

REQUEST for LETTERS of INTEREST (RFLOI)

TITLE: BO-2416, SR 1153 (Tingen Road) Bicycle & Pedestrian Bridge

ISSUE DATE: November 17, 2023

SUBMITTAL DEADLINE: January 5, 2024

ISSUING AGENCY: Town of Apex, Wake County, NC

SYNOPSIS

SUBCONSULTANTS ARE PERMITTED UNDER THIS CONTRACT.

This contract shall be partially reimbursed with Federal-aid funding through the North Carolina Department of Transportation (hereinafter referred to as the Department). The solicitation, selection, and negotiation of a contract shall be conducted in accordance with all Department requirements and guidelines.

The primary and/or subconsultant firm(s) shall be pre-qualified by the Department to perform all of the Discipline Codes listed below for the Town of Apex. Discipline Codes required are:

- 024 - Bridges – Spans Under 200'
- 032 - Categorical Exclusions / Minimum Criteria Determination Checklists
- 070 - Erosion and Sediment Control
- 171 - Public Involvement
- 235 - SUE
- 243 - Threatened and Endangered Species Study & Surveys
- 269 - Urban Roadway Design
- 270 - Utility Coordination
- 295 - Structure Foundation Investigation and Design

- 280 - Wetland and Stream Delineation
- 316 - Multi-Use Trail Design, Survey, and Layout
- 360 - Topographic Surveying
- 361 - Boundary Surveying
- 434 - Tier II Complete Hydrologic and Hydraulic Design

WORK CODES for each primary and/or subconsultant firm(s) SHALL be listed on the respective RS-2 FORMS (see section 'SUBMISSION ORGANIZATION AND INFORMATION REQUIREMENTS').

This RFLOI is to solicit responses (LETTERS of INTEREST, or LOIs) from qualified firms to provide professional consulting services to:

Provide professional transportation planning and engineering services for design of a proposed bicycle and pedestrian bridge over the CSXT S-line railroad corridor along the current alignment of the SR 1153 (Tingen Road) at-grade crossing.

Electronic LOIs shall be submitted in .pdf format using software such as Adobe, CutePDF PDF Writer, DocuDesk deskPDF, etc. and be no larger than 10MB file size.

LOIs SHALL be received in electronic (.pdf) format only no later than 4:00 p.m., January 5, 2024.

The email address for electronic deliveries is: Russell.Dalton@apexnc.org

LOIs received after this deadline will not be considered.

Except as provided below any firm wishing to be considered must be properly registered with the Office of the Secretary of State and with the North Carolina Board of Examiners for Engineers and Surveyors. Any firm proposing to use corporate subsidiaries or subcontractors must include a statement that these companies are properly registered with the North Carolina Board of Examiners for Engineers and Surveyors and/or the NC Board for Licensing of Geologists. The Engineers performing the work and in responsible charge of the work must be registered Professional Engineers in the State of North Carolina and must have a good ethical and professional standing. It will be the responsibility of the selected private firm to verify the registration of any corporate subsidiary or subcontractor prior to submitting a Letter of

Interest. Firms which are not providing engineering services need not be registered with the North Carolina Board of Examiners for Engineers and Surveyors. Some of the services being solicited may not require a license. It is the responsibility of each firm to adhere to all laws of the State of North Carolina.

The prime firm must have the financial resources and ability to undertake the work in its entirety and must have adequate accounting systems to identify costs chargeable to the project. The prime firm shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an additional insured by endorsement to the policies. If the policy has a blanket additional insured provision, the prime firm's insurance shall be primary and non-contributory to other insurance. Additionally, the prime firm shall maintain professional liability insurance in the minimum amount of \$1,000,000 and maintain and show proof of workers' compensation insurance, and employer's liability insurance in the minimum amount of \$1,000,000. The prime firm 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 prime firm 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.

Such insurance as is appropriate for the Work being performed shall provide protection from claims which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable. The Contractor shall ensure subcontractors maintain insurance coverage appropriate for their exposures in the workplace, and are trained in safety practices necessary for safe completion of the work they perform.

The firm(s) must have an adequate accounting system to identify costs chargeable to the project.

SCOPE OF WORK

The Town of Apex is soliciting proposals for the services of a firm/team for professional transportation planning and engineering services for design of a proposed bicycle and pedestrian bridge over the CSXT S-line railroad corridor along the current alignment of the SR 1153 (Tingen Road) at-grade crossing.

The existing at-grade crossing is required to be closed upon completion of the Apex Peakway bridge spanning the S-line and South Salem Street further south, currently anticipated to be open to traffic in early 2027. In order to provide connectivity across the railroad tracks between the NC 55 railroad bridge 0.28 miles north and the future Apex Peakway grade separation 0.55 miles south, the bicycle and pedestrian bridge at Tingen Road is proposed to replace the vehicular crossing.

Additionally, the scope will need to be phased. The first phase will be a feasibility study, including environmental document, to evaluate possible alternatives with opinions of probable cost and additional information to justify the project purpose and need. The phase should be informed through public outreach and agency coordination, as well as input from CSXT. Findings should be presented to the Apex Town Council with the intent of identifying a locally-preferred alternative. If the Town of Apex recommends moving forward with final design of a locally-preferred alternative, and it is subsequently recommended at the Agency Concurrence Meeting, final design and right of way phase services for the Recommended Alternative will be scoped in order to proceed. In the event the Town of Apex chooses not to move forward with final design, no further phases will be scoped.

This project is identified in the STIP as BO-2416, up to 80% federally-funded with a minimum of 20% local matching funds for PE & ROW phases. Construction is not yet funded. The planning and environmental studies for this project require compliance with the National Environmental Policy Act of 1969, as amended (NEPA).

PROPOSED CONTRACT TIME: 14 MONTHS (FEASIBILITY STUDY PHASE) + 24 MONTHS (FINAL DESIGN & ROW PHASES)

PROPOSED CONTRACT PAYMENT TYPE: LUMP SUM

SUBMITTAL REQUIREMENTS

All LOIs are limited to **fifteen (15)** pages and shall be electronically formatted on 8-1/2" x 11" pages, single-spaced. Front/back cover sheet, RS-2 forms, and an appendix containing resumes of key staff are not included in the page count.

LOIs containing more than **fifteen (15)** pages will not be considered.

Firms submitting LOIs are encouraged to carefully check them for conformance to the requirements stated above. If LOIs do not meet ALL of these requirements they will be disqualified. No exception will be granted.

SELECTION PROCESS

Following is a general description of the selection process:

- The LGA's Selection Committee will review all qualifying LOI submittals.
- The LGA's Selection Committee MAY, at the LGA's discretion, shortlist a minimum of three (3) firms to be interviewed. IF APPLICABLE, dates of shortlisting and dates for interviews are shown in the section SUBMISSION SCHEDULE AND KEY DATES at the end of this RFLOI.
- In order to be considered for selection, consultants must submit a complete response to this RFLOI prior to the specified deadlines. Failure to submit all information in a timely manner will result in disqualification.

TITLE VI NONDISCRIMINATION NOTIFICATION

The LGA in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all RESPONDENTS that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit LETTERS of INTEREST (LOIs) in response to this ADVERTISEMENT and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

SMALL PROFESSIONAL SERVICE FIRM (SPSF) PARTICIPATION

The Department encourages the use of Small Professional Services Firms (SPSF). Small businesses determined to be eligible for participation in the SPSF program are those meeting size standards defined by Small Business Administration (SBA) regulations, 13 CFR Part 121 in Sector 54 under the North American Industrial Classification System (NAICS). The SPSF program is a race, ethnicity, and gender-neutral program designed to increase the availability of contracting opportunities for small businesses on federal, state or locally funded contracts. SPSF participation is not contingent upon the funding source.

The Firm, at the time the Letter of Interest is submitted, shall submit a listing of all known SPSF firms that will participate in the performance of the identified work. The participation shall be submitted on the Department's Subconsultant Form RS-2. RS-2 forms may be accessed on the Department's website at [NCDOT Connect Guidelines & Forms](#).

The SPSF must be qualified with the Department to perform the work for which they are listed.

PREQUALIFICATION

The Department maintains on file the qualifications and key personnel for each approved discipline, as well as any required samples of work. Each year on the anniversary date of the company, the firm shall renew their prequalified disciplines. If your firm has not renewed its application as required by your anniversary date or if your firm is not currently prequalified, please submit an application to the Department **prior to submittal of your LOI**. An application may be accessed on the Department's website at [Prequalifying Private Consulting Firms](#) -- Learn how to become Prequalified as a Private Consulting Firm with NCDOT. Having this data on file with the Department eliminates the need to resubmit this data with each letter of interest.

Professional Services Contracts are race and gender neutral and do not contain goals. However, the Respondent is encouraged to give every opportunity to allow Disadvantaged, Minority-Owned and Women-Owned Business Enterprises (DBE/MBE/WBE) subconsultant utilization on all LOIs, contracts and supplemental agreements. The Firm, subconsultant and subfirm shall not discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract.

DIRECTORY OF FIRMS AND DEPARTMENT ENDORSEMENT

Real-time information about firms doing business with the Department, and information regarding their prequalifications and certifications, is available in the Directory of Transportation Firms. The Directory can be accessed on the Department's website at [Directory of Firms](#) -- Complete listing of certified and prequalified firms.

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm.

SELECTION CRITERIA

All prequalified firms who submit responsive letters of interest will be considered.

In selecting a firm/team, the selection committee will take into consideration qualification information including such factors as:

1. **50%** = Qualifications and experience of individuals relating to the type of work required.
2. **30%** = Project approach for both feasibility and final design phases that clearly and thoroughly demonstrates a familiarity with the project and process required, including innovative solutions and ways to reduce cost and/or compress the schedule.
3. **20%** = Performance of the firm and its subconsultants on similar projects with the Town of Apex, other municipalities, and/or NCDOT. While the firm and/or subconsultants may not have performed similar work for the Town of Apex, documenting performance on similar projects with other municipalities and/or NCDOT may be equally sufficient. After reviewing qualifications, if firms are equal on the evaluation review, then those qualified firms with proposed SPSF participation will be given priority consideration.

SUBMISSION ORGANIZATION AND INFORMATION REQUIREMENTS

The LOI should be addressed to **Russell Dalton, PE, Traffic Engineering Manager** and must include the name, address, telephone number, and e-mail address of the prime consultant's contact person for this RFLOI.

The LOI must also include the information outlined below:

Chapter 1 - Introduction

The Introduction should demonstrate the consultant's overall qualifications to fulfill the requirements of the scope of work and should contain the following elements of information:

1. Expression of firm's interest in the work;
2. Statement of whether firm is on register;
3. Date of most recent private engineering firm qualification;
4. Statement regarding firm's(') possible conflict of interest for the work; and
5. Summation of information contained in the letter of interest.
6. Ability to fully comply with the terms of the attached Apex Design Services Agreement, or any exceptions to those terms noted and explained.

Chapter 2 - Team Qualifications

This chapter should elaborate on the general information presented in the introduction, to establish the credentials and experience of the consultant to undertake this type of effort. The following must be included:

1. Identify recent, similar projects the firm, acting as the prime contractor, has conducted which demonstrates its ability to conduct and manage the project. Provide a synopsis of each project and include the date completed, and contact person.
2. If subconsultants are involved, provide corresponding information describing their qualifications as requested in bullet number 1 above.

Chapter 3 - Team Experience

This chapter must provide the names, classifications, and location of the firm's North Carolina employees and resources to be assigned to the advertised work; and the professional credentials and experience of the persons assigned to the project, along with any unique qualifications of key personnel. Although standard personnel resumes may be included, identify pertinent team experience to be applied to this project. Specifically, the Department is interested in the experience, expertise, and total quality of the consultant's proposed team. If principals of the firm will not be actively involved in the study/contract/project, do not list them. The submittal shall clearly indicate the Consultant's Project Manager, other key Team Members and his/her qualifications for the proposed work. Also, include the team's organization

chart for the Project / Plan. A Capacity Chart / Graph (available work force) should also be included. Any other pertinent information should also be listed in this section.

Note: If a project team or subconsultant encounters personnel changes, or any other changes of significance dealing with the company, NCDOT should be notified immediately.

Chapter 4 - Technical Approach

The consultant shall provide information on its understanding of, and approach to accomplish, this project, including their envisioned scope for the work and any innovative ideas/approaches, and a schedule to achieve the dates outlined in this RFLOI (if any project-specific dates are outlined below).

APPENDICES-

CONSULTANT CERTIFICATION Form RS-2

Completed Form RS-2 forms SHALL be submitted with the firm's letter of interest. This section is limited to the number of pages required to provide the requested information.

Submit Form RS-2 forms for the following:

- **Prime Consultant firm**
 - Prime Consultant Form RS-2 Rev 1/14/08; and
- **ANY/ALL Subconsultant firms** to be, or anticipated to be, utilized by your firm.
 - Subconsultant Form RS-2 Rev 1/15/08.
 - In the event the firm has no subconsultant, it is required that this be indicated on the Subconsultant Form RS-2 by entering the word "None" or the number "ZERO" and signing the form.

Complete and sign each Form RS-2 (instructions are listed on the form).

The required forms are available on the Department's website at:

<https://connect.ncdot.gov/business/consultants/Pages/Guidelines-Forms.aspx>

[Prime Consultant Form RS-2](#)

[Subconsultant Form RS-2](#)

All submissions, correspondence, and questions concerning this RFLOI should be directed to **Russell.Dalton@apexnc.org**

IF APPLICABLE, questions may be submitted electronically only, to the contact above. Responses will be issued in the form of an addendum available to all interested parties. Interested parties should also send a request, by email only, to the person listed above to be placed on a public correspondence list to ensure future updates regarding the RFLOI or other project information can be conveyed. Questions must be submitted to the person listed above no later than **December 15, 2023**. The last addendum will be issued no later than **December 20, 2023**.

SUBMISSION SCHEDULE AND KEY DATES

RFLOI Release – **November 17, 2023**

Deadline for Questions – **December 15, 2023**

Issue Final Addendum – **December 20, 2023**

Deadline for LOI Submission – **January 5, 2024**

Anticipated Firm Selection and Notification – **January 26, 2024**

Anticipated Notice to Proceed – **May 31, 2024**

Anticipated Completion of Feasibility Study Phase – **July 30, 2025**

Anticipated Completion of Final Design & ROW Phase – **July 30, 2027**

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**PURCHASE ORDER # [Click here to PO #](#)
DESIGN SERVICES AGREEMENT**

THIS AGREEMENT is entered into this ____ day of _____, 20____ by and between, _____, a North Carolina corporation with its principal business offices located at _____ (the “Design Professional”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”). Town and Design Professional may collectively be referred to as “Parties” hereinafter.

WITNESSETH:

WHEREAS, the Town is engaged in the utilization and operation of Town buildings, infrastructure, and facilities which from time to time require design, revision, engineering, evaluation, surveying, testing, architectural services and other related projects; and

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

WHEREAS, Design Professional provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

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

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

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

1. SCOPE OF SERVICES.

The Design Professional agrees to perform for the Town the following services:

In the event of a conflict between the terms of the attached Scope of Services and this Agreement, this Agreement shall control.

2. SPECIFICATIONS.

Design Professional shall provide services in accordance with all governing agency regulations and shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the

performance of services for Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in North Carolina.

3. TIME OF COMMENCEMENT AND COMPLETION.

Design Professional shall commence the work required in this Agreement no later than _____ days after the date of execution of this Agreement, and the Design Professional shall complete entire work no later than _____. Additionally, Design Professional shall perform in accordance with any individual timelines provided in the attached Scope of Services. If Design Professional 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 Design Professional.

4. CONSIDERATION AND PAYMENT OF SERVICES.

In consideration of the above services, the Town will pay the Design Professional the total sum of \$ _____. The costs attributed to specific services are as shown in the attached Scope. In the event the Town requests that any service shown in the Scope not be performed, the total sum designated in this section shall be reduced by the corresponding amount attributed to that particular service in the Scope. Invoices from Design Professional for services performed shall be paid by the Town within thirty (30) days from receipt of invoice. Town has the right to require the Design Professional to produce for inspection all of Design Professional's records and charges to verify the accuracy of all invoices. Town shall pay Design Professional's invoices at times set forth above unless a bona fide dispute exists between Town and Design Professional concerning the accuracy of said invoice or the services covered thereby.

5. CHANGE ORDERS

- A. In the event Town requests changes or additions to the services that are not covered by the Scope, these changes will not invalidate or relieve Design Professional from any guarantee it has given in this Agreement. Changes in work shall not proceed without a Change Order approved by the Town. Design Professional shall provide a complete breakdown of all costs associated with the Change Order request. No claim for adjustments of the Agreement price or the completion date 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 Agreement.
- B. Change Orders shall be submitted by the Design Professional for the Town's review and approval. Design Professional shall provide a detailed scope and all applicable supporting information. The Town shall respond to the Design Professional's proposal within fourteen (14) days of receipt of the proposal. If accepted, the Town shall prepare the Change Order for the Design Professional's signature. The Town shall execute the approved Change Order within seven (7) days of receipt from the Design Professional. In the event a Change Order cannot be agreed upon by the Parties, nothing in this Agreement shall preclude the Town from performing, or having performed, the work requested in a Change Order.

6. INDEMNIFICATION.

To the extent permitted by law, the Design Professional agrees to indemnify and hold harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all losses,

damages, and expenses, 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, if fault on the part of the Design Professional or its derivatives is a proximate cause of the loss, damage, or expense suffered by the Town.

7. APPLICABILITY OF LAWS AND REGULATIONS.

The Design Professional 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.

8. E-VERIFY COMPLIANCE.

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

9. QUALITY AND WORKMANSHIP.

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 Design Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an additional insured by endorsement to the policies. If the policy has a blanket additional insured provision, the Design Professional's insurance shall be primary and non-contributory to other insurance. Additionally, the Design Professional shall maintain professional liability insurance in the minimum amount of \$1,000,000 and maintain and show proof of workers' compensation insurance, and employer's liability insurance in the minimum amount of \$1,000,000. The Design Professional 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 Design Professional 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 Design Professional shall attend a pre-project safety review meeting with Town representatives and the Safety and Risk Manager prior to the start of work.

12. DEFAULT.

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

13. OWNERSHIP OF DOCUMENTS.

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

14. TERMINATION FOR CONVENIENCE.

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

15. 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 DESIGN PROFESSIONAL:

TO TOWN: Town of Apex

Attention: _____
PO Box 250
Apex, NC 27502
Email: _____

16. DELAY BEYOND THE CONTROL OF THE PARTIES.

Neither Design Professional 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.

17. 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.

18. 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.

19. NO REPRESENTATIONS.

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this 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.

20. 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.

21. 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.

22. 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.

23. BINDING EFFECT.

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

24. ASSIGNMENT.

Design Professional 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 Design Professional from employing such independent consultants, associates, and subcontractors as it may deem appropriate to assist Design Professional in the performance of services rendered.

25. INDEPENDENT CONTRACTOR.

Design Professional is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Design Professional shall be wholly responsible for the methods, means and techniques of performance.

26. 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.

27. IRAN DIVESTMENT ACT CERTIFICATION.

N.C.G.S. 147-86.60 prohibits the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina from contracting with any entity that is listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. N.C.G.S. 147-86.59 further requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List. As of the date of execution of this Agreement the Design Professional hereby certifies that the Design Professional is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Design Professional will not utilize any subcontractors found on the Final Divestment List.

28. ANTI-HUMAN TRAFFICKING.

The Design Professional warrants and agrees that no labor supplied by the Design Professional or the Design Professional'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.

29. 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.

30. NONDISCRIMINATION.

Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Contractor hereby warrants and agrees that Contractor will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement "protected class" includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

{The Remainder of This Page Intentionally Left Blank; Signatures Follow}

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals
this ____ day of _____, 20 ____.

Design Professional

Name: _____
Name of Design Professional (type or print)

By: _____
(Signature)

Title: _____

Attest:

(Secretary, if a corporation)

Town of Apex

Town Manager

Attest:

Town Clerk

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

Finance Director