



AGENDA | REGULAR TOWN COUNCIL MEETING

Thursday, September 10, 2026 at 6:00 PM
Council Chambers – Apex Town Hall, 73 Hunter Street

The meeting will adjourn when all business is concluded or 11:00 PM, whichever comes first

Governing Body and Town Senior Executive Leadership

Mayor: Jacques K. Gilbert | Mayor Pro Tempore: Terry Mahaffey
Council Members: Edward Gray, Arno Zegerman, Shane Reese, Sue Mu
Town Manager: Randal E. Vosburg
Deputy Town Manager: Shawn Purvis
Assistant Town Managers: Demetria John and Marty Stone
Town Clerk: Allen L. Coleman | Interim Town Attorney: Brian Meyer

English	Spanish	Chinese (Simplified)
ANNOUNCEMENTS Members of the public can one1m and view the meeting on the Town's YouTube Channel https://www.youtube.com/c/TownofApexGov or attend in-person. The meeting date, start time, and location details are included at the top of this agenda document.	ANUNCIOS Las personas interesadas pueden acceder y ver la reunión a través del canal de YouTube de la Ciudad en https://www.youtube.com/c/TownofApexGov o asistir en persona. En la parte superior de este documento de agenda se indican la fecha, la hora de inicio y la ubicación de la reunión.	公告 公众可通过镇政府的YouTube频道 https://www.youtube.com/c/TownofApexGov 在线旁听会议，或选择现场参与。会议日期、开始时间及地点详情见本议程文件顶部。
Accommodation Statement: Anyone needing special accommodations to attend this meeting and/or if this one1m ation is needed in an alternative format, please contact the Town Clerk's Office. The Town Clerk is located at 73 Hunter Street in Apex Town Hall on the 2nd Floor, (email) allen.coleman@apexnc.org or (1one) 919-249-1260.	Aviso sobre adaptaciones: Si necesita adaptaciones especiales para asistir a esta reunión o requiere esta información en un formato alternativo, comuníquese con la Oficina del Secretario Municipal, ubicada en el segundo piso del Ayuntamiento de Apex, en 73 Hunter Street, por correo electrónico a través de allen.coleman@apexnc.org o llamando al 919-249-1260.	便利服务声明: 如需特殊便利服务以参加本次会议，或需要将本信息提供为其他格式，请联系镇书记官办公室。 办公地址：Apex镇政务厅二楼（Hunter街73号） 邮箱： allen.coleman@apexnc.org 电话：919-249-1260

COMMENCEMENT, INVOCATION, AND PLEDGE OF ALLEGIANCE

The Town of Apex values and celebrates diversity and inclusion. We see diversity as a strength that binds our community together – inviting members from different faith communities to deliver the invocation at the beginning of our Council meetings, supports this unity.

Recognizing that not everyone practices the same traditions, we welcome you to have a private moment of silence.

Please stand as you are able for the Pledge of Allegiance

Patriot Day Presentation of Colors by the Apex Police Department and Apex Fire Department

ANNOUNCEMENTS AND PETITIONS BY THE GOVERNING BODY

Members of the governing body may use this time to share updates on a variety of different topics or submit petitions for future consideration with the entire board and the community.

ADOPTION OF THE MEETING AGENDA

The Mayor will call for additional Agenda items from Council or Staff and set the Regular Meeting Agenda prior to Council actions. Items to be pulled or added should be submitted to the Town Clerk in advance of the meeting.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the Consent Agenda, and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Mayor will present the Consent Agenda to be set prior to taking action on the following items:

CN1 Agreement - Itron, Inc. - Utility Software Support Technology Services - Amendment No. 4 FDM Tools and Field Tools Solution through June 30, 2027

Jonathan Jacobs, P.E., Director, Water Resources Department

CN2 Agreement - Norfield Development Partners, LLC - Continuation of Locator Logix Software for Electric and Water Lines - September 13, 2026 through September 12, 2027

Kathy Moyer, Director, Electric Utilities Department

CN3 Agreements - Research Triangle Regional Public Transportation Authority, d/b/a GoTriangle (GoTriangle) and the Capital Area Metropolitan Planning Organization (CAMPO) - Go Apex Route 1: Fixed Route Circulator and FY2027 Bus Stop Improvements and New Bus Stop Construction

Katie Schwing, Senior Planner - Long Range Transit, Planning Department

CN4 Agreement - Transportation and Infrastructure Reimbursement Agreement - Design and Installation of a Pedestrian Hybrid Beacon Traffic Signal at Middle Creek Greenway Crossing of Sunset Lake Road - Reimbursing the Town of Holly Springs \$100,000

Russell Dalton, Traffic Engineering Manager, Transportation and Infrastructure Dev. Dept.

CN5 Agreement Ratification - Enpira, Inc. - Energy Management Software Licensing - July 1, 2026 through June 30, 2027

Don Reeves, Sustainability Program Coordinator, Budget and Performance Mgmt. Department

CN6 Agreement Ratification - Motorola Solutions, Inc. - August 1, 2026 through July 31, 2027 - Radio Equipment for Various Town Departments

Trevor Materasso, Deputy Chief of Police, Apex Police Department (APD)

CN7 Contract Award - Hollins Construction Services, Inc. - Downtown Safe Routes to School and Transit Connections (BL-0047)

Amir Nezarati, Transportation Engineering Manager, Transportation and Infra. Dev. Dept.

CN8 Council Meeting Minutes - Various

Allen Coleman, Town Clerk

CN9 Report of Council Committee Referrals

Allen Coleman, Town Clerk

TOWN COUNCIL COMMITTEE REPORTS - None Anticipated

TOWN MANAGER'S REPORT

TOWN CLERK'S REPORT

PUBLIC ART MOMENT QUARTERLY - None Scheduled

The quarterly public art moment spotlights local creativity, reflects community voices, and supports informed decisions that strengthen a vibrant and growing cultural landscape. The purpose of this item is to bring awareness and appreciation of local artist.

PROCLAMATIONS / SPECIAL PRESENTATIONS

PR1 Proclamation - Hispanic Heritage Month - September 15 through October 15, 2026

Mayor Jacques K. Gilbert

PR2 Proclamation - National Senior Center Month 2026 - September 2026

Mayor Jacques K. Gilbert

PR3 Proclamation - Patriot's Day 2026 - Friday, September 11, 2026

Mayor Jacques K. Gilbert

PR4 Proclamation - Think Apex Day 2026 - Saturday, September 12, 2026

Mayor Jacques K. Gilbert

PR5 Proclamation - United States Air Force Birthday - Friday, September 18, 2026

Mayor Jacques K. Gilbert and Councilmember Edward Gray

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Mayor and Town Council. The speaker is requested not to address items that appear as Public Hearings. The Mayor will recognize those who would like to speak at the appropriate time.

Large groups are asked to select a representative to speak for the entire group.

Comments must be limited to 3 minutes to allow others the opportunity to speak.

Members of the public are encouraged to view the Public Forum and Public Hearing Participation Guidelines.

PUBLIC HEARINGS

PH1 Annexation No. 831 - 2412 Olive Chapel Road - 1.481 acres

Dianne Khin, Director, Planning Department

REGULAR MEETING AGENDA - None Anticipated

INFORMATIONAL ITEMS

Information items focus on educating and bringing awareness to matters or topics that do not require immediate decision or action.

Information items are for informational purposes only and may not be discussed as part of the business meeting.

CLOSED SESSION

Council will enter into closed session pursuant to:

CS1 Karmen McGee, Human Resources Director

NCGS §143-318.11(a)(6):

"To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee."

CS2 Karmen McGee, Human Resources Director

NCGS §143-318.11(a)(6):

"To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee."

ADJOURNMENT

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 10, 2026

Item Details

Presenter(s): Jonathan Jacobs, P.E., Director

Department(s): Water Resources

Requested Motion

Motion to approve Amendment No. 4 to the FDM Tools and Field Tools Solution Agreement between the Town of Apex and Itron, Inc., extending the agreement through July 31, 2027, approve the inclusion of indemnification language, and authorize the Town Manager, or their designee, to execute the amendment on behalf of the Town.

Approval Recommended?

Yes

Item Details

Through the Water Resources Department, the Town utilizes Itron, Inc. software and field tools to support the collection of meter reads from the Town's utility metering infrastructure. The Town and Itron originally entered into the FDM Tools and Field Tools Solution Agreement on June 9, 2022, and the agreement has subsequently been amended to continue the necessary software support and subscription services.

Amendment No. 4 proposes to extend the existing agreement for an additional one-year term, through July 31, 2027.

The renewal includes FCS Software Maintenance and Field Tools Advanced subscription services for the period of August 1, 2026 through July 31, 2027. These services support the software and field tools used by Town staff in connection with utility meter reading operations. The total cost of the renewal is \$7,265.72, consisting of \$4,994.82 for FCS Software Maintenance and \$2,270.90 for Field Tools Advanced.

Amendment No. 4 does not otherwise replace the underlying agreement; rather, it extends the term of the existing agreement through July 31, 2027. The amendment also continues contractual provisions previously approved by the Town, including indemnification language associated with the original agreement.

The total cost of the one-year renewal is \$7,265.72. Funding is available within the Water Resources Department's adopted FY 2026-27 budget, and no additional appropriation is required.

Attachments

- CN1-A1: CONT-2022-059 - Original Contract between TOA and Intron - Collection of Meter Reads
- CN1-A2: CONT-2023-101 - Amendment No. 1 - TOA and Intron - Collection of Meter Reads
- CN1-A3: CONT-2024-115 - Amendment No. 2 - TOA and Intron - Collection of Meter Reads
- CN1-A4: CONT-2025-238 - Amendment No. 3 - TOA and Intron - Collection of Meter Reads
- CN1-A5: Revised Quote - Intron - Collection of Meter Reads
- CN1-A6: Proposed Amendment No. 4 - TOA and Intron - Collection of Meter Reads



FDM Tools and Field Tools Solution Agreement



FDM TOOLS AND FIELD TOOLS SOLUTION AGREEMENT

THIS FDM TOOLS AND FIELD TOOLS SOLUTION AGREEMENT (THIS “AGREEMENT”) GOVERNS YOUR USE OF AND ACCESS TO THE SERVICES, AS DEFINED IN THE DEFINITIONS SECTION BELOW, THAT ARE PROVIDED BY ITRON, INC. OR ANY OF ITS SUBSIDIARIES (EACH “ITRON”).

This Agreement is made by and between Itron, Inc. (“Itron”), and entity organized under the laws of Washington having an address at 2111 N. Molter Road, Liberty Lake, WA 99019 and *Town of Apex*, an entity organized under the laws of North Carolina, having an address at 73 Hunter Street, Apex, NC 27502 (“Customer”) and is effective as of the date of the last signature (the “Effective Date”).

1. Definitions.

Affiliate means any legal entity that directly or indirectly controls, is controlled by, or is under common control with, a Party to this Agreement, where "control" means ownership of at least fifty (50) percent of the equity having the power to vote on or direct the affairs of the entity.

Annual Adjustment means Itron’s annual price increase.

Billing Cycle means a period of one year beginning on the Effective Date or any anniversary thereof.

Claim means an unaffiliated third-party claim, action, cause of action, or demand for damages, cost, or expense (including reasonable attorney’s fees) or other relief.

Client Services Guidelines Documents means the following documents as they may be updated by Itron from time to time: “Product Contact Information Sheet”, “After Hours Support”, and “Working Effectively with Itron Global Services”. Copies of the Client Services Guidelines Documents may be obtained by calling (877) 487-6602 or such other number or process provided by Itron to Customer.

Confidential Information means any confidential, trade secret or other proprietary information disclosed by a Party or a Party’s Affiliate related to its business that is designated as “confidential” or which a

reasonable person knows or should understand to be confidential, regardless of the form of disclosure and whether of a technical, business or financial nature, including but not limited to processes and methods, product design and details of operation, product plans, prototypes, schedules, results, reports, computer programs, databases, compilations of data, engineering activity, manufacturing activity, analytical methods, strategies, and the like, but excluding information that: (i) is now or becomes generally available to the public through no fault or breach of the receiving Party; (ii) is rightfully in the receiving Party's possession, or known by it, prior to its receipt from the disclosing Party; (iii) is rightfully disclosed to the receiving Party by a third-party, free of any obligation of confidentiality; (iv) is developed by the receiving Party independently and without reference to the disclosing Party's Confidential Information, or (v) is rightfully disclosed pursuant to the applicable laws or regulations, or rules of any stock exchange, or orders of the court or other government authorities with notice to the disclosing Party. Confidential Information shall not include "public records" as defined by Chapter 132 of the North Carolina General Statutes.

Covered Product means Software.

Customer means you or, if you are accepting on behalf of your employer or another entity, such employer or entity.

Customer Data means all data about Customer's existing or prospective end users that Itron acquires, develops, or derives in connection with performance under this Agreement. Such customer data may include, without limitation, any personally identifying information relating to a Customer's existing or prospective end user, or any other information that, either individually or when combined with other information could be used to identify a particular Customer end user or a prospective Customer end user, which information is not generally available to the public.

Defended Party means a Party entitled to defense and indemnification from the other Party under Section 11 ("Third-Party Claims") of this Agreement.

Defending Party means a Party obligated to provide defense and indemnification to the other Party under Section 11 ("Third Party Claims") of this Agreement.

Documentation means user manuals, training materials, product descriptions and specifications, technical manuals, supporting materials and other information relating to Services or Software provided by Itron, which Itron customarily makes available to its customers.

Endpoint means an electric meter, gas or water endpoint receiver-transmitter, battery-powered device, or any other device which Customer will configure and/or manage as part of a Service Offering.

Error means a material failure of Software to comply with applicable published Itron specifications.

Fees means all amounts payable to Itron by Customer for Services provided under this Agreement, as set forth in a Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron.

Fix means a correction or workaround for an Error.

Global Support Services means those support services provided by Itron technical representatives via telephone, email, website or other means to assist Customer's Primary Service Contacts with questions or issues related to the operation of Covered Products.

Improvement means an update, modification, enhancement and/or extension to Software functionality that is included in a Release.

Intellectual Property and **Intellectual Property Rights** mean all industrial and intellectual property, including, without limitation, patents, patent applications, invention registrations, and all other rights in inventions, copyrights in published and unpublished works, whether registered or unregistered, know-how, trade secrets, and confidential and proprietary information, whether such intellectual property has been created, applied for or obtained anywhere throughout the world.

M&S Commencement Date means the date upon and after which a Covered Product will be entitled to receive Maintenance Services purchased by Customer, which unless otherwise specified in a Quote provided by Itron, will be the Service Offering Commencement Date.

Maintenance Services means maintenance and support services described in Section 8 ("Maintenance Services") of this Agreement.

Mobile Device Software means Itron's FDM Tools or Field Tools mobile application for FDM Tools or Field Tools, as applicable.

One-Time Setup Fee means the one-time setup fee(s) for each Service Offering (if any) identified in the applicable Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron.

Operating Condition means performance in accordance with applicable published Itron specifications.

Party means Customer or Itron and **Parties** means Customer and Itron.

Primary Services Contacts means Customer's primary support staff who provides internal support to Customer's operations personnel and who are key interface to Itron for all Maintenance Services.

Quote means a valid quote for Services provided to Customer by Itron.

Release means a collection of Fixes and/or Improvements made available by Itron to Customer.

Service Offering means the FDM Tools or Field Tools software-as-a-service offering identified on the applicable Purchase Order whereby Itron or its designated provider hosts and provides Customer with access to SaaS Software on Servers via the internet.

SaaS Software means the Itron proprietary data collection and management computer program(s) for the Service Offering(s) purchased by Customer.

Servers means the physical computer hardware owned by Itron or its designated provider on which SaaS

Software will be installed, operated, and maintained by or on behalf of Itron.

Service Offering Commencement Date means, with respect to each Service Offering, the date Itron makes access credentials for the Service Offering available to Customer.

Service Levels means the defined level of impact and associated response time, effort level, and escalation path procedures and guidelines described in Attachment A to this Agreement.

Services mean the Service Offering(s) and Maintenance Services.

Software means Mobile Device Software and SaaS Software.

Subscription Fees means annual fees identified in the applicable Quote or, if no Quote, Itron's then- current list price at the time of Purchase Order acceptance by Itron, for each Service Offering, plus the Annual Adjustment, if any.

Subscription Term means the subscription term purchased by Customer for each Service Offering, which begins upon the applicable Service Offering Commencement Date.

Territory means the country in which Itron provides Services to Customer.

2. Purchase Order Requirement. Customer shall purchase Services by issuing a purchase order or similar ordering document accepted by Itron ("Purchase Order") indicating specific Services, Itron part numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and contract reference. No contingency contained on any Purchase Order shall be binding upon Itron. The terms of this Agreement shall apply, regardless of any additional or conflicting terms of any Purchase Order or other correspondence or documentation submitted by Customer to Itron, and any such additional or conflicting terms are deemed rejected by Itron.

3. Term. The initial term of this Agreement begins on the Effective Date and expires one (1) year following the Effective Date. Prior to the expiration of the Subscription for the Mobile Device Software, the Parties will sign an amendment that extends the Subscription for the Mobile Device Software for one (1) year. Any accepted Purchase Orders as of the expiration date of this Agreement shall be completed by the Parties and the term of this Agreement will be extended solely for that purpose until completion. This Section is subject to Section 14 ("Termination") of this Agreement.

4. Fees, Invoicing, Taxes and Payment

4.1. . Fees. Itron offers a basic Service Offering and a premium Service Offering under this Agreement. The basic Service Offering is provided free of charge and the premium Service Offering is provided at the initial fees set forth in Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron. Fees for Software Maintenance Services are included in the Subscription Fee, if any, for the applicable Service Offering. Itron reserves the right to add, remove and/or change features within a Service Offering at Itron's sole discretion and will notify Customer of such changes at least sixty (60) days in advance of implementing such changes within Service Offering.

4.2. Invoicing. Customer shall pay Subscription Fees (if any) in advance for each Billing Cycle for which it has purchased a Service Offering. Itron will invoice Customer for the One-Time Setup Fee and initial Subscription Fees for each Service Offering upon the Service Offering Commencement Date. Initial Subscription Fees shall be prorated based on the number of months remaining in the current Billing Cycle following the Service Offering Commencement Date. Itron may discontinue a Service Offering by providing Customer with written notice of discontinuance no less than 180 days prior to the commencement of a Billing Cycle. Otherwise, Itron will provide Customer with a renewal notice for the Service Offering at least 120 days prior to the commencement of each Billing Cycle. Customer may discontinue a Service Offering by providing Itron with written notice of non-renewal no less than 90 days prior to the commencement of a Billing Cycle. Otherwise, approximately 20 days prior to the commencement of each Billing Cycle, Itron will provide Customer with an invoice for Subscription Fees payable by Customer for the forthcoming Billing Cycle.

4.3. Payment. Customer shall pay the Itron entity designated in the applicable invoice. Unless otherwise specified in the applicable invoice, Customer shall pay such Itron entity in USD. Customer must pay each invoice within thirty (30) days of the invoice issuance date. Payment must be made by electronic transfer to a bank account designated by Itron.

4.4. Invoice Disputes. Customer shall notify Itron in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within ten (10) days from the original invoice date. Invoices for which no such timely notification is received shall be deemed accepted by Customer as true and correct, and Customer shall pay all amounts due under such invoices within the period set forth in Section 4.3. The Parties shall seek to resolve all such disputes expeditiously and in good faith in accordance with the dispute resolution provisions set forth in Section 17 ("Disputes"). Notwithstanding anything to the contrary, each Party shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, payment by Customer of all undisputed amounts due and payable under this Agreement.

4.5. Late Payment. Except for invoiced payments that Customer has timely disputed, all late payments

shall bear interest at the lesser of the rate of one percent (1%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall also reimburse Itron for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Itron does not waive by the exercise of any rights hereunder), Itron shall be entitled to suspend the provision of any Services if Customer fails to pay any undisputed amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof.

4.6. No Setoff. Customer shall not withhold payment of any amounts due and payable under this Agreement by reason of any setoff of any claim or dispute with Itron, whether relating to Itron's breach, bankruptcy, or otherwise.

4.7. Taxes. All prices are exclusive of any taxes, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon this Agreement. Customer shall pay any taxes related to products and services provided pursuant to this Agreement (except for taxes based on Itron's net income) or shall present an exception certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice. The Parties agree to fully cooperate with one another regarding taxes and any related issues arising from this Agreement. Customer shall indemnify and hold Itron harmless from any tax liability assessed against Itron but rightfully owed by Customer arising from or related to transactions set forth herein .

5. Documentation. Subject to Customer's compliance with this Agreement, including payment of all applicable Fees, Itron hereby grants to Customer a non-exclusive, non-transferable, non-assignable, limited right to access and use the Documentation with the Services for its internal business purposes in the Territory. Itron will make its standard Documentation available via download. Itron will provide Customer with download instructions.

6. Service Offerings

6.1. Access Rights and Restrictions.

6.1.1. Access Rights. Subject to Customer's compliance with this Agreement, including payment of all applicable Fees (if any), Itron hereby grants to Customer, for the Subscription Term(s) purchased, a non-exclusive, non-transferable, non-assignable, limited right to access and use the Service Offering(s) for its internal business purposes in the Territory.

6.1.2. Restrictions on Use. Customer and its authorized users may not: (a) modify, translate or create derivative works of any Service Offering or related Documentation; (b) copy, reproduce, distribute, republish, download, display, post or transmit any portion of a Service Offering or related Documentation in any form or by any means; (c) sell, assign, transfer, lease or sublicense any Service Offering; (d) allow any third party, other than authorized users, to access any Service Offering or related Documentation without Itron's prior written consent; (e) use any Service Offering or related

Documentation to provide services to third parties, or otherwise use any Service Offering on a “service bureau” or “timesharing” or subscription basis; (f) reverse engineer, disassemble, decrypt, extract or otherwise reduce any Service Offering to a human perceivable form or otherwise attempt to determine the source code or algorithms of any Service Offering (except to the extent the foregoing restriction is expressly prohibited by applicable law); (g) infringe any of Itron’s or its providers’ Intellectual Property Rights; (h) publicly publish the results of any benchmark tests run on any Service Offering; (i) use any Service Offering or related Documentation to engage in any fraudulent, illegal or unauthorized act; (j) introduce into or transmit through any Service Offering any material containing software viruses, worms, trap doors, back doors, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (k) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of Itron’s or its providers’ Intellectual Property Rights, whether such notice or indications are affixed on, contained in or otherwise connected to a Service Offering; (l) attempt to gain unauthorized access to a Service Offering or Itron’s or its providers’ systems or networks; (m) merge any Service Offering with any other product or service without Itron’s prior written consent and the payment of any additional fees; or (n) access or use any Service Offering or related Documentation to build or support, and/or assist a third-party in building or supporting, products or services competitive to Itron or its providers.

6.1.3. Content Restrictions. Customer may not distribute, download, or place on any Itron or its providers’ website or Server, or use with any Service Offering, any content that: (a) Customer knows or has reason to believe infringes the Intellectual Property Rights of any third party or violates any rights of publicity or privacy; (b) violates any applicable law, statute, ordinance; (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; or (d) is obscene, pornographic or indecent (items (a) – (d) are collectively referred to as “Prohibited Content”). Itron reserves the right to remove any Prohibited Content from the Server without prior notice to Customer. Customer will indemnify, defend and hold Itron and its providers harmless for any claims, liabilities, losses, causes of action, damages, settlements, and costs and expenses (including, without limitation attorneys’ fees and costs) arising from any third-party claims related to or generated by any Prohibited Content distributed, downloaded, or placed on any Itron or its providers’ website or Server or used with any Service Offering by Customer.

6.2. Breach of Restrictions. Customer’s breach of the restrictions set forth in Section 6.1.2 (“Restrictions on Use”) or Section 6.1.3 (“Content Restrictions”) shall constitute a material breach of this Agreement and shall result in revocation and immediate suspension or termination, as determined by Itron in its sole discretion, of all rights and licenses granted under this Agreement with respect to the Service Offerings. Revocation does not preclude Itron from pursuing any legal and equitable remedies for Customer’s breach of these restrictions.

6.3. SaaS Software Availability. Itron will endeavor to make the SaaS Software available to Customer

through the Service Offering(s) purchased by Customer at least 99.5% of the time, excluding any downtime resulting from maintenance or circumstances beyond Itron's reasonable control.

6.4. Third-Party Radio Devices. Customer may use a Service Offering to collect Customer Data from Endpoints equipped with radio communication devices not manufactured or provided by Itron ("Third-Party Radio Device"). Itron makes no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, and fitness for use, merchantability, condition, quality, performance or non-infringement of, and disclaims all liability with respect to, Third-Party Radio Devices. Without limiting the foregoing, Itron shall have no liability (a) if a Third-Party Radio Device is not responding or communicating or (b) for unread Endpoints due to defective or unreachable Third-Party Radio Devices. Customer shall contact the supplier of such device for support.

6.5. Sizing of Software-as-a-Service. Itron will size Service Offerings, Servers, and systems for Customer's specific deployment. System sizing depends upon the Service Offering and types of devices and sensors and may be a factor in determining Subscription Fees. Sizing criteria may include number of system endpoints, number of network devices, residential meter configuration, commercial and industrial meter configuration, desired data collection intervals, storage duration for historical data, and the number of concurrent and total users of the application. Any sizing changes during a Subscription Term will require a written agreement of the Parties and may result in a change in Subscription Fees.

6.6. Application Upgrade and Fixes. SaaS Software is updated regularly using a continuous delivery method.

6.7. Conditions on Use of Service. Customer will use of the Service Offerings only in accordance with the Documentation, this Agreement, and applicable laws and government regulations. The rights of any user to access and use the Service Offerings cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized user), and Customer shall make every reasonable effort to prevent unauthorized third parties from accessing the Service Offerings.

6.8. Suspension or Restriction of Service. Itron may suspend or restrict all or part of the Service Offerings at any time to protect the integrity and functionality of the Software, Servers, platforms, and systems, or for a breach of Section 6.1.2 ("Restrictions on Use"), Section 6.1.3 ("Content Restrictions") or Section 6.7 ("Conditions on Use of Service"), until such breach is cured to Itron's reasonable satisfaction.

6.9. Incident Management. Itron will provide Customer support and incident and problem management services, which include responding to alerts, tracking the issue, troubleshooting the problem and escalating to Itron subject matter experts or third-party providers.

6.10. Customer Technical Responsibilities. Customer is responsible for selecting, acquiring, securing and maintaining all equipment and ancillary services needed to connect to, access, or otherwise use and maintain compatibility with the Service Offerings, at Customer's sole expense.

6.11. User IDs and Passwords. Itron shall provide Customer with a user identification and password ("User ID") to access each Service Offering. Customer shall be solely responsible for all use of Customer's subscriptions and accounts. Customer shall maintain the confidentiality of all User IDs assigned to or created by Customer. User IDs may not be shared or used by more than one user.

6.12. Maintenance. System maintenance, whenever reasonably practicable, will be performed during off-business hours based on the regions covered by the Service Offering. Itron will minimize Service Offering disruptions to the extent reasonably practical.

6.13. Business Continuity. Application data is fully backed up weekly and differentially backed up daily unless backup is prevented by loss of datacenter or datacenter connectivity or other circumstances outside Itron's reasonable control. Itron's hosted environment is on fault tolerant systems with specific mechanisms for high availability.

6.14. Recovery of Customer Data. At the end of the Term of the Agreement or SaaS service (unless the Agreement or SaaS service is renewed pursuant to duly executed amendment or a new agreement), or in the event of its early termination in accordance with the terms of the Agreement, Customer will confirm to Itron in writing, no later than on the effective date of expiration or termination, its decision to close the SaaS service ("Closure Confirmation"). Provided that Itron has received the Closure Confirmation from Customer within the aforementioned period, Itron will maintain Customer's access to the system for a maximum period of three (3) months from receipt of the Closure Confirmation, for the sole purpose of enabling Customer to retrieve the following Customer data: access account information, meter details, history of index reading data and photographs. Customer may, at no additional cost, export said system data in the standard file format used by the SaaS service, or the format already supported by the SaaS service. At the end of this three (3) month period, the Customer data will be permanently deleted and will no longer be recoverable.

7. Mobile Device Software License.

7.1. License Grant. Subject to the terms of this Agreement, Itron grants Company a limited, non-exclusive, and non-transferrable license to download, install, and use the Mobile Device Software on Itron-approved mobile devices owned or otherwise controlled by Customer (each a "Mobile Device")

strictly in accordance with the Documentation.

7.2. License Restrictions. Customer shall not: (a) copy the Mobile Device Software; (b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Mobile Device Software; (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Mobile Device Software or any part thereof; (d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Mobile Device Software, including any copy thereof; or (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Mobile Device Software, or any features or functionality of the Mobile Device Software, to any third party for any reason.

7.3. Updates. Itron may from time to time in its sole discretion develop and provide Mobile Device Software updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "Updates"). Based on Customer's Mobile Device settings, when Customer's Mobile Device is connected to the internet either: (a) the Mobile Device Software will automatically download and install all available Updates; or (b) Customer may receive notice of or be prompted to download and install available Updates. Customer shall promptly download and install all Updates and acknowledge and agree that the Mobile Device Software, the Service Offering, or portions thereof may not properly operate should Customer fail to do so. Customer further agrees that all Updates will be deemed part of the Mobile Device Software and be subject to all terms and conditions of this Agreement.

7.4. Compatible Mobile Devices. Mobile Device Software is designed to work in connection with Mobile Devices that meet Itron minimum requirements. Itron will provide the minimum specifications to Customer. Itron is not required to make Mobile Device Software work with any other mobile devices.

7.5. Disclaimer of Liability. Mobile Device Software requires Internet connectivity, which Customer is solely responsible for procuring. Itron accepts no responsibility for any internet services failure, Mobile Device failure, or for any loss or damage of any kind caused by such failure.

8. Maintenance Services.

8.1. Primary Services Contacts.

8.1.1. Designation by Customer. Customer shall designate a minimum of one and not more than two Primary Services Contacts for each Covered Product line, to serve as administrative liaisons for all matters pertaining to Maintenance Services for such Covered Product line and shall provide their contact information to Itron's customer account representative. Primary Services Contacts shall

promptly report problems with Covered Products by submitting a Service Request for entry into Itron's support tracking system. Although it is Customer's sole right to choose its Primary Services Contacts, Customer and Itron acknowledge that each Primary Services Contact must have the appropriate technical skills and training for the position. If Customer replaces a Primary Services Contact, Customer will provide updated contact information to Itron's customer account representative, and the new Primary Services Contact will be properly trained prior to interfacing with Itron support personnel.

8.2. Training of Principal Services Contacts. Before a Primary Services Contact interfaces with Itron support personnel, he/she will attend training sessions offered by Itron, an Itron-approved trainer, or Customer's training program approved by Itron to ensure that the Primary Services Contact is (i) knowledgeable about operation of the applicable Covered Products, and (ii) qualified to perform problem determination and remedial functions with respect to such Covered Products. Customer may perform Itron-approved training or may engage Itron to perform training of Primary Services Contacts at Itron's then current rates. Itron will make training sessions available by remote video conference or training will be made available at a location or in a manner mutually agreed by the Parties. Customer shall be responsible for all Customer's associated travel-related expenses and, if the Parties agree that training will be provided at a location other than an Itron-designated facility (e.g., at a Customer- proposed facility), Customer will also reimburse Itron's travel-related expenses. The Primary Services Contacts must have the skills and capabilities to train other Customer personnel on Covered Products. Itron may update Covered Product training from time to time and, upon receiving notice of such updates from Itron, Customer shall promptly provide such training to its Primary Services Contacts in accordance with this Section. Global Support Services & Service Requests.

8.2.1. Global Support Services. Itron will make support representatives available to provide technical support during its then current normal business hours as set forth in the Product Contact Information Sheet included within the Client Services Guidelines Document. Global Support Services include troubleshooting & problem diagnosis relating to Covered Products; release or system management consulting; and recommendations for fully utilizing Covered Products. Customer acknowledges and agrees that Global Support Services are not intended as a substitute for training of Customer personnel, field support, or Itron professional services. Nor will Customer use Global Support Services in lieu of having qualified and trained support personnel of its own.

8.2.2. Service Request Process. Customer shall submit Service Requests in the manner required by the Client Services Guidelines Documents and Service Levels. Customer may submit Service Requests on a 24/7/365 basis and Itron will respond to such Service Requests in accordance with the Service Levels. When Customer submits a Service Request, Customer will reasonably assess its

urgency according to the appropriate Severity Level in Attachment A to this Agreement. Itron will designate the initial Severity Level and the Parties will resolve any perceived gap regarding the Severity Level designation as soon as is reasonably practical.

8.2.3. Field Support. At Customer's request, and Itron's approval, Itron will dispatch support personnel to Customer's location to provide onsite Global Support Services ("Requested Field Support") related to a reported problem which cannot be addressed remotely. Requested Field Support will be billed at Itron's then-current rates, and Customer will reimburse Itron's travel-related expenses, unless the cause of the reported problem is found to be the fault of Itron.

8.3. Software Maintenance.

8.3.1. Fixes. Itron shall provide Fixes in accordance with the Service Levels. Itron's obligations with respect to Service Levels are contingent upon Customer (i) devoting the same level of effort to resolving the Error as is required of Itron, (ii) responding to requests made by Itron within the applicable Response Time, (iii) assigning only qualified personnel to help Itron address the Error, and (iv) providing all information, access, and assistance reasonably requested by Itron to address the Error.

8.3.2. Improvements. Itron shall provide Improvements, if any, at no charge to Customer if such Improvements are made within the current product specifications and are made available to Itron customers generally at no charge. Improvements created as new add-on modules/features and not part of the products original specifications, will be created at Itron's discretion and will be billable at Itron's then current rates. Access to new add-on modules may also require additional licensing and subscription fees.

8.3.3. Exclusions. Itron shall have no obligation to provide Maintenance Services for, or liability to Customer for Software adversely affected by (i) use of Software by anyone other than Itron in combination with software, equipment, or communications networks not referenced in the Documentation as being compatible with the Software; (ii) failure to perform customer responsibilities describe in this Agreement, (iii) viruses introduced through no fault of Itron.

8.3.4. Customer Responsibilities. Customer will support Itron investigation and restoration efforts as defined in the Service Level table and will act upon / implement support solutions and workarounds recommended by Itron in a timely fashion. When escalating a Service Request with Itron, Customer's Primary Service Contact shall collect and provide all data logs, findings, analysis, and any relevant forensic information pertaining to the issue as outlined in Client Services Guideline Documents.

9. Warranty Disclaimer. ITRON MAKES NO WARRANTY OF ANY KIND RELATING TO SERVICES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, (I) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (II) WARRANTIES OF TITLE AND AGAINST INFRINGEMENT, AND (III) WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. ITRON AND ITS SUPPLIERS DO NOT WARRANT OR REPRESENT THAT SERVICES OR EQUIPMENT WILL BE FREE FROM BUGS, ERRORS OR THAT THEIR USE WILL BE UNINTERRUPTED OR ERROR-FREE. ITRON ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM ITS DATA CENTERS OR DATA CENTERS OF ITS VENDORS VIA WAN, CELLULAR OR OTHER PUBLIC COMMUNICATIONS OR BROADBAND SYSTEMS (INCLUDING OUTAGES, DEVICE NON-REACHABILITY, LOSS OR INACCURATE READING) OR FOR ANY CONSEQUENCES, LOSSES, OR DAMAGES ARISING FROM CHANGES MADE BY CUSTOMER TO THE CONTENT OR PROGRAMMING OF EQUIPMENT (UNLESS CAUSED BY A DEFECTIVE PRODUCT). THESE DISCLAIMERS WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER THIS AGREEMENT.

10. Intellectual Property.

10.1. Reservation of Intellectual Property. Subject to the limited rights expressly granted by Itron to Customer under this Agreement: (i) Itron reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Itron owns all rights, title and interest in and to its Confidential Information and the products, services and related deliverables provided by Itron under this Agreement. Subject to the limited rights expressly granted by Customer to Itron under this Agreement, Customer reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Customer owns all right, title and interest in and to its Confidential Information and Customer Data. All rights, titles, and interests not specifically and expressly granted by either Party hereunder are hereby reserved.

10.2. Customer Suggestions. Itron shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into any products and services any suggestions, enhancement requests, recommendations or other feedback provided by Customer.

11. Third-Party Claims.

11.1. General Claims. The Defending Party will defend the Defended Party from and against Claims arising from personal bodily injury, death, or damage to tangible personal property or real property, and will indemnify the Defended Party from resulting settlements approved by the Defending Party and final judgments entered against the Defended Party, to the extent caused by the negligence of the Defending Party.

11.2. Infringement Claims. Itron, as the Defending Party, will defend Customer, as the Defended Party, from and against Claims alleging that any Itron-branded products or services, as delivered to Customer, infringe upon any third party's Intellectual Property Rights within the Territory ("IP Claims"). Itron will also indemnify Customer for settlements approved by Itron and final judgments entered against Customer to the extent resulting from IP Claims. If Itron receives notice of an alleged infringement by any products or services provided to Customer under this Agreement, or if Itron reasonably believes that an IP Claim is likely, Itron may stop delivery of the affected products or services without liability for failure to deliver them. Itron will have the right, at its sole option, to obtain the right for Customer to continue use of the affected products or services, or to replace or modify the affected products or services so that they are no longer alleged or believed to infringe, if it can be done without significant loss of functionality. If neither of the foregoing options are available to Itron on commercially reasonable terms, Itron may terminate Customer's use of the affected products or Services without further liability under this section, in which case Itron will refund to Customer the depreciated value of the affected product and any prepaid unused portion of the service.

11.3. Conditions to Defense. As a condition to the Defending Party's obligations under Section 11.1 or Section 11.2 above, the Defended Party must: (i) promptly notify the Defending Party in writing of the Claim; (ii) give the Defending Party all reasonably requested information and assistance in connection with the Claim in a timely manner; and (iii) give the Defending Party the sole right to control the defense and settle of the Claim. The Defending Party shall not enter into any settlement of a Claim against a Defended Party without the Defended Party's prior written consent unless: (a) there is no admission of fault of the Defended Party; (b) there is no injunctive or other non-monetary relief against the Defended Party; and, (c) the settlement includes the claimant's or plaintiff's release of the Defended Party from all liability in respect of the Claim.

11.4. Exclusions to Infringement Claim Defense. Itron will have no obligation under Section 11.2 above for any infringement Claim in which infringement is alleged or caused by (i) the combination, operation or use of any product or service provided by Itron with any product or service (including third-party software and equipment) not provided by Itron, (ii) any modification to products or services made either without Itron's prior written consent or by a person other than Itron or an authorized representative

of Itron, (iii) failure to use updated or modified products or services as provided by Itron, (iv) use of any release of Itron software or any firmware other than the most current release made available to Customer, (v) use of products or services not in accordance with this Agreement and applicable Documentation, or (vi) Itron's compliance with any designs, specifications, or instructions provided by Customer. In addition, Itron shall not be liable for enhanced or punitive damages that could have been avoided or reduced by actions within the control of Customer.

11.5. EXCLUSIVE REMEDY. THIS SECTION 11 CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST CUSTOMER.

12. Data Protection. The Parties must implement and establish reasonable security protocols for the protection and retention of Customer Data. As between Customer and Itron, Customer will retain its rights in Customer Data; provided, however, Customer hereby grants Itron a non-exclusive, royalty-free, perpetual, worldwide license to copy, modify, use, sublicense, distribute, display, create derivative works of all Customer Data for the purposes of (i) providing products and services to Customer, (ii) testing, troubleshooting, and optimizing performance and quality of Itron's products and services, and (iii) so long as Customer is not identifiable and all personally identifiable information is either removed or anonymized, developing new products and services. Itron assumes no responsibility for Customer or third-party content carried on Customer's or Itron's systems. Customer warrants and represents that, during the term of this Agreement, (a) it has the legal right and authority to grant Itron access to view, store, and use the Customer Data to provide products and services, and (b) Itron's transmission, use and storage of any such Customer Data in accordance with this Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligation between Customer and any third-party..

13. Confidentiality. Each Party receiving, possessing, accessing or otherwise acquiring Confidential Information of the other Party acknowledges that the disclosing Party's Confidential Information is the property of and confidential to, or a trade secret of, the disclosing Party. The receiving Party: (a) must keep the disclosing Party's Confidential Information confidential and may not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the disclosing Party's prior written approval; (b) must take all reasonable steps to secure and keep secure all disclosing Party's Confidential Information coming into its possession or control; (c) may not disclose any Confidential Information to anyone other than the receiving Party's employees, agents, contractors or subcontractors and professional advisors, or those of its Affiliates, who have a need to know such Confidential Information; (d) must use the Confidential Information solely for purposes related to the subject matter of this Agreement or for potential future commercial transactions between the Parties not otherwise covered by a separate agreement; and (e) must ensure that any person to whom it discloses Confidential Information in accordance with this provision is subject to binding confidentiality obligations that are at least as restrictive as those set forth in this Agreement.

14. Termination. Either Party may terminate this Agreement by providing the other Party with written notice if the other Party (i) becomes insolvent, executes a general assignment for the benefit of creditors or becomes subject to bankruptcy or receivership proceedings, or (ii) commits a material breach of this Agreement that remains uncured for thirty (30) days following delivery of written notice of such breach. Any notice of breach must specify (a) the nature of the breach, and (b) the specific act or acts that the non-breaching Party contends would correct such breach. For the avoidance of doubt, Customer's failure to pay invoices timely will be deemed a material breach of this Agreement.

15. Survival. The following sections of this Agreement shall survive termination or expiration of this Agreement: 1 ("Definitions"), 3 ("Term"), 4 ("Fees, Invoicing, Taxes and Payment"), 6.1.2 ("Restrictions on Use"), 6.2 ("Breach of Restrictions"), 9 ("Warranty Disclaimer"), 10 ("Intellectual Property"), 12 ("Data Protection"), 13 ("Confidentiality"), 15 ("Survival"), 16 ("Limitation of Liability"), 17 ("Disputes"), 18 ("Governing Law and Venue"), 23 ("Force Majeure"), and 24 (Miscellaneous).

16. Limitation of Liability. Except for Customer's violation of Itron's Intellectual Property Rights, neither Party will be liable to the other Party for any consequential, indirect, special, incidental, punitive or exemplary damages arising out of this Agreement or products or services provided hereunder (including, but not limited to, damages for loss of data, goodwill, profits other than amounts payable by Customer to Itron hereunder, investments, use of money or facilities; interruption in use or availability of data; stoppage of other work or impairment of other assets), whether or not foreseeable and even if such Party has been advised of the possibility of such damages. Except for Customer's payment obligations hereunder or violation of Itron's Intellectual Property Rights, neither Party's total, aggregate liability to the other Party arising out of or related to this Agreement or any products or services provided hereunder shall exceed the amounts paid and payable by Customer under this Agreement during the twelve month period immediately preceding the date upon which the liability arose, regardless of whether any action or claim is based on contract, warranty, indemnity, negligence, strict liability or other tort or otherwise.

17. Disputes. The Parties shall resolve any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity hereof (each, a "Dispute") in accordance with this Section. A Party shall send written notice to the other Party of any Dispute ("Dispute Notice"). The Parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within thirty (30) Business Days after one Party delivers the Dispute Notice to the other Party, either Party may, by written notice to the other Party ("Escalation to Executive Notice"), refer such Dispute to the executives of each Party designated by such Party in a written notice to the other Party ("Executive(s)"). If the Executives cannot resolve any Dispute during the period ending thirty (30) Business Days after the date of the Escalation to Executive Notice (the last day of such time period, the "Escalation to Mediation Date"), either

Party may submit the Dispute to any mutually agreed to mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediation service and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The Parties covenant that they will use commercially reasonable efforts in participating in the mediation. The Parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the Parties. If the Parties cannot resolve any Dispute for any reason, including, but not limited to, the failure of either Party to agree to enter into mediation or agree to any settlement proposed by the mediator, within sixty (60) Business Days after the Escalation to Mediation Date, either Party may proceed in accordance with the provisions of Section 18 (Governing Law and Venue). Notwithstanding the foregoing, nothing in this Section shall be construed as preventing a Party from seeking available equitable relief, including without limitation, specific performance and injunctive relief in a court of competent jurisdiction.

18. Governing Law and Venue. This Agreement and all related documents, including all addenda attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of North Carolina, United States of America (including its statutes of limitations), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the United States District Court for the Western District of Texas, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Travis County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the United States District Court for the Eastern District of North Carolina or, if such court does not have subject matter jurisdiction, the courts of the State of North Carolina sitting in Wake County. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

19. Legal Compliance. Each Party must comply with all applicable laws. Itron's products and services delivered under this Agreement are subject to the U.S. Export Administration Regulations ("EAR"; 15 CFR part 730 et seq.) and any applicable laws and regulations of the particular country to which such items are shipped or received. Customer shall comply with all applicable export control laws and shall not cause, directly or indirectly, the export, re-export, or transfer of any such items or services to destinations or persons without obtaining any required prior authorization from the U.S. Government and any other

applicable local authorities. Customer shall not do anything to cause Itron to violate such export control laws, including, but not limited to, requesting support for a product that has been unlawfully re-exported or requesting delivery of a product or service intended for a U.S. sanctioned region or person. Each party represents that it is not listed on a U.S. Government restricted party list for export control or trade sanctions purposes, and is not 50% or more owned, in the aggregate, by one or more restricted parties. Customer shall maintain any required export records related to Itron's products or services and make such records available to Itron upon request. The Parties must comply with all anti-bribery laws and may not make any payments or transfer any item of any value for the purpose of bribing any individual or group, or accepting or participating in any extortion, kickbacks, or other unlawful or improper means to obtain business related to this Agreement or products and services orderable under this Agreement.

20. Publicity. Neither Party may issue a press release related to this Agreement or their relationship without the other Parties' prior written consent.

21. Sub-contractor and Outsourcer. Itron may hire, engage, or retain the services of one or more subcontractors and/or outsourcing providers to perform any or all of its obligations related to its product development, network operations, and/or any portion of services provided under this Agreement. Subcontractors and outsourcing providers that have access to Customer Data will be bound by written obligations of confidentiality and data security requirements as restrictive as those required under this Agreement.

22. Independent Contractor. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. The Parties are independent contractors. Neither Party has any authority to act on behalf of, or to bind the other to any obligation.

23. Force Majeure. Neither Party (the "Impacted Party") shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for Customer's obligations to make payments to Itron under this Agreement), when and to the extent such failure or delay is caused by or results from acts or omissions (whether in effect on or after the Effective Date of this Agreement) beyond the Impacted Party's reasonable control and without the Impacted Party's negligence, including, without limitation: (a) left blank (b) severe weather, flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) changes in applicable laws or regulations; (e) embargoes or blockades; (f) action or inaction by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; (i) shortage of adequate materials, qualified labor, power or transportation; (j) epidemics, pandemics or quarantines; and (k) other similar or dissimilar circumstances outside the Impacted Party's reasonable control and without the Impacted Party's negligence (each a "Force Majeure").

24. Miscellaneous. (a) If any provision of this Agreement is found to be unenforceable by a court of competent jurisdiction or arbitration panel, such provision will be deleted and the remaining terms will be construed so as to give maximum lawful effect to any such deleted terms. (b) Section numbers and captions are provided for convenience of reference and do not constitute a part of this Agreement. Any references to a particular section of this Agreement will be deemed to include reference to any and all subsections thereof. (c) No waiver by either Party of any breach under this Agreement will constitute a waiver of any other breach. (d) This Agreement is not made for the benefit of any third parties. (e) All notices under this Agreement must be sent to such other address as such Party has notified the other in writing, will be effective on the date received (unless the notice specifies a later date) and must be sent by a courier service that confirms delivery in writing, or by certified or registered mail, postage prepaid, return receipt requested. All communications and notices to be made or given pursuant to this Agreement must be in English. (f) Customer may not assign this Agreement or any of its rights hereunder without Itron's prior written consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties and their respective successors and permitted assigns, but any assignment in violation of this provision will be void.

25. Public Records Requirements. To the extent applicable, Itron will comply with the public records requirements in Customer's state. Itron recognizes that Customer is subject to public records laws under which Customer is required to disclose all records characterized as public under state law, unless an exemption applies. For that reason, Customer agrees that if a record regarding Itron software and/or documentation is requested under public records laws, Customer will provide Itron with prompt written notice of such request prior to producing any records so that Itron has an opportunity to seek court protection of the requested records. Customer also agrees to reasonably cooperate with Itron to mitigate the disclosure of such software and/or documentation to the extent requested by Itron and allowed by applicable public records laws.

In witness thereof, the Parties, by their authorized agents, affix their signatures and seals this 9th day of June, 22

Itroth

DocuSigned by:

Name: _____

Joel Vach

D4BB7D03A21E4BB...

(type or print)

By: Joel Vach

(Signature)

Title: VP-Tax and Corporate Treasurer

Attest: _____

DocuSigned by:

Chris Ware

7AF489604F544EB...

(Secretary, if a corporation)

CLIENT (Town of Apex)

Catherine Crosby, Town Manager

Attest: _____

Town Clerk



This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Vance Holloman
Vance Holloman, Finance Director

Attachment A**– Software Maintenance & Support Service Levels –**

Severity Level	Response Times	Effort Level and Restoration	Escalation
Business Impact: Critical Impact / System Down. A Production System Error for which there is no work-around, which causes Software or a critical business function / process of said product to be unavailable such that system operation cannot continue. Example: a) Billing cannot be completed, b) Major documented function not working, c) System hung or completely down	During regular business-hours Itron will begin the Service Request process during Customer's initial call. During after-hour periods, Itron will respond to a critical support voice messages within 15 minutes by a return call to Customer, to validate receipt of the critical support call and begin the Service Request process. Following the start of the Service Request process Itron will respond to Customer's Service Request within two (2) business hours with an investigation response. Itron will update Customer at three (3) hour intervals during each day the Service Request remains unresolved, or as otherwise agreed by the Parties. Customer will respond to an Itron inquiry or request within three (3) hours.	Itron will make diligent efforts on a 24x7 basis, or as otherwise agreed by the Parties, to: i) restore Software with a change to eliminate root cause, ii) provide a workaround which restores Software and downgrades the Severity Level to S2, S3, S4. Customer Support Staff must be available 24x7 to work cooperatively with Itron continuously until such time restoration is achieved.	An unresolved Service Request shall be escalated to Itron management as follows: After 30 minutes: Technical Customer Support Team Lead After 8 hours: Manager, Technical Client Services After 16 hours: Director, Global Support Services After 48 hours: Service Request. Vice President, Services and Delivery After 72 hours: President, Itron

Severity Level 2*

Business Impact: Major

impact, degraded

Operation. An Error other than a Severity Level 1 Error, for which there is no work-around, which degrades or limits operation of major system functions causing Software to miss required business interface or deadlines. Software remains available for operation but in a highly restricted fashion.

Example: a) Billing cannot be completed on time, b) Major function is operating outside documented timing / term, c) Software operating slow, missing data, data delivery, daily mission.

Severity Level 3**

Business Impact:

Minor Business Impact, compromised operations.

An Error other than a Severity Level 1 or Severity Level 2 Error that has moderate impact on use of or access, with low business impact, but not preventing Customer from performing daily activities.

Example: The Service Request affects use by Software users, allowing Customer's functions to continue to meet daily business needs.

During regular business-hours Itron will respond

to Customer regarding Service Request within one (1) business day.

While Service Request remains unresolved, Itron will update the Customer and the Service Request at least every other business day, or as otherwise agreed by the parties.

Customer will respond to an Itron inquiry or request within one (1) business day.

During regular business-hours Itron will respond to Customer regarding Service Request within two (2) business days.

While Service Request remains unresolved, Itron will update the Service Request weekly, or as otherwise agreed by the parties.

Customer will respond to an Itron inquiry or request within two (2) business days.

Itron will make diligent efforts during normal

business hours to:

i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrade the Severity Level to S3, S4.

Itron will work during normal business hours to:

i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrades the Severity Level to S4

An unresolved Service Request shall be

escalated to Itron management as follows:

After 1 hours:

Technical Customer Support Team Lead

After 8 hours:

Manager, Technical Client Services

After 24 hours:

Director, Global Support Services

After 30 Days:

Vice President, Services and Delivery

Severity Level 4 Business Impact: Standard Operations intact. A low or no-impact Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error, or a request for enhancement / new functionality Example: Generally, a cosmetic Error or an Error which does not degrade Customer's use of the product or system.	During regular business-hours Itron will respond to Customer regarding Service Request within three (3) business days.	Itron GSS Management Team will make commercially reasonable efforts during normal business hours to understand the Service Request and provide applicable recommendations as to when a Fix may be schedule in a future release, or how to proceed with a formal enhancement request to Itron's product and delivery teams.
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* Severity Level 1 and Severity Level 2 must be reported by phone to insure they are addressed under the appropriate severity level response process. Service Requests entered by email or Web access are generally addressed as a Severity Level 3.

** Service Request opened on Non-production servers / environments are entered as a Severity Level 3.



Electric / Gas / Water
Information collection, analysis and application

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www.itron.com

Pricing Summary for
Town of Apex, North Carolina

BMR# 24686-22 Ver1 Apr
April 25, 2022

Item	Part Number	Description	Qty	Unit Price	Extended Price	Notes
Itron Cloud Services						(1,2)
Setup Fees						
1	FTA-SETUP-FEE	Field Tools Advanced Value-Add Setup Fee			\$275.00	
Annual Subscription Fees						
2	FTA E-SUB	Field Tools Advanced, From 25,001 - 50,000 Endpoints, Electronic Delivery			\$1,749.00	
Itron Cloud Services Total					\$2,024.00	

Notes and Assumptions

- (1) Every new Field Tools Advanced customer must have Itron setup their Business Unit to make the Advanced Value-add features available to the Field Tools app or mobile client.
- (2) Subscriptions are an annual fee shown in List Price, to gain access to the Advanced Value-add features of Field Tools. Quantity pricing is based on the total number of distinct endpoints owned by the utility.
- (3) Unless otherwise agreed by the parties, Itron reserves the right to renew Recurring Services after the first year at the then-current price list.
- (4) Pricing is based on existing agreements or Itron's standard terms and conditions.
- (5) Freight and taxes are not included. Prices are in US dollars. Prices are valid for 60 days.

Confidential



MINUTES - REGULAR TOWN COUNCIL MEETING

May 10, 2022 AT 6:00 PM

COUNCIL CHAMBERS – APEX TOWN HALL, 73 HUNTER STREET

WELCOME AND COMMENCEMENT

Mayor Jacques Gilbert called the meeting to order and welcomed the community to the meeting of the Town Council. Nathan Mariner provided the Invocation. The Mayor then asked all attending to join him in the Pledge of Allegiance.

Town Council and Administration:

In attendance were Mayor Jacques K. Gilbert, and Mayor Pro Tem Killingsworth, Council Members Brett D. Gantt, Terry Mahaffey, Cheryl F. Stallings and Edward Gray. Also, in attendance were Town Manager Catherine Crosby, Assistant Town Manager Shawn Purvis, Interim Town Clerk Julie Reid, and Town Attorney Laurie L. Hohe.

CONSENT AGENDA

The Mayor explained that all Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the Consent Agenda, and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

CONSENT AGENDA

A motion was made to approve the consent agenda items as submitted. (Motion: Mayor Pro Tem Killingsworth/Second: Council Member Gray/Vote: 5-0)

- CN1 Approved the minutes of the April 26, 2022 meeting of the Regular Town Council Meeting.
- CN2 Approved the Apex Tax Report dated April 3, 2022.
- CN3 Approved a 3-year contract renewal with LexisNexis.
- CN4 Set the Public Hearing concerning the proposed Fiscal Year 2022-2023 Budget including expenditures for Economic Development (pursuant to NCGS 158-7.1), for Tuesday, May 24, 2022 at 6:00 p.m. at the Apex Town Hall.
- CN5 Approved the contract for audit services for the 2022 fiscal year with Cherry Bekaert LLP of Raleigh, North Carolina.
- CN6 Approved award of contract to National Transformer Sales for 3 Phase Pad Mount and Single Overhead Transformers.
- CN7 Approve award of contract to Crossroads Ford of Apex for the purchase of a 2022 F750 Chipper Truck.

- CN8 Appointed Sarah Soh as a new Planning Board member to serve the remaining term of Tommy Pate, December 31, 2022.
- CN9 Set a Public Hearing for the May 24, 2022 Town Council meeting regarding Rezoning Application #22CZ01 Arden at Summit Pines PUD. The applicant, Collier Marsh, FC Apex, LLC., seeks to rezone approximately 11.74 acres from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 8200 Jenks Road.
- CN10 Set a Public Hearing for the May 24, 2022 Town Council meeting regarding Rezoning Application #21CZ31 Sears Property PUD. The applicant, Jeff Roach, Peak Engineering and Design, LLC., seeks to rezone approximately 26.218 acres from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 0 & 2108 Old US 1 Highway.
- CN11 Adopted a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 24, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the R. Michael Strickland Trustee of Family Trust property containing 13.541 acres located at 8200 Jenks Road, Annexation #727 into the Town’s corporate limits.
- CN12 Adopted a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 10, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the Peak 360, LLC property containing 7.6631 acres located at 7825 and 7809 Jenks Road, Annexation #732 into the Town’s corporate limits.
- CN13 Set the Public Hearing for the May 24, 2022 Town Council meeting regarding various amendments to the Unified Development Ordinance (UDO).
- CN14 Approved an Agreement with NCDOT for up to \$1,395,356 in federal funds, up to 80% reimbursement, of the total cost of right of way acquisition, utility relocation, and construction of project BL-0047, Downtown Apex Safe Routes to School, and authorized the Town Manager to execute the agreement on behalf of the Town.
- CN15 Approved a Review and Oversight Agreement with NCDOT for design review and project oversight activities for project BL-0047, Downtown Apex Safe Routes to School, requiring payment of a \$10,000.00 deposit, and authorized the Town Manager to execute the agreement on behalf of the Town.
- CN16 Approved the Triangle Area Water Supply Project Phase IX Five-Year Interlocal Agreement and authorized the Town Manager to execute it on behalf of the Town.
- CN17 Approved an agreement with Itron and authorized the Town Manager to execute the agreement on behalf of the Town.

PRESENTATIONS

The Mayor and Town Council Members read the following proclamations in turn.

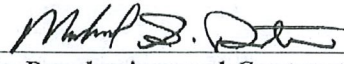
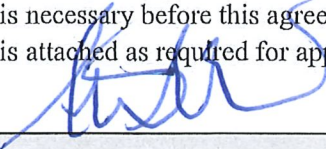
- PR1 Presentation of LGBTQIA Pride Month 2022 Proclamation
- PR2 Presentation of Azerbaijan Independence Day Proclamation

CNT 2023-101

CONTRACT ROUTING CONTROL SHEET

Routing Order: (1) Department Director, (2) Purchasing and Contract Manager (3) Legal,
(4) Risk Manager, (5) Vendor for Signature (6) Finance Director, (7) Town Clerk, (8) Town Council/Town Manager

EVERY SECTION MUST BE COMPLETED

DEPARTMENT:	
Department Contact Person for Contract: <u>Michael Mote</u>	Extension: <u>919-372-7512</u>
Contractor/Vendor Name and address: <u>Ilron 2111 N Molter Rd, Liberty Lake, WA 99019</u>	
Contractor/Vendor Phone: Contractor/Vendor Contact Person: <u>Tracy Wright 865-356-3546</u>	
Purpose of Contract: <u>FDM Software Maintenance and annual support to assist with meter services.</u>	
Amount: <u>\$2,024.00</u>	Budget Code: <u>32-81044509 & 30-8300 44509</u>
Type of Contract: ☐ New ☐ Renew ☒ Amendment	Exhibits/Attachments included: ☒ Yes ☐ N/A
Department Director's Signature: <u></u> Date: <u>4/10/23</u>	
<i>All Contracts should be sent to the Purchasing and Contract Manager (Steve Maynard). Steve will determine whether the contract will need to go to the Legal Department for review or not.</i>	
LEGAL	
Reviewed by: <u>Chris Welch</u>	Date: <u>04/10/2023</u>
Comments: <u>1 year extension but terms require council approval</u>	
☒ Town Council approval required ☐ Town Manager authorized to approve	
☐ N/A – Purchasing and Contract Manager to forward	
☐ Other Approvals required/permited:	
RISK MANAGER	
Reviewed by and approved: _____ Date: _____	
☒ N/A – Purchasing and Contract Manager to forward	
☐ Insurance specifications meet requirements.	
☐ Insurance specifications have been revised.	
☐ A pre-project safety review between the contractor and contracting department is required.	
<i>Return to Department Contact Person to have contract signed by Contractor prior to forwarding to Finance Director</i>	
<i>Obtain a copy of Certificate of Insurance that includes the proper coverage and shows the Town as an additional insured</i>	
FINANCE DIRECTOR	
☒ Sufficient funds are available in the proper category to pay for this expenditure. <u>PO # 2023-976</u>	
☐ This contract is conditioned upon appropriation by the Town Council of sufficient funds.	
☐ A budget amendment is necessary before this agreement is approved.	
☐ A budget amendment is attached as required for approval of this agreement.	
Finance Director: <u></u> Date: <u>4/19/2023</u>	
TOWN CLERK	
Date Received: <u>4/23/2023</u>	Signed by Contractor: ☒ YES ☐ NO--Return to Department
Council Action Required: <u>forward to Town Manager</u>	Agenda Date: <u>4/25/2022</u>
Approved by Council: ☒ YES ☐ NO	
TOWN MANAGER	
This document has been reviewed and approval is recommended by the Town Manager: ☒ YES ☐ NO	
Town Manager: <u></u>	Date: <u>4/26/2023</u>
After approval and signatures, contract will be sent to the Purchasing and Contracts Manager who will return it to the Department Contact Person for Department to administer.	
Scan signed contract to Department contracts folder (include Routing Sheet and copy of Certificate of Insurance)	

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 25, 2023

Item Details

Presenter(s): Michael S. Deaton, PE, Director

Department(s): Water Resources

Requested Motion

Motion to approve an agreement with Itron and to authorize the Town Manager to execute the Amendment to the Itron FDM Tools and Field Tools Contract on behalf of the Town.

Approval Recommended?

Yes

Item Details

Town Council action is required to approve this Amendment to FDM Tools and Field Tools Solution

Contract # 2022-00000213 dated June 9, 2022 because the Contractor (Itron) did not delete the indemnity language as requested by the Town's Legal Department.

Field Deployment Manager (FDM) software is required to obtain water and electric meter reads and receive meter data such as consumption and meter health. This Amendment extends the Contract for a period of one year to receive continued support for FDM functions. The total fee for this service is \$2,024.

Attachments

- Cover Sheet
- Itron FDM Tools and Field Tools Solution Agreement

Approved
CN

CONT-2022-059
original



STATE OF NORTH CAROLINA

Contract #

COUNTY OF WAKE

AMENDMENT TO FDM TOOLS AND
FIELD TOOLS SOLUTION AGREEMENT

THIS AMENDMENT is entered into this the 25th day of April, 2023, by and between Itron, Inc. ("Itron"), and the Town of Apex, a municipal corporation of the State of North Carolina, (the "Town").

PREMISES:

WHEREAS, the Parties entered into FDM Tools and Field Tools Solution Agreement dated June 9th, 2022 (the "Agreement"), which includes in Paragraph 3 the contemplation of an amendment to the Agreement whereby the Parties agree to extend the Subscription for Mobile Device Software; and

WHEREAS, the Parties desire to extend the Agreement for one (1) year.

WITNESSETH:

The Town and Itron, for the consideration stated herein, agree to amend the Agreement as follows: In Paragraph 3, the first and second sentences are deleted and hereby replaced with the following sentence: The term of this Agreement expires on June 9th, 2024.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this 25th day of April, 2023.

Itron, Inc.

Name: Joel Vach

By: _____

DocuSigned by:
Joel Vach
(Signature) D4BB7D03A21E4BB...

Title: VP-Tax and Corporate Treasurer

Attest:

DocuSigned by:
Chris Warr
(Secretary, if a corporation)

Town of Apex

Catherine Crosby, Town Manager

Attest:

Allen L. Coleman, CMC, NCCCC Town Clerk



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

Antwan Morrison, Finance Director

STATE OF NORTH CAROLINA

Contract # 2022-00000213

COUNTY OF WAKE

AMENDMENT #2 TO FDM TOOLS AND
FIELD TOOLS SOLUTION AGREEMENT

THIS AMENDMENT is entered into this the 30th day of May, 2024, by and between Itron, Inc. ("Itron"), and the Town of Apex, a municipal corporation of the State of North Carolina, (the "Town").

PREMISES:

WHEREAS, the Parties entered into FDM Tools and Field Tools Solution Agreement dated June 9th, 2022 (the "Agreement"), which includes in Paragraph 3 the contemplation of an amendment to the Agreement whereby the Parties agree to extend the Subscription for Mobile Device Software; and

WHEREAS, the Parties desire to extend the Agreement for one (1) year.

WITNESSETH:

The Town and Itron, for the consideration stated herein, agree to amend the Agreement as follows: In Paragraph 3, the first and second sentences are deleted and hereby replaced with the following sentence: The term of this Agreement expires on June 9th, 2025.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this 30th day of May, 2024.

Itron, Inc.

Name: Joel Vach

DocuSigned by:
Joel Vach
D4BB7D03A21E4BB...
(Signature)

Title: VP Tax, Treasury, MD&A

Attest:

DocuSigned by:
Jenell Roberts
C5FC3B1B0170470...
(Secretary, if a corporation)

Town of Apex

DocuSigned by:
Randal Vosburg
4F2B7C4B5FA3479...
Randal E Vosburg, Town Manager

Attest:

DocuSigned by:
Allen Coleman
C1F24B7AF04C4FF...
Allen L. Coleman, CMC, NCCCC Town Clerk

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

DocuSigned by:
Antwan Morrison
C1FEC1A957074406...
Antwan Morrison, Finance Director



Date Printed: 18-MAR-2024

Service Pricing

Page: 1 of 1

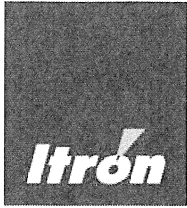
Customer Name: Town of Apex, North Carolina
Customer Number: 1397
Bill To Contact: Michael Mote
Customer Address: PO Box 250
Apex,NC 27502-0250

Contract Number: SC00000668
Description: Town of Apex, North Carolina - FCS / FTA

Contract Duration: 01-AUG-24 - 31-JUL-25

Description	Serial Number	Start Date	End Date	Quantity	Total Amount
SOFTWARE					
FCS SFTW MAINTENANCE, 25001-50000 ENDPOINTS, ELECTRONIC DELIVERY		01-AUG-24	31-JUL-25	1	5,753.57
			Subtotal :	1	5,753.57
	SOFTWARE		Subtotal :	1	5,753.57
FIELD TOOLS ADVANCED, 25001-50000 ENDPOINTS, SUBSCRIPTION		01-AUG-24	31-JUL-25	1	2,039.33
			Subtotal :	1	2,039.33
			Subtotal :	1	2,039.33
Contract Grand Total:				2	7,792.90

FDM Tools and Field Tools Solution Agreement



FDM TOOLS AND FIELD TOOLS SOLUTION AGREEMENT

THIS FDM TOOLS AND FIELD TOOLS SOLUTION AGREEMENT (THIS “AGREEMENT”) GOVERNS YOUR USE OF AND ACCESS TO THE SERVICES, AS DEFINED IN THE DEFINITIONS SECTION BELOW, THAT ARE PROVIDED BY ITRON, INC. OR ANY OF ITS SUBSIDIARIES (EACH “ITRON”).

This Agreement is made by and between Itron, Inc. (“Itron”), and entity organized under the laws of Washington having an address at 2111 N. Molter Road, Liberty Lake, WA 99019 and *Town of Apex*, an entity organized under the laws of North Carolina, having an address at 73 Hunter Street, Apex, NC 27502 (“Customer”) and is effective as of the date of the last signature (the “Effective Date”).

1. Definitions.

Affiliate means any legal entity that directly or indirectly controls, is controlled by, or is under common control with, a Party to this Agreement, where "control" means ownership of at least fifty (50) percent of the equity having the power to vote on or direct the affairs of the entity.

Annual Adjustment means Itron’s annual price increase.

Billing Cycle means a period of one year beginning on the Effective Date or any anniversary thereof.

Claim means an unaffiliated third-party claim, action, cause of action, or demand for damages, cost, or expense (including reasonable attorney’s fees) or other relief.

Client Services Guidelines Documents means the following documents as they may be updated by Itron from time to time: “Product Contact Information Sheet”, “After Hours Support”, and “Working Effectively with Itron Global Services”. Copies of the Client Services Guidelines Documents may be obtained by calling (877) 487-6602 or such other number or process provided by Itron to Customer.

Confidential Information means any confidential, trade secret or other proprietary information disclosed by a Party or a Party’s Affiliate related to its business that is designated as “confidential” or which a

reasonable person knows or should understand to be confidential, regardless of the form of disclosure and whether of a technical, business or financial nature, including but not limited to processes and methods, product design and details of operation, product plans, prototypes, schedules, results, reports, computer programs, databases, compilations of data, engineering activity, manufacturing activity, analytical methods, strategies, and the like, but excluding information that: (i) is now or becomes generally available to the public through no fault or breach of the receiving Party; (ii) is rightfully in the receiving Party's possession, or known by it, prior to its receipt from the disclosing Party; (iii) is rightfully disclosed to the receiving Party by a third-party, free of any obligation of confidentiality; (iv) is developed by the receiving Party independently and without reference to the disclosing Party's Confidential Information, or (v) is rightfully disclosed pursuant to the applicable laws or regulations, or rules of any stock exchange, or orders of the court or other government authorities with notice to the disclosing Party. Confidential Information shall not include "public records" as defined by Chapter 132 of the North Carolina General Statutes.

Covered Product means Software.

Customer means you or, if you are accepting on behalf of your employer or another entity, such employer or entity.

Customer Data means all data about Customer's existing or prospective end users that Itron acquires, develops, or derives in connection with performance under this Agreement. Such customer data may include, without limitation, any personally identifying information relating to a Customer's existing or prospective end user, or any other information that, either individually or when combined with other information could be used to identify a particular Customer end user or a prospective Customer end user, which information is not generally available to the public.

Defended Party means a Party entitled to defense and indemnification from the other Party under Section 11 ("Third-Party Claims") of this Agreement.

Defending Party means a Party obligated to provide defense and indemnification to the other Party under Section 11 ("Third Party Claims") of this Agreement.

Documentation means user manuals, training materials, product descriptions and specifications, technical manuals, supporting materials and other information relating to Services or Software provided by Itron, which Itron customarily makes available to its customers.

Endpoint means an electric meter, gas or water endpoint receiver-transmitter, battery-powered device, or any other device which Customer will configure and/or manage as part of a Service Offering.

Error means a material failure of Software to comply with applicable published Itron specifications.

Fees means all amounts payable to Itron by Customer for Services provided under this Agreement, as set forth in a Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron.

Fix means a correction or workaround for an Error.

Global Support Services means those support services provided by Itron technical representatives via telephone, email, website or other means to assist Customer's Primary Service Contacts with questions or issues related to the operation of Covered Products.

Improvement means an update, modification, enhancement and/or extension to Software functionality that is included in a Release.

Intellectual Property and **Intellectual Property Rights** mean all industrial and intellectual property, including, without limitation, patents, patent applications, invention registrations, and all other rights in inventions, copyrights in published and unpublished works, whether registered or unregistered, know-how, trade secrets, and confidential and proprietary information, whether such intellectual property has been created, applied for or obtained anywhere throughout the world.

M&S Commencement Date means the date upon and after which a Covered Product will be entitled to receive Maintenance Services purchased by Customer, which unless otherwise specified in a Quote provided by Itron, will be the Service Offering Commencement Date.

Maintenance Services means maintenance and support services described in Section 8 ("Maintenance Services") of this Agreement.

Mobile Device Software means Itron's FDM Tools or Field Tools mobile application for FDM Tools or Field Tools, as applicable.

One-Time Setup Fee means the one-time setup fee(s) for each Service Offering (if any) identified in the applicable Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron.

Operating Condition means performance in accordance with applicable published Itron specifications.

Party means Customer or Itron and **Parties** means Customer and Itron.

Primary Services Contacts means Customer's primary support staff who provides internal support to Customer's operations personnel and who are key interface to Itron for all Maintenance Services.

Quote means a valid quote for Services provided to Customer by Itron.

Release means a collection of Fixes and/or Improvements made available by Itron to Customer.

Service Offering means the FDM Tools or Field Tools software-as-a-service offering identified on the applicable Purchase Order whereby Itron or its designated provider hosts and provides Customer with access to SaaS Software on Servers via the internet.

SaaS Software means the Itron proprietary data collection and management computer program(s) for the Service Offering(s) purchased by Customer.

Servers means the physical computer hardware owned by Itron or its designated provider on which SaaS

Software will be installed, operated, and maintained by or on behalf of Itron.

Service Offering Commencement Date means, with respect to each Service Offering, the date Itron makes access credentials for the Service Offering available to Customer.

Service Levels means the defined level of impact and associated response time, effort level, and escalation path procedures and guidelines described in Attachment A to this Agreement.

Services mean the Service Offering(s) and Maintenance Services.

Software means Mobile Device Software and SaaS Software.

Subscription Fees means annual fees identified in the applicable Quote or, if no Quote, Itron's then- current list price at the time of Purchase Order acceptance by Itron, for each Service Offering, plus the Annual Adjustment, if any.

Subscription Term means the subscription term purchased by Customer for each Service Offering, which begins upon the applicable Service Offering Commencement Date.

Territory means the country in which Itron provides Services to Customer.

2. Purchase Order Requirement. Customer shall purchase Services by issuing a purchase order or similar ordering document accepted by Itron ("Purchase Order") indicating specific Services, Itron part numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and contract reference. No contingency contained on any Purchase Order shall be binding upon Itron. The terms of this Agreement shall apply, regardless of any additional or conflicting terms of any Purchase Order or other correspondence or documentation submitted by Customer to Itron, and any such additional or conflicting terms are deemed rejected by Itron.

3. Term. The initial term of this Agreement begins on the Effective Date and expires one (1) year following the Effective Date. Prior to the expiration of the Subscription for the Mobile Device Software, the Parties will sign an amendment that extends the Subscription for the Mobile Device Software for one (1) year. Any accepted Purchase Orders as of the expiration date of this Agreement shall be completed by the Parties and the term of this Agreement will be extended solely for that purpose until completion. This Section is subject to Section 14 ("Termination") of this Agreement.

4. Fees, Invoicing, Taxes and Payment

4.1. . Fees. Itron offers a basic Service Offering and a premium Service Offering under this Agreement. The basic Service Offering is provided free of charge and the premium Service Offering is provided at the initial fees set forth in Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron. Fees for Software Maintenance Services are included in the Subscription Fee, if any, for the applicable Service Offering. Itron reserves the right to add, remove and/or change features within a Service Offering at Itron's sole discretion and will notify Customer of such changes at least sixty (60) days in advance of implementing such changes within Service Offering.

4.2. Invoicing. Customer shall pay Subscription Fees (if any) in advance for each Billing Cycle for which it has purchased a Service Offering. Itron will invoice Customer for the One-Time Setup Fee and initial Subscription Fees for each Service Offering upon the Service Offering Commencement Date. Initial Subscription Fees shall be prorated based on the number of months remaining in the current Billing Cycle following the Service Offering Commencement Date. Itron may discontinue a Service Offering by providing Customer with written notice of discontinuance no less than 180 days prior to the commencement of a Billing Cycle. Otherwise, Itron will provide Customer with a renewal notice for the Service Offering at least 120 days prior to the commencement of each Billing Cycle. Customer may discontinue a Service Offering by providing Itron with written notice of non-renewal no less than 90 days prior to the commencement of a Billing Cycle. Otherwise, approximately 20 days prior to the commencement of each Billing Cycle, Itron will provide Customer with an invoice for Subscription Fees payable by Customer for the forthcoming Billing Cycle.

4.3. Payment. Customer shall pay the Itron entity designated in the applicable invoice. Unless otherwise specified in the applicable invoice, Customer shall pay such Itron entity in USD. Customer must pay each invoice within thirty (30) days of the invoice issuance date. Payment must be made by electronic transfer to a bank account designated by Itron.

4.4. Invoice Disputes. Customer shall notify Itron in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within ten (10) days from the original invoice date. Invoices for which no such timely notification is received shall be deemed accepted by Customer as true and correct, and Customer shall pay all amounts due under such invoices within the period set forth in Section 4.3. The Parties shall seek to resolve all such disputes expeditiously and in good faith in accordance with the dispute resolution provisions set forth in Section 17 ("Disputes"). Notwithstanding anything to the contrary, each Party shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, payment by Customer of all undisputed amounts due and payable under this Agreement.

4.5. Late Payment. Except for invoiced payments that Customer has timely disputed, all late payments

shall bear interest at the lesser of the rate of one percent (1%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall also reimburse Itron for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Itron does not waive by the exercise of any rights hereunder), Itron shall be entitled to suspend the provision of any Services if Customer fails to pay any undisputed amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof.

4.6. No Setoff. Customer shall not withhold payment of any amounts due and payable under this Agreement by reason of any setoff of any claim or dispute with Itron, whether relating to Itron's breach, bankruptcy, or otherwise.

4.7. Taxes. All prices are exclusive of any taxes, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon this Agreement. Customer shall pay any taxes related to products and services provided pursuant to this Agreement (except for taxes based on Itron's net income) or shall present an exception certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice. The Parties agree to fully cooperate with one another regarding taxes and any related issues arising from this Agreement. Customer shall indemnify and hold Itron harmless from any tax liability assessed against Itron but rightfully owed by Customer arising from or related to transactions set forth herein .

5. Documentation. Subject to Customer's compliance with this Agreement, including payment of all applicable Fees, Itron hereby grants to Customer a non-exclusive, non-transferable, non-assignable, limited right to access and use the Documentation with the Services for its internal business purposes in the Territory. Itron will make its standard Documentation available via download. Itron will provide Customer with download instructions.

6. Service Offerings

6.1. Access Rights and Restrictions.

6.1.1. Access Rights. Subject to Customer's compliance with this Agreement, including payment of all applicable Fees (if any), Itron hereby grants to Customer, for the Subscription Term(s) purchased, a non-exclusive, non-transferable, non-assignable, limited right to access and use the Service Offering(s) for its internal business purposes in the Territory.

6.1.2. Restrictions on Use. Customer and its authorized users may not: (a) modify, translate or create derivative works of any Service Offering or related Documentation; (b) copy, reproduce, distribute, republish, download, display, post or transmit any portion of a Service Offering or related Documentation in any form or by any means; (c) sell, assign, transfer, lease or sublicense any Service Offering; (d) allow any third party, other than authorized users, to access any Service Offering or related Documentation without Itron's prior written consent; (e) use any Service Offering or related

Documentation to provide services to third parties, or otherwise use any Service Offering on a “service bureau” or “timesharing” or subscription basis; (f) reverse engineer, disassemble, decrypt, extract or otherwise reduce any Service Offering to a human perceivable form or otherwise attempt to determine the source code or algorithms of any Service Offering (except to the extent the foregoing restriction is expressly prohibited by applicable law); (g) infringe any of Itron’s or its providers’ Intellectual Property Rights; (h) publicly publish the results of any benchmark tests run on any Service Offering; (i) use any Service Offering or related Documentation to engage in any fraudulent, illegal or unauthorized act; (j) introduce into or transmit through any Service Offering any material containing software viruses, worms, trap doors, back doors, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (k) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of Itron’s or its providers’ Intellectual Property Rights, whether such notice or indications are affixed on, contained in or otherwise connected to a Service Offering; (l) attempt to gain unauthorized access to a Service Offering or Itron’s or its providers’ systems or networks; (m) merge any Service Offering with any other product or service without Itron’s prior written consent and the payment of any additional fees; or (n) access or use any Service Offering or related Documentation to build or support, and/or assist a third-party in building or supporting, products or services competitive to Itron or its providers.

6.1.3. Content Restrictions. Customer may not distribute, download, or place on any Itron or its providers’ website or Server, or use with any Service Offering, any content that: (a) Customer knows or has reason to believe infringes the Intellectual Property Rights of any third party or violates any rights of publicity or privacy; (b) violates any applicable law, statute, ordinance; (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; or (d) is obscene, pornographic or indecent (items (a) – (d) are collectively referred to as “Prohibited Content”). Itron reserves the right to remove any Prohibited Content from the Server without prior notice to Customer. Customer will indemnify, defend and hold Itron and its providers harmless for any claims, liabilities, losses, causes of action, damages, settlements, and costs and expenses (including, without limitation attorneys’ fees and costs) arising from any third-party claims related to or generated by any Prohibited Content distributed, downloaded, or placed on any Itron or its providers’ website or Server or used with any Service Offering by Customer.

6.2. Breach of Restrictions. Customer’s breach of the restrictions set forth in Section 6.1.2 (“Restrictions on Use”) or Section 6.1.3 (“Content Restrictions”) shall constitute a material breach of this Agreement and shall result in revocation and immediate suspension or termination, as determined by Itron in its sole discretion, of all rights and licenses granted under this Agreement with respect to the Service Offerings. Revocation does not preclude Itron from pursuing any legal and equitable remedies for Customer’s breach of these restrictions.

6.3. SaaS Software Availability. Itron will endeavor to make the SaaS Software available to Customer

through the Service Offering(s) purchased by Customer at least 99.5% of the time, excluding any downtime resulting from maintenance or circumstances beyond Itron's reasonable control.

6.4. Third-Party Radio Devices. Customer may use a Service Offering to collect Customer Data from Endpoints equipped with radio communication devices not manufactured or provided by Itron ("Third-Party Radio Device"). Itron makes no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, and fitness for use, merchantability, condition, quality, performance or non-infringement of, and disclaims all liability with respect to, Third-Party Radio Devices. Without limiting the foregoing, Itron shall have no liability (a) if a Third-Party Radio Device is not responding or communicating or (b) for unread Endpoints due to defective or unreachable Third-Party Radio Devices. Customer shall contact the supplier of such device for support.

6.5. Sizing of Software-as-a-Service. Itron will size Service Offerings, Servers, and systems for Customer's specific deployment. System sizing depends upon the Service Offering and types of devices and sensors and may be a factor in determining Subscription Fees. Sizing criteria may include number of system endpoints, number of network devices, residential meter configuration, commercial and industrial meter configuration, desired data collection intervals, storage duration for historical data, and the number of concurrent and total users of the application. Any sizing changes during a Subscription Term will require a written agreement of the Parties and may result in a change in Subscription Fees.

6.6. Application Upgrade and Fixes. SaaS Software is updated regularly using a continuous delivery method.

6.7. Conditions on Use of Service. Customer will use of the Service Offerings only in accordance with the Documentation, this Agreement, and applicable laws and government regulations. The rights of any user to access and use the Service Offerings cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized user), and Customer shall make every reasonable effort to prevent unauthorized third parties from accessing the Service Offerings.

6.8. Suspension or Restriction of Service. Itron may suspend or restrict all or part of the Service Offerings at any time to protect the integrity and functionality of the Software, Servers, platforms, and systems, or for a breach of Section 6.1.2 ("Restrictions on Use"), Section 6.1.3 ("Content Restrictions") or Section 6.7 ("Conditions on Use of Service"), until such breach is cured to Itron's reasonable satisfaction.

6.9. Incident Management. Itron will provide Customer support and incident and problem management services, which include responding to alerts, tracking the issue, troubleshooting the problem and escalating to Itron subject matter experts or third-party providers.

6.10. Customer Technical Responsibilities. Customer is responsible for selecting, acquiring, securing and maintaining all equipment and ancillary services needed to connect to, access, or otherwise use and maintain compatibility with the Service Offerings, at Customer's sole expense.

6.11. User IDs and Passwords. Itron shall provide Customer with a user identification and password ("User ID") to access each Service Offering. Customer shall be solely responsible for all use of Customer's subscriptions and accounts. Customer shall maintain the confidentiality of all User IDs assigned to or created by Customer. User IDs may not be shared or used by more than one user.

6.12. Maintenance. System maintenance, whenever reasonably practicable, will be performed during off-business hours based on the regions covered by the Service Offering. Itron will minimize Service Offering disruptions to the extent reasonably practical.

6.13. Business Continuity. Application data is fully backed up weekly and differentially backed up daily unless backup is prevented by loss of datacenter or datacenter connectivity or other circumstances outside Itron's reasonable control. Itron's hosted environment is on fault tolerant systems with specific mechanisms for high availability.

6.14. Recovery of Customer Data. At the end of the Term of the Agreement or SaaS service (unless the Agreement or SaaS service is renewed pursuant to duly executed amendment or a new agreement), or in the event of its early termination in accordance with the terms of the Agreement, Customer will confirm to Itron in writing, no later than on the effective date of expiration or termination, its decision to close the SaaS service ("Closure Confirmation"). Provided that Itron has received the Closure Confirmation from Customer within the aforementioned period, Itron will maintain Customer's access to the system for a maximum period of three (3) months from receipt of the Closure Confirmation, for the sole purpose of enabling Customer to retrieve the following Customer data: access account information, meter details, history of index reading data and photographs. Customer may, at no additional cost, export said system data in the standard file format used by the SaaS service, or the format already supported by the SaaS service. At the end of this three (3) month period, the Customer data will be permanently deleted and will no longer be recoverable.

7. Mobile Device Software License.

7.1. License Grant. Subject to the terms of this Agreement, Itron grants Company a limited, non-exclusive, and non-transferrable license to download, install, and use the Mobile Device Software on Itron-approved mobile devices owned or otherwise controlled by Customer (each a "Mobile Device")

strictly in accordance with the Documentation.

7.2. License Restrictions. Customer shall not: (a) copy the Mobile Device Software; (b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Mobile Device Software; (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Mobile Device Software or any part thereof; (d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Mobile Device Software, including any copy thereof; or (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Mobile Device Software, or any features or functionality of the Mobile Device Software, to any third party for any reason.

7.3. Updates. Itron may from time to time in its sole discretion develop and provide Mobile Device Software updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "Updates"). Based on Customer's Mobile Device settings, when Customer's Mobile Device is connected to the internet either: (a) the Mobile Device Software will automatically download and install all available Updates; or (b) Customer may receive notice of or be prompted to download and install available Updates. Customer shall promptly download and install all Updates and acknowledge and agree that the Mobile Device Software, the Service Offering, or portions thereof may not properly operate should Customer fail to do so. Customer further agrees that all Updates will be deemed part of the Mobile Device Software and be subject to all terms and conditions of this Agreement.

7.4. Compatible Mobile Devices. Mobile Device Software is designed to work in connection with Mobile Devices that meet Itron minimum requirements. Itron will provide the minimum specifications to Customer. Itron is not required to make Mobile Device Software work with any other mobile devices.

7.5. Disclaimer of Liability. Mobile Device Software requires Internet connectivity, which Customer is solely responsible for procuring. Itron accepts no responsibility for any internet services failure, Mobile Device failure, or for any loss or damage of any kind caused by such failure.

8. Maintenance Services.

8.1. Primary Services Contacts.

8.1.1. Designation by Customer. Customer shall designate a minimum of one and not more than two Primary Services Contacts for each Covered Product line, to serve as administrative liaisons for all matters pertaining to Maintenance Services for such Covered Product line and shall provide their contact information to Itron's customer account representative. Primary Services Contacts shall

promptly report problems with Covered Products by submitting a Service Request for entry into Itron's support tracking system. Although it is Customer's sole right to choose its Primary Services Contacts, Customer and Itron acknowledge that each Primary Services Contact must have the appropriate technical skills and training for the position. If Customer replaces a Primary Services Contact, Customer will provide updated contact information to Itron's customer account representative, and the new Primary Services Contact will be properly trained prior to interfacing with Itron support personnel.

8.2. Training of Principal Services Contacts. Before a Primary Services Contact interfaces with Itron support personnel, he/she will attend training sessions offered by Itron, an Itron-approved trainer, or Customer's training program approved by Itron to ensure that the Primary Services Contact is (i) knowledgeable about operation of the applicable Covered Products, and (ii) qualified to perform problem determination and remedial functions with respect to such Covered Products. Customer may perform Itron-approved training or may engage Itron to perform training of Primary Services Contacts at Itron's then current rates. Itron will make training sessions available by remote video conference or training will be made available at a location or in a manner mutually agreed by the Parties. Customer shall be responsible for all Customer's associated travel-related expenses and, if the Parties agree that training will be provided at a location other than an Itron-designated facility (e.g., at a Customer- proposed facility), Customer will also reimburse Itron's travel-related expenses. The Primary Services Contacts must have the skills and capabilities to train other Customer personnel on Covered Products. Itron may update Covered Product training from time to time and, upon receiving notice of such updates from Itron, Customer shall promptly provide such training to its Primary Services Contacts in accordance with this Section. Global Support Services & Service Requests.

8.2.1. Global Support Services. Itron will make support representatives available to provide technical support during its then current normal business hours as set forth in the Product Contact Information Sheet included within the Client Services Guidelines Document. Global Support Services include troubleshooting & problem diagnosis relating to Covered Products; release or system management consulting; and recommendations for fully utilizing Covered Products. Customer acknowledges and agrees that Global Support Services are not intended as a substitute for training of Customer personnel, field support, or Itron professional services. Nor will Customer use Global Support Services in lieu of having qualified and trained support personnel of its own.

8.2.2. Service Request Process. Customer shall submit Service Requests in the manner required by the Client Services Guidelines Documents and Service Levels. Customer may submit Service Requests on a 24/7/365 basis and Itron will respond to such Service Requests in accordance with the Service Levels. When Customer submits a Service Request, Customer will reasonably assess its

urgency according to the appropriate Severity Level in Attachment A to this Agreement. Itron will designate the initial Severity Level and the Parties will resolve any perceived gap regarding the Severity Level designation as soon as is reasonably practical.

8.2.3. Field Support. At Customer's request, and Itron's approval, Itron will dispatch support personnel to Customer's location to provide onsite Global Support Services ("Requested Field Support") related to a reported problem which cannot be addressed remotely. Requested Field Support will be billed at Itron's then-current rates, and Customer will reimburse Itron's travel-related expenses, unless the cause of the reported problem is found to be the fault of Itron.

8.3. Software Maintenance.

8.3.1. Fixes. Itron shall provide Fixes in accordance with the Service Levels. Itron's obligations with respect to Service Levels are contingent upon Customer (i) devoting the same level of effort to resolving the Error as is required of Itron, (ii) responding to requests made by Itron within the applicable Response Time, (iii) assigning only qualified personnel to help Itron address the Error, and (iv) providing all information, access, and assistance reasonably requested by Itron to address the Error.

8.3.2. Improvements. Itron shall provide Improvements, if any, at no charge to Customer if such Improvements are made within the current product specifications and are made available to Itron customers generally at no charge. Improvements created as new add-on modules/features and not part of the products original specifications, will be created at Itron's discretion and will be billable at Itron's then current rates. Access to new add-on modules may also require additional licensing and subscription fees.

8.3.3. Exclusions. Itron shall have no obligation to provide Maintenance Services for, or liability to Customer for Software adversely affected by (i) use of Software by anyone other than Itron in combination with software, equipment, or communications networks not referenced in the Documentation as being compatible with the Software; (ii) failure to perform customer responsibilities describe in this Agreement, (iii) viruses introduced through no fault of Itron.

8.3.4. Customer Responsibilities. Customer will support Itron investigation and restoration efforts as defined in the Service Level table and will act upon / implement support solutions and workarounds recommended by Itron in a timely fashion. When escalating a Service Request with Itron, Customer's Primary Service Contact shall collect and provide all data logs, findings, analysis, and any relevant forensic information pertaining to the issue as outlined in Client Services Guideline Documents.

9. Warranty Disclaimer. ITRON MAKES NO WARRANTY OF ANY KIND RELATING TO SERVICES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, (I) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (II) WARRANTIES OF TITLE AND AGAINST INFRINGEMENT, AND (III) WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. ITRON AND ITS SUPPLIERS DO NOT WARRANT OR REPRESENT THAT SERVICES OR EQUIPMENT WILL BE FREE FROM BUGS, ERRORS OR THAT THEIR USE WILL BE UNINTERRUPTED OR ERROR-FREE. ITRON ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM ITS DATA CENTERS OR DATA CENTERS OF ITS VENDORS VIA WAN, CELLULAR OR OTHER PUBLIC COMMUNICATIONS OR BROADBAND SYSTEMS (INCLUDING OUTAGES, DEVICE NON-REACHABILITY, LOSS OR INACCURATE READING) OR FOR ANY CONSEQUENCES, LOSSES, OR DAMAGES ARISING FROM CHANGES MADE BY CUSTOMER TO THE CONTENT OR PROGRAMMING OF EQUIPMENT (UNLESS CAUSED BY A DEFECTIVE PRODUCT). THESE DISCLAIMERS WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER THIS AGREEMENT.

10. Intellectual Property.

10.1. Reservation of Intellectual Property. Subject to the limited rights expressly granted by Itron to Customer under this Agreement: (i) Itron reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Itron owns all rights, title and interest in and to its Confidential Information and the products, services and related deliverables provided by Itron under this Agreement. Subject to the limited rights expressly granted by Customer to Itron under this Agreement, Customer reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Customer owns all right, title and interest in and to its Confidential Information and Customer Data. All rights, titles, and interests not specifically and expressly granted by either Party hereunder are hereby reserved.

10.2. Customer Suggestions. Itron shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into any products and services any suggestions, enhancement requests, recommendations or other feedback provided by Customer.

11. Third-Party Claims.

11.1. General Claims. The Defending Party will defend the Defended Party from and against Claims arising from personal bodily injury, death, or damage to tangible personal property or real property, and will indemnify the Defended Party from resulting settlements approved by the Defending Party and final judgments entered against the Defended Party, to the extent caused by the negligence of the Defending Party.

11.2. Infringement Claims. Itron, as the Defending Party, will defend Customer, as the Defended Party, from and against Claims alleging that any Itron-branded products or services, as delivered to Customer, infringe upon any third party's Intellectual Property Rights within the Territory ("IP Claims"). Itron will also indemnify Customer for settlements approved by Itron and final judgments entered against Customer to the extent resulting from IP Claims. If Itron receives notice of an alleged infringement by any products or services provided to Customer under this Agreement, or if Itron reasonably believes that an IP Claim is likely, Itron may stop delivery of the affected products or services without liability for failure to deliver them. Itron will have the right, at its sole option, to obtain the right for Customer to continue use of the affected products or services, or to replace or modify the affected products or services so that they are no longer alleged or believed to infringe, if it can be done without significant loss of functionality. If neither of the foregoing options are available to Itron on commercially reasonable terms, Itron may terminate Customer's use of the affected products or Services without further liability under this section, in which case Itron will refund to Customer the depreciated value of the affected product and any prepaid unused portion of the service.

11.3. Conditions to Defense. As a condition to the Defending Party's obligations under Section 11.1 or Section 11.2 above, the Defended Party must: (i) promptly notify the Defending Party in writing of the Claim; (ii) give the Defending Party all reasonably requested information and assistance in connection with the Claim in a timely manner; and (iii) give the Defending Party the sole right to control the defense and settle of the Claim. The Defending Party shall not enter into any settlement of a Claim against a Defended Party without the Defended Party's prior written consent unless: (a) there is no admission of fault of the Defended Party; (b) there is no injunctive or other non-monetary relief against the Defended Party; and, (c) the settlement includes the claimant's or plaintiff's release of the Defended Party from all liability in respect of the Claim.

11.4. Exclusions to Infringement Claim Defense. Itron will have no obligation under Section 11.2 above for any infringement Claim in which infringement is alleged or caused by (i) the combination, operation or use of any product or service provided by Itron with any product or service (including third-party software and equipment) not provided by Itron, (ii) any modification to products or services made either without Itron's prior written consent or by a person other than Itron or an authorized representative

of Itron, (iii) failure to use updated or modified products or services as provided by Itron, (iv) use of any release of Itron software or any firmware other than the most current release made available to Customer, (v) use of products or services not in accordance with this Agreement and applicable Documentation, or (vi) Itron's compliance with any designs, specifications, or instructions provided by Customer. In addition, Itron shall not be liable for enhanced or punitive damages that could have been avoided or reduced by actions within the control of Customer.

11.5. EXCLUSIVE REMEDY. THIS SECTION 11 CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST CUSTOMER.

12. Data Protection. The Parties must implement and establish reasonable security protocols for the protection and retention of Customer Data. As between Customer and Itron, Customer will retain its rights in Customer Data; provided, however, Customer hereby grants Itron a non-exclusive, royalty-free, perpetual, worldwide license to copy, modify, use, sublicense, distribute, display, create derivative works of all Customer Data for the purposes of (i) providing products and services to Customer, (ii) testing, troubleshooting, and optimizing performance and quality of Itron's products and services, and (iii) so long as Customer is not identifiable and all personally identifiable information is either removed or anonymized, developing new products and services. Itron assumes no responsibility for Customer or third-party content carried on Customer's or Itron's systems. Customer warrants and represents that, during the term of this Agreement, (a) it has the legal right and authority to grant Itron access to view, store, and use the Customer Data to provide products and services, and (b) Itron's transmission, use and storage of any such Customer Data in accordance with this Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligation between Customer and any third-party..

13. Confidentiality. Each Party receiving, possessing, accessing or otherwise acquiring Confidential Information of the other Party acknowledges that the disclosing Party's Confidential Information is the property of and confidential to, or a trade secret of, the disclosing Party. The receiving Party: (a) must keep the disclosing Party's Confidential Information confidential and may not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the disclosing Party's prior written approval; (b) must take all reasonable steps to secure and keep secure all disclosing Party's Confidential Information coming into its possession or control; (c) may not disclose any Confidential Information to anyone other than the receiving Party's employees, agents, contractors or subcontractors and professional advisors, or those of its Affiliates, who have a need to know such Confidential Information; (d) must use the Confidential Information solely for purposes related to the subject matter of this Agreement or for potential future commercial transactions between the Parties not otherwise covered by a separate agreement; and (e) must ensure that any person to whom it discloses Confidential Information in accordance with this provision is subject to binding confidentiality obligations that are at least as restrictive as those set forth in this Agreement.

14. Termination. Either Party may terminate this Agreement by providing the other Party with written notice if the other Party (i) becomes insolvent, executes a general assignment for the benefit of creditors or becomes subject to bankruptcy or receivership proceedings, or (ii) commits a material breach of this Agreement that remains uncured for thirty (30) days following delivery of written notice of such breach. Any notice of breach must specify (a) the nature of the breach, and (b) the specific act or acts that the non-breaching Party contends would correct such breach. For the avoidance of doubt, Customer's failure to pay invoices timely will be deemed a material breach of this Agreement.

15. Survival. The following sections of this Agreement shall survive termination or expiration of this Agreement: 1 ("Definitions"), 3 ("Term"), 4 ("Fees, Invoicing, Taxes and Payment"), 6.1.2 ("Restrictions on Use"), 6.2 ("Breach of Restrictions"), 9 ("Warranty Disclaimer"), 10 ("Intellectual Property"), 12 ("Data Protection"), 13 ("Confidentiality"), 15 ("Survival"), 16 ("Limitation of Liability"), 17 ("Disputes"), 18 ("Governing Law and Venue"), 23 ("Force Majeure"), and 24 (Miscellaneous).

16. Limitation of Liability. Except for Customer's violation of Itron's Intellectual Property Rights, neither Party will be liable to the other Party for any consequential, indirect, special, incidental, punitive or exemplary damages arising out of this Agreement or products or services provided hereunder (including, but not limited to, damages for loss of data, goodwill, profits other than amounts payable by Customer to Itron hereunder, investments, use of money or facilities; interruption in use or availability of data; stoppage of other work or impairment of other assets), whether or not foreseeable and even if such Party has been advised of the possibility of such damages. Except for Customer's payment obligations hereunder or violation of Itron's Intellectual Property Rights, neither Party's total, aggregate liability to the other Party arising out of or related to this Agreement or any products or services provided hereunder shall exceed the amounts paid and payable by Customer under this Agreement during the twelve month period immediately preceding the date upon which the liability arose, regardless of whether any action or claim is based on contract, warranty, indemnity, negligence, strict liability or other tort or otherwise.

17. Disputes. The Parties shall resolve any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity hereof (each, a "Dispute") in accordance with this Section. A Party shall send written notice to the other Party of any Dispute ("Dispute Notice"). The Parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within thirty (30) Business Days after one Party delivers the Dispute Notice to the other Party, either Party may, by written notice to the other Party ("Escalation to Executive Notice"), refer such Dispute to the executives of each Party designated by such Party in a written notice to the other Party ("Executive(s)"). If the Executives cannot resolve any Dispute during the period ending thirty (30) Business Days after the date of the Escalation to Executive Notice (the last day of such time period, the "Escalation to Mediation Date"), either

Party may submit the Dispute to any mutually agreed to mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediation service and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The Parties covenant that they will use commercially reasonable efforts in participating in the mediation. The Parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the Parties. If the Parties cannot resolve any Dispute for any reason, including, but not limited to, the failure of either Party to agree to enter into mediation or agree to any settlement proposed by the mediator, within sixty (60) Business Days after the Escalation to Mediation Date, either Party may proceed in accordance with the provisions of Section 18 (Governing Law and Venue). Notwithstanding the foregoing, nothing in this Section shall be construed as preventing a Party from seeking available equitable relief, including without limitation, specific performance and injunctive relief in a court of competent jurisdiction.

18. Governing Law and Venue. This Agreement and all related documents, including all addenda attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of North Carolina, United States of America (including its statutes of limitations), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the United States District Court for the Western District of Texas, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Travis County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the United States District Court for the Eastern District of North Carolina or, if such court does not have subject matter jurisdiction, the courts of the State of North Carolina sitting in Wake County. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

19. Legal Compliance. Each Party must comply with all applicable laws. Itron's products and services delivered under this Agreement are subject to the U.S. Export Administration Regulations ("EAR"; 15 CFR part 730 et seq.) and any applicable laws and regulations of the particular country to which such items are shipped or received. Customer shall comply with all applicable export control laws and shall not cause, directly or indirectly, the export, re-export, or transfer of any such items or services to destinations or persons without obtaining any required prior authorization from the U.S. Government and any other

applicable local authorities. Customer shall not do anything to cause Itron to violate such export control laws, including, but not limited to, requesting support for a product that has been unlawfully re-exported or requesting delivery of a product or service intended for a U.S. sanctioned region or person. Each party represents that it is not listed on a U.S. Government restricted party list for export control or trade sanctions purposes, and is not 50% or more owned, in the aggregate, by one or more restricted parties. Customer shall maintain any required export records related to Itron's products or services and make such records available to Itron upon request. The Parties must comply with all anti-bribery laws and may not make any payments or transfer any item of any value for the purpose of bribing any individual or group, or accepting or participating in any extortion, kickbacks, or other unlawful or improper means to obtain business related to this Agreement or products and services orderable under this Agreement.

20. Publicity. Neither Party may issue a press release related to this Agreement or their relationship without the other Parties' prior written consent.

21. Sub-contractor and Outsourcer. Itron may hire, engage, or retain the services of one or more subcontractors and/or outsourcing providers to perform any or all of its obligations related to its product development, network operations, and/or any portion of services provided under this Agreement. Subcontractors and outsourcing providers that have access to Customer Data will be bound by written obligations of confidentiality and data security requirements as restrictive as those required under this Agreement.

22. Independent Contractor. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. The Parties are independent contractors. Neither Party has any authority to act on behalf of, or to bind the other to any obligation.

23. Force Majeure. Neither Party (the "Impacted Party") shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for Customer's obligations to make payments to Itron under this Agreement), when and to the extent such failure or delay is caused by or results from acts or omissions (whether in effect on or after the Effective Date of this Agreement) beyond the Impacted Party's reasonable control and without the Impacted Party's negligence, including, without limitation: (a) left blank (b) severe weather, flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) changes in applicable laws or regulations; (e) embargoes or blockades; (f) action or inaction by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; (i) shortage of adequate materials, qualified labor, power or transportation; (j) epidemics, pandemics or quarantines; and (k) other similar or dissimilar circumstances outside the Impacted Party's reasonable control and without the Impacted Party's negligence (each a "Force Majeure").

24. Miscellaneous. (a) If any provision of this Agreement is found to be unenforceable by a court of competent jurisdiction or arbitration panel, such provision will be deleted and the remaining terms will be construed so as to give maximum lawful effect to any such deleted terms. (b) Section numbers and captions are provided for convenience of reference and do not constitute a part of this Agreement. Any references to a particular section of this Agreement will be deemed to include reference to any and all subsections thereof. (c) No waiver by either Party of any breach under this Agreement will constitute a waiver of any other breach. (d) This Agreement is not made for the benefit of any third parties. (e) All notices under this Agreement must be sent to such other address as such Party has notified the other in writing, will be effective on the date received (unless the notice specifies a later date) and must be sent by a courier service that confirms delivery in writing, or by certified or registered mail, postage prepaid, return receipt requested. All communications and notices to be made or given pursuant to this Agreement must be in English. (f) Customer may not assign this Agreement or any of its rights hereunder without Itron's prior written consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties and their respective successors and permitted assigns, but any assignment in violation of this provision will be void.

25. Public Records Requirements. To the extent applicable, Itron will comply with the public records requirements in Customer's state. Itron recognizes that Customer is subject to public records laws under which Customer is required to disclose all records characterized as public under state law, unless an exemption applies. For that reason, Customer agrees that if a record regarding Itron software and/or documentation is requested under public records laws, Customer will provide Itron with prompt written notice of such request prior to producing any records so that Itron has an opportunity to seek court protection of the requested records. Customer also agrees to reasonably cooperate with Itron to mitigate the disclosure of such software and/or documentation to the extent requested by Itron and allowed by applicable public records laws.

In witness thereof, the Parties, by their authorized agents, affix their signatures and seals this 9th day of

[Signature]
Itron

Name: _____
(type or print)

DocuSigned by:

Joel Vach

U4BB7D03A21E4BB...

By: Joel Vach
(Signature)

Title: VP-Tax and Corporate Treasurer

Attest:

DocuSigned by:

Chris Ware

7AF480604F544EB...

(Secretary, if a corporation)

CLIENT (Town of Apex)

[Signature]
Catherine Crosby, Town Manager

Attest:

[Signature]
Town Clerk



This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

[Signature]
Vance Holloman, Finance Director

Attachment A**– Software Maintenance & Support Service Levels –**

Severity Level	Response Times	Effort Level and Restoration	Escalation
Business Impact: Critical Impact / System Down. A Production System Error for which there is no work-around, which causes Software or a critical business function / process of said product to be unavailable such that system operation cannot continue. Example: a) Billing cannot be completed, b) Major documented function not working, c) System hung or completely down	During regular business-hours Itron will begin the Service Request process during Customer's initial call. During after-hour periods, Itron will respond to a critical support voice messages within 15 minutes by a return call to Customer, to validate receipt of the critical support call and begin the Service Request process. Following the start of the Service Request process Itron will respond to Customer's Service Request within two (2) business hours with an investigation response. Itron will update Customer at three (3) hour intervals during each day the Service Request remains unresolved, or as otherwise agreed by the Parties. Customer will respond to an Itron inquiry or request within three (3) hours.	Itron will make diligent efforts on a 24x7 basis, or as otherwise agreed by the Parties, to: i) restore Software with a change to eliminate root cause, ii) provide a workaround which restores Software and downgrades the Severity Level to S2, S3, S4. Customer Support Staff must be available 24x7 to work cooperatively with Itron continuously until such time restoration is achieved.	An unresolved Service Request shall be escalated to Itron management as follows: After 30 minutes: Technical Customer Support Team Lead After 8 hours: Manager, Technical Client Services After 16 hours: Director, Global Support Services After 48 hours: Service Request. Vice President, Services and Delivery After 72 hours: President, Itron

Severity Level 2***Business Impact: Major****impact, degraded**

Operation. An Error other than a Severity Level 1 Error, for which there is no work-around, which degrades or limits operation of major system functions causing Software to miss required business interface or deadlines. Software remains available for operation but in a highly restricted fashion.

Example: a) Billing cannot be completed on time, b) Major function is operating outside documented timing / term, c) Software operating slow, missing data, data delivery, daily mission.

Severity Level 3****Business Impact:****Minor Business Impact, compromised operations.**

An Error other than a Severity Level 1 or Severity Level 2 Error that has moderate impact on use of or access, with low business impact, but not preventing Customer from performing daily activities.

Example: The Service Request affects use by Software users, allowing Customer's functions to continue to meet daily business needs.

During regular business-hours Itron will respond

to Customer regarding Service Request within one (1) business day.

While Service Request remains unresolved, Itron will update the Customer and the Service Request at least every other business day, or as otherwise agreed by the parties.

Customer will respond to an Itron inquiry or request within one (1) business day.

Itron will make diligent efforts during normal

business hours to:

i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrade the Severity Level to S3, S4.

An unresolved Service Request shall be

escalated to Itron management as follows:

After 1 hours:

Technical Customer Support Team Lead

After 8 hours:

Manager, Technical Client Services

After 24 hours:

Director, Global Support Services

After 30 Days:

Vice President, Services and Delivery

During regular business-hours Itron will respond

to Customer regarding Service Request within two (2) business days.

While Service Request remains unresolved, Itron will update the Service Request weekly, or as otherwise agreed by the parties.

Customer will respond to an Itron inquiry or request within two (2) business days.

Itron will work during normal business hours to:

i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrades the Severity Level to S4

**Severity Level 4
Business Impact:
Standard Operations
intact.** A low or no-

impact Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error, or a request for enhancement / new functionality

Example:
Generally, a cosmetic Error or an Error which does not degrade Customer's use of the product or system.

During regular business-hours Itron will respond to Customer regarding

Service Request within three (3) business days.

Itron GSS Management Team will make commercially reasonable efforts during normal business hours to understand the Service Request and provide applicable recommendations as to when a Fix may be schedule in a future release, or how to proceed with a formal enhancement request to Itron's product and delivery teams.

* Severity Level 1 and Severity Level 2 must be reported by phone to insure they are addressed under the appropriate severity level response process. Service Requests entered by email or Web access are generally addressed as a Severity Level 3.

** Service Request opened on Non-production servers / environments are entered as a Severity Level 3.



Electric / Gas / Water
Information collection, analysis and application

2111 N. Molter Rd.
Liberty Lake, WA 99019
fax: 866-787-6910
www.itron.com

Pricing Summary for
Town of Apex, North Carolina

BMR# 24686-22 Ver1 Apr
April 25, 2022

Item	Part Number	Description	Qty	Unit Price	Extended Price	Notes
Itron Cloud Services						(1,2)
Setup Fees						
1	FTA-SETUP-FEE	Field Tools Advanced Value-Add Setup Fee			\$275.00	
Annual Subscription Fees						
2	FTA E-SUB	Field Tools Advanced, From 25,001 - 50,000 Endpoints, Electronic Delivery			\$1,749.00	
Itron Cloud Services Total					\$2,024.00	

Notes and Assumptions

- (1) Every new Field Tools Advanced customer must have Itron setup their Business Unit to make the Advanced Value-add features available to the Field Tools app or mobile client.
- (2) Subscriptions are an annual fee shown in List Price, to gain access to the Advanced Value-add features of Field Tools. Quantity pricing is based on the total number of distinct endpoints owned by the utility.
- (3) Unless otherwise agreed by the parties, Itron reserves the right to renew Recurring Services after the first year at the then-current price list.
- (4) Pricing is based on existing agreements or Itron's standard terms and conditions.
- (5) Freight and taxes are not included. Prices are in US dollars. Prices are valid for 60 days.

Confidential



MINUTES - REGULAR TOWN COUNCIL MEETING

May 10, 2022 AT 6:00 PM

COUNCIL CHAMBERS – APEX TOWN HALL, 73 HUNTER STREET

WELCOME AND COMMENCEMENT

Mayor Jacques Gilbert called the meeting to order and welcomed the community to the meeting of the Town Council. Nathan Mariner provided the Invocation. The Mayor then asked all attending to join him in the Pledge of Allegiance.

Town Council and Administration:

In attendance were Mayor Jacques K. Gilbert, and Mayor Pro Tem Killingsworth, Council Members Brett D. Gantt, Terry Mahaffey, Cheryl F. Stallings and Edward Gray. Also, in attendance were Town Manager Catherine Crosby, Assistant Town Manager Shawn Purvis, Interim Town Clerk Julie Reid, and Town Attorney Laurie L. Hohe.

CONSENT AGENDA

The Mayor explained that all Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the Consent Agenda, and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

CONSENT AGENDA

A motion was made to approve the consent agenda items as submitted. (Motion: Mayor Pro Tem Killingsworth/Second: Council Member Gray/Vote: 5-0)

- CN1 Approved the minutes of the April 26, 2022 meeting of the Regular Town Council Meeting.
- CN2 Approved the Apex Tax Report dated April 3, 2022.
- CN3 Approved a 3-year contract renewal with LexisNexis.
- CN4 Set the Public Hearing concerning the proposed Fiscal Year 2022-2023 Budget including expenditures for Economic Development (pursuant to NCGS 158-7.1), for Tuesday, May 24, 2022 at 6:00 p.m. at the Apex Town Hall.
- CN5 Approved the contract for audit services for the 2022 fiscal year with Cherry Bekaert LLP of Raleigh, North Carolina.
- CN6 Approved award of contract to National Transformer Sales for 3 Phase Pad Mount and Single Overhead Transformers.
- CN7 Approve award of contract to Crossroads Ford of Apex for the purchase of a 2022 F750 Chipper Truck.

- CN8 Appointed Sarah Soh as a new Planning Board member to serve the remaining term of Tommy Pate, December 31, 2022.
- CN9 Set a Public Hearing for the May 24, 2022 Town Council meeting regarding Rezoning Application #22CZ01 Arden at Summit Pines PUD. The applicant, Collier Marsh, FC Apex, LLC., seeks to rezone approximately 11.74 acres from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 8200 Jenks Road.
- CN10 Set a Public Hearing for the May 24, 2022 Town Council meeting regarding Rezoning Application #21CZ31 Sears Property PUD. The applicant, Jeff Roach, Peak Engineering and Design, LLC., seeks to rezone approximately 26.218 acres from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 0 & 2108 Old US 1 Highway.
- CN11 Adopted a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 24, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the R. Michael Strickland Trustee of Family Trust property containing 13.541 acres located at 8200 Jenks Road, Annexation #727 into the Town’s corporate limits.
- CN12 Adopted a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 10, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the Peak 360, LLC property containing 7.6631 acres located at 7825 and 7809 Jenks Road, Annexation #732 into the Town’s corporate limits.
- CN13 Set the Public Hearing for the May 24, 2022 Town Council meeting regarding various amendments to the Unified Development Ordinance (UDO).
- CN14 Approved an Agreement with NCDOT for up to \$1,395,356 in federal funds, up to 80% reimbursement, of the total cost of right of way acquisition, utility relocation, and construction of project BL-0047, Downtown Apex Safe Routes to School, and authorized the Town Manager to execute the agreement on behalf of the Town.
- CN15 Approved a Review and Oversight Agreement with NCDOT for design review and project oversight activities for project BL-0047, Downtown Apex Safe Routes to School, requiring payment of a \$10,000.00 deposit, and authorized the Town Manager to execute the agreement on behalf of the Town.
- CN16 Approved the Triangle Area Water Supply Project Phase IX Five-Year Interlocal Agreement and authorized the Town Manager to execute it on behalf of the Town.
- CN17 Approved an agreement with Itron and authorized the Town Manager to execute the agreement on behalf of the Town.

PRESENTATIONS

The Mayor and Town Council Members read the following proclamations in turn.

- PR1 Presentation of LGBTQIA Pride Month 2022 Proclamation
- PR2 Presentation of Azerbaijan Independence Day Proclamation

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA
Meeting Date: May 14, 2024

Item Details

Presenter(s): Michael S. Deaton, PE, Director

Department(s): Water Resources

Requested Motion

Motion to approve an agreement with Itron and to authorize the Town Manager to execute Amendment #2 to the Itron FDM Tools and Field Tools Contract on behalf of the Town.

Approval Recommended?

Yes

Item Details

Town Council action is required to approve this Amendment #2 to FDM Tools and Field Tools Solution Contract # 2022-00000213 dated June 9, 2022 because the Contractor (Itron) did not delete the indemnity language as requested by the Town's Legal Department.

Field Deployment Manager (FDM) software is required to obtain water and electric meter reads and receive meter data such as consumption and meter health. This Amendment #2 extends the Contract for a period of one year to received continued support for FDM functions. The total subscription fees for this service is \$7,792.90.

Attachments

- Cover Sheet
- Amendment #2
- Itron Quote
- Contract #2022-00000213 Itron FDM Tools and Field Tools Solution Agreement



View results

Respondent

282

Jessica Sloan

12:49

Time to complete

1. DEPARTMENT *

Water Resources

2. CONTRACTOR/VENDOR NAME *

Itron, Inc.

3. CONTRACTOR/VENDOR ADDRESS *

2111 N Molter Road, Liberty Lake, WA 99019

4. CONTRACTOR/VENDOR CONTACT INFO (Provide FULL NAME and EMAIL of vendor/contractor/person recipient who will sign contract) *

Joel Vach joel.vach@itron.com

5. PURPOSE OF CONTRACT *

Field Deployment Manager (FDM) software is required to obtain water and electric meter reads and receive meter data such as consumption and meter health. This Amendment #2 extends the Contract for a period of one year to received continued support for FDM functions.

6. AMOUNT *

\$7,792.90

7. BUDGET CODE *

Split 50/50 32-8010 44509 and 30-8300 44509

8. TYPE OF CONTRACT *

- ☐ NEW
- ☐ RENEW
- ☒ AMENDMENT

9. HAS LEGAL REVIEWED AND IF SO, WHO? *

- ☒ Yes, Christopher Welch
- ☐ Yes, Laurie Hohe
- ☐ Yes, Brian Meyer
- ☐ No, Legal has NOT reviewed
- ☐ Other

10. SUMMARY OF CONTRACT BEING SUBMITTED *Required for Town Manager* *

The FDM Tools and Field Tools Solution are required for an additional year as the Meter Upgrade Project will not be fully implemented for another year. The software is instrumental in ensuring consumption is billed accurately to our customers.

11. MISC. COMMENTS?

Approved at Council on 5/14/24

12. ATTACHMENTS/EXHIBITS/CONTRACTS INCLUDED *(reminder to attach all files IF needed such as SSA, MSA, Certificate of Insurance and if new vendor attach application with W9)* *

- ☒ YES
- ☐ N/A

13. UPLOAD ALL FILES HERE, PLEASE ENSURE THE NEW TOWN MANAGER IS LISTED ON THE SSA OR MSA *

 [Council Coversheet Jessica Sloan.docx](#)

 [FDM Quote Jessica Sloan 1.pdf](#)

 [Itron 2022 Agreement Jessica Sloan.pdf](#)

 [Itron Amendment #2 ITRON SIGNED Jessica Sloan.pdf](#)

FDM Tools and Field Tools Solution Agreement



FDM TOOLS AND FIELD TOOLS SOLUTION AGREEMENT

THIS FDM TOOLS AND FIELD TOOLS SOLUTION AGREEMENT (THIS “AGREEMENT”) GOVERNS YOUR USE OF AND ACCESS TO THE SERVICES, AS DEFINED IN THE DEFINITIONS SECTION BELOW, THAT ARE PROVIDED BY ITRON, INC. OR ANY OF ITS SUBSIDIARIES (EACH “ITRON”).

This Agreement is made by and between Itron, Inc. (“Itron”), and entity organized under the laws of Washington having an address at 2111 N. Molter Road, Liberty Lake, WA 99019 and *Town of Apex*, an entity organized under the laws of North Carolina, having an address at 73 Hunter Street, Apex, NC 27502 (“Customer”) and is effective as of the date of the last signature (the “Effective Date”).

1. Definitions.

Affiliate means any legal entity that directly or indirectly controls, is controlled by, or is under common control with, a Party to this Agreement, where "control" means ownership of at least fifty (50) percent of the equity having the power to vote on or direct the affairs of the entity.

Annual Adjustment means Itron’s annual price increase.

Billing Cycle means a period of one year beginning on the Effective Date or any anniversary thereof.

Claim means an unaffiliated third-party claim, action, cause of action, or demand for damages, cost, or expense (including reasonable attorney’s fees) or other relief.

Client Services Guidelines Documents means the following documents as they may be updated by Itron from time to time: “Product Contact Information Sheet”, “After Hours Support”, and “Working Effectively with Itron Global Services”. Copies of the Client Services Guidelines Documents may be obtained by calling (877) 487-6602 or such other number or process provided by Itron to Customer.

Confidential Information means any confidential, trade secret or other proprietary information disclosed by a Party or a Party’s Affiliate related to its business that is designated as “confidential” or which a

reasonable person knows or should understand to be confidential, regardless of the form of disclosure and whether of a technical, business or financial nature, including but not limited to processes and methods, product design and details of operation, product plans, prototypes, schedules, results, reports, computer programs, databases, compilations of data, engineering activity, manufacturing activity, analytical methods, strategies, and the like, but excluding information that: (i) is now or becomes generally available to the public through no fault or breach of the receiving Party; (ii) is rightfully in the receiving Party's possession, or known by it, prior to its receipt from the disclosing Party; (iii) is rightfully disclosed to the receiving Party by a third-party, free of any obligation of confidentiality; (iv) is developed by the receiving Party independently and without reference to the disclosing Party's Confidential Information, or (v) is rightfully disclosed pursuant to the applicable laws or regulations, or rules of any stock exchange, or orders of the court or other government authorities with notice to the disclosing Party. Confidential Information shall not include "public records" as defined by Chapter 132 of the North Carolina General Statutes.

Covered Product means Software.

Customer means you or, if you are accepting on behalf of your employer or another entity, such employer or entity.

Customer Data means all data about Customer's existing or prospective end users that Itron acquires, develops, or derives in connection with performance under this Agreement. Such customer data may include, without limitation, any personally identifying information relating to a Customer's existing or prospective end user, or any other information that, either individually or when combined with other information could be used to identify a particular Customer end user or a prospective Customer end user, which information is not generally available to the public.

Defended Party means a Party entitled to defense and indemnification from the other Party under Section 11 ("Third-Party Claims") of this Agreement.

Defending Party means a Party obligated to provide defense and indemnification to the other Party under Section 11 ("Third Party Claims") of this Agreement.

Documentation means user manuals, training materials, product descriptions and specifications, technical manuals, supporting materials and other information relating to Services or Software provided by Itron, which Itron customarily makes available to its customers.

Endpoint means an electric meter, gas or water endpoint receiver-transmitter, battery-powered device, or any other device which Customer will configure and/or manage as part of a Service Offering.

Error means a material failure of Software to comply with applicable published Itron specifications.

Fees means all amounts payable to Itron by Customer for Services provided under this Agreement, as set forth in a Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron.

Fix means a correction or workaround for an Error.

Global Support Services means those support services provided by Itron technical representatives via telephone, email, website or other means to assist Customer's Primary Service Contacts with questions or issues related to the operation of Covered Products.

Improvement means an update, modification, enhancement and/or extension to Software functionality that is included in a Release.

Intellectual Property and **Intellectual Property Rights** mean all industrial and intellectual property, including, without limitation, patents, patent applications, invention registrations, and all other rights in inventions, copyrights in published and unpublished works, whether registered or unregistered, know-how, trade secrets, and confidential and proprietary information, whether such intellectual property has been created, applied for or obtained anywhere throughout the world.

M&S Commencement Date means the date upon and after which a Covered Product will be entitled to receive Maintenance Services purchased by Customer, which unless otherwise specified in a Quote provided by Itron, will be the Service Offering Commencement Date.

Maintenance Services means maintenance and support services described in Section 8 ("Maintenance Services") of this Agreement.

Mobile Device Software means Itron's FDM Tools or Field Tools mobile application for FDM Tools or Field Tools, as applicable.

One-Time Setup Fee means the one-time setup fee(s) for each Service Offering (if any) identified in the applicable Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron.

Operating Condition means performance in accordance with applicable published Itron specifications.

Party means Customer or Itron and **Parties** means Customer and Itron.

Primary Services Contacts means Customer's primary support staff who provides internal support to Customer's operations personnel and who are key interface to Itron for all Maintenance Services.

Quote means a valid quote for Services provided to Customer by Itron.

Release means a collection of Fixes and/or Improvements made available by Itron to Customer.

Service Offering means the FDM Tools or Field Tools software-as-a-service offering identified on the applicable Purchase Order whereby Itron or its designated provider hosts and provides Customer with access to SaaS Software on Servers via the internet.

SaaS Software means the Itron proprietary data collection and management computer program(s) for the Service Offering(s) purchased by Customer.

Servers means the physical computer hardware owned by Itron or its designated provider on which SaaS

Software will be installed, operated, and maintained by or on behalf of Itron.

Service Offering Commencement Date means, with respect to each Service Offering, the date Itron makes access credentials for the Service Offering available to Customer.

Service Levels means the defined level of impact and associated response time, effort level, and escalation path procedures and guidelines described in Attachment A to this Agreement.

Services mean the Service Offering(s) and Maintenance Services.

Software means Mobile Device Software and SaaS Software.

Subscription Fees means annual fees identified in the applicable Quote or, if no Quote, Itron's then- current list price at the time of Purchase Order acceptance by Itron, for each Service Offering, plus the Annual Adjustment, if any.

Subscription Term means the subscription term purchased by Customer for each Service Offering, which begins upon the applicable Service Offering Commencement Date.

Territory means the country in which Itron provides Services to Customer.

2. Purchase Order Requirement. Customer shall purchase Services by issuing a purchase order or similar ordering document accepted by Itron ("Purchase Order") indicating specific Services, Itron part numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and contract reference. No contingency contained on any Purchase Order shall be binding upon Itron. The terms of this Agreement shall apply, regardless of any additional or conflicting terms of any Purchase Order or other correspondence or documentation submitted by Customer to Itron, and any such additional or conflicting terms are deemed rejected by Itron.

3. Term. The initial term of this Agreement begins on the Effective Date and expires one (1) year following the Effective Date. Prior to the expiration of the Subscription for the Mobile Device Software, the Parties will sign an amendment that extends the Subscription for the Mobile Device Software for one (1) year. Any accepted Purchase Orders as of the expiration date of this Agreement shall be completed by the Parties and the term of this Agreement will be extended solely for that purpose until completion. This Section is subject to Section 14 ("Termination") of this Agreement.

4. Fees, Invoicing, Taxes and Payment

4.1. . Fees. Itron offers a basic Service Offering and a premium Service Offering under this Agreement. The basic Service Offering is provided free of charge and the premium Service Offering is provided at the initial fees set forth in Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron. Fees for Software Maintenance Services are included in the Subscription Fee, if any, for the applicable Service Offering. Itron reserves the right to add, remove and/or change features within a Service Offering at Itron's sole discretion and will notify Customer of such changes at least sixty (60) days in advance of implementing such changes within Service Offering.

4.2. Invoicing. Customer shall pay Subscription Fees (if any) in advance for each Billing Cycle for which it has purchased a Service Offering. Itron will invoice Customer for the One-Time Setup Fee and initial Subscription Fees for each Service Offering upon the Service Offering Commencement Date. Initial Subscription Fees shall be prorated based on the number of months remaining in the current Billing Cycle following the Service Offering Commencement Date. Itron may discontinue a Service Offering by providing Customer with written notice of discontinuance no less than 180 days prior to the commencement of a Billing Cycle. Otherwise, Itron will provide Customer with a renewal notice for the Service Offering at least 120 days prior to the commencement of each Billing Cycle. Customer may discontinue a Service Offering by providing Itron with written notice of non-renewal no less than 90 days prior to the commencement of a Billing Cycle. Otherwise, approximately 20 days prior to the commencement of each Billing Cycle, Itron will provide Customer with an invoice for Subscription Fees payable by Customer for the forthcoming Billing Cycle.

4.3. Payment. Customer shall pay the Itron entity designated in the applicable invoice. Unless otherwise specified in the applicable invoice, Customer shall pay such Itron entity in USD. Customer must pay each invoice within thirty (30) days of the invoice issuance date. Payment must be made by electronic transfer to a bank account designated by Itron.

4.4. Invoice Disputes. Customer shall notify Itron in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within ten (10) days from the original invoice date. Invoices for which no such timely notification is received shall be deemed accepted by Customer as true and correct, and Customer shall pay all amounts due under such invoices within the period set forth in Section 4.3. The Parties shall seek to resolve all such disputes expeditiously and in good faith in accordance with the dispute resolution provisions set forth in Section 17 ("Disputes"). Notwithstanding anything to the contrary, each Party shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, payment by Customer of all undisputed amounts due and payable under this Agreement.

4.5. Late Payment. Except for invoiced payments that Customer has timely disputed, all late payments

shall bear interest at the lesser of the rate of one percent (1%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall also reimburse Itron for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Itron does not waive by the exercise of any rights hereunder), Itron shall be entitled to suspend the provision of any Services if Customer fails to pay any undisputed amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof.

4.6. No Setoff. Customer shall not withhold payment of any amounts due and payable under this Agreement by reason of any setoff of any claim or dispute with Itron, whether relating to Itron's breach, bankruptcy, or otherwise.

4.7. Taxes. All prices are exclusive of any taxes, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon this Agreement. Customer shall pay any taxes related to products and services provided pursuant to this Agreement (except for taxes based on Itron's net income) or shall present an exception certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice. The Parties agree to fully cooperate with one another regarding taxes and any related issues arising from this Agreement. Customer shall indemnify and hold Itron harmless from any tax liability assessed against Itron but rightfully owed by Customer arising from or related to transactions set forth herein .

5. Documentation. Subject to Customer's compliance with this Agreement, including payment of all applicable Fees, Itron hereby grants to Customer a non-exclusive, non-transferable, non-assignable, limited right to access and use the Documentation with the Services for its internal business purposes in the Territory. Itron will make its standard Documentation available via download. Itron will provide Customer with download instructions.

6. Service Offerings

6.1. Access Rights and Restrictions.

6.1.1. Access Rights. Subject to Customer's compliance with this Agreement, including payment of all applicable Fees (if any), Itron hereby grants to Customer, for the Subscription Term(s) purchased, a non-exclusive, non-transferable, non-assignable, limited right to access and use the Service Offering(s) for its internal business purposes in the Territory.

6.1.2. Restrictions on Use. Customer and its authorized users may not: (a) modify, translate or create derivative works of any Service Offering or related Documentation; (b) copy, reproduce, distribute, republish, download, display, post or transmit any portion of a Service Offering or related Documentation in any form or by any means; (c) sell, assign, transfer, lease or sublicense any Service Offering; (d) allow any third party, other than authorized users, to access any Service Offering or related Documentation without Itron's prior written consent; (e) use any Service Offering or related

Documentation to provide services to third parties, or otherwise use any Service Offering on a “service bureau” or “timesharing” or subscription basis; (f) reverse engineer, disassemble, decrypt, extract or otherwise reduce any Service Offering to a human perceivable form or otherwise attempt to determine the source code or algorithms of any Service Offering (except to the extent the foregoing restriction is expressly prohibited by applicable law); (g) infringe any of Itron’s or its providers’ Intellectual Property Rights; (h) publicly publish the results of any benchmark tests run on any Service Offering; (i) use any Service Offering or related Documentation to engage in any fraudulent, illegal or unauthorized act; (j) introduce into or transmit through any Service Offering any material containing software viruses, worms, trap doors, back doors, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (k) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of Itron’s or its providers’ Intellectual Property Rights, whether such notice or indications are affixed on, contained in or otherwise connected to a Service Offering; (l) attempt to gain unauthorized access to a Service Offering or Itron’s or its providers’ systems or networks; (m) merge any Service Offering with any other product or service without Itron’s prior written consent and the payment of any additional fees; or (n) access or use any Service Offering or related Documentation to build or support, and/or assist a third-party in building or supporting, products or services competitive to Itron or its providers.

6.1.3. Content Restrictions. Customer may not distribute, download, or place on any Itron or its providers’ website or Server, or use with any Service Offering, any content that: (a) Customer knows or has reason to believe infringes the Intellectual Property Rights of any third party or violates any rights of publicity or privacy; (b) violates any applicable law, statute, ordinance; (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; or (d) is obscene, pornographic or indecent (items (a) – (d) are collectively referred to as “Prohibited Content”). Itron reserves the right to remove any Prohibited Content from the Server without prior notice to Customer. Customer will indemnify, defend and hold Itron and its providers harmless for any claims, liabilities, losses, causes of action, damages, settlements, and costs and expenses (including, without limitation attorneys’ fees and costs) arising from any third-party claims related to or generated by any Prohibited Content distributed, downloaded, or placed on any Itron or its providers’ website or Server or used with any Service Offering by Customer.

6.2. Breach of Restrictions. Customer’s breach of the restrictions set forth in Section 6.1.2 (“Restrictions on Use”) or Section 6.1.3 (“Content Restrictions”) shall constitute a material breach of this Agreement and shall result in revocation and immediate suspension or termination, as determined by Itron in its sole discretion, of all rights and licenses granted under this Agreement with respect to the Service Offerings. Revocation does not preclude Itron from pursuing any legal and equitable remedies for Customer’s breach of these restrictions.

6.3. SaaS Software Availability. Itron will endeavor to make the SaaS Software available to Customer

through the Service Offering(s) purchased by Customer at least 99.5% of the time, excluding any downtime resulting from maintenance or circumstances beyond Itron's reasonable control.

6.4. Third-Party Radio Devices. Customer may use a Service Offering to collect Customer Data from Endpoints equipped with radio communication devices not manufactured or provided by Itron ("Third-Party Radio Device"). Itron makes no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, and fitness for use, merchantability, condition, quality, performance or non-infringement of, and disclaims all liability with respect to, Third-Party Radio Devices. Without limiting the foregoing, Itron shall have no liability (a) if a Third-Party Radio Device is not responding or communicating or (b) for unread Endpoints due to defective or unreachable Third-Party Radio Devices. Customer shall contact the supplier of such device for support.

6.5. Sizing of Software-as-a-Service. Itron will size Service Offerings, Servers, and systems for Customer's specific deployment. System sizing depends upon the Service Offering and types of devices and sensors and may be a factor in determining Subscription Fees. Sizing criteria may include number of system endpoints, number of network devices, residential meter configuration, commercial and industrial meter configuration, desired data collection intervals, storage duration for historical data, and the number of concurrent and total users of the application. Any sizing changes during a Subscription Term will require a written agreement of the Parties and may result in a change in Subscription Fees.

6.6. Application Upgrade and Fixes. SaaS Software is updated regularly using a continuous delivery method.

6.7. Conditions on Use of Service. Customer will use of the Service Offerings only in accordance with the Documentation, this Agreement, and applicable laws and government regulations. The rights of any user to access and use the Service Offerings cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized user), and Customer shall make every reasonable effort to prevent unauthorized third parties from accessing the Service Offerings.

6.8. Suspension or Restriction of Service. Itron may suspend or restrict all or part of the Service Offerings at any time to protect the integrity and functionality of the Software, Servers, platforms, and systems, or for a breach of Section 6.1.2 ("Restrictions on Use"), Section 6.1.3 ("Content Restrictions") or Section 6.7 ("Conditions on Use of Service"), until such breach is cured to Itron's reasonable satisfaction.

6.9. Incident Management. Itron will provide Customer support and incident and problem management services, which include responding to alerts, tracking the issue, troubleshooting the problem and escalating to Itron subject matter experts or third-party providers.

6.10. Customer Technical Responsibilities. Customer is responsible for selecting, acquiring, securing and maintaining all equipment and ancillary services needed to connect to, access, or otherwise use and maintain compatibility with the Service Offerings, at Customer's sole expense.

6.11. User IDs and Passwords. Itron shall provide Customer with a user identification and password ("User ID") to access each Service Offering. Customer shall be solely responsible for all use of Customer's subscriptions and accounts. Customer shall maintain the confidentiality of all User IDs assigned to or created by Customer. User IDs may not be shared or used by more than one user.

6.12. Maintenance. System maintenance, whenever reasonably practicable, will be performed during off-business hours based on the regions covered by the Service Offering. Itron will minimize Service Offering disruptions to the extent reasonably practical.

6.13. Business Continuity. Application data is fully backed up weekly and differentially backed up daily unless backup is prevented by loss of datacenter or datacenter connectivity or other circumstances outside Itron's reasonable control. Itron's hosted environment is on fault tolerant systems with specific mechanisms for high availability.

6.14. Recovery of Customer Data. At the end of the Term of the Agreement or SaaS service (unless the Agreement or SaaS service is renewed pursuant to duly executed amendment or a new agreement), or in the event of its early termination in accordance with the terms of the Agreement, Customer will confirm to Itron in writing, no later than on the effective date of expiration or termination, its decision to close the SaaS service ("Closure Confirmation"). Provided that Itron has received the Closure Confirmation from Customer within the aforementioned period, Itron will maintain Customer's access to the system for a maximum period of three (3) months from receipt of the Closure Confirmation, for the sole purpose of enabling Customer to retrieve the following Customer data: access account information, meter details, history of index reading data and photographs. Customer may, at no additional cost, export said system data in the standard file format used by the SaaS service, or the format already supported by the SaaS service. At the end of this three (3) month period, the Customer data will be permanently deleted and will no longer be recoverable.

7. Mobile Device Software License.

7.1. License Grant. Subject to the terms of this Agreement, Itron grants Company a limited, non-exclusive, and non-transferrable license to download, install, and use the Mobile Device Software on Itron-approved mobile devices owned or otherwise controlled by Customer (each a "Mobile Device")

strictly in accordance with the Documentation.

7.2. License Restrictions. Customer shall not: (a) copy the Mobile Device Software; (b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Mobile Device Software; (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Mobile Device Software or any part thereof; (d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Mobile Device Software, including any copy thereof; or (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Mobile Device Software, or any features or functionality of the Mobile Device Software, to any third party for any reason.

7.3. Updates. Itron may from time to time in its sole discretion develop and provide Mobile Device Software updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "Updates"). Based on Customer's Mobile Device settings, when Customer's Mobile Device is connected to the internet either: (a) the Mobile Device Software will automatically download and install all available Updates; or (b) Customer may receive notice of or be prompted to download and install available Updates. Customer shall promptly download and install all Updates and acknowledge and agree that the Mobile Device Software, the Service Offering, or portions thereof may not properly operate should Customer fail to do so. Customer further agrees that all Updates will be deemed part of the Mobile Device Software and be subject to all terms and conditions of this Agreement.

7.4. Compatible Mobile Devices. Mobile Device Software is designed to work in connection with Mobile Devices that meet Itron minimum requirements. Itron will provide the minimum specifications to Customer. Itron is not required to make Mobile Device Software work with any other mobile devices.

7.5. Disclaimer of Liability. Mobile Device Software requires Internet connectivity, which Customer is solely responsible for procuring. Itron accepts no responsibility for any internet services failure, Mobile Device failure, or for any loss or damage of any kind caused by such failure.

8. Maintenance Services.

8.1. Primary Services Contacts.

8.1.1. Designation by Customer. Customer shall designate a minimum of one and not more than two Primary Services Contacts for each Covered Product line, to serve as administrative liaisons for all matters pertaining to Maintenance Services for such Covered Product line and shall provide their contact information to Itron's customer account representative. Primary Services Contacts shall

promptly report problems with Covered Products by submitting a Service Request for entry into Itron's support tracking system. Although it is Customer's sole right to choose its Primary Services Contacts, Customer and Itron acknowledge that each Primary Services Contact must have the appropriate technical skills and training for the position. If Customer replaces a Primary Services Contact, Customer will provide updated contact information to Itron's customer account representative, and the new Primary Services Contact will be properly trained prior to interfacing with Itron support personnel.

8.2. Training of Principal Services Contacts. Before a Primary Services Contact interfaces with Itron support personnel, he/she will attend training sessions offered by Itron, an Itron-approved trainer, or Customer's training program approved by Itron to ensure that the Primary Services Contact is (i) knowledgeable about operation of the applicable Covered Products, and (ii) qualified to perform problem determination and remedial functions with respect to such Covered Products. Customer may perform Itron-approved training or may engage Itron to perform training of Primary Services Contacts at Itron's then current rates. Itron will make training sessions available by remote video conference or training will be made available at a location or in a manner mutually agreed by the Parties. Customer shall be responsible for all Customer's associated travel-related expenses and, if the Parties agree that training will be provided at a location other than an Itron-designated facility (e.g., at a Customer- proposed facility), Customer will also reimburse Itron's travel-related expenses. The Primary Services Contacts must have the skills and capabilities to train other Customer personnel on Covered Products. Itron may update Covered Product training from time to time and, upon receiving notice of such updates from Itron, Customer shall promptly provide such training to its Primary Services Contacts in accordance with this Section. Global Support Services & Service Requests.

8.2.1. Global Support Services. Itron will make support representatives available to provide technical support during its then current normal business hours as set forth in the Product Contact Information Sheet included within the Client Services Guidelines Document. Global Support Services include troubleshooting & problem diagnosis relating to Covered Products; release or system management consulting; and recommendations for fully utilizing Covered Products. Customer acknowledges and agrees that Global Support Services are not intended as a substitute for training of Customer personnel, field support, or Itron professional services. Nor will Customer use Global Support Services in lieu of having qualified and trained support personnel of its own.

8.2.2. Service Request Process. Customer shall submit Service Requests in the manner required by the Client Services Guidelines Documents and Service Levels. Customer may submit Service Requests on a 24/7/365 basis and Itron will respond to such Service Requests in accordance with the Service Levels. When Customer submits a Service Request, Customer will reasonably assess its

urgency according to the appropriate Severity Level in Attachment A to this Agreement. Itron will designate the initial Severity Level and the Parties will resolve any perceived gap regarding the Severity Level designation as soon as is reasonably practical.

8.2.3. Field Support. At Customer's request, and Itron's approval, Itron will dispatch support personnel to Customer's location to provide onsite Global Support Services ("Requested Field Support") related to a reported problem which cannot be addressed remotely. Requested Field Support will be billed at Itron's then-current rates, and Customer will reimburse Itron's travel-related expenses, unless the cause of the reported problem is found to be the fault of Itron.

8.3. Software Maintenance.

8.3.1. Fixes. Itron shall provide Fixes in accordance with the Service Levels. Itron's obligations with respect to Service Levels are contingent upon Customer (i) devoting the same level of effort to resolving the Error as is required of Itron, (ii) responding to requests made by Itron within the applicable Response Time, (iii) assigning only qualified personnel to help Itron address the Error, and (iv) providing all information, access, and assistance reasonably requested by Itron to address the Error.

8.3.2. Improvements. Itron shall provide Improvements, if any, at no charge to Customer if such Improvements are made within the current product specifications and are made available to Itron customers generally at no charge. Improvements created as new add-on modules/features and not part of the products original specifications, will be created at Itron's discretion and will be billable at Itron's then current rates. Access to new add-on modules may also require additional licensing and subscription fees.

8.3.3. Exclusions. Itron shall have no obligation to provide Maintenance Services for, or liability to Customer for Software adversely affected by (i) use of Software by anyone other than Itron in combination with software, equipment, or communications networks not referenced in the Documentation as being compatible with the Software; (ii) failure to perform customer responsibilities describe in this Agreement, (iii) viruses introduced through no fault of Itron.

8.3.4. Customer Responsibilities. Customer will support Itron investigation and restoration efforts as defined in the Service Level table and will act upon / implement support solutions and workarounds recommended by Itron in a timely fashion. When escalating a Service Request with Itron, Customer's Primary Service Contact shall collect and provide all data logs, findings, analysis, and any relevant forensic information pertaining to the issue as outlined in Client Services Guideline Documents.

9. Warranty Disclaimer. ITRON MAKES NO WARRANTY OF ANY KIND RELATING TO SERVICES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, (I) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (II) WARRANTIES OF TITLE AND AGAINST INFRINGEMENT, AND (III) WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. ITRON AND ITS SUPPLIERS DO NOT WARRANT OR REPRESENT THAT SERVICES OR EQUIPMENT WILL BE FREE FROM BUGS, ERRORS OR THAT THEIR USE WILL BE UNINTERRUPTED OR ERROR-FREE. ITRON ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM ITS DATA CENTERS OR DATA CENTERS OF ITS VENDORS VIA WAN, CELLULAR OR OTHER PUBLIC COMMUNICATIONS OR BROADBAND SYSTEMS (INCLUDING OUTAGES, DEVICE NON-REACHABILITY, LOSS OR INACCURATE READING) OR FOR ANY CONSEQUENCES, LOSSES, OR DAMAGES ARISING FROM CHANGES MADE BY CUSTOMER TO THE CONTENT OR PROGRAMMING OF EQUIPMENT (UNLESS CAUSED BY A DEFECTIVE PRODUCT). THESE DISCLAIMERS WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER THIS AGREEMENT.

10. Intellectual Property.

10.1. Reservation of Intellectual Property. Subject to the limited rights expressly granted by Itron to Customer under this Agreement: (i) Itron reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Itron owns all rights, title and interest in and to its Confidential Information and the products, services and related deliverables provided by Itron under this Agreement. Subject to the limited rights expressly granted by Customer to Itron under this Agreement, Customer reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Customer owns all right, title and interest in and to its Confidential Information and Customer Data. All rights, titles, and interests not specifically and expressly granted by either Party hereunder are hereby reserved.

10.2. Customer Suggestions. Itron shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into any products and services any suggestions, enhancement requests, recommendations or other feedback provided by Customer.

11. Third-Party Claims.

11.1. General Claims. The Defending Party will defend the Defended Party from and against Claims arising from personal bodily injury, death, or damage to tangible personal property or real property, and will indemnify the Defended Party from resulting settlements approved by the Defending Party and final judgments entered against the Defended Party, to the extent caused by the negligence of the Defending Party.

11.2. Infringement Claims. Itron, as the Defending Party, will defend Customer, as the Defended Party, from and against Claims alleging that any Itron-branded products or services, as delivered to Customer, infringe upon any third party's Intellectual Property Rights within the Territory ("IP Claims"). Itron will also indemnify Customer for settlements approved by Itron and final judgments entered against Customer to the extent resulting from IP Claims. If Itron receives notice of an alleged infringement by any products or services provided to Customer under this Agreement, or if Itron reasonably believes that an IP Claim is likely, Itron may stop delivery of the affected products or services without liability for failure to deliver them. Itron will have the right, at its sole option, to obtain the right for Customer to continue use of the affected products or services, or to replace or modify the affected products or services so that they are no longer alleged or believed to infringe, if it can be done without significant loss of functionality. If neither of the foregoing options are available to Itron on commercially reasonable terms, Itron may terminate Customer's use of the affected products or Services without further liability under this section, in which case Itron will refund to Customer the depreciated value of the affected product and any prepaid unused portion of the service.

11.3. Conditions to Defense. As a condition to the Defending Party's obligations under Section 11.1 or Section 11.2 above, the Defended Party must: (i) promptly notify the Defending Party in writing of the Claim; (ii) give the Defending Party all reasonably requested information and assistance in connection with the Claim in a timely manner; and (iii) give the Defending Party the sole right to control the defense and settle of the Claim. The Defending Party shall not enter into any settlement of a Claim against a Defended Party without the Defended Party's prior written consent unless: (a) there is no admission of fault of the Defended Party; (b) there is no injunctive or other non-monetary relief against the Defended Party; and, (c) the settlement includes the claimant's or plaintiff's release of the Defended Party from all liability in respect of the Claim.

11.4. Exclusions to Infringement Claim Defense. Itron will have no obligation under Section 11.2 above for any infringement Claim in which infringement is alleged or caused by (i) the combination, operation or use of any product or service provided by Itron with any product or service (including third-party software and equipment) not provided by Itron, (ii) any modification to products or services made either without Itron's prior written consent or by a person other than Itron or an authorized representative

of Itron, (iii) failure to use updated or modified products or services as provided by Itron, (iv) use of any release of Itron software or any firmware other than the most current release made available to Customer, (v) use of products or services not in accordance with this Agreement and applicable Documentation, or (vi) Itron's compliance with any designs, specifications, or instructions provided by Customer. In addition, Itron shall not be liable for enhanced or punitive damages that could have been avoided or reduced by actions within the control of Customer.

11.5. EXCLUSIVE REMEDY. THIS SECTION 11 CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST CUSTOMER.

12. Data Protection. The Parties must implement and establish reasonable security protocols for the protection and retention of Customer Data. As between Customer and Itron, Customer will retain its rights in Customer Data; provided, however, Customer hereby grants Itron a non-exclusive, royalty-free, perpetual, worldwide license to copy, modify, use, sublicense, distribute, display, create derivative works of all Customer Data for the purposes of (i) providing products and services to Customer, (ii) testing, troubleshooting, and optimizing performance and quality of Itron's products and services, and (iii) so long as Customer is not identifiable and all personally identifiable information is either removed or anonymized, developing new products and services. Itron assumes no responsibility for Customer or third-party content carried on Customer's or Itron's systems. Customer warrants and represents that, during the term of this Agreement, (a) it has the legal right and authority to grant Itron access to view, store, and use the Customer Data to provide products and services, and (b) Itron's transmission, use and storage of any such Customer Data in accordance with this Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligation between Customer and any third-party..

13. Confidentiality. Each Party receiving, possessing, accessing or otherwise acquiring Confidential Information of the other Party acknowledges that the disclosing Party's Confidential Information is the property of and confidential to, or a trade secret of, the disclosing Party. The receiving Party: (a) must keep the disclosing Party's Confidential Information confidential and may not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the disclosing Party's prior written approval; (b) must take all reasonable steps to secure and keep secure all disclosing Party's Confidential Information coming into its possession or control; (c) may not disclose any Confidential Information to anyone other than the receiving Party's employees, agents, contractors or subcontractors and professional advisors, or those of its Affiliates, who have a need to know such Confidential Information; (d) must use the Confidential Information solely for purposes related to the subject matter of this Agreement or for potential future commercial transactions between the Parties not otherwise covered by a separate agreement; and (e) must ensure that any person to whom it discloses Confidential Information in accordance with this provision is subject to binding confidentiality obligations that are at least as restrictive as those set forth in this Agreement.

14. Termination. Either Party may terminate this Agreement by providing the other Party with written notice if the other Party (i) becomes insolvent, executes a general assignment for the benefit of creditors or becomes subject to bankruptcy or receivership proceedings, or (ii) commits a material breach of this Agreement that remains uncured for thirty (30) days following delivery of written notice of such breach. Any notice of breach must specify (a) the nature of the breach, and (b) the specific act or acts that the non-breaching Party contends would correct such breach. For the avoidance of doubt, Customer's failure to pay invoices timely will be deemed a material breach of this Agreement.

15. Survival. The following sections of this Agreement shall survive termination or expiration of this Agreement: 1 ("Definitions"), 3 ("Term"), 4 ("Fees, Invoicing, Taxes and Payment"), 6.1.2 ("Restrictions on Use"), 6.2 ("Breach of Restrictions"), 9 ("Warranty Disclaimer"), 10 ("Intellectual Property"), 12 ("Data Protection"), 13 ("Confidentiality"), 15 ("Survival"), 16 ("Limitation of Liability"), 17 ("Disputes"), 18 ("Governing Law and Venue"), 23 ("Force Majeure"), and 24 (Miscellaneous).

16. Limitation of Liability. Except for Customer's violation of Itron's Intellectual Property Rights, neither Party will be liable to the other Party for any consequential, indirect, special, incidental, punitive or exemplary damages arising out of this Agreement or products or services provided hereunder (including, but not limited to, damages for loss of data, goodwill, profits other than amounts payable by Customer to Itron hereunder, investments, use of money or facilities; interruption in use or availability of data; stoppage of other work or impairment of other assets), whether or not foreseeable and even if such Party has been advised of the possibility of such damages. Except for Customer's payment obligations hereunder or violation of Itron's Intellectual Property Rights, neither Party's total, aggregate liability to the other Party arising out of or related to this Agreement or any products or services provided hereunder shall exceed the amounts paid and payable by Customer under this Agreement during the twelve month period immediately preceding the date upon which the liability arose, regardless of whether any action or claim is based on contract, warranty, indemnity, negligence, strict liability or other tort or otherwise.

17. Disputes. The Parties shall resolve any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity hereof (each, a "Dispute") in accordance with this Section. A Party shall send written notice to the other Party of any Dispute ("Dispute Notice"). The Parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within thirty (30) Business Days after one Party delivers the Dispute Notice to the other Party, either Party may, by written notice to the other Party ("Escalation to Executive Notice"), refer such Dispute to the executives of each Party designated by such Party in a written notice to the other Party ("Executive(s)"). If the Executives cannot resolve any Dispute during the period ending thirty (30) Business Days after the date of the Escalation to Executive Notice (the last day of such time period, the "Escalation to Mediation Date"), either

Party may submit the Dispute to any mutually agreed to mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediation service and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The Parties covenant that they will use commercially reasonable efforts in participating in the mediation. The Parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the Parties. If the Parties cannot resolve any Dispute for any reason, including, but not limited to, the failure of either Party to agree to enter into mediation or agree to any settlement proposed by the mediator, within sixty (60) Business Days after the Escalation to Mediation Date, either Party may proceed in accordance with the provisions of Section 18 (Governing Law and Venue). Notwithstanding the foregoing, nothing in this Section shall be construed as preventing a Party from seeking available equitable relief, including without limitation, specific performance and injunctive relief in a court of competent jurisdiction.

18. Governing Law and Venue. This Agreement and all related documents, including all addenda attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of North Carolina, United States of America (including its statutes of limitations), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the United States District Court for the Western District of Texas, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Travis County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the United States District Court for the Eastern District of North Carolina or, if such court does not have subject matter jurisdiction, the courts of the State of North Carolina sitting in Wake County. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

19. Legal Compliance. Each Party must comply with all applicable laws. Itron's products and services delivered under this Agreement are subject to the U.S. Export Administration Regulations ("EAR"; 15 CFR part 730 et seq.) and any applicable laws and regulations of the particular country to which such items are shipped or received. Customer shall comply with all applicable export control laws and shall not cause, directly or indirectly, the export, re-export, or transfer of any such items or services to destinations or persons without obtaining any required prior authorization from the U.S. Government and any other

applicable local authorities. Customer shall not do anything to cause Itron to violate such export control laws, including, but not limited to, requesting support for a product that has been unlawfully re-exported or requesting delivery of a product or service intended for a U.S. sanctioned region or person. Each party represents that it is not listed on a U.S. Government restricted party list for export control or trade sanctions purposes, and is not 50% or more owned, in the aggregate, by one or more restricted parties. Customer shall maintain any required export records related to Itron's products or services and make such records available to Itron upon request. The Parties must comply with all anti-bribery laws and may not make any payments or transfer any item of any value for the purpose of bribing any individual or group, or accepting or participating in any extortion, kickbacks, or other unlawful or improper means to obtain business related to this Agreement or products and services orderable under this Agreement.

20. Publicity. Neither Party may issue a press release related to this Agreement or their relationship without the other Parties' prior written consent.

21. Sub-contractor and Outsourcer. Itron may hire, engage, or retain the services of one or more subcontractors and/or outsourcing providers to perform any or all of its obligations related to its product development, network operations, and/or any portion of services provided under this Agreement. Subcontractors and outsourcing providers that have access to Customer Data will be bound by written obligations of confidentiality and data security requirements as restrictive as those required under this Agreement.

22. Independent Contractor. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. The Parties are independent contractors. Neither Party has any authority to act on behalf of, or to bind the other to any obligation.

23. Force Majeure. Neither Party (the "Impacted Party") shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for Customer's obligations to make payments to Itron under this Agreement), when and to the extent such failure or delay is caused by or results from acts or omissions (whether in effect on or after the Effective Date of this Agreement) beyond the Impacted Party's reasonable control and without the Impacted Party's negligence, including, without limitation: (a) left blank (b) severe weather, flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) changes in applicable laws or regulations; (e) embargoes or blockades; (f) action or inaction by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; (i) shortage of adequate materials, qualified labor, power or transportation; (j) epidemics, pandemics or quarantines; and (k) other similar or dissimilar circumstances outside the Impacted Party's reasonable control and without the Impacted Party's negligence (each a "Force Majeure").

24. Miscellaneous. (a) If any provision of this Agreement is found to be unenforceable by a court of competent jurisdiction or arbitration panel, such provision will be deleted and the remaining terms will be construed so as to give maximum lawful effect to any such deleted terms. (b) Section numbers and captions are provided for convenience of reference and do not constitute a part of this Agreement. Any references to a particular section of this Agreement will be deemed to include reference to any and all subsections thereof. (c) No waiver by either Party of any breach under this Agreement will constitute a waiver of any other breach. (d) This Agreement is not made for the benefit of any third parties. (e) All notices under this Agreement must be sent to such other address as such Party has notified the other in writing, will be effective on the date received (unless the notice specifies a later date) and must be sent by a courier service that confirms delivery in writing, or by certified or registered mail, postage prepaid, return receipt requested. All communications and notices to be made or given pursuant to this Agreement must be in English. (f) Customer may not assign this Agreement or any of its rights hereunder without Itron's prior written consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties and their respective successors and permitted assigns, but any assignment in violation of this provision will be void.

25. Public Records Requirements. To the extent applicable, Itron will comply with the public records requirements in Customer's state. Itron recognizes that Customer is subject to public records laws under which Customer is required to disclose all records characterized as public under state law, unless an exemption applies. For that reason, Customer agrees that if a record regarding Itron software and/or documentation is requested under public records laws, Customer will provide Itron with prompt written notice of such request prior to producing any records so that Itron has an opportunity to seek court protection of the requested records. Customer also agrees to reasonably cooperate with Itron to mitigate the disclosure of such software and/or documentation to the extent requested by Itron and allowed by applicable public records laws.

In witness thereof, the Parties, by their authorized agents, affix their signatures and seals this 9th day of June, 22

Itroth

Name: _____
(type or print)

DocuSigned by:

Joel Vach

D4BB7D03A21E4BB...

By: Joel Vach
(Signature)

Title: VP-Tax and Corporate Treasurer

Attest:

DocuSigned by:

Chris Ware

7AF489604F544EB...

(Secretary, if a corporation)

CLIENT (Town of Apex)

Catherine Crosby, Town Manager

Attest:

Town Clerk



This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Vance Holloman
Vance Holloman, Finance Director

Attachment A**– Software Maintenance & Support Service Levels –**

Severity Level	Response Times	Effort Level and Restoration	Escalation
Business Impact: Critical Impact / System Down. A Production System Error for which there is no work-around, which causes Software or a critical business function / process of said product to be unavailable such that system operation cannot continue. Example: a) Billing cannot be completed, b) Major documented function not working, c) System hung or completely down	During regular business-hours Itron will begin the Service Request process during Customer's initial call. During after-hour periods, Itron will respond to a critical support voice messages within 15 minutes by a return call to Customer, to validate receipt of the critical support call and begin the Service Request process. Following the start of the Service Request process Itron will respond to Customer's Service Request within two (2) business hours with an investigation response. Itron will update Customer at three (3) hour intervals during each day the Service Request remains unresolved, or as otherwise agreed by the Parties. Customer will respond to an Itron inquiry or request within three (3) hours.	Itron will make diligent efforts on a 24x7 basis, or as otherwise agreed by the Parties, to: i) restore Software with a change to eliminate root cause, ii) provide a workaround which restores Software and downgrades the Severity Level to S2, S3, S4. Customer Support Staff must be available 24x7 to work cooperatively with Itron continuously until such time restoration is achieved.	An unresolved Service Request shall be escalated to Itron management as follows: After 30 minutes: Technical Customer Support Team Lead After 8 hours: Manager, Technical Client Services After 16 hours: Director, Global Support Services After 48 hours: Service Request. Vice President, Services and Delivery After 72 hours: President, Itron

Severity Level 2***Business Impact: Major****impact, degraded**

Operation. An Error other than a Severity Level 1 Error, for which there is no work-around, which degrades or limits operation of major system functions causing Software to miss required business interface or deadlines. Software remains available for operation but in a highly restricted fashion.

Example: a) Billing cannot be completed on time, b) Major function is operating outside documented timing / term, c) Software operating slow, missing data, data delivery, daily mission.

Severity Level 3****Business Impact:****Minor Business Impact, compromised operations.**

An Error other than a Severity Level 1 or Severity Level 2 Error that has moderate impact on use of or access, with low business impact, but not preventing Customer from performing daily activities.

Example: The Service Request affects use by Software users, allowing Customer's functions to continue to meet daily business needs.

During regular business-hours Itron will respond

to Customer regarding Service Request within one (1) business day.

While Service Request remains unresolved, Itron will update the Customer and the Service Request at least every other business day, or as otherwise agreed by the parties.

Customer will respond to an Itron inquiry or request within one (1) business day.

During regular business-hours Itron will respond to Customer regarding Service Request within two (2) business days.

While Service Request remains unresolved, Itron will update the Service Request weekly, or as otherwise agreed by the parties.

Customer will respond to an Itron inquiry or request within two (2) business days.

Itron will make diligent efforts during normal

business hours to:

i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrade the Severity Level to S3, S4.

Itron will work during normal business hours to:

i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrades the Severity Level to S4

An unresolved Service Request shall be

escalated to Itron management as follows:

After 1 hours:

Technical Customer Support Team Lead

After 8 hours:

Manager, Technical Client Services

After 24 hours:

Director, Global Support Services

After 30 Days:

Vice President, Services and Delivery

Severity Level 4 Business Impact: Standard Operations intact. A low or no- impact Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error, or a request for enhancement / new functionality Example: Generally, a cosmetic Error or an Error which does not degrade Customer's use of the product or system.	During regular business- hours Itron will respond to Customer regarding Service Request within three (3) business days.	Itron GSS Management Team will make commercially reasonable efforts during normal business hours to understand the Service Request and provide applicable recommendations as to when a Fix may be schedule in a future release, or how to proceed with a formal enhancement request to Itron's product and delivery teams.
--	---	---

* Severity Level 1 and Severity Level 2 must be reported by phone to insure they are addressed under the appropriate severity level response process. Service Requests entered by email or Web access are generally addressed as a Severity Level 3.

** Service Request opened on Non-production servers / environments are entered as a Severity Level 3.



Electric / Gas / Water
Information collection, analysis and application

2111 N. Molter Rd.
Liberty Lake, WA 99019
fax: 866-787-6910
www.itron.com

Pricing Summary for
Town of Apex, North Carolina

BMR# 24686-22 Ver1 Apr
April 25, 2022

Item	Part Number	Description	Qty	Unit Price	Extended Price	Notes
Itron Cloud Services						(1,2)
Setup Fees						
1	FTA-SETUP-FEE	Field Tools Advanced Value-Add Setup Fee			\$275.00	
Annual Subscription Fees						
2	FTA E-SUB	Field Tools Advanced, From 25,001 - 50,000 Endpoints, Electronic Delivery			\$1,749.00	
Itron Cloud Services Total					\$2,024.00	

Notes and Assumptions

- (1) Every new Field Tools Advanced customer must have Itron setup their Business Unit to make the Advanced Value-add features available to the Field Tools app or mobile client.
- (2) Subscriptions are an annual fee shown in List Price, to gain access to the Advanced Value-add features of Field Tools. Quantity pricing is based on the total number of distinct endpoints owned by the utility.
- (3) Unless otherwise agreed by the parties, Itron reserves the right to renew Recurring Services after the first year at the then-current price list.
- (4) Pricing is based on existing agreements or Itron's standard terms and conditions.
- (5) Freight and taxes are not included. Prices are in US dollars. Prices are valid for 60 days.

Confidential



MINUTES - REGULAR TOWN COUNCIL MEETING

May 10, 2022 AT 6:00 PM

COUNCIL CHAMBERS – APEX TOWN HALL, 73 HUNTER STREET

WELCOME AND COMMENCEMENT

Mayor Jacques Gilbert called the meeting to order and welcomed the community to the meeting of the Town Council. Nathan Mariner provided the Invocation. The Mayor then asked all attending to join him in the Pledge of Allegiance.

Town Council and Administration:

In attendance were Mayor Jacques K. Gilbert, and Mayor Pro Tem Killingsworth, Council Members Brett D. Gantt, Terry Mahaffey, Cheryl F. Stallings and Edward Gray. Also, in attendance were Town Manager Catherine Crosby, Assistant Town Manager Shawn Purvis, Interim Town Clerk Julie Reid, and Town Attorney Laurie L. Hohe.

CONSENT AGENDA

The Mayor explained that all Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the Consent Agenda, and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

CONSENT AGENDA

A motion was made to approve the consent agenda items as submitted. (Motion: Mayor Pro Tem Killingsworth/Second: Council Member Gray/Vote: 5-0)

- CN1 Approved the minutes of the April 26, 2022 meeting of the Regular Town Council Meeting.
- CN2 Approved the Apex Tax Report dated April 3, 2022.
- CN3 Approved a 3-year contract renewal with LexisNexis.
- CN4 Set the Public Hearing concerning the proposed Fiscal Year 2022-2023 Budget including expenditures for Economic Development (pursuant to NCGS 158-7.1), for Tuesday, May 24, 2022 at 6:00 p.m. at the Apex Town Hall.
- CN5 Approved the contract for audit services for the 2022 fiscal year with Cherry Bekaert LLP of Raleigh, North Carolina.
- CN6 Approved award of contract to National Transformer Sales for 3 Phase Pad Mount and Single Overhead Transformers.
- CN7 Approve award of contract to Crossroads Ford of Apex for the purchase of a 2022 F750 Chipper Truck.

- CN8 Appointed Sarah Soh as a new Planning Board member to serve the remaining term of Tommy Pate, December 31, 2022.
- CN9 Set a Public Hearing for the May 24, 2022 Town Council meeting regarding Rezoning Application #22CZ01 Arden at Summit Pines PUD. The applicant, Collier Marsh, FC Apex, LLC., seeks to rezone approximately 11.74 acres from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 8200 Jenks Road.
- CN10 Set a Public Hearing for the May 24, 2022 Town Council meeting regarding Rezoning Application #21CZ31 Sears Property PUD. The applicant, Jeff Roach, Peak Engineering and Design, LLC., seeks to rezone approximately 26.218 acres from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 0 & 2108 Old US 1 Highway.
- CN11 Adopted a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 24, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the R. Michael Strickland Trustee of Family Trust property containing 13.541 acres located at 8200 Jenks Road, Annexation #727 into the Town’s corporate limits.
- CN12 Adopted a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 10, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the Peak 360, LLC property containing 7.6631 acres located at 7825 and 7809 Jenks Road, Annexation #732 into the Town’s corporate limits.
- CN13 Set the Public Hearing for the May 24, 2022 Town Council meeting regarding various amendments to the Unified Development Ordinance (UDO).
- CN14 Approved an Agreement with NCDOT for up to \$1,395,356 in federal funds, up to 80% reimbursement, of the total cost of right of way acquisition, utility relocation, and construction of project BL-0047, Downtown Apex Safe Routes to School, and authorized the Town Manager to execute the agreement on behalf of the Town.
- CN15 Approved a Review and Oversight Agreement with NCDOT for design review and project oversight activities for project BL-0047, Downtown Apex Safe Routes to School, requiring payment of a \$10,000.00 deposit, and authorized the Town Manager to execute the agreement on behalf of the Town.
- CN16 Approved the Triangle Area Water Supply Project Phase IX Five-Year Interlocal Agreement and authorized the Town Manager to execute it on behalf of the Town.
- CN17 Approved an agreement with Itron and authorized the Town Manager to execute the agreement on behalf of the Town.

PRESENTATIONS

The Mayor and Town Council Members read the following proclamations in turn.

- PR1 Presentation of LGBTQIA Pride Month 2022 Proclamation
- PR2 Presentation of Azerbaijan Independence Day Proclamation

CONTRACT ROUTING CONTROL SHEET

Routing Order: (1) Department Director, (2) Purchasing and Contract Manager (3) Legal,
(4) Risk Manager, (5) Vendor for Signature (6) Finance Director, (7) Town Clerk, (8) Town Council/Town Manager

EVERY SECTION MUST BE COMPLETED

DEPARTMENT:	
Department Contact Person for Contract: <u>Michael Mole</u>	Extension: <u>919-372-7512</u>
Contractor/Vendor Name and address: <u>Iron 2111 N Molter Road, Liberty Lake, WA 99019</u>	
Contractor/Vendor Phone: <u>Contractor/Vendor Contact Person: Tracy Wright 865-356-3546</u>	
Purpose of Contract: <u>FDM Software Upgrade and annual support to assist with meter services.</u>	
Amount: <u>\$2,024</u>	Budget Code: <u>32-8010 44509 & 30-8300 44509</u>
Type of Contract: ☒ New ☐ Renew ☐ Amendment	Exhibits/Attachments included: ☒ Yes ☐ N/A
Department Director's Signature: <u>Michael S Deaton</u>	Date: <u>4/25/2022</u>
<i>All Contracts should be sent to the Purchasing and Contract Manager (Steve Maynard). Steve will determine whether the contract will need to go to the Legal Department for review or not.</i>	
LEGAL	
Reviewed by: <u>Christopher Welch</u>	Date: <u>04/25/2022</u>
Comments: <u>Iron accepted some changes but did not remove indemnity; Council approval required</u>	
☒ Town Council approval required ☐ Town Manager authorized to approve	
☐ N/A – Purchasing and Contract Manager to forward	
☐ Other Approvals required/permitted:	
RISK MANAGER	
Reviewed by and approved: _____	Date: _____
☒ N/A – Purchasing and Contract Manager to forward	
☐ Insurance specifications meet requirements.	
☐ Insurance specifications have been revised.	
☐ A pre-project safety review between the contractor and contracting department is required.	
<i>Return to Department Contact Person to have contract signed by Contractor prior to forwarding to Finance Director</i>	
<i>Obtain a copy of Certificate of Insurance that includes the proper coverage and shows the Town as an additional insured</i>	
FINANCE DIRECTOR	
☒ Sufficient funds are available in the proper category to pay for this expenditure. PO # <u>2022-1278</u>	
☐ This contract is conditioned upon appropriation by the Town Council of sufficient funds.	
☐ A budget amendment is necessary before this agreement is approved.	
☐ A budget amendment is attached as required for approval of this agreement.	
Finance Director: <u>Vance H</u>	Date: <u>5/5/2022</u>
TOWN CLERK	
Date Received: <u>6/6/2022</u>	Signed by Contractor: ☒ YES ☐ NO--Return to Department
Council Action Required: <u>forward to Town Manager</u>	Agenda Date: <u>5/10/2022</u>
Approved by Council: ☒ YES ☐ NO	<u>CN17</u>
TOWN MANAGER	
This document has been reviewed and approval is recommended by the Town Manager: ☒ YES ☐ NO	
Town Manager: <u>[Signature]</u>	Date: <u>6/9/2022</u>
After approval and signatures, contract will be sent to the Purchasing and Contracts Manager who will return it to the Department Contact Person for Department to administer.	
Scan signed contract to Department contracts folder (include Routing Sheet and copy of Certificate of Insurance)	

Ship To

TOWN OF APEX
PUBLIC WORKS
105-A UPCHURCH ST
APEX, NC 27502

Bill To

TOWN OF APEX
ACCOUNTS PAYABLE
PO BOX 250
APEX, NC 27502

Purchase Order

No. 2022-00001278

DATE 06/01/2022

VENDOR NO. 1762

Vendor

ITRON, INC.
PO BOX 200209
DALLAS, TX 753200209



PURCHASE ORDER NUMBER MUST APPEAR ON
ALL INVOICES, SHIPPERS, BILL OF LADING AND
CORRESPONDENCE

DELIVER BY
FREIGHT TERMS

PAGE 1 of 1

ORIGINATOR: Steve Maynard

REFERENCE

QTY	UNIT	DESCRIPTION	VENDOR PART #	UNIT COST	TOTAL COST
1.0000	Each	Software Maintenance - FCS Software License Fee 30-8300 44509 - Software License & Maintenance 1,012.00 32-8010 44509 - Software License & Maintenance 1,012.00		2,024.0000	\$2,024.00

Purchase Order terms and conditions: <http://www.apexnc.org/terms>.

SUBTOTAL \$2,024.00

SALES TAX \$146.74

TOTAL DUE \$2,170.74

Special Instructions

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT
BUDGET AND FISCAL CONTROL ACT. Purchas

Purchase Order #: TBD

STATE OF NORTH CAROLINA

Contract #: 450

COUNTY OF WAKE

**AMENDMENT #3 TO FDM TOOLS AND
FIELD TOOLS SOLUTION AGREEMENT**

THIS AMENDMENT is effective upon execution of the last of the parties to sign, and entered into between Itron, Inc. ("Itron"), and the Town of Apex, a municipal corporation of the State of North Carolina, (the "Town").

P R E M I S E S:

WHEREAS, the Parties entered into FDM Tools and Field Tools Solution Agreement dated June 9th, 2022 (the "Agreement"), which includes in Paragraph 3 the contemplation of an amendment to the Agreement whereby the Parties agree to extend the Subscription for Mobile Device Software; and

WHEREAS, the Parties desire to extend the Agreement for one (1) year.

WITNESSETH:

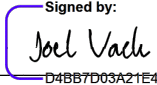
The Town and Itron, for the consideration stated herein, agree to amend the Agreement as follows: In Paragraph 3, the first and second sentences are deleted and hereby replaced with the following sentence: The term of this Agreement expires on July 31, 2026.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this

Itron, Inc.

Town of Apex

Name: Joel Vach

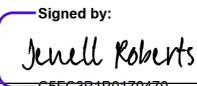
By: 
Signed by:
D4BB7D03A21E4BB...
(Signature)

Title: VP, Tax, Corporate Treasurer, MD&A



Marty Stone , Assistant Town Manager
Email: marty.stone@apexnc.org
Timestamp: Friday, July 11th, 2025 4:19 PM UTC

Attest:


Signed by:
C5FC3B1B0170470...
(Secretary, if a corporation)

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

x Jessica Rhem

Jessica Rhem , Interim Finance Director

Email: jessica.murphy-rhem@apexnc.org

Timestamp: Wednesday, July 9th, 2025 8:31 PM UTC

Itron, Inc.-Amendment

Document ID
682488f73203d2c53f097be6

Filename
Itron Amendment 3.pdf

Marty Stone

Jessica Rhem

What	When	Where
 Signed by Marty Stone marty.stone@apexnc.org	11 Jul 2025 16:19 UTC	IP 96.10.1.162 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/138.0.0.0 Safari/537.36
Viewed by Marty Stone marty.stone@apexnc.org	11 Jul 2025 16:18 UTC	IP 96.10.1.162 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/138.0.0.0 Safari/537.36
Sent for signing by Jessica Sloan jessica.sloan@apexnc.org	9 Jul 2025 20:31 UTC	IP 136.61.32.152 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/138.0.0.0 Safari/537.36
 Signed by Jessica Rhem jessica.murphy-rhem@apexnc.org	9 Jul 2025 20:31 UTC	IP 136.61.32.152 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/138.0.0.0 Safari/537.36

What	When	Where
Commented by Jessica Rhem jessica.murphy-rhem@apexnc.org	9 Jul 2025 20:31 UTC	IP 136.61.32.152 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/138.0.0.0 Safari/537.36
Viewed by Jessica Rhem jessica.murphy-rhem@apexnc.org	9 Jul 2025 20:31 UTC	IP 136.61.32.152 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/138.0.0.0 Safari/537.36
Sent for signing by Nicole Garcia nicole.garcia@apexnc.org	26 Jun 2025 20:15 UTC	IP 96.10.1.162 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/138.0.0.0 Safari/537.36
Commented by Nicole Garcia nicole.garcia@apexnc.org	15 May 2025 18:59 UTC	IP 96.10.1.162 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/136.0.0.0 Safari/537.36
Commented by Jessica Sloan jessica.sloan@apexnc.org	14 May 2025 23:52 UTC	IP 108.66.214.7 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/136.0.0.0 Safari/537.36
Commented by Nicole Garcia nicole.garcia@apexnc.org	14 May 2025 20:32 UTC	IP 96.10.1.162 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/136.0.0.0 Safari/537.36
Commented by Nicole Garcia nicole.garcia@apexnc.org	14 May 2025 19:26 UTC	IP 96.10.1.162 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/136.0.0.0 Safari/537.36
Commented by Jessica Sloan jessica.sloan@apexnc.org	14 May 2025 12:36 UTC	IP 96.10.1.162 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/136.0.0.0 Safari/537.36

What	When	Where
Commented by Nicole Garcia nicole.garcia@apexnc.org	14 May 2025 12:30 UTC	IP 96.10.1.162 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/136.0.0.0 Safari/537.36
Commented by Jessica Sloan jessica.sloan@apexnc.org	14 May 2025 12:16 UTC	IP 96.10.1.162 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/136.0.0.0 Safari/537.36
Created by Jessica Sloan jessica.sloan@apexnc.org	14 May 2025 12:13 UTC	IP 96.10.1.162 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/136.0.0.0 Safari/537.36



Date Printed: 27-JUL-2026

Service Pricing

Page: 1 of 1

Customer Name: Town of Apex, North Carolina
Customer Number: 1397
Bill To Contact: Jessica Sloan
Customer Address: PO Box 250
Apex,NC 27502-0250

Contract Number: SC00000668
Description: Town of Apex, North Carolina - FCS / FTA

Contract Duration: 01-AUG-26 - 31-JUL-27

Description	Serial Number	Start Date	End Date	Quantity	Total Amount
SOFTWARE					
FCS SFTW MAINTENANCE, 25001-50000 ENDPOINTS, ELECTRONIC DELIVERY		01-AUG-26	01-AUG-26	1	0.00
			Subtotal :	1	0.00
FCS SFTW MAINTENANCE, 5001-10000 METERS, ELECTRONIC DELIVERY		01-AUG-26	31-JUL-27	1	4,994.82
			Subtotal :	1	4,994.82
	SOFTWARE		Subtotal :	2	4,994.82
FIELD TOOLS ADVANCED, 25001-50000 ENDPOINTS, SUBSCRIPTION		01-AUG-26	01-AUG-26	1	0.00
			Subtotal :	1	0.00
FIELD TOOLS ADVANCED, 5001-10000 ENDPOINTS, SUBSCRIPTION		01-AUG-26	31-JUL-27	1	2,270.90
			Subtotal :	1	2,270.90
			Subtotal :	2	2,270.90
Contract Grand Total:				4	7,265.72

STATE OF NORTH CAROLINA Contract #

**COUNTY OF WAKE AMENDMENT #4 TO FDM TOOLS AND
FIELD TOOLS SOLUTION AGREEMENT**

THIS AMENDMENT is entered into this the , by and between Itron, Inc. (“Itron”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”).

P R E M I S E S:

Whereas, the Parties entered into FDM Tools and Field Tools Solution Agreement dated June 9th, 2022 (the “Agreement”), which includes in Paragraph 3 the contemplation of an amendment to the Agreement whereby the Parties agree to extend the Subscription for Mobile Device Software; and

Whereas, the Parties desire to extend the Agreement for one (1) year.

WITNESSETH:

The Town and Itron, for the consideration stated herein, agree to amend the Agreement as follows: In Paragraph 3, the first and second sentences are deleted and hereby replaced with the following sentence: The term of this Agreement expires on July 31, 2027.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this .

Itron, Inc.

X _____

[empty member name] , VP, Tax, Corporate Treasurer, MD&A
Email: joel.vach@itron.com
Timestamp: [empty signing timestamp]

Town of Apex

X _____

Randal E. Vosburg, Town Manager
Email: [empty member email]
Timestamp: [empty signing timestamp]

Contractor Attest

X _____

[empty member name]
Email: jenell.roberts@itron.com
Timestamp: [empty signing timestamp]

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

X _____

[empty member name] , Finance Director
Email: jon.griffin@apexnc.org
Timestamp: [empty signing timestamp]

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 13, 2026

Item Details

Presenter(s): Kathy Moyer, Director

Department(s): Electric Utilities

Requested Motion

Motion to approve an agreement between Norfield Development Partners, LLC and the Town of Apex for the renewal of Locator LOGiX software used for utility locating services, in the amount of \$8,502.73, through September 12, 2027, and authorize the Town Manager, or their designee, to execute the agreement on behalf of the Town.

Approval Recommended?

Yes

Item Details

The Town of Apex Electric Utilities Department utilizes Norfield Development Partners, LLC's Locator LOGiX software to support the locating of Town-owned electric and water utility infrastructure. North Carolina law requires underground utilities to be located prior to certain excavation and construction activities, and the software assists Town staff with receiving, managing, tracking, and documenting utility locate requests.

The current agreement is scheduled to expire September 30, 2026. Staff is requesting approval to renew the Locator LOGiX subscription for an additional one-year term to ensure uninterrupted access to the software and continued support of the Town's utility locating operations. The proposed renewal is in the amount of \$8,502.73. The agreement also provides for telephone support services and permits renewal for additional one-year periods upon written agreement of both parties.

The total cost of the proposed one-year renewal is \$8,502.73. Funding is available within the Electric Utilities Department's adopted FY 2026-27 budget. No additional appropriation is required.

Clerk Note: On March 10, 2026, the Town Council approved Agreement Ratification CONT-2026-033, authorizing the Town's agreement with Norfield Development Partners, LLC through September 30, 2026.

Due to an administrative error, September 13, 2026 term date was subsequently reflected in the vendor documentation. The official Council action and approved meeting minutes reflect an expiration date of September 30, 2026. This renewal is intended to continue services from the expiration of the previously authorized term.

Attachments

- CN2-A1: Agreement - Subscription Agreement - Norfield Development Partners, LLC - Continuation of Locator Logix Software for Electric and Water Lines - September 13, 2026 through September 12, 2027



**Norfield Development Partners, LLC**

PO Box 211
Meridian, ID 83680

DATE 8/11/2026**SALESPERSON** Jennifer Rodriguez**EXPIRATION DATE** 9/13/2026**CUSTOMER INFORMATION**

Town of Apex
Emily Woody - Emily.Woody@apexnc.org
105-C Upchurch Street
Apex, NC 27502

QUOTE # 3**PRODUCTS**

- | | |
|---|--|
| ☒ 1 - LOCATOR LOGiX | ☐ 6 - INCIDENT REPORTING SERVICES |
| ☐ 2 - DiG LOGiX | ☐ 7 - EVENT TASK MANAGEMENT |
| ☐ 3 - INSiGHT LOGiX | ☐ 8 - BILLING CODE & REPORTING |
| ☐ 4 - LOGiX API – COMMERCIAL INTEGRATION | ☐ 9 - PROFESSIONAL SERVICES |
| ☐ 5 - SET-UP & CONFIGURATION | |

NO.	PRODUCT/SERVICE DESCRIPTION	QTY	PRICE	TOTAL
1	Locator LOGiX Renewal - September 13, 2026 - September 13, 2027	1	8502.73	8502.73
				0
				0
				0
				0
				0
				0

Town of Apex**TOTAL QUOTE VALUE** **8502.73**

X

Randal e. Vosburg, Town Manager
Email: nicole.garcia@apexnc.org
Timestamp: [empty signing timestamp]

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

X

[empty member name] , Finance Director
Email: jon.griffin@apexnc.org
Timestamp: [empty signing timestamp]

SCHEDULE A

NORFIELD DEVELOPMENT PARTNERS SOFTWARE AS A SERVICE TERMS & CONDITIONS

March, 2025

YOU AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A CORPORATION OR OTHER ORGANIZATION , YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ORGANIZATION TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

A. Agreement Definitions

“You” and “your” refers to the individual or entity that has ordered software as a service from Norfield Development Partners (“LICENSOR”) by clicking “I agree” below. Software as a service consists of access to and use of LICENSOR’s proprietary LOGiX™ Platform (the “LICENSOR PLATFORM”).

The term “users” shall mean those individuals authorized by you or on your behalf to use the LICENSOR PLATFORM.

B. Rights Granted

Upon your acceptance of these terms by signing the attached quote, you have the nonexclusive, non-assignable, royalty free, limited right to access and use the LICENSOR PLATFORM solely for your internal business operations and subject to these terms and conditions. You may allow your users to use the LICENSOR PLATFORM only for this purpose and you are responsible for your users’ compliance with these terms and conditions.

You acknowledge that LICENSOR has no delivery obligation and will not ship copies of the LICENSOR PLATFORM to you. Upon the expiration of your access to the LICENSOR PLATFORM due to expiration of the license term, non-renewal of this license or failure to pay any fees due to LICENSOR for such access, all of your rights to access and use of the LICENSOR PLATFORM shall terminate and shall be of no further force or effect.

C. Ownership and Restrictions

You retain all ownership and intellectual property rights in and to your data. LICENSOR retains all ownership and intellectual property rights in and to the LICENSOR PLATFORM.

You may not:

- remove or modify any program markings or any notice of LICENSOR's or its licensors' proprietary rights;
- provide your access credentials for the LICENSOR PLATFORM in any manner to any third party;
- modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the LICENSOR PLATFORM (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the LICENSOR PLATFORM in order to build or support, and/or assist a third party in building or supporting, products or services competitive to LICENSOR;
- disclose results of any LICENSOR PLATFORM benchmark tests to any party without LICENSOR's prior written consent; or
- license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau, use, or otherwise commercially exploit or make the LICENSOR PLATFORM or materials available, to any third party other than, as expressly permitted under these terms and conditions.

The rights granted to you under thereunder are also conditioned on the following:

- except as expressly provided herein, no part of the LICENSOR PLATFORM may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means;
- LICENSOR will only support the most current version of the LICENSOR PLATFORM and you shall not use any version of the LICENSOR PLATFORM other than the most current version made available by LICENSOR; and

- you agree to make every reasonable effort to prevent unauthorized third parties from accessing the LICENSOR PLATFORM.

D. Warranties, Disclaimers and Exclusive Remedies

LICENSOR warrants that it will provide you with access to the LICENSOR PLATFORM [during normal business days and normal business hours]. If at any time you do not receive access to the LICENSOR PLATFORM, you must provide written notice to LICENSOR no later than five business days after such failure to receive access.

LICENSOR DOES NOT GUARANTEE THAT THE LICENSOR PLATFORM WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT LICENSOR WILL CORRECT ALL ERRORS. YOU ACKNOWLEDGE THAT LICENSOR DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT ACCESS TO THE LICENSOR PLATFORM MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. WITHOUT LIMITING ANY OTHER PROVISIONS OF THE AGREEMENTS, LICENSOR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. FOR ANY BREACH OF THE ABOVE WARRANTIES CAUSED SOLELY BY LICENSOR OR ITS SUPPLIERS OR SUBCONTRACTORS, LICENSOR WILL REMIT A SERVICES FEE CREDIT TO YOU CALCULATED AT THREE AND ONE-HALF PERCENT (3.5%) OF NET MONTHLY FEES FOR EACH DAY DURING THE MONTH IN WHICH THE BREACH OCCURRED. THE CREDIT WILL BE PROVIDED ONLY TOWARDS ANY OUTSTANDING BALANCE OWED TO LICENSOR, AND THE REMITTANCE OF SUCH CREDIT WILL REPRESENT YOUR EXCLUSIVE REMEDY, AND LICENSOR'S SOLE LIABILITY, FOR ALL BREACHES OF ANY WARRANTY SPECIFIED HEREIN. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

E. Indemnification

If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects LICENSOR's ability to meet its obligations hereunder, then LICENSOR may, at its option and upon 30 days prior written notice, terminate these terms and conditions. The Provider will not indemnify the Recipient if the Recipient alters the Material or uses it outside the scope of use identified in the Provider's user documentation or services policies or if the Recipient uses a version of the Materials which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon (i) any information, design, specification, instruction, software, data, or material not furnished by the Provider, or (ii) any Material from a third-party portal or other external source that is accessible to you within or from the service (e.g., a third-party Web page accessed via a hyperlink). LICENSOR will not indemnify you to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by LICENSOR. LICENSOR will not indemnify you for infringement caused by your actions against any third party if the services as delivered to you and used in accordance with the terms of this Agreement would not otherwise infringe any third-party intellectual property rights. LICENSOR will not indemnify you for any infringement claim that is based on: (1) a patent that you were made aware of prior to the effective date of this Agreement (pursuant to a claim, demand, or notice); or (2) your actions prior to the effective date of this Agreement. This Section provides the parties' exclusive remedy for any infringement claims for damages.

F. Support Services

LICENSOR will provide you with telephone support services through its call center in accordance with LICENSOR's standard customer support practices.

G. End of Agreement

The initial term of this Agreement may be renewed in a writing signed by the Parties for additional one (1) year periods.

The term of the Agreement and any renewal years are collectively defined as the “Service Term.” At the end of the Service Term, all rights to access or use the LICENSOR PLATFORM, shall end. If either of us materially breaches these terms and conditions and fails to correct the breach within 30 days of written notice explaining in sufficient detail the basis of the breach, then the breaching party shall be in default and the non-breaching party may terminate This Agreement upon written notice to the breaching party. If LICENSOR terminates this Agreement as specified in the preceding sentence, you must pay within 30 days all undisputed fees which have accrued prior to such termination, as well as all sums remaining unpaid for access to the LICENSOR PLATFORM plus related taxes, to the extent applicable, and all expenses. If LICENSOR terminates access to the LICENSOR PLATFORM under the Indemnification section, you must pay within 30 days all amounts remaining unpaid set forth herein or for access to the LICENSOR PLATFORM plus related taxes and expenses. The non-breaching party may agree in its sole discretion to extend such 30-day cure period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if you are in default under this Agreement, you may not access the LICENSOR PLATFORM. In addition, LICENSOR may immediately suspend your password, account, and access to or use of the LICENSOR PLATFORM (i) if you fail to pay LICENSOR as required under this hereunder and do not make payment within ten days of the date due, or (ii) if you violate any provision within Sections C, or D or L hereof. LICENSOR may terminate access to the LICENSOR PLATFORM hereunder if any of the foregoing is not cured within 30 days after LICENSOR’s initial notice thereof. Any suspension by LICENSOR of access to the LICENSOR PLATFORM under this paragraph shall not excuse you from your obligation to make payment(s) under these terms and conditions.

You agree and acknowledge that LICENSOR has no obligation to retain your data. Provisions that survive termination or expiration of the Agreement are those relating to limitation of liability, infringement indemnity, payment, and others which by their nature are intended to survive or are otherwise expressly stated to survive.

H. Fees and Taxes

You shall pay for access to the LICENSOR PLATFORM as set forth herein. All fees due hereunder are non- cancelable and the sums paid nonrefundable. Any amounts not paid by you when due shall, to the extent permitted by applicable law, bear interest at the rate of one-and-one-half percent (1.5%) (or the highest legal rate if lower) per month. You agree to pay any sales, value-added or other taxes that may be imposed by applicable law , except for taxes based on LICENSOR's income.

I. Nondisclosure

By virtue of this Agreement, the parties may have access to information, documentation, materials and data, which may be disclosed or made available from any source or in any form, including, without limitation, paper record, oral communication, audio recording, electronic media, electronic display or electronic transmission, relating to their respective business, financial information, employees, programs, documentation, techniques, trade secrets, systems and know-how that is confidential or proprietary to one another ("Confidential Information"). We each agree to access and disclose only information that is required for the performance of obligations under this Agreement. A party's confidential information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; (d) is independently developed by the other party; or (e) is a public record as defined by Chapter 132 of the North Carolina General Statutes. This Section L shall remain in full force and effect after the expiration or termination of this Agreement.

J. Entire Agreement

If any term of the terms and conditions set forth herein are found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of the Agreement. It is expressly agreed that the terms and conditions of the Agreement shall supersede the terms in any purchase order or other document provided by you and no terms included in any such purchase order or other document provided by you shall apply to the access provided to the LICENSOR PLATFORM.

The rights and restrictions set forth herein may not be waived except in a writing signed or accepted by authorized representatives of you and of LICENSOR.

K. Limitation of Liability

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES TO BE PAID UNDER THIS AGREEMENT), DATA, OR DATA USE. LICENSOR'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT (EXCLUDING STRICT LIABILITY AND NEGLIGENCE), OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO LICENSOR FOR THE SERVICES UNDER THE SALES ORDER THAT IS THE SUBJECT OF THE CLAIM AND THE AMOUNT PAID TO LICENSOR IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. ANY DAMAGE IN YOUR FAVOR AGAINST LICENSOR SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY YOU UNDER THIS AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY. IN NO EVENT SHALL LICENSOR OR AN 811 CALL CENTER HAVE ANY LIABILITY WHATSOEVER WITH RESPECT TO DAMAGES, LOSSES, EXPENSES OR COSTS OF ANY NATURE CAUSED BY ANY ACTS OR OMISSIONS OF ANY PARTY INCLUDING, BUT NOT LIMITED TO, THIRD PARTIES, WITH RESPECT TO A TICKET PROCESSED THROUGH THE LICENSOR PLATFORM AND AN 811 CALL CENTER.

L. Other

- This Agreement is governed by the substantive and procedural laws of the State in which the customer is based, and you and LICENSOR agree to submit to the exclusive jurisdiction of, and venue in, the appropriate state or federal court in Wake County, NC, in any dispute arising out of or relating to this Agreement.
- If you have a dispute with LICENSOR or if you wish to provide a notice under E. Indemnification, or if you become subject to insolvency or other similar legal proceedings, you will within 15 business days send written

notice to: Norfield Development Partners, P.O. Box 630 Clarence, NY 14031. LICENSOR may give notice applicable to LICENSOR's software as a service customer by means of a general notice on the LICENSOR portal for the Services, and notices specific to you by electronic mail to your e-mail address on record in LICENSOR's account information or by written communication sent by first class mail or pre-paid post.

- You may not assign, sublet, subcontract this Agreement or transfer, sublet or subcontract the Services or an interest in them to any third party by operation of law for otherwise without the prior written consent of LICENSOR,

M. Force Majeure

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage or other equipment failure that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or any other event, provided that each of the foregoing is outside the reasonable control of the obligated party. The party whose performance is affected by the force majeure event will use commercially reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed services upon written notice to the other. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or your obligation to pay for the services.

N. Third Party Web Sites, Content, Products and Services

The LICENSOR PLATFORM may enable you to add links to Web sites and access to content, products, and services of third parties, including users, advertisers, affiliates and sponsors of such third parties. LICENSOR is not responsible for any third-party Web sites or third-party content provided on or through the LICENSOR PLATFORM and you bear all risks associated with the access and use of such Web sites and third-party content, products and services.

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

P. Anti-Human Trafficking. LICENSOR warrants and agrees that no labor supplied by LICENSOR or LICENSOR'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.

Q. Nondiscrimination. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, LICENSOR hereby warrants and agrees that LICENSOR 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.

R. Nonappropriation. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from You are from appropriations and monies from the Town of Apex Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to You to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of You.

Town of Apex

X

Randal E. Vosburg, Town Manager
 Email: nicole.garcia@apexnc.org
 Timestamp: [empty signing timestamp]

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

X

[empty member name] , Finance Director
 Email: jon.griffin@apexnc.org
 Timestamp: [empty signing timestamp]

Norfield Development Partners

X

[empty member name] , Business Operations Manager
 Email: tiffany@ndpcci.com
 Timestamp: [empty signing timestamp]

TITLE

DATE

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 10, 2026

Item Details

Presenter(s): Katie Schwing, Senior Planner - Long Range Transit

Department(s): Planning

Requested Motion

Motion to approve, and to authorize the Town Manager to sign and execute, four (4) transit funding agreements with Research Triangle Regional Public Transportation Authority, d/b/a GoTriangle (GoTriangle) and the Capital Area Metropolitan Planning Organization (CAMPO), concerning funding for transit projects:

- General Operating Agreement for Bus Operations - Community Funding Area Program: GoApex Route 1: Fixed-Route Circulator
- General Capital Funding Agreement Community Funding Area Program for Bus Infrastructure: GoApex Route 1: FY27 Bus Stop Improvements and New Bus Stop Construction
- General Capital Funding Agreement Community Funding Area Program for Capital Planning: Mobility Solutions Study
- General Capital Funding Agreement for Bus Infrastructure: Apex Mobility Hub Phase 1 Final Design

Approval Recommended?

Yes.

Item Details

The Town of Apex's adopted FY26-27 budget and capital improvement plan (CIP) document includes funding for five transit projects: (1) operating for GoApex Route 1 and associated complementary ADA paratransit service, (2) improvements to bus stops for GoApex Route 1, (3) new bus stop installation, (4) final design for the proposed Apex Mobility Hub Phase 1, and (5) a Mobility Solutions Study. The Planning Department applied for and was awarded funding for all these projects through the Wake Transit program. The subject agreements between Town of Apex, CAMPO, and GoTriangle, establish the terms of the funding agreements and responsibilities of each party. Based on the agreements, Wake Transit funds up to the following amounts would be awarded to the Town of Apex on a reimbursement basis:

- Agreement 1- \$1,073,254: General Operating Agreement for Bus Operations – Community Funding Area Program: GoApex Route 1: Fixed-Route Circulator, effective through December 31, 2027
- Agreement 2- \$588,705: General Capital Funding Agreement Community Funding Area Program for Bus Infrastructure: GoApex Route 1: FY27 Bus Stop Improvements (\$133,705) and New Bus Stop Construction (\$455,000), effective through December 31, 2029
- Agreement 3- \$65,000: General Capital Funding Agreement Community Funding Area Program for Capital Planning: Mobility Solutions Study, effective through December 31, 2029
- Agreement 4- \$300,000: General Capital Funding Agreement for Bus Infrastructure: Apex Mobility Hub Phase 1 Final Design, effective through December 31, 2029

For Agreement 1, Agreement 2, and Agreement 3, the Community Funding Area Program provides a 65% match for eligible project expenses. The Town of Apex local funding match would be provided through local funds included in the adopted budget. Agreement 4 includes Wake Transit funding for mobility hub design up to \$300,000, with no local match required.

Attachments

- CN3-A1: General Operating Agreement for Bus Operations – Community Funding Area Program: GoApex Route 1: Fixed-Route Circulator
- CN3-A2: Exhibit A - General Operating Agreement for Bus Operations – Community Funding Area Program: GoApex Route 1: Fixed-Route Circulator
- CN3-A3: General Capital Funding Agreement Community Funding Area Program for Bus Infrastructure: GoApex Route 1: FY27 Bus Stop Improvements AND New Bus Stop Construction
- CN3-A4: Exhibit A - General Capital Funding Agreement Community Funding Area Program for Bus Infrastructure: GoApex Route 1: FY27 Bus Stop Improvements AND New Bus Stop Construction
- CN3-A5: General Capital Funding Agreement Community Funding Area Program for Capital Planning: Mobility Solutions Study
- CN3-A6: Exhibit A - General Capital Funding Agreement Community Funding Area Program for Capital Planning: Mobility Solutions Study
- CN3-A7: General Capital Funding Agreement for Bus Infrastructure: Apex Mobility Hub Phase 1 Final Design
- CN3-A8: Exhibit A - General Capital Funding Agreement for Bus Infrastructure: Apex Mobility Hub Phase 1 Final Design



GENERAL OPERATING AGREEMENT
FOR BUS OPERATIONS – COMMUNITY FUNDING AREA PROGRAM

WAKE TRANSIT FY 2027

This Operating Agreement ("Agreement") is made by and between Research Triangle Regional Public Transportation Authority, d/b/a GoTriangle ("GoTriangle") and the Town of Apex ("Implementing Party") and the Capital Area Metropolitan Planning Organization ("CAMPO"). The foregoing may collectively be referred to as "Parties."

WHEREAS, the Parties to Agreement, who have or may have specific roles in the implementation of public transit and the support of public transit infrastructure in the Wake County area, have determined that it is in their best interest and the best interest of the constituents they represent to coordinate future public transit planning, funding, expansion and construction; and

WHEREAS, an extensive community driven process was used to develop a strategic transit vision document that set forth an enhanced public transit plan for Wake County, referred to as the "Wake County Transit Plan" ("Wake Transit Plan"), and this plan was unveiled on or about December 8, 2015, and adopted by the GoTriangle Board of Trustees on May 25, 2016, the Capital Area Metropolitan Planning Organization's ("CAMPO") Executive Board on May 18, 2016, and the Wake County Board of Commissioners on June 6, 2016; and was subsequently updated and adopted by the CAMPO Executive Board on April 21, 2021, and the GoTriangle Board of Trustees on April 28, 2021; and was updated and adopted by the CAMPO Executive Board and GoTriangle Board of Trustees on November 19, 2025; and

WHEREAS, in conjunction with the Wake Transit Plan, GoTriangle, Wake County, and CAMPO (collectively, "the Governance ILA Parties") adopted the Wake Transit Governance Interlocal Agreement ("Governance ILA") that creates a governance structure for the implementation of the Wake Transit Plan by and through the annual Wake Transit Work Plan; and

WHEREAS, pursuant to Section 3.02c of the Governance ILA, CAMPO has been designated as the lead agency for administering the Community Funding Area Program and has the authority to enter into this Agreement and enforce the provisions thereof and is a necessary Party to this Agreement; and

WHEREAS, the Governance ILA specifically created the Transit Planning Advisory Committee ("TPAC") and charged the TPAC with coordinating and recommending the planning and implementation aspects of the Wake Transit Work Plan; and

WHEREAS, the Governance ILA Parties, together with the Implementing Party, numerous Wake County municipalities, and other entities, entered into a Master Participation Agreement (“Participation Agreement”), which, among other purposes, established standards that govern the Participation Agreement Parties’ eligibility for inclusion of sponsored Implementation Elements in the Wake Transit Work Plan, receipt of funding allocations from Wake County Transit Tax Revenue, and confirmed the Participation Agreement Parties’ roles in carrying out TPAC responsibilities; and

WHEREAS, the FY 2027 Wake Transit Work Plan was developed and recommended by the TPAC, presented for public comment, and adopted, as required, by the Boards of CAMPO and GoTriangle; and

WHEREAS, the FY 2027 Triangle Tax District Wake Operating Ordinance was adopted by the GoTriangle Board of Trustees on June 24, 2026; and

WHEREAS, the Parties desire to implement the components of the FY 2027 Wake Transit Work Plan as adopted by GoTriangle and CAMPO; and

WHEREAS, as stated in the Participation Agreement, all Implementation Elements contained in the Wake Transit Work Plan, whether partially or fully funded with Wake County Transit Tax Revenues, will not move forward until Implementation Agreements, which shall include a Capital Funding Agreement and an Operating Agreement, are executed by and between the Implementing Party; GoTriangle, as administrator of the Special District, and CAMPO, if the Implementing Agreement involves federal or state funding that is otherwise under the distribution and program management responsibility of CAMPO or, regardless of funding source, constitutes a regionally significant project as defined in 23 CFR § 450.104; and

WHEREAS, no Implementation Elements awarded funding through the Community Funding Area Program will move forward until an Implementation Agreement, which shall include Capital Funding Agreements or Operating Agreements, is executed by and between the Implementing Party; GoTriangle, as administrator of the Special District; and CAMPO.

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to, inter alia, N.C.G.S. §§ 160A-20.1; 160A-312; 160A-313; 160A-610; 153A-275; 153A-276; and 153A-449.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants herein contained, the Parties hereto agree as follows:

1. **Term:**

The Agreement shall become effective upon execution by all Parties (“Effective Date”). The term of this Agreement shall be from the Effective Date until December 31, 2027. The Parties may extend the term of this Agreement or may otherwise amend this Agreement as set forth in Section 7.

2. **Purpose:**

The purpose of this Agreement is to outline the details of how the Project(s) listed in Exhibit A attached hereto and incorporated herein by reference, being an approved Project(s) in the Wake County Transit Annual Work Plan, shall be implemented, in accordance with the requirements of the Participation Agreement.

3. **Responsibilities:**

A. **Responsibilities of the Implementing Party.**

- (1) The Implementing Party shall provide the Projects listed in Exhibit A and fund the cost of the Projects on an up-front basis, except as provided herein. The Implementing Party is responsible for ensuring funds are available to pay for the Projects prior to requesting reimbursement from GoTriangle.
- (2) The Wake Transit Work Plan Reimbursement Request and Financial Report Template (“Reimbursement Request Template”) must be submitted by the Implementing Party at least quarterly but may be as often as is efficient and effective for the Implementing Party. The reimbursement request shall be emailed to waketransitreimbursement@gotriangle.org with a copy to CAMPO, specifically suvir.venkatesh@campo-nc.us.

All Reimbursement Requests must be made using the Wake Transit Work Plan Reimbursement Request and Financial Report template agreed to by the Parties and must include a signed statement by the Implementing Party’s Finance Officer or designee stating that funds were spent in accordance with the Wake Transit Work Plan and with all applicable laws, rules, and regulations, and that the Reimbursement Request includes items due and payable. All Reimbursement Requests shall be based on actual expenses incurred as recorded in the financial system.

- (3) In special circumstances where an advance payment may be required, Reimbursement Requests must be submitted using the Reimbursement Request Template and with a justification for the advance payment request. Advance payments received by the Implementing Party must be disbursed within 72 hours of receipt from GoTriangle.
- (4) Any performance on which an Implementing Party receives reimbursement must be performed by June 30 of that fiscal year.
- (5) Reimbursement Requests for expenses incurred as of June 30, 2027, shall be submitted by August 10 for the fiscal year in which the work was done.
- (6) Further, the Implementing Party shall:
 - (a) Ensure that Wake Transit funds provided by GoTriangle are not misappropriated or misdirected to any other account, need, project, or line item, other than as listed in Exhibit A. The Implementing Party shall have an obligation to return any reimbursed or advanced payments that were misappropriated or expended outside the approved Project(s) listed in Exhibit A.
 - (b) Ensure that a minimum of 35 percent of the total costs associated with the project, as described in Exhibit A, are expended from the Implementing Party's funds that were demonstrated through its application to the Community Funding Area Program to be provided as the required matching funds for the program. All Reimbursement Requests submitted by the Implementing Party shall detail total costs expended for the project along with the reimbursable amount. The total of Reimbursement Requests for reimbursable costs shall not exceed the amount allocated to the project as described in Exhibit A.
 - (c) Monitor award activities, to include sub-awards, to provide reasonable assurance that funds are spent in compliance with applicable requirements. Responsibilities include accounting for receipts and expenditures, cash management, maintaining adequate financial records, and refunding disallowed expenditures.
 - (d) Maintain a financial management system adequate for monitoring the accumulation of costs.
 - (e) Meet with staff from CAMPO within sixty (60) days of the execution of this agreement to discuss the scope of work, timeline, reporting requirements, public engagement activities, reimbursement requirements for the project,

as well as to discuss a schedule for any subsequent project oversight meetings.

- (7) The Implementing Party shall coordinate with CAMPO to ensure the Project is considered for inclusion in the CAMPO Transportation Improvement Program.

B. Responsibilities of GoTriangle

- (1) GoTriangle, as administrator of the Triangle Tax District, shall have the responsibilities and duties as set forth in the Governance ILA, including appropriating funds from the FY 2027 Triangle Tax District Wake Operating Ordinance in accordance with the Governance ILA. The specific appropriation and approved project budgets are further detailed in Exhibit A and in the FY 2027 Wake Transit Work Plan.
- (2) GoTriangle, as Tax District, upon receipt of a Reimbursement Request from CAMPO, shall verify within five business days whether the Reimbursement Request is complete; is within the approved budget; is within the annual work plan; and is in accordance with the Wake Transit Billing, Payment, and Reimbursement Policy and Guidelines, adopted by GoTriangle on June 28, 2017, and CAMPO on June 21, 2017, and subsequently amended and adopted by GoTriangle on June 23, 2021, and CAMPO on June 16, 2021. Payment will be remitted within thirty (30) days of verification to the Implementing Party according to the payment instructions on file.

If GoTriangle is unable to verify the Reimbursement Request, GoTriangle shall, within two (2) business days, notify the Implementing Party in writing of the deficiencies in the Reimbursement Request. The Implementing Party may thereafter submit a revised Reimbursement Request ("Revised Reimbursement Request"), which shall be verified within five business days of receipt. If the Revised Reimbursement Request is denied, CAMPO or the Implementing Party may place the item on the next TPAC agenda for discussion and a recommendation to GoTriangle, CAMPO, and the Implementing Party.

- (3) Where advance payments are requested, GoTriangle, after due consideration of the request, will remit funds via payment instructions on file.
- (4) All disbursements from GoTriangle shall be in accordance with North Carolina General Statute 159 Article 3, known as the North Carolina Budget and Fiscal Control Act, and the Wake Transit Financial Policies and Guidelines, adopted by GoTriangle on June 28, 2017, and CAMPO on June 21, 2017, and

subsequently amended and adopted by GoTriangle on June 23, 2021, and CAMPO on June 16, 2021.

C. Responsibilities of CAMPO

- (1) Within five (5) business days of receiving a Reimbursement Request from the Implementing Party, CAMPO shall verify that the Reimbursement Request is complete, is within the approved budget, and is consistent with the scope of the project as reflected in Exhibit A and any other applicable scope-related attachments or exhibits to this Agreement.
- (2) Meet with staff from the Implementing Party within sixty (60) days of the execution of this agreement to discuss the scope of work, timeline, reporting requirements, public engagement activities, reimbursement requirements for the project, as well as to discuss a schedule for any subsequent project oversight meetings.
- (3) Meet with staff from the Implementing Party for a mid-year project review meeting to discuss project progress and to address any technical issues with the project that may need attention. The mid-year review meeting may be held virtual or in person.

4. Minimum Service Standards:

For the Projects listed in Exhibit A, the Implementing Party agrees to provide for:

- A. Maintenance of all vehicles and facilities in accordance with a preventative maintenance program.
- B. Maintenance of all vehicles and facilities in a safe and dependable condition and cleaning of all vehicles and facilities regularly.
- C. Monitoring of services and responding to incidents in a timely and professional manner.
- D. Regular reviews of service including: safety, on-time performance, customer satisfaction, accessibility, cleanliness, security, and customer service training.
- E. Public engagement activities in accordance with state and federal guidelines and agency and municipal policies and procedures, if applicable.

5. Performance Reporting:

Unless otherwise agreed in writing between Parties, the Implementing Party shall report operating statistics and ridership to the National Transit Database and to the North Carolina Department of Transportation Public Transportation Division.

The Implementing Agency also agrees to provide quarterly and annual reporting per the Master Participation Agreement for the Reported Deliverables as identified in Exhibit A using a Reporting Template agreed to by the Parties. The Implementing Agency shall include in its quarterly reports any details of issues that may impact delivery of the Projects identified in Exhibit A.

The Annual Wake Transit Report prepared by GoTriangle shall provide information regarding how strategic public transit objectives have been met and shall include the performance achieved, the strategies being followed, and performance targets and key milestones for capital projects and operating services.

Quarterly Status Reports prepared by GoTriangle and/or CAMPO shall provide information regarding progress toward strategic objectives outlined in the Wake Transit Work Plan and include the performance achieved, the strategies being followed, and performance targets and key milestones for Capital Projects and operating services identified in the Wake Transit Work Plan. GoTriangle shall include in its Quarterly Status Reports any details of issues that may impact delivery of funding for the Projects identified in Exhibit A.

The Parties agree to share supporting documentation, if requested, in addition to their quarterly and annual reporting, in a timely manner.

6. **Further Agreements:**

The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of this Agreement. The Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Agreement.

7. **Amendment:**

Any extension of the term of this Agreement and/or change to the content of this Agreement shall be by written amendment signed by all Parties.

8. **Breach; Termination:**

In the event that (1) the Implementing Party is not able or fails to provide a Project(s) as required by the Agreement; or (2) GoTriangle is not able or fails to

provide funding for a Project(s) as required by the Agreement; or (3) GoTriangle fails to fulfill its responsibilities and duties as set out in the Governance ILA; or (4) any Party fails to fulfill a responsibility or duty of this Agreement; or (5) any Party withdraws from the Master Participation Agreement (separately each a “breach”), any Party to this Agreement shall notify the Clerk to the TPAC Committee and the other Parties to this Agreement. The Non-breaching party may place the item on a TPAC agenda for discussion and a non-binding recommendation to the Parties.

The Non-breaching Party may provide the Breaching Party with a period of time to cure the breach to the reasonable satisfaction of the Non-breaching Party. If the breach is not timely cured, or cannot be cured, the Non-breaching Party may (1) elect to terminate this Agreement in full; or (2) elect to terminate this Agreement only as to one or more Projects listed in Exhibit A. In the event of breach of this Agreement, the Parties shall be entitled to such legal or equitable remedy as may be available, including specific performance.

In the event the Agreement is terminated for any reason other than by the end of the Term of the Agreement:

- (a) The Implementing Party shall not be required to continue implementing the Projects, but may elect to continue implementing the Projects using funds from sources other than the Wake Transit Tax.
- (b) GoTriangle shall reimburse the Implementing Party for any expenses for the Projects that have been approved in the annual work plan and made in reliance on this Agreement, whether or not a Reimbursement Request has been made by Implementing Party at the time of termination. The Implementing Party shall have sixty (60) days after the date of termination to submit all Reimbursement Requests.
- (c) The Implementing Party shall report the final status for its deliverable and GoTriangle shall do a final quarterly report and shall issue the annual report required by this Agreement.

9. **ADA and Paratransit Requirements:**

The Implementing Party shall provide paratransit service as required by law within the ADA-required radius of the all-day fixed-route bus services implemented as Projects pursuant to this Agreement.

10. **Record Retention:**

All parties must adhere to record retention guidelines as set forth in North Carolina General Statutes or federal guidelines as appropriate

11. **Notices:**

Any notice given pursuant to this Agreement shall be deemed given if delivered by hand or if deposited in the United States Mail, postage paid, certified mail, return receipt requested and addressed as follows:

If to GoTriangle:

GoTriangle
Attn: President and CEO
4600 Emperor Blvd
Durham, NC 27703

And with a copy to:

GoTriangle
Attn: General Counsel
4600 Emperor Blvd
Durham, NC 27703

If to Clerk to the TPAC Committee:

CAMPO
Attn: Clerk to the TPAC Committee
1 Fenton Main Street, Suite 201
Cary, NC 27511

If to CAMPO:

CAMPO
Attn: Executive Director
1 Fenton Main Street, Suite 201
Cary, NC 27511

If to Town of Apex:

Town of Apex
Attn: Deputy Town Manager
Apex Town Hall
73 Hunter Street
P.O. Box 250
Apex, NC 27502

And with a copy to:

Town of Apex
Attn: Town Attorney
Apex Town Hall
73 Hunter Street
P.O. Box 250
Apex, NC 27502

12. **Representations and Warranties:**

The Parties each represent, covenant and warrant for the other's benefit as follows:

- A. Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and the individuals signing this Agreement have the right and power to do so. This Agreement is a valid and binding obligation of each Party.
- B. To the knowledge of each Party, neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which a Party is bound, or constitutes a default under any of the foregoing.
- C. To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such party (or against any other person) affecting such Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither such Party's execution and delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.
- D. The Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Operating Community Funding Agreement.

13. **Merger and Precedence:**

The provisions of this Agreement, including all Exhibits and attachments, constitute the entire agreement by and between the Parties hereto and shall supersede all previous communications, representations or agreements, either oral or written between the Parties hereto with respect to the subject matter hereof. Notwithstanding the foregoing, in the event of any inconsistency or conflict between this Agreement and the Participation Agreement or the Governance ILA, the terms of the Participation Agreement and Governance ILA have precedence.

14. **Dispute Resolution:**

In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice of Wake County, North Carolina.

15. **No Waiver of Non-Compliance with Agreement:**

No provision of this Agreement shall be deemed to have been waived by any Party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any Party hereto at any time to require strict performance by the other of any provision hereof shall in no way affect the right of the other Party to thereafter enforce the same. In addition, no waiver or acquiescence by a Party hereto of any breach of any provision hereof by another Party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

16. **Governing Law:**

The Parties intend that this Agreement be governed by the law of the State of North Carolina. Proper venue for any action shall solely be Wake County.

17. **Assignment:**

No Party may sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other Parties.

18. **Independence of the Parties:**

Nothing herein shall be construed to modify, abridge, or deny the authority or discretion of any Party to independently develop, administer, or control transportation projects pursuant to enumerated authority or funding sources separate from those in this Agreement.

19. **Execution in Counterparts/Electronic Version of Agreement:**

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Any Party may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.

20. **No Waiver of Sovereign Immunity:**

Nothing in this Agreement shall be construed to mandate purchase of insurance by any municipality pursuant to N.C.G.S. 160A-485; or to in any other way waive any Party's defense of sovereign or governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law.

21. **No Waiver of Qualified Immunity:**

No officer, agent or employee of any Party shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

22. **Verification of Work Authorization; Iran Divestment Act:**

All Parties, and any permitted subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes. The Parties hereby certify that they, and all permitted subcontractors, if any, are not on the Iran Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.59.

23. **No third-Party Beneficiaries:**

There are no third-party beneficiaries to this Agreement.

24. **E – Verify:**

Each Party shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of Implementing Party's knowledge, any

subcontractor employed by Implementing Party as a part of this Agreement shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 *et seq.* In cases of conflict between this Agreement and any of the above incorporated attachments or references, the terms of this Agreement shall prevail.

25. **Companies Boycotting Israel Divestment Act Certification:**

Each Party certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81.

26. **Electronic Signatures:**

Parties acknowledge and agree that the electronic signature application Adobe Sign may be used to execute this Agreement and any associated documents. By selecting "I Agree," "I Accept," or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the Adobe Sign application, Parties consent to be legally bound by the terms and conditions of this Agreement and that such act constitutes Parties' signatures as if signed by Parties in writing. Parties also agree that no certification authority or other third-party verification is necessary to validate the electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of the electronic signature. Parties acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby, through the Adobe Sign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

SIGNATURE PAGES FOLLOW

RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY (d/b/a GoTriangle) By: _____ Brian C. Smith, President and CEO This, the ____ day of _____, 2026.	This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act. _____ Michelle Jeng, Chief Financial Officer for GoTriangle This, the ____ day of _____, 2026.
	Reviewed and Approved as to legal form. _____ T. Byron Smith, General Counsel

NC CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION "CAMPO"

By: _____
Chris Lukasina, Executive Director

Attest:

By: _____
Ben Howell, Wake Transit Program Manager

TOWN OF APEX By: _____ Randal E. Vosburg, Town Manager This, the ____ day of _____, 2026.	This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act. _____ Jonathan Griffin, Finance Director This, the ____ day of _____, 2026.
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Exhibit A

Implementing /Operating
Agency

Town of Apex

Parties to
Agreement:

**Apex, CAMPO,
GoTriangle**

Total FY27 Appropriation **\$1,073,254**

Project	<u>GoApex Route 1: Fixed-Route Circulator</u>		
Project ID from Work Plan	TO005-BF		
FY 2027 Budget	\$1,073,254	for project or as amended by the adopted Wake Transit Work Plan	
Scope	The project description included in the FY2027 Adopted Wake Transit Work Plan, and as amended, is incorporated herein by reference.		
Expected Implementation Date	7/1/2026		
Quarterly Reporting Deliverables	1. Revenue hours of service 2. Ridership 3. Passenger boardings per revenue hour 4. Operating cost per passenger boarding 5. On-time performance		
Contract #	27-022		

GENERAL CAPITAL FUNDING AGREEMENT
COMMUNITY FUNDING AREA PROGRAM
FOR BUS INFRASTRUCTURE

WAKE TRANSIT FY 2027

This Capital Funding Agreement ("Agreement") is made by and between Research Triangle Regional Public Transportation Authority, d/b/a GoTriangle ("GoTriangle") and the Town of Apex ("Implementing Party") and the Capital Area Metropolitan Planning Organization ("CAMPO"). The foregoing may collectively be referred to as "Parties."

WHEREAS, the Parties to Agreement, who have or may have specific roles in the implementation of public transit and the support of public transit infrastructure in the Wake County area, have determined that it is in their best interest and the best interest of the constituents they represent to coordinate future public transit planning, funding, expansion and construction; and

WHEREAS, an extensive community driven process was used to develop a strategic transit vision document that set forth an enhanced public transit plan for Wake County, referred to as the "Wake County Transit Plan" ("Wake Transit Plan"), and this plan was unveiled on or about December 8, 2015, and adopted by the GoTriangle Board of Trustees on May 25, 2016, the Capital Area Metropolitan Planning Organization's ("CAMPO") Executive Board on May 18, 2016, and the Wake County Board of Commissioners on June 6, 2016; and was subsequently updated and adopted by the CAMPO Executive Board on April 21, 2021, and the GoTriangle Board of Trustees on April 28, 2021; and was updated and adopted by the CAMPO Executive Board and GoTriangle Board of Trustees on November 19, 2025; and

WHEREAS, in conjunction with the Wake Transit Plan, GoTriangle, Wake County, and CAMPO (collectively, "the Governance ILA Parties") adopted the Wake Transit Governance Interlocal Agreement ("Governance ILA") that creates a governance structure for the implementation of the Wake Transit Plan by and through the annual Wake Transit Work Plan; and

WHEREAS, pursuant to Section 3.02c of the Governance ILA, CAMPO has been designated as the lead agency for administering the Community Funding Area Program and has the authority to enter into this Agreement and enforce the provisions thereof and is a necessary Party to this Agreement; and

WHEREAS, the Governance ILA specifically created the Transit Planning Advisory Committee ("TPAC") and charged the TPAC with coordinating and recommending the planning and implementation aspects of the Wake Transit Work Plan; and

WHEREAS, the Governance ILA Parties, together with the Implementing Party, numerous Wake County municipalities, and other entities, entered into a Master Participation Agreement (“Participation Agreement”), which, among other purposes, established standards that govern the Participation Agreement Parties’ eligibility for inclusion of sponsored Implementation Elements in the Wake Transit Work Plan, receipt of funding allocations from Wake County Transit Tax Revenue, and confirmed the Participation Agreement Parties’ roles in carrying out TPAC responsibilities; and

WHEREAS, the FY 2027 Wake Transit Work Plan was developed and recommended by the TPAC, presented for public comment, and adopted, as required, by the Boards of CAMPO and GoTriangle; and

WHEREAS, the FY 2027 Triangle Tax District Wake Operating Ordinance was adopted by the GoTriangle Board of Trustees on June 24, 2026; and

WHEREAS, the Parties desire to implement the components of the FY 2027 Wake Transit Work Plan as adopted by GoTriangle and CAMPO; and

WHEREAS, as stated in the Participation Agreement, all Implementation Elements contained in the Wake Transit Work Plan, whether partially or fully funded with Wake County Transit Tax Revenues, will not move forward until Implementation Agreements, which shall include Capital Funding Agreements and Operating Agreements are executed by and between the Implementing Party; GoTriangle, as administrator of the Special District, and CAMPO, if the Implementing Agreement involves federal or state funding that is otherwise under the distribution and program management responsibility of CAMPO or, regardless of funding source, constitutes a regionally significant project as defined in 23 CFR § 450.104; and

WHEREAS, no Implementation Elements awarded funding through the Community Funding Area Program will move forward until an Implementation Agreement, which shall include Capital Funding Agreements or Operating Agreements, is executed by and between the Implementing Party; GoTriangle, as administrator of the Special District; and CAMPO; and

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to, inter alia, N.C.G.S. §§ 160A-20.1; 160A-312; 160A-313; 160A-610; 153A-275; 153A-276; and 153A-449.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants herein contained, the Parties hereto agree as follows:

1. **Term:**

The Agreement shall become effective upon execution by all Parties (“Effective Date”). The term of this Agreement shall be from the Effective Date until December 31, 2029. The Parties may extend the term of this Agreement or may otherwise amend this Agreement as set forth in Section 6.

2. **Purpose:**

The purpose of this Agreement is to outline the details of how the Project(s) listed in Exhibit A attached hereto and incorporated herein by reference, being an approved Project(s) in the Wake County Transit Annual Work Plan, shall be implemented, in accordance with the requirements of the Participation Agreement.

3. **Responsibilities:**

A. Responsibilities of the Implementing Party.

- (1) The Implementing Party shall provide the Projects listed in Exhibit A and fund the cost of the Projects on an up-front basis, except as provided herein. The Implementing Party is responsible for ensuring funds are available to pay for costs incurred related to Project phases, or invoices, prior to requesting reimbursement from GoTriangle, except in instances where advance payments are requested. Implementing parties may utilize pre-award authority for Capital projects requiring immediate implementation. Pre-award authority may not be exercised until the annual budget has been recommended by the TPAC and adopted by CAMPO and GoTriangle.
- (2) The Wake Transit Work Plan Reimbursement Request and Financial Report Template (“Reimbursement Requests”) must be submitted by the Implementing Party at least quarterly but may be as often as it is efficient and effective for the Implementing Party. The reimbursement request shall be emailed to waketransitreimbursement@gotriangle.org with a copy to CAMPO, specifically to Suvir.venkatesh@campo-nc.us.

All Reimbursement Requests must be made using the Wake Transit Work Plan Reimbursement Request and Financial Report Template agreed to by the Parties and must include a signed statement by the Implementing Party’s Finance Officer or designee stating that funds were spent in accordance with the Wake Transit Work Plan and with all applicable laws, rules, and regulations,

and that the Reimbursement Request includes items due and payable. All Reimbursement Requests shall be based on actual expenses incurred as recorded in the financial system.

- (3) In special circumstances where an advance payment may be required, Reimbursement Requests must be submitted using the Reimbursement Request Template and with a justification for the advance payment request. Advance payments received by the Implementing Party must be disbursed within 72 hours of receipt from GoTriangle.
- (4) Any work for which an Implementing Party receives reimbursement must be performed by June 30 of that fiscal year.
- (5) Reimbursement Requests for expenses incurred as of June 30 shall be submitted by August 10 for the fiscal year in which the work was done.
- (6) Further, the Implementing Party shall:
 - (a) Ensure that Wake Transit funds provided by GoTriangle are not misappropriated or misdirected to any other account, need, project, or line item, other than as listed in Exhibit A. The Implementing Party shall have an obligation to return any reimbursed or advanced payments that were misappropriated or expended outside the approved Project(s) listed in Exhibit A.
 - (b) Ensure that a minimum of 35 percent of the total costs associated with the project, as described in Exhibit A, are expended from matching (not Wake Transit) funds. All Reimbursement Requests submitted by the Implementing Party shall detail total costs expended for the project along with the reimbursable amount. The total of Reimbursement Requests for reimbursable costs shall not exceed the amount allocated to the project as described in Exhibit A.
 - (c) Monitor award activities, to include sub-awards, to provide reasonable assurance that funds are spent in compliance with applicable requirements. Responsibilities include accounting for receipts and expenditures, cash management, maintaining adequate financial records, and refunding disallowed expenditures.
 - (d) Maintain a financial management system adequate for monitoring the accumulation of costs.
 - (e) Follow all applicable Federal procurement and/or property acquisition processes.
 - (f) Meet with staff from CAMPO within sixty (60) days of the execution of this agreement to discuss the scope of work, timeline, reporting requirements,

public engagement activities, reimbursement requirements for the project, as well as to discuss a schedule for any subsequent project oversight meetings.

- (g) Meet with staff from CAMPO for a mid-year project review meeting to discuss project progress and to address any technical issues with the project that may need attention. The mid-year review meeting may be held by phone or in person.

B. Responsibilities of GoTriangle

- (1) GoTriangle, as administrator of the Triangle Tax District, shall have the responsibilities and duties as set forth in the Governance ILA, including appropriating funds from the FY 2027 Triangle Tax District Capital Ordinance in accordance with the Governance ILA. The specific appropriation and approved project budgets are further detailed in Exhibit A and in the FY 2027 Wake Transit Work Plan.
- (2) GoTriangle, as Tax District, upon receipt of a Reimbursement Request from CAMPO, shall verify within five business days whether the Reimbursement Request is complete; is within the approved budget; is within the annual work plan; and is in accordance with the Wake Transit Billing, Payment, and Reimbursement Policy and Guidelines, adopted by GoTriangle on June 28, 2017, and CAMPO on June 21, 2017, and subsequently amended and adopted by GoTriangle on June 23, 2021, and CAMPO on June 16, 2021. Payment will be remitted within thirty (30) days of verification to the Implementing Party according to the payment instructions on file.

If GoTriangle is unable to verify the Reimbursement Request, GoTriangle shall, within two (2) business days, notify the Implementing Party in writing of the deficiencies in the Reimbursement Request. The Implementing Party may thereafter submit a revised Reimbursement Request ("Revised Reimbursement Request"), which shall be verified within five (5) business days of receipt. If the Revised Reimbursement Request is denied, the Implementing Party may place the item on the next TPAC agenda for discussion and a recommendation to GoTriangle and the Implementing Party.

- (3) Where advance payments are requested, GoTriangle, after due consideration of the request, will remit funds via payment instructions on file.
- (4) All disbursements from GoTriangle shall be in accordance with North Carolina General Statute 159 Article 3, known as the North Carolina Budget and Fiscal Control Act, and the Wake Transit Financial Policies and Guidelines, adopted

by GoTriangle on June 28, 2017, and CAMPO on June 21, 2017, and subsequently amended and adopted by GoTriangle on June 23, 2021, and CAMPO on June 16, 2021.

C. Responsibilities of CAMPO

- (1) Within five (5) business days of receiving a Reimbursement Request from the Implementing Party, CAMPO shall verify that the Reimbursement Request is complete, is within the approved budget, and is consistent with the scope of the project as reflected in Exhibit A and any other applicable scope-related attachments or exhibits to this Agreement.
- (2) Meet with staff from the Implementing Party within sixty (60) days of the execution of this agreement to discuss the scope of work, timeline, reporting requirements, public engagement activities, reimbursement requirements for the project, as well as to discuss a schedule for any subsequent project oversight meetings.
- (3) Meet with staff from the Implementing Party for a mid-year project review meeting to discuss project progress and to address any technical issues with the project that may need attention. The mid-year review meeting may be held virtual or in person.

4. **Progress Reporting:**

Unless otherwise agreed in writing between Parties, the Implementing Party agrees to provide quarterly and annual reporting per the Master Participation Agreement for the Reported Deliverables as identified in Exhibit A using a Reporting Template agreed to by the Parties. This reporting shall be provided by the Implementing Party to GoTriangle and CAMPO within thirty (30) days following the end of each applicable quarter. The Implementing Party shall include in its quarterly reports any details of issues that may impact delivery of the Projects identified in Exhibit A. If the Implementing Party is allocating local funds towards Projects identified in Exhibit A, those expenditures shall be disclosed as part of its quarterly and annual reports.

The Annual Wake Transit Report prepared by GoTriangle shall provide information regarding how strategic public transit objectives have been met and shall include the progress achieved, the strategies being followed, and performance targets and key milestones for capital projects and operating services.

Quarterly Status Reports prepared by GoTriangle and/or CAMPO shall provide information regarding progress toward strategic objectives outlined in the Wake Transit Work Plan and include the performance achieved, the strategies being followed, and performance targets and key milestones for Capital Projects and operating services identified in the Wake Transit Work Plan. GoTriangle shall include in its Quarterly Status Reports any details of issues that may impact delivery of funding for the Projects identified in Exhibit A.

The Parties agree to share supporting documentation, if requested, in addition to their quarterly and annual reporting, in a timely manner.

5. **Further Agreements:**

The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of this Agreement. The Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Agreement.

6. **Amendment:**

Any extension of the term of this Agreement and/or change to the content of this Agreement shall be by written amendment signed by all Parties.

7. **Breach; Termination:**

In the event that (1) the Implementing Party is not able or fails to provide a Project(s) as required by the Agreement; or (2) GoTriangle is not able or fails to provide funding for a Project(s) as required by the Agreement; or (3) GoTriangle fails to fulfill its responsibilities and duties as set out in the Governance ILA; or (4) any Party fails to fulfill a responsibility or duty of this Agreement; or (5) any Party withdraws from the Master Participation Agreement (separately each a “breach”), any Party to this Agreement shall notify the Clerk to the TPAC Committee and the other Parties to this Agreement. The Non-breaching Party may place the item on a TPAC agenda for discussion and a non-binding recommendation to the Parties.

The Non-breaching Party may provide the Breaching Party with a period of time to cure the breach to the reasonable satisfaction of the Non-breaching Party. If the breach is not timely cured, or cannot be cured, the Non-breaching Party may (1) elect to terminate this Agreement in full; or (2) elect to terminate this Agreement

only as to one or more Projects listed in Exhibit A. In the event of breach of this Agreement, the Parties shall be entitled to such legal or equitable remedy as may be available, including specific performance.

In the event the Agreement is terminated for any reason other than by the end of the term of the Agreement:

- (a) The Implementing Party shall not be required to continue implementing the Projects, but may elect to continue implementing the Projects using funds from sources other than the Wake Transit Tax.
- (b) GoTriangle shall reimburse the Implementing Party for any expenses for the Projects that have been approved in the annual work plan and made in reliance on this Agreement, whether or not a Reimbursement Request has been made by Implementing Party at the time of termination. The Implementing Party shall have sixty (60) days after the date of termination to submit all Reimbursement Requests.
- (c) The Implementing Party shall report the final status for its deliverable and GoTriangle shall do a final quarterly report and shall issue the annual report required by this Agreement.

8. **Record Retention:**

All parties must adhere to record retention guidelines as set forth in North Carolina General Statutes or federal guidelines as appropriate.

9. **Notices:**

Any notice given pursuant to this Agreement shall be deemed given if delivered by hand or if deposited in the United States Mail, postage paid, certified mail, return receipt requested and addressed as follows:

If to GoTriangle:
GoTriangle
Attn: President and CEO
4600 Emperor Blvd
Durham, NC 27703

And with a copy to:
GoTriangle
Attn: General Counsel

4600 Emperor Blvd
Durham, NC 27703

If to the Clerk to the TPAC Committee
CAMPO
Attn: Clerk to the TPAC Committee
1 Fenton Main Street, Suite 201
Cary, NC 27511

If to CAMPO:
CAMPO
Attn: Executive Director
1 Fenton Main Street, Suite 201
Cary, NC 27511

If to the Town of Apex:
Town of Apex
Attn: Town Manager
P.O. Box 250
Apex, NC 27502

With a copy to:
Town of Apex
Attn: Town Attorney
P.O. Box 250
Apex, NC 27502

10. **Representations and Warranties:**

The Parties each represent, covenant and warrant for the other's benefit as follows:

A. Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and the individuals signing this Agreement have the right and power to do so. This Agreement is a valid and binding obligation of each Party.

B. To the knowledge of each Party, neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or

instrument to which a Party is bound or constitutes a default under any of the foregoing.

C. To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such party (or against any other person) affecting such Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither such Party's execution and delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

D. Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Capital Community Funding Agreement.

11. **Merger and Precedence:**

The provisions of this Agreement, including all Exhibits and attachments, constitute the entire agreement by and between the Parties hereto and shall supersede all previous communications, representations or agreements, either oral or written between the Parties hereto with respect to the subject matter hereof. Notwithstanding the foregoing, in the event of any inconsistency or conflict between this Agreement and the Participation Agreement or the Governance ILA, the terms of the Participation Agreement and Governance ILA have precedence.

12. **Dispute Resolution:**

In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice of Wake County, North Carolina.

13. **No Waiver of Non-Compliance with Agreement:**

No provision of this Agreement shall be deemed to have been waived by any Party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any Party hereto at any time to require strict performance by the other Party of any provision hereof shall in no way affect the

right of the other Party to thereafter enforce the same. In addition, no waiver or acquiescence by a Party hereto of any breach of any provision hereof by another Party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

14. **Governing Law:**

The Parties intend that this Agreement be governed by the law of the State of North Carolina. Proper venue for any action shall solely be Wake County.

15. **Assignment:**

No Party may sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other Parties.

16. **Independence of the Parties:**

Nothing herein shall be construed to modify, abridge, or deny the authority or discretion of any Party to independently develop, administer, or control transportation projects pursuant to enumerated authority or funding sources separate from those in this Agreement.

17. **Execution in Counterparts/Electronic Version of Agreement:**

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Any Party may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.

18. **No Waiver of Sovereign Immunity:**

Nothing in this Agreement shall be construed to mandate purchase of insurance by any municipality pursuant to N.C.G.S. 160A-485; or to in any other way waive any Party's defense of sovereign or governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law.

19. **No Waiver of Qualified Immunity:**

No officer, agent or employee of any Party shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

20. **Verification of Work Authorization; Iran Divestment Act:**

All Parties, and any permitted subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes. The Parties hereby certify that they, and all permitted subcontractors, if any, are not on the Iran Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58.

21. **No Third-Party Beneficiaries:**

There are no third-party beneficiaries to this Agreement.

22. **E – Verify:**

Implementing Party shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of Implementing Party's knowledge, any subcontractor employed by Implementing Party as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq. In cases of conflict between this Contract and any of the above incorporated attachments or references, the terms of this Contract shall prevail.

23. **Companies Boycotting Israel Divestment Act Certification:**

Implementing Party certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81.

24. **Electronic Signatures:**

Parties acknowledge and agree that the electronic signature application Adobe Sign may be used to execute this Agreement and any associated documents. By selecting "I Agree," "I Accept," or other similar item, button, or icon via use of a

keypad, mouse, or other device, as part of the Adobe Sign application, Parties consent to be legally bound by the terms and conditions of this Agreement and that such act constitutes Parties' signatures as if signed by Parties in writing. Parties also agree that no certification authority or other third-party verification is necessary to validate the electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of the electronic signature. Parties acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby, through the Adobe Sign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

SIGNATURE PAGES FOLLOW

RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY (d/b/a GoTriangle) By: _____ Brian C. Smith, President and CEO This, the ____ day of _____, 2026.	This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act. _____ Michelle Jeng, Chief Financial Officer for GoTriangle This, the ____ day of _____, 2026.
	Reviewed and Approved as to legal form. _____ T. Byron Smith, General Counsel

NC CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION "CAMPO"

By: _____
Chris Lukasina, Executive Director

ATTEST:

By: _____
Ben Howell, Wake Transit Program Manager

TOWN OF APEX By: _____ Randal E. Vosburg, Town Manager This, the ____ day of _____, 2026.	This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act. _____ Jonathan Griffin, Finance Director This, the ____ day of _____, 2026.
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Exhibit A

Implementing /Operating
Agency

Town of Apex

Parties to
Agreement:

Apex, CAMPO,
GoTriangle

Total FY27 Appropriation **\$588,705**

Project **GoApex Route 1: FY27 Bus Stop Improvements**

Project ID from Work Plan **TC002-BX**

FY 2027 Budget **\$133,705** for project or as amended by the adopted Wake Transit Work Plan

Scope The project description included in the FY2027 Adopted Wake Transit Work Plan, and as amended, is incorporated herein by reference.

Expected Implementation
Date 7/1/2026

Quarterly Reporting
Deliverables 1. Contract award date for site or program of sites
2. Number of sites with improvements completed/constructed per quarter. If none completed for a quarter, report on the phase of ongoing site improvements.

Project **New Bus Stop Construction**

Project ID from Work Plan **TC002-BY**

FY 2027 Budget **\$455,000** for project or as amended by the adopted Wake Transit Work Plan

Scope The project description included in the FY2027 Adopted Wake Transit Work Plan, and as amended, is incorporated herein by reference.

Expected Implementation
Date 7/1/2026

Quarterly Reporting
Deliverables 1. Contract award date for site or program of sites
2. Number of sites with improvements completed/constructed per quarter. If none completed for a quarter, report on the phase of ongoing site improvements.

Contract # **27-023**

GENERAL CAPITAL FUNDING AGREEMENT
COMMUNITY FUNDING AREA PROGRAM
FOR CAPITAL PLANNING

WAKE TRANSIT FY 2027

This Capital Funding Agreement ("Agreement") is made by and between Research Triangle Regional Public Transportation Authority, d/b/a GoTriangle ("GoTriangle") and the Town of Apex ("Implementing Party") and the Capital Area Metropolitan Planning Organization ("CAMPO"). The foregoing may collectively be referred to as "Parties."

WHEREAS, the Parties to Agreement, who have or may have specific roles in the implementation of public transit and the support of public transit infrastructure in the Wake County area, have determined that it is in their best interest and the best interest of the constituents they represent to coordinate future public transit planning, funding, expansion and construction; and

WHEREAS, an extensive community driven process was used to develop a strategic transit vision document that set forth an enhanced public transit plan for Wake County, referred to as the "Wake County Transit Plan" ("Wake Transit Plan"), and this plan was unveiled on or about December 8, 2015, and adopted by the GoTriangle Board of Trustees on May 25, 2016, the Capital Area Metropolitan Planning Organization's ("CAMPO") Executive Board on May 18, 2016, and the Wake County Board of Commissioners on June 6, 2016; and was subsequently updated and adopted by the CAMPO Executive Board on April 21, 2021, and the GoTriangle Board of Trustees on April 28, 2021; and was updated and adopted by the CAMPO Executive Board and GoTriangle Board of Trustees on November 19, 2025; and

WHEREAS, in conjunction with the Wake Transit Plan, GoTriangle, Wake County, and CAMPO (collectively, "the Governance ILA Parties") adopted the Wake Transit Governance Interlocal Agreement ("Governance ILA") that creates a governance structure for the implementation of the Wake Transit Plan by and through the annual Wake Transit Work Plan; and

WHEREAS, pursuant to Section 3.02c of the Governance ILA, CAMPO has been designated as the lead agency for administering the Community Funding Area Program and has the authority to enter into this Agreement and enforce the provisions thereof and is a necessary Party to this Agreement; and

WHEREAS, the Governance ILA specifically created the Transit Planning Advisory Committee ("TPAC") and charged the TPAC with coordinating and recommending the planning and implementation aspects of the Wake Transit Work Plan; and

WHEREAS, the Governance ILA Parties, together with the Implementing Party, numerous Wake County municipalities, and other entities, entered into a Master Participation Agreement (“Participation Agreement”), which, among other purposes, established standards that govern the Participation Agreement Parties’ eligibility for inclusion of sponsored Implementation Elements in the Wake Transit Work Plan, receipt of funding allocations from Wake County Transit Tax Revenue, and confirmed the Participation Agreement Parties’ roles in carrying out TPAC responsibilities; and

WHEREAS, the FY 2027 Wake Transit Work Plan was developed and recommended by the TPAC, presented for public comment, and adopted, as required, by the Boards of CAMPO and GoTriangle; and

WHEREAS, the FY 2027 Triangle Tax District Wake Operating Ordinance was adopted by the GoTriangle Board of Trustees on June 24, 2026; and

WHEREAS, the Parties desire to implement the components of the FY 2027 Wake Transit Work Plan as adopted by GoTriangle and CAMPO; and

WHEREAS, as stated in the Participation Agreement, all Implementation Elements contained in the Wake Transit Work Plan, whether partially or fully funded with Wake County Transit Tax Revenues, will not move forward until Implementation Agreements, which shall include Capital Funding Agreements and Operating Agreements are executed by and between the Implementing Party; GoTriangle, as administrator of the Special District, and CAMPO, if the Implementing Agreement involves federal or state funding that is otherwise under the distribution and program management responsibility of CAMPO or, regardless of funding source, constitutes a regionally significant project as defined in 23 CFR § 450.104; and

WHEREAS, no Implementation Elements awarded funding through the Community Funding Area Program will move forward until an Implementation Agreement, which shall include Capital Funding Agreements or Operating Agreements, is executed by and between the Implementing Party; GoTriangle, as administrator of the Special District; and CAMPO; and

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to, inter alia, N.C.G.S. §§ 160A-20.1; 160A-312; 160A-313; 160A-610; 153A-275; 153A-276; and 153A-449.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants herein contained, the Parties hereto agree as follows:

1. **Term:**

The Agreement shall become effective upon execution by all Parties (“Effective Date”). The term of this Agreement shall be from the Effective Date until December 31, 2029. The Parties may extend the term of this Agreement or may otherwise amend this Agreement as set forth in Section 6.

2. **Purpose:**

The purpose of this Agreement is to outline the details of how the Project(s) listed in Exhibit A attached hereto and incorporated herein by reference, being an approved Project(s) in the Wake County Transit Annual Work Plan, shall be implemented, in accordance with the requirements of the Participation Agreement.

3. **Responsibilities:**

A. Responsibilities of the Implementing Party.

- (1) The Implementing Party shall provide the Projects listed in Exhibit A and fund the cost of the Projects on an up-front basis, except as provided herein. The Implementing Party is responsible for ensuring funds are available to pay for costs incurred related to Project phases, or invoices, prior to requesting reimbursement from GoTriangle, except in instances where advance payments are requested. Implementing parties may utilize pre-award authority for Capital projects requiring immediate implementation. Pre-award authority may not be exercised until the annual budget has been recommended by the TPAC and adopted by CAMPO and GoTriangle.
- (2) The Wake Transit Work Plan Reimbursement Request and Financial Report Template (“Reimbursement Requests”) must be submitted by the Implementing Party at least quarterly but may be as often as it is efficient and effective for the Implementing Party. The reimbursement request shall be emailed to waketransitreimbursement@gotriangle.org with a copy to CAMPO, specifically Suvir.venkatesh@campo-nc.us.

All Reimbursement Requests must be made using the Wake Transit Work Plan Reimbursement Request and Financial Report Template agreed to by the Parties and must include a signed statement by the Implementing Party’s Finance Officer or designee stating that funds were spent in accordance with the Wake Transit Work Plan and with all applicable laws, rules, and regulations,

and that the Reimbursement Request includes items due and payable. All Reimbursement Requests shall be based on actual expenses incurred as recorded in the financial system.

- (3) In special circumstances where an advance payment may be required, Reimbursement Requests must be submitted using the Reimbursement Request Template and with a justification for the advance payment request. Advance payments received by the Implementing Party must be disbursed within 72 hours of receipt from GoTriangle.
- (4) Any work for which an Implementing Party receives reimbursement must be performed by June 30 of that fiscal year.
- (5) Reimbursement Requests for expenses incurred as of June 30 shall be submitted by August 10 for the fiscal year in which the work was done.
- (6) Further, the Implementing Party shall:
 - (a) Ensure that Wake Transit funds provided by GoTriangle are not misappropriated or misdirected to any other account, need, project, or line item, other than as listed in Exhibit A. The Implementing Party shall have an obligation to return any reimbursed or advanced payments that were misappropriated or expended outside the approved Project(s) listed in Exhibit A.
 - (b) Ensure that a minimum of 35 percent of the total costs associated with the project, as described in Exhibit A, are expended from matching (not Wake Transit) funds. All Reimbursement Requests submitted by the Implementing Party shall detail total costs expended for the project along with the reimbursable amount. The total of Reimbursement Requests for reimbursable costs shall not exceed the amount allocated to the project as described in Exhibit A.
 - (c) Monitor award activities, to include sub-awards, to provide reasonable assurance that funds are spent in compliance with applicable requirements. Responsibilities include accounting for receipts and expenditures, cash management, maintaining adequate financial records, and refunding disallowed expenditures.
 - (d) Maintain a financial management system adequate for monitoring the accumulation of costs.
 - (e) Follow all applicable Federal procurement and/or property acquisition processes.
 - (f) Meet with staff from CAMPO within sixty (60) days of the execution of this agreement to discuss the scope of work, timeline, reporting requirements,

public engagement activities, reimbursement requirements for the project, as well as to discuss a schedule for any subsequent project oversight meetings.

- (g) Meet with staff from CAMPO for a mid-year project review meeting to discuss project progress and to address any technical issues with the project that may need attention. The mid-year review meeting may be held by phone or in person.

B. Responsibilities of GoTriangle

- (1) GoTriangle, as administrator of the Triangle Tax District, shall have the responsibilities and duties as set forth in the Governance ILA, including appropriating funds from the FY 2027 Triangle Tax District Capital Ordinance in accordance with the Governance ILA. The specific appropriation and approved project budgets are further detailed in Exhibit A and in the FY 2027 Wake Transit Work Plan.
- (2) GoTriangle, as Tax District, upon receipt of a Reimbursement Request from CAMPO, shall verify within five business days whether the Reimbursement Request is complete; is within the approved budget; is within the annual work plan; and is in accordance with the Wake Transit Billing, Payment, and Reimbursement Policy and Guidelines, adopted by GoTriangle on June 28, 2017, and CAMPO on June 21, 2017, and subsequently amended and adopted by GoTriangle on June 23, 2021, and CAMPO on June 16, 2021. Payment will be remitted within thirty (30) days of verification to the Implementing Party according to the payment instructions on file.

If GoTriangle is unable to verify the Reimbursement Request, GoTriangle shall, within two (2) business days, notify the Implementing Party in writing of the deficiencies in the Reimbursement Request. The Implementing Party may thereafter submit a revised Reimbursement Request ("Revised Reimbursement Request"), which shall be verified within five (5) business days of receipt. If the Revised Reimbursement Request is denied, the Implementing Party may place the item on the next TPAC agenda for discussion and a recommendation to GoTriangle and the Implementing Party.

- (3) Where advance payments are requested, GoTriangle, after due consideration of the request, will remit funds via payment instructions on file.
- (4) All disbursements from GoTriangle shall be in accordance with North Carolina General Statute 159 Article 3, known as the North Carolina Budget and Fiscal Control Act, and the Wake Transit Financial Policies and Guidelines, adopted

by GoTriangle on June 28, 2017, and CAMPO on June 21, 2017, and subsequently amended and adopted by GoTriangle on June 23, 2021 and CAMPO on June 16, 2021.

C. Responsibilities of CAMPO

- (1) Within five (5) business days of receiving a Reimbursement Request from the Implementing Party, CAMPO shall verify that the Reimbursement Request is complete, is within the approved budget, and is consistent with the scope of the project as reflected in Exhibit A and any other applicable scope-related attachments or exhibits to this Agreement.
- (2) Meet with staff from the Implementing Party within sixty (60) days of the execution of this agreement to discuss the scope of work, timeline, reporting requirements, public engagement activities, reimbursement requirements for the project, as well as to discuss a schedule for any subsequent project oversight meetings.
- (3) Meet with staff from the Implementing Party for a mid-year project review meeting to discuss project progress and to address any technical issues with the project that may need attention. The mid-year review meeting may be held virtual or in person.

4. **Progress Reporting:**

Unless otherwise agreed in writing between Parties, the Implementing Party agrees to provide quarterly and annual reporting per the Master Participation Agreement for the Reported Deliverables as identified in Exhibit A using a Reporting Template agreed to by the Parties. This reporting shall be provided by the Implementing Party to GoTriangle and CAMPO within thirty (30) days following the end of each applicable quarter. The Implementing Party shall include in its quarterly reports any details of issues that may impact delivery of the Projects identified in Exhibit A. If the Implementing Party is allocating local funds towards Projects identified in Exhibit A, those expenditures shall be disclosed as part of its quarterly and annual reports.

The Annual Wake Transit Report prepared by GoTriangle shall provide information regarding how strategic public transit objectives have been met and shall include the progress achieved, the strategies being followed, and performance targets and key milestones for capital projects and operating services.

Quarterly Status Reports prepared by GoTriangle and/or CAMPO shall provide information regarding progress toward strategic objectives outlined in the Wake Transit Work Plan and include the performance achieved, the strategies being followed, and performance targets and key milestones for Capital Projects and operating services identified in the Wake Transit Work Plan. GoTriangle shall include in its Quarterly Status Reports any details of issues that may impact delivery of funding for the Projects identified in Exhibit A.

The Parties agree to share supporting documentation, if requested, in addition to their quarterly and annual reporting, in a timely manner.

5. **Further Agreements:**

The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of this Agreement. The Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Agreement.

6. **Amendment:**

Any extension of the term of this Agreement and/or change to the content of this Agreement shall be by written amendment signed by all Parties.

7. **Breach; Termination:**

In the event that (1) the Implementing Party is not able or fails to provide a Project(s) as required by the Agreement; or (2) GoTriangle is not able or fails to provide funding for a Project(s) as required by the Agreement; or (3) GoTriangle fails to fulfill its responsibilities and duties as set out in the Governance ILA; or (4) any Party fails to fulfill a responsibility or duty of this Agreement; or (5) any Party withdraws from the Master Participation Agreement (separately each a “breach”), any Party to this Agreement shall notify the Clerk to the TPAC Committee and the other Parties to this Agreement. The Non-breaching Party may place the item on a TPAC agenda for discussion and a non-binding recommendation to the Parties.

The Non-breaching Party may provide the Breaching Party with a period of time to cure the breach to the reasonable satisfaction of the Non-breaching Party. If the breach is not timely cured, or cannot be cured, the Non-breaching Party may (1) elect to terminate this Agreement in full; or (2) elect to terminate this Agreement

only as to one or more Projects listed in Exhibit A. In the event of breach of this Agreement, the Parties shall be entitled to such legal or equitable remedy as may be available, including specific performance.

In the event the Agreement is terminated for any reason other than by the end of the term of the Agreement:

- (a) The Implementing Party shall not be required to continue implementing the Projects, but may elect to continue implementing the Projects using funds from sources other than the Wake Transit Tax.
- (b) GoTriangle shall reimburse the Implementing Party for any expenses for the Projects that have been approved in the annual work plan and made in reliance on this Agreement, whether or not a Reimbursement Request has been made by Implementing Party at the time of termination. The Implementing Party shall have sixty (60) days after the date of termination to submit all Reimbursement Requests.
- (c) The Implementing Party shall report the final status for its deliverable and GoTriangle shall do a final quarterly report and shall issue the annual report required by this Agreement.

8. **Record Retention:**

All parties must adhere to record retention guidelines as set forth in North Carolina General Statutes or federal guidelines as appropriate.

9. **Notices:**

Any notice given pursuant to this Agreement shall be deemed given if delivered by hand or if deposited in the United States Mail, postage paid, certified mail, return receipt requested and addressed as follows:

If to GoTriangle:
GoTriangle
Attn: President and CEO
4600 Emperor Blvd
Durham, NC 27703

And with a copy to:
GoTriangle
Attn: General Counsel

4600 Emperor Blvd
Durham, NC 27703

If to the Clerk to the TPAC Committee
CAMPO
Attn: Clerk to the TPAC Committee
1 Fenton Main Street, Suite 201
Cary, NC 27511

If to CAMPO:
CAMPO
Attn: Executive Director
1 Fenton Main Street, Suite 201
Cary, NC 27511

If to the Town of Apex:
Town of Apex
Attn: Town Manager
P.O. Box 250
Apex, NC 27502

With a copy to:
Town of Apex
Attn: Town Attorney
P.O. Box 250
Apex, NC 27502

10. **Representations and Warranties:**

The Parties each represent, covenant and warrant for the other's benefit as follows:

A. Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and the individuals signing this Agreement have the right and power to do so. This Agreement is a valid and binding obligation of each Party.

B. To the knowledge of each Party, neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or

instrument to which a Party is bound, or constitutes a default under any of the foregoing.

C. To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such party (or against any other person) affecting such Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither such Party's execution and delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

D. Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Capital Community Funding Agreement.

11. **Merger and Precedence:**

The provisions of this Agreement, including all Exhibits and attachments, constitute the entire agreement by and between the Parties hereto and shall supersede all previous communications, representations or agreements, either oral or written between the Parties hereto with respect to the subject matter hereof. Notwithstanding the foregoing, in the event of any inconsistency or conflict between this Agreement and the Participation Agreement or the Governance ILA, the terms of the Participation Agreement and Governance ILA have precedence.

12. **Dispute Resolution:**

In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice of Wake County, North Carolina.

13. **No Waiver of Non-Compliance with Agreement:**

No provision of this Agreement shall be deemed to have been waived by any Party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any Party hereto at any time to require strict performance by the other Party of any provision hereof shall in no way affect the

right of the other Party to thereafter enforce the same. In addition, no waiver or acquiescence by a Party hereto of any breach of any provision hereof by another Party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

14. **Governing Law:**

All matters relating to this Agreement shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Agreement shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

15. **Assignment:**

No Party may sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other Parties.

16. **Independence of the Parties:**

Nothing herein shall be construed to modify, abridge, or deny the authority or discretion of any Party to independently develop, administer, or control transportation projects pursuant to enumerated authority or funding sources separate from those in this Agreement.

17. **Execution in Counterparts/Electronic Version of Agreement:**

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Any Party may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.

18. **No Waiver of Sovereign Immunity:**

Nothing in this Agreement shall be construed to mandate purchase of insurance by any municipality pursuant to N.C.G.S. 160A-485; or to in any other way waive any Party's defense of sovereign or governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law.

19. **No Waiver of Qualified Immunity:**

No officer, agent or employee of any Party shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

20. **Verification of Work Authorization; Iran Divestment Act:**

All Parties, and any permitted subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes. The Parties hereby certify that they, and all permitted subcontractors, if any, are not on the Iran Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58.

21. **No Third-Party Beneficiaries:**

There are no third-party beneficiaries to this Agreement.

22. **E – Verify:**

Parties shall comply with *E-Verify*, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 *et seq.* In addition, to the best of the Parties' knowledge, any subcontractor employed by the Parties as a part of this Agreement shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 *et seq.* In cases of conflict between this Agreement and any of the above incorporated attachments or references, the terms of this Agreement shall prevail.

23. **Companies Boycotting Israel Divestment Act Certification:**

Each Party certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81.

24. **Electronic Signatures:**

Parties acknowledge and agree that the electronic signature application Adobe Sign may be used to execute this Agreement and any associated documents. By selecting "I Agree," "I Accept," or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the Adobe Sign application, Parties consent to be legally bound by the terms and conditions of this Agreement and that such act constitutes Parties' signatures as if signed by Parties in writing. Parties also agree that no certification authority or other third-party verification is necessary to validate the electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of the electronic signature. Parties acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby, through the Adobe Sign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

SIGNATURE PAGES FOLLOW

RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY (d/b/a GoTriangle) By: _____ Brian C. Smith, President and CEO This, the ____ day of _____, 2026.	This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act. _____ Michelle Jeng, Chief Financial Officer for GoTriangle This, the ____ day of _____, 2026.
	Reviewed and Approved as to legal form. _____ T. Byron Smith, General Counsel

NC CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION "CAMPO"

By: _____
Chris Lukasina, Executive Director

ATTEST:

By: _____
Ben Howell, Wake Transit Program Manager

TOWN OF APEX By: _____ Randal E. Vosburg, Town Manager This, the ____ day of _____, 2026.	This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act. _____ Jonathan Griffin, Finance Director This, the ____ day of _____, 2026.
---	--



Exhibit A

Implementing /Operating
Agency

Town of Apex

Parties to
Agreement:

**Apex, CAMPO,
GoTriangle**

Total FY27 Appropriation: **\$65,000**

Project

Mobility Solutions Study

Project ID from Work Plan

TC003-AH

FY 2027 Budget

\$65,000

for project or as amended by the adopted Wake Transit Work Plan

Scope

The project description included in the FY2027 Adopted Wake Transit Work Plan, and as amended, is incorporated herein by reference.

Expected Implementation
Date

7/1/2026

Quarterly Reporting
Deliverables

1. Date RFP/RFQ released for plan/study
2. Date contract awarded for plan/study
3. Estimation of percent completion of scope on quarterly basis
4. Results and/or recommendations of plan/study

Contract #

27-025

65
GENERAL CAPITAL FUNDING AGREEMENT
FOR BUS INFRASTRUCTURE

WAKE TRANSIT FY 2027

This Capital Funding Agreement ("Agreement") is made by and between Research Triangle Regional Public Transportation Authority, d/b/a GoTriangle ("GoTriangle") and the Town of Apex ("Implementing Party") and the Capital Area Metropolitan Planning Organization ("CAMPO"). The foregoing may collectively be referred to as "Parties."

WHEREAS, the Parties to Agreement, who have or may have specific roles in the implementation of public transit and the support of public transit infrastructure in the Wake County area, have determined that it is in their best interest and the best interest of the constituents they represent to coordinate future public transit planning, funding, expansion and construction; and

WHEREAS, an extensive community driven process was used to develop a strategic transit vision document that set forth an enhanced public transit plan for Wake County, referred to as the "Wake County Transit Plan" ("Wake Transit Plan"), and this plan was unveiled on or about December 8, 2015, and adopted by the GoTriangle Board of Trustees on May 25, 2016, the Capital Area Metropolitan Planning Organization's ("CAMPO") Executive Board on May 18, 2016, and the Wake County Board of Commissioners on June 6, 2016; and was subsequently updated and adopted by the CAMPO Executive Board on April 21, 2021, and the GoTriangle Board of Trustees on April 28, 2021; and was updated and adopted by the CAMPO Executive Board and GoTriangle Board of Trustees on November 19, 2025; and

WHEREAS, in conjunction with the Wake Transit Plan, GoTriangle, Wake County, and CAMPO (collectively, "the Governance ILA Parties") adopted the Wake Transit Governance Interlocal Agreement ("Governance ILA") that creates a governance structure for the implementation of the Wake Transit Plan by and through the annual Wake Transit Work Plan; and

WHEREAS, the Governance ILA specifically created the Transit Planning Advisory Committee ("TPAC") and charged the TPAC with coordinating and recommending the planning and implementation aspects of the Wake Transit Work Plan; and

WHEREAS, the Governance ILA Parties, together with the Implementing Party, numerous Wake County municipalities, and other entities, entered into a Master Participation Agreement ("Participation Agreement"), which, among other purposes, established standards that govern the Participation Agreement Parties' eligibility for inclusion of sponsored Implementation Elements in the Wake Transit Work Plan, receipt

of funding allocations from Wake County Transit Tax Revenue, and confirmed the Participation Agreement Parties' roles in carrying out TPAC responsibilities; and

WHEREAS, the FY 2027 Wake Transit Work Plan was developed and recommended by the TPAC, presented for public comment, and adopted, as required, by the Boards of CAMPO and GoTriangle; and

WHEREAS, the FY 2027 Triangle Tax District Wake Operating Ordinance was adopted by the GoTriangle Board of Trustees on June 24, 2026; and

WHEREAS, the Parties desire to implement the components of the FY 2027 Wake Transit Work Plan as adopted by GoTriangle and CAMPO; and

WHEREAS, as stated in the Participation Agreement, all Implementation Elements contained in the Wake Transit Work Plan, whether partially or fully funded with Wake County Transit Tax Revenues, will not move forward until Implementation Agreements, which shall include Capital Funding Agreements and Operating Agreements are executed by and between the Implementing Party; GoTriangle, as administrator of the Special District, and CAMPO, if the Implementing Agreement involves federal or state funding that is otherwise under the distribution and program management responsibility of CAMPO or, regardless of funding source, constitutes a regionally significant project as defined in 23 CFR § 450.104; and

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to, inter alia, N.C.G.S. §§ 160A-20.1; 160A-312; 160A-313; 160A-610; 153A-275; 153A-276; and 153A-449.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants herein contained, the Parties hereto agree as follows:

1. **Term:**

The Agreement shall become effective upon execution by all Parties ("Effective Date"). The term of this Agreement shall be from the Effective Date until December 31, 2029. The Parties may extend the term of this Agreement or may otherwise amend this Agreement as set forth in Section 6.

2. **Purpose:**

The purpose of this Agreement is to outline the details of how the Project(s) listed in Exhibit A attached hereto and incorporated herein by reference, being an approved Project(s) in the Wake County Transit Annual Work Plan, shall be

implemented, in accordance with the requirements of the Participation Agreement.

3. **Responsibilities:**

A. Responsibilities of the Implementing Party.

- (1) The Implementing Party shall provide the Projects listed in Exhibit A and fund the cost of the Projects on an up-front basis, except as provided herein. The Implementing Party is responsible for ensuring funds are available to pay for costs incurred related to Project phases, or invoices, prior to requesting reimbursement from GoTriangle, except in instances where advance payments are requested. Implementing parties may utilize pre-award authority for Capital projects requiring immediate implementation. Pre-award authority may not be exercised until the annual budget has been recommended by the TPAC and adopted by CAMPO and GoTriangle.
- (2) The Wake Transit Work Plan Reimbursement Request and Financial Report Template ("Reimbursement Requests") must be submitted by the Implementing Party at least quarterly but may be as often as it is efficient and effective for the Implementing Party. The reimbursement request shall be emailed to waketransitreimbursement@gotriangle.org.

All Reimbursement Requests must be made using the Wake Transit Work Plan Reimbursement Request and Financial Report Template agreed to by the Parties and must include a signed statement by the Implementing Party's Finance Officer or designee stating that funds were spent in accordance with the Wake Transit Work Plan and with all applicable laws, rules, and regulations, and that the Reimbursement Request includes items due and payable. All Reimbursement Requests shall be based on actual expenses incurred as recorded in the financial system.

- (3) In special circumstances where an advance payment may be required, Reimbursement Requests must be submitted using the Reimbursement Request Template and with a justification for the advance payment request. Advance payments received by the Implementing Party must be disbursed within 72 hours of receipt from GoTriangle.
- (4) Any work for which an Implementing Party receives reimbursement must be performed by June 30 of that fiscal year.
- (5) Reimbursement Requests for expenses incurred as of June 30 shall be submitted by August 10 for the fiscal year in which the work was done.

(6) Further, the Implementing Party shall:

- (a) Ensure that Wake Transit funds provided by GoTriangle are not misappropriated or misdirected to any other account, need, project, or line item, other than as listed in Exhibit A. The Implementing Party shall have an obligation to return any reimbursed or advanced payments that were misappropriated or expended outside the approved Project(s) listed in Exhibit A.
 - (b) Monitor award activities, to include sub-awards, to provide reasonable assurance that funds are spent in compliance with applicable requirements. Responsibilities include accounting for receipts and expenditures, cash management, maintaining adequate financial records, and refunding disallowed expenditures.
 - (c) Maintain a financial management system adequate for monitoring the accumulation of costs.
- (7) The implementing party agrees to coordinate with the municipality as it relates to transit service that enters the local municipal area. These coordination efforts should include discussions as it relates to, but are not limited to, route planning and development, schedule development, passenger amenities, maintenance and upkeep of passenger amenities, public engagement and advertisement in relation to the new services, etc. These coordination efforts shall occur prior to the execution of the transit services.

B. Responsibilities of GoTriangle

- (1) GoTriangle, as administrator of the Triangle Tax District, shall have the responsibilities and duties as set forth in the Governance ILA, including appropriating funds from the FY 2027 Triangle Tax District Capital Ordinance in accordance with the Governance ILA. The specific appropriation and approved project budgets are further detailed in Exhibit A and in the FY 2027 Wake Transit Work Plan.
- (2) GoTriangle, upon receipt of a Reimbursement Request, shall verify within five business days whether the Reimbursement Request is complete; is within the approved budget; is within the annual work plan; and is in accordance with the Wake Transit Billing, Payment, and Reimbursement Policy and Guidelines, adopted by GoTriangle on June 28, 2017, and CAMPO on June 21, 2017, and subsequently amended and adopted by GoTriangle on June 23, 2021, and CAMPO on June 16, 2021. Payment will be remitted within thirty (30) days of verification to the Implementing Party according to the payment instructions on file.

If GoTriangle is unable to verify the Reimbursement Request, GoTriangle shall, within two (2) business days, notify the Implementing Party in writing of the deficiencies in the Reimbursement Request. The Implementing Party may thereafter submit a revised Reimbursement Request (“Revised Reimbursement Request”), which shall be verified within five (5) business days of receipt. If the Revised Reimbursement Request is denied, the Implementing Party may place the item on the next TPAC agenda for discussion and a recommendation to GoTriangle and the Implementing Party.

- (3) Where advance payments are requested, GoTriangle, after due consideration of the request, will remit funds via payment instructions on file.
- (4) All disbursements from GoTriangle shall be in accordance with North Carolina General Statute 159 Article 3, known as the North Carolina Budget and Fiscal Control Act, and the Wake Transit Financial Policies and Guidelines, adopted by GoTriangle on June 28, 2017, and CAMPO on June 21, 2017, and subsequently amended and adopted by GoTriangle on June 23, 2021, and CAMPO on June 16, 2021.

4. **Progress Reporting:**

Unless otherwise agreed in writing between Parties, the Implementing Party agrees to provide quarterly and annual reporting per the Master Participation Agreement for the Reported Deliverables as identified in Exhibit A using a Reporting Template agreed to by the Parties. The Implementing Party shall include in its quarterly reports any details of issues that may impact delivery of the Projects identified in Exhibit A. If the Implementing Party is allocating local funds towards Projects identified in Exhibit A, those expenditures shall be disclosed as part of its quarterly and annual reports.

The Annual Wake Transit Report prepared by GoTriangle shall provide information regarding how strategic public transit objectives have been met and shall include the progress achieved, the strategies being followed, and performance targets and key milestones for capital projects and operating services.

Quarterly Status Reports prepared by GoTriangle and/or CAMPO shall provide information regarding progress toward strategic objectives outlined in the Wake Transit Work Plan and include the performance achieved, the strategies being followed, and performance targets and key milestones for Capital Projects and operating services identified in the Wake Transit Work Plan. GoTriangle shall

include in its Quarterly Status Reports any details of issues that may impact delivery of funding for the Projects identified in Exhibit A.

The Parties agree to share supporting documentation, if requested, in addition to their quarterly and annual reporting, in a timely manner.

5. **Further Agreements:**

The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of this Agreement. The Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Agreement.

6. **Amendment:**

Any extension of the term of this Agreement and/or change to the content of this Agreement shall be by written amendment signed by all Parties.

7. **Breach; Termination:**

In the event that (1) the Implementing Party is not able or fails to provide a Project(s) as required by the Agreement; or (2) GoTriangle is not able or fails to provide funding for a Project(s) as required by the Agreement; or (3) GoTriangle fails to fulfill its responsibilities and duties as set out in the Governance ILA; or (4) any Party fails to fulfill a responsibility or duty of this Agreement; or (5) any Party withdraws from the Master Participation Agreement (separately each a “breach”), any Party to this Agreement shall notify the Clerk to the TPAC Committee and the other Parties to this Agreement. The Non-breaching Party may place the item on a TPAC agenda for discussion and a non-binding recommendation to the Parties.

The Non-breaching Party may provide the Breaching Party with a period of time to cure the breach to the reasonable satisfaction of the Non-breaching Party. If the breach is not timely cured, or cannot be cured, the Non-breaching Party may (1) elect to terminate this Agreement in full; or (2) elect to terminate this Agreement only as to one or more Projects listed in Exhibit A. In the event of breach of this Agreement, the Parties shall be entitled to such legal or equitable remedy as may be available, including specific performance.

In the event the Agreement is terminated for any reason other than by the end of the term of the Agreement:

- (a) The Implementing Party shall not be required to continue implementing the Projects, but may elect to continue implementing the Projects using funds from sources other than the Wake Transit Tax.
- (b) GoTriangle shall reimburse the Implementing Party for any expenses for the Projects that have been approved in the annual work plan and made in reliance on this Agreement, whether or not a Reimbursement Request has been made by Implementing Party at the time of termination. The Implementing Party shall have sixty (60) days after the date of termination to submit all Reimbursement Requests.
- (c) The Implementing Party shall report the final status for its deliverable and GoTriangle shall do a final quarterly report and shall issue the annual report required by this Agreement.

8. **Record Retention:**

All parties must adhere to record retention guidelines as set forth in North Carolina General Statutes or federal guidelines as appropriate.

9. **Notices:**

Any notice given pursuant to this Agreement shall be deemed given if delivered by hand or if deposited in the United States Mail, postage paid, certified mail, return receipt requested and addressed as follows:

If to GoTriangle:
GoTriangle
Attn: President and CEO
4600 Emperor Blvd
Durham, NC 27703

And with a copy to:
GoTriangle
Attn: General Counsel
4600 Emperor Blvd
Durham, NC 27703

If to the Town of Apex:
Town of Apex
Attn: Town Manager
P.O. Box 250
Apex, NC 27502

With a copy to:
Town of Apex
Attn: Town Attorney
P.O. Box 250
Apex, NC 27502

10. **Representations and Warranties:**

The Parties each represent, covenant and warrant for the other's benefit as follows:

A. Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and the individuals signing this Agreement have the right and power to do so. This Agreement is a valid and binding obligation of each Party.

B. To the knowledge of each Party, neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which a Party is bound or constitutes a default under any of the foregoing.

C. To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such party (or against any other person) affecting such Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither such Party's execution and delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

D. Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Capital Funding Agreement.

11. **Merger and Precedence:**

The provisions of this Agreement, including all Exhibits and attachments, constitute the entire agreement by and between the Parties hereto and shall supersede all previous communications, representations or agreements, either oral or written between the Parties hereto with respect to the subject matter hereof. Notwithstanding the foregoing, in the event of any inconsistency or conflict

between this Agreement and the Participation Agreement or the Governance ILA, the terms of the Participation Agreement and Governance ILA have precedence.

12. **Dispute Resolution:**

In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice of Wake County, North Carolina.

13. **No Waiver of Non-Compliance with Agreement:**

No provision of this Agreement shall be deemed to have been waived by any Party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any Party hereto at any time to require strict performance by the other Party of any provision hereof shall in no way affect the right of the other Party to thereafter enforce the same. In addition, no waiver or acquiescence by a Party hereto of any breach of any provision hereof by another Party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

14. **Governing Law:**

All matters relating to this Agreement shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Agreement shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

15. **Assignment:**

No Party may sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other Parties.

16. **Independence of the Parties:**

Nothing herein shall be construed to modify, abridge, or deny the authority or discretion of any Party to independently develop, administer, or control

transportation projects pursuant to enumerated authority or funding sources separate from those in this Agreement.

17. **Execution in Counterparts/Electronic Version of Agreement:**

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Any Party may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.

18. **No Waiver of Sovereign Immunity:**

Nothing in this Agreement shall be construed to mandate purchase of insurance by any municipality pursuant to N.C.G.S. 160A-485; or to in any other way waive any Party's defense of sovereign or governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law.

19. **No Waiver of Qualified Immunity:**

No officer, agent or employee of any Party shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

20. **Verification of Work Authorization; Iran Divestment Act:**

All Parties, and any permitted subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes. The Parties hereby certify that they, and all permitted subcontractors, if any, are not on the Iran Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58.

21. **No Third-Party Beneficiaries:**

There are no third-party beneficiaries to this Agreement.

22. **E – Verify:**

Parties shall comply with *E-Verify*, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 *et seq.* In addition, to the best of the Parties' knowledge, any subcontractor employed by the Parties as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 *et seq.* In cases of conflict between this Agreement and any of the above incorporated attachments or references, the terms of this Agreement shall prevail.

23. **Companies Boycotting Israel Divestment Act Certification:**

Each Party certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81.

24. **Electronic Signatures:**

Parties acknowledge and agree that the electronic signature application Adobe Sign may be used to execute this Agreement and any associated documents. By selecting "I Agree," "I Accept," or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the Adobe Sign application, Parties consent to be legally bound by the terms and conditions of this Agreement and that such act constitutes Parties' signatures as if signed by Parties in writing. Parties also agree that no certification authority or other third-party verification is necessary to validate the electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of the electronic signature. Parties acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby, through the Adobe Sign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

SIGNATURE PAGES FOLLOW

RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY (d/b/a GoTriangle) By: _____ Brian C. Smith, President and CEO This, the ____ day of _____, 2026.	This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act. _____ Michelle Jeng, Chief Financial Officer for GoTriangle This, the ____ day of _____, 2026.
	Reviewed and Approved as to legal form. _____ T. Byron Smith, General Counsel

NC CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION "CAMPO"

By: _____
Chris Lukasina, Executive Director

ATTEST:

By: _____
Ben Howell, Wake Transit Program Manager

TOWN OF APEX By: _____ Randal E. Vosburg, Town Manager This, the ____ day of _____, 2026.	This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act. _____ Jonathan Griffin, Finance Director This, the ____ day of _____, 2026.
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Exhibit A

Implementing /Operating
Agency

Town of Apex

Parties to
Agreement:

**Apex,
GoTriangle**

Total FY27 Appropriation **\$300,000**

Project **Apex Mobility Hub Phase 1 Final Design**

Project ID from Work Plan **TC002-BS**

FY 2027 Budget **\$300,000** for project or as amended by the adopted Wake Transit Work Plan

Scope The project description included in the FY2027 Adopted Wake Transit Work Plan, and as amended, is incorporated herein by reference.

Expected Implementation
Date 7/1/2026

Quarterly Reporting
Deliverables 1. Contract award date for site or program of sites
 2. Number of sites with improvements completed/constructed per quarter. If none completed for a quarter, report on the phase of ongoing site improvements.

Contract # **27-024**

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 10, 2026

Item Details

Presenter(s): Russell H. Dalton, P.E., Traffic Engineering Manager

Department(s): Transportation and Infrastructure Development

Requested Motion

Motion to approve a Transportation Infrastructure Reimbursement Agreement for the Town of Apex to reimburse the Town of Holly Springs \$100,000 toward the design and installation of a pedestrian hybrid beacon traffic signal at the Middle Creek Greenway crossing of Sunset Lake Road and authorize the Town Manager, or their designee, to execute the agreement on behalf of the Town.

Approval Recommended?

Yes

Item Details

The Town of Apex constructed a crosswalk across Sunset Lake Road serving the Middle Creek Greenway connection between Apex and Holly Springs. The existing crosswalk consists of high-visibility markings and signs as well as a concrete median refuge. Town of Holly Springs staff have since requested the addition of warning lights or a signalized crossing. NCDOT reviewed and recommended a signalized crossing which would consist of poles on both sides of Sunset Lake Road supporting pedestrian hybrid beacon signal heads to stop vehicular traffic on both approaches controlled by pedestrian push buttons with crosswalk signals. \$100,000 has been allocated in the FY27 budget under Capital Improvement Project P0006 (account number P0006.220.9200.57020).

Attachments

- CN4-A1: Agreement - Transportation and Infrastructure Reimbursement Agreement - Design and Installation of a Pedestrian Hybrid Beacon Traffic Signal at Middle Creek Greenway Crossing of Sunset Lake Road - Reimbursing the Town of Holly Springs \$100,000



STATE OF NORTH CAROLINA)
)
WAKE COUNTY)

TRANSPORTATION INFRASTRUCTURE
REIMBURSEMENT AGREEMENT

This TRANSPORTATION INFRASTRUCTURE REIMBURSEMENT AGREEMENT (this “**Agreement**”) is entered into this the ____ day of _____, 2026, by and between the TOWN OF HOLLY SPRINGS, NORTH CAROLINA, a municipal corporation organized and existing under the laws of the State of North Carolina (“**Holly Springs**”), and the TOWN OF APEX, NORTH CAROLINA, a municipal corporation organized and existing under the laws of the State of North Carolina (“**Apex**”) (collectively, the “**Parties**”).

RECITALS

WHEREAS, Apex and Holly Springs desire to provide safe and efficient transportation infrastructure in the areas within and proximate to their corporate boundaries;

WHEREAS, Holly Springs is willing and able to improve the Middle Creek Greenway crosswalk on Sunset Lake Road (the “**Crosswalk**”), located within the corporate boundaries of Apex and Holly Springs at the municipal boundary agreement line which runs along Sunset Lake Road, for the purpose of enhancing the safety of the Crosswalk;

WHEREAS, the project to design and install a pedestrian hybrid beacon mounted on metal poles (the “**Improvements**”) at the Crosswalk has been contemplated by both Parties and Apex has allocated \$100,000 in its budget for fiscal year 2027 to support this project which will be completed by Holly Springs;

WHEREAS, Apex and Holly Springs as neighbors in the region collaborate on providing safe and efficient transportation infrastructure to their residents and visitors;

WHEREAS, Apex is agreeable to reimburse Holly Springs for a portion of the Improvements; and

WHEREAS, this Agreement is authorized by N.C.G.S. § 160A-296 and § 160A-461.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. RECITALS; PURPOSE. The recitals are incorporated into this Agreement. This Agreement shall be effective upon execution by both parties (“**Effective Date**”). This Purpose of this Agreement is for Apex to reimburse Holly Springs for a portion of the Improvements expenses, including expenses for design, acquisition of property rights, and construction.
2. COMPENSATION: Apex shall pay to Holly Springs up to fifty percent (50%) of the total cost of the Improvements, or the total sum of one hundred thousand dollars (\$100,000.00), whichever is less. Payment shall be made within thirty (30) days of receipt of an invoice from Holly Springs. Invoices for payment shall include documentation that the project is completed and that North Carolina Department of Transportation has accepted the beacon signal for perpetual

maintenance.

3. DELAY BEYOND THE CONTROL OF THE PARTIES. Neither Holly Springs nor Apex, having taken commercially reasonable precautions, shall be in default of the provisions of this Agreement 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.
4. NO JOINT AGENCY AND NO PERSONNEL. No joint agency is established by this Agreement, and this Agreement does not create a partnership, joint venture, other joint endeavor, joint ownership, joint operations, or personnel sharing of any kind. No joint personnel are needed by the Parties to carry out this Agreement; this Agreement does not provide for the appointment of any personnel joint or otherwise.
5. AMENDMENT. This Agreement may be amended at any time by the mutual written consent of both Parties.
6. NOTICE. All notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, or deposited in the United States mail, postage prepaid, addressed as follows:

The notice address for Holly Springs shall be:

Attn: Randy Harrington, Town Manager
Town of Holly Springs
PO Box 8
Holly Springs, NC 27540

The notice address for Apex shall be:

Attn: Randal E. Vosburg, Town Manager
Town of Apex
PO Box 250
Apex, NC 27502

7. DISPUTE RESOLUTION; GOVERNING LAW; VENUE. In the event a dispute arises between the Parties regarding performance under this Agreement, the Parties agree to bargain in good faith towards a mutual resolution. If the Parties, after honest good faith negotiations, cannot reach a mutually agreeable resolution of the dispute, then a Party may adjudicate its dispute as allowed by North Carolina State Laws. This Agreement shall be governed by the laws of the State of North Carolina. Any and all suits or actions related to this Agreement shall be brought in Wake County, North Carolina.
8. NON-EXCLUSIVE REMEDIES/NO WAIVER. The selection of one or more remedies for breach shall not limit a Party's right to invoke any other remedy available under Agreement or by law. No delay, omission or forbearance to exercise any right, power or remedy accruing to

a Party shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default. Every right, power or remedy may be exercised from time to time and as often as deemed expedient.

9. NO THIRD-PARTY BENEFICIARIES. There are no third-party beneficiaries to Agreement.
10. ELECTRONIC SIGNATURES. Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this Agreement 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 Apex's Electronic Signature Policy and intend to be bound by the Agreement and any related documents. If electronic signatures are used the Agreement shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

Remainder of page left blank intentionally.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officials.

APEX, Town of Apex

Randal E. Vosburg, Town Manager

Date

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

Jonathan Griffin, Finance Director

Date

HOLLY SPRINGS, Town of Holly Springs

Randy Harrington, Town Manager

Date

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 10, 2026

Item Details

Presenter(s): Don Reeves, Sustainability Program Coordinator

Department(s): Budget and Performance Management

Requested Motion

Motion to ratify the oral agreement between the Town of Apex and Enpira Inc. for energy management software licensing and related professional services beginning July 1, 2026, through June 30, 2027, in an amount not to exceed \$25,000, and authorize the Town Manager, or their designee, to execute the written agreement on behalf of the Town.

Approval Recommended?

Yes

Item Details

Enpira Inc. provides the Town with an energy management software platform used to monitor and analyze utility consumption and costs for Town-owned facilities and accounts. The Town has utilized the Enpira platform since 2023.

Under the proposed FY 2026-27 agreement, Enpira will continue to provide software licensing and monitoring for the Town's electricity, natural gas, water, solar generation, and fleet fuel data. Platform services include interactive dashboards, building and interval-data analysis, anomaly and leak alerts, utility benchmarking, ENERGY STAR Portfolio Manager integration, Scope 1 and Scope 2 emissions reporting, budget forecasting, fleet fuel tracking, weather normalization, account and meter tracking, data export, and solar generation tracking. Professional services include data auditing and validation, rate simulation, on-demand energy management advisory services, and customized analytics and reporting. The renewal also includes development of new upload software to accommodate the Town's updated metering system formats.

Services for FY 2026-27 began July 1, 2026, prior to execution of the written agreement. Council action is therefore requested to ratify the oral agreement under which services have continued and to authorize execution of the written agreement governing services through June 30, 2027.

The total cost of the agreement is \$25,000 for FY 2026-27. Funding is included within the adopted Budget & Performance Management Department budget. No additional appropriation is requested as part of this action.

Attachments

- CN5-A1: Standard Services Agreement - Agreement Ratification - Enpira, Inc. - Energy Management Software Licensing - July 1, 2026 through June 30, 2027



THIS STANDARD SERVICES AGREEMENT (hereinafter “Agreement”) is entered into this between, Enpira Inc., a Delaware corporation with its principal business offices located at 5000 Centre Green Way Ste 500, Cary, NC 27513 (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:

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:

Enpira software platform licenses and monitoring of all Town-owned utility accounts and facilities, including electricity, natural gas, water, solar generation, and fleet fuel data. Platform features continuing under this renewal include interactive dashboards, building operation/interval data analysis, anomaly and leak alerts, calendarization, EUI benchmarking, ENERGY STAR Portfolio Manager integration, automated Scope 1 & 2 emissions reporting, budget forecasting, fleet fuel tracking, weather normalization, account/meter/rate tracking, data export, and solar generation tracking. Professional services continuing under this renewal include data auditing and validation, rate simulation, on-demand energy management advisory, and custom analytics/reporting. This renewal also incorporates development of new upload software to accommodate Apex's updated metering system formats.

The Quote #1107 dated 02/23/2026, Statement of Work dated June 6, 2026, and Supplemental Enpira Software License Terms are incorporated herein. In the event of a conflict between the terms of the attached Quote, Statement of Work, or Supplemental Enpira Software License Terms and this Agreement, this Agreement 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. Upon request by the Town, Contractor will provide plans and specifications prior to engaging in any services under this Agreement. Contractor hereby acknowledges that it is fully licensed to perform the work contemplated by this Agreement. In the event of a conflict between any provided plans and specifications and this Agreement, this Agreement shall control.

3. TIME OF COMMENCEMENT AND COMPLETION.

Contractor shall commence the work required in this Agreement no more than **1** days after the date of execution of this Agreement, and the Contractor shall complete entire work no later than **June 30th, 2027** . If a Scope of Services is provided Contractor shall also comply with all timelines and deadlines documented in the Scope of Services. 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 Agreement 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 \$25,000.00** to be paid according to the following schedule: **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 defend, pay on behalf of, 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 Agreement and any attached specifications.

This Agreement shall be governed by the laws of the State of North Carolina. Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or nonperformance of, this Agreement shall be brought in the General Court of Justice of North Carolina sitting in Wake County, North Carolina, or the United States District Court sitting in Wake County, North Carolina, and it is agreed by the Parties that no other court shall have jurisdiction or venue with respect to such suits or actions.

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. 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.

9. 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.

10. INSURANCE.

The Contractor shall maintain valid general liability insurance in the minimum amount of \$1,000,000.00, commercial automobile liability insurance in the minimum amount of \$1,000,000.00, 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 and show proof of workers' compensation insurance within the statutory limits, and employer's liability insurance in the minimum amount of \$1,000,000.00. 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.

11. PRE-PROJECT SAFETY REVIEW MEETING.

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

12. DEFAULT.

In the event of substantial failure by Contractor to perform in accordance with the terms of this Agreement, 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 Agreement.

13. TERMINATION FOR CONVENIENCE.

Town shall have the right to terminate this Agreement 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.

14. NOTICE.

Any formal notice, demand, or request required by or made in connection with this Agreement 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
Daniel Kauffman	Attn: Don Reeves
5000 Centre Green Way Ste 500	Department: Budget & Performance
Cary NC, 27513	PO Box 250
dk@enpira.io	Apex, NC 27502
	don.reeves@apexnc.org
	Invoices: Apex.Invoices@apexnc.org

15. 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 Agreement 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.

16. NONWAIVER FOR BREACH.

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

17. CONSTRUCTION.

Should any portion of this Agreement 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.

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

19. SEVERABILITY.

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

20. COUNTERPARTS.

This Agreement 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.

21. MODIFICATION.

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

22. BINDING

EFFECT.

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

23. 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 Agreement 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.

24. INDEPENDENT

CONTRACTOR.

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

25. NON-APPROPRIATION.

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

26. 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 Agreement 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.

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.

28. ELECTRONIC SIGNATURE.

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

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 10, 2026

Item Details

Presenter(s): Trevor Materasso, Deputy Chief of Police

Department(s): Police

Requested Motion

Motion to ratify the oral agreement between the Town of Apex and Motorola Solutions, Inc. for radio system maintenance, support, and related services beginning August 1, 2026, through July 31, 2027, in an amount not to exceed \$117,194.05, and authorize the Town Manager, or their designee, to execute the written agreement on behalf of the Town.

Approval Recommended?

Yes

Item Details

Motorola Solutions, Inc. provides maintenance, technical support, software and system upgrade services, and preventive maintenance for the Town's Motorola radio communications system. These services support radio equipment utilized by multiple Town departments, including Police, Emergency Communications, Streets, Solid Waste, Parks, Electric, and Water Resources.

Under the proposed agreement, Motorola will continue to provide recurring support services for the Town's ASTRO radio system, including the ASTRO System Essential Plus package, system upgrade services, implementation services, local device preventive maintenance, and local device support. The agreement supports the continued operation and maintenance of the Town's radio communications infrastructure and associated equipment. Services under the agreement began August 1, 2026, prior to execution of the written agreement. Council action is therefore requested to ratify the oral agreement under which services have continued and to authorize execution of the written agreement governing services through July 31, 2027.

The total cost of the agreement is \$117,194.05. Funding for these services is included within the applicable FY 2026-27 departmental budgets. No additional appropriation is requested as part of this action.

Attachments

- CN6-A1: Agreement - Service Agreement between TOA and Motorola Solutions Radio Equipment for Various Town Departments - through July 31, 2027





500 W Monroe Street
Chicago, IL. 60661
(888) 325-9336

SERVICE AGREEMENT

Quote Number : QUOTE-3576807
Contract Number: USC000005861
Contract Modifier: R02-APR-26 04:14:30

Date:04/04/2026

Company Name: APEX, TOWN OF

Attn:

Billing Address: 205 SAUNDERS ST

City, State, Zip: APEX , NC, 27502

Customer Contact: James Newhaus

Phone: +19193628661

Required P.O. #

PO # :

Customer # :1000631095

Bill to Tag # :

Contract Start Date :01-Aug-2026

Contract End Date :31-Jul-2027

Payment Cycle :ANNUALLY

Qty	Service Name	Service Description	Extended Amt	
	SVC02SVC0201A	ASTRO SUA II UO IMPLEMENTATION SERVICES	\$0.00	
	SVC02SVC0344A	RELEASE IMPLEMENTATION TRAINING	\$0.00	
	SVC02SVC0343A	RELEASE IMPACT TRAINING	\$0.00	
	LSV01S01107A	ASTRO SYSTEM ESSENTIAL PLUS PACKAGE	\$33,310.25	
	SVC04SVC0169A	SYSTEM UPGRADE AGREEMENT II	\$24,906.27	
	SVC02SVC0433A	ASTRO SUA II FIELD IMPLEMENTATN SVC	\$2,109.17	
	LSV00S00324A	LOCAL DEVICE PREVENTATIVE MAINTENANCE	\$28,434.18	
	LSV00Q00572A	LOCAL DEVICE SUPPORT	\$28,434.18	
		Subtotal - Recurring Services	\$9,766.17	\$117,194.05
		Subtotal - One-Time Event Services	\$0.00	\$0.00
		Total		\$117,194.05
		THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA		

SPECIAL INSTRUCTIONS:

I have received Applicable Statements of Work which describe the Services provided on this Agreement. Motorola's Terms and Conditions are attached hereto and incorporated herein by reference. By signing below, Customer



500 W Monroe Street
Chicago, IL. 60661
(888) 325-9336

SERVICE AGREEMENT

Quote Number : QUOTE-3576807
Contract Number: USC000005861
Contract Modifier: R02-APR-26 04:14:30

acknowledges these terms and conditions govern all Services under this Agreement.

Town of Apex

X _____

Randal E. Vosburg, Town Manager
Email: [empty member email]
Timestamp: [empty signing timestamp]

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

X _____

[empty member name] , Finance Director
Email: jon.griffin@apexnc.org
Timestamp: [empty signing timestamp]

Motorola Solutions, Inc.

X _____

[empty member name] , Motorola Representative
Email: kelly.nix@motorolasolutions.com
Timestamp: [empty signing timestamp]

Company Name : APEX, TOWN OF

Contract Number : USC000005861 Contract Modifier : R02-APR-26 04:14:30 Contract Start Date : 01-Aug-2026

Contract End Date : 31-Jul-2027



500 W Monroe Street
Chicago, IL. 60661
(888) 325-9336

SERVICE AGREEMENT

Quote Number : QUOTE-3576807
Contract Number: USC000005861
Contract Modifier: R02-APR-26 04:14:30

Service Terms and Conditions

Motorola Solutions Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

Section 1. APPLICABILITY

1.1 These Maintenance Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2. DEFINITIONS AND INTERPRETATION

2.1 "Agreement" means these Maintenance Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Maintenance Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2 "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3 "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3. ACCEPTANCE

Customer accepts these Maintenance Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

Section 4. SCOPE OF SERVICES

4.1 Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2 If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3 If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4 All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5 Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6 If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7 Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this.

Section 5. EXCLUDED SERVICES

5.1 Service excludes the repair or replacement of Equipment that has become ~~corroded~~ or damaged from use in other than the normal, customary, intended, and



SERVICE AGREEMENT

500 W Monroe Street
Chicago, IL. 60661
(888) 325-9336

Quote Number : QUOTE-3576807
Contract Number: USC000005861
Contract Modifier: R02-APR-26 04:14:30

authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2 Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

5.3 This Agreement pricing provided does not take into account prevailing wage requirement. Should prevailing wage regulations be applicable to this project, the pricing shall be subject to change to reflect compliance with those regulations.

Section 6. TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

Section 7. CUSTOMER CONTACT

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

Section 8. INVOICING AND PAYMENT

8.1 Customer affirms that a purchase order or notice to proceed is not required for the duration of this service contract and will appropriate funds each year through the contract end date. Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date

8.2 Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity. The Customer will pay all invoices as received from Motorola. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

8.3 For multi-year service agreements, at the end of the first year of the Agreement and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, all Items, Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. All items, not seasonally adjusted shall be used as the measure of CPI for this price adjustment. Measurement will take place once the annual average for the new year has been posted by the Bureau of Labor Statistics. For purposes of illustration, if in year 5 the CPI reported an increase of 8%, Motorola may increase the Year 6 price by 5% (8%-3% base).

Section 9. WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10. DEFAULT/TERMINATION

10.1 If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement. - Page 202 -



SERVICE AGREEMENT

500 W Monroe Street
Chicago, IL. 60661
(888) 325-9336

Quote Number : QUOTE-3576807
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10.2 Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

10.3 If the Customer terminates this Agreement before the end of the Term, for any reason other than Motorola default, then the Customer will pay to Motorola an early termination fee equal to the discount applied to the last three (3) years of Service payments for the original Term.

Section 11. LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement.

ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR

THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

Section 12. EXCLUSIVE TERMS AND CONDITIONS

12.1 This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2 Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1 Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2 Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3 This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

Section 14. FCC LICENSES AND OTHER AUTHORIZATIONS

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

Section 15. COVENANT NOT TO EMPLOY

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.



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Chicago, IL. 60661
(888) 325-9336

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Section 16. MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

Section 17. SOFTWARE, SUA, VIDEO AND SUBSCRIPTION SERVICES

All software, SUA, video and subscription services provided by Motorola are governed by the Motorola Solutions Customer Agreement available at: https://www.motorolasolutions.com/en_us/about/legal/communications_terms.html.
(https://www.motorolasolutions.com/en_us/about/legal/communications_terms.html)

Section 18. GENERAL TERMS

18.1 If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

18.2 This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed.

18.3 Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

18.4 Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

18.5 Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

18.6 Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event.

18.7 THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.

18.8 If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.

18.9 This Agreement may be executed in one or more counterparts, all of which shall be considered part of the Agreement. The parties may execute this Agreement in writing, or by electronic signature, and any such electronic signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

Revised July 2, 2025

Motorola Solutions Customer Agreement

This Motorola Solutions Customer Agreement (the "**MCA**") is entered into between Motorola Solutions, Inc., and affiliated companies, with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 ("**Motorola**") and the entity purchasing Products (as defined below) from Motorola ("**Customer**"). Motorola and Customer will each be referred to herein as a "**Party**" and collectively as the "**Parties**". This Agreement below is effective as of the earlier of (a) the first

purchase of a Product from Motorola, and (b) the date of the last signature on the Agreement (the “**Effective Date**”).

1. Agreement.

- 1.1. Scope; Agreement Documents. This MCA governs Customer’s purchase of Products (as defined below) from Motorola. Additional terms and conditions applicable to specific Products are set forth in one or more agreed upon addenda incorporated within this MCA (each an “**Addendum**”, and collectively the “**Addenda**”). This MCA, the applicable Addenda, and Proposal collectively form the Parties’ “**Agreement**”.
- 1.2. Order of Precedence. In interpreting this Agreement and resolving any ambiguities each Addendum will control with respect to conflicting terms in the Agreement, but only as applicable to the Products described in such Addendum. The Proposal will control with respect to conflicting terms in the MCA or any Addenda, but only as applicable to the Products and Services described in the Proposal.

2. Definitions.

“**Authorized Users**” means Customer’s employees and contractors engaged for the purpose of supporting or using the Products and Services on behalf of Customer, and that are not competitors of Motorola, and the entities (if any) specified in a Proposal or otherwise approved by Motorola in writing (email from an authorized Motorola signatory accepted), which may include affiliates or other Customer agencies.

“**Change Order**” means a written amendment to this Agreement after the Effective Date.

“**Communications System**” is a solution that includes at least one radio Product, whether devices, software, or infrastructure, and requires Integration Services to deploy such radio Product at a Customer Site or onto any Customer-Provided Equipment or Equipment provided to Customer.

“**Contract Price**” or “**Fees**” means the charges applicable to the Products, excluding applicable sales or similar taxes and freight charges.

“**Confidential Information**” means any and all non-public information provided by one Party to the other that is disclosed under this Agreement in oral, written, graphic, machine recognizable, or sample form, being clearly designated, labeled or marked as confidential or its equivalent or that a reasonable business person would consider non-public and confidential by its nature. With respect to Motorola, Confidential Information will also include Products, and Documentation, as well as any other information relating to the Products.

“**Customer Data**” has the meaning given to it in the DPA.

“**Customer-Provided Equipment**” means components, including equipment and software, not provided by Motorola which may be used with the Products.

“**Data Processing Addendum**” or “**DPA**” means the Mo



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(https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/motorola_solutions_united_states_data_processing_addendum_online_version.pdf)Addendum
(https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/motorola_solutions_united_states_data_processing_addendum_online_version.pdf)

applicable to processing of data, including Customer Data, as updated, supplemented, or superseded from time to time. The DPA is incorporated into and made a part of this Agreement for all purposes pertaining to the contents of the DPA. Where terms or provisions in the Agreement conflict with terms or provisions of the DPA, the terms or provisions of the DPA will control with respect to the contents of the DPA.

“Delivery” means the applicable delivery for a Product as described in Section 5.7 of this Agreement. **“Documentation”** means the documentation for the Products, or data, that is delivered or made available with the Products that specifies technical and performance features, capabilities, users, or operation, including training manuals, and other deliverables, such as reports, specifications, designs, plans, drawings, analytics, or other information.

“Equipment” means hardware provided by Motorola.

“Equipment Lease-Purchase Agreement” means the agreement by which Customer finances all or a portion of the Contract Price.

“Feedback” means comments or information, in oral or written form, given to Motorola by Customer or Authorized Users, including end users, in connection with or relating to the Products.

“Integration Services” means the design, deployment, implementation, and integration Services provided by Motorola in order to design, install, set up, configure, and/or integrate the applicable Products as agreed upon by the Parties.

“Licensed Software” means software which is made available to Customer by Motorola (for example software preinstalled on Equipment, accessible via a website provided by Motorola, or software installed on or made available for Customer-Provided Equipment) and is licensed to Customer by Motorola.

“Lifecycle Management Services” or **“LMS”** means upgrade services as set out in the applicable Proposal.

“Maintenance and Support Services” means the break/fix maintenance, technical support, or other Services described in the applicable Proposal.



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“Motorola Data” means data owned by Motorola and made available to Customer in connection with the

Products;

“Motorola Materials” means proprietary equipment, hardware, content, software, tools, data, and other materials, including designs, utilities, models, methodologies, systems, and specifications, which Motorola has developed or licensed from third parties (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, or derivative works of the foregoing, whether made by Motorola or another party). Products, Motorola Data, Third-Party Data (as defined in the DPA), and Documentation, are considered Motorola Materials.

“Non-Motorola Materials” means collectively, Customer or third-party equipment, software, services, hardware, content, and data that is not provided by Motorola.

“Proposal” means solution descriptions, pricing, equipment lists, statements of work (“**SOW**”), schedules, technical specifications, quotes, order forms, and other documents setting forth the Products to be purchased by Customer and provided by Motorola. The Proposal may also include an Acceptance Test Plan (“**ATP**”); a “Payment” Form (Communications System purchase only); or a “System Acceptance Certificate” (Communications System only), depending on the Products purchased by Customer.

“Products” or **“Product”** is how the Equipment, Licensed Software and Services being purchased by the Customer is collectively referred to in this Agreement (collectively as “Products”, or individually as a “Product”).

“Professional Services” are services provided by Motorola to Customer under this Agreement, including Integration Services, the nature and scope of which are more fully described in the Proposal.

“Prohibited Jurisdiction” means any jurisdiction in which the provision of such Products is prohibited under applicable laws or regulations.

“Services” means services, including access to services, as described in the Proposal, and includes Integration Services, Subscription Services, Professional Services, Maintenance & Support Services, and Lifecycle Management Services provided by Motorola.

“Service Completion Date” means the date of Motorola’s completion of the Services described in a Proposal. **“Service Use Data”** has the meaning given to it in the DPA.

“Site” or **“Sites”** means the location where the Integration Services, Lifecycle Management Services, or Maintenance and Support Services will take place.

“Software-as-a-Service” or **“SaaS”** means a solution that includes at least one Subscription Service and associated Licensed Software, which may include, as an example,

“Software System” means a solution that includes at least one Licensed Software Product and requires Integration Services to deploy such Licensed Software Product at a Customer Site or onto any Customer-Provided Equipment or Equipment provided by or made available to Customer by Motorola.

“Subscription” means a recurring payment for Products, as set out in the Proposal.

“Subscription Services” or **“Recurring Services”** means Services, including access to Services, paid for on a subscription basis. Subscription Services includes services available through SaaS Products.

“Term” means the term of this MCA which will commence on the Effective Date and continue until six (6) months after the later of (a) the termination, expiration, or discontinuance of Services under the last Proposal in effect, or (b) the expiration of all applicable warranty periods, unless the MCA is earlier terminated as set forth herein.

3. Products and Services.

3.1. Products. Motorola will sell (a) Equipment, (b) licenses to Licensed Software, and (c) Services to Customer, to the extent each is set forth in this Agreement. At any time during the Term, Motorola may substitute any Products at no cost to Customer, if the substitute is substantially similar to, or has substantially the same functionality as, the Products set forth in this Agreement. All Licensed Software is provided pursuant to the terms of the https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Software-License-Agreement-v2.1_4.9.25.pdf **Software** https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Software-License-Agreement-v2.1_4.9.25.pdf **License** https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Software-License-Agreement-v2.1_4.9.25.pdf **Agreement** https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Software-License-Agreement-v2.1_4.9.25.pdf.

3.2. Services.

3.2.1. Motorola will provide Services, to the extent set forth in this Agreement.

3.2.2. Integration Services; Maintenance and Support Services. Motorola will provide (a) Integration Services at the applicable Sites, agreed upon by the Parties, or (b) Maintenance and Support Services or Lifecycle Management Services, each as further described in the applicable SOW. Terms applicable to Maintenance, Support and Lifecycle Management can be found in the [Maintenance](https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Maintenance-Support-and-Lifecycle-Mgmt-Addendum-v3.17.25.pdf), https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Maintenance-Support-and-Lifecycle-Mgmt-Addendum-v3.17.25.pdf https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Maintenance-Support-and-Lifecycle-Mgmt-Addendum-v3.17.25.pdf

[Support-and-Lifecycle-Mgmt-Addendum-v3.17.25.pdf](https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Maintenance-Support-and-Lifecycle-Mgmt-Addendum-v3.17.25.pdf)Support

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(https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Maintenance-Support-and-Lifecycle-Mgmt-Addendum-v3.17.25.pdf)Addendum

(https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Maintenance-Support-and-Lifecycle-Mgmt-Addendum-v3.17.25.pdf).

3.2.3. Service Proposals. The Fees for Services will be set forth in Motorola's Proposal. A Customer point of contact may be set forth in the applicable SOW for the Services.

3.2.4. Service Completion. Services described in a Proposal will be deemed complete upon the Service Completion Date, or as Services expire, or are renewed or terminated.

3.2.5. Professional Services

3.2.5.1. Additional Service Terms. If Customer is purchasing Professional Services to evaluate or assess networks, systems or operations; network security assessment or network monitoring; software application development Services; Rave Alert, RapidSOS Service Data, Panic Button, or transport connectivity services, (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Additional-Services-Terms-v4.9.25.pdf)Additional (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Additional-Services-Terms-v4.9.25.pdf) (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Additional-Services-Terms-v4.9.25.pdf)Services (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Additional-Services-Terms-v4.9.25.pdf) (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Additional-Services-Terms-v4.9.25.pdf)Terms (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Additional-Services-Terms-v4.9.25.pdf)

Terms-v4.9.25.pdf) apply.

- 3.3. Additional Product Terms. If the Products include one of the following Products or Product types, additional terms apply as found in the below links:

AI (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/AI-Terms.pdf)
(https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/AI-Terms.pdf)Terms
(https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/AI-Terms.pdf)

Comparison (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/comparison_manager_addendum.pdf) (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/comparison_manager_addendum.pdf)Manager
(https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/comparison_manager_addendum.pdf)

Data (https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/dla.html)
(https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/dla.html)licensed
(https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/dla.html)
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Drone (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Drone-Service-Addendum-v2.4.9.25.pdf) (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Drone-Service-Addendum-v2.4.9.25.pdf)related
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Mobile (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Mobile-Video-and-Vigilant-Addendum-vmca-2.0.pdf) (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Mobile-Video-and-Vigilant-Addendum-vmca-2.0.pdf)Video
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(https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Mobile-Video-and-Vigilant-Addendum-vmca-2.0.pdf)



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- 3.4. Non-Preclusion. If, in connection with the Products provided under this Agreement, Motorola performs assessments of its own, or related, products or makes recommendations, including a recommendation to purchase other products, nothing in this Agreement precludes such efforts nor precludes Motorola from participating in a future competitive bidding process or otherwise offering or selling the recommended products to Customer. Customer represents that this paragraph does not violate its procurement standards or other laws, regulations, or policies.
- 3.5. Customer Obligations. Customer represents that information Customer provides to Motorola in connection with receipt of Products are accurate and complete in all material respects. If any assumptions in the Proposals or information provided by Customer prove to be incorrect, or if Customer fails to perform any of its obligations under this Agreement, Motorola's ability to perform its obligations may be impacted and changes to the Agreement, including the scope, Fees, and performance schedule may be required.
- 3.6. Documentation. Products may be delivered with Documentation. Documentation is and will be owned by Motorola, unless otherwise expressly stated in a Proposal that certain Documentation will be owned by Customer. Motorola hereby grants Customer a limited, royalty-free, worldwide, non-exclusive license to use the Documentation solely for its internal business purposes in connection with the Products.
- 3.7. Motorola Tools and Equipment. As part of delivering the Products, Motorola may provide certain tools, equipment, models, and other materials of its own. Such tools and equipment will remain the sole property of Motorola unless they are to be purchased by Customer as Products. - Page 211 - explicitly listed on the Proposal. The tools and

equipment may be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction. Customer will safeguard all tools and equipment while in its custody or control, and be liable for any loss or damage. Upon the expiration or earlier termination of this Agreement, Customer, at its expense, will return to Motorola all such tools and equipment in its possession or control.

- 3.8. Authorized Users. Customer will ensure its employees and Authorized Users comply with the terms of this Agreement and will be liable for all acts and omissions of its employees and Authorized Users. Customer is responsible for the secure management of Authorized Users' names, passwords and login credentials for access to Products.
- 3.9. Export Control. Customer, its employees, and any other Authorized Users will not access or use the Products in any Prohibited Jurisdiction, and Customer will not provide access to the Products to any government, entity, or individual located in a Prohibited Jurisdiction. Customer represents and warrants that (a) it and its Authorized Users are not named on any U.S. government list of persons prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) it and its Authorized Users are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) Customer will not permit its Authorized Users to access or use the Products or Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) Customer and its Authorized Users will comply with all applicable laws regarding the transmission of technical data exported from the U.S. and the country in which Customer, its employees, and the Authorized Users are located.
- 3.10. Change Orders. Unless a different change control process is agreed upon in writing by the Parties, a Party may request changes to an Addendum or a Proposal by submitting a Change Order to the other Party. If a requested change causes an increase or decrease in the Products, the Parties by means of the Change Order will make appropriate adjustments to the Fees, project schedule, or other matters. Change Orders are effective and binding on the Parties only upon execution of the Change Order by an authorized representative of both Parties.
- 3.11. Beta Testing. If Motorola makes any beta version of a pre release Product ("Beta Product") available to Customer, Customer may choose to use such Beta Product at its own discretion, provided, however, that Customer will use the Beta Product solely for purposes of Customer's evaluation of such Beta Product, and for no other purpose. Customer acknowledges and agrees that all Beta Products are offered "as-is" and without any representations or warranties or other commitments or protections from Motorola. Motorola will determine the duration of the evaluation period for any Beta Product, in its sole discretion, and Motorola may discontinue any Beta Product at any time. Customer acknowledges that Beta Products, by their nature, have not been fully tested and may contain defects or deficiencies.

4. Term and Termination.

- 4.1. Term. The applicable Addendum or Proposal v - Page 212 - The Term for the Products governed thereby.

- 4.1.1. Subscription Terms. Unless otherwise specified in the Proposal, if the Products are purchased as a Subscription, the Subscription commences upon Delivery of, or Customer having access to, the first applicable Product ordered under this Agreement and will continue for a twelve (12) month period or such other period identified in a Proposal (the “**Initial Subscription Period**”) and, unless otherwise stated in the Proposal, will automatically renew for additional twelve (12) month periods (each, a “**Renewal Subscription Year**”), unless either Party notifies the other of its intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. (The Initial Subscription Period and each Renewal Subscription Year will each be referred to herein as a “**Subscription Term**”.) Motorola may increase Fees prior to any Renewal Subscription Year by notifying Customer of the proposed increase no later than thirty (30) days prior to commencement of the Renewal Subscription Year.
- 4.2. Termination. Either Party may terminate the Agreement or the applicable Addendum or Proposal if the other Party breaches a material obligation under the Agreement and does not cure such breach within thirty (30) days after receipt of notice of the breach or fails to produce a cure plan within such period of time. Each Addendum and Proposal may be separately terminable as set forth therein.
- 4.3. Termination for Non-Appropriation. In the event any identified funding is not appropriated or becomes unavailable, the Customer reserves the right to terminate this Agreement for non-appropriation upon thirty (30) days’ advance written notice to Motorola. In the event of such termination, Motorola shall be entitled to compensation for all conforming Products delivered or performed prior to the date of termination.
- 4.4. Suspension of Services. Motorola may promptly terminate or suspend any Products under a Proposal if Motorola determines: (a) the related Product license has expired or has terminated for any reason; (b) the applicable Product is being used on a hardware platform, operating system, or version not approved by Motorola; (c) Customer fails to make any payments when due; or (d) Customer fails to comply with any of its other obligations or otherwise delays Motorola’s ability to perform.
- 4.5. Wind Down of Subscription. In addition to the termination rights in this Agreement, Motorola may terminate any Subscription Term, in whole or in part, in the event Motorola plans to cease offering the applicable Licensed Software or Subscription Services to customers.
- 4.6. Effect of Termination or Expiration. Upon termination for any reason or expiration of this Agreement, an Addendum, or a Proposal, Customer and the Authorized Users will return or destroy (at Motorola’s option) all Motorola Materials and Motorola’s Confidential Information in their possession or control and, as applicable, provide proof of such destruction, except that Equipment purchased by Customer should not be returned. If Customer has any outstanding payment obligations under this Agreement, Motorola may accelerate and declare all such obligations of Customer immediately due and payable by Customer. Notwithstanding the reason for termination or expiration, Customer agrees to pay Motorola for Products delivered or performed. Customer has a duty to mitigate any damages under this Agreement, including in the event of default by Motorola and Customer’s termination of

4.7. Equipment. In the event that Customer purchases any Product at a price below the published list price for such Product in connection with Customer entering into a fixed- or minimum required-term agreement for Products, and Customer or Motorola terminates the Agreement prior to the expiration of such fixed- or minimum required-term, then Motorola will have the right to invoice Customer for, and Customer will pay, the amount of the discount to the published list price for the Product or such other amount set forth in writing. This Section will not limit any other remedies Motorola may have with respect to an early termination.

5. Payment, Invoicing, Delivery and Risk of Loss

5.1. The Contract Price of \$_____, excluding taxes, is fully committed and identified, including all subsequent years of any contracted Services. The Customer will pay all invoices as received from Motorola subject to the terms of this Agreement and any changes in scope will be subject to the change order process as described in this Agreement.

Motorola acknowledges the Customer may require the issuance(s) of a purchase order or notice to proceed as part of the Customer's procurement process. However, Customer agrees that the issuance or non-issuance of a purchase order or notice to proceed does not preclude the Customer from its contractual obligations as defined in this Agreement.

5.2. Fees. Fees and charges applicable to the Products will be as set forth in the applicable Proposal. Changes in the scope of Products described in a Proposal that require an adjustment to the Fees will be set forth in the applicable pricing schedule. The Fees for any Products exclude expenses associated with unusual and costly Site access requirements (e.g., if Site access requires a helicopter or other equipment), tariffs, fluctuations in the costs of energy, raw materials, and fuel. Motorola reserves the right to equitably adjust the Fees for these expenses upon written notice to Customer. Customer will reimburse Motorola for expenses reasonably incurred by Motorola in connection with the Products. The annual Subscription Fee for Products may include certain one-time Fees, such as start-up fees, license fees, or other fees set forth in a Proposal. Motorola may suspend Licensed Software and any Subscription Services if Customer fails to make any payments within thirty (30) days of invoice due date when due.

5.3. Taxes. The Fees do not include any excise, sales, lease, use, property, or other taxes, assessments, duties, or regulatory charges or contribution requirements (collectively, "**Taxes**"), all of which will be paid by Customer, except as exempt by law, unless otherwise specified in a Proposal. If Motorola is required to pay any Taxes, Customer will reimburse Motorola for such Taxes (including any interest and penalties) within thirty (30) days after Customer's receipt of an invoice therefore. Customer will be solely responsible for reporting the Products for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income and net worth.



SERVICE AGREEMENT

500 W Monroe Street
Chicago, IL. 60661
(888) 325-9336

Quote Number : QUOTE-3576807
Contract Number: USC000005861
Contract Modifier: R02-APR-26 04:14:30

5.4. Invoicing. Motorola will invoice Customer as described in this Agreement and Customer will pay all invoices within thirty (30) days of the invoice date or as otherwise specified in writing. In the event Customer finances the purchase of the Motorola Products contemplated herein via Motorola Solutions Credit Corporation ("MSCC"), invoices for such purchase will be paid via the disbursement of the financing proceeds pursuant to the Equipment Lease - Purchase Agreement executed between the parties and the payment schedule enclosed therein shall control payment of the related invoices. Late payments will be subject to interest charges at the maximum rate permitted by law, commencing upon the due date. Motorola may invoice electronically via email, and Customer agrees to receive invoices via email at the email address set forth in Section 5.6. Customer acknowledges and agrees that a purchase order or other notice to proceed is not required for payment for Products.

5.5. Payment. Customer will pay invoices for the Products provided under this Agreement in accordance with the invoice payment terms set forth in Section 5.4. Generally, invoices are issued after shipment of Equipment or upon Motorola's Delivery of Licensed Software, Customer access to SaaS, or upon System Completion Date of a Software System, as applicable, but if a specific invoicing or payment schedule is set forth in the Agreement, such schedule will determine the invoicing cadence.

Motorola will have the right to suspend future Deliveries of Products if Customer fails to make any payments when due.

5.6. INVOICING AND SHIPPING ADDRESSES. Invoices will be sent to the Customer at the following address:

Name: _____

Address: _____

Phone: _____ E-INVOICE. To receive
invoices via email:

Customer Account Number: _____

Customer Accounts Payable Email: _____ Customer CC (optional)

Email: _____

The address which is the ultimate destination where the Equipment will be delivered to Customer is:

Name: _____

Address: _____

The Equipment will be shipped to the Customer at the following address (insert if this information is known):

Name: _____

Address: _____



SERVICE AGREEMENT

500 W Monroe Street
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Quote Number : QUOTE-3576807
Contract Number: USC000005861
Contract Modifier: R02-APR-26 04:14:30

Phone: _____

Customer may change this information by giving written notice to Motorola.

5.7. Delivery, Title and Risk of Loss. Motorola will provide to Customer the Products set forth in a Proposal, in accordance with the terms of the Agreement. Motorola will, using commercially reasonable practices, pack the ordered Equipment and ship such Equipment to the Customer address set forth in **Section 5.6** or otherwise provided by Customer in writing, using a carrier selected by Motorola.

Notwithstanding the foregoing and unless otherwise stated in a Equipment Lease - Purchase Agreement, Delivery of Equipment (and any incorporated Licensed Software) will occur, and title and risk of loss for the Equipment will pass to Customer, upon shipment by Motorola in accordance with ExWorks, Motorola's premises (Incoterms 2020). Customer will pay all shipping costs, taxes, and other charges applicable to the shipment and import or export of the Products and Services, as applicable, and Customer will be responsible for reporting the Products for personal property tax purposes.

Delivery of Licensed Software for installation on Equipment or Customer-Provided Equipment will occur upon the earlier of (a) electronic delivery of the Licensed Software by Motorola, or (b) the date Motorola otherwise makes the Licensed Software available for download or use by Customer. If agreed upon in a Proposal, Motorola will also provide Services related to such Products. Title to Licensed Software will not pass to Customer at any time. Delivery of SaaS Products will occur when the Services are made available to Customer.

5.8. Delays. Any shipping dates set forth in a Proposal are approximate. While Motorola will make reasonable efforts to ship Products by any such estimated shipping date, Motorola will not be liable for any delay or related damages to Customer. Time for Delivery will not be of the essence, and delays will not constitute grounds for cancellation, penalties, termination, or a refund.

5.9. Future Regulatory Requirements. The Parties acknowledge and agree that certain Products (for example, cyber services) are in evolving technological areas and therefore, laws and regulations regarding Products may change. Changes to existing Products required to achieve regulatory compliance may be available for an additional fee. Any required changes may also impact the price for Products.

5.10. Resale of Equipment. Equipment may contain embedded Licensed Software. If Customer desires to sell its used Equipment to a third party, Customer must first receive prior written authorization from Motorola, which will not be unreasonably denied, and obtain written acceptance of the applicable Licensed Software license terms, including the obligation to pay relevant license fees, from such third party. Customer will take appropriate security measures when disposing of Equipment, including the deletion of all data stored in the Equipment.

6. Sites; Customer-Provided Equipment; Non-Motorola Materials.

6.1. **Access to Sites.** Customer will be responsible - Page 216 - all necessary permits, licenses, and other approvals necessary for the performance, installation and use of the Products at each applicable Site, including for Motorola

to perform its obligations hereunder, and for facilitating Motorola's access to the Sites. No waivers of liability will be imposed on Motorola or its subcontractors by Customer or others at Customer facilities or other Sites, but if and to the extent any such waivers are imposed, the Parties agree such waivers are void.

- 6.2. Site Conditions. Customer will ensure that (a) all Sites are safe and secure, (b) Site conditions meet all applicable industry and legal standards (including standards promulgated by OSHA or other governmental or regulatory bodies), (c) to the extent applicable, Sites have adequate physical space, air conditioning, and other environmental conditions, electrical power outlets, distribution, equipment, connections, and telephone or other communication lines (including modem access and interfacing networking capabilities), and (d) Sites are suitable for the installation, use, and maintenance of the Products. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.
- 6.3. Site Issues. Upon its request, which will not be unreasonably denied, Motorola will have the right to inspect the Sites and advise Customer of any deficiencies or non-conformities with the requirements of this **Section 6 – Sites; Customer-Provided Equipment; Non-Motorola Materials**. If Motorola or Customer identifies any deficiencies or non-conformities, Customer will promptly remediate such issues or the Parties will select a replacement Site. If a Party determines that a Site identified in a Proposal is not acceptable or desired, the Parties will cooperate to investigate the conditions and select a replacement Site or otherwise adjust the installation plans and specifications as necessary. A change in Site or adjustment to the installation plans and specifications may cause a change in the Fees or performance schedule under the applicable Proposal.
- 6.4. Customer-Provided Equipment. Customer will be responsible, at its sole cost and expense, for providing and maintaining the Customer-Provided Equipment in good working order. Customer represents and warrants that it has all rights in Customer-Provided Equipment to permit Motorola to access and use the applicable Customer-Provided Equipment to provide the Products under this Agreement, and such access and use will not violate any laws or infringe any third-party rights (including intellectual property rights). Customer (and not Motorola) will be fully liable for Customer-Provided Equipment, and Customer will immediately notify Motorola of any Customer-Provided Equipment damage, loss, change, or theft that may impact Motorola's ability to provide the Products under this Agreement, and Customer acknowledges that any such events may cause a change in the Fees or performance schedule under the applicable Proposal.
- 6.5. Non-Motorola Materials. In certain instances, Customer may be permitted to access, use, or integrate Non-Motorola Materials with or through the Products. If Customer accesses, uses, or integrates any Non-Motorola Materials with the Products, Customer will first obtain all necessary rights and licenses to permit Customer's and its Authorized Users' use of the Non-Motorola Materials in connection with the Products. Customer will also obtain the necessary rights for Motorola to use such Non-Motorola Materials in connection with providing the Products, including the right for Motorola to access, store, and process such Non-Motorola Materials (e.g., in connection with SaaS Products), and to otherwise enable



SERVICE AGREEMENT

that it will obtain the foregoing rights and licenses prior to accessing, using, or integrating the applicable Non-Motorola Materials with the Products, and that Customer and its Authorized Users will comply with any terms and conditions applicable to such Non-Motorola Materials. If any Non-Motorola Materials requires access to Customer Data, Customer hereby authorizes Motorola to allow the provider of such Non-Motorola Materials to access Customer Data, in connection with the interoperation of such Non-Motorola Materials with the Products.

- 6.6. Customer acknowledges and agrees that Motorola is not responsible for, and makes no representations or warranties with respect to, the Non-Motorola Materials (including any disclosure, modification, or deletion of Customer Data resulting from use of Non-Motorola Materials or failure to properly interoperate with the Products). If Customer receives notice that any Non-Motorola Materials must be removed, modified, or disabled within the Products, Customer will promptly do so. Motorola will have the right to disable or remove Non-Motorola Materials if Motorola believes a violation of law, third-party rights, or Motorola's policies is likely to occur, or if such Non-Motorola Materials poses or may pose a security or other risk or adverse impact to the Products, Motorola, Motorola's systems, or any third party (including other Motorola customers).
- 6.7. Motorola may provide certain Non-Motorola Materials as an authorized sales representative of a third party as set out in a Proposal. As an authorized sales representative, the third party's [terms](https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/authorized-sales-representative.pdf) (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/authorized-sales-representative.pdf) (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/authorized-sales-representative.pdf)and (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/authorized-sales-representative.pdf) (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/authorized-sales-representative.pdf) conditions (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/authorized-sales-representative.pdf) will apply to any such sales. Any orders for such Non-Motorola Materials will be fulfilled by the third party.
- 6.8. End User Licenses. Notwithstanding any provision to the contrary in the Agreement, certain Non-Motorola Materials software are governed by a separate license, EULA, or other agreement, including terms governing third-party equipment or software, such as open source software, included in the Products. Customer will comply, and ensure its Authorized Users comply, with any such additional terms applicable to third-party equipment or software. Certain [third](https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/flow-down-terms.html) (https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/flow-down-terms.html) (https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/flow-down-terms.html)party (https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/flow-down-terms.html) (https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/flow-down-terms.html)flow-do (https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/flow-down-terms.html)
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(https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/flow-down-terms.html)

(https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/flow-down-terms.html)applicable to Motorola Products may apply.

6.9. Prohibited Use. Customer will not integrate or use, or permit a third party or an Authorized User to integrate or use, any Non-Motorola Materials with or in connection with a Software System or other Licensed Software provided by Motorola under this Agreement, without the express written permission of Motorola.

6.10. API and Client Support. Motorola will use reasonable efforts to maintain its Application Programming Interfaces (APIs) for each Software System, understanding that APIs will evolve. Motorola will support each API version for 6 months after introduction but may discontinue support with reasonable notice or without notice if a security risk is present. For Licensed Software requiring a local client installation, Customer is responsible for installing the current version. Motorola will support each client version for 45 days after its release but may update the client at any time, and does not guarantee support for prior client versions.

7. Representations and Warranties.

7.1. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that (a) it has the right to enter into, and execute, the Agreement and perform its obligations hereunder, and (b) the Agreement will be binding on such Party.

7.2. System Warranty. Subject to the disclaimers and exclusions below, Motorola represents and warrants that, on the date of System Acceptance (for Communications Systems), System Completion Date (for Software Systems), or Delivery, as applicable (a) the Communications System will perform in accordance with the descriptions in the applicable Proposal in all material respects, (b) the Software System will perform in accordance with the descriptions in the applicable Proposals in all material respects, and (c) if Customer has purchased any Licensed Software (but, for clarity, excluding SaaS Products) as part of such Communications System or Software System, the warranty period applicable to such Licensed Software will continue for a period of one (1) year commencing upon System Acceptance, System Completion, or date the Licensed Software is delivered (the "**Warranty Period**").

7.3. Communications Systems. During the Warranty Period, in addition to warranty services, Motorola will provide Maintenance and Support Services for the Equipment and support for the Motorola Licensed Software in Communication Systems pursuant to the applicable maintenance and support Proposal. Support for the Licensed Software will be in accordance with Motorola's established [Software](https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/software_policy.html) (https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/software_policy.html) Support (https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/software_policy.html)

[customer-terms/software_policy.html](https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/software_policy.html)) (https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/software_policy.html) Policy (https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/software_policy.html) ("SwSP"). If Customer wishes to purchase (a) additional Maintenance and Support Services during the Warranty Period; or (b) continue or expand maintenance, software support, installation, and/or Motorola's LMS after the Warranty Period, Motorola will provide the description of and pricing for such services in a separate proposal document and such terms will be agreed upon in a Proposal. Unless otherwise agreed by the Parties in writing, the terms and conditions of the MSLMA referenced in Section 3.2.2 will govern the provision of such Services.

- 7.4. SaaS. SaaS Products do not qualify for the System Warranty above.
- 7.5. Motorola Warranties - Services. Subject to the disclaimers and exclusions below, Motorola represents and warrants that (a) Services will be provided in a good and workmanlike manner and will conform in all material respects to the descriptions in the applicable Proposal; and (b) for a period of ninety (90) days commencing upon the Service Completion Date for one-time Services, the Services will be free of material defects in materials and workmanship. Other than as set forth in subsection (a) above, recurring Services are not warranted but rather will be subject to the requirements of the applicable Addendum or Proposal.
- 7.6. Motorola Warranties - Equipment. Subject to the disclaimers and exclusions set forth below, (a) for a period of one (1) year commencing upon the Delivery of Motorola-manufactured Equipment under **Section 5.7 – Delivery, Title and Risk of Loss**, Motorola represents and warrants that such Motorola-manufactured Equipment, under normal use, will be free from material defects in materials and workmanship; and (b) the warranties applicable to Motorola-manufactured Equipment set forth in herein shall be applicable to all radio Equipment purchased hereunder whether or not such Equipment was manufactured by Motorola.
- 7.7. Warranty Claims; Remedies. To assert a warranty claim, Customer must notify Motorola in writing of the claim prior to the expiration of any warranty period set forth in this Agreement. Unless a different remedy is otherwise expressly set forth herein, upon receipt of such claim, Motorola will investigate the claim and use commercially reasonable efforts to repair or replace any confirmed materially non-conforming Product or re-perform any non-conforming Service, at its option. Such remedies are Customer's sole and exclusive remedies for Motorola's breach of a warranty. Motorola's warranties are extended by Motorola to Customer only, and are not assignable or transferable.
- 7.8. Pass-Through Warranties. Notwithstanding any provision of this Agreement to the contrary, Motorola will have no liability for third-party software or hardware provided by Motorola; provided, however, that to the extent offered by third-party providers of software or hardware and to the extent permitted by law, Motorola will pass through express warranties provided by such third parties.
- 7.9. WARRANTY DISCLAIMER. EXCEPT FOR THE

AGREEMENT, PRODUCTS AND SERVICES PURCHASED HEREUNDER ARE PROVIDED "AS IS" AND WITH ALL FAULTS. WARRANTIES SET FORTH IN THE AGREEMENT ARE THE COMPLETE WARRANTIES FOR THE PRODUCTS AND SERVICES AND MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF

MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND

QUALITY. MOTOROLA DOES NOT REPRESENT OR WARRANT THAT USE OF THE PRODUCTS AND SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF SECURITY VULNERABILITIES, OR THAT THEY WILL MEET CUSTOMER'S PARTICULAR REQUIREMENTS.

7.10. ADDITIONAL WARRANTY EXCLUSIONS. NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, MOTOROLA WILL HAVE NO LIABILITY FOR (A) DEFECTS IN OR

DAMAGE TO PRODUCTS RESULTING FROM USE OTHER THAN IN THE NORMAL AUTHORIZED

MANNER, OR FROM ACCIDENT, LIQUIDS, OR NEGLIGENCE; (B) TESTING, MAINTENANCE, REPAIR, INSTALLATION, OR MODIFICATION BY PARTIES OTHER THAN MOTOROLA; (C) CUSTOMER'S OR

ANY AUTHORIZED USER'S FAILURE TO COMPLY WITH INDUSTRY AND OSHA OR OTHER LEGAL STANDARDS; (D) DAMAGE TO RADIO ANTENNAS, UNLESS CAUSED BY DEFECTS IN MATERIAL OR WORKMANSHIP; (E) EQUIPMENT WITH NO SERIAL NUMBER; (F) BATTERIES OR CONSUMABLES; (G) FREIGHT COSTS FOR SHIPMENT TO REPAIR DEPOTS; (H) COSMETIC

DAMAGE THAT DOES NOT AFFECT OPERATION; (I) NORMAL WEAR AND TEAR; (J) ISSUES OR

OBSOLESCENCE OF LICENSED SOFTWARE DUE TO CHANGES IN CUSTOMER OR AUTHORIZED

USER REQUIREMENTS, EQUIPMENT, OR SYSTEMS; (K) TRACKING AND LOCATION-BASED

SERVICES; OR (L) BETA SERVICES.

8. Indemnification.

8.1. General Indemnity. Motorola will defend, indemnify, and hold Customer harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual third-party claim, demand, action, or proceeding ("Claim") for personal injury, death,

or direct damage to tangible property to the extent caused by Motorola's negligence, gross negligence or willful misconduct while performing its duties under this Agreement, except to the extent the claim arises from Customer's negligence or willful misconduct. Motorola's duties under this **Section 8.1 – General Indemnity** are conditioned upon: (a) Customer promptly notifying Motorola in writing of the Claim; (b) Motorola having sole

control of the defense of the suit and all negotiations for its settlement or compromise to the extent allowed by applicable law; and (c) Customer cooperating with Motorola and, if requested by Motorola, providing reasonable assistance in the defense of the Claim.

8.2. Intellectual Property Infringement. Motorola will defend Customer against any third-party claim alleging that a Motorola-developed or manufactured Product (the "Infringing Product") directly infringes a United States patent or copyright ("Infringement Claim"), and Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim, or agreed to in writing by Motorola in settlement of an Infringement Claim. Motorola's duties under this **Section 8.2 – Intellectual Property Infringement** are conditioned upon: (a) Customer promptly notifying Motorola in writing of the Infringement Claim; (b) Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with Motorola and, if requested by Motorola, providing reasonable assistance in the defense of the Infringement Claim.

8.2.1. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Infringing Product; (b) replace or modify the Infringing Product so that it becomes non-infringing; or (c) grant Customer (i) a prorated refund of any amounts pre-paid for the Infringing Product (if the Infringing Product is Licensed Software) or (ii) a credit for the Infringing Product, less a reasonable charge for depreciation (if the Infringing Product is Equipment, including Equipment with embedded Licensed Software).

8.2.2. In addition to the other damages disclaimed under this Agreement, Motorola will have no duty to defend or indemnify Customer for any Infringement Claim that arises from or is based upon: (a) Customer Data, Customer-Provided Equipment, Non-Motorola Materials, or third-party equipment, hardware, software, data, or other third-party materials; (b) the combination of the Product with any products or materials not provided by Motorola; (c) a Product designed, modified, or manufactured in accordance with Customer's designs, specifications, guidelines or instructions; (d) a modification of the Product by a party other than Motorola; (e) use of the Product in a manner for which the Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to use or install an update to the Product that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from an Infringement Claim extend in any way to any payments due on a royalty basis, other than a reasonable royalty based upon revenue derived by Motorola from Customer from sales or license of the Infringing Product.

8.2.3. This **Section 8.2 – Intellectual Property Infringement** provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim.

8.3. Customer Indemnity. In accordance with North Carolina State Law, the Parties agree that the Customer is unable to indemnify Motorola, and thus this section is omitted from this contract.

9. Limitation of Liability.

9.1. EXCEPT FOR PERSONAL INJURY OR DEATH, MOTOROLA'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF THIS AGREEMENT IN THE AGGREGATE WILL NOT EXCEED THE GREATER OF \$100 U.S. OR THE FEES PAID FOR THE SPECIFIC PRODUCT OR SERVICE FROM WHICH THE CLAIM AROSE. FOR RECURRING SERVICES, LIABILITY IS CAPPED AT THE FEES PAID IN THE TWELVE MONTHS PRECEDING THE DATE THE CLAIM AROSE. IN NO EVENT WILL

MOTOROLA BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, NOR LOST PROFITS OR LOST REVENUE, REGARDLESS OF THE LEGAL THEORY, EVEN IF MOTOROLA HAS BEEN ADVISED BY CUSTOMER OR ANY THIRD PARTY OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES AND WHETHER OR NOT SUCH DAMAGES OR LOSSES ARE FORESEEABLE.

9.2. Statute of Limitations. Customer may not bring any claims against a Motorola Party in connection with this Agreement or the Products and Services more than one (1) year after the date of accrual of the cause of action.

10. Confidentiality.

10.1. Confidential Information. Customer and Motorola agree that, subject to any applicable freedom of information or public records legislation, Motorola's [Confidentiality](https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Confidentiality-Terms.pdf) (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Confidentiality-Terms.pdf) (https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/Confidentiality-Terms.pdf) apply to information shared between the Parties.

11. Proprietary Rights; Data; Feedback.

11.1. Motorola Materials. Customer acknowledges that Motorola may use or provide Customer with access to "Motorola Materials". Except when Motorola has expressly transferred title or other interest to Customer in writing, the Motorola Materials are the property of Motorola or its licensors, and Motorola or its licensors retain all right, title and interest in and to the Motorola Materials (including, all rights in patents, copyrights, trademarks, trade names, trade secrets, know-how, other intellectual property and proprietary rights, and all associated goodwill and moral rights).

This Agreement does not grant to Customer any shared development rights in or to any Motorola Materials or other intellectual property, and Customer agrees to execute any documents and take any other actions reasonably requested by Motorola to effectuate the foregoing. Motorola and its licensors reserve all rights not expressly granted to Customer, and no rights, other than those expressly granted herein, are granted to Customer by implication, estoppel or otherwise. Custom

code or create derivative works from, merge with other software, distribute, sublicense, sell, or export the Products and Services or other Motorola Materials, or permit any third party to do so.

- 11.2. Ownership of Customer Data. Customer retains all right, title and interest, including intellectual property rights, if any, in and to Customer Data. Motorola acquires no rights to Customer Data except those rights granted under this Agreement including the right to Process (as defined in the DPA) and use the Customer Data as set forth in the DPA.
- 11.3. Feedback. Any Feedback provided by Customer is entirely voluntary, and will not create any confidentiality obligation for Motorola, even if designated as confidential by Customer. Motorola may use, reproduce, license, and otherwise distribute and exploit the Feedback without any obligation or payment to Customer or Authorized Users and Customer represents and warrants that it has obtained all necessary rights and consents to grant Motorola the foregoing rights.
- 11.4. Improvements; Products and Services. The Parties agree that, notwithstanding any provision of this Agreement to the contrary, all fixes, modifications and improvements to the Services or Products conceived of or made by or on behalf of Motorola that are based either in whole or in part on the Feedback, Customer Data, or Service Use Data (or otherwise) are the exclusive property of Motorola and all right, title and interest in and to such fixes, modifications or improvements will vest solely in Motorola.

Customer agrees to execute any written documents necessary to assign any intellectual property or other rights it may have in such fixes, modifications or improvements to Motorola.

12. Acceptance

- 12.1. Communications System Acceptance. Unless further defined in the applicable Proposal or Statement of Work, System Acceptance for a Communications System occurs upon successful completion of Acceptance Tests as detailed in the Acceptance Test Plan. Motorola will provide ten days' notice before testing begins, and upon successful completion, both parties will sign an acceptance certificate. If the plan includes tests for subsystems or phases, acceptance occurs upon successful completion of those tests and separate certificates will be issued. If Customer believes the system has failed, they must provide a detailed written notice within thirty days; otherwise, System Acceptance is deemed to have occurred. Minor, non-material issues will not delay acceptance but will be addressed per a mutually agreed schedule. Customer use of the system before System Acceptance requires Motorola's written authorization and transfers responsibility for system operation to the Customer. Software System Completion is defined by Customer's Beneficial Use of each Product within the system, with "Beneficial Use" defined to occur thirty days after functional demonstration if not otherwise defined in the Proposal.

13. Force Majeure; Delays Caused by Customer.

- 13.1. Force Majeure. Except for Customer's payment obligations hereunder, neither Party will be responsible for nonperformance or delayed performance due to events outside of its reasonable control. If performance will be

significantly delayed, the affected Party will provide notice to the other Party, and the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule.

- 13.2. Delays Caused by Customer. Motorola's performance of the Products will be excused for delays caused by Customer or its Authorized Users or subcontractors, or by failure of any assumptions set forth in this Agreement (including in any Addendum or Proposal). In the event of a delay under this **Section 13.2 – Delays Caused by Customer**, (a) Customer will continue to pay the Fees as required hereunder, (b) the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule, and (c) Customer will compensate Motorola for its out-of-pocket costs incurred due to the delay (including those incurred by Motorola's affiliates, vendors, and subcontractors).

14. **Disputes**. The Parties will use the following procedure to resolve any disputes relating to or arising out of this Agreement (each, a "Dispute"):

- 14.1. Governing Law. All matters relating to or arising out of the Agreement are governed by the laws of the State of Illinois, unless Customer is the United States Government (or an agency thereof) or a state government or state agency or local municipality within the United States, in which case all matters relating to or arising out of the Agreement will be governed by the laws of the State in which the Products and Services are provided. The terms of the U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply.
- 14.2. Negotiation; Mediation. The Parties will attempt to timely resolve the Dispute promptly through good faith negotiations. Either Party may initiate dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute") to the other Party. The Parties will choose an independent mediator within thirty (30) days of such Notice of Mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, but if the Parties are unable to agree upon a mediator, either Party may request that the American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Unless otherwise agreed in writing, all in person meetings under this **Section 14.2 – Negotiation; Mediation** will take place in Chicago, Illinois, and all communication relating to the Dispute resolution will be maintained in strict confidence by the Parties. Notwithstanding the foregoing, any Dispute arising from or relating to Motorola's intellectual property rights must be decided by a court of competent jurisdiction, in accordance with **Section 14.3 – Litigation, Venue, Jurisdiction** below.
- 14.3. Litigation, Venue, Jurisdiction. If the Dispute has not been resolved by mediation within sixty (60) days from the Notice of Mediation, either Party may submit the Dispute exclusively to a court in Cook County, Illinois, or in the case the Customer is the United States, a state agency, or local municipality, then the appropriate court in the State in which the Products and Services are provided. Each Party expressly consents to the exclusive jurisdiction of such courts for resolution of any Dispute, and to enforce the outcome of any mediation.

15. General.

- 15.1. Compliance with Laws. Each Party will comply with applicable laws in connection with the performance of its obligations under this Agreement, including that Customer will ensure its and its Authorized Users' use of the Products complies with law (including privacy laws), and Customer will obtain any FCC, FAA, and other licenses or authorizations (including licenses or authorizations required by foreign regulatory bodies) required for its and its Authorized Users' use of the Products. Motorola may, at its discretion, cease providing or otherwise modify Products (or any terms related thereto in an Addendum or Proposal), in order to comply with any changes in applicable law.
- 15.2. Audit; Monitoring. Motorola will have the right to monitor and audit use of the Products, including an audit of total user licenses credentialed by Customer for any Licensed Software or SaaS Products, which may also include access by Motorola to Customer Data and Service Use Data. Customer will provide notice of such monitoring to its Authorized Users and obtain any required consents, including individual end users, and will cooperate with Motorola in any monitoring or audit. Customer will maintain during the Term, and for two (2) years thereafter, accurate records relating to any licenses granted under this Agreement to verify compliance with this Agreement. Motorola or a third party ("Auditor") may inspect Customer's and, as applicable, Authorized Users' premises, books, and records. Motorola will pay expenses and costs of the Auditor, unless Customer is found to be in violation of the terms of the Agreement, in which case Customer will be responsible for such expenses and costs. In the event Motorola determines that Customer's usage of the Licensed Software or SaaS Product exceeded the number of licenses purchased by Customer at a given time, Motorola may invoice Customer for the additional licenses used by Customer, pro-rated for each additional license from the date such license was activated, and Customer will pay such invoice in accordance with the payment terms in the Agreement.
- 15.3. Assignment and Subcontracting. Neither Party may assign or otherwise transfer this Agreement without the prior written approval of the other Party. Motorola may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without consent (a) for financing purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of its assets, (c) as part of a corporate reorganization, or (d) to a subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon the Parties and their respective successors and assigns. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.
- 15.4. Waiver. A delay or omission by either Party to exercise any right under this Agreement will not be construed to be a waiver of such right. A waiver by either Party of any of the obligations to be performed by the other, or any breach thereof, will not be construed to be a waiver of any succeeding breach or of any other obligation. All waivers must be in writing and signed by the Party waiving its rights.
- 15.5. Severability. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision will be modified to reflect as nearly as possible the original

intentions of the Parties in accordance with applicable law. The remaining provisions of this Agreement will not be affected, and each such provision will be valid and enforceable to the full extent permitted by applicable law.

- 15.6. Independent Contractors. Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership, or formal business organization of any kind.
- 15.7. Third-Party Beneficiaries. The Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that the Agreement will not benefit, or create any right or cause of action in or on behalf of, any entity other than the Parties. Notwithstanding the foregoing, a licensor or supplier of third-party software included in the software Products will be a direct and intended third-party beneficiary of this Agreement.
- 15.8. Interpretation. The section headings in this Agreement are included only for convenience. The words "including" and "include" will be deemed to be followed by the phrase "without limitation". This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.
- 15.9. Notices. Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address provided by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as FedEx, UPS, or DHL), and will be effective upon receipt.
- 15.10. Cumulative Remedies. Except as specifically stated in this Agreement, all remedies provided for in this Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law, in equity, by contract, or otherwise. Except as specifically stated in this Agreement, the election by a Party of any remedy provided for in this Agreement or otherwise available to such Party will not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract, or otherwise.
- 15.11. Survival. The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.5 – Customer Obligations; Section 4.6 – Effect of Termination or Expiration; Section 5 – Payment and Invoicing; Section 7.9 – Warranty Disclaimer; Section 7.10 - Additional Warranty Exclusions; Section 8.3 – Customer Indemnity; Section 9 – Limitation of Liability; Section 10 – Confidentiality; Section 11 – Proprietary Rights; Data; Feedback; Section 13 – Force Majeure; Delays Caused by Customer; Section 14 – Disputes; and Section 15 – General.
- 15.12. Entire Agreement. This Agreement, including all Addenda, and Proposals, constitutes the entire agreement of the Parties regarding the subject matter hereto, and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to the subject matter. This Agreement may be executed in multiple counterparts, and will have the same legal force and effect as if the Parties had executed it as a single



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document. The Parties may sign in writing or by electronic signature. An electronic signature, facsimile copy, or computer image of a signature, will be treated, and will have the same effect as an original signature, and will have the same effect, as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment, or other form will not be considered an amendment or modification or part of this Agreement, even if a representative of each Party signs such document. For the purposes of this Agreement, "electronic signature" includes, but is not limited to, typed names, digital signatures, or "click-through" acceptances.

LOCAL GOVERNMENT ADDENDUM

ADDENDUM to Service Agreement (Contract Number: USC000005861) dated August 19, 2025, between Motorola Solutions, Inc. ("Motorola") and Town of Apex ("Customer"). The Services Agreement is hereinafter referred to as "Agreement".

The parties hereby amend the above-referenced Agreement as follows:

Section 10.3 of the Service Terms and Conditions is amended to read: If the Customer terminates this Agreement before the end of the Term, for any reason other than Motorola default, then the Customer will pay to Motorola an early termination fee equal to the discount applied to the Quote to which these Service Terms and Conditions apply.

The second to last sentence of Section 11 of the Service Terms and Conditions is modified to read: "Unless the statute of limitations under North Carolina law provides otherwise, no action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account."

Section 15 of the Service Terms and Conditions is deleted in its entirety.

Section 18.7 of the Service Terms and Conditions Agreement is deleted in its entirety and replaced with the following: This Agreement will terminate on July 31, 2027.

NON-APPROPRIATION. Notwithstanding any other provisions of the Agreement, the parties agree that payments due hereunder from the Customer are from appropriations and monies from the Apex Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the Customer to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Customer. Customer will pay Motorola for all services rendered up to the date of termination.

The following terms and conditions are hereby added to the Agreement:

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

Notwithstanding anything to the contrary in this Agreement, Chapter 132 of the North Carolina General Statutes governs the release of any information determined to be a public record and shall control in this Agreement without penalty or liability to either party, provided Motorola receives prompt notice of the request and Customer works in good faith to minimize disclosure permitted by the statute. Release,



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retention or copying of any document or information consistent with North Carolina law shall not be a breach of this Agreement.

Motorola warrants and agrees that no labor supplied by Motorola or its 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. Motorola also warrants and agrees that Motorola 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.

In the event of a conflict between the terms and conditions of the Agreement and this Addendum, this Addendum shall control.

By signing this Addendum, the Parties acknowledge the above changes to the Agreement and authorize such changes. In all other respects, the terms and conditions of the Agreement remain in full force and effect.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this .

The Parties hereby enter into this MCA as of the Effective Date.

Motorola Solutions, Inc.

X _____

[empty member name]

Email: kelly.nix@motorolasolutions.com

Timestamp: [empty signing timestamp]

Town of Apex

X _____

Randal E. Vosburg, Town Manager

Email: [empty member email]

Timestamp: [empty signing timestamp]



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

X _____

[empty member name] , Finance Director

Email: jon.griffin@apexnc.org

Timestamp: [empty signing timestamp]

Software License Agreement

This Software License Agreement (this “**SLA**”) is subject to, and governed by, the terms of the Motorola Solutions Customer Agreement or other agreement (“**MCA**”) to which it is attached. Capitalized terms used in this SLA, but not defined herein, will have the meanings set forth in the MCA.

Section 1. Agreement. This SLA governs Customer’s use of Licensed Software and Software-as-a-Service from Motorola, as applicable, and is an integral part of the Parties’ Agreement.

Section 2. Licensed Software License and Restrictions.

2.1. Licensed Software License. Subject to Customer’s and its Authorized Users’ compliance with the Agreement (including payment terms), Motorola hereby grants Customer and its Authorized Users a limited, non-transferable, non-sublicensable, and non-exclusive license to use the Licensed Software identified in a Proposal, in the code format provided only, and the associated Documentation, solely in connection with the Equipment provided by Motorola or authorized Customer-Provided Equipment (as applicable, the “**Designated Products**”) and solely for Customer’s internal business purposes. Unless otherwise stated in an Addendum or the Proposal, the foregoing license grant will be limited to the number of licenses set forth in the applicable Proposal. Licensed Software embedded as firmware on a Designated Product will be licensed for the life of the applicable Designated Product. Except as otherwise permitted in an applicable Addendum or Proposal, Customer may install, access, and use Licensed Software only in Customer’s owned or controlled facilities, including any authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into, access, or use the Licensed Software remotely from any location. The grant of license contemplated herein shall not survive termination due to breach of the license terms by Customer, including Customer’s Authorized Users

2.2. Customer Restrictions. Customers and Authorized Users will comply with the applicable Documentation and the copyright laws of the United States and all other relevant jurisdictions (including the copyright laws where Customer uses the Products) in connection with their use of the Products. Customers and Authorized Users will comply with the applicable Documentation in connection with their use of the Products. Customer and its Authorized Users will comply with Motorola’s [Acceptable Use Policy](https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/acceptable-use-policy.html) (https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/acceptable-use-policy.html).

2.3. Copies. Customer may make a reasonable number of backup copies of the Licensed Software. Customer may make as many copies of the Documentation reasonably required for the internal use of the Licensed Software during such Licensed Software’s license term. Unless the Licensed Software is available to the general public, or otherwise authorized by Motorola in writing, Customer will not, and will not enable or allow any third party to, (a) make a licensed copy of the Licensed Software on more than one (1) unit of a Designated Product; or (b) copy onto or transfer the Licensed Software installed in a unit of a Designated Product onto another device. Customer may temporarily transfer Licensed Software installed on a Designated Product to another device if

the Designated Product is inoperable or malfunctioning, if Customer provides written notice to Motorola of the temporary transfer and identifies the device on which the Licensed is transferred. Temporary transfer of the Licensed Software to another device must be discontinued when the original Designated Product is returned to operation and the Licensed Software must be removed from the other device. Customer must provide prompt written notice to Motorola at the time the temporary transfer is discontinued.

2.4. User Credentials. If applicable, Motorola will provide Customer with administrative user credentials for the Licensed Software including, if applicable, the Software-as-a-Service, and Customer will ensure such administrative user credentials are accessed and used only by Customer's employees with training on their proper use. Customer will protect, and will cause its Authorized Users to protect, the confidentiality and security of all user credentials, including any administrative user credentials, and maintain user credential validity, including by updating passwords. Customer will be liable for any use of the Licensed Software through such user credential (including through any administrative user credentials), including any changes made to the Licensed Software, Software-as-a-Service, or issues or user impact arising therefrom. To the extent Motorola provides Services to Customer in order to help resolve issues resulting from changes made through user credentials, including through any administrative user credentials, or issues otherwise created by Authorized Users, such Services will be billed to Customer on a time and materials basis, and Customer will pay all invoices in accordance with the payment terms of the MCA.

Section 3. Software Systems and SaaS Products - Applicable Terms and Conditions

3.1. CAD and Records Products. In the event Customer purchases any Computer Aided Dispatch ("CAD") or Records Products under the Agreement Customer acknowledges and agrees that the licenses granted by Motorola under this SLA to CAD and Records Products for on-premises Software Systems are conditioned upon Customer purchasing Maintenance and Support Services for such Products during the term of the applicable license. If at any time during the term of any such license, Customer fails to purchase associated Maintenance and Support Services (or pay the fees for such Services), Motorola will have the right to terminate or suspend the software licenses for CAD and Record Products.

3.2. SaaS.

3.2.1. Data Storage. Motorola will determine, in its sole discretion, the location of stored content for SaaS Products. All data, replications, and backups will be stored at a location in the United States for Customers in the United States.

3.2.2. Data Retrieval. SaaS Products will leverage different types of storage to optimize software, as determined in Motorola's sole discretion. For multimedia data, such as videos, pictures, audio files, Motorola will, in its sole discretion, determine the type of storage medium used to store the content. The type of storage and medium selected by Motorola will determine the data retrieval speed. Access to content in archival storage may take up to twenty-four (24) hours to be viewable.

3.2.3. Maintenance. Scheduled maintenance of SaaS Products will be performed periodically. Motorola will make commercially reasonable efforts to notify customers one (1) week in advance of any such maintenance. Unscheduled and emergency maintenance may be required from time to time. Motorola will make commercially reasonable efforts to notify customers of any unscheduled or emergency maintenance twenty-four (24) hours in advance.

Section 4. Term.

4.1. Term. The term of this SLA (the "SLA Term") will commence upon the Effective Date of the MCA.

4.2. Termination. Notwithstanding the termination provisions of the MCA, Motorola may terminate this SLA (and any Agreements hereunder) immediately upon notice to Customer if Customer breaches **Section 2 – Licensed Software License and Restrictions** of this SLA; any other provision related to Licensed Software license scope or restrictions set forth in a Proposal, EULA, Acceptable Use Policy, or other applicable Addendum; or Motorola determines that Customer's use of a SaaS Product poses, or may pose, a security or other risk or adverse impact to any SaaS Product, Motorola, Motorola's systems, or any third party (including other Motorola customers). Upon termination or expiration of the SLA Term, all Motorola obligations under this SLA (including with respect to Equipment and Licensed Software delivered hereunder) will terminate. If Customer desires to purchase additional Services in connection with such Equipment or Licensed Software, Customer may enter into a separate Addendum with Motorola, governing such Services.

4.3. Customer acknowledges that Motorola made a considerable investment of resources in the development, marketing, and



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distribution of the Licensed Software, SaaS Products, and Documentation, and that Customer's breach of the SLA will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Customer breaches this SLA, in addition to termination, Motorola will be entitled to all available remedies at law or in equity (including immediate injunctive relief).

Section 5. Warranty

5.1. Motorola Licensed Software Warranty. Unless otherwise stated in the License Agreement, for a period of ninety (90) days commencing upon the delivery of Motorola-owned Licensed Software, Motorola represents and warrants that such Licensed Software, when used in accordance with the Documentation and the Agreement, will be free from reproducible defects that prevent operation of features critical to the primary functionality or successful operation of the Motorola-developed Licensed Software (as determined by Motorola)

5.2. As Customer's sole and exclusive remedy for any breach of the Motorola Licensed Software Warranty, Motorola will use commercially reasonable efforts to remedy the material defect in the applicable Licensed Software; provided, however, that if Motorola does not remedy such material defect within a reasonable time, then at Motorola's sole option, Motorola will either replace the defective Licensed Software with functionally-equivalent software, provide substitute software to Customer, or terminate the applicable software license and refund any paid license fees to Customer on a pro-rata basis.

5.3. For clarity, the Motorola Licensed Software Warranty applies only to the most current version of the Licensed Software issued by Motorola, and issuance of updated versions of any Licensed Software does not result in a renewal or extension of the Motorola Licensed Software Warranty beyond the ninety (90) day warranty period.

5.4. SaaS. SaaS Products do not qualify for the Motorola Licensed Software Warranty above.

5.5. WARRANTY DISCLAIMER. EXCEPT AS PROVIDED ABOVE, AND TO THE MAXIMUM EXTENT PROVIDED BY LAW, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE LICENSED SOFTWARE AND SERVICES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE AND ACCURACY IS WITH YOU AND MOTOROLA AND ITS SUPPLIERS AND LICENSORS PROVIDE THE LICENSED SOFTWARE "AS-IS" AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL OTHER WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF: MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS, OR INFORMATIONAL CONTENT; (C) WORKMANLIKE EFFORT; (D) CORRESPONDENCE TO DESCRIPTION; (E) TITLE OR NON-INFRINGEMENT OR NON-MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; (F) CUSTOM OR TRADE; (G) QUIET ENJOYMENT; OR (H) SYSTEM INTEGRATION. MOTOROLA MAKES NO WARRANTY THAT ANY PORTION OF THE SOFTWARE OR SERVICES WILL OPERATE ERROR-FREE, FREE OF ANY SECURITY DEFECTS, OR IN AN UNINTERRUPTED MANNER. MOTOROLA SHALL NOT BE RESPONSIBLE FOR PROBLEMS CAUSED BY CHANGES IN THE OPERATING CHARACTERISTICS OF THE DEVICE(S) UPON WHICH THE SOFTWARE IS OPERATING, OR FOR PROBLEMS IN THE INTERACTION OF THE SOFTWARE AND SERVICES WITH NON-MOTOROLA MATERIALS. MOTOROLA NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON PURPORTING TO ACT ON ITS BEHALF TO MODIFY OR TO CHANGE THIS WARRANTY, NOR TO ASSUME FOR MOTOROLA ANY OTHER WARRANTY OR LIABILITY CONCERNING THE SOFTWARE AND SERVICES. THE WARRANTY MADE BY MOTOROLA MAY BE VOIDED BY ABUSE OR MISUSE. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS UNDER MANDATORY LAW THAT VARY FROM STATE TO STATE AND COUNTRY TO COUNTRY.

Section 6. Copyright Notices. The existence of a copyright notice on any Licensed Software will not be construed as an admission or presumption of publication of the Licensed Software or public disclosure of any trade secrets associated with the Licensed Software.

Section 7. Survival. The following provisions will survive the expiration or termination of this SLA for any reason: Section 2 – Licensed Software License and Restrictions; Section 3 -- Software Systems and SaaS Products - Applicable Terms and Conditions; Section 4 – Term; Section 5.5 Warranty Disclaimer; and Section 7 – Survival.



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MAINTENANCE, SUPPORT AND LIFECYCLE MANAGEMENT ADDENDUM

This Maintenance, Support and Lifecycle Management Addendum (this “**MSLMA**”) is subject to, and governed by, the terms of the Motorola Solutions Customer Agreement (“**MCA**”) to which it is attached.

Capitalized terms used in this MSLMA, but not defined herein, will have the meanings set forth in the MCA.

Section 1. Addendum. This MSLMA governs Customer's purchase of Maintenance, Support and Lifecycle Management (as defined below) services (and, if set forth in an Proposal related Services) from Motorola and will form part of the Parties' Agreement. This MSMLA will control with respect to conflicting terms in the MCA or any other applicable Addendum, but only as applicable to the Maintenance, Support and Lifecycle Management services purchased under this MSMLA and not with respect to other Products and Services.

Section 2. Scope

Motorola will provide break/fix maintenance, technical support, or other Services (such as software integration Services) (“Maintenance and Support Services”) and/or upgrade services (“Lifecycle Management”) as further described in the applicable Proposal.

Section 3. Terms and conditions

3.1 Maintenance and Support services

3.1.1 Purchase Order Acceptance. Purchase orders for additional, continued, or expanded maintenance and software support, during the Warranty Period or after the Warranty Period, become binding only when accepted in writing by Motorola.

3.1.2 Start Date. The “Start Date” for Maintenance and Support Services will be indicated in the applicable Proposal.

3.1.3 Auto Renewal. Unless the applicable Proposal specifically states a termination date or one Party notifies the other in writing of its intention to discontinue the Maintenance and Support Services, this Agreement will renew for an additional one (1) year term on every anniversary of the Start Date. At the anniversary date, Motorola may adjust the price of the Services to reflect the renewal rate.

3.1.4 Termination. Written notice of intent to terminate must be provided thirty (30) days or more prior to the anniversary date. If Motorola provides Services after the termination or expiration of this MSLMA, the terms and conditions in effect at the time of termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates. This provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision.

3.1.5 Equipment Definition. For maintenance and support services, Equipment will be defined to mean the hardware specified in the applicable Proposal.

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3.1.6 Additional Hardware. If Customer purchases additional hardware from Motorola that becomes part of the Communications System, the additional hardware may be added to this MSLMA and will be billed at the applicable rates after the warranty period for that additional equipment expires. Such hardware will be included in the definition of Equipment.

3.1.7 Maintenance. Equipment will be maintained at levels set forth in the manufacturer's product manuals and routine procedures that are prescribed by Motorola will be followed. Motorola parts or parts of equal quality will be used for Equipment maintenance.

3.1.8 Equipment Condition. All Equipment must be in good working order on the Start Date or when additional equipment is added to the MSLMA. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay maintenance and support fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice. If Equipment cannot, in Motorola's reasonable opinion, be properly or economically maintained for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to maintain that Equipment.

3.1.9 Equipment Failure. Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this MSLMA and applicable Proposal.

3.1.10 Intrinsically Safe. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

3.1.11 Excluded Services.

- a. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.
- b. Unless specifically included in this MSLMA or the applicable Proposal, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

3.1.12 Time And Place. Service will be provided at the location specified in this MSLMA and/or the applicable Proposal. When Motorola performs maintenance, - Page 234 - installation at Customer's location, Customer will provide

Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this MSLMA or applicable Proposal, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this MSLMA or applicable Proposal, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

3.1.13 Customer Contact. Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

3.1.14 Warranty. Motorola warrants that its Maintenance and Support Services under this section will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

3.2 Lifecycle Management Services

3.2.1 The License terms included in the MCA and its SLA Addendum apply to any Motorola Licensed Software provided as part of the Lifecycle Management transactions.

3.2.2 The term of this MSLMA is [REDACTED] years, commencing on [REDACTED], 202[REDACTED]. The Lifecycle Management Price for the [REDACTED] years of services is \$ [REDACTED], excluding applicable sales or use taxes but including discounts as more fully set forth in the pricing pages. Because the Lifecycle Management is a Subscription Service as more fully described in the applicable Proposal, payment from Customer is due in advance and will not be in accordance with any Payment Milestone Schedule.

3.2.3 The Communications System upgrade will be scheduled during the subscription period and will be performed when Motorola's upgrade operation resources are available. Motorola may substitute any of the promised Equipment or Licensed Software so long as the substitute is equivalent or superior to the initially promised Equipment or Licensed Software.

3.2.4 Acceptance of a Lifecycle Management transaction occurs when the Equipment (if any) and Licensed Software are delivered, in accordance with the MCA, and the Lifecycle Management services are fully performed.

3.2.5 The Warranty Period for any Equipment or Licensed Software provided under a Lifecycle Management transaction will commence upon shipment and is for a period of ninety (90) days. The ninety (90) day warranty for Lifecycle Management services is set forth in the applicable Proposal.

3.2.6 In addition to the description of the Lifecycle Management services and exclusions provided in the applicable



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Proposal, the following apply:

1. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment.
2. Lifecycle Management services exclude the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.
3. Unless specifically included in this MSLMA or the applicable Proposal, Lifecycle Management services exclude items that are consumed in the normal operation of the Equipment; accessories; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet, or for Equipment malfunction caused by the transmission medium.
4. Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available during the performance of the Lifecycle Management services.

3.2.7 The Lifecycle Management annualized price is based on the fulfillment of the two year cycle. If Customer terminates this service during a two year cycle, except for Motorola's default, then Customer will be required to pay for the balance of payments owed for the two year cycle if a major system release has been implemented before the point of termination.

3.2.8 If Customer terminates this Maintenance and Support or Lifecycle Management service and contractual commitment before the end of the year term, for any reason other than Motorola's default, then the Customer will pay to Motorola a termination fee equal to the discount applied to the last three years of service payments related to the year commitment. This provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision.

Section 4. Payment

4.1 Unless alternative payment terms are stated in this MSLMA, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly and the Customer must pay each invoice in U.S. dollars within thirty (30) days of the invoice date. Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity.

4.2 INFLATION ADJUSTMENT. For multi-year agreements, at the end of the Agreement's first year and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, "All Items," Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. The adjustment calculation will be based upon the CPI for the most recent twelve (12) month increment beginning from the most current month available posted by the U.S. Department of Labor (<http://www.bls.gov>) immediately preceding the new maintenance year. For purposes of illustration, if in - Page 236 - PI reported an increase of 8%, Motorola may increase



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the Year 6 price by 5% (8%-3% base).

Motorola Solutions, Inc
Maintenance, Support & Lifecycle Mgmt Addendum v3.17.25

Software Policy

This document defines specific support availability and timelines for Motorola Solutions ASTRO® 25 and Dimetra systems.

Support Periods : The standard support period begins when a system software release is first made available to the market. From that date, the standard support period for the software release is four years, referred to as Year 1 to Year 4 or Y1 to Y4. The extended support period is from year 5 to year 7 or Y5 to Y7. Depending on the support option, the End of Support (EoS) period is from either year 5 or year 8 and into the future. These support periods are not affected by the purchase date, shipment date or acceptance date of a system for a given software release.

1) Standard support period: Motorola Solutions will support the given software release in the following manner:

- **Support Service Availability**

- Period: Y1 through Y4 from initial market availability of the software release
- All Support Services available

- **Software Defect Repair / Patching**

- Period: Y1 through Y2
- Qualified Severity 1 and Severity 2 incidents that result in product defect fixes will be made available to the customer. Some defects may require an upgrade to a more current release to resolve.
- Period: Y3 through Y4
- Qualified Severity 1 incidents that result in product defect fixes will be made available to the customer. Some defects may require an upgrade to a more current release to resolve.

- **Security Services**

- Period: Y1 through Y4
- All Security Services available (Security Monitoring and Security Update Service)

- **System Expansion**

- Period: Y1 through Y4
- Full system expansion available including subscribers, sites, consoles, base stations and radio system Customer Enterprise Network (CEN) additions.

2) Extended Support Period: Applies to software releases that have reached the end of Standard Support. Motorola Solutions continues to provide support on such products as specified below. Extended Support includes:

- **Support Service Availability**

- Period: Y5 through Y7
- All Support Services available through pricing - Page 237 - services will be escalated.



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- Software Defect Repair / Patching
 - Period: Y5 through Y7
 - Defect Repair: Not available
- Security Services
 - Period: Y5 through Y7
 - Security Services - Not available
- System Expansion
 - Period: Y5 through Y7
 - Infrastructure expansions are not available. System Expansion is limited to subscribers only. Some features on the subscribers may not function due to Infrastructure expansions no longer being available.

3) End of Support Period: Applies to software releases that have reached the end of Extended Support. Support for older software versions will no longer be available. End of Support includes:

- Support Service Availability and Pricing
 - Period: Y8 and later
 - Support Services - Not Available
- Software Patching
 - Period: Y5 and later
 - Defect Repair - Not Available
 - Security Services - Not Available
- System Expansion
 - Period: Y5 and later
 - Infrastructure expansions are not available. System Expansion is limited to subscribers only. Some features on the subscribers may not function due to Infrastructure expansions no longer being available.

Motorola Solutions, Inc
Effective 11-21-2016

Confidentiality Terms

As part of any Agreement between Customer and Motorola, and subject to any applicable freedom of information or public records legislation, the following confidentiality terms apply:

Confidential Information. In order to be considered Confidential Information, information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by disclosing party ("Discloser") by submitting a written document to receiving party ("Recipient") within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purposes and must be labeled or marked as confidential or its equivalent.



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Obligations of Confidentiality. During the Term and for a period of three (3) years from the expiration or termination of this Agreement, Recipient will (a) not disclose Confidential Information to any third party, except as expressly permitted in this Section 10 - Confidentiality; (b) restrict disclosure of Confidential Information to only those employees, agents or consultants who must access the Confidential Information for the purpose of providing Products or Services and who are bound by confidentiality terms substantially similar to those in this Agreement and licenses; (c) not copy, reproduce, reverse engineer, decompile or disassemble any Confidential Information; (d) use the same degree of care as for its own information of like importance, but no less than reasonable care to safeguard against disclosure; (e) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Section; and (f) only use the Confidential Information as needed to fulfill its obligations and secure its rights under this Agreement.

Exceptions. Recipient may disclose Confidential Information to the extent required by law, or a judicial or legislative order or proceeding. Recipient is not obligated to maintain as confidential any information that Recipient can demonstrate by documentation (a) is publicly known or available prior to without breach of this Agreement; (b) is lawfully obtained; or (c) is independently known or developed by Recipient without the use of, or reference to, any of Discloser's Confidential Information or any breach of this Agreement.

Ownership of Confidential Information. All Confidential Information is and will remain the property of Discloser, and will not be copied or reproduced without written permission. Within ten (10) days of receipt of Discloser's written request, Recipient will destroy or return or destroy all Confidential Information to Discloser, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain (a) one (1) archival copy for use only in case of a dispute concerning this Agreement, and

(b) Confidential Information that has been automatically stored in accordance with Recipient's standard backup or recordkeeping procedures. Recipient will remain subject to the obligations of this Agreement with respect to any Confidential Information retained subject to clauses (a) or (b). No license, express or implied, in the Confidential Information is granted to the Recipient other than to use it in the manner, and to the extent authorized by this Agreement. Discloser represents and warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

Disclosure. If Recipient is required to disclose Confidential Information pursuant to applicable law, statute, or regulation, or court order, the recipient will give to Discloser prompt written notice of the request and a reasonable opportunity to object to such disclosure and seek a protective order or appropriate remedy. If, in the absence of a protective order, Recipient determines, upon the advice of counsel, that it is required to disclose such information, it may disclose only confidential information specifically required and only to the extent required to do so.

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 10, 2026

Item Details

Presenter(s): Amir Nezarati, Transportation Engineering Manager

Department(s): Transportation and Infrastructure Development

Requested Motion

Motion to conditionally award the construction contract for the BL-0047 Downtown Safe Routes to School & Transit Connections Project to Hollins Construction Services, Inc., as the lowest responsible, responsive bidder, in an amount not to exceed \$2,422,856.00, subject to concurrence by the North Carolina Department of Transportation; authorize a construction contingency of 10%, or \$242,285.60; and authorize the Town Manager, or their designee, to execute the contract and related documents on behalf of the Town.

Approval Recommended?

Yes

Item Details

The BL-0047 Downtown Safe Routes to School & Transit Connections Project will construct pedestrian and multimodal improvements at several locations in and around Downtown Apex. Improvements include new sidewalk and sidepath connections, curb and gutter, associated drainage and utility work, and upgrades to pedestrian crossings and traffic signal infrastructure.

The construction contract includes approximately 5,350 linear feet of five-foot concrete sidewalk, approximately 820 linear feet of ten-foot asphalt sidepath, and improvements to signalized pedestrian crossings. Work will occur along portions of Apex Peakway, Hillcrest Road, Cash Street, Pate Street, Hunter Street, and Ambergate Station, including pedestrian crossing improvements at North Salem Street and Hunter Street.

The project is being delivered through the Locally Administered Projects Program (LAPP) and currently includes federal funding based on an 80% federal/20% local cost share for eligible right-of-way, utility relocation, and construction expenses. Current programmed project funding totals \$1,744,196, consisting of approximately \$1,395,356 in federal funds and \$348,840 in local matching funds.

Current Funding Table:

	Amount
Current Funding Amount	\$1,744,196
Federal Funds (80%)	\$1,395,356
Local Match (20%)	\$348,840

Sealed construction bids were received and opened on August 13, 2026. Hollins Construction Services, Inc. submitted the lowest responsible, responsive bid in the amount of \$2,422,856.00. The bid exceeds the Engineer's Estimate of \$2,027,078.93 by approximately \$395,777, or 19.5%. The next-lowest bid was submitted by Fred Smith Company in the amount of \$2,662,169.50.

The overall project funding requirement is currently estimated at approximately \$3.519 million. This amount includes right-of-way acquisition, construction, construction contingency, material testing, the CSX agreement, and NCDOT review charges. Higher fuel, labor, overhead, and other construction costs, together with inflation since the project was originally estimated, have increased the overall project cost.

To offset a portion of the increased construction cost, staff has submitted a request to CAMPO for supplemental federal funding. If approved, the supplemental funding could reimburse up to 50% of the remaining eligible project costs, up to the maximum amount awarded.

Supplemental Funding Table:

	Amount
Total Funding Needed (Right of Way, Construction, Contingencies, Material Testing, CSX Agreement & NCDOT Review Charges)	\$3,518,660
Current Funding Amount	\$1,744,196
Estimated Remaining Costs	\$1,774,464
Additional Federal Funds (50%)	\$887,232
Local Match (50%)	\$887,232

If CAMPO approves the supplemental funding request at the anticipated level, the Town's total estimated local contribution to the project would be approximately \$1,236,072. If supplemental funding is not awarded, the Town's estimated contribution would increase to approximately \$2,123,304. Existing funding within the Transportation Improvements Project Fund is sufficient to proceed with the project even if the supplemental funding request is not approved.

Staff recommends conditional award of the construction contract to Hollins Construction Services, Inc., as the lowest responsible, responsive bidder. Following Council approval, staff will submit the bid information to NCDOT for concurrence. Contract execution will occur following receipt of the required NCDOT concurrence.

Following issuance of the Notice to Proceed, the contractor will have 330 calendar days to complete the project, subject to the terms and schedule requirements contained in the Contract Documents.

Attachments

- CN7-A1: Construction Contract - Hollins Construction Services, Inc. - Downtown Safe Routes to School and Transit Connections (BL-0047)
- CN7-A2: Bid Tabulation - Hollins Construction Services, Inc. - Downtown Safe Routes to School and Transit Connections (BL-0047)



**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**PURCHASE ORDER #
ROAD WORK CONTRACT**

THIS CONTRACT is entered into this the ____ day of _____, 2026, by and between, Hollins Construction Services, Inc. a North Carolina corporation with its principal business offices located at 3211 Rogers Road, Wake Forest, NC 27587 (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 streets, roads, sidewalks and related infrastructure which from time to time require construction, maintenance, reconfiguration, renovation, installation, evaluation, site work, landscaping, 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

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 construction of approximately 5,350 linear feet of 5-foot concrete sidewalk to include curb and gutter where needed, approximately 820 linear feet of 10-foot asphalt side path, and improvement of signalized pedestrian crossings located within the Town of Apex at locations and in accordance with the specifications detailed in the Contract Documents (the “Work”). “Contract Documents” as used in this Contract include the following which are hereby incorporated into this Contract:

- A. This Contract
- B. Plan sheets titled “Downtown Safe Routes to School & Transit Connections”, dated 1/21/2026 by Town of Apex
- C. Town of Apex Standard Specifications and Standard Details
- D. 2024 NCDOT Standard Specifications for Roads and Structures as amended by the “Allowable Changes to the NC DOT 2024 Standard Specifications.” The terms “Engineer” and “Department” in Division I of the NC DOT 2024 Standard Specifications are replaced by “Transportation Engineering Manager” and “Town of Apex” respectively, as appropriate and applicable.
- E. NCDOT 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 (if applicable)
- H. Instructions to Bidders
- I. Execution of Bid
- J. Bid Form
- K. Bid Form Submission
- L. Bid Bond
- M. Notice of Award
- N. Performance & Payment Bonds
- O. Notice to Proceed
- P. Special Provisions
- Q. Addenda
- R. 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 within **330**calendar days of the issuance of the Notice to Proceed. Contractor will also comply with all contract times described in the Contract Documents including SP1 G08C, SP1 G13A, and SP1 G14C. Except where otherwise provided by the Contract, observation periods required by the Contract will not be a part of the work to be completed by the completion date and/or intermediate contract times stated in the Contract. The acceptable completion of the observation periods that extend beyond the final completion date shall be a part of the work covered by the performance and payment bonds. 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. In the alternate, 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 the amount as defined in the Contract Documents. Any changes to the schedule(s) provided in the Contract must be agreed to in writing by the Town and the Contractor.

If the Contractor is delayed at any time in the progress of his work by any act or negligence of the Town, Contractor's 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 an amount not to exceed \$2,422,856.00. Contractor shall submit applications for payment reflecting work completed through the date of application. Town will process all pay applications as the Work progresses. Payment shall be made within 30 days after certification of the Work in an application for payment. 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.

Final payment will be made within forty-five (45) days after acceptance of the Work and the Town has received all required warranty information, "as-built" drawings as required, and receipt 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 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 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 have been removed.

4. CHANGE ORDERS.

- A. In the event Town has changes in the Work not covered by the Contract Documents, 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. Contractor shall provide a complete breakdown of all labor and material costs with the Change Order request. The breakdown shall include the Contractor's allowance for overhead and profit not to exceed 10% of the net cost of the change with work provided directly by the Contractor. For purposes of this Contract, "net cost" shall mean the difference between all proper cost additions and deductions. No claim for adjustments of the contract price shall be valid unless the procedure outlined in this section is followed. Any work performed pursuant to an approved Change Order shall be governed by the terms of this Contract.
- B. The Parties agree that there are two methods that may be utilized to determine the cost of changes:
 1. If unit prices are quoted in the proposal or bid and the additional work is covered by those unit prices, or can be subsequently agreed to by the Parties, the cost of the change shall be computed by application of the unit prices based on quantities. If this method is used no additional allowances shall be made for overhead and profit.
 2. If the additional work is not covered by unit prices, unit prices were not provided in the proposal or bid, or by the Parties mutual election, Town and Contractor may negotiate and agree upon the value of the change prior to the issuance of the change order and the change order shall identify the corresponding lump sum adjustment to the contract price.

- C. In the event concealed conditions are discovered in the performance of the work below grade, or in the event concealed or unknown conditions in an existing structure vary from the conditions indicated in the Contract Documents, the contract sum and time for completion may be adjusted by Change Order upon claim by either party made within thirty (30) days after the condition has been identified. The cost shall be determined by one of the methods outlined in this Contract.
- D. Change Orders shall be submitted by the Contractor for the Town's review and approval. Contractor shall provide all applicable supporting data and information. Delay in approval of a Change Order due to Contractor's failure to submit proper documentation shall not be grounds for a time extension or basis of a claim. The Town shall respond to the Contractor's proposal within fourteen (14) days of receipt of the proposal. If accepted, the Town shall prepare the Change Order for the Contractor's signature. The Town shall execute the approved Change Order within seven (7) days of receipt from the Contractor. If the Work requires bonding, the Contractor shall notify its bonding company that the contract has been changed by the amount of the Change Order and provide a copy of the approved Change Order to the surety. In the event a Change Order cannot be agreed upon by the Parties, nothing in this Contract shall preclude the Town from performing, or having performed, the work requested in a Change Order.

In the event of a conflict between the terms of this Section 4 and the 2024 NC DOT Standard Specifications for Roads and Structures ("NC DOT Standards") for additional work or change orders, the NC DOT Standards shall control.

5. 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.

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.

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 all applicable state or national codes.

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. 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.

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. If required by law for performance of the Work, Contractor hereby certifies that Contractor is a licensed general contractor as defined by N.C.G.S. 87-1.

10. PROTECTION AND RESTORATION OF SITE.

Unless otherwise noted in the Contract Documents, Contractor shall supply all labor, transportation, tools, and apparatus necessary for the completion of this Work and shall maintain and remove all equipment of the Work, and be responsible for the safe, proper and lawful construction, maintenance and use of the same. Contractor shall provide all necessary protections for the site and shall be responsible for and pay for or repair, any damage to Town property caused by Contractor's or subcontractor's actions on the site. Protections provided by Contractor shall include cover of any Work that is not in progress but is accessible to the public. Any Work damaged that was not properly protected shall be repaired or replaced by the Contractor. Contractor shall provide all barricades necessary to keep the public away from the Work and shall secure and make safe any pedestrian paths impacted by the Work.

If at any point during the Work or completion of the Work contemplated by this Contract, the conduct or behavior of any worker on the site be determined to be a nuisance to the Town, or detrimental to the Town's operations, Contractor shall immediately remove such party from the site.

Contractor shall keep the work site and surrounding area reasonably free from obstruction and debris and shall remove all such debris when requested by the Town. Before final acceptance of the Work Contractor shall thoroughly clean the site and surrounding area and prepare the work site for use by the Town. Following the Work the Contractor shall restore impacted areas that are not part of the Work to their original state.

11. MAINTENANCE OF TRAFFIC.

Contractor will maintain traffic within the limits of the Work including all existing roadways that cross or intersect the Work from the beginning of the Work until the Town accepts the Work as complete. Contractor shall maintain roads, passageways, and sidewalks impacted by the Work in a safe, passable and convenient condition during the prosecution of the Work. When traffic control devices are necessary,

furnishing, erecting, operating, maintaining, relocating and removing said devices will be in accordance with the Contract Documents.

12. INSURANCE.

Work under this Contract shall not proceed until the Contractor has obtained all required insurance. The Contractor shall maintain valid general liability insurance in the minimum amount of \$5,000,000 per occurrence and \$5,000,000 general aggregate, covering Contractor from claims or damages for bodily injury, personal injury, or for property damages that may arise from operating under the Contract by the employees and agents of the Contractor. Contractor shall maintain commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex and the State of North Carolina as *additional insureds* 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 and show proof of workers' compensation in accordance with the statutory limits and employer's liability insurance in the minimum amount of \$1,000,000. The required limits of insurance may be obtained by a single general liability policy or the combination of a general liability policy and excess liability or umbrella policy. 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.

13. PRE-PROJECT SAFETY REVIEW MEETING.

When requested by the Town, the Contractor shall attend a pre-project safety review meeting with the contracting Department Head and Supervisors and Safety and Risk Manager prior to the start of Work.

14. SUBCONTRACTORS.

Contractor shall be fully responsible for its 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 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.

15. DISADVANTAGED BUSINESS ENTERPRISE.

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

16. 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 him 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, the Town may give notice in writing, sent by certified mail, return receipt requested, to the Contractor and Contractor's surety of such

delay, neglect or default, specifying the same, and if the Contractor within a period of seven (7) days after such notice shall not proceed in accordance therewith, then the Town shall, declare this Contract in default. Upon a declaration of default the following shall apply:

1. If the Work was required to be bonded the surety shall promptly take over the Work and complete the performance of this Contract in the manner and within the time frame specified. In the event the surety shall fail to take over the Work to be done under this Contract within seven (7) days after being so notified and notify the Town in writing, sent by certified mail, return receipt requested, that it is taking the same over and stating that it will diligently pursue and complete the same, the Town shall have full power and authority, without violating the Contract, to take the prosecution of the Work out of the hands of said Contractor, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said Contract according to the terms and provisions thereof or use such other methods as in its opinion shall be required for the completion of said Contract in an acceptable manner. All costs and charges incurred by the Town, together with the costs of completing the Work under Contract, shall be deducted from any monies due or which may become due said Contractor and surety. In case the expense so incurred by the Contractor shall be less than the sum which would have been payable under the Contract, if it had been completed by said Contractor, then the said Contractor and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the Contract, then the Contractor and the surety shall be liable and shall pay to the Town the amount of said excess.
2. If a bond was not required and there is no surety, then the Contractor shall promptly cure the default and complete the performance of this Contract in the manner and within the time frame specified in the written notice. In the event the Contractor shall fail to cure the default within the time specified, the Town shall have full power and authority, without violating the Contract, to take the prosecution of the Work out of the hands of said Contractor, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said Contract according to the terms and provisions thereof or use such other methods as in its opinion shall be required for the completion of said Contract in an acceptable manner. All costs and charges incurred by the Town, together with the costs of completing the Work under contract, shall be deducted from any monies due or which may become due said Contractor. If the expense so incurred by the Town shall be less than the sum which would have been payable under the Contract, if it had been completed by said Contractor, then the said Contractor shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the Contract, then the Contractor shall be liable and shall pay to the Town the amount of said excess.

17. 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. Unless otherwise notified, upon termination Contractor shall discontinue all Work and the placement of orders for materials and supplies in connection with this Contract. In the event of termination for convenience, the Town shall pay Contractor for all services satisfactorily performed in accordance with this Contract and such other costs actually incurred by the Contractor as approved by the Town.

18. 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 fails to perform the Work in a satisfactory manner or to perform in accordance with the terms of this Contract, the Town, after seven (7) days' written notice to the Contractor from the Town, may perform or have performed that portion of the Work. The cost of the associated Work may be deducted from any amounts due or that become due to the Contractor. In the event the cost of such performance exceeds the amount due the Contractor, then the Contractor or the surety (if applicable), or both, shall be liable for and shall pay to the Town the amount of the excess.

19. 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 Attn: Amir Nezarati PO Box 250 Apex, NC 27502 Amir.Nezarati@apexnc.org
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20. DELAY BEYOND THE CONTROL OF THE PARTIES.

Neither Contractor nor Town 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 fire, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. BINDING EFFECT.

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

28. 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.

29. 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.

30. 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.

31. 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.

32. CONTRACTOR'S WARRANTIES.

The Contractor, in executing this Contract, unconditionally guarantees materials and workmanship against 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 cases 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. During the manufacturer's warranty period the Contractor shall be responsible for the replacement of such defective equipment or materials.

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.

33. BOND REQUIREMENTS.

If a bond is required by the Contract Documents, 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 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 conformance with N.C.G.S. 44A-33. The corporate surety furnishing the bonds shall be authorized to do business in the State of North Carolina. 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.

34. 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.

35. 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.

33. 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 _____, 2026.

[Contractor]

X _____

[empty member name]
Email:
Timestamp: [empty signing timestamp]

Town of Apex

X _____

Randal E. Vosburg, Town Manager *Randy Vosburg*
Email: randy.vosburg@apexnc.org
Timestamp: [empty signing timestamp]

Attest

X _____

[empty member name]
Email:
Timestamp: [empty signing timestamp]

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

X _____

[empty member name] , Finance Director
Email: jon.griffin@apexnc.org
Timestamp: [empty signing timestamp]

ITEM #	SECTION	DESCRIPTION	QUANTITY	UNIT	Engineer's Estimate		Hollins Construction Services, Inc.		Fred Smith Company	
					UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
ROADWAY ITEMS										
1	800	MOBILIZATION	1	LS	\$ 98,157.35	\$ 98,157.35	\$115,000.00	\$ 115,000.00	\$130,000.00	\$ 130,000.00
2	801	CONSTRUCTION SURVEYING	1	LS	\$ 15,000.00	\$ 15,000.00	\$80,000.00	\$ 80,000.00	\$33,540.00	\$ 33,540.00
3	226	UNDERCUT EXCAVATION	100	CY	\$ 50.00	\$ 5,000.00	\$60.00	\$ 6,000.00	\$120.00	\$ 12,000.00
4	226	GRADING	1	LS	\$ 350,000.00	\$ 350,000.00	\$400,000.00	\$ 400,000.00	\$800,000.00	\$ 800,000.00
5	240	DRAINAGE DITCH EXCAVATION	25	CY	\$ 85.00	\$ 2,125.00	\$60.00	\$ 1,500.00	\$28.00	\$ 700.00
6	300	FOUNDATION CONDITIONING MATERIAL, MINOR STRUCTURES	75	TN	\$ 60.00	\$ 4,500.00	\$90.00	\$ 6,750.00	\$50.00	\$ 3,750.00
7	300	FOUNDATION CONDITIONING GEOTEXTILE	245	SY	\$ 10.00	\$ 2,450.00	\$9.00	\$ 2,205.00	\$5.00	\$ 1,225.00
8	310	15" PIPE CULVERTS, PP	530	LF	\$ 120.00	\$ 63,600.00	\$120.00	\$ 63,600.00	\$130.00	\$ 68,900.00
9	310	18" PIPE CULVERTS, PP	130	LF	\$ 150.00	\$ 19,500.00	\$150.00	\$ 19,500.00	\$160.00	\$ 20,800.00
10	310	15" PIPE END SECTION	3	EA	\$ 3,500.00	\$ 10,500.00	\$2,500.00	\$ 7,500.00	\$810.00	\$ 2,430.00
11	340	PIPE REMOVAL	30	LF	\$ 50.00	\$ 1,500.00	\$60.00	\$ 1,800.00	\$75.00	\$ 2,250.00
12	454	SEGMENTAL GRAVITY RETAINING WALLS	1,099	SF	\$ 175.00	\$ 192,325.00	\$95.00	\$ 104,405.00	\$121.00	\$ 132,979.00
13	520	AGGREGATE BASE COURSE	420	TN	\$ 80.00	\$ 33,600.00	\$85.00	\$ 35,700.00	\$65.00	\$ 27,300.00
14	545	INCIDENTAL STONE BASE	50	TN	\$ 100.00	\$ 5,000.00	\$85.00	\$ 4,250.00	\$85.00	\$ 4,250.00
15	607	MILLING ASPHALT PAVEMENT, 0-1.5"	335	SY	\$ 30.00	\$ 10,050.00	\$30.00	\$ 10,050.00	\$40.00	\$ 13,400.00
16	610	ASPHALT CONCRETE SURFACE COURSE, TYPE S 9.5B	180	TN	\$ 200.00	\$ 36,000.00	\$350.00	\$ 63,000.00	\$320.00	\$ 57,600.00
17	610	ASPHALT CONCRETE INTERMEDIATE COURSE, TYPE I 19.0C	120	TN	\$ 200.00	\$ 24,000.00	\$300.00	\$ 36,000.00	\$300.00	\$ 36,000.00
18	610	ASPHALT CONCRETE BASE COURSE, TYPE B 25.0C	390	TN	\$ 200.00	\$ 78,000.00	\$250.00	\$ 97,500.00	\$150.00	\$ 58,500.00
19	620	ASPHALT BINDER FOR PLANT MIX	40	TN	\$ 607.75	\$ 24,310.00	\$800.00	\$ 32,000.00	\$900.00	\$ 36,000.00
20	654	ASPHALT PLANT MIX, PAVEMENT REPAIR	10	TN	\$ 250.00	\$ 2,500.00	\$350.00	\$ 3,500.00	\$300.00	\$ 3,000.00
21	SP	PATCHING EXISTING PAVEMENT	100	TN	\$ 250.00	\$ 25,000.00	\$320.00	\$ 32,000.00	\$330.00	\$ 33,000.00
22	840	MASONRY DRAINAGE STRUCTURES	16	EA	\$ 5,000.00	\$ 80,000.00	\$5,500.00	\$ 88,000.00	\$5,000.00	\$ 80,000.00
23	840	MASONRY DRAINAGE STRUCTURES	2	LF	\$ 1,000.00	\$ 1,800.00	1,100	\$ 1,980.00	\$500.00	\$ 900.00
24	840	FRAME W/ GRATE, STANDARD 840.03	14	EA	\$ 1,750.00	\$ 24,500.00	1,300	\$ 18,200.00	\$1,000.00	\$ 14,000.00
25	840	FRAME W/ COVER, TOA STANDARD 700.05	2	EA	\$ 1,750.00	\$ 3,500.00	\$1,300.00	\$ 2,600.00	\$1,600.00	\$ 3,200.00
26	846	2'-6" CONCRETE CURB & GUTTER	1,995	LF	\$ 40.00	\$ 79,800.00	\$40.00	\$ 79,800.00	\$20.00	\$ 39,900.00
27	848	CONCRETE CURB RAMP	27	EA	\$ 3,000.00	\$ 81,000.00	\$3,500.00	\$ 94,500.00	\$2,500.00	\$ 67,500.00
28	848	6" CONCRETE DRIVEWAY	440	SY	\$ 60.00	\$ 26,400.00	\$100.00	\$ 44,000.00	\$95.00	\$ 41,800.00
29	848	4" CONCRETE SIDEWALK	2,250	SY	\$ 55.00	\$ 123,750.00	\$70.00	\$ 157,500.00	\$63.00	\$ 141,750.00
30	867	FENCE RESET (CHAIN LINK)	741	LF	\$ 40.00	\$ 29,640.00	\$40.00	\$ 29,640.00	\$22.00	\$ 16,302.00
31	876	RIP RAP, CLASS B	10	TN	\$ 100.00	\$ 1,000.00	\$190.00	\$ 1,900.00	\$155.00	\$ 1,550.00
32	876	GEOTEXTILE FOR DRAINAGE	120	SY	\$ 25.00	\$ 3,000.00	\$9.00	\$ 1,080.00	\$7.00	\$ 840.00
33	901	CONTRACTOR FURNISHED, TYPE E SIGNS	6	SF	\$ 50.00	\$ 300.00	\$55.00	\$ 330.00	\$22.50	\$ 135.00
34	903	SUPPORTS, 2-LB STEEL SQUARE BREAKAWAY	8	EA	\$ 300.00	\$ 2,400.00	\$105.00	\$ 840.00	\$135.00	\$ 1,080.00
35	904	SIGN ERECTION, TYPE E (GROUND MOUNTED)	3	EA	\$ 300.00	\$ 900.00	\$500.00	\$ 1,500.00	\$145.00	\$ 435.00
36	904	SIGN ERECTION, RELOCATE TYPE E (GROUND MOUNTED)	12	EA	\$ 200.00	\$ 2,400.00	\$500.00	\$ 6,000.00	\$225.00	\$ 2,700.00
37	SP	TEMPORARY TRAFFIC CONTROL	1	LS	\$ 150,000.00	\$ 150,000.00	\$189,000.00	\$ 189,000.00	\$380,000.00	\$ 380,000.00
38	1205	THERMO PAVEMENT MARKING LINES (4", 90 MILS)	65	LF	\$ 6.00	\$ 390.00	\$10.00	\$ 650.00	\$3.00	\$ 195.00
39	1205	THERMO PAVEMENT MARKING LINES (8", 90 MILS)	1,122	LF	\$ 5.00	\$ 5,610.00	\$18.00	\$ 20,196.00	\$4.00	\$ 4,488.00
40	1205	THERMO PAVEMENT MARKING LINES (24", 90 MILS)	150	LF	\$ 15.00	\$ 2,250.00	\$30.00	\$ 4,500.00	\$11.70	\$ 1,755.00
41	1510	6" WATER LINE (DIP)	20	LF	\$ 150.00	\$ 3,000.00	\$350.00	\$ 7,000.00	\$375.00	\$ 7,500.00
42	1515	RELOCATE WATER METER	17	EA	\$ 3,500.00	\$ 59,500.00	\$3,000.00	\$ 51,000.00	\$2,500.00	\$ 42,500.00
43	1515	RELOCATE FIRE HYDRANT	1	EA	\$ 4,550.00	\$ 4,550.00	\$15,000.00	\$ 15,000.00	\$10,750.00	\$ 10,750.00
44	1520	RELOCATE SANITARY SEWER CLEAN-OUT	10	EA	\$ 2,000.00	\$ 20,000.00	\$2,000.00	\$ 20,000.00	\$3,000.00	\$ 30,000.00
45	1520	SANITARY SEWER CLEAN-OUT	1	EA	\$ 2,600.00	\$ 2,600.00	\$550.00	\$ 550.00	\$4,200.00	\$ 4,200.00
46	1520	SEWER SERVICE LINE	46	LF	\$ 130.00	\$ 5,980.00	\$100.00	\$ 4,600.00	\$210.00	\$ 9,660.00
47	1530	ABANDON 4" UTILITY PIPE	56	LF	\$ 20.00	\$ 1,120.00	\$35.00	\$ 1,960.00	\$120.00	\$ 6,720.00
48	SP	FLOWABLE FILL	5.00	CY	\$ 500.00	\$ 2,500.00	\$800.00	\$ 4,000.00	\$1,500.00	\$ 7,500.00
49	1605	TEMPORARY SILT FENCE	2600	LF	\$ 3.00	\$ 7,800.00	\$6.50	\$ 16,900.00	\$2.15	\$ 5,590.00
50	1605	TEMPORARY SILT FENCE (SUPER SILT FENCE)	150.00	LF	\$ 5.00	\$ 750.00	\$7.50	\$ 1,125.00	\$7.85	\$ 1,177.50
51	SP	TREE PROTECTION FENCE	2,050.00	LF	\$ 3.00	\$ 6,150.00	\$4.50	\$ 9,225.00	\$1.70	\$ 3,485.00
52	1610	STONE FOR EROSION CONTROL, CLASS B	60.00	TN	\$ 100.00	\$ 6,000.00	\$85.00	\$ 5,100.00	\$85.00	\$ 5,100.00
53	1610	SEDIMENT CONTROL STONE	90.00	TN	\$ 100.00	\$ 9,000.00	\$85.00	\$ 7,650.00	\$75.00	\$ 6,750.00
54	1631	MATTING FOR EROSION CONTROL	8,400.00	SY	\$ 2.50	\$ 21,000.00	\$5.00	\$ 42,000.00	\$2.00	\$ 16,800.00
55	1632	1/4" HARDWARE CLOTH	300.00	LF	\$ 6.00	\$ 1,800.00	\$5.50	\$ 1,650.00	\$12.00	\$ 3,600.00
56	1642	COIR FIBER WATTLE BARRIER	300	LF	\$ 15.00	\$ 4,500.00	\$17.00	\$ 5,100.00	\$9.00	\$ 2,700.00
57	1660	SEEDING AND MULCHING	1.70	AC	\$ 4,000.00	\$ 6,800.00	\$3,600.00	\$ 6,120.00	\$2,500.00	\$ 4,250.00
58	1675	RESPONSE TO EROSION CONTROL	25	EA	\$ 160.00	\$ 4,000.00	\$300.00	\$ 7,500.00	\$50.00	\$ 1,250.00
59	SP	FABRIC INSERT INLET PROTECTION, TYPE 1	7	EA	\$ 250.00	\$ 1,750.00	\$450.00	\$ 3,150.00	\$220.00	\$ 1,540.00
60	SP	FABRIC INSERT INLET PROTECTION, TYPE 2	18	EA	\$ 250.00	\$ 4,500.00	\$450.00	\$ 8,100.00	\$200.00	\$ 3,600.00
61	SP	FABRIC INSERT INLET PROTECTION CLEANOUT	150	EA	\$ 125.00	\$ 18,750.00	\$170.00	\$ 25,500.00	\$50.00	\$ 7,500.00
62	SP	FILTER BAG WITH GRAVEL PAD	1	EA	\$ 500.00	\$ 500.00	\$500.00	\$ 500.00	\$1,000.00	\$ 1,000.00
63	SP	TREE PLANTING	7.00	EA	\$ 800.00	\$ 5,600.00	\$2,000.00	\$ 14,000.00	\$1,434.00	\$ 10,038.00
64	SP	CONCRETE WASHOUT STRUCTURE	1.00	EA	\$ 1,500.00	\$ 1,500.00	\$1,700.00	\$ 1,700.00	\$2,500.00	\$ 2,500.00
65	SP	PREFABRICATED CONCRETE WASHOUT	1.00	EA	\$ 1,500.00	\$ 1,500.00	\$2,500.00	\$ 2,500.00	\$2,300.00	\$ 2,300.00
TRAFFIC SIGNAL ITEMS										
66	1705	PEDESTRIAN SIGNAL HEAD (16", 1 SECTION WITH COUNTDOWN)	8	EA	\$ 1,668.55	\$ 13,348.40	\$1,700.00	\$ 13,600.00	\$1,300.00	\$ 10,400.00
67	SP	APS DETECTOR STATION	8	EA	\$ 1,805.65	\$ 14,445.20	\$5,000.00	\$ 40,000.00	\$1,200.00	\$ 9,600.00
68	SP	CENTRAL CONTROL UNITS FOR APS DETECTOR STATION	1	EA	\$ 4,706.66	\$ 4,706.66	\$6,000.00	\$ 6,000.00	\$4,400.00	\$ 4,400.00
69	1705	SIGNAL CABLE	2,200	LF	\$ 5.34	\$ 11,742.50	\$12.00	\$ 26,400.00	\$7.80	\$ 17,160.00
70	1705	VEHICLE SIGNAL HEAD (12", 3 SECTION)	4	EA	\$ 1,660.90	\$ 6,643.60	\$2,000.00	\$ 8,000.00	\$1,600.00	\$ 6,400.00
71	1705	VEHICLE SIGNAL HEAD (12", 4 SECTION)	4	EA	\$ 2,235.68	\$ 8,942.70	\$2,000.00	\$ 8,000.00	\$2,200.00	\$ 8,800.00
72	1715	UNPAVED TRENCH (1.2')	200	LF	\$ 31.25	\$ 6,250.00	\$26.00	\$ 5,200.00	\$26.00	\$ 5,200.00
73	1715	PAVED TRENCH (1.2')	100	LF	\$ 93.75	\$ 9,375.00	\$81.00	\$ 8,100.00	\$40.00	\$ 4,000.00
74	1716	JUNCTION BOX (STANDARD SIZE)	1	EA	\$ 1,099.40	\$ 1,099.40	\$1,250.00	\$ 1,250.00	\$1,150.00	\$ 1,150.00
75	1726	LEAD-IN CABLE (14-2)	2,900	LF	\$ 3.54	\$ 10,258.75	\$11.00	\$ 31,900.00	\$4.30	\$ 12,470.00
76	1737	MODIFY RADIO INSTALLATION	1	EA	\$ 2,022.43	\$ 2,022.43	\$5,400.00	\$ 5,400.00	\$4,035.00	\$ 4,035.00
77	1743	TYPE II PEDESTAL WITH FOUNDATION	8	EA	\$ 4,729.40	\$ 37,835.20	\$6,400.00	\$ 51,200.00	\$4,300.00	\$ 34,400.00
78	1745	SIGN FOR SIGNALS	9	EA	\$ 764.88	\$ 6,883.88	\$800.00	\$ 7,200.00	\$1,060.00	\$ 9,540.00
79	1747	LED BLANKOUT SIGN	1	EA	\$ 3,125.00	\$ 3,125.00	\$7,000.00	\$ 7,000.00	\$10,000.00	\$ 10,000.00
80	1750	SIGNAL CABINET FOUNDATION	1	EA	\$ 3,795.31	\$ 3,795.31	\$4,000.00	\$ 4,000.00	\$2,350.00	\$ 2,350.00
81	1751	CONTROLLER WITH CABINET (TYPE 2070LX, BASE MOUNTED)	1	EA	\$ 33,290.28	\$ 33,290.28	\$40,000.00	\$ 40,000.00	\$28,100.00	\$ 28,100.00
82	1751	DETECTOR CARD (170)	10	EA	\$ 417.14	\$ 4,171.38	\$1,100.00	\$ 11,000.00	\$370.00	\$ 3,700.00
83	1753	CABINET BASE EXTENDER	1	EA	\$ 1,715.40	\$ 1,715.40	\$1,400.00	\$ 1,400.00	\$500.00	\$ 500.00
84	1550	BORE & JACK	40	LF	\$ 488.01	\$ 19,520.50	\$220.00	\$ 8,800.00	\$85.00	\$ 3,400.00
85	SP	PREEMPT FIELD MONITORING UNIT	1	EA	\$ 5,000.00	\$ 5,000.00	\$12,000.00	\$ 12,000.00	\$12,400.00	\$ 12,400.00
					TOTAL:	\$ 2,027,078.93		\$ 2,422,856.00		\$ 2,662,169.50

ITEM # SECTION		DESCRIPTION	QUANTITY	UNIT	Browe Construction Company		Morgan Trucking & Gen Const	
					UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
ROADWAY ITEMS								
1	800	MOBILIZATION	1	LS	\$112,750.00	\$ 112,750.00	\$176,856.00	\$ 176,856.00
2	801	CONSTRUCTION SURVEYING	1	LS	\$49,750.00	\$ 49,750.00	\$75,100.00	\$ 75,100.00
3	226	UNDERCUT EXCAVATION	100	CY	\$120.00	\$ 12,000.00	\$55.65	\$ 5,565.00
4	226	GRADING	1	LS	\$356,250.00	\$ 356,250.00	\$1,007,900.00	\$ 1,007,900.00
5	240	DRAINAGE DITCH EXCAVATION	25	CY	\$100.00	\$ 2,500.00	\$28.00	\$ 700.00
6	300	FOUNDATION CONDITIONING MATERIAL, MINOR STRUCTURES	75	TN	\$100.00	\$ 7,500.00	\$95.00	\$ 7,125.00
7	300	FOUNDATION CONDITIONING GEOTEXTILE	245	SY	\$30.00	\$ 7,350.00	\$12.50	\$ 3,062.50
8	310	15" PIPE CULVERTS, PP	530	LF	\$375.00	\$ 198,750.00	\$132.00	\$ 69,960.00
9	310	18" PIPE CULVERTS, PP	130	LF	\$435.00	\$ 56,550.00	\$200.00	\$ 26,000.00
10	310	15" PIPE END SECTION	3	EA	\$3,500.00	\$ 10,500.00	\$2,000.00	\$ 6,000.00
11	340	PIPE REMOVAL	30	LF	\$125.00	\$ 3,750.00	\$40.00	\$ 1,200.00
12	454	SEGMENTAL GRAVITY RETAINING WALLS	1,099	SF	\$85.00	\$ 93,415.00	\$75.00	\$ 82,425.00
13	520	AGGREGATE BASE COURSE	420	TN	\$87.00	\$ 36,540.00	\$90.00	\$ 37,800.00
14	545	INCIDENTAL STONE BASE	50	TN	\$100.00	\$ 5,000.00	\$85.00	\$ 4,250.00
15	607	MILLING ASPHALT PAVEMENT, 0-1.5"	335	SY	\$25.00	\$ 8,375.00	\$30.00	\$ 10,050.00
16	610	ASPHALT CONCRETE SURFACE COURSE, TYPE S 9.5B	180	TN	\$325.00	\$ 58,500.00	\$200.00	\$ 36,000.00
17	610	ASPHALT CONCRETE INTERMEDIATE COURSE, TYPE I 19.0C	120	TN	\$325.00	\$ 39,000.00	\$200.00	\$ 24,000.00
18	610	ASPHALT CONCRETE BASE COURSE, TYPE B 25.0C	390	TN	\$325.00	\$ 126,750.00	\$250.00	\$ 97,500.00
19	620	ASPHALT BINDER FOR PLANT MIX	40	TN	\$920.00	\$ 36,800.00	\$810.00	\$ 32,400.00
20	654	ASPHALT PLANT MIX, PAVEMENT REPAIR	10	TN	\$325.00	\$ 3,250.00	\$550.00	\$ 5,500.00
21	SP	PATCHING EXISTING PAVEMENT	100	TN	\$325.00	\$ 32,500.00	\$550.00	\$ 55,000.00
22	840	MASONRY DRAINAGE STRUCTURES	16	EA	\$9,000.00	\$ 144,000.00	\$5,000.00	\$ 80,000.00
23	840	MASONRY DRAINAGE STRUCTURES	2	LF	\$2,000.00	\$ 3,600.00	\$2,700.00	\$ 4,860.00
24	840	FRAME W/ GRATE, STANDARD 840.03	14	EA	\$2,800.00	\$ 39,200.00	\$1,990.00	\$ 27,860.00
25	840	FRAME W/ COVER, TOA STANDARD 700.05	2	EA	\$2,800.00	\$ 5,600.00	\$1,990.00	\$ 3,980.00
26	846	2'-6" CONCRETE CURB & GUTTER	1,995	LF	\$30.00	\$ 59,850.00	\$50.00	\$ 99,750.00
27	848	CONCRETE CURB RAMP	27	EA	\$2,250.00	\$ 60,750.00	\$5,000.00	\$ 135,000.00
28	848	6" CONCRETE DRIVEWAY	440	SY	\$100.00	\$ 44,000.00	\$125.00	\$ 55,000.00
29	848	4" CONCRETE SIDEWALK	2,250	SY	\$60.00	\$ 135,000.00	\$75.00	\$ 168,750.00
30	867	FENCE RESET (CHAIN LINK)	741	LF	\$40.00	\$ 29,640.00	\$30.00	\$ 22,230.00
31	876	RIP RAP, CLASS B	10	TN	\$200.00	\$ 2,000.00	\$115.00	\$ 1,150.00
32	876	GEOTEXTILE FOR DRAINAGE	120	SY	\$30.00	\$ 3,600.00	\$12.50	\$ 1,500.00
33	901	CONTRACTOR FURNISHED, TYPE E SIGNS	6	SF	\$150.00	\$ 900.00	\$300.00	\$ 1,800.00
34	903	SUPPORTS, 2-LB STEEL SQUARE BREAKAWAY	8	EA	\$280.00	\$ 2,240.00	\$225.00	\$ 1,800.00
35	904	SIGN ERECTION, TYPE E (GROUND MOUNTED)	3	EA	\$300.00	\$ 900.00	\$150.00	\$ 450.00
36	904	SIGN ERECTION, RELOCATE TYPE E (GROUND MOUNTED)	12	EA	\$300.00	\$ 3,600.00	\$80.00	\$ 960.00
37	SP	TEMPORARY TRAFFIC CONTROL	1	LS	\$265,000.00	\$ 265,000.00	\$700,000.00	\$ 700,000.00
38	1205	THERMO PAVEMENT MARKING LINES (4", 90 MILS)	65	LF	\$5.00	\$ 325.00	\$1.75	\$ 113.75
39	1205	THERMO PAVEMENT MARKING LINES (8", 90 MILS)	1,122	LF	\$6.00	\$ 6,732.00	\$3.25	\$ 3,646.50
40	1205	THERMO PAVEMENT MARKING LINES (24", 90 MILS)	150	LF	\$18.00	\$ 2,700.00	\$10.00	\$ 1,500.00
41	1510	6" WATER LINE (DIP)	20	LF	\$1,000.00	\$ 20,000.00	\$315.00	\$ 6,300.00
42	1515	RELOCATE WATER METER	17	EA	\$4,375.00	\$ 74,375.00	\$1,500.00	\$ 25,500.00
43	1515	RELOCATE FIRE HYDRANT	1	EA	\$18,750.00	\$ 18,750.00	\$10,000.00	\$ 10,000.00
44	1520	RELOCATE SANITARY SEWER CLEAN-OUT	10	EA	\$1,800.00	\$ 18,000.00	\$3,000.00	\$ 30,000.00
45	1520	SANITARY SEWER CLEAN-OUT	1	EA	\$3,125.00	\$ 3,125.00	\$6,500.00	\$ 6,500.00
46	1520	SEWER SERVICE LINE	46	LF	\$190.00	\$ 8,740.00	\$105.00	\$ 4,830.00
47	1530	ABANDON 4" UTILITY PIPE	56	LF	\$325.00	\$ 18,200.00	\$100.00	\$ 5,600.00
48	SP	FLOWABLE FILL	5.00	CY	\$2,000.00	\$ 10,000.00	\$650.00	\$ 3,250.00
49	1605	TEMPORARY SILT FENCE	2600	LF	\$9.00	\$ 23,400.00	\$4.50	\$ 11,700.00
50	1605	TEMPORARY SILT FENCE (SUPER SILT FENCE)	150.00	LF	\$15.00	\$ 2,250.00	\$18.50	\$ 2,775.00
51	SP	TREE PROTECTION FENCE	2,050.00	LF	\$12.00	\$ 24,600.00	\$3.00	\$ 6,150.00
52	1610	STONE FOR EROSION CONTROL, CLASS B	60.00	TN	\$100.00	\$ 6,000.00	\$125.00	\$ 7,500.00
53	1610	SEDIMENT CONTROL STONE	90.00	TN	\$100.00	\$ 9,000.00	\$95.00	\$ 8,550.00
54	1631	MATTING FOR EROSION CONTROL	8,400.00	SY	\$10.00	\$ 84,000.00	\$2.50	\$ 21,000.00
55	1632	1/4" HARDWARE CLOTH	300.00	LF	\$5.00	\$ 1,500.00	\$4.00	\$ 1,200.00
56	1642	COIR FIBER WATTLE BARRIER	300	LF	\$10.00	\$ 3,000.00	\$18.85	\$ 5,655.00
57	1660	SEEDING AND MULCHING	1.70	AC	\$9,800.00	\$ 16,660.00	\$6,170.00	\$ 10,489.00
58	1675	RESPONSE TO EROSION CONTROL	25	EA	\$500.00	\$ 12,500.00	\$75.00	\$ 1,875.00
59	SP	FABRIC INSERT INLET PROTECTION, TYPE 1	7	EA	\$400.00	\$ 2,800.00	\$800.00	\$ 5,600.00
60	SP	FABRIC INSERT INLET PROTECTION, TYPE 2	18	EA	\$500.00	\$ 9,000.00	\$800.00	\$ 14,400.00
61	SP	FABRIC INSERT INLET PROTECTION CLEANOUT	150	EA	\$300.00	\$ 45,000.00	\$250.00	\$ 37,500.00
62	SP	FILTER BAG WITH GRAVEL PAD	1	EA	\$750.00	\$ 750.00	\$4,270.00	\$ 4,270.00
63	SP	TREE PLANTING	7.00	EA	\$2,850.00	\$ 19,950.00	\$1,000.00	\$ 7,000.00
64	SP	CONCRETE WASHOUT STRUCTURE	1.00	EA	\$5,000.00	\$ 5,000.00	\$1,250.00	\$ 1,250.00
65	SP	PREFABRICATED CONCRETE WASHOUT	1.00	EA	\$6,000.00	\$ 6,000.00	\$1,250.00	\$ 1,250.00
TRAFFIC SIGNAL ITEMS								
66	1705	PEDESTRIAN SIGNAL HEAD (16", 1 SECTION WITH COUNTDOWN)	8	EA	\$1,375.00	\$ 11,000.00	\$1,400.00	\$ 11,200.00
67	SP	APS DETECTOR STATION	8	EA	\$2,425.00	\$ 19,400.00	\$2,275.00	\$ 18,200.00
68	SP	CENTRAL CONTROL UNITS FOR APS DETECTOR STATION	1	EA	\$5,375.00	\$ 5,375.00	\$5,000.00	\$ 5,000.00
69	1705	SIGNAL CABLE	2,200	LF	\$7.00	\$ 15,400.00	\$6.25	\$ 13,750.00
70	1705	VEHICLE SIGNAL HEAD (12", 3 SECTION)	4	EA	\$1,625.00	\$ 6,500.00	\$1,600.00	\$ 6,400.00
71	1705	VEHICLE SIGNAL HEAD (12", 4 SECTION)	4	EA	\$2,375.00	\$ 9,500.00	\$1,700.00	\$ 6,800.00
72	1715	UNPAVED TRENCH (1.2")	200	LF	\$25.00	\$ 5,000.00	\$26.00	\$ 5,200.00
73	1715	PAVED TRENCH (1.2")	100	LF	\$95.00	\$ 9,500.00	\$85.00	\$ 8,500.00
74	1716	JUNCTION BOX (STANDARD SIZE)	1	EA	\$1,000.00	\$ 1,000.00	\$750.00	\$ 750.00
75	1726	LEAD-IN CABLE (14-2)	2,900	LF	\$6.00	\$ 17,400.00	\$6.00	\$ 17,400.00
76	1737	MODIFY RADIO INSTALLATION	1	EA	\$6,000.00	\$ 6,000.00	\$5,200.00	\$ 5,200.00
77	1743	TYPE II PEDESTAL WITH FOUNDATION	8	EA	\$7,250.00	\$ 58,000.00	\$6,200.00	\$ 49,600.00
78	1745	SIGN FOR SIGNALS	9	EA	\$625.00	\$ 5,625.00	\$600.00	\$ 5,400.00
79	1747	LED BLANKOUT SIGN	1	EA	\$8,350.00	\$ 8,350.00	\$7,250.00	\$ 7,250.00
80	1750	SIGNAL CABINET FOUNDATION	1	EA	\$3,125.00	\$ 3,125.00	\$3,000.00	\$ 3,000.00
81	1751	CONTROLLER WITH CABINET (TYPE 2070LX, BASE MOUNTED)	1	EA	\$34,950.00	\$ 34,950.00	\$37,950.00	\$ 37,950.00
82	1751	DETECTOR CARD (170)	10	EA	\$625.00	\$ 6,250.00	\$600.00	\$ 6,000.00
83	1753	CABINET BASE EXTENDER	1	EA	\$1,000.00	\$ 1,000.00	\$1,000.00	\$ 1,000.00
84	1550	BORE & JACK	40	LF	\$200.00	\$ 8,000.00	\$175.00	\$ 7,000.00
85	SP	PREEMPT FIELD MONITORING UNIT	1	EA	\$8,125.00	\$ 8,125.00	\$7,000.00	\$ 7,000.00
						\$ 2,749,517.00		\$ 3,537,487.75

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 10, 2026

Item Details

Presenter(s): Allen Coleman, Town Clerk

Department(s): Town Clerk's Office

Requested Motion

Motion to approve, as submitted or amended, Meeting Minutes from the following meetings:

- August 07, 2026 - Special Town Council Meeting Minutes
- August 08, 2026 - Special Town Council Meeting Minutes
- August 11, 2026 - Regular Town Council Meeting Minutes
- August 25, 2026 - Regular Town Council Meeting Minutes

Approval Recommended?

The Town Clerk recommends the Town Council approve the meeting minutes as presented or amended.

Item Details

In accordance with 160A-72 of North Carolina General Statutes (NCGS), the Governing Board has the legal duty to approve all minutes that are entered into the official journal of the Board's proceedings.

Attachments

- CN8-A1: **DRAFT** Minutes - August 07, 2026 - Special Town Council Meeting Minutes
- CN8-A2: **DRAFT** Minutes - August 08, 2026 - Special Town Council Meeting Minutes
- CN8-A3: **DRAFT** Minutes - August 11, 2026 - Regular Town Council Meeting Minutes
- CN8-A4: **DRAFT** Minutes - August 25, 2026 - Regular Town Council Meeting Minutes



| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 10, 2026

Item Details

Presenter(s): Allen Coleman, Town Clerk

Department(s): Town Clerk's Office

Requested Motion

Motion to confirm the following Council Committee agenda items:

- Tobacco Free Parks Discussion to Vibrant Community and Economic Vitality Council Committee
- Electric Vehicle Charging Discussion to Responsible Development Council Committee
- Potential Town Code and Unified Development Ordinance Amendments in Response to Session Law No. 2026-41 Discussion to Responsible Development and General Government, Fiscal Stewardship, and Internal Support Council Committee
- Axon Dir Drone Program Contract Discussion to Public Safety Council Committee
- Automatic License Plate Reader Program Discussion to Public Safety Council Committee
- Council Policies Discussion to General Government, Fiscal Stewardship, and Internal Support Council Committee

Approval Recommended?

Yes

Item Details

Council Committees are intended to support the Town Council's policy-development process by providing a forum for more focused review and discussion of matters within defined subject areas before recommendations are brought back to the full Town Council for consideration. The Council Committee framework establishes specific areas of responsibility for each committee, identifies departmental and advisory board alignments where applicable, and provides a clearer pathway for routing policy matters through the organization. The adopted framework aligns with the Town's Strategic Plan Areas and includes committees addressing governance and fiscal stewardship, environmental leadership, responsible development, community and economic vitality, and public safety.

As part of the routing and review process for Council Committees, the Town Council has provided direction that proposed committee matters should first be presented to the full Town Council before being placed on a Council Committee agenda. Matters initiated by an elected official should generally be introduced during the Announcements and Petitions portion of a regular Town Council meeting. Matters initiated or recommended by Town staff should generally be presented to Council through the Consent Agenda. This process provides the full Council with notice of the proposed topic and an opportunity to confirm the appropriate committee referral before staff schedules the matter for committee review.

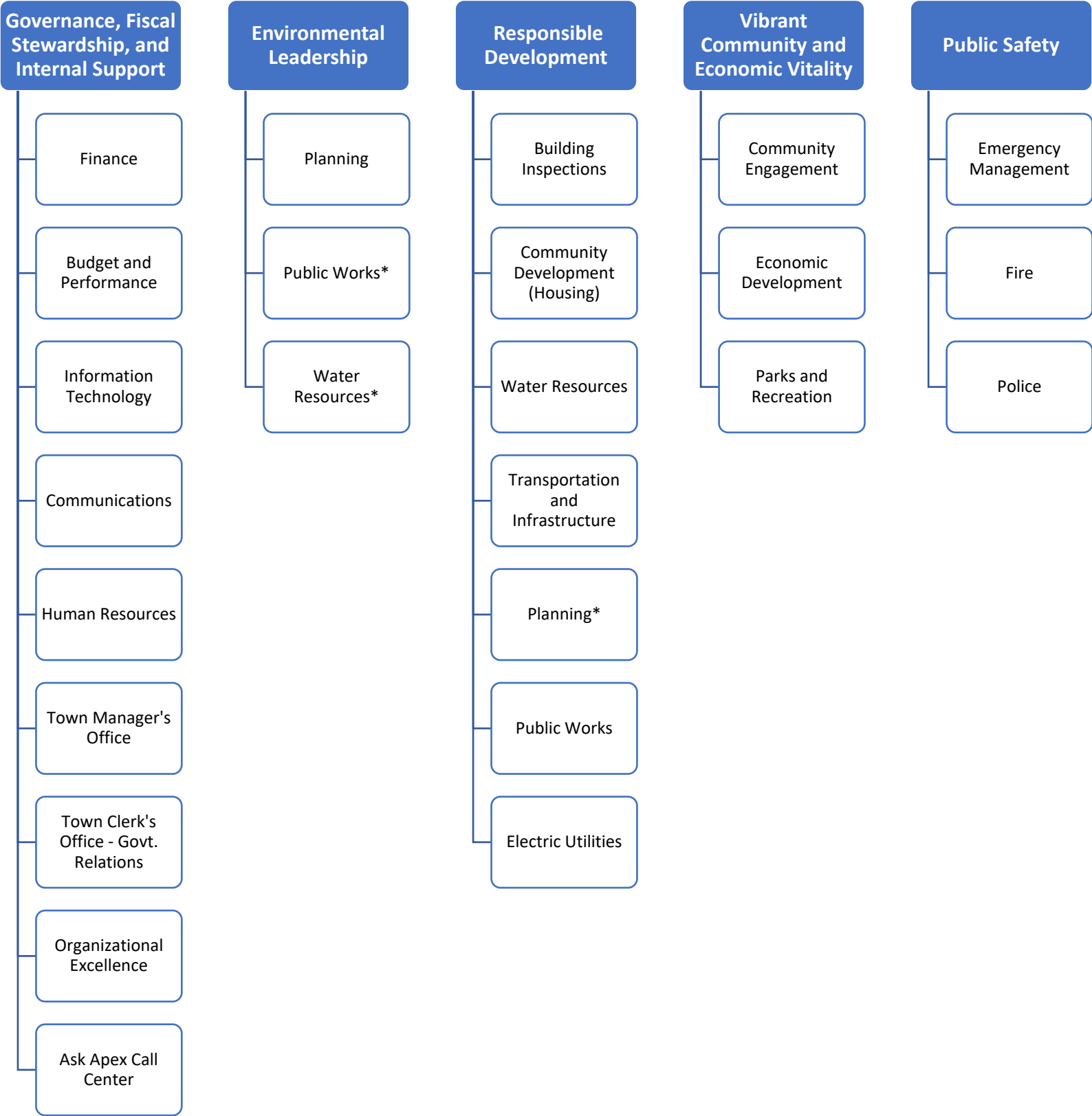
Accordingly, this agenda item serves to document and confirm the Council Committee referrals listed above. The requested referrals include matters related to tobacco-free parks, electric vehicle charging, potential Town Code and Unified Development Ordinance amendments, the Axon Drone Program, the Automatic License Plate Reader Program, and Council policies.

Attachments

- CN9-A1: Council Committee Structure



TOWN OF APEX COUNCIL COMMITTEE FRAMEWORK



ADOPTED 3/25/2025

**means their home Committee but matter may overlap with other committees*

TOWN OF APEX COUNCIL COMMITTEE FRAMEWORK

Governance, Fiscal Stewardship, and Internal Support Committee

Objective: Governance related matters and the policy development process; Government Relations Strategy Recommendations, Town Council’s Rules of Procedures, establishment of Council Committees; the annual budget process, capital improvement programming and debt, financial reporting, annual audit, and fees; and Policies and strategies related to Human Resources, including personnel, benefits, and compensation; Communication strategies and Innovative practices, policies related to advisory boards and commissions.

Membership: Two Elected Members

Advisory Board Alignment: N/A

Environmental Leadership Committee

Objective: Ensure the contributions of natural resources to human well-being are explicitly recognized and valued and that maintaining their health is a primary objective; Public health needs are recognized and addressed through provisions for healthy foods, physical activity, access to recreation, healthcare, environmental justice, and safe neighborhoods; Building and maintenance resilience to climate change

Membership: Two Elected Members

Advisory Board Alignment: Environmental Advisory Board (EAB), Planning Board

Responsible Development Committee

Objective: Support Town Council’s long-range vision and comprehensive planning goals; Provide direction on development policies and processes and transportation standards that ensure sustainable development and redevelopment strategies; and Ensure that all local proposals account for, connect with, and support the plans of adjacent jurisdictions and the surrounding region; Review policy updates and make policy recommendations that enhance the quality of life in Apex and the livability of neighborhoods on all matters relating to the creation and maintenance of housing within the Town, including public housing and affordable private housing; Review policy matters relating to solving homelessness and the provision of services to unhoused individuals within the Town; and Oversee the City’s investments of Federal Housing and Urban Development (HUD) Funding Programs to address a wide range of community development needs.

Membership: Two Elected Members

Advisory Board Alignment: Planning Board, Multimodal Transportation Advisory Board (MTAB)

Economic Vitality and Community Support Committee

Objective: Provide economic development strategies that enhance the health of the economy and improve the employability of Apex residents; Reviews and recommends policies that promote workforce development, economic opportunities and business growth.

Membership: Two Elected Members

**means their home Committee but matter may overlap with other committees*

TOWN OF APEX COUNCIL COMMITTEE FRAMEWORK

Advisory Board Alignment: Parks and Recreation Advisory Board, Culture and Arts Advisory Board

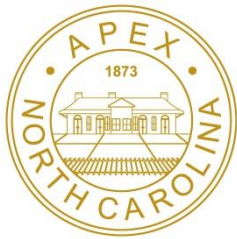
Public Safety Committee

Objective: Public safety policy direction in areas of interest including police, fire, EMS, and emergency management.

Membership: Two Elected Members

Advisory Board Alignment: N/A (Current)

**means their home Committee but matter may overlap with other committees*



"The Peak of Good Living"

TOWN OF APEX NORTH CAROLINA

Proclamation

Hispanic Heritage Month 2026

from the Office of the Mayor

WHEREAS, National Hispanic Heritage Month is celebrated each year from September 15th to October 15th to recognize the histories, cultures, and contributions of Americans with ancestors from Spain, Mexico, the Caribbean, and Central and South America; and,

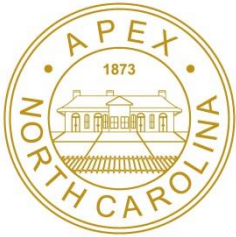
WHEREAS, September 15th marks the beginning of the observance as it is the anniversary of independence for Latin American countries Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. In addition, Mexico and Chile celebrate their independence days on September 16th and September 18th, respectively; and,

WHEREAS, More than 6% of Apex's population is Hispanic, and those individuals strengthen the Town as successful business owners, artists, scientists, teachers, civic and faith leaders, and so much more; and,

WHEREAS, Hispanic culture is beautiful and vibrant, and we are fortunate as a Town to have incredible residents that are willing to share that culture with everyone; and,

WHEREAS, The Town of Apex is proud to host a bilingual story event, Spider Stories - Historias de Arañas, on September 16th at Hunter Street Park, as well as the Latino Arts Festival on September 26th here at Town Hall, to further share and celebrate Hispanic heritage and culture.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim September 15th - October 15th, 2026 "Hispanic Heritage Month" in the Town of Apex, and extend my gratitude to the Hispanic community in Apex for their passion for the success and growth of our Town and its residents.



"The Peak of Good Living"

TOWN OF APEX NORTH CAROLINA

Proclamation

National Senior Center Month 2026

from the Office of the Mayor

WHEREAS, National Senior Center Month, observed each September, is a time to recognize and celebrate the vital role senior centers play in strengthening communities by providing opportunities for older adults to remain active, engaged, connected, and independent; and,

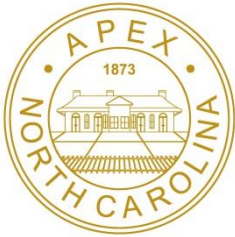
WHEREAS, The Apex Senior Center, serving adults age 55 and older, provides a vibrant and inclusive community where residents can participate in a diverse array of fitness, wellness, arts, educational, social, recreational, and travel opportunities designed to support active and fulfilling lives; and,

WHEREAS, The Apex Senior Center exemplifies the evolving role of senior centers as vibrant community hubs where older adults are not defined by age or stereotypes, but are empowered to remain active, pursue new experiences, forge friendships, share their knowledge and talents, and continue to thrive; and,

WHEREAS, In recent years, the Apex Senior Center has experienced tremendous growth, with a 229% increase in monthly visits and a 92% increase in annual program registrations from 2022 to 2025; and,

WHEREAS, The Town of Apex is proud to have a state-of-the-art Senior Center for our seniors to utilize and is grateful to all of our staff members whose dedicated work ensures it can be used to the fullest extent possible.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim the Month of September 2026 "National Senior Center Month" in the Town of Apex, and encourage all Apex adults age 55 and over to visit our Senior Center to see all of the things it can offer to you.



"The Peak of Good Living"

TOWN OF APEX NORTH CAROLINA

Proclamation

Patriot Day 2026

from the Office of the Mayor

WHEREAS, 2026 marks the 25th anniversary of the terrorist attacks of September 11th, 2001, which brings difficult and painful emotions, memories, and reflections for millions of people across the country; and,

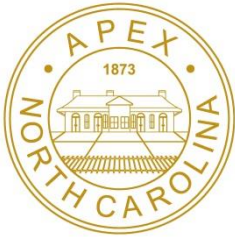
WHEREAS, Patriot Day serves as an annual reminder of one of our nation's greatest tragedies, and an opportunity to remember and honor the over 3,000 lives that were lost on that day in this horrific attack, including nearly 500 first responders; and,

WHEREAS, Since then, the FDNY World Trade Center Program reports that over 9,000 people have died from illnesses linked to the attacks and their aftermath, including one of the largest rescue, recovery, and clean-up operations in human history; and,

WHEREAS, Even a quarter century later, the toll exacted by these horrendous acts of wanton violence remains heavy, with health impacts from Ground Zero conditions extending to thousands, and emotional burdens from the loss extending to millions; and,

WHEREAS, The Town of Apex honors the lives lost 25 years ago and the lives still impacted today, and invite all residents to join us in remembrance for the Annual Patriot Day ceremony on Friday, September 11th, 2026, at 9:30 AM at the Downtown Service Memorial.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim Friday, September 11th, 2026, "Patriot Day" in the Town of Apex, and urge all residents to join me in our responsibility to keep the memory of those who perished, those who survived, and those who bravely responded alive.



"The Peak of Good Living"

TOWN OF APEX NORTH CAROLINA

Proclamation

Think Apex Day 2026

from the Office of the Mayor

WHEREAS, Think Apex Day was established in 2017 through the vision of former Councilmember and Mayor Pro Tempore Nicole Dozier as a community-wide day dedicated to bringing people together through volunteer service and projects that strengthen and enhance the Town of Apex; and,

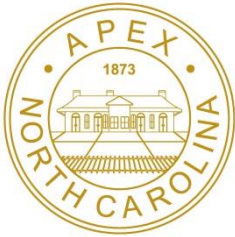
WHEREAS, This year, Think Apex Day will host projects across the community, including "Think Clean", "Think Golden Games", "Think Green", "Think Create", "Think Refresh", and "Think ReUse"; and,

WHEREAS, Through these projects, volunteers across Apex will come together to beautify public spaces, support local nonprofits, engage with seniors, care for the environment, strengthen neighborhoods, and demonstrate the compassion and generosity that define our community; and,

WHEREAS, Think Apex Day serves as a reminder that when neighbors come together with a shared purpose, they create a stronger, more vibrant, and more connected community for current and future generations; and,

WHEREAS, Every act of service, whether large or small, has the power to make a lasting difference, inspire others to get involved, and strengthen the connections that make Apex the Peak of Good Living; and,

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim Saturday, September 12th, 2026, "Think Apex Day" in the Town of Apex, and encourage residents to participate in one of the many service opportunities and always remember there is nothing we can't accomplish when we work together.



"The Peak of Good Living"

TOWN OF APEX NORTH CAROLINA

Proclamation

United States Air Force's 79th Birthday

from the Office of the Mayor

WHEREAS, The Department of the Air Force was created when President Harry Truman signed the National Security Act of 1947, and the Air Force was officially established on September 18, 1947, with the swearing in of its first Secretary W. Stuart Symington; and,

WHEREAS, Prior to this change, the roles now fulfilled by the Air Force were performed by the United States Army, with military use of aircraft beginning in the early 1900's and being critical throughout both World Wars; and,

WHEREAS, After World War II, it was obvious that airpower would need to be a significant part of military strategy to aid in the nation's defense and deter war, giving rise to the Air Force as a separate entity; and,

WHEREAS, Through its entire history, the United States Air Force has played a significant role in protecting our country and its people as well as pioneering significant scientific and technological breakthroughs which have had applications far beyond the military; and,

WHEREAS, The Town of Apex is grateful for our country's Armed Forces and its members across all branches, and wish a very happy birthday to the United States Air Force.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim September 18th, 2026, "the 79th Birthday of the United States Air Force", and extend my gratitude to all individuals who have served our country in the United States Air Force, including Councilmember Ed Gray.

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PUBLIC HEARING
Meeting Date: September 10, 2026

Item Details

Presenter(s): Dianne Khin, Director

Department(s): Planning

Requested Motion

Conduct a Public Hearing and consider possible motion to adopt an annexation ordinance on the Question of Annexation - Apex Town Council's intent to annex 3.03 +/- acres, located at 2412 Olive Chapel Road (PIN No. 0722-50-9118), Annexation No. 831, into the Town Corporate limits.

Approval Recommended?

Yes

Item Details

The annexation petition has been certified and a public hearing notice has been posted.

This annexation is not associated with a rezoning case at this time. The parcel is zoned as Rural Residential and currently in the Town's ETJ area. According to the Annexation Petition submitted, the applicant seeks the annexation primarily to obtain sewer services.

Attachments

- PH1-A1: Annexation Ordinance - Annexation No. 831- 2412 Olive Chapel Road - 3.03 acres
- PH1-A2: Public Legal Notice - Annexation No. 831 - 2412 Olive Chapel Road - 3.03 acres
- PH1-A3: Legal Description - Annexation No. 831 - 2412 Olive Chapel Road - 3.03 acres
- PH1-A4: Aerial Map - Annexation No. 831 - 2412 Olive Chapel Road - 3.03 acres
- PH1-A5: Plat Map - Annexation No. 831 - 2412 Olive Chapel Road - 3.03 acres
- PH1-A6: Annexation Petition - Annexation No. 831 - 2412 Olive Chapel Road - 3.03 acres





TOWN OF APEX, NORTH CAROLINA

Municipality No. 333

After recording, please return to: Town Clerk, Town of Apex, P.O. Box 250, Apex, NC 27502

ORDINANCE NO. 2026-_____
ANNEXATION PETITION NO. 831
2412 OLIVE CHAPEL ROAD - 3.03 ACRES

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS
OF THE TOWN OF APEX, NORTH CAROLINA
P.O. Box 250, Apex, North Carolina 27502

WHEREAS, the Apex Town Council has been petitioned under G.S.§160A-31, as amended, to annex the area described herein; and

WHEREAS, the Apex Town Council has by Resolution directed the Town Clerk to investigate the sufficiency of said petition; and

WHEREAS, the Town Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at Apex Town Hall at 6:00 p.m. on September 10, 2026, after due notice by posting to the Town of Apex website, <http://www.apexnc.org/news/public-notices-legal-ads>; and

WHEREAS, the Apex Town Council does hereby find as a fact that said petition meets the requirements of G.S.§160A-31, as amended.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of Apex, North Carolina:

Section 1. By virtue of the authority granted by G.S.§160A-31, as amended, the territory described on the below identified survey plat, also property PIN No. 0722-50-9118, is hereby annexed and made part of the Town of Apex, North Carolina, as of the date of adoption of this Ordinance on September 10, 2026. The survey plat that describes the annexed territory is that certain survey plat entitled "ANNEXATION MAP TOWN OF APEX" in that certain area identified as "3.03 ACRES TOTAL ANNEXED". Plat map print date June 08, 2026, and Land Surveyor dated June 16, 2026 and recorded in Book of Maps book number 2026 and page numbers _____, Wake County Registry.

Section 2. Upon and after the adoption of this ordinance, the territory described herein and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Apex, North Carolina, and shall be entitled to the same privileges and benefits as other parts of the Town of Apex. Said territory shall be subject to municipal taxes according to G.S. §160A-58.10, as amended.

Section 3. The Clerk of the Town of Apex, North Carolina shall cause to be recorded in the Office of the Register of Deeds of Wake County and in the Office of the Secretary of State at Raleigh, North Carolina and in the Office of the Wake County Board of Elections an accurate map of the annexed territory, described in Section 1 hereof, together with a duly certified copy of this Ordinance.

Adopted this the 10th day of September, 2026.

Jacques K. Gilbert
Mayor | Town of Apex

ATTEST:

Allen L. Coleman, CMC
Town Clerk | Town of Apex

APPROVED AS TO FORM:

Brian Meyer
Interim Town Attorney | Town of Apex

Legal Description

ANNEXATION AREA DESCRIPTION
ANNEXATION PETITION NO. 831
2412 OLIVE CHAPEL ROAD - 3.03 ACRES

Lying and being in Town of Apex ETJ, White Oak Township, Wake County, North Carolina and being described more fully as follows to wit:

BEGINNING at a point, the northeast corner of a 3.03 acre tract (B.M. 1980, Pg. 151), the southeast corner of a 4.39 acre tract (B.M. 1982, Pg. 24); thence a curve to the left South 14° 54' 26" East, 45.17 feet (chord), 324.66 feet (radius) to a point; thence South

19° 02' 40" East, 251.73 feet to a point; thence South 71° 00' 01" West, 399.49 feet to a point; thence North 21° 22' 18" West, 324.65 feet to a point; thence North 72° 41' 11" East, 155.49 feet to a point; thence North 17° 59' 08" West, 35.64 feet to a point; thence North 83° 42' 57" East, 266.43 feet to a point and place of BEGINNING, containing 3.03 acres more or less. The above-described tract of land includes that portion within the right of way of Olive Chapel Road (NCSR 1160)

ORDINANCE NO. 2026-_____
ANNEXATION PETITION NO. 831
2412 OLIVE CHAPEL ROAD - 3.03 ACRES

STATE OF NORTH CAROLINA

COUNTY OF WAKE

CLERK'S CERTIFICATION

I, Allen L. Coleman, Town Clerk, Town of Apex, North Carolina, do hereby certify the foregoing is a true and correct copy of Annexation Ordinance No. 2026_____, adopted at a meeting of the Town Council, on the 10th day of September 2026, the original of which will be on file in the Office of the Town Clerk of Apex, North Carolina.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official Seal of the Town of Apex, North Carolina, this the 10th day of September 2026.

(SEAL)

Allen L. Coleman, CMC
Town Clerk



"The Peak of Good Living"

OFFICE OF THE TOWN CLERK

TOWN OF APEX NORTH CAROLINA

Media Contact:

Allen Coleman, Town Clerk to the Apex Town Council

FOR IMMEDIATE RELEASE

REVISED NO. 2 - PUBLIC NOTICE – PUBLIC HEARING

APEX, N.C. (July 1, 2026 (Original Publication), July 23, 2026 (**Revised**), August 14, 2026 (**Revised No. 2**)) – The Town Council of Apex, North Carolina has scheduled a Public Hearing to be held at **6:00 p.m.** at Apex Town Hall, 73 Hunter Street, on the **10th day of September, 2026**, on the question of annexation of the following property requested by petition filed pursuant to G.S. 160A-31:

Annexation Petition No. 831 2412 Olive Chapel Road – 1.481 acres



The property owner/applicant requested a continuance from August 11, 2026 to Thursday, September 10, 2026. The Town Council unanimously voted to approve the continuance request at the August 11, 2026 meeting.

Continued on next page



"The Peak of Good Living"

OFFICE OF THE TOWN CLERK

TOWN OF APEX NORTH CAROLINA

PUBLIC NOTICE – PUBLIC HEARING

Residents may submit written comments to the Town Council with attention marked to the Town Clerk Allen Coleman; P.O. Box 250; Apex, NC 27502 or by email at public public.hearing@apexnc.org. Please use subject line "Annexation Petition No. 831" and include your first and last name, your address, and your phone number in your written statements. Written comments will be accepted until 3:00 PM on Thursday, September 10, 2026.

Members of the public can access and view the meeting on the Town's YouTube Channel <https://www.youtube.com/c/TownofApexGov> or attend in-person.

Anyone needing special accommodations to attend this meeting and/or if this information is needed in an alternative format, please contact the Town Clerk's Office. The Town Clerk is located at 73 Hunter Street in Apex Town Hall on the 2nd Floor, (email) allen.coleman@apexnc.org or (phone) 919-249-1260. We request at least 48 hours' notice prior to the meeting to make the appropriate arrangements.

Questions should be directed to the Town Clerk's Office.

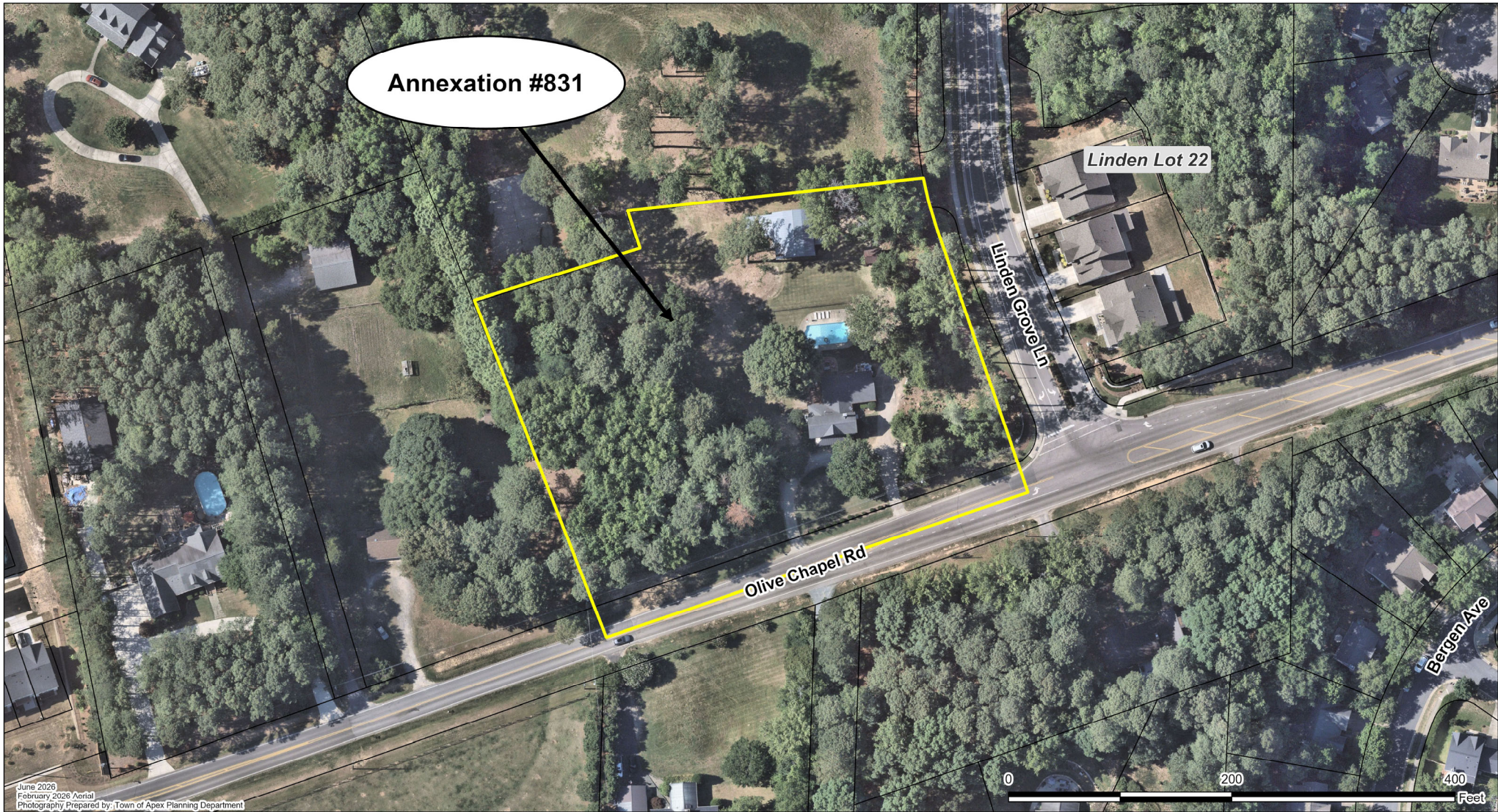
###

Smith & Smith Surveyors, P.A.
P.O. Box 457
Apex, N.C. 27502
(919) 362-7111
Firm License No. C-0155

Lying and being in Town of Apex ETJ, White Oak Township, Wake County, North Carolina and being described more fully as follows to wit:

BEGINNING at a point, the northeast corner of a 3.03 acre tract (B.M. 1980, Pg. 151), the southeast corner of a 4.39 acre tract (B.M. 1982, Pg. 24); thence a curve to the left South 14° 54' 26" East, 45.17 feet (chord), 324.66 feet (radius) to a point; thence South 19° 02' 40" East, 251.73 feet to a point; thence South 71° 00' 01" West, 399.49 feet to a point; thence North 21° 22' 18" West, 324.65 feet to a point; thence North 72° 41' 11" East, 155.49 feet to a point; thence North 17° 59' 08" West, 35.64 feet to a point; thence North 83° 42' 57" East, 266.43 feet to a point and place of BEGINNING, containing 3.03 acres more or less. The above-described tract of land includes that portion within the right of way of Olive Chapel Road (NCSR 1160).

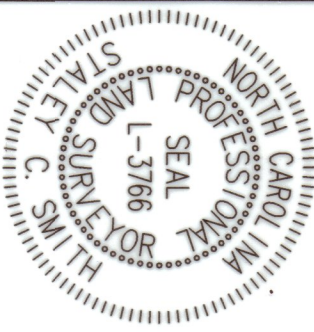
This description was prepared for the sole purpose of annexation of a municipal boundary and for no other use.





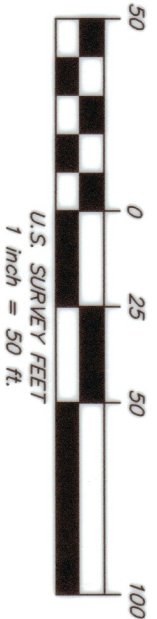
I, STALEY C. SMITH, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION AS RECORDED IN:
D.B. 19389, PG. 588
D.B. 1982, PG. 24
B.M. 1980, PG. 151

THIS MAP OR PLAT IS EXEMPT FROM THE REQUIREMENTS OF G.S. 47-30 PURSUANT TO G.S. 47-30(i).
WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER, AND SEAL THIS 16TH DAY OF JUNE, A.D., 2026.



Staley C. Smith
Professional Land Surveyor
License Number
L-3766

(3)
KELLY HUNTER
DRISCOLL, ET VIR
D.B. 18537, PG. 2432
B.M. 1982, PG. 24



(2)
PITTSBORO HOME RENTALS, LLC
D.B. 19486, PG. 2220
B.M. 1982, PG. 24

Legend
R/W - Right Of Way (Approximate)
PIN - Parcel Identification Number
ETJ - Extrajurisdictional Jurisdiction
NCSR - North Carolina Secondary Road
2412 - Street Address (Typical)
Property Line / Annexation Line (not surveyed)
Property Line (not surveyed)
Approximate Right Of Way Line (not surveyed)
Existing Town or Apex Corporate Limits (not surveyed)

OLIVE CHAPEL ROAD
PUBLIC R/W ~ NCSR 1160
FRANK A. FOSTER
REBECCA COPELAND
D.B. 17659, PG. 494
B.M. 1993, PG. 491
RR CAPITAL GROUP LLC
D.B. 19470, PG. 665

LISTED OWNER
(NOT A TITLE REPLICATION)
ZION LAND MANAGEMENT, LLC
200 FRANKLIN WAY
APEX, NC 27502
PIN 0722-50-9118

ANNEXATION MAP for the TOWN OF APEX
ZION LAND MANAGEMENT, LLC
TOWN APEX ETJ, WHITE OAK TOWNSHIP, WAKE COUNTY, NC
Smith & Smith,
Surveyors, P.A.
P.O. BOX 457
APEX, NC 27502
(919) 362-7111
FIRM LICENSE NO. C-0155
PLAN DATE
JUNE 8, 2026
SCALE
1" = 50'
DRAWN BY
WHH
PROJECT NO.
2023-86

3.03 ACRES TOTAL ANNEXED
NOT A PHYSICAL SURVEY

THIS MAP WAS PREPARED FOR THE SOLE PURPOSE OF ANNEXATION OF A MUNICIPAL BOUNDARY. THIS MAP SHOULD NOT BE USED TO TRANSFER PROPERTY SHOWN HEREON.

ZION LAND MANAGEMENT, LLC
D.B. 19389, PG. 588 ~ TRACT TWO
B.M. 1980, PG. 151

ALLEN COLEMAN, CMC, NCCCO, TOWN CLERK

ANNEXATION # _____
I, ALLEN COLEMAN, CMC, NCCCO, TOWN CLERK, Apex, North Carolina
certify this is a true and exact map of annexation adopted
the _____ day of _____, 2026,
by the Town Council, I set my hand and seal of
the Town of Apex, _____, 2026.

ZION LAND MANAGEMENT, LLC
D.B. 19389, PG. 588 ~ TRACT TWO
B.M. 1982, PG. 24

RESOURCE CONSERVATION EASEMENT
B.M. 2019, PG. 1362

SURVEYOR NOTES:
1. THE PROPERTY SHOWN HEREON MAY BE SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS, RIGHTS, EASEMENTS, OR INTERESTS OF RECORD.
2. NO TITLE SEARCH HAS BEEN PERFORMED BY THIS FIRM DURING THE COURSE OF THIS SURVEY.
3. THIS SURVEYOR DOES NOT CERTIFY TO THE EXISTENCE OR NON-EXISTENCE OF ANY UNDERGROUND UTILITIES, BURIAL GROUNDS, OR ANY SUBSURFACE FEATURES THAT MAY OR MAY NOT BE PRESENT ON THIS SITE.
4. ALL DISTANCES ARE HORIZONTAL U.S. SURVEY FOOT UNIT GROUND MEASUREMENTS.
5. AREA DETERMINED USING THE COORDINATE GEOMETRY METHOD.
6. CURRENT PROPERTY ZONING: RR (RURAL RESIDENTIAL)
7. SUBJECT PROPERTY ADDRESS: 2412 OLIVE CHAPEL RD
APEX, NC 27502

ASTER COURT
50' PUBLIC R/W
B.M. 2022, PG. 18

LINDEN GROVE LANE
60' PUBLIC R/W
B.M. 2019, PG. 1362

OPEN SPACE 2
B.M. 2019, PG. 1362

LINDEN HOMEOWNERS ASSOCIATION, INC.
D.B. 19360, PG. 946 ~ TRACT ONE
ANNEXATION # 620
B.M. 2018, PG. 231

VARIABLE WIDTH
PUBLIC STREET
DRAINAGE EASEMENT
B.M. 2019, PG. 1362

50' INTERMITTENT
STREAM BUFFER
B.M. 2019, PG. 1362

10' X 70' SIGHT
DISTANCE TRIANGLE
B.M. 2019, PG. 1362

20' TOWN OF APEX
UTILITY EASEMENT
B.M. 2019, PG. 1362

(203)
B.M. 2022, PG. 18

(202)
B.M. 2022, PG. 18

(201)
B.M. 2022, PG. 18

LINDEN HOMEOWNERS ASSOCIATION, INC.
D.B. 19360, PG. 946 ~ TRACT ONE
ANNEXATION # 620
B.M. 2018, PG. 231

OPEN SPACE 1
B.M. 2019, PG. 1362

10' X 70' SIGHT
DISTANCE TRIANGLE
B.M. 2019, PG. 1362

SEARS
D.B. 2984, PG. 137

DORTCH, ET UX
D.B. 17304, PG. 2622
ANNEXATION # 214
B.M. 1992, PG. 877

TOWN OF APEX CORPORATE LIMITS
B.M. 1991, PG. 877
S 71°00'01" W
399.49'
OUT IN
2412

PETITION FOR VOLUNTARY ANNEXATION

Town of Apex, North Carolina



ANNEXATION PETITION SUBMISSION: Applications are due by 12:00 pm on the first business day of each month. See the "[Annexation Petition Schedule](#)" on the website for details.

ANNEXATION FEE: \$300; \$200.00 for well/septic failure

VOLUNTARY ANNEXATION: Upon receipt of a valid petition signed by all of the owners of real property in the area described therein, the Town may annex an area either contiguous or not contiguous to its primary corporate limits when the area meets the standards set out under North Carolina General Statutes 160A-31 and 160A-58.1. A petition submitted pursuant to North Carolina General Statute 160A-58.1 need not be signed by the owners of real property that is wholly exempt from property taxation under the Constitution and laws of North Carolina, nor by railroad companies, public utilities as defined in G.S. 62-3(23), or electric or telephone membership corporations.

HARD COPY SUBMITTAL REQUIREMENTS:

- Town of Apex Petition for Annexation with original wet ink signatures. No photocopies or scanned images.
- Petition Fee by one of the following forms of payment:
 - Visa or Master Card (online only);
 - In person: Cash (exact amount only); or
 - Check payable to 'Town of Apex'

ELECTRONIC SUBMITTAL REQUIREMENTS: [GeoCivix \(IDT\)](#)

- Town of Apex Petition for Annexation
- Written Metes and Bounds Legal Description: Submit original PDF. Scanned documents will not be accepted.
- Electronic plat submittal (18" x 24")

REVIEW AND APPROVAL PROCESS:

- **SUBMITTAL:** Submit hard copy application with original wet signatures (no photo copies or scanned images) and fee to the Planning Department and upload an electronic copy of the application, legal description and Annexation Plat via [GeoCivix](#).
- **REVIEW BY STAFF:** The Planning Department and Development Services Department review the annexation submission. Comments will be sent to the applicant via email.
- **DESIGNATION OF ANNEXATION NUMBER:** The application is assigned an annexation number once the annexation petition is received.
- **ANNEXATION PLAT SUBMISSION:** After the map and legal description are deemed sufficient by the Town of Apex, the applicant is required to submit three (3) 18"x24" Mylar annexation plats to the Planning Department by the due date on the attached Annexation Schedule.
- **1ST TOWN COUNCIL MEETING:** This Town Council Meeting is typically held the second Tuesday of each month. The Town Council will pass a resolution directing the Town Clerk to investigate the annexation petition. The Town Clerk will present to the Town Council a Certificate of Sufficiency indicating that the annexation petition is complete. A resolution setting the date of the public hearing is then approved.
- **LEGAL ADVERTISEMENT:** A legal advertisement will be published on the Town of Apex's website no more than 25 days and no less than 10 days prior to the date of the public hearing.
- **2ND TOWN COUNCIL MEETING/PUBLIC HEARING:** This Town Council Meeting is typically held the fourth Tuesday of each month. The Town Council will either adopt or deny an ordinance to extend the corporate limits of the Town of Apex.
- **RECORDATION:** If the annexation is approved by the Town Council, the Town Clerk will have the Annexation Plats recorded at the Wake County or Chatham County Register of Deeds, as appropriate. Wake County or Chatham County will keep one of the recorded plats, one copy will be returned to the Planning Department, and the surveying company is given the remaining recorded Annexation Plat.

FOR WELL AND/OR SEPTIC FAILURES:

If the purpose of the petition is to connect to public water and/or sewer, contact Water Resources Program Coordinator Jessica Sloan at 919-372-7478 or jessica.sloan@apexnc.org to confirm that public water and/or sewer is available to the property. In order to receive public water and/or sewer services from the Town of Apex, refer to the checklist of items below to assist with obtaining one or both of these services:

- Apply for a plumbing permit with the Building Inspections and Permitting Department.
- The plumbing permit and associated costs for water and/or sewer will be included with the permit.

Please refer to the [Town of Apex Fee Schedule](#) for the list of current fees.

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 831
Fee Paid: \$ 300.00

Submittal Date: 5-6-2026
Check #: CC

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, ☒ Wake County, ☐ Chatham County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads, and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

OWNER INFORMATION

ZION LAND MANAGEMENT, LLC
Owner Name (Please Print)

919-602-0147
Phone

Owner Name (Please Print)

Phone

Owner Name (Please Print)

Phone

0722509118
Property PIN or Deed Book & Page #

admin@zionlm.com
E-mail Address

Property PIN or Deed Book & Page #

E-mail Address

Property PIN or Deed Book & Page #

E-mail Address

SURVEYOR INFORMATION

Surveyor: SMITH & SMITH SURVEYORS P.A.

Phone: 919-362-7111 Fax: —

E-mail Address: ben@smithandsmithsurveyors.net

ANNEXATION SUMMARY CHART

Property Information

Total Acreage to be annexed: 3.03

Population of acreage to be annexed: 6

Existing # of housing units: 1

Proposed # of housing units: 1

Zoning District*: RR

Reason(s) for annexation (select all that apply)

Need water service due to well failure ☐

Need sewer service due to septic system failure ☐

Water service (new construction) ☐

Sewer service (new construction) ☒

Receive Town Services ☐

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department with questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: _____

Submittal Date: _____

COMPLETE IF SIGNED BY INDIVIDUALS:

All individual owners must sign. (If additional signatures are necessary, please attach an additional sheet.)

Please Print

Signature

Please Print

Signature

Please Print

Signature

Please Print

Signature

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County,
this the _____ day of _____, 20____.

SEAL

Notary Public

My Commission Expires: _____

COMPLETE IF A CORPORATION:

In witness whereof, said corporation has caused this instrument to be executed by its President and attested by its Secretary by order of its Board of Directors, this the _____ day of _____, 20____.

SEAL

Corporate Name

Attest:

By: _____

President (Signature)

Secretary (Signature)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County,
this the _____ day of _____, 20____.

SEAL

Notary Public

My Commission Expires: _____

PETITION FOR VOLUNTARY ANNEXATION

Application #: _____

Submittal Date: _____

COMPLETE IF IN A LIMITED LIABILITY COMPANY

In witness whereof, ZION LAND MANAGEMENT a limited liability company, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the 5th day of MAY, 2026.

Name of Limited Liability Company ZION LAND MANAGEMENT, LLC

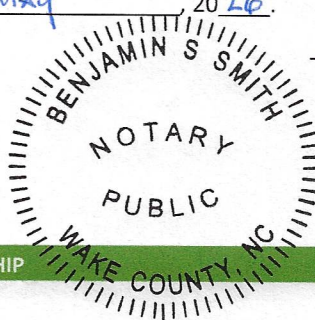
By: _____

Signature of Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, BENJAMIN S. SMITH, a Notary Public for the above State and County, this the 5th day of MAY, 2026.

SEAL



Notary Public

My Commission Expires: 10/6/30

COMPLETE IF IN A PARTNERSHIP

In witness whereof, _____, a partnership, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the _____ day of _____, 20____.

Name of Partnership _____

By: _____

Signature of General Partner

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____ a Notary Public for the above State and County, this the _____ day of _____, 20____.

SEAL

Notary Public

My Commission Expires: _____

VOLUNTARY ANNEXATION-PLAT CHECKLIST

FOR APPLICANT USE ONLY

PLEASE DO NOT INCLUDE THIS CHECKLIST WITH YOUR APPLICATION SUBMITTAL

COMMON ACRONYMS/DEFINITIONS

GeoCivix (IDT)	Electronic Plan Review	UDO	Town's Unified Development Ordinance
TOA	Town of Apex	NCDEQ	North Carolina Dept. of Environmental Quality
RCA	Resource Conservation Area	DDM	Design & Development Manual
CONTACT INFORMATION			
Planning Department	(919) 249-3426	Water Resources (Utilities)	(919) 372-7478
Development Services	(919) 249-3394	Clerk's Office	(919) 249-1260

REQUIRED PLAT ITEMS

#	
1	The exact boundary lines of the area to be annexed fully dimensioned by lengths and bearings, and the location of intersecting boundary lines of existing town limits, labeled and distinctly marked. Include full right-of-way if the area on both sides is or will be in the corporate limits.
2	Show and label any utility easements with metes and bounds.
3	Accurate locations and descriptions of all monuments, markers, and control points.
4	Ultimate right-of-way widths on all streets.
5	Entitle "ANNEXATION MAP for the TOWN OF APEX" or "SATELLITE ANNEXATION MAP for the TOWN OF APEX", as appropriate.
6	Name of property owner.
7	Name, seal, and registration of Professionally Licensed Surveyor (PLS).
8	Date of the survey and map preparation; a north arrow indicating whether the index is true magnetic North Carolina grid (NAD 83 or NAD 27) or deed; graphic scale; and declination.
9	Names of the township, county, and state.
10	A detailed vicinity map.
11	Include address of property if assigned.
12	Show all contiguous or non-contiguous town limits.
13	The following certification must be placed on the map near a border to allow the map to be sealed: Annexation # _____ I, Allen Coleman, CMC, NCCCC, Town Clerk, Apex, North Carolina certify this a true and exact map of annexation adopted the _____ day of _____, 20____, by the Town Council. I set my hand and seal of the Town of Apex, _____. Day/Month/Year _____ Allen Coleman, CMC, NCCCC, Town Clerk -Seal-
14	Leave 2 inch by 2 inch space for the Wake County or Chatham County Register of Deeds stamp on the plat. All final plats must be stamped and signed before they can be accepted by the Town.

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CLOSED SESSION
Meeting Date: September 10, 2026

Item Details

Presenter(s): Karmen McGee, Director

Department(s): Human Resources

Requested Motion

Possible motion to enter into closed session pursuant to NCGS § 143-318.11(a)(6) to consider a personnel matter.

Approval Recommended?

N/A

Item Details

NCGS § 143-318.11(a)(6)

"To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee"

Attachments

- N/A



| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CLOSED SESSION
Meeting Date: September 10, 2026

Item Details

Presenter(s): Karmen McGee, Director

Department(s): Human Resources

Requested Motion

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Approval Recommended?

N/A

Item Details

NCGS § 143-318.11(a)(6)

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Attachments

- N/A

