



# AGENDA | REGULAR TOWN COUNCIL MEETING

April 25, 2023 at 6:00 PM

Council Chambers - Apex Town Hall, 73 Hunter Street

The meeting will adjourn when all business is concluded or 10:00 PM, whichever comes first

## Town Council and Administration

Mayor: Jacques K. Gilbert | Mayor Pro Tempore: Audra Killingsworth  
Council Members: Brett D. Gantt; Terry Mahaffey; Edward Gray; Arno Zegerman  
Town Manager: Catherine Crosby | Deputy Town Manager: Shawn Purvis  
Assistant Town Managers: Demetria John and Marty Stone  
Town Clerk: Allen Coleman | Town Attorney: Laurie L. Hohe

## COMMENCEMENT

Call to Order | Invocation | Pledge of Allegiance

## 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 - Converge One - Microsoft Teams Phone Services**

*Erika Sacco, Director, Information Technologies Department*

### **CN2 Agreement - Supplement No. 4 - North Carolina Department of Transportation (NCDOT)**

#### **- Lake Pine Drive Improvements - Completion Date 12/31/2024**

*Russell H. Dalton, PE, Traffic Engineering Manager, Transportation and Infra. Department*

### **CN3 Agreement - North Carolina Department of Transportation (NCDOT) - Saunders St and Hinton St Sidewalk Project - BL-0095**

*Russell H. Dalton, PE, Traffic Engineering Manager, Transportation and Infra. Department*

### **CN4 Contract Technical Amendment - Itron, Inc. - Water and Electric Meter Software**

*Michael S. Deaton, PE, Director, Water Resources Department*

### **CN5 Council Meeting Minutes - Various**

*Allen Coleman, Town Clerk*

### **CN6 Design and Development Manual Updates**

*Shelly Mayo, Planner II, Planning Department*

### **CN7 Encroachment Agreement - 2553 Silas Peak Lane Lot 30**

*Chris Johnson, PE, MPA, Director, Transportation & Infrastructure Development Department*

**CN8 Enterprise Resource Planning (ERP) System - Various Agreements, Budget Ordinance Amendment No. 16 and Capital Project Ordinance Amendment No. 2023-7**

*Shawn Purvis, Deputy Town Manager*

**CN9 Surplus Badge and Service Weapon - Retiring Police Officer Joseph S. Gianni**

*Deputy Chief Mitch McKinney, Apex Police Department (APD)*

## **PRESENTATIONS**

**PR1 Proclamation - Apex Small Business Week - April 30 through May 6, 2023**

*Mayor Jacques K. Gilbert*

**PR2 Proclamation - Civilian Law Enforcement Professionals Week - April 23 through April 29, 2023**

*Mayor Jacques K. Gilbert*

**PR3 Proclamation - Public Service Recognition Week - May 7 through May 13, 2023**

*Mayor Jacques K. Gilbert*

**PR4 Proclamation - Think Apex Day - Saturday, April 29, 2023**

*Mayor Jacques K. Gilbert*

## **REGULAR MEETING AGENDA**

Mayor Gilbert will call for additional Agenda items from Council or Staff and set the Regular Meeting Agenda prior to Council actions.

## **PUBLIC FORUM**

Public Forum allows the public an opportunity to address the Town Council. The speaker is requested not to address items that appear as Public Hearings scheduled on the Regular Agenda. 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.

## **PUBLIC HEARINGS**

**PH1 Annexation No. 754 - Prestwick (Morris Tracts) - 14.129 acres**

*Dianne Khin, Director, Planning Department*

**PH2 Rezoning Case No. 23CZ01 - Cash Corporate Center (revised uses)**

*Amanda Bunce, Current Planning Manager, Planning Department*

**PH3 Rezoning Case No. 23CZ02 Triangle Home Services Phase II**

*Shelly Mayo, Planner II, Planning Department*



**PH4 Rezoning Case No. 23CZ03 Veridea Expansion**

*Amanda Bunce, Current Planning Manager, Planning Department*

**NEW BUSINESS**

**UPDATES BY TOWN MANAGER**

**CLOSED SESSION** - *None*

**ADJOURNMENT**

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 25, 2023

## Item Details

Presenter(s): Erika Sacco, IT Director

Department(s): Information Technology

### Requested Motion

Motion to approve a three-year Agreement between the Town and Converge One as a vendor to provide telephone services and authorize the Town Manager to execute the agreement on behalf of the Town.

### Approval Recommended?

Yes

### Item Details

The Agreements is for the implementation and set up of Microsoft Teams Phone to be utilized throughout the Town of Apex in replacing our current Avaya Phone System.

### Attachments

- CN1-A1: Contract Routing Sheet - Converge One
- CN1-A2: Cloud Services Agreement - Converge One
- CN1-A3: Solution Summary Telephone Sets - Converge One
- CN1-A4: Solution Summary Set-Up Services - Converge One
- CN1-A5: Terms of Service - Converge One



## 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

<b>DEPARTMENT:</b>	
Department Contact Person for Contract: <u>Erika Sacco</u> Extension: _____	
Contractor/Vendor Name and address: <u>ConvergeOne Inc. 10900 Nesbitt Ave S. Bloomington, MN 55437</u>	
Contractor/Vendor Phone: _____ Contractor/Vendor Contact Person: <u>Carrie Tish CTish@convergeone.com</u>	
Purpose of Contract: <u>Upgrade &amp; Migrate Phone Services Town Wide</u>	
Amount: <u>\$151,788.00</u> Budget Code: <u>PO 2023-941</u>	
Type of Contract: <input checked="" type="checkbox"/> New <input type="checkbox"/> Renew <input type="checkbox"/> Amendment Exhibits/Attachments included: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A	
Department Director's Signature: <u>Erika Sacco</u> <small>Digitally signed by Erika Sacco Date: 2023.04.06 13:28:51 -04'00'</small> Date: <u>4/6/2023</u>	
<b>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.</b>	
<b>LEGAL</b>	
Reviewed by: <u>Chris Welch</u> Date: <u>04/11/2023</u>	
Comments: <u>changes were accepted by contractor; council approval required for 3 year term</u>	
<input checked="" type="checkbox"/> Town Council approval required <input type="checkbox"/> Town Manager authorized to approve	
<input type="checkbox"/> N/A – Purchasing and Contract Manager to forward	
<input type="checkbox"/> Other Approvals required/permitted: _____	
<b>RISK MANAGER</b>	
Reviewed by and approved: _____ Date: _____	
<input type="checkbox"/> N/A – Purchasing and Contract Manager to forward	
<input type="checkbox"/> Insurance specifications meet requirements.	
<input type="checkbox"/> Insurance specifications have been revised.	
<input type="checkbox"/> A pre-project safety review between the contractor and contracting department is required.	
<b>Return to Department Contact Person to have contract signed by Contractor prior to forwarding to Finance Director</b>	
<b>Obtain a copy of Certificate of Insurance that includes the proper coverage and shows the Town as an additional insured</b>	
<b>FINANCE DIRECTOR</b>	
<input type="checkbox"/> Sufficient funds are available in the proper category to pay for this expenditure.	
<input type="checkbox"/> This contract is conditioned upon appropriation by the Town Council of sufficient funds.	
<input type="checkbox"/> A budget amendment is necessary before this agreement is approved.	
<input type="checkbox"/> A budget amendment is attached as required for approval of this agreement.	
Finance Director: _____ Date: ____/____/20__	
<b>TOWN CLERK</b>	
Date Received: ____/____/20__ Signed by Contractor: <input type="checkbox"/> YES <input type="checkbox"/> NO--Return to Department	
Council Action Required:– forward to Town Manager Agenda Date: ____/____/20__	
Approved by Council: <input type="checkbox"/> YES <input type="checkbox"/> NO	
<b>TOWN MANAGER</b>	
This document has been reviewed and approval is recommended by the Town Manager: <input type="checkbox"/> YES <input type="checkbox"/> NO	
Town Manager: _____ Date: ____/____/20__	
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)	

**Cloud Services Agreement****Date:** April 5, 2023**SELLER:** ConvergeOne, Inc.  
10900 Nesbitt Ave S  
Bloomington, MN 55437  
(800) 431-1333**CUSTOMER:** Town of Apex  
73 Hunter St.  
Apex, NC 27502

This CLOUD SERVICES AGREEMENT ("Agreement") is made and entered into on the date indicated above ("Effective Date") by and between Seller and Customer (including any guarantor of Customer). Seller and Customer are each a "Party" to this Agreement and may collectively be referred to herein as the "Parties."

In consideration of the mutual undertakings herein contained, the Parties agree as follows:

1. This Agreement shall apply to:

- 1.1. "Datacenter Infrastructure," means the datacenter infrastructure as described on the Terms of Service ("TOS"), owned by Seller, access to which is to be supplied to Customer by Seller as a hosted cloud service for Customer's use; and
- 1.2. "Telecom Services" means the telecom services ordered by Customer from Seller to reside on the Datacenter Infrastructure provided on the basis of the quantity and type of user and described in detail on a TOS. Additional users may be added or removed in accordance with the terms of the TOS; and
- 1.3. "Maintenance Services" means the maintenance services required to maintain and service the Datacenter Infrastructure and, if applicable, as described in detail in an TOS; and
- 1.4. "Separately Licensed Third Party Software" refers to any third party software that Customer has previously licensed under separate terms between Customer and the third party software manufacturer, and not under the terms of this Agreement.

Seller's provision of access to the Datacenter Infrastructure, along with Seller's provision of the Telecom Services, Maintenance Services, and any other professional services ("Professional Services") that relate to the Datacenter Infrastructure as outlined in the pertinent TOS, shall collectively be referred to as the "Services" or "Cloud Services". Customer agrees that all rights, title and interest in and to all Intellectual Property in the Services and any materials provided in connection with the Services are owned exclusively by Seller. Except as expressly provided herein, any license granted to Customer under the Services does not convey any ownership or other rights, express or implied, in the Services, any materials provided in connection with the Services, or in any Intellectual Property.

In the event of a conflict between the terms and provisions of the applicable TOS and the terms and provisions of this Agreement, the terms and provisions of this Agreement will control. Seller will provide the Services to Customer at times upon which Customer and Seller agree. Customer has the right to evaluate the Datacenter Infrastructure prior to entering into the TOS to determine if they are complete and in compliance to service requirements and Seller agrees to provide access to Customer for this purpose. The Services will be deemed irrevocably accepted by Customer upon the delivery by Seller. By executing a TOS, Customer confirms that the Datacenter Infrastructure and Services all conform to the standards set forth in the TOS and authorizes Seller to pay the applicable suppliers for the Services.

2. PURCHASE ORDERS. Customer may issue to Seller a purchase order to order the Services, but no terms or provisions of the purchase order shall apply. Rather, only the terms and provisions of this Agreement and the applicable TOS shall apply to the Services. If Customer submits a purchase order to order the Services hereunder, the purchase order must contain the following language: "THE TERMS AND PROVISIONS OF THE CLOUD SERVICES AGREEMENT DATED [INSERT DATE] BY AND BETWEEN CONVERGEONE, INC. AND [INSERT CUSTOMER NAME] APPLY TO THIS PURCHASE ORDER."

3. FEES. The price to be charged for the Services ("Total Minimum Monthly Fees") shall be specified on the TOS. The Total Minimum Monthly Fees shall be paid to Seller or to Seller's assignee ("Seller's Assignee") in monthly installments ("Minimum Monthly Fees") as specified in the TOS. The first Minimum Monthly Fee will be due as specified in the TOS, and the remaining Minimum Monthly Fees being due on the same day of each subsequent month (each, a "Due Date") until the Total Minimum Monthly Fees have been paid in full, unless otherwise specified in the TOS. Customer shall pay to Seller or Seller's Assignee the Total Minimum Monthly Fees, together with any other itemized charges, taxes, and costs ("Amount Due"), in the manner described in the TOS. The currency to be used for payment of the Amount Due is the United States Dollar. If any Minimum Monthly Fees or other amount payable to Seller or Seller's Assignee is not paid within 10 days of its Due Date, Customer shall, to the extent permitted by law, pay on demand, as a late charge, an amount equal to the greater of \$25.00 or 5% of the amount then due for each 30 days or portion thereof that said overdue payments are not made (but in no event to exceed the highest late charge permitted by applicable law).

4. INVOICING AND PAYMENT. Seller or Seller's Assignee will invoice Customer the Minimum Monthly Fees and any other amounts due under this Agreement, on a monthly basis in advance. Payment is due thirty (30) days after the invoice date unless the applicable TOS provides otherwise. Customer will pay all bank charges, taxes, duties, levies, and other costs and commissions associated with any wire transfer or other means of payment. Customer is not responsible for any income tax assessed on the net income of Seller or Seller's Assignee. Customer shall be responsible for the timely payment, reporting and/or discharge of all sales and use taxes, rental taxes, and personal property taxes and agrees to reimburse Seller or Seller's Assignee for all taxes assessed against the Services, and/or Minimum Monthly Fees during the term of this Agreement that are paid by Seller or Seller's Assignee on behalf of Customer

4.1 Payment of the Minimum Monthly Fees and the Total Minimum Monthly Fees specified in the TOS is not conditioned on Customer's receipt of moneys or services from any other person. All orders for configured hardware and software are non-refundable. All software, regardless of whether such software is part of a configured order, is non-returnable. ALL OF THE TOTAL MINIMUM MONTHLY FEES ARE NON-CANCELABLE AND ARE THE ABSOLUTE AND UNCONDITIONAL OBLIGATIONS OF CUSTOMER UNTIL (I) THE END OF TOS INITIAL TERM, (II) THE END OF ANY RENEWAL TERM, OR (III) THE AGREEMENT IS TERMINATED AS PROVIDED IN SECTION 9 AND THE APPLICABLE TERMINATION FEE IS PAID. CUSTOMER IS NOT ENTITLED TO ABATE OR REDUCE ANY MINIMUM MONTHLY FEE OR APPLICABLE TERMINATION FEE (SET FORTH IN THE APPLICABLE TOS) OR SET-OFF ANY OTHER AMOUNTS AGAINST MINIMUM MONTHLY FEES OR THE APPLICABLE TERMINATION FEE FOR ANY REASON WHATSOEVER.

## 5. CUSTOMER RESPONSIBILITIES.

5.1. General. Customer will cooperate with Seller as reasonably necessary for the performance of Seller's obligations under this Agreement, including things such as: (i) providing Seller with full, free, and safe access to Customer's facilities; (ii) providing telephone numbers, network addresses, and passwords necessary for remote access; and (iii) providing interface information and necessary third party consents and licenses, including but not limited to those associated with Separately Licensed Third Party Software. Customer acknowledges that provision of the Services by Seller is dependent upon Seller access to Customer's internet/VPN connection. The foregoing three (3) items will be provided by Customer at Customer's expense. If Seller provides an Update or other new release of software as part of the Telecom Services or Maintenance Services, Customer will implement it promptly. Customer agrees to fulfill its responsibilities listed in this Agreement and in the applicable TOS. Seller will be relieved of its responsibilities to provide the Services and will incur no liability to Customer, or any third party, to the extent Seller's responsibilities are adversely impacted by, or any liability arises as a result of, (a) Customer's failure to fulfill its responsibilities, in whole or in part, under this Agreement and/or the applicable TOS, (b) the Separately Licensed Third Party Software cannot be used by Seller to provide the Services and Seller is thereby required to replace the Separately Licensed Third Party Software in order to provide the Services to Customer, or (c) actions taken by the manufacturer of the Separately Licensed Third Party Software to prevent its use by Seller in the provision of Services.

5.2. 911 Acknowledgement and Acceptable Use Policy. Customer acknowledges, agrees and will comply with the 911 Acknowledgement attached as Exhibit 1 and the Acceptable Use Policy attached as Exhibit 2.

- 5.3. Vendor Management. If as part of the Services Seller is to instruct or request products or services on Customer's behalf from third party vendors under Customer's supply contracts with the third party vendors, including those of Separately Licensed Third Party Software ("Vendor Management"), Customer will provide Seller with a letter of agency or similar document, in a form that is reasonably satisfactory to Seller, that authorizes Seller to perform the Vendor Management. Where the third party vendor's consent is required for Seller to be able to perform the Vendor Management in a timely manner, Customer will obtain the written consent of the third party vendor and will provide Seller with a copy of such written consent.
- 5.4. Third Party Hosting. For Telecom Services and Maintenance Services that include monitoring, if one (1) or more network address(es) to be monitored by Seller are associated with systems owned, managed, and/or hosted by a third party service provider ("Host"), Customer will (i) notify Seller of the Host prior to commencement of the Telecom Services and Maintenance Services; (ii) obtain Host's advance written consent for Seller to perform the Telecom Services and Maintenance Services on Host's computer systems on the form provided by Seller, and will provide Seller with a copy of such signed consent; and (iii) facilitate necessary communications between Seller and Host in connection with the Telecom Services and Maintenance Services.
- 5.5. Disclaimer of Data Storage Responsibilities. Customer acknowledges and agrees that: (i) Seller's role with respect to Customer communications and the content thereof shall be that of a passive conduit; and (ii) any storage of Customer communications and/or account data by Seller shall be performed merely as a convenience to Customer and as a compliment to and incidental to Seller's core data transmission function; provided, however, that Seller shall comply with all data protection to the extent that such laws by their terms impose obligations directly upon Seller as a passive conduit in connection with the Services. Seller shall have no obligation to store, retain, back-up, or ensure the availability of any stored Customer communications and/or account data. To the extent that Customer wishes to retain any account data or other information relating to the Services, Customer shall ensure that such information is downloaded, saved, and/or backed-up outside of the Services, as Customer deems necessary or appropriate for Customer purposes. Customer shall not rely on the Services as a repository for or means by which to retain, store, or back-up data, information, or materials. Seller may delete or purge any and all copies and versions of any stored Customer communications and/or account data or other data at any time, without notice, including without limitation after termination of this Agreement. Seller may, in its sole discretion and option and without notice, implement reasonable limits as to the size or duration of storage of Customer account data.
- 5.6. Customer Coordinator. Customer shall designate a coordinator at Customer's site ("Coordinator") with the knowledge and authority to make decisions with respect to all of Customer's operations in order for Seller to meet its obligations hereunder.
- 5.7. Testing Data. Customer shall make available such data as is necessary to adequately test the Services.
- 5.8. Services are provided to Customer for business use only. Customer may not use the Services for any personal, residential, non-business and/or non-professional purpose. Customer may not resell or transfer the Services to any other person for any purpose or make any charge for the use of the Services, without express, prior written permission from Seller. If Seller determines in its sole discretion that Customer is using the Services for non-business and/or non-commercial purposes, Seller reserves the right to immediately terminate the Services, change the calling plan, or otherwise modify the Services.
- 5.9. Customer shall not: (a) copy or adapt the Services and/or associated software for any purpose, except as specifically permitted under this Agreement; (b) use the Services and/or associated software except in accordance with all applicable laws and regulations, and except as set forth in the standard specifications or documentation, if any, accompanying the Services and/or Software; (c) reverse engineer, translate, decompile, or disassemble the Services and/or associated software; (d) use the Services and/or associated software in any outsourcing arrangement, application service provider arrangement, time-sharing arrangement, or service bureau arrangement, including, without limitation, to provide services or process data for the benefit of, or on behalf of, any third party other than the Customer; or (e) cause or permit the disabling or circumvention of any security mechanism contained in or associated with the Services and/or associated software. For the avoidance of doubt, Customer acknowledges and agrees that Customer shall not use the Services for any fraudulent, illegal, or disruptive activities.
- 5.10. Customer acknowledges that Customer is responsible for all use(s) related to Customer's account. Customer assumes full responsibility for the actions of any individual that uses the Services via Customer's account,

regardless of whether such use was done with or without Customer permission. Customer acknowledges that the Internet is not a totally secure network, and that third parties may be able to intercept, access, use or corrupt the information and/or telephone calls Customer transmits over the Internet. In order to maintain the security of Services, Customer must safeguard User IDs and Passwords, as well as the media access control (MAC) address of any equipment used to access Seller Services. Customer further acknowledges that the MAC address is information used by Seller to authenticate Customer calls, and therefore may not be shared by Customer.

5.11. Access to Personal Data. Customer expressly acknowledges that with respect to Seller's performance of the Services called for under this Agreement, such Services do not involve or in any way require access to personally identifiable information ("PII") of Customer or its customers ("Customer PII"). If, in the future, Customer requests additional services that require Seller access to Customer PII, those additional services, and the security requirements associated with the access to Customer PII in order to perform those additional services, shall be subject to a separate written agreement between the Parties.

6. CONFIDENTIAL INFORMATION. "Confidential Information" means either Party's business and/or technical information, information concerning employees, and any other information or data, regardless of whether such information is in tangible, electronic, or other form, if it is marked or otherwise identified in writing as confidential or proprietary. Information communicated verbally will qualify as Confidential Information if it is designated as confidential or proprietary at the time of disclosure and summarized in writing within thirty (30) days after verbal disclosure. Confidential Information does not include materials or information that (i) is generally known by third parties as a result of no act or omission of the receiving Party; (ii) subsequent to its disclosure, it was lawfully received from a third party having the right to disseminate the information without restriction on disclosure; (iii) was already known by the receiving Party prior to receiving it from the other Party and it was not received from a third party in breach of that third party's obligations of confidentiality; (iv) was independently developed by the receiving Party without use of Confidential Information of the disclosing Party; or (v) is required to be disclosed by court order or other lawful government action, but only to the extent ordered, and provided that, if legally permitted, the receiving Party promptly provides to the disclosing Party written notice of the pending disclosure so that the disclosing Party may attempt to obtain a protective order. In the event of a potential disclosure pursuant to subsection (v) above, the receiving Party will provide reasonable assistance to the disclosing Party where the disclosing Party attempts to obtain a protective order. Each Party will protect the confidentiality of all Confidential Information received from the other Party with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than a reasonable degree of care. Except as permitted in this Section or for the purpose of performing its obligations under the terms and provisions of this Agreement, the receiving Party will not use or disclose the disclosing Party's Confidential Information to anyone except receiving Party's affiliates and its and their respective directors, officers, employees, agents and advisors, including, without limitation, attorneys, accountants, consultants, and Seller's Assignee to whom disclosure is necessary, and who have agreed to be bound by the obligations of confidentiality comparable to those hereunder, neither Party will use or disclose the other Party's Confidential Information. Provided, however, Confidential Information may be disclosed to Seller's Assignee to the extent necessary for assignee to administer the billing and collection of the Services. The confidentiality obligations of each Party will survive the expiration or termination of this Agreement. Upon the expiration or termination of this Agreement, each Party will cease all use of the other Party's Confidential Information and will promptly return (or, at the other Party's request, destroy) all Confidential Information in tangible form and all copies of Confidential Information in that Party's possession or under its control. In addition, each Party will destroy all copies of the other Party's Confidential Information that it has on its computers, disks, and other digital storage devices. Upon request, a Party will certify in writing its compliance with the terms and provisions of this Section. Notwithstanding the forgoing, Seller's Assignee may retain copies of such Confidential Information as it deems necessary in order to comply with ordinary and customary retention requirements of financial institutions, sound banking practices and audit and examination requirements. Nothing contained in the prior sentence shall, however, require Seller's Assignee to alter its normal record retention policies or to expunge from its records internally generated files, references, notes, analyses or memoranda related to the existence of, or relating to, the Confidential Information, but Seller's Assignee shall continue to maintain as confidential all such documentation pursuant to the terms of this Agreement

7. FEEDBACK. If Customer provides Seller with any feedback, improvements or other suggestions regarding the Services ("Feedback"), Customer hereby agrees that Seller has the right to use and fully exploit such Feedback and related information in any manner it deems appropriate. Seller will treat any Feedback it receives from Customer as non-confidential and non-proprietary. Customer agrees that it will not submit to Seller any information or ideas that it considers to be confidential or proprietary.

8. DISPUTE RESOLUTION. If a dispute arises that cannot be resolved by the personnel directly involved, the dispute shall be referred jointly to the responsible area senior management for Seller and Customer. The senior management shall exercise good faith efforts to settle the dispute within thirty (30) days (or an extended period, if they so agree). In

the event that the dispute is not resolved within such a period, the Parties reserve the right to seek other relief as the Party deems appropriate.

9. **TERM AND TERMINATION.** Unless otherwise specified in the applicable TOS, the Agreement will commence as of the Effective Date and continue for the number of months specified on the applicable TOS(s) ("Initial Term") and for any successive Renewal Term. In the event of termination, for any reason whatsoever, any applicable Termination Fees shall be specified in the applicable TOS ("Termination Fee"), provided that "Termination Fee" shall in all cases include any and all Minimum Monthly Fees, taxes, late charges and other amounts due and owing as of the applicable Termination Date. The Termination Fee shall be due and payable as and on the date set forth below ("Termination Date").

9.1. **Termination for Convenience by Customer.** Unless otherwise specified in the applicable TOS, Customer may terminate the Services under a TOS, in whole, but not part, upon providing to Seller and Seller's Assignee not less than ninety (90) days advance written notice; ("Termination for Convenience Notice"), provided however, that any such termination shall not relieve Customer of its obligation to pay the applicable Termination Fee set forth in the applicable TOS. The Termination Date shall be ninety (90) days from the date the Termination for Convenience Notice is delivered to Seller and Seller's Assignee and the Termination Fee has been paid in full. If a TOS is terminated for convenience, Customer and Seller shall work in good faith to develop a mutually agreed upon transition schedule and fee schedule for up to ninety (90) days following the Termination Date to support moving the Services in-house or to alternative service provider(s).

9.2. **Termination for Cause.** Either Party may terminate this Agreement by giving written notice of termination to the other Party upon the occurrence of any of the following (each an "Event of Termination"):

- 9.2.1. a Party's material breach of this Agreement which is not substantially cured within sixty (60) days after written notice is given to the breaching Party specifying the breach; or
- 9.2.2. a Party's failure to perform or observe any other representation, warranty, covenant, condition or agreement to be performed or observed, and such Party fails to cure any such breach within sixty (60) days after notice thereof; or
- 9.2.3. any representation or warranty made by a Party under this Agreement, or in any other instrument provided to the other by Party, that proves to be incorrect in any material respect when made; or
- 9.2.4. a Party makes an assignment for the benefit of creditors, whether voluntary or involuntary; or
- 9.2.5. a proceeding under any bankruptcy, reorganization, arrangement of debts, insolvency, liquidation or receivership law is filed by or against a Party or such Party takes any action to authorize any of the foregoing matters; or
- 9.2.6. a Party voluntarily or involuntarily dissolves or is dissolved; or
- 9.2.7. the appointment of a receiver or similar officer for a Party; or
- 9.2.8. an assignment by a Party to its creditors of all or substantially all of its assets; or
- 9.2.9. the filing of a meritorious petition in bankruptcy by or against a Party under any bankruptcy or debtors' law for its relief or reorganization; or
- 9.2.10. in the case of Customer, upon written notice to Seller of a Chronic Failure (as such term is described in the TOS) in accordance with the applicable Service Level Agreement set forth in the TOS; or
- 9.2.11. Customer breaches the terms of any End User Licensing Agreement governing the access and use of software, including Separately Licensed Third Party Software, under any TOS.

9.3. **Termination by Customer for Cause.** Following the occurrence of an Event of Termination by Seller Customer may terminate the applicable TOS by providing not less than thirty (30) days prior written notice ("Customer Termination Notice") to Seller and Seller's Assignee and paying Seller or Seller's Assignee the Termination Fee, if any, set forth in the TOS. In the case of a Termination by Customer for Cause, the Termination Date shall be the later of thirty (30) days after the delivery of the Customer Termination Notice to Seller and Seller's Assignee or the day following the applicable cure period, if any.

9.4. **Termination by Seller for Cause.** Seller or Seller's Assignee may terminate this Agreement and/or each and any TOS upon written notice to Customer upon the occurrence of an Event of Termination and/or if Customer fails to pay any Minimum Monthly Fee or any other amount payable to Seller under this Agreement within thirty (30) days after its Due Date. If Seller or Seller's Assignee elects to terminate this Agreement and/or each and any TOS, Seller or Seller's Assignee shall provide to Customer notice of the respective Event of Termination or payment default and provide Customer with thirty (30) days from the date of such notice in which to cure such default, the end of such notice period being the Termination Date. If the Event of Termination and/or payment default is not cured within such cure period, Seller or Seller's Assignee may exercise one or more of the following remedies:



- 9.4.1. declare the applicable Termination Fee set forth in the TOS, plus any and all Minimum Monthly Fees, taxes, late charges and other amounts then due and owing, to be due and payable on the Termination Date as liquidated damages for loss of a bargain and not as a penalty;
- 9.4.2. proceed by court action to enforce performance by Customer of obligations under this Agreement and/or to recover all damages and expenses incurred by Seller or Seller's Assignee by reason of any Event of Default;
- 9.4.3. terminate any other agreement that Seller or Seller's Assignee may have with Customer;
- 9.4.4. subject to Section 9.5, terminate and/or suspend all Services in any or all TOSs;
- 9.4.5. terminate each End User Licensing Agreement governing the Customer's access and use of software, but not Separately Licensed Third Party Software, under any or all TOSs; and/or
- 9.4.6. exercise any other right or remedy available to Seller and Seller's Assignee at law or in equity.

These remedies are cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time. Customer will reimburse Seller and/or Seller's Assignee for all costs of collection, including but not limited to reasonable attorney fees, incurred by Seller and/or Seller's Assignee in any action to enforce its rights under this Agreement

- 9.5. Effect of Termination. Termination of this Agreement or any TOS shall not limit the right of either Party to pursue other remedies available to it, including any lawsuit for damages and injunctive relief nor shall such termination relieve Customer of its obligation to pay an applicable Termination Fee to Seller or Seller's Assignee under any TOS regardless of whether the termination is for cause or for convenience. If the Agreement expires or terminates, Customer and Seller shall work in good faith to develop a mutually agreed upon transition schedule and fee schedule and Seller shall provide such contracted Services for up to ninety (90) days to support moving the Services in-house or to alternative service provider(s).

## 10. REPRESENTATIONS AND WARRANTIES.

Services. Seller represents and warrants to Customer that the Services will be performed in a professional and workmanlike manner by qualified personnel and in accordance with the terms and provisions of this Agreement and applicable TOS. If the Services have not been so performed and if within thirty (30) days after the performance of the applicable Service Customer provides to Seller written notice of such non-compliance, then Seller, at its option, will re-perform such Service, correct the deficiencies, or render a prorated rebate based on the original charge for the deficient Service.

The warranty remedies expressly provided in this Section will be Customer's sole and exclusive remedies for breach of warranty claims involving Services. EXCEPT AS REFERENCED AND LIMITED IN THIS AGREEMENT, SELLER NOR ITS LICENSORS, SELLER'S ASSIGNEE, OR SUPPLIERS MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE DATACENTER INFRASTRUCTURE, THE SERVICES, OR ANY SEPARATELY LICENSED THIRD PARTY SOFTWARE. IN PARTICULAR, THERE IS NO WARRANTY THAT (i) ANY SERVICE WILL MEET ANY PARTICULAR REQUIREMENTS; (ii) ANY SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (iii) ALL SECURITY THREATS AND VULNERABILITIES WILL BE DETECTED; OR (iv) THE SERVICES WILL RENDER ANY SEPARATELY LICENSED THIRD PARTY SOFTWARE OR DATACENTER INFRASTRUCTURE SAFE FROM SECURITY BREACHES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER DISCLAIMS ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE LICENSORS, OR SUPPLIERS OR SELLER'S ASSIGNEE, HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, STATUTORY, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST SAVINGS, OR LOST REVENUES OF ANY KIND; LOST, CORRUPTED, MISDIRECTED, OR MISAPPROPRIATED DATA; CHARGES FOR COMMON CARRIER TELECOMMUNICATIONS SERVICES; CHARGES FOR FACILITIES ACCESSED THROUGH OR CONNECTED TO THE DATACENTER INFRASTRUCTURE OR SEPARATELY LICENSED THIRD PARTY SOFTWARE THAT THE SERVICES ARE PERFORMED ON ("TOLL FRAUD"); NETWORK DOWNTIME; INTERRUPTION OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH PERFORMANCE OR NON-PERFORMANCE OF ANY DATACENTER INFRASTRUCTURE OR SEPARATELY LICENSED THIRD PARTY SOFTWARE THAT THE SERVICES ARE PERFORMED ON OR USE BY CUSTOMER; OR COST OF COVER).

EXCEPT FOR THE APPLICABLE TERMINATION FEE AND THE INDEMNIFICATION OBLIGATIONS HEREUNDER EACH PARTY'S LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE TERMS AND PROVISIONS OF THIS AGREEMENT WILL NOT EXCEED (A) IN THE CASE OF THE CUSTOMER THE TOTAL

AMOUNT PAYABLE TO SELLER UNDER THE TERMS AND PROVISIONS OF THE TOS WITH RESPECT TO WHICH SUCH CLAIMS ARISE, AND (B) IN THE CASE OF SELLER THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER TO SELLER OR SELLER'S ASSIGNEE UNDER THE TERMS AND PROVISIONS OF THE TOS WITH RESPECT TO WHICH SUCH CLAIMS ARISE. THE LIMITATIONS OF LIABILITY IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, OR OTHERWISE), AND REGARDLESS OF WHETHER (1) EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (2) THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. THE LIMITATIONS OF LIABILITY PROVISIONS IN THIS SECTION ALSO WILL APPLY TO ANY LIABILITY OF OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, AND AFFILIATES. THE LIMITATIONS OF LIABILITY PROVISIONS IN THIS SECTION, HOWEVER, WILL NOT APPLY IN CASES OF INTENTIONAL (WILLFUL) MISCONDUCT OR GROSS NEGLIGENCE, PERSONAL INJURY OR DEATH, OR DAMAGES TO PROPERTY.

## 12. NON-SOLICITATION OF EMPLOYMENT.

12.1. Seller agrees that it will not solicit for employment, or employ directly or indirectly, Customer's personnel during the term of this Agreement or for a period of twelve (12) months thereafter; provided, however, that Seller may hire Customer's personnel if Customer's personnel initiate contact with Seller (e.g., a response to Seller's general recruiting initiatives). If Seller violates this provision, Seller will pay to Customer an amount equal to the amount of the total potential compensation for the first twelve (12) months for the Customer employee that has been hired. Seller shall pay such amount to Customer on the date that is thirty (30) days after the person accepts Seller's offer of employment.

12.2. Customer agrees that it will not solicit for employment, or employ directly or indirectly, Seller's personnel during the term of this Agreement or for a period of twelve (12) months thereafter; provided, however, that Customer may hire Seller's personnel if Seller's personnel initiate contact with Customer (e.g., a response to Customer's general recruiting initiatives). If Customer violates this provision, Customer will pay to Seller an amount equal to the amount of total potential compensation for the first twelve (12) months for the Seller employee that has been hired. Customer shall pay such amount to Seller on the date that is thirty (30) days after the person accepts Customer's offer of employment.

## 13. NETWORK QUALITY ASSURANCE REVIEW.

13.1. Network Quality Assurance Assessment. Seller intends to implement the VoIP solution set forth in the applicable TOS on a network that meets such VoIP solution's minimum requirements for quality voice ("Minimum Network Requirements"). Customer represents and warrants that Customer's network meets the Minimum Network Requirements. Seller can assist Customer in determining whether its current networking architecture and design meet the Minimum Network Requirements through a review of Customer's existing network topology and hardware infrastructure ("Network Quality Assurance Assessment"). If Customer elects to forego the Network Quality Assurance Assessment, Customer hereby expressly agrees that: (1) if Seller discovers that Customer's network does not meet the Minimum Network Requirements, Seller will delay the integration of such VoIP solution until Customer resolves the network-related issues, under which Seller will offer support to resolve the issues through T&M (time and materials) billing; (2) if performance problems are encountered during the implementation and are determined to be associated with network performance, network reliability or any network security issues, Customer is solely responsible for all costs associated with any subsequent network assessments and reconfigurations needed; and (3) if the VoIP solution provider determines that maintenance issues exist because Customer's network does not meet the Minimum Network Requirements, such provider will suspend the maintenance resolution process until Customer either resolves the network-related issues or accepts T&M billing for such provider to continue the maintenance resolution process.

13.2. Waiver. If Customer elects to forego the Network Quality Assurance Assessment, Customer assumes any implementation and/or maintenance risks associated with such VoIP solution and waives any and all claims arising out of or in connection with such VoIP solution.

14. RENEWAL OF TERMS. The applicable TS shall expire at the end of the then-current Term, unless it is otherwise extended or renewed in writing and signed by the Parties..

15. SERVICES AND TIMING. Seller will use commercially reasonable efforts to provide the Services in accordance with the Service Level Objectives set forth in the applicable TOS. Seller's sole liability and Customer's exclusive remedy for

any failure of the Services to conform to the Service Level Objectives is the Performance Credits set forth in the applicable TOS. Services not specifically itemized in a TOS are not required to be provided. CUSTOMER IS SOLELY RESPONSIBLE FOR SYSTEM BACK-UP PRIOR TO COMMENCEMENT OF SERVICES.

## 16. MISCELLANEOUS.

16.1. Merger. This Agreement constitutes the entire agreement between Seller and Customer with respect to the subject matter described herein, superseding all prior and contemporaneous correspondence and understandings between the Parties, whether written or verbal. No provision of this Agreement or any TOS shall be deemed waived, amended, or modified by either Party unless such waiver, amendment, or modification is in writing and signed by the Party against whom enforcement is sought.

### 16.2. Assignment.

16.2.1. Except as set forth in 16.2.2 below, this Agreement shall not be assignable by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that in any assignment of this Agreement, both the assignor and the assignee are jointly and severally liable under this Agreement for any outstanding obligations of the assignor that are due as of the date of the assignment.

16.2.2. Notwithstanding the foregoing, Seller shall have the unqualified right without notice to or the consent of Customer to assign its rights to receive payment of all or any portion of the Total Minimum Monthly Fees and the applicable Termination Fee due and payable under the terms of this Agreement and to enforce this Agreement with regard to the collection thereof of such amounts. Customer acknowledges and agrees that Seller's Assignee is not responsible for any of Seller's obligations hereunder and that in the event of a dispute Customer shall bring any claims against Seller only and Customer also agrees that the Minimum Monthly Fees and any applicable Termination Fees, and other amounts due hereunder are absolutely due to Seller's Assignee without defense, set-off, or counterclaim whatsoever. Customer shall not assert against any Seller's Assignee any claim or defense Customer may have against Seller.

16.3. Notices. All notices issued under the terms and provisions of this Agreement shall be in writing and shall be delivered in person, sent by facsimile, sent by overnight courier, or sent by certified U.S. Mail, postage prepaid, to the address of the other Party as set forth in this Agreement or to such other address as a Party shall designate by like notice. In addition, copies of all notices to Seller shall be delivered to ConvergeOne, Inc., ATTN: General Counsel, 10900 Nesbitt Ave South, Bloomington, MN 55437. Notices to be sent to Seller's Assignee shall be as specified by the applicable Seller's Assignee.

16.4. Acknowledgment and Authority. By execution hereof, the signer hereby certifies that he/she has read this Agreement and these terms and each TOS, understands them, and agrees to all terms and provisions stated herein. In addition, Seller and Customer represent and warrant to each other that each respective Party has the full right, power, and authority to execute this Agreement.

16.5. Publicity. Neither Party shall use the name(s), trademark(s), or trade name(s), whether registered or not, of the other Party in publicity releases or advertising or in any other manner without the prior written consent of such other Party. Each Party agrees that it will not, without the prior written consent of the other Party, make any public statement regarding this Agreement, any of its provisions, or the fact that this Agreement exists.

16.6. Independent Contractors. The Parties acknowledge that Customer is a Party independent from Seller and that nothing in this Agreement will be construed or deemed to create a relationship of employer and employee, principal and agent, or any relationship other than that of independent entities contracting with each other solely for the purpose of carrying out the terms and provisions of this Agreement.

16.7. Waiver. If either Party fails to enforce any right or remedy available under this Agreement, that failure shall not be construed as a waiver of any right or remedy with respect to any other breach or failure by the other Party.

16.8. Software License; Intellectual Property Rights. The Parties acknowledge that Seller will license software from third parties to provide monitoring or administration of the Telecom Services, and that such licenses may require Customer, when accessing the software to use the Services, to agree to an End User Licensing

Agreement governing the access and use of the software. Customer shall receive a limited, personal, revocable, non-exclusive, non-sub-licensable, non-assignable, non-transferable, non-resellable license to use the software provided in conjunction with the Services during the Term in strict accordance with the terms of this Agreement and third party EULA, and solely for Customer's internal business use. In the event of any expiration or termination of this Agreement and/or applicable TOS, all license rights granted herein or the applicable TOS in connection with any software shall immediately terminate. All Intellectual Property rights in the Services and/or technology used in the provision of the Services are and shall remain the sole and exclusive property of Seller and its licensors. All rights not expressly granted herein are reserved and retained by Seller and its licensors, and no Intellectual Property rights or other rights or licenses are granted, transferred, or assigned to Customer or any other party by implication or otherwise. Customer acknowledges that misuse of the Services may violate third party Intellectual Property rights in the software provided in conjunction with the Services. CUSTOMER AND SELLER ACKNOWLEDGE AND AGREE THAT THE FOREGOING HAS NO APPLICATION WITH RESPECT TO SEPARATELY LICENSED THIRD PARTY SOFTWARE.

- 16.9. Credit Information. CUSTOMER AUTHORIZES SELLER OR ITS ASSIGNEE TO OBTAIN CREDIT BUREAU REPORTS, AND MAKE OTHER CREDIT INQUIRIES THAT SELLER OR ITS ASSIGNEE DETERMINE ARE NECESSARY. Customer agrees to provide copies of its balance sheet, income statement and other financial reports as Seller or Seller's Assignee may periodically reasonably request.
- 16.10. Severability. In the event that any term or provision of this Agreement is held to be illegal, unenforceable, or invalid, the remaining terms and provisions hereof shall remain in full force and effect.
- 16.11. Survival of Terms. Notwithstanding any termination or expiration of this Agreement, all rights and remedies available to the Parties and all terms and provisions of this Agreement that are not performed or cannot be performed during the term of this Agreement shall survive the termination or expiration of this Agreement.
- 16.12. Governing Law. The laws of the state of North Carolina (including, but not limited to, the Uniform Commercial Code as adopted) apply to all Services provided under the terms and provisions of this Agreement, without reference to such jurisdiction's conflicts of law principles.
- 16.13. E-Verify. Seller shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Seller shall require all of Seller's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).
- 16.14. Anti-Human Trafficking. Seller warrants and agrees that no labor supplied by Seller or Seller'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.
- 16.15. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Seller hereby warrants and agrees that Seller 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.
- 16.16. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from Customer 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 Customer to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of Customer; provided, however, Customer warrants that it will not execute a TOS until such time that all funds necessary for such TOS have been appropriated in full.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of this Agreement duly authorized by all necessary and appropriate corporate action to execute this Agreement.

By signing below, Customer acknowledges that it has received, read, and understood Exhibit 1 of this Agreement concerning 911 services.

SELLER: ConvergeOne, Inc.

CUSTOMER: Town of Apex

BY: Scott Byers

BY: \_\_\_\_\_

SIGNATURE: 

SIGNATURE: \_\_\_\_\_

TITLE: Regional Vice President

TITLE: \_\_\_\_\_

DATE: 04/11/2023

DATE: \_\_\_\_\_

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

\_\_\_\_\_

# EXHIBIT 1

## 911 ACKNOWLEDGMENT

This Exhibit applies where the Telecom Services available to Customer include access to emergency services and/or 911 providers (the "Emergency Services").

1. Emergency Services permit most users of the Telecom Services to access either basic 911 or Enhanced 911 ("E911") service. A user's access may differ depending on the user's location or the device the user is using, and emergency calling services work differently than a user may have experienced using traditional wireline or wireless telephones.
  - 1.1 With appropriate licensing, users using IP Desk Phones can dial 911 directly from the Sellers C1CX softphone. E911 services are predicated upon customer installing, ConvergeOne provided, E911 application and, if applicable, customer updating dispatchable location on computer or mobile device.
  - 1.2 In areas where it is available, the Telecom Service allows Emergency SMS messages, also known as Text-to-911, only through the customers native mobile device operating system.
2. The Emergency Services differ from the 911 services offered by a traditional telephone company or wireless company. Customer acknowledges and certifies that it understands that Seller does not support traditional 911 and that the Emergency Services offered under this Agreement are subject to limitations as described below.
  - 2.1. Access to 911 or E911 may differ depending on the user's location or the device the user is using. It is strongly recommended that users have an alternative means for placing emergency calls available at all times.
  - 2.2. Prior to initiating Telecom Services, Customer must provide a Registered Address for each physical device using the Telecom Services, in accordance with Seller's procedures. The Registered Address is the physical address of the device and is necessary to provide accurate address information in connection with the Emergency Services. Customer agrees to update the Registered Address, through Seller's provided portal, immediately after a device is moved. If the Registered Address is not updated as required, incorrect address information may be provided to the 911 provider responding to a 911 call or 911 calls may be routed to the wrong 911 provider or, potentially, not connected. In some instances, the Registered Address may not be received by the 911 provider, and consequently users should be prepared to provide the location from which the call originates. If the 911 provider does not have the user's phone number and location, the operator may not be able to call the user back or dispatch help to the user's location if the call is dropped or disconnected. If Customer has more than one line or extension, Customer is solely responsible for ensuring that an accurate and up-to-date Registered Address is maintained for each such line or extension and that Customer's users are aware of how the Registered Address can be changed.
  - 2.3 If the Telecom Services are being used on a device that is mobile [but not via the Mobile Application], including without limitation a tablet, smartphone or laptop computer, the user is responsible for updating the Registered Address in accordance with Section 2.2 of this Exhibit. Customer must install, Seller provided, E911 application on any mobile device utilizing Seller cloud services and which required the ability to call 911. Customer is solely responsible for updating the application installed on mobile devices with correct location information.
  - 2.4. In the case of Emergency Services provided through the Mobile Application, the Mobile Application is dependent on location information entered by user via the provided E911 application. If wireless service (WiFi, 5G, 4G, or 3G) is unavailable, calls to 911 will not be completed, and in some circumstances the user's smartphone or wireless network may not pass location or calling number information to the 911 provider.
  - 2.5. In some cases, 911 calls dialed via the Telecom Services cannot be directed to the local 911 provider, and are instead directed to a National Emergency Call Center (the "NECC"). This may occur if there is the Registered Address cannot be validated, if the Registered Address is an international location, or if the Registered Address is in an area that is not covered by the landline 911 network. 911 calls that are directed to the NECC may not transmit the originating telephone number or Registered Address. Trained

operators at the NECC will request the caller's name, location, and telephone number and attempt to reach emergency responders in the caller's local area.

- 2.6. Some features of the Emergency Services, including provision of Registered Addresses and the ability to return a call from a user who has dialed 911, may not be supported by individual 911 providers, or may not function in certain circumstances.
- 2.7. Emergency Services will not work if there is a power outage, if connectivity to Seller cloud solution is interrupted, if the Telecom Services are unavailable, or if there is a disruption to 911 service in the area where the call to 911 is made.
- 2.8. Emergency Services will not work if the Telecom Services have been disconnected.
3. Customer agrees to notify any employees, contractors, guests, or persons who may place calls using the Telecom Services or may be present at the physical location where the Telecom Services may be used, of the limitations of the Emergency Services. Customer agrees to affix a Seller-provided sticker warning that 911 services may be limited or unavailable in a readily visible place on each piece of equipment that might be used to access or use the Telecom Services.
4. Liability and Releases
  - 4.1. The availability of certain features, such as transmission of a Registered Address or Customer telephone number, depends on whether local emergency response centers support those features, and are factors outside of Seller's control. Seller relies on third parties to assist in routing 911 calls to local emergency response centers and to the NECC. Seller does not have control over local emergency response centers, the NECC, emergency responders, or other third parties. Seller disclaims all responsibility for the conduct of local emergency response centers, the NECC and all other third parties involved in the provision of emergency response services. Accordingly, to the extent permitted by applicable law, Customer hereby releases and discharges Seller from and against any and all liability relating to or arising from any acts or omissions of such third parties or other third parties involved in the handling of or response to any emergency or 911 call.
  - 4.2. After initial E911 portal installation and service turn up, customer bears sole responsibility for maintaining the customer E911 tenant database to reflect device dispatchable location. Additionally, customer is solely responsible for updating mobile device dispatchable location through the Seller provided E911 application. To the extent permitted by applicable Law, Customer releases, and will obtain from the users of the Telecom Services waivers releasing, Seller from any and all claims or liability that may arise related to Emergency Services.. Customer bears sole responsibility for providing any emergency services to its users and for any costs associated with providing these services and payment of any governmental fees or assessments related to 911, E911 or alternative 911 services.

## EXHIBIT 2

### Acceptable Use Policy

#### 1. High Risk Use

CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT DESIGNED, MANUFACTURED, INTENDED, OR RECOMMENDED FOR USE FOR ANY HIGH-RISK OR FAIL-SAFE PURPOSE OR ACTIVITY OR IN ANY ENVIRONMENT WHERE FAILURE, INTERRUPTION, MALFUNCTION, ERROR, OR UNAVAILABILITY COULD RESULT IN SUBSTANTIAL LIABILITY OR DAMAGES, PHYSICAL HARM OR PERSONAL INJURY, DEATH OR DISMEMBERMENT, OR PROPERTY OR ENVIRONMENTAL DAMAGE. CUSTOMER REPRESENTS AND WARRANTS THAT CUSTOMER AND ANY USERS OF THE SERVICES WILL NOT USE THE SERVICES FOR ANY SUCH PURPOSE OR ACTIVITY OR IN ANY SUCH ENVIRONMENT.

#### 2. Customer Legal Compliance

Customer represents and warrants that all use and usage of the Services will at all times comply with all applicable law, including but not limited to the rules, policies and regulation of the Federal Communications Commission ("FCC"), and all laws relating to Do-Not-Call provisions; unsolicited marketing; telemarketing; faxing; telemarketing; email marketing; spamming or phishing; data security or privacy; international communications; account or debt collection; recording of calls or conversations; export control; export of technical or personal data; end user, end-use, and destination restrictions imposed by the United States or foreign governments; consumer protection; pornography; trade practices; false advertising; unfair competition; anti-discrimination; harassment; defamation; intellectual property; or securities.

#### 3. Unsolicited Advertisements and TCPA Compliance

- 3.1. Certain communication practices – including without limitation, the placing of unsolicited calls; the placing of commercial messages; the sending of unsolicited facsimile, internet facsimile, SMS, or other messages; and the use of certain automated telephone equipment to place certain calls – are regulated in the United States by the Federal Telephone Consumer Protection Act of 1991 (also known as the "TCPA") (available at <http://www.fcc.gov/document/telephone-consumer-protection-act-1991>), the Junk Fax Prevention Act of 2005, and similar state, municipal or local laws, regulations, codes, ordinances and rules.
- 3.2. Customer agrees, represents, and warrants that:
  - 3.1.1. Customer is the creator of the content of, and are solely responsible for determining the destination(s) and recipient(s) of, all outbound communications made using the Services ("Customer Communication");
  - 3.1.2. All content, communications, files, information, data, and other content provided for transmission through the Services will be provided solely for lawful purposes, and in no event shall any Customer Communication or any content thereof be in violation of the TCPA, Junk Fax Prevention Act, the rules governing the Do Not Call Registry, and the Canadian Unsolicited Telecommunications Rules or any other law; and
  - 3.1.3. No unsolicited advertisements, commercial messages, solicitations, marketing or promotional materials, or commercial messages or content will be transmitted or distributed in the form of facsimiles or internet facsimiles through the Services.
- 3.3. At Seller's sole option and without further notice, Seller may use technologies and procedures, including without limitation, filters, that may block or terminate such unsolicited advertisements without delivering them.
- 3.4. Customer agrees to indemnify and hold harmless Seller, and any third-party provider(s) from any and all third party claims, losses, damages, fines, or penalties arising: (i) out of violation or alleged violation of the TCPA, the Junk Fax Prevention Act, the rules governing the Do Not Call Registry, and the Canadian Unsolicited Telecommunications Rules or any similar regulation or legislation by Customer or its users; or (ii) otherwise related to any voicemail, text, and/or fax spam, solicitations, or commercial messages that



Customer or its users may send and/or receive using the Services.

#### 4. Export Restrictions

Customer acknowledges and agree that the software and/or hardware used in conjunction with the Services may be subject to Canada, United States and other foreign laws and regulations governing the export, re-export, and/or transfer of software by physical or electronic means. Customer agrees, represents, covenants, and warrants that: (i) neither Customer nor any user (nor any entity or person that controls Customer or any user): (a) is located in an Embargoed Area or listed on any Export Control List or (b) will export or re-export any Seller software or hardware into any Embargoed Area or to any person, entity, or organization on any Export Control List, or to any person, entity, or organization subject to economic sanctions due to ownership or control by any such person, entity, or organization, without prior authorization by license, license exception, or license exemption; and (ii) the Services and Seller software and/or hardware will not be used or accessed from any Embargoed Area.

#### 5. Recording Conversations or Calls

- 5.1. Certain features of the Services may allow Customer or users of the Services to record calls or other communications. The notification and consent requirements relating to the recording of calls, and/or other communications may vary from state to state, and country to country. Customer should consult with an attorney prior to recording any call as some states or countries may require callers or users to obtain the prior consent of all parties to a recorded call, or other communication before the caller or user may record the call, or other communication. Customer represents, covenants, and warrants that it will review all applicable law before using or allowing use of the Services to record any calls or other communications and will at all times comply with all applicable law. Customer agrees to inform all users of the Services that they are obligated to comply with all laws relating to their use of the call recording feature. Violations of the call recording laws may be subject to criminal or civil penalties.
- 5.2. Seller expressly disclaims all liability with respect to recording of telephone conversations by Customer or users. Customer agrees to indemnify and hold harmless Seller, and any third-party provider(s) from any and all third party claims, losses, damages, fines, or penalties arising out of violation or alleged violation of any call recording laws by Customer or any user. Seller expressly disclaims all liability and all warranties with respect to recording of conversations and/or calls.

#### 6. Prohibited Use of the Services.

Neither Customer nor any user of the Services may use or allow use of the Services in any of the following ways:

- 6.1. In any manner or for any purpose that is fraudulent, malicious, deceptive, dishonest, abusive, obscene, threatening, harassing, tortious, improper, defamatory, libelous, slanderous, or in violation of any law;
- 6.2. To intentionally send or transmit unsolicited or “junk” or “spam” advertisements, communications, or messages (commercial or otherwise) without consent, including without limitation through email, voicemail, SMS, facsimile, or internet facsimile;
- 6.3. To harvest or otherwise collect information about others, including without limitation email addresses or personally-identifiable information, without their consent;
- 6.4. To intentionally engage in blasting or broadcasting bulk communications, advertisements, or messages (e.g., sending hundreds of messages simultaneously), including without limitation through email, voicemail, SMS, facsimile, or internet facsimile;
- 6.5. To perform auto-dialing or “predictive” dialing (i.e., non-manual dialing or using a software program or other means to continuously dial or place out-bound calls) in violation of applicable law;
- 6.6. To provide multi-party conference calls or multiparty chat lines, for extensive call forwarding or to use call forwarding or conferencing features to act as a bridge to chat lines or other conferencing facilities or services;
- 6.7. To provide monitoring or transcription services;

- 6.8. To transmit any communication that would violate Customer's obligations under Section 3 of this Exhibit 2;
- 6.9. To intentionally transmit or store any material that contains viruses, time bombs, Trojan horses, worms, malware, spyware, or any other programs or materials that may be harmful or dangerous;
- 6.10. To transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value, including by creating a false Caller ID identity or forged email/SMS address or header or by otherwise attempting to mislead others as to the identity of the sender or the origin of any outbound Customer Communication;
- 6.11. To infringe, misappropriate, or otherwise violate the foreign or domestic intellectual property rights or proprietary rights of any party, including without limitation by transmitting or storing any material that might infringe, misappropriate, or otherwise violate any such right;
- 6.12. To violate the right of privacy, personality, or publicity of any party, including without limitation by transmitting or storing any material that might violate any such right;
- 6.13. To violate any law regarding the transmission of technical data or information or software through the Services;
- 6.14. In any manner that interferes with Seller's ability to provide high quality products or services to other customers; or
- 6.15. To store personal health information ("PHI"), as that term is used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); or if Customer qualifies as a "covered entity," "business associate," or "subcontractor" under HIPAA (or similar terms under similar legislation in other jurisdictions) or is otherwise subject to HIPAA, to transmit, receive, or store PHI.

A breach of obligations in this Section constitutes a material breach of this Agreement, as applicable, such that Seller may suspend service, terminate the Agreement immediately, or take any other action Seller deems necessary to enforce the terms of this Section;

## 7. Prohibited Acts.

Customer represents, warrants, covenants, and agrees that neither Customer nor any user shall do any of the following during the Term:

- 7.1. Transmit, upload, distribute in any way, or store any corrupted file or material that contains viruses, time bombs, Trojan horses, worms, malware, spyware, or any other programs or materials that may be harmful or dangerous or may damage the operation of the Services or another party's computers, devices, equipment, systems, or networks;
- 7.2. Take advantage of, bypass, exploit, or otherwise avoid Customer's obligations or the provisions, restrictions, and prohibitions set forth in this Exhibit 2 (or attempt to do so);
- 7.3. Interfere with or disrupt networks or systems connected to the Services;
- 7.4. Sell, resell, distribute, lease, export, import, or otherwise grant or purport to grant rights to third parties with respect to the Services, and any software or hardware used in conjunction with the Services or any part thereof without Seller's prior written consent;
- 7.5. Display or use of any trademark, trade name, service mark or logo (together or individually, a "Mark") of Seller in any manner in violation of Seller's then-current policies on its trademark and logo usage or without Seller's express, prior written permission, to be granted or denied in Seller's sole discretion;
- 7.6. Display or use of any third party Mark without the prior, written consent of the third party that owns the third party Mark;

- 7.7. Undertake, direct, attempt, cause, permit, or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling, or hacking of the Services or any software and hardware used in conjunction with the Services, or part thereof;
- 7.8. Defeat, disable, or circumvent any protection mechanism related to the Services;
- 7.9. Intercept, capture, sniff, monitor, modify, emulate, decrypt, or redirect any communication or data used by Seller for any purpose, including without limitation by causing the any product to connect to any computer server or other device not authorized by Seller or in any manner not authorized in advance in writing by Seller;
- 7.10. Allow any service provider or other third party – with the sole exception of Seller’s authorized maintenance providers acting with Seller’s express, prior authorization – to use or execute any software commands that facilitate the maintenance or repair of any software or hardware used in conjunction with the Services;
- 7.11. Gain access to or use (or attempt to gain access or use) any device, system, network, account, or plan in any unauthorized manner (including without limitation through password mining);
- 7.12. Engage in or to allow trunking or forwarding of Customer’s telephone or facsimile number to (an)other number(s) capable of handling multiple simultaneous calls, or to a private branch exchange (PBX) or a key system; or
- 7.13. Violate or take any action to jeopardize, limit, or interfere with Seller’s intellectual property rights, including without limitation their IP Rights in the software and hardware used in conjunction with the Services.

Breach of obligations in this Section constitutes a material breach of the Agreement, as applicable, such that Seller may suspend service, terminate the Agreement immediately, or take any other action Seller deems necessary to enforce the terms of this Section.

## Solution Summary

### Microsoft Teams Voice with Direct Routing Configuration - Telephone Sets and ATAs

<b>Customer:</b> Town of Apex	<b>Primary Contact:</b> Erika Sacco
<b>Ship To Address:</b> 73 HUNTER ST APEX, NC 27502	<b>Email:</b> erika.sacco@apexnc.org
<b>Bill To Address:</b> 105 UPCHURCH ST APEX, NC 27502	<b>Phone:</b> (919) 249-3312
<b>Customer ID:</b> TOWAPE0001	<b>National Account Manager:</b> Carrie Tish
<b>Customer PO:</b>	<b>Email:</b> CTish@convergeone.com
	<b>Phone:</b> +16517966702

Solution Summary	Billing Frequency	Due	Total Project
Hardware	One-Time	\$16,143.00	\$16,143.00
Maintenance			
AUDIOCODES Maintenance	Prepaid	\$2,256.00	\$2,256.00
<b>Project Subtotal</b>			<b>\$18,399.00</b>
Estimated Tax			NOT INCLUDED
Estimated Freight			NOT INCLUDED
<b>Project Total</b>			<b>\$18,399.00</b>

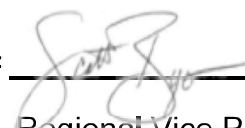
This Solution Summary summarizes the document(s) that are attached hereto and such documents are incorporated herein by reference (collectively, this "Order"). Customer's signature on this Order (or Customer's issuance of a purchase order in connection with this Order) shall represent Customer's agreement with each document in this Order and acknowledgement that such attached document(s) are represented accurately by this Solution Summary.

Unless otherwise specified in this Order, this Order shall be subject to the following terms and conditions (the "Agreement"): (i) the Master Sales Agreement or other applicable master agreement in effect as of the date hereof between ConvergeOne, Inc. and/or its subsidiaries and affiliates (collectively, "C1" or "ConvergeOne" or "Seller") and Customer; or (ii) if no such master agreement is currently in place between C1 and Customer, the Online General Terms and Conditions currently found on the internet at: <https://www.convergeone.com/online-general-terms-and-conditions/>. If Customer's Agreement is a master agreement entered into with one of ConvergeOne, Inc.'s predecessors, affiliates and/or subsidiaries ("Legacy Master Agreement"), the terms and conditions of such Legacy Master Agreement shall apply to this Order, subject to any modifications, located at: <https://www.convergeone.com/online-general-terms-and-conditions/>. In the event of a conflict between the terms and conditions in the Agreement and this Order, the order of precedence shall be as follows: (i) this Order (with the most recent and specific document controlling if there are conflicts between the Solution Summary and any applicable supporting document(s) incorporated into this Order), (ii) Attachment A to the Agreement (if applicable), and (iii) the main body of the Agreement.

This Order may include the sale of any of the following to Customer: (a) any hardware, third party software, and/or Seller software (collectively, "Products"); (b) any installation services, professional services, and/or third party provided support services that are generally associated with the Products and sold to customers by Seller (collectively, "Professional Services"); (c) any Seller-provided vendor management services, software release management services, remote monitoring services and/or, troubleshooting services (collectively, "Managed Services"); and/or (d) any Seller-provided maintenance services ordered by Customer to maintain and service Supported Products or Supported Systems at Supported Sites to ensure that they operate in conformance with their respective documentation and specifications (collectively, "Maintenance Services"). For ease of reference only, Professional Services, Managed Services and Maintenance Services may be referred to collectively as "Services." Unless otherwise defined herein, capitalized terms used herein will have the same meanings as set forth in the Agreement.

Products and/or Services not specifically itemized are not provided hereunder. This Order will be valid for a period of thirty (30) days following the date hereof. Thereafter, this Order will no longer be of any force and effect. Due to rapidly changing prices in the market for third party Products and/or Services, after the expiration of the foregoing 30 day period, Seller reserves the right to adjust offerings and/or prices accordingly prior to issuing any new Order(s).

ACCEPTED BY:

BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_ SELLER:  DATE: 04/11/2023  
TITLE: \_\_\_\_\_ TITLE: Regional Vice President

## Master Agreement Rider

#	Item Number	Description	Term In Months	Qty	Unit Price	Extended Price
<b>Teams C400 HD Series IP Phones</b>						
1	EXPANSION_UNIT	450HD and C450HD SFB Expansion Unit with		2	\$209.00	\$418.00
2	TEAMS-C450HD-DBW-TAA	TEAMS-C450HD-DBW-TAA - Teams C450HD TAA IP-Phone PoE GbE black with integrated BT and Dual Band Wi-Fi		10	\$410.00	\$4,100.00
3	TEAMS-C450HD-DBW	Teams C450HD IP-Phn PoE GbE blk w/int BT		10	\$410.00	\$4,100.00
4	TEAMS-C470HD-DBW	Teams C470HD IP-Phn PoE GbE blk w/int BT		10	\$420.00	\$4,200.00
<b>Teams C400 HD Series IP Phones Subtotal:</b>						\$12,818.00
<b>Analog VoIP Gateways</b>						
5	MP114/4S/SIP/CER	MediaPack Series MP-114 Analog VoIP GWY		2	\$350.00	\$700.00
6	ACTS24X7-MP11X_S2/YR	Support Contract ACTS 24x7		6	\$60.00	\$360.00
7	AHR-MP11X_S2/YR	Advanced Hardware Replacement (AHR) Serv		6	\$16.00	\$96.00
8	MP124/16S/AC/SIP	MP124/16S/AC/SIP 16 FXS ONLY		1	\$1,150.00	\$1,150.00
9	ACTS24X7-MP11X_S4/YR	Support Contract ACTS 24x7		3	\$240.00	\$720.00
10	AHR-MP11X_S4/YR	Advanced Hardware Replacement (AHR) Serv		3	\$60.00	\$180.00
11	MP124/24S/AC/SIP	MP124, 24FXS PORTS - SIP AC POWERED		1	\$1,475.00	\$1,475.00
12	ACTS24X7-MP11X_S4/YR	Support Contract ACTS 24x7		3	\$240.00	\$720.00
13	AHR-MP11X_S4/YR	Advanced Hardware Replacement (AHR) Serv		3	\$60.00	\$180.00
<b>Analog VoIP Gateways Subtotal:</b>						\$5,581.00
<b>Total:</b>						<b>\$18,399.00</b>

# AudioCodes Customer Technical Support (“ACTS”) Policy

## 1 OVERVIEW

AudioCodes is committed to providing customers and partners with the most comprehensive and qualified Customer Support. Whether you have recently deployed a new AudioCodes solution or require ongoing support for AudioCodes system-level solutions, our Global Customer Support team delivers customer-oriented technical support coverage that ensures you get the most out of the AudioCodes product you have purchased.

The intent of this document is to set forth the terms and conditions that shall be enforced for the sales of AudioCodes Technical Support packages acquired by entities, such as individual enterprises, AudioCodes Value Added Resellers, System Integrators and Master Distributors (“Customer”). This shall not be construed to have changed any of the terms and conditions of purchase that have been previously agreed between the parties.

Services described in this document are delivered for the life of the agreement (one or more years) and the agreement is renewable annually. Details are provided below.

To receive technical support as provided by AudioCodes Global Services and described in the AudioCodes Technical Support section below, you must: (i) provide the serial number and/or other identifying entitlement information (such as contract number) and (ii) have complied with the related payment terms for the ordered support.

These Technical Support Policies are subject to change at AudioCodes discretion; however, AudioCodes policy changes will not result in a material reduction in the level of the services provided during the support period (defined below) for which fees for technical support have been paid.

## 2 SUPPORT TERMS

### Technical Support Fees

Technical support fees are due and payable annually in advance of the support period, unless otherwise stated in the relevant order. Technical support is effective upon the date of delivery of the hardware/software, when it is installed and fully functional. AudioCodes technical support terms, including pricing, reflect typically a 12-month support period, but longer periods are available (known as the “support period”).

Once placed, your order for technical support services is non-cancelable and the sums paid non-refundable. AudioCodes is not obligated to provide technical support beyond the end of the support period. AudioCodes does not offer Time and Materials or Per Incident Support.

### Matching Service Levels

Support is normally not transferrable from one unit to another unit (except in the case of AudioCodes Spares Replacement Services). When acquiring technical support, all hardware components and/or accessories plugged into the existing system as well as any add-on or upgrade software loaded on the hardware must have the same level of support purchased as the original hardware itself. In addition, ACTS support is a prerequisite for most add-on services.

### Reinstatement of AudioCodes Technical Support and Related Services:

1. If technical support was not originally purchased with your equipment when it was ordered, the prorated annual rate will be assessed, based on the current price list, for the period that the equipment was not covered. This reinstatement cost is limited to a maximum period of 18 months.
2. If technical support or related add-on services have lapsed from a previous expiration date, the prorated annual rate will be assessed, based on the current price list, for the period that the equipment was not covered. This reinstatement cost is limited to a maximum period of 18 months.
3. If any AudioCodes annuity services were not purchased in the first place or have lapsed since the original factory product warranty for more than 180 days, a signed declaration of conformity may be required as to the good working condition of the equipment and allowing inspection of such equipment by or on behalf of AudioCodes, before coverage can be added.
4. New hardware replacement contracts (AHR and MGSP) are subject to a qualification period to properly stock before replacement services can be provided under the newly purchased technical support coverage. Details are provided in section 4.
5. Non-Covered equipment may not be eligible for support if one or more of the following conditions exist:
  - The hardware was sold more than seven (7) years ago
  - The hardware is considered EOL with no replacement options
  - The hardware has not had support coverage in 3 years or more
6. A qualification period of 30 days from the ACTS purchase is required to be eligible to request Repair and Return service under the newly purchased coverage.

### Product Lifecycle Support:

Contracted services for software support shall be provided only with respect to the latest available major version release (N) and the previous (N-1) major version release of the product software. Notwithstanding the above, each and every major software version will be supported for at least two years from its date of release.

1. In the event that AudioCodes declares that the software of a particular product is no longer being developed, AudioCodes will support only the last applicable major version release for that product.
2. In the event that AudioCodes declares that a particular product has reached its end-of-life and is no longer being sold by AudioCodes, AudioCodes will support the last applicable major version release for that product for two years from the effective date of such an announcement.
3. In the cases of 2) and 3) above, such software support is limited to workarounds and material bug fixes only.
4. It may become necessary as a part of AudioCodes product lifecycle to announce an End of Service Life date for certain products. AudioCodes will use commercially reasonable efforts to provide six (6) months advance notice of EOL for a specific product.
5. Hardware repair/replacement services for discontinued products will be provided for 3 years from product EOL notifications, provided that out of warranty repair services are purchased by the buyer. Software bug fixes are limited to 2 years after product EOL notification.

### 3 AUDIOCODES TECHNICAL SUPPORT LEVELS AND PRIORITY DEFINITIONS

#### AudioCodes Customer Technical Support Program (ACTS)

AudioCodes Customer Technical Support customers will be entitled to full access to the AudioCodes software updates and patches for the products included in the purchased agreement.

All ACTS Programs include:

- 24x7 online (incident) ticketing in AudioCodes Services Portal
- Free access to software patches and Maintenance Releases for AudioCodes products. Does not include updates for Windows Operating Systems (e.g., on SBA or other appliances) or other third-party software
- Free access to major software version releases for AudioCodes products. Does not include upgrades for Windows Operating Systems (e.g., on SBA or other appliances) or other third-party software
- Repair and Return Service

The ACTS 9x5 Program includes:

- Level 2-4 remote technical support for a 12-month period for deployed products. Available during normal business days and hours, Monday-Friday, 8:00 AM – 5:00 PM (Customer local time, Holidays excluded).

The ACTS 24x7 Program includes:

- Level 2-4 remote technical support for a 12-month period for deployed products. Available 24x7 (24 hours a day, 7 days a week) for incidents of Urgent Priority Level and Monday-Friday, 8:00 AM – 5:00 PM (Customer local time, Holidays excluded), for all other incident priority levels.

Note: The above Software Support Services are applicable only to installed and fully functional products. The ACTS Program may be subject to a maximum extension/renewal period. Support for installation, configuration and provisioning related activities are available from AudioCodes and can be purchased separately.

#### Support Responsibilities

Customer - Level 1 (Operational Support)

- Perform installation, configuration and provisioning-related activities (support from AudioCodes for such activities is available and can be purchased separately)
- Make best effort to solve the problem
- For problems that cannot be resolved, initiate support tickets for service using AudioCodes Services Portal ticketing system and assist in collection of all required relevant data, logs, traces and files for the ticket. If necessary, perform hardware replacement
- Perform on-site support activities when necessary.
- If necessary, perform hardware replacement and send RMA requests to AudioCodes for defective equipment (per AudioCodes prevailing RMA procedure – for more details see Repair and Return Service below).
- Distribute and implement software patches, fixes, updates and major releases only for contracted equipment (i.e., equipment that is covered by contracted services)
- Back up configurations and certificates on a regular basis and provide them to AudioCodes personnel, in order to restore the device

AudioCodes - Level 2-3 (Product Support)

- Handle ticket and resolve remotely product-related problem that cannot be resolved by Customer (excluding installation, configuration and provisioning related activities; support from AudioCodes for such activities is available and can be purchased separately)
- Perform analysis of logs, traces and processor dumps
- Provide status updates to Customer. Follow up on status until ticket is closed

Level 4 (Engineering Support)

- Develop, test and release software and firmware corrections
- Provide permanent solution



## Support Ticket Handling

### Priority Levels

The priority level given to a support ticket is based on the information provided by the customer in the field Priority Level (Service Impact) and is defined as follows:

#### Urgent

- System is down or service is unavailable or severely degraded
- Safety issue
- No work around exists

#### High

- Service affected
- Ability to administer the product is lost
- No work around exists

#### Medium

- Ability to administer the product is affected and work around exists

#### Low

- Not affecting service or performance
- General questions, information documentation or firmware request

## Repair and Return Service

AudioCodes provides Repair and Return service relating to hardware (see notes below) of properly used Contracted Equipment for the contract period of this ACTS Program so that they conform to the hardware specifications. The typical repair turn-around time is 10 business days (max 30 calendar days). Replacement parts/Products may be reconditioned or previously repaired parts/Products.

The repair warranty is for the contract period of this ACTS Program or 90 days from the date of shipment of the repaired product, whichever date is later. The detailed and applicable RMA procedure and terms are available on AudioCodes' website

([RMA-Procedure-and-Terms](#)).

It is the customer's responsibility to ship the defective unit back to AudioCodes and AudioCodes' responsibility to return the repaired unit back to the customer. Shipment terms are DAP (Incoterms 2010) to AUDIOCODES WAREHOUSE according to the local office instructions using a traceable carrier.

#### Notes:

1. The Repair and Return service assumes an annual ACTS contract in advance. To the extent the ACTS Program does not immediately follow the expiry of the original factory hardware warranty or other hardware maintenance service, support service must be ordered for the period that the equipment was not covered (see Reinstatement Conditions above).

## 4 ADDITIONAL SUPPORT SERVICES AVAILABLE FOR PURCHASE

### Spares Replacement Services (Optional)

#### 1. Managed Spares (MGSP)

This managed service includes dispatch of a local in-country technician who will deliver and replace defective AudioCodes hardware with a Field Replacement Unit (FRU) at your site if a fault occurs, as well as return the defective unit to AudioCodes for repair. This service does not include AudioCodes IP-Phone products.

AudioCodes offers on-site Managed Spares hardware replacement service on a global basis, subject to approval of the Customer site address prior to quoting this service (send SLA verification requests to [mgsp-sla-check@audiocodes.com](mailto:mgsp-sla-check@audiocodes.com), stating the complete postal address for each site where the hardware is to be installed).

The MGSP service is an add-on service to the ACTS program. Following AudioCodes Customer Service diagnosis of a reported ticket, AudioCodes shall assign and dispatch a local in-country field technician, who will arrive at the site with an FRU to the Customer site and will replace it. The field technician will remove the replaced unit.

Spares are stocked in a local in-country warehouse to ensure delivery within the purchased SLA (i.e. 4-hour delivery or Next Business Day (NBD) delivery).

Purchase of MGSP service is subject to an activation period of up to 60 days to have stock available in local warehouses. During this activation period Advance Hardware Replacement (AHR) is used, however, time for delivery will be based on best effort, on location and stocking levels.

The faulty part must be returned to the technician in return for the replacement part. If it is not returned for any reason, after fifteen (15) days AudioCodes shall invoice Customer for the full product purchase price. Expected time of service delivery is within the confirmed SLA, following diagnosis of the reported ticket, and assuming the customer-provided information is received in advance and as specified below:

- Customer must provide valid and applicable serial numbers for all Products covered by MGSP contract, as well as current shipment contact information, such as: contact name, title, address, telephone number, e-mail address, and fax number.
- Additional costs may apply in case Customer requests to provide the service at a location, other than the pre-agreed Customer site address. In this case, the actual SLA may differ than the pre-agreed timeframe, as well.
- Replacement parts/Products may be reconditioned or previously repaired parts/Products.
- It is the customer's responsibility to back up configurations and certificates on a regular basis and provide them to AudioCodes personnel, for the purpose of restoring the device.
- The warranty for the replacement part is for the contracted period of this program or 90 days from the date of shipment of the replacement part/Product, whichever date is later.
- Managed Spares service may be subject to a minimum purchase commitment per year, as well as maximum extension/renewal period.

Note: The MGSP service assumes an annual contract in advance. To the extent that MGSP relates to an ACTS Program that does not immediately follow the expiry of the original factory hardware warranty, customers may be requested to sign a declaration as to the good working condition of the equipment. They are subject to a qualification period of 30 days from ACTS purchase to be eligible to request MGSP service under the newly purchased coverage; they should allow for it to be inspected; and they may be required to pay a reinstatement fee.

#### 2. Advance Hardware Replacement (AHR)

AHR is an add-on service to ACTS that provides a replacement unit to the customer before the defective hardware is sent back to AudioCodes. Once the defective hardware is validated by the AudioCodes support team, the replacement unit will ship as follows: in the countries where in-country AHR is supported (see supported countries below), if an RMA is received by 13:00 (1:00 PM) according to specified time zone (refer to table below for specific times), the replacement part will be shipped out within one business day. For other destinations shipments may take more than two business days and further delays should be expected due to customs and other import clearance issues. AudioCodes will ship the replacement part per DAP (Delivered at Place), Incoterms 2010 (customer releases shipment from Customs and pays import taxes). Replacement parts/Products may be reconditioned or previously repaired parts/Products.

Purchase of AHR service is subject to an activation period of up to 30 days to have stock available in local warehouses. For IP-Phone products this service only applies for AHR bundles for IP-Phone in USA and EU. Contact your AudioCodes sales representative to verify.

AudioCodes may invoice Customer for shipping costs in case Customer requests to ship the replacement part to a location, other than the Customer's pre-registered address.

It is the customer's responsibility to return the original defective product when the advance replacement is received. Customer should ship the defective product back to AudioCodes according to DAP (Delivered at Place) Incoterms 2010. If it is not returned for any reason, after fifteen (15) days AudioCodes shall invoice Customer for the product full purchase price. For US and EU-based customers, a prepaid return label will be provided for convenience.

All replaced products and parts shall become the property of AudioCodes upon receipt. Title and risk of loss to replacement parts/products shall pass to Customer upon shipment by AudioCodes (DAP Incoterms 2010).

Note: The AHR service assumes an annual contract in advance. To the extent the AHR relates to an ACTS Program that does not immediately follow the expiry of the original factory hardware warranty, Customers may be requested to sign a declaration as to the good working condition of the equipment, are subject to a qualification period of 30 days from AHR purchase to be eligible to request advance replacement service under the newly purchased coverage.

COUNTRY	Time Zone
Australia/New Zealand	UTC+10
Brazil	UTC-3
China	UTC+8
EU	UTC+1
India	UTC+5:30
Israel	UTC+2
Japan	UTC+9
USA/Canada	UTC-5

### 3. Onsite Spare Unit (OSSU)

OSSU is an add-on service to ACTS that allows a customer to restore service within minutes using a spare unit that AudioCodes will co-locate at the customer site, in order to ensure accelerated availability. This service does not include AudioCodes IP-Phone products.

The spare unit remains the property of AudioCodes up until the discovery of a problem, where the AudioCodes Technical Support (ACTS) customer will simply contact the AudioCodes Technical Support Center to report the problem. If it is determined that there is a hardware-related issue, AudioCodes Support will provide the license key to enable the spare device to be used in place of the defective unit. Once the replacement unit is in service, ACTS coverage will be transferred to the spare unit, and a new spare replacement will be sent to the customer location.

Initial shipment of the spare unit is according to EXW (Ex Works), Incoterms 2010. It is the customer's responsibility to return the original defective product when the new spare unit is received. Customer should ship the defective product back to AudioCodes according to DAP (Delivered at Place) Incoterms 2010. If it is not returned for any reason, after thirty (30) days AudioCodes shall invoice Customer for the product full purchase price.

The spare unit remains the property of AudioCodes, which is responsible for ensuring that the unit is current with software and hardware versions. All replaced products and parts shall become the property of AudioCodes upon receipt. Title and risk of loss to replacement parts/products shall pass to Customer upon shipment by AudioCodes (DAP Incoterms 2010).

AudioCodes typically recommends that one OSSU product provides coverage for up to four units of the same model. It is required that ACTS 24 X 7 support is purchased in addition to enable the OSSU service.

#### 4. Break-Fix (BF)

This managed service includes dispatch of a local in-country technician who will replace defective AudioCodes hardware with a Field Replacement Unit (FRU) located at your site if a fault occurs.

AudioCodes offers on-site Break-Fix replacement service on a global basis, subject to approval of the Customer site address prior to quoting this service (send SLA verification requests to [mgsp-sla-check@audiocodes.com](mailto:mgsp-sla-check@audiocodes.com), stating the complete postal address for each site where the hardware is to be installed).

The BF service is an add-on service to the ACTS program. Following AudioCodes Customer Service diagnosis of a reported ticket, AudioCodes shall assign and dispatch a local in-country field technician, who will arrive at the Customer site and will replace the defective unit with the onsite FRU. The local field technician will arrival within the purchased SLA (i.e. 4-hours or Next Business Day (NBD)).

## 5 CONTACT INFORMATION:

- Phone numbers and contact information can be found here: <https://www.audiocodes.com/corporate/offices-worldwide>
- Information for all AudioCodes Services can be found at: <https://www.audiocodes.com/services-support>

**Thank you for Choosing AudioCodes Global Services**

## Solution Summary

### Microsoft Teams Voice with Direct Routing Configuration Set-Up Services

<b>Customer:</b> Town of Apex	<b>Primary Contact:</b> Erika Sacco
<b>Ship To Address:</b> Install Sites	<b>Email:</b> erika.sacco@apexnc.org
<b>Bill To Address:</b> 105 UPCHURCH ST APEX, NC 27502	<b>Phone:</b> (919) 249-3312
<b>Customer ID:</b> TOWAPE0001	<b>National Account Manager:</b> Carrie Tish
<b>Customer PO:</b>	<b>Email:</b> CTish@convergeone.com
	<b>Phone:</b> +16517966702

Solution Summary	Billing Frequency	Due	Total Project
Professional Services	One-Time	\$37,414.00	\$37,414.00
<b>Project Subtotal</b>			<b>\$37,414.00</b>
Estimated Tax			NOT INCLUDED
Estimated Freight			NOT INCLUDED
<b>Project Total</b>			<b>\$37,414.00</b>

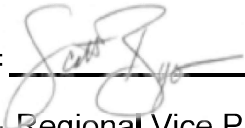
This Solution Summary summarizes the document(s) that are attached hereto and such documents are incorporated herein by reference (collectively, this "Order"). Customer's signature on this Order (or Customer's issuance of a purchase order in connection with this Order) shall represent Customer's agreement with each document in this Order and acknowledgement that such attached document(s) are represented accurately by this Solution Summary.

Unless otherwise specified in this Order, this Order shall be subject to the following terms and conditions (the "Agreement"): (i) the Master Sales Agreement or other applicable master agreement in effect as of the date hereof between ConvergeOne, Inc. and/or its subsidiaries and affiliates (collectively, "C1" or "ConvergeOne" or "Seller") and Customer; or (ii) if no such master agreement is currently in place between C1 and Customer, the Online General Terms and Conditions currently found on the internet at: <https://www.convergeone.com/online-general-terms-and-conditions/>. If Customer's Agreement is a master agreement entered into with one of ConvergeOne, Inc.'s predecessors, affiliates and/or subsidiaries ("Legacy Master Agreement"), the terms and conditions of such Legacy Master Agreement shall apply to this Order, subject to any modifications, located at: <https://www.convergeone.com/online-general-terms-and-conditions/>. In the event of a conflict between the terms and conditions in the Agreement and this Order, the order of precedence shall be as follows: (i) this Order (with the most recent and specific document controlling if there are conflicts between the Solution Summary and any applicable supporting document(s) incorporated into this Order), (ii) Attachment A to the Agreement (if applicable), and (iii) the main body of the Agreement.

This Order may include the sale of any of the following to Customer: (a) any hardware, third party software, and/or Seller software (collectively, "Products"); (b) any installation services, professional services, and/or third party provided support services that are generally associated with the Products and sold to customers by Seller (collectively, "Professional Services"); (c) any Seller-provided vendor management services, software release management services, remote monitoring services and/or, troubleshooting services (collectively, "Managed Services"); and/or (d) any Seller-provided maintenance services ordered by Customer to maintain and service Supported Products or Supported Systems at Supported Sites to ensure that they operate in conformance with their respective documentation and specifications (collectively, "Maintenance Services"). For ease of reference only, Professional Services, Managed Services and Maintenance Services may be referred to collectively as "Services." Unless otherwise defined herein, capitalized terms used herein will have the same meanings as set forth in the Agreement.

Products and/or Services not specifically itemized are not provided hereunder. This Order will be valid for a period of thirty (30) days following the date hereof. Thereafter, this Order will no longer be of any force and effect. Due to rapidly changing prices in the market for third party Products and/or Services, after the expiration of the foregoing 30 day period, Seller reserves the right to adjust offerings and/or prices accordingly prior to issuing any new Order(s).

ACCEPTED BY:

BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_ SELLER:  DATE: 04/11/2023  
TITLE: \_\_\_\_\_ TITLE: Regional Vice President

## Master Agreement Rider



VCP Customer: Yes  
VCP ID #: 0009999991  
Master Sales Agreement #: C12029-PS

Date: 3/29/2023  
Page #: 2 of 2  
Documents #: OP-000742740  
SO-000830826  
Solution Name: Microsoft Teams Voice with  
Direct Routing Configuration  
Set-Up Services  
Customer: Town of Apex

Master Agreement Rider

#	Item Number	Description	Term In Months	Qty	Unit Price	Extended Price
1	Professional Services	Professional Services				\$37,414.00



### Microsoft Teams Voice with Direct Connect Configuration

PREPARED FOR: Town of Apex

PREPARED BY: Carrie Tish  
National Account Manager  
CTish@convergeone.com

Mike Beatty  
Principal Solutions Architect  
MBeatty@convergeone.com

REFERENCE: Opportunity: OP-000742740  
Solution: SO-000830826  
Quote(s): QU-000469438

DATE: March 28, 2023

**TABLE OF CONTENTS**

1. Confidentiality Notice ..... 3

2. Scope of Work - Terms and Conditions ..... 3

3. Project Timeline Expectations ..... 4

4. Project Overview..... 5

5. High-Level Architecture ..... 6

6. Project Scope of Services ..... 7

7. Project Management..... 15

8. Change Order Process ..... 16

9. Milestone and/or Project Acceptance ..... 16

10. Customer Responsibilities ..... 17

11. Professional Services Assumptions ..... 18

12. Professional Services Pricing and Billing Schedule ..... 20

13. Customer Authorization to Proceed ..... 21



## 1. CONFIDENTIALITY NOTICE

**THE INFORMATION CONTAINED HEREIN IS CONSIDERED CONFIDENTIAL AND PROPRIETARY, PRODUCED SOLELY FOR THE CUSTOMER IDENTIFIED ABOVE.**

This Statement of Work ("SOW") is proprietary to ConvergeOne, Inc. and contains ConvergeOne, Inc. Confidential Information. It may not be disclosed in whole or in part without the express written authorization of ConvergeOne. No portion of this SOW may be duplicated or used for any purpose other than to receive Services or deliverables from ConvergeOne described herein.

## 2. SCOPE OF WORK - TERMS AND CONDITIONS

This Statement of Work or Scope of Work ("SOW") and the applicable Solution Summary (and any documents attached thereto and incorporated therein by reference) (collectively, this "Order") is subject to the following terms and conditions (the "MSA" or the "Agreement"): (i) the Master Sales Agreement or other applicable master agreement in effect as of the date hereof between ConvergeOne, Inc. and/or its subsidiaries and affiliates (collectively, "ConvergeOne" or "Seller") and Town of Apex ("Customer"); or (ii) if no such master agreement is currently in place between ConvergeOne and Customer, the Online General Terms and Conditions currently found on the internet at: <https://www.convergeone.com/online-general-terms-and-conditions/>. If the Customers Agreement is a master agreement entered into with one of ConvergeOne, Inc.'s predecessors, affiliates, and/or subsidiaries, ("Legacy Master Agreement"), the terms and conditions of such Legacy Master Agreement shall apply to this Order, subject to any modifications located at <https://www.convergeone.com/online-general-terms-and-conditions/>. In the event of a conflict between the terms and conditions in the Agreement and this Order, the order of precedence shall be as follows: (i) this Order (with the most recent and specific document controlling if there are conflicts between the Solution Summary, this SOW and any other applicable supporting document(s) incorporated into this Order), (ii) Attachment A to the Agreement (if applicable), and (iii) the main body of the Agreement.

The Customer's signature on this Order (or the Customer's issuance of a purchase order in connection with this Order) shall represent the Customer's agreement with each document in this Order.

This Order may include the sales of any of the following to Customer: (a) any hardware, third-party software, and/or Seller software (collectively, "Products"); any installation services, professional services, and/or third-party provided support services that are generally associated with the Products and sold to customers by Seller ("Professional Services"); any Seller-provided vendor management services, software release management services, remote monitoring services and/or, troubleshooting services (collectively, "Managed Services"); and/or any Seller-provided maintenance services ordered by Customer to maintain and service Supported Products or Supported Systems at Supported Sites to ensure that they operate in conformance with their respective documentation and specifications

("Maintenance Services"). For ease of reference only, Professional Services, Managed Services, and Maintenance Services may be referred to collectively as "Services." Unless otherwise defined herein, capitalized terms used herein will have the same meanings as set forth in the Agreement.

Any dates and/or time intervals listed in this Order are approximate and for planning purposes only. ConvergeOne will use commercially reasonable efforts to accommodate any requested dates; provided, however, project milestones will be fully discussed and mutually agreed upon between ConvergeOne and Customer after project kickoff.

Products and/or Services not specifically itemized are not provided herein. Any additional applications, technologies, integrations, or other Products and/or Services not specified herein, are not included in this SOW and may result in additional charges at any time during the project.

Unless signed, this Order will be valid for a period of thirty (30) days following the date hereof. Due to rapidly changing prices in the market for third-party Products and/or Services, after the expiration of the foregoing 30-day period, the Seller reserves the right to adjust offerings and/or prices accordingly prior to issuing any new Order(s). Thereafter, this Order will no longer be of any force and effect.

The outline of deliverables for this Order follows below.

### 3. PROJECT TIMELINE EXPECTATIONS

Approximately 5 business days after signed acceptance of this SOW, ConvergeOne will assign a project manager that will make contact and start planning a project kick-off meeting. The project kick-off may not take place immediately. Project start times depend on the availability of ConvergeOne and Customer resources.

The expected duration of this project has been budgeted at four (4) weeks from the time of kick-off to completion. If the project exceeds this timeframe, a project change order may be required to extend the engagement, resulting in additional fees.

## 4. PROJECT OVERVIEW

Thank you for the opportunity to work with you on the Microsoft Teams Voice with Direct Connect Configuration project. This document describes the work to be performed during this engagement and covers the assumptions as the basis for this agreement, the responsibilities of ConvergeOne personnel, and the responsibilities of the Customer.

The town of Apex, NC has an aging Avaya phone system and has seen a shift toward remote workers over the past couple of years. They desire to modernize their phone solution to leverage Microsoft Teams for their users in support of their municipal services. This proposal is built on the recommendation for a Microsoft Teams Direct Routing as a Service solution that is hosted by ConvergeOne. There are three new analog gateways that will be configured to support those devices at Town Hall, Public Works, and the Police Department along with one existing gateway at the fire station.

There will be approximately 20 people working in a basic contact center capacity with call queues and auto-attendants. Initially, a knowledge transfer session led by ConvergeOne will educate Apex on the Microsoft Teams out-of-box capabilities and assist in the setup of call queues and the first five auto attendants.

Most users will use Bluetooth or wired headsets with their Teams softphone client, and there are up to ten (10) Teams-compatible phones will be configured in this effort. There is an existing Surface Hub in a conference room with another one ordered, and the enrollment of this Teams room system is also included in the scope. There are about 250 phone users that will require Microsoft Teams Phone System licensing (to be acquired by Apex prior to the start of this engagement with their current license provider).

- 4.1.** This statement of work is written with the assumption the customer will provide unfettered/direct access to both the Office 365 tenant and any related on-prem infrastructure to ConvergeOne during the length of this project. Should that not be the case, a Change Request can be completed to account for the estimated 50% increase in time required to successfully complete this project.

### 4.2. Project Location(s)

Below is a list of the location(s) that should be included in this project.

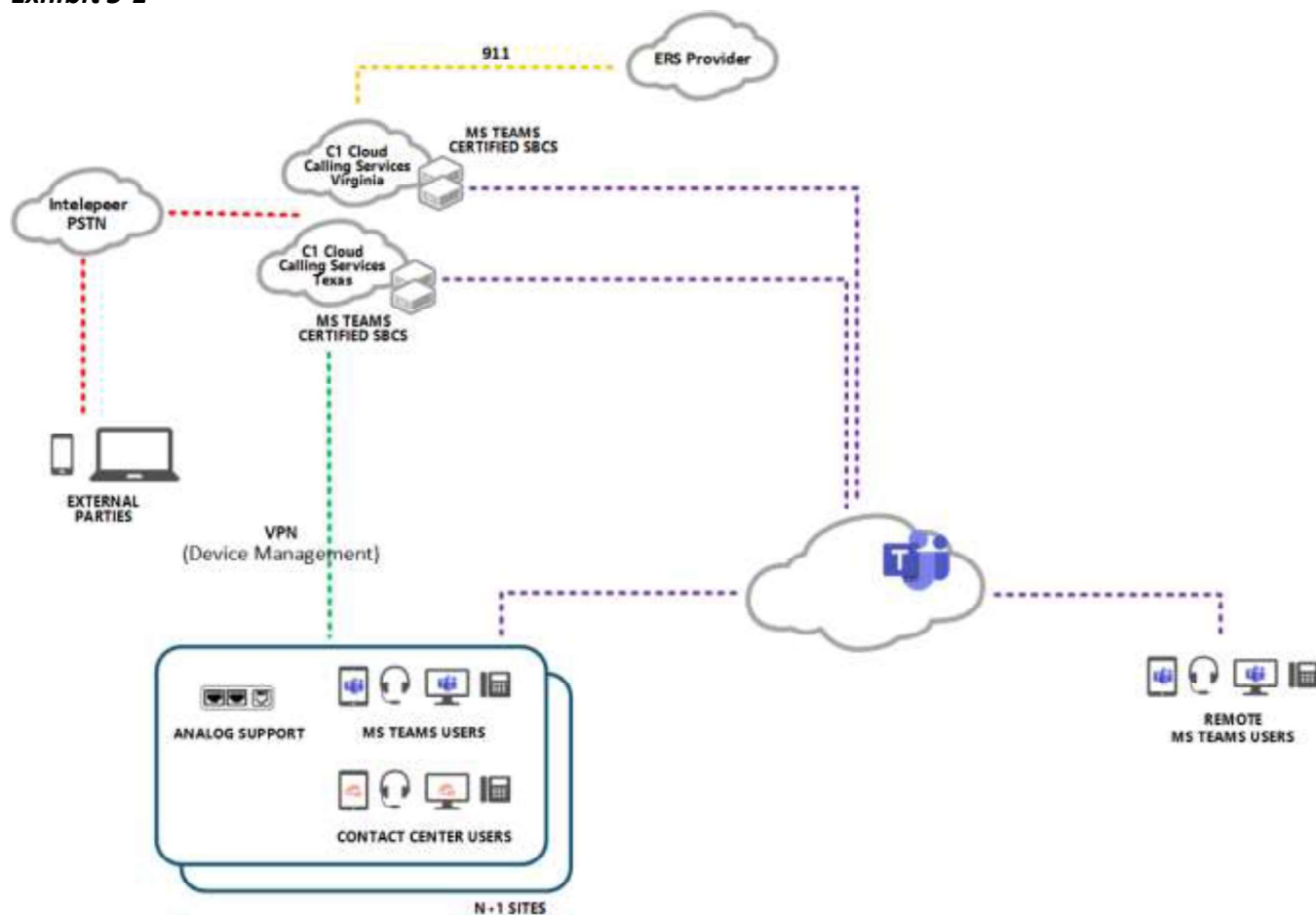
**Table 4-1**

Site Name	Site Address
Apex, NC	73 HUNTER ST APEX, NC 27502

## 5. HIGH-LEVEL ARCHITECTURE

### 5.1. Proposed Architecture

*Exhibit 5-1*



## 6. PROJECT SCOPE OF SERVICES

This section identifies the work that will be performed as part of this project. Below is an initial, high-level list of tasks and assumptions for the project. This schedule may change depending on the Customer's business requirements and other factors. Also, depending on the schedule finally agreed upon at the kickoff meeting, the days worked may not be contiguous. ConvergeOne will conduct a meeting with the Customer to review and finalize the technical approach, constraints, and project schedule. This meeting is intended to ensure that all parties are working with consistent expectations for the project.

### Project Overview

The town of Apex, NC has an aging Avaya phone system and has seen a shift toward remote workers over the past couple of years. They desire to modernize their phone solution to leverage Microsoft Teams for their users in support of their municipal services. This proposal includes a configuration, deployment of Teams Phone System, and phone number porting to Direct Routing as a Service (DRaaS) hosted by ConvergeOne. There are four analog gateways that will be configured to support those devices at Town Hall, Public Works, Fire Dept, and the Police Department.

There are nine people working in a basic contact center capacity with call queues and auto-attendants. During the design session, ConvergeOne will present the Microsoft Teams out-of-box capabilities and assist in the setup of call queues and the first five auto attendants.

Most users will use Bluetooth or wired headsets with their Teams softphone client, and there are five (5) Teams-compatible phones will be configured in this effort. There is an existing Surface Hub in a conference room with another one ordered, and the enrollment of this Teams room system is also included in the scope. There are about 250 users for Teams Phone services in scope, and Microsoft Teams Phone System licensing will be acquired by Apex prior to the start of this engagement with their current license provider.

AudioCodes MediaPack analog telephony adapters are also included in this scope to bring dial tone to about 50 analog devices that will also connect to the solution through new three analog gateways and the one existing AudioCodes analog gateway at the fire station.

### 6.1. Microsoft

#### Teams

##### E911

If E911/911 services are selected and implemented for the location(s) covered by this, customer acknowledges that (a) That the seller's implementation of the E911/911 services will be in accordance with the E911/911 documentation, (b) That such implementation does not ensure customer compliance with any regulations applicable to

such E911/911 services, including but not limited to Kari's Law act of 2017, or the applicable provisions of Ray Baum's Act, and (c) That it is the obligation of the customer to ensure such compliance.

**Table 6-1**

Microsoft Teams	
Number of Microsoft Teams users	250
Include Readiness Assessment	Y
Include Production Deployment	Y
Number of online user migration events (<= 500 seats)	1
Include Voice Deployment	Y
Include Audio Conferencing	Y
Number of MTR/Collab Bars/Surface Hubs to provision	1

### Readiness Assessment

Perform a Microsoft Teams Readiness Assessment to identify potential solution blockers and recommended remediation actions

- Customer is responsible for implementing recommended remediation actions discovered during assessment. ConvergeOne may assist with remediation upon completion of a project change order if required.

### Design and Planning - Voice

Teams voice planning covers:

- Direct Routing as a Service (DRaaS)
- User personas
  - Expectations
  - Device options
  - Bandwidth requirements
- Voice configuration
  - Dial plans
  - Voice routes
  - Toll/toll-free calling
  - Toll bypass considerations for international meetings
- Call routing with legacy PBX solutions
- Voicemail and retention policies

- Mainline behavior
- Boss/admin/delegate functionality
- Clients and devices
  - Desktop phones
    - Teams certified
    - Teams compatible/3PIP/SIP
  - Receptionist/attendant consoles
    - hardware and/or software solutions
  - Soft clients
  - Headsets
  - Webcams
  - administration and management
- Policies
  - Calling Line Identity (Caller ID)
  - Calling
  - Call Hold
  - Emergency Calling and Emergency Call Routing
  - Security and Compliance
  - Voicemail
  - Voice Routing
- Common area phones
- Language support
- Up to **five (5)** Auto Attendants, Dial-In Conference Numbers and Call Queues per site
- Up to **one (1)** Call Park Orbit per site
- Conduct emergency calling workshop to draw out considerations and requirements
  - Discovery and collection of site location, network, and port data
  - Dynamic E-911
  - Local, state, and national regulations
  - Civic addresses for static emergency calling (if required)
  - MLTS notifications

- 3rd party emergency call handling integration (if required)
- Public Internet egress IP identification
- Call blocking
- Voice analytics, reporting, and monitoring
- Call accounting solutions
- Analog devices
  - Analog gateway(s)
  - Paging/warehouse bell
  - Faxing
  - Alarm/emergency call
  - Fire alarms
  - Regular analog phones

It is recommended that life-safety equipment such as elevator phones, fire and security alarms and monitoring, etc be connected directly to the PSTN and not through analog gateways.

**Table 6-2**

Teams Voice	
Number of Sites Enabled for Voice	4
SBC platform	Other
Number of Analog Gateways	4

### Design and Planning Meeting & conference room/huddle space/focus room solutions

- Resource account provisioning
  - Azure Active Directory account
  - Calendar processing & automatic replies
  - Resource account capacity, features, & properties
  - Mail tips
  - Third-party meeting join (Zoom, WebEx, etc.)
  - Modern Auth & multi-factor authentication
  - PSTN number assignment
  - Admin calendar access/room manager
  - Exchange room lists



- Local content presentation
  - HDMI ingest
  - Wireless (Wifi/Miracast/Airplay)
- Monitoring & alerting solutions
  - Nectar
  - IR Prognosis
  - Azure
- Management, analytics, and administration
  - Teams Admin Center
  - Endpoint Configuration Manager
- Licensing & related features
  - Basic
  - Pro
  - Policies Assist with enrolling the existing Surface Hub to Microsoft Teams
- Network and security requirements and considerations

## **Deployment - Production Environment**

### **Configure Production Teams Components**

Configure environment per the approved design, including but not limited to:

- Up to one (1) Microsoft Office 365 tenants
- Policies
  - App settings
  - Archiving, expiration, and retention
  - Caller ID
  - Classification
  - Guest access
  - Meetings
  - Messaging
  - Security and Compliance
  - Teams and channels (creation and naming)
- Coordination with DRaaS provider (ConvergeOne Cloud Operations)
- Configuration of DRaaS SBCs in Teams tenant

- Analog gateway(s) for connectivity of analog device(s)
- Room systems/collab bars - Rooms may be equipped with a combination of Microsoft Teams Room (MTR) systems, Microsoft Teams Certified Collab Bars, Teams Certified Conference Phones, and/or Surface Hubs. This is the tenant account and policy configuration and configuration of device settings. This does not include physical installation/setup.

## **Emergency Calling**

### **Tenant configuration**

- Dispatchable locations for emergency calling (E-911) (if required)
- MLTS notifications for emergency calling (if required)
- Emergency Calling policies
- Emergency Call Routing policies
- Emergency numbers

## **Enable Production Users**

- Enable production user accounts for Microsoft Teams
- Provide tier-3 support escalation to the support team for up to 1-day after each provisioning event

## **Telephone Number Porting**

The Customer is responsible for authorizing the telephone number porting process by ConvergeOne, by completing the Letter of Agency (LOA). ConvergeOne shall provide guidance for porting data collection, and shall manage the submission of porting request(s). This effort pertains to those locations identified in this SOW document. Both the Customer and ConvergeOne agree that ConvergeOne is not responsible for the portability of any individual number, or group of numbers, and the execution of the Professional Services Project Completion Form shall not be withheld by Customer for any delays in the porting of the numbers.

- ConvergeOne, upon Customer request, shall assist the Customer with this responsibility by performing the following tasks for each Site:
- ConvergeOne shall assist the Customer with the initial submission of port requests and shall assist in up to three (3) rejections/resubmissions per location, or 90 days from submission, whichever occurs first;
- Any additional port rejections will be the responsibility of the Customer;

- The customer shall provide ConvergeOne all appropriate Letters of Authorization ("LOA"s), billing information, and authorized signer information for each location;
- Porting submissions will include numbers mapped to correct route as "company" numbers or Direct Dial phone numbers;

#### **Additional Teams Tasks**

- Assist Teams registration for up to ten (10) certified Teams Phones

#### **Out of Scope**

- Configuration changes to third-party systems not listed in this proposal.
- Placement of endpoint devices.
- End-user training is not included in this scope
- Troubleshooting issues related to the core deployments of Active Directory, Exchange, existing Lync/Skype for Business infrastructure, Office 365 tenant, and underlying hardware and storage is out of scope of this proposal and will be billed separately on a time and materials basis.
- Troubleshooting issues related to the network infrastructure is out of scope for this proposal and will be billed separately on a time and materials basis.
- Configuration, firmware updates, or troubleshooting of devices purchased through a vendor other than ConvergeOne will be billed separately on a time and materials basis.

#### **Teams**

- Placement of physical room systems or other endpoint devices.
- Quality of Service detailed configurations for network equipment are not included in this proposal.
- The implementation of QoS in network infrastructure is out of scope. Additionally, the deployment of Group Policy Objects (GPOs) for the deployment of QoS are also not in scope.
- Any vendor-specific phone features not controlled by Microsoft Teams or Skype for Business Policies are out of scope for this engagement.

### **Deliverables**

The following table describes the deliverables that may be included as part of this proposal:

- Project Plan & Schedule - Describes the project tasks dependencies and timeline for a completion of milestone

### **Teams**

- Voice Site Worksheets - Spreadsheets detailing the specific configuration for a Microsoft Teams voice site. Includes applicable PSTN usages, gateways, dial plans, voice policies, voice routes, voice route policies, normalization rules, firewall rules, and requirements.
- Phone System and Conferencing Worksheets - Document covering site architecture/requirements, Phone System features design decisions including auto attendants and call queues.

### **Microsoft Modern Workplace Specific Customer Responsibilities**

- Verify and complete forms and questionnaires from ConvergeOne consultants or engineers in a timely fashion.
- If requested, provide comprehensive documentation for existing network and system deployments, including physical and logical schematics, prior to service commencement.
- Customer to assist with making changes to Active Directory, ADFS, AAD Connect, Azure Active Directory and the global Office 365 tenant in a timely manner as requested to facilitate ConvergeOne responsibilities based on agreed upon schedule.
- If requested, designate ConvergeOne as the Microsoft Claiming Partner of Record (CPOR) for Office 365 and/or Azure services in scope with this Statement of Work.
  - onmicrosoft.com domain name: apexnc.org
  - Tenant ID: 1c6e531a-a916-4e3f-a5bd-4fa33591e4a8

### **Teams**

- Customer will process Letter of Authorization (LOA) for porting numbers to the new solution if needed.
- Provide independent administrative access to the Microsoft Teams and Skype for Business areas of the Office 365 tenant.
  - Teams Service Admin
  - Skype for Business Admin

- Global Read Only/Azure Global Reader
- Customer is responsible for providing legacy PBX resources for any programming and reconfiguration on legacy PBX environment or carrier infrastructure.
- Customer to provide location maps and blocks of numbers for emergency dialing configuration associated with the enabled users. Additionally, customer to provide subnet and contact information for each subnet.

#### **Microsoft Modern Workplace Specific Technical Assumptions**

- All users enabled for telephony in Microsoft Teams will have a proper E.164 formatted number.
- All users enabled for telephony have a phone number/extension that is unique throughout the organization.
- Network equipment (routers, VLANs, switches, SD-Wan, DNS, firewalls, etc.) are configured properly to allow access between sites, service providers, and Microsoft Teams for voice. Significant troubleshooting or remediation may require a Change Request for the additional scope that is not included in this SOW.
- All locations have unique IP ranges

## **7. PROJECT MANAGEMENT**

ConvergeOne will provide Project Management Services to help you effectively manage the project and control risks during the deployment. ConvergeOne will designate a Project Manager who will act as the single point of accountability for all ConvergeOne contract deliverables for the duration of the Project. ConvergeOne follows the Project Management Body of Knowledge (PMBOK) for project delivery. The PMBOK is an adaptable approach that enables technology project success by aligning business and technology goals. Key elements include an iterative delivery process, clear project metrics, proactive risk management, and effective response to change.

### **7.1. Project Manager**

ConvergeOne will designate a Project Manager (PM) responsible for overseeing the project. Once the contract is signed and accepted by ConvergeOne, this individual will act as the Customer's single point of contact for all planning and issues related to solution delivery. The ConvergeOne PM will work closely with the Customer to guide the implementation and work on a mutually agreed-upon schedule. The ConvergeOne Project Manager is responsible for the following:

- Conduct internal (ConvergeOne) and joint ConvergeOne/Customer meetings.

- Develop a project plan, including activities, milestones, roles, and responsibilities.
- Schedule and manage required ConvergeOne resources and partners.
- Conduct Issue and Risk Management.
- Provide agenda and meeting notes.
- Track Customer and ConvergeOne project deliverables.
- Manage change orders and any associated billing with the Customer.
- Manage project closeout process, punch list, and Customer acceptance.

## 8. CHANGE ORDER PROCESS

Despite good project planning, design, and review, project plans often require some degree of change at some point. These changes are handled using change order requests, which must be agreed upon by all parties to the contract before such work can be performed.

Either ConvergeOne or the Customer may initiate a change order for any deliverable, work requirement, assumption, or dependency that is part of the project. All requests must be in writing and handled by the ConvergeOne Project Manager. ConvergeOne will review the change and provide pricing as applicable before proceeding. The ConvergeOne Project Manager may also engage project team members to assess the impact of the change. Agreed changes must be approved in writing by an authorized representative of the Customer, via email, or modified purchase order.

## 9. MILESTONE AND/OR PROJECT ACCEPTANCE

Upon completion of the services described in this SOW, ConvergeOne shall provide the Customer with an Acceptance Form. Upon delivery of the Acceptance Form, the Customer has five (5) working days to review and accept. Failure to respond within the designated five (5) day period, signifies the completion of the milestone or project. To refuse acceptance, the Customer must both indicate non-acceptance with written notification to ConvergeOne within the five (5) day period noted above and describe why it was not accepted. ConvergeOne shall have up to ten (10) days after the receipt of such notice to correct the error given it is within ConvergeOne scope and control to do so. The period to correct the error may be extended by mutual consent.

## 10. CUSTOMER RESPONSIBILITIES

### 10.1. Provide a single point of contact that will be responsible for:

- Understanding the business process impact and technical requirements and who has the authority to make binding decisions on the Customers behalf.
- Working with ConvergeOne Project Manager to develop mutually agreed project schedule, including outside of Normal Business Hours test and cutover windows (if applicable).
- Ensuring all Customer responsibilities are completed in accordance with the project schedule.
- Reasonable notification of schedule and changes for the installation work.
- Attending all project status meetings.

### 10.2. Site Preparation:

- Ensure the equipment room is ready, including all electrical, wiring, grounding, lighting, racks, and HVAC required to maintain equipment within operating conditions specified by the equipment manufacturer.
- Provide required cable/patch panels that meet all requirements for Category 5e, racks, and network connectivity.
- Accept receipt of equipment and store it in a secure area. Retain shipping documentation, and inventory shipments by box count, and report any apparent external damage to the ConvergeOne Project Manager.
- Provide floor plans for equipment room configuration and related locations if applicable.
- Ensure that the existing Customer network is configured, connected, and operating within the manufacturer's specifications.
- Customers will provide QOS on all their network equipment to the WAN based on the Supplier's guidelines and requirements if carrying voice.

### 10.3. Ensure the availability of appropriate Customer resources that will:

- Assist in the development and execution of applicable test plans.
- Provide accurate documentation for all existing systems and networks.
- Provide all necessary IP addresses, subnet masks, and default gateways.
- Provide a qualified Network Administrator with working knowledge of Customer requirements.
- Provide information on planned changes in the network.

## 11. PROFESSIONAL SERVICES ASSUMPTIONS

The following assumptions were made to create this Statement of Work. Should any of these assumptions prove to be incorrect or incomplete then ConvergeOne may modify the price, scope of work, or milestones. Any such modifications shall be managed by the Change Order Procedure.

### 11.1. General Assumptions

- Unless explicitly stated otherwise, all services will be delivered remotely
- All non-service impacting work described in this scope will be performed during U.S. normal business hours defined as 8:00 AM to 5:00 PM local time; Monday through Friday, excluding ConvergeOne designated holidays. "Cutover" for the sites will be completed during business hours unless otherwise stated in this scope of work.
- The Customer must identify any specific requirements for maintenance windows and change control. The Customer retains overall responsibility for any business process impact and any Customer-internal change management procedures and communications.
- All services, documentation, and project deliverables will be provided in English only.
- ConvergeOne will install specific software versions agreed upon at the time of project kickoff. Upgrades to the software are not included in the SOW. ConvergeOne may choose to install an upgrade if required by the manufacturer or to resolve a problem.
- The Customer is responsible for the underlying data infrastructure including network and virtualization. Systems must be capable of supporting the proposed solution. ConvergeOne can supply consulting and remediation services to ensure successful implementation, if not included in this scope, through a change order and billed at an additional fee.
- The Customer is responsible for all communications and scheduling of any contractors or vendors not managed by the ConvergeOne Project Manager.
- Any product or service delivery dates communicated outside of this SOW or the Project Plan, are not to be considered valid or binding.
- If the project extends beyond the timeline specified in the Project Plan due to delays caused by parties other than ConvergeOne and its subcontractors, ConvergeOne may invoice for service performed to date.
- The Customer is responsible to verify and arrange the installation of all applicable network connections and provide a functional network for application deployment.
- Projects requiring multiple site visits and/or intervals of inactivity between events must be noted as such prior to acceptance of this SOW.
- The Customer is responsible for relocation, removal, and disposal of any previously installed Customer-owned equipment or cabling unless specifically agreed otherwise herein.



- The Customer is responsible to notify ConvergeOne if the site requires any specialized access for personnel and/or Union trades for any tasks associated with this SOW. Notification of requirements must take place prior to the quote. Any and all additional costs for post-quote changes or additional site restrictions requiring specialized training or Union Labor shall be chargeable to the Customer.
- The Customer is responsible for managing all 3rd Parties not outlined in this SOW.
- Services not specifically called out in this SOW will be deemed out of scope.
- VPN access will be provided to ConvergeOne resources to allow for work to be accomplished remotely when applicable. If unfettered remote access to the Customer network cannot be provided additional charges will be required.

## 11.2. Technical Assumptions

- Unless specifically called out, above, no IP address changes are included in the SOW. If requested, additional charges may apply.
- The Customer is responsible to have current licensing, maintenance, and support on the components of the servers, database, storage, and network infrastructure including hardware, software (including operating systems), and any associated costs.
- The Customer is responsible for any operating system patches and anti-virus software installation and support.
- The Customer is responsible to ensure the existing network is free of layer 3 protocol and broadcast errors.
- The Customer is responsible for the cost and acquisition of any 3rd party security certificates necessary for successful deployment. ConvergeOne can provide services for Security Audits and Certificate deployment which can be billed at an additional fee.
- The Customer is responsible for resolving interoperability issues with other vendors not acting as a sub-contractor to ConvergeOne.
- The Customer is responsible for any firmware updates to re-used circuit packs, media modules, or cards not specifically identified within this SOW. ConvergeOne can provide services for firmware updates through a change order and billed at an additional fee.

## 12. PROFESSIONAL SERVICES PRICING AND BILLING SCHEDULE

Billing terms for this project supersede any MSA in place and are only applicable to the services stated in this scope of work. Invoices are due within thirty (30) days from the date of the invoice unless otherwise previously agreed between the Customer and ConvergeOne credit department. Any change to the Project Pricing and Payment schedule will be managed through the Change Order procedures specified herein. All stated prices are exclusive of any taxes, fees, duties, or other amounts, however, designated and including without limitation value added and withholding taxes which are levied or based upon such charges, or upon this SOW (other than taxes based on the net income of ConvergeOne). The Customer shall pay any taxes related to services purchased or licensed pursuant to this SOW or the Customer shall present an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice.

### 12.1. Project Price and Milestone Billing Schedule

The fixed fee price for this services engagement is below and will be billed with the following milestone schedule:

**Total Price: \$37,414.00**

- Milestone 1 (30%) - Project Initiation - Kick-Off Meeting, Resource Assignment
- Milestone 2 (30%) - Planning and Design - Project Plan, Design
- Milestone 3 (30%) - Seller Solution Validation - Solution Validation Plan completed, system validated ready for client UAT
- Milestone 4 (10%) - Final Customer Acceptance of the Project

### 12.2. Project Expenses:

There are no anticipated project-related expenses expected for this project above the price included in this SOW. In the event that the need for additional expense arises, a Change Order will be presented by the Project Manager for approval by the Customer in advance. ConvergeOne will make a reasonable effort to minimize expenses and will ensure sufficient time is built into the project schedule to maximize efficiency when scheduling site visits.

### 13. CUSTOMER AUTHORIZATION TO PROCEED

The use of signatures on this SOW is to ensure agreement and understanding on project objectives and assumptions, and the work and deliverables to be performed by ConvergeOne. By signing below, the duly authorized Customer representative signifies their commitment to proceed with the project as described in this SOW.

**Customer's Authorized Representative:**

---

Signature

---

Printed Name

---

Title

---

Date

---

PO Number



## Terms of Service (TOS)

PREPARED FOR: Town of Apex

PREPARED BY: Mike Beatty, Principal Solutions Architect  
Adam Carpenter, Managed Services Sol Architect

DATE PREPARED: 3/30/2023

OFFER EXPIRES: 9/17/2023

**TABLE OF CONTENTS**

1. Introduction .....3

2. Overview .....3

3. Managed Microsoft Teams Service Packages .....4

4. Cloud Calling Services .....4

5. Transition Services .....7

6. Managed Services .....10

7. Solution Pricing .....13

8. Client Responsibilities .....19

9. Service Hours .....20

10. Regulatory Compliance .....24

11. Customer and Seller Acceptance .....24

12. Attachment A - Implementation Services.....25

13. Attachment B - Managed Sites .....31

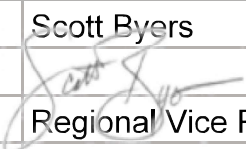
14. Attachment D - Contract Change Control.....32

## 1. INTRODUCTION

This Terms for Services ("TOS") is entered into on the first day of the month immediately following signature of this TOS ("Effective Date") by Town of Apex ("Customer"), and ConvergeOne, Inc., ("Seller"), pursuant to the ConvergeOne Cloud Services Agreement #C13311 ("Agreement"), between the parties. This TOS incorporates by reference the Agreement and constitutes an agreement separate from any other statement(s) of work incorporating by reference the Agreement. Unless specifically defined in this TOS, capitalized terms herein shall have the meanings set forth in the Agreement.

*IN WITNESS WHEREOF, the Parties have caused these Terms of Service to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of these Terms of Service, duly authorized by all necessary and appropriate corporate action to execute these Terms of Service.*

**Table 1-1**

SELLER:	<b>ConvergeOne, Inc.</b>	CUSTOMER:	Town of Apex
BY:	Scott Byers	BY:	
SIGNATURE:		SIGNATURE:	
TITLE:	Regional Vice President	TITLE:	
DATE:	04/11/2023	DATE:	

## 2. OVERVIEW

The Town of Apex, NC is modernizing its unified communications platform to Microsoft Teams for an initial group of 250 voice users. The Town of Apex currently leverages ConvergeOne managed support services for their Avaya solution and would like to maintain the high levels of support provided by ConvergeOne for the Microsoft Teams voice services after the transition. This is a three-year proposal for Managed Services for Microsoft Teams and monitoring, problem management, and release management for four AudioCodes Media Gateways through a dedicated VPN secured connection.

### 3. MANAGED MICROSOFT TEAMS SERVICE PACKAGES

This Statement of Work applies to each of the Managed Microsoft Teams service packages supported by ConvergeOne. These packages include the services listed in the below table. The scope for each service is provided as a part of this SOW.

**Table 3-1**

Service Item	Basic (Monitoring)	Premier (Fully Managed)
Service Desk	Yes	Yes
Monitoring & Event Management	Yes	Yes
Incident Management	Yes	Yes
Problem Management	Yes	Yes
Service Request Management (MACD)	Yes	Yes
Service Level Management / Reporting	Yes - Online Only	Yes - Online + QBR
Release Management		Yes
Performance & Capacity Management		Yes
Teams Optimization		Yes
OnGuard IQ Analytics		

### 4. CLOUD CALLING SERVICES

#### 4.1. Microsoft Teams Cloud Calling Subscription

Seller will make available and Gateway Services ("Voice Services") for Customer's Microsoft Teams environment. No additions, deletions, or substitutions to standard subscription services allowed without express written approval from Seller. Modifications to subscription plans, if approved by Seller, may incur incremental one-time and monthly service fees.

**Table 4-1**

Cloud Calling Service Entitlements	
Features	Unit
Local number (One DID per subscription)	1 Per User
Unlimited Local Calling	Unlimited
Unlimited Long-Distance (US Domestic 48, Hawaii and Canada)	Unlimited
International Calling	Per Minute
Number porting	User Assigned or Parked
Caller ID (CNAM)	Included

Cloud Calling Service Entitlements	
Directory Listing	Included
Dynamic E911 Location Services for Microsoft Teams	Included
E911 Location Services for Non-Microsoft Teams	Per User

#### EXCLUSIONS & LIMITATIONS:

- For U.S. Based Users Only. Non-U.S. users will either route through ConvergeOne's Cloud Calling Service data centers in the U.S. or will be serviced under a separate, international contract.
- Cloud Calling Services UC Subscription Plans are intended for general purpose enterprise Unified Communications use only
- Long distance calling plan excludes Alaska. Outbound termination to Alaska will be invoiced on a per minute basis
- One (1) DID provisioned per active UC subscription. If a Customer ports more DIDs into the service than active UC subscribers, excess DIDs will be parked on a metered or unlimited trunk and Customer will be charged an additional monthly fee
- Unlimited calling entitlements in the Cloud Calling Service UC Subscription Plans are based on a 10:1 user to port ratio. If concurrent usage exceeds this ratio, Customer will be invoiced on a per minute basis

#### Toll Free Services

If purchased for an additional fee, Seller will provide Toll Free Numbers for inward dialing. Toll Free usage will be charged on a per minute basis according to the most recent rate schedule published by the Seller. Toll Free usage charges vary by country.

#### International Calling

Seller enables International Calling for each Subscription Plan participant. Long distance usage outside the US and Canada will be charged on a per minute basis according to the most recent rate schedule published by the Seller. International usage charges vary by country.

#### Additional Phone Numbers

Client may choose to maintain DIDs within ConvergeOne's Carrier Service that are not assigned to an active device or user subscription plan. Any additional toll or toll-free DIDs ported into service not assigned to an active device or user subscription will incur a monthly service fee per number.



### **Dynamic 911 Support Services**

Seller is required by FCC to provide E911 services compliant with all current requirements associated with fixed and mobile endpoints in the US and Canada. As part of standard service, Seller will provide the following capabilities:

- Direct 911 dialing as part of the standard dial plan
- Provisioning and management of Emergency Location Identification Numbers (ELIN)s for emergency calling
- Microsoft Teams Users
  - Dynamic location services for Microsoft Teams users who are off network. This requires specific Microsoft Teams policy configuration on behalf of the Customer.
  - Automated call routing to the nearest 911 Public Safety Answering Point (PSAP) based on Customer provided dispatchable location information (per service ELIN)
  - Emergency call-back numbers delivered to the PSAP when a 911 call is placed
  - Phone tracking within enterprise based on static MAC address, Layer 3 subnet, or Layer 2 network discovery

### **Porting Existing Numbers**

Seller will work with client and their incumbent carrier to port existing numbers into the service. Seller will obtain incumbent carrier/service provider information, numbers to port, number types and service addresses from the client and place the a DID port order with both carriers.

Porting services are performed during normal business hours. Client will be responsible for any additional fees incurred by Seller pertaining to orders that are changed, cancelled, or performed outside of normal business hours.

### **Fair Use**

Business Voice Services as described above are intended to be used for general purpose enterprise UC usage (which may include some limited conferencing or inbound contact center usage), in which calls are placed via direct human interaction. Seller strictly prohibits any use of the Business Voice Services inconsistent with this purpose, including without limitation connecting to any device, computer, or telephone system, which can either place calls in an automated fashion (such as any predictive dialer, auto-dialer or robodialer) or makes routing choices based on the cost of a call (such as a least cost routing engine). Seller will continuously monitor usage for traffic patterns inconsistent with general enterprise UC usage and reserves the right to charge Customer for any usage that does not conform to this purpose.

## 5. TRANSITION SERVICES

ConvergeOne's Transition Services team will be engaged to perform a successful onboarding of each Client location into our ongoing Managed Services operations.

The transition services process will be initiated upon the execution of the final agreed SOW and the completion of the Professional Services outlined in each service catalog section. Services under the final SOW will begin to be delivered at the completion of the on-boarding process ("Services Start Date"), unless otherwise agreed between the parties.

### **Phased Approach**

ConvergeOne will manage the transition of services responsibilities from Client to ConvergeOne's Managed Services team utilizing a six-phase transition methodology tailored to fit the Client's environment and the committed scope of services to be transferred. Key aspects of this transition methodology include:

- Quality gate process at the end of each phase.
- Collaborative effort with executive sponsorship.
- Team consisting of members from the Client and ConvergeOne working toward the success of the transition with defined milestones.
- Clearly defined roles and responsibilities of the team.
- Jointly defined communication plan.
- Project plan that is task driven.
- Regular transition meetings - productive and informative.
- Dashboard reports for executive sponsors.

The specific services transition plan for this engagement will be documented in the "ConvergeOne Managed Services Transition Plan"). The following provides an outline of the six-phase methodology that will be utilized:

#### **5.1. Phase 1 - Initiate**

The purpose of the Initiate Phase is to provide the transition team with a clear understanding of the scope of the engagement and to ensure that all members of the transition team (ConvergeOne and the Client) understand the transition process, deliverables, roles and responsibilities, and to set appropriate expectations for all stakeholders.

#### **5.2. Phase 2 - Plan**

The purpose of the Plan Phase is to develop the transition project plan, resource plan, communication plan and hold the formal kick-off meeting with ConvergeOne and the Client transition project team resources.

### **5.3. Phase 3 - Assessment**

The purpose of the Assessment Phase is to identify any discrepancies between the SOW, solution design and the Client's expectations as they relate to the services and service performance levels defined in this SOW and make necessary adjustments in the transition project plan or SOW to adjust for these discrepancies.

### **5.4. Phase 4 - Execute**

During the Execute Phase, all contractual requirements documented in this SOW are performed as reflected in the baseline Transition Project Plan from Phase 2. Phase 4 is focused on implementation and testing.

### **5.5. Phase 5 - Deploy**

The objective of Phase 5 is a stable service delivery operating environment which meets all SOW requirements and Client expectations. This phase is characterized by an official hand-off of operational responsibility for the account from the Services Transition Manager to the Steady-state Customer Success Manager.

### **5.6. Phase 6 - Close**

A complete review of all phases of the engagement is conducted, and suggested additions or corrections to the Methodology are documented and delivered to ConvergeOne's Transition Management for inclusion in future versions of the ConvergeOne Standard Transition Methodology. Completion of this phase marks the official "closeout" of the Transition Engagement.

### **5.7. Transition Governance**

Transition governance will be performed by transition executive sponsors from the Client and ConvergeOne organizations; as well as other key personnel, as designated by each organization. Transition governance includes the establishment of an accountability framework to achieve the transition deliverables within the agreed timeline. This includes supporting the services transition team to acquire timely decisions as it relates to the transition scope and deliverables. The transition governance steering committee will perform the following functions:

- Sign-off on the transition plan, communication plan, escalation list and risk assessment.
- Review and approve changes to the scope and deliverables of the transition.
- Provide timely decisions as it relates to the scope and Deliverables of the transition.

## 5.8. Transition Team

The services transition team consists of both ConvergeOne and Client personnel assigned to affect the transition of services from the Client to ConvergeOne's Operations Team. The services transition is led by the ConvergeOne Services Transition Manager, as defined below, and includes other subject matter experts based on the specific services to be transitioned.

### Services Transition Manager

The "Services Transition Manager" is the single point of contact and accountability to both ConvergeOne and Client during the transition period. The Services Transition Manager is responsible for all activities associated with the transition of services, including the following:

- Transition Plan
- Key project decisions
- Services transition team
- Services transition communication plan, status reports and meeting minutes
- Gate reviews for each transition phase
- Hand-off from services transition team to the services team

### Subject Matter Experts

ConvergeOne subject matter experts are ConvergeOne personnel supporting the transition of services to from Client to ConvergeOne.

**Table 5-1**

Subject Matter Expert	Services Transition Team Role
On-boarding Specialist - Process	Responsible for leading process development discussions with Client and ConvergeOne personnel and documenting engagement specific processes
On-boarding Specialist - Database	Responsible for loading ConvergeOne's management tools with the relevant information about Client's supported environment
Invoicing Specialist	Responsible for establishing the invoicing process based on the agreement pricing structure

### Client Responsibilities

Client shall play an active role during the services transition period of this agreement. Client shall supply information to ConvergeOne to support the deliverables of the services transition. To the extent ConvergeOne already has the requested information, ConvergeOne will collect the information and provide for review and confirmation. This includes, but is not limited to, the following data.

**Table 5-2**

Required Information	Content
Network Topology	Network diagram for current voice and data infrastructure
Service Locations Information	Additional site-specific information such as site contact information
Supported Products Information	Detailed inventory of the Supported Product hardware, software, and Microsoft Teams users/rooms
Access Information	Data and approvals to complete RAS/D-ADMIN process and forms
Transition Team Members	Client transition team subject matter experts
Transition Contact and Escalation Information	Client names and contact information
Client Vendor Information	Third party vendor information regarding the vendor's scope, deliverables and service agreements for the Supported Products sufficient to enable ConvergeOne to perform the Services (for example, pricing may be redacted). In addition, a Letter of Authorizations (LOA) that allows for ConvergeOne to act on Client's behalf.

## 6. MANAGED SERVICES

### 6.1. Service Desk

- Service Desk is a centralized function serving as a single point-of-entry for all Customer requests related to the services provided under this TOS
- Service Desk is accessible during Service Hours by Customer's Help Desk or authorized personnel with a working knowledge of the Customer's technical environment as it relates to the Supported Products at Supported Sites covered under this TOS
- Service Desk supports the following tasks and workflows:
  - Receipt of Customer's service requests and trouble reports
  - Event assessment and assignment of incident classification according to agreed incident prioritization criteria
  - Update status of service requests and/or trouble tickets based on agreed intervals or with change in status
  - Review, validation, and closure of tickets.
- Tickets may be submitted to the Service Desk via the following methods:
  - Phone call to the Service Desk

- Request submitted via Seller's web portal
- Events received from Seller's element monitoring system

## 6.2. Service Request Fulfillment (MAC)

### Administration & Self-Service Portals

- Seller will provide and make available a web portal for simple MACD's. Within the portal, Customer Administrators can perform the following activities:
  - Individual number forwarding to PSTN
  - Individual number to system error prompt
  - All number forwarding to PSTN
  - All number forwarding to PSTN
- Any MACD activity that cannot be performed within the Administrative portal provided, Seller will provide system administration and support services related to moves, adds, changes, and deletions (MACDs) according to Seller's service request fulfillment process.

### Service Request Process

- Seller will fulfill Service Requests for Simple Software Changes, as submitted by Customer, in support of users of the solution provided under the standard Terms of Service, to include any Managed Products. Service request fulfillment will occur during Service Hours as indicated in this Agreement
- The Service Request Fulfillment process only applies to Simple Software Changes and does not apply to Requests categorized as Events, Incidents, or Problems
- Service Request Process
  - A "Service Request" contains the information submitted by an authorized Customer representative to request for one or more system administration activities to be performed for the solution provided under the standard Terms of Service, to include any Managed Product. A Service Request must contain the relevant information about the requested activity to be performed including affected user and systems. It is the Customer's responsibility to interface with the user to determine the system administration requirements for a MAC and to provide all information necessary to complete a MAC. Multiple system administration (MAC) activities can be included on a single Service Request; however each individual MAC will be counted as a separate MAC activity for purposes of measuring performance and billing. For clarity a request to add a new user that requires the user be created in multiple systems, each configuration

activity (i.e., adding a user in each systems) will be counted individually as a separate Simple Software MAC activity. A separate Service Request should be submitted for each site where support is requested

- Service Request Fulfillment supports the following tasks and workflows:
  - Service Request acceptance
  - Completion of Service Request according to defined Service Levels
  - Service Request fulfillment monitoring, updates, and reporting
- Service Requests may be submitted to the Service Desk via a request submitted via Seller's web portal
- System administration requests in support of users of the solution provided under this TOS will be classified as Simple and Complex as follows:
  - Simple Software MAC - System administration work performed within the application software (remotely) that affects only a particular user. An example is changing a feature for a particular user
  - Complex Software MAC - System administration work performed within the application software (remotely) that affects or has the ability to affect multiple users. These changes are at the system or application level. An example includes defining a new class of service within a system
- For Complex system administration requests, Seller will scope the requested change and provide the requestor with an estimated time for the work to be performed, including supporting documentation to allow the necessary approvals to be obtained for the change to be implemented
- Seller will provide consultation to assist in developing the scope of Complex MAC requests in support of Customer's defined business requirements
- Work that requires the involvement of design engineer, project management, development effort, new and/or configured product will be considered out of scope

### 6.3. Service Management

Seller will provide a Service Management portal to enable communication between the parties about the services delivered under this TOS. The service management portal is available for designated Customer personnel and serves as a shared workspace between Seller and Customer.

With the service management portal, Customer's designated personnel will be able to:

- Open new incident and service request tickets and check status of existing tickets
- Review reports indicating overall service performance, available reports include:

- Incident Management - provides details regarding active or closed incidents during the reporting period
- Service Request Fulfillment - provides details regarding the MAC activity completed during the reporting period

## 7. SOLUTION PRICING

### 7.1. Summary of Fees

#### One-time Charges:

**Table 7-1**

Service	Price
Transition Services	\$3,175.00

#### Monthly Managed Services Recurring Charges:

**Table 7-2**

Service	Price/User/Month	# Users	Monthly Price
§ Managed Microsoft Teams Premier Users/Rooms:	\$4.00	250	\$1,000.00

The monthly price is calculated by measuring the maximum number of Microsoft Teams Voice users during the monthly billing period as reported by Microsoft and ConvergeOnes OnGuard service management platform. The monthly billing period will end on the last business day of the month unless agreed upon by both parties prior to the execution of this contract.

#### Additional Fees:

- On-site Support:
  - All services defined in this SOW are expected to be delivered remotely. However, in the unlikely event that ConvergeOne engineering is required to be on-site to perform specific support requests and/or changes, the rates below will be applied. Scheduling of work will be based on availability of local resources or a minimum of 2 weeks prior for resources that must travel to the site.
    - \$175.00 per hour Normal Business Hours
    - \$262.50 per hour Standard Overtime
    - \$350.00 per hour Premium Overtime (Holidays or Sunday)
    - \$81 trip charge - metro areas[1]



- Travel Expenses (i.e. airfare, hotel, rental car, per diem, etc) will be billed as actuals if incurred
- 1 hour minimum billed for all service requests
- Recurring Support:
  - The Basic, Premier, and Premier+ service packages include support for monthly Simple MACs based upon 2% of the supported user count. If additional support is required beyond the included hours of support, then services will be provided at additional charge as indicated below.
  - On a quarterly basis, ConvergeOne will review the actual Simple and Complex MAC activity performed and assess whether the actual volume of MACs supported are greater than the included volume of support. If the actual volume of Simple and Complex MACs performed during the quarter exceeds the included volume, the incremental MAC support will be charged at the quoted rates for the relevant support. Any included MAC support that is not utilized within a given quarter will not be rolled over into future quarters.
  - Incremental MAC support beyond the volumes included in the Recurring Charges above will be charged at the following rates:
    - Simple MAC
      - \$85 per activity
    - Complex MAC
      - \$180.00 per hour Normal Business Hours
      - \$270.00 per hour Standard Overtime
      - \$360.00 per hour Premium Overtime
      - ½ hour minimum for all service requests

[1] For Non-metro areas the trip charge is \$81 for up to sixty (60) miles beyond the Metro area. For any distance over sixty (60) miles beyond the Metro area, the actual travel time to the site from that point is charged at the applicable hourly rate for the time of day (i.e. Normal Business Hours, Standard Overtime, and Premium Overtime).

## 7.2. Monthly Managed Carrier Service Fees

**Table 7-3**

Minimum Quantities and Unit Prices (Table 7-6)		
Description	Minimum Quantity	Unit Price per Month
Cloud Calling Service - Microsoft Teams	250	\$6.00
Managed Analog Gateways	4	\$75.00
VPN	1	\$220.00

## 7.3. Monthly Carrier & Managed Service Fees

**Table 7-4**

Minimum Monthly Fees (Table 7-3)	
Description	Minimum Monthly Fee
Carrier Managed Services:	\$2,020.00
Managed Services:	\$1,000.00
<b>Total Minimum Monthly Fees:</b>	<b>\$3,020.00</b>

## 7.4. Pricing Conditions

Prices are quoted in USD, and do not include applicable taxes which will be billed as a separate line item unless proper tax-exempt documentation is provided by Client in advance.

Pricing includes all services as described in this SOW and Attachments. Changes to the services, or changes to the configuration of the Supported Products to include, but not limited to the addition of licenses, hardware, and new features, may result in additional charges. Changes will be subject to the Contract Change Control Process.

The monthly fee above represents the minimum recurring charge for the duration of this SOW for support of the Protected Servers identified by the Magna site IT Administrator upon service sign-up.

## 7.5. Invoicing

Invoices for one-time services (Professional Services, Transition Services, etc) will be submitted at time of service completion and/or based upon specific project milestones as agreed upon between ConvergeOne and the Client.

Managed Services Invoices will be based upon the following:

- Maximum number of Microsoft Teams Voice users active during the billing period as reported by Microsoft and ConvergeOne's OnGuard service management platform
- The monthly billing period will end on the last business day of the month unless agreed upon by both parties prior to the execution of this contract.

## **7.6. Pricing Conditions**

- Prices based on initial contract term of thirty-six (36) months
- Prices quoted in USD, and do not include applicable taxes which will be billed as a separate line item unless proper tax-exempt documentation is provided by Client in advance.
- Pricing for services described in this TOS are valid for sixty (60) days from date of proposal and binding throughout the initial order term upon full execution of the TOS by the parties
- Prices are subject to terms and conditions stated within this TOS and your Agreement
- Prices exclude any applicable fees, surcharges, or freight. Customer will be invoiced for these items when due
- The monthly fee above represents the minimum recurring fee for services based on your initial order. This fee may increase in any billing period where additional services are added/requested by Customer
- Incremental Users/Units above the Minimum Quantity of Users, will be charged monthly at the Additional Price Per User as indicated. ("Overage Fee"). Overage Fees will be invoiced in arrears.
- Any additional fees, including but not limited to fees related to Variable Usage Based Services or Carrier Services listed above will be invoiced in addition to minimum recurring fee ("Usage Fees"). Usage Fees will be invoiced in arrears.
- Unit Price does not include equipment related to IP Desk phones, including but not limited to, handsets, headsets, software installed on or related to those devices.
- Pricing includes all services as described in the standard TOS and Attachments. Any changes to the license quantities, service descriptions, Managed Sites, or Managed Products or Solutions may impact pricing. Changes will be subject to the Contract Change Control Process.
- The Parties hereby agree that this document constitutes an order for all Services described for the entire duration of the Term, plus any renewal or mutually-agreed extension

## **7.7. Invoicing & Payment**

- Upfront Payment - One-Time will be invoiced in advance based upon receipt of Customer signature on this TOS

- The Fixed Minimum Monthly Fees will commence on the Effective Date of this TOS, will be invoiced in advance, and continue monthly for the applicable Term
- The Variable Minimum Monthly Fees will be invoiced in advance commencing upon the sooner of 90 days from Effective Date or the Service Activation Date and continue monthly for the duration of the initial contract term
  - Service Activation is the first of the month following the date on which ConvergeOne informs the Customer that the Services are installed and ready for Customer's use
  - Prior to Services Activation Date, ConvergeOne will prorate the Variable Minimum Monthly Fee based on the number of days during the month(s) in which Services are installed and ready for Customers use
- Seller will invoice Customer for Usage Fees in the billing period following the month the services are consumed. In the event that usage-based services are consumed by the Customer prior to Services Activation Date, Seller will invoice Customer for Usage Fees when consumed
- If Seller is unable to provide services by 90 days from Effective Date due to Customer's failure to fully perform its responsibilities as defined in Section 9 below, the Customer nevertheless remains obligated for the payment of the Minimum Variable Fee as set forth above
- Customer may receive separate invoices for One-Time Fees, Non-Recurring Services Fees, Minimum Monthly Fees, and Overage Fees (if applicable)
- If Customer's internal processes require issuance of purchase orders in order to allow timely payment of invoices due, Customer will issue such purchase orders in a timely manner to ensure invoicing and payment is carried out in accordance with the standard Statement of Work and Agreement
  - If Seller does not receive a purchase order from Customer in accordance with the above provisions, it will not release Customer from its obligations to pay Seller Services described in the standard Statement of Work
- Seller will be entitled to invoice Customer and Customer agrees to pay Seller for the Services and late payment charges in accordance with the standard Statement of Work and the Agreement
- Non-Recurring Services
  - The Total Minimum Monthly Fees include support for a volume of Simple Software MAC activities on the UC applications up to 2% of the monthly user volume per month
  - The allotted volume of MAC activities may be carried over from month-to-month within a quarter

- If additional support is required beyond the included hours of support, services will be provided at additional charge as indicated below
- On a quarterly basis Seller will review the actual Simple Software MAC activity performed and assess whether the actual volume of MACs supported is greater than the included volume of support
  - If the actual volume of Simple Software MACs support performed during the quarter exceeds the included volume, the incremental MAC support will be charged at the quoted rates for the relevant support
  - Any included MAC support that is not utilized within a given quarter will not be rolled over into future quarters
- Incremental MAC support beyond the volumes included in the Total Minimum Monthly Fees above will be charged at the following rate:
  - Simple Software MAC - \$65.00 per transaction as a non-recurring fee
  - Complex MAC
    - \$190.00 per hour Normal Business Hours
    - \$285.00 per hour Standard Overtime
    - \$380.00 per hour Premium Overtime
    - 1/2 hour minimum for all orders

## 7.8. Term

The Initial Term of this TOS is from the Effective Date until thirty-six (36) months following Service Activation of the solution provided herein.

### Termination and Termination Amount

- Termination for Convenience by Customer: In the event Customer elects to terminate Services for convenience per the Agreement, the Termination Fee shall be the total of all remaining Minimum Monthly Fees for the applicable Term
- Termination for Cause by Customer: In the event Customer elects to terminate Services for cause per the Agreement, the Termination Fee shall be the total of all remaining Minimum Monthly Fees for the applicable Term
- Termination for Cause by Seller: In the event Seller terminates Services for cause per the Agreement, the Termination Fee shall be the total of all remaining Minimum Monthly Fees for the applicable Term

## 8. CLIENT RESPONSIBILITIES

### General Client obligations:

- Provide ConvergeOne remote access to all areas, network devices, servers, software, and/or cloud logins and other access necessary to deliver services to the items within the TOS
- Provide ConvergeOne access to Client IT staff that may need to be interviewed, queried or available for ConvergeOne to complete a given task
- Provide ConvergeOne access to all infrastructure documentation and other documents, information or materials request by ConvergeOne which are pertinent to reasonable delivery of the services to the Client
- Provide a physical or VM workstation or server that allows ConvergeOne dedicated Managed Services to function 24x7x365 on clients internal network infrastructure. If Client does not have an adequate VM, workstation or server available, ConvergeOne will provide a probe server for a one-time fee
- Provide a single point of contact responsible for:
  - Understanding the business and technical requirements and who has the authority to make binding decisions on Clients behalf
  - Working with ConvergeOnes Project Manager to develop mutually agreed project schedule
  - Ensuring all Client responsibilities are completed in accordance with the project schedule
  - Attending all project status meetings
- Ensure availability of appropriate Client resources that will:
  - Assist in development and execution of applicable test plans
  - Provide accurate documentation for all existing systems and network
  - Provide all necessary IP addresses, subnet mask, and default gateways
- Provide a list of authorized representatives that can request support on Clients behalf, and identify technical and business personnel to ensure requirements can be defined and implemented expeditiously
- Provide a designated contact for approval and scheduling of product updates
- Resolve troubles associated with equipment not supported under this TOS and provide status of resolution efforts to ConvergeOne as appropriate
- Submit notification of changes to Clients environment according to the change management procedures agreed under this TOS
- Maintain agreements directly with the supported maintenance service providers  
Note: Services performed by the vendors will be paid by Client directly to the vendor
- Provide information relative to the supported maintenance service provider, including specific information relative to the agreed scope and service levels
- Provide ConvergeOne and the supported maintenance service providers, and other third parties to be managed under this TOS, with a Letter of Authorization (LOA) to allow ConvergeOne to initiate support with the respective third parties on behalf of Client

- End user calls will be handled by the Clients internal Help Desk. The end user help desk will provide the following with respect to the supported environment:
  - Receive calls requesting services from end users
  - Perform initial investigation to determine the requirements of a Service Request or the nature of the trouble reported and to confirm that the Request/trouble is related to the Supported Products
  - Gather appropriate information from the end user to provide to the ConvergeOnes services team for completion of a Service Request or further trouble isolation/diagnosis, including, but not limited to:
    - Description of trouble experienced
    - Description of Service Request
    - User location (address, building, floor, etc.)
    - User contact information
    - Other client specific information required
  - Provisioning and support of antivirus software and updates for the environment residing on equipment at Clients premises, such as agent PCs, supported under this TOS
  - Perform vulnerability assessments (if required) - any remediation support required by ConvergeOne will be at additional charge

## 9. SERVICE HOURS

**Table 9-1**

<b>Service Desk</b>	24x7x365; English Language Only
<b>Proactive Monitoring</b>	24x7x365; Events received from ConvergeOne's element monitoring system
<b>Service Request Fulfillment</b>	Normal Business Hours
<b>Incident Management Services</b>	24x7x365; Major Failures Normal Business Hours; Minor Failures
<b>Release Management Services</b>	The identification and evaluation of available product updates, as well as, scheduling activities, will be performed during Normal Business Hours. The remote implementation of product updates will be performed during a Standard Maintenance Window.
<b>Standard Maintenance Window</b>	Time reserved daily from 2:00 AM to 4:00 AM eastern time, Sundays from Midnight to 6:00 AM eastern time, during which time ConvergeOne may perform maintenance activities such as updates, patching, etc.

Normal Business Hours:

- Normal Business Hours are defined as the hours of 8:00 AM - 5:00 PM of the time zone for the location of the site to be supported ("Local Site Time"), Monday - Friday; excluding ConvergeOne

designated Holidays ("Normal Business Hours"). The Managed Services described in this SOW are available during these Normal Business Hours unless otherwise stated within this document.

**Overtime:**

- Client may contact the Service Desk to initiate support outside of Normal Business Hours. Overtime billing will not apply unless Client specifically requests the work to be performed outside of the Normal Business Hours for the Supported Product.
- Requests for such services to be performed outside of Normal Business Hours will be billable as follows:
  - Standard Overtime - Standard overtime rates apply to work performed Monday to Friday (excluding ConvergeOne holidays) after 5:00 PM Local Site Time,
  - Premium Overtime - Premium overtime rates apply to work performed on weekends and ConvergeOne holidays. Weekends begin on Saturday at 12:00 AM Local Site Time, and end Monday at 8:00 AM Local Site Time. Holiday overtime begins at 12:00 AM Local Site Time, the day of the holiday and ends at 8:00 AM Local Site Time, the next business day following the holiday.
- Requests for overtime support are subject to resource availability and acceptance by ConvergeOne.

**9.1. General Client obligations:**

- Provide ConvergeOne remote access to all areas, network devices, servers, software, and/or cloud logins and other access necessary to deliver services to the items within the TOS
- Provide ConvergeOne access to Client IT staff that may need to be interviewed, queried or available for ConvergeOne to complete a given task
- Provide ConvergeOne access to all infrastructure documentation and other documents, information or materials request by ConvergeOne which are pertinent to reasonable delivery of the services to the Client
- Provide a physical or VM workstation or server that allows ConvergeOnes dedicated Managed Services to function 24x7x365 on clients internal network infrastructure. If Client does not have an adequate VM, workstation or server available, ConvergeOne will provide a probe server for a one-time fee
- Provide a single point of contact responsible for:
  - Understanding the business and technical requirements and who has the authority to make binding decisions on Clients behalf
  - Working with ConvergeOnes Project Manager to develop mutually agreed project schedule



- Ensuring all Client responsibilities are completed in accordance with the project schedule
- Attending all project status meetings
- Ensure availability of appropriate Client resources that will:
  - Assist in development and execution of applicable test plans
  - Provide accurate documentation for all existing systems and network
  - Provide all necessary IP addresses, subnet mask, and default gateways
- Provide a list of authorized representatives that can request support on Clients behalf, and identify technical and business personnel to ensure requirements can be defined and implemented expeditiously
- Provide a designated contact for approval and scheduling of product updates
- Resolve troubles associated with equipment not supported under this TOS and provide status of resolution efforts to ConvergeOne as appropriate
- Submit notification of changes to Clients environment according to the change management procedures agreed under this TOS
- Maintain agreements directly with the supported maintenance service providers  
**Note:** Services performed by the vendors will be paid by Client directly to the vendor
- Provide information relative to the supported maintenance service provider, including specific information relative to the agreed scope and service levels
- Provide ConvergeOne and the supported maintenance service providers, and other third parties to be managed under this TOS, with a Letter of Authorization (LOA) to allow ConvergeOne to initiate support with the respective third parties on behalf of Client
- End user calls will be handled by the Clients internal Help Desk. The end user help desk will provide the following with respect to the supported environment:
  - Receive calls requesting services from end users
  - Perform initial investigation to determine the requirements of a Service Request or the nature of the trouble reported and to confirm that the Request/trouble is related to the Supported Products
  - Gather appropriate information from the end user to provide to the ConvergeOnes services team for completion of a Service Request or further trouble isolation/diagnosis, including, but not limited to:
    - Description of trouble experienced
    - Description of Service Request
    - User location (address, building, floor, etc.)
    - User contact information

- Other client specific information required
- Provisioning and support of antivirus software and updates for the environment residing on equipment at Clients premises, such as agent PCs, supported under this TOS
- Perform vulnerability assessments (if required) - any remediation support required by ConvergeOne will be at additional charge

## 9.2. E911 Client Obligations

- Customer is responsible for payment of all fees related to maintaining E911 regulatory compliance including recovery fees associated with device/user discovery, routing, and notification when 911 calls are placed and any applicable local, state, or federal taxes
- Customer is solely responsible for the maintenance and accuracy of site address and dispatchable location information being provided to the PSAP
  - All relevant dispatchable emergency location information to assist first responders in identifying location for any fixed telephony endpoints registered to the service
  - All relevant contact information including but not limited to name, phone number, email address, or pager address for emergency response personnel receiving emergency notifications
  - Actively testing and validating emergency call-back numbers and dispatchable locations thru 933 test call services
- Customer responsible for all desktop installation and support
- For Microsoft Teams Voice customers - Customer is responsible for ensuring the Microsoft Teams Emergency Calling policy is configured to allow users to set emergency addresses when not on the company network.
  - <https://docs.microsoft.com/en-us/powershell/module/skype/set-csteamsemergencycallingpolicy?view=skype-ps>
  - -ExternalLocationLookupMode = \$True

## 10. REGULATORY COMPLIANCE

Client expressly acknowledges that with respect to ConvergeOne's performance of the Services called for under this Agreement, such Services do not involve or in any way require access to personally identifiable information (PII) of Client or its clients. If, in the future, Client requests additional services that require ConvergeOne access to Client PII, those additional services, and the security requirements associated with the access to Client PII in order to perform those additional services, shall be subject to a separate written agreement between the parties.

Notify ConvergeOne prior to allowing PII data on Supported Products under this SOW.

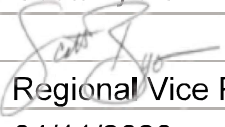
### 10.1. GDPR Compliance

To meet General Data Protection Regulation (GDPR) compliance, during the services implementation and on-boarding process, ConvergeOne will supply an email template to Client that must be sent to all Client employees based outside of the U.S. notifying them that support of Supported Products will be handled by a U.S. based service provider. Without a reply of acceptance those users will not have support under this SOW. If Client already has a preferred method of contacting non-U.S. users and gaining that user acceptance, this will need to be reviewed by both Parties to ensure GDPR compliance.

## 11. CUSTOMER AND SELLER ACCEPTANCE

*IN WITNESS WHEREOF, the Parties have caused these Terms of Service to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of these Terms of Service, duly authorized by all necessary and appropriate corporate action to execute these Terms of Service.*

**Table 11-1**

SELLER:	ConvergeOne, Inc.	CUSTOMER:	
BY:	Scott Byers	BY:	
SIGNATURE:		SIGNATURE:	
TITLE:	Regional Vice President	TITLE:	
DATE:	04/11/2023	DATE:	

## 12. ATTACHMENT A - IMPLEMENTATION SERVICES

### 12.1. Confidentiality Notice

**THE INFORMATION CONTAINED HEREIN IS CONSIDERED CONFIDENTIAL AND PROPRIETARY, PRODUCED SOLELY FOR THE CUSTOMER IDENTIFIED ABOVE.**

This Statement of Work ("SOW") is proprietary to ConvergeOne, Inc. and contains ConvergeOne, Inc. Confidential Information. It may not be disclosed in whole or in part without the express written authorization of ConvergeOne. No portion of this SOW may be duplicated or used for any purpose other than to receive Services or deliverables from ConvergeOne described herein.

### 12.2. Scope of Work - Terms and Conditions

This Statement of Work or Scope of Work ("SOW") and the applicable Solution Summary (and any documents attached thereto and incorporated therein by reference) (collectively, this "Order") is subject to the following terms and conditions (the "MSA" or the "Agreement"): (i) the Master Sales Agreement or other applicable master agreement in effect as of the date hereof between ConvergeOne, Inc. and/or its subsidiaries and affiliates (collectively, "ConvergeOne" or "Seller") and Town of Apex ("Customer"); or (ii) if no such master agreement is currently in place between ConvergeOne and Customer, the Online General Terms and Conditions currently found on the internet at: <https://www.convergeone.com/online-general-terms-and-conditions/>. If the Customer's Agreement is a master agreement entered into with one of ConvergeOne, Inc.'s predecessors, affiliates, and/or subsidiaries, ("Legacy Master Agreement"), the terms and conditions of such Legacy Master Agreement shall apply to this Order, subject to any modifications located at <https://www.convergeone.com/online-general-terms-and-conditions/>. In the event of a conflict between the terms and conditions in the Agreement and this Order, the order of precedence shall be as follows: (i) this Order (with the most recent and specific document controlling if there are conflicts between the Solution Summary, this SOW and any other applicable supporting document(s) incorporated into this Order), (ii) Attachment A to the Agreement (if applicable), and (iii) the main body of the Agreement.

The Customer's signature on this Order (or the Customer's issuance of a purchase order in connection with this Order) shall represent the Customer's agreement with each document in this Order.

This Order may include the sales of any of the following to Customer: (a) any hardware, third-party software, and/or Seller software (collectively, "Products"); any installation services, professional services, and/or third-party provided support services that are generally associated with the Products and sold to customers by Seller ("Professional Services"); any Seller-provided vendor management services, software release management services, remote monitoring services and/or, troubleshooting services (collectively, "Managed Services"); and/or any Seller-provided maintenance services ordered by Customer to maintain and service Supported

Products or Supported Systems at Supported Sites to ensure that they operate in conformance with their respective documentation and specifications ("Maintenance Services"). For ease of reference only, Professional Services, Managed Services, and Maintenance Services may be referred to collectively as "Services." Unless otherwise defined herein, capitalized terms used herein will have the same meanings as set forth in the Agreement.

Any dates and/or time intervals listed in this Order are approximate and for planning purposes only. ConvergeOne will use commercially reasonable efforts to accommodate any requested dates; provided, however, project milestones will be fully discussed and mutually agreed upon between ConvergeOne and Customer after project kickoff.

Products and/or Services not specifically itemized are not provided herein. Any additional applications, technologies, integrations, or other Products and/or Services not specified herein, are not included in this SOW and may result in additional charges at any time during the project.

Unless signed, this Order will be valid for a period of thirty (30) days following the date hereof. Due to rapidly changing prices in the market for third-party Products and/or Services, after the expiration of the foregoing 30-day period, the Seller reserves the right to adjust offerings and/or prices accordingly prior to issuing any new Order(s). Thereafter, this Order will no longer be of any force and effect.

The outline of deliverables for this Order follows below.

### **12.3. Project Timeline Expectations**

Approximately 5 business days after signed acceptance of this SOW, ConvergeOne will assign a project manager that will make contact and start planning a project kick-off meeting. The project kick-off may not take place immediately. Project start times depend on the availability of ConvergeOne and Customer resources.

The expected duration of this project has been budgeted at one hundred fifty-six (156) weeks from the time of kick-off to completion. If the project exceeds this timeframe, a project change order may be required to extend the engagement, resulting in additional fees.

### **12.4. Project Scope of Services**

This section identifies the work that will be performed as part of this project. Below is an initial, high-level list of tasks and assumptions for the project. This schedule may change depending on the Customers business requirements and other factors. Also, depending on the schedule finally agreed upon at the kickoff meeting, the days worked may not be contiguous. ConvergeOne will conduct a meeting with the Customer to review and finalize the technical approach, constraints, and project schedule. This meeting is intended to ensure that all parties are working with consistent expectations for the project.

**Microsoft**

### **Out of Scope**

- Configuration changes to third-party systems not listed in this proposal.
- Placement of endpoint devices.
- End-user training is not included in this scope
- Troubleshooting issues related to the core deployments of Active Directory, Exchange, existing Lync/Skype for Business infrastructure, Office 365 tenant, and underlying hardware and storage is out of scope of this proposal and will be billed separately on a time and materials basis.
- Troubleshooting issues related to the network infrastructure is out of scope for this proposal and will be billed separately on a time and materials basis.
- Configuration, firmware updates, or troubleshooting of devices purchased through a vendor other than ConvergeOne will be billed separately on a time and materials basis.

### **Microsoft Modern Workplace Specific Customer Responsibilities**

- Verify and complete forms and questionnaires from ConvergeOne consultants or engineers in a timely fashion.
- If requested, provide comprehensive documentation for existing network and system deployments, including physical and logical schematics, prior to service commencement.
- Customer to assist with making changes to Active Directory, ADFS, AAD Connect, Azure Active Directory and the global Office 365 tenant in a timely manner as requested to facilitate ConvergeOne responsibilities based on agreed upon schedule.
- If requested, designate ConvergeOne as the Microsoft Claiming Partner of Record (CPOR) for Office 365 and/or Azure services in scope with this Statement of Work.

## **12.5. Project Management**

ConvergeOne will provide Project Management Services to help you effectively manage the project and control risks during the deployment. ConvergeOne will designate a Project Manager who will act as the single point of accountability for all ConvergeOne contract deliverables for the duration of the Project. ConvergeOne follows the Project Management Body of Knowledge (PMBOK) for project delivery. The PMBOK is an adaptable approach that enables technology project success by aligning business and technology goals. Key elements include an iterative delivery process, clear project metrics, proactive risk management, and effective response to change.

### **Project Coordinator**

The ConvergeOne Project Coordinator (PC) shall work with the Customer, ConvergeOne resources, and Third-Party vendor to coordinate the project deliverables. The PC shall be the point of contact for communications on scheduling, and any required changes in project scope. The Project Coordinator shall perform the following:

- Coordinate internal and external kickoff meeting with the Customer to determine logistics.
- Resource coordination as required.
- Facilitate customer acceptance and project closure once deliverables are complete.
- Manage the project change orders, if required.
- Third-party vendor coordination.

### **12.6. Change Order Process**

Despite good project planning, design, and review, project plans often require some degree of change at some point. These changes are handled using change order requests, which must be agreed upon by all parties to the contract before such work can be performed.

Either ConvergeOne or the Customer may initiate a change order for any deliverable, work requirement, assumption, or dependency that is part of the project. All requests must be in writing and handled by the ConvergeOne Project Manager. ConvergeOne will review the change and provide pricing as applicable before proceeding. The ConvergeOne Project Manager may also engage project team members to assess the impact of the change. Agreed changes must be approved in writing by an authorized representative of the Customer, via email, or modified purchase order.

### **12.7. Customer Responsibilities**

Provide a single point of contact that will be responsible for:

- Understanding the business process impact and technical requirements and who has the authority to make binding decisions on the Customers behalf.
- Working with ConvergeOne Project Manager to develop mutually agreed project schedule, including outside of Normal Business Hours test and cutover windows (if applicable).
- Ensuring all Customer responsibilities are completed in accordance with the project schedule.
- Reasonable notification of schedule and changes for the installation work.
- Attending all project status meetings.

#### Site Preparation:

- Ensure the equipment room is ready, including all electrical, wiring, grounding, lighting, racks, and HVAC required to maintain equipment within operating conditions specified by the equipment manufacturer.
- Provide required cable/patch panels that meet all requirements for Category 5e, racks, and network connectivity.
- Accept receipt of equipment and store it in a secure area. Retain shipping documentation, and inventory shipments by box count, and report any apparent external damage to the ConvergeOne Project Manager.
- Provide floor plans for equipment room configuration and related locations if applicable.
- Ensure that the existing Customer network is configured, connected, and operating within the manufacturer's specifications.
- Customers will provide QOS on all their network equipment to the WAN based on the Supplier's guidelines and requirements if carrying voice.

Ensure the availability of appropriate Customer resources that will:

- Assist in the development and execution of applicable test plans.
- Provide accurate documentation for all existing systems and networks.
- Provide all necessary IP addresses, subnet masks, and default gateways.
- Provide a qualified Network Administrator with working knowledge of Customer requirements.
- Provide information on planned changes in the network.

## 12.8. Professional Services Assumptions

The following assumptions were made to create this Statement of Work. Should any of these assumptions prove to be incorrect or incomplete then ConvergeOne may modify the price, scope of work, or milestones. Any such modifications shall be managed by the Change Order Procedure.

#### General Assumptions

- Unless explicitly stated otherwise, all services will be delivered remotely
- All non-service impacting work described in this scope will be performed during U.S. normal business hours defined as 8:00 AM to 5:00 PM local time; Monday through Friday, excluding ConvergeOne designated holidays. "Cutover" for the sites will be completed during business hours unless otherwise stated in this scope of work.



- The Customer must identify any specific requirements for maintenance windows and change control. The Customer retains overall responsibility for any business process impact and any Customer-internal change management procedures and communications.
- All services, documentation, and project deliverables will be provided in English only.
- ConvergeOne will install specific software versions agreed upon at the time of project kickoff. Upgrades to the software are not included in the SOW. ConvergeOne may choose to install an upgrade if required by the manufacturer or to resolve a problem.
- The Customer is responsible for the underlying data infrastructure including network and virtualization. Systems must be capable of supporting the proposed solution. ConvergeOne can supply consulting and remediation services to ensure successful implementation, if not included in this scope, through a change order and billed at an additional fee.
- The Customer is responsible for all communications and scheduling of any contractors or vendors not managed by the ConvergeOne Project Manager.
- Any product or service delivery dates communicated outside of this SOW or the Project Plan, are not to be considered valid or binding.
- If the project extends beyond the timeline specified in the Project Plan due to delays caused by parties other than ConvergeOne and its subcontractors, ConvergeOne may invoice for service performed to date.
- The Customer is responsible to verify and arrange the installation of all applicable network connections and provide a functional network for application deployment.
- Projects requiring multiple site visits and/or intervals of inactivity between events must be noted as such prior to acceptance of this SOW.
- The Customer is responsible for relocation, removal, and disposal of any previously installed Customer-owned equipment or cabling unless specifically agreed otherwise herein.
- The Customer is responsible to notify ConvergeOne if the site requires any specialized access for personnel and/or Union trades for any tasks associated with this SOW. Notification of requirements must take place prior to the quote. Any and all additional costs for post-quote changes or additional site restrictions requiring specialized training or Union Labor shall be chargeable to the Customer.
- The Customer is responsible for managing all 3rd Parties not outlined in this SOW.
- Services not specifically called out in this SOW will be deemed out of scope.

- VPN access will be provided to ConvergeOne resources to allow for work to be accomplished remotely when applicable. If unfettered remote access to the Customer network cannot be provided additional charges will be required.

### Technical Assumptions

- Unless specifically called out, above, no IP address changes are included in the SOW. If requested, additional charges may apply.
- The Customer is responsible to have current licensing, maintenance, and support on the components of the servers, database, storage, and network infrastructure including hardware, software (including operating systems), and any associated costs.
- The Customer is responsible for any operating system patches and anti-virus software installation and support.
- The Customer is responsible to ensure the existing network is free of layer 3 protocol and broadcast errors.
- The Customer is responsible for the cost and acquisition of any 3rd party security certificates necessary for successful deployment. ConvergeOne can provide services for Security Audits and Certificate deployment which can be billed at an additional fee.
- The Customer is responsible for resolving interoperability issues with other vendors not acting as a sub-contractor to ConvergeOne.
- The Customer is responsible for any firmware updates to re-used circuit packs, media modules, or cards not specifically identified within this SOW. ConvergeOne can provide services for firmware updates through a change order and billed at an additional fee.

## 13. ATTACHMENT B - MANAGED SITES

**Table 13-1**

Site Name	Site Address	Number of Users
Apex, NC	73 HUNTER ST APEX, NC 27502	250
Fire Station 1	210 N SALEM ST APEX, NC 27502	0
Police Department	205 SAUNDERS ST APEX, NC 27502	0
Public Works	105 UPCHURCH ST APEX, NC 27502	0

#### 14. ATTACHMENT D - CONTRACT CHANGE CONTROL

If changes are identified by either party during the provision of services that affect the scope, content, methods, or schedule set forth in this TOS, they must be agreed upon, documented and tracked within a Change Request ("CR"). When one party initiates a CR (the "Requesting Party"), the other party ("Responding Party") will use reasonable efforts to respond to such CR within ten business days of receipt. Further, both parties will use reasonable efforts to either fully execute such CR, or mutually agree to abandon such CR, within fifteen business days of the Responding Party's receipt of the CR.

The parties must agree in writing to any change to the TOS. The following procedure will be used to control a CR:

- Client or ConvergeOne will initiate the process by providing the other Party written notice of the CR, including all relevant information necessary for the other Party to evaluate the request.
- Upon receipt of a CR, the Responding Party will assess the requested change and inform the Requesting Party of the result of the assessment within a mutually agreeable period.
- If rejected, the Responding Party will provide written reason for the rejection and if appropriate any alternatives.
- If both parties agree to proceed, both parties will work to document requirements and associated effects on this TOS.
- ConvergeOne will prepare a plan setting forth the scope, schedule and estimated costs associated with implementing the CR.
- The Client accepts the CR and associated costs, changes will be amended to the TOS. If rejected, ConvergeOne will provide services as agreed to under the current TOS.
- Neither party is under any obligation to accept any CR to this TOS.

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 25, 2023

## Item Details

Presenter(s): Russell H. Dalton, PE, Traffic Engineering Manager

Department(s): Public Works & Transportation

### Requested Motion

Motion to approve a 4<sup>th</sup> Supplemental Agreement with NCDOT to extend the project completion deadline to 12/31/24 for U-5537, Lake Pine Drive Improvements, and to authorize the Town Manager to execute the agreement on behalf of the Town.

### Approval Recommended?

Yes

### Item Details

This Supplemental Agreement is required to extend the required completion date of the federally funded U-5537 Lake Pine Drive Improvements Project from 6/30/23 to 12/31/24 to allow for all federal reimbursements to be completed. A utility issue has most recently delayed construction which is anticipated to be complete this year, but it will take extra time beyond completion of construction to request and receive final reimbursement and close out the project meeting all federal requirements. That is the reason we requested additional time to the end of next year as the deadline for project completion in the 4th supplemental agreement.

### Attachments

- CN2-A1: 4<sup>th</sup> Supplemental Agreement - NCDOT Agreement for U-5537



NORTH CAROLINA  
WAKE COUNTY

**4<sup>th</sup> SUPPLEMENTAL AGREEMENT**

DATE: 4/13/2023

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

TIP #: U-5537

AND

WBS ELEMENTS: PE 44112.1.FD1

ROW 44112.2.1

TOWN OF APEX

CON 44112.3.1

OTHER FUNDING:

FEDERAL-AID #: STPDA-0501(34)

CFDA #: 20.205

TOTAL SUPPLEMENTAL FUNDS [NCDOT PARTICIPATION] \$0

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department", and the Town of Apex, hereinafter referred to as the "Municipality."

**WITNESSETH:**

WHEREAS, the Department and the Municipality, on 1/30/2014, entered into a certain Project Agreement for the original scope: the preconstruction activities for the widening of Lake Pine Drive to 3 lanes, 10' wide asphalt multi-use path on east side, 5' wide concrete sidewalk on west side and high-visibility crosswalk with refuge area at Versailles Drive in Apex, programmed under Project U-5537; and,

WHEREAS, the Department and the Municipality, on 2/17/2016, entered into a Supplemental Agreement to include the construction phase of the Project; and,

WHEREAS, the Department and the Municipality, on 3/10/2021, entered into a Supplemental Agreement for additional funding allocated to the Project; and,

WHEREAS, the Department and the Municipality, on 11/9/2021, entered into a Supplemental Agreement to reimburse non-FEMA/FHWA emergency funds to replace an aging culvert as part of the Project; and,

WHEREAS, the Municipality has requested additional time to complete the Project;

NOW THEREFORE, the parties wish to supplement the aforementioned Agreement whereby the following provisions are amended:

#### **4. TIME FRAME**

The Municipality, and/or its agent, shall complete the Project by December 31, 2024. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the Project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

Except as hereinabove provided, the Agreements heretofore executed by the Department and the Municipality on 1/30/2014, 2/19//2016, 3/10/2021 and 11/9/2021 are ratified and affirmed as therein provided.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:

TOWN OF APEX

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

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

(SEAL)

\_\_\_\_\_  
(FINANCE OFFICER)

Federal Tax Identification Number

\_\_\_\_\_  
Remittance Address:

Town of Apex

\_\_\_\_\_  
DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_

(CHIEF ENGINEER)

DATE: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 5/4/2023 (Date)

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 25, 2023

## Item Details

Presenter(s): Russell H. Dalton, PE, Traffic Engineering Manager

Department(s): Public Works & Transportation

### Requested Motion

Motion to approve a Review and Oversight Agreement with NCDOT for design review and project oversight activities for project BL-0095, Saunders St and Hinton St Sidewalk, requiring payment of a \$10,000.00 deposit, and to authorize the Town Manager to execute the agreement on behalf of the Town.

### Approval Recommended?

Yes

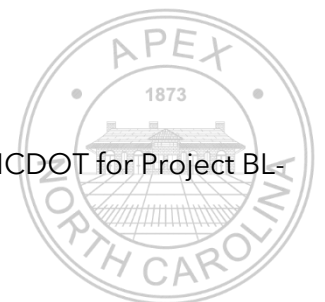
### Item Details

BL-0095, Saunders St and Hinton St Sidewalk, consists of construction of 100 feet of sidewalk extension eastward along the north side of W Chatham St to the northwest corner of Saunders St, sidewalk along the south side of Saunders St from W Chatham St to the western driveway of the Apex Police parking lot, and sidewalk along the west side of Hinton St from Saunders St to Hunter St.

Approval of the Review and Oversight Agreement is required for NCDOT to begin design review and project oversight activities of the Town's project in order to meet federal and state requirements for securing the federal cost reimbursement toward construction costs as provided under separate agreement. NCDOT requires the Review and Oversight Agreement in order to charge internal staff time during preliminary engineering phase. A \$10,000.00 deposit is due upon delivery of the signed agreement to NCDOT. Once construction phase activities are authorized by NCDOT following approval of preliminary engineering and right-of-way phases, NCDOT can begin charging staff review and inspections time under the construction funding reimbursement agreement.

### Attachments

- CN3-A1: Review and Oversight Agreement 1000017978 - Agreement with NCDOT for Project BL-0095





NORTH CAROLINA  
WAKE COUNTY

**REVIEW AND OVERSIGHT AGREEMENT**

DATE: 3/30/2023

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

AND

WBS Elements: 36249.4666

TOWN OF APEX

THIS MUNICIPAL AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the Town of Apex, hereinafter referred to as the "Municipality".

**WITNESSETH:**

WHEREAS, the Department and the Municipality propose to make certain roadway improvements under WBS 36249.4666 in Wake County; and,

WHEREAS, the Municipality has agreed to participate in the cost of the Project as hereinafter set out.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

**SCOPE OF PROJECT**

1. The Project consists of the construction of a sidewalk along the south side of Saunders Street, a sidewalk along the west side of Hinton Street, and sidewalk along the north side of West Chatham Street.
2. The Municipality seeks the Department to review and approval in the planning, environmental document, and design phases of the Project.
3. The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

4. The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department. All design plans, calculations and supporting documents shall be submitted to the Department for review and approval at appropriate intervals."
5. If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.
6. The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.
7. The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

## FUNDING

8. The Municipality shall reimburse the Department one hundred percent (100%) of the actual cost of the Review and Oversight performed by the Department, including administrative costs. Based on the estimated costs, the Municipality shall submit a check for \$10,000 to the Department's Division Engineer upon **partial execution** of this Agreement by the Municipality. Upon completion of the Project, if actual costs exceed the amount of payment, the Municipality shall reimburse the Department any underpayment within sixty (60) days of invoicing by the Department. If the actual cost of the work is less than \$10,000, the Department shall reimburse the Municipality any overpayment. The Department shall charge a late payment penalty and interest on any unpaid balance due in accordance with G.S. 147-86.23.

9. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, the City hereby authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by the General Statutes of North Carolina, Section 136-41.1, until such time as the Department has received payment in full.

## **STANDARD PROVISIONS**

### **A. AGREEMENT MODIFICATIONS**

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a written Supplemental Agreement.

### **B. ASSIGNMENT OF RESPONSIBILITIES**

The **Department** must approve any assignment or transfer of the responsibilities of the **Municipality** set forth in this Agreement to other parties or entities.

### **C. AGREEMENT FOR IDENTIFIED PARTIES ONLY**

This Agreement is solely for the benefit of the identified parties to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

### **D. OTHER AGREEMENTS**

The **Municipality** is solely responsible for all agreements, contracts, and work orders entered into or issued by the **Municipality** to meet the terms of this Agreement. The **Department** is not responsible for any expenses or obligations incurred for the terms of this Agreement except those specifically eligible for the funds and obligations as approved by the **Department** under the terms of this Agreement.

### **E. AUTHORIZATION TO EXECUTE**

The parties hereby acknowledge that the individual executing this Agreement has read this Agreement, conferred with legal counsel, fully understands its contents, and is authorized to execute this Agreement and to bind the respective parties to the terms contained herein.

### **F. DEBARMENT POLICY**

It is the policy of the **Department** not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the **Municipality** certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from

participation in this transaction by any Federal or State Agency or **Department** and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

#### **G. INDEMNIFICATION**

To the extent authorized by state and federal claims statutes, the **Municipality** shall be responsible for its actions under the terms of this agreement and save harmless the FHWA (if applicable), the **Department**, and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns to the extent allowed by law, from and against any and all claim for payment, damages and/or liabilities of any nature, asserted against the **Department** in connection with this Agreement. The **Department** shall not be liable and shall be held harmless from any and all third-party claims that might arise on account of the **Municipality's** negligence and/or responsibilities under the terms of this agreement.

#### **H. AVAILABILITY OF FUNDS**

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

#### **I. DOCUSIGN**

Department and Municipality acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of the Department or the Municipality, to execute this Agreement. 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 DocuSign application, Department and Municipality consent to be legally bound by the terms and conditions of Agreement and that such act constitutes Department's signature as if actually signed by Department in writing or Municipality's signature as if actually signed by Municipality in writing. The Department and Municipality also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. The Department and Municipality acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

## **J. GIFT BAN**

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department and the Municipality is subject to the conditions of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

ATTEST:

TOWN OF APEX

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: Town Manager

DATE: \_\_\_\_\_

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Federal Tax Identification Number

(SEAL)

56-6001166

Remittance Address:

Town of Apex

PO Box 250

Apex, NC 27502

DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_  
(CHIEF ENGINEER)

DATE: \_\_\_\_\_

PRESENTED TO BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_

# | 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 the Amendment to the Itron Field Deployment Manager (FDM) and Field Tools Agreement and to authorize the Town Manager to execute the Amendment on behalf of the Town.

### Approval Recommended?

Yes

### Item Details

Town Council action is required to approve this Amendment to FDM 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.

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

- CN4-A1: Amendment to Itron FDM and Field Tools Solution Agreement
- CN4-A2: Itron FDM and Field Tools Solution Agreement



STATE OF NORTH CAROLINA

Contract # 2022-00000213

COUNTY OF WAKE

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

THIS AMENDMENT is entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2023, 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 9<sup>th</sup>, 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 9<sup>th</sup>, 2024.

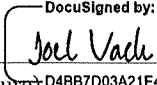
In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**Itron, Inc.**

**Town of Apex**

Name: \_\_\_\_\_ Joel Vach

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

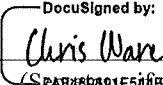
By: \_\_\_\_\_  
(Signature)  D4BB7D03A21E4BB...

Attest:

Title: \_\_\_\_\_ VP-Tax and Corporate Treasurer

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

Attest:

\_\_\_\_\_  
 (Seal of the State of North Carolina)

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

\_\_\_\_\_  
Antwan Morrison, Finance Director



## 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 –**

<b>Severity Level</b>	<b>Response Times</b>	<b>Effort Level and Restoration</b>	<b>Escalation</b>
<p><b>Business Impact:</b>  <b>Critical Impact / System Down.</b> 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.</p> <p><b>Example:</b> a) Billing cannot be completed, b) Major documented function not working, c) System hung or completely down</p>	<p>During regular business-hours Itron will begin the Service Request process during Customer's initial call.</p> <p>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.</p> <p>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.</p> <p>Itron will update Customer at three (3) hour intervals during each day the Service Request remains unresolved, or as otherwise agreed by the Parties.</p> <p>Customer will respond to an Itron inquiry or request within three (3) hours.</p>	<p>Itron will make diligent efforts on a 24x7 basis, or as otherwise agreed by the Parties, to:</p> <p>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.</p> <p>Customer Support Staff must be available 24x7 to work cooperatively with Itron continuously until such time restoration is achieved.</p>	<p>An unresolved Service Request shall be escalated to Itron management as follows:</p> <p><b>After 30 minutes:</b>  Technical Customer Support Team Lead</p> <p><b>After 8 hours:</b>  Manager, Technical Client Services</p> <p><b>After 16 hours:</b>  Director, Global Support Services</p> <p><b>After 48 hours:</b>  Service Request. Vice President, Services and Delivery</p> <p><b>After 72 hours:</b>  President, Itron</p>

**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

<b>Severity Level 4 Business Impact: Standard Operations intact.</b> 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](http://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
<b>Itron Cloud Services</b>						(1,2)
<b>Setup Fees</b>						
1	FTA-SETUP-FEE	Field Tools Advanced Value-Add Setup Fee			\$275.00	
<b>Annual Subscription Fees</b>						
2	FTA E-SUB	Field Tools Advanced, From 25,001 - 50,000 Endpoints, Electronic Delivery			\$1,749.00	
<b>Itron Cloud Services Total</b>					<b>\$2,024.00</b>	

**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: April 25, 2023

## 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:

- April 11, 2023 - 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

- CN5-A1: **DRAFT** Minutes - April 11, 2023 Regular Town Council Meeting



# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 25, 2023

## Item Details

Presenter(s): Shelly Mayo, Planner II

Department(s): Planning

### Requested Motion

Motion to approve the removal of details from the Design and Development Manual that were added to the Standard Specifications and Standard Details on February 28, 2023.

### Approval Recommended?

The Planning Department recommends approval.

### Item Details

### Attachments

- CN8-A1: Staff Report, Duplicate Details to be Removed, and Revised Design and Development Manual





**PROPOSED CHANGES:**

The Design and Development Manual includes recommended plant lists, planting details, site details, as well as architectural recommendations for the Small Town Character Overlay District. The Design and Development Manual is available for viewing at:

<http://www.apexnc.org/DocumentCenter/View/467/Design-and-Development-Manual-PDF?bidId=>

On February 28, 2023, Town Council approved the addition of several details to the Standard Specifications and Standard Details that have to date been located in the Design and Development Manual as recommended by staff. The Standard Specifications and Standard Details are available for viewing at:

<http://www.apexnc.org/197/Engineering-Specifications>

Planning Staff now recommends removing those details from the Design and Development Manual:

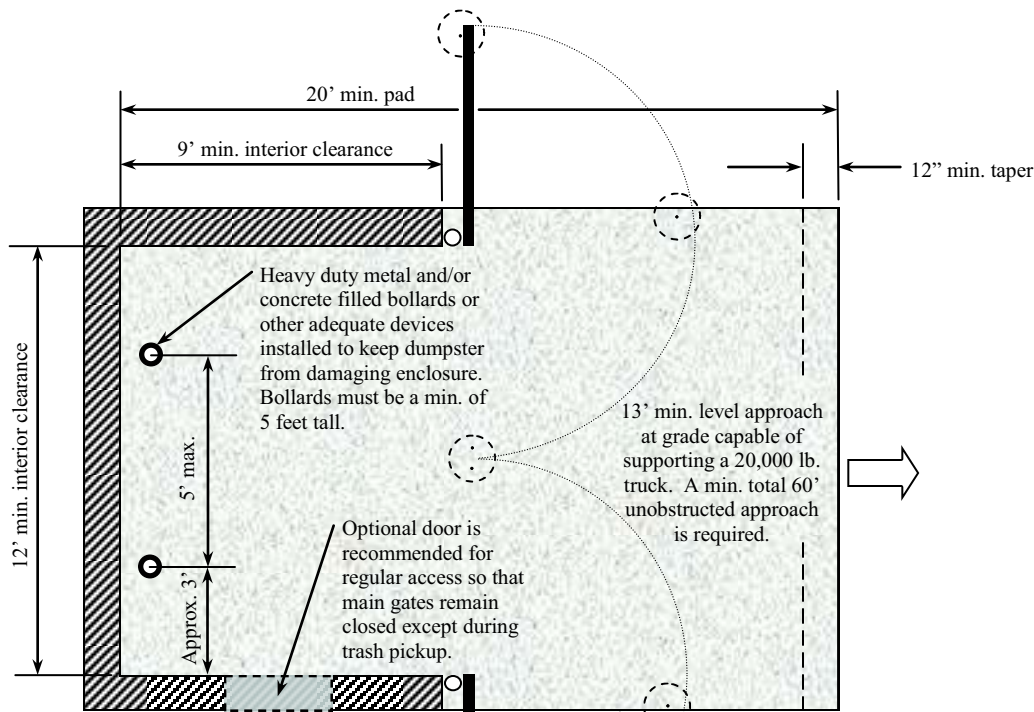
Detail Name	Specification Number:
Dumpster Enclosure	200.02
Accessible Parking	200.04
Tree Protection Fence	200.06

**PLANNING STAFF RECOMMENDATION:**

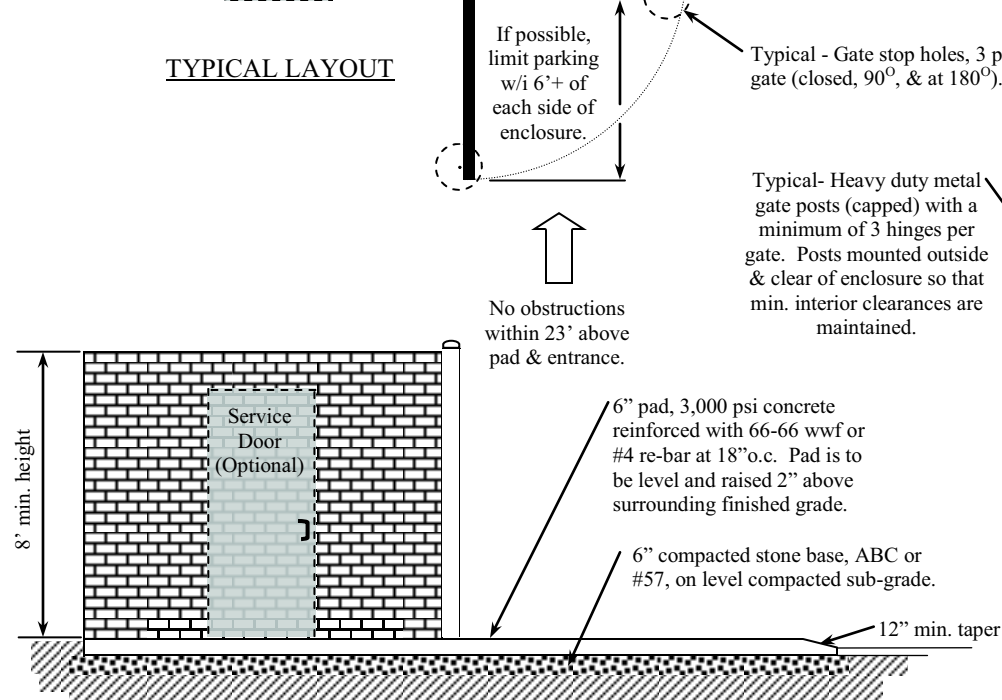
Planning staff recommends approval of the proposed changes.

## DUMPSTER PAD AND ENCLOSURE DETAILS

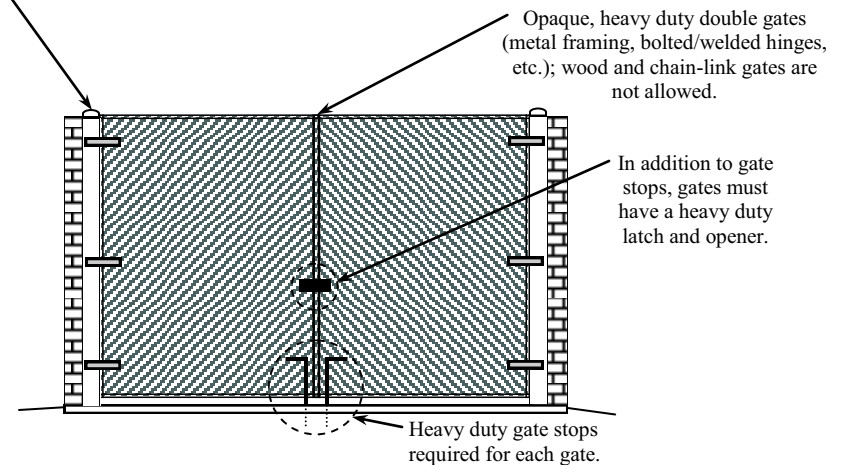
- Layout is for a single dumpster; enclosure needs to expand 12 feet for each additional dumpster. Compactors, recycling and trash roll-out cart areas must be screened in a similar way.
- Include enclosure design/location with any plan submittal.
- Enclosure must be 8 feet high or height of the dumpster (whichever is higher).
- Enclosure walls must be built of masonry materials and finished to match architecturally with principal building.
- Pad must be properly sloped and/or incorporate other appropriate drainage to ensure water does not collect/pond.
- Gates must be built of heavy duty commercial grade materials (metal framing/finishes, bolted /welded hinges, etc.).
- Gates finishes must blend with principal building by using opaque metal, wood composite, PVC composite, or approved equals (no wood framing, wood finishes or chain-link fencing or similar materials allowed).
- Gates must be designed to swing clear of enclosure walls.
- Other components and hardware (bollards, hinges, latches, stops, service doors, etc.) must be built of heavy duty commercial grade materials.
- Enclosures must be landscaped to blend with surrounding areas and buildings and visually soften the appearance.
- Gates must remain closed except during trash pickups; optional service doors are recommended.
- Gate stop latches & holes are required to hold gates in place whether closed or open.



TYPICAL LAYOUT



SIDE ELEVATION

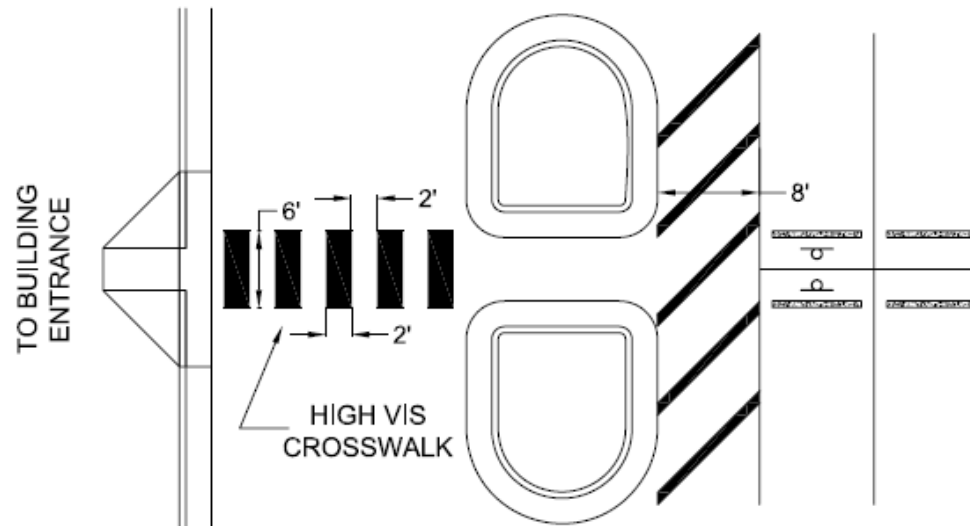


FRONT ELEVATION

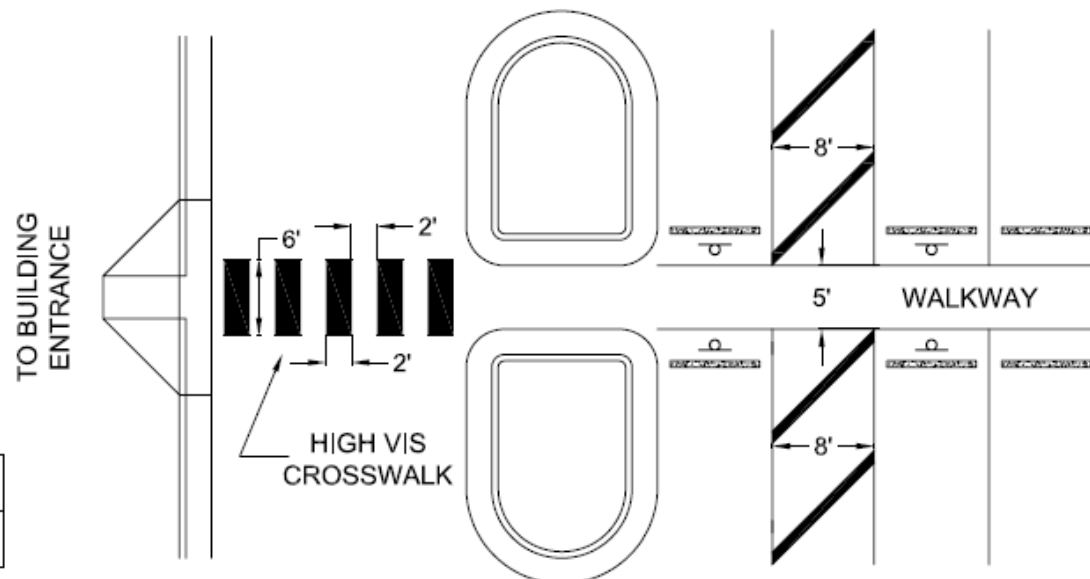


NOTE: ACCESSIBLE PARKING SPACES  
TO BE CONSTRUCTED PER THE NC  
ACCESSIBILITY CODE

### OPTION 1



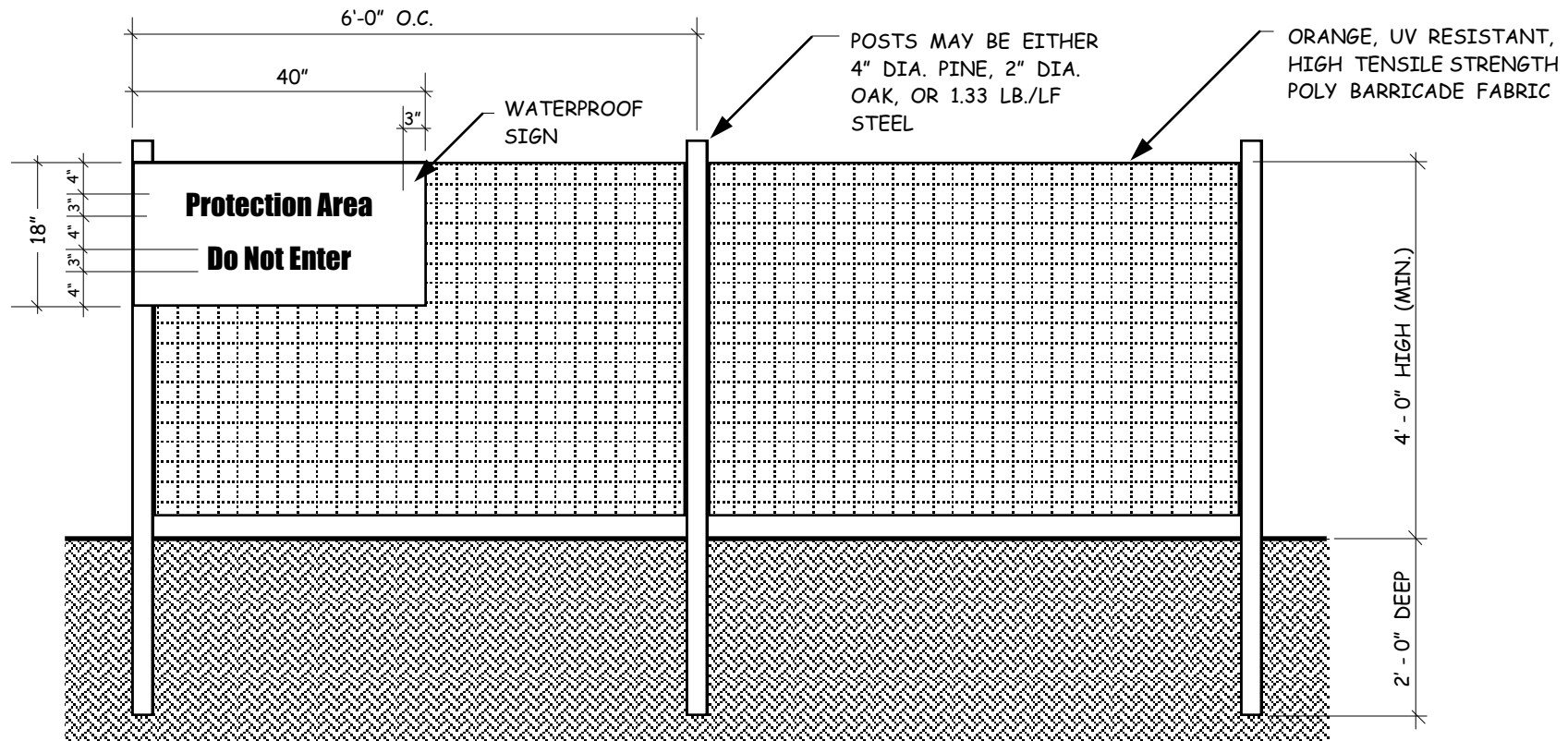
### OPTION 2



Symbol	Description
	R7-8 RESERVED PARKING SIGN

## ACCESSIBLE PARKING SPACES

## PROTECTION FENCE



### NOTES

- WARNING SIGNS TO BE MADE OF DURABLE WATERPROOF MATERIAL.
- ALL LETTERS TO BE AT LEAST 3-INCHES HIGH, CLEARLY LEGIBLE AND SPACED AS INDICATED ABOVE.
- SIGNS TO BE PLACED 200-FEET ON CENTER, MAX.
- SIGNS TO BE PLACED AT EACH END OF LINEAR TREE PROTECTION AREA AND 200-FEET ON CENTER THEREAFTER.
- FOR TREE PROTECTION AREAS LESS THAN 200-FEET IN PERIMETER, PROVIDE NO LESS THAN ONE SIGN PER PROTECTION AREA AND/OR SIDE.
- ATTACH SIGNS SECURELY TO FENCE POSTS AND FABRIC.
- FABRIC MUST BE ATTACHED TO APPROVED POSTS ONLY. DO NOT ATTACH TO TREES.
- MAINTAIN TREE PROTECTION FENCE THROUGHOUT DURATION OF PROJECT - FENCING MUST REMAIN UPRIGHT AND SLACK FREE.
- ADDITIONAL SIGNS AND/OR PROTECTION MEASURES MAY BE REQUIRED BY THE PLANNING DEPARTMENT BASED UPON ACTUAL FIELD CONDITIONS.
- FAILING TO MAINTAIN TREE PROTECTION MEASURES MAY RESULT IN FINES AND/OR PERMIT REVOCATION.





**APEX**  
NORTH CAROLINA

# Design and Development Manual

Updated 2023

# Table of Contents

Section	Page #
Landscaping	1
Native and Adaptive Plant List	1-23
Large Trees	1-4
Medium Trees	5
Small Trees	6-8
Large Shrubs	9-11
Small Shrubs	12-14
Parking Lot Shade Trees	15
Parking Lot Screening Shrubs	16
Trees Under Power Lines	17-18
Suggested Type A Buffer Trees & Shrubs	19-21
High-Quality Shade Trees	22-23
RCA Establishment Requirements	24-25
Tree Planting Guidelines	26
Planting in Special Situations	27
Tree Pruning	28
Recommended Plant List for BMPs	29-31
Mulch Standards	32-33
Small Town Character Residential Design Standards	34
Architectural Features	35
Decorative Features	36
Residential Standards-Roofs	37
Residential Standards-Facades	38
Residential Standards-Windows	39
Residential Standards-Sides facing public streets	40
Residential Standards-Entryways & Materials	41

## Native and Adaptive Plant Lists

The Native and Adaptive Plant Lists are in chart form and include descriptions of trees and shrubs. Native species shown are native to the eastern half of the United States. These plant lists are not intended to be all-inclusive. The intent of these lists is to encourage the use of landscape plants that are hardy in Apex and exhibit tolerance of urban conditions. Plants not on the native and adaptive plant list may be used with approval from the Planning Department.

Invasive species are prohibited. Please refer to the NC Invasive Plant Council for a list of prohibited plants.

<http://nc-ipc.weebly.com/nc-invasive-plants.html>

The Native and Adaptive Plant Lists are divided into the following categories:

- Large Trees (50+ feet tall)
- Medium Trees (30 – 50 feet tall)
- Small Trees (up to 30 feet tall)
- Large Shrubs (8+ feet tall)
- Small/Medium Shrubs (2 to 8 feet tall)

The following additional lists are provided, which show specific tree and shrub recommendations for specific situations.

- Parking Lot Shade Trees
- Parking Lot Screening Shrubs
- Trees & Large Shrubs Under Power Lines
- Suggested Type A Buffer Trees & Shrubs
- High-Quality Shade Trees

Large Trees (height ≥ 50 ft)					
Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/Deciduous	Comments
<b>Native Species:</b>					
<i>Acer rubrum</i>	Red Maple	40-60	30-40	D	Don't Plant Near Pavement; Natural Areas Only; Pollinator Friendly
<i>Acer saccharum</i>	Sugar Maple	60-75	40-50	D	Pollinator Friendly
<i>Acer x fremanii</i>	Freeman Maple	40-60	20-40	D	
<i>Betula nigra</i>	River Birch	40-70	40-60	D	
<i>Carya cordiformis</i>	Bitternut Hickory	50-70	40-50	D	Pollinator Friendly
<i>Carya glabra</i>	Pignut Hickory	50-60	25-35	D	Pollinator Friendly
<i>Carya illinoensis</i>	Pecan	70-100	40-75	D	Large Edible Nuts
<i>Carya ovata</i>	Shagbark Hickory	60-80	30-50	D	Pollinator Friendly

## Native and Adaptive Plant Lists

Large Trees (height ≥ 50 ft)					
Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/Deciduous	Comments
<i>Celtis laevigata</i>	Sugarberry	40-60	40-60	D	Bird & Pollinator Friendly
<i>Celtis occidentalis</i>	Common Hackberry	40-60	40-60	D	Bird & Pollinator Friendly
<i>Cladrastis lutea</i>	American Yellowwood	30-50	40-55	D	Large Attractive Flowers; Pollinator Friendly
<i>Diospyros virginiana</i>	American Persimmon	30-70	25-30	D	Large Fruit; Plant Away From Parking & Sidewalk
<i>Fagus grandiflora</i>	American Beech	50-70	30-40	D	Edible Nuts
<i>Fraxinus americana</i>	White Ash	50-80	40-50	D	Pollinator Friendly
<i>Fraxinus pennsylvanica</i>	Green Ash	50-60	20-30	D	Pollinator Friendly
<i>Gleditsia triacanthos</i> var. <i>inermis</i>	Thornless Honeylocust	30-70	30-70	D	Pollinator Friendly
<i>Gymnocladus dioica</i>	Kentucky Coffeetree	60-75	40-50	D	
<i>Ilex opaca</i>	American Holly	40-50	20-40	E	Tolerates Some Shade
<i>Juglans nigra</i>	Eastern Black Walnut	50-75	50-75	D	Edible Nuts
<i>Juniperus virginiana</i>	Eastern Red Cedar	40-50	10-20	E	Bird Friendly
<i>Liquidambar styraciflua</i> 'Rotundiloba'	Sweetgum, Fruitless	60-75	20-30	D	Quick Growth
<i>Liriodendron tulipifera</i>	Tulip Poplar	70-90	30-40	D	Quick Growth; Pollinator Friendly
<i>Magnolia acuminata</i>	Cucumber Magnolia	40-70	20-35	D	Pollinator Friendly
<i>Magnolia grandiflora</i>	Southern Magnolia	60-80	40-50	E	Pollinator Friendly
<i>Nyssa sylvatica</i>	Black Gum	30-50	20-30	D	Bird & Pollinator Friendly
<i>Pinus echinata</i>	Shortleaf Pine	50-60	20-35	E	
<i>Pinus palustris</i>	Longleaf Pine	60-80	30-40	E	
<i>Pinus taeda</i>	Loblolly Pine	60-100	25-35	E	Pollinator Friendly
<i>Platanus occidentalis</i>	American Sycamore	75-100	75-100	D	Large Root System; Not Good For Small Areas
<i>Prunus serotina</i>	Black Cherry	50-80	30-50	D	Bird & Pollinator Friendly; Tasty Fruit
<i>Quercus alba</i>	White Oak	50-80	50-80	D	
<i>Quercus bicolor</i>	Swamp White Oak	50-60	50-60	D	
<i>Quercus coccinea</i>	Scarlet Oak	60-80	40-50	D	
<i>Quercus falcata</i>	Southern Red Oak	60-80	60-70	D	
<i>Quercus imbricaria</i>	Shingle Oak	50-60	50-60	D	

## Native and Adaptive Plant Lists

Large Trees (height ≥ 50 ft)					
Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/Deciduous	Comments
<i>Quercus laurifolia</i>	Laurel Oak	60-70	35-45	D	
<i>Quercus lyrata</i>	Overcup Oak	40-70	35-50	D	
<i>Quercus michauxii</i>	Swamp Chestnut Oak	40-60	30-50	D	
<i>Quercus nuttallii</i>	Nuttall Oak	40-60	35-50	D	
<i>Quercus phellos</i>	Willow Oak	40-60	30-40	D	
<i>Quercus prinus</i>	Chestnut Oak	60-70	60-70	D	
<i>Quercus rubra</i>	Northern Red Oak	60-75	35-45	D	
<i>Quercus shumardii</i>	Shumard Oak	40-60	40-60	D	
<i>Quercus velutina</i>	Black Oak	50-60	40-70	D	
<i>Quercus virginiana</i>	Live Oak	40-80	60-100	E	
<i>Salix nigra</i>	Black Willow	30-60	30-60	D	Pollinator Friendly
<i>Sassafras albidum</i>	Sassafras	30-60	25-40	D	Pollinator Friendly
<i>Taxodium distichum</i>	Baldcypress	50-70	30-40	D	Drought Tolerant
<i>Tilia americana</i>	Basswood	50-80	30-50	D	Quick Growth; Pollinator Friendly
<i>Tsuga canadensis</i>	Eastern Hemlock	40-70	25-35	E	Susceptible To Hemlock Wolly Adelgid
<i>Ulmus americana</i> 'Princeton'	Princeton Elm	50-70	30-50	D	Susceptible to Dutch Elm Disease
<b>Introduced Adaptive Species:</b>					
<i>Cedrus deodara</i>	Deodar Cedar	40-70	20-40	E	
<i>Cercidiphyllum japonicum</i>	Katsuratree	40-60	20-30	D	
<i>Cryptomeria japonica</i>	Japanese Cryptomeria	50-60	20-30	E	Not Drought Tolerant
<i>Cunninghamia lanceolata</i>	Chinese Fir	30-70	10-30	E	
<i>Fagus sylvatica</i>	European Beech	50-60	35-45	D	
<i>Ginkgo biloba</i>	Ginkgo	25-50	25-35	D	Female Trees Have Unpleasant Odor
<i>Metasequoia glyptostroboides</i>	Dawn Redwood	70-100	20-30	E	
<i>Pinus nigra</i>	Austrian Pine	50-60	20-40	E	
<i>Pinus sylvestris</i>	Scotch Pine	30-60	30-40	E	
<i>Pinus thunbergi</i>	Japanese Black Pine	20-60	10-20	E	
<i>Ostrya carpinifolia</i>	European Hop Hornbeam	40-50	30-40	D	

## Native and Adaptive Plant Lists

Large Trees (height ≥ 50 ft)					
Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/Deciduous	Comments
<i>Quercus acutissima</i>	Sawtooth Oak	40-60	40-60	D	
<i>Quercus robur 'Fastigiata'</i>	Fastigiante English Oak	50-60	10-20	D	Narrow Canopy
<i>Salix alba</i>	Weeping Willow	30-40	30-40	D	
<i>Tilia cordata</i>	Little Leaf Linden	50-60	30-40	D	
<i>Tilia tomentosa</i>	Silver Linden	50-70	30-50	D	
<i>Thuja standishii x plicata 'Green Giant'</i>	Green Giant Arborvitae	50-60	10-20	E	Quick Growth
<i>X Cupressocyparis leylandii</i>	Leyland Cypress	60-70	15-25	E	Quick Growth
<i>Zelkova serrata</i>	Japanese Zelkova	50-80	50-75	D	

## Native and Adaptive Plant Lists

### Medium Trees (height 30-50 ft)

Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/Deciduous	Comments
<b>Native Species:</b>					
<i>Acer negundo</i>	Boxelder	30-50	35-40	D	
<i>Carpinus caroliniana</i>	American Hornbeam	20-35	20-35	D	
<i>Catalpa bignonioides</i>	Southern catalpa	30-40	30-40	D	Pollinator Friendly
<i>Chamaecyparis thyoides</i>	Atlantic white cedar	40-50	10-20	E	
<i>Cladrastis kentuckea</i>	American yellowwood	30-50	40-55	D	Pollinator Friendly
<i>Halesia Carolina</i>	Carolina Silverbell	30-40	20-35	D	Pollinator Friendly
<i>Ilex opaca</i>	American Holly	40-50	20-40	E	Pollinator & Bird Friendly
<i>Maclura pomifera</i>	Osage orange	30-40	20-40	D	Thorns
<i>Magnolia macrophylla</i>	Bigleaf magnolia	30-40	20-30	D	Large Flowers
<i>Magnolia tripetelata</i>	Umbrella magnolia	20-40	30-40	D	Large Flowers
<i>Oxydendrum arboreum</i>	Sourwood	20-50	10-25	D	Pollinator Friendly
<i>Pinus virginiana</i>	Virginia Pine	15-40	10-30	E	
<i>Thuja occidentalis</i>	Eastern Arborvitae	20-40	10-15	E	Many Cultivars Available; Shrub-Forms Available
<b>Introduced Adaptive Species:</b>					
<i>Acer buergerianum</i>	Trident Maple	25-35	15-25	D	
<i>Alnus cordata</i>	Italian alder	30-50	20-40	D	
<i>Carpinus betulus</i>	European Hornbeam	30-40	20-30	D	
<i>Cupressus arizonica</i>	Arizona cypress	30-40	8-12	E	
<i>Parrotia persica</i>	Persian ironwood	20-40	20-35	D	
<i>Phellodendron amurense</i>	Amur corktree	30-45	30-45	D	
<i>Ulmus parvifolia</i>	Chinese elm	40-50	35-50	D	

## Native and Adaptive Plant Lists

Small Trees (height ≤30 ft)					
Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/Deciduous	Comments
<b>Native Species:</b>					
<i>Acer leucoderme</i>	Chalkbark Maple	20-30	20-25	D	
<i>Aesculus pavia</i>	Red Buckeye	15-20	15-20	D	Toxic; Pollinator Friendly
<i>Amelanchier arborea</i>	Downy Serviceberry	10-25	10-15	D	Very Early Spring Flowers; Pollinator & Bird Friendly
<i>Amelanchier canadensis</i>	Shadblow Serviceberry	25-30	15-20	D	Very Early Spring Flowers; Pollinator & Bird Friendly
<i>Asimina triloba</i>	Pawpaw	15-30	15-20	D	Large Edible Fruit
<i>Cercis canadensis</i>	Eastern Redbud	20-30	25-35	D	Early Spring Flowers; Pollinator Friendly
<i>Chionanthus virginicus</i>	White Fringe Tree	15-20	15-20	D	Pollinator Friendly
<i>Cornus florida</i>	Flowering Dogwood	10-30	15-30	D	Spring Flowers; Pollinator & Bird Friendly
<i>Cornus alternatifolia</i>	Pagoda Dogwood	15-30	10-20	D	Spring Flowers; Pollinator & Bird Friendly
<i>Cotinus obovatus</i>	American Smoketree	10-30	15-20	D	Pollinator Friendly
<i>Crataegus phaenopyrum</i>	Washington Hawthorn	25-30	20-25	D	Pollinator & Bird Friendly
<i>Crataegus viridis</i>	Green Hawthorn	20-30	20-30	D	Pollinator & Bird Friendly
<i>Halesia diptera</i>	Two-Wing Silverbell	20-30	20-30	D	Showy Flowers; Pollinator Friendly
<i>Hamamelis virginiana</i>	Common Witchhazel	15-30	15-30	D	Pollinator Friendly
<i>Ilex cassine</i>	Dahoon Holly	20-30	10-15	E	Pollinator Friendly
<i>Ilex decidua</i>	Possumhaw	20-30	15-20	E	Pollinator & Bird Friendly
<i>Ilex vomitoria</i>	Yaupon Holly	15-20	10-15	E	Pollinator & Bird Friendly
<i>Ilex x 'Emily Bruner'</i>	Emily Bruner Holly	15-20	8-10	E	
<i>Magnolia grandiflora</i> 'Little Gem'	Little Gem Magnolia	15-20	8-10	E	Pollinator & Bird Friendly
<i>Magnolia virginiana</i>	Sweetbay Magnolia	10-30	15-20	E	Pollinator & Bird Friendly
<i>Malus angustifolia</i>	Southern Crabapple	25-30	25-30	D	Pollinator & Bird Friendly
<i>Malus coronaria</i>	American/Sweet Crabapple	15-30	20-30	D	Needs Moist Soils; Pollinator Friendly
<i>Morus rubra</i>	Red Mulberry	20-45	35-40	D	Pollinator & Bird Friendly; Messy Edible Fruit
<i>Myrica cerifera</i>	Southern Wax Myrtle	15-25	15-25	E	Bird Friendly
<i>Myrica pennsylvanica</i>	Northern Bayberry	5-10	5-10	D	Bird Friendly
<i>Prunus americana</i>	American Red Plum	15-25	15-20	D	Pollinator & Bird Friendly



## Native and Adaptive Plant Lists

Small Trees (height ≤30 ft)					
Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/Deciduous	Comments
<i>Prunus caroliniana</i>	Carolina Cherrylaurel	20-30	15-25	E	Toxic; Pollinator & Bird Friendly
<i>Prunus virginiana</i>	Common Chokecherry	15-20	10-15	D	Pollinator & Bird Friendly
<i>Rhus copallina</i>	Shining Or Winged Sumac	15-25	15-25	D	Pollinator & Bird Friendly
<i>Rhus typhina</i>	Staghorn Sumac	15-25	15-25	D	Pollinator & Bird Friendly
<b>Introduced Adaptive Species:</b>					
<i>Abies firma</i>	Japanese Fir	20-30	10-15	E	
<i>Acer carpiniifolium</i>	Hornbeam Maple	15-25	15-25	D	
<i>Acer cissifolium</i>	Ivy-Leaved Maple	20-30	20-30	D	
<i>Acer ginnala</i>	Amur Maple	15-20	15-30	D	
<i>Acer griseum</i>	Paperbark Maple	20-30	15-20	D	
<i>Acer palmatum</i>	Japanese Maple	15-20	10-15	D	
<i>Acer tartaricum</i>	Tatarian Maple	15-25	10-15	D	
<i>Acer truncatum</i>	Purpleblow Maple	20-25	15-20	D	
<i>Cephalotaxus harringtonia</i>	Japanese Plum Yew	10-25	20-30	E	
<i>Cercis reniformis</i>	Oklahoma Redbud	15-25	15-25	D	Spring Flowers; Pollinator Friendly
<i>Chionanthus retusus</i>	Chinese Fringe Tree	15-25	10-25	D	Spring Flowers; Pollinator Friendly
<i>Cornus kousa</i>	Kousa Dogwood	10-30	15-30	D	Spring Flowers; Pollinator Friendly
<i>Cornus mas</i>	Cornelian Cherry Dogwood	20-25	15-20	D	Spring Flowers; Pollinator Friendly
<i>Cotinus coggygria</i>	Common Smoketree	10-30	15-20	D	
<i>Hamamelis x intermedia</i>	Hybrid Witchhazel	12-15	12-15	D	
<i>Ilex x attenuata</i>	Hybrid Holly	15-30	10-15	E	
<i>Ilex x 'Dr. Kassab'</i>	Dr. Kassab Holly	15-20	10-15	E	
<i>Ilex x 'Nellie R. Stevens'</i>	Nellie R. Stevens	15-25	10-15	E	Bird & Pollinator Friendly
<i>Lagerstroemia fauriei</i>	Japanese Crapemyrtle	10-25	20-25	D	Summer Flowers
<i>Lagerstroemia indica &amp; hybrids</i>	Common Crapemyrtle	10-25	20-25	D	Summer Flowers
<i>Magnolia stellata</i>	Star Magnolia	15-20	10-15	D	Spring Flowers
<i>Magnolia x loebneri</i>	Loebner Magnolia	20-30	20-40	D	Spring Flowers
<i>Magnolia x soulangiana</i>	Saucer Magnolia	20-30	20-30	D	Spring Flowers

## Native and Adaptive Plant Lists

Small Trees (height ≤30 ft)					
Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/Deciduous	Comments
<i>Malus spp.</i>	Flowering Crabapple	15-25	10-20	D	Most Crabapples Are Non-Native; Spring Flowers; Bird & Pollinator Friendly
<i>Photinia x fraseri</i>	Fraser Photinia	15-25	10-20	E	
<i>Pistachia chinensis</i>	Chinese Pistache	30-35	25-35	D	
<i>Prunus hybrids</i>	Cherry	Varies	Varies	D	Spring Flowers; Bird & Pollinator Friendly
<i>Prunus mume</i>	Japanese Apricot	15-20	15-20	D	Spring Flowers; Pollinator Friendly
<i>Prunus persica</i>	Common Peach	15-25	15-25	D	Spring Flowers; Pollinator Friendly
<i>Prunus sargentii</i>	Sargent Cherry	20-30	20-30	D	Spring Flowers; Bird & Pollinator Friendly
<i>Prunus serrulata</i>	Flowering Cherry	15-30	20-30	D	Spring Flowers; Bird & Pollinator Friendly
<i>Prunus subhirtella</i>	Higan Cherry	20-40	15-30	D	Spring Flowers; Bird & Pollinator Friendly
<i>Prunus x yedoensis</i>	Yoshino Cherry	20-30	20-30	D	Spring Flowers; Bird & Pollinator Friendly
<i>Quercus glauca</i>	Blue Japanese Oak	20-30	10-15	D	
<i>Styrax japonicus</i>	Japanese Snowbell	20-30	15-30	D	Spring Flowers; Pollinator Friendly
<i>Syringa reticulata</i>	Japanese Tree Lilac	25-30	20-25	D	Spring Flowers; Pollinator Friendly
<i>Thuja orientalis</i>	Western Arborvitae	20-25	10-25	E	

## Native and Adaptive Plant Lists

### Large Shrub List (8-25 ft)

Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/ Deciduous	Comments
<b>Native Species:</b>					
<i>Aesculus parviflora</i>	Bottlebrush buckeye	8-12	8-15	D	Summer Flowers; Pollinator Friendly;
<i>Aronia arbutifolia</i>	Red Chokecherry	6-10	3-5	D	Pollinator & Bird Friendly;
<i>Calycanthus floridus</i>	Carolina Allspice	6-9	6-12	D	Great Fragrance.
<i>Camellia sasanqua</i>	Sasanqua Camellia	6-10	5-7	E	Showy Early Spring Flowering.
<i>Chimonanthus virginicus</i>	Fringetree	12-20	12-20	D	Showy Flowers.
<i>Clethra acuminata</i>	Cinnamonbark	8-15	4-6	D	Summer Flowers; Pollinator Friendly;
<i>Cornus amomum</i>	Silky Dogwood	10-15	6-12	D	Summer Flowers; Pollinator Friendly;
<i>Corylus americana</i>	American Hazelnut	12-15		D	Edible Nuts. Suckers. Pollinator & Bird Friendly;
<i>Fothergilla major</i>	Large Fothergilla	6-10	6-8	D	Showy Flowers; Pollinator Friendly;
<i>Hamamelis vernalis</i>	Witchhazel	6-10	6-10	D	Showy Flowers; Pollinator Friendly;
<i>Ilex verticillata</i>	Winterberry Holly	6-10	6-10	D	Berries; Pollinator & Bird Friendly;
<i>Ilex vomitoria</i>	Yaupon Holly	15-20	8-12	E	Many Cultivars Available.
<i>Illicium floridanum</i>	Florida Anise	10-15	6-8	E	Showy Flowers; Pollinator Friendly
<i>Illicium parviflorum</i>	Yellow Anise	10-15	6-10	E	Showy Flowers; Pollinator Friendly
<i>Kalmia latifolia</i>	Mountain Laurel	7-15	7-15	E	Showy Flowers; Pollinator Friendly
<i>Leucothoe populifolia</i>	Florida Leucothoe	8-12	6-8	E	Toxic; Forms Thickets; Pollinator & Bird Friendly;
<i>Lindera benzoin</i>	Spicebush	8-15	6-10	D	Pollinator & Bird Friendly;
<i>Myrica cerifera</i>	Wax Myrtle	10-15	8-12	E	Good For Light Screening. Ice Damage.
<i>Rhododendron catawbiense</i>	Mountain Rosebay	6-10	8-10	E	Spring Flowers; Pollinator Friendly;
<i>Rhododendron periclymenoides</i>	Pinxter Azalea	4-10	4-5	D	Spring Flowers; Pollinator Friendly;
<i>Rhododendron vaseyi</i>	Pinkshell Azalea	5-15	5-10	E	Spring Flowers; Pollinator Friendly;
<i>Sambucus canadensis</i>	American Elderberry	5-12	6-12	D	Suckers; Pollinator & Bird Friendly; Tasty Berries
<i>Vaccinium corymbosum</i>	Highbush blueberry	6-12	3-10	D	Good Fall Color; Pollinator & Bird Friendly; Tasty Berries
<i>Viburnum dentatum</i>	Arrowwood Viburnum	6-10	6-10	D	Pollinator & Bird Friendly;
<i>Viburnum lentago</i>	Nannyberry Viburnum	12-18	6-12	D	Pollinator & Bird Friendly;
<i>Viburnum prunifolium</i>	Smooth Blackhaw	12-15	6-12	D	Pollinator & Bird Friendly;
<i>Viburnum nudum</i>	Possumhaw or Witherod	5-12	5-12	D	Pollinator & Bird Friendly;
<i>Viburnum trilobum</i>	American Cranberrybush	8-15	8-10	D	Pollinator & Bird Friendly;

## Native and Adaptive Plant Lists

Large Shrub List (8-25 ft)					
Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/Deciduous	Comments
<i>Weigela florida</i>	Weigila	6-9	6-12	D	Showy Spring Flowers.
<b>Introduced Adaptive Species:</b>					
<i>Aucuba japonica</i>	Acuba	6-10	4-8	E	Dwarf Varieties Available. Tolerates Poor Drainage
<i>Berberis julianae</i>	Wintergreen Barberry	6-8	6-8	E	Thorns. Good For Screening.
<i>Buxus sempervirens</i>	Common Boxwood	15-20	15-20	E	Many Cultivars Available
<i>Camellia japonica</i>	Japanese Camellia	10-15	6-10	E	Showy Early Spring Flowering
<i>Chimonanthus praecox</i>	Fragrant Wintersweet	10-15	8-12	D	Fragrant Winter Flowers.
<i>Cleyera japonica</i>	Japanese Cleyera	8-12	6-7	E	
<i>Cotoneaster salicifolius</i>	Willowleaf Cotoneaster	10-15	7-12	E	
<i>Deutzia scabra</i>	Pride of Rochester	6-10	4-8	D	Showy Spring Flowers.
<i>Euonymus japonicus</i>	Dwarf Japanese Euonymus	10-15	5-7	E	
<i>Euonymus kiautschovicus</i>	Spreading Euonymus	8-10	4-8	D	
<i>Exochorda racemosa</i>	Pearlbush	10-15	10-15	D	Spring Flowering.
<i>Forsythia x</i>	Forsythia	8-10	10-12	D	Early Spring Flowers.
<i>Hibiscus syriacus</i>	Rose of Sharon	8-12	6-10	D	Showy Summer Flowers; Aggressively Self-Seeds.
<i>Hydrangea paniculata</i>	Panicle Hydrangea	10-20	10-20	D	
<i>Ilex aquifolia</i>	English Holly	8-12	8-12	E	
<i>Ilex cornuta</i>	Chinese or Burford Holly	8-10	8-10	E	Many Cultivars Available
<i>Ilex latifolia</i>	Lusterleaf Holly	20-25	7-11	E	
<i>Ilex x 'Nellie R. Stevens'</i>	Nellie Stevens Holly	15-25	15-25	E	Good For Screening; Bird Friendly.
<i>Illicium anisatum</i>	Anisetree	6-10	6-10	E	Good For Screening.
<i>Lonicera fragrantissima</i>	Winter Honeysuckle	8-12	6-10	D	
<i>Loropetalum chinense</i>	Chinese Fringe-flower	6-10	6-10	E	
<i>Magnolia figo</i>	Banana Shrub	6-8	6-8	E	
<i>Magnolia stellata</i>	Star Magnolia	15-20	10-15	D	
<i>Osmanthus fragrans</i>	Sweet Osmanthus	10-12	10-14	E	
<i>Osmanthus heterophyllus</i>	False Holly	8-10	8-10	E	
<i>Prunus laurocerasus</i>	English Laurel	10-18	25-30	E	Many Cultivars Available
<i>Viburnum dilatatum</i>	Linden Viburnum	8-10	6-8	D	Red Fruit.

## Native and Adaptive Plant Lists

### Large Shrub List (8-25 ft)

Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/ Deciduous	Comments
<i>Viburnum opulus</i>	Cranberrybush Viburnum	8-12	10-15	D	
<i>Viburnum plicatum</i>	Doublefile Viburnum	8-10	9-12	D	Accent Plant. Spring Flowers.
<i>Viburnum rhytidophyllum</i>	Leatherleaf Viburnum	10-15	10-15	E	
<i>Viburnum x burkwoodii</i>	Burkwood Viburnum	8-10	5-7	D	Fragrant Pink Spring Blossoms. Nice Accent Plant.
<i>Vitex agnus castus</i>	Chaste Tree	10-12	8-10	D	Summer Flowers; Bee Favorite

## Native and Adaptive Plant Lists

### Small to Medium Shrub List (height ≤ 8 ft)

Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/ Deciduous	Comments
<b>Native Species:</b>					
<i>Amorpha canescens</i>	Lead Plant	2-3	2-6	D	Pollinator Friendly; Showy Flowers.
<i>Amorpha nana</i>	Fragrant False Indigo	1-2	1-3	D	Pollinator Friendly; Showy Flowers.
<i>Aronia melanocarpa</i>	Black Chokeberry	3-5	3-5	D	Pollinator Friendly; Spring Flowers.
<i>Callicarpa americana</i>	American Beautyberry	3-8	4-6	D	Pollinator & Bird Friendly; Showy Berries.
<i>Ceanothus americanus</i>	New Jersey Tea	2-3	3-4	D	Pollinator Friendly; Showy Flowers.
<i>Cephalanthus occidentalis</i>	Buttonbush	5-8	3-6	D	Pollinator Friendly; Showy Flowers.
<i>Clethra alnifolia</i>	Summersweet Clethra	4-8	4-6	D	Pollinator Friendly; Summer Flowers
<i>Cornus stolonifera</i>	Red Osier Dogwood	7-8	4-6	D	Pollinator Friendly; Summer Flowers
<i>Diervilla sessilifolia</i>	Southern Bush Honeysuckle	3-5	3-5	D	Pollinator Friendly; Summer Flowers
<i>Diervilla lonicera</i>	Bush Honeysuckle	2-4	2-4	D	Pollinator Friendly; Showy Flowers.
<i>Euonymus americanus</i>	Strawberry Bush	4-5	3-5	D	Pollinator Friendly; Summer Flowers
<i>Fothergilla gardenii</i>	Dwarf Fothergilla	2-3	2-3	D	Pollinator Friendly; Summer Flowers
<i>Hydrangea arborescens</i>	Smooth Hydrangea	3-5	3-5	D	Pollinator Friendly; Summer Flowers
<i>Hydrangea quercifolia</i>	Oakleaf Hydrangea	6-8	6-8	D	Pollinator Friendly; Summer Flowers
<i>Hypericum densiflorum</i>	Dense St. Johns Wort	4-6	4-6	D	Pollinator Friendly; Summer Flowers
<i>Hypericum prolificum</i>	Shrubby St. Johns Wort	1-4	1-4	D	Pollinator Friendly; Summer Flowers
<i>Ilex glabra</i>	Inkberry Holly	6-8	8-10	E	Pollinator & Bird Friendly
<i>Itea virginica</i>	Virginia Sweetspire	3-5	4-6	D	Pollinator Friendly; Summer Flowers
<i>Juniperus horizontalis</i>	Creeping Juniper	1	4-8	E	Good For Banks/Slopes As A Groundcover.
<i>Leucothoe axillaris</i>	Doghobble	3-4	4-6	D	Pollinator Friendly; Spring Flowers.
<i>Leucothoe fontanesiana</i>	Drooping Leucothoe	3-5	2-3	E	Pollinator Friendly; Spring Flowers.
<i>Lyonia lucida</i>	Fetterbush	3-6	3-6	E	Pollinator Friendly; Spring Flowers.
<i>Physocarpus opulifolius</i>	Ninebark	5-8	4-8	D	Pollinator Friendly; Summer Flowers.
<i>Rhododendron atlanticum</i>	Dwarf or Coastal Azalea	2-6	2-5	D	Spring Flowers; Pollinator & Bird Friendly
<i>Rhododendron carolinianum</i>	Carolina Rhododendron	3-6	3-6	E	Spring Flowers; Pollinator & Bird Friendly
<i>Rhododendron calendulaceum</i>	Flame Azalea	4-8	8-10	D	Pollinator Friendly; Late Spring Flowers
<i>Rhus aromatica</i>	Fragrant Sumac	2-6	6-10	D	Stabilizes Slopes; Pollinator Friendly; Appearance Similar To Poison Ivy.
<i>Rosa carolina</i>	Carolina Rose	3-6	5-10	D	Stabilizes Slopes; Pollinator Friendly

## Native and Adaptive Plant Lists

### Small to Medium Shrub List (height ≤ 8 ft)

Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/Deciduous	Comments
<i>Rosa paulstris</i>	Swamp Rose	3-6	3-6	D	Pollinator Friendly
<i>Spiraea alba</i>	Meadowsweet	3-4	3-4	D	Pollinator Friendly
<i>Spiraea betulifolia</i>	White Spirea	2-3	2-3	D	Pollinator Friendly
<i>Spiraea tomentosa</i>	Steeplebush	2-4	3-5	D	Pollinator Friendly
<i>Vaccinium ashei</i>	Rabbiteye Blueberry	4-6	3-5	D	Edible Fruit; Pollinator & Bird Friendly
<i>Vaccinium pallidum</i>	Lowbush Blueberry	2-3	2-3	D	Pollinator & Bird Friendly; Spring Flowers; Edible Fruit;
<i>Virburnum acerifolium</i>	Mapleleaf Viburnum	4-6	3-4	D	Pollinator & Bird Friendly; Spring Flowers.
<i>Viburnum cassinoides</i>	Witherod Viburnum	5-6	5-8	D	Pollinator & Bird Friendly; Spring Flowers.
<i>Viburnum nudum</i>	Smooth Witherod	4-6	5-8	D	Pollinator & Bird Friendly; Spring Flowers.
<b>Introduced adaptive species:</b>					
<i>Abelia x grandiflora</i>	Glossy Abelia	4-6	3-5	E	Showy Summer Flowers.
<i>Berberis verruculosa</i>	Warty Barberry	3-6	3-6	E	Thorns; Many Cultivars Available;
<i>Berberis x chenaultii</i>	Chenault Barberry	3-4	3-4	E	Thorns; Many Cultivars Available;
<i>Berberis x mentorensis</i>	Mentor Barberry	4-6	5-7	D	
<i>Buxus microphylla</i>	Littleleaf Boxwood	3-4	3-4	E	
<i>Callicarpa japonica</i>	Japanese Beautyberry	4-6	4-6	D	Showy Berries
<i>Chaenomeles japonica</i> <i>Japanese</i>	Flowering Quince	2-3	2-3	D	Spring Flowering.
<i>Cotoneaster divaricatus</i>	Spreading Cotoneaster	5-6	6-8	D	Red Berries.
<i>Cotoneaster horizontalis</i>	Rockspray Cotoneaster	2-3	5-8	E	Red Berries.
<i>Cytisus scoparius</i>	Scotch Broom	5-6	5-8	D	
<i>Deutzia</i>	Deutzia	2-4	3-4	D	Showy Spring Flowers.
<i>Hydrangea macrophylla</i>	Mophead Hydrangea	3-6	3-6	D	Large Flowers;
<i>Ilex crenata</i>	Japanese Holly	5-10	5-10	E	Many Cultivars Available. Low Screening.
<i>Jasminum nudiflorum</i>	Winter Jasmine	3-4	4-7	D	Showy Flowers. Stabilizes Slopes
<i>Juniperus chinensis</i>	Chinese Juniper	2-6	2-6	E	
<i>Juniperus conferta</i>	Shore Juniper	1-2	6-9	E	Many Cultivars Available; Stabilizes Slopes.
<i>Juniperus procumbens</i>	Japanese Garden Juniper	1-2	10-15	E	
<i>Kerria japonica</i>	Japanese Kerria	3-6	6-9	D	Yellow Flowers In The Spring.
<i>Lonicera nitida</i>	Box Honeysuckle	5-6	3-4	E	Fragrant White Flowers.

## Native and Adaptive Plant Lists

### Small to Medium Shrub List (height ≤ 8 ft)

Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/Deciduous	Comments
<i>Mahonia aquifolium</i>	Oregon Grape Holly	3-6	3-5	E	
<i>Prunus laurocerasus</i>	Dwarf English Laurel	3-4	3-4	E	
<i>Rosmarinus officianalis</i>	Rosemary	4-6	3-6	E	Edible;
<i>Spirea japonica</i>	Japanese Spiraea	4-5	4-5	D	
<i>Spirea thunbergii</i>	Thunberg Spirea	3-5	3-5	D	
<i>Spirea x bumalda</i>	Bumald Spiraea	2-3	3-5	D	Good Fall Color, Spring Flowers.



## Native and Adaptive Plant Lists

### Parking Lot Shade Tree List

This list is intended to provide trees that adapt well to parking lot conditions and meet the requirements of UDO Sec. 8.2.5.C.2.

Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/ Deciduous	Comments
<b>Native Species:</b>					
Amelanchier canadensis	Shadblow Serviceberry	25-30	15-20	D	Very Early Spring Flowers; Pollinator & Bird Friendly
Gleditsia triacanthos var. inermis	Thornless Honeylocust	30-70	30-70	D	Pollinator Friendly
Liquidambar styraciflua 'Rotundiloba'	Sweetgum, Fruitless	60-75	20-30	D	Quick Growth
Nyssa sylvatica	Black Gum	30-50	20-30	D	Pollinator & Bird Friendly
Quercus lyrata	Overcup Oak	40-70	35-50	D	
Quercus nuttallii	Nuttall Oak	40-60	35-50	D	
Quercus shumardii	Shumard Oak	40-60	40-60	D	
Taxodium distichum	Baldcypress	50-70	30-40	D	Drought Tolerant
Ulmus americana 'Princeton'	Princeton Elm	50-70	30-50	D	Susceptible to Dutch Elm Disease
<b>Introduced Adaptive Species:</b>					
Acer buergerianum	Trident Maple	25-35	15-25	D	
Acer truncatum	Purpleblow Maple	20-25	15-20	D	
Carpinus betulus	European Hornbeam	40-60	30-40	D	
Ginkgo biloba	Ginkgo	25-50	25-35	D	Flowers On Female Trees Have Unpleasant Odor
Lagerstroemia indica & hybrids	Common Crape myrtle	10-25	20-25	D	Summer Flowers
Parrotia persica	Persian ironwood	20-40	20-35	D	
Pistachia chinensis	Chinese Pistache	30-35	25-35	D	
Tilia tomentosa	Silver Linden	50-70	30-50	D	
Ulmus parvifolia	Chinese elm	40-50	35-50	D	
Zelkova serrata	Japanese Zelkova	50-80	50-75	D	

## Native and Adaptive Plant Lists

### Vehicle Use Area Screening Shrubs

This list is intended to provide evergreen shrubs that adapt well to parking lot conditions and meet the requirements of UDO Sec. 8.2.5.B.2.a.

Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Sun/Shade	Comments
<b>Native Species:</b>					
<i>Ilex glabra</i>	Inkberry	6-8	8-10	Sun	Pollinator & Bird Friendly
<i>Ilex vomitoria</i>	Yaupon Holly	3-5	3-5	Sun	Pollinator & Bird Friendly
<i>Illicium floridanum</i>	Florida Anise	10-15	6-8	Shade – Part Shade	Showy Flowers; Pollinator Friendly
<i>Juniperus virginiana</i>	Red Cedar – shrub form	3-8	3-6	Sun	Bird Friendly
<i>Kalmia latifolia</i>	Mountain Laurel	7-15	7-15	Sun – Part Sun	Showy Flowers; Pollinator Friendly
<i>Myrica pusilla</i>	Dwarf Wax Myrtle	5	5	Sun – Part Sun	Bird Friendly
<i>Pinus strobus</i> ‘Nana’	Dwarf Eastern White Pine ‘Nana’	6	10	Sun	
<i>Rhododendron carolinianum</i>	Carolina Rhododendron	3-6	3-6	Sun – Part Shade	Pollinator & Bird Friendly
<i>Thuja occidentalis</i>	Arborvitae – shrub form	2-10	2-6	Sun	
<i>Tsuga Canadensis</i>	Dwarf Eastern Hemlock	5-8	3-6	Sun – Part Shade	
<b>Introduced Adaptive Species:</b>					
<i>Abelia x grandiflora</i>	Glossy Abelia	4-6	3-5	Sun – Part Sun	Bird Friendly
<i>Acuba japonica</i>	Japanese Acuba	6-10	4-8	Shade	
<i>Buxus microphylla</i>	Littleleaf Boxwood	3-4	3-4	Sun – Part Sun	
<i>Buxus sempervirens</i>	Boxwood	15-20	15-20	Sun – Part Sun	
<i>Camellia japonica</i>	Japanese Camellia	10-15	6-10	Shade – Full Shade	
<i>Euonymus japonicus</i>	Japanese Euonymus	10-15	5-7	Sun – Part Sun	
<i>Gardenia jasminoides</i>	Gardenia	3-10	2-10	Part Sun	
<i>Ilex cornuta</i>	Chinese Holly	8-10	8-10	Sun – Part Sun	
<i>Juniperus chinensis</i>	Chinese Juniper	2-6	2-6	Sun – Part Sun	
<i>Prunus laurocerasus</i>	English Laurel	3-4	3-4	Sun – Part Sun	
<i>Rhododendron x</i>	Azalea	3-15	3-12	Shade – Part Shade	
<i>Spirea japonica</i>	Japanese Spirea	4-5	4-5	Sun – Part Sun	
<i>Viburnum awabuki</i>	Chindo Viburnum	6-12	6-10	Sun – Part Sun	Bird Friendly
<i>Viburnum tinus</i>	Laurustinus ‘Compactum’	6-10	6-10	Sun – Part Sun	Bird Friendly
<i>Viburnum x pragense</i>	Prague Viburnum	10-12	8-10	Sun – Part Sun	Bird Friendly

## Native and Adaptive Plant Lists

### Recommended Trees & Large Shrubs Under Electric Lines

Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/ Deciduous	Comments
<b>Native Species:</b>					
<i>Aesculus pavia</i>	Red Buckeye	15-20	15-20	D	
<i>Amelanchier arborea</i>	Downy Serviceberry	10-25	10-15	D	Very Early Spring Flowers; Pollinator & Bird Friendly
<i>Amelanchier x grandiflora</i> 'Autumn Brilliance'	Autumn Brilliance Serviceberry	15-20	15-20	D	Very Early Spring Flowers; Pollinator & Bird Friendly
<i>Aronia arbutifolia</i>	Red Chokecherry	8-12	4-6	D	Spring Flowers; Pollinator & Bird Friendly
<i>Chionanthus virginicus</i>	White Fringe Tree	15-20	15-20	D	Spring Flowers; Pollinator & Bird Friendly
<i>Cotinus obovatus</i>	American Smoketree	15-25	20-25	D	Spring Flowers; Pollinator & Bird Friendly
<i>Ilex vomitoria</i>	Yaupon Holly	15-20	10-15	E	Pollinator & Bird Friendly
<i>Ilex x 'Emily Bruner'</i>	Emily Bruner Holly	15-20	8-10	E	Pollinator & Bird Friendly
<i>Juniperus virginiana</i> 'Blue Arrow'	Blue Arrow Red Cedar	10-15	4-6	E	Bird Friendly
<i>Juniperus virginiana</i> 'Skyrocket'	Skyrocket Red Cedar	10-20	3-4	E	Bird Friendly
<i>Magnolia grandiflora</i> 'Little Gem'	Little Gem Magnolia	15-20	8-10	E	Pollinator & Bird Friendly
<i>Magnolia virginiana</i>	Sweetbay Magnolia	10-30	15-20	E	Pollinator & Bird Friendly
<i>Myrica cerifera</i>	Southern Wax Myrtle	15-25	15-25	E	Bird Friendly
<i>Prunus americana</i>	American Red Plum	15-25	15-20	D	Pollinator & Bird Friendly
<i>Prunus caroliniana</i>	Carolina Cherrylaurel	10-20	10-15	E	Pollinator & Bird Friendly
<i>Prunus virginiana</i>	Common Chokecherry	15-20	10-15	D	Pollinator & Bird Friendly
<i>Rhus copallina</i>	Shining Or Winged Sumac	15-25	15-25	D	Pollinator & Bird Friendly
<i>Rhus typhina</i>	Staghorn Sumac	15-25	15-25	D	Pollinator & Bird Friendly
<i>Thuja occidentalis</i>	"Emerald" Arborvitae	15-20	5	E	
<i>Viburnum lentago</i>	Nannyberry Viburnum	12-18	15	D	Pollinator & Bird Friendly
<b>Introduced Adaptive Species:</b>					
<i>Acer buergerianum</i>	Trident Maple	30	30	D	
<i>Acer carpinifolium</i>	Hornbeam Maple	15-25	15-25	D	
<i>Acer ginnala</i>	Amur Maple	15-20	15-30	D	
<i>Acer palmatum</i>	Japanese Maple	15-20	10-15	D	
<i>Acer tartaricum</i>	Tatarian Maple	15-25	10-15	D	
<i>Acer truncatum</i>	Purpleblow Maple	20-25	15-20	D	
<i>Cephalotaxus harringtonia</i>	Japanese Plum Yew	10-25	20-30	E	

## Native and Adaptive Plant Lists

### Recommended Trees & Large Shrubs Under Electric Lines

Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/Deciduous	Comments
<i>Cercis reniformis</i>	Oklahoma Redbud	15-25	15-25	D	Pollinator Friendly
<i>Chionanthus retusus</i>	Chinese Fringe Tree	15-25	10-25	D	Spring Flowers; Pollinator Friendly
<i>Cornus mas</i>	Cornelian Cherry Dogwood	20-25	15-20	D	Spring Flowers; Pollinator Friendly
<i>Cornus kousa</i>	Kousa Dogwood	20	20	D	Spring Flowers; Pollinator Friendly
<i>Cotinus coggyria</i>	Smoketree	15	15	D	Spring Flowers; Pollinator Friendly
<i>Ilex x 'Dr. Kassab'</i>	Dr. Kassab Holly	15-20	10-15	E	Bird Friendly
<i>Ilex x 'Nellie R. Stevens'</i>	Nellie R. Stevens	15-25	10-15	E	Bird & Pollinator Friendly
<i>Juniperus scopulorum 'Wichita Blue'</i>	Wichita Blue Juniper	10-15	6-8	E	Bird Friendly
<i>Lagerstoemia fauriei</i>	Japanese Crapemyrtle	10-25	20-25	D	Summer Flowers
<i>Lagerstroemia indica &amp; hybrids</i>	Common Crapemyrtle	10-25	20-25	D	Summer Flowers
<i>Magnolia stellata</i>	Star Magnolia	15-20	10-15	D	
<i>Photinia x fraseri</i>	Fraser Photinia	15-25	10-20	E	Bird Friendly
<i>Prunus cerasifera</i>	Cherry Plum	15-20	15-20	D	Spring Flowers; Bird & Pollinator Friendly
<i>Prunus mume</i>	Japanese Apricot	15-20	15-20	D	Spring Flowers; Pollinator Friendly
<i>Prunus persica</i>	Common Peach	15-25	15-25	D	Spring Flowers; Pollinator Friendly
<i>Prunus serrulata</i>	Flowering Cherry	15-25	20-30	D	Spring Flowers; Bird & Pollinator Friendly
<i>Styrax japonicas</i>	Japanese Snowbell	20-25	20-25	D	Spring Flowers; Pollinator Friendly
<i>Syringa oblata</i>	Early Lilac	10-15	10	D	Spring Flowers; Pollinator Friendly
<i>Syringa reticulata</i>	Japanese Tree Lilac	25	20-25	D	Spring Flowers; Pollinator Friendly
<i>Viburnum sieboldii</i>	Siebold Viburnum	20	15	D	Spring Flowers; Bird & Pollinator Friendly

## Native and Adaptive Plant Lists

### Type A Buffer Tree List

Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Sun/Shade	Comments
<b>Native Species:</b>					
<i>Chamaecyparis thyoides</i>	Atlantic white cedar	40-50	10-20	sun	
<i>Ilex cassine</i>	Dahoon Holly	20-30	10-15	sun	Pollinator Friendly
<i>Ilex opaca</i>	American Holly	40-50	20-40	sun	Pollinator & Bird Friendly
<i>Ilex vomitoria</i>	Yaupon Holly	15-20	10-15	sun	Pollinator Friendly
<i>Juniperus virginiana</i>	Eastern Red Cedar	40-50	10-20	sun	Bird Friendly
<i>Magnolia grandiflora</i>	Southern Magnolia	60-80	40-50	sun – part sun	Pollinator & Bird Friendly
<i>Magnolia virginiana</i>	Sweetbay Magnolia	10-30	15-20	sun – part sun	Pollinator & Bird Friendly
<i>Pinus virginiana</i>	Virginia Pine	15-40	10-30	sun	
<i>Prunus caroliniana</i>	Carolina Cherry Laurel	20-30	15-25	sun	Toxic; Pollinator & Bird Friendly
<i>Thuja occidentalis</i>	Eastern Arborvitae	20-40	10-15	sun	Many Cultivars Available; Shrub-Forms Available
<i>Tsuga canadensis</i>	Canadian Hemlock	40-70	25-35	sun	
<b>Introduced Adaptive Species:</b>					
<i>Abies firma</i>	Japanese Fir	20-30	10-15	sun – part sun	
<i>Cedrus deodara</i>	Deodar Cedar	40-70	20-40	sun – part sun	
<i>Cryptomeria japonica</i>	Japanese Cryptomeria	50-60	20-30	shade	
<i>Cunninghamia lanceolata</i>	Chinese Fir	30-70	10-30	sun – part sun	
<i>Cupressus arizonica</i>	Arizona cypress	30-40	8-12	sun – part sun	
<i>Ilex x attenuata</i>	Hybrid Holly	15-30	10-15	sun – part sun	
<i>Ilex x 'Dr. Kassab'</i>	Dr. Kassab Holly	15-20	10-15	sun – part sun	Bird Friendly
<i>Ilex x 'Nellie R. Stevens'</i>	Nellie R. Stevens	15-25	10-15	sun – part sun	Pollinator & Bird Friendly
<i>Metasequoia glyptostroboides</i>	Dawn Redwood	70-100	20-30	sun – part sun	
<i>Photinia x fraseri</i>	Fraser Photinia	15-25	10-20	sun – part sun	Pollinator Friendly
<i>Pinus nigra</i>	Austrian Pine	50-60	20-40	sun – part sun	
<i>Pinus sylvestris</i>	Scotch Pine	30-60	30-40	sun – part sun	
<i>Pinus thunbergi</i>	Japanese Black Pine	20-60	10-20	sun – part sun	
<i>Thuja orientalis</i>	Western Arborvitae	20-25	10-25	sun – part sun	
<i>Thuja standishii x plicata 'Green Giant'</i>	Green Giant Arborvitae	50-60	10-20	sun – part sun	
<i>X Cupressocyparis leylandii</i>	Leyland Cypress	60-70	15-25	sun – part sun	

## Native and Adaptive Plant Lists

### Type A Buffer Shrub List

This list is intended to provide evergreen shrubs that meet the requirements of UDO Sec. 8.2.2.B.3.d. and 8.2.6.B.5.a.

Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Sun/Shade	Comments
<b>Native Species:</b>					
<i>Camellia sasanqua</i>	Sasanqua Camellia	6-10	5-7	Part Shade	Showy Flowers; Pollinator Friendly
<i>Ilex glabra</i>	Inkberry Holly	6-8	8-10	Sun	Pollinator & Bird Friendly
<i>Ilex verticillata</i>	Winterberry Holly	6-10	6-10	Sun – Part Sun	Berries; Pollinator & Bird Friendly;
<i>Illicium floridanum</i>	Florida Anise	10-15	6-8	Sun – Part Sun	Showy Flowers; Pollinator Friendly
<i>Illicium parviflorum</i>	Yellow Anise	10-15	6-10	Shade – Part Shade	Showy Flowers; Pollinator Friendly
<i>Juniperus virginiana</i>	Eastern Cedar – shrub form	2-10	2-10	Sun	Bird Friendly
<i>Kalmia latifolia</i>	Mountain Laurel	7-15	7-15	Shade – Part Shade	Showy Flowers; Pollinator Friendly
<i>Leucothoe populifolia</i>	Florida Leucothoe	8-12	6-8	Shade – Part Shade	Toxic; Forms Thickets; Pollinator & Bird Friendly;
<i>Myrica cerifera</i>	Wax Myrtle	10-15	8-12	Sun – Part Sun	Good For Light Screening. Ice Damage.
<i>Rhododendron catawbiense</i>	Mountain Rosebay	6-10	8-10	Part Shade	Spring Flowers; Pollinator Friendly;
<i>Rhododendron vaseyi</i>	Pinkshell Azalea	5-15	5-10	Shade – Part Shade	Spring Flowers; Pollinator Friendly
<i>Thuja occidentalis</i>	Arborvitae – shrub form	3-15	2-6	Sun	
<i>Tsuga canadensis</i>	Eastern Hemlock – shrub form	2-8	2-6	Sun – Part Sun	Susceptible To Hemlock Woolly Adelgid.
<b>Introduced Adaptive Species:</b>					
<i>Aucuba japonica</i>	Acuba	6-10	4-8	Shade – Part Shade	Dwarf Varieties Available. Tolerates Poor Drainage
<i>Buxus sempervirens</i>	Common Boxwood	15-20	15-20	Sun	Many Cultivars Available
<i>Camellia japonica</i>	Camellia	10-15	6-10	Shade – Part Shade	Showy Early Spring Flowering
<i>Cleyera japonica</i>	Japanese Cleyera	8-12	6-7	Sun – Part Sun	
<i>Ilex crenata</i>	Japanese Holly	5-10	5-10	Sun – Part Sun	Many Cultivars Available. Low Screening.
<i>Ilex aquifolia</i>	English HollyS	8-12	8-12	Sun – Part Sun	Bird Friendly
<i>Ilex cornuta</i>	Chinese or Burford Holly	8-10	8-10	Sun – Part Sun	
<i>Ilex latifolia</i>	Lusterleaf Holly	20-25	7-11	Sun – Part Sun	
<i>Illicium anisatum</i>	Anisetree	6-10	6-10	Sun – Part Sun	
<i>Juniperus chinensis</i>	Chinese Juniper	Varies	Varies	Sun – Part Sun	Choose Disease Resistant Cultivars.
<i>Lonicera nitida</i>	Box Honeysuckle	5-6	3-4	Sun – Part Sun	Fragrant White Flowers.
<i>Mahonia aquifolium</i>	Oregon Grape Holly	3-6	3-5	Sun – Part Sun	Bird Friendly

## Native and Adaptive Plant Lists

### Type A Buffer Shrub List

This list is intended to provide evergreen shrubs that meet the requirements of UDO Sec. 8.2.2.B.3.d. and 8.2.6.B.5.a.

Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Sun/Shade	Comments
<i>Prunus laurocerasus</i>	English Laurel	10-18	25-30	Sun – Part Sun	Many Cultivars Available.
<i>Rosmarinus officianalis</i>	Rosemary	4-6	3-6	Sun – Part Sun	Edible
<i>Viburnum rhytidophyllum</i>	Leatherleaf Viburnum	10-15	10-15	Sun – Part Sun	Bird Friendly

## Native and Adaptive Plant Lists

High Quality Shade Trees					
Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/Deciduous	Comments
<b>Native Species:</b>					
<i>Acer rubrum</i>	Red Maple	40-60	30-40	D	Don't Plant Near Pavement; Natural Areas Only
<i>Acer saccharum</i>	Sugar Maple	60-75	40-50	D	
<i>Acer x fremanii</i>	Freeman Maple	40-60	20-40	D	
<i>Amelanchier canadensis</i>	Shadblow Serviceberry	25-30	15-20	D	Very Early Spring Flowers; Pollinator & Bird Friendly
<i>Betula nigra</i>	River Birch	40-70	40-60	D	
<i>Carya glabra</i>	Pignut Hickory	50-60	25-35	D	Bird & Pollinator Friendly
<i>Carya illinoensis</i>	Pecan	70-100	40-75	D	Edible Nuts
<i>Carya ovata</i>	Shagbark Hickory	60-80	30-50	D	Pollinator Friendly
<i>Celtis laevigata</i>	Sugarberry	40-60	40-60	D	Bird & Pollinator Friendly
<i>Cladrastis lutea</i>	American Yellowwood	30-50	40-55	D	Large Attractive Flowers; Pollinator Friendly
<i>Fagus grandiflora</i>	American Beech	50-70	30-40	D	Edible Nuts
<i>Fraxinus americana</i>	White Ash	50-80	40-50	D	
<i>Juglans nigra</i>	Eastern Black Walnut	50-75	50-75	D	Edible Nuts
<i>Liquidambar styraciflua</i> 'Rotundiloba'	Sweetgum, Fruitless	60-75	20-30	D	Quick Growth
<i>Nyssa sylvatica</i>	Black Gum	30-50	20-30	D	Bird & Pollinator Friendly
<i>Platanus occidentalis</i>	American Sycamore	75-100	75-100	D	Large Root System; Not Good For Small Areas
<i>Tilia americana</i>	Basswood	50-80	30-50	D	Quick Growth; Pollinator Friendly
<i>Quercus alba</i>	White Oak	50-80	50-80	D	
<i>Quercus bicolor</i>	Swamp White Oak	50-60	50-60	D	
<i>Quercus coccinea</i>	Scarlet Oak	60-80	40-50	D	
<i>Quercus lyrata</i>	Overcup Oak	40-70	35-50	D	
<i>Quercus michauxii</i>	Swamp Chestnut Oak	40-60	30-50	D	
<i>Quercus phellos</i>	Willow Oak	40-60	30-40	D	
<i>Quercus rubra</i>	Northern Red Oak	60-75	35-45	D	
<i>Taxodium distichum</i>	Baldcypress	50-70	30-40	D	Drought Tolerant
<i>Ulmus americana</i> 'Princeton'	Princeton Elm	50-70	30-50	D	Susceptible to Dutch Elm Disease



## Native and Adaptive Plant Lists

### High Quality Shade Trees

Scientific Name	Common Name	Height (Feet)	Spread (Feet)	Evergreen/ Deciduous	Comments
<b>Introduced Adaptive Species:</b>					
<i>Acer truncatum</i>	Purpleblow Maple	20-25	15-20	D	
<i>Metasequoia glyptostroboides</i>	Dawn Redwood	70-100	20-30	E	
<i>Parrotia persica</i>	Persian Ironwood	20-40	20-35	D	
<i>Pistachia chinensis</i>	Chinese Pistache	30-35	25-35	D	
<i>Quercus acutissima</i>	Sawtooth Oak	40-60	40-60	D	
<i>Ulmus parvifolia</i>	Chinese Elm	40-50	35-50	D	
<i>Zelkova serrata</i>	Japanese Zelkova	50-80	50-75	D	

# Meadows and Open Fields

The replacement or establishment of forests or woodlands to meet the requirements of disturbed buffers and/or Resource Conservation Areas shall replicate the surrounding indigenous vegetation. Plantings shall assure a diversified plant population by including a canopy layer, an under-story layer, a shrub layer, and groundcover layer.

Recently timbered or cutover areas must include supplemental plantings to discourage the establishment of non-native, invasive and weedy species. Other types of plantings may be approved where it is necessary to correct an existing soil stabilization problem.

Areas used for Resource Conservation Areas must provide stabilization or protection of steep slopes, wetlands or riparian buffers, or act as functional woodlands or wildlife corridors. Resource Conservation Areas that act as functional woodlands and wildlife corridors must contain plants that provide both food and shelter for wildlife and be at least 30 feet wide and 2,000 square feet. RCA may be allowed to combine with buffers to meet this minimum size standard where it can be demonstrated that the existing buffer is undisturbed and already provides a natural, wooded environment. When combined with natural buffers, the RCA portion cannot be less than 10 feet wide. RCA and buffers will still be calculated separately.

## Planting Standards

Plants used to meet any of the conditions stated above must meet the standard sizes and quantities found in Section 8.2.3 C) – Replacement of Existing, Original Vegetation, of the Town's Unified Development Ordinance. Plant types and species must meet those found in the Native and Adaptive Plant List found herein or an approved alternative. Upon approval by the Planning Director, trees may meet smaller substitution sizes as long as an adequate amount of the larger sizes are used. Smaller or substitution sizes are not intended to be used for entire sections of required buffers, only where existing buffers have been partially disturbed or where the non-vegetated section of an existing buffer makes up a small percentage of the overall buffer. Entire buffer areas with no existing vegetation must be planted according to the standards found in Section 8.2 of the UDO. Where substitutions are allowed, the sizes and quantities are as follows:

Each unit represents plants needed for 200 square feet of disturbed or non-vegetated area.

- |    |  |                           |
|----|--|---------------------------|
| a) | One Large Deciduous Tree, 2 $\frac{1}{2}$ -inch caliper, 12'tall = | Two, 10 gallon, 6' tall   |
| b) | One Large Evergreen Tree, 2 $\frac{1}{2}$ -inch caliper, 8' tall = | Two, 10 gallon, 4' tall   |
| c) | Two Small Trees, 1 $\frac{1}{2}$ -inch caliper, 8' tall =          | Three, 10 gallon, 4' tall |
| d) | Four evergreen *shrubs, at least 24" tall, 3 gallon =              | No substitute             |



## Meadows and Open Fields

**In addition to the above, provide 1-gallon size groundcover type plants on all slopes equal to or greater than a ratio of 2:1. Plants must be spaced approximately 2 feet on center. Native or adaptive species must be used. Additional slope stabilization such as matting or geo-textile fabric may be required. Other unplanted and open areas must be planted with non-turf type plants (native grasses, clover, wildflowers, etc.).**

**Spacing of plants may vary depending upon site conditions, but no large deciduous tree should be planted closer than 10 feet on center, and no large evergreen tree or small tree should be planted closer than six feet on center.**

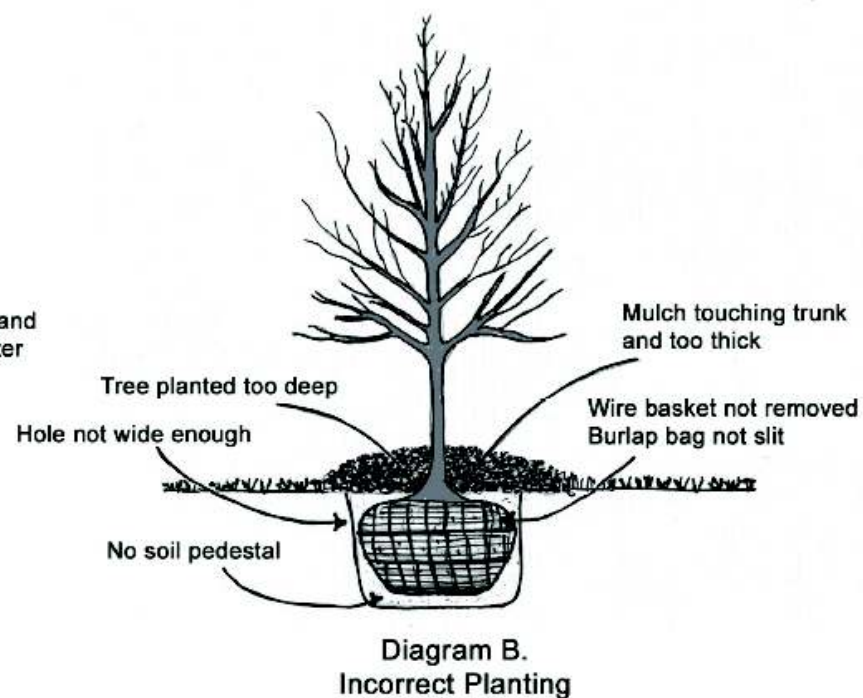
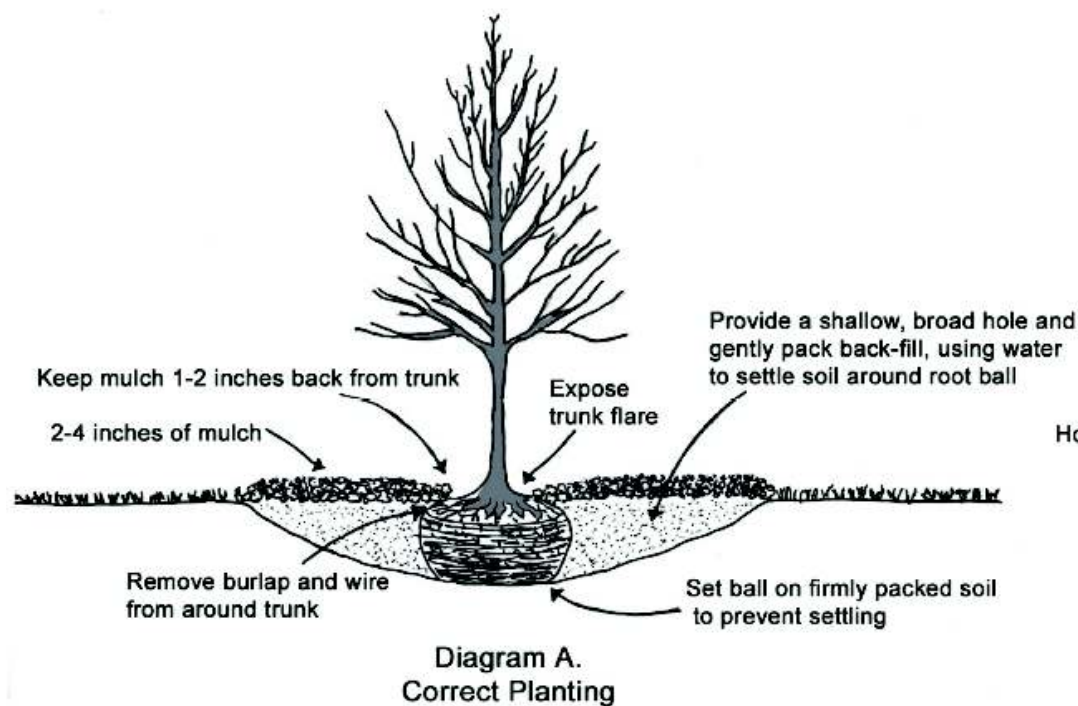
Resource Conservation Areas may include meadows and open fields provided that these areas do not occupy a large percentage of the total required RCA (i.e.: 10 % or less). The Planning Director must approve the final size of any meadows or open fields used for RCA. Areas such as, but not limited to: recently timbered and cutover areas, lawns, cultivated fields, picnic grounds, overflow parking, play areas or ball fields, do not qualify as meadows and open fields. Meadows and open fields must provide protection for wetlands or riparian buffers, or function as wildlife habitat. Low maintenance native grasses and wildflowers with individual or groups of shrubs or small trees characterize these areas. Meadows and open fields when combined with other wooded sections of RCA or wooded and undisturbed buffers must provide a contiguous area at least 30 feet wide and 2,000 square feet. When combined with natural buffers, the RCA portion cannot be less than 10 feet wide. RCA and buffers will still be calculated separately.

### **Planting Standards**

Plantings for meadows and open fields must utilize native or adaptive plants, grasses, wildflowers, and/or perennials. Selection should be based on the particular location and its use such as but not limited to wetland or riparian areas, wildlife habitat, and aesthetic and scenic value. Plant selection, planting/seeding and maintenance of these natural areas must be based on recommendations of a recognized local authority such as but not limited to, the NC Wildlife Resource Commission, Agricultural Extension Agency, and NCDOT Roadside Environmental Unit.

## TREE PLANTING GUIDELINES

1. Dig a shallow, broad hole three times the diameter of the root ball, but only as deep as the root ball.
2. Identify the trunk flare. The trunk flare is where the roots spread at the base of the tree. This point should be partially visible after the tree has been planted. (see diagram A)
3. Place the tree at the proper height. Check to see that the hole has been dug to the proper depth and no more. If the tree is too deep, the roots will have difficulty developing due to lack of oxygen. It is better to plant the tree a little high. This may be necessary in areas with compacted or poor soil that causes drainage problems. (see diagram C on next page)
4. Straighten the tree in the hole.
5. Fill the hole, gently but firmly. Fill about 1/3 full and gently pack the soil around the base of the root ball. Cut and remove the string and wire from around the trunk and top 1/3 of the root ball. Fill the rest of the hole by adding soil a few inches at a time and settling it with water. Continue this process until the hole is filled and the tree is firmly planted.
6. Stake the tree, only if necessary. Protective staking may be required on some sites. Remove the stakes and ties after one year.
7. Cover the ground with 2-4 inches of mulch. Keep a mulch free area, one to two inches wide at the base of the tree to avoid moist bark conditions and prevent decay.
8. Provide follow-up care for the tree. Keep the soil moist, but not soaked. Maintain 2-4 inches of mulch. Control weeds. Remove any stakes and ties before they start girdling the tree.





## PLANTING IN SPECIAL SITUATIONS

### Poor Soils

When planting in a poorly drained or severely compacted site, follow the previous guidelines, except set the plant so the root ball is partially above the existing grade (*Diagram C*). Also, create a ring of mulch approximately 2-3 inches high to encourage water to drain into the roots of the plant. This water basin does not need to be a permanent fixture and can be removed after the tree has become established. Take care not to pile the mulch too high or to pile it on the trunk or root flare of the tree.

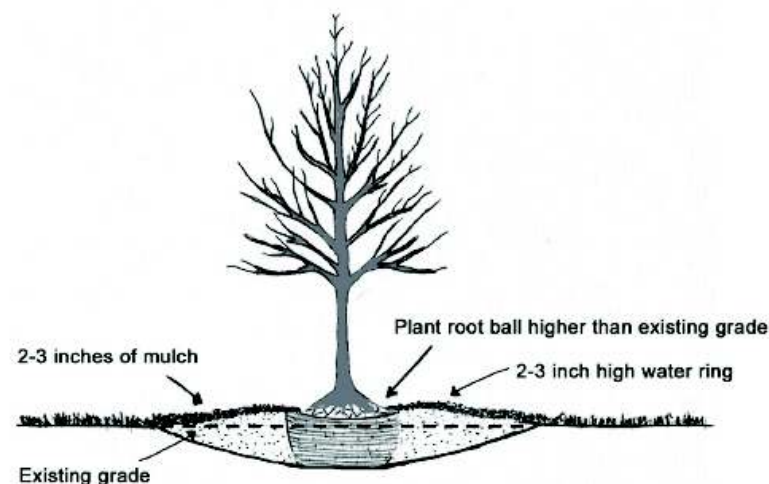


Diagram C.  
Correct planting for poor soil/drainage issues

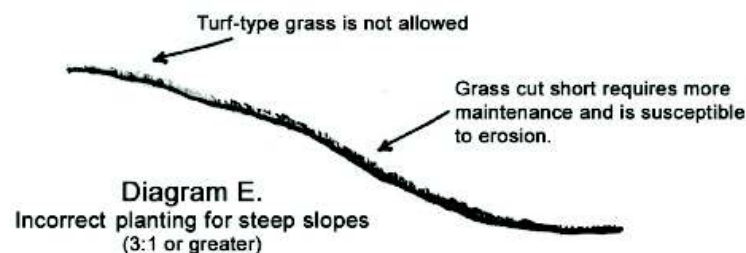
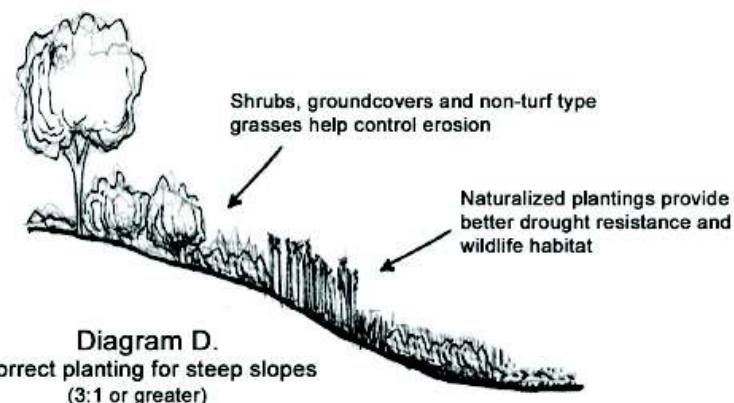
### Steep Slopes

When planting on a slope, it is best to use a combination of smaller plants, such as shrubs, small trees, and groundcovers to stabilize the ground and prevent erosion. Using grass alone does not control erosion effectively because the roots are too shallow. An example of a planting scheme for a 2:1 slope is provided (*Diagram D*), incorporating shrubs, perennials, groundcovers, and tall native grasses.

Specific site conditions, such as sun/shade, wet or dry soil and steepness will vary the plant species appropriate for each location. For examples of appropriate plant species see the recommended plants listed in the "Stormwater Ponds for Water Quality and Wildlife Habitat" worksheet and the lists of Native and Adaptive Plants in this book. Note in particular the plants listed for embankment areas, such as groundcovers, grasses, legumes, clovers, and wildflowers.

For extremely steep slopes a stabilization fabric, such as jute, may be necessary to help prevent erosion until the roots of the plantings take hold. The material should be laid out and pinned down with a layer of approximately 2-3 inches of mulch spread on top. Cut a hole in the fabric in order to install the plants. Engineered types of slope stabilization may be required.

The second drawing shows an inappropriate planting scheme that uses only turf grass. (*Diagram E*) This type of planting is not allowed. Turf grasses will not prevent erosion as effectively, will require more maintenance, and will limit the site's attraction as a wildlife habitat.



## TREE PRUNING

Any pruning of a newly planted tree should be kept to a minimum and should only be done to maintain a single trunk to the top of the tree (it is best to purchase a tree with a strong central leader so that pruning is unnecessary) and to remove any branches that were damaged during the planting process. Wait to begin corrective pruning (see below) until after a full season of growth in the new location.

### Canopy Pruning

Generally, the natural shape of trees should be encouraged but it may be necessary to remove lower limbs so they are out of the way of people and vehicles. On smaller specimen trees in a planting bed and evergreen trees, lower branching is preferred and limbs should be left alone. Keeping lower limbs helps to develop a stronger trunk and reduces sunscald to bark.

At least 1/2 of the foliage of a tree should be in the lower 2/3 of the tree. (*Diagram A*) Temporary branches on the lower trunk of the tree are important to the tree's early growth and should not be removed until the tree has become established.

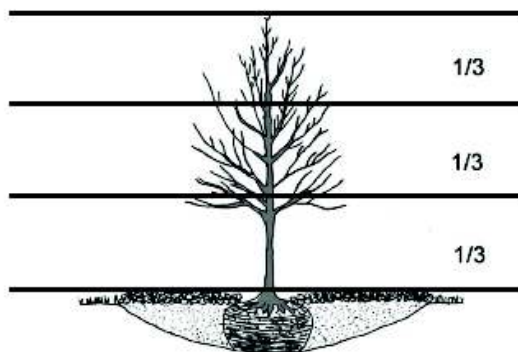


Diagram A.  
Proper Canopy Trimming

Correct

Retain at least 50% of the tree's foliage in the lower 2/3 of the tree.

Incorrect

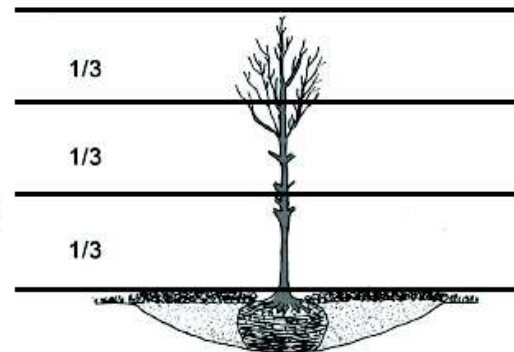


Diagram B.  
Improper Pruning

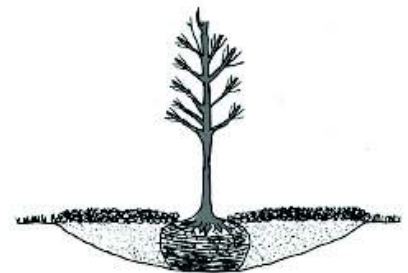


Diagram C.  
Improper "tree topping"

Tree topping is the indiscriminate cutting of branches to stubs or lateral branches that are not large enough to assume the central leader role. (*Diagram C*) Other names for topping include "heading", "tipping", "hat-racking" and "rounding over." This is an unacceptable practice that often removes 50-100% of the leaf-bearing crown of a tree, temporarily starving the tree and causing stress that can lead to insect and disease infestations. The tree will send out multiple shoots below each cut in an effort to survive. These shoots grow very quickly, but are weaker and prone to breaking, thus making the tree a hazard, especially during ice storms and high winds.



## **Recommended Plant List for Storm Water BMPs (Constructed Wetlands & Wet Ponds)**

### ***DeepWater Areas*** (permanent pool 1 to 6 feet deep).

The deeper pools of storm water BMPs such as those found in constructed wetlands and wet ponds are generally colonized by submergent plants if any at all. Typically these areas are not planted due to the limited availability of adequate plant material and the concern that introduced submergent plants may become too aggressive and eventually clog storm water outlet structures. Some submergent plants usually establish themselves naturally, but if plants are needed for specific reasons such as to help control algae, then the following plants may be used in limited quantities:

Yellow Lotus, *Nelumbo lutea*; Spatterdock / Cow Lily, *Nuphar lutea*; Fragrant White Lily, *Nymphaea odorata*.



### ***Low Marsh*** (regular to permanent inundation up to 1 foot deep).

These wet areas are typified by their location within the normal pool up to a permanent depth of about one foot such as aquatic benches along the shore and low earthen mounds located below the surface of the water within ponds and channels.

Emergent plants grow in this area. These plants help to stabilize the bottom and edges of the pond by absorbing wave actions and reducing erosion when water levels fluctuate. They slow water velocities, decrease sediment deposition rates, and reduce re-suspension of wind-driven sediments.

These plants supply an important habitat for many aquatic and non-aquatic animals, including predators that provide a natural control of mosquito populations. Wetland plants also enhance pollutant uptake and improve oxidation levels.

The following plants should be planted within the shallow parts of the permanent pool:

Sweet Flag, *Acorus calamus*; space 2-foot on center; small pots or bare root; plant approximately 20% of the area.

Pickering Weed, *Pontederia pectinatus*; space 2-foot on center; small pots or bare root; plant 25% of area.

Arrowhead/Duck Potato, *Sagittaria latifolia*; space 2-foot on center; small pots or bare root; plant 25% of area.

A mix of the following plants (provide at least four species) – Soft-stem Bulrush, *Schoenoplectus tabernaemontani*; *Striped* Sweet Flag, *Acorus calamus* “*Variegatus*”; Narrow Leaf Arrowhead, *Sagittaria lancifolia*; Arrow Arum, *Peltandra virginica*; Square Stem Spike Rush, *Eleocharis quadrangulata*; Three-way Sedge, *Dulichium arundinaceum*; Lizard Tail, *Saururus cernuus*; Powdered Thalia, *Thalia dealbata*; space 2-foot on center; small pots or bare root; plant 30% of area.



### **Cattails**, *Typha* species, **must not be planted** and should be controlled.

Cattails are highly invasive, and once established fill the pool area with vegetative mass that provides habitat for mosquitoes while limiting access from mosquitoes’ natural predators. Cattail’s aggressive nature may also limit the ability of the storm water structure to fully function as designed.



## **Recommended Plant List for Storm Water BMPs (Constructed Wetlands & Wet Ponds)**

### **High Marsh** (regular inundation along shoreline fringe):

*This area encompasses the wetter fringe of the shoreline up to a vertical elevation of about one foot above the permanent pool line. It is subject to regular inundation by normal storm events.*

*Plants in this area must be vigorously planted to stabilize the soil against flooding storm waters and wind. Plants should also be able to tolerate occasional periods of drought. These plants also shade the shoreline helping to reduce water temperature. They enhance pollutant uptake, and often provide food and cover for wildlife. A good stand of vegetation may also discourage Canada geese from establishing.*

The following plants should be planted along the permanent pool from the shoreline to approximately three feet inland:

Soft Rush, *Juncus effusus*; space 2-foot on center; small pots or bare root; plant 50% of area.

Southern Blue Flag, *Iris virginica*; space 2-foot on center; small pots or bare root; plant 20% of area.

A mix of the following plants (provide at least four species) – White Top Sedge, *Rhynchospora colorata*; Wool Grass, *Scirpus cyperinus*; Tussock Sedge, *Carex stricta*; Cardinal Flower, *Lobelia cardinalis*; Copper Iris, *Iris fulva*; Northern Blue Flag, *Iris versicolor*; Golden Club, *Orontium aquaticum*; Eastern Grasswort, *Lilaeopsis carolinensis*; space 2-foot on center; small pots or bare root; plant 30% of area.



The following plants should be planted farther inland along the shore (four feet plus from the permanent pool line), but still within areas that are regularly inundated by normal storm events:

Virginia Sweetspire, *Itea virginica*; space 5-feet on center; 3-gallon container; plant 30% of area.

Switchgrass, *Panicum virgatum*; space 4-feet on center if using 1-quart or 1-gallon containers, or 2-feet on center if using smaller pots; plant 30% of area.

A mix of the following plants – Red Chokeberry, *Aronia arbutifolia*; Florida Anise, *Illicium floridanum*; space 6-feet on center; 3-gallon container; plant 5% of area.

A mix of the following plants (at least four species): Swamp Rose, *Rosa palustris*; Buttonbush, *Cephalanthus occidentalis*; Possumhaw, *Viburnum nudum*; Titi, *Cyrilla racemiflora*; Swamp Sweetbells, *Leucothoe racemosa*; Silky Dogwood, *Cornus amomum*; Redosier Dogwood, *Cornus sericea*; Yellowstem Dogwood, *Cornus sericea* “Flaviramea”; space 4-feet on center; 1-quart or 1-gallon container; plant 15% of area.

A mix of the following plants (at least three species): Marsh Hibiscus, *Hibiscus moscheutos*; Red Rose Mallow, *Hibiscus coccineus*; Swamp Sunflower, *Helianthus angustifolius* or *H. simulans*; Yellowroot, *Xanthorhiza simplicissima*; Joe-Pye Weed, *Eupatoriadelphus fistulosus*; space 4-feet on center; 1-quart or 1-gallon container; plant 10% of area.

A mix of the following plants (at least three species): Spider Lily, *Hymenocallis occidentalis*; Plymouth Rose Gentian, *Sabatia kennedyana*; Great Blue Lobelia, *Lobelia siphilitica*; Marsh Eryngo, *Eryngium aquaticum*; River Oats, *Chasmanthium latifolium*; Macbridea, *Macbridea caroliniana*; New England Aster, *Aster novae-angliae*; space 2-foot on center; small pots to 1-quart container; plant 5% of area.

A mix of the following trees (at least two species) - Bald Cypress, *Taxodium distichum*; Pond Cypress, *Taxodium ascendens*; Water Tupelo, *Nyssa aquatica*; Sweet-Bay Magnolia, *Magnolia virginiana*; River Birch, *Betula nigra*; Overcup Oak, *Quercus lyrata*; space trees randomly along the shore at least 30 feet apart; do not plant on the dam side or within 20 feet of any storm water structure or inlet/outlet device; provide one tree for every 100 linear feet of permanent pool shoreline; provide at least 10-gallon container size plants or equivalent.





## **Recommended Plant List for Storm Water BMPs (Constructed Wetlands & Wet Ponds)**

### **Riparian Fringe / Floodplain Terrace** (periodic to infrequent inundation):

*These areas may be flooded from time to time, mostly during a significant storm event. The waters should quickly recede within a few days or less.*

*Plants in these areas must be able to withstand some occasional flooding and longer periods of drought. For the most part, plants should be low maintenance native species.*

The following plants should be planted in areas one foot or more vertically above the permanent pool elevation where periodic to infrequent flooding is likely to occur:

A mix of the following plants (at least four species): Sweet Pepperbush, *Clethra alnifolia*; Witch Alder, *Fothergilla gardenii*; Ninebark, *Physocarpus opulifolius*; Inkberry Holly, *Ilex glabra*; Winterberry Holly (male and female), *Ilex verticillata*; Sweet Betsy, *Calycanthus floridus*; Witherod, *Viburnum cassinoides*; space 6-feet on center; 3-gallon container; plant 60% of area.

A mix of the following plants (at least five species): Path Rush, *Juncus tenuis*; Horsetail, *Equisetum hyemale*; Swamp Milkweed, *Asclepias incarnate*; Horse Mint, *Monarda fistulosa*; Sundrops, *Oenothera fruticosa*; Blazing Star, *Liatris spicata*; Small's Beard Tongue, *Penstemon smallii*; Spiderwort, *Tradescantia virginiana*; White Wild Indigo, *Baptisia alba*; False Indigo, *Baptisia australis*; Blue-eyed Grass, *Sisyrinchium angustifolium*; space 2-foot on center; small pots to 1-quart container; plant 10% of area.

A mix of the following grasses: Switchgrass, *Panicum virgatum*; Big Bluestem, *Andropogon gerardii*; Eastern Gammagrass, *Tripsacum dactyloides*; space 18-inches on center; small pots; plant 20% of area.

A mix of the following plants (at least two species): Wax Myrtle, *Myrica cerifera*; Vernal Witch Hazel, *Hamamelis vernalis*; Deciduous Holly, *Ilex decidua*; Spicebush, *Lindera benzoin*; space 8-feet on center; 3-gallon container; plant 5% of area.

A mix of the following trees –Red Maple, *Acer rubrum*; Sycamore, *Platanus occidentalis*; Black Gum, *Nyssa sylvatica*; Willow Oak, *Quercus phellos*; spaced randomly along the lower interior slopes 30 or more feet apart; do not plant on the dam side or within 20 feet of any storm water structure, inlet/outlet device, or within 20 feet of the downhill toe of the dam; provide one tree for every 80 linear feet of permanent pool shoreline; at least 10-gallon container size plants or equivalent.



### **Upland Slopes, Embankment, Downhill & Surrounding Slopes** (dry - seldom to no inundation):

*This area rarely if ever floods. This zone is typically above the maximum 100-year water surface elevation. Plants should be able to sustain prolonged periods of drought. Select plants that are capable of adequately stabilizing the steeper slopes typical of this area. Trees and larger woody vegetation must be kept off the dam embankment (interior and exterior slopes).*

The following plants should be planted:

A mix of the following trees (at least two species): Fringetree, *Chionanthus virginicus*; Blackhaw Viburnum, *Viburnum prunifolium*; Red Bud, *Cercis Canadensis*; Ironwood, *Carpinus caroliniana*; space at least 15 feet on center; do not plant on the dam side or within 10 feet of any storm water structure, inlet/outlet device, or within 10 feet of the downhill toe of the dam; at least 5-gallon container; plant 5% of the area.

A mix of the following grasses (plant at least five species): Switchgrass, *Panicum virgatum*; Big Bluestem, *Andropogon gerardii*; Eastern Gammagrass, *Tripsacum dactyloides*; Indian Grass, *Sorghastum nutans*; Little Bluestem, *Schizachyrium scoparium*; Sideoats Grama, *Boutelou curtipendula*; Pink Muhly Grass, *Muhlenbergia capalaris*; Mosquito Grass, *Boutelou gracilis*; Purple Love Grass, *Erogrostis spectabilis*; space 18-inches on center; small pots; plant 50% of area - use the lower growing Purple Love Grass and Mosquito Grass on top of dam and along service drives.

A mix of the following plants (at least two species): Nearly Wild Rose, *Rosa species "Nearly Wild"*; Petite-Pink Scotch Rose, *Rosa pimpinellifolia*; Beautyberry, *Callicarpa Americana*; American Elderberry, *Sambucus Canadensis*; Fragrant Sumac, *Rhus aromatica*; Winter Jasmine, *Jasminum nudiflorum*; Butterfly Bush, *Buddleia davidii*; space 6-feet on center; 3-gallon container; plant 20% of area

A mix of the following plants (at least three species): Butterfly Weed, *Asclepias tuberosa*; Purple Coneflower, *Echinacea purpurea*; Whirling Butterflies, *Gaura lindheimeri*; Creeping Phlox, *Phlox subulata*; Black-eyed Susan, *Rudbeckia hirta*; Homestead Purple Verbena, *Verbena canadensis* "Homestead Purple"; Cornflower, *Centaurea species*; Tickseed, *Coreopsis species*; space 2-foot on center; small pots to 1-quart container; plant 20% of area.

A mix of the following trees (at least three species): Eastern Red Cedar, *Juniperus virginiana*; Sourwood, *Oxydendrum arboretum*; Persimmon, *Diospyros virginiana*; Loblolly Pine, *Pinus taeda*; White Oak, *Quercus alba*; spaced randomly in family groupings along the upland and downhill slopes 30 or more feet apart; do not plant on the dam side or within 20 feet of any storm water structure, inlet/outlet device, or within 20 feet of the downhill toe of the dam; provide one tree for every 60 linear feet of permanent pool shoreline; at least 10-gallon container size plants or equivalent.



# Mulch Standards

## Benefits of Proper Mulching

- Helps maintain soil moisture. Evaporation is reduced, and the need for watering can be minimized.
- Helps control weeds. A 2-4 inch layer of mulch will reduce the germination and growth of weeds.
- Mulch serves as nature's insulating blanket. Mulch keeps soils warmer in the winter and cooler in the summer.
- Many types of mulch can improve soil aeration, structure (aggregation of soil particles), and drainage over time.
- Some mulch can improve soil fertility.
- A layer of mulch can inhibit certain plant diseases.
- Mulching around trees helps facilitate maintenance, and can reduce the likelihood of damage from "weed whackers" or the dreaded "lawnmower blight."

Applying a **2-4 inch layer of organic mulch** can mimic a more natural environment and improve plant health. The roots of most trees can extend out a significant distance from the tree trunk. In addition, most of the fine absorbing roots are located within inches of the soil surface. These roots, which are essential for taking up water and minerals, require oxygen to survive. A **thin layer of mulch, applied as broadly as practical**, can improve the soil structure, oxygen levels, temperature, and moisture availability where these roots grow.

## **Not Too Much!**

As beneficial as mulch is, **too much can be harmful**. The generally recommended mulching depth is 2 to 4 inches. Unfortunately, North American landscapes are falling victim to a plague of over mulching. A new term, "mulch volcanoes," has emerged to describe mulch that has been piled up around the base of trees. Most organic mulches must be replenished, but the rate of decomposition varies. Some mulch, such as cypress mulch, remains intact for many years. Top dressing with new mulch annually (often for the sake of refreshing the color) creates a buildup to depths that can be unhealthy. Deep mulch can be effective in suppressing weeds and reducing maintenance, but it often causes additional problems.

## Types of Mulch

Two major types of mulch are inorganic and organic. Inorganic mulches do not decompose and do not need to be replenished often. On the other hand, they do not improve soil structure, add organic materials, or provide nutrients. Organic mulches include wood chips, pine needles, hardwood and softwood bark, cocoa hulls, leaves, compost mixes, and a variety of other products usually derived from plants. Because the decomposition process improves soil quality and fertility, many arborists and other landscape professionals consider this a positive characteristic, despite the added maintenance. For the most part, the following **organic type mulches should be used**:

**Hardwood mulch** - Ground or shredded, and screened to a maximum particle size of four inches; well aged and composted at least six months; free of inert material.

**Pine straw mulch** - Preferably collected from long-leaf pines; clean and free of twigs, branches, pine cones, and inert material. Use should be limited to areas planted with acid-loving plants.

**Pine bark mulch** - Fine shredded and screened to a maximum particle size of two inches.

**Leaf mulch** - Well shredded. Use should be limited to natural areas.

In order to maintain a more natural appearance, use of artificially colored mulch is discouraged.



# Mulch Standards

## Problems Associated with Improper Mulching

- Deep mulch can lead to excess moisture in the root zone, which can stress the plant and cause root rot.
- Piling mulch against the trunk or stems of plants can stress stem tissues and may lead to insect and disease problems.
- Some mulch, especially those containing cut grass, can affect soil pH. Continued use of certain mulches over long periods can lead to micronutrient deficiencies or toxicities.
- Mulch piled high against the trunks of young trees may create habitats for rodents that chew the bark and can girdle the trees.
- Thick blankets of fine mulch can become matted, and may prevent the penetration of water and air. In addition, a thick layer of fine mulch can become like potting soil and may support weed growth.
- Anaerobic "sour" mulch may give off pungent odors, and the alcohols and organic acids that build up may be toxic to young plants.

## Proper Mulching

It is clear that the choice of mulch and the method of application can be important to the health of landscape plants. The following are some guidelines to use when applying mulch.

• **Inspect plants and soil in the area to be mulched.** Determine whether drainage is adequate. Determine whether there are plants that may be affected by the choice of mulch. Most commonly available mulches work well in most landscapes. Some plants may benefit from the use of slightly acidifying mulch such as pine bark.

• **If mulch is already present, check the depth.** Do not add mulch if there is a sufficient layer in place. Rake the old mulch to break up any matted layers and to refresh the appearance. Some landscape maintenance companies spray mulch with a water soluble vegetable-based dye to improve the appearance.

• **If mulch is piled against the stems or tree trunks, pull it back several inches** so that the base of the trunk and the root crown are exposed.

• **Organic mulches are usually preferred to inorganic materials** due to their soil-enhancing properties. If organic mulch is used, it should be well aerated, and preferably, composted. Avoid sour-smelling mulch.

• **Composted wood chips can make good mulch**, especially when they contain a blend of leaves, bark, and wood. Fresh wood chips may also be used around established trees and shrubs. Avoid using non-composted wood chips that have been piled deeply without exposure to oxygen.

• **For well-drained sites, apply a 2-4 inch layer.** If there are drainage problems, a thinner layer should be used. Avoid placing mulch against the tree trunks. For new installation and where it is possible to do around mature trees, place mulch out to the tree's drip line or beyond.



# Small Town Character Residential Design Standards

These Residential Design Standards are only applicable in the in the Small Town Character Overlay District. The sketches represent examples of how the requirements of UDO Section 6.3.1 (H) maybe met. The sketches do not illustrate everyway the ordinance can be met, nor do they illustrate all required by the ordinance for new residential construction or major residential renovations in the Small Town Character Overlay District.



## Architectural Features, UDO Sec. 6.3.1 (H)(2)(a)

### *Architectural Features*

Residential structures shall have three (3) or more of the following features:

Wrap around porch (entire front façade and part of one or both side façades)

Predominant porch (over 75% of front façade)

Awnings

Columns

Porticos

Balconies

Broken roof lines

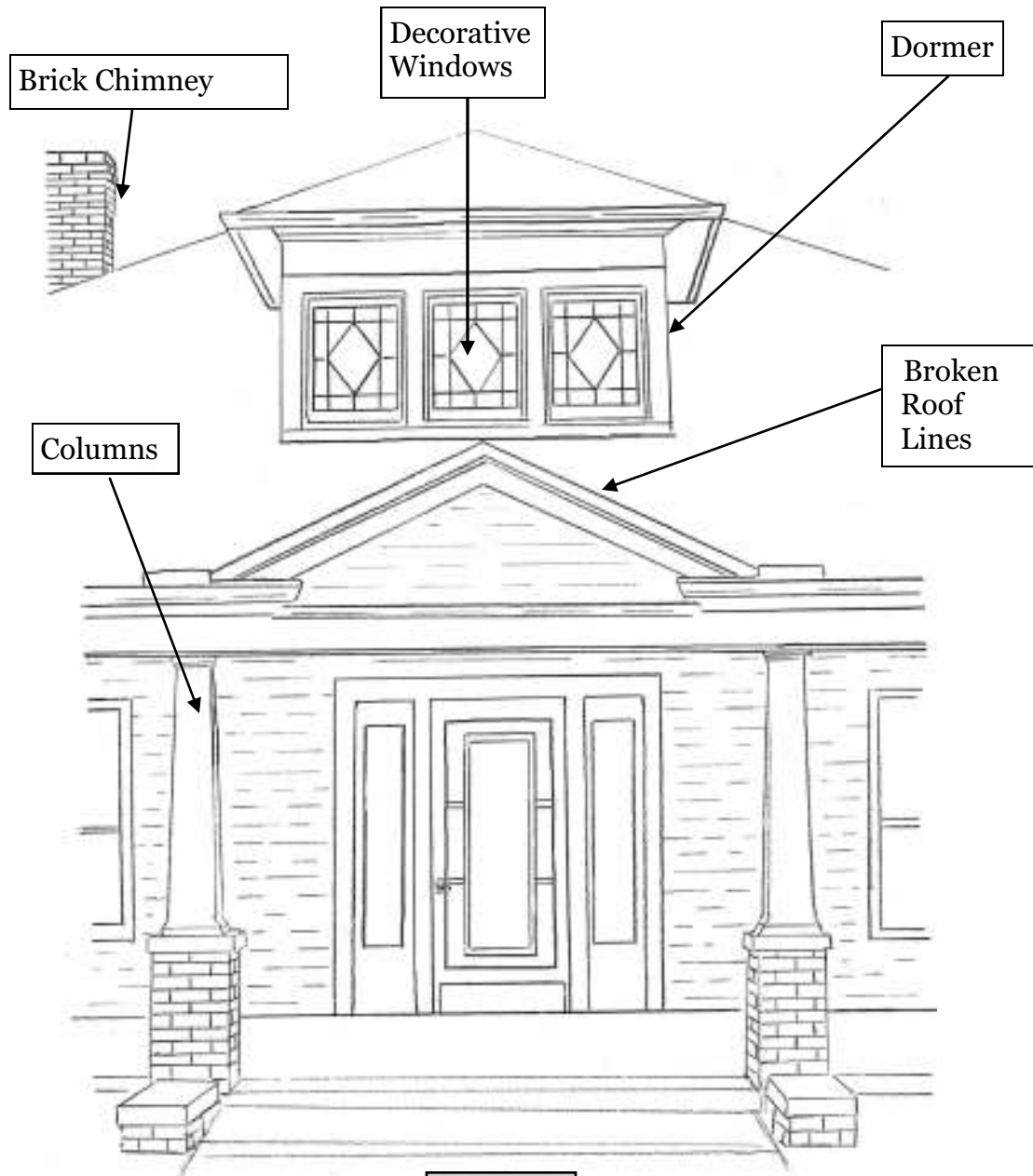
Dormers

Arched architectural features

Brick chimney

All brick façade

Other architectural features as approved by the Planning Director





## Decorative Features, UDO Sec. 6.3.1 (H)(2)(b)

### *Decorative Features*

Residential structures shall have four (4) or more of the following features:

Decorative shake

Decorative porch railing/  
posts

Shutters

Decorative/functional air  
vents on roof or foun-  
dation

Trimmed Windows

Recessed windows

Decorative/period win-  
dows

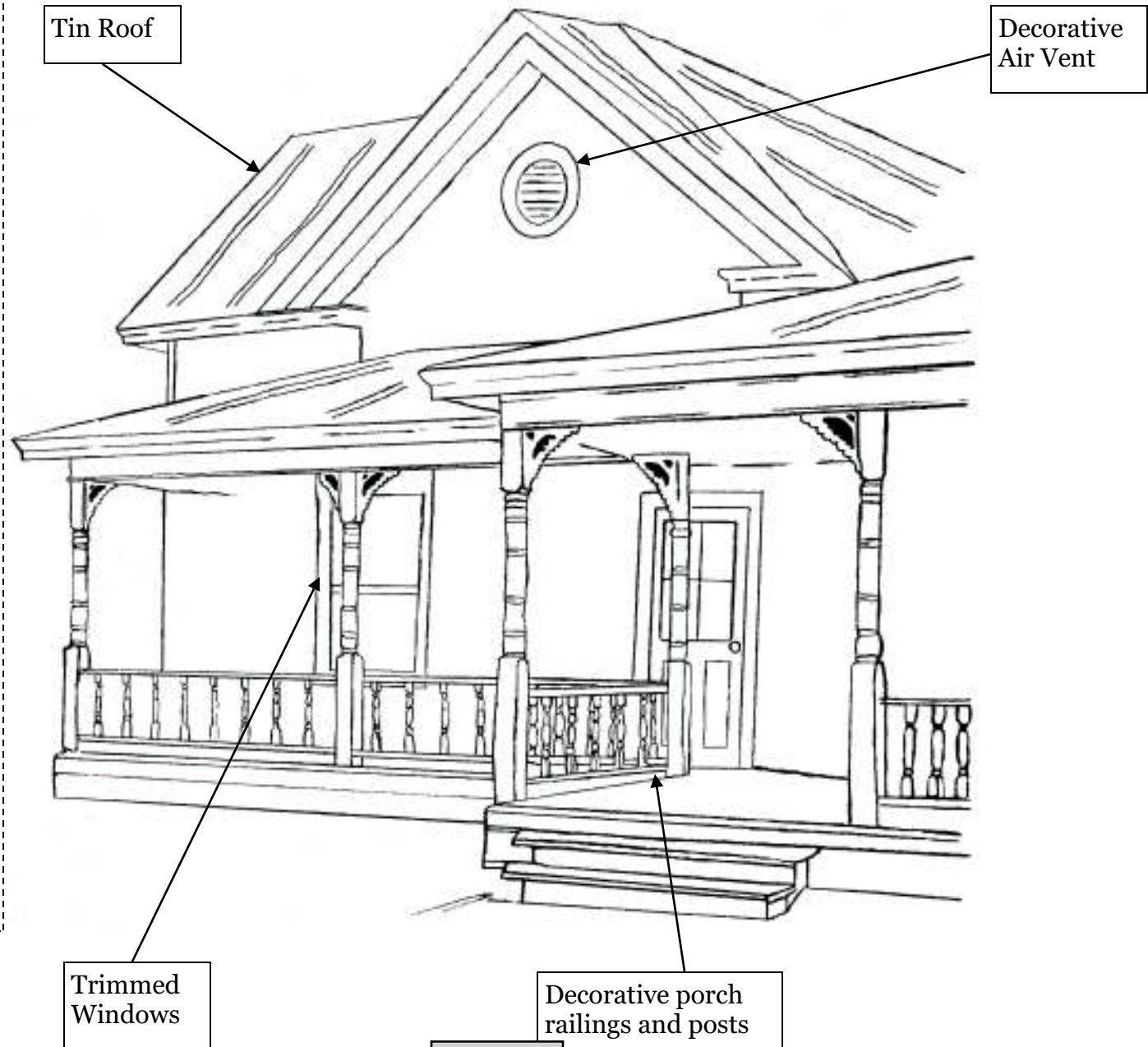
Decorative brick/stone

Decorative gables

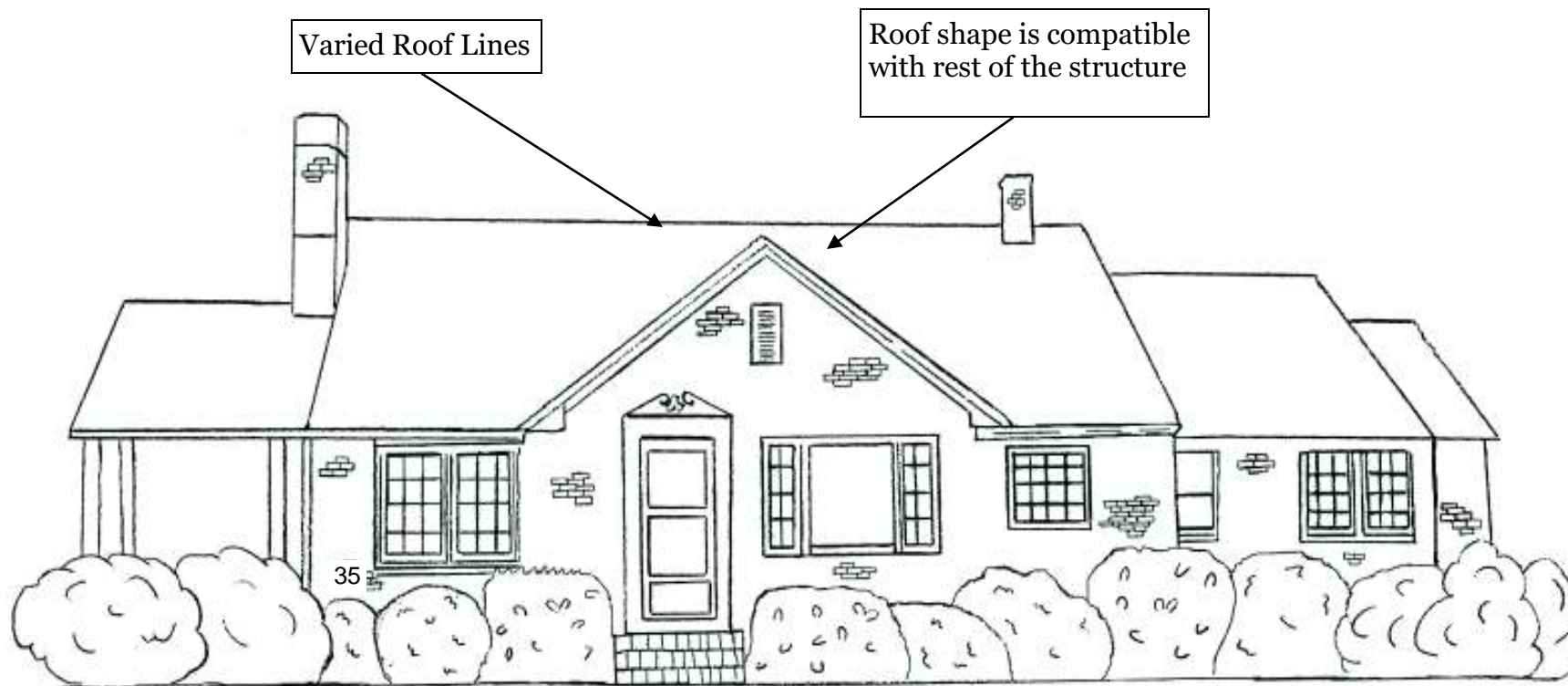
Decorative cornices

Tin/metal roof

Other decorative features  
as approved by the Plan-  
ning Director



## Residential Standards-Roofs, UDO Sec. 6.3.1 (H)(2)(c)



### *Roofs*

Roof lines shall be varied to reduce the scale of structures and add visual interest.

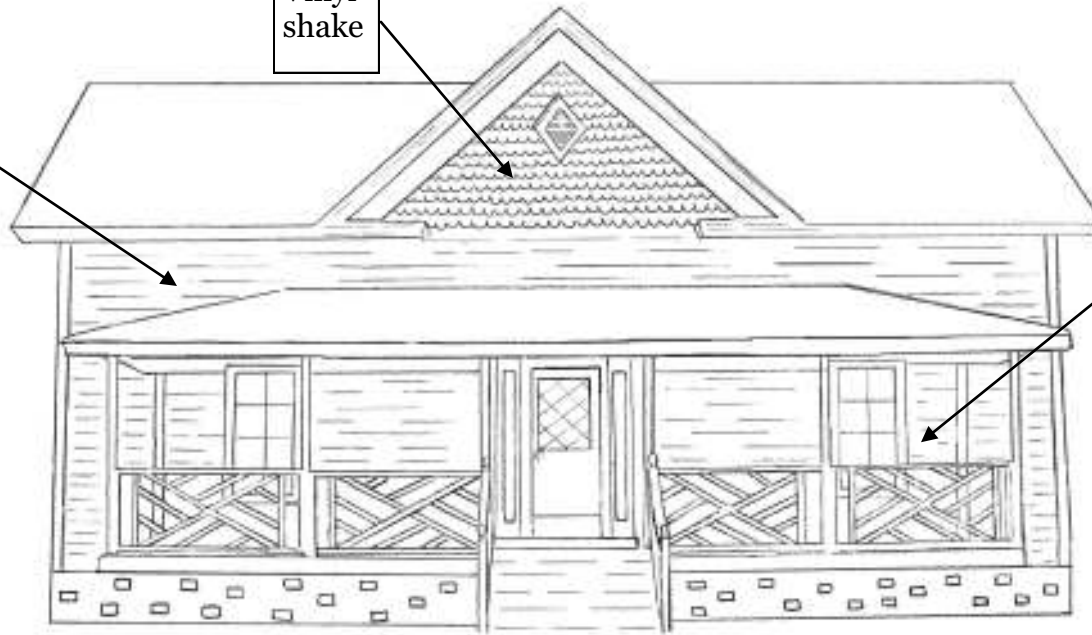
Roof shape (for example: flat, hip, mansard, or gable) and material shall be architecturally compatible with façade elements and the rest of the structure.

## Residential Standards-Facades, UDO Sec. 6.3.1 (H)(2)(d)

Wood  
Composite  
siding

Vinyl  
shake

Porch Area  
at least 50%  
of facade



### *Facades*

The width of the façade shall not be any wider than 1.5 feet times the depth of the principal structure. The width to depth ratio shall be no more than 1.5 feet to 1 foot.

#### Recesses and projections:

The principal structure's front façade must incorporate recesses and projections along at least 50 (fifty) percent of the length of the façade. Windows, awnings, and porch area shall total at least 50 percent of the façade length abutting a public street.

#### Repeating design patterns:

Façades shall incorporate a repeating pattern of change in color, texture, and material modules.

#### Renovations:

Façade renovations shall incorporate original building details to the maximum extent practicable.

#### Materials:

The façade exterior siding shall be brick, stone, wood, wood composite, or fiber cement (or combination thereof). Vinyl shall only be used for exterior shake and trim elements and shall not be used as the siding material.

#### Roof cornices:

If roof cornices have been removed or damaged on an existing structure, renovations of that structure must include retaining, repairing, and replacing the roof cornices.



## Residential Standards-Windows, UDO Sec. 6.3.1 (H)(2)(e)



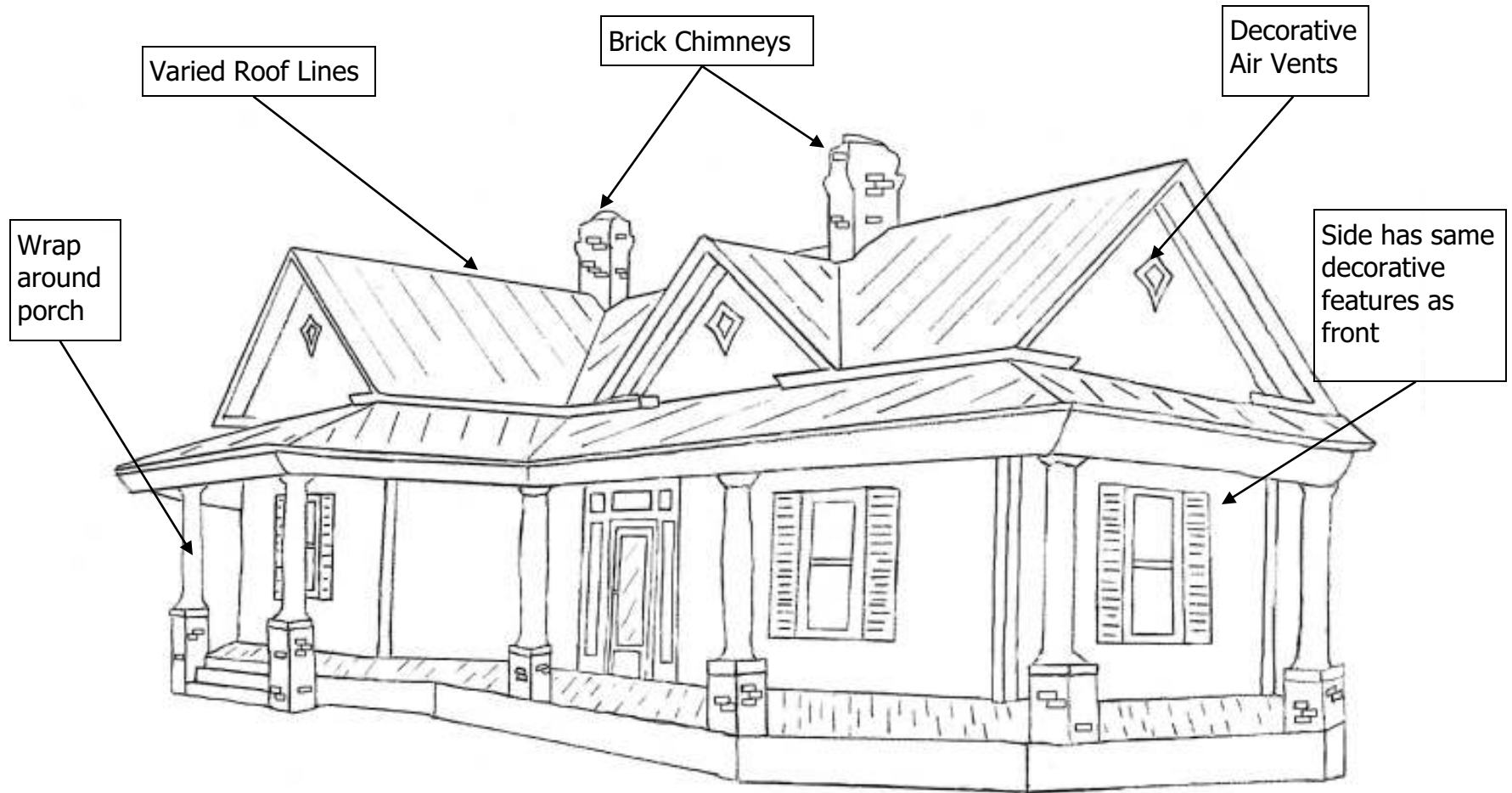
### *Windows*

Replacement of windows on the façade of an existing structure shall be accomplished by using windows of the same trim size and character as the original.

Blank exterior walls are prohibited; windows shall be present on all sides of the home.

Shutters on windows shall be one half the width of the window to which they are affixed.

**Residential Standards-Sides facing public street, UDO Sec. 6.3.1 (H)(2)(f)**



*Sides Facing Abutting Street*

All sides of a principal structure that face an abutting public street shall have architectural and decorative features as described in Section 6.3.1(H)(1)(a) and (b).

## Residential Standards-Entryways & Materials, UDO Sec. 6.3.1 (H)(2)(g)(h)



### *Entryways*

#### Required features:

Doors shall have built-in windows; alternatively, a solid door is allowed provided side lights (side windows) are installed immediately adjacent to the solid door.

#### Variation:

Variations in color schemes and textures are encouraged in order to articulate entryways so as to give greater recognition to these features.

### *Materials*

#### Predominant exterior building materials:

Predominant exterior building materials shall be high quality materials, including brick, wood, stone, fiber cement, and/or wood composite. Vinyl shall only be allowed in the form of shake and trim elements.

#### Foundations:

No slab on grade foundations are permitted. Foundations around the principal structure shall be fully enclosed. Front and side porches with open foundations shall have brick or stone piers and openings shall be fully screened with evergreen plantings.

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 25, 2023

## Item Details

Presenter(s): Chris Johnson, PE, MPA, Transportation & Infrastructure Development Director

Department(s): Transportation & Infrastructure Development

### Requested Motion

Motion to approve an encroachment agreement between the Town and property owner Upright Builders, Inc to install a driveway that will encroach 55 square feet (SF) onto the Town of Apex 20' Public Drainage Easement and authorize the Town Manager to execute the same.

### Approval Recommended?

Yes

### Item Details

The proposed Encroachment Agreement is between the Town and property owner Upright Builders, Inc (Grantee) for the property described as a residential lot known as Wake County PIN #0723-86-1009, Book of Maps 2022, Page 01764, lot is also known as 2553 Silas Peak Lane, Apex NC 27523. Grantee wishes to install certain improvements, more particularly described as a driveway that will encroach 55 square feet (SF) onto the Town of Apex 20' Public Drainage Easement.

### Attachments

- CN7-A1: Encroachment Agreement - 2553 Silas Peak Lane
- CN7-A2: Encroachment Agreement - Exhibit A - 2553 Silas Peak Lane



After Recording Mail To:     Development Services  
   Town of Apex  
   PO Box 250  
   Apex, NC 27502

**STATE OF NORTH CAROLINA  
COUNTY OF WAKE**

**ENCROACHMENT AGREEMENT**

THIS ENCROACHMENT AGREEMENT, being made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between Upright Builders, Inc hereinafter referred to as "Grantee," and the Town of Apex, hereinafter referred to as the "Town."

WHEREAS, the Grantee is the owner of a certain residential lot of land in the County of Wake, State of North Carolina, which is designated as **PIN #0723-86-1009** by the Wake County Revenue Department and more particularly described as **Lot 30** of the subdivision known as **Ellsworth** as shown on that certain plat recorded in **Book of Maps 2022, Page 01764**, Wake County Registry (hereinafter the "**Subdivision Plat**"). The residential lot is also known as **2553 Silas Peak Lane, Apex, NC 27523**. The residential lot described in this paragraph is hereinafter referred to as the "**Residential Lot**."

WHEREAS, the Town is the owner of a **20' Public Drainage Easement** as shown on the **Subdivision Plat** hereinafter referred to as the "**Public Drainage Easement**."

WHEREAS, Grantee wishes to install certain improvements more particularly described as a **driveway that will encroach 55 square feet (SF) onto the Public Drainage Easement**, which serves the Residential Lot, hereinafter referred to as the "**Encroachment**", all as shown on the attached **Exhibit A**. Grantee desires to make certain agreements and covenants regarding the Encroachment.

WHEREAS, the Town, under the terms and conditions herein set forth, is willing to allow the above-described Encroachment upon the **Public Drainage Easement**.

NOW, THEREFORE, in consideration of these promises and other consideration, the receipt and sufficiency of which is hereby acknowledged, Grantee and the Town hereby covenant and agree:

1. Subject to the terms herein, the Town agrees to allow Grantee, and Grantees' successors and assigns at Grantee sole risk and expense, to encroach into the **Public Drainage Easement** of the Town as shown in the attached **Exhibit A**, and incorporated by reference as though fully set forth herein.

2. The Encroachment shall not be enlarged or increased beyond the Encroachment shown in **Exhibit A** and described in this Encroachment Agreement. Grantee is responsible for any and all expenditures of labor or materials required for the installation, erection, repair, removal, or maintenance of the above-referenced Encroachment and shall be allowed to maintain the Encroachment and to perform all necessary repairs, maintenance, and replacement of the Encroachment as may be necessary from time to time.

3. The Town shall not be held responsible for any and all property damage or injury or death of any person which results from any and all negligence, omission, defect in design, maintenance, or workmanship created by the Encroachment described herein, or any cause of action arising out of the installation, maintenance, removal, destruction, or location of said Encroachment.

4. Grantee agrees to and does hereby hold the Town, its officers, council members and employees harmless from any and all liability arising out of such negligence, omission, defect or other cause of action; that it will defend the Town, its officers, council members and employees, and pay all attorney fees in any and all actions brought as a result of such; and that it will indemnify the Town, its officers, council members, and employees against any and all loss sustained by reason of such negligence, omission, defect, or other cause of action, claim, cost, or expense arising out of the installation, maintenance, removal, or location of said Encroachment; provided that, Grantee shall not be obligated hereunder to indemnify the Town for any negligent acts or omissions of the Town, its contractor(s) (including sub-contractors) and their respective officers, agents and employees.

5. Sections 3 and 4 shall survive the termination of this Encroachment Agreement for any reason.

6. All notices required herein shall be deemed given by depositing such in the United States mail, first class, and addressed to:

To Town: Town Manager  
Town of Apex  
PO Box 250  
Apex, NC 27502

To Grantee: Upright Builders Inc  
590 New Waverly Place Ste 140  
Cary, NC 27518-7407

7. In the event there is a dispute between the parties concerning the interpretation of the terms of this Encroachment Agreement or their respective rights and obligations hereunder, such dispute or controversy shall be adjudged pursuant to the laws of the State of North Carolina.

8. Grantee agrees to abide by all applicable laws, regulations, statutes and ordinances.

9. This Encroachment Agreement shall not divest the Town of any rights or interest in said **Public Drainage Easement**.

10. If the Town deems, within its sole discretion, that removal of all or apportion of the Encroachment is necessary in order to operate, protect, maintain, modify, replace, add-to or improve its facilities located within the **Public Drainage Easement**, then Grantee shall cause such removal to be made at Grantee's sole expense within 30 days after receipt of notice from the Town and shall be completed in a manner that will allow the Town complete and safe access to the **Public Drainage Easement**. In the event that the Grantee fails to timely remove the Encroachment or in the event of an emergency associated with the condition of the **Public Drainage Easement**, the Town is authorized to remove all or such portion of the Encroachment as the Town determines in its sole discretion to be reasonably necessary, convenient or advisable to operate, protect, maintain, modify, replace, add-to or improve its facilities located within the **Public Drainage Easement**. The Town shall have the sole discretion to determine the existence of an emergency associated with the condition of the **Public Drainage Easement**.

11. Grantee agrees to pay and reimburse the Town the entire expense and cost of removal of the Encroachment in the event that the Town removes the Encroachment as provided in the Paragraph 10 or if Grantee fails to remove the Encroachment within the time limit after receiving notice under Paragraph 9.

12. Grantee, during the life of this Encroachment Agreement, agrees to procure or cause to be procured from a responsible insurance carrier or carriers authorized under the laws of the State of North Carolina, insurance in the minimum amounts of \$300,000/\$500,000/\$300,000 covering full liability for any and all personal injury, property damage or wrongful death caused by the construction, maintenance, location, repair or visual obstruction of said Encroachment. Grantee shall furnish the Town, without demand, each July a certification from the insurance carrier or carriers with whom the insurance herein mentioned is carried, stating that such compensation is covered by such carrier or carriers and showing such insurance to be in full force and effect. Both Grantee and the Town shall be named as insured parties by endorsement of the policy. In the event of any change in the insurance policy, Grantee shall give the Town thirty (30) days' notice of such change. Should Grantee fail to pay premiums upon said insurance or to perform any of the agreement, terms or conditions herein contained, the Town, at its option, by written notice may declare this Encroachment Agreement canceled and terminated and all rights acquired hereunder by Grantee shall thereupon terminate.

13. Notwithstanding Section 14 below, Grantee shall be released from its obligation under this Encroachment Agreement only upon the assumption of said obligations either by a successor in title to the **Residential Lot**, or by assumption of said obligations by an incorporated party approved by the Town. The Town's consent to such assumption and release shall be required but shall not be withheld, conditioned or delayed if, as reasonably determined by the Town, the party assuming Grantee's obligations possesses adequate financial resources and ownership interest, and Grantee's delegate and proposed assignee assume and agree to fulfill, in writing, all of Grantee's duties set forth in this Encroachment Agreement.

14. The right to encroach is appurtenant to and runs with the land hereinabove referred to and shall forever by subject to the conditions above agreed on between the parties. This Encroachment Agreement is binding upon the heirs, assigns, transferees, and successors in interest of the Grantee and shall, upon execution, be recorded in the Office of the Register of Deeds of Wake County, North Carolina.



In testimony whereof, said Grantee and said Town have here unto set their hands and seals, the day and year first above written.

**GRANTEE**

**Upright Builders Inc**

By: S.W. Carroll (SEAL)  
S Wesley Carroll  
President

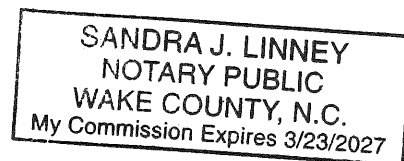
**NORTH CAROLINA**

COUNTY OF WAKE [county in which acknowledgement taken]

I, SANDRA J. LINNEY, a Notary Public of WAKE County, North Carolina, certify that S Wesley Carroll, personally appeared before me this day and acknowledged that he is the President for Upright Builders Inc Grantee herein, and that by authority duly given as President for the company, the foregoing instrument was signed and sealed by him on behalf of the company and acknowledged said writing to be the act and deed of said company.

Witness my hand and official stamp or seal, this 13 day of APRIL, 2023.

Sandra J. Linney  
[Signature of Notary Public]



My Commission Expires: 3/23/27

(SEAL)

**TOWN OF APEX**

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

(Corporate Seal)

ATTEST:

\_\_\_\_\_  
Allen Coleman, CMC, NCCCC  
Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_ *[county in which acknowledgement taken]*

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_  
\_\_\_\_\_ County, North Carolina, certify that Allen Coleman personally came before me this day and  
acknowledged that he is Town Clerk for the Town of Apex, a North Carolina Municipal Corporation, and that  
by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by  
its Town Manager, sealed with its corporate seal and attested by him as its Town Clerk.

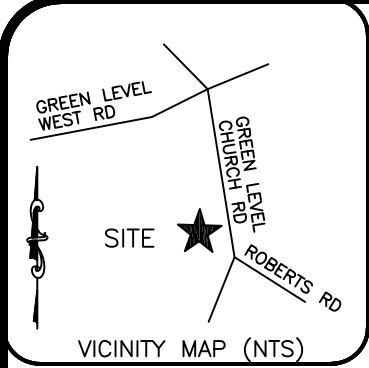
Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
*[Signature of Notary Public]*

My Commission Expires: \_\_\_\_\_

(SEAL)

Exhibit A



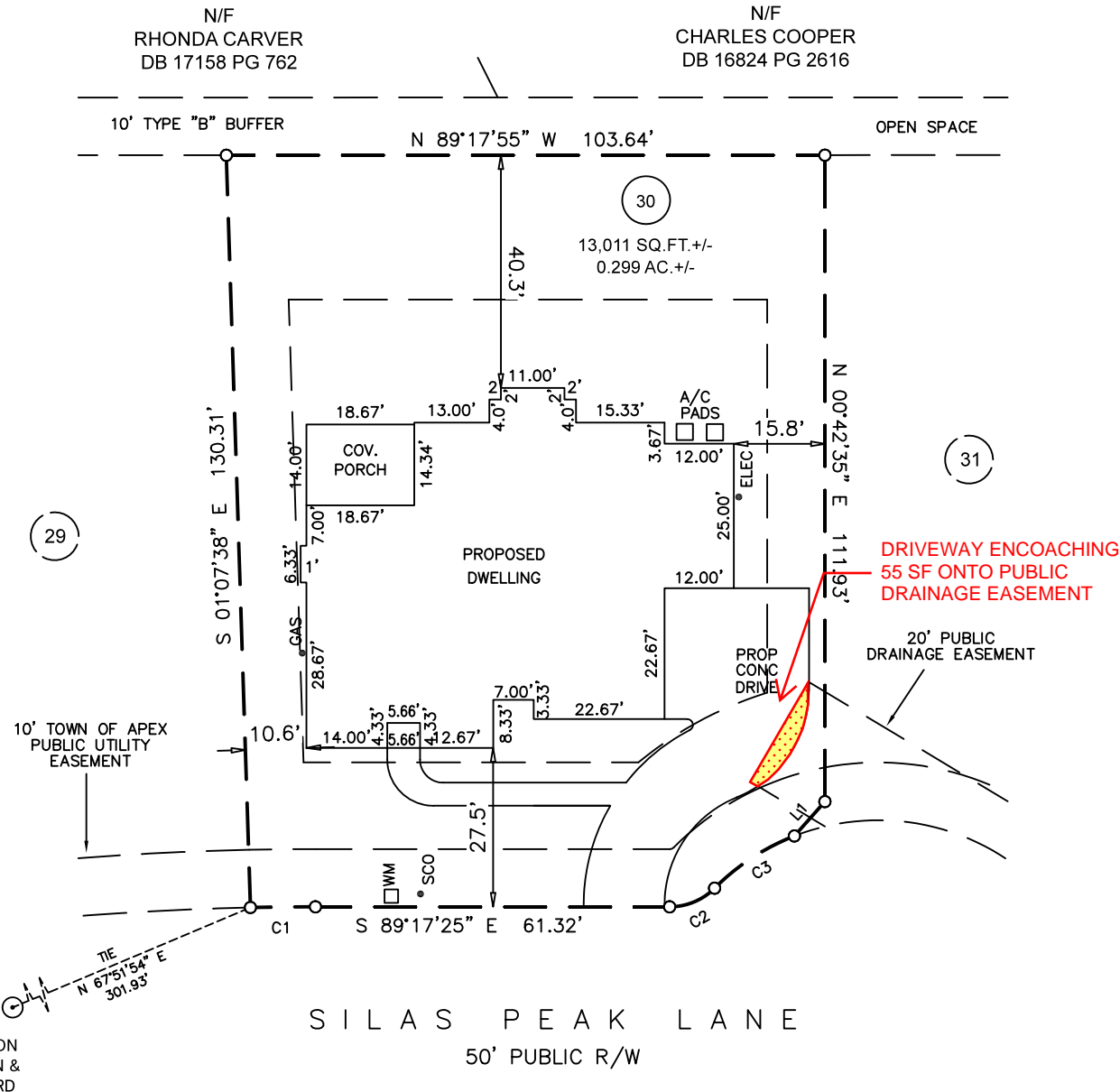
- LEGEND
- AC=AIR CONDITIONING UNIT
  - BOC=BACK OF CURB
  - DW=CONC DRIVEWAY
  - EB=ELECTRIC BOX
  - EOP=EDGE OF PAVEMENT
  - P=PATIO
  - PO=PORCH
  - SCO=CLEANOUT
  - SW=SIDEWALK
  - TP=TELEPHONE PEDESTAL
  - WM=WATER METER
  - IRON PIPE FOUND
  - IRON PIPE SET
  - NAIL SET

NOTE:  
THIS MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS.

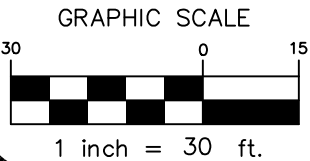
PER PLAT SETBACKS

FRONT	25'
SIDE MIN.	8'
SIDE TOTAL	20'
REAR	25'
CORNER	18'

PLAT NORTH  
BM 2022 FCS 1703-1707



INTERSECTION  
SILAS PEAK LN &  
ASPENWOOD RD



REVISION: SHOW PROPOSED UTILITIES 12/5/22

L1 N 42°20'36" E 7.95'

C1	R=525.00'	A=11.26'	S 89°54'16" E	11.26'
C2	R=11.00'	A=8.66'	S 68°09'37" W	8.44'
C3	R=40.00'	A=16.63'	N 57°31'13" E	16.51'

IMPERVIOUS AREA

HOUSE	3,704 SQ.FT.
DRIVE/WALK	1,344 SQ.FT.
PATIO	0 SQ.FT.
TOTAL	5,048 SQ.FT.

PLOT PLAN

PROJECT: ELLSWORTH

DRAWN BY: NMF

SURVEYED BY: N/A

SCALE: 1"=30'

FIELD WORK: N/A

DWG DATE: 10/18/22

FOR UPRIGHT BUILDERS, INC.

2553 SILAS PEAK LANE

LOT 30

ELLSWORTH SUBDIVISION

WHITE OAK E CO., NC

BM 21 1767

- Page 181 -

ECLS GLOBAL, INC.

U.S. VETERAN-OWNED

19 N MCKINLEY ST

COATS, NC 27521

910.897.3257 ECLSGLOBALINC.COM

910.897.2329 (FAX) CO#C-4175

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 25, 2023

## Item Details

Presenter(s): Shawn Purvis, Deputy Town Manager

Department(s): Administration

### Requested Motion

Motion to approve enterprise resource planning (ERP) system contracts, authorize the Town Manager to execute said contracts, and approve corresponding Budget Ordinance Amendment No. 16 and Capital Project Ordinance Amendment No. 2023-7.

### Approval Recommended?

Yes

### Item Details

The Town is preparing to transition to a new enterprise resource planning (ERP) system. Elements of the current system, particularly in billing and collections, are unable to support the level of service the Town seeks to provide its residents and customers. Implementation of the new ERP system will take a couple of years to fully complete as staff phases implementation of various modules for different departments. The initial data migration process will begin mid-June.

### Attachments

- CN8-A1: Milsoft Utility Software Subscription
- CN8-A2: Premier Master Service Agreement
- CN8-A3: Premier Data Migration Statement of Work
- CN8-A4: RPI Master Service Agreement
- CN8-A5: RPI SaaS Agreement
- CN8-A6: RPI Statement of Work
- CN8-A7: SEW SaaS Agreement
- CN8-A8: SEW Statement of Work
- CN8-A9: SEW Payment Services Agreement
- CN8-A10: Budget Amendment No. 16
- CN8-A11: Capital Project Ordinance Amendment 2023-7



## **Milsoft Contract for Software License and Support, With iXp® Subscription**

This Contract for Software License, Support, and Subscription (hereinafter referred to as "Contract") is by and between **Town of APEX, NC** ("Customer") and **Milsoft Utility Solutions, Inc.**, a Texas corporation ("Milsoft"), and is effective on the date signed by the latter of Customer and Milsoft ("Effective Date").

Whereas, Customer has the desire and capacity to procure from Milsoft the authorized use of its proprietary software known as **Milsoft iXp® Hosted Solutions incl. Customer Information System with ePrint and existing integrations, setup and subscription; Integration Configurations, supportable; services include Billing Conversion and Training** (altogether, the "System"), more particularly identified in Section 1 below; and

Whereas, Milsoft has the desire and capability to furnish and support the System for Customer as quoted and in accordance with the terms and conditions of this Contract;

Now, therefore, in consideration of the premises, the Contract Price and the respective covenants contained herein, the Customer and Milsoft (the "parties") hereby agree as follows:

1. **SYSTEM.** The System (or "System Components") shall consist of the licensed System software (the "Software") and subscription services described in Milsoft **Quote # 51533**, constituting "**Schedule A**" for purposes of this Contract and incorporated herein by reference as if fully set forth, as well as any other software and/or service Options that may be added by written approval as addenda hereto.
2. **CONTRACT PRICE; TERMS OF PAYMENT.** The itemized and/or aggregate pricing for the System Components, basic installation, training if included, and software license (collectively the base "Contract Price") is set forth in **Schedule A**, together with the terms of payment.
3. **STATEMENT OF WORK.** If and to the extent deemed necessary by Milsoft, the Parties shall in good faith mutually develop and agree upon a Statement of Work ("SOW") to describe and set forth with particularity the essential scope of work, technical specifics, period of performance, schedules/milestones, acceptance criteria, change orders and other requirements unique to the project. Should the Parties be unable to agree upon the SOW within [ 30 ] calendar days after entering into this Contract, either Party may elect to terminate this Contract by giving written notice to the other, without necessity of default, whereupon the termination shall be effective in one week (7 calendar days after notice) if no agreement as to the SOW be reached.
4. **DELIVERY, INSTALLATION AND TURNOVER.** For the Contract Price and in accordance with the SOW (if applicable), Milsoft shall host and deliver access to the System Components to the Customer's location identified in **Schedule A** and, subject to Customer's preparatory compliance as described in Section 7, shall install the System on site, or by remote electronic delivery, or combination thereof as appropriate. The Turnover Date shall be the date, after completion of installation and testing, upon which Milsoft turns over the System to Customer for fully operational use.
5. **TRAINING.** Milsoft shall provide basic System administration and user training to Customer's designated employees, if and as may be described in more detail in the Statement of Work or **Schedule A**.
6. **SUPPORT SERVICES.** Support is included at no additional cost for the products and services provided hereunder by Subscription. For the components of Software not covered by subscription hereunder, Customer will be eligible to participate in Milsoft's annually renewable support program (the "Support Program") for technical and user support, Software fixes/patches, and upgrades to future Software editions. The Support Program is offered at an initial annual rate of 20% of the Retail Price of the Software, excluding any discounts, plus any applicable sales taxes. Renewal pricing is subject to change in view of software complexity and market conditions, not to exceed 5% variance from one year to the next, unless otherwise specified in proposal as accepted. If payment is not received when due, Milsoft may withhold services until paid. In the event Customer declines or discontinues its participation in the Support Program, in order to again be eligible to receive support Customer may be required to upgrade and/or agree to pay an increased rate based upon the extent of maintenance missed and appropriate to the circumstances.

For purposes of this Contract, support of the Software means:

- support related to System applications;
- delivery of Software fixes/patches;
- delivery of upgrades to the latest Software versions made available by Milsoft.

Hours of support availability will be 24 hours/day, 7 days/week, year-round for Milsoft iXp, OMS, and Communications systems; and no less than 7:00 a.m. to 7:00 p.m. Central Time, Monday through Friday, excepting normal business holidays observed by Milsoft, for all other support issues. With prior notice and as reasonably requested, Customer shall allow online access to the System and sufficient access to Customer's premises as needed for Milsoft to provide its support services.

The non-hosted services to be provided under the Support Program or on-site Subscription do not cover damages or claims due to Customer's misuse, negligence, accidents, thefts, unexplained data loss, loss of data due to Hardware failure, lack of daily backups, abuse, electrical outages, fire, flood, wind, acts of public enemy, or improper wiring, installation, repair or alteration by anyone other than Milsoft approved technicians. Repairs necessitated by any one or more of the above-excepted causes may be performed by Milsoft upon request, provided the Customer agrees to pay for such extra work at Milsoft's current hourly rates. Such work would not represent or imply any additional warranty or representation regarding the System, the System Components or the functionality of the System.

## **7. CUSTOMER'S OBLIGATIONS, PREP AND SPECS; INTEGRATION WITH 3<sup>rd</sup>-PARTY SOFTWARE.**

**7.1** Customer assumes responsibility for care and risk of loss of any on-site System Components upon delivery or completion of online installation. Customer is responsible for meeting the data requirements, purchasing and providing any other hardware and/or third-party software, and preparing its location for installation consistent with the specifications, requirements and recommendations per SOW, Schedule A, RFP/Response or applicable terms and conditions, at its expense. Any Customer data required for installation shall be timely delivered to Milsoft pursuant to its instructions. Customer shall also secure any permits, licenses or other governmental approvals for its installation site as may be required by applicable law or regulation, at its expense. Once a Milsoft technician is on-site as reasonably scheduled, if the installation is delayed due to failure of the Customer to have met the preparatory requirements, there may be a charge of \$1,000 per day assessed until ready to proceed.

**7.2** Milsoft products are generally amenable to integration with a variety of products from third-party vendors known by Milsoft to be certifiably interoperable (including but not limited to many MultiSpeak® integrations, when applicable), subject to verification, and with a range of other third-party products that may require more extensive customization. The development or provision by Milsoft of any and all interface between its products and third-party software (whether deemed necessary at the time of Milsoft product installation or as needed in the future due to change of circumstances) can only be undertaken pursuant to specific evaluation and may, at the discretion of Milsoft, require reasonable adjustment of time and/or cost.

Every interface to be developed and provided for integration with third-party products must be testable by Milsoft with consent and cooperation of the third-party vendor (whose consent and cooperation shall be provided by Customer, as Customer's responsibility) and will be specific only to the version or iteration of the third-party product in use at the time of the interface development. Customer shall be responsible for alerting Milsoft to future additions, updates or new versions of all third-party product and for providing renewed consent and cooperation of each third-party for testing, as any such changes could render the Milsoft interface less functional unless addressed. In such event, Milsoft offers no warranty for the previously provided interface, and assumes no responsibility to develop or provide additional interface without further agreement and compensation, if at all. **No other representation, warranty or promise regarding interfaces or integration between Milsoft products and third-party software is expressed or implied.**

**8. SOFTWARE LICENSE.** Upon successful installation and as of the Turnover Date, Milsoft grants to Customer, and Customer accepts, a non-exclusive and non-transferable license to use the Software furnished hereunder (including modifications and enhancements furnished under the terms of this Contract, and modifications and enhancements furnished under the terms of the Support Program described in Section 6) strictly upon the terms and conditions contained herein. Title to and ownership of all Software shall remain with Milsoft or its licensors. Customer shall have no right to sell, sublicense, publish, disclose, display, assign, duplicate, alter, lease, or otherwise make available the Software to any third party. Customer shall take appropriate action with its employees, agents, contractors, consultants and other representatives or end users to ensure compliance with these terms and conditions. Customer may make copies of the Software only for backup purposes and/or archival purposes, and any such copy must contain the same copyright notice and proprietary markings that the original Software contains. Customer acknowledges the Software represent a very large-scale investment in the development of an intangible asset by Milsoft and must be strictly protected hereunder. In the event of a breach under the provisions of this Software license by Customer, upon written notice which may be given at the election of Milsoft, Customer shall forfeit all rights as licensee under this Contract and shall immediately return the Software to Milsoft along with all documentation and source media associated therewith. Customer assumes full liability to Milsoft for any damages (including consequential damages), whether or not foreseen by the parties hereto, resulting directly or indirectly from any compromise of any rights owned by Milsoft and not expressly conferred under this Contract, if such damages are the result of the negligence or willful act or omission of Customer (including any employee, agent, contractor, consultant or other representative of Customer). **CUSTOMER ACKNOWLEDGES THAT THE SOFTWARE IN EXECUTABLE LINE CODE FORM REMAINS A CONFIDENTIAL TRADE SECRET AND CUSTOMER**



AGREES NOT TO ATTEMPT TO REVERSE-ENGINEER, TRANSLATE, DECIPHER, DECOMPILE, MODIFY OR DISASSEMBLE THE SOFTWARE, NOR INCORPORATE THE SOFTWARE IN WHOLE OR IN PART INTO ANY OTHER SOFTWARE OR PRODUCT OR DEVELOP DERIVATIVE WORKS THEREFROM OR ALLOW ANY OTHER THIRD PARTY TO DO SO, WITHOUT THE EXPRESS WRITTEN CONSENT OF MILSOFT.

## **9. CONFIDENTIALITY.**

**9.1** During performance of this Contract or in the contemplation thereof, and subject to and in conformity with Section 8, employees, agents and authorized contractors or consultants of each party to this Contract may have access to private or confidential information owned by the other party, including, but not limited to, the Software, and information concerning operating procedures and methods of doing business, which may be owned or controlled by the other party. *Confidential information shall not include any "public records" as defined in Chapter 132 of the North Carolina General Statutes.* With respect to any confidential information so accessed or acquired, each party agrees as follows: (a) all such information shall be and shall remain the exclusive property of the party which owns the information; (b) each party shall limit access to such information of the other party to their respective employees, agents and authorized contractors or consultants who have a need to know consistent with the receiving party's authorized use of such information; (c) the receiving party shall keep, and have its employees, agents and authorized contractors or consultants having access keep, all such information confidential; (d) the receiving party shall not copy, publish or disclose to others, or permit its employees, agents and authorized contractors, consultants or anyone else to copy, publish or disclose to others, any such information without the owning party's prior written consent; (e) the receiving party shall return such information to the owning party at its request; and (f) the receiving party shall use such information only for the purpose of performing its obligations hereunder.

**9.2** Each party shall secure and protect the other party's confidential information in a manner consistent with the protection it provides to its own confidential information, but in any case using no less than reasonable degree of care. Each party's duties of confidentiality as regards the confidential information shall survive any cancellation, expiration or termination of this Contract. Notwithstanding the foregoing, receiving party may disclose Confidential Information as required by applicable law or by proper legal or governmental authority; in such event, receiving party shall give the owning party prompt notice of any such legal or governmental demand and reasonably cooperate with such owner in any effort to seek a protective order or otherwise to contest such required disclosure, at owner's expense.

**9.3** Each party at all times shall maintain appropriate internal policies and procedures reasonably sufficient to satisfy its obligations under this Section 9. Should either party or its employees, agents and authorized contractors or consultants use, disclose or attempt to use or disclose any such information in a manner contrary to this Contract, the owning party shall have the right to seek injunctive relief against such breach or threatened breach (without posting a bond or other security), in addition to any other remedies that may be available at law or in equity.

**10. PRODUCT CHANGES.** Milsoft reserves the right to make modifications and distribute enhancements to existing Software. In addition, upon notice to Customer of no less than one hundred eighty (180) days, Milsoft reserves the right to discontinue offering the Support Program associated with the System in place, and may require that specified upgrades to the System Components be made as a condition for continued Customer participation in the Support Program.

## **11. LIMITED WARRANTIES.**

**11.1 *Software.*** Upon delivery and continuing through the first thirty (30) calendar days following the Turnover Date, Milsoft warrants exclusively that the Software shall substantially conform to, and perform in substantial accordance with, all applicable Software specifications. Milsoft represents and warrants generally that it owns the Software or that it has the right to license Customer's use of the Software in accordance with the provisions of this Contract. In event of breach or failure, Customer's exclusive remedies shall be, at the option and expense of Milsoft, either (i) to have Milsoft promptly correct any discrepancy in performance that materially impairs the appropriate functionality of the Software; or (ii) to have Milsoft refund the price paid for the licensed use of the Software, provided that Customer must allow Milsoft to de-install the Software within 30 days of Customer's timely notification to Milsoft of the discrepancy. **ALL CLAIMS AND REMEDIES ARE LIMITED TO THOSE EXPRESSLY PROVIDED IN THIS CONTRACT.**

**11.2 *Support Services.*** With respect to services provided under the Support Program or other work, Milsoft warrants exclusively that such services shall be performed in a good and workmanlike fashion. In event of breach or failure, Customer's exclusive remedies shall be, at the option and expense of Milsoft, either (i) to have Milsoft promptly correct such services, or (ii) to have Milsoft refund the price paid for the applicable portion of the services.

**12. DISCLAIMER OF OTHER WARRANTIES.** **THERE ARE NO OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

13. **GENERAL LIMITATION OF LIABILITY.** THE LIABILITY OF MILSOFT, ITS LICENSORS AND ITS AFFILIATES, IF ANY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES FOR ANY CLAIM OF ANY KIND WHATSOEVER WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED BY MILSOFT, REGARDLESS OF THE LEGAL THEORY OR THE DELIVERY OR NON-DELIVERY OR ALLEGED FAILURE OF ANY PRODUCTS OR SERVICES, SHALL NOT BE GREATER THAN THE FEES ACTUALLY PAID BY CUSTOMER TO MILSOFT HEREUNDER IN CONNECTION WITH THE PRODUCTS OR SERVICES AT ISSUE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH SUCH CLAIM ACCRUED. UNDER NO CIRCUMSTANCES WILL MILSOFT, ITS LICENSORS OR ANY AFFILIATE BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, COMPENSATION, REIMBURSEMENT OR DAMAGES ON ACCOUNT OF THE LOSS OF PRESENT OR PROSPECTIVE PROFITS, EXPENDITURES, INVESTMENTS, COMMITMENTS, BUSINESS REPUTATION OR GOODWILL, FOR LOSS OF DATA, COST OF SUBSTITUTE SOFTWARE, COST OF CAPITAL, AND THE CLAIMS OF ANY THIRD PARTY, OR FOR ANY OTHER REASON WHATSOEVER, REGARDLESS OF WHETHER SUCH CLAIM HAS ITS BASIS IN ANY THEORY OF CONTRACT, EQUITY, OR TORT, EXCLUDING NEGLIGENCE AND STRICT LIABILITY, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.
14. **PAYMENT.** Timely payment by Customer to Milsoft at its principal place of business of all sums due hereunder is a material element of this Contract. Unless otherwise specified in Schedule A or by a subsequent agreement of the parties in writing, payment shall be due upon billing and paid within thirty (30) days of invoice. Without limiting Milsoft's other rights and remedies for any failure of Customer to make payment, Milsoft may charge interest on all unpaid sums at the lesser of the rate of 1.5% per month or the maximum contract rate allowed by law. Milsoft has no desire to exceed the maximum amount of interest that may be contracted for, charged or received under applicable law, and any interest paid in excess of said maximum amount shall be credited toward any past due payment or refunded to Customer.
15. **TAXES.** Unless specified as such, the prices set forth herein do not include any sales, use, excise, ad valorem, property or other taxes applicable to the sale, use, license or delivery of the System Components and any related services supplied hereunder. *It is understood that as a governmental entity, Customer is not subject to or liable for taxation.*
16. **FORCE MAJEURE.** Neither party shall be deemed in default of any provision of this Contract, or responsible for failures in performance, resulting from any cause beyond its reasonable control, which include, without limitation, acts of civil or military authority, civil disturbances, war, fires, or other catastrophes. In the event of any failure or delay resulting from such causes, an equitable adjustment of schedule and any other appropriate terms and conditions shall be agreed upon by the parties.
17. **NON-WAIVER.** No waiver of any breach or default shall constitute waiver of subsequent breach or default. No failure or delay to exercise any right, power, or privilege under this Contract shall operate as a waiver of such right, power, or privilege; nor shall any single or partial exercise of any right, power, or privilege preclude further exercise of such right, power, or privilege.
18. **TERM and TERMINATION.** The initial term of Subscription(s) hereunder shall be through the duration of year(s) stated in Schedule A and may continue in renewal or extension thereof in the time and manner stated therein; in the absence of further written agreement or notice of cancellation or termination, agreement to extend on a month-to-month basis may be inferred so long as Customer continues to pay and Milsoft continues to accept monthly subscription payments. If at any time either party fails to perform a material obligation and does not remedy such failure within thirty (30) days following notice from the non-defaulting party, the non-defaulting party may elect to terminate this Contract by giving notice of termination to the party in default. Termination for default shall in no way prejudice the rights or remedies available to the non-defaulting party as a result of the default nor relieve Customer of its obligation to pay Milsoft for all compliant product provided and services actually rendered up to the date of termination.
19. **DISPUTE RESOLUTION.** The parties will attempt in good faith to promptly resolve any dispute arising out of this Contract without resorting to litigation. Before any suit for damages may proceed, the parties shall submit to non-binding mediation by an impartial mediator, at a mutually convenient location, with each party bearing its own attorney's fees and expenses. Any dispute not so resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction. Nothing contained herein, however, shall preclude the parties from first seeking temporary injunctive or other equitable relief in preservation of its rights.
20. **GOVERNING LAW; CHOICE OF FORUM.** The validity, performance and construction of this Contract shall be governed by the laws of the State of North Carolina (without giving effect to principles of conflicts of law). The parties agree that the Uniform Computer Information Transaction Act and the UN Convention on International Sale of Goods do not apply. Any legal claim or action shall be filed in Wake County, NC, unless otherwise agreed.
21. **SUCCESSORS AND ASSIGNS.** This Contract shall inure to the benefit of and be binding upon successors and assigns of the parties; however, Customer may not assign without the consent of Milsoft, which shall not be unreasonably withheld.



22. **CONSTRUCTION AND CAPTIONS; PARTIAL INVALIDITY.** Captions are for convenience only and shall not be construed to expand or limit any provision hereunder. Should any provision of this Contract be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Contract.

23. **CONTROLLING TERMS, ORDER OF PRECEDENCE.** Any terms or conditions appearing on the face or reverse side of any purchase order, preliminary quote, acknowledgment or confirmation that are different from or in addition to those required hereunder shall not be binding upon the parties, even if signed and returned, unless both parties expressly agree in writing to be bound by such. In event of any conflict or inconsistency between the main body of this Contract and the provisions of any schedule or other attachment, the provisions of this Contract shall prevail, except as to the job-specific details of Schedule A or applicable SOW.

24. **NOTICE.** All notices given under this Contract must be in writing and shall be deemed duly given only upon (a) personal hand delivery; (b) the fourth day following deposit in the United States Mail, postage paid, certified/return receipt requested; (c) delivery by a nationally recognized overnight courier service that obtains signed acknowledgment of receipt; or (d) confirmation of electronic transmission via facsimile or email; using the addresses or numbers shown below or any other address or numbers as either party may designate by ten days prior written notice given in accordance with this provision.

*If to Customer:*

**Town of Apex (or Apex Electric Utilities)**

Attention: \_\_\_\_\_

\_\_\_\_\_

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

*If to Milsoft:*

**Milsoft Utility Solutions, Inc.**

Attn: Adam Turner, CEO of Business Operations

P.O. Box 5726

Abilene, Texas 79608

Facsimile: (325) 690-0338

Email: [adam.turner@milsoft.com](mailto:adam.turner@milsoft.com)

25. **ENTIRE AGREEMENT; AMENDMENTS; SIGNATURES.** The SOW (if any) and all referenced schedules and addenda are integral parts of this Contract as if written verbatim herein. Collectively, this Contract sets forth all authorized and material representations, constitutes the parties' entire agreement and understandings with respect to the subject matter, and supersedes any and all other agreements, proposals and/or representations, subject to Milsoft's Response to Request for Proposal as Accepted (if applicable) which is incorporated herein by reference. No addendum, amendment or modification shall be effective unless in writing and duly executed by authorized representatives of both parties. Signatures may be made and/or delivered by electronic means, and any true, correct and complete copy of this fully signed instrument shall be as enforceable as the original.

26. **E-VERIFY; ANTI-HUMAN TRAFFICKING.** Milsoft shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (*E-Verify*) and shall require all of Milsoft's subcontractors to comply therewith as well. Milsoft warrants and agrees that no labor supplied by Milsoft or Milsoft's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, *Human Trafficking*.

27. **NONDISCRIMINATION.** Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Milsoft hereby warrants and agrees that it 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 WITNESS WHEREOF, the parties have signed by their duly authorized representatives as of the dates entered below.

**TOWN OF APEX**

**MILSOFT UTILITY SOLUTIONS, INC.**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name & Title, typed or printed)

By:   
Adam Turner, CEO of Business Operations

Date: \_\_\_\_\_

Date: APRIL 3, 2023

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



#### Schedule A

Quote Number: 51533  
 Date Created: 08-04-2022  
 Account Manager: Brian Watson  
 E-mail: brian.watson@milsoft.com  
 Phone: (800) 344-5647  
 Valid Until: 06-01-2023

#### Bill To

Troy Salahuddin  
 Town of Apex  
 Box 250  
 Apex, NC, 27502-0250  
 USA

#### Accounting & Utility Billing

Quantity	Quoted Line Item	Retail Price	Ext. Price
1.00	iXp Hosted Solution Software includes Customer Information System (CIS), ePrint (if applicable), and existing Milsoft integrations. Contract is for five (5) years. Billing begins upon project start.	\$40,635.00	\$40,635.00

Subtotal: \$40,635.00  
 Total: \$40,635.00

#### Accounting & Utility Billing - Subscription

Quantity	Quoted Line Item	Retail Price	Ext. Price
1.00	iXp Hosted Monthly Subscription Monthly subscription (support included) Customer Information System (CIS), ePrint, and existing Milsoft integrations. Contract is for five (5) years.	\$3,500.00	\$3,500.00

Subtotal: \$3,500.00  
 Total: \$3,500.00

#### Services

Quantity	Quoted Line Item	Retail Price	Ext. Price
1.00	Billing Conversion Conversion of utility customer and billing data. Milsoft Support not applicable.	\$35,000.00	\$35,000.00
1.00	Integration Configuration A Milsoft integration configuration for Datavoice OMS. Milsoft Support applicable.	\$20,000.00	\$20,000.00
1.00	Integration Configuration A Milsoft CIS integration developed for City Works. SOW required. Milsoft Support applicable.	\$20,000.00	\$20,000.00
1.00	Integration Configuration A Milsoft integration configured for all existing MultiSpeak integrations. Milsoft Support applicable.	\$15,000.00	\$15,000.00

1.00	Integration Configuration Optional Milsoft CIS integration developed for Laserfiche. SOW Required. Milsoft Support applicable.	\$10,000.00	\$10,000.00
1.00	Integration Configuration A Milsoft CIS integration developed for Infor WMS. SOW Required. Milsoft Support applicable.	\$20,000.00	\$20,000.00

---

Subtotal:	\$120,000.00
Total:	\$120,000.00

## Training

Quantity	Quoted Line Item	Retail Price	Ext. Price
1.00	Initial iXp Training Plan Includes five onsite training trips and additional webinar courses as needed. Travel expenses included.	\$50,000.00	\$50,000.00

---

Subtotal:	\$50,000.00
Total:	\$50,000.00

---

<b>Grand Total</b>	
Subtotal:	\$214,135.00
Total:	\$214,135.00

---



**Quote Acceptance:**

This Quote comprises all material representations and constitutes the entire understanding between the parties to date with respect to the subject matter hereof and supersedes any and all prior representations, offers or agreements either oral or written between the parties with respect to such subject matter. This Quote shall serve as Schedule A to the Customer's forthcoming contract for procurement of the Product, Training, Service and Support Program as described, when applicable, or as an Addendum to Customer/Client's current contract(s) with Milsoft and/or Daffron.

**Terms & Conditions – iXp® Hosted Solution with Subscription****Subscription Term**

- Five (5) year initial term, unless otherwise specified on the face of this Quote; commencing when the project starts.
- Automatic (1) year renewals after initial term, unless/until cancelled in writing by notice given before the next contract year; renewal pricing may be subject to change.
- Pricing is based upon an initial 5-year commitment, and the subscription will be paid in monthly payments. In the event of early cancellation, the balance of payments for the 5-year commitment will be due without proration.

**Payment Terms**

- Payment due in USD upon receipt of invoice.
- Initial fees invoiced upon quote acceptance.
- Subscription fee invoiced monthly upon project start at quoted rate.

**Price Inclusion**

- Initial Setup, Testing and Training.
- Subscription includes Support Program.

**IMPORTANT! Customer's Hardware and Operating System (OS) Requirements**

Customer, before signing below, please check online to ensure that you have current compatibility and the latest recommendations for optimum functionality of this and all Milsoft® software with your computers and devices, through the following link to our sharefile: <https://www.mylsoft.com/resources/hardware-requirements>

**Terms & Conditions - Database Conversion****Payment Terms**

- Payment due upon receipt of invoice
- 75% invoiced after quote acceptance
- 25% invoiced upon delivery of final conversion
- Payment must be in USD

**Price Exclusions**

- Hardware
- Microsoft® SQL Server™

**Terms & Conditions - Integration Configuration****Payment Terms**

- Payment due upon receipt of invoice
- 75% invoiced after quote acceptance
- 25% invoiced upon delivery of final conversion
- Payment must be in USD

**Price Exclusions**

- Hardware
- Support Program
  - Annual support at the rate of 20% of the full list price
  - Support invoiced separately upon completed installation

**Terms & Conditions - Training (Initial, Follow-Up)**

**Payment Terms:**

- Payment due upon receipt of invoice
- Payment must be made in USD
- 75% invoiced upon quote acceptance
- 25% invoiced upon training completion or one year from signed quote

**Price Exclusion**

- Costs incurred as a result of Customer requested changes

**Account Name:** \_\_\_\_\_

**Accepted By:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**PO# (if applicable):** \_\_\_\_\_



## MASTER SERVICES AGREEMENT

This Master Services Agreement (this “**Agreement**”), effective as of April 10, 2023 (the “**Effective Date**”), is entered into by Premier International Enterprises, LLC, a Delaware limited liability company having its principal place of business at 135 S. LaSalle, Suite 2225, Chicago, Illinois 60603 (“**Premier**”), and Town of Apex, a municipal corporation, having its principal place of business at 73 Hunter Street Apex, NC 27502 (“**Client**”). Premier and Client shall also be known individually as a “**Party**” or collectively known as the “**Parties**”.

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. PREMIER SERVICES

**1.1 Premier Services.** Subject to the terms and conditions of this Agreement, Premier shall provide Client services and deliverables as set forth in any mutually agreed to and executed Statement of Work (“Statement of Work” or “SOW”) (services and deliverables shall be collectively known as the “Services” or the “Premier Services”). All SOWs will be deemed incorporated herein by reference and shall be consecutively numbered (i.e. Statement of Work Number 1, etc.). This Agreement is not an exclusive engagement with Premier.

**1.2 SOW Change Orders.** The Parties may mutually agree to execute a change order (“Change Order”) to any SOW. In the event that the Client initiates a Change Order to any SOW, as soon as reasonably possible after receipt of any such Change Order, Premier shall provide Client with a written statement offering to perform services consistent with the Change Order or proposing modifications to the Change Order. Any statement offering to perform or proposing modifications to the Change Order will include detailed information as to the availability of resources, and the impact, if any, on the time for completion of Services or the delivery of any deliverables and the cost therefore. Each Change Order shall be signed by the authorized representatives of each Party and shall constitute a formal modification to and become a part of the SOW. In no event shall the SOW be deemed amended except through a Change Order approved by authorized representatives of each Party in accordance with the provisions as described herein.

**1.3 Applaud Software.** Client acknowledges that the Services will be performed by Premier utilizing Premier’s proprietary software known as Applaud (“Applaud”). Client acknowledges that Applaud will be installed on Client’s network during the term hereof for the sole reason of allowing Premier to perform the Services. No license or other rights in or to Applaud are granted to Client hereunder, even if Applaud is installed on Client network. Client may not access Applaud for any reason without prior written approval of Premier. Upon termination of this Agreement or any applicable SOW or as may otherwise be requested by Premier, Client agrees to delete any and all instances of Applaud and/or provide Premier access to its network to allow Premier to delete Applaud.

**1.4 Client Affiliates.** Client Affiliates may purchase Premier Services subject to the terms of this Agreement by executing a SOW hereunder. This Agreement shall apply to SOWs executed with such Client Affiliates, and such Affiliates shall be deemed the “Client” as contemplated herein in connection with such SOW.

**1.5 Client Responsibilities.** Client shall: (a) have sole responsibility for the accuracy and legality of all Client data (“Client Data”) provided to Premier hereunder; and (b) provide Premier timely and accurate responses to Premier’s requests for information and/or other assistance as may be necessary for Premier to perform the Services.

**1.6 Protection of Client Data.** Premier will maintain administrative, physical and technical safeguards designed to protect the confidentiality and integrity of Client Data. Premier will only access, use, process, modify, delete or disclose Client Data: (a) to provide the Services in accordance with this Agreement, and (b) as compelled by law in accordance with the Confidentiality section below.

### 2. FEES & PAYMENT

**2.1 Fees and Payment.** Client agrees to pay Premier as set forth on the applicable SOW (the “Service Fees”). Client shall also reimburse Premier for pre-approved out-of-pocket expenses and pre-approved third-party expenses incurred in connection with the Services (“Expenses”). Unless otherwise set forth in the applicable SOW, Premier will invoice Client monthly for any Service Fees or Expenses incurred in the immediately preceding calendar month. Unless otherwise set forth in an applicable SOW, Client shall pay all invoices within thirty (30) days of the date of invoice. In the event of termination of this Agreement for any reason, Client shall be responsible to pay Service Fees and Expenses for Services performed through the date of termination. Service Fees paid are non-refundable.

**2.2 Overdue Payments.** Premier may impose late fees if Client’s account is thirty (30) days or more overdue,



Premier may, in addition to any of its other rights or remedies, upon written notice, suspend Services until such amounts are paid in full. If such failure to pay has not been cured within sixty (60) days of the due date, then upon written notice, Premier may terminate this Agreement and any or all outstanding SOWs in accordance with the Termination for Cause section below.

**2.3 Payment Disputes.** Premier shall not exercise its rights under the “Overdue Payments” section above if Client is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

**2.4 Taxes.** Unless otherwise stated, Premier’s fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use, sales or withholding taxes collected by any jurisdiction whatsoever (collectively, “**Taxes**”). Client is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on Premier’s net income or property. If Premier has the legal obligation to pay or collect Taxes for which Client is responsible under this Section, the appropriate amount shall be invoiced to and paid by Client, unless Client provides Premier with a valid tax exemption certificate authorized by the appropriate taxing authority.

### 3. PROPRIETARY RIGHTS

**3.1 Ownership of Services.** All Services and any other materials, information or data, in whatever form of media, specifically prepared for, produced, and/or resulting from Premier’s performance of the Services herein are owned by Premier, unless the Parties mutually agree in an applicable SOW that certain deliverables are to be owned by Client (“Client Owned Deliverables”). To the extent that Parties agree in an applicable SOW that certain Deliverables are to be Client Owned Deliverables, such Client Owned Deliverables shall become the property of Client, exclusive of any Premier materials (“Premier Materials”) contained therein, including but not limited to Applaud. To the extent that title to any Client Owned Deliverables may not, by operation of law, vest in Client or such Client Owned Deliverables may not be considered works for hire, Premier irrevocably assigns all rights, title, and interest in such Client Owned Deliverables to Client, exclusive of any Premier Materials. Upon request, Premier agrees to give Client reasonable assistance required to perfect these rights.

**3.2 Reservation of Rights.** As between Premier and Client, Client exclusively owns all rights, title and interest in and to all Client Data. Subject to the limited rights expressly granted hereunder, Premier reserves all rights, title and interest in and to the Premier Services and Applaud, including all related intellectual property rights therein and to any improvements, enhancements or updates thereto. No rights are granted to either Party hereunder other than as expressly set forth herein.

**3.3 Intellectual Property Restrictions.** Client shall not (a) modify, copy or create derivative works based on the Premier Services or Applaud; (b) reverse engineer the Premier Services or Applaud; (c) alter, remove or suppress in any manner any copyright, trademark or other notices displayed by the Premier Services or Applaud; or (d) access the Premier Services or Applaud in order to (i) build a competitive product or service, or (ii) copy any features, functions or graphics of the Premier Services or Applaud.

**3.4 Feedback.** If Client elects to provide to Premier any suggestions, comments, improvements, ideas or other feedback relating to the Premier Services or Applaud (collectively, “**Feedback**”), Client acknowledges and agrees that Premier may incorporate into the Premier Services or Applaud any such Feedback without any obligation, payment, or restriction based on intellectual property rights or otherwise, excluding any Client Confidential Information contained in the Feedback.

### 4. CONFIDENTIALITY

**4.1 Definition of Confidential Information.** As used herein, “**Confidential Information**” means all confidential and proprietary information of a Party, or any of its Affiliates (“**Disclosing Party**”), disclosed to the other Party, or any of its Affiliates, (“**Receiving Party**”) that is marked or designated as “Confidential” and/or “Proprietary”, or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including, without limitation, all information and data relating to the provision of the Services, a Party’s business and marketing plans, technology and technical information, product designs, and business processes. Client Data is the Confidential Information of Client. Notwithstanding the foregoing, each Party may disclose the existence and terms of this Agreement, in confidence, to a potential purchaser of or successor to any portion of such Party’s business resulting from the reorganization, spin-off, or sale of all or a portion of all of the assets of any business, division, or group of such Party. Confidential Information (except for Client Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party or any third party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party; (iii) was independently developed by the Receiving Party; (iv) is received from a third party without breach of any obligation owed to the Disclosing Party; or (v) is a public record as defined in Chapter 132 of the North Carolina General Statutes.

**4.2 Confidentiality.** The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) to not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its



Affiliates' employees, contractors and agents ("**Representatives**") who need such access for purposes consistent with this Agreement and who are subject to written confidentiality obligations with the Receiving Party containing protections no less stringent than those contained herein. Receiving Party shall be liable for any breach of this Section 4 by its Representatives. Other than as otherwise provided herein, neither Party shall disclose the terms of this Agreement or any SOW to any third party other than its Representatives without the other Party's prior written consent.

**4.3 Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**4.4 Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) or fails to limit access to any Confidential Information of the Disclosing Party in breach of the confidentiality obligations set forth herein, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

**4.5 Survival.** The obligation of Confidentiality set forth in this Section 4 shall survive termination or expiration of this Agreement.

## 5. WARRANTIES & DISCLAIMERS

**5.1 Mutual Warranties.** The Parties each represent and warrant that: (a) the execution, delivery and performance of this Agreement has been duly authorized and nothing contained in this Agreement or in the performance of this Agreement constitutes a breach of any other contract or obligation; and (b) to its knowledge, it is in compliance with all applicable laws, rules, and regulations as they apply to such Party in connection with the services provided under this Agreement.

**5.2 Premier Warranties.** Premier warrants and represents that: (a) it has all third-party licenses, permits (including governmental work permits and/or other consents/documents enabling Premier to work in the United States), rights, and/or certifications necessary for the performance of Services; (b) it shall perform its Services in a professional, workmanlike, and diligent manner in accordance with this Agreement and applicable law; and (c) it shall use skilled, qualified and competent staff to perform Services each of whom have passed a background check.

**5.3 Disclaimer.** EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY LAW, PREMIER EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WITH RESPECT TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION OR STATEMENT SHALL BE DEEMED TO BE A WARRANTY BY PREMIER. PREMIER MAKES NO WARRANTY OF ANY KIND WITH RESPECT TO ANY THIRD-PARTY SOFTWARE OR EQUIPMENT USED BY CLIENT IN CONNECTION WITH THE PREMIER SERVICES.

## 6. MUTUAL INDEMNIFICATION

**6.1 Indemnification by Premier.** Subject to Section 7 below, Premier shall defend, indemnify and hold Client harmless from any finally awarded damages, reasonable attorneys' fees and judgments or settlements ("**Damages**") arising from any claims, demands, suits or proceedings made or brought by a third party ("**Claims**") against Client alleging (a) that Client's use of the Premier Services within the scope of this Agreement infringes the intellectual property rights of such third party; (b) a breach by Premier of its confidentiality obligations under Section 4 hereof; or (c) gross negligence or willful misconduct by Premier. If Premier receives information about an infringement Claim related to the Premier Services, Premier shall in its discretion and at no cost to Client: (i) modify the Premier Services so that they no longer infringe; (ii) obtain a license for Client's continued use of the Premier Services in accordance with this Agreement, or if (i) and (ii) are not reasonably practicable: then (iii) terminate the Services upon 30 days' written notice and refund Client prepaid fees, if any. Premier shall have no obligation to indemnify or defend Client to the extent any Claim arises from Client's use of any Third-Party Provider's services, or Client's use of the Premier Services in breach of this Agreement.

**6.2 Procedure.** The Party seeking indemnification must: (a) promptly notify the indemnifying Party in writing of the applicable Claim for which indemnification is sought; provided, that failure to notify shall not relieve a Party of its indemnification obligations unless the indemnifying Party has been materially prejudiced thereby; (b) give the indemnifying Party sole control of the defense and settlement of the Claim (except that the indemnifying Party may not settle a Claim unless it unconditionally releases the indemnified Party of all liability); and (c) provide the indemnifying Party with all non-monetary assistance, information and authority reasonably required for the defense and settlement of such Claim.





**6.3 Exclusive Remedy.** This “Mutual Indemnification” section states the indemnifying Party’s sole liability to, and the indemnified Party’s exclusive remedy against, the other Party for any type of Claim described in this Section.

## **7. LIMITATION OF LIABILITY**

**7.1 Limitation of Liability.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY’S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CLIENT HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CLIENT HEREUNDER. THE ABOVE LIMITATIONS WILL NOT LIMIT CLIENT’S PAYMENT OBLIGATIONS HEREUNDER.

**7.2 Exclusion of Indirect Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR COVER DAMAGES OF ANY KIND OR NATURE HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## **8. INSURANCE**

**8.1 Insurance.** During the term of this Agreement, Premier shall maintain, at its expense, the following insurance coverages:

- (i) Business Automobile Liability insurance, non-owned and hired motor vehicles with combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per occurrence;
- (ii) Commercial General Liability insurance with combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) and Two Million Dollar (\$2,000,000) in the aggregate in a policy year;
- (iii) Workers’ Compensation Insurance in state statutory amounts and employer’s liability insurance as required by law, but in no event less than One Million Dollars (\$1,000,000) per occurrence;
- (iv) Umbrella Liability insurance with a limit of Ten Million Dollars (\$10,000,000) over General Liability, Auto and Workers’ Compensation;
- (v) Professional Liability coverage with minimum limits of Five Million Dollars (\$5,000,000) per claim and annual aggregate;
- (vi) Umbrella liability coverage with a limit of Five Million Dollars, (\$5,000,000) over Professional Liability;
- (vii) Employee Dishonesty and Computer Fraud coverage, in connection with, any fraudulent or dishonest acts committed by employees or agents, in the amount of Two Million Dollars (\$2,000,000) per occurrence; and.
- (ix) Cyber Coverage in an amount of Five Million Dollars (\$5,000,000) per claim and annual aggregate.

All policies shall be written using A- rated carriers falling within a “Secure” rating by the A.M. Best Company or its replacement.

## **9. TERM & TERMINATION**

**9.1 Term of Agreement.** The term of this Agreement shall commence on the Effective Date and shall continue for three (3) years (the “Initial Term”). Notwithstanding the foregoing, this Agreement shall control all outstanding SOWs even after termination hereof.

**9.2 Term of SOWs.** SOWs hereunder shall commence on the Start Date and continue for the term specified in the applicable SOW.

**9.3 Termination for Cause.** A Party may terminate this Agreement for cause: (a) upon 30 days’ written notice of a material breach to the other Party if such breach remains uncured at the expiration of such period; or (b) immediately if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or



assignment for the benefit of creditors. Termination for cause by Client shall not relieve Client of the obligation to pay any fees accrued or payable to Premier through the effective date of termination. Upon any termination for cause by Premier, Client shall remain obligated to pay all fees owed through the effective date of termination.

**9.4 Surviving Provisions.** The terms of any provision required to give effect thereto shall survive the expiration or termination of this Agreement.

## **10. GENERAL PROVISIONS**

**10.1 Non-Solicitation of Employees.** The Parties agree that during the term hereof and for a period of one (1) year after termination hereof, without the prior written consent of the other, neither Party will directly or indirectly, solicit or aid others to solicit for employment or consultancy any employees, agents or consultants of the other Party; provided, however, that the foregoing provision will not prevent hiring any such person as a result of such person responding to a general advertisement for employment.

**10.2 Publicity.** Neither Party shall use the other's name, trademarks or logos, without prior written consent in each instance of use. Neither Party shall issue a press release or other public statement regarding this Agreement or the Service provided hereunder, without the prior written consent of the other. Notwithstanding the foregoing, Premier may use Client's name and logo to provide the Services and to identify Client as a customer of Premier.

**10.3 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**10.4 No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**10.5 Anti-Corruption.** Neither Party has received or been offered any illegal or improper bribe, kickback, payment, gift or thing of value from an employee or agent of the other Party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Client learns of any violation of the above restrictions, it will use reasonable efforts to promptly notify Premier.

**10.6 Notices.** All notices shall be in writing and shall be deemed to be delivered when deposited in the United States Postal Service, postage prepaid, return receipt requested, or when sent by email (provided a confirmation copy is promptly by US Mail) or overnight mail. All notices shall be directed to the respective addresses set forth on the title page of this Agreement or to such other address as one Party may, from time to time, designate by notice to the other Party.

**10.7 Waiver and Cumulative Remedies.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

**10.8 Severability.** Any provision of this Agreement which is prohibited and unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

**10.9 Assignment.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, either Party may assign this Agreement in its entirety (including all SOWs), without consent of the other Party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other Party. Any attempt by a Party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**10.10 Governing Law; Prevailing Party.** This Agreement shall be governed exclusively by the internal laws of the State of North Carolina, without regard to its conflicts of laws rules. The state and federal courts located in Wake County, North Carolina shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each Party consents to the exclusive jurisdiction of such courts. t

**10.11 Entire Agreement.** This Agreement is the entire agreement between the parties regarding Client's use of the Services, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the parties. The parties agree that any term or condition stated in a Client purchase order or in any other Client order documentation (excluding SOWs) is void. The language used in this Agreement shall be deemed to be language chosen by both parties hereto to express their mutual intent, and no rule of strict construction against either Party shall apply to rights granted herein or to any term or condition of this Agreement.



**10.12 Signatures; Counterparts.** The execution and delivery of this Agreement has been duly authorized and constitutes the legal, valid and binding obligation on each of the parties. This Agreement may be executed and transmitted by facsimile or electronic mail in pdf or other electronic format, and in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A signature transmitted by facsimile or electronic mail shall be deemed an original signature for the purpose of this Agreement.

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

**10.14 Anti-Human Trafficking.** Premier warrants and agrees that no labor supplied by Premier or Premier'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.

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

**10.16 Nonappropriation.** Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Client 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 the Client to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Client except to pay for Services rendered hereunder through the date of termination.

\*\*\* SIGNATURE PAGE TO FOLLOW \*\*\*



**IN WITNESS WHEREOF**, the authorized representatives of the parties hereto have executed and delivered this Agreement with the intent to be bound as of the Effective Date.

**TOWN OF APEX**

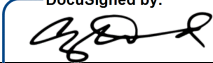
Signature: \_\_\_\_\_

Printed: \_\_\_\_\_

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

Date: \_\_\_\_\_

**PREMIER INTERNATIONAL ENTERPRISES, LLC**

Signature:  \_\_\_\_\_  
DocuSigned by:  
59D22E7EDA6243B...

Printed: Craig M. Wood

Title: CEO

Date: 4/10/2023 | 5:31 PM CDT

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

\_\_\_\_\_  
Antwan Morrison, Finance Director

# Data Migration Statement of Work

*Prepared for:*  
**Town of Apex, NC**  
*Apex Infor Implementation*



221 North LaSalle | Chicago, IL 60601  
800.426.0428 | [premier-international.com](http://premier-international.com)



## STATEMENT OF WORK- Town of Apex Infor Implementation

This Statement of Work #01 (the “SOW”) between Premier International Enterprises, LLC (“Premier”) and the town of Apex, North Carolina (“Client” or “Apex”), dated April 11, 2023 (the “SOW Effective Date”) is incorporated into, and shall be governed, by the terms of the Master Services Agreement between Premier and Apex dated April 10, 2023 (the “Agreement”) and shall describe the Services that Premier shall provide to Apex. Any terms not defined herein, will have the meaning as set forth in the Agreement

### 1. The Services.

#### Background

The Town of Apex (“Apex”) has undertaken an initiative to replace their outdated legacy New World system with modernized platforms including Infor and Milsoft. There will be a phased approach to these implementations.

- Phase 1 – Includes the implementation of Infor ERP and HCM modules. Phase 1 will also include the implementation of Milsoft Utility Billing solution.
- Phase 2 – Includes the implementation of Infor IPS module.

Apex has engaged multiple system integrators (“SI”) including RPI, Milsoft, and others to assist with the implementation of Infor and Milsoft.

#### Scope of Services

Premier will be responsible for extracting, profiling, analyzing, cleansing, and transforming the data into Infor and Milsoft load templates for each defined conversion object (the “Project”). Premier will assist by ensuring data migration best practices are being followed throughout the implementation and will utilize Infor and Milsoft load templates for the conversion objects provided by the SIs.

The Project consists of the following data conversion objects. Any conversion object not explicitly defined below will be considered out of the scope of this SOW.

Automated Conversion Programs	Legacy Source	Area	Target System	Phase
General Ledger	New World	ERP	Infor	Phase 1
General Ledger Budgets	New World	ERP	Infor	Phase 1
Chart Account Categories	New World	ERP	Infor	Phase 1
Accounting Units	New World	ERP	Infor	Phase 1
Vendor Master	New World	ERP	Infor	Phase 1
Customer Master	New World	ERP	Infor	Phase 1
Supplier Contracts	New World	ERP	Infor	Phase 1
Item Master	New World	ERP	Infor	Phase 1
Purchase Orders	New World	ERP	Infor	Phase 1
Vendors and Locations	New World	ERP	Infor	Phase 1
Fixed Assets	New World	ERP	Infor	Phase 1
Accounts Payable	New World	ERP	Infor	Phase 1
Accounts Receivable	New World	ERP	Infor	Phase 1
Jobs	New World	HCM	Infor	Phase 1
Supervisors	New World	HCM	Infor	Phase 1
Positions	New World	HCM	Infor	Phase 1
Employees	New World	HCM	Infor	Phase 1
Employee User Fields	New World	HCM	Infor	Phase 1
Dependents	New World	HCM	Infor	Phase 1



Payroll Records w/ deductions	New World	HCM	Infor	Phase 1
Work Assignments (active employees)	New World	HCM	Infor	Phase 1
Work Assignments (termed employees)	New World	HCM	Infor	Phase 1
Leave Records	New World	HCM	Infor	Phase 1
Benefits - Participant Enrollment	New World	HCM	Infor	Phase 1
Benefits - Dependent Enrollment	New World	HCM	Infor	Phase 1
Benefits - Beneficiary Enrollment	New World	HCM	Infor	Phase 1
Customers (CVPCONV)	New World	Utility Billing	Milsoft	Phase 1
Billing - AR Adjustments (CVPHSTA)	New World	Utility Billing	Milsoft	Phase 1
Billing - History (CVPHSTB)	New World	Utility Billing	Milsoft	Phase 1
Billing - AR History of Payment (CVPPHST)	New World	Utility Billing	Milsoft	Phase 1
Customer Locations (CVPLOCT)	New World	Utility Billing	Milsoft	Phase 1
Meter Inventory (CVPMTTR)	New World	Utility Billing	Milsoft	Phase 1
Utility Service (CVPSEVR)	New World	Utility Billing	Milsoft	Phase 1
Meters and Location/Property (CVPAXMTR)	New World	Utility Billing	Milsoft	Phase 1
Check History - Bad/Returned (CVPBDCHK)	New World	Utility Billing	Milsoft	Phase 1
Payment Info - Installments (CVDEFP)	New World	Utility Billing	Milsoft	Phase 1
Demand History (CVPDEM)	New World	Utility Billing	Milsoft	Phase 1
Bill Payment - Energy Assistance (CVPENGAST)	New World	Utility Billing	Milsoft	Phase 1
Meters for Installed Services (CVPMHIS)	New World	Utility Billing	Milsoft	Phase 1
Meter Readings (CVPRDING)	New World	Utility Billing	Milsoft	Phase 1
Light Inventory (CVPSL)	New World	Utility Billing	Milsoft	Phase 1
Open Service Orders (CVPSO)	New World	Utility Billing	Milsoft	Phase 1
Planning/PM - Applications	New World	IPS	Infor	Phase 2
Planning/PM - Contacts	New World	IPS	Infor	Phase 2
Planning/PM - Fees	New World	IPS	Infor	Phase 2
Planning/PM - Reviews	New World	IPS	Infor	Phase 2
Planning/PM - Logs	New World	IPS	Infor	Phase 2
Planning/PM - Inspections	New World	IPS	Infor	Phase 2
Planning/PM - Historical Details	New World	IPS	Infor	Phase 2
Licenses/Permits - Applications	New World	IPS	Infor	Phase 2
Licenses/Permits - Contacts	New World	IPS	Infor	Phase 2
Licenses/Permits - Fees	New World	IPS	Infor	Phase 2
Licenses/Permits - Reviews	New World	IPS	Infor	Phase 2
Licenses/Permits - Logs	New World	IPS	Infor	Phase 2
Licenses/Permits - Inspections	New World	IPS	Infor	Phase 2
Licenses/Permits - Historical Details	New World	IPS	Infor	Phase 2



## 2. The Activities and Deliverables.

Activity/Deliverable Name	Activity/Deliverable Description	Primary Owner	Support
List of data sources (tables/files) and data access plan	Premier supports Apex in reviewing relevant data sources (specific tables and files), and in determining the optimal manner of accessing each data source. Client provides Premier with data access for each data source as required.	Apex	SI Premier
Extraction into the Applaud data repository	Premier extracts all data from each identified legacy table/file and replicates the relevant portions of the legacy data environment in the Applaud data repository.	Premier	SI Apex
Data profiling reports	Premier produces profile reports. These reports provide the project team with raw data statistics for every column/field.  Premier produces pattern analysis reports for relevant fields, as directed by RPI, Milsoft, and Apex. These reports identify all distinct data patterns, along with a count of rows/records that fit each pattern.	Premier	SI Apex
Review of profile reports	Apex and Premier review the profiling reports to identify data issues that require additional research.	Apex	Premier
Custom data analysis reports	Premier works at the direction of Apex to use Applaud's analysis tools to drill down into the data repository and produce custom analysis reports to support the team's data quality efforts. These reports identify all rows/records with specific issues as well as produce a high-level summary of the findings.	Premier	Apex
Data quality strategy	Premier and Apex review the analysis reports to develop a data strategy to address the data quality issues. During this process, comprehensive rules for handling invalid, inconsistent, and missing data are developed.	Apex Premier	N/A
Manual data cleansing	Apex manually updates data in the legacy system to implement the data quality strategy and address data quality issues which can only be handled in a manual fashion.	Apex	Premier
Automated data cleansing	Premier works at the direction of Apex to build and run Applaud components to implement the data quality strategy and address data quality issues which can be handled in an automated fashion.	Premier	Apex
Conversion requirements	Premier, RPI, and Milsoft support Apex as they define and document the conversion requirements, which are the detailed rules dictating how to convert the structure and content of the legacy data to match the required Infor and Milsoft structures.	Apex	Premier SI
Data transformation programs	Premier uses the data conversion requirements provided by Apex to create Applaud components to automatically transform legacy data into the structure and content required by Infor and Milsoft.	Premier	N/A





Activity/Deliverable Name	Activity/Deliverable Description	Primary Owner	Support
Management of changing requirements	<p>Premier maintains ongoing issues list and enhancements list documentation throughout the project.</p> <p>Premier will keep the conversion requirements documentation (legacy to target mapping) up to date as the project proceeds and the team requests changes.</p>	Premier	Apex
Transformed data	Premier provides fully converted data into the defined Infor and Milsoft formats provided by Apex. Premier creates Error Logs to identify situations where the legacy data did not match the conversion requirements.	Premier	Apex
Data load	RPI executes the Infor load programs to process the fully converted data into the Infor base tables. Milsoft executes the Milsoft load programs to process the fully converted data into the Milsoft base tables.	SI	Premier
Conversion error resolution	Apex makes decisions to resolve data errors encountered during the extraction and load processes. Premier provides Apex with reports to identify critical data errors. RPI and Milsoft assist Apex in resolving any errors related to configuration and/or solution design.	Apex SI	Premier
Conversion test cycles (Infor)	<p>Apex and RPI work together to establish the project testing schedule. Premier runs the data transformation programs at these designated times (aligned with this schedule).</p> <p>Premier will perform each data transformation program and provide data in the agreed upon load-ready format a single time in support of each cycle. Any subsequent data loads (i.e. "Delta" conversions) or manual data entry (i.e. "Catch Up Transactions" or Dual Maintenance) required will be the responsibility of Apex.</p> <p>This SOW assumes the following test cycles and Go Live executions apply:</p> <p>Phase 1 (Infor – HCM &amp; ERP):</p> <ul style="list-style-type: none"> <li>- One Unit Test cycle</li> <li>- One System Integration Test (SIT) cycle</li> <li>- One User Acceptance Test (UAT) cycle</li> <li>- One Go-Live execution into PROD</li> </ul> <p>Phase 2 (Infor – IPS):</p> <ul style="list-style-type: none"> <li>- One Unit Test cycle</li> <li>- One System Integration Test (SIT) cycle</li> <li>- One User Acceptance Test (UAT) cycle</li> <li>- One Go-Live execution into PROD</li> </ul> <p>Following each test cycle, Apex will verify the accuracy of the Data Migration and direct Premier in any changes required.</p>	Apex SI	Premier



Activity/Deliverable Name	Activity/Deliverable Description	Primary Owner	Support
Conversion test cycles (Milsoft)	<p>Apex and Milsoft work together to establish the project testing schedule. Premier runs the data transformation programs at these designated times (aligned with this schedule).</p> <p>Premier will perform each data transformation program and provide data in the agreed upon load-ready format a single time in support of each cycle. Any subsequent data loads (i.e. "Delta" conversions) or manual data entry (i.e. "Catch Up Transactions" or Dual Maintenance) required will be the responsibility of Apex.</p> <p>This SOW assumes the following test cycles and Go Live executions apply:</p> <ul style="list-style-type: none"> <li>- One Unit Test cycle</li> <li>- Two System Integration Test (SIT) cycles</li> <li>- One User Acceptance Test (UAT) cycle</li> <li>- One Go-Live execution into PROD</li> </ul> <p>Following each test cycle, Apex will verify the accuracy of the Data Migration and direct Premier in any changes required.</p>	Apex SI	Premier
Post-load processes	Following the load into the target system, Apex will work with RPI and Milsoft to run necessary post-load processes (i.e. closing GL, running collections, etc.).	Apex	SI
Conversion validation	Apex defines acceptance criteria, performs data validation, ensures that the converted data leads to desired functionality in the target system, and provides formal signoff of each data migration element.	Apex	SI Premier

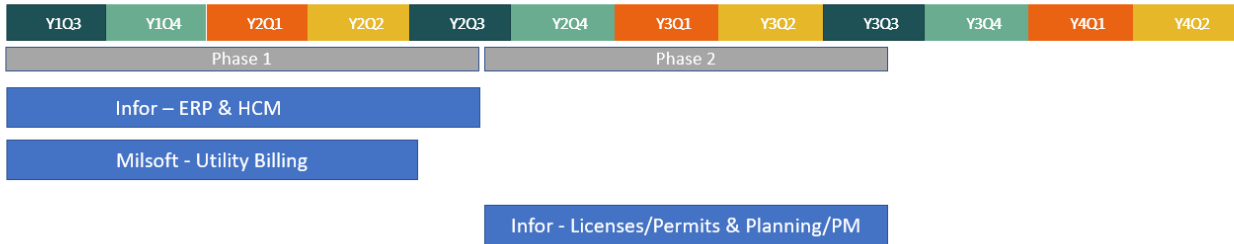
**3. Location of Performance.** Premier will perform work either in Premier's Chicago, Illinois offices or at the applicable staff member's remote work location for a majority of the project. It is expected that Premier will work at designed client sites less than one quarter of the weeks of the project. All required client site travel will be pre-approved by Apex.

**4. Term of SOW; Timing.** Services are expected to commence on July 1<sup>st</sup>, 2023 and are anticipated to be completed on July 31<sup>st</sup>, 2025, provided however this end date may be extended as needed to complete the Services upon completion of an executed Change Order, which may result in an adjustment to the expected Service Fees.

The following diagram outlines the anticipated timeline for the Project:



## Project Phasing



**5. Assumptions.** Apex understands and agrees that the following assumptions apply to the Services to be performed under this SOW:

- Apex will provide a Windows based server to Premier on which all data migration activities will occur. The Applaud Server Requirements document details how to configure the server which will run the Applaud Data Migration software.
- Apex will provide Premier with data access for each data source as required, in a timely fashion.
- Apex will provide Premier with back-end (i.e., database) access to each target application as required, in a timely fashion.
- Apex will provide Premier with front-end access to each target application as required, in a timely fashion.
- Delta or "Catch Up" transaction conversions not explicitly defined herein are outside of the scope of Services.
- Historical data (anything inactive or older than 2 years) is being backed up to an SQL server at RPI's direction and will not be converted into Infor nor Milsoft. Therefore this history is outside the scope of Services.
- In addition to Infor and Milsoft, Apex is implementing another new system: SEW (Smart Energy Water). All data required for SEW will come from Milsoft, thus no conversion is needed and is outside the scope of Services.
- The conversion specifications are dependent on SI functional experts participating in the mapping workshops along with Apex data legacy experts.
- Apex will be responsible for approval/sign-off of the conversion requirements for each conversion cycle, to ensure that they satisfy the Apex's business requirements for the target application.
- Apex will be responsible for the completeness and accuracy of all data provided. Data cleansing can be accomplished by Apex providing automated data cleansing rules to Premier or by Apex executing manual data correction in the data sources.
- Apex, RPI, and Milsoft are responsible for providing fully-configured target environments for each conversion cycle per the approved project schedule. This includes all required setups and data objects that are required for the conversion objects in Premier's scope.
- Apex is responsible for providing a resource that will serve as the Client Data Conversion Lead, and function as a counterpart to the Premier Data Conversion Lead.
- Apex will develop a mutually agreeable set of data management controls specifying the process, procedures, and methods that will be used by the Parties for the secure transfer, access, and exchange management of Apex's sensitive information pertinent to the Services, intended to safeguard the confidentiality and security of the sensitive information.
- RPI will provide target tables / structures for all in-scope conversions ahead of data conversion mapping sessions
- Milsoft will provide target tables / structures for all in-scope conversions ahead of data conversion mapping sessions
- RPI and Milsoft will execute and troubleshoot the programs that load data into Infor and Milsoft respectively.
- All parties expect open, professional communication lines between project members, project teams, and project vendors to enable Premier to perform the Services as set forth herein. Inappropriate conduct (i.e., dishonesty, abuse of staff, etc.) will not be tolerated and will be deemed a material breach of the Agreement.



**6. Ownership.** For purposes of this SOW, Client acknowledges that the Services and the Applaud Software, which includes any applicable tools or offshoot applications, used to perform the Services are owned exclusively by Premier. Notwithstanding anything to the contrary contained herein, no license is provided to the Applaud Software whatsoever.

**7. Resource Estimates.** Premier has determined that the following key resources will be required to perform the Services. The level of involvement from each resource will vary from week to week:

Key Resources	Description
Project Executive	Provides project oversight and is responsible for overall project results.
Conversion Lead / Developer (Infor)	Primary day-to-day communication point for Client project management. Maintains deliverable status, supports scheduling, and monitors overall deliverable quality. Works directly with the Apex deployment team to review analysis reports, conduct data mapping workshops, and build data conversion programs.
Conversion Developer (Infor)	Works directly with the Apex deployment team to review analysis reports, conduct data mapping workshops, and build data conversion programs.
Conversion Developer (Milsoft)	Works directly with the Apex deployment team to review analysis reports, conduct data mapping workshops, and build data conversion programs.

**8. Service Fees.** Service Fees are charged on a Time and Material basis at a blended hourly rate of \$215 per hour (the "Hourly Rate"). The Hourly Rate excludes any Expenses. Based on the current scope of the Services set forth in this SOW, it is estimated that a total of 4,600 hours will be required to perform the Services, however Apex understands that Apex is responsible for all hours incurred by Premier to perform the Services. Premier will not invoice Apex for an amount that exceeds \$989,000 unless both parties have entered into a mutually executed amendment to this SOW.

Summary	Hours	Rate / Hr	Cost
Phase 1 (Infor – HCM & ERP)	2,150	215	\$462,250
Phase 1 (Milsoft)	1,350	215	\$290,250
Phase 2 (Infor – IPS)	1,100	215	\$236,500
<b>Total:</b>	4,600	215	\$989,000

**9. Expenses \ Travel.** If travel is required, reasonable travel, meals, living, and other expenses incurred by Premier or its staff in connection with the Services shall be invoiced to Apex. To assist with budgeting, Premier is estimating \$75,000 to support potential travel for key milestones.

Summary	Cost
Phase 1 (Infor – HCM & ERP, Milsoft)	\$50,000
Phase 2 (Infor – IPS)	\$25,000
<b>Total:</b>	\$75,000

**10. Payment of Fees.** Premier will invoice Apex monthly for Service Fees and Expenses. Service Fees and Expenses shall be paid in accordance with the terms of the Agreement.

\*\*\* SIGNATURE PAGE TO FOLLOW \*\*\*

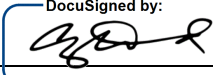


**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement to be effective as of the date first above written.

**[TOWN OF APEX, NORTH CAROLINA]**

**PREMIER INTERNATIONAL ENTERPRISES, LLC**

Signature: \_\_\_\_\_

Signature:  \_\_\_\_\_  
59D22E7EDA6243B...

Printed: \_\_\_\_\_

Printed: Craig M. Wood

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

Title: CEO

Date: \_\_\_\_\_

Date: 4/11/2023 | 2:19 PM CDT

## MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2023, (the “Effective Date”), by and between Town of Apex, a municipal corporation of the State of North Carolina (hereinafter the “Client”), and RPI Consultants, LLC, a Maryland Limited Liability Company (hereinafter “RPI”).

### RECITALS

WHEREAS, RPI is a contractor that engages in the provision of professional, management, and software services to government agencies, healthcare facilities, and other facilities in the areas of human resources, supply chain management, and accounts payable and receivable;

WHEREAS, Client requests that RPI provide business process and Infor Lawson software consulting services to Client; and

WHEREAS, RPI and Client desire to enter into a master services agreement for RPI to provide certain services as a contractor of Client as more specifically described in one or more statements of work (“SOW”).

NOW THEREFORE, in consideration of the foregoing recitals and mutual covenants described herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Client and RPI hereby agree as follows:

1. Engagement. Client hereby engages RPI on a non-exclusive basis to provide services, and RPI hereby agrees to provide such services, upon the terms and conditions set forth herein and in accordance with each SOW.

2. Scope of Services. During the term of this Agreement RPI will be available to perform the services described in each SOW (the “Services”). The exact description of the Services to be rendered by RPI from time to time shall be as specified on the applicable SOW. Any SOW may be modified from time to time upon the signed, written agreement of RPI and Client.

3. Provider of Services. RPI will provide the Services. RPI may use its employees and RPI may subcontract the Services to independent contractors.

4. Statement of Services.

4.1 RPI or the Client will generate a SOW for each period of service. The SOW shall state the scope and nature of the Services to be supplied by RPI. Each SOW shall be in the form of a mutually agreed upon letter agreement. The SOW shall be effective upon approval of the SOW by RPI and the Client. Client and RPI may agree to more than one SOW at any time.

4.2 Each SOW will contain an explanation of the project, the Services to be provided by RPI, the anticipated start date, the deliverable specifications, personnel requirements

and other relevant information. Provided Client has made timely payment as set forth in Section 5 hereunder, the working papers and other deliverables prepared by RPI in connection with the performance of Services will be the property of the Client. The Services provided in each SOW shall be completed upon the Client's acceptance of the Services using the specifications and criteria set forth in the applicable SOW and in accordance with this Agreement.

5. Compensation.

5.1 Client will pay RPI according to the rates set forth in the applicable SOW and in accordance with the terms and conditions of this Agreement.

5.2 Client will reimburse RPI for its reasonable expenses as set forth in the applicable SOW and in accordance with the terms and conditions of this Agreement.

5.3 RPI will invoice Client at the end of each month. Client agrees to pay RPI's invoices within fifteen (15) calendar days of the date of RPI's invoice. Invoices not paid within thirty (30) calendar days may be subject to a late payment fee of five percent (5%) and may be subject to accrued interest at the rate of 1.5% per month.

6. Duties and Obligations of RPI.

6.1 RPI agrees to provide the Services:

6.1.1 in accordance with the applicable SOW;

6.1.2 in a timely, professional, high quality and workmanlike manner that is consistent with industry best practices; and

6.1.3 in the event that the Client has established standards of conduct, RPI shall abide by the standards of conduct established by the Client provided that the Client has provided such standards to RPI in a reasonable fashion before the commencement of work.

6.1.4 For its employees, RPI agrees: (i) to maintain all necessary personnel and payroll records; (ii) to account for wages and withhold applicable taxes, Social Security, and other government-mandated charges and remit such taxes, Social Security and other government-mandated charges to the appropriate governmental entity as required by law; and (iii) to complete and maintain I-9 forms in compliance with the Immigration Reform and Control Act of 1986. RPI will require its agents and contractors to provide the above on behalf of RPI in the case RPI uses independent contractors for the Services.

7. Insurance.

7.1 RPI's obligations with respect to insurance shall be as follows:

7.1.1 RPI shall provide and continuously maintain general, professional, fraud, automobile and employer's liability insurance in such amounts as is applicable according to the SOW, as required by law, and in accordance with general commercial reasonableness;

7.1.2 RPI shall maintain workers' compensation insurance in accordance with the statutory limit as required by law for the applicable SOW;

7.1.3 RPI shall give to Client a Certificate of Insurance regarding the insurance in this Section 7.1 within a reasonable period of time upon the Client's reasonable request of and upon the execution of a SOW.

7.2 Client's obligations with respect to insurance shall be as follows:

7.2.1 Client shall provide and continuously maintain general, professional, fraud, automobile and employer's liability insurance in such amounts as required by law, and in accordance with general commercial reasonableness;

7.2.2 Client shall give RPI a Certificate of Insurance regarding the insurance in this Section 7.2 within a reasonable period of time upon RPI's reasonable request.

## 8. Confidential Information.

8.1 RPI and Client recognize and acknowledge that its relationship with each other shall, of necessity, provide each party with specialized knowledge concerning the other party, which, if used for the benefit of others or disclosed to others could cause serious harm to the other party. Accordingly, RPI and Client each covenant that it and its employees, contracted parties, assigns and parties under agreement with, shall not at any time, directly or indirectly, use, disclose to others, or permit the use by or disclosure to others of, any Confidential Information (as hereinafter defined) except as expressly provided herein.

8.2 While engaged during the term of this Agreement, RPI and Client may use and disclose Confidential Information only for purposes that are necessary for the carrying out the duties as set forth herein or assigned to it by a SOW.

8.3 For purposes of this Agreement, the term "Confidential Information" means all confidential and/or proprietary information and trade secrets, whether oral, written, computerized, digitized or otherwise, of either party regarding that party and its business, including, without limiting the generality of the foregoing, information regarding such party's intellectual property and technology (whether owned or licensed), patents and patent applications, research and development, inventions, systems, system configurations, equipment, software, engineering data and specifications, technical knowledge, know-how, techniques, manuals, products, sales and marketing, earnings, business plans, financial information and forecasts, prospects, business arrangements, operating policies and procedures, methods of operation and business strategies, regardless of whether or not such information is deemed "trade secrets" under applicable law. Confidential Information does not include information that (i) becomes generally available to the public other than as a result of disclosure by any person in violation of any duty of confidentiality, (ii) was available to the public on a non-confidential basis from a source other than the Client, or (iii) is required to be disclosed by legal process or applicable law, including Chapter 132 of the North Carolina General Statutes.

## 9. RPI's Representations and Warranties. RPI represents and warrants continuously



through the term of this Agreement the following:

9.1 RPI has the full power to enter into and perform this Agreement and to make the grant or rights contained herein and that no consent of any other person or entity is required by RPI to grant such rights other than consents that have been obtained and are in effect.

9.2 RPI is not a party to or otherwise subject to or bound by the terms of any contract, agreement or understanding which in any manner would limit or otherwise affect its ability to perform its obligations hereunder, including without limitation any contract, agreement or understanding containing terms and provisions similar in any manner to those contained in Section 8 hereof.

9.3 RPI will comply with all applicable federal, state, and local laws, rules, regulations, codes, ordinances and orders.

9.4 RPI has the permits, licenses, and other authorizations necessary for the performance of the Services.

9.5 RPI is not, and at no time has been, suspended, debarred or excluded from participating in any federal contract, administrative agency program, or any federally-funded health care program, including Medicare and Medicaid.

9.6 If and to the extent required by Section 1395x(v)(1)(I) of Title 42 of the United States code, until the expiration of four (4) years after the termination of this Agreement, RPI shall make available, upon written request by the Secretary of the Department of Health and Human Services, or upon request by the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the Services provided by RPI under this Agreement.

#### 10. Client's Representations and Warranties.

10.1 Client has the full power to enter into and perform this Agreement and to make the grant or rights contained herein and that no consent of any other person or entity is required by RPI to grant such rights other than consents that have been obtained and are in effect.

10.2 Client is not a party to or otherwise subject to or bound by the terms of any contract, agreement or understanding which in any manner would limit or otherwise affect its ability to perform its obligations hereunder, including without limitation any contract, agreement or understanding containing terms and provisions similar in any manner to those contained in Section 8 hereof.

10.3 Client is not, and at no time has been, suspended, debarred or excluded from participating in any federal contract, administrative agency program, or any federally-funded health care program, including Medicare and Medicaid.

#### 11. Remedy for Breach.

11.1 As the breach by RPI of the provisions of Section 8 would cause irreparable injury to the Client, and there is no adequate remedy at law for such violation, Client shall have the right to seek to enjoin RPI in a court of equity from violating such provisions.

11.2 Nothing in this Section 11 will be construed as prohibiting either party from pursuing any other remedies available to it for a breach of Section 8 of this Agreement.

12. Independent Contractor. RPI acknowledges that it is at all times acting as an independent contractor under this Agreement and, except as specifically provided herein, not acting as an agent or employee of Client. RPI agrees to be solely responsible for all matters relating to compensation of RPI's employees, including, but not limited to, compliance with laws governing workers' compensation, Social Security, withholding and payment of any and all federal, state and local personal income taxes, disability insurance, unemployment, and any other taxes for such persons, including any related employer assessment or contributions required by law, and all other regulations governing such matters, and the payment of all salary, vacation and other employee benefits.

13. Conflict Between SOW and Agreement. In the event there is a conflict between a SOW and this Agreement, specific terms of the SOW shall supersede the terms of this Agreement; specific terms of this Agreement shall supersede general terms of the SOW; and general terms of the SOW shall supersede general terms of this Agreement.

14. Term & Termination.

14.1 The term of this Agreement is for one (1) year, beginning on the Effective Date of this Agreement.

14.2 An applicable SOW will terminate automatically upon the complete performance of both RPI and the Client, including the delivery of the deliverables and working papers and the payment of the compensation and reimbursable expenses. All SOWs shall terminate upon the non-renewal of this Agreement pursuant to Section 14.1 or the termination of this Agreement for any reason

14.3 Either party may terminate one (1) or more SOWs and/or terminate this Agreement upon written notice to the other party by reason of the other party's breach of any material provision of this Agreement or any SOW, provided that, if such breach is curable, the breach is not cured within ten (10) calendar days of written notice to cure such breach; provided, however, such ten (10) day cure period does not apply where the same or a materially similar breach has occurred ("Prior Breach") in the previous twelve (12) months and written notice to cure was provided with respect to the Prior Breach

14.4 Either party may terminate one (1) or more SOWs and/or this Agreement, without cause, upon the giving of written notice to the other party at least ninety (90) days prior to the termination date.

14.5 In the event that either party is debarred, suspended or excluded from

participating in any federal administrative agency program or federally-funded health care program during the term of this Agreement, the other party may terminate this agreement upon giving the first party written notice of termination.

- 14.6 Upon notice of termination and the request of the other party, RPI and Client will promptly return each other's property, including but not limited to, personal property, and intangible property. RPI and Client may choose to return or destroy Confidential Information within ninety (90) days of such notice and retain no copies of Confidential Information. Upon such return or destruction of all copies of Confidential Information and giving notice to the other party in accordance with this Agreement's notice provisions, such party will terminate all of that party's rights and obligations regarding the Confidential Information.
- 14.7 Termination of this Agreement or any SOW shall not relieve any party from liability arising out of an antecedent breach of this Agreement or the applicable SOW, or relieve any party of any obligation created in this Agreement or the applicable SOW, including but not limited to paying compensation for services provided before the termination date, which obligation is intended to survive such termination pursuant to its terms.

15. Indemnification.

15.1 RPI shall indemnify, protect, and hold harmless Client for any and all liabilities, damages, costs, claims, losses, judgments, and expenses (including reasonable attorney fees, expert witnesses' fees, and reasonable costs of handling such claims) up to the limit of any insurance policy required by Section 7.1 above and arising out of: (i) RPI's breach of any of its representations and warranties set forth in this Agreement; or (ii) willful misconduct or gross negligent acts or omissions of RPI, its employees and agents. Client shall notify RPI in writing of any claims or suits for which Client may assert indemnification from RPI, and Client shall permit RPI, or its insurer, at RPI's expense, to assume control of or participate in the defense and settlement of any such claims or suits and Client shall fully cooperate with RPI or its insurer in such defense when reasonably requested to do so, with reasonable out-of-pocket costs to be reimbursed. No party shall settle or compromise any claim or suit without the prior written consent of the other party, which consent shall not be unreasonably withheld.

15.2 The indemnification provisions of this Section 15 shall survive any termination of this Agreement.

16. Limitation on Liability.

16.1 Neither party will be liable for any damages for lost profits, lost revenues, loss of good will, loss of anticipated savings, loss of data, the cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages in any way related to this Agreement or any SOW. Except as otherwise expressly provided in this Agreement, an aggrieved party may not recover compensation for that part of a loss that could have been avoided by taking measures reasonable under the circumstances to avoid or reduce loss, including reasonable steps to cure or prevent breach of contract relating to the systems for

backup or retrieval of information. The parties must in all circumstances take all reasonable steps for mitigation of any loss.

16.2 Each party's total liability to the other, whether in contract or in tort (excluding negligence and strict liability) shall be limited to an amount not to exceed, in the aggregate for all claims, the total dollar amounts paid or payable for Services hereunder that gave rise to such liability; further, any damage claim arising out of a specific SOW shall be limited to the total dollar amounts paid or payable for said SOW. These limitations shall not apply with respect to: (i) damages to person and/or tangible property occasioned by the willful misconduct or gross negligence of a party; (ii) claims that are the subject of indemnification pursuant to Section 15 above; and (iii) either party's breach or alleged breach of its confidentiality obligations under this Agreement.

17. Force Majeure. If either party's performance of this Agreement or any SOW is prevented, restricted or interfered with by causes beyond its reasonable control including, but not limited to, pandemic, epidemic, governmental shutdown, fire, explosion, vandalism, storm or other similar occurrence, a law, order, regulation, direction, action or request of the United States government or state or local governments, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more said governments, or of any civil or military authority, or by national emergencies, insurrections, riots, wars, terrorist attacks and responses to such attacks, strikes, lock-outs or work stoppages, or other labor difficulties, supplier failures, shortages, breaches or delays, then such party shall be excused from such performance on a day to day basis to the extent of such prevention, restriction or interference. The party whose performance is affected shall use best commercial efforts under the circumstances to avoid and remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes cease.

18. Trademarks. Neither party shall use the other party's trademarks for any purpose nor activity except as expressly authorized or contemplated herein. Upon termination of this Agreement for any reason, each party will immediately cease using the trademarks, goodwill, service marks, copyrights and other intellectual property of the other.

19. HIPAA.

19.1 In the course of providing items or services contemplated by this Agreement, RPI may receive, maintain, and/or have access to information about patients of Client that constitutes individually identifiable protected health information under the privacy rule promulgated pursuant to the privacy regulations of the Health Insurance and Portability and Accountability Act of 1996 ("HIPAA") as set forth at 45 C.F.R. Part 45 C.F.R. Parts 160 and 164, as well as any other federal or state privacy laws and regulations. All such information is Confidential Information of Client. If Client reasonably believes that RPI will have access to such information, RPI and Client hereby agree to sign a reasonable and mutually agreeable Business Associate Agreement.

19.2 In the event that RPI receives protected health information (PHI) from Client, RPI will store all PHI in compliance with all applicable laws under HIPAA, HITECH, states laws, and applicable regulatory, and professional standards, use reasonable security measures to protect PHI from unauthorized disclosure or use. Such measures shall be no less rigorous than

those measures maintained by RPI for its own data of a similar nature. In the event RPI stores or transmits PHI in or through an offsite database for any amount of time no matter how limited, including any cloud-based storage, RPI shall use offsite storage methods reasonably acceptable to Client that shall, without limiting the foregoing, be in full compliance with all confidentiality provisions of this Agreement and all applicable laws.

20. Miscellaneous.

20.1 Entire Agreement. This Agreement, which includes all schedules and exhibits hereto sets forth the entire agreement of the parties with respect to the subject matter hereof and no modification or amendment of this Agreement, nor waiver of any of its provisions, shall be valid or enforceable unless in writing and signed by all parties.

20.2 Benefit. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. This Agreement may not be assigned in whole or in part, by any party without the signed written agreement of the parties.

20.3 Separability. The invalidity or unenforceability of any provision of this Agreement shall not affect any other provision hereof, and the Agreement shall be construed in all respects as though such invalid or unenforceable provisions were omitted.

20.4 Notices. Any notice required to be given pursuant to this Agreement shall be in writing may be given in person, or sent by certified mail, return receipt requested, or confirmed email or facsimile. Such notice will be deemed given if delivered in person on the day of delivery and, if given by certified mail or facsimile, upon the date of posting or confirmed send date of such email or facsimile. Notice shall be given to the address of the party as follows:

In case of Client: Information Technology Director

PO Box 250

Apex, NC 27502

In case of RPI: Greg Pollard  
Partner  
RPI Consultants, LLC  
1 N Haven Street Suite 201  
Baltimore, MD 21224

20.5 Governing Law and Venue. This Agreement has been made in and shall be governed by and construed in accordance with the laws of the State of North Carolina, exclusive of any conflicts of law principle which would apply the law of another jurisdiction. Any cause of action hereunder shall be brought in an appropriate court of jurisdiction in the State of North Carolina.

20.6 Waiver. The failure of any party to fully enforce any provision hereof shall not be deemed to be a waiver of such provision or any part thereof, and the waiver by any party of any provision hereof shall not be deemed to be a waiver of any other provision hereof or a waiver

with respect to any other incidence of non-compliance therewith. No waiver shall be effective unless in writing and signed by the party so waiving.

20.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute but one instrument.

20.8 Third Parties. No rights are intended to be created under this Agreement for the benefit of any third party donee, creditor, individual or incidental beneficiary.

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


20.10 Anti-Human Trafficking. RPI warrants and agrees that no labor supplied by RPI or RPI'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.

20.11 Nondiscrimination. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, RPI hereby warrants and agrees that RPI 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 WITNESS WHEREOF, the parties have executed this Agreement on the date and year first written above.

RPI CONSULTANTS, LLC

TOWN OF APEX

DocuSigned by:  
  
651F2ECED3DA486...

By: Greg Pollard

By: \_\_\_\_\_

Title: Partner

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



Infor Government Essentials  
Software Order Form and  
SaaS Agreement  
Town of Apex, NC

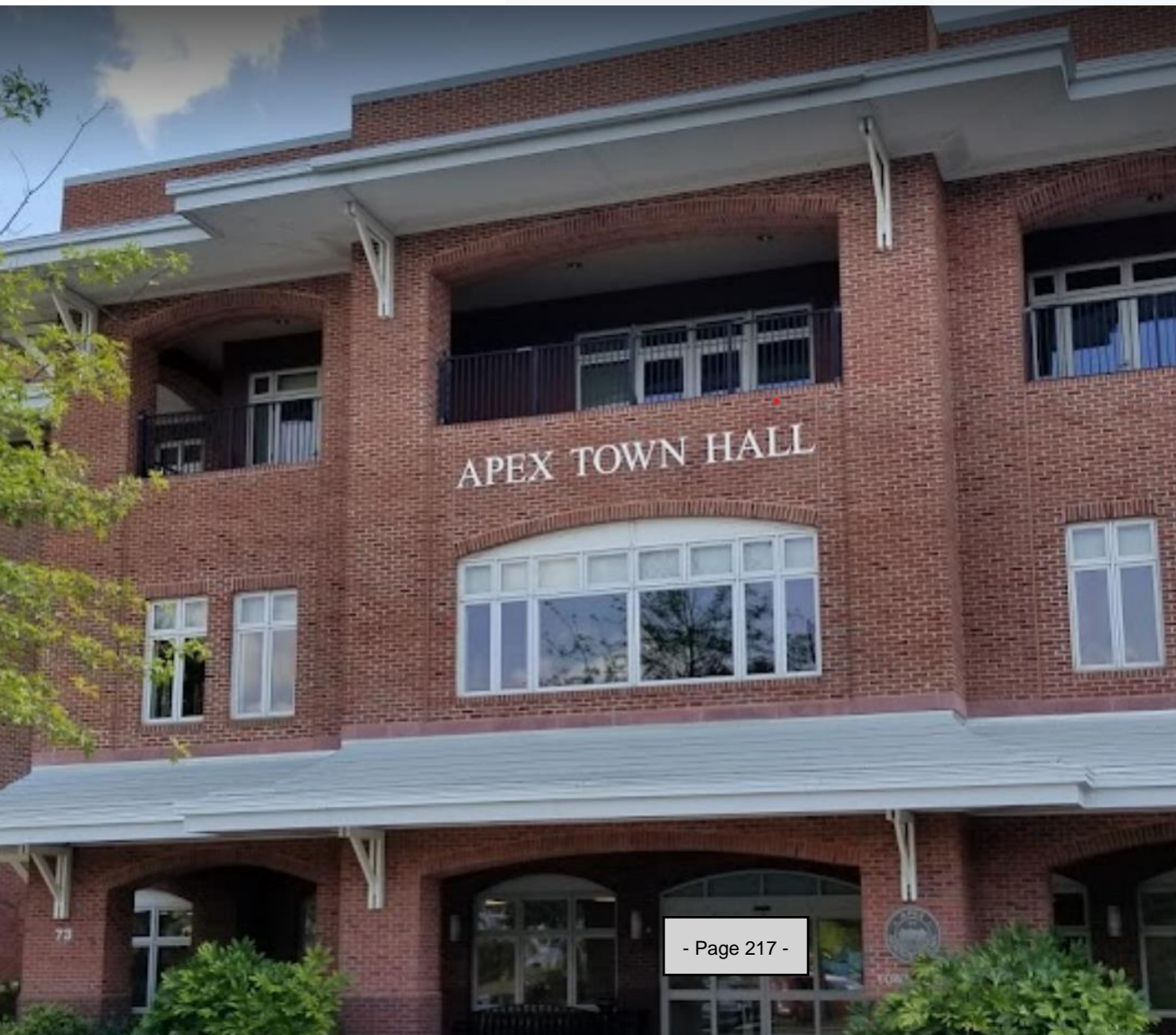
Prepared for:

**Troy Salahuddin**  
[troy.salahuddin@apexnc.org](mailto:troy.salahuddin@apexnc.org)  
919-948-8556

**Erika Sacco**  
[Erika.sacco@apexnc.org](mailto:Erika.sacco@apexnc.org)  
919-249-3401

Prepared by:

**Chris Lang**  
Regional Sales Director  
404-434-9026  
[clang@rpic.com](mailto:clang@rpic.com)



April 7, 2023

---

# Contents

Software as a Service Agreement .....3

Software Order Form .....10



---

# Software as a Service Agreement

This Software as a Service End User Agreement (the "Agreement") is between **RPI Consultants ("RPI")** and **Town of Apex ("End User" or "Customer")** and entered as of the Effective Date. The parties agree as follows:

## 1. **Definitions.**

**"Affiliate"** means (i) in the case of RPI, any entity controlled by RPI. and (ii) in the case of Customer, any entity controlled by Customer. For purposes of the preceding sentence, "control" means the direct or indirect ownership of more than 50% of the voting interests of an entity.

**"Annual Period"** means each successive 12-month period following the Effective Date.

**"Authorized Users"** means employees and individual contractors of Customer or its Affiliates authorized by Customer or its Affiliates to access the Subscription Software.

**"Confidential Information"** means non-public information that is identified as or would be reasonably understood to be confidential and/or proprietary. Confidential Information of Infor includes, without limitation, the Documentation and the Subscription Software, including any software code and all algorithms, methods, techniques, and processes revealed or utilized therein. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly discloses to third parties without restriction on disclosure; (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation known to Recipient; (iv) is a public record as defined in Chapter 132 of the North Carolina General Statutes; or (v) is independently developed by the Recipient without use of Confidential Information.

**"Customer Data"** means information provided, entered or uploaded for use by or with the Subscription Software by the Customer or its Authorized Users. Customer owns all proprietary rights in Customer Data.

**"Discloser"** means the party providing Confidential Information to the Recipient.

**"Documentation"** means the then-current documentation made generally available by Infor relating to the features, functions, and use of the Subscription Software.

**"Documented Defect"** means a material deviation between the then-current, general release version of the Subscription Software and its Documentation.

**"Effective Date"** means the last signature date below unless a different date is specified in the Effective Date field on the signature page.

**"Initial Subscription Term"** means the initial subscription period set forth on the applicable Order Form.

**"Intellectual Property Rights"** means any and all rights in patents, copyrights, trademarks and service marks.

**"Order Form"** means each order form between the parties incorporating the terms of this Agreement which shall contain, without limitation, a list of the Subscription Software and associated quantities and Use Restrictions, a description of the Subscription Services, Subscription Fees, and payment terms.

**"Personal Information"** means Customer Data that (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers). Personal Information shall include any non-public personal information regarding any individual that is subject to applicable national, state, regional, and/or local laws and regulations governing the privacy, security, confidentiality and protection of non-public personal information.

**"Recipient"** means the party receiving Confidential Information of the Discloser.

**"Renewal Term"** means any renewal or extension of Customer's right to access and use the Subscription Software and Subscription Services following the expiration of the Initial Subscription Term.

**"Residual Knowledge"** shall mean ideas, concepts, know-how or techniques related to the Discloser's technology and Confidential Information that are retained in the unaided memories of the Recipient who had rightful access to Confidential Information.

---

**"Service Level Agreement"** means the Service Level Agreement applicable to the Subscription Software and Subscription Services and attached as an exhibit to an Order Form.

**"Subscription Fees"** means the fees for the Subscription Services set forth on the applicable Order Form.

**"Subscription Services"** means the Subscription Software-related application hosting services and Support (as defined in Section 3(b)) that Infor provides Customer under this Agreement. At its sole discretion, RPI may subcontract to a Third Party Licensor the obligation to provide the Subscription Services to Licensee; provided however, that RPI will remain fully responsible for the provision of such Subscription Services in accordance with this Agreement.

**"Subscription Software"** means collectively or individually the computer software programs identified in the applicable Order Form for which Infor is providing access via the Subscription Services.

**"Subscription Term"** means the Initial Subscription Term or any Renewal Term, as applicable.

**"Third Party Licensor"** means a third party whose software products or services have been made available to Infor for distribution under the terms of its agreement with Infor.

**"Third Party Licensor"** means a third party whose software products ("**Third Party Products**") have been made available to RPI for distribution and licensing under the terms of its agreement with such Third Party Licensor (a "**Third Party Agreement**"). Customer acknowledges and agrees that any such Third Party Licensor is a third party beneficiary to this Agreement with respect to enforcing Customer's obligations related to the Subscription Software.

**"Updates"** means generally available updates, enhancements, or modifications to the then-current, general release version of the Subscription Software that are not separately priced as new products.

**"Use Restriction"** means any limitation on the use of the Subscription Software identified in an Order Form (e.g., number of Authorized Users, locations, connections).

**"UserID"** means a unique user identification credential used in combination with a unique password to access the Subscription Software and Subscription Services.

## **2. Use Rights and Restrictions.**

a. **Access Rights.** Subject to the terms and conditions of this Agreement and the applicable Order Form, Customer is permitted to allow its Authorized Users to access and use the Subscription Software and the Subscription Services, during the Subscription Term, in an operating environment hosted by RPI or Third Party Licensor(s), solely for the internal use of Customer and its Affiliates (for so long as they remain Affiliates). Any rights not expressly granted in this Agreement are expressly reserved. Customer shall ensure that its Affiliates and Authorized Users comply with the terms of this Agreement and shall be liable for any noncompliance by its Affiliates and Authorized Users.

b. **Documentation.** Customer may make a reasonable number of copies of the Documentation for the Subscription Software for its internal use in accordance with the terms of this Agreement. Customer must reproduce the unaltered Intellectual Property Rights notice(s) in any full or partial copies that Customer makes of the Documentation.

c. **Additional Restrictions on Use of the Subscription Software and Subscription Services.** Use of the Subscription Software and Subscription Services is subject to any Use Restriction specified in the applicable Order Form. Customer is prohibited from causing or permitting the reverse engineering, disassembly or de-compilation of the Subscription Software. Customer is prohibited from using the Subscription Software and Subscription Services to provide service bureau services to third parties. Customer will not allow the Subscription Software to be used by, or disclose all or any part of the Subscription Software to, any person except Authorized Users. Customer acknowledges that the Subscription Software and Subscription Services are U.S.-origin and supported from the U.S. in whole or part, and subject to U.S. export control laws and regulations and other applicable export and import laws and regulations. Customer agrees that neither it nor its Affiliates will export, reexport, transfer, or use the Subscription Software in violation of applicable export or import laws or regulations, economic sanctions laws or regulations, or other applicable laws or regulations; any violation of the foregoing may result in immediate suspension or termination of the Subscription Services.

## **3. Subscription Services.**

a. **Hosted Environment.** RPI or Third Party Licensor(s) will provide the application hosting environment, including the hardware, equipment, and systems software configuration on which RPI or Third Party Licensor(s) supports use of the Subscription Software and Subscription Services, on servers located at facilities selected by RPI or Third Party Licensor(s). Customer is not permitted to access the Subscription Software on any environment outside the hosted environments selected by RPI or Third Party Licensor(s) as part of the Subscription Services.

b. **Support.** RPI or Third Party Licensor(s) shall (a) provide Customer with access (via the internet, telephone or other means established by RPI or Third Party Licensor(s)) to RPI or Third Party Licensor(s)'s support helpline, (b) install, when and if generally available, Updates; and (c) use reasonable efforts to correct or circumvent any material deviation between the then-current,

general release version of the Subscription Software and its Documentation (the foregoing referred to collectively as "Support"). Support is included in the Subscription Fee. The terms of Support are set forth in the Order Form and Service Level Agreement.

c. User Accounts. Customer shall ensure that a unique UserID and password is assigned to each Authorized User accessing the Subscription Software and Customer shall be responsible for managing such UserIDs and passwords through the Subscription Software interface. Customer shall maintain the confidentiality of Customer's UserIDs and passwords and shall cause its Authorized Users to maintain the confidentiality of their UserIDs and passwords. Customer is responsible for all uses of and activities undertaken with UserIDs registered on Customer's account. Customer agrees to immediately notify RPI or Third Party Licensor(s) of any unauthorized use of Customer's UserIDs of which Customer becomes aware.

d. Connectivity. RPI or Third Party Licensor(s) will be responsible for maintaining connectivity from its network to the Internet which is capable of servicing the relevant Internet traffic to and from the hosted environment. Customer is responsible for providing connectivity to the Internet for itself and its Authorized Users. Customer shall also be responsible for ensuring that latency and available bandwidth from the device of the Authorized User to RPI or Third Party Licensor(s)'s hosted routers are adequate to meet Customer's desired level of performance. Customer is responsible for all costs associated with any specialized network connectivity required by Customer. If Customer purchases Subscription Services in a single tenant environment, Customer will be responsible for securing VPN connectivity to such environment.

e. Customizations. Customizations (as defined below) are not permitted in a multi-tenant hosted environment. Customizations may only be permitted in a single-tenant hosted environment if authorized in writing by RPI or Third Party Licensor(s) and documented in a separate written agreement between the parties. Support or other services for Customizations are not included as part of the Subscription Services and may only be purchased pursuant to a separate written agreement between the parties. As used herein, "Customizations" means any components deployed in the hosted environment other than the generally available Subscription Software or components that Customer may deploy via the standard user interface or tools included in the generally available Subscription Software.

#### **4. Payment and Taxes.**

a. Payment of Subscription Fees. Customer shall pay RPI the Subscription Fees set forth on the Order Form. Subscription Fees are payable in advance and RPI will invoice Customer for Subscription Fees prior to the commencement of the portion of the Subscription Term to which such fees apply. Unless otherwise specified in the Order Form, invoices are due within 30 days of invoice date. After the Initial Subscription Term, the Subscription Fees shall be subject to annual adjustment. Except as otherwise set forth in this Agreement, Subscription Fees are non-refundable. Late payments are subject to a late charge equal to the lesser of: (i) one percent (1%) per month; and (ii) the highest rate permitted by applicable law. Notwithstanding anything to the contrary in this Agreement, following 10 business days' prior written notice, RPI reserves the right to suspend access to the Subscription Services in the event of any past due Subscription Fees.

b. Taxes. Customer is responsible for paying all taxes relating to this Agreement. Applicable tax amounts (if any) are not included in the Subscription Fees set forth on any Order Form. RPI will invoice Customer for applicable tax amounts and such invoices are payable in accordance with Section 4.a. and the Order Form as related to Subscription Fees.

#### **5. Limited Warranties, Disclaimer of Warranties, and Remedies.**

a. Limited Subscription Software Warranty by RPI and Remedy For Breach. RPI and Third Party Licensor(s) warrants that the Subscription Software will operate without a Documented Defect during the Initial Subscription Term. RPI's sole obligation with respect to a breach of the foregoing warranty shall be to repair or replace the Subscription Software giving rise to the breach of warranty. If RPI is unable to repair or replace such Subscription Software within a reasonable period of time then, subject to the limitations set forth in Section 9 of this Agreement, Customer may pursue its remedies at law to recover damages resulting from the breach of this warranty. The remedies in this Section 5(a) are exclusive and in lieu of all other remedies, and represent RPI's sole obligations, for a breach of the foregoing warranty. Customer must provide notice to RPI of any warranty claim within the warranty period. For clarity, Customer's entitlement to Support (as defined in Section 3(b)) in connection with any Documented Defect shall continue throughout the Subscription Term.

b. Malicious Code. RPI and Third Party Licensor(s) warrants that it will use generally accepted industry tools and practices, to provide Subscription Software and Subscription Services that do not contain any "time bombs," "worms," "viruses," "Trojan horses," "protect codes," "data destruct keys," or other programming devices that are intended to access, modify, delete, damage, deactivate or disable Customer Data ("Malicious Code"). Upon discovery, RPI Third Party Licensor(s) shall investigate, identify and remove such Malicious Code from the Subscription Software and Subscription Services.

c. **DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5 OR EXHIBIT A (IF APPLICABLE), RPI MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE SUBSCRIPTION SOFTWARE PROVIDED UNDER THIS AGREEMENT AND/OR ANY ORDER FORM. RPI EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. RPI EXPRESSLY DOES NOT WARRANT THAT THE SUBSCRIPTION SOFTWARE OR SUBSCRIPTION SERVICES, IN WHOLE OR IN PART, WILL BE ERROR FREE, OPERATE WITHOUT INTERRUPTION OR MEET CUSTOMER'S REQUIREMENTS.**

d. **FAILURE OF ESSENTIAL PURPOSE.** THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 5 AND 9 WILL SURVIVE AND APPLY EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

e. **HIGH RISK ACTIVITIES.** THE SUBSCRIPTION SOFTWARE IS NOT FAULT-TOLERANT AND IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE AS ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICATION SYSTEMS, MASS TRANSIT, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE SUBSCRIPTION SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). ACCORDINGLY, RPI DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. CUSTOMER AGREES THAT RPI SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM OR RELATED TO THE USE OF THE SUBSCRIPTION SOFTWARE IN SUCH APPLICATIONS.

## **6. Confidential Information.**

a. **Confidentiality.** Recipient will take reasonable measures designed to prevent the unauthorized use or disclosure of Discloser's Confidential Information, including, at a minimum, those measures Recipient takes to protect its own Confidential Information of a similar nature. Recipient will use and disclose the Confidential Information disclosed to it under this Agreement only to the extent necessary to further and fulfill the purposes of this Agreement. The non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after termination of this Agreement. Recipient shall be responsible for any breach of the confidentiality terms contained in this Section 6 by any of its directors, officers, employees, Authorized Users (in the case of Customer), Affiliates, contractors and agents. Nothing herein shall limit Recipient's use of Residual Knowledge, subject to any Intellectual Property Rights of the Discloser, or RPI's use of aggregated anonymous data related to Customer's use of the Subscription Software and Subscription Services. If the Recipient should receive any legal request or process in any form seeking disclosure of Discloser's Confidential Information, or if the Recipient should be advised by counsel of any obligation to disclose such Confidential Information, the Recipient shall (if allowed by law) provide the Discloser with prompt notice of such request or advice so that the Discloser may seek a protective order or pursue other appropriate assurance of the confidential treatment of the Confidential Information. Regardless of whether or not a protective order or other assurance is obtained, the Recipient shall provide only that portion of the Discloser's Confidential Information which is legally required to be provided and to use reasonable efforts to assure that the information is maintained in confidence by the party to whom it is furnished. Customer shall ensure that Authorized Users are bound by confidentiality obligations consistent with those above.

b. **Security Policies and Safeguards for Subscription Services.** Applicable Information Security Plan from Third Party Licensors, setting forth the security measures with respect to the Subscription Software and Subscription Services, is incorporated into the Order Form.

7. **Indemnity by RPI.** RPI will defend, indemnify and hold Customer harmless from and against any loss, cost and expense to the extent arising from a third party claim against Customer that the Subscription Software infringes any Intellectual Property Rights of others. RPI's obligations under this indemnification are expressly conditioned on the following: (i) Customer must promptly notify RPI of any such claim; (ii) Customer must, in writing, grant RPI sole control of the defense of any such claim and of all negotiations for its settlement or compromise so long as such settlement or compromise does not result in payment of money by Customer or an admission of guilt by Customer (if Customer chooses to represent its own interests in any such action, Customer may do so at its own expense, but such representation must not prejudice RPI's right to control the defense of the claim and negotiate its settlement or compromise); (iii) Customer must reasonably cooperate with RPI to facilitate the settlement or defense of the claim. RPI will not have any liability hereunder to the extent the claim arises from (a) any modification of the Subscription Software by, on behalf of, or at the request of Customer; or (b) the use or combination of the Subscription Software with any computer, computer platform, operating system and/or data base management system other than as specified in the Documentation or otherwise authorized by RPI in writing. If any Subscription Software is, or in RPI's opinion is likely to become, the subject of an Intellectual Property Rights infringement claim, then RPI, at its sole option and expense, will either: (A) obtain for Customer the right to continue using the Subscription Software under the terms of this Agreement; (B) replace the Subscription Software with products that are substantially equivalent in function, or modify the Subscription Software so that it becomes non-infringing and substantially equivalent in function; or (C) refund to Customer the un-used portion of the Subscription Fee, if any, paid to RPI for the Subscription Software giving rise to the infringement claim, and discontinue Customer's use of such Subscription Software. **THE FOREGOING SETS FORTH RPI'S EXCLUSIVE OBLIGATION AND LIABILITY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

## **8. Term and Termination.**

a. **Term.** The Initial Subscription Term will be specified in the applicable Order Form. Except as set forth in Sections 2(c), 8(b) or 11, the Subscription Term cannot be terminated prior to its expiration date.

b. **Right of Termination.** If either party breaches any material obligation in an Order Form and fails to remedy such breach within thirty (30) days of receipt of written notice of such breach, the other party may terminate the Order Form. Notice of an alleged breach of warranty does not constitute notice of material breach for purposes of this Section.



c. **Effect of Termination.** Upon termination of an Order Form by either party, Customer's access and use of the Subscription Software and Subscription Services under such Order Form shall immediately terminate as of the effective date of such termination. Termination of an Order Form will not release either party from making payments which may be owing to the other party through the effective date of such termination. Termination of an Order Form will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement, unless otherwise expressly stated herein. In the event of Customer's termination of an Order Form under Section 8(b), Customer shall be entitled to a refund, on a pro rata basis, of any prepaid Subscription Fees under such Order Form applicable to the unused portion of the then-current Subscription Term following the effective date of termination.

d. **Survival of Obligations.** All obligations relating to non-use and non-disclosure of Confidential Information, limitation of liability, and such other terms which by their nature survive termination, will survive termination or expiration of this Agreement.

## **9. LIMITATIONS OF LIABILITY.**

a. **LIMITED LIABILITY.** EXCEPT WITH RESPECT TO (I) RPI'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS UNDER SECTION 7; (II) UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION RESULTING FROM A PARTY'S ACTIONS, WHICH LIABILITY SHALL BE SUBJECT TO SECTION 9(c) BELOW; (III) CUSTOMER'S INFRINGEMENT OR MISAPPROPRIATION OF RPI'S INTELLECTUAL PROPERTY RIGHTS; OR (IV) CUSTOMER'S OBLIGATION TO PAY FEES, THE TOTAL LIABILITY OF EITHER PARTY, ITS AFFILIATES AND THIRD PARTY LICENSORS (IN THE CASE OF RPI), WHATEVER THE BASIS OF LIABILITY, (i) IN CONNECTION WITH OR RELATED TO THE SUBSCRIPTION SOFTWARE, THE SUBSCRIPTION SERVICES OR ANY OTHER MATTER RELATING TO THIS AGREEMENT (OTHER THAN PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT, WHICH IS ADDRESSED IN (ii) BELOW) WILL NOT EXCEED THE SUBSCRIPTION FEES PAID OR PAYABLE TO RPI HEREUNDER FOR THE ANNUAL PERIOD IN WHICH SUCH LIABILITY FIRST AROSE.

b. **EXCLUSION OF DAMAGES.** EXCEPT WITH RESPECT TO (I) RPI'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS UNDER SECTION 7; OR (II) CUSTOMER'S INFRINGEMENT OR MISAPPROPRIATION OF RPI'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES OR THIRD PARTY LICENSORS (IN THE CASE OF RPI) BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (EXCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY SEEK OR BE LIABLE FOR PUNITIVE DAMAGES.

c. **UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION.** WITH RESPECT TO UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION RESULTING FROM A PARTY'S ACTIONS, THE TOTAL LIABILITY OF THE BREACHING PARTY, ITS AFFILIATES AND THIRD PARTY LICENSORS (IN THE CASE OF RPI), SHALL NOT EXCEED THREE (3) TIMES THE SUBSCRIPTION FEES PAID OR PAYABLE TO RPI HEREUNDER FOR THE ANNUAL PERIOD IN WHICH SUCH LIABILITY FIRST AROSE. TO THE EXTENT SUCH BREACH RESULTS IN THE UNAUTHORIZED DISCLOSURE OF PERSONAL INFORMATION, DIRECT DAMAGES SHALL INCLUDE (1) THE COSTS OF PROVIDING NOTICE TO AFFECTED PERSONS, (2) THE COST OF ESTABLISHING AND OPERATING A CALL CENTER TO FIELD INQUIRIES RELATED TO SUCH UNAUTHORIZED DISCLOSURE FOR UP TO 12 MONTHS; AND (3) THE COST OF PROVIDING CREDIT MONITORING SERVICES TO AFFECTED PERSONS, IN EACH CASE TO THE EXTENT REQUIRED BY APPLICABLE LAW AND ACTUALLY INCURRED.

10. **Notices.** All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: delivered personally; sent by overnight courier; or transmitted by facsimile and confirmed by first class mail. Notices must be sent to a party at its address shown on the signature page of this Agreement, or to such other place as the party may subsequently designate for its receipt of notices in accordance with this Section. Customer must promptly send copies of any notice of material breach and/or termination of the Agreement to RPI Consultants, LLC, Attention: General Counsel, 1 North Haven Street, Suite 201, Baltimore, MD 21224 and rpi@rpc.com, or to such other place as RPI may subsequently designate for its receipt of notices.

11. **Force Majeure.** Except with respect to the payment of fees hereunder, neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including, without limitation, war, terrorist acts, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance, or the threat of any of the foregoing (a "Force Majeure Event"). A party seeking to excuse its non-performance as a result of a Force Majeure Event shall have the burden of proof to demonstrate that the Force Majeure Event prevents its performance and must, upon becoming aware of a Force Majeure Event that prevents its performance, provide written notice to the other party specifying the details in such regard (a "Force Majeure Notice"). If, within thirty (30) days following a party's provision of a Force Majeure Notice, such party is unable to provide written assurances of its ability to perform in accordance with the Agreement, the other party shall be entitled to terminate the Agreement or suspend its performance thereunder upon providing written notice.

12. **Assignment.** Customer may not assign or transfer any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of RPI. Notwithstanding the foregoing, the named Customer

specified above may, upon written notice to RPI, but without requirement of RPI's consent, assign or transfer this Agreement in its entirety (including all Order Forms) to a successor of Customer in connection with a merger, acquisition, or sale of all or substantially all of its assets, provided Customer is not in breach of this Agreement and such successor has agreed, in writing, to assume all of the obligations of Customer hereunder. Any attempted assignment or transfer in violation of the foregoing will be void.

**13. No Waiver.** A party's failure to enforce its rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

**14. Choice of Law; Severability.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina, without application of any conflict of laws provisions thereof, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of North Carolina, without application of any conflict of laws provisions thereof. This Agreement is originally written in the English language and the English language version shall control over any translations. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect. The United Nations Convention on the International Sale of Goods (CISG) shall not apply to the interpretation or enforcement of this Agreement.

**15. Audit.** RPI may audit Customer's compliance with the terms of this Agreement and applicable Order Forms. If an audit reveals that Customer has exceeded the permitted scope of use, then, in addition to any other remedies available to RPI, Customer will promptly pay RPI any underpaid Subscription Fees associated with such overuse based on RPI's then-current list rates.

**16. Miscellaneous.** RPI and Customer are independent contractors under this Agreement, and nothing herein will be construed to create a partnership, joint venture or agency relationship between them. This Agreement shall be construed as if drafted by both parties and shall not be strictly construed against either party.

**17. Entire Agreement.** This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications, representations and understandings between the parties about its subject matter. Each party acknowledges that, in entering into this Agreement, it does not rely upon, and shall have no remedy in respect of, any statement or representation of any person other than as expressly set out in this Agreement. Any purchase order or similar document that may be issued by Customer in connection with this Agreement does not modify, supplement or add terms to this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement. This Agreement and any signed agreement entered into in connection herewith or contemplated hereby may be executed in counterparts. An executed document that has been delivered via fax, electronic or digital means shall be treated as an original.

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

**19. Anti-Human Trafficking.** RPI warrants and agrees that no labor supplied by RPI or RPI'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.

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

**21. Nonappropriation.** Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Customer 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 the Customer to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Customer.

[Signature Page Follows]

THE PARTIES have executed this Agreement through the signatures of their respective authorized representatives.

**RPI Consultants, LLC**

Signature:

  
651F2EECED3DA486...

Printed Name:

Greg Pollard

Title:

Partner

Address:

1 North Haven St, Suite 201

Address:

Baltimore, MD 21224

Date: 4/12/2023

**Town of Apex**

Signature:

Printed Name:

Title:

Address: PO Box 250

Address: Apex, NC 27502

Date:

Effective Date: (only complete if different than the last signature date above)

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

# Software Order Form

This Order Form is subject to the terms of the Software as a Service Agreement between RPI Consultants, LLC ("RPI") and Town of Apex ("Customer" or "Licensee" or "End User") with an effective date of \_\_\_\_\_ (the "Agreement"). All terms of the Agreement are incorporated herein by reference. In the event of a conflict, the terms of this Order Form control over the terms of the Agreement.

Capitalized terms not defined in this Order Form are defined in the Agreement. In the event the capitalized terms in this Order Form differ from the terminology used in the Agreement, references herein to: "Subscription Software" and "Component Systems" shall have the same meaning, refer to the computer software programs identified this Order Form and may be referred to in the Agreement as Component Systems, Products, Software Products, Subscription Software, Software, Programs or Licensed Programs; "Support" may be referred to in the Agreement as Support, Maintenance and Support, Annual Support, Support Services, On-Going Support or One Point Support; and "License Restriction" means any limitation on the use of the Subscription Software and may be referred to in the Agreement as License Restriction or User Restriction.

## **Subscription Software- PROD: Apex**

	Part # (if applicable)	Subscription Software	License Restriction*		Support Level**
			Quantity	Type	
1	S3F-S-CSPSFSM-MT	Infor CloudSuite Public Sector Financials & Supply Management - SaaS MT	60,000	POP	CPRE
2	S3F-S-GRA-MT	Grant Accounting - SaaS MT	60,000	POP	CPRE
3	S3F-S-SRM-MT	Strategic Sourcing/Supplier Portal - SaaS MT	60,000	POP	CPRE
4	S3O-S-CSFUS-MT	Infor Financials & Supply Management US Country Pack - SaaS MT	1	ET	CPRE
5	TAM-S-CSHCMCORE-MT	Infor HR Talent GHR TM Core - SaaS MT	60,000	POP	CPRE
6	TAM-S-GHRPAYROLL-MT	HR Payroll - SaaS MT	500	EM	CPRE
7	HRM-S-BSIF	BSI TF US - SaaS MT	500	EM	CXT
8	WFM-S-MVS-MT	Workforce Management MVS Bundle - SaaS MT	500	EM	CPRE
9	WFM-S-TA-MT	Workforce Management Time & Attendance - SaaS Bundle - SaaS MT	500	EM	CPRE
10	HAN-S-H8CDREB-MT	Infor Public Sector Suite - CDR Enhanced Bundle - SaaS MT	25	NU	CPRE
11	HAN-S-H8CDRB-MT	Infor Public Sector Suite - CDR Billing - SaaS MT	25,000	ATRA N	CPRE
12	HAN-S-MOBILE-CDR-MT	Infor Field Inspector CDR - SaaS MT	10	NU	CPRE
13	HAN-S-H8GIS-MT	Infor Public Sector Suite - GIS Data Integration - SaaS MT	60,000	POP	CPRE
14	HAN-S-H8GGS-MT	Infor Public Sector Suite - GeoAdministrator - SaaS MT	10	NU	CXTP
15	RFG-S-CIVICS-S	Infor Rhythm for Civics - SaaS	30,000	AASTX	CXTP
16	BBI-S-DENT-PLS-ENH	Infor Birst Enterprise Platform Enhanced	1	BBIEN H	CPRE
17	BBI-S-DHSTBUDR	Birst Cloud Hosting, Back-up, Data Recovery (Direct)	1,000	1.0GB	NAX
18	ION-S-ESSENTLS-CE	Infor OS Essentials - SaaS MT	1	TECH	CXTP
19	ION-S-STORAGE	Infor Storage	2,000	1.0GB	NAX
20	EDU-S-NOP-CPM	Infor Campus Plus Membership - All Campus Plus Content	1	ET	CXTP
21		Questica Budget Suite and Openbook for Infor Essentials	60,000	POP	NAX

For the purpose of the definitions below, "Software" is used to refer to the Subscription Software and/or Component Systems, as the context logically dictates, and may be used interchangeably.

\* If specified in the User/License Restriction field:

- "1.0GB" = 1.0GB - Represents the number of Storage capacity in Giga Byte



- **“AASSTX” = Annual Active Searchable Transactions** - Quantity represents the number of entries within a single year which are active and searchable by the Software, including but not limited to permits, service requests, business licenses and utility billing accounts, regardless of whether such entries are entered manually or electronically via the Software or any other means.
- **“ATRAN” = Annual Transactions** - Quantity represents the number of entries processed annually by the Software, including but not limited to such sources as bank account summaries, bank account statements, accounting reports from any interface software, excel import templates, purchase orders, sales orders and invoices, regardless of whether such entries are entered manually or electronically.
- **“BBIENH” = Birst Enhancement** - Customer’s subscription to an Infor CloudSuite offering is upgraded so that users permitted to access such offering are also permitted to access Birst Enterprise.
- **“EM” = Employee** - The total number of individuals who are or have been employees of Customer (whether employed on a full-time, part-time, seasonal or other basis) or independent contractors of Customer (whether engaged directly or through a third party as contract workers, consultants, freelancers or other capacity). For licensing purposes, former employees and independent contractors of Customer shall only count as Employees if their data is maintained or processed by the Software for administrative, pension or payroll purposes. Within thirty days following each anniversary of the Order Form Date (each an “Anniversary”), Customer will provide detail regarding the total number of Employees as of such Anniversary. If the actual number of Employees as of an Anniversary is in excess of the specified authorized quantity of Employees as of such Anniversary, Customer will purchase additional authorizations corresponding to such excess amount.
- **“ET” = Enterprise** - Allows unlimited use of the Software by the Customer or by Customer and other permitted subsidiaries to the extent expressly authorized in the Agreement
- **“POP” = Population** - Quantity represents the maximum number of persons who reside within the jurisdiction of Customer and an increase in population which exceeds the Quantity specified will carry additional Authorization and Support Fees.
- **“TECH” = Tech Platform** - Allows use of the Infor OS platform technology up to the usage limits for the corresponding service tier (Essentials, Professional, Enterprise) as set forth in the Infor OS Service Limits at <https://docs.infor.com/inforos/12.0.x/en-us/usagelimits/default.html> plus any additional subscription quantities duly authorized by Customer pursuant to an order form. Use in excess of any usage limit requires a subscription to the appropriate tier or a subscription for an additional quantity of permitted use where applicable. Any changes to the Infor OS Service Limits will not result in a material reduction of service.

**\*\*Support Level for Subscription Software:**

“CXT” = Infor Essential (24X5); “CXTP” = Infor Premium (24x7); “CXTE” = Infor Customer Success Plus program

Descriptions of these plans can be found at <http://www.infor.com/cloud/subscription/>

“CPRE” = Infor Premium (24x7) Descriptions of this can be found at <http://www.infor.com/cloud/MTsubscription/>

“NAX” = Not Applicable

## **II. Subscription Term and Subscription Fees**

The Initial Subscription Term is for one (1) year. Years two through five are provided below as a pricing quote if the Customer elects to renew the contract beyond the Initial Subscription Term. Customer agrees to notify RPI, in writing, their intent to renew or terminate the subscription 60 days prior to the subscription term end-date.

<b>Product</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
Infor CloudSuite Government Essentials & Workforce Management	\$360,000	\$360,000	\$360,000	\$360,000	\$360,000
Questica Budget Suite and Openbook	\$29,500	\$29,500	\$29,500	\$30,680	\$31,907
<b>Total Annual Fee:</b>	<b>\$389,500</b>	<b>\$389,500</b>	<b>\$389,500</b>	<b>\$390,680</b>	<b>\$391,907</b>

All amounts are in US Dollars unless otherwise specified.

**Currency: United States Dollars**

**III. Payment Terms**

Payment is due within 15 days of the date of the invoice.

The first annual Subscription Fee, plus applicable taxes, will be invoiced promptly upon the Order Form Date. All other annual Subscription Fees will be invoiced such that they are due prior to the commencement of the portion of the Subscription Term to which the annual Subscription Fee applies.

<b>End User Primary Location Address:</b>	<b>Invoice Address:</b>
Town of Apex, North Carolina 73 Hunter Street Apex, NC 27502 USA	Town of Apex, North Carolina 73 Hunter Street Apex, NC 27502 USA
Contact Name: Troy Salahuddin	Contact Name: Troy Salahuddin
Contact Phone: (919) 948-8556	Contact Phone: (919) 948-8556
Contact email: <a href="mailto:Troy.Salahuddin@apexnc.org">Troy.Salahuddin@apexnc.org</a>	Contact email: <a href="mailto:Troy.Salahuddin@apexnc.org">Troy.Salahuddin@apexnc.org</a>

**IV. Additional Terms for Infor Subscription Software**

Please visit <https://www.infor.com/customer-center/MTcloud> for benefits related to the Infor Multi-tenant Cloud Customer Bill of Rights (only applicable to Subscription Software hosted in a multi-tenant environment).

The Service Level Agreement sets forth additional terms and conditions applicable to Customer's access to and use of the Subscription Software licensed herein. The terms of the Agreement are hereby amended by the Service Level Agreement as it relates to the Subscription Software licensed herein. In the event of a conflict between the terms and conditions of the Agreement and the provisions of the Service Level Agreement, the provisions of the Service Level Agreement shall govern and control. The Service Level Agreement can be found at: <https://www.infor.com/service-level-description>.

The Security Plan sets forth additional terms and conditions applicable to Customer's access to and use of the Subscription Software licensed herein. The terms of the Agreement are hereby amended by the Security Plan as it relates to the Subscription Software licensed herein. In the event of a conflict between the terms and conditions of the Agreement and the provisions of the Security Plan, the provisions of the Security Plan shall govern and control. The Security Plan can be found at: <https://www.infor.com/security-plan>.


No changes or modifications of any kind to this Order Form shall be accepted after execution unless signed in writing by both parties.

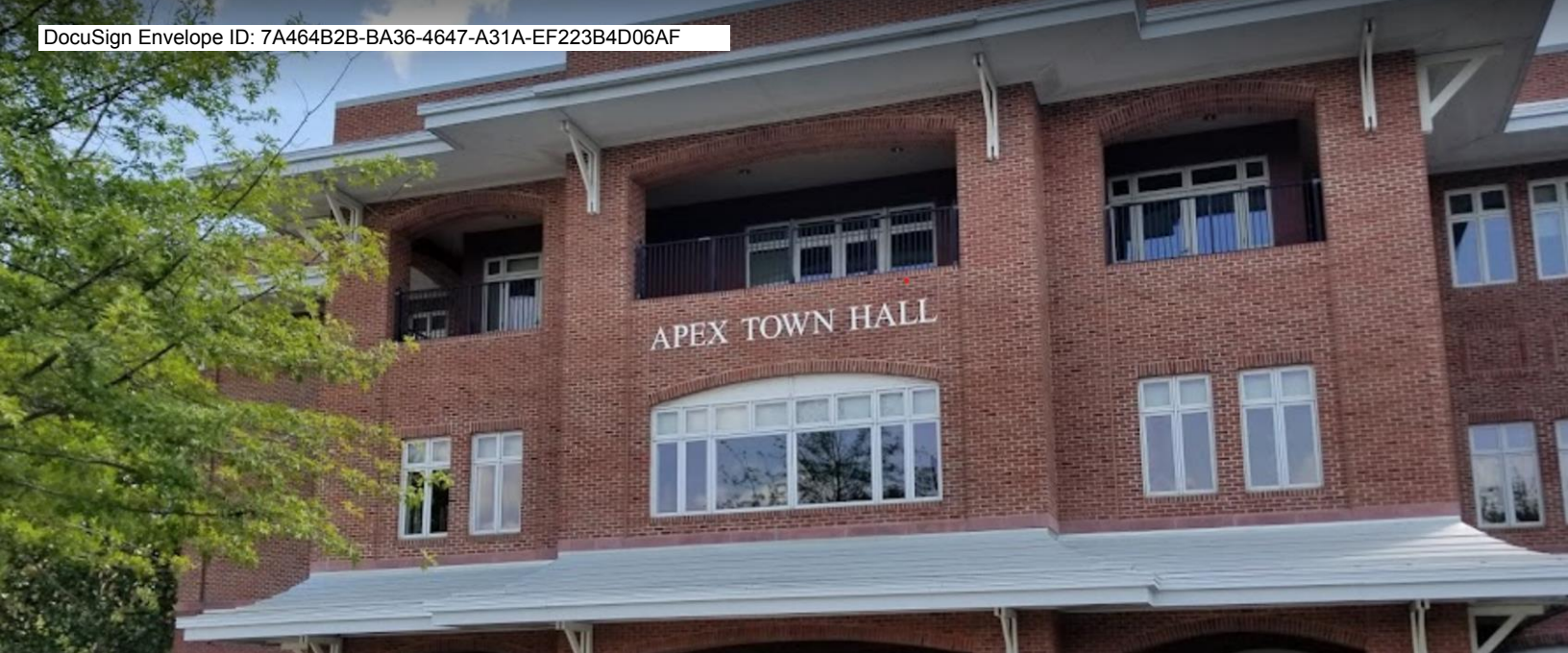
Education Services – INFOR CAMPUS Membership: NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, INFOR MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH REGARD TO INFOR CAMPUS MEMBERSHIPS OR ANY EDUCATION SERVICES AND INFOR EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, THE TOTAL LIABILITY OF INFOR, ITS AFFILIATES AND THIRD PARTY LICENSORS IN CONNECTION WITH AN INFOR CAMPUS MEMBERSHIP OR ANY EDUCATION SERVICES SHALL NOT EXCEED THE ANNUAL FEE PAID BY CUSTOMER FOR SUCH INFOR CAMPUS MEMBERSHIP OR EDUCATION SERVICES (AS APPLICABLE) FOR THE ANNUAL PERIOD IN WHICH THE LIABILITY FIRST AROSE.

By signing this Order Form, Customer represents and warrants that all necessary authorizations and approvals have been obtained including, but not limited to, appropriation of funds and budget approval.

Effective date of this Order Form: \_\_\_\_\_ (the “Order Form Date”)

For: <b>RPI Consultants, LLC</b>	For: <b>Town of Apex, NC</b>
DocuSigned by:  -----051F2ECED3DA480... Signature	
Greg Pollard	Signature
Typed or Printed Name	Typed or Printed Name
Partner	
Title	Title
4/12/2023	
Date	Date



**Town of Apex, NC**

**Infor Government Essentials  
Implementation – Financials,  
Human Capital Management, and  
Infor Public Sector**



**Statement of Work**

**Prepared For:**

**Troy Salahuddin**

Project Manager

919-948-8556

[Troy.salahuddin@apexnc.org](mailto:Troy.salahuddin@apexnc.org)



**Prepared By:**

**Chris Lang**

Regional Sales Director

404-434-9026

[clang@rpic.com](mailto:clang@rpic.com)

**Richard Leigh Stout**

Partner, Infor Practice Leader

410-862-0262

[rstout@rpic.com](mailto:rstout@rpic.com)

**RPI Consultants**

1 N Haven Street, Suite 201

Baltimore, MD 21224-1614

<http://www.rpic.com/team>

# Table of Contents



Revision History ..... 4

Statement of Work ..... 5

    Term ..... 5

Project Scope ..... 6

    Application and Organizational Scope ..... 6

    Services Scope ..... 7

    Services Provided ..... 7

    Training Scope ..... 8

    Change Management Scope ..... 8

    Testing Scope ..... 9

    Conversion Scope ..... 10

    Technical Development Scope ..... 14

    Reporting Scope ..... 17

    WFM Scope ..... 18

    Questica Scope ..... 18

    Go-Live Scope ..... 22

    Data Archiving Scope ..... 22

    Standard Assumptions ..... 22

Proposed Project Timeline ..... 23

Roles & Responsibilities ..... 24

Estimated Effort ..... 29

Implementation Cost ..... 31

    RPI Deliverables Strategy ..... 31

    Deliverable Acceptance ..... 31

    Deliverables by Phase/Milestone ..... 31

    Milestone Schedule ..... 33

Addendum A - Infor Public Sector, Community Development & Regulation (CDR) Implementation Services ..... 36

    About TruePoint ..... 36

    Purpose ..... 36

    Project Summary ..... 37

---

Implementation Approach .....	37
Implementation Scope .....	37
Work Plan Items.....	39
Services and Products Out-of-Scope .....	48
Role and Responsibilities.....	48
Deliverable Acceptance.....	51
Milestone Payment Schedule .....	51
Approval & Acceptance.....	53

## Revision History

Date	Version	Description of Revision
11/30/2022	1.0	Initial Draft of Statement of Work developed and sent to client
1/11/2023	2.0	Added data archiving scope
2/17/2023	3.0	Added change management scope, change deliverable acceptance to 10 days, elaborate conversion scope
4/5/2023	4.0	Added Infor Public Sector scope and adjusted conversion scope based on conversations with the Town.

# Statement of Work

This Statement of Work ("SOW") represents a new project-based engagement between RPI Consultants LLC ("RPI" or "Consultant") and Town of Apex, NC ("Client" or "**Apex**") and is subject to the terms and conditions of the Master Services Agreement with an effective date of \_\_\_\_\_. The purpose of this document is to define requirements, services, costs, and other information relevant to the work to be completed by RPI, assuming successful execution of this agreement.

Under the assumptions of this SOW, RPI will provide consulting services and project management support for the following objective:

- Infor CloudSuite Financial & Supply Management (FSM) Implementation
- Infor CloudSuite Human Capital Management (HCM) Implementation
- Infor Public Sector – Permits & Inspections / PM / Planning

## Term

The term of this SOW begins as of the last date on the approval and acceptance page, then continues for approximately 62 weeks.



# Project Scope

The following objectives provide detailed descriptions of the scope of services which will be completed during this engagement. Any services not explicitly defined in this section are considered out of scope and billed as incurred. Significant changes in scope may be estimated separately and executed through a scope change document.

## Application and Organizational Scope

RPI Consultants will support the implementation of the following Infor modules for Apex:

### Finance & Supply Management

- Global Ledger
- Project Ledger
- Payables
- Grant Accounting
- Receivables
- Cash Management
- Assets
- Invoice Matching
- Purchasing
- Requisitions/Requisition Self Service
- Inventory Control

### Human Capital Management

- Global HR
- Payroll
- Benefits
- Absence Management (FMLA)
- Performance Management
- Employee Space
- Manager Space

### Workforce Management

- Time and Attendance
- Time Off (Absence Management)
- Mobility
- Multi-View Scheduler

### Technology

- Infor OS
- Infor Document Management

### Questica

- Budgeting and Planning

## Services Scope

On the following pages we have outlined the full Project Scope we are proposing and the Services we are providing.

### Business Processes Scope

- The RPI team will provide best practice guidance and testing support around a standardized set of business processes.
- Town of Apex, NC will provide consolidated representation from each business area responsible to make future state process decisions on behalf of the organization.

## Services Provided

RPI provides the following services:

- **Project Management Services**
  - Provide management of the RPI team
  - Maintain and Update Project Workplan, Status Reporting, Budget Reporting
  - Track Risks, Action items, Issues, and key Decisions (RAID)
  - Co-create project kick-off
  - Assist in the creation and presentation of the Final (Project Closure) Report
- **Technical Services**
  - Guidance and advisory on technical topics throughout the project such as: tenant strategy, maintenance, and system/application updates, transitioning project areas, RICE development techniques, information security, etc.
  - Enablement & Advisory for CloudSuite Technical Tools & Security Management
  - Interface Development per Extension Scope
  - Data Conversion per Conversion Scope
  - Extensions Development (Workflows, Configuration Console, Security) per Extension Scope
  - Reporting Tool Training
  - Custom Report Development Advisory
- **Discovery and Design**
  - Lead the review of current processes and procedures and leverage industry best practices to design the new system
  - Conduct workshops for: Conversions, Interfaces, Workflow & Action Requests, Configuration Console (application and security)
  - Create Technical Development plan (RICE)
- **Unit Testing, System Testing, User Acceptance Testing**
  - Provide templates and requirements for functional and technical test plans
  - Prepare system for testing cycles
  - Provide consulting expertise to support analysis and resolution of test issues
  - Provide technical consulting expertise to support analysis and resolution of technical development test issues

- **Training**
  - Train the Apex project team
  - Develop an end-user training plan
  - Develop end-user training materials
  - Deliver end-user training for super users
- **Readiness**
  - Assist in development of a readiness assessment, contingency plan, and cutover plan
- **Provide Go-Live and Post Go-Live Support**

## Training Scope

### Assumptions

Activity	Phase	Responsible	Key Assumptions / Description
Development of Training Strategy	Initiate & Plan	RPI	
Development of Training Curriculum	Initiate & Plan	RPI	
Design Enablement	Analyze & Design	RPI	RPI will provide Super User Enablement to facilitate solution design.
End User Guides	Verify & Empower	RPI	RPI will develop custom training materials based on Client training preferences.
End User Training	Verify & Empower	RPI	RPI will conduct End User training. Training sessions will be recorded where possible.
Self Service Training	Verify & Empower	Apex	Client will be responsible for conducting Self Service training. RPI will assist with train the trainer documentation.

Detailed representation of these tasks is delineated in the Training Strategy document delivered as part of the Planning Phase of the project.

## Change Management Scope

RPI will provide an Integrated Change Management Plan (ICM) and assist the project team in Change Management communications.

Activity	Phase	Responsible	Key Assumptions / Description
Change Risk Assessment	Initiate & Plan	RPI	RPI Change Manager will conduct a Change Risk Assessment with the project Sponsor(s) and other leaders to evaluate the scope of the change (Change Characteristics) to be compared against the organization's overall change readiness (Organizational Attributes) in order to determine the project's level of change risk.
Project Vision & Branding	Initiate & Plan	RPI/Apex	RPI Change Manager will work with Apex leaders to create the project's vision statement and the associated organizational value propositions. Apex may choose to develop branding for the project; this effort would typically be led by the marketing

Activity	Phase	Responsible	Key Assumptions / Description
			department with support from the RPI Change Manager. Branding can include project name, logo, and style guide.
<b>Development of Change Management Plan</b>	<b>Initiate &amp; Plan</b>	RPI	RPI Change Manager will develop a custom Change Management Plan based on the knowledge gathered during Initiate & Plan, which establishes the major change management deliverables, activities, and milestones for the project, including: <ul style="list-style-type: none"> <li>Organizational Change Profile</li> <li>Change Network Roster</li> <li>Change Communication Plan</li> <li>Resistance Mitigation Strategy</li> </ul>
<b>Change Impact Assessment</b>	<b>Analyze &amp; Design</b>	RPI	Following completion of the initial Design Document, RPI Change Manager will work with the RPI and Client functional team leads to identify the most impactful changes that the organization will experience in moving from the current state to the future state. This deliverable describes each significant change, its impacts, identifies the impacted parties, notes any related value propositions, and defines the recommended response, if applicable. The assessment findings heavily inform both the training and communication strategies.
<b>Knowledge Transfer Evaluation &amp; Training Support</b>	<b>Build &amp; Develop, Verify &amp; Empower</b>	RPI	Following each major testing cycle or End User training event, RPI Change Manager evaluates knowledge transfer. This process takes the form of proficiency self-evaluations and/or knowledge checks which track the core project team's level of knowledge and ability relevant to set expectations across the project lifecycle. The result of Knowledge Transfer Evaluation inform the Training Strategy to ensure a successful Go-Live.
<b>Change Champion Program Facilitation</b>	<b>Verify &amp; Empower</b>	RPI/Apex	With RPI Change Manager guidance, Apex may choose to create a Change Champion Program. Champions volunteer or are recruited from outside of the project team to support and advocate for the project. Champions facilitate bidirectional communication for the project and can act as early adopters of the future state. The program also educates Champions about change management models, principles, and strategies which can be employed to benefit the project at hand, but also any future change that the organization may undergo.
<b>Development of Sustainment Plan</b>	<b>Go-Live &amp; Support</b>	RPI	RPI Change Manager will work with the project team leads to deliver a Sustainment Plan designed to be implemented post-live, in order to ensure that system adoption, utilization and proficiency continue to be reinforced after project close. Analysis will be performed to ensure that the plan is actionable and that the right Apex resources are enabled to carry out sustainment activities.

## Testing Scope

RPI will lead Unit Testing and System Integrated Testing. Client will take a lead role for User Acceptance Testing. Detailed representation of these tasks is delineated in the Testing Strategy document delivered as part of planning.

## Assumptions

Activity	Responsible	Key Assumptions / Description
Testing Plan Development	RPI	Testing Plan Development
Script Development	RPI: Unit Test, SIT Shared: UAT	Test Script Development
System Prep	RPI: Unit Test, SIT Shared: UAT	Prepare the designated CloudSuite tenant for testing cycle
Testing Support, Issue Resolution	Shared: Unit Test, SIT, UAT	User Testing Support and Issue Resolution
Testing Management	RPI: Unit Test, SIT Client: UAT	Management of overall testing process
User Management	Client	Provisioning new user accounts, role assignment and troubleshooting and resolving any issues as required to support testing process
Data Validation	Client	Validate all data is accurate
Resource Allocation	Client	Providing resources to complete testing as per project schedule
Test Execution	Client	Executing test scripts

## Conversion Scope

Data conversion activities will precede each of the three rounds of testing and final cutover. RPI will lead the conversion passes with assistance from the Client. RPI services include support for up to four conversion passes. Data conversion scope may vary between passes.

## Conversion Schedule

Project Phase	Conversion
Build & Develop	Initial Data Conversion Load (Limited Data)
Build & Develop	First Full Conversion Pass for Unit Test
Verify & Empower	Second Conversion Pass for System Integrated Test
Verify & Empower	Third Conversion Pass for User Acceptance Test
Go-Live & Support	Fourth Conversion Pass for Go-Live

## Conversion Tooling

The following data conversion tools are anticipated to be used:

Systems	Conversion Tooling
NewWorld to Infor FSM & Infor HCM	RPI Tooling & Spreadsheet Designer Uploads

## Master Files - FSM

Data	Scope	Additional Notes / Assumptions
<b>Accounting Units</b>	All required for converted GL transactions	Part of financials build 7 years archived
<b>Chart/Account Categories</b>	All required for converting GL transactions	Account Categories may be mapped elsewhere depending on the GL design 7 years archived
<b>Assets</b>	All active/non-disposed assets – 1 book	One asset file, provided by Customer 7 years archived
<b>Vendor Master and Locations</b>	All active Vendors plus currently inactive vendors used within the last 24 months	7 years archived
<b>Supplier Contracts</b>	All active agreements (w/remaining balances)	7 years archived
<b>Item Master</b>	All active Items	7 years archived
<b>Purchase Orders</b>	Open purchase orders (w/open remaining quantities and lines)	7 years archived
<b>Requisitions</b>	Strongly encourage all requisitions to be closed prior to cutover (due to approvals)	5 years archived

## Transaction Files - FSM

Data	Scope	Additional Notes / Assumptions
<b>GL Transactions</b>	1 Year detail, 2 Years summary	7 Years archived
<b>GL Budgets</b>	1 Year detail, 2 Years summary	7 years archived
<b>Accounts Payable</b>	All open AP Invoices	7 years archived
<b>Accounts Receivable</b>	All open AR Invoices (unapplied portion), Closed AR Invoices Header & Distributions (current + 1 year)	7 years archived

## Master Files - HCM

Data	Scope	Additional Notes / Assumptions
<b>Org Structure</b>	All Active	

<b>Employees</b>	All employees including termed employees	15-30 year archived
<b>Work Assignments (active employees)</b>	All work assignments for active employees	15-30 years archived
<b>Work Assignments (termed employees)</b>	All work assignments included in payroll history within last 2 years, Termed employees beyond last 2 years will be mapped to a special conversion work assignment	15-30 years archived
<b>Job Codes</b>	All active job codes & inactive job codes supporting converted work assignment history	15-30 years archived
<b>Supervisors</b>	All Active & inactive supervisors supporting converted work assignment history	15-30 years archived
<b>Positions</b>	All Active & inactive positions supporting converted work assignment history	15-30 years archived
<b>Employee User Fields</b>	Actively used (current value only)	15-30 years archived
<b>Dependents</b>	All dependents for employees with active benefit enrollments	15-30 years archived

## Transaction Files - HCM

<b>Data</b>	<b>Scope</b>	<b>Additional Notes / Assumptions</b>
<b>Payroll Records w/deductions</b>	All active pay codes and deduction codes, current year to date pay records w/deductions and 1 year payroll history (previous year) – all inactive pay codes and deduction codes supporting the payroll history	7 years archived
<b>Leave Records</b>	Current balances	15-30 years archived
<b>Benefits – Participant Enrollment</b>	Current year-to-date enrollments	15-30 years archived
<b>Benefits – Dependent Enrollment</b>	Current year-to-date enrollments	15-30 years archived
<b>Benefits – Beneficiary Enrollment</b>	Out of scope	Benefit providers should be the system of record (SOR) for beneficiary information. Therefore out of scope for Infor CloudSuite.

## Assumptions

Activity	Responsible	Key Assumptions	Description
<b>Review Identified Conversions</b>	RPI & Client	Decisions on module scope and historical transaction time periods finalized.  The conversion specifications are dependent on RPI functional experts participating in the mapping workshops along with Apex data legacy experts.	List needed data conversions and criteria for inclusion.
<b>Extract data from legacy applications</b>	Client	RPI will provide Excel templates in a format ready to upload to Infor. Client will extract and transform data to conform to templates.	All activities involved in getting data from third party solutions into the appropriate cleansing tools.
<b>Migration Strategy and process description</b>	RPI & Client	Client has suitably qualified personnel that have experience and knowledge of existing data to provide mapping support.  Apex and RPI are responsible for providing a fully-configured target environment for each conversion cycle per the approved project schedule. This includes all required setups and data objects that are required for the conversion objects in Premier's scope.	Defines how the process is going to be managed and routines used.
<b>Mapping</b>	RPI & Client	Client will ensure all data cleanup activities include comprehensive mapping to original data.	Mapping "old" to "new" values
<b>Transform Data</b>	RPI	RPI will take primary responsibility for data conversions.  RPI will execute and troubleshoot the programs that load data into Infor.	Legacy data is transformed into the new data base structure. New fields are created and populated.
<b>Data cleansing and rationalization</b>	Client	Client will be responsible for data cleansing.	All data fields will be reviewed by the appropriate qualified business owner to ensure that data is accurate and meets the business requirements.
<b>Data validation</b>	Client	Client is responsible for ensuring that all converted and integrated data is accurate and will be responsible for data validation efforts associated with all testing.	Validate all data loaded into CloudSuite is correct and accurate
<b>Full Migration - Systems test</b>	Client	RPI will run the conversions and Client process owners will conduct data verification tests and sign-off.	All data within scope will be migrated to ensure performance is measured.



## Technical Development Scope

### Integration Scope

System	Integration	Assumptions
<b>Bank</b>	Positive Pay	Assumes 1 Bank
	ACH (Electronic Payments)	
	Bank Reconciliation	
<b>Benefits</b>	401K/403b Contributions	1 provider, 1 plan
	Health Insurance	1 provider, up to 3 plans
	Dental Insurance	1 provider, 1 plan
	Life Insurance	1 provider, 1 plan
	AD&D (Disability)	1 provider, 1 plan
	Flex Plan	1 provider, 1 plan
	HSA	1 provider, 1 plan (standard bank interface)
<b>Time Entry System</b>	Employee Demographics	To Infor WFM
	Time Records	From Infor WFM
	Time Off	From Infor WFM
<b>Generic HCM File Creation Utility Outputs</b>	Generic EE Demographic Data Outbound	Assumes HCM File Creation Utility meets requirement. File to SFTP Server.
<b>Applicant Tracking System</b>	Inbound EE Record	New Hire and Rehire Action requests only
	Outbound Job/Location	Job Location Master File

### Assumptions

Activity	Responsible	Key Assumptions	Description
<b>Integration Tool Training</b>	RPI	Client's technical / development team will participate in training	RPI will provide training on Infor FSM integration tools and techniques
<b>Integration Development</b>	RPI & Client	RPI responsible for integrations listed above and within available budget. Client is responsible for all other integrations to and from the Infor system.	Creation of interfaces and integrations
<b>Infor FSM Compatibility</b>	Client	Client is responsible to apply updates to on-premise systems as required for compatibility with Infor Cloud integrations.	Any updates to on-premise or third-party software required for Infor FSM integration

Activity	Responsible	Key Assumptions	Description
<b>Data Mapping</b>	Client	Client responsible for data mapping from source system to Infor CloudSuite.	Mapping Infor business classes and fields to interface files and systems
<b>File Transfer</b>	Client	Client responsible for FTP/SFTP servers and processes.	Movement of data in and out of Infor
<b>Testing and Data Validation</b>	Client	Client is responsible for testing and validation of all interfaces.	
<b>Third-party relationships</b>	Client	Client is responsible for understanding and detailing non-Infor system file structure and providing timely and accurate file downloads, managing third party vendor relationships, and ensuring an adequate test environments and support from those systems with which to test Infor integrations.	Subject matter expertise and coordination with non-Infor systems and providers
<b>Single Sign-on</b>	Client	Active Directory Integration is a client responsibility.	Configure Infor CloudSuite to sign-on using Client's Identity Provider

## Extensions Scope

Extension	Category	Scope
<b>Workflows</b>	AP Invoice Approval	Infor Delivered, client responsible for modifications
	Payment Request	Infor Delivered, client responsible for modifications
	Requisition Approval	Custom - RPI Delivered. Approvals based on requesting location and dollar thresholds. Full approval occurs within FSM.
	Journal Entry Approval	Infor Delivered, client responsible for modifications
	New Item Request	Infor Delivered, client responsible for modifications
	New Vendor Request	Infor Delivered, client responsible for modifications
	New Hire Action Request	Infor Delivered, client responsible for modifications
	Transfer Action Request	Infor Delivered, client responsible for modifications
	Promote Action Request	Infor Delivered, client responsible for modifications
	Terminate Action Request	Infor Delivered, client responsible for modifications
	Re-Hire Action Request	Infor Delivered, client responsible for modifications
	Add Work Assignment Action Request	Infor Delivered, client responsible for modifications
	Change Pay Rate	Infor Delivered, client responsible for modifications

Extension	Category	Scope
	Change Relationship to Organization Action Request	Infor Delivered, client responsible for modifications
	Employee Space User Provisioning	RPI Delivered – Adds user accounts for Employee Space and Disables accounts upon termination based on GHR source data.  Integrations begin and end within SFTP server. Client responsible for powershell scripts to update or query AD.
<b>Configuration Console</b>	Role Based Security	Infor Delivered
	Application Configurations	Defaulting Fields (Limited to Employee, Manager)  User Fields Creation, Form Configuration, Business Class Creation, Modifying Action Requests (Based on prioritization during Configuration Workshop and available consulting hours)
<b>IDM Output Format</b>	Purchase Orders	
	Pick Ticket Print	If applicable
	Document Creation, including AP Checks	Infor Delivered

## Assumptions

Activity	Responsible	Key Assumptions	Description
<b>Extension Tool Training</b>	RPI	Client's technical / development team will participate in training	RPI will provide training on Infor FSM extension tools such as Configuration Console and IPA
<b>Requirements Analysis</b>	RPI & Client	RPI will assist Client in determining where configurations will be needed	Determine gaps between Client needs and Infor Delivered functionality
<b>Agile Scrum facilitation</b>	Client	Client is responsible for technical project management over development team	Provide technical project management of development activities following Agile methodology
<b>Extension Design</b>	Client	Client is responsible for design documentation and testing criteria for all extensions	Creation of requirements documentation for all extensions
<b>Workflow Development</b>	Client	RPI will provide advisory support within budgeted hours	Technical development of workflows, approvals, and action requests
<b>Security Configuration</b>	Client	RPI will provide advisory support within budgeted hours	Creation of custom security roles and classes
<b>Configuration Console Development</b>	Client	RPI will provide advisory support within budgeted hours	Creation of application configurations

Activity	Responsible	Key Assumptions	Description
<b>Testing and Validation</b>	Client	Client responsible for testing all extensions including approval logic and approver assignments	Validate all extensions work correctly and accurately

## Reporting Scope

An allocation of 120 consulting hours is included in the SOW for the RPI team to provide a workshop to train designated Apex personnel on self-service BI and custom report development tools available within Infor CloudSuite and provide advisory services for development of custom reporting.

An allocation of 200 consulting hours is included for creation of custom reports.

## Assumptions

Activity	Responsible	Key Assumptions	Description
<b>Delivered Report Enablement</b>	RPI	Training and best practice utilization of standard Infor CloudSuite delivered reports are included with the implementation of core application functionality.	Training and enablement of core project team on Infor delivered reports
<b>Infor BI Tool Training</b>	RPI	Training will be provided on Application Studio and Birst including initial configuration up to the budgeted hours. All future state reports must be identified and prioritized in a development plan along with requirements documented prior to training.	Train Client report development team on use of Infor CloudSuite reporting tools
<b>Custom Report Requirement Definition</b>	Client		Identify and document custom report development needs
<b>Custom Report Development</b>	RPI & Client	RPI will provide report development services up to the budgeted hours. All future state reports must be identified and prioritized in a development plan along with requirements documented prior.	
<b>Report Testing</b>	Client		Testing to ensure all reports are accurate and meet business requirements.

## WFM Scope

The following pertains to the implementation of Infor WFM:

Activity	Scope
<b>Calculation Groups</b>	Up to 4 Calculation Groups in Scope
<b>Security Groups</b>	Up to 4 Security Groups in Scope
<b>Other Configurations</b>	Time Off Planner Configuration Blackout Calendars Mobility UI Configuration Multi-View Scheduler

## Questica Scope

The following pertains to the implementation of Questica:

Activity		Scope
<b>Budget Configuration &amp; Shared Components</b>	Application-Level Security	Initial Assessment and Assignment. Updates transition to client responsibility upon enablement.
	Single Sign-On	Standard authentication protocols only (i.e. Windows, LDAP, CAS, Google, or SAML Authentication)
	Import Master Configuration Data	Configuration and data import of the following Questica standard data structures, using data supplied by The Customer in Excel® workbooks provided by Questica: <ul style="list-style-type: none"> <li>• Division/Department hierarchy;</li> <li>• Fund Categories and Funds;</li> <li>• Account Categories and Expense and Revenue GL Accounts;</li> <li>• Statistical Account Categories and Statistical Accounts;</li> <li>• Other Chart of Account Segment Values;</li> <li>• Performance Measure Units</li> </ul>
	Analytics	Standard Reports – Questica Budget's standard reports. These reports are provided as-is and may not fully address The Customer's specific reporting requirements.  Administrator Authored Reporting - Questica's reporting infrastructure allows users to create ad hoc views which can be used as datasets when using Report Builder 3.0 for administrator authored reporting; as the data source for dashboard widgets; and as part of the ad-hoc analytics interface. Each ad hoc view requires a base “entity” (database table), which can be one of Questica's native data entities; a user configured entity; or a custom built “report entity” which consolidates the data from multiple entities and presents it to the ad hoc view as a single entity ready to report on.
<b>Operating Module</b>	Import Costing Centers	Configuration and data import of standard Questica Operating data structures, using data supplied by The Customer in Excel® workbooks provided by Questica. At a minimum, the files will contain the data necessary to:

Activity		Scope
		<ul style="list-style-type: none"> <li>Create Costing Centers (for each historical and current/future budget year to be loaded);</li> <li>Add Costing Centers to Departments consistent with, and shared by, the Capital budget module;</li> <li>Associate Costing Centers with Funds;</li> <li>Define Budget Promotion Stages.</li> </ul>
	Initial Data Load	<p>Import Initial Budget - Questica will import the most recent budget with 1 year of future forecast data. Questica will repeat the import once, to accommodate a refresh prior to going live.</p> <p>Import Historic Budgets - Questica will import 2 prior years' budgets.</p> <p>Import Actuals Transactions - Import Operating actuals transactions from data import workbooks</p> <p>Statistical Imports are Not in Scope</p>
	Integrations	<p>Approved operating budget (1 integration)</p> <p>Operating budget amendments (1 integration))</p> <p>Operating actual costs (1 integration))</p> <p>Statistical Integrations are Not in Scope</p>
<b>Personnel Planning &amp; Budgeting Module</b>	Initial Data Load	<p>Configuration and data import of standard Questica Personnel data structures, using data supplied by The Customer in Excel® workbooks provided by Questica. At a minimum, the files will contain the data necessary to:</p> <ul style="list-style-type: none"> <li>Create positions;</li> <li>Create salary grades;</li> <li>Create salary grade steps;</li> <li>Create modifiers (benefits);</li> <li>Create employees;</li> <li>Allocate employees to positions;</li> <li>Allocate positions to costing centers.</li> </ul> <p>For the purpose of the above, the definitions of positions, grades, grade steps, employees and modifiers shall be those found in the Questica Budget Personnel manual. The relationships between them shall be those currently supported by Questica Budget and described in the Questica Budget Operating Manual.</p> <p>Import Positions &amp; Employees - Import from data workbooks.</p> <p>Import Grades &amp; Scales - Import from data workbooks.</p> <p>Create Benefits (Modifiers) – Questica will create Initial “Modifiers” to generate supplementary personal costs, such as benefits, allowances and insurances. Updates transition to client responsibility upon enablement.</p>
	Integrations	<p>Employee Data Sync (1 Integration)</p> <p>Position Data Sync (1 Integration)</p> <p>Position Allocations (1 Integration)</p> <p>Payroll Actuals Import is not in Scope</p> <p>Integration of profiles (bargaining units), grades, steps, pay scales and details of benefit calculations is not in Scope</p>

Activity		Scope
<b>Capital Module</b>	Import Projects	<p>Configuration and data import of standard Questica Operating data structures, using data supplied by The Customer in Excel® workbooks provided by Questica. At a minimum, the files will contain the data necessary to:</p> <ul style="list-style-type: none"> <li>• Create Projects (including closed projects where historical budget is to be loaded);</li> <li>• Add Projects to Departments consistent with, and shared by, the Operating budget module;</li> <li>• Define Project Promotion Stages.</li> </ul> <p>The configuration data may optionally contain data necessary to:</p> <ul style="list-style-type: none"> <li>• Define Asset Categories &amp; Asset Types;</li> <li>• Define Project Regions;</li> <li>• Define a single set of Project Ranking Metrics.</li> </ul>
	Initial Data Load	<p>Import Initial Budget - Questica will import most recent budget with 5 years future forecast, Questica will repeat the import once, to accommodate a refresh prior to going live</p> <p>Import Historic Budgets – Questica will import 2 prior years' budgets.</p> <p>Import Actual Transactions - Configuration and data import of standard Questica Operating data structures, using data supplied by The Customer in Excel®</p> <p>Statistical Budget Imports – Not in Scope</p>
	Integrations	<p>Budget Export (1 Integration)</p> <p>Actuals Import (1 Integration)</p> <p>Amended Budget Export – Not in Scope</p> <p>Statistical Imports – Not in Scope</p>
<b>Performance Measures</b>	Configuration	Questica will, with the help of The Customer, determine and configure the Performance Measures Categories and Units, establishing those lookup values within the system.
	Initial Data Load	<p>Questica will import the initial set of performance measures, to a limit of 4 hours of consulting.</p> <p>Questica will, with the help of The Customer, create the initial set of scorecards, to a limit of 4 hours of consulting.</p>
	Integrations	Not in scope
<b>OpenBook</b>	Configuration	<p>System Administration – Customer is responsible – with reasonable assistance from Questica and provided training material – for General configuration of OpenBook to set the look-and-feel, captions, and add users.</p> <p>Visualizations - Questica will assist in configuring OpenBook “Visualizations”, to a limit of 10 hours of consulting time</p> <p>Questica Budget - Questica will, with the help of The Customer, configure up to 3 ad hoc views as a source of OpenBook data. The Customer is able to configure as many additional ad hoc views as required.</p>

Activity		Scope
	Integrations	<p>Import from Questica Budget - Connection of OpenBook to Questica Budget, through a shared API key, and the publication of ad hoc views for seamless import of data into OpenBook from Questica Budget.</p> <p>Import from CSV Files – Customer Responsibility</p>
<b>Training</b>	Administration	Training in Questica Budget administration is delivered via a series of training courseware, such as pre-recorded videos. One Training Session.
	Administrator Authored Reporting	Training in the use of ad hoc views and dashboards is delivered via pre-recorded training videos. Questica also provides instructional videos on the use of the Report Builder 3.0 report authoring tool but recommend that users make use of the many online resources to gain expertise in this tool. This will be delivered in one training session.
	Administrator Authored Reporting	Training in the use of ad hoc views and dashboards is delivered via pre-recorded training videos. Questica also provides instructional videos on the use of the Report Builder 3.0 report authoring tool but recommend that users make use of the many online resources to gain expertise in this tool. This will be delivered in one training session.
	Operating	<p>“Train the trainer” training in the use of Questica Budget's Operating module.</p> <p>In scope:</p> <p>Up to 2 training sessions will be held on this topic.</p>
	Personnel	<p>“Train the trainer” training in the use of Questica Budget's Personnel Planning &amp; Budgeting module.</p> <p>In scope:</p> <p>This will be delivered in one training session.</p>
	Capital	<p>“Train the trainer” training in the use of Questica Budget's Capital module.</p> <p>In scope:</p> <p>This will be delivered in one training session.</p>
	Performance Measures	“Train the trainer” training in the use of Questica Budget's Performance module is via pre-recorded training video.



## Go-Live Scope

During go-live and post, our consultants are often immediately resolving issues. However, at a minimum, the following are the SLA commitments go-live and post go-live support:

Priority	During Business Hours Response Time	Outside of Business Hours Response Time
<b>High</b>	Within 2 hours	Within 1 hour of next business day
<b>Medium</b>	Same day, if reported before 3:00 PM	Within 4 hours of next business day
<b>Low</b>	Same day, if reported before 3:00 PM	Within 4 hours of next business day

**Note:** Business hours are defined as 8:00 AM – 5:00 PM Eastern Time during weekdays excluding major holidays.

## Data Archiving Scope

RPI is allocating 500 hours for additional historical data archiving, with an estimated cost of \$102,500 of services. This pertains to LogosDB, LogosDB\_HrReporting and eSitedb databases that support the New World ERP suite. We recommend during the discovery sessions to determine the best solution for the Town, and RPI will allocate those hours to the preferred solution. Software cost (if any) is not included in this estimate.

## Standard Assumptions

All necessary credentials, including remote access and administrative access, will be provided to RPI team members as needed to complete required tasks. RPI resources will have access to independently initiate a remote connection to all Infor tenants. Town of Apex, NC will provision appropriate access to complete the project deliverables unimpeded.



# Roles & Responsibilities

A description of the various roles and associated responsibilities is as follows. Roles may be expanded or consolidated based on the skill sets of the assigned APEX associates.

## Project Management

Organization	Role	Responsibilities
Town of Apex, NC	Project Sponsor / Steering Committee	<ul style="list-style-type: none"> <li>Assumes ultimate responsibility for the Town of Apex, NC Project team's success.</li> <li>Communicates Project directives and objectives.</li> <li>Provides timely and effective resolution to issues escalated by the Project team.</li> <li>Designates and assures commitment of resources throughout the Project to ensure Project success.</li> <li>Determines Project priorities and approves all changes to Project scope.</li> <li>Provides final review and approval of Project deliverables and milestones.</li> <li>Monitors Project quality and integrity with respect to business goals.</li> <li>Provides positive leadership and ongoing support to all Project team members.</li> <li>Identifies and communicates any issues of concern throughout the course of the Project.</li> <li>Participates in monthly Steering Committee Meetings.</li> </ul>
Town of Apex, NC	Project Managers	<ul style="list-style-type: none"> <li>Ensures Project quality and integrity.</li> <li>Controls and directs day-to-day aspects of the Project, including task assignment.</li> <li>Manages the ongoing Project scope and measures Project performance.</li> <li>Manages third party vendors</li> <li>Coordinates efforts between Project components (applications, interfaces, hardware, conversions).</li> <li>Monitors, tracks, maintains, and assumes overall responsibility for the Project work plan to ensure timeline is adhered to.</li> <li>Monitors, tracks, maintains, and assumes overall responsibility for the Project issues log.</li> <li>Monitors budget of the implementation.</li> <li>Oversees and manages interdependencies of all system modules and interfaces.</li> <li>Identifies and allocates Project Team resources and ensures participation and dedication to Project activities.</li> <li>Facilitates timely issue resolution and escalates Project issues to executive management as needed.</li> <li>Facilitates weekly Project Team status Meetings and monthly Project Steering Committee Meetings.</li> <li>Establishes, coordinates, and ensures effective communication channels are maintained throughout the Project.</li> <li>Ensures effective team building and conflict resolution.</li> </ul>

Organization	Role	Responsibilities
		<ul style="list-style-type: none"> <li>Serves as the primary point of contact for Sponsors, Project Team, and RPI.</li> <li>Responsible for coordination and issue management with third party vendors.</li> </ul>
RPI	Project Manager	<ul style="list-style-type: none"> <li>Schedules the Project's consulting and training activities together with the Town of Apex, NC Project Manager.</li> <li>Provides regular status reports to Town of Apex, NC.</li> <li>Develops the initial implementation plan jointly with the Town of Apex, NC Project Manager.</li> <li>Helps ensure team understanding of objectives and methodology.</li> <li>Assigns and manages RPI consulting resources.</li> <li>Serves as the escalation contact at RPI.</li> <li>Attends &amp; participates in Project status meetings.</li> <li>Reports on issues and concerns affecting the Project.</li> <li>Identifies and helps resolve issues.</li> <li>Identifies and allocates appropriate resources.</li> <li>Drives deliverables, activities, and milestone achievement according to the Project plan.</li> <li>Partners with Town of Apex, NC Project Manager to prevent "Scope Creep".</li> <li>Works with Town of Apex, NC management and PM to insure timely review of change requests.</li> </ul>

### Functional

Organization	Role	Responsibilities
Town of Apex, NC	Functional Team Leads	<ul style="list-style-type: none"> <li>Actively participates in System Design to define requirements in pertinent functional areas. Includes system process requirements, conversion requirements, and high-level interface requirements.</li> <li>Defines processing roles for end users in pertinent functional areas and accommodates security requirements definition.</li> <li>Responsible for identifying and coordinating resources for Super User Training.</li> <li>Responsible for sign-off of Operating Model and Configuration Documents in pertinent functional areas.</li> <li>Responsible for supporting prioritization of technical development backlog as Process Owner.</li> <li>Responsible for providing technical development acceptance criteria as Process Owner.</li> <li>Responsible for identifying and coordinating resources for Integrated Testing.</li> <li>Identifies Integrated Testing Scenarios and provides validation/reconciliation of parallel test results.</li> <li>Responsible for data validation of all converted data in pertinent functional areas.</li> <li>Determines training requirements for end users and coordinate resources for end user training.</li> <li>Performs end user training.</li> </ul>

Organization	Role	Responsibilities
		<ul style="list-style-type: none"> <li>Provides sign-off of end user training materials.</li> <li>Provides sign-off of Go-Live Cutover Plan.</li> <li>Develops high priority reports using standard reporting tools.</li> </ul>
<b>RPI</b>	Functional Consultants	<ul style="list-style-type: none"> <li>Leads System Design by conducting interviews, assessing business needs, analyzing gaps, and providing best practice recommendations for process and system configuration in pertinent functional areas.</li> <li>Provides recommendations relative to conversion requirements, interface requirements, and end user roles/security definition.</li> <li>Prepares Configuration Documents for Operating Model.</li> <li>Provides detailed security specifications to the technical team for end user Roles.</li> <li>Assists Data Conversion team with build out of structural Infor data, such as employee master, chart of accounts, item master, vendor master, etc.</li> <li>Assists Data Conversion team with recommendations and mapping of historical transactional data.</li> <li>Configures system for Super User Training.</li> <li>Collaborates with Functional leads to identify Integrated Testing Scenarios and requirements. Provide leadership and assistance to Town of Apex, NC testers through Integrated Testing.</li> <li>Coordinate/Conduct Security Test.</li> <li>Provides available templates for custom User Manuals and facilitates End User Training.</li> <li>“On the ground” Go-Live facilitation and post-Live application consulting expertise through first month end close.</li> </ul>
<b>Town of Apex, NC</b>	Super Users	<ul style="list-style-type: none"> <li>Responsible for individual task completion.</li> <li>Communicating and resolving issues.</li> <li>Development and testing of procedures and policies.</li> <li>Testing and documentation of functionality.</li> <li>Provide assistance and training to end users.</li> <li>Develops, validates, and documents policies and procedures.</li> <li>Provides Town of Apex, NC subject matter expertise.</li> <li>Completes prerequisite web-based training courses and attends Infor Application Training classes.</li> <li>Learns basic Infor system functionality and features and applies this knowledge to the Town of Apex, NC functional business needs.</li> <li>Assumes responsibility for design decisions, execution of system setup, and validation that design meets the business needs of the organization.</li> <li>Participates in weekly Project Team status meetings, including the preparation and presentation of a weekly Project status report by application area.</li> <li>Identifies, communicates and resolves application team issues.</li> <li>Learns in-depth building, maintenance and integration of system files.</li> <li>Define, document, execute and validate unit test (prototyping) and system test scenarios and results.</li> <li>Validates converted and/or interfaced data.</li> </ul>

Organization	Role	Responsibilities
		<ul style="list-style-type: none"> <li>Participates in the Sprint Review Event as designated in the technical development strategy and at the direction of the Functional Team Lead/Process Owner.</li> <li>Develops and documents end-user training materials.</li> <li>Conducts or assists in end-user education as needed.</li> <li>Communicates business process changes to Town of Apex, NC personnel, including policies and procedures.</li> <li>Participates in report definition, prioritization, and development.</li> <li>Assists with identification and validation of security needs.</li> <li>Effectively communicates throughout the course of the Project.</li> </ul>

### Technical

Organization	Role	Responsibilities
<b>RPI</b>	Lead Technical Consultant	<ul style="list-style-type: none"> <li>Initial setup of the newly provisioned Infor FSM tenants.</li> <li>Facilitate base data conversion and uploads into Infor.</li> <li>Provides leadership on technical development strategy.</li> </ul>
<b>Infor</b>	Cloud Ops	<ul style="list-style-type: none"> <li>As per SaaS delivery guide</li> </ul>
<b>RPI</b>	Development lead	<ul style="list-style-type: none"> <li>Provides guidance on development strategy.</li> </ul>
<b>RPI</b>	Developer	<ul style="list-style-type: none"> <li>Responsible for developing technical items as per scope</li> </ul>
<b>Town of Apex, NC</b>	Interface Specialists	<ul style="list-style-type: none"> <li>Responsible for developing interfaces.</li> <li>Participates in Sprint Events as designated in the technical development strategy.</li> <li>Supports troubleshooting and interface updates throughout Unit Testing, SIT and Post Live.</li> </ul>
<b>Town of Apex, NC</b>	Process Automation Developer/Administrator	<ul style="list-style-type: none"> <li>Responsible to develop workflows per design agreed upon during design.</li> <li>Participates in Sprint Events as designated in the technical development strategy.</li> <li>Responsible for supporting, maintaining, and/or extending Infor Process Automation solutions.</li> </ul>
<b>Town of Apex, NC</b>	Reporting Specialist	<ul style="list-style-type: none"> <li>Develops custom (nonstandard Infor) reports and distribution method.</li> <li>Participates in Sprint Events as designated in the technical development strategy.</li> </ul>
<b>Town of Apex, NC</b>	Security Administrator	<ul style="list-style-type: none"> <li>Responsible for maintaining the Infor Application and Environment security. This position will work closely with the Functional Team and RPI Security Consultant.</li> <li>Administration of users, roles, &amp; tasks – including security.</li> <li>Defines user access to printers, access to multiple environments.</li> <li>Works with business users to design the security model.</li> <li>Participates in testing with business users.</li> <li>Effectively communicates security development status throughout the course of the Project.</li> </ul>
<b>RPI</b>	Conversions Consultants	<ul style="list-style-type: none"> <li>Responsible to upload data into Infor system as per Conversion Scope.</li> </ul>

Organization	Role	Responsibilities
Town of Apex, NC	Conversion Specialist	<ul style="list-style-type: none"><li>Provides requisite data dumps from legacy systems for all conversion activities.</li></ul>
Town of Apex, NC	IT Support	<ul style="list-style-type: none"><li>Configure and administer the identity provider for CloudSuite</li><li>Responsible to provide remote access to RPI team.</li><li>Installation and administration of on-premises servers, if applicable.</li><li>Procurement of any third-party software keys that may be required for the Infor installation and operation.</li><li>All hardware and software acquisitions, including sizing.</li><li>Procurement and support of handheld devices including wireless.</li><li>Responsible for Active Directory administration and creation and management of user accounts.</li><li>Responsible for network configuration and security for external access.</li></ul>

# Estimated Effort

The following represents comprehensive estimates of hours for both Apex and RPI resources based on information provided by Apex and our experiences migrating customers to CloudSuite.

We look forward to refining these estimates through further discussions with the Apex team to achieve a mutually successful partnership and outcomes.

## Estimated Client Effort by Phase

Apex Effort Estimate								
Role	Initiate & Plan	Analyze & Design	Build & Develop	Verify & Empower	Go-Live & Support	Total Hours	Hours / Week*	FTE
Project Sponsor	16	42	60	88	20	226	3.6	9%
Project Manager	160	408	568	880	200	2216	35.7	89%
Finance Lead	80	208	240	672	160	1360	21.9	55%
GL Super User	32	120	136	392	120	800	12.9	32%
Grants Super User	32	120	136	392	120	800	12.9	32%
AP Super User	32	120	136	392	120	800	12.9	32%
SCM Lead	80	208	240	672	160	1360	21.9	55%
Procurement Super User	32	120	136	392	120	800	12.9	32%
HCM Lead	80	208	240	672	160	1360	21.9	55%
GHR/Perf Super User	32	152	208	296	32	720	11.6	29%
Payroll Super User	32	152	208	296	32	720	11.6	29%
WFM Lead	56	168	208	512	120	1064	17.2	43%
System Administrator	24	136	180	264	144	748	12.1	30%
End Users (UAT)	0	0	0	1792	0	1792	28.9	72%
IT Support	96	248	296	432	56	1128	18.2	45%
Interfaces	0	112	280	140	0	532	8.6	21%
Configuration Console	0	80	200	100	0	380	6.1	15%
IPA Development	0	112	280	140	0	532	8.6	21%
Report Development	0	112	280	140	0	532	8.6	21%
<b>Totals</b>						<b>17870</b>	<b>288.2</b>	<b>7.2</b>



## Estimated RPI Effort by Phase

RPI Effort Estimate								
Role	Initiate & Plan	Analyze & Design	Build & Develop	Verify & Empower	Go-Live & Support	Total Hours	Hours / Week*	FTE
Project Director	64	68	60	112	48	352	5.7	14%
Project Manager	88	352	496	728	200	1864	30.1	75%
Change Management	0	50	30	220	30	330	5.3	13%
Project Coordinator	0	144	240	352	96	832	13.4	34%
Technical Architect	24	92	30	44	48	238	3.8	10%
Senior Financials Consultant	112	344	400	708	168	1732	27.9	70%
Fin BA	0	80	268	240	80	668	10.8	27%
Budget Lead	0	0	120	160	0	280	4.5	11%
Senior SCM Consultant	112	344	400	708	168	1732	27.9	70%
SCM BA	0	80	268	240	80	668	10.8	27%
Senior GHR/PG Consultant	112	328	360	572	104	1476	23.8	60%
Payroll/BN Consultant	112	344	400	736	168	1760	28.4	71%
HCM BA	0	128	268	392	80	868	14.0	35%
WFM Consultant	112	344	400	736	120	1712	27.6	69%
Development Lead	0	160	216	0	0	376	6.1	15%
Development	0	96	656	0	0	752	12.1	30%
Data Conversions Lead	0	112	56	72	0	240	3.9	10%
Data Conversions	0	296	160	216	24	696	11.2	28%
Systems Analyst	32	120	120	216	144	632	10.2	25%
Reporting	0	80	240	0	0	320	5.2	13%
<b>Totals</b>						<b>17528</b>	<b>282.7</b>	<b>7.1</b>

# Implementation Cost

## RPI Deliverables Strategy

The foundation for a successful fixed priced ERP implementation is to identify up-front the deliverables that will require development and approval by both the vendor and the client. Fixed Price projects provide budget protection for the client but require a higher degree and precision of expectation management and outcomes. Fixed price contracts by their nature require a fixed project schedule, fixed approach, fixed scope, fixed resource staff, fixed outcomes and most importantly, fixed expectations.

## Deliverable Acceptance

The Project Work Plan will be used to plan and track the Deliverable Acceptance activities. The schedule will be built with a ten (10) business day approval cycle unless otherwise discussed based on the complexity of a particular deliverable.

## Deliverables by Phase/Milestone

Listed below are the Deliverables Apex will receive during each Milestone of the project.

<b>Initiate &amp; Plan</b>
<b>1-Project Governance Documents</b>
Program Charter
Program RACI
Program Change Log
Communication Plan
Training Strategy
Testing Strategy
Technical Strategy
Technical Development Strategy
Data Conversion or Migration Strategy
Data Validation Strategy
Roles and Responsibilities
Communication Strategy
<b>2-Project Management Plan</b>
Detailed Project Plan
PMO - Schedule for Discovery, Training, Design, Testing
Current State Assessment
<b>3-Change Readiness Assessment</b>
Change Management Plan
Change Readiness Assessment
Knowledge Transfer Assessment
<b>4-System Provisioning</b>
Tenant Strategy/Plan
<b>Analyze &amp; Design</b>
<b>5-Super User Training &amp; CRP Build</b>
Super User Training Curriculum/Schedule
CRP Tenant Build

**6-Technical Development Strategy**

Technical Future State Design

Technical Requirements &amp; Design

Tech Development Plan

**7-Unit Test Plan**

Unit Test Plan

**8-Initial System Design for Unit Test**

Initial Draft System Design

Conversion Mapping Workshop Agenda/Deck

Data Conversion Requirements &amp; Design

Data Validation Plan

**Build & Develop****9-Unit Test System Build**

Unit Test System Build

**10-Unit Test Scripts**

Infor-Delivered Test Scripts for Client Updates

**11-Complete Unit Test**

Conversion - 1st Pass Unit Test Results

Testing and Data Validation Results

**12-Updated System Design for SIT**

Updated Draft System Design

Security Strategy

Functional Security Requirements Workshop

Security Role Requirements &amp; Design

Process Automation &amp; Action Request Design

Configuration Console Requirements &amp; Design

**13-SIT Test Plan**

System Integrated Test Plan

**14-SIT Test Scripts**

System Integrated Test Scripts

**15-RICE Development Ready for SIT**

Technical Development Plan Updated

Technical Design Documents

**Verify & Empower****16-SIT System Build**

System Integrated Test System Build

**17-Complete System Integrated Test**

Conversion - 2nd Pass SIT Results

Testing and Data Validation Results

Payroll Parallel Testing and Validation Results

**18- Final Design**

Final System Design

Security Role Requirements Final Design

Process Automation &amp; Action Request Final Design

Configuration Console Requirements Final Design

**19-UAT Test Plan**

User Acceptance Test Plan

**20-UAT Test Scripts**

User Acceptance Test Scripts

**21-UAT System Build**

Cutover Plan for User Acceptance Test

**22-Complete User Acceptance Testing**

Conversion - 3rd Pass UAT Results

Testing and Data Validation Results

Payroll Parallel Testing and Validation Results

**23-End User Training Guides**

Training Materials/User Guides

**24-Cutover Plan**

Final Cutover Plan for Go Live

**25-End User Training Delivery**

End User Training Curriculum/Schedule

**Go-Live & Support****26-Cutover**

Execution of Cutover Plan

**27-Support 30 Days Complete**

Issues Log

**28-Support 90 Days Complete**

Issues Log

Project Closure Document

## Milestone Schedule

Detailed deliverable payment schedule by phase.

#	Phase	Milestone	Cost
1	Initiate & Plan	Project Governance Documents	\$73,227
2	Initiate & Plan	Project Management Plan	\$54,920
3	Initiate & Plan	Change Readiness Assessment	\$36,614
4	Initiate & Plan	System Provisioning	\$54,920
5	Analyze & Design	Super Training & CRP Build	\$224,258
6	Analyze & Design	Technical Development Strategy	\$137,301
7	Analyze & Design	Unit Test Plan	\$36,614
8	Analyze & Design	Initial System Design for Unite Test	\$256,295
9	Build & Develop	Unit Test System Build	\$201,374
10	Build & Develop	Unit Test Scripts	\$54,920
11	Build & Develop	Complete Unit Test	\$228,835
12	Build & Develop	Updated System Design for SIT	\$109,841

#	Phase	Milestone	Cost
13	Build & Develop	SIT Test Plan	\$36,614
14	Build & Develop	SIT Test Scripts	\$73,227
15	Build & Develop	RICE Development Ready for SIT	\$256,295
16	Verify & Empower	SIT System Build	\$219,681
17	Verify & Empower	Complete System Integrated Test	\$256,295
18	Verify & Empower	Final Design	\$54,920
19	Verify & Empower	UAT Test Plan	\$36,614
20	Verify & Empower	UAT Test Scripts	\$36,614
21	Verify & Empower	UAT System Build	\$73,227
22	Verify & Empower	Complete UAT	\$109,841
23	Verify & Empower	End User Training Guides	\$73,227
24	Verify & Empower	Cutover Plan	\$36,614
25	Verify & Empower	End User Training Delivery	\$73,227
26	Go-Live & Support	Cutover	\$73,227
27	Go-Live & Support	30 Days Support Complete	\$73,227
28	Go-Live & Support	90 Days Support Complete	\$99,631
<b>Total</b>			<b>\$3,051,600</b>

#	Activity	Milestone	Hours	Cost
1	Data Archiving	Development of a Data Archiving Strategy & Solution	500	\$102,500
<b>Total</b>				<b>\$102,500</b>

## Travel

RPI will charge all reasonable out-of-pocket expenses. Out-of-pocket expenses include such items as travel, lodging, airport parking, and/or mileage at the rate published by the IRS. All expenses shall be reimbursed for actual out-of-pocket amounts, except for meals. Meals shall be reimbursed based on current GSA standard per diem rates.

### Estimated Travel Cost

Project Phase	Estimated Trips	Estimated Cost Per Trip	Estimated Travel Cost
<b>Initiate &amp; Plan</b>	10	\$2,000	\$20,000
<b>Analyze &amp; Design</b>	24	\$2,000	\$48,000
<b>Build &amp; Develop</b>	24	\$2,000	\$48,000
<b>Verify &amp; Empower</b>	28	\$2,000	\$56,000
<b>Go-Live &amp; Support</b>	14	\$2,000	\$28,000
<b>TOTAL TRIPS ESTIMATED</b>	<b>100</b>		<b>\$200,000</b>

# Addendum A - Infor Public Sector, Community Development & Regulation (CDR) Implementation Services

RPI will partner with TruePoint Solutions (TPS) to implement Infor Public Sector (IPS) Community Development and Regulation (CDR) Suite v11.2 using a SaaS Multi-Tenant (MT) environment for the Town of Apex, NC. **These applications will handle business processes for the Town's Licensing & Permitting team and the PM/Planning team.**

## About TruePoint

TruePoint Solutions (TPS) is a privately held software and solutions company and certified Small Business Entity based in California. Established in late 2004, TPS formally commenced operations in 2005. The team totals over 50 staffers who in turn encompass well over 700 years of Public Sector IT experience.

TPS is comprised of a significant number of former Infor/Hansen employees and executives. In fact, the team at TPS has more than 170 years of cumulative, employed by Infor/Hansen, software experience. No other services company can claim as much direct experience with these products as TPS. TPS also has extensive experience in local municipalities, with over 150 years of experience working for local government.

TPS can provide the guidance and experience based on best practices to the Town of Apex, NC. that are necessary to make a successful implementation to a new platform (Infor Public Sector).

## Purpose

The purpose of this implementation plan and scope of work is to document the services to be delivered, the level of effort of the requested services, the roles of the various parties participating in the implementation, and the associated responsibilities for each position in delivering implementation. This implementation plan and scope of work is presented in conjunction with RPI Consultants' proposal response to the Town of Apex, NC ERP RFP for Software and Implementation Services for a Permitting Software Systems Environment. The final configuration of the Infor Public Sector software is expected to align with the descriptions provided within RPI/TPS proposal response, to the extent that they conform to the mutually agreed upon business requirements documented as a result of this implementation plan and scope of work and the IPS product functionality demonstrated to the Town of Apex, NC by Infor. If this implementation plan and scope of work conflicts in any way with RPI/TPS's proposal response to the above-mentioned RFP, the implementation plan and scope of work shall supersede RPI/TPS's proposal response.

This document addresses the specific requirements of the Town of Apex, NC as well as the specific requirements of RPI/TPS in order to efficiently and feasibly deliver the requested services. This document is a starting point for describing the project and related professional services. The

associated project plans and documents will continue to evolve over time with collaboration from both the Town of Apex, NC and RPI and RPI/TPS staff.

## Project Summary

The Town of Apex, NC (Town/Client) will replace New World and EPermits Permitting Solutions. The Town of Apex, NC's current, primary application, which is used to support the Community Development and Regulations (CDR). The goals of this project are expected to include:

- Provide a single, comprehensive, and integrated solution that uses a shared repository of information and processes to ensure that all users have access to the same information and reporting is consistent
- Streamline business processes to take advantage of best practices through automation, integration, and electronic business workflows
- Implement a platform with a modern look and feel, with thoughtful, intuitive functionality.
- Provide easy access to real-time data that enables and facilitates sound business decisions.
- Automate currently manual processes.
- Eliminate the need for Excel spreadsheets to manage business information.
- Eliminate the need for redundant data entry
- Improve and provide necessary reports and access to data through inquiry or drill down capabilities for better decision making (Accessible via Microsoft Power BI)
- Provide interface capabilities with third-party systems.
- Provide robust mobile capabilities where appropriate.

## Implementation Approach

Project implementation will be a collaborative effort between the Town of Apex, NC, RPI and TPS. Significant time will be spent to ensure Apex's goals are met, as defined above. TruePoint Solutions implementation projects range in duration from six months to several years based upon a variety of factors. **For the implementation of Infor Public Sector, we are expecting a project timeline of fourteen (14) to eighteen (18) months.**

RPI, in conjunction with RPI/TPS, will develop a project management plan that provides details of the approach, strategy, organization, communication strategy, risk mitigation strategy, staffing plan, training plan, development, transition and implementation plan, and collaboration between Apex and the design team for program success. Tasks, as specified below, will be accounted for within the project management plan to support the execution of it. At the program level, we will integrate the individual tasks and activities to form an overall project management plan and an integrated master schedule.

## Implementation Scope

### Application Scope

RPI Consultants, in conjunction with TPS, will support the implementation of the following Infor modules for Apex:



- Infor Public Sector (IPS) Community Development and Regulation (CDR) Suite v11.2 using a SaaS Multi-Tenant (MT) environment.
  - CDR Enhanced Bundle (Modules include: Building; Project; Planning; Use; Code Enforcement; Business and Trade Licensing; Customer Service; Map Drawer; Web Services – Assets, Billing, CDR; Microsoft Exchange; Open 311 API).
  - CDR Billing
  - Rhythm for Civics (Portal)
  - Field Inspector – CDR (mobile)
  - GIS Sync (Esri Interface)
  - Birst Enterprise and IDM (Reporting)

## Services Scope

The following services will be delivered as part of this implementation:

1. Project Management
2. Software Provisioning Oversight
3. Business Analysis
4. Configuration
  - 4.1. Workflow Configurations
  - 4.2. Portal, Mobile and GIS Configurations
5. Data Migration of legacy data
6. Interface – Third (3<sup>rd</sup>) party applications
  - 6.1. Critical: out-of-the-box interface
  - 6.2. Critical: interface design needed
  - 6.3. Desired Interface
7. Testing – Unit, Functional, User Acceptance Testing (UAT)
  - 7.1. Unit Testing
  - 7.2. Functional Testing
  - 7.3. User Acceptance Testing (UAT)
8. Training – Core Team, Admin, and End User - Train the Trainer
  - 8.1. Implementation Training (Core Team)
  - 8.2. Train-the-Trainer Classes
  - 8.3. Reporting – Includes BIRST Enterprise and Infor Document Management (IDM)
9. Go-Live
  - 9.1. Go-Live Support
  - 9.2. Post Go-Live Support

## Work Plan Items

### 1. Project Management

#### Responsibilities

RPI/TPS Responsibilities:	Client Responsibilities:
<ul style="list-style-type: none"> <li>Develop and maintain project plan.</li> <li>Schedule and participate in kick-off meeting.</li> <li>Maintain an Issue Log throughout the implementation and propose solutions to identified issues.</li> <li>Lead weekly project status meetings and provide weekly status reports.</li> <li>Manage all consulting resources throughout the project.</li> <li>Actively manage the project in partnership with client.</li> </ul>	<ul style="list-style-type: none"> <li>Review and approve initial project plan.</li> <li>Schedule and participate in kick-off meeting.</li> <li>Schedule and participate in status meetings.</li> <li>Manage all Client resources throughout the project.</li> <li>Actively manage the project in partnership with RPI/TPS team.</li> <li>Give direction on resolution of issues on the issue log.</li> </ul>

#### Deliverables:

- 1.1 – Project Management Plan
- 1.2 – Kick Off Meeting

### 2. Software Provisioning Oversight

RPI/TPS will oversee and review initial software setup and configuration (aka 'provisioning') of the Infor Multitenant SaaS environment, completed by Infor under separate contract.

#### Responsibilities:

RPI/TPS Responsibilities:	Client Responsibilities:
<ul style="list-style-type: none"> <li>Ensure the initial setup of the Infor Public Sector MT environment and associated bundle products are configured and working seamlessly together.</li> </ul>	<ul style="list-style-type: none"> <li>Participate in IPS 11.2 maintenance training for staff.</li> </ul>

#### Deliverables:

- 2.1 – Infor Public Sector Setup & Configuration

### 3. Business Analysis

RPI/TPS will lead the business analysis efforts for this project.

Our consultants will meet with designated Apex staff to participate in Business Requirement Design (BRD) meetings. The purpose of these meetings will be to document the business workflow requirements for each of the included Community Development divisions:

3.1 Planning

3.2 Site Development

3.3 Building

RPI/TPS will plan to conduct initial business analysis meetings onsite to meet with project team members from each division separately. During these meetings, it is expected that we will review the following:

- Existing documentation related to both As-Is and To-Be workflows (as available)
- Current application types and workflows being used by each division.
- Application types and workflows that are not currently within the Town has determined need to be included in the new system.
- Review of existing reports and printable forms.
- Discussion of Best Practices use with the IPS product.

RPI/TPS will develop a BRD document for each of the workflow types defined within Section 4.1 Workflow Configurations. RPI/TPS will document the business processes and workflows from the BRD meetings and develop the initial BRD documents. The initial draft BRD documents will be presented to Apex for initial review and to ensure that the business processes are documented correctly. If Apex finds discrepancies, they will submit a conditional BRD sign off listing the discrepancies to RPI/TPS.

RPI/TPS expects that an average of two (2) BRD revisions will be completed per BRD document prior to final signoff, provided that RPI/TPS has fully and accurately corrected any discrepancies in each revision. Once the Town reviews and completes a final sign off on the BRD documents, RPI/TPS will configure the IPS CDR system based on the agreed upon BRD requirements.

### Responsibilities:

RPI/TPS Responsibilities:	Client Responsibilities:
<ul style="list-style-type: none"> <li>• Be an active owner of the BRD.</li> <li>• Lead business analysis meetings.</li> <li>• Work closely with Client Business Analyst(s).</li> <li>• Deliver individual workflow BRD documents for Client review.</li> <li>• Revise BRD documents.</li> <li>• Deliver final BRD document.</li> </ul>	<ul style="list-style-type: none"> <li>• Be an active owner of the BRD.</li> <li>• Be an active participant in RPI/TPS led business analysis meetings.</li> <li>• Apex Business Analyst(s) work closely with the RPI/TPS team to learn Best Practices use with the IPS product, understand BRD needs, and assist Apex staff.</li> <li>• Provide documentation and information on current business processes and workflows.</li> <li>• Review draft BRD documents for accuracy and consistency.</li> </ul>

### Deliverables:

- **3.1 – Business Requirements Design documents – Planning**
- **3.2 – Business Requirements Design documents – Site Development**
- **3.3 – Business Requirements Design documents – Building**

## 4. Configuration

RPI/TPS will lead the configuration efforts for this project. RPI/TPS will commence configuration once the Town of Apex, NC accepts the BRD's. RPI/TPS will configure the IPS system to the BRD specifications and present the configurations to Apex. Apex will complete two rounds of testing, provide feedback and updates.

RPI/TPS will also provide 'hands-on' configuration training to designated Apex staff. This will be completed as a part of the included Implementation Training. The goal of this training will be for the Town's sustainment staff to become proficient with the IPS configuration tools during the implementation and play an active role in the configuration effort. This will also ensure that Apex staff will be able to configure additional application types identified after go-live or that that are determined to be outside of this scope.

RPI/TPS will configure:

- Ten (10) workflow types for Planning
- Ten (10) workflow types for Site Development
- Fifteen (15) workflow types for Building
- Six (6) detail pages per workflow type
- Ten (10) advanced scripts per module (i.e. IPS Building Permits, Project, and Planning)
- Twenty (20) Notification Templates

RPI/TPS will configure up to a total of thirty-five (35) workflow types for Planning, Site Development and Building. At the Town's discretion, the Apex may elect to adjust the number of workflow types to be configured for each division.

RPI/TPS will also lead business analysis sessions related to the configuration of:

- the Rhythm for Civics (portal)
- Field Inspector (mobile)
- GeoAdministrator (GIS) products

### Responsibilities:

RPI/TPS Responsibilities:	Client Responsibilities:
<ul style="list-style-type: none"> <li>• IPS CDR Configuration for Planning, Site Development and Building.</li> <li>• Provide 'hands-on' configuration training to designated Apex Business Analysts in order to create new application types.</li> <li>• Rhythm for Civics initial delivery includes updating of picture and graphic. Theme editing not included.</li> </ul>	<ul style="list-style-type: none"> <li>• Be an active owner of the product and solution.</li> <li>• Participate in Testing.</li> <li>• Apex Systems Analyst(s) work closely with the RPI/TPS team to learn IPS CDR system configuration and assist Apex staff.</li> <li>• Configure application types in IPS CDR as assigned by Project Team .</li> </ul>

RPI/TPS Responsibilities:	Client Responsibilities:
<ul style="list-style-type: none"> <li>• Provide configuration and training for one (1) Customer Portal Questionnaire 'Wizard' workflow.</li> <li>• Mobile device Readiness.</li> <li>• IPS GeoAdministrator configuration for use with Apex GIS data for addressing and parcels (two (2) layers) using the Apex Esri 10.5.1 environment.</li> </ul>	<ul style="list-style-type: none"> <li>• Providing appropriate Mobile devices for staff field use.</li> <li>• Participate in RPI/TPS analysis sessions for configuration.</li> <li>• Participate in Testing.</li> <li>• Provide address and parcel layers for editing during GIS configuration.</li> <li>• Be an active owner of the products and solutions.</li> </ul>

### Deliverables:

- **4.1.a – Workflow for Planning**
- **4.1.b – Workflow for Site Development**
- **4.1.c – Workflow for Building**
- **4.2.a – Rhythm for Civics Configuration and 'Wizard'**
- **4.2.b – Mobile Configuration**
- **4.2.c – GIS Configuration**

## 5. Data Conversions

An analysis of Apex's legacy data will be conducted in order to determine if Apex's legacy data will be migrated to the new IPS system as a part of this project. Apex will deliver existing legacy data from the current System to RPI/TPS as a SQL backup. This data will include permit records for Planning, Site Development and Building. A database dictionary and schema will be provided by Apex. The task associated with this work will include:

### Data Conversion - Analysis

Upon the completion of the Data Conversion – Analysis task, Apex will make a final determination as to what, if any, data will be migrated from the Town's current Permit. If Apex elects to proceed with a data migration effort, the following optional data migration tasks will be included within this project scope at the direction of Apex's Project Manager.

### Data Conversion Mapping

Each IPS module (i.e. Planning, Site Development, Building Permit) will have one historical record type that all applications will be converted to. These historical records will be converted for 'view only' use and will not be editable within the IPS system. Active records will be either input manually by the Town staff or cloned after conversion. The Town will be responsible for providing support to RPI/TPS in order to facilitate the completion of the conversion process. There will be three (3) iterations of the data conversion which will include:

- Data Conversion - initial – test
- Data Conversion - revised after Apex review – test
- Data Conversion - final – production

**Data Migration: Definition of Roles**

Role	Summary
Lead	The party ultimately responsible for the activity.
Assist	The party provides active assistance for the activity.
Participate	The party provides passive assistance for the activity.
Share	Both parties share equal responsibility for the activity.
None	The party has no role in the activity.

**Data Migration: Summary of Response Indicators**

Indicator	Response	Description
<b>S</b>	Supports	The Proposal supports the prescribed responsibility roles with its proposed data conversion methodology and approach.
<b>C</b>	Conflict	The Proposal has a conflict with the prescribed responsibility roles and proposes alternate responsibility in its proposed data conversion methodology and approach.

**Data Migration: Responsibilities of Deliverables**

No	Data Conversion Activity	Proposer Role	City Role	Response	Other Comments
1	Perform Conversion Analysis of Existing Legacy Data	Lead	Participate	S	
2	Perform Crosswalk Development of Legacy Data from Legacy System to New System	Lead	Participate	S	
3	Provide Conversion Data	None	Lead	S	
4	Provide File Layouts/Data Maps of Existing System	None	Lead	S	
5	Proof Data Provided	Assist	Lead	S	
6	Analysis of Data to be Converted	Lead	Assist	S	
7	Developing and Testing Conversions	Lead	None	S	
8	Review and Correct Errors	Share	Share	S	
9	Load Converted Data into Training Database	Lead	Participate	S	
10	Confirmation of Converted Data in Training Database	None	Lead	S	
11	Approval/Signoff of Converted Data in Training Database	None	Lead	S	
12	Load Converted Data into Live Database	Lead	Participate	S	
13	Confirmation of Converted Data into Live Database	None	Lead	S	
14	Approval/Signoff of Converted Data in Live Database	None	Lead	S	
15	Other:				
16	Other:				

**Data Migration: Data Migration Scope**

Category	Infor Object	Data Requirement	Clarification on Scope
<b>Planning/Project Management</b>	Applications	2-4 years active	Actively used (current applications only)
<b>Planning/Project Management</b>	Contacts	Must have required data for IPS contact.	

Category	Infor Object	Data Requirement	Clarification on Scope
Planning/Project Management	Fees	Requires active fee types	Outstanding fees will be converted with amounts owed.
Planning/Project Management	Reviews	Requires active review type	Problems and reviews for history of the active applications
Planning/Project Management	Logs		Logs are used to store reportable data from the historical system that may not have a one to one match in the new workflows
Planning/Project Management	Inspections	Requires active fee types	Problems and inspections for history of the active applications
Planning/Project Management	Historical Details		If there is any queried data that can not be mapped to a destination in IPS a custom table can be created.
Permits	Applications	2-4 years active	Actively used (current applications only)
Permits	Contacts	Must have required data for IPS contact.	
Permits	Fees	Requires active fee types	Outstanding fees will be converted with amounts owed.
Permits	Reviews	Requires active review type	Problems and reviews for history of the active applications
Permits	Logs		Logs are used to store reportable data from the historical system that may not have a one to one match in the new workflows
Permits	Inspections	Requires active fee types	Problems and inspections for history of the active applications
Permits	Historical Details		If there is any quired data that can not be mapped to a destination in IPS a custom table can be created.

### Responsibilities:

RPI/TPS Responsibilities:	Client Responsibilities:
<ul style="list-style-type: none"> <li>Lead data conversion mapping sessions.</li> <li>Develop, test and execute data conversion program to import data into IPS database.</li> <li>Maintain data integrity.</li> <li>Deliver data conversion document to Apex.</li> <li>Deliver converted data to the Infor Cloud Team.</li> </ul>	<ul style="list-style-type: none"> <li>Participate in data conversion mapping.</li> <li>Review and approve the conversion document.</li> <li>Deliver appropriate data set for testing, development and implementation.</li> <li>Complete testing and verification of the converted data.</li> <li>Provide input and solutions to matters as they are required.</li> </ul>

RPI/TPS Responsibilities:	Client Responsibilities:
<ul style="list-style-type: none"> <li>Infor Cloud Team will be responsible for the final data load into Apex's MT Cloud environment.</li> </ul>	<ul style="list-style-type: none"> <li>Provide alternatives and solutions to any and all rejected data.</li> </ul>

**Deliverables:**

- 5.1 – Data Conversion – Analysis**
- 5.2 – Data Conversions – Final Production**

## 6. Interfaces

Interfaces will be addressed on an individual basis. Hour's estimate is based on similar Parcel Owner and State Licensing Board integrations. If the analysis and design exceed the typical requirements more resources may be required.

**Interface Design Document Process**

Each Interface Design Document will include the following process:

- a. Document workflows and data requirements.** Through a combination of onsite and remote meetings, Apex will share the requirements they envision for the system interface. Apex will communicate and document the required interface needs and upon examination, the Project Team will provide recommendations for process improvements. Through an iterative process, a final requirements document will be developed.
- b. Third Party Interface Tools.** Identify and determine the availability of third-party interface tools. We understand that all software systems are evolving, and vendors are continuing to develop easier ways to share and exchange data and processes with other systems. As such, an effort to examine the availability of APIs, import tools and other data sharing functions supported by Apex's back office and other third-party solutions will be completed. We anticipate this being a joint effort with Apex as they may have existing experience using these tools. This is also an opportunity to engage directly with the third-party vendors for inclusion on any subsequent scope requirements.
- c. Interface design document development.** A design document will be prepared which will outline the Interface requirements and the anticipated scope of work to execute the design.

**Responsibilities:**

RPI/TPS Responsibilities:	Client Responsibilities:
<ul style="list-style-type: none"> <li>Develop Interface Design Documents for listed applications.</li> </ul>	<ul style="list-style-type: none"> <li>Participate in Interface Review and Design sessions.</li> <li>Approve Interface Design Documents.</li> </ul>



RPI/TPS Responsibilities:	Client Responsibilities:
<ul style="list-style-type: none"> <li>Conduct Interface Reviews for listed applications.</li> </ul>	

**Deliverables:**

- 6.1 – Interface Design Document**
- 6.2 – Interface Development Complete**

## 7. Testing

Project testing will occur throughout the project, which includes on-going Core Team training.

**Unit Testing**

Intended to be done by the configuration team. In this phase of testing the goal is to ensure the small function or pieces produce the desired outcome.

**Functional Testing**

Intended for the core team. In this phase of testing the goal is to ensure that the iterations within each sprint are successful and produce the desired outcome.

**User Acceptance Testing (UAT)**

Testing the whole solution from start to finish. In this phase of the testing the goal is to ensure the product works in total and produces the business solution.

RPI/TPS Responsibilities:	Client Responsibilities:
<ul style="list-style-type: none"> <li>Unit Testing of configurations.</li> <li>Core Team Training (throughout the project).</li> <li>Functional Testing: Staff doing the Functional testing will receive training as each item is delivered (e.g. Conversion, CDR configuration).</li> <li>User Acceptance Testing (UAT) <ul style="list-style-type: none"> <li>RPI/TPS responsible for test case development.</li> <li>RPI/TPS responsible for training for testing.</li> <li>RPI/TPS responsible for supporting UAT (On and off site), including making any corrections to failed UAT test cases identified during testing.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Schedule appropriate people for core team training and testing.</li> <li>Functional Testing: Staff doing the Functional testing will receive training as each item is delivered (e.g. Conversion, CDR configuration).</li> <li>User Acceptance Testing (UAT): the end users that will participate in the UAT will receive core training. Staff will also provide input and review of test cases developed.</li> <li>Participate in training and testing.</li> <li>Participate in regression testing (as needed).</li> <li>Continue ongoing training and testing.</li> </ul>

**Deliverable:**

- 7.1 – Completion and sign-off for User Acceptance Testing (UAT)**

## 8. Training

### Training Roles and Responsibilities

During project initiation, a draft training plan will be created based on the products purchased, the numbers and types of users, and the specific Apex requirements relative to training and development for both Apex's operational and on-going administrative needs. Should needs change as the implementation progresses, this plan will be updated accordingly.

### Implementation Training (Core Team)

The RPI/TPS team will plan multiple opportunities for Implementation Training for the Apex over the course of the project. There will be initial Product Overview and Basic Concepts training. There will also be training sprints planned to educate the project team in parallel with the needed configuration skills for each implementation sprint. RPI/TPS will spend time explaining how the software works and will review with Apex staff so they will understand how the solution was built, how they can build their parts of the solution, and where documentation exists.

Implementation Training Classes will include the following:

- Product Overview and Basic Concepts Training – 16 hours
- Technical Systems Configuration Training – 40 hours
- GeoAdministrator Training – 4 hours

### End User Training

RPI/TPS provides a variety of user and administrator training courses that are designed to orient, educate, and reinforce the core concepts behind the operation and management of Infor Public Sector. For this project the RPI/TPS team intends to train the end users with the assistance of the Apex subject matter experts during the trainings.

RPI/TPS and the Apex team will work together to identify the end user sessions needed. This will be done by identifying the daily processes and functional groups. Also, before scheduling the training sessions, the configuration of the processes will be in a state close to final in order to avoid any retraining efforts. RPI/TPS will provide up to 80 hours of end-user training sessions.

### Reporting Training

RPI/TPS will provide training to Apex staff on the use of ad-hoc query and reporting capabilities within the Infor Public Sector product. This will include both the use of the IPS Dashboard and the ability to export data from developed queries.

RPI/TPS will also provide training to designated Apex staff on the Birst product intended for use in developing business analytics and custom reports; and the IDM product, used for creating Report Templates with MS Word for the Community Development Department. RPI/TPS will assist with developing Birst and IDM reports for Apex on an as-requested basis. It is expected that following Birst and IDM report training, Apex will be able to develop the majority of custom reports for this project using Apex resources. The maximum level of effort allocated by RPI/TPS will be 200 hours for this reporting task.

### Deliverables:

- **8.1 – Implementation Training**
- **8.2 – End-User Training**
- **8.3 – Reporting Training**

- **8.4 – Report Design Documents and Reports**

## 9. Go-Live & Support

RPI/TPS will be onsite for the Go-Live week (2 staff, 4 days). It is expected that all divisions (Planning, Site Development and Building) will participate in a single Go-Live event.

RPI/TPS will provide remote, Post Go-Live support to the Town of Apex, NC for 30 days following the Go-Live week. It is expected that all divisions (Planning, Site Development and Building) will participate in a single Go-Live event.

RPI/TPS Responsibilities:	Client Responsibilities:
<ul style="list-style-type: none"> <li>• Create Go-Live Plan.</li> <li>• Deployment of Go-Live Plan.</li> <li>• Onsite Support during Go-Live event.</li> </ul>	<ul style="list-style-type: none"> <li>• Participate in creation of Go-Live Plan.</li> <li>• Deployment of Go-Live Plan.</li> <li>• Go-Live Support.</li> </ul>

### Deliverables:

- **9.1 – Cutover**
- **9.2 – Support 30 Days Complete**

## Services and Products Out-of-Scope

Work that is not specifically listed in this SOW as being In-Scope is considered Out-of-Scope for this project. Specific items out-of-scope include:

- Customizations to the IPS software.
- Load Performance testing.

## Role and Responsibilities

Organization	Role	Responsibilities
Town of Apex, NC	Project Sponsor (CDD Director and Assistant Director)	<ul style="list-style-type: none"> <li>• Ultimate responsibility for the success of the project</li> <li>• Create an environment that promotes project buy-in</li> <li>• Drive the project through all levels of the Town</li> <li>• High-level oversight throughout the duration of the project</li> <li>• Serve as the primary escalation point to address project issues in a timely manner</li> </ul>
Town of Apex, NC	Implementation Project Manager	<ul style="list-style-type: none"> <li>• Overall administration, coordination, communication, and decision-making associated with the implementation</li> <li>• Planning, scheduling, coordinating and tracking the implementation with TruePoint Solutions and within the Town</li> </ul>

Organization	Role	Responsibilities
		<ul style="list-style-type: none"> <li>Ensuring that the project team stays focused, tasks are completed on schedule, and that the project stays on track</li> </ul>
<b>TruePoint</b>	Project Manager and Lead	<p>TruePoint Solutions' Project Manager is responsible for overall project management and works directly with the Apex throughout all aspects of the TruePoint Solutions implementation—from the initial scoping, planning, staffing, to delivery. The Project Manager undertakes the project administration tasks:</p> <ul style="list-style-type: none"> <li>Project plan management</li> <li>Change order management</li> <li>Issue log management and escalation</li> <li>Status reporting</li> <li>Project workspace management</li> <li>Resources management</li> <li>Work plan management</li> <li>Meeting management</li> </ul> <p>In addition, the Project Manager will have significant experience in the business process as well as the product functionality and is responsible for:</p> <ul style="list-style-type: none"> <li>Business Process Analysis activities—Mapping the Apex's business processes and requirements to the functionality of Infor Public Sector and the creation of the To-Be Analysis Documentation using the Business Requirements Design (BRD) documents.</li> <li>Leading system configuration activities</li> <li>Ensures continuity of all implementation tasks with Apex goals/processes</li> <li>Facilitating meetings with the Apex's business and IT staff</li> <li>Day to day management of overall work plan tasks</li> <li>Involved in overall concept design of Conversion and Report analysis as it relates to the known Apex business requirements</li> </ul>
<b>TruePoint</b>	Business Consultants	<p>Implementation Consultant resources have significant Infor Public Sector and business experience. Each Consultant will be responsible for one or more of the following:</p> <ul style="list-style-type: none"> <li>Lead and conduct To-Be Analysis sessions</li> <li>System Configuration based on workflow documentation</li> <li>Data migration specification mapping</li> <li>Report Configuration Mapping</li> <li>Providing training/mentoring to Apex staff</li> </ul>
<b>Town of Apex, NC</b>	<p>Division/Departmental Business Leads</p> <p>(Planning Manager(s), Site Development Manager, Building Official, ISD Manager, ISD Systems Analyst)</p>	<p>A user representative for each affected department must be appointed to facilitate analysis and configuration and serve as a decision-making entity for that group. These critical appointments may well determine the success of the implementation for their respective areas.</p> <p>Responsibilities include:</p> <ul style="list-style-type: none"> <li>Attending requirements workshop sessions</li> </ul>

Organization	Role	Responsibilities
		<ul style="list-style-type: none"> <li>• Willing and able to gather data and make decisions about business processes</li> <li>• Assist in the creation of specifications for reports &amp; conversions</li> <li>• Review and test the system configuration, reports &amp; conversion</li> <li>• Participating in the implementation of the Infor Public Sector solution</li> </ul>
<b>Town of Apex, NC</b>	Division/Departmental Subject Matter Expert (SME)	<p>Responsibilities include:</p> <ul style="list-style-type: none"> <li>• Being trained on IPS at a System Administration level</li> <li>• Being fully engaged in the Business Analysis and system configuration activities</li> <li>• Assist internal efforts towards the creation of reports &amp; conversions</li> <li>• Assist in the review and testing of the system</li> <li>• Actively participate in the full implementation of IPS</li> </ul>
<b>TruePoint</b>	Technical Consultants	<p>The Technical Consultants will provide expertise in their areas of assignment. The Technical Consultants work with the PM to ensure that solution design meets the Apex's overall goals/process requirements. Tasks for a technical consultant could include:</p> <ul style="list-style-type: none"> <li>• Data Migration Development</li> <li>• Infor VB Configuration Development</li> <li>• Report Development</li> <li>• GIS Configuration and support</li> <li>• Installation/System Provisioning and support</li> </ul>
<b>Town of Apex, NC</b>	Technical Lead (ISD Systems Analyst)	<p>Responsibilities include:</p> <ul style="list-style-type: none"> <li>• Primary responsibility for the technical environment during the software implementation</li> <li>• Work with TruePoint Solutions technical personnel during implementation</li> <li>• Act as the primary technical resource for troubleshooting problems</li> </ul>

## Deliverable Acceptance

The Project Work Plan will be used to plan and track the Deliverable Acceptance activities. The schedule will be built with a ten (10) business day approval cycle unless otherwise discussed based on the complexity of a particular deliverable.

## Milestone Payment Schedule

Detailed deliverable payment schedule by phase.

#	Phase	Milestone	Cost
1.1	<b>Project Planning</b>	Project Management Plan	\$40,512
1.2	<b>Initiate &amp; Plan</b>	Project Kick-off	\$10,128
2.1	<b>Provision</b>	System Setup and Initial Configuration	\$60,768
3.1	<b>Business Analysis</b>	Requirements - Planning	\$50,640
3.2	<b>Business Analysis</b>	Requirements – Site Development	\$50,640
3.2	<b>Business Analysis</b>	Requirements – Building	\$50,640
4.1a	<b>Configuration</b>	Workflow Configurations – Planning	\$60,768
4.1b	<b>Configuration</b>	Workflow Configurations – Site Development	\$60,768
4.1c	<b>Configuration</b>	Workflow Configurations – Building	\$60,768
4.2a	<b>Configuration</b>	Rhythm for Civics Configuration	\$30,384
4.2b	<b>Configuration</b>	Mobile Configuration	\$30,384
4.2c	<b>Configuration</b>	GIS Configuration	\$20,256
5.1	<b>Conversions</b>	Conversion Analysis	\$20,256
5.2	<b>Conversions</b>	Data Conversions – Test	\$30,384
5.2	<b>Conversions</b>	Data Conversions – Final	\$40,512
6.1	<b>Interfaces</b>	Interface Design Document	\$20,256
6.2	<b>Interfaces</b>	Interface Development	\$20,256
7.1	<b>Testing</b>	User Acceptance Testing Sign-off	\$81,024
8.1	<b>Training</b>	Implementation Team Training	\$30,384
8.2	<b>Training</b>	End User Training	\$30,384
8.3	<b>Training</b>	Reporting Training	\$20,256
8.4	<b>Training</b>	Reports and Report Design Documents	\$40,512
9.1	<b>Go-Live &amp; Support</b>	Cutover	\$50,640

#	Phase	Milestone	Cost
9.2	Go-Live & Support	Support 30 Days Complete	\$50,640
9.3	Go-Live & Support	Final Acceptance – 90 Days	\$50,640
<b>Total</b>			<b>\$1,012,800</b>

## Travel

RPI will charge all reasonable out-of-pocket expenses. Out-of-pocket expenses include such items as travel, lodging, airport parking, and/or mileage at the rate published by the IRS. All expenses shall be reimbursed for actual out-of-pocket amounts, except for meals. Meals shall be reimbursed based on current GSA standard per diem rates.

## Estimated Travel Cost

Project	Estimated Trips	Estimated Cost Per Trip	Estimated Travel Cost
Initiate & Plan	20	\$2,000	\$40,000
<b>TOTAL TRIPS ESTIMATED</b>	<b>20</b>		<b>\$40,000</b>

# Approval & Acceptance

IN WITNESS WHEREOF, the parties hereto each acting with proper authority have executed this Statement of Work. By signing below, Client hereby acknowledges and agrees to the work required as documented herein, and to the payment of the fees required herein. This Statement of Work must be fully executed by January 31, 2023, to remain valid.

**Town of Apex, NC**

Printed Name

Title

Date

Signature

**RPI CONSULTANTS LLC**

Greg Pollard

Partner

Printed Name

Title

4/12/2023

DocuSigned by:

Greg Pollard

661F2ECED3DA486...

Date

Signature

**INVOICE & CONTACT INFORMATION**

Contact Name

Contact Address

Contact City, State, Zip

Email Address

PO# or Other Instructions

☐ Please Check for Invoicing via Email☐ Please Check if PO# is Required



**Order Form for Smart Energy Water SaaS and Cloud Subscription****Between**

**Smart Energy Systems, Inc. dba Smart Energy Water**  
**15495 Sand Canyon Avenue, STE 100**  
**Irvine, CA 92618**  
**("SEW")**

**And**

**Town of Apex**  
**73 Hunter Street**  
**Apex, NC 27502**  
**("Customer")**

**1. Order Form**

This Order Form, as issued by SEW, shall constitute an offer made by SEW to a Customer. When signed and returned to SEW by Customer, it shall become a binding agreement for the SEW Cloud Service(s) or other Services listed in this Order Form and effective on the date signed by Customer. This Order Form is governed by and incorporates the Terms and Conditions attached hereto.

**2. SEW Platform Modules and Service(s)**

The table below shows the purchased SEW Platform(s) and associated Service(s) thereof, purchased number of user licenses, initial subscription term, and fees, which shall be listed and selected by Customer below and subject to the Terms and Conditions which govern this Purchase Order.

<input checked="" type="checkbox"/>	Product Code	Product Name
<input checked="" type="checkbox"/>	<b>Smart Customer Mobile (SCM®) – Mass Market Persona</b>	
<input checked="" type="checkbox"/>	SCM-10-Web	Customer Web Portal
<input checked="" type="checkbox"/>	SCM-10-Mobile	Customer Mobile Apps (iOS & Android)
<input type="checkbox"/>	SCM-10-WebX	Smart Web Experience
<input checked="" type="checkbox"/>	SCM-10-1	SCM – My Account
<input checked="" type="checkbox"/>	SCM-10-2	SCM – Billing
<input checked="" type="checkbox"/>	SCM-10-3	SCM – Usage
<input type="checkbox"/>	SCM-10-4	SCM – Compare
<input checked="" type="checkbox"/>	SCM-10-5	SCM – Outages
<input checked="" type="checkbox"/>	SCM-10-6	SCM – Notifications
<input checked="" type="checkbox"/>	SCM-10-7	SCM – Service
<input checked="" type="checkbox"/>	SCM-10-8	SCM - Connect Me
<input type="checkbox"/>	SCM-10-9	SCM - Efficiency / Conservation
<input type="checkbox"/>	SCM-10-10	SCM - Smart Home
<input type="checkbox"/>	SCM-10-11	SCM - Electric Vehicle
<input type="checkbox"/>	SCM-10-12	SCM – Footprint
<input type="checkbox"/>	SCM-10-13	CSP – Dashboard
<input type="checkbox"/>	SCM-10-14	CSP – Efficiency / Conservation
<input checked="" type="checkbox"/>	SCM-10-15	CSP – Notifications
<input checked="" type="checkbox"/>	SCM-10-16	CSP – CSR
<input checked="" type="checkbox"/>	SCM-10-17	CSP – Administration
<input checked="" type="checkbox"/>	SCM-10-18	CSP – Outages
<input checked="" type="checkbox"/>	SCM-10-19	CSP – Customer AI / Analytics
<input type="checkbox"/>	SCM-10-22	CSP – Smart Home
<input type="checkbox"/>	SCM-10-24	CSP – Demand Response
<input type="checkbox"/>	SCM-10-28	CSP – Smart CRM – Marketing & Campaign
<input type="checkbox"/>	SCM-10-29	CSP – Smart CRM – Notifications
<input type="checkbox"/>	SCM-10-30	CSP – Smart CRM – Case Management
<input type="checkbox"/>	SCM-10-31	CSP – Smart BI
<b>Support &amp; Maintenance</b>		
<input checked="" type="checkbox"/>	Sup-1	Standard Support Plan
<input type="checkbox"/>	Sup-2	Max Support Plan

**3. Subscriptions, Term, and Fees**

The number of subscribers listed below represents the committed number of subscriptions authorized to utilize the SEW Cloud Service(s). Additional subscriptions may be purchased at an additional cost by contacting your local SEW representative or sending a request to [contracts@sew.ai](mailto:contracts@sew.ai)

✓	Product	Subscription Metric	# of Subscriptions	Annual Subscription Fee
<input checked="" type="checkbox"/>	SCM® Mass Market Persona	Number of Meters / Active Services	51,000 (Inclusive of 10 Utility User subscriptions)	\$63,525

The term of this Agreement commences on the date of signature of this Order Form and continues for the initial term set forth below, unless earlier terminated in accordance with this Agreement.

Term	Total Fee for Order Form	Payment Conditions for Term
Five Years	\$317,625 (\$63,525 annually)	Total fee due upon signing and invoiced in five (5) equal installments: <ul style="list-style-type: none"> <li>On August 1, 2023</li> <li>Upon the 1<sup>st</sup> anniversary of the Effective Date</li> <li>Upon the 2<sup>nd</sup> anniversary of the Effective Date</li> <li>Upon the 3<sup>rd</sup> anniversary of the Effective Date</li> <li>Upon the 4<sup>th</sup> anniversary of the Effective Date</li> </ul>
Implementation and Setup Fee	\$77,500	One-time implementation and setup fee (Based on standard integrations – Deviations may affect pricing)

The fees for additional services purchased under Section 4 and 5 shall be invoiced separately under the respective terms of such service.

#### 4. Additional Services

The table below shall display the SEW Notification Service(s) selected to be purchased by Customer, subject to the SEW Notification Services Terms and Conditions (below). Applicable setup fees shall be invoiced on August 1, 2023. Fixed monthly and annual fees for the services below require a minimum of one year term and are invoiced annually upfront beginning on August 1, 2023, then upon each anniversary of the Effective Date.

<input checked="" type="checkbox"/> EMAIL MESSAGING SERVICE			
Service Type	Price (USD)		Description
Number of Emails	<input checked="" type="checkbox"/>	Included	Standard: Up to 150,000 Emails/Month
	<input type="checkbox"/>	Premium: \$1500 / Month	Premium: Up to 1,000,000 Emails/Month
	<input type="checkbox"/>	Premium Pro: \$2400 / Month	Premium Pro: Up to 4,000,000 Emails/Month
	<input type="checkbox"/>	Elite: \$3500/ Month	Elite: Exceeding 4,000,000 Emails/Month
Email Volume SLA	<input checked="" type="checkbox"/>	Included	Standard: Up to 10 Emails/Sec
	<input type="checkbox"/>	Premium: \$125 / Month	Premium: Up to 50 Emails/Sec
	<input type="checkbox"/>	Premium Pro: \$187 / Month	Premium Pro: Up to 100 Emails/Sec
	<input type="checkbox"/>	Elite: \$245 / Month	Elite: Up to 200 Emails/Sec
Setup fees	\$4,500		
	\$2,900 Annually		

<input checked="" type="checkbox"/> TEXT MESSAGING SERVICE			
Service Type	Price (USD)		Description
<input type="checkbox"/> Long Code	\$399 / Month per Long Code + \$1,000 one-time setup fees		Number of codes: _____
<input type="checkbox"/> Random Short Code	\$1900 / Month per Short Code + \$9500 one-time setup fees (Waived)		Number of codes: _____

<input type="checkbox"/>	<b>Vanity Short Code</b>	\$2400/Month per Short Code + \$9500 one-time setup fees (Waived)	Number of codes: _____
<input type="checkbox"/>	<b>In/Outbound SMS Text Messaging</b>	\$0.04 / Message	
<b>SMS Volume SLA</b>	<input checked="" type="checkbox"/>	Included	Standard: Up to 5 Messages/Sec/Short Code
	<input type="checkbox"/>	Premium: \$286 / Month/ Code	Premium: Up to 25 Messages/Sec/Short Code
	<input type="checkbox"/>	Premium Pro: \$442 / Month/ Code	Premium Pro: Up to 50 Messages/Sec/Short Code
	<input type="checkbox"/>	Elite: \$689 / Month / Code	Elite: Up to 100 Messages/Sec/Short Code
	<input type="checkbox"/>	Enterprise: \$947 / Month / Code	Enterprise: Up to 200 Messages/Sec/Short Code
<b>Annual Service Maintenance &amp; Support</b>		\$4,900 Annually	

<input checked="" type="checkbox"/> <b>VOICE CALL SERVICE</b>			
Service Type		Price (USD)	Description
<input type="checkbox"/>	<b>Toll-Free</b>		
	Lines	\$15 / Month per Line	Number of Toll-free Lines: _____
	In/ Outbound Toll-Free Voice Call	\$0.06 / Minute per Call (Duration <=59 seconds per call)	
<input type="checkbox"/>	<b>Local Number</b>		
	Lines	\$10 / Month per Line	Number of Local Lines: _____
	Voice Call	\$0.06 / Minute per Call (Duration <=59 seconds per call)	
<b>Voice Call Volume SLA</b>	<input checked="" type="checkbox"/>	Included	Standard: Up to 1 Call / Sec
	<input type="checkbox"/>	Premium: \$237 / Month	Premium: Up to 5 Calls / Sec
	<input type="checkbox"/>	Premium Pro: \$912 / Month	Premium Pro: Up to 10 Calls / Sec
	<input type="checkbox"/>	Elite: \$2941 / Month	Elite: Up to 25 Calls / Sec
	<input type="checkbox"/>	Enterprise: \$9702 / Month	Enterprise: Up to 50 Calls / Sec
<b>One-time Initial Setup</b>		\$9,500	
<b>Annual Service Maintenance &amp; Support</b>		\$4,900 Annually	

<input type="checkbox"/> <b>TCPA PHONE VALIDATION SERVICE</b>			
Service		Price (USD)	Description
Phone number validation service to check Reassigned Numbers Database (RND) to determine whether a telephone number has been permanently disconnected after a date certain and therefore is no longer assigned to the party the caller wants to reach.	<input type="checkbox"/>	Basic: \$1499 / Month	Basic: Up to 100,000 phone number verifications in a month
	<input type="checkbox"/>	Premium: \$2799 / Month	Premium: Up to 200,000 phone number verifications in a month
	<input type="checkbox"/>	Premium Pro: \$4799 / Month	Premium Pro: Up to 400,000 phone number verifications in a month
	<input type="checkbox"/>	Elite: \$9700 / Month	Elite: Up to 1 million phone number verifications in a month
<b>Annual Service Maintenance &amp; Support</b>		\$8,550	

##### 5. Other Add-on Subscriptions

SEW additionally offers the following add-on, a la carte, or individual Subscriptions, which can be selected by Customer below, subject to the Terms and Conditions which govern this Purchase Order.

Other Add-on Services			
	Description	Price (USD)	Comments
<input type="checkbox"/>	Onsite Training	\$1,750 Per Day	One (1) Day (8 Hours) Blocks of Onsite Training

			Conducted in the "Train-the-Trainer" Format. Additional hours may be purchased as necessary. Expenses and materials incurred for training to be billed at actual costs
<input type="checkbox"/>	<b>Additional Language Pack</b>	<b>\$5,500</b> <i>Annually</i>	<b>Support and Deployment of Platform in Additional Languages</b>  Translations to be provided and approved by Client. Pricing provided shall be per Language/Translation basis
<input type="checkbox"/>	<b>Smart Citizen Engagement</b> (Includes 5 service requests for citizens + Smart CRM Subscription)	<b>\$24,570</b> <b>(35%)</b> <i>Annually</i>	Includes 10 Utility User Subscriptions for Smart CRM  Additional implementation fee of \$33,500 (50%) shall apply
<input type="checkbox"/>	<b>SCM® Enterprise / Large C&amp;I Persona</b>	<b>\$27,500</b> <i>Annually</i>	Additional implementation fee of \$49,000 shall apply
<input type="checkbox"/>	<b>SCM® Landlord Persona</b>	<b>\$27,500</b> <i>Annually</i>	Additional implementation fee of \$49,000 shall apply
<input type="checkbox"/>	<b>SCM® Property Manager Persona</b>	<b>\$27,500</b> <i>Annually</i>	Additional implementation fee of \$49,000 shall apply
<input type="checkbox"/>	<b>SCM® Agency Persona</b>	<b>\$27,500</b> <i>Annually</i>	Additional implementation fee of \$49,000 shall apply
<input type="checkbox"/>	<b>Chatbot</b>	<b>\$12,500</b> <i>Annually</i>	Additional implementation fee of \$14,000 shall apply
<input type="checkbox"/>	<b>Chatbot: Live Agent Handoff</b>	<b>\$49 per agent</b> <i>Per Month</i>	Additional implementation fee of \$10,000 shall apply
<input type="checkbox"/>	<b>Smart CRM – Marketing &amp; Campaign Module (SCM-10-28)</b> <b>Smart CRM – Notifications Module (SCM-10-29)</b>	<b>\$10,000</b> <i>(annually)</i>	Additional implementation fee of \$14,000 shall apply

**Infor Citizen Engagement Platform Environment:**

<input type="checkbox"/>	<b>SEW Integration to Infor CRM Batch File Integration for Customer Account Changes</b>	<b>\$9,500 (One time)</b>
<input type="checkbox"/>	<b>SEW Integration to Infor CRM API Integration for Customer Account Changes</b>	<b>\$14,000 (One-time)</b>  *Assumes Customer has API Available to SEW **SEW is not responsible for any fees from any third party

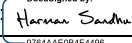
**SEW Enhanced Support Services for Level 1 and Level 2 Production Support – Core Support Structure**

SEW will manage and respond to only the following types of technical support calls on behalf of the utility to both end customers of the utility and internal personnel of the utility.

- Web portal and Mobile Application (iOS and Android) login issues
- Account activation assistance including email correction and resending activation emails
- Login assistance including password reset, 2 factor authentication, username reset, temporary passwords, security question reset, change email address, unlock account, delete profile
- Set up paperless billing, remove paperless billing
- Web portal and mobile app navigation issues
- Basic browser assistance including changing browsers, autofill issues, locating the portal
- Error messages with web portal and mobile app

<input checked="" type="checkbox"/>	<b>SEW Enhanced Support Services for Level 1 and Level 2 Production Support – Core Support Structure</b>	<b>\$9,750 per month</b> <b>(business hours only)</b>	Number of months selected: <u>  3  </u>  * Service initiates upon go-live.
-------------------------------------	--	--	--

**6. Acceptance and Authorization**

Customer: Town of Apex	Smart Energy Water
Signature:	Signature: <small>DocuSigned by:</small> 
Name:	Name: Harman Sandhu <small>9764AAE8B4E4496</small>
Title:	Title: President
Effective Date:	Date: 4/6/2023

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

\_\_\_\_\_  
Antwan Morrison, Finance Director

- Appendix A: SEW Software-as-a-Service Subscription Terms**
- Appendix B: SEW Notification Services Agreement**
- Appendix C: Data Retention Policy**

\_\_\_\_\_

## Appendix A

### SEW Software-as-a-Service Subscription Terms

Smart Energy Systems, Inc. dba Smart Energy Water ("Provider" or "SEW") has developed certain proprietary software applications, and the Parties have agreed that Provider will make the software-as-a-service platform(s) set forth on the Order Form attached hereto (the "Software") available via the Internet to the Customer hereunder. Therefore, in consideration of the mutual covenants, terms, and conditions set forth below and in any relevant exhibits or documents, the adequacy of which is hereby acknowledged, the Parties agree as follows:

#### 1. DEFINITIONS. The following capitalized terms will have the following meanings whenever used in this Agreement.

- 1.1. "Agreement" means these SEW Software-as-a-Service Subscription Terms & Conditions, including any applicable Order Form.
- 1.2. "Customer Data" means the data uploaded or otherwise input by Customer and/or Subscribers into the Software.
- 1.3. "Documentation" means the Software's standard user manuals and any other accompanying documents related to the Software, in each case, that are delivered by SEW to Customer during Implementation.
- 1.4. "Feedback" means any suggestions, comments for enhancements or functionality or other feedback regarding SEW's products and/or services that are communicated by Customer to SEW.
- 1.5. "Implementation" means the process for gathering requirements, configuring, testing, training, and integrating the Software for Customer's use, as set forth in a Statement of Work.
- 1.6. "Maintenance and Support" means, unless Customer is subscribing to SEW's Max Support Plan, SEW's maintenance and support performed in accordance with SEW's then-current Standard Support Plan (a copy of which will be provided to Customer upon request).
- 1.7. "Order Form" means an Order Form for Smart Energy Water Cloud Services executed between SEW and Customer.
- 1.8. "Software" means the SEW software that Customer has subscribed to as identified in an applicable Order Form.
- 1.9. "Specifications" means SEW's specifications for the Software.
- 1.10. "Statement of Work" means a statement of work that (a) expressly references, and is governed by, this Agreement, (b) is executed by an authorized representative of each party and (c) sets forth, at a minimum, the Services to be performed by SEW and the related fees to be paid by Customer in consideration thereof.
- 1.11. "Subscribers" means an active account registered with the Customer to use the Software, either from a preexisting account of Customer or as associated with an active utility meter, as set forth in an applicable Order Form.

#### 2. SOFTWARE DELIVERY.

- 2.1. Right to Access and Use Software. Subject to the terms and conditions of this Agreement, SEW hereby grants Customer a non-exclusive, non-sublicensable, non-transferable, limited right to access and use the Software for Customer's business purposes.
- 2.2. Restrictions on Software Use. Customer will not permit any third parties to access and use the Software other than Subscribers. Customer will not permit Subscribers in excess of the cap set forth in the applicable Order Form to access or use the Software. Customer will be responsible and liable for all Subscribers' compliance with the terms and conditions of this Agreement. Customer will not: (a) modify, translate or create derivative works from the Software; (b) allow third parties to exploit the Software; (c) reverse engineer, decompile, or attempt to derive any of the Software's source code, object code or underlying structure, ideas or algorithms of the Software; (d) remove or modify any program markings or any notice of SEW's proprietary rights; (e) copy, rent, lease, distribute, pledge, assign or otherwise transfer or allow any lien, security interest or other encumbrance on the Software; (f) use the Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or (g) hack, manipulate, interfere with or disrupt the integrity or performance of or otherwise attempt to gain unauthorized access to the Software or its related systems, hardware or networks or any content or technology incorporated in any of the foregoing. Customer will (i) use commercially reasonable efforts to prevent unauthorized access to or use of the Software and notify SEW promptly of any such unauthorized access or use, and (ii) use the Software only in accordance with the Documentation and all applicable laws, rules and regulations.

#### 3. UPDATES AND SERVICE LEVELS.

- 3.1. Provision of Updates and Maintenance SEW will provide regular Maintenance and Support, including by making available to Customer any modifications, bug-fixes, or security updates to the Software that SEW generally makes available to its customers, for no additional fee ("Updates"). "Software" as defined herein will incorporate any Updates, as well as any custom upgrades provided to Customer pursuant to a Statement of Work as contemplated herein.
- 3.2. Service Level Availability: SEW will use commercially reasonable efforts to make the Software available in accordance with the Availability Service Level Agreement ("SLA") stated hereunder. SEW will provide Availability (as defined below) of at least 99.5% each month as calculated below. "Availability" is calculated as follows:

$$\text{Availability} = ((\# \text{ of minutes in month}) - [\# \text{ of minutes per month the Software is Unavailable}]) / [\# \text{ of minutes in month}]$$

"Unavailable" means the Software is not available for access and use through Customer's Internet connection, excluding any performance issues: (i) caused by factors outside of SEW's reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of SEW; (ii) that result from any actions or inactions of Customer or any third party; (iii) that result from Customer's equipment, software or other technology and/or third-party equipment, software or other technology (other than third-party equipment within SEW's direct control); (iv) that result from any planned maintenance as described in this Agreement or (v) arising from SEW's suspension or termination of Customer's right to use the Software.

#### 4. FEES.

- 4.1. Fees. Fees shall be based upon the SEW Platform(s), modules, number of Subscribers, and Services selected from the Order Form and the pricing stated therein. Customer agrees to make all payments to SEW within thirty (30) calendar days after receipt of invoice. Late invoices will incur a late payment fee of 1.5% or the maximum allowable under the law, whichever is less. If Customer's account is sixty (60) days or more overdue, SEW reserves the right with prior written notice to withhold performance of its obligations under this Agreement, without liability, until such payments are paid in full, or to terminate for cause. Fees under this Agreement shall additionally be exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for all applicable taxes, levies, or duties hereunder. In the event this Agreement is renewed as contemplated by Section 11.1, in each Renewal Term, the fees (including, without limitation, annual and subscriptions, one-time, and/or volume-based fees) shall increase by a percentage equal to the change in the Consumer Price Index published by the U.S. Bureau of Labor; provided that, in no event will the fees decrease.

#### 5. INTELLECTUAL PROPERTY RIGHTS.

- 5.1. Customer Data. As between SEW and Customer, Customer owns the Customer Data. Customer hereby grants to SEW: (a) a non-exclusive, worldwide, royalty-free, fully paid up, non-sublicensable (except to contractors and service SEWs providing services on behalf of SEW), non-transferable (subject to Section 12.3) right and license to copy, distribute, display, create derivative works of and otherwise use the Customer Data (i) to perform its obligations under this Agreement, (ii) to internally improve its products and services and (iii) to create aggregated and/or anonymized data from such Customer Data (the "Aggregated Data"); and (b) a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid up, sublicensable (through multiple tiers), transferable right and license to copy, distribute, display, create derivative works of and otherwise use the Aggregated Data. Customer reserves any and all right, title and interest in and to the Customer Data other than the rights and licenses expressly granted to SEW in this Section 5.1.
- 5.2. Software. SEW retains all right, title, and interest in and to the Documentation and Software, as well as any related modifications, improvements, methodologies, techniques, processes, and instruction developed by SEW and used in the course of performing the Services (collectively "SEW IP"). Nothing in this Agreement will be construed to grant Customer any ownership in the SEW IP. Customer recognizes that the Software and its components are protected by copyright and other laws. SEW grants no, and reserves any and all, rights other than the rights expressly granted to Customer under this Agreement with respect to the Software.
- 5.3. Feedback. Customer hereby grants SEW a perpetual, irrevocable, unrestricted, worldwide license to use any Feedback, without compensation or any obligation to report on such use, and without any other restriction. Such rights will include, without limitation, the right to exploit Feedback in any way and the right to grant sublicenses (through multiple tiers). Notwithstanding the provisions of Article 6 (*Confidential Information*) below, Feedback will not be considered Customer's Confidential Information.

**6. CONFIDENTIAL INFORMATION.**

- 6.1. Confidential Information Defined. "Confidential Information" refers to the following types of material or content one party to this Agreement ("Discloser") discloses to the other ("Recipient"): (a) any information Discloser marks or designates as "Confidential" at the time of disclosure; and (b) any other nonpublic, sensitive information disclosed by Discloser including, but not limited to code, inventions, know-how, business, technical, and financial information, or other information which should reasonably be known by the Recipient to be confidential at the time it is disclosed, due to the nature of the information and the circumstances surrounding such disclosure. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Recipient's possession at the time of disclosure; (ii) is independently developed by Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Recipient's improper action or inaction; or (iv) is rightfully obtained by Recipient from a third party without breach of any confidentiality obligations; or (v) is a public record as defined by Chapter 132 of the North Carolina General Statutes.
- 6.2. Nondisclosure. Recipient will not use Confidential Information of the Discloser for any purpose other than to exercise its rights or perform its obligations under this Agreement (the "Purpose"). Recipient: (a) will not disclose Confidential Information of the Discloser to any employee or contractor of Recipient unless such person needs access in order to facilitate the Purpose and executes a written agreement with Recipient with terms no less restrictive than those of this Article 6; and (b) will not disclose Confidential Information of the Discloser to any other third party without Discloser's prior written consent. Recipient will protect Confidential Information of the Discloser with the same degree of care it uses to protect its own confidential information of a similar nature, but with no less than reasonable care. Recipient will promptly notify Discloser of any misuse or misappropriation of Confidential Information of the Discloser that comes to Recipient's attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information of the Discloser as required by applicable law or by proper legal or governmental authority. Recipient will give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser's expense.
- 6.3. Injunction. Recipient agrees that breach of this Article 6 may cause Discloser irreparable injury, for which monetary damages may be inadequate, and in addition to any other remedy, Discloser will be entitled to seek injunctive relief against such breach or threatened breach, without proving actual damage.
- 6.4. Termination & Return. Upon expiration or termination of this Agreement, Recipient will return to the Discloser all copies (excepting one (1) copy archived for purposes of Recipient's back-up processes) of Confidential Information of the Discloser or certify, in writing, the destruction thereof.
- 6.5. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license or any other right thereto. Discloser will retain all right, title, and interest in and to all of its Confidential Information.

**7. DATA PRIVACY & SECURITY.**

- 7.1. Data Security. Each party will be responsible for establishing and maintaining its own data privacy and information security policies, including physical, technical, administrative, and organizational safeguards to ensure the security and confidentiality of Customer Data; protect against any anticipated threats or hazards to the security of Customer Data; protect against unauthorized disclosure, access to, or use of Customer Data; ensure the proper disposal of Customer Data; and ensure that all employees, agents, and subcontractors, if any, comply with the above.

**8. REPRESENTATIONS & WARRANTIES.**

- 8.1. From SEW.  
 (a) Re: Function. SEW represents and warrants that, during the Term, the Software will perform materially in accordance with the Software Specifications.  
 (b) Re: Intellectual Property Rights in the Software. SEW represents and warrants that it owns the Software, and has the power and authority to grant the rights in this Agreement without the further consent of any third party. In the event of a breach of the warranty in this Section 8.1(b), SEW, at its own expense and election, will promptly take the following actions: (i) secure for Customer the right to continue using the Software; (ii) replace or modify the Software to make it non-infringing, provided such modification or replacement will not materially degrade any functionality listed in the Specifications; or (iii) refund the prorated SaaS subscription fee paid for the Software for every month remaining in the Term, following the date after which Customer is required to cease use of the Software. In conjunction with Customer's right to terminate for breach where applicable and the provisions of Section 9.1 below (*Indemnified Claims*), the preceding sentence states SEW's sole obligation and liability, and Customer's sole remedy, for breach of the warranty in this Section 8.1(b) and for potential or actual infringement by the Software. SEW's representations and warranties herein will not apply to the extent any infringement arises out of any conditions listed in Section 9.1 (a) -9.1(f) below.
- 8.2. From Both Parties. Each party represents and warrants that (a) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement, (b) no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required hereunder, (c) the execution of this Agreement and performance of its obligations thereunder do not and will not violate any other agreement to which it is a party; and (c) this Agreement constitutes a legal, valid and binding obligation when signed by both Parties.
- 8.3. Warranty Disclaimers. Except for the express warranties in Sections 8.1 and 8.2 above, SEW MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE. SEW does not warrant that the Software will perform without error or that it will run without immaterial interruption. SEW provides no warranty regarding, and will have no responsibility for, any claim arising out of: (a) a modification of the Software made by anyone other than SEW, unless SEW approves such modification in writing; or (b) use of the Software in combination with any operating system, hardware, software or other third-party materials not authorized or specifically forbidden in the Specifications or Documentation.

**9. INDEMNIFICATION.**

- 9.1. Indemnification by SEW. SEW will defend and indemnify Customer and its officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns against any settlement amounts, damages, liabilities, costs and expenses (including reasonable attorneys' fees) (collectively, "Liabilities") that are payable to any third party or incurred by Customer arising from any third-party claim, suit, or proceeding arising out of an allegation that Customer's authorized use of the Software infringes or misappropriates a third party's intellectual property rights. SEW's obligations set forth in this Section 9.1 do not apply to the extent that any claim arises out of: (a) Customer's breach of this Agreement; (b) revisions to the Software made without SEW's written consent; (c) Customer's failure to incorporate Upgrades that would have avoided the alleged infringement, provided SEW offered such Upgrades without charges not otherwise required pursuant to this Agreement; (d) SEW's modification of Software in compliance with Customer's specifications; (e) unauthorized use of the software by third parties; or (f) use of the Software with hardware or software not provided by or approved of by SEW.
- 9.2. Indemnification by Customer. Customer will indemnify, defend and hold SEW and its officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns against any Liabilities that are payable to any third party or incurred by SEW arising from any third-party claim, suit, or proceeding arising out of (a) SEW's authorized use of the Customer Data or (b) any use of the Software by Customer and/or its Subscribers in violation of this Agreement.
- 9.3. Indemnification Procedure. If an indemnified party becomes aware of any matter it believes it should be indemnified under Section 9.1 or Section 9.2, as applicable, involving any claim, action, suit, investigation, arbitration or other proceeding against the indemnified party by any third party (each an "Action"), the indemnified party will give the other party prompt written notice of such Action. The indemnified party will cooperate, at the expense of the indemnifying party, with the indemnifying party and its counsel in the defense and the indemnified party will have the right to participate fully, at its own expense, in the defense of such Action with counsel of its own choosing. Any compromise or settlement of an Action will require the prior written consent of both Parties hereunder, such consent not to be unreasonably withheld or delayed.

**10. LIMITATION OF LIABILITY.**

- 10.1. Liability Cap. UNDER NO CIRCUMSTANCES WILL SEW'S LIABILITY FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS) EXCEED THE AGGREGATE FEES PAID BY CUSTOMER TO SEW UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY.
- 10.2. Exclusion of Consequential Damages. IN NO EVENT WILL SEW BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING LOST PROFITS OR LOST REVENUE, ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 10.3. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 9 APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; EVEN IF SEW IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Section 10, SEW's liability will be limited to the maximum extent permissible by law. For the avoidance of doubt, SEW's liability limits apply to SEW's affiliates,

SEWs, agents, sponsors, directors, officers, employees, consultants, and other representatives.

- 10.4. Exceptions to Limitation of Liability. The foregoing limitations do not apply to any liability arising from SEW's indemnification obligations under Section 9.1 above.

#### 11. TERM & TERMINATION.

- 11.1. Term. The Initial Term of this Agreement shall begin on the Effective Date and continue for the Term as stated in the applicable Order Form. Thereafter, unless this Agreement is earlier terminated in accordance with its terms, this Agreement will automatically renew for additional one (1) year terms (each, a "Renewal Term", and together with the Initial Term, the "Term"), unless either party delivers to the other party written notice of non-renewal at least ninety (90) days' prior to the end of the then-current term.
- 11.2. Termination. Either party may terminate this Agreement: (a) upon written notice to the other party if such other party materially breaches this Agreement and fails to cure such breach within thirty (30) days of written notice thereof; or (b) upon written notice to the other party if such other party becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or assignment for the benefit of creditors (which, if involuntary, is not dismissed within sixty (60) days of its institution).
- 11.3. Effects of Termination. Upon expiration or termination of this Agreement, Customer will immediately cease all use of the Software and delete, destroy, or return all copies of the Documentation in its possession or control. SEW shall similarly delete, destroy, or return all relevant copies of Customer data which may be entitled to preservation based on state or federal data retention requirements. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination (in addition to any fees owed under Section 11.3 above, if applicable) and (b) Sections 1, 4, 5, 6, 8.3, 9, 10, 11 and 12.

#### 12. MISCELLANEOUS.

- 12.1. Independent Contractors. The Parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.
- 12.2. Force Majeure. No delay, failure, or default, other than a failure to pay fees, will constitute a breach of this Agreement to the extent caused by causes beyond the performing party's reasonable control or acts of war, terrorism, earthquakes, other acts of nature, strikes or labor disputes, embargoes.
- 12.3. Assignment & Successors. Customer may not assign this Agreement or any of its rights or obligations hereunder without SEW's written consent. SEW may freely assign this Agreement. Except to the extent forbidden herein, this Agreement will be binding upon and inure to the benefit of the Parties' respective successors and assigns.
- 12.4. Severability. To the extent permitted by law, the Parties waive any provision of law that would render any clause of this Agreement invalid or unenforceable. In the event that a provision herein is held to be invalid or unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by law, and the remaining provisions of this Agreement will continue in full force and effect.
- 12.5. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach hereof will constitute a waiver of any other breach of this Agreement.
- 12.6. Choice of Law & Jurisdiction. This Agreement will be governed by the laws of the State of North Carolina, without reference to any conflicts of law principles. The Parties consent to the personal and exclusive jurisdiction of the federal and state courts of Wake County, North Carolina.
- 12.7. Conflicts. Should this Agreement conflict with any other agreements, this Agreement will govern.
- 12.8. Construction. The Parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- 12.9. Entire Agreement. This Agreement sets forth the entire agreement of the Parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 12.10. Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- 12.11. Modification. This Agreement may be modified from time to time by SEW, with Customer to be provided notice of no less than thirty (30) days prior to such Terms and Conditions taking effect.
- 12.12. E-Verify. SEW shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). SEW shall require all of SEW's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).
- 12.13. Anti-Human Trafficking. SEW warrants and agrees that no labor supplied by SEW or SEW'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.
- 12.14. Nondiscrimination. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, SEW hereby warrants and agrees that SEW 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.
- 12.15. Non-appropriation. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Customer 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 the Customer to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Customer.



## Appendix B

### **SEW Notification Services Agreement**

Smart Energy Systems, Inc. dba Smart Energy Water ("Provider" or "SEW") has developed certain proprietary software applications and services for a Customer, and the Parties have agreed that Provider will make the Services described in the Order Form available to the Customer hereunder. Therefore, in consideration of the mutual covenants, terms, and conditions set forth below and in any relevant exhibits or documents, the adequacy of which is hereby acknowledged, the Parties agree as follows

#### **1. Definitions**

- 1.1. **"Monthly Uptime Percentage"** shall refer to the difference between 100% and the percentage of time during which the Services are unavailable.
- 1.2. **"Services"** shall refer to notification services for the SCM® Cloud Services platform utilized to establish form(s) of contact between the Customer and end user of the SEW Cloud Services Platform, which include, but are not limited to, SMS text messaging, email, and interactive voice response (IVR) services.
- 1.3. **"SEW Cloud Services Platform"** shall refer to Customer's deployment of the SCM® platform, or other applicable software of SEW sold through an authorized reseller.
- 1.4. **"Term"** shall mean the Term set forth in the applicable license agreement, SaaS subscription agreement, cloud services agreement, or if not defined in an applicable signed writing, one (1) year from the Effective Date.

#### **2. Scope and General Terms**

- 2.1. SEW shall provide the following Services selected within the Order Form in accordance with the following terms and conditions.
- 2.2. Customer may use the Services solely to:
  - a) Use and make the Services available to end users in connection with the use of SEW Cloud Services Platform.
  - b) Use the Services in connection with and as necessary for Customer's activities pursuant to these terms or the terms set forth in an applicable license agreement, SaaS subscription agreement, or cloud services agreement.
  - c) Allow any affiliates to use the Services, subject to the terms hereunder.
- 2.3. In relation to the Services provided under this Agreement, Customer agrees that:
  - a) Customer shall not transfer, resell, lease, license, or otherwise make available the Services or SEW Cloud Services Platform to third parties or offer it on a standalone basis, or make any representation, warranty, or guarantee to any end user or third party on behalf of SEW concerning the Services.
  - b) SEW shall be entitled to use any Customer data that is necessary to provide the Services.
  - c) Customer's use of the Services does not violate the terms of this Agreement.
  - d) Customer shall not use the Services or SEW Cloud Services Platform to create, train, or improve (director or indirectly) a substantially similar product or service.
  - e) Customer shall not reverse engineer, decompile, disassemble, or otherwise create, attempt to create or derive, or permit or assist anyone else to create or derive the source code of any Services or SEW Cloud Services Platform provided in connection with this Agreement.
- 2.4. SEW shall make the Services available and guarantee a Monthly Uptime Percentage of 99.5%, notwithstanding any unavailability or performance issues of the Services caused by or as a result of the following (collectively, the "Exclusions"):
  - a) Factors that are outside of SEW's reasonable control, including, without limitation, any force majeure event, telecommunications provider-related problems or issues, internet access or related problems occurring beyond the point in the network where SEW maintains access and control of the Services.
  - b) Any actions or inactions of Customer or any third party.
  - c) Any Customer application(s), equipment, software, or other technology, third party equipment, software, etc. not authorized for use with the Services.
  - d) Routine or scheduled maintenance for which SEW will provide at least twenty-four (24) hours of advanced notice.
  - e) Problems or issues related to alpha, beta, or not otherwise generally available in SEW features or products.
- 2.5. Notification Services shall commence at the rates and volumes selected by Customer in the Order Form.
  - a) In the event that Customer exceeds the number of emails per month selected, SEW shall automatically escalate Customer to the next service tier and corresponding rates. Customer shall thereafter be invoiced according to the rates set forth for the escalated tier for the remaining Term for such Order Form.
  - b) At any time during the Term of the Order Form, Customer can contact SEW to request to be change their service to a lower tier. Such changes to revert to a lower tier and corresponding rates can be made only once during a twelve-month period. Customer shall not be entitled to any credits for unused volumes when reverting to a lower service tier after having been escalated to a higher tier as a result of having exceeded notification volume limits.
  - c) In the event Customer requires a higher notification Volume SLA tier in order to meet increased demand or to ensure timely delivery of the Services for Customer's end users, Customer shall contact SEW detailing the Email Volume SLA or SMS Volume SLA tier customer wishes to upgrade to.

#### **3. Term**

- 3.1. The Initial Term of this Agreement shall begin on the Effective Date and continue for the Term as stated in the applicable Order Form.

#### **4. Renewals**

- 4.1. This Agreement shall automatically renew upon the expiration of the Initial Term as stated in the Order Form for one (1) year intervals ("Renewal Term"), unless terminated by Customer by providing written notice to SEW ninety (90) days prior to the expiration of the Term. For the avoidance of doubt, SEW shall not be required to refund any previously paid fees, regardless of when termination occurs during the Term or Renewal Term.

#### **5. Fees**

- 5.1. Fees for the Services shall be set forth in the Order Form. Customer shall be invoiced for applicable one-time initial setup fees, maintenance and support fees, and monthly service type fees upfront upon signing of this Agreement and annually thereafter if applicable. The usage fees applicable to inbound and outbound SMS messaging or voice call messages that are selected by the Customer shall be invoiced based on monthly intervals. Customer agrees to make all payments to SEW within thirty (30) calendar days after receipt of invoice. Late invoices will incur a late payment fee of 1.5% or the maximum allowable under the law, whichever is less. If Customer's account is sixty (60) days or more overdue, SEW reserves the right with prior written notice to withhold performance of its obligations under this Agreement, without liability, until such payments are paid in full, or to terminate for cause. Fees under this Agreement shall additionally be exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for all applicable taxes, levies, or duties hereunder. In the event this Agreement is renewed as contemplated by Section 4.1, in each Renewal Term, the fees (including, without limitation, annual and subscriptions, one-time, and/or volume-based fees) shall increase by a percentage equal to the change in the Consumer Price Index published by the U.S. Bureau of Labor; provided that, in no event will the fees decrease.

#### **6. Warranty and Liability**

- 6.1. **DISCLAIMER OF WARRANTY.** WITH THE EXCEPTION OF THE SERVICE LEVEL COMMITMENT SET FORTH IN SECTION 2.4, THE SERVICES UNDER THIS AGREEMENT ARE PROVIDED "AS-IS," EXCLUSIVE OF ANY WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED. SEW DOES NOT WARRANT THAT THE SERVICES ARE OR WILL BE ERROR-FREE OR MEET ALL CUSTOMER REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, SERVICES MAY BE SUBJECT TO LIMITATIONS OF THE TELECOMMUNICATIONS PROVIDER, HOSTING ENVIRONMENT, DELAYS, INTERNET SERVICE PROVIDER, THIRD PARTIES, ACTIONS OR INACTIONS OF THE CUSTOMER, AND OTHER PROBLEMS INHERENT TO THE USE OF MASS-MARKET NOTIFICATION SERVICES AND ELECTRONIC COMMUNICATIONS. SEW IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, DELETIONS, LOSS OF DATA, DATA CORRUPTION, THIRD-PARTY PUBLICATION, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS NOT CAUSED BY SEW OR OUTSIDE OF SEW'S REASONABLE CONTROL. TO THE EXTENT SUCH DISCLAIMER CONFLICTS WITH APPLICABLE LAW, THE SCOPE AND DURATION OF ANY APPLICABLE WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW. SEW SHALL NOT BE LIABLE AND WILL HAVE NO OBLIGATION TO INDEMNIFY CUSTOMER FOR END USER DATA OR ANY OTHER PERSONALLY IDENTIFIABLE INFORMATION SENT TO SEW.
- 6.2. **LIMITATION OF LIABILITY.** IN NO EVENT WILL SEW'S AND ITS LICENSORS' TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT EXCEED THE AMOUNT PAID FOR THE NOTIFICATION SERVICES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY BEFORE SUCH CLAIM AROSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL SEW OR ITS LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY

FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR SIMILAR DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOST PROFITS, OPPORTUNITIES, DATA, OR USE, ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES, EVEN IF SEW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

- 6.3. **Recordings and Communications Monitoring.** In the event Customer records or monitors any SMS messages, IVR communications, or other communications using the Services, then Customer represents and warrants that it shall comply with all applicable laws prior to doing so at all times. SEW makes no representations or warranties with respect to recording or monitoring telephone calls/IVR communications, SMS messages, or other communications, and recommends that Customer always secure prior consent to record or monitor communications using the Services. Customer acknowledges that these representations, warranties, and obligations are essential to SEW's ability to provide the Services and further agrees to indemnify SEW and its affiliates or providers in the event of any acts or omissions in connection with recording or monitoring IVR communications, SMS messages, or other communications, whether such claims arise under contract, tort, statute, or other legal theory.

## 7. Additional Terms

- 7.1. **Short Codes.** If Customer utilizes a short code with SEW as a part of the Services, Customer:
- Shall not change the short code use case without first having such new use case approved by SEW or the applicable provider.
  - Shall stop sending additional messages to any party that replies by texting "STOP" (or the equivalent) to the short code, except for a single text message confirming that such party has been successfully opted out of the short code.
  - Shall follow all applicable rules, regulations, laws, statutes, or guidelines set by state, local, or federal legal authorities, or as imposed by SEW or its affiliates, providers, etc. pertaining to the use of short codes or voice recordings.
- 7.2. **Compliance with Laws.** Both Customer and SEW agree to comply with the applicable laws relating to each Party's respective activities pursuant to this Agreement.
- 7.3. **No Waiver.** Our failure to enforce at any time, any provision of this Agreement, or any other applicable policy or signed writing in connection hereto shall not waive our right to do so later. Any waiver must be in writing and signed by both Parties to be legally binding.
- 7.4. **Independent Contractors.** The Parties are independent contractors and will so represent themselves in all regards. Neither Party is the agent of the other, and neither may make commitments on the other's behalf.
- 7.5. **Force Majeure.** No delay, failure, or default, other than a failure to pay fees, will constitute a breach of this Agreement to the extent that such delay, failure, or default, or any other breach is caused by acts of war, terrorism, earthquakes, other acts of nature, strikes or labor disputes, embargoes, or other causes beyond the performing Party's reasonable control.
- 7.6. **Assignment & Successors.** Customer may not assign this Agreement or any of its rights or obligations hereunder without Provider's prior written consent. Except to the extent forbidden herein, this Agreement will be binding upon and inure to the benefit of the Parties' respective successors and assigns. Any attempt to assign, transfer, or delegate the terms under this Agreement shall be null and void.
- 7.7. **Notices.** Any notice required or permitted to be given under this Agreement will be given in writing to the receiving Party by personal delivery, certified mail, return receipt requested, overnight delivery recognized by a nationally recognized carrier, or by email upon confirmation of receipt. Notices to SEW shall be copied to [contracts@sew.ai](mailto:contracts@sew.ai).
- 7.8. **Modification.** Modifications to the Services and associated fees thereof may be made from time to time, and any modifications made to the Services, or associated fees, shall be noticed to the Customer thirty (30) days prior to such modifications taking effect.
- 7.9. **Severability.** To the extent permitted by law, the Parties waive any provision of law that would render any clause of this Agreement invalid or unenforceable. In the event that a provision herein is held to be invalid or unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by law, and the remaining provisions of this Agreement will continue in full force and effect.
- 7.10. **Choice of Law & Jurisdiction:** This Agreement will be governed by the laws of the State of North Carolina, without reference to any conflicts of law principles. The Parties consent to the personal and exclusive jurisdiction of the federal and state courts of Wake County, North Carolina.
- 7.11. **Conflicts.** Should this Agreement conflict with any other agreements, this Agreement will govern.
- 7.12. **Construction.** The Parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- 7.13. **Entire Agreement.** This Agreement sets forth the entire agreement of the Parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter, with the exception of an applicable license agreement, SaaS subscription agreement, or statement of work. Neither Party has relied upon any such prior or contemporaneous communications except those expressly referenced and named herein.
- 7.14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- 7.15. **Amendment.** This Agreement may only be amended in writing by authorized representatives of each Party.
- 7.16. **E-Verify.** SEW shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). SEW shall require all of SEW's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).
- 7.17. **Anti-Human Trafficking.** SEW warrants and agrees that no labor supplied by SEW or SEW'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.
- 7.18. **Nondiscrimination.** Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, SEW hereby warrants and agrees that SEW 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.
- 7.19. **Non-appropriation.** Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Customer 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 the Customer to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Customer.

**Appendix C**  
**Data Retention Policy**

**1) Data Retention Policy**

**a) Introduction**

- i) It shall be the policy of Smart Energy Water to maintain complete and accurate records for the usage, billing, behavior, or any of the specified types of data ("Data") of Client and its Users, for the duration described for historical reference, contractual or legal requirements, or for any other purposes as set forth in this Data Retention Policy ("Policy"). The types of Data stored and subsequent durations for each type, described in the Retention Summary set forth in Section 1(h) below, shall be the recommended and standard retention periods based on legal requirements and practical considerations. In the event that Client wishes to have such Data retained for an extended period, such additional retention periods shall be agreed upon in a separate writing.
- ii) Data Retention shall include, but is not limited to, paper and electronic records, documentary materials, Customer Data, personally identifiable information, billing records, usage information, etc. Such information shall be managed and maintained in a manner that protects the integrity of the Data, while ensuring appropriate access for the durations described above.
- iii) Upon expiration of the above retention periods, such data shall be destroyed, deleted, returned or otherwise disposed of according to standard industry guidelines and in compliance with legal requirements, EXCEPT for those records pertaining to (1) matters under investigation or those matters that are the subject of any claim or litigation, and (2) matters that are anticipated to be the subject of reasonably foreseeable investigation, claim, or litigation.

**b) Definitions**

- i) **"Audit Logs"** shall refer to recordings of key system events, timestamps, and other records that otherwise maintain evidence of any processes or activities.
- ii) **"Billing Data"** shall refer to any information regarding the billing information of customers, which may include, but is not limited to, credit card information, security codes, expiration dates, billing addresses, names of customers, etc.
- iii) **"Billing Summaries"** shall refer to any information regarding the costs or charges relating to a customer's usage of utilities maintained over monthly billing periods.
- iv) **"Customer Data"** shall refer to any personally identifiable information of a Client's users, which may include, but is not limited to, name, address, personal Usage information, etc.
- v) **"Investigation"** shall refer to any business or legal process which requires the retention, examination, or review of any Data.
- vi) **"Notifications"** shall refer to logs of the information events (email, IVR, SMS text messaging) sent by a utility and received by a customer.
- vii) **"Outages"** shall refer to logs of outage events reported via OMS to the Services, by either the customer, if approved, or the Client.
- viii) **"Retention"** shall refer to storage of Data on either local, cloud-based, or archive storage or servers.
- ix) **"Usage"** shall refer to any customer's use of a utility as tracked and maintained by the Services.
- x) **"User Behavior"** shall refer to the interaction of Client's customers on the portal or mobile application, which may include, but is not limited to, log-on periods, active periods, interactions with particular modules, clicks, etc.

**c) General**

- i) SEW shall be bound in its obligations regarding the Data it processes and controls. These obligations shall include how long SEW retains Data, and when and how SEW can destroy such Data. These obligations may arise from industry standards, local laws or regulations, or arising out of agreements between the Parties.
- ii) SEW shall ensure that necessary records, documents, or Data are adequately protected and maintained, and additionally, that such records, documents, or Data are properly disposed of.
- iii) SEW shall not use Client or Customer Data except as necessary to provide the Services, or as necessary to comply with the law or binding order of a governmental body.

**d) Cloud-Based Storage**

- i) In maintaining the Data, SEW shall utilize its cloud-based scalable storage solutions which shall allow Client to store and display historical usage data, billing information, payment history, etc. SEW shall utilize industry standard methodologies, which shall ensure business continuity, continuous retention for the periods described, data recovery, and availability for its Users.

**e) Archiving and Backups**

- i) SEW shall utilize similar industry standard solutions for archiving, restoring, and backing up Data. Incremental Data (daily usage, user behavior, notifications, outages) shall be recorded nightly, and full Data backups shall be executed over the weekend. Data shall be retained in both Cloud-based local storage form, as well as Array-based replication form offsite to be utilized as back-ups or archives in the event of system failure of the local Cloud-based storage.
- ii) SEW shall be notified via email confirmation of backups of Data being saved successfully or such backups failing to be saved. Backups shall be tested periodically by restoring such Data to a staging database to ensure that Data is not corrupted and are in proper usage compliance in its application configuration.

**f) Destruction and Purging of Data**

- i) Data that is personal or confidential in nature shall be disposed of according to methodologies agreed upon by and between the parties in a signed writing.
- ii) Electronic Data shall be subject to secure electronic deletion.
- iii) Physical or paper documents shall be shredded using secure consoles through which waste shall be properly screened for disposal.
- iv) Specific deletion or destruction processes shall be carried out by an employee of SEW or by an internal or external service provider employed for the purposes of such proper and compliant disposal of Data.
- v) Data of Users or Clients who have been inactive for a period of twenty-four (24) months shall be deleted. Clients, if such Client or User account(s) are inactive for a period of eighteen (18) months, shall be notified of such inactivity via email.

**g) Litigation or Investigation**

- i) In the event that SEW becomes involved in any unforeseen litigation or business event that requires access to Client and Customer Data, such Data may need to be archived beyond its active use or as required by law.
- ii) Documents shall be retained in the event that they are subject to matters under investigation or those that are subject to any claim or litigation, or those matters that are anticipated to be the subject of reasonably foreseeable investigation, claim, or litigation.
- iii) Prior to the disclosure of any Client and Customer Data, SEW shall first disclose to Client of such requirement, so that Client may inform its users and allow users the opportunity to seek protection from such disclosure.

**h) Retention Summary**

- i) SEW, for the purposes of historical reference, contractual or legal requirements, or other requirements as a part of its delivery and maintenance of Services or Software to Client, shall retain the following types of Data for the durations set forth, and pursuant to the terms set forth in this Data Retention Policy.

Data Type	Description	Duration
Usage	Monthly Read	24 months
	Daily Read	12 months
	Hourly Read	6 months
	15-minute Read	3 months
Billing Data/Summary	Overview of Past Bills	24 months
User Behavior	User Interactions with Portal	12 months
Notifications	Text Message, IVR, Email Logs	6 months
Audit Logs	Timestamps, Recordings of Key Events	6 months
Bill PDF Storage	* Add-on Feature	12 months
Outages	History of Reported Outages	12 months

**Certificate Of Completion**

Envelope Id: 9C73A670F46B4879929D9742F628447B

Status: Completed

Subject: Complete with DocuSign: SEW OFM for SCM Subscription\_23.04.06 (Clean).pdf

Source Envelope:

Document Pages: 11

Signatures: 1

Envelope Originator:

Certificate Pages: 1

Initials: 0

Joseph

AutoNav: Enabled

15495 Sand Canyon Ave suite 100

Envelopeld Stamping: Enabled

Irvine, CA 92618

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

joseph.chaparo@sew.ai

IP Address: 64.147.23.106

**Record Tracking**

Status: Original

Holder: Joseph

Location: DocuSign

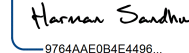
4/6/2023 11:17:36 AM

joseph.chaparo@sew.ai

**Signer Events****Signature****Timestamp**

Harman Sandhu

DocuSigned by:



Sent: 4/6/2023 11:18:15 AM

Harman.Sandhu@sew.ai

Viewed: 4/6/2023 11:31:40 AM

President

Signed: 4/6/2023 11:32:17 AM

SEW

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication (None)

Using IP Address: 146.70.172.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

Hashed/Encrypted

4/6/2023 11:18:15 AM

Certified Delivered

Security Checked

4/6/2023 11:31:40 AM

Signing Complete

Security Checked

4/6/2023 11:32:17 AM

Completed

Security Checked

4/6/2023 11:32:17 AM

**Payment Events****Status****Timestamps**

## STATEMENT OF WORK - SCOPE

This Statement of Work ("SOW") is executed between Smart Energy Water ("SEW") and Town of Apex ("Client") effective as of April 6, 2023 and confirms our agreement that SEW will provide the implementation services set forth herein for deployment of SEW's Smart Customer Mobile – SCM® (the "Project") for the Client.

### 1 Scope of Services

The Applications in scope of this SOW are for the versions of application and other software identified in Appendix A. Any other application is outside of the scope of this SOW. There will be no upgrade of any of this software to a different version by either party prior to the installation of each release into production, except as specifically stated herein. Any other application is outside of the scope of this SOW. Any other services or support other than installation of "patches", "enhancements", or "user exits" required to meet the requirements stated in Appendix B is outside of the scope of this SOW.

### 2 Language Scope

The application as well as all Project activities and Deliverables will be created in English. To the extent that any translation activities are required, those translation activities will be the responsibility of Client. The customer notifications and portal/mobile labels will be configured in following languages:

<b>Language Pack</b>	English	X
	Other	

The setup/translation of notification templates and customer facing content, as applicable, will be performed and provided by Client to ensure accuracy, and will be reviewed and implemented by SEW.

### 3 Marketing & Training Scope

<b>Marketing Package</b>	Base	X
	Advanced	
	Premium	
<b>Product Training</b>	Onsite In-Person Training Days	X
	Webinar-based Remote Training	X (8 hours)

Smart Energy Water will provide both Webinar-based Remote Training and Onsite In-Person Training Days.

### 4 System Installation and Data Integration

The scope of the project includes the following key system installation and data integration activities:

- 1 Design, configure, and setup of SEW software stated in Appendix A to the extent required to meet the requirement stated in Appendix B.
- 2 Integration of SEW software with Utility systems mentioned below.
- 3 Load the existing customer preferences to the SCM database for the notifications in scope.
- 4 Deploy Utility branded customer web portal functionality in scope.

Customer agrees to ensure integration access with the Utility's systems identified in the table below prior to the completion of the planning phase. Any costs that may be associated for such integration relating to any agreement Client may be a party to, will be the responsibility of the Client. Integration to Utility's source systems and data is dependent on access to said systems, including any API allowances as applicable. It is anticipated that the SEW team will migrate existing Client data as needed to the SCM® platform. However, any validation or cleansing of the source data is not in scope of SEW's responsibilities. The SEW team will work with the Client team to identify and catalogue the data for migration and agree upon a migration strategy. Upon completing the strategy for data conversion and migration, SEW shall be responsible for taking the data in the source format and translating/converting the data to the SCM® platform.

Integrations with the following systems are in scope:

	3 <sup>rd</sup> Party Systems	System Name
--	-------------------------------	-------------

<b>Integration Services</b>	CIS / Billing System	Milsoft CIS
	MDM	Phase3: IPKeys
	AMI	Phase3: Sensus
	3 <sup>rd</sup> party Payments Systems	NA
	Bill Presentment	Milsoft
	Outages	DataVoice
	ERP – Application Fees	Infor
	WoM for Service Requests*****	CityWorks
	Planning/PM Payments	IDT

## 6 Project Approach, Deliverables and Milestones

The project scope may be delivered in multiple Releases (in one (1) or more phases) called **Release Packages** based on the scope defined in the Sections 1 and 2 above.

Each Release Package delivered will follow stages as defined below. The first stage will be common for all Releases described above. Upon completion of the Stage 1 activities and approvals by Client, each of the following Phases will be executed for the Releases. Any new requirements identified after completion of Stage 1 will be scoped and delivered in a separate Change Request process set forth in Section 8 below. The table below summarizes the key stages of the project, scope of activities, Milestones.

The actual duration for the project is not confirmed until a Delivery Plan with start and end dates have been agreed by Parties. Wherein, SEW shall deliver and Client shall sign-off Document of Understanding (DOU) together with a list of all Change Requests (CR) identified during the Planning & Design stage of the project. Any CRs requested by clients after Planning & Analysis phase, shall be implemented once the agreed scope is delivered as per Delivery Plan in a production environment.

Stage	Description	SEW Deliverable	Client Responsibility
<b>Milestone: SOW Signed</b>			
1. Planning & Design	<b>Project Kick Off Meeting</b> – Initial kick off meeting to identify key stakeholders, establish program governance, and agree preliminary project schedule and scope.	1) Kick-off Deck	
	<b>Fit Gap Workshops</b> - Fit Gap workshops are specifically designed workshops to review all requirements, business processes, Client specific business rules and validations, as well as the user experience to align the SCM solution to the final desired solution.	1) CR List of deviations from Base Product	1) Approve the CR List
	<b>Requirements Sign Off/Finalization</b> - Requirement sign off and finalization is the requirement review and approval activity which is key to solidifying the scope of work and providing a check point for the project team to validate the scope of work.	1) DOU 2) CR Doc (with details of solution)	1) Sign DOU 2) Sign CR Document

	<b>Project Plan and Schedule Baseline</b> - Project plan and schedule baseline is intended to be a review cycle for the project leadership team members to validate all scope items and schedule considerations are accounted for before commencing the next Stage of the project.	1) Delivery Plan (Implementation project plan and Delivery Date) 2) RAID Log (if applicable)	1) Review Plan and Agree to delivery Plan 2) Close all Client Dependencies (ex: CIS/MDM System Access, APIs, Data Access, VPNs)
<b>Milestone: Planning &amp; Design Complete</b>			
2. Build	<b>Configure/Integration</b> - Product configuration and source system integration per business requirements defined in the Project Planning/Design Stage.	1) Solution Architecture & Design description	
	<b>Unit Testing</b> - SCM product unit testing to ensure configuration changes are per the approved business requirements.		
	<b>Environment Validation</b> - Environment validation of integration points and environment deployment to ensure all integrations and systems are available for testing.	1) UAT Environment created	
<b>Milestone: Build &amp; Configure complete</b>			
3. Test	<b>SEW System/Quality Assurance Testing</b> - Quality assurance testing of all defined business requirements and the designed solution to ensure end to end functionality is working as desired.	1) Product moved into UAT Environment 2) Client UAT Test Plan test scripts & UAT Schedule	1) Agree upon UAT test accounts/data, UAT Test scripts & UAT Schedule.
	<b>User Training</b> - User training for Client Customer Service and internal team members on the Customer Service solution and how to best support Client Customers with the tool.	1) End User Training Plan	
	<b>Client Functional/User Acceptance Testing</b> - Testing conducted by Client team to confirm business requirements in scope and validate that the system is working as desired. Client User Acceptance Testing to test the end to end solution from Client's customers and Client perspective.	NA	1) UAT Signoff (by email) per acceptance criteria
<b>Milestone: UAT Complete</b>			
4. Deploy	<b>Product Deployment</b> - Deployment of SCM and any necessary source system changes into the production environment.	1) Move product to Production environment	1) Provide Production Customer Data set
	<b>Performance Testing</b> - Testing conducted by SEW focused on system performance and scalability. The primary objective is to ensure the system can scale to customer adoption rates.	1) Performance Test Report	

	<ul style="list-style-type: none"> <li><b>Knowledge Transfer</b> - Knowledge transfer of configurations required in Client systems and documentation review of changes with Client support team.</li> </ul>	1) Training Workshops 2) User Guide	
	<ul style="list-style-type: none"> <li><b>SEW Production Verification</b> - Production environment validation of all functionality after product deployment to ensure the product was deployed successfully.</li> </ul>	1) Production Verification Report	
	<ul style="list-style-type: none"> <li><b>Client Two Day Production Verification PVT</b> – Client production verification of all functionality after product deployment to ensure the product was deployed successfully</li> </ul>		1) PVT Signoff by email
<b>Milestone: PVT Complete</b>			
5. Stabilization	Production Stabilization – Four weeks of production stabilization support transitioning the Client to a Production Support Plan consistent with the terms of the SaaS agreement	1) Client support ticketing Portal Access will be setup and made available	1) Transition to use production ticketing system

## 7 Standard Functionality

An objective of the Project is to take advantage of the inherent capabilities of the in-scope SCM® modules and to implement them with only the customizations to the extent required to deliver the scope as stated in Appendices A and B of this SOW. To the extent there is a need to incorporate additional functionality, SEW will assess the impact of such a requirement on the Project Plan and associated fees. Any additional functionality will be reviewed with Client for approval and will then follow the change request process.

## 8 Change Request Procedure

In the event of any change to the Services or Software, either by Client's election to purchase or implement additional Software and Services, or due to changes becoming necessary in either the implementation period or at any time in the Initial or Renewed Term, a Change Request ("CR") shall be required.

- Such CRs shall describe the change, the rationale for the change, and the effect such change will have on the existing Software or Services.
- Provider shall then submit the proposed CR to the Client with the necessary details for review.
- All CRs shall be documented in detail; including but not limited to description, workflow, integration to 3<sup>rd</sup> party services, database changes, wireframes.
- Client shall be responsible for identifying the CRs during the Planning & Design stage of each Release.** Each CR must be reviewed and agreed upon by either party prior to completion of Planning & Design phase.
- Client shall agree to reviewing the proposed CR and the associated charges and shall provide notice to Provider of Client's desire to proceed with or discard the proposed changes.
- Any CRs that arise from the clients after Planning & Analysis phase, shall be implemented and tested post the original scope is delivered in a production environment.
- SEW shall further specify any changes to the fees as is necessary and shall set forth such pricing changes within the CR. Additional work done beyond the amount agreed to in the applicable Statement of Work shall be performed at an agreed upon price which shall be set forth in the CR or at a rate of \$250 per individual per work hour.

All CRs must be signed by authorized representatives from both Parties prior to the commencement of any such



work as detailed in the CR. Client understands and agrees that during the testing, deployment, and stabilization of any change(s) or solution(s) described in a CR, service level agreements, if any, shall not apply for that CR or any other outstanding incident or newly reported incident tickets or bugs.

## 9 Deliverable Acceptance

Acceptance Criteria shall mean:

- The conformity to the specifications of all Deliverables in their material respects.
- Compatibility with, or a lack of malfunction caused when integrated with, any previously accepted Deliverable or set of Deliverables.
- Proper phrasing of written Deliverables in industry standard terms or language intended to be easily understood by non-technical personnel (ie., laypersons without subject matter experience).
- Proper formatting of Deliverables (ie., hard copies, electronic forms) according to industry accepted standards, or as mutually agreed upon by the Parties upon the completion of Planning for each Release.

During the Client Functional/User Acceptance Testing (UAT) or Performance / Production Validation testing (PVT) the Client agrees to perform UAT testing only as per defined test cases shared by SEW prior to the commencement of UAT. Further the Client shall perform the UAT testing in a time period consistent with the mutually agreed project plan. Deliverables as set forth above shall be considered accepted by the Client for that Release when there are no pending Severity 1 & 2 issues to be fixed by SEW (and that were logged in the ticketing system). The Client shall notify and report of any outstanding issues from such testing and shall classify the severity of the issues consistent with Severity Classification section as below.

Client shall provide SEW with written notice of any such Deliverable it deems deficient or nonconforming per the Acceptance Criteria, and shall further specify the nature of the nonconformity or deficiency. Upon receipt of such notice, SEW shall promptly classify issues or deficiencies, if any, and upon correction and re-delivery of the named Deliverables, Client shall have a period of five (5) business days to report any ongoing issues or deficiencies. Failure to provide such notice for any defects in a timely manner shall deem the Deliverables constructively accepted by the Client.

For any deficiencies that are considered Severity 2 & 3, SEW shall schedule with Client, a date by which to address and fix those deficiencies. Furthermore, SEW shall prioritize the resolution of Critical issues over that of any Non-Critical issue.

### Severity Level Classifications:

**Functional Levels:** Below are illustrative symptoms of the incidents that we will leverage throughout the project for functional issues.

<b>Severity - 1</b>	<ul style="list-style-type: none"> <li>• An unavoidable error which makes a major component or the product itself inoperative</li> <li>• Entire areas of functionality are not working</li> <li>• Required for initial release</li> <li>• No work-around exists</li> <li>• Downstream testing not possible</li> <li>• Resolution needed ASAP</li> </ul>
<b>Severity - 2</b>	<ul style="list-style-type: none"> <li>• A problem which severely disables a major function of a component or the component itself</li> <li>• Major areas of functionality are not working</li> <li>• Required for initial release</li> <li>• Work around exists but may have serious resource implications</li> <li>• Continued downstream testing difficult. May be able to work on something else</li> </ul>
<b>Severity - 3</b>	<ul style="list-style-type: none"> <li>• A minor functional problem or technical inaccuracy</li> <li>• Minor issue with functionality.</li> <li>• Not necessarily required for initial release</li> <li>• Work-around exists using existing level of resources</li> </ul>

	<ul style="list-style-type: none"> <li>Downstream testing possible</li> </ul>
<b>Severity - 4</b>	<ul style="list-style-type: none"> <li>A non-functional problem</li> <li>Nice-to-have functionality</li> <li>Not required for initial release</li> <li>No work-around required</li> <li>No impact to downstream testing</li> </ul>

**Visual Levels:** Below are the severity definitions that we will leverage throughout the project implementation for Visual issues.

<b>Severity - 1</b>	<ul style="list-style-type: none"> <li>User is unable to complete a task. Visual, voice or tone issue detrimental to brand. Legal or licensed partner contractual issue.</li> </ul> <p><b>Examples:</b></p> <ul style="list-style-type: none"> <li>Video or image not loading correctly.</li> <li>Misaligned dropdowns keep guest from accessing other functionality.</li> <li>Incorrect copy or image prevents Legal/LP approval.</li> </ul>
<b>Severity - 2</b>	<ul style="list-style-type: none"> <li>Major impact to guest experience. Requires heavy workaround by the user to complete a task or to understand the interface. Major licensed partner or legal feedback. Major deviation from original design.</li> </ul> <p><b>Examples:</b></p> <ul style="list-style-type: none"> <li>Significant font inconsistency or text wrapping.</li> <li>Page "jumps" on refresh</li> <li>Misaligned Call to Actions, chevrons and links.</li> </ul>
<b>Severity - 3</b>	<ul style="list-style-type: none"> <li>Minimal impact to guest experience. User briefly stumbles with a task in the system, but can complete with minimal effort. Minor visual inconsistencies with visual style or copy tone.</li> </ul> <p><b>Examples:</b></p> <ul style="list-style-type: none"> <li>Incorrect button or promo color.</li> <li>Incorrect or inconsistent copy with no legal or LP impact</li> </ul>
<b>Severity - 4</b>	<ul style="list-style-type: none"> <li>Does not negatively impact the guest experience. Not noticed by casual user. Enhancement.</li> </ul> <p><b>Examples:</b></p> <ul style="list-style-type: none"> <li>Small spacing or padding inconsistencies as determined by creative team.</li> <li>Minor font weight/color/size inconsistencies as determined by creative team.</li> </ul>

## 10 Key Assumptions

The following statements, which have been accepted by Client, have been made by SEW in its efforts to fulfill its obligations under this Agreement, the failure of which by Client may affect SEW's project duration timeline set forth in this Agreement. SEW has relied on the assumptions stated below in pricing, planning, and determining its approach to the Services.

### **Base Assumptions**

1. The SOW is binding upon authorized execution, and any changes to the SOW will be provided in writing from either SEW or the Client team and approved by both teams.
2. Client will provide timely responses to SEW for any of SEW's information needs, as well as timely review of project documents provided.
3. Key personnel at Client will be made available to SEW as required during the project.
4. Client will provide onsite workspaces for SEW resources with internet connectivity as necessary.
5. To the extent feasible, SEW will utilize existing web service interfaces to meet the requirements stated in this SOW.
6. SEW team will migrate existing Customer Notification preference data to the SCM platform however any validation or cleansing of the source data is not in scope. SEW team will work with the Client team to identify and catalog the data for migration and agree upon a migration strategy. Upon completing the strategy for data conversion and migration, SEW shall be responsible for taking the data in the source format and translate and convert to the SCM platform.

7. The SEW validation checks will be applied at the time of loading into the staging area to confirm data was moved without error.
8. The payment functionality and integration, assuming SEW Payment Services
9. Data quality and validation will be the responsibility of Client.
10. Any customization to standard features and functionality is expressly not included. Inclusion will be managed via a Change Order where changes to budget and/or schedule will be specified.
11. Integration to source systems and data is dependent on access to said systems, including API allowances, as applicable and responsibility of the Client.
12. Standard SEW implementation and configuration is conducted primarily from SEW offices with any included on-site activities to be determined and documented during Planning Stage 1.
13. The SCM platform includes functionality for messaging/notification services including email, SMS Text, Voice (IVR Outbound Dialer only), and push notifications. Upon activation of such functionality for Client, the SMS Text and Voice notifications shall incur additional per message fees outside the scope of pricing stated in this SOW. Integration with any third party notification service is not in scope and will incur additional fees.
14. It is essential for the Client to manage the following contingencies provided below to ensure the timely and successful implementation of the project. Any delay from the Client regarding any of the following items may have an impact on the project, including duration and schedule, resources and budget.
  - a) Delay from Client in approving necessary documentation, artifacts, or deliverables.
  - b) Delay or unresponsiveness from third-party service providers.
  - c) Unavailability of Client personnel to work with SEW on the project.
  - d) Requested information is unavailable or not provided in a timely manner to SEW.
  - e) Client data is unavailable, missing, or incorrect.
  - f) Environment to access the data/files is unavailable or interrupted.
  - g) Scope changes and customizations after the execution of this SOW.

#### **Base Software**

1. All functionality or services that are available in base out of the box (OOTB) SCM package will be utilized. Third party or custom functionality will only be utilized if such option is not available in SCM platform.
2. Client will utilize base OOTB SEW's notification services. The notification services will be activated prior to Test Phase of the project.

#### **Environment and Access**

1. Client will provide 24/7 secure VPN and remote system access to project environments for SEW's offsite developers.
2. Integration to source systems and data is dependent on access to said systems, including API allowances, as applicable and delay in access will impact the project schedule. Client will be responsible for ensuring Client's on premise or other third-party environments and integration services are available to SEW prior to development activities can be started.
3. Client shall be responsible for coordinating the access to any Client owned and third-party APIs required for integration. These API's/services are expected to be fully tested and functional. Minimal sanity validation of third-party APIs is included but should the APIs be non-functional or required extensive troubleshooting from Consultant, a Change Request (CR) will be required due to potential impact on resource, budget and schedule.
4. Delay in schedule due to unavailability of access to the required source system will result in budget impact and will be handled through a Change Request.

#### **Scope of Services**

1. SEW will participate in design activities, share best practices and provide input however the development of to-be business processes is not in scope of this engagement.
2. The proposed timeline assumes that the appropriate key decision makers from Client will be available to make key decisions within the agreed time frames.
3. Any changes to Client systems necessary for facilitating future state design will be performed by Client resources.
4. SEW will use Client's project management tool for tracking of project activities and schedule. Client will be responsible for providing access to the tools to SEW personnel.

#### **Release Management**

1. Client and SEW may agree to deploy the functionality in scope of this SOW in multiple releases. SEW will develop the release schedule based on technical dependencies on the CIS system, development schedule, and module cross dependencies in SCM and publish such schedule as part of the planning phase.

### ***Integration Services***

1. CIS Integration – SEW will be responsible for installation of the base SCM integration pack including the integration services and back end objects available in the software release.
2. Non-CIS Systems – The effort to integrate with non-CIS systems listed under Section 4 is included in this SOW. In case Middleware is involved in such integrations, effort for implementation of the Middleware, transformation work within the Middleware, and work to move data to and from the Middleware to third party systems are not included in the scope of this SOW.
3. It is assumed that Design Specifications for required changes to interfacing systems (i.e. Legacy Systems or 3rd Party Systems) will be the responsibility of Client Technical team and consultation from SEW.
4. SEW will make technical architect(s) available to participate in interface design and mapping exercises as an SCM integration specialist, in accordance with the Project Schedule.
5. Client will make a legacy application specialist(s) available to participate in interface design and mapping exercises, in accordance with the Project Schedule.

### ***Training***

1. SEW will assist Client personnel or designated training provider with preparation of materials and delivery of the train-the-trainer program. Training materials will only include the customer service portal (CSP) User Guide adapted for the Client software modules and features in scope. Development of tailored training material to incorporate the Client's business process is not in scope but may be added as part of a separate Change Request.
2. Training will be conducted in a train-the-trainer format. Utility customer service representatives (CSRs) will be trained by the trainers. Training of end users (i.e., utility service area customers/users) is not in scope of this SOW.
3. Client will deliver internal CSR/end-user training. The Client will be responsible for all internal, end-user trainings (including, but not limited to, material duplication and facilities, as applicable). SEW will assign a Trainer from the SEW team to work with Client during such training sessions.

### ***Data Conversion***

1. The Client will provide staff knowledgeable of the Legacy System to provide information about data content to SEW staff. SEW and Client will analyze and develop Data Mapping, Transformation, and data contract specification document.
2. SEW will only be responsible for Data Cleansing to the extent possible in its automated conversion programs for the SCM Solution. This will be an iterative process and will result in numerous data cleanup issues being resolved and others being identified for manual resolution. Manual Data Clean Up activities are responsibility of Client. SEW will provide feedback from Conversion development and testing to assist in identifying data issues affecting conversion.
3. Client will extract data from Legacy Systems into the agreed upon format.
4. Client will assist with data mapping, document review, functional design, converted data validation, balancing or any other mutually agreed upon task that will contribute to a successful data conversion and implementation.

### ***Testing***

1. Prior to Integration Testing, the SEW will deliver the SCM Solution to be tested in accordance with the Release Schedule.
2. SEW will provide test script templates and advice to Client who will develop the Test Scripts.
3. Client will share the Test scripts with SEW prior to the Testing.
4. Client will provide sufficient Testers for Conversion, Integration and Pre-Production Testing who have been trained during project team training and are familiar with Client's business requirements.
5. Client will execute Test Scripts, will validate issues against the functional specifications and document Defects encountered using the process defined and agreed to in the approved Test Plan, and re-test incidents following resolution of Defects by Client, SEW or other responsible party.
6. SEW will be assigned to and will resolve Defects that are a result of SEW's responsibilities in accordance with this SOW and approved project documentation, including the Scope Document, Functional Specifications and Technical Specifications.

7. Performance testing, including Stress Test and Load Test shall be conducted by SEW in accordance with the mutually agreed Performance Test Plan. SEW will be responsible for creating the Performance Test Plan with input from Client.
8. Testing will be conducted for a specific period of time as agreed to by the SEW and Client Project Managers and as defined in the Project Schedule. Delays caused by additional testing required due to responsibilities other than those of SEW under this SOW may require a Change Request.
9. If the results of the load test indicate that performance of the system does not meet the criteria in the Performance Test Plan, SEW and Client shall make appropriate changes in their respective areas of responsibility and repeat the performance test until acceptable performance is achieved or, if necessary, the Performance Test Plan is changed via the Change Request Process.

#### ***Test Data***

1. SEW will provide a template with test case scenarios for testing Web, Android, and iOS, as applicable. Client shall prepare and provide the required test data sets that meet the test scenario on time in the development and QA environment while ensuring data quality. Test data preparation activity may include Data cleaning, conversion, migrating data from a legacy system.
2. Client shall be responsible for providing test data on timely basis for testing of all functional scenarios in scope of the project.
3. Prior to the start of User Acceptance Testing, Production Verification Testing and Production support activities, Client shall supply two working username and corresponding passwords to SEW to support these activities. Such access shall be continued throughout the duration of these activities.
4. Client shall provide SEW access to the CIS system to validate data in the lower environment.

#### ***Languages***

1. All project activities will be performed, and Deliverables will be created in English.
2. The customer web portal will be configured in English only, unless specified otherwise in Section 2 above.
3. Additional labels, notifications and outbound messages may be translated and configured at additional cost.
4. Additional, future language requests may be included via a separate Change Request and SCM SaaS pricing amendment outside the scope of this SOW.
5. SEW will not be responsible for any translation, grammar, or context validation of additional languages.

#### ***Production Live and Cutover***

1. SEW will create the Production Live Checklist. SEW will review the checklist and agree upon the Cutover checklist with the Client Project Manager.
2. SEW and Client will establish Go/no-go Criteria during development of the Cutover Checklist.
3. Client will be responsible for the operations of the Production Environment with support from SEW.

#### ***Delivery Locations***

1. All services under this SOW will be provided from multiple delivery locations including combination of onsite and offsite resources.

#### ***SEW Responsibilities***

1. SEW will establish a framework for project planning, communications, reporting, procedural and contractual activity, and other activities associated with the Services.
2. SEW will Review the SOW, any associated documents, and the contractual responsibilities of both parties with the Client Project Manager
3. SEW will establish and maintain project communications through the Client Project Manager;
4. SEW will Prepare and maintain the Project Plan which lists the activities, tasks, assignments, milestones and duration estimates for performance of this SOW and align with the overall program project schedule
5. SEW will measure, track and evaluate progress against the project plan, and help resolve any deviations with the Client Project Manager
6. SEW will work with the Client Project Manager to address and resolve deviations from the Project Plan;
7. SEW will participate in regularly scheduled project status meetings with Client's project team
8. SEW will prepare and submit status reports to the Program
9. SEW will administer the Project Change Control Procedure with the Program Governance
10. SEW will remain engaged for the duration of the project; and coordinate and manage the technical activities of SEW project personnel.

**Client Responsibilities**

1. The Client will ensure that they have appropriate agreements in place with third parties whose work may affect SEW's ability to provide the Services. Unless specifically agreed to otherwise in writing, Client is responsible for the management and performance of the third parties, and for any third-party hardware, software or communications equipment used in connection with the Services.
2. The Client will make key business users available to play critical roles in the Blueprinting, such as hierarchy and process workshops, functional gap analysis and resolution and defining the organizational model;
3. SEW and Client will review the scope and deliverable expectations before work begins in order to provide a common understanding by both parties;
4. The Client is responsible for identifying the trainers to participate in the train-the-trainer activities, rooms for training sessions, managing enrollment and any costs associated with additional training sessions and attendance of Client trainees and SEW personnel at such training sessions.

**11 Fees**

The fees for the scope of work defined in this SOW are estimated at \$\_77,500\_.

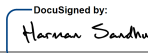
Implementation Milestone	Amount (USD)	Percentage
August 1, 2023	\$31,000	40%
Planning & Design Complete	\$15,500	20%
UAT Complete	\$15,500	20%
PVT Complete	\$15,500	20%

**Payment Terms:** Client agrees to make all payments to SEW within thirty (30) calendar days after receipt of invoice. Late invoices will incur a late payment fee of 1.5% or the maximum allowable under the law, whichever is less. If Client's account is sixty (60) days or more overdue, SEW reserves the right with prior written notice to withhold performance of its obligations under this Agreement, without liability, until such payments are paid in full.

**Scope Changes:** Should anything beyond SEW's control cause the above fees to exceed those stated above, SEW will notify Client in advance and obtain written approval in the form of a CR pursuant to Section 9 above, executed by the Client's authorized signatory.

**Estimated Travel and Expenses:** Expenses for travel, room, board, and other direct expenses will be submitted to Client for reimbursement per the schedule above or at actual cost as incurred and will be invoiced on monthly basis.

**12 Acceptance and Authorization**

Accepted by:	Accepted by:
Signature:	Signature: 
Name:	Name: Harman Sandhu
Title:	Title: President
Date:	Date: 4/6/2023

## APPENDIX A

### Software and Platform Services in Scope

#### A. Software Specifications

The scope of the SOW includes installation and configuration of the following Smart Customer Mobile (SCM®) platform modules and personas. The Client must procure the required subscription to the selected Software Personas and modules under a separate Order Form prior to the kick off of the implementation project.

✓	Product Code	Product Name
<input checked="" type="checkbox"/>	<b>Smart Customer Mobile (SCM®) – Mass Market Persona</b>	
<input checked="" type="checkbox"/>	SCM-10-Web	Customer Web Portal
<input checked="" type="checkbox"/>	SCM-10-Mobile	Customer Mobile Apps (iOS & Android)
<input checked="" type="checkbox"/>	SCM-10-1	SCM – My Account
<input checked="" type="checkbox"/>	SCM-10-2	SCM – Billing
<input checked="" type="checkbox"/>	SCM-10-3	SCM – Usage
<input type="checkbox"/>	SCM-10-4	SCM – Compare
<input checked="" type="checkbox"/>	SCM-10-5	SCM – Outages
<input checked="" type="checkbox"/>	SCM-10-6	SCM – Notifications
<input checked="" type="checkbox"/>	SCM-10-7	SCM – Service
<input checked="" type="checkbox"/>	SCM-10-8	SCM - Connect Me
<input type="checkbox"/>	SCM-10-9	SCM - Efficiency / Conservation
<input type="checkbox"/>	SCM-10-10	SCM - Smart Home
<input type="checkbox"/>	SCM-10-11	SCM - Electric Vehicle
<input type="checkbox"/>	SCM-10-12	SCM – Footprint
<input type="checkbox"/>	SCM-10-13	CSP – Dashboard
<input type="checkbox"/>	SCM-10-14	CSP – Efficiency / Conservation
<input checked="" type="checkbox"/>	SCM-10-15	CSP – Notifications
<input checked="" type="checkbox"/>	SCM-10-16	CSP – CSR
<input checked="" type="checkbox"/>	SCM-10-17	CSP – Administration
<input type="checkbox"/>	SCM-10-18	CSP – Outages
<input checked="" type="checkbox"/>	SCM-10-19	CSP – Customer AI / Analytics
<input type="checkbox"/>	SCM-10-22	CSP – Smart Home
<input type="checkbox"/>	SCM-10-24	CSP – Demand Response
<input type="checkbox"/>	SCM-10-28	CSP – Smart CRM – Marketing & Campaign
<input type="checkbox"/>	SCM-10-29	CSP – Smart CRM – Notifications
<input type="checkbox"/>	SCM-10-30	CSP – Smart CRM – Case Management
<b>Support &amp; Maintenance</b>		
<input checked="" type="checkbox"/>	Sup-1	Base Support and Maintenance
<input type="checkbox"/>	Sup-2	Max Support

#### B. Multi Channel Smart Notification Workflow & Services

The SCM® platform includes integrated notification services which can be configured upon request for the purposes of customer alerts and notifications based on configurable workflow and decision trees.

The scope for configuration of notifications/alert campaigns will be determined during the planning phase. Additional alerts/campaigns can be configured with additional cost.

Module	Notification	Push	Email	SMS	Voice
<b>My Account</b>	Online Account Registration/Activation Link		X		
	Forgot Your Password	X	X	X	
	Forgot Your Username	X	X	X	
	Profile Information Update (Phone &Email)	X	X	X	
	Password Updated	X	X	X	
	Paperless Bill Enrollment/Unenrollment	X	X	X	
	Add/Delete Account	X	X	X	
	Add/Delete Payment Method	X	X	X	

	Updating Marketing Preference		X		
	Notification Preference Update		X		
<b>Billing</b>	eBill Ready Notification	X	X	X	
	Payment Reminder	X	X	X	
	Payment Delinquent	X	X	X	
	Autopay Enroll/Unenroll Confirmation		X		
	Text-to-Pay (two-way SMS notifications)			X	
	Budget Billing/Level Pay Enroll/Unenroll Confirmation	X	X	X	
	Request Confirmation	X	X	X	
<b>Connect Me</b>	Usage Threshold Alerts (triggered based on customer established threshold)	X	X	X	
	Move In Request Confirmation	X	X	X	
<b>Service</b>	Move Out Request Confirmation	X	X		
	Service Transfer Request Confirmation	X	X		
	Generic Service Request Confirmation	X	X		
	Adhoc messages from Customer Service Portal	X	X		



## APPENDIX B

### Project Scope For Phase 1

Scope to be included per module:

#### Login & Registration:

1. Ability to register using standard SCM registration process (two step process) and showcase sample bill, FAQs and tutorial video to help with registration
2. Registration Step 1 (Validation):  
Ability to select either residential or commercial during registration- registration screen will dynamically change base on required fields
3. Registration Step 2 (Sign Up):  
Ability to allow the user to enter personal information (Username, Password, First Name, Last Name)
4. Ability to enroll for bill type (Paperless, Paper, Both ) during registration
5. Ability to subscribe to notification preferences during registration
6. Ability to verify the user by sending the activation link on email followed by a reminder
7. Ability to sync all accounts, associated with the customer depending upon the account used for registration, to the registered user profile
8. Ability to use login Help (Forgot username, Forgot Password, Problem Signing in) for assistance
9. Ability to login with valid username and password
10. Ability to block the IP/Account during incorrect login/registration attempts
11. Ability to provide biometric login depending upon device

#### My Account & Dashboard:

1. Ability to show/edit personal contact info (Email Address, Phone Number) entered during registration to the user
2. Ability to show/edit login info (Username, Password) entered during registration to the user
3. Ability to add/edit personal info (Secondary Email Address, Secondary Phone Number) entered during registration to the user
4. Ability to set various marketing preferences at a user level
5. Ability to give the add / edit / delete payment methods (Credit card, Bank account)
6. Ability to set the notification preferences (Email only) at user+account level
7. Ability to set quiet hours (Part of notification preferences)
8. Ability to make an account as default for better user experience
9. Ability to link accounts with the profile
10. Ability to unlink accounts from the profile
11. Ability to show/update account level nickname
12. Ability to show/update account level enrollment for bill types (Paperless, Paper, Both)
13. Ability to show/update the account level mailing address
14. Ability to select time zone for a personalized experience
15. Ability to download a user's data to meet the compliance regulations
16. Ability to submit a delete user's profile request
17. Ability to gather answers on the surveyed rolled out under About My home (Residential Customers) and About My business (Commercial Customers)
18. Ability to delegate the access of account (Guest User)
19. Ability for a guest to register a fresh or use its existing profile to access the invited account
20. Ability to resend the activation or edit the access details of the invited guest user  
Ability to inform users via standard email notifications for important updates related to the

**account and profile**

21. Ability to show the welcome screen - First Time User Only, to allow them to set basic optional notification preferences for a better experience
22. Ability to show the billing summary on the dashboard and redirect to the billing modules: remaining balance, due balance, and due date.
23. Ability to show the bill comparison on the dashboard for latest bill, second latest bill and last year's bill corresponding to the latest this year.
24. Ability to show or manage the banners on the right rail contents and Auto Pay Carousel
25. Ability to select account from account selection (customer with more than 1 account)

**Generic Functionalities (across platform)**

26. Ability to choose the account/property address linked to the profile so that account specific information can be accessed across the platform
27. Ability to show the FAQs
28. Ability to greet the user based on the time zone
29. Ability to show the Terms & Conditions and Privacy Policy
30. Ability to show the total number of unread notifications on the bell icon and redirect to the notification inbox

**Billing & Payment:**

1. Ability to Show Due Balance & Credit from (Account level)
2. Ability to show Pass Due Balance (Account level)
3. Ability to open/export Bill PDF (Account level)
4. Ability to show Due Date (Account level)
5. Ability to show Bill Period (Account level)- Support monthly and bi-monthly billing period
6. Ability to access bill history up to 3 columns- Bill Date, Amount, Bill PDF (Account level)
7. Ability to access payment history up to 3 columns- Payment Date, Payment Amount, Channel (Account level)
8. Ability to export bill details to XLS (Account level)
9. Ability to export bill history to XLS (Account level)
10. Ability to export payment history to XLS (Account level)
11. Ability to set up Autopay- SEW scheduler (Account level)
12. Ability to set up Autopay- send AP details to CIS (Account level)
13. Ability to make 1-time payment (Pre-Login and Post Login)
14. Ability to integrate with utility payment vendor or SEW payment service with standard payment API + iframe (Account level)- Supports CC, Debit, and ACH
15. Ability to integrate with Paypal, Venmo, Apple and Google Pay (Account level)- Supports CC, and Debit
16. Ability to make unauthenticated 1-time payment- 2 fields validation, and SCM will be displaying total due balance post validation
17. Ability to display payment location on google map
18. Ability to submit billing queries to CSR
19. Ability to access bill history up to 3 columns- Bill Date, Amount, Bill PDF (Account level)

**Usage:**

1. Ability to show consumption monthly average in UOM (KwH, Gal, CF)
2. Ability to show the highest consumption this year in UOM (KwH, Gal, CF)

3. Ability to show monthly usage (Non-AMI)
4. Ability to show interval usage 15 mins, 30 mins, hourly base on data received (AMI- client provide/no calculation)
5. Ability to view usage at meter level (meter selection dropdown)
6. Ability to toggle between UOM and Dollar (Billing Period Usage only for \$)
7. Ability to show usage graph- Y-axis unit consumption, X-axis usage months
8. Ability to export consumption data according to user filter
9. Ability to filter by usage year
10. Ability to set usage alert (AMI)
11. Ability to view rate plan- client to provide rate table data or redirect link
12. Ability to see Usage use so far this month if interval and daily AMI data is available for the utility account for UOM and Dollar consumption.
13. Ability to see projected usage for the current billing period if interval and daily AMI data is available for the utility account for UOM and Dollar consumption.
14. Ability to select an account from the account selector, the user will be able to view usage & compare at the meter level associated with the selected account.
15. Ability to switch between different commodities (Gas, Electric, and Water) if the data structure is supported under utility account.

#### **Notification:**

##### **Billing**

1. Ability to send notification X days before bill due date- If balance is > \$0.00
2. Ability to send notification on due date - If balance is > \$0.00
3. Ability to send notification X days pass bill due date (Delinquency) - If balance is > \$0.00
4. Ability to send notification X days before autopay withdraw

##### **Payment**

1. Ability to send confirmation when one time payment is successful
2. Ability to send confirmation when one time payment is declined
3. Ability to send notification when SCM execute autopay transaction successfully
4. Ability to send notification when autopay payment transaction was declined for this customer
1. Usage Ability to send high usage alert
2. Ability to send leak alert (applicable when leak alerts are in scope)

##### **Service**

1. Ability to send confirmation when a service - move in request has been submitted successfully
2. Ability to send confirmation when a service - move out request has been submitted successfully
3. Ability to send confirmation when a service - transfer request has been submitted successfully
4. Ability to send confirmation when a service - others request has been submitted successfully

##### **My Account/Profile**

1. Ability to send notification when profile information has been updated successfully
2. Ability to send notification when notification preferences has been updated successfully
3. Ability to send notification when payment methods has been added/deleted/Edited successfully
4. Ability to send notification when a guest user has been invited/added to the profile successfully



**Certificate Of Completion**

Envelope Id: 8F1A8A7462D64B06A764DCDB63B275F0

Status: Completed

Subject: Complete with DocuSign: SCM SOW - Town of Apex 23.04.06 (Clean).pdf

Source Envelope:

Document Pages: 16

Signatures: 1

Envelope Originator:

Certificate Pages: 1

Initials: 0

Joseph

AutoNav: Enabled

15495 Sand Canyon Ave suite 100

Envelopeld Stamping: Enabled

Irvine, CA 92618

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

joseph.chaparo@sew.ai

IP Address: 64.147.23.106

**Record Tracking**

Status: Original

Holder: Joseph

Location: DocuSign

4/6/2023 11:16:17 AM

joseph.chaparo@sew.ai

**Signer Events**

Harman Sandhu

Harman.Sandhu@sew.ai

President

SEW

Security Level: Email, Account Authentication  
(None)**Signature**

DocuSigned by:



9764AAE0B4E4496...

Signature Adoption: Pre-selected Style  
Using IP Address: 146.70.172.10**Timestamp**

Sent: 4/6/2023 11:17:15 AM

Viewed: 4/6/2023 11:32:34 AM

Signed: 4/6/2023 11:32:44 AM

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

Hashed/Encrypted

4/6/2023 11:17:15 AM

Certified Delivered

Security Checked

4/6/2023 11:32:34 AM

Signing Complete

Security Checked

4/6/2023 11:32:44 AM

Completed

Security Checked

4/6/2023 11:32:44 AM

**Payment Events****Status****Timestamps**



### Order Form for Premium Payment Services

Between **IPaySmart Inc. (SEW Affiliate Payment Service)**  
**15495 Sand Canyon Ave., STE 100**  
**Irvine CA 92618**  
**("Provider")**

And **Town of Apex**  
**73 Hunter Street**  
**Apex, NC 27502**  
**("Customer")**

#### 1. Order Form

When signed and returned to Provider by Customer this order form by and between Customer and Provider is a binding agreement for the Services listed in this form and effective on the date signed by Customer (collectively, the "Agreement"). This Agreement is governed by and incorporates the terms and conditions that begin on page 3 below.

#### 2. Premium Payment Subscription & Fees

The table below outlines implementation fees and subscription levels as selected by Customer by checking the relevant boxes below.

Absorbed FEE MODEL - PAID BY UTILITY / Convenience FEE MODEL – PAID BY CUSTOMER		
<input checked="" type="checkbox"/> <b>Cards</b> (Credit/Debit - Visa, MasterCard, Discover, Amex, Apple Pay, Google Pay)		
Customer / Transaction Type	Fee per Transaction	Transaction Limit
Residential & Commercial	Interchange PLUS \$0.50	\$10,000.00
<input checked="" type="checkbox"/> <b>Wallets</b> (PayPal, Venmo)		
Customer / Transaction Type	Fee per Transaction	Transaction Limit
Residential & Commercial	1.75%	\$10,000.00
<input checked="" type="checkbox"/> <b>ACH / eCheck</b>		
Customer / Transaction Type	Fee per Transaction	Transaction Limit
Residential & Commercial (Includes ODFI and DDA Validation Fees)	\$0.10	\$10,000.00
<input checked="" type="checkbox"/> <b>Online Banking Consolidation</b>		
Customer / Transaction Type	Fee Per Transaction	Transaction Limit
Residential & Commercial (Includes CheckFree /Metavante, RP)	\$0.30	\$99,999.00
<input checked="" type="checkbox"/> <b>E-Lockbox</b>		
Customer / Transaction Type	Fee Per Transaction	Installation Fee
Residential & Commercial	\$0.30	None
<b>Other Fees and Terms</b>		
<ul style="list-style-type: none"> <li><b>Chargebacks:</b> \$2.95 per chargeback (applicable to Cards above)</li> <li><b>Returned ACH - Insufficient Funds (NSF)</b> – \$0.75 per ACH NSF Return</li> <li><b>Returned ACH – Unauthorized</b> \$4.95 per ACH Unauthorized Return</li> <li><b>One time and AutoPay</b> – ACH, Card and PayPal are available for One Time and AutoPay. Venmo is only available for One Time Pay.</li> <li><b>Terms Apply:</b> Standard card and bank terms apply. Apple Pay and Google Pay functionality may be restricted to respective browsers.</li> </ul>		



### 3. Payment Channels

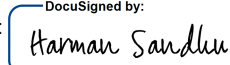
✓	Channel / Product Code	Fee	Description
<input checked="" type="checkbox"/>	<b>Web Portal</b> (IPS-10-Web)	<b>N/A</b> (Integrated with SEW SCM Web Portal)	Utility web portal experience integrated within provider website.
<input checked="" type="checkbox"/>	<b>Mobile Apps iOS &amp; Android</b> (IPS-10-Mobile)	<b>N/A</b> (Integrated with SEW SCM Web Portal)	Utility branded mobile apps deployed and maintained in Apple and Google app stores.
<input type="checkbox"/>	<b>Automated IVR (Inbound)</b> (IPS-IVR)	\$399 per month + Transaction Fees in Section 2 above	24-hour phoneline accessible for end consumers to make payments over the phone using automated interface. Inbound calls only.
<input type="checkbox"/>	<b>Live Agent Payments</b> (IPS-LA)	\$5.99 / transaction + Transaction Fees in Section 2 above	Provider customer service agents available during business hours + weekends to assist Customer's end consumers with making payments over the phone.
<input type="checkbox"/>	<b>SMS Text-to-pay - Long Code Messaging</b> (IPS-TXT-SC)	<b>N/A</b>	Automated SMS Text based payments using digital wallets.
<input type="checkbox"/>	<b>SMS Text-to-pay - Long Code Messaging</b> (IPS-TXT-LC)	<b>N/A</b>	

### 4. Other Plans and Subscriptions

✓	Product Name	Fee	Description
<input type="checkbox"/>	24 Hour Support	\$399 per month	24X7 support for technical support after hours and on weekends.
<input type="checkbox"/>	We Smart Advanced Chatbot – Bill Payment	<b>N/A</b>	
<input type="checkbox"/>	Live Chat Agent Add-on for agent hand-off	<b>N/A</b>	

All subscription fees for products selected above are paid annually upfront.

### 5. Acceptance and Authorization

Customer	Provider
Signature:	Signature: 
Name:	Name: Harman Sandhu
Title:	Title: President
Effective Date:	Date: 4/6/2023

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

Antwan Morrison, Finance Director

**Premium Payment Services Terms and Conditions**

iPaySmart, Inc. and its affiliates ("Provider") have developed certain proprietary software applications and services for the Customer, and the Parties have agreed that Provider will make the Services described in the Order Form available to the Customer hereunder. Therefore, in consideration of the mutual covenants, terms, and conditions set forth below and in any relevant exhibits or documents, the adequacy of which is hereby acknowledged, the Parties agree as follows

**1. Definitions**

- 1.1. **"Agreement"** or **"Contract"** shall refer to the main agreement or contract for Cloud Services, as amended from time to time.
- 1.2. **"Approved Payment Types"** shall mean credit and debit means of payment, such as Visa®, MasterCard®, Discover®, E-check and other payment methods as deemed necessary by Provider.
- 1.3. **"Average Bill Amount"** shall mean the total amount of Payments processed through Provider in each month divided by the number for the same month.
- 1.4. **"Effective Date"** shall be the last date upon which the parties signed the Agreement. The Agreement will not be effective against any party "until that date."
- 1.5. **"Enhancement(s)"** shall refer to any personalization of the Provider Platform to achieve certain additional functional requirements of the Customer, as clarified and agreed during implementation.
- 1.6. **"Fee Assumptions"** shall mean information used to calculate the Provider Service Fee, including the projected Average Bill Amount, projected payment method mix (credit vs debit vs e-check) and the total Payment Amount processed each month resulting from Non-Qualified Transactions.
- 1.7. **"Initial Setup"** shall mean the first personalization and activation of the standard service as specified during the implementation process.
- 1.8. **"IVR"** shall mean an interactive telephone voice response system that facilitates payment by Users.
- 1.9. **"Launch Date"** shall be the date on which Customer launches the Services to the Users.
- 1.10. **"Monthly Uptime Percentage"** shall refer to the difference between 100% and the percentage of time during which the Services are unavailable.
- 1.11. **"Non-Qualified Transaction"** shall mean (i) a Payment made with a card generally issued for business use that results in interchange fees or other processing charges assessed by a Provider Authorized Processor or card association that are higher than those charged for transactions with cards issued for consumer use; (ii) a Payment that does not qualify for reduced interchange fees under programs that Customer may be participating in; or (iii) a Payment that exceeds the transaction limits established in the Agreement. These high-cost cards may include, among others, corporate cards, virtual cards, purchase cards, business cards, and travel and entertainment cards.
- 1.12. **"Order Form"** shall mean the check-box list of services selected by Customer and fee schedule attached to the Agreement.
- 1.13. **"Payment"** shall mean payment by a User through the Platform for Customer's services, Customer's bills, or other amounts owed to Customer.
- 1.14. **"Payment Amount"** shall mean the amount of a Payment.
- 1.15. **"Reversed or Charged-back Transactions"** shall mean canceled transactions due to User error, a User's challenge to Payment authenticity, or action by a financial institution or a Provider Authorized Processor (commonly referred to as ACH or eCheck returns or credit/debit card chargebacks).
- 1.16. **"Services"** shall refer to payment and payment processing services for the Customer powered by iPaySmart, Inc. and its affiliates.
- 1.17. **"Provider Authorized Processor"** shall mean a Provider authorized merchant account provider and payment processing gateway.
- 1.18. **"Provider Platform"** shall refer to Customer's deployment of the digital cloud payments platform, or other applicable software sold directly or through an authorized reseller.
- 1.19. **"Term"** shall mean the period set forth in Section 4 below.
- 1.20. **"Transaction Fees"** shall mean costs and fees incurred by Provider in the ordinary course of processing payments on behalf of Customer.
- 1.21. **"Interchange Fees"** (IC) shall mean interchange, assessment, and scheme fees and bank foreign handling fees, which are passed through to Customer by Provider at Provider's cost.
- 1.22. **"User"** shall mean the users of Customer's services.

**2. Scope and General Terms**

- 2.1. Provider shall provide Services selected by Customer on the attached Order Form in accordance with the terms and conditions within the Agreement. Provider or its authorized agents may, on behalf of customer, procure, setup, and maintain third-party services in order to properly provide the Services for the Customer, dependent upon the Customer's selections. Services enable Users to make Payments by Approved Payment Types. Payments may be made via IVR or secure Internet interface provided on the Provider Platform.
- 2.2. Customer may use the Services solely to:
  - a) Use and make the Services available to Users in connection with the Provider Platform.
  - b) Use the Services in connection with and as necessary for Customer's activities pursuant to these terms or the terms set forth in an applicable license agreement, SaaS subscription agreement, or cloud services agreement.
  - c) Allow any affiliates to use the Services, subject to the terms hereunder.
- 2.3. Enhancements
  - a) The Parties agree that the Services are provided on a "platform as a service" basis, and not as a result of custom software development. The Provider Platform may be personalized to achieve certain additional functional requirements of the Customer as clarified and agreed during implementation ("Enhancements"). Enhancements may include some or all of the features included in any technical requirements or similar document provided to Provider. The Parties will fully cooperate with one another to: 1) ensure that requirements with respect to Enhancements are clarified as needed; 2) accept Provider's proposed reasonable alternatives to achieve Customer's functional objectives within the limits of the Provider Platform; and 3) accept Provider's reasonable estimates of time of completion, designs and plans with respect to agreed Enhancements. There will be no fee charged by Provider to Customer for Enhancements, provided Provider designs and plans are accepted by Customer. If the Services are to be offered at multiple locations, or if the Services include multiple Enhancements, the Parties will agree to a phased implementation





- 2.4. In relation to the Services provided under this Agreement, Customer agrees that:
- Customer shall not transfer, resell, lease, license, or otherwise make available the Services or Provider Platform to third parties or offer it on a standalone basis, or make any representation, warranty, or guarantee to any end user or third party on behalf of Provider concerning the Services.
  - Provider shall be entitled to use any Customer data that is necessary to provide the Services.
  - Customer's use of the Services does not violate the terms of the Agreement or these terms and conditions.
  - Customer shall not use the Services or Provider Platform to create, train, or improve (directly or indirectly) a substantially similar product or service.
  - Customer shall not reverse engineer, decompile, disassemble, or otherwise create, attempt to create or derive, or permit or assist anyone else to create or derive the source code of any Services or Provider Platform provided in connection with the Agreement or these terms and conditions.
- 2.5. Provider will charge Customer's utility consumers a service fee for each Payment ("Provider Service Fee") or invoice Customer separately per transaction, as provided in the attached order form.
- The Provider Service Fee is to be collected in addition to the corresponding Payment or invoiced to Customer, as designated by Customer.
  - For each Payment, the Provider Service Fee will be collected and Provider will pay the corresponding processing and related fees of the Approved Payment Types ("Transaction Fees") except for fees related to Reversed or Charged-back Transactions.
  - A schedule of Provider Service Fees is the Order Form. The Provider Service Fee is based on the Fee Assumptions. Customer shall be billed additional Provider Service Fees equal to three percent of the Non-Qualified Transaction amount for each month.
  - Provider may amend the terms upon prior written notice to Customer if a change is caused by changes in the card or payment system rules or changes in credit card fees or if the Fee Assumptions prove to have been materially incorrect. The amended Service Fee shall take effect thirty (30) days after written notice to Customer.
- 2.6. Explicit User Confirmation - Provider shall confirm the dollar amount of all Payments, and when paid by the User, the corresponding Provider Service Fee to be charged to a card and electronically obtain the User's approval of the charges prior to initiating card authorizations transaction. Provider shall provide User with electronic confirmation of all transactions.
- 2.7. Merchant Account - Provider will arrange for Customer to have a merchant account with the Provider Authorized Processor for processing and settlement of the card transactions.
- 2.8. Card Authorization - For authorization purposes, Provider will electronically transmit all card transactions to the appropriate card-processing center, in real time as the transactions occur.
- 2.9. Client's Responsibilities - In order for Provider to provide the Services outlined with the Agreement, Customer shall cooperate with Provider by:
- Entering into all applicable merchant card, cash management, ACH origination, or kiosk agreements.
  - Keeping throughout the duration of the Agreement or these terms and conditions, a bill payment link connecting to Provider System at a prominent and mutually agreed location on Customer's website. The phone number for IVR payments will also be added to the web site. Customer will also add the IVR payment option as part of Customer's general phone system.
  - Sharing User Adoption marketing as may be performed under this or another agreement or Order Form.
  - Launching the Service within thirty (30) days of the merchant account setup.
  - Dedicating sufficient and properly trained personnel to support the implementation process and its use of the Services in compliance with all laws applicable to its use of the Services.
- 2.10. Provider shall make the Services available and guarantee a Monthly Availability of 99.5%, notwithstanding any unavailability or performance issues of the Services caused by or as a result of the following (collectively, the "Exclusions"):
- Factors that are outside of Provider's reasonable control, including, without limitation, any force majeure event, telecommunications provider-related problems or issues, internet access or related problems occurring beyond the point in the network where Provider maintains access and control of the Services.
  - Any actions or inactions of Customer or any third party.
  - Any Customer application(s), equipment, software, or other technology, third party equipment, software, etc. not authorized for use with the Services.
  - Routine or scheduled maintenance for which Provider will provide at least twenty-four (24) hours of advanced notice.
  - Problems or issues related to alpha, beta, or not otherwise generally available in Provider features or products.

### 3. Payment

- 3.1. **Net 30.** Customer agrees that payment is due upon receipt of Provider's invoice, payable within 30 days of the date of such invoice.
- 3.2. **Offsets.** Customer agrees that Provider shall have the right to deduct the value of sums collected on behalf of Customer during the Term.

### 4. Term

- 4.1. The term shall commence on the Effective Date, set forth upon the execution of the Agreement for a five (5) year period.

### 5. Renewals

- 5.1. This Agreement shall automatically renew upon the expiration of the Term for three (3) year intervals ("Renewal Term"). For the avoidance of doubt, Provider shall not be required to refund any previously paid fees, regardless of when termination occurs during the Term or Renewal Term.

### 6. Settlement and Payment Terms

- 6.1. Provider together with its authorized card processor shall forward the payment transactions, and when paid by User, the corresponding Provider Service Fee to the appropriate card organizations for settlement (other than the Provider Service Fee) directly to Customer's depository bank account previously designated by Customer (hereinafter the "Customer Bank Account"). When as provided in Schedule A Customer pays the Provider Service Fee, Provider will invoice Customer and debit the fees from Customer's account on a monthly basis.
- 6.2. Provider together with the Provider Authorized Processor will continuously review its settlement and direct debit processes for its simplicity and efficiencies. Customer and Provider agree to fully cooperate with each other if Provider were to change its settlement and invoicing processes.
- 6.3. Customer shall be invoiced for applicable one-time initial setup fees, maintenance and support fees, and monthly service type fees upfront upon signing of the Agreement and annually thereafter if applicable. The usage fees applicable to inbound and outbound SMS messaging, voice call messages, or interactive voice recording messages, that are selected by the Customer shall be invoiced based on monthly intervals. Customer agrees to make all payments to Provider within thirty (30) calendar days after receipt of invoice. Late invoices will incur a late payment fee of 1.5% or the maximum allowable under the law, whichever is less. If Customer's account is sixty (60) days or more overdue, Provider reserves the right with prior written notice to withhold performance of its obligations under the Agreement or these terms and conditions, without liability, until such payments are paid in full, or to terminate for cause. Fees under the Agreement and these terms and conditions shall additionally be exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for all applicable taxes, levies, or duties hereunder based on Customer's income.



## 7. Insights

- 7.1. **Aggregate Data, Anonymized.** Customer hereby grants Provider the right to anonymize and aggregate data generated from the Provider Platform to create insights for comparison of local, regional, national and global usage, consumption or other trends resulting from such data.
- 7.2. **Customer Access.** Provider will enable Customer to display aggregated and anonymized insights data to enhance the customer experience for Customer's end users.

## 8. PCI DSS

- 8.1. For PCI Compliance, Customer shall have two options for using the Services - Provider Platform; or Any other configuration.
- 8.2. To eliminate or substantially reduce any PCI compliance risks, and to render all Customer systems out of scope from PCI compliance requirements, Client agrees to use Provider's Platform, were Provider uses its own platform to capture payments and to manage the entire end to end user experience from the following channels for payment acceptance: Web, Mobile, IVR, and Point-of-sale devices operated by Customer's employees (per Provider's recommended setup), recurring payments, eBill Presentment, etc. If Customer however chooses any other integration, such as third-party web pages integrated with APIs, third-party gateway pages, or its own IVR systems or other point-of-sale or customer self-service solutions, or a cashiering model from a third-party, Customer expressly agrees that Customer shall not be exempt from PCI requirements and shall be liable for any data breaches occurring on its own systems as Customer recognizes that Customer systems are participating in the transactions and are in scope for PCI compliance. Under those circumstances, Provider shall not be responsible for any PCI obligations outside of Provider's own platform, and Provider expressly disclaims any PCI or security obligations related to Customer systems or third-party systems that participate in the payment transactions that are outside of the Provider Platform.
- 8.3. Provider highly recommends that Customer uses the Provider Platform to substantially reduce its PCI compliance and data breach risks.
- 8.4. If Customer chooses to use any other option than the Provider Platform, Customer agrees and warrants that Customer shall remain PCI compliant throughout the term of the Agreement. For clarity, Customer's utilization PCI compliant applications, such as its billing software, does not eliminate the need for Customer to be PCI compliant. Per PCI requirements, if a party's systems participate in processing, accepting, or storing card transactions, that party is required to be PCI compliant as the systems are in scope.

## 9. Reversed or Charged-Back Transactions

- 9.1. With respect to all Reversed or Charged-back Transactions, Customer authorizes Provider and Provider Authorized Processor (and/or the respective card organizations) to debit the Customer Bank Account for the Payment Amount and Provider shall refund the card organization for the credit back to the User, the corresponding Provider Service Fee, if any. Provider, together with Provider Authorized Processor(s), will continuously review its processes for Reversed or Charged-back Transactions for simplicity and efficiencies. Customer and Provider agree to reasonably cooperate with each other if Provider requires any change to its settlement and invoicing processes for these transactions.

## 10. Warranty and Liability

- 10.1. **DISCLAIMER OF WARRANTY.** WITH THE EXCEPTION OF THE SERVICE LEVEL COMMITMENT SET FORTH IN SECTION 2.4, THE SERVICES UNDER THESE TERMS AND CONDITIONS ARE PROVIDED "AS-IS," EXCLUSIVE OF ANY WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED. PROVIDER DOES NOT WARRANT THAT THE SERVICES ARE OR WILL BE ERROR-FREE OR MEET ALL CUSTOMER REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, SERVICES MAY BE SUBJECT TO LIMITATIONS OF THE TELECOMMUNICATIONS PROVIDER, HOSTING ENVIRONMENT, DELAYS, INTERNET SERVICE PROVIDER, THIRD PARTIES, ACTIONS OR INACTIONS OF THE CUSTOMER, AND OTHER PROBLEMS INHERENT TO THE USE OF MASS-MARKET NOTIFICATION SERVICES AND ELECTRONIC COMMUNICATIONS. PROVIDER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, DELETIONS, LOSS OF DATA, DATA CORRUPTION, THIRD-PARTY PUBLICATION, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS NOT CAUSED BY PROVIDER OR OUTSIDE OF PROVIDER'S REASONABLE CONTROL. TO THE EXTENT SUCH DISCLAIMER CONFLICTS WITH APPLICABLE LAW, THE SCOPE AND DURATION OF ANY APPLICABLE WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW. PROVIDER SHALL NOT BE LIABLE AND WILL HAVE NO OBLIGATION TO INDEMNIFY CUSTOMER FOR END USER DATA OR ANY OTHER PERSONALLY IDENTIFIABLE INFORMATION SENT TO PROVIDER.

- 10.2. **LIMITATION OF LIABILITY.** IN NO EVENT WILL PROVIDER'S AND ITS LICENSORS' TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATING TO THESE TERMS AND CONDITIONS EXCEED THE SPECIFIC DOLLAR AMOUNT OF THE PROVIDER SERVICE FEE PAID TO PROVIDER FOR THE PARTICULAR PAYMENT TRANSACTION WHICH IS THE SUBJECT MATTER OF THE CLAIM OF DAMAGE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL PROVIDER OR ITS LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR SIMILAR DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOST PROFITS, OPPORTUNITIES, DATA, OR USE, ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

- 10.3. **Recordings and Communications Monitoring.** In the event Customer records or monitors any SMS messages, IVR communications, or other communications using the Services, then Customer represents and warrants that it shall comply with all applicable laws prior to doing so at all times. Provider makes no representations or warranties with respect to recording or monitoring telephone calls/IVR communications, SMS messages, or other communications, and recommends that Customer always secure prior consent to record or monitor communications using the Services. Customer acknowledges that these representations, warranties, and obligations are essential to Provider's ability to provide the Services, and further agrees to indemnify Provider and its service providers in the event of any acts or omissions in connection with recording or monitoring IVR communications, SMS messages, or other communications, whether such claims arise under contract, tort, statute, or other legal theory.

## 11. Additional Terms

- 11.1. **Short Codes.** If Customer utilizes a short code with Provider as a part of the Services, Customer:
- Shall not change the short code use case without first having such new use case approved by Provider or the applicable provider.
  - Shall stop sending additional messages to any party that replies by texting "STOP" (or the equivalent) to the short code, except for a single text message confirming that such party has been successfully opted out of the short code.
  - Shall follow all applicable rules, regulations, laws, statutes, or guidelines set by state, local, or federal legal authorities, or as imposed by Provider or its service providers pertaining to the use of short codes or voice recordings.
- 11.2. **Compliance with Laws.** Both Customer and Provider agree to comply with the applicable laws relating to each Party's respective activities pursuant to the Agreement and these terms and conditions.
- 11.3. **No Waiver.** Our failure to enforce at any time, any provision of the Agreement, these terms and conditions, or any other applicable policy or signed writing in connection hereto shall not waive our right to do so later. Any waiver must be in writing and signed by both Parties to be legally binding.
- 11.4. **Independent Contractors.** The Parties are independent contractors and will so represent themselves in all regards. Neither Party is the agent of the other, and neither may make commitments on the other's behalf.
- 11.5. **Force Majeure.** No delay, failure, or default, other than a failure to pay fees, will constitute a breach of these terms and conditions, to the extent that such delay, failure, or default, or any other breach is caused by acts of war, terrorism, earthquakes, other acts of God or of nature, strikes or labor



disputes, embargoes, or other causes beyond the performing Party's reasonable control.

- 11.6. **Assignment & Successors.** Customer may not assign the Agreement, these terms and conditions, or any of its rights or obligations hereunder without Provider's prior written consent. Except to the extent forbidden herein, these terms and conditions will be binding upon and inure to the benefit of the Parties' respective successors and assigns. Any attempt to assign, transfer, or delegate these terms and conditions shall be null and void.
- 11.7. **Notices.** Any notice required or permitted to be given under these terms and conditions will be given in writing to the receiving Party by personal delivery, certified mail, return receipt requested, overnight delivery recognized by a nationally recognized carrier, or by email upon confirmation of receipt. Notices to Provider shall be copied to [contracts@ipaysmart.ai](mailto:contracts@ipaysmart.ai).
- 11.8. **Modification.** Modifications to the Services and associated fees thereof may be made from time to time, and any modifications made to the Services, or associated fees, shall be noticed to the Customer thirty (30) days prior to such modifications taking effect.
- 11.9. **Severability.** To the extent permitted by law, the Parties waive any provision of law that would render any clause of these terms and conditions invalid or unenforceable. In the event that a provision herein is held to be invalid or unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by law, and the remaining provisions of and these terms and conditions will continue in full force and effect.
- 11.10. **Choice of Law & Jurisdiction:** These terms and conditions will be governed by the laws of the State of North Carolina, without reference to any conflicts of law principles. The Parties consent to the personal and exclusive jurisdiction of the federal and state courts of Wake County, North Carolina.
- 11.11. **Conflicts.** Should and these terms and conditions conflict with any other agreements or terms, these terms and conditions will govern.
- 11.12. **Construction.** The Parties agree that these terms result from negotiations between them. These terms and conditions will not be construed in favor of or against either party by reason of authorship.
- 11.13. **Entire Agreement.** These terms and conditions, along with the Agreement, set forth the entire agreement of the Parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter, with the exception of an applicable license agreement, SaaS subscription agreement, or statement of work. Neither Party has relied upon any such prior or contemporaneous communications except those expressly referenced and named herein.
- 11.14. **Amendment.** These terms and conditions may only be amended in writing by authorized representatives of each Party.
- 11.15. **E-Verify.** SEW shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). SEW shall require all of SEW's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).
- 11.16. **Anti-Human Trafficking.** SEW warrants and agrees that no labor supplied by SEW or SEW'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.
- 11.17. **Nondiscrimination.** Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, SEW hereby warrants and agrees that SEW 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.
- 11.18. **Non-appropriation.** Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Customer 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 the Customer to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Customer.



### Implementation Services Addendum

Pursuant to the agreement between iPaySmart, Inc. ("Provider") and Customer under the Order Form for Premium Payment Services included herein, the Customer has engaged the Provider to deliver the following services.

#### Scope of Services

The scope for services includes the following key implementation activities:

1. Conducting a solution confirmation workshop for payment integration to incorporate Customer's business rules.
2. Configuration and setup of the Payment Services as mentioned below.

Selection	Activity	Description
<input checked="" type="checkbox"/>	Integration with Customer system	Client CIS/Billing System: API or daily file transfer using Secure FTP for posting payment. Set up of SFTP and configuration of batch jobs for the transfers of daily payment reconciliation reports.
<input checked="" type="checkbox"/>	Setup web payments	Configure and setup white labeled web portal for online payment options with Customer branding and linked to Customer's website.
<input checked="" type="checkbox"/>	Setup mobile apps	Configure and deploy white labeled Apple iOS and Android mobile apps with Customer branding.
<input checked="" type="checkbox"/>	Setup notification services	Account set up and configuration of all billing notifications based on designated channels as outlined in this agreement.
<input checked="" type="checkbox"/>	Customer Service Portal (CSP)	Configuration of CSP Payment Analytics to provide summary dashboard, payment details and reconciliation reports of payment transactions. Client staff can make payment transactions for customers in CSP.
<input type="checkbox"/>	Automated IVR line setup	Setup inbound automated IVR phone line for end consumers to call in and make automated payments (up to 3 accounts max tied to a number).
<input type="checkbox"/>	Live agent service setup	Setup inbound live agent call line for end consumers to call in and make payments.
<input type="checkbox"/>	SMS Text / Text-to-Pay	Ability for customers to pay bills via text (up to 3 accounts max tied to a number)

#### Features In Scope

Payment Features In Scope		
Selection	Deliverable	Description
<input checked="" type="checkbox"/>	One-Time Payments - Authenticated	Customer is a registered user of payment portal and is required to Login to make payments.
<input checked="" type="checkbox"/>	One-Time Payments - Unauthenticated	Customer can make guest payment without being a registered user in the web portal.
<input checked="" type="checkbox"/>	Automatic Recurring Payments	Ability to enroll in autopay to have the full bill balance deducted monthly based on due date or selected days prior to due date (up to 10 days prior to due date).
Administrator Features In Scope		
Standard	Deliverable	Description
	Payment Setup	Merchant ID, Convenience Fees configuration
	Payment Dashboard	CSP Analytics Dashboard to show summary and details of payment transactions
	Payment Reconciliation Reports	Deposit summary report, deposit details report, chargeback reports, ECP return reports, transfer summaries. These reports will be provided via batch files as well as under Admin Portal
	Refunds and Voids	Ability for CSR to refund or void payment transactions via the Admin Portal



## Multi-Channel Notification Services

Powered by SEW

The following notification workflows are in scope of the implementation services.

Notification	Email	SMS	IVR
eBill Ready Notification	Y	Y	N
Payment Reminder	Y	Y	N
Payment Delinquent	Y	Y	N
Payment Plan/Arrangement Enroll/Unenroll Confirmation	N	N	N
Autopay Enroll/Unenroll Confirmation	Y	Y	N
Text-to-pay	N	N	N

Note: All outbound notifications shall be one-way with exception of Text to pay and IVR payment. SMS and IVR notifications require appropriate subscription to be purchased in the Order Form.

### Assumptions

1. Client shall be responsible for coordinating the access to any Client owned and third-party data and interfaces required for integration. These API's/services are expected to be fully tested by Client and error free.
2. Client will provide timely responses to Provider for any of Provider's information needs, as well as timely review of project documents provided.
3. To the extent feasible, Provider will utilize existing web service interfaces to meet the requirements stated in this Addendum.
4. Provider team will migrate existing Customer Notification preference data to the provider platform however any validation or cleansing of the source data is not in scope. Provider team will work with the Client team to identify and catalog the data for migration and agree upon a migration strategy. Upon completing the strategy for data conversion and migration, Provider shall be responsible for taking the data in the source format and translate and convert to the IPS platform.
5. Provider will assist Client personnel or designated training provider with preparation of materials and delivery of the Train-the-Trainer program. Training materials will only include software User Guides adapted for the Client software modules and features in scope. Development of tailored training material to incorporate the Client's business process is not in scope but may be added as part of a separate Change Request.
6. Training will be conducted in a train the trainer format. (CSRs to be trained by the Trainers). End user (Utility customer) training is not in scope of this SOW.
7. Client Trainers will deliver end-user training with Provider trainers in a supporting role. The Client Training Coordinator will be responsible for scheduling end-users, material duplication, and training facilities. Provider will assign a Trainer from Provider team to work with Client during Training sessions.
8. Provider will provide a template with test case scenarios for testing. Client shall prepare and provide the required test data sets that meet the test scenario on time in the QA environment while ensuring data quality. Test data preparation activity may include Data cleaning, conversion, migrating data from a legacy system and shall be Client's responsibility.
9. Client shall be responsible for providing test data on timely basis for testing of all functional scenarios in scope of the project.
10. All project activities will be performed, and Deliverables will be created in English.
11. The Client will ensure that they have appropriate agreements in place with third parties whose work may affect Provider's ability to provide the Services. Unless specifically agreed to otherwise in writing, Client is responsible for the management and performance of the third parties, and for any third-party hardware, software or communications equipment used in connection with the Services.
12. The Client will make key business users available to play critical roles in the workshop.
13. Provider and Client will review the scope and deliverable expectations before work begins in order to provide a common understanding by both parties.
14. The Client is responsible for identifying the trainers to participate in Train the Trainer activities, rooms for training sessions, managing enrollment and any costs associated additional training sessions and attendance of Client trainees and Provider personnel at such training sessions.

**Certificate Of Completion**

Envelope Id: 07E058EB320842D59FFAD77D9AB9F1CB

Status: Completed

Subject: Complete with DocuSign: Apex Order Form - SEW Premium Payment Services\_23.03.10.pdf

Source Envelope:

Document Pages: 8

Signatures: 1

Envelope Originator:

Certificate Pages: 4

Initials: 0

Joseph

AutoNav: Enabled

15495 Sand Canyon Ave suite 100

Envelopeld Stamping: Enabled

Irvine, CA 92618

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

joseph.chaparo@sew.ai

IP Address: 64.147.23.106

**Record Tracking**

Status: Original

Holder: Joseph

Location: DocuSign

4/6/2023 11:18:46 AM

joseph.chaparo@sew.ai

**Signer Events**

Harman Sandhu

Harman.sandhu@ipaysmart.ai

President

Security Level: Email, Account Authentication  
(None)**Signature**

DocuSigned by:



B7A85CCC7BB8412...

Signature Adoption: Pre-selected Style

Using IP Address: 146.70.172.10

**Timestamp**

Sent: 4/6/2023 11:19:33 AM

Viewed: 4/6/2023 11:43:44 AM

Signed: 4/6/2023 11:43:56 AM

**Electronic Record and Signature Disclosure:**

Accepted: 4/6/2023 11:43:44 AM

ID: 687915d9-33ae-4d87-8bb8-534e382c1576

Company Name: SEW

**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

Hashed/Encrypted

4/6/2023 11:19:33 AM

Certified Delivered

Security Checked

4/6/2023 11:43:44 AM

Signing Complete

Security Checked

4/6/2023 11:43:56 AM

Completed

Security Checked

4/6/2023 11:43:56 AM

**Payment Events****Status****Timestamps****Electronic Record and Signature Disclosure**



## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, SEW (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

#### **How to contact SEW:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [Contracts@SEW.AI](mailto:Contracts@SEW.AI)

#### **To advise SEW of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [Contracts@SEW.AI](mailto:Contracts@SEW.AI) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

#### **To request paper copies from SEW**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [Contracts@SEW.AI](mailto:Contracts@SEW.AI) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

#### **To withdraw your consent with SEW**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:



- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [Contracts@SEW.AI](mailto:Contracts@SEW.AI) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify SEW as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SEW during the course of your relationship with SEW.



# Town of Apex

## Budget Ordinance Amendment No. 16

BE IT ORDAINED, by the Council of the Town of Apex that the following Budget Amendment for the Fiscal Year 2022-2023 Budget Ordinance be adopted:

### **General Fund**

#### **Section 1. Revenues:**

39902: Appropriated Fund Balance	\$3,229,550
<b>Total Revenues</b>	<b>\$3,229,550</b>

#### **Section 2. Expenditures:**

49661: Transfer to General Capital Project Fund	\$3,229,550
<b>Total Expenditures</b>	<b>\$3,229,550</b>

### **Electric Fund**

#### **Section 1. Revenues:**

39902: Appropriated Fund Balance	\$656,400
<b>Total Revenues</b>	<b>\$656,400</b>

#### **Section 2. Expenditures:**

49661: Transfer to General Capital Project Fund	\$656,400
<b>Total Expenditures</b>	<b>\$656,400</b>

### **Water & Sewer Fund**

#### **Section 1. Revenues:**

39902: Appropriated Fund Balance	\$715,410
<b>Total Revenues</b>	<b>\$715,410</b>

#### **Section 2. Expenditures:**

49661: Transfer to General Capital Project Fund	\$676,230
49661: Transfer to General Capital Project Fund (Stormwater)	\$39,180
<b>Total Expenditures</b>	<b>\$715,410</b>

**Section 7.** Within five (5) days after adoption, copies of this Amendment shall be filed with the Finance Officer and Town Clerk.

Adopted this the 25th day of April, 2022.

Attest:

\_\_\_\_\_  
Jacques K. Gilbert, Mayor

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



# Town of Apex

## CAPITAL PROJECT ORDINANCE AMENDMENT 2023-7

### 61 - General Capital Project Fund

BE IT ORDAINED, by the Council of the Town of Apex that the Capital Project Ordinance previously entitled "General Capital Project Fund" be amended as follows:

#### Section 1. The revenues anticipated for the projects are:

39710: Transfer from General Fund	\$3,229,550
39730: Transfer from Electric Fund	656,400
39777: Transfer from Water/Sewer Fund	715,410

<b>Total Revenues</b>	<b>\$4,601,360</b>
-----------------------	--------------------

#### Section 2. The expenditures anticipated are:

9225.0114 - 47300 ERP - Professional Services	1,248,750
9225.0114 - 47300 ERP - Capital Outlay	3,352,610

<b>Total Expenditures</b>	<b>\$4,601,360</b>
---------------------------	--------------------

**Section 3.** Within five (5) days after adoption, copies of this Amendment shall be filed with the Finance Officer and Town Clerk.

Adopted this the 25th day of April, 2023.

Attest:

\_\_\_\_\_  
Jacques K. Gilbert, Mayor

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

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 25, 2023

## Item Details

Presenter(s): Deputy Chief Mitch McKinney

Department(s): Police

### Requested Motion

Motion to declare one (1) badge and (1) service weapon (Glock Model 17 9mm handgun, Serial Number XTA-784) as surplus property; and, award to Retiring Officer Joseph S. Gianni who retired from the Apex Police Department.

### Approval Recommended?

### Item Details

North Carolina General Statute 20-187.2(a) allows the governing body of a municipality to, upon request, declare as surplus the badge and side arm of a retiring police officer. The statute states that the badge is to be awarded at "no cost" to the retiring member and that the side arm be awarded "at a price determined by such governing body".

Officer Joseph Gianni retired from the Apex Police Department as of March 31, 2023 and has made a request to be awarded his badge and service handgun.

In recognition of his 11 years of service in law enforcement to the Apex Police Department, Deputy Chief McKinney requests that one "Police Officer" badge and one handgun (described below) be declared "surplus", that the price for such handgun be set at \$1.00 (One Dollar) and that the badge and handgun be awarded to Retiring Officer Joseph S. Gianni.

- Glock Model 17 9mm handgun, Serial Number XTA-784

### Attachments

NONE





*"The Peak of Good Living"*

TOWN OF APEX  
NORTH CAROLINA

## *Proclamation*

### **Apex Small Business Week 2023**

*from the Office of the Mayor*

WHEREAS, For more than 50 years, the U.S. Small Business Administration (SBA) has celebrated National Small Business Week, which recognizes the critical contributions of America's entrepreneurs and small business owners; and,

WHEREAS, Small businesses are critical to the growth and economic vitality of our nation, region, and town; and,

WHEREAS, Small businesses in Apex sustain jobs, add to our community and culture, and bring innovative ideas and products to market; and,

WHEREAS, Small business create two-thirds of the new jobs in the U.S. each year, and represent 99.6% of all businesses in North Carolina; and,

WHEREAS, The Town of Apex is home to an array of locally owned shops, restaurants, and services; and,

WHEREAS, The Town of Apex and our small business partners have created a week of activities to celebrate our local small businesses.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim, the week of April 30th through May 6th, 2023, Apex Small Business Week in the Town of Apex, and encourage residents to join me in supporting Apex's small business community during Small Business Week and all year long.

I hereby set my hand and have caused the Seal of the Town of Apex, North Carolina, to be affixed this the 25th day of April 2023

Jacques Gilbert, Mayor



*"The Peak of Good Living"*

TOWN OF APEX  
NORTH CAROLINA

## *Proclamation*

### **Civilian Law Enforcement Professionals Week 2023**

*from the Office of the Mayor*

WHEREAS, Civilian law enforcement professionals play an essential role in coordinating various operations within law enforcement agencies; and,

WHEREAS, Civilian law enforcement professionals are vital contributors in today's law enforcement work environment and key public relations ambassadors in these organizations; and,

WHEREAS, The work of civilian law enforcement professionals requires advanced knowledge and expertise in communications, technology, project management, organization, analysis, customer service, criminal justice systems, community services, and the willingness to learn and accept new challenges; and,

WHEREAS, Much of the work of civilian law enforcement professionals is performed behind the scenes and often goes unrecognized; and,

WHEREAS, The Apex Police Department and Town of Apex depends upon the assistance, expertise, knowledge, and dedication of its civilian law enforcement professionals to serve the citizens of this town; and,

WHEREAS, Civilian Law Enforcement Professionals Week will be observed annually in Apex to show appreciation and gratitude for the contributions of our civilian law enforcement professionals.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim, the week of April 23rd through April 29th, 2023, CIVILIAN LAW ENFORCEMENT PROFESSIONALS WEEK in the Town of Apex, in honor of the men and women whose diligence and professionalism support the Apex Police Department and help keep our town safe.

I hereby set my hand and have caused the Seal of the Town of Apex, North Carolina, to be affixed this the 25th day of April 2023

Jacques Gilbert, Mayor



*"The Peak of Good Living"*

TOWN OF APEX  
NORTH CAROLINA

## *Proclamation*

### **Public Service Recognition Week 2023**

*from the Office of the Mayor*

WHEREAS, Our residents are served every single day by public servants at the federal, state, county, and municipal levels; and,

WHEREAS, The Town of Apex employs nearly 600 talented and hard-working people, who have amassed over 5,000 combined years of government service; and,

WHEREAS, In often difficult circumstances, our civil servants work to protect and improve quality of life for our residents, businesses, and visitors; and,

WHEREAS, The day-to-day operations of the town depend upon our fantastic staff, who ensure the trash gets collected, the water keeps running, and the lights stay on; and,

WHEREAS, Many public servants in our town risk their health and safety daily through the execution of their duties, including police officers, firefighters, and emergency services personnel; and,

WHEREAS, Public Service Recognition Week has been celebrated during the first week of May since 1985 to honor the people who serve our nation as federal, state, county, and municipal government employees.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim, the week of May 7th through May 15th, 2023, PUBLIC SERVICE RECOGNITION WEEK in the Town of Apex, and recognize all public servants, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated and vital service to their communities.

I hereby set my hand and have caused the Seal of the Town of Apex, North Carolina, to be affixed this the 25th day of April 2023

Jacques Gilbert, Mayor



*"The Peak of Good Living"*

TOWN OF APEX  
NORTH CAROLINA

## *Proclamation*

### **Think Apex Day 2023**

*from the Office of the Mayor*

WHEREAS, Think Apex Day was created in 2017 as a day dedicated to giving back to the Apex community by volunteering in ways that positively impact the town and the people who live here; and,

WHEREAS, Former Council Member Nicole Dozier asked residents to write down what Apex meant to them on a "Think Apex" banner at PeakFest in 2017, creating a mosaic of comments such as "beautiful place to live", "a great community", and "home"; and,

WHEREAS, Think Apex Day is part of the Apex 150 celebration year and earns participants a visa sticker as part of the Passport to the Peak; and,

WHEREAS, The Think Apex initiative has a unique web presence, and an annual awards presentation that highlights members of the community who make significant impacts; and,

WHEREAS, Residents can go to the Think Apex web page at [www.apexnc.org/946/Think-Apex](http://www.apexnc.org/946/Think-Apex) to get more information on Think Apex Day and to register for multiple volunteer opportunities and activities; and,

WHEREAS, It is our hope that that the Think Apex initiative highlights how all parts of Apex: businesses, residents and visitors alike, can come together to create a stronger and more vibrant community.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim, Saturday, April 29<sup>th</sup>, 2023 as "Think Apex Day" in the Town of Apex, and encourage all residents consider some form of participation, either formal or otherwise, that will further enhance the commitment to our community and to one another.

I hereby set my hand and have caused the Seal of the Town of Apex,  
North Carolina, to be affixed this the 25th day of April 2023

Jacques Gilbert, Mayor



# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PUBLIC HEARING

Meeting Date: April 25, 2023

## Item Details

Presenter(s): Dianne Khin, Planning Director

Department(s): Planning

### Requested Motion

Conduct a Public Hearing and Possible motion to adopt an Ordinance on the Question of Annexation - Apex Town Council's intent to annex 14.129 acres, Prestwick (Morris Tract), Annexation No. 754 into the Town Corporate limits.

### Approval Recommended?

Yes

### Item Details

The annexation has been certified and a public hearing has been posted as required.

## Attachments

- PH1-A1: Annexation Ordinance - Annexation No. 754
- PH1-A2: Public Hearing Notice - Annexation No. 754
- PH1-A3: Legal Description - Annexation No. 754
- PH1-A4: Plat Map - Annexation No. 754
- PH1-A5: Aerial Map - Annexation No. 754
- PH1-A6: Annexation Petition - Annexation No. 754





*"The Peak of Good Living"*

**OFFICE OF THE TOWN CLERK**

# TOWN OF APEX NORTH CAROLINA

## Media Contact:

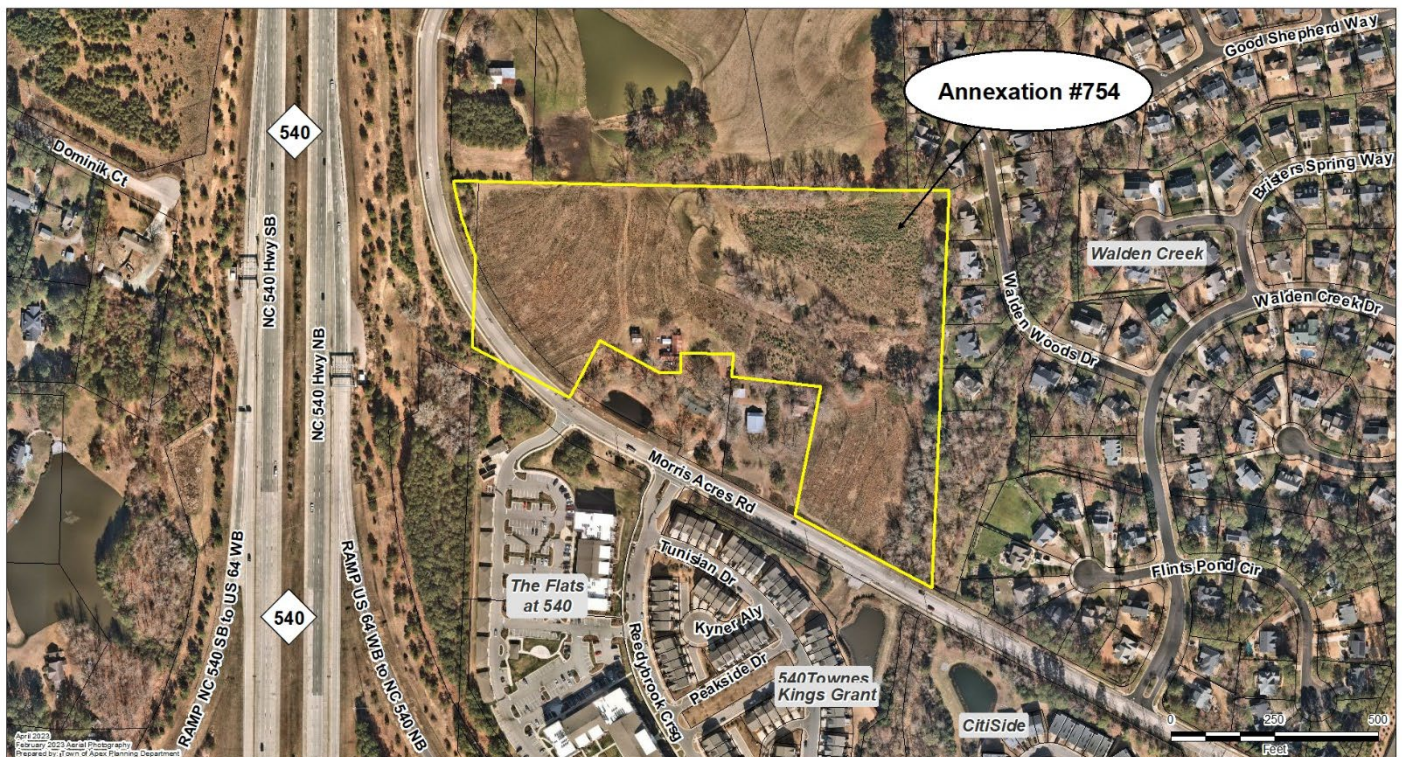
Allen Coleman, Town Clerk to the Apex Town Council

## FOR IMMEDIATE RELEASE

### PUBLIC NOTICE – PUBLIC HEARING

APEX, N.C. (April 13, 2023) – 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 **25<sup>th</sup> day of April, 2023**, on the question of annexation of the following property requested by petition filed pursuant to G.S. 160A-31:

### Annexation Petition No. 754 Prestwick (Morris Tracts) – 14.129 acres





*"The Peak of Good Living"*

## OFFICE OF THE TOWN CLERK

# TOWN OF APEX NORTH CAROLINA

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.hearing@apexnc.org](mailto:public.hearing@apexnc.org). Please use subject line "Annexation Petition No. 754" 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 Tuesday, April 25, 2023.

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 2<sup>nd</sup> Floor, (email) [allen.coleman@apexnc.org](mailto: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.

###

## Morris Annexation Legal Description

**Beginning** at an Existing Axle Located on the southeast corner of that property owned by Wilma Lee Morris (PIN No. 0732295482), DB 16593, PG 1783, Wake County Registry and having North Carolina Grid Coordinates (NAD83, 2011), N: 729,123.48', E: 2,032,670.88'; Thence, Thence, South 88°52'12" East a distance of 904.77' to an Existing Iron Pipe; Thence, North 89°57'34" East a distance of 36.59' to an Existing Iron Rebar; Thence, North 89°44'31" East a distance of 62.17' to an Existing Iron Pipe; Thence, South 02°27'02" West a distance of 119.42' to an Existing Iron Rebar; Thence, South 02°22'53" West a distance of 111.43' to an Existing Iron Rebar; Thence, South 02°18'02" West a distance of 92.88' to an Existing Iron Rebar; Thence, South 02°21'36" West a distance of 208.96' to an Existing Iron Rebar; Thence, South 02°22'28" West a distance of 428.91' to an Existing Iron Pipe located on the northern margin of Morris Acres Road, a variable width Public Right of Way (SR#3129); Thence with said Public Right of Way, North 62°20'05" West a distance of 374.12' to a point; Thence, leaving said Public Right of Way, North 11°17'51" East a distance of 318.24' to a point; Thence, North 83°39'21" West a distance of 217.02' to a point; Thence, North 05°16'39" East a distance of 54.78' to a point; Thence, North 88°49'51" West a distance of 125.97' to a point; Thence, South 02°21'09" West a distance of 48.00' to a point; Thence, North 89°50'51" West a distance of 48.48' to a point; Thence, North 62°23'51" West a distance of 165.92' to a point; Thence, South 27°36'09" West a distance of 154.91', (crossing a point at 122.99') to a point located within the Public Right of Way of Morris Acres Road, a variable width Public Right of Way (SR#3129); Thence North 62°20'05" West a distance of 280.01' to a Point; Thence, North 05°46'15" East a distance of 211.66' to an Existing Iron Pipe located on the southern margin of Morris Acres Road, a variable width Public Right of Way (SR#3129); Thence, with a curve to the right having a radius of 783.00', an arc length of 190.70', a chord bearing of North 16°13'03" West, and distance of 190.22', to an Existing Iron Pipe; Thence, South 89°15'20" East a distance of 59.77' to an Existing Iron Pipe; Thence, South 88°46'47" East a distance of 131.45' to an Existing Axle; being the point and place of **Beginning**, and having an area of 14.880 Acres (648,179 SF), More or Less.





LEGEND

(EIP)-IRON PIPE FOUND  
(NIP)-IRON PIPE SET  
(EIR)-REBAR FOUND  
(PT)-COMPUTED POINT (NO MONUMENT FOUND OR SET)

GPS NOTE:  
CLASS OF SURVEY: A  
POSITIONAL ACCURACY: 0.05'  
DATE OF SURVEY: AUGUST 28, 2021  
GEOID MODEL 2018  
COMBINED SCALE FACTOR: 0.999896225  
UNITS: US SURVEY FEET

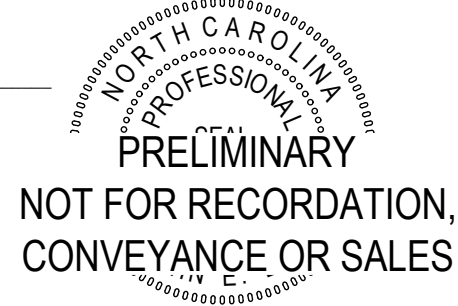
LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 26°40'56" E	20.62'

CURVE TABLE			
CURVE	ARC LENGTH	RADIUS	CHORD BRG.
C1	137.84'	783.00'	N 57°21'34" W
C2	399.10'	783.00'	N 37°42'52" W
C3	190.70'	783.00'	N 16°13'03" W

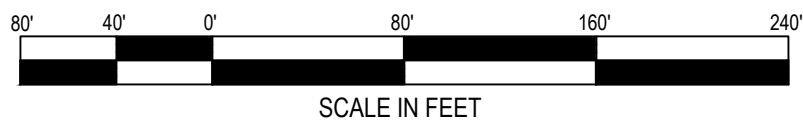
SURVEYOR'S CERTIFICATE  
"I, BENJAMIN E. DAYTON, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK SEE MAP, PAGE \_\_\_\_). THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK SEE MAP, PAGE \_\_\_\_; THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY AS CALCULATED IS 1:40,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER AND SEAL THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D., 2022.

THIS SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXEMPTION OR EXCEPTION TO THE DEFINITION OF SUBDIVISION.

BENJAMIN E. DAYTON, PLS L-4390



GENERAL NOTES  
1. BASIS OF BEARINGS: NC STATE PLANE GRID COORDINATES, NAD83(2011)  
2. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES IN U.S. SURVEY FEET UNLESS OTHERWISE NOTED.  
3. AREAS SHOWN HEREON WERE COMPUTED USING THE COORDINATE METHOD.  
4. LINES NOT SURVEYED ARE SHOWN AS BROKEN LINES FROM INFORMATION REFERENCED ON THE FACE OF THIS PLAT.  
5. SUBJECT PROPERTY IS NOT LOCATED WITHIN A FLOOD HAZARD AREA ACCORDING TO FLOOD INSURANCE RATE MAP 3720073200K DATED JULY 19, 2022.  
6. IRON PIPES SET AT ALL CORNERS UNLESS OTHERWISE NOTED.



OWNERS:  
EDITH S. MORRIS  
7208 MORRIS ACRES ROAD  
APEX, NORTH CAROLINA 27523

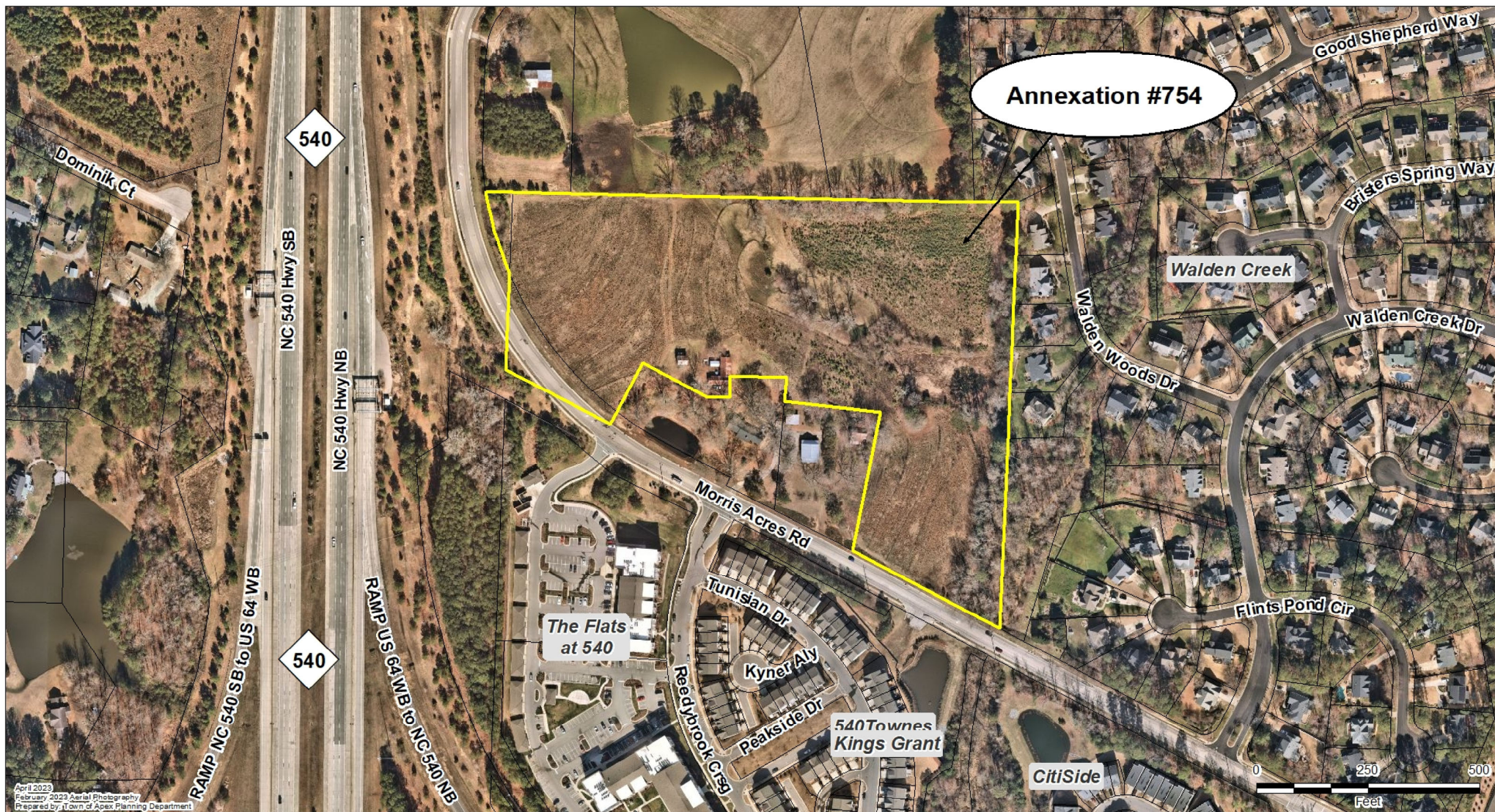
ANNEXATION # \_\_\_\_\_  
"I, \_\_\_\_\_, TOWN CLERK, APEX, NORTH CAROLINA CERTIFY THIS A TRUE AND EXACT  
MAP OF ANNEXATION ADOPTED THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, BY THE TOWN COUNCIL. I  
SET MY HAND AND SEAL OF THE TOWN OF APEX, \_\_\_\_\_ DAY/MONTH/YEAR  
\_\_\_\_\_  
TOWN CLERK  
-SEAL-

TOTAL ANNEXATION AREA: 16.412 ACRES

DATE: 12/27/2022	ANNEXATION MAP for the TOWN OF APEX		
SCALE: 1"=100'	EDITH S. MORRIS		
SURVEYED BY: WR			
DRAWN BY: BD			
CHECK & CLOSURE BY: BD			
CAD FILE: ANNEXATION PLAT.DWG	TOWNSHIP: WHITE OAK	COUNTY: WAKE	STATE: NORTH CAROLINA
PROJECT NO: 02210742.00	ZONE: DP (PER GIS)	PIN No. MULTI (SEE PLAT)	

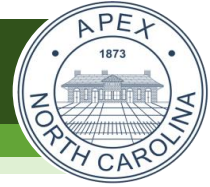
**WithersRavenel**  
Engineers | Planners | Surveyors  
115 MacKenan Drive | Cary, NC 27511  
t: 919.469.3340 | license #: F-1479 | www.withersravenel.com







## 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:** \$200.00

**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

### ELECTRONIC SUBMITTAL REQUIREMENTS: [IDT Plans](#)

- 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 Department of Planning and Community Development and upload an electronic copy of the application, legal description and Annexation Plat via [IDT Plans](#).
- **REVIEW BY STAFF:** The Planning and Community Development 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) Mylar annexation plats to the Department of Planning and Community Development by the due date on the attached Annexation Schedule.
- **1<sup>ST</sup> 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.
- **2<sup>ND</sup> 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 Department of Planning and Community Development, 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 Director Michael Deaton at 919-249-3413 or [michael.deaton@apexnc.org](mailto:michael.deaton@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 #: \_\_\_\_\_

Submittal Date: \_\_\_\_\_

Fee Paid \$ \_\_\_\_\_

Check # \_\_\_\_\_

### 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

Edith S. Morris

0732382709, 0732295017

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

### SURVEYOR INFORMATION

Surveyor: Ben Dayton

Phone: 919.469.3340

Fax: \_\_\_\_\_

E-mail Address: bdayton@withersravenel.com

### ANNEXATION SUMMARY CHART

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	14.88	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:	_____	Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	1	Water service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:	97	Sewer service (new construction)	<input checked="" type="checkbox"/>
Zoning District*:	RR & PUD-CZ	Receive Town Services	<input checked="" type="checkbox"/>

\*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 Department of Planning and Community Development 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.)

Edith Seagroves Morris  
Please Print

Edith Seagroves Morris  
Signature

\_\_\_\_\_  
Please Print

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Please Print

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Please Print

\_\_\_\_\_  
Signature

STATE OF NORTH CAROLINA

COUNTY OF WAKE



Sworn and subscribed before me, Edith Seagroves Morris, a Notary Public for the above State and County,  
this the 7 day of December, 2022

Melody M. Hand  
Notary Public

My Commission Expires: November 28, 2025

## 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\_\_\_\_.

Corporate Name \_\_\_\_\_

SEAL

By: \_\_\_\_\_

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

Attest: \_\_\_\_\_

\_\_\_\_\_  
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\_\_\_\_.

\_\_\_\_\_  
Notary Public

SEAL

My Commission Expires: \_\_\_\_\_

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PUBLIC HEARING

Meeting Date: April 25, 2023

## Item Details

Presenter(s): Amanda Bunce, Current Planning Manager

Department(s): Planning

### Requested Motion

Public Hearing and possible motion to approve Rezoning Application #23CZ01 Cash Corporate Center (revised uses). The applicants, Rockpoint Group, LLC and Oppidan seek to rezone approximately 83.03 acres from Light Industrial-Conditional Zoning (#21CZ08) to Light Industrial-Conditional Zoning (LI-CZ). The proposed rezoning is located at 0 & 0 Pristine Water Drive and 1251 Burma Drive.

### Approval Recommended?

The Planning Department recommends approval.

The Planning Board held a public hearing on April 10, 2023 and unanimously recommended approval with the conditions offered by the applicant.

### Item Details

The properties to be rezoned are identified as PINs 0751043020, 0751235497, & 0751132324.

## Attachments

- PH2-A1: Staff Report, Application, and Vicinity Map - Rezoning No. 23CZ01 Cash Corporate Center (Revised Uses)



## STAFF REPORT

### Rezoning #23CZ01 Cash Corporate (revised uses)

April 25, 2023 Town Council Meeting



All property owners, tenants, and neighborhood associations within 300 feet of this rezoning have been notified per UDO Sec. 2.2.11 *Public Notification*.

#### **BACKGROUND INFORMATION:**

**Location:** 0 & 0 Pristine Water Drive & 1251 Burma Drive

**Applicants/Owners:** Rockpoint Group, LLC & Oppidan/Apex Industrial Owner 3, LLC & Apex Industrial Owner 4, LLC

#### **PROJECT DESCRIPTION:**

**Acreage:** ±83.03

**PINs:** 0751043020, 0751235497, & 0751132324

**Current Zoning:** Light Industrial-Conditional Zoning (LI-CZ #21CZ08)

**Proposed Zoning:** Light Industrial-Conditional Zoning (LI-CZ)

**2045 Land Use Map:** Industrial Employment

**Town Limits:** Yes

#### **Adjacent Zoning & Land Uses:**

	<b>Zoning</b>	<b>Land Use</b>
<b>North:</b>	Light Industrial Conditional Zoning (LI-CZ #21CZ08); Light Industrial Conditional Use (LI-CU #90CU09)	Contractor's office and storage yard; Wholesaling distribution center; Manufacturing and Processing
<b>South:</b>	Light Industrial (LI); Light Industrial Conditional Zoning (LI-CZ #17CZ19)	Recycling Plant; Dumpster rental company; Dixie Pipeline
<b>East:</b>	Rural Residential (RR)	Golf Course (Knights Play Golf Center)
<b>West:</b>	Light Industrial (LI)	Contractor's office and storage yard; Vacant

#### **Existing Conditions:**

The subject properties total ±83.03 acres and are located north of Pristine Water Drive along Burma Drive and the future extension of Production Drive. Two of the properties are vacant while the third property is under construction.

#### **Neighborhood Meeting:**

The applicant conducted a neighborhood meeting on January 18, 2023. The neighborhood meeting report is attached.

#### **2045 Land Use Map:**

The 2045 Land Use Map classifies the subject properties as Industrial Employment. The proposed rezoning to Light Industrial-Conditional Zoning (LI-CZ) is consistent with that land use classification.

## STAFF REPORT

### Rezoning #23CZ01 Cash Corporate (revised uses)

April 25, 2023 Town Council Meeting



#### PROPOSED ZONING CONDITIONS:

##### Limitation of Uses:

The Rezoned Lands may be used for, and only for, the uses listed immediately below. The permitted uses are subject to the limitations and regulations stated in the UDO and any additional limitations or regulations stated below. For convenience, some relevant sections of the UDO may be referenced; such references do not imply that other sections of the UDO do not apply. An "(SUP)" designation indicates a Special Use Permit is required prior to commencing this use.

##### Permitted Uses and Limitations:

Note: New and modified uses are shown in bold. All other existing uses remain unchanged.

- |   |   |
|---|---|
| 1. Security or caretaker quarters           | 20. Dry cleaning and dyeing plant               |
| 2. Government service                       | 21. Laundry plant                               |
| 3. Heliport or helipad                      | 22. Manufacturing and processing                |
| 4. Transportation facility                  | 23. Microbrewery                                |
| 5. Utility, minor                           | 24. Microdistillery                             |
| 6. Regional recreation complex              | 25. Botanical garden                            |
| 7. Broadcast station (radio and television) | <b>26. Building supplies, wholesale</b>         |
| 8. Radio and television recording studio    | <b>27. Warehousing, general</b>                 |
| 9. Medical or dental office or clinic       | <b>28. Warehousing fulfillment center</b>       |
| 10. Medical or dental laboratory            | <b>29. Manufacturing and processing, minor</b>  |
| 11. Office, business or professional        | <b>30. Retail sales, general (%)</b>            |
| 12. Pilot plant                             | <b>31. Repair services, limited</b>             |
| 13. Research facility                       | <b>32. Repair and maintenance, general</b>      |
| 14. Laboratory, industrial research         | <b>33. Monument sales, retail</b>               |
| 15. Machine or welding shop                 | <b>34. Artisan studio</b>                       |
| 16. Woodworking or cabinetmaking            | <b>35. Contractor's office and storage yard</b> |
| 17. Wholesaling <b>distribution center</b>  | <b>36. Gas and fuel, wholesale</b>              |
| 18. Brewery                                 | <b>37. Commissary</b>                           |
| 19. Distillery                              |   |

##### Conditions:

Note: A new zoning condition is shown in bold. All other existing conditions remain unchanged.

1. EIFS cornices and parapet trim may be used. EIFS and stucco shall not be used within four (4) feet of the ground and shall be limited to 25% of each building façade.
2. The front façade and any façade that faces a collector street shall be a minimum of 60% masonry. The remainder of such facades shall be high-quality aluminum composite metal panels or similar.
3. The developer shall dedicate 30' of public right-of-way along the southern property line for future construction of Pristine Water Drive in accordance with the Apex Transportation Plan.
4. No buffer shall be required along major and minor collector streets.
5. A continuous 10' Side Path within the public right-of-way or 10' Greenway within a 20' Public Greenway Easement shall be constructed from Burma Drive at the northern property boundary to future Production Drive at the southern property boundary.
6. The minimum parking requirement shall either be in accordance with UDO Sec. 8.3.2 *Off-Street Parking Requirements* or 1 parking space per employee on the maximum shift plus 2% additional for visitors, whichever is greater.

## STAFF REPORT

### Rezoning #23CZ01 Cash Corporate Center (revised uses)

April 25, 2023 Town Council Meeting



7. With the exception of development on Lots 1 and 2, each development shall provide two (2) electric vehicle charging spaces. These spaces count toward minimum parking standards.
8. Greenhouses accessory to a Research facility shall be exempt from the following:
  - a. The building material and color standards of Sec. 4.5.3 Accessory Structures, Non-Residential Zoning Districts; and
  - b. The limitation on percent of yard area occupied and setback requirements of Sec.5.2.7.B *Dimensional Standards for Detached Accessory Structures, Percentage of Required Yard Occupied and Required Setbacks.*
9. **Outdoor storage shall be prohibited as a principal use.**

#### ENVIRONMENTAL ADVISORY BOARD:

This rezoning was exempt from meeting with the Apex Environmental Advisory Board (EAB) per Unified Development Ordinance (UDO) Section 2.1.9.A.2. The proposed rezoning is to amend uses and to add a use standard.

#### PLANNING STAFF RECOMMENDATION:

Planning staff recommends approval of Rezoning #23CZ01 with the conditions as offered by the applicant.

#### PLANNING BOARD RECOMMENDATION:

The Planning Board held a public hearing on April 10, 2023 and unanimously recommended approval with the conditions as proposed by the applicant.

#### ANALYSIS STATEMENT OF THE REASONABLENESS OF THE PROPOSED REZONING:

This Statement will address consistency with the Town's comprehensive and other applicable plans, reasonableness, and effect on public interest:

The 2045 Land Use Map classifies the subject properties as Industrial Employment. The proposed rezoning to Light Industrial-Conditional Zoning (LI-CZ) is consistent with that land use classification.

The proposed rezoning is reasonable and in the public interest because it will provide additional flexibility in the types of uses allowed, encourage compatible development of the property, and allow for uses that will generate jobs and increase the tax base.

#### CONDITIONAL ZONING STANDARDS:

The Town Council shall find the LI-CZ designation demonstrates compliance with the following standards. 2.3.3.F:

##### Legislative Considerations

The applicant shall propose site-specific standards and conditions that take into account the following considerations, which are considerations that are relevant to the legislative determination of whether or not the proposed conditional zoning district rezoning request is in the public interest. These considerations do not exclude the legislative consideration of any other factor that is relevant to the public interest.

- 1) *Consistency with 2045 Land Use Map.* The proposed Conditional Zoning District use's appropriateness for its proposed location and consistency with the purposes, goals, objectives, and policies of the 2045 Land Use Map.
- 2) *Compatibility.* The proposed Conditional Zoning District use's appropriateness for its proposed location and compatibility with the character of surrounding land uses.

## STAFF REPORT

### Rezoning #23CZ01 Cash Corporate Center (revised uses)

April 25, 2023 Town Council Meeting



- 3) *Zoning district supplemental standards.* The proposed Conditional Zoning District use's compliance with Sec 4.4 *Supplemental Standards*, if applicable.
- 4) *Design minimizes adverse impact.* The design of the proposed Conditional Zoning District use's minimization of adverse effects, including visual impact of the proposed use on adjacent lands; and avoidance of significant adverse impacts on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration and not create a nuisance.
- 5) *Design minimizes environmental impact.* The proposed Conditional Zoning District use's minimization of environmental impacts and protection from significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.
- 6) *Impact on public facilities.* The proposed Conditional Zoning District use's avoidance of having adverse impacts on public facilities and services, including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities.
- 7) *Health, safety, and welfare.* The proposed Conditional Zoning District use's effect on the health, safety, or welfare of the residents of the Town or its ETJ.
- 8) *Detrimental to adjacent properties.* Whether the proposed Conditional Zoning District use is substantially detrimental to adjacent properties.
- 9) *Not constitute nuisance or hazard.* Whether the proposed Conditional Zoning District use constitutes a nuisance or hazard due to traffic impact or noise, or because of the number of persons who will be using the Conditional Zoning (CZ) District use.
- 10) *Other relevant standards of this Ordinance.* Whether the proposed Conditional Zoning District use complies with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.







## PETITION TO AMEND THE OFFICIAL ZONING MAP

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 #: 23CZ01

Submittal Date: 2-1-23

Fee Paid: \$1,000

### Project Information

Project Name: Cash Corporate Center Permitted Uses Update

Address(es): 0 Pristine Water Drive; 0 Pristine Water Drive; & 1251 Burma Drive

PIN(s): 0751043020; 0751235497; & 0751132324

Acreage: 83.03

Current Zoning: LI-CZ

Proposed Zoning: LI-CZ

Current 2045 LUM Classification(s): Industrial Employment

Is the proposed rezoning consistent with the 2045 LUM Classification(s)? Yes ☒

No ☐

If any portion of the project is shown as mixed use (3 or more stripes on the 2045 Land Use Map) provide the following:

Area classified as mixed use: Acreage: N/A

Area proposed as non-residential development: Acreage: N/A

Percent of mixed use area proposed as non-residential: Percent: N/A

### Applicant Information

Name: Rockpoint Group LLC & Oppidan c/o Ashley Honeycutt Terrazas

Address: 301 Fayetteville Street, Suite 1400

City: Raleigh State: NC Zip: 27601

Phone: (919) 835-4043 E-mail: ashleyterrazas@parkerpoe.com

### Owner Information

Name: See attached addendum.

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

### Agent Information

Name: Ashley Honeycutt Terrazas

Address: 301 Fayetteville St, Suite 1400

City: Raleigh State: NC Zip: 27601

Phone: 919-835-4043 E-mail: ashleyterrazas@parkerpoe.com

Other contacts: \_\_\_\_\_

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



Cash Corporate Center Permitted Uses Update  
Ownership Addendum

Owner Information

**Parcel 1**

Site Address:	0 Pristine Water Drive
Pin:	0751043020
Deed Reference (book/page):	19072/2389
Acreage:	15.91 ac
Owner:	Apex Industrial Owner 3 LLC
Owner Address:	3953 Maple Ave., Suite 300, Dallas, TX 75219-3228

**Parcel 2**

Site Address:	0 Pristine Water Drive
Pin:	0751235497
Deed Reference (book/page):	19072/2389
Acreage:	45.53 ac
Owner:	Apex Industrial Owner 4 LLC
Owner Address:	3953 Maple Ave., Suite 300, Dallas, TX 75219-3228

**Parcel 3**

Site Address:	1251 Burma Drive
Pin:	0751132324
Deed Reference (book/page):	18554/2706
Acreage:	21.59 ac
Owner:	Apex Industrial Owner 3 LLC
Owner Address:	3953 Maple Ave., Suite 300, Dallas, TX 75219-3228

## PETITION INFORMATION

Application #:

23CZ01

Submittal Date:

An application has been duly filed requesting that the property described in this application be rezoned from LI-CZ \_\_\_\_\_ to LI-CZ \_\_\_\_\_. It is understood and acknowledged that if the property is rezoned as requested, the property described in this request will be perpetually bound to the use(s) authorized and subject to such conditions as imposed, unless subsequently changed or amended as provided for in the Unified Development Ordinance (UDO). It is further understood and acknowledged that final plans for any specific development to be made pursuant to any such Conditional Zoning shall be submitted for site or subdivision plan approval, as required by the UDO. Use additional pages as needed.

## PROPOSED USES:

The Rezoned Lands may be used for, and only for, the uses listed immediately below. The permitted uses are subject to the limitations and regulations stated in the UDO and any additional limitations or regulations stated below. For convenience, some relevant sections of the UDO may be referenced; such references do not imply that other sections of the UDO do not apply.

1	Security of caretaker quarters	21	Laundry plant
2	Government Service	22	Manufacturing and processing
3	Heliport or helipad	23	Microbrewery
4	Transportation facility	24	Microdistillery
5	Utility, Minor	25	Botanical Garden
6	Regional recreation complex	26	<b>Building Supplies, wholesale</b>
7	Broadcasting Station (radio and television)	27	<b>Warehousing, general</b>
8	Radio and television recording studio	28	<b>Warehousing fulfillment center</b>
9	Medical or dental office or clinic	29	<b>Manufacturing processing, minor</b>
10	Medical or dental laboratory	30	<b>Retail Sales, General (maximum 30% gross floor area and associated with principal industrial use, pursuant to UDO § 4.4.5.G.13.b.ii)</b>
11	Office, business or professional	31	<b>Repair Services, Limited</b>
12	Pilot plant	32	<b>Repair and maintenance, general</b>
13	Research facility	33	<b>Monument Sales, Retail</b>
14	Laboratory, industrial research	34	<b>Artisan Studio</b>
15	Machine or welding shop	35	<b>Contractor's Office and Storage Yard</b>
16	Woodworking or cabinetmaking	36	<b>Gas and fuel, wholesale</b>
17	Wholesaling <b>distribution center</b>	37	<b>Commissary</b>
18	Brewery	38	
19	Distillery	39	
20	Dry cleaning and dyeing plant	40	

## PETITION INFORMATION

Application #:

23CZ01

Submittal Date:

## PROPOSED CONDITIONS:

The applicant hereby requests that the Town Council of the Town of Apex, pursuant to the Unified Development Ordinance, approve the Conditional Zoning for the above listed use(s) subject to the following condition(s). Use additional pages as needed.

See attached conditions

## LEGISLATIVE CONSIDERATIONS - CONDITIONAL ZONING

The applicant shall propose site-specific standards and conditions that take into account the following considerations, which are considerations that are relevant to the legislative determination of whether or not the proposed conditional zoning district rezoning request is in the public interest. These considerations do not exclude the legislative consideration of any other factor that is relevant to the public interest. Use additional pages as needed.

1) *Consistency with 2045 Land Use Map.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and consistency with the purposes, goals, objectives, and policies of the 2045 Land Use Map.

See attached Statement of Consistency

2) *Compatibility.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and compatibility with the character of surrounding land uses.

See attached Statement of Consistency

**23-CZ-01**  
**Cash Corporate Center Permitted Uses Update**  
**Proposed Conditions**

*(Changes to current zoning conditions are in bold text)*

1. EIFS cornices and parapet trim may be used. EIFS and stucco shall not be used within four (4) feet of the ground and shall be limited to 25% of each building façade.
2. The front façade and any façade that faces a collector street shall be a minimum of 60% masonry. The remainder of such facades shall be high-quality aluminum composite metal panels or similar.
3. The developer shall dedicate 30' of public right-of-way along the southern property line for future construction of Pristine Water Drive in accordance with the Apex Transportation Plan.
4. No buffer shall be required along major and minor collector streets.
5. A continuous 10' Side Path within the public right-of-way or 10' Greenway within a 20' Public Greenway Easement shall be constructed from Burma Drive at the northern property boundary to future Production Drive at the southern property boundary.
6. The minimum parking requirement shall either be in accordance with UDO Sec. 8.3.2 Off-Street Parking Requirements or 1 parking space per employee on the maximum shift plus 2% additional for visitors, whichever is greater.
7. With the exception of development on Lots 1 and 2, each development shall provide two (2) electric vehicle charging spaces. These spaces count toward minimum parking standards.
8. Greenhouses accessory to a Research facility shall be exempt from the following:
  - a. The building material and color standards of Sec. 4.5.3 Accessory Structures, Non-Residential Zoning Districts; and
  - b. The limitation on percent of yard area occupied and setback requirements of Sec. 5.2.7.B Dimensional Standards for Detached Accessory Structures, Percentage of Required Yard Occupied and Required Setbacks.
9. **Outdoor storage shall be prohibited as a principal use.**

## PETITION INFORMATION

Application #:

23CZ01

Submittal Date:

3) Zoning district supplemental standards. The proposed Conditional Zoning (CZ) District use's compliance with Sec 4.4 *Supplemental Standards*, if applicable.

See attached Statement of Consistency

---

---

---

4) *Design minimizes adverse impact.* The design of the proposed Conditional Zoning (CZ) District use's minimization of adverse effects, including visual impact of the proposed use on adjacent lands; and avoidance of significant adverse impacts on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration and not create a nuisance.

See attached Statement of Consistency

---

---

---

5) *Design minimizes environmental impact.* The proposed Conditional Zoning District use's minimization of environmental impacts and protection from significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.

See attached Statement of Consistency

---

---

---

6) *Impact on public facilities.* The proposed Conditional Zoning (CZ) District use's avoidance of having adverse impacts on public facilities and services, including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities.

See attached Statement of Consistency

---

---

---

7) *Health, safety, and welfare.* The proposed Conditional Zoning (CZ) District use's effect on the health, safety, or welfare of the residents of the Town or its ETJ.

See attached Statement of Consistency

---

---

---

## PETITION INFORMATION

Application #: 23CZ01 Submittal Date: \_\_\_\_\_

8) *Detrimental to adjacent properties.* Whether the proposed Conditional Zoning (CZ) District use is substantially detrimental to adjacent properties.

See attached Statement of Consistency

---

---

---

9) *Not constitute nuisance or hazard.* Whether the proposed Conditional Zoning (CZ) District use constitutes a nuisance or hazard due to traffic impact or noise, or because of the number of persons who will be using the Conditional Zoning (CZ) District use.

See attached Statement of Consistency

---

---

---

10) *Other relevant standards of this Ordinance.* Whether the proposed Conditional Zoning (CZ) District use complies with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.

See attached Statement of Consistency

---

---

---

**Statement of Consistency**  
**Text Change to Zoning Conditions**  
**0 Pristine Water Drive, 0 Pristine Water Drive & 1251 Burma Drive**

Purpose of the Conditional Rezoning Request:

The owners and developers of a planned industrial park, most of which is located in the Cash Corporate Center assemblage (“Cash Corporate”), are seeking to amend the 21CZ08 zoning conditions to reflect a recent wholesaling/warehousing UDO text change and add additional permitted uses for the three southern Cash Corporate parcels: 0 Pristine Water Drive (PIN: 0751043020); 0 Pristine Water Drive (PIN: 0751235497); and, 1251 Burma Drive (PIN: 0751132324) (collectively, the “Site”). The requested additional uses are listed in the attached **Letter dated January 30, 2023.**

Cash Corporate is an economic development site that the Town has long earmarked for industrial development to bring businesses and jobs to Apex, to fulfill the Town’s goal of “accommodate[ing] non-retail employment growth.” Comp. Plan, p. 33. Cash Corporate was first rezoned to Light Industrial – Conditional Zoning in 2018 (18CZ19), and its conditions were amended through another rezoning process initiated by the Town in 2021 (21CZ08). The Town also entered into several development agreements with the developer of Cash Corporate—all to facilitate this job-creating development.

Today, Cash Corporate is comprised of five parcels: the northernmost parcels are owned by different owners and have been developed and are operating as a distribution center and an insect research and production facility. The three southernmost parcels, which are adjacent to a recycling plant, a wastewater treatment facility, and a concrete plant, are being developed as a part of an industrial park that will also include another LI-CZ parcel located to the southeast of Cash Corporate on Jessie Drive (with 17CZ19 zoning). Of the three southern Cash Corporate parcels, one has already been developed with an industrial building, and another has an approved site plan for two more industrial buildings.

This list of permitted uses updates the names of the “Wholesaling, distribution center,” “Warehousing, fulfillment center,” and “Warehousing, general” uses to incorporate the UDO text amendment recently passed by the Town Council on January 10, 2023. The additional uses will also make the businesses permitted on the Site more consistent with those that are permitted on the fourth parcel in the planned industrial park (on Jessie Drive), making leasing of space in the industrial park more streamlined.

As the developer has engaged in discussions with potential tenants and investors in the project, it has become clear that additional permitted uses are needed on the Site, to accommodate a more diverse array of businesses that are interested in leasing the space. The proposed text amendment to the list of permitted uses on the Site will give needed flexibility to ensure the success of this job-creating development, which has long been a goal of the applicants and the Town of Apex.



## Legislative Considerations – Conditional Zoning

*1) Consistency with 2045 Land Use Map. The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and consistency with the purposes, goals, objectives, and policies of the 2045 Land Use Map.*

The Site is designated as “Industrial Employment” on the 2045 Land Use Map, which “is intended to delineate land that allows for industrial uses such as light manufacturing, tech-flex, warehousing, and processing facilities.” Comp Plan, p. 23.

It is part of a certified economic development site in the Middle Creek North industrial and commercial area. The stated Advance Apex Key Principle for this area is to “invest in key corridors and activity centers,” Advance Apex, p. 16, and the proposed update to the permitted uses on the Site will help the Town reach its longtime goal for this area: to bring an array of businesses and jobs to Apex.

*2) Compatibility. The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and compatibility with the character of surrounding land uses.*

The Site's current LI-CZ zoning, with expanded permitted uses, is compatible with the area. The Site is almost completely surrounded by industrial uses and Light Industrial zoning, the vast majority of which does not have any (or very few) use restrictions. Numerous industrial buildings and businesses are located to the north on Burma Dr and Production Dr. The Wall Recycling plant, a concrete plant, and a wastewater treatment plant are located to the south. The Knights Play golf course is located to the east and more warehousing and industrial uses are located to the west.

*3) Zoning district supplemental standards. The proposed Conditional Zoning (CZ) District use's compliance with Sec 4.4 Supplemental Standards, if applicable.*

The tenant users of the industrial park planned for the site will comply with all relevant Sec. 4.4 Supplemental Standards.

*4) Design minimizes adverse impact. The design of the proposed Conditional Zoning (CZ) District use's minimization of adverse effects, including visual impact of the proposed use on adjacent lands; and avoidance of significant adverse impacts on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration and not create a nuisance.*

Two of the three properties included in the request have approved site plans for three industrial buildings. These buildings were designed in accordance with the Light Industrial zoning district and zoning conditions put in place during two previous rezoning cases, which were designed to mitigate impacts. These conditions will remain in place, and the proposed addition of permitted uses will not change the impacts of the planned industrial park for the Site.

Furthermore, the proposed additional uses will all be indoor uses and will not allow outdoor storage, to ensure the proposed text change does not create a visual impact for neighbors.

*5) Design minimizes environmental impact. The proposed Conditional Zoning District use's minimization of environmental impacts and protection from significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.*

The proposed text change to amend the list of permitted uses will not cause additional environmental impacts for the development and use of the Site. None of the requested additional uses are significantly more impactful to the environment and natural resources than the uses already permitted on the Site today.

*6) Impact on public facilities. The proposed Conditional Zoning (CZ) District use's avoidance of having adverse impacts on public facilities and services, including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities.*

The proposed text change to the conditions of the site will not have an adverse impact on public facilities and services. The proposed uses are all permitted in the Light Industrial district and have impacts similar to those of the uses that are permitted on the Site today.

*7) Health, safety, and welfare. The proposed Conditional Zoning (CZ) District use's effect on the health, safety, or welfare of the residents of the Town or its ETJ.*

The proposed text change will have a positive effect on the health, safety, and welfare of Apex residents. It will help the Cash Corporate Center provide a wider array of jobs and opportunities for businesses to locate in Apex, which will help fulfill the Town's economic development goals for the Site.

*8) Detrimental to adjacent properties. Whether the proposed Conditional Zoning (CZ) District use is substantially detrimental to adjacent properties.*

Two of the three properties included in the request have approved site plans for three industrial buildings. These buildings were designed in accordance with the Light Industrial zoning district and zoning conditions put in place during two previous rezoning cases, which were designed to mitigate impacts. These conditions will remain in place, and the proposed addition of permitted uses will not change the impacts of the planned industrial park for the site.

Furthermore, the proposed additional uses will all be indoor uses and will not allow outdoor storage, to ensure the proposed text change does not create a visual impact for neighbors.

*9) Not constitute nuisance or hazard. Whether the proposed Conditional Zoning (CZ) District use constitutes a nuisance or hazard due to traffic impact or noise, or because of the number of persons who will be using the Conditional Zoning (CZ) District use.*

The proposed additional permitted uses will not constitute a nuisance or hazard. They will not create a substantial traffic impact or additional noise, as they will all be indoors.

*10) Other relevant standards of this Ordinance. Whether the proposed Conditional Zoning (CZ) District use complies with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.*

Two of the three properties included in the request have approved site plans for three industrial buildings. These buildings were designed in accordance with the Light Industrial zoning district

and zoning conditions put in place during two previous rezoning cases, which means that the layout and development characteristics have complied with all applicable ordinances, including 21CZ08. The businesses using the space in the development will comply with all applicable UDO standards, as well as the additional “Indoor”-only characteristic for the proposed additional uses that would otherwise allow outdoor storage.

**AGENT AUTHORIZATION FORM**Application #: 23CZ01Submittal Date: 2/1/2023

Apex Industrial Owner 3 LLC is the owner\* of the property for which the attached application is being submitted:

- ☐ Land Use Amendment
- ☒ Rezoning: For Conditional Zoning and Planned Development rezoning applications, this authorization includes express consent to zoning conditions that are agreed to by the Agent which will apply if the application is approved.
- ☐ Site Plan
- ☐ Subdivision
- ☐ Variance
- ☐ Other: \_\_\_\_\_

The property address is: 0 Pristine Water Drive; 0 Pristine Water Drive; 1251 Burma DrThe agent for this project is: Ashley Honeycutt Terrazas☐ I am the owner of the property and will be acting as my own agentAgent Name: Ashley Honeycutt TerrazasAddress: 301 Fayetteville St, Suite 1400, Raleigh, NC 27601Telephone Number: 919-835-4043E-Mail Address: ashleyterrazas@parkerpoe.com

Signature(s) of Owner(s)\*

  
\_\_\_\_\_  
Ron J. Hoyl, Vice President1/31/2023

Type or print name

Date

Type or print name

Date

Attach additional sheets if there are additional owners.

\*Owner of record as shown on the latest equalized assessment rolls of Wake County. An option to purchase does not constitute ownership. If ownership has been recently transferred, a copy of the deed must accompany this authorization.

Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this application 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 application and any related documents. If electronic signatures are used the application shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

**AGENT AUTHORIZATION FORM**Application #: 23CZ01Submittal Date: 2/1/2023

Apex Industrial Owner 4 LLC is the owner\* of the property for which the attached application is being submitted:

- ☐ Land Use Amendment
- ☒ Rezoning: For Conditional Zoning and Planned Development rezoning applications, this authorization includes express consent to zoning conditions that are agreed to by the Agent which will apply if the application is approved.
- ☐ Site Plan
- ☐ Subdivision
- ☐ Variance
- ☐ Other: \_\_\_\_\_

The property address is: 0 Pristine Water Drive; 0 Pristine Water Drive; 1251 Burma Dr

The agent for this project is: Ashley Honeycutt Terrazas

☐ I am the owner of the property and will be acting as my own agent

Agent Name: Ashley Honeycutt Terrazas

Address: 301 Fayetteville St, Suite 1400, Raleigh, NC 27601

Telephone Number: 919-835-4043

E-Mail Address: ashleyterrazas@parkerpoe.com

Signature(s) of Owner(s)\*

  
\_\_\_\_\_  
Ron J. Hoyl, Vice President

1/31/2023

\_\_\_\_\_  
Type or print name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type or print name

\_\_\_\_\_  
Date

Attach additional sheets if there are additional owners.

\*Owner of record as shown on the latest equalized assessment rolls of Wake County. An option to purchase does not constitute ownership. If ownership has been recently transferred, a copy of the deed must accompany this authorization.

Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this application 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 application and any related documents. If electronic signatures are used the application shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

## AFFIDAVIT OF OWNERSHIP

Application #: 23CZ01

Submittal Date: \_\_\_\_\_

The undersigned, Ashley Honeycutt Terrazas (the "Affiant") first being duly sworn, hereby swears or affirms as follows:

1. Affiant is over eighteen (18) years of age and authorized to make this Affidavit. The Affiant is the sole owner, or is the authorized agent of all owners, of the property located at 0 Pristine Water Drive; 0 Pristine Water Drive; and 1251 Burma Drive and legally described in **Exhibit "A"** attached hereto and incorporated herein (the "Property").
2. This Affidavit of Ownership is made for the purpose of filing an application for development approval with the Town of Apex.
3. Affiant is the authorized agent of the owner(s) of the Property, Affiant possesses documentation indicating the agency relationship granting the Affiant the authority to apply for development approval on behalf of the owner(s).
4. To Affiant's knowledge, no claim or action has been brought against the owners of the property which questions title or right to possession of the property, nor is any claim or action pending against Affiant or owner(s) in court regarding possession of the Property.

This the 25<sup>th</sup> day of January, 2023.

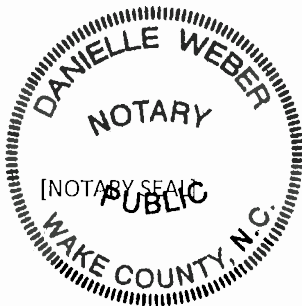
  
Ashley Honeycutt Terrazas


STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned, a Notary Public in and for the County of Wake, hereby certify that

Ashley Honeycutt Terrazas, Affiant, personally known to me or known to me by said Affiant's presentation of said Affiant's N.C. Drivers License, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing Affidavit.



  
Notary Public Danielle Weber  
State of North Carolina  
My Commission Expires: 2-23-2027



BOOK: 019072 PAGE: 02389 - 02393

Prepared by and return to:

GIBSON, DUNN & CRUTCHER LLP  
555 MISSION STREET  
SAN FRANCISCO, CA 94105  
ATTN: DAN BALLSubmitted electronically by CA - First American Title  
National Commercial Services in compliance with North  
Carolina statutes governing recordable documents and  
the terms of the submitter agreement with the Wake  
Register of Deeds.

Revenue Stamps: \$0.00

New Tract A-0045172 &  
Tax Parcel Number(s): New Tract B-0490739

\*\*\*\*\*

**STATE OF NORTH CAROLINA****QUITCLAIM DEED****COUNTY OF WAKE**

**THIS QUITCLAIM DEED** is made and entered into this the 27 day of May, 2022 by APEX INDUSTRIAL OWNER 1 LLC, a Delaware limited liability company (the "Grantor"), whose address is: Woodlawn Hall at Old Parkland, 3953 Maple Avenue, Suite 300, Dallas, TX 75219, and APEX INDUSTRIAL OWNER 3 LLC, a Delaware limited liability company (the "Grantee"), whose address is: Woodlawn Hall at Old Parkland, 3953 Maple Avenue, Suite 300, Dallas, TX 75219. The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

**WITNESSETH**, that Grantor, for valuable consideration paid by Grantee, the receipt and sufficiency of which is hereby acknowledged, has and by these presents does hereby quitclaim and forever release to Grantee and Grantee's heirs, successors and assigns, all of such right, title and interest as Grantor has or may have in or to those certain lots or parcels of land situated in Wake County, North Carolina and more particularly described as follows:

See "EXHIBIT A" attached hereto and incorporated herein by reference as if fully set forth.

**TO HAVE AND TO HOLD** said lot or parcel of land, together with all rights, privileges, easements and appurtenances thereto belonging to Grantee, its heirs, successors and assigns, free and clear of all right, title, claim or interest of the Grantor thereto. Grantor makes no warranty, express or implied, as to the title to the property herein described.

NCS-110466101A

FIRST AMERICAN TITLE INSURANCE COMPANY

Title to the property hereinabove described is specifically conveyed subject to the following exceptions: (a) the lien of ad valorem real property taxes and assessments for the current year and for subsequent years; (b) all easements, covenants, conditions, restrictions, and other agreements of record encumbering the property hereby conveyed and created or conveyed by Grantor; and (c) all matters which would be disclosed by a current, accurate on the ground survey, of the property hereby conveyed.

[Signature Page Follows]



**IN WITNESS WHEREOF**, Grantor has caused this Quitclaim Deed to be duly executed and delivered.

APEX INDUSTRIAL OWNER 1 LLC,  
a Delaware limited liability company

By:  \_\_\_\_\_

Name: Ron J. Hoyl

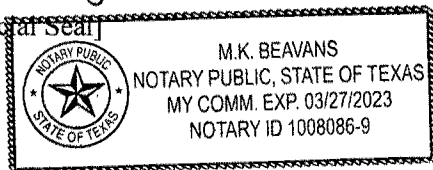
Title: Vice President

SEAL-STAMP STATE OF TEXAS, COUNTY OF DALLAS

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Ron J. Hoy, Vice President. [insert name and title of person signing]

Date: May 24, 2022

[Official Seal]



Notary Public

Print Name: M.K. Beavans

My commission expires: 3/27/2023

The foregoing Certificate(s) of \_\_\_\_\_ is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

\_\_\_\_\_  
COUNTY REGISTER OF DEEDS FOR \_\_\_\_\_

By: \_\_\_\_\_ Deputy/Assistant - Register of Deeds

Exhibit A

Legal Description

The Land referred to herein below is situated in the County of WAKE, State of North Carolina, and is described as follows:

TRACT A:  
BEING ALL OF NEW TRACT A, CONTAINING 15.9051 ACRES, AS SHOWN ON THE MAP ENTITLED "EXEMPT SUBDIVISION PLAT FOR APEX INDUSTRIAL OWNER 1 LLC", PREPARED SEPTEMBER 20, 2021 BY BASS, NIXON & KENNEDY INC. CONSULTING ENGINEERS, AND RECORDED DECEMBER 3, 2021 IN BOOK OF MAPS 2021, PAGE 2111 WAKE COUNTY REGISTRY.

TRACT B:  
BEING ALL OF NEW TRACT B, CONTAINING 21.5869 ACRES, AS SHOWN ON THE MAP ENTITLED "EXEMPT SUBDIVISION PLAT FOR APEX INDUSTRIAL OWNER 1 LLC", PREPARED SEPTEMBER 20, 2021 BY BASS, NIXON & KENNEDY INC. CONSULTING ENGINEERS, AND RECORDED DECEMBER 3, 2021 IN BOOK OF MAPS 2021, PAGE 2111 WAKE COUNTY REGISTRY.

BOOK: 019072 PAGE: 02394 - 02398

Prepared by and return to:

GIBSON, DUNN & CRUTCHER LLP  
555 MISSION STREET  
SAN FRANCISCO, CA 94105  
ATTN: DAN BALLSubmitted electronically by CA - First American Title  
National Commercial Services in compliance with North  
Carolina statutes governing recordable documents and the  
terms of the submitter agreement with the Wake Register of  
Deeds.

Revenue Stamps: \$0.00

Tax Parcel Number(s): New Tract C-0490739

\*\*\*\*\*

**STATE OF NORTH CAROLINA****QUITCLAIM DEED****COUNTY OF WAKE**

**THIS QUITCLAIM DEED** is made and entered into this the 27 day of May, 2022 by APEX INDUSTRIAL OWNER 1 LLC, a Delaware limited liability company (the "Grantor"), whose address is: Woodlawn Hall at Old Parkland, 3953 Maple Avenue, Suite 300, Dallas, TX 75219, and APEX INDUSTRIAL OWNER 4 LLC, a Delaware limited liability company (the "Grantee"), whose address is: Woodlawn Hall at Old Parkland, 3953 Maple Avenue, Suite 300, Dallas, TX 75219. The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

**WITNESSETH**, that Grantor, for valuable consideration paid by Grantee, the receipt and sufficiency of which is hereby acknowledged, has and by these presents does hereby quitclaim and forever release to Grantee and Grantee's heirs, successors and assigns, all of such right, title and interest as Grantor has or may have in or to those certain lots or parcels of land situated in Wake County, North Carolina and more particularly described as follows:

See "EXHIBIT A" attached hereto and incorporated herein by reference as if fully set forth.

**TO HAVE AND TO HOLD** said lot or parcel of land, together with all rights, privileges, easements and appurtenances thereto belonging to Grantee, its heirs, successors and assigns, free and clear of all right, title, claim or interest of the Grantor thereto. Grantor makes no warranty, express or implied, as to the title to the property herein described.

NCS-110466101B

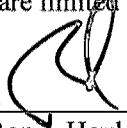
FIRST AMERICAN TITLE INSURANCE COMPANY

Title to the property hereinabove described is specifically conveyed subject to the following exceptions: (a) the lien of ad valorem real property taxes and assessments for the current year and for subsequent years; (b) all easements, covenants, conditions, restrictions, and other agreements of record encumbering the property hereby conveyed and created or conveyed by Grantor; and (c) all matters which would be disclosed by a current, accurate on the ground survey, of the property hereby conveyed.

[Signature Page Follows]

**IN WITNESS WHEREOF**, Grantor has caused this Quitclaim Deed to be duly executed and delivered.

APEX INDUSTRIAL OWNER 1 LLC,  
a Delaware limited liability company

By:  \_\_\_\_\_

Name: Ron J. Hoyl

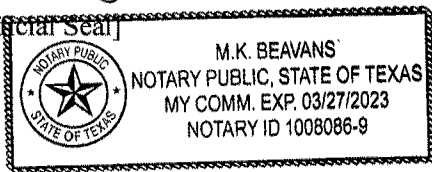
Title: Vice President

SEAL-STAMP STATE OF TEXAS, COUNTY OF DALLAS

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Ben J. Hoyt, Vice President [insert name and title of person signing]

Date: May 24, 2022

[Official Seal]



Notary Public

Print Name: MK Beavans

My commission expires: 3/27/2023

The foregoing Certificate(s) of \_\_\_\_\_ is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

\_\_\_\_\_  
COUNTY REGISTER OF DEEDS FOR \_\_\_\_\_

By: \_\_\_\_\_ Deputy/Assistant - Register of Deeds

Exhibit A

Legal Description

The Land referred to herein below is situated in the County of WAKE, State of North Carolina, and is described as follows:

TRACT C:

BEING ALL OF NEW TRACT C, CONTAINING 45.5280 ACRES, AS SHOWN ON THE MAP ENTITLED "EXEMPT SUBDIVISION PLAT FOR APEX INDUSTRIAL OWNER 1 LLC", PREPARED SEPTEMBER 20, 2021 BY BASS, NIXON & KENNEDY INC. CONSULTING ENGINEERS, AND RECORDED DECEMBER 3, 2021 IN BOOK OF MAPS 2021, PAGE 2111 WAKE COUNTY REGISTRY.



**AFFIDAVIT OF OWNERSHIP: EXHIBIT A – LEGAL DESCRIPTION**

Application #: 23CZ01

Submittal Date:

**Insert legal description below.**

TRACT A PER FIELD:

PIN: 0751043020

COMMENCING AT AN EXISTING IRON PIPE LOCATED ON THE NORTHERN PROPERTY LINE OF LANDS NOW OR FORMERLY OF APEX INDUSTRIAL OWNER 2 LLC AS RECORDED IN DEED BOOK 18554 PAGE 2713 AND SHOWN ON BOOK OF MAPS 2016 PAGE 1902, WAKE COUNTY REGISTRY, BEING THE SOUTHWESTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OF CAREY C. JONES MEMORIAL PARK, INC. AS RECORDED IN WILL BOOK 3 PAGE 41, WAKE COUNTY REGISTRY, AND HAVING NC GRID NAD ('83/2011) COORDINATES OF N: 712817.7170 FEET E: 2053329.7580 FEET, AND BEING THE POINT OF BEGINNING; THENCE ALONG AND WITH SAID NORTHERN PROPERTY LINE NORTH 86°56'41" WEST A DISTANCE OF 649.65 FEET TO AN EXISTING IRON PIPE, SAID IRON PIPE BEING LOCATED ON THE NORTHERN EDGE OF THE PRODUCTION DRIVE DRIVE RIGHT-OF-WAY; THENCE ALONG AND WITH SAID RIGHT-OF-WAY NORTH 87°41'32" WEST A DISTANCE OF 644.36 FEET TO AN EXISTING IRON PIPE; THENCE NORTH 87°48'30" WEST A DISTANCE OF 1260.18 FEET TO AN EXISTING IRON PIPE, SAID IRON PIPE BEING THE NORTHEASTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OF DIXIE PIPE LINE COMPANY AS RECORDED IN DEED BOOK 1961 PAGE 380 AND SHOWN ON BOOK OF MAPS 1970 PAGE 106, WAKE COUNTY REGISTRY; THENCE ALONG AND WITH SAID NORTHERN PROPERTY LINE NORTH 87°51'29" WEST A DISTANCE OF 525.36 FEET TO A POINT; SAID POINT BEING THE SOUTH EASTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OF DIXIE PIPELINE COMPANY AS RECORDED IN DEED BOOK 1961 PAGE 380, WAKE COUNTY REGISTRY; THENCE ALONG AND WITH SAID EASTERN PROPERTY LINE NORTH 24°31'04" WEST A DISTANCE OF 533.44 FEET TO A POINT, SAID POINT BEING THE BEGINNING; THENCE NORTH 24°31'04" WEST A DISTANCE OF 71.78 FEET TO AN EXISTING IRON PIPE, SAID IRON PIPE BEING THE SOUTH EASTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OF APEX TOOL U.S. REAL ESTATE HOLDINGS, LLC AS RECORDED IN DEED BOOK 15329 PAGE 2263 AND SHOWN ON BOOK OF MAPS 1988 PAGE 586, WAKE COUNTY REGISTRY; THENCE ALONG AND WITH SAID EASTERN PROPERTY LINE NORTH 01°38'58" EAST A DISTANCE OF 1059.83 FEET TO AN EXISTING IRON PIPE, SAID IRON PIPE HAVING NC GRID (NAD '83/2011) COORDINATES OF N: 714556.1640 FEET E: 2050032.3020 FEET; THENCE SOUTH 88°26'34" EAST A DISTANCE OF 122.40 FEET TO A CONCRETE MONUMENT, SAID MONUMENT BEING THE SOUTHWESTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OF TEAM PROPERTIES, LP. AS RECORDED IN DEED BOOK 9302 PAGE 1964 AND SHOWN ON BOOK OF MAPS 2002 PAGE 209, WAKE COUNTY REGISTRY; THENCE SOUTH 88°37'56" EAST A DISTANCE OF 629.23 FEET TO AN EXISTING IRON PIPE, SAID IRON PIPE BEING LOCATED ON THE WESTERN EDGE OF THE BURMA DRIVE RIGHT-OF-WAY; THENCE ALONG AND WITH SAID RIGHT-OF-WAY SOUTH 01°18'20" WEST A DISTANCE OF 41.05 FEET TO A POINT; THENCE WITH A CURVE TO THE RIGHT AN ARC DISTANCE OF 117.60 FEET TO A POINT, SAID CURVE HAVING A RADIUS OF 170.00 FEET, A CHORD DIRECTION OF SOUTH 21°04'51" WEST, AND A CHORD DISTANCE OF 115.27 FEET; THENCE SOUTH 41°00'19" WEST A DISTANCE OF 130.25 FEET TO A POINT; THENCE WITH A CURVE TO THE LEFT AN ARC DISTANCE OF 158.73 FEET TO A POINT, SAID CURVE HAVING A RADIUS OF 230.00, A CHORD DIRECTION OF SOUTH 21°09'41" WEST, AND A CHORD DISTANCE OF 155.60 FEET; THENCE SOUTH 01°23'27" WEST A DISTANCE OF 440.52 FEET TO A POINT; THENCE ALONG AND WITH A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 170.00 FEET, A CHORD BEARING OF S 15°56'57" W AND A CHORD DISTANCE OF 84.94 FEET TO A POINT; THENCE SOUTH 29°24'01" WEST A DISTANCE OF 109.30 FEET TO A POINT; THENCE ALONG AND WITH A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 230.05 FEET, A CHORD BEARING OF S 19°40'32" W AND A CHORD DISTANCE OF 77.71 FEET TO A POINT; THENCE ALONG AND WITH A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 25.00 FEET, A CHORD BEARING OF S 50°27'36" W AND A CHORD DISTANCE OF 32.48 FEET TO A POINT; THENCE S 00°57'55" W A DISTANCE OF 69.99 FEET TO A POINT, SAID POINT BEING LOCATED ON THE NORTHERN PROPERTY LINE OF LANDS NOW OR FORMERLY OF JAMES S. SMITH AND ROSE M. SMITH AS RECORDED IN DEED BOOK 18688 PAGE 1891, WAKE COUNTY REGISTRY; THENCE ALONG AND WITH SAID NORTHERN PROPERTY LINE NORTH 89°01'46" WEST A DISTANCE OF 334.16 FEET TO AN EXISTING IRON PIPE, SAID PIPE BEING LOCATED ON THE WESTERN PROPERTY LINE OF LANDS NOW OR FORMERLY OF APEX INDUSTRIAL OWNER 1 LLC ; THENCE ALONG AND WITH SAID WESTERN PROPERTY LINE NORTH 24°32'52" WEST A DISTANCE 66.57 FEET TO A POINT; THENCE NORTH 89°32'21" WEST A DISTANCE OF 66.24 FEET TO THE POINT OF BEGINNING, CONTAINING 15.8849 ACRES.

## AFFIDAVIT OF OWNERSHIP: EXHIBIT A – LEGAL DESCRIPTION

Application #: 23CZ01

Submittal Date:

Insert legal description below.

### PROPERTY DESCRIPTION PER FIELD:

TRACT B (PIN: 0751132324)

COMMENCING FROM AN EXISTING IRON PIPE ON THE INTERSECTION OF THE WESTERN RIGHT-OF-WAY OF BURMA DRIVE AND THE NORTHERN RIGHT-OF-WAY OF PRISTINE WATER DRIVE, SAID PIPE BEING THE SOUTHEASTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OWNED BY JAMES S. SMITH AND ROSE M. SMITH AS RECORDED IN DEED BOOK 18688 PAGE 1891, WAKE COUNTY REGISTRY AND HAS NC GRID (NAD '83/2011) COORDINATES OF N: 712,998.112 FEET AND E: 2,050,466.263 FEET; THENCE CROSSING BURMA DRIVE S 87°54'08" E A DISTANCE OF 95.02 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON NORTHERN RIGHT-OF-WAY OF PRISTINE WATER DRIVE; THENCE ALONG AND WITH A CURVE TO THE RIGHT ALONG THE TRANSITION TO THE EASTERN RIGHT-OF-WAY OF BURMA DRIVE, SAID CURVE HAVING A RADIUS OF 25.00 FEET, A CHORD DIRECTION OF N 42°50'08" W AND A CHORD DISTANCE OF 35.37 FEET TO A POINT; THENCE N 02°11'12" E A DISTANCE OF 420.91 FEET TO A POINT; THENCE ALONG AND WITH A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 170.00 FEET, A CHORD BEARING OF N 15°47'36" E AND A CHORD DISTANCE OF 79.99 FEET TO A POINT; THENCE N 29°24'05" E A DISTANCE OF 79.59 FEET TO A POINT; THENCE ALONG AND WITH A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 230.00 FEET, A CHORD BEARING OF N 16°40'35" E AND A CHORD DISTANCE OF 121.61 FEET TO A POINT, SAID POINT BEING THE SOUTHWESTERN PROPERTY CORNER OF TRACT 2 AS RECORDED IN DEED BOOK 18555 PAGE 1712, WAKE COUNTY REGISTRY AND SHOWN IN BOOK OF MAPS 2021 PAGES 523-524, WAKE COUNTY REGISTRY; THENCE LEAVING SAID RIGHT-OF-WAY S 88°36'35" E A DISTANCE OF 1,453.23 FEET TO A POINT, SAID POINT BEING A SOUTHWESTERN PROPERTY CORNER OF TRACT C AS RECORDED IN DEED BOOK 18554 PAGE 2706, WAKE COUNTY REGISTRY AND SHOWN IN BOOK OF MAPS 2021 PAGE 2111, WAKE COUNTY REGISTRY; THENCE S 32°01'16" W A DISTANCE OF 792.68 FEET TO A POINT; THENCE S 85°52'48" W A DISTANCE OF 498.34 FEET TO A POINT ON THE NORTHERN RIGHT-OF-WAY OF PRISTINE WATER DRIVE; THENCE N 86°07'12" W A DISTANCE OF 341.51 FEET TO A POINT; THENCE ALONG AND WITH A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 260.00 FEET, A CHORD BEARING OF N 86°59'21" W AND A CHORD DISTANCE OF 7.89 FEET TO A POINT; THENCE N 87°51'29" W A DISTANCE OF 55.90 FEET TO AN EXISTING IRON PIPE; THENCE N 87°51'29" W A DISTANCE OF 218.89 FEET TO THE POINT OF BEGINNING, CONTAINING 21.5372 ACRES.



**AFFIDAVIT OF OWNERSHIP: EXHIBIT A – LEGAL DESCRIPTION**

Application #: 23CZ01

Submittal Date:

Insert legal description below.

TRACT C PER FIELD;

BEGINNING AT AN EXISTING IRON PIPE LOCATED ON THE NORTHERN PROPERTY LINE OF LANDS NOW OR FORMERLY OF APES INDUSTRIAL OWNER 2 LLC AS RECORDED IN DEED BOOK 18554 PAGE 2713 AND SHOWN ON BOOK OF MAPS 2016 PAGE 1902, WAKE COUNTY REGISTRY, BEING THE SOUTHWESTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OF CAREY C. JONES MEMORIAL PARK, INC. AS RECORDED IN WILL BOOK 3 PAGE 41, WAKE COUNTY REGISTRY, AND HAVING NC GRID NAD (83:2011) COORDINATES OF N: 712817.7170 FEET E: 2053329.7580 FEET, AND BEING THE POINT OF BEGINNING; THENCE ALONG AND WITH SAID NORTHERN PROPERTY LINE NORTH 86°56'41" WEST A DISTANCE OF 649.65 FEET TO AN EXISTING IRON PIPE, SAID IRON PIPE BEING LOCATED ON THE NORTHERN EDGE OF THE PRODUCTION DRIVE DRIVE RIGHT-OF-WAY; THENCE ALONG AND WITH SAID RIGHT-OF-WAY NORTH 87°41'32" WEST A DISTANCE OF 644.36 FEET TO AN EXISTING IRON PIPE; THENCE NORTH 87°48'30" WEST A DISTANCE OF 1260.18 FEET TO AN EXISTING IRON PIPE, SAID IRON PIPE BEING THE NORTHEASTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OF DIXIE PIPE LINE COMPANY AS RECORDED IN DEED BOOK 1961 PAGE 380 AND SHOWN ON BOOK OF MAPS 1970 PAGE 106, WAKE COUNTY REGISTRY; THENCE ALONG AND WITH SAID NORTHERN PROPERTY LINE NORTH 87°51'29" WEST A DISTANCE OF 525.36 FEET TO A POINT; SAID POINT BEING THE SOUTH EASTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OF DIXIE PIPE LINE COMPANY AS RECORDED IN DEED BOOK 1961 PAGE 380, WAKE COUNTY REGISTRY; THENCE ALONG AND WITH SAID EASTERN PROPERTY LINE NORTH 24°31'04" WEST A DISTANCE OF 533.44 FEET TO A POINT, SAID POINT BEING THE SOUTH WESTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OF TRACT A AS RECORDED IN DEED BOOK DEED BOOK 18554 PAGE 2706 AND SHOWN ON BOOK OF MAPS 2021 PAGE 2111, WAKE COUNTY REGISTRY; THENCE ALONG AND WITH SAID SOUTHERN PROPERTY LINE SOUTH 89°32'21" EAST A DISTANCE OF 66.24 FEET TO AN EXISTING IRON PIPE; THENCE SOUTH 24°32'52" EAST A DISTANCE OF 66.57 FEET TO AN EXISTING IRON PIPE, SAID IRON PIPE BEING THE NORTH WESTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OF SMITH, JAMES STEPHEN & SMITH, ROSE M. AS RECORDED IN DEED BOOK 18688 PAGE 1891 AND SHOWN ON BOOK OF MAPS 1984 PAGE 1899, WAKE COUNTY REGISTRY; THENCE ALONG AND WITH SAID WESTERN PROPERTY LINE SOUTH 24°30'09" EAST A DISTANCE OF 402.22 FEET TO A POINT; THENCE SOUTH 87°56'20" EAST A DISTANCE OF 174.08 FEET TO AN EXISTING IRON PIPE, SAID IRON PIPE BEING LOCATED ON THE SOUTHERN EDGE OF THE THE BURMA DRIVE RIGHT-OF-WAY; THENCE ALONG AND WITH SAID RIGHT-OF-WAY SOUTH 87°48'50" EAST A DISTANCE OF 60.00 FEET TO A POINT, SAID POINT BEING THE SOUTH WESTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OF TRACT B AS RECORDED IN DEED BOOK 18554 PAGE 2706 AND SHOWN ON BOOK OF MAPS 2021 PAGE 2111, WAKE COUNTY REGISTRY; THENCE ALONG AND WITH SAID PROPERTY LINE SOUTH 88°03'12" EAST A DISTANCE OF 35.02 FEET; THENCE SOUTH 87°51'29" EAST A DISTANCE OF 274.79 FEET TO A POINT; THENCE WITH A CURVE TO THE RIGHT AN ARC DISTANCE OF 7.89 FEET TO A POINT, SAID CURVE HAVING A RADIUS OF 260.00 FEET, A CHORD DIRECTION OF SOUTH 86°59'21" EAST, AND A CHORD DISTANCE OF 7.89 FEET; THENCE SOUTH 86°07'12" EAST A DISTANCE OF 341.51 FEET TO A POINT; THENCE NORTH 85°52'48" EAST A DISTANCE OF 498.34 FEET TO A POINT; THENCE NORTH 32°01'16" EAST A DISTANCE OF 792.68 FEET TO A POINT; THENCE NORTH 88°36'35" WEST A DISTANCE OF 115.72 FEET TO A POINT, SAID POINT BEING THE SOUTH EASTERN PROPERTY LINE OF LANDS NOW OR FORMERLY OF BIN - BD1201 LLC AS RECORDED IN DEED BOOK 18555 PAGE 1712 AND SHOWN ON BOOK OF MAPS 2021 PAGE 523-524, WAKE COUNTY REGISTRY; THENCE ALONG AND WITH SAID EASTERN PROPERTY LINE NORTH 24°37'57" EAST A DISTANCE OF 290.77 FEET TO AN EXISTING IRON PIPE, SAID IRON PIPE BEING LOCATED ON THE SOUTHERN PROPERTY LINE OF LANDS NOW OR FORMERLY OF PROTEIN PRODUCTION LLC AS RECORDED IN DEED BOOK 18413 PAGE 1500 AND SHOWN ON BOOK OF MAPS 2021 PAGE 43, WAKE COUNTY REGISTRY; THENCE ALONG AND WITH SAID SOUTHERN PROPERTY LINE SOUTH 49°41'38" EAST A DISTANCE OF 179.06 FEET TO A POINT; THENCE NORTH 85°31'44" EAST A DISTANCE OF 127.10 FEET TO AN EXISTING IRON PIPE; THENCE NORTH 53°56'15" EAST A DISTANCE OF 136.26 FEET TO A POINT; THENCE NORTH 56°58'05" EAST A DISTANCE OF 89.85 FEET TO A POINT; THENCE NORTH 58°11'14" EAST A DISTANCE OF 158.89 FEET TO AN EXISTING IRON PIPE; THENCE NORTH 36°19'07" EAST A DISTANCE OF 277.70 FEET TO AN EXISTING IRON PIPE; THENCE NORTH 46°40'04" EAST A DISTANCE OF 63.68 FEET TO AN EXISTING IRON PIPE; THENCE NORTH 11°52'28" WEST A DISTANCE OF 68.24 FEET TO AN EXISTING IRON PIPE; THENCE WITH A CURVE TO THE RIGHT AN ARC DISTANCE OF 110.65 FEET TO AN EXISTING IRON PIPE, SAID CURVE HAVING A RADIUS OF 370.00 FEET, A CHORD DISTANCE OF NORTH 03°18'26" WEST, AND A CHORD DISTANCE OF 110.24 FEET, SAID IRON PIPE BEING THE SOUTH WESTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OF PRODUCTION DRIVE BUSINESS CNT MASTER CRD AS RECORDED IN DEED BOOK 12779 PAGE 2532 AND SHOWN ON BOOK OF MAPS 2006 PAGE 1762; THENCE ALONG AND WITH SAID SOUTHERN PROPERTY LINE SOUTH 88°36'08" EAST A DISTANCE OF 515.27 FEET TO AN EXISTING CONCRETE MONUMENT SAID MONUMENT BEING THE NORTH WESTERN PROPERTY CORNER OF LANDS NOW OF FORMERLY OF CAREY C. JONES MEMORIAL PARK, INC.; THENCE SOUTH 02°18'33" WEST A DISTANCE OF 1658.21 FEET TO THE POINT OF BEGINNING, CONTAINING 45.5280 ACRES

# NOTICE OF ELECTRONIC NEIGHBORHOOD MEETING

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.

January 4, 2023

Date

Dear Neighbor:

You are invited to an electronic neighborhood meeting to review and discuss the development proposal at

0 Pristine Water Drive; 0 Pristine Water Drive; 1251 Burma Drive      0751043020; 0751235497; & 0751132324

Address(es)

PIN(s)

in accordance with the Town of Apex Electronic Neighborhood Meeting procedures. This meeting is intended to be a way for the applicant to discuss the project and review the proposed plans with adjacent neighbors and neighborhood organizations before the submittal of an application to the Town. This provides neighbors an opportunity to raise questions and discuss any concerns about the impacts of the project before it is officially submitted. If you are unable to attend, you may contact the applicant before or after the meeting is held. Once an application has been submitted to the Town, it may be tracked using the [Interactive Development Map](#) or the [Apex Development Report](#) located on the Town of Apex website at [www.apexnc.org](http://www.apexnc.org). If at all feasible given emergency declarations, limits on in-person gatherings, and social distancing, an additional in-person Neighborhood Meeting may be scheduled and held prior to a public hearing or staff decision on the application.

An Electronic Neighborhood Meeting is required because this project includes (check all that apply):

Application Type		Approving Authority
<input checked="" type="checkbox"/>	Rezoning (including Planned Unit Development)	Town Council
<input type="checkbox"/>	Major Site Plan	Town Council (QJPH*)
<input type="checkbox"/>	Special Use Permit	Town Council (QJPH*)
<input type="checkbox"/>	Residential Master Subdivision Plan (excludes exempt subdivisions)	Technical Review Committee (staff)

\*Quasi-Judicial Public Hearing: The Town Council cannot discuss the project prior to the public hearing.

The following is a description of the proposal (also see attached map(s) and/or plan sheet(s)):

The applicant is proposing to update the current zoning conditions of the Property to reflect upcoming Town-initiated text changes to the warehousing

and wholesaling uses provided in the Unified Development Ordinance. It will also add some new permitted uses that will provide more flexibility

in leasing the existing and planned industrial development on the Property.

Estimated submittal date: February 1, 2023

## MEETING INFORMATION:

Property Owner(s) name(s): See attached addendum.

Applicant(s): Ashley Honeycutt Terrazas (Parker Poe Adams & Bernstein LLP)

Contact information (email/phone): ashleyterrazas@parkerpoe.com; (919) 835-4043

Electronic Meeting invitation/call in info: See attached notice letter.

Date of meeting\*\*: January 18, 2023

Time of meeting\*\*: 6:00PM - 8:00PM

## MEETING AGENDA TIMES:

Welcome: 6:00PM      Project Presentation: between 6:00 - 8:00PM      Question & Answer: between 6:00 - 8:00PM

\*\*Meetings shall occur between 5:00 p.m.-9:00 p.m. on a Monday through Thursday (excluding Town recognized holidays). If you have questions about the general process for this application, please contact the Planning Department at 919-249-3426. You may also find information about the Apex Planning Department and on-going planning efforts at <http://www.apexnc.org/180/Planning>.

**January 4, 2023**

**Re: Notice of Virtual Neighborhood Meeting**

Neighboring Property Owners:

You are invited to attend a neighborhood meeting on January 18, 2023 from 6–8pm. The purpose of the meeting is to discuss an upcoming application to revise the current zoning conditions for three parcels of land located at 0 Pristine Water Drive (PIN 0751043020), 0 Pristine Water Drive (PIN 0751235497), and 1251 Burma Drive (PIN 0751132324) (collectively, the “Property”). The Property is currently zoned Light Industrial-Conditional Zoning (LI-CZ).

The applicant is proposing to update the current zoning conditions of the Property to reflect upcoming Town-initiated text changes to the warehousing and wholesaling uses provided in the Unified Development Ordinance. It will also add some new permitted uses that will provide more flexibility in leasing the existing and planned industrial development on the Property. During the meeting, the applicant will describe the nature of this rezoning request and field any questions from the public. Enclosed are: (1) a vicinity map outlining the location of the subject parcels; (2) a zoning map of the subject area; (3) a project contact information sheet; and (4) a common construction issues & who to call information sheet.

The meeting will be held virtually. You can participate online via Zoom or by telephone. To participate in the Zoom online meeting:

Visit:	<a href="https://zoom.us/join">https://zoom.us/join</a>
Enter the following meeting ID:	861 8506 3736
Enter the following password:	459606

To participate by telephone:

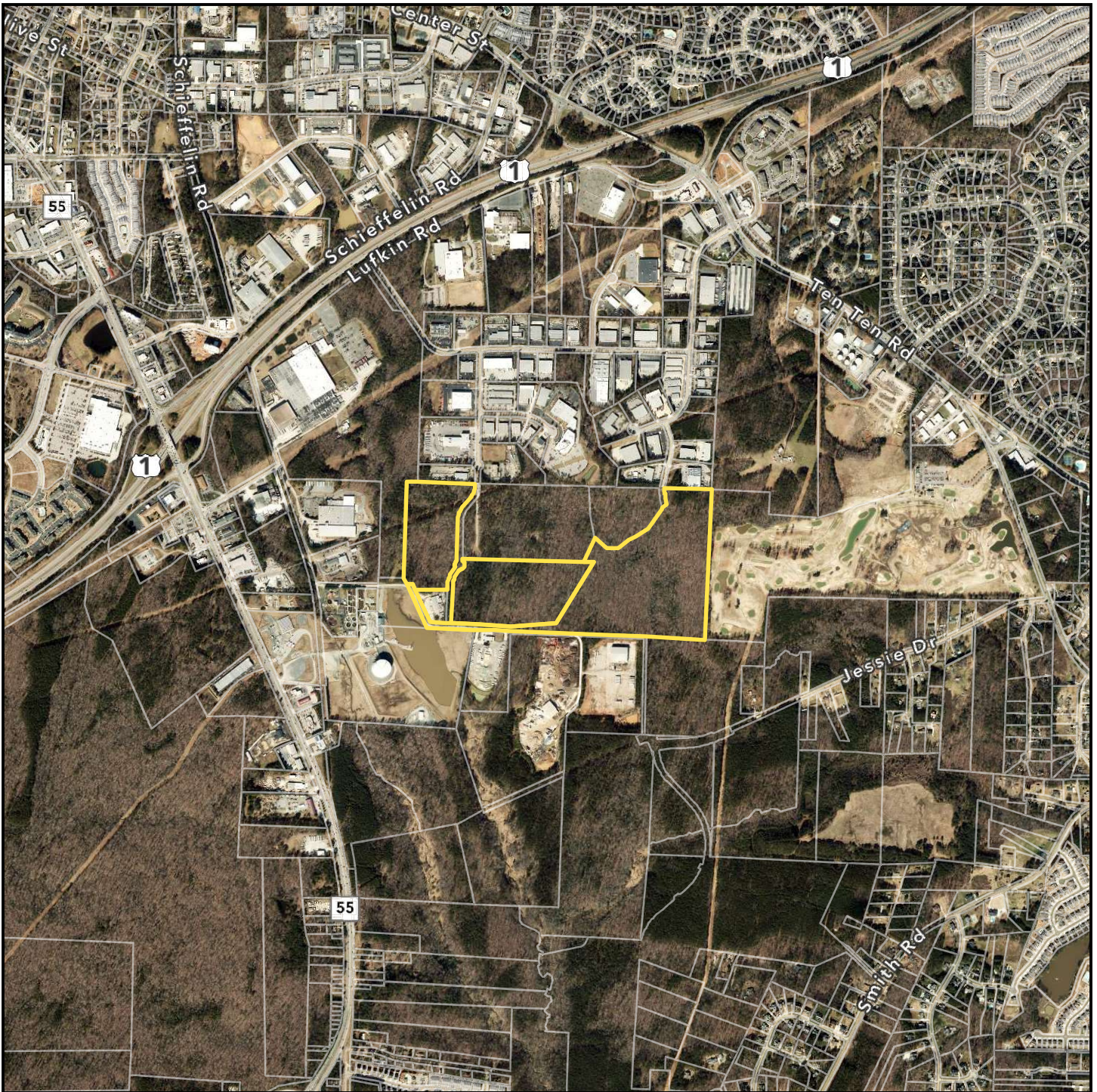
Dial:	1 929 205 6099
Enter the following meeting ID:	861 8506 3736 #
Enter the Participant ID:	#
Enter the Meeting password:	459606 #

If you have any questions about this rezoning, please contact me at (919) 835-4043 or via email at [ashleyterrazas@parkerpoe.com](mailto:ashleyterrazas@parkerpoe.com).

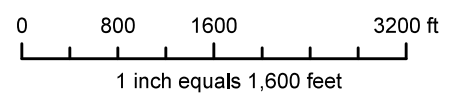
Thank you,

Ashley Honeycutt Terrazas





**0 Pristine Water Drive; 0 Pristine Water Drive;  
& 1251 Burma Drive**

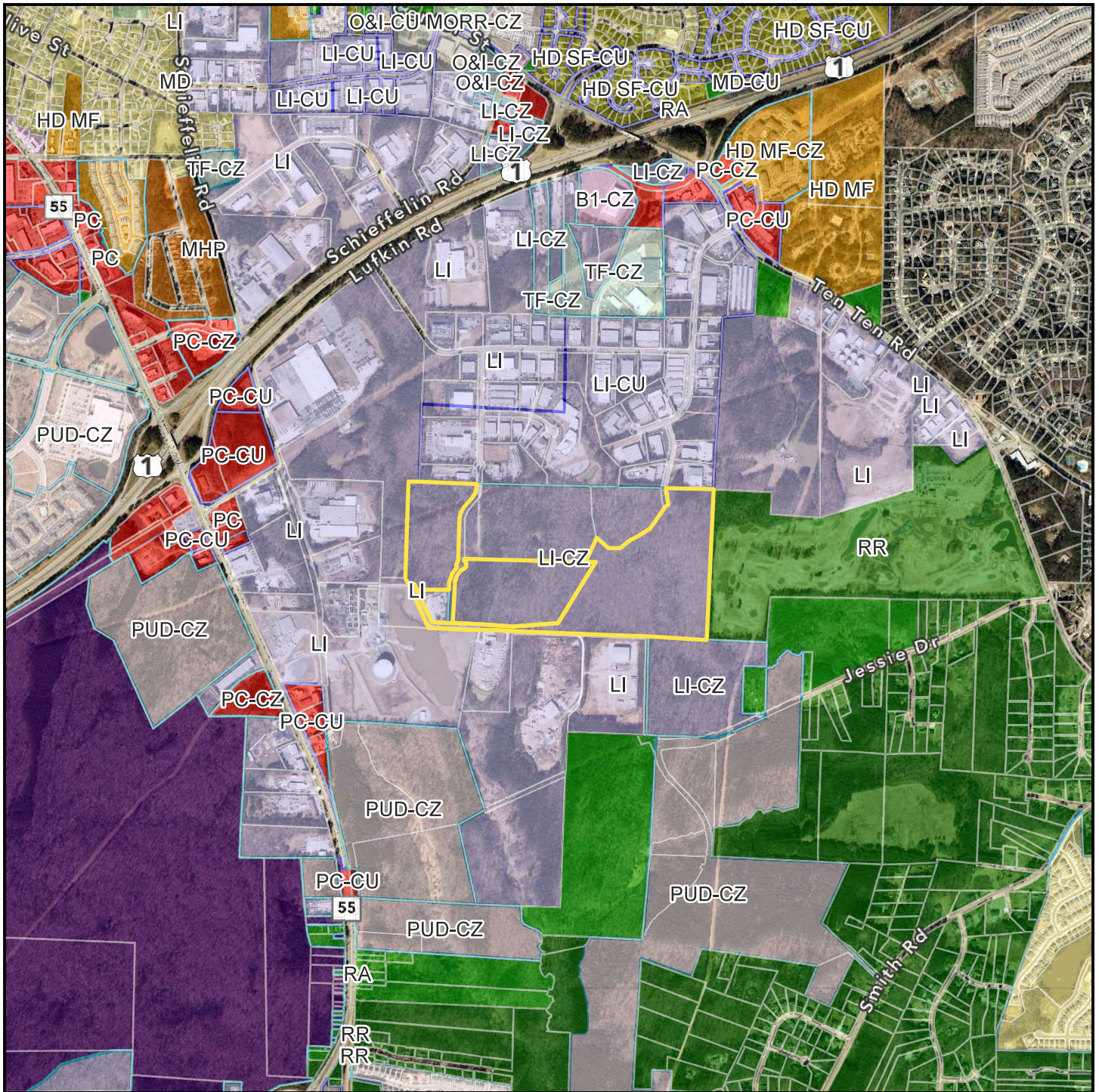


## Vicinity Map

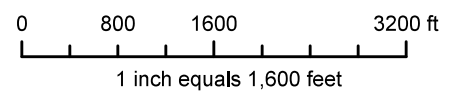
### Disclaimer

iMaps makes every effort to produce and publish the most current and accurate information possible. However, the maps are produced for information purposes, and are **NOT** surveys. No warranties, expressed or implied, are provided for the data therein, its use, or its interpretation.





0 Pristine Water Drive; 0 Pristine Water Drive;  
& 1251 Burma Drive



## Zoning Map

**Current Zoning: LI-CZ**

### Disclaimer

iMaps makes every effort to produce and publish the most current and accurate information possible. However, the maps are produced for information purposes, and are **NOT** surveys. No warranties, expressed or implied, are provided for the data therein, its use, or its interpretation.



# PROJECT CONTACT INFORMATION

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.

## Development Contacts:

Project Name: Cash Corporate Center Permitted Uses Update Zoning: LI-CZ

Location: 0 Pristine Water Drive; 0 Pristine Water Drive; & 1251 Burma Drive

Property PIN(s): 0751043020; 0751235497;  
& 0751132324 Acreage/Square Feet: 83.03 acres

Property Owner: See attached addendum.

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Developer: Oppidan

Address: 2000 Regency Parkway, Suite 435

City: Cary State: NC Zip: 27518

Phone: c/o Ashley Terrazas; (919) 835-4043 Fax: N/A Email: ashleyterrazas@parkerpoe.com

Engineer: N/A

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Builder (if known): N/A

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**Please note that Town staff will not have complete information about a proposed development until the application is submitted for review. If you have a question about Town development standards and how they relate to the proposed development, please contact the appropriate staff person listed below.**

## Town of Apex Department Contacts

Planning Department Main Number (Provide development name or location to be routed to correct planner)	(919) 249-3426
Parks, Recreation & Cultural Resources Department Angela Reincke, Parks Planner	(919) 249-7468
Public Works - Transportation Russell Dalton, Senior Transportation Engineer	(919) 249-3358
Water Resources Department Jessica Bolin, Senior Engineer (Stormwater, Sedimentation & Erosion Control) Stan Fortier, Senior Engineer (Stormwater, Sedimentation & Erosion Control) James Gregg, Utility Engineer (Water & Sewer)	(919) 249-3537 (919) 249-1166 (919) 249-3324
Electric Utilities Division Rodney Smith, Electric Technical Services Manager	(919) 249-3342



Cash Corporate Center Permitted Uses Update  
Ownership Addendum

Owner Information

**Parcel 1**

Site Address:	0 Pristine Water Drive
Pin:	0751043020
Deed Reference (book/page):	19072/2389
Acreage:	15.91 ac
Owner:	Apex Industrial Owner 3 LLC
Owner Address:	3953 Maple Ave., Suite 300, Dallas, TX 75219-3228

**Parcel 2**

Site Address:	0 Pristine Water Drive
Pin:	0751235497
Deed Reference (book/page):	19072/2389
Acreage:	45.53 ac
Owner:	Apex Industrial Owner 3 LLC
Owner Address:	3953 Maple Ave., Suite 300, Dallas, TX 75219-3228

**Parcel 3**

Site Address:	1251 Burma Drive
Pin:	0751132324
Deed Reference (book/page):	18554/2706
Acreage:	21.59 ac
Owner:	Apex Industrial Owner 1 LLC
Owner Address:	3953 Maple Ave., Suite 300, Dallas, TX 75219-3228

# COMMON CONSTRUCTION ISSUES & WHO TO CALL

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.

<b>Noise &amp; Hours of Construction:</b>	<b>Non-Emergency Police</b>	<b>919-362-8661</b>
---	-----------------------------	---------------------

Noise from tree removal, grading, excavating, paving, and building structures is a routine part of the construction process. The Town generally limits construction hours from 7:00 a.m. to 8:30 p.m. so that there are quiet times even during the construction process. Note that construction outside of these hours is allowed with special permission from the Town when it makes more sense to have the construction occur at night, often to avoid traffic issues. In addition, the Town limits hours of blasting rock to Monday through Friday from 8:00 a.m. to 5:00 p.m. Report violations of construction hours and other noise complaints to the Non-Emergency Police phone number at 919-362-8661.

<b>Construction Traffic:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
------------------------------	------------------------	---------------------

Construction truck traffic will be heavy throughout the development process, including but not limited to removal of trees from site, loads of dirt coming in and/or out of the site, construction materials such as brick and wood brought to the site, asphalt and concrete trucks come in to pave, etc. The Town requires a construction entrance that is graveled to try to prevent as much dirt from leaving the site as possible. If dirt does get into the road, the Town can require they clean the street (see "Dirt in the Road" below).

<b>Road Damage &amp; Traffic Control:</b>	<b>Water Resources – Infrastructure Inspections</b>	<b>919-362-8166</b>
---	---	---------------------

There can be issues with roadway damage, roadway improvements, and traffic control. Potholes, rutting, inadequate lanes/signing/stripping, poor traffic control, blocked sidewalks/paths are all common issues that should be reported to Water Resources – Infrastructure Inspections at 919-249-3427. The Town will get NCDOT involved if needed.

<b>Parking Violations:</b>	<b>Non-Emergency Police</b>	<b>919-362-8661</b>
----------------------------	-----------------------------	---------------------

Unless a neighbor gives permission, there should be no construction parking in neighbors' driveways or on their property. Note that parking in the right-of-way is allowed, but Town regulations prohibit parking within 15 feet of driveways so as not to block sight triangles. Trespassing and parking complaints should be reported to the Non-Emergency Police phone number at 919-362-8661.

<b>Dirt in the Road:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
--------------------------	------------------------	---------------------

Sediment (dirt) and mud gets into the existing roads due to rain events and/or vehicle traffic. These incidents should be reported to James Misciagno. He will coordinate the cleaning of the roadways with the developer.

<b>Dirt on Properties or in Streams:</b>	<b>James Misciagno</b> <b>Danny Smith</b>	<b>919-372-7470</b> <b><a href="mailto:Danny.Smith@ncdenr.gov">Danny.Smith@ncdenr.gov</a></b>
--	--	--

Sediment (dirt) can leave the site and get onto adjacent properties or into streams and stream buffers; it is typically transported off-site by rain events. These incidents should be reported to James Misciagno at 919-372-7470 so that he can coordinate the appropriate repairs with the developer. Impacts to the streams and stream buffers should also be reported to Danny Smith ([danny.smith@ncdenr.gov](mailto:danny.smith@ncdenr.gov)) with the State.

<b>Dust:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
--------------	------------------------	---------------------

During dry weather dust often becomes a problem blowing into existing neighborhoods or roadways. These incidents should be reported to James Misciagno at 919-372-7470 so that he can coordinate the use of water trucks onsite with the grading contractor to help control the dust.

<b>Trash:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
---------------	------------------------	---------------------

Excessive garbage and construction debris can blow around on a site or even off of the site. These incidents should be reported to James Misciagno at 919-372-7470. He will coordinate the cleanup and trash collection with the developer/home builder.

<b>Temporary Sediment Basins:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
-----------------------------------	------------------------	---------------------

Temporary sediment basins during construction (prior to the conversion to the final stormwater pond) are often quite unattractive. Concerns should be reported to James Misciagno at 919-372-7470 so that he can coordinate the cleaning and/or mowing of the slopes and bottom of the pond with the developer.

<b>Stormwater Control Measures:</b>	<b>Jessica Bolin</b>	<b>919-249-3537</b>
-------------------------------------	----------------------	---------------------

Post-construction concerns related to Stormwater Control Measures (typically a stormwater pond) such as conversion and long-term maintenance should be reported to Mike Deaton at 919-249-3413.

<b>Electric Utility Installation:</b>	<b>Rodney Smith</b>	<b>919-249-3342</b>
---------------------------------------	---------------------	---------------------

Concerns with electric utility installation can be addressed by the Apex Electric Utilities Department. Contact Rodney Smith at 919-249-3342.

# NEIGHBORHOOD MEETING SIGN-IN SHEET

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.

Meeting Address: virtually, via Zoom  
Date of meeting: 1/18/2023 Time of meeting: 6-8pm  
Property Owner(s) name(s): Apex Industrial Owner 1 LLC & Apex Industrial Owner 3 LLC  
Applicant(s): Ashley Honeycutt Terrazas

Please print your name below, state your address and/or affiliation with a neighborhood group, and provide your phone number and email address. Providing your name below does not represent support or opposition to the project; it is for documentation purposes only. For virtual meetings, applicants must include all known participants and request the information below.

	NAME/ORGANIZATION	ADDRESS	PHONE #	EMAIL	SEND PLANS & UPDATES
1.	Todd Phillips, Apex Tool Group	1000 Lufkin Rd, Apex, NC	919-387-2345		
2.	Kevin & Kelli Jones	2512 Ten Ten Rd, Apex, NC			X
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					

Use additional sheets, if necessary.

# SUMMARY OF DISCUSSION FROM THE NEIGHBORHOOD MEETING

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.

Property Owner(s) name(s): Apex Industrial Owner 1 LLC & Apex Industrial Owner 3 LLC

Applicant(s): Ashley Honeycutt Terrazas

Contact information (email/phone): ashleyterrazas@parkerpoe.com, 919-835-4043

Meeting Address: virtual, via Zoom

Date of meeting: 1/18/2023

Time of meeting: 6-8pm

Please summarize the questions/comments and your responses from the Neighborhood Meeting or emails/phone calls received in the spaces below (attach additional sheets, if necessary). Please state if/how the project has been modified in response to any concerns. The response should not be "Noted" or "No Response". There has to be documentation of what consideration the neighbor's concern was given and justification for why no change was deemed warranted.

## Question/Concern #1:

Question about groundwater treatment, whether there would be wells in the development, will the development be tapping into municipal water?

### Applicant's Response:

There will be no wells, the development existing and planned on these parcels will be connecting to Apex water.

## Question/Concern #2:

Who can businesses in adjacent industrial buildings that need additional space talk to about leasing space in new development?

### Applicant's Response:

Applicant provided Tim Brent's contact information to discuss leasing options.

## Question/Concern #3:

What are the buffers between Knights Play golf course and industrial development on approved site plan on adjacent property?

### Applicant's Response:

Applicant did not know buffers on site plan offhand, but followed up with Knights Play owner on this question.

Sent a pdf of approved site plan and communicated that a 40' buffer shown on plan, and overall, there would be about 200' between the planned building and the Knights Play property line.

## Question/Concern #4:

Question about access points for development and connections to Jessie Dr.

### Applicant's Response:

The planned access points are on Burma Dr and Production Dr. When the fourth parcel in the industrial park, which fronts Jessie Dr, is developed, it will connect the parcels to Jessie Dr.

# AFFIDAVIT OF CONDUCTING A NEIGHBORHOOD MEETING, SIGN-IN SHEET AND ISSUES/RESPONSES SUBMITTAL

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.

I, Ashley Honeycutt Terrazas, do hereby declare as follows:  
Print Name

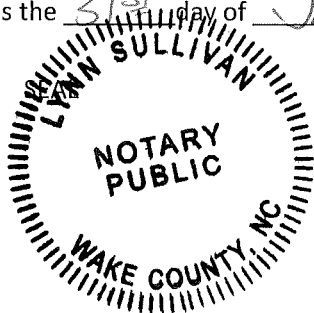
1. I have conducted a Neighborhood Meeting for the proposed Rezoning, Major Site Plan, Minor Site Plan, Residential Master Subdivision Plan, or Special Use Permit in accordance with UDO Sec. 2.2.7.B *Neighborhood Meeting*.
2. The meeting invitations were mailed to the Apex Planning Department, all property owners and tenants abutting and within 300 feet of the subject property and any neighborhood association that represents citizens in the notification area via first class mail a minimum of 14 days in advance of the Neighborhood Meeting.
3. The meeting was conducted at virtually, via Zoom (location/address) on 1/18/2023 (date) from 6pm (start time) to 8pm (end time).
4. I have included the mailing list, meeting invitation, sign-in sheet, issue/response summary, and zoning map/reduced plans with the application.
5. I have prepared these materials in good faith and to the best of my ability.

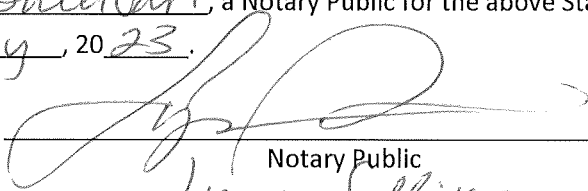
1/31/2023  
Date

By: 

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Sworn and subscribed before me, Lynn Sullivan, a Notary Public for the above State and County, on this the 31st day of January, 2023.



  
Notary Public  
Lynn Sullivan  
Print Name

My Commission Expires: 11/16/2027

SITE ADDRESS	PIN NUM	OWNER	MAILING ADDRESS	
560 PRISTINE WATER DR	0751222279	560 PRISTINE WATER LLC	550 CORPORATE CENTER DR	RALEIGH NC 27607-0153
1251 BURMA DR	0751132324	APEX INDUSTRIAL OWNER 1 LLC	ROCKPOINT GROUP LLC	3953 MAPLE AVE STE 300 DALLAS TX 75219-3228
5125 JESSIE DR	0751322322	APEX INDUSTRIAL OWNER 2 LLC	ROCKPOINT GROUP LLC	3953 MAPLE AVE STE 300 DALLAS TX 75219-3228
0 PRISTINE WATER DR	0751043020	APEX INDUSTRIAL OWNER 3 LLC	WOODLAWN HALL AT OLD PARKLAND	3953 MAPLE AVE STE 300 DALLAS TX 75219-3228
1000 LUFKIN RD	0741954413	APEX TOOL U.S. REAL ESTATE HOLDING, LLC	910 RIDGEBROOK RD STE 200	SPARKS MD 21152-9389
300 PRISTINE WATER DR	0741932178	APEX TOWN OF	PO BOX 250	APEX NC 27502-0250
1201 BURMA DR	0751143089	BIN - BD1201 LLC	BEACON PARTNERS	500 E MOREHEAD ST STE 200 CHARLOTTE NC 28202-3353
2512 TEN TEN RD	0751532815	CAREY C JONES MEMORIAL PARK INC	PO BOX 781	APEX NC 27502-0781
1111 BURMA DR	0751141725	COUSINS INVESTMENTS I LLC	PO BOX 30007	CHARLOTTE NC 28230-0007
0 E WILLIAMS ST	0741929413	DIXIE PIPE LINE COMPANY	PO BOX 4018	HOUSTON TX 77210-4018
500 PRISTINE WATER DR	0751029412	EAGLE ROCK CONCRETE LLC	8310 BANDFORD WAY	RALEIGH NC 27615-2752
800 LUFKIN RD	0741933676	EASTERN SERVICES HOLDINGS LLC	RALEIGH PAVING	800 LUFKIN RD APEX NC 27539-7050
2026 PRODUCTION DR	0751245667	HEIA LLC	PO BOX 1396	ELMIRA NY 14902-1396
850 LUFKIN RD	0741942224	LM LUFKIN ROAD II LLC	37 W 39TH ST RM 402	NEW YORK NY 10018-3888
2025 PRODUCTION DR	0751341664	LOT 17 PRODUCTION DRIVE BUSINESS CNT MASTER CRD	BOBBITT DESIGN BUILD	600 GERMANTOWN RD RALEIGH NC 27607-5144
2019 PRODUCTION DR	0751342839	PRODUCTION DRIVE BUSINESS CENTER CONDOS	ABCZ PROPERTIES LLC	2511 RELIANCE AVE APEX NC 27539-6347
1100 BURMA DR	0751054189	PURYEAR PROPERTIES LLC	5844 LEASE LN	RALEIGH NC 27617-4708
401 PRISTINE WATER DR	0751033230	SMITH, JAMES STEPHEN SMITH, ROSE M	1069 ALDERMAN CIR	RALEIGH NC 27603-2067
1120 BURMA DR	0751044654	TEAM PROPERTIES LP	2411 RIVER HILL RD	IRVING TX 75061-8909
2100 PRODUCTION DR	0751244221	THE SPRINGS CENTRE LLC	920 FREDERICA ST	OWENSBORO KY 42301-3050
2132 TEN TEN RD	0751359861	VERTICAL BRIDGE AM II LLC	750 PARK OF COMMERCE DR STE 200	BOCA RATON FL 33487-3650
520 PRISTINE WATER DR	0751113934	WALL REAL PROPERTY LLC	160 MINE LAKE CT STE 200	RALEIGH NC 27615-6417
		Current Tenant	1100 Burma DR	APEX NC 27539
		Current Tenant	1111 Burma DR	APEX NC 27539
		Current Tenant	1120 Burma DR	APEX NC 27539
		Current Tenant	800 Lufkin RD	APEX NC 27539
		Current Tenant	850 Lufkin RD	APEX NC 27539
		Current Tenant	860 Lufkin RD	APEX NC 27539
		Current Tenant	870 Lufkin RD	APEX NC 27539
		Current Tenant	880 Lufkin RD	APEX NC 27539
		Current Tenant	1000 Lufkin RD	APEX NC 27539
		Current Tenant	300 Pristine Water DR	APEX NC 27539
		Current Tenant	401 Pristine Water DR	APEX NC 27539
		Current Tenant	451 Pristine Water DR	APEX NC 27539
		Current Tenant	500 Pristine Water DR	APEX NC 27539
		Current Tenant	520 Pristine Water	APEX NC 27539
		Current Tenant	551 Pristine Water DR	APEX NC 27539
		Current Tenant	560 Pristine Water DR	APEX NC 27539
		Current Tenant	2015 Production DR	APEX NC 27539
		Current Tenant	2019 Production DR	APEX NC 27539
		Current Tenant	2019 Production DR Ste 100	APEX NC 27539
		Current Tenant	2019 Production DR Ste 101	APEX NC 27539
		Current Tenant	2019 Production DR Ste 102	APEX NC 27539
		Current Tenant	2019 Production DR Ste 103	APEX NC 27539
		Current Tenant	2019 Production DR Ste 104	APEX NC 27539
		Current Tenant	2019 Production DR Ste 105	APEX NC 27539
		Current Tenant	2019 Production DR Ste 106	APEX NC 27539
		Current Tenant	2019 Production DR Ste 107	APEX NC 27539
		Current Tenant	2025 Production DR	APEX NC 27539
		Current Tenant	2026 Production DR	APEX NC 27539
		Current Tenant	2028 Production DR	APEX NC 27539
		Current Tenant	2031 Production DR	APEX NC 27539
		Current Tenant	2100 Production DR	APEX NC 27539
		Current Tenant	2512 Ten Ten RD	APEX NC 27539

Created by Town of Apex Planning Department  
Date Created: 12/19/2022

# PLANNING BOARD REPORT TO TOWN COUNCIL

## Rezoning Case: 23CZ01 Cash Corporate Center (revised uses)

Planning Board Meeting Date: April 10, 2023



### Report Requirements:

Per NCGS §160D-604(b), all proposed amendments to the zoning ordinance or zoning map shall be submitted to the Planning Board for review and comment. If no written report is received from the Planning Board within 30 days of referral of the amendment to the Planning Board, the Town Council may act on the amendment without the Planning Board report. The Town Council is not bound by the recommendations, if any, of the Planning Board.

Per NCGS §160D-604(d), the Planning Board shall advise and comment on whether the proposed action is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

### PROJECT DESCRIPTION:

**Acreage:** ±83.03

**PIN(s):** 0751043020, 0751235497, & 0751132324

**Current Zoning:** Light Industrial-Conditional Zoning (LI-CZ #21CZ08)

**Proposed Zoning:** Light Industrial-Conditional Zoning (LI-CZ)

**2045 Land Use Map:** Industrial Employment

**Town Limits:** Yes

### Applicable Officially Adopted Plans:

The Board must state whether the project is consistent or inconsistent with the following officially adopted plans, if applicable. Applicable plans have a check mark next to them.

☒ 2045 Land Use Map  
☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

☒ Apex Transportation Plan  
☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

☐ Parks, Recreation, Open Space, and Greenways Plan  
☐ Consistent ☐ Inconsistent Reason: \_\_\_\_\_



PLANNING BOARD REPORT TO TOWN COUNCIL  
Rezoning Case: 23CZ01 Cash Corporate Center (revised uses)

Planning Board Meeting Date: April 10, 2023



**Legislative Considerations:**

The applicant shall propose site-specific standards and conditions that take into account the following considerations, which are considerations that are relevant to the legislative determination of whether or not the proposed conditional zoning district rezoning request is in the public interest. These considerations do not exclude the legislative consideration of any other factor that is relevant to the public interest.

1. *Consistency with 2045 Land Use Plan.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and consistency with the purposes, goals, objectives, and policies of the 2045 Land Use Plan.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

2. *Compatibility.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and compatibility with the character of surrounding land uses.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

3. *Zoning district supplemental standards.* The proposed Conditional Zoning (CZ) District use's compliance with Sec. 4.4 *Supplemental Standards*, if applicable.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

4. *Design minimizes adverse impact.* The design of the proposed Conditional Zoning (CZ) District use's minimization of adverse effects, including visual impact of the proposed use on adjacent lands; and avoidance of significant adverse impacts on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration and not create a nuisance.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

5. *Design minimizes environmental impact.* The proposed Conditional Zoning District use's minimization of environmental impacts and protection from significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

PLANNING BOARD REPORT TO TOWN COUNCIL  
Rezoning Case: 23CZ01 Cash Corporate Center (revised uses)

Planning Board Meeting Date: April 10, 2023



6. *Impact on public facilities.* The proposed Conditional Zoning (CZ) District use's avoidance of having adverse impacts on public facilities and services, including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

7. *Health, safety, and welfare.* The proposed Conditional Zoning (CZ) District use's effect on the health, safety, or welfare of the residents of the Town or its ETJ.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

8. *Detrimental to adjacent properties.* Whether the proposed Conditional Zoning (CZ) District use is substantially detrimental to adjacent properties.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

9. *Not constitute nuisance or hazard.* Whether the proposed Conditional Zoning (CZ) District use constitutes a nuisance or hazard due to traffic impact or noise, or because of the number of persons who will be using the Conditional Zoning (CZ) District use.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

10. *Other relevant standards of this Ordinance.* Whether the proposed Conditional Zoning (CZ) District use complies with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

PLANNING BOARD REPORT TO TOWN COUNCIL  
Rezoning Case: 23CZ01 Cash Corporate Center (revised uses)

Planning Board Meeting Date: April 10, 2023



**Planning Board Recommendation:**

Motion: To recommend approval of additional uses to conditional zoning as presented.

Introduced by Planning Board member: Alyssa Byrd

Seconded by Planning Board member: Sarah Soh

- ☐ *Approval:* the project is consistent with all applicable officially adopted plans and the applicable legislative considerations listed above.
- ☒ *Approval with conditions:* the project is not consistent with all applicable officially adopted plans and/or the applicable legislative considerations as noted above, so the following conditions are recommended to be included in the project in order to make it fully consistent:

As proposed by the applicant.

- ☐ *Denial:* the project is not consistent with all applicable officially adopted plans and/or the applicable legislative considerations as noted above.

With 8 Planning Board Member(s) voting "aye"

With 0 Planning Board Member(s) voting "no"

Reasons for dissenting votes:

This report reflects the recommendation of the Planning Board, this the 10th day of April 2023.

Attest:

Reginald Skinner, Planning Board Chair

Dianne Khin

Digitally signed by Dianne Khin  
Date: 2023.04.10 17:47:54  
-04'00'

Dianne Khin, Planning Director





## TOWN OF APEX

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

## PUBLIC NOTIFICATION OF PUBLIC HEARINGS CONDITIONAL ZONING #23CZ01 Cash Corporate Center Amendment

Pursuant to the provisions of North Carolina General Statutes §160D-602 and to the Town of Apex Unified Development Ordinance (UDO) Section 2.2.11, notice is hereby given of public hearings before the Planning Board of the Town of Apex. The purpose of these hearings is to consider the following:

**Applicant:** Rockpoint Group LLC & Oppidan  
**Authorized Agent:** Ashley Honeycutt Terrazas  
**Property Addresses:** 0 & 0 Pristine Water Drive & 1251 Burma Drive  
**Acreage:** ±83.03 acres  
**Property Identification Numbers (PINs):** 0751043020, 0751235497, 0751132324  
**2045 Land Use Map Designation:** Industrial Employment  
**Existing Zoning of Properties:** Light Industrial-Conditional Zoning (LI-CZ #21CZ08)  
**Proposed Zoning of Properties:** Light Industrial-Conditional Zoning (LI-CZ)

**Public Hearing Location:** Apex Town Hall  
Council Chamber, 2<sup>nd</sup> Floor  
73 Hunter Street, Apex, North Carolina

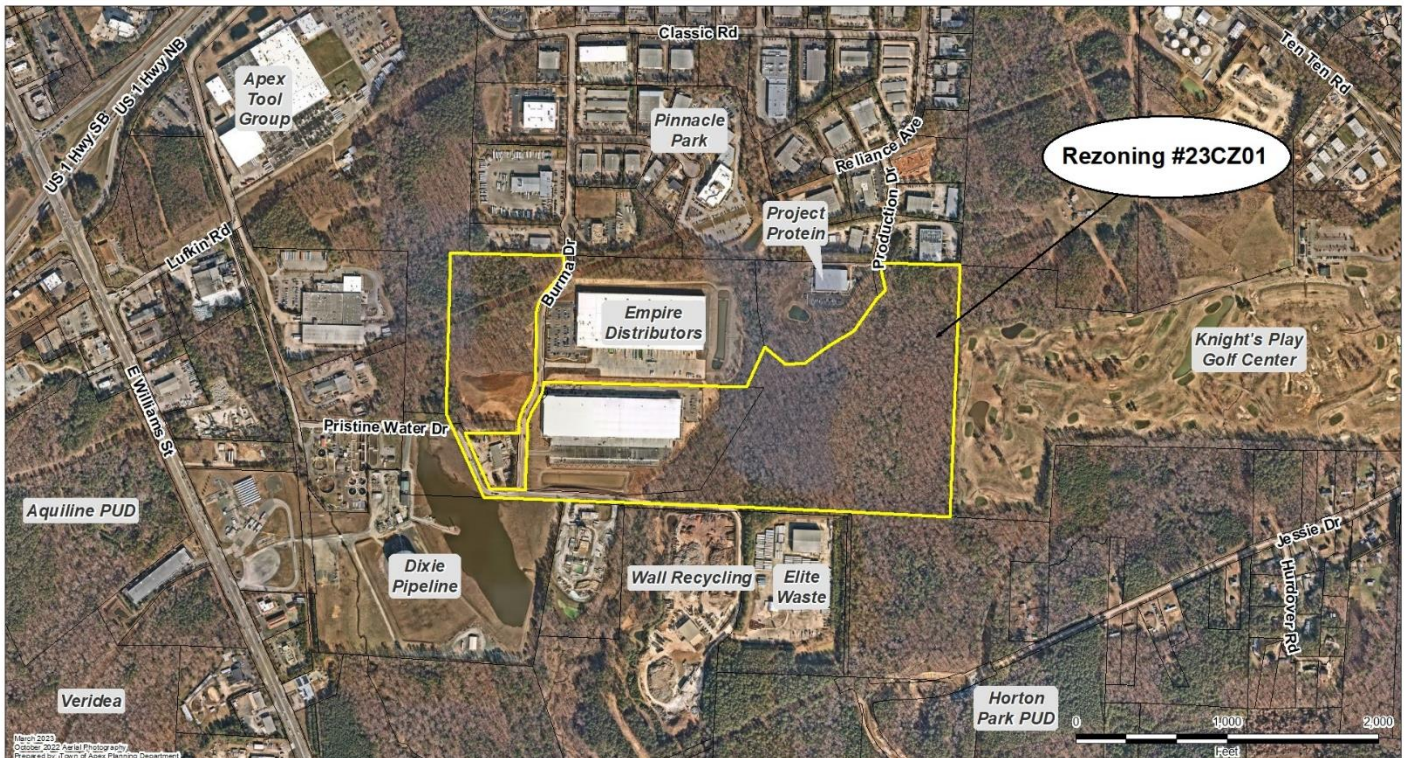
### **Planning Board Public Hearing Date and Time: April 10, 2023 4:30 PM**

You may attend the meeting in person or view the meeting through the Town's YouTube livestream at:  
<https://www.youtube.com/c/townofapexgov>.

If you are unable to attend, you may provide a written statement by email to [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), or submit it to the clerk of the Planning Board, Jeri Pederson (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Planning Board vote. You must provide your name and address for the record. The written statements will be delivered to the Planning Board prior to their vote. Please include the Public Hearing name in the subject line.

**A separate notice of the Town Council public hearing on this project will be mailed and posted in order to comply with State public notice requirements.**

### **Vicinity Map:**



Property owners, tenants, and neighborhood associations within 300 feet of the proposed conditional zoning have been sent this notice via first class mail. All interested parties may submit comments with respect to the application by the means specified above. In addition to the above map, the location of the property may be viewed online at <https://maps.raleighnc.gov/imaps>. The 2045 Land Use Map may be viewed online at [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). You may call 919-249-3426, Planning Department, with questions or for further information. To view the petition and related documents on-line: <https://www.apexnc.org/DocumentCenter/View/42042>.

Dianne F. Khin, AICP  
Planning Director





**TOWN OF APEX**  
POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

**PUBLIC NOTIFICATION  
OF PUBLIC HEARINGS  
CONDITIONAL ZONING #23CZ01  
Cash Corporate Center Amendment**

Pursuant to the provisions of North Carolina General Statutes §160D-602 and to the Town of Apex Unified Development Ordinance (UDO) Section 2.2.11, notice is hereby given of public hearings before the Planning Board of the Town of Apex. The purpose of these hearings is to consider the following:

**Applicant:** Rockpoint Group LLC & Oppidan  
**Authorized Agent:** Ashley Honeycutt Terrazas  
**Property Addresses:** 0 & 0 Pristine Water Drive & 1251 Burma Drive  
**Acreage:** ±83.03 acres  
**Property Identification Numbers (PINs):** 0751043020, 0751235497, 0751132324  
**2045 Land Use Map Designation:** Industrial Employment  
**Existing Zoning of Properties:** Light Industrial-Conditional Zoning (LI-CZ #21CZ08)  
**Proposed Zoning of Properties:** Light Industrial-Conditional Zoning (LI-CZ)

**Public Hearing Location:** Apex Town Hall  
Council Chamber, 2<sup>nd</sup> Floor  
73 Hunter Street, Apex, North Carolina

**Planning Board Public Hearing Date and Time: April 10, 2023 4:30 PM**

You may attend the meeting in person or view the meeting through the Town's YouTube livestream at:  
<https://www.youtube.com/c/townofapexgov>.

If you are unable to attend, you may provide a written statement by email to [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), or submit it to the clerk of the Planning Board, Jeri Pederson (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Planning Board vote. You must provide your name and address for the record. The written statements will be delivered to the Planning Board prior to their vote. Please include the Public Hearing name in the subject line.

**A separate notice of the Town Council public hearing on this project will be mailed and posted in order to comply with State public notice requirements.**

**Vicinity Map:**



Property owners, tenants, and neighborhood associations within 300 feet of the proposed conditional zoning have been sent this notice via first class mail. All interested parties may submit comments with respect to the application by the means specified above. In addition to the above map, the location of the property may be viewed online at <https://maps.raleighnc.gov/imaps>. The 2045 Land Use Map may be viewed online at [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). You may call 919-249-3426, Planning Department, with questions or for further information. To view the petition and related documents on-line: <https://www.apexnc.org/DocumentCenter/View/42042>.

Dianne F. Khin, AICP  
Planning Director





**TOWN OF APEX**  
PO BOX 250  
APEX, NORTH CAROLINA 27502  
TELÉFONO 919-249-3426

## NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS

### ORDENAMIENTO TERRITORIAL CONDICIONAL #23CZ01

#### Cash Corporate Center Amendment

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-602 y con la Sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del ayuntamiento de Apex, por la presente se notifican las audiencias públicas ante la Junta de Planificación de Apex. El propósito de estas audiencias es considerar lo siguiente:

**Solicitante:** Rockpoint Group LLC & Oppidan

**Agente autorizado:** Ashley Honeycutt Terrazas

**Dirección de la propiedades:** 0 & 0 Pristine Water Drive & 1251 Burma Drive

**Superficie:** ±83.03 acres

**Números de identificación de la propiedades:** 0751043020, 0751235497, 0751132324

**Designación actual en el Mapa de Uso Territorial para 2045:** Industrial Employment

**Ordenamiento territorial existente de la propiedades:** Light Industrial-Conditional Zoning (LI-CZ #21CZ08)

**Ordenamiento territorial propuesto para la propiedades:** Light Industrial-Conditional Zoning (LI-CZ)

**Lugar de la audiencia pública:** Ayuntamiento de Apex  
Cámara del Consejo, 2º piso  
73 Hunter Street, Apex, Carolina del Norte

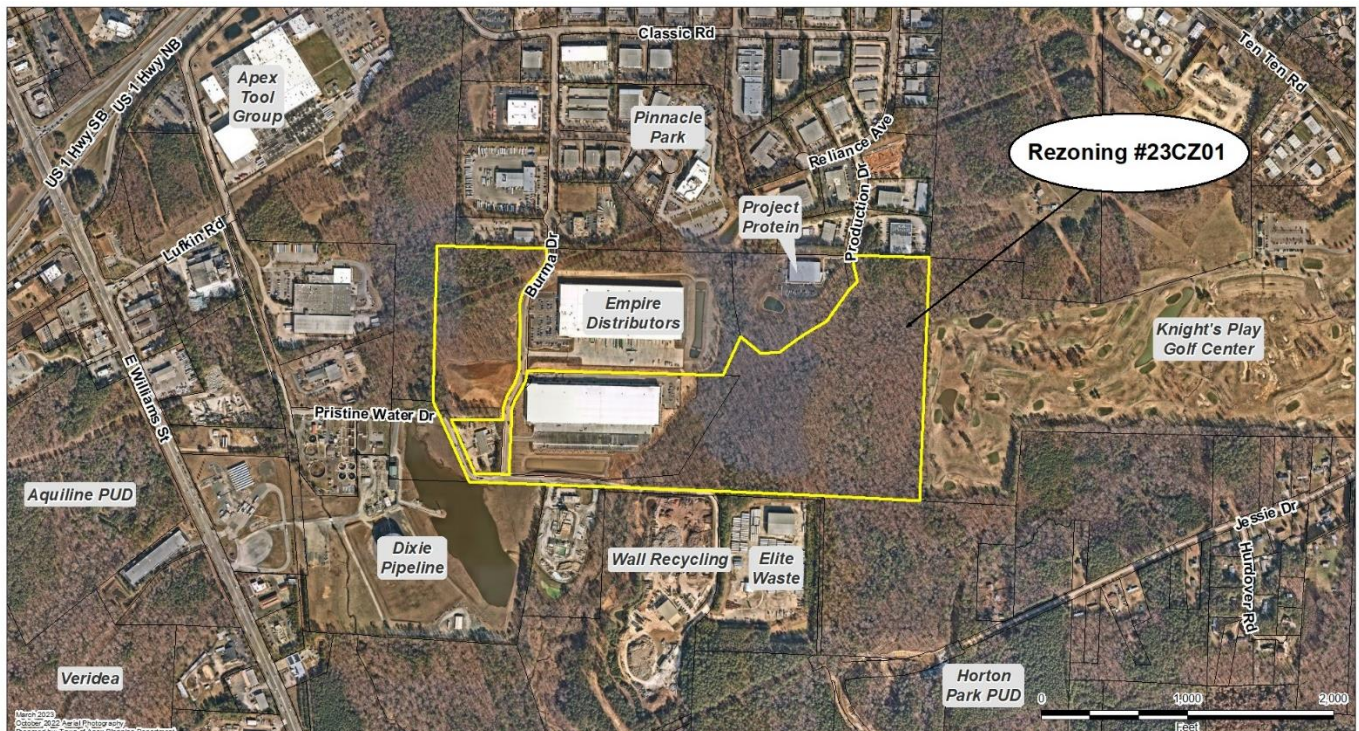
**Fecha y hora de la audiencia pública de la Junta de Planificación:** 10 de abril de 2023 4:30 P.M.

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), o presentarla a la secretaria de la Junta de Planificación, Jeri Pederson (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación de la Junta de Planificación. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán a la Junta de Planificación antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

**De conformidad con los requisitos estatales de notificaciones públicas, se enviará por correo y se publicará por separado una notificación de la audiencia pública del Consejo Municipal sobre este proyecto.**

**Mapa de las inmediaciones:**



Los propietarios, inquilinos y asociaciones de vecinos en un radio de 300 pies del Ordenamiento Territorial Condicional propuesto han recibido esta notificación por correo postal de primera clase. Todas las partes interesadas pueden presentar comentarios sobre la solicitud a través de los medios especificados anteriormente. La ubicación de la propiedad también puede verse aquí: <https://maps.raleighnc.gov/imaps>. Puede ver el Mapa de Uso Territorial para 2045 aquí: [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). Si tiene preguntas o desea obtener más información, puede comunicarse con el Departamento de Planificación al 919-249-3426. Puede ver la solicitud y otros documentos relacionados aquí: <https://www.apexnc.org/DocumentCenter/View/42042>.

Dianne F. Khin, AICP  
Directora de Planificación





**TOWN OF APEX**  
PO BOX 250  
APEX, NORTH CAROLINA 27502  
TELÉFONO 919-249-3426

## NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS

### ORDENAMIENTO TERRITORIAL CONDICIONAL #23CZ01

#### Cash Corporate Center Amendment

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-602 y con la Sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del ayuntamiento de Apex, por la presente se notifican las audiencias públicas ante la Junta de Planificación de Apex. El propósito de estas audiencias es considerar lo siguiente:

**Solicitante:** Rockpoint Group LLC & Oppidan

**Agente autorizado:** Ashley Honeycutt Terrazas

**Dirección de la propiedades:** 0 & 0 Pristine Water Drive & 1251 Burma Drive

**Superficie:** ±83.03 acres

**Números de identificación de la propiedades:** 0751043020, 0751235497, 0751132324

**Designación actual en el Mapa de Uso Territorial para 2045:** Industrial Employment

**Ordenamiento territorial existente de la propiedades:** Light Industrial-Conditional Zoning (LI-CZ #21CZ08)

**Ordenamiento territorial propuesto para la propiedades:** Light Industrial-Conditional Zoning (LI-CZ)

**Lugar de la audiencia pública:** Ayuntamiento de Apex

Cámara del Consejo, 2º piso

73 Hunter Street, Apex, Carolina del Norte

**Fecha y hora de la audiencia pública de la Junta de Planificación:** 10 de abril de 2023 4:30 P.M.

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), o presentarla a la secretaria de la Junta de Planificación, Jeri Pederson (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación de la Junta de Planificación. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán a la Junta de Planificación antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

De conformidad con los requisitos estatales de notificaciones públicas, se enviará por correo y se publicará por separado una notificación de la audiencia pública del Consejo Municipal sobre este proyecto.

**Mapa de las inmediaciones:**



Los propietarios, inquilinos y asociaciones de vecinos en un radio de 300 pies del Ordenamiento Territorial Condicional propuesto han recibido esta notificación por correo postal de primera clase. Todas las partes interesadas pueden presentar comentarios sobre la solicitud a través de los medios especificados anteriormente. La ubicación de la propiedad también puede verse aquí: <https://maps.raleighnc.gov/imaps>. Puede ver el Mapa de Uso Territorial para 2045 aquí: [www.apexnc.org/DocumentCenter/View/478](https://www.apexnc.org/DocumentCenter/View/478). Si tiene preguntas o desea obtener más información, puede comunicarse con el Departamento de Planificación al 919-249-3426. Puede ver la solicitud y otros documentos relacionados aquí: <https://www.apexnc.org/DocumentCenter/View/42042>.

Dianne F. Khin, AICP  
Directora de Planificación

Fechas de publicación: 24 de marzo de 2023 – 10 de abril de 2023





## TOWN OF APEX

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

### AFFIDAVIT CERTIFYING Public Notification – Written (Mailed) Notice

Section 2.2.11  
Town of Apex Unified Development Ordinance

Project Name: Conditional Zoning #23CZ01  
Cash Corporate Center Amendment

Project Location: 0 & 0 Pristine Water Drive & 1251 Burma Drive

Applicant or Authorized Agent: Rockpoint Group LLC & Oppidan c/o Ashley Honeycutt Terrazas

Firm: Rockpoint Group LLC & Oppidan

This is to certify that I, as Director of Planning, mailed or caused to have mailed by first class postage for the above mentioned project on March 24, 2023, a notice containing the time and place, location, nature and scope of the application, where additional information may be obtained, and the opportunity for interested parties to be heard, to the property owners and tenants within 300' of the land subject to notification. I further certify that I relied on information from the Wake County Tax Assessor and the Town of Apex Master Address Repository provided to me by Town of Apex GIS Staff as to accuracy of the list and accuracy of mailing addresses of property owners and tenants within 300' of the land subject to notification.

3/28/2023

Date

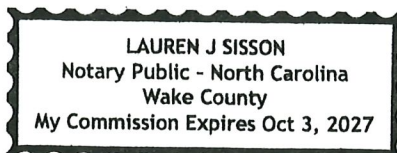
*Dianne L. Phin*

Planning Director

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Sworn and subscribed before me, Lauren J Sisson, a Notary Public for the above

State and County, this the 28<sup>th</sup> day of MARCH, 2023.



SEAL

*[Signature]*

Notary Public

My Commission Expires: 10 / 3 / 2027



## TOWN OF APEX

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

## PUBLIC NOTIFICATION OF PUBLIC HEARINGS CONDITIONAL ZONING #23CZ01 Cash Corporate Center Amendment

Pursuant to the provisions of North Carolina General Statutes §160D-602 and to the Town of Apex Unified Development Ordinance (UDO) Section 2.2.11, notice is hereby given of public hearings before the Planning Board of the Town of Apex. The purpose of these hearings is to consider the following:

**Applicants:** Rockpoint Group LLC & Oppidan  
**Authorized Agent:** Ashley Honeycutt Terrazas  
**Property Addresses:** 0 & 0 Pristine Water Drive & 1251 Burma Drive  
**Acreage:** ±83.03 acres  
**Property Identification Numbers (PINs):** 0751043020, 0751235497, 0751132324  
**2045 Land Use Map Designation:** Industrial Employment  
**Existing Zoning of Properties:** Light Industrial-Conditional Zoning (LI-CZ #21CZ08)  
**Proposed Zoning of Properties:** Light Industrial-Conditional Zoning (LI-CZ)

**Public Hearing Location:** Apex Town Hall  
Council Chamber, 2<sup>nd</sup> Floor  
73 Hunter Street, Apex, North Carolina

**Comments received prior to the Planning Board public hearing will not be provided to the Town Council.  
Separate comments for the Town Council public hearing must be provided by the deadline specified below.**

### **Town Council Public Hearing Date and Time: April 25, 2023 6:00 PM**

You may attend the meeting in person or view the meeting through the Town's YouTube livestream at:  
<https://www.youtube.com/c/townofapexgov>.

If you are unable to attend, you may provide a written statement by email to [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), or submit it to the Office of the Town Clerk (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Town Council vote. You must provide your name and address for the record. The written statements will be delivered to the Town Council prior to their vote. Please include the Public Hearing name in the subject line.

### **Vicinity Map:**



Property owners, tenants, and neighborhood associations within 300 feet of the proposed conditional zoning have been sent this notice via first class mail. All interested parties may submit comments with respect to the application by the means specified above. In addition to the above map, the location of the property may be viewed online at <https://maps.raleighnc.gov/imaps>. The 2045 Land Use Map may be viewed online at [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). You may call 919-249-3426, Planning Department, with questions or for further information. To view the petition and related documents on-line: <https://www.apexnc.org/DocumentCenter/View/42042>.

Dianne F. Khin, AICP  
Planning Director





**TOWN OF APEX**  
POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

**PUBLIC NOTIFICATION  
OF PUBLIC HEARINGS**  
**CONDITIONAL ZONING #23CZ01**  
**Cash Corporate Center Amendment**

Pursuant to the provisions of North Carolina General Statutes §160D-602 and to the Town of Apex Unified Development Ordinance (UDO) Section 2.2.11, notice is hereby given of public hearings before the Planning Board of the Town of Apex. The purpose of these hearings is to consider the following:

- Applicants:** Rockpoint Group LLC & Oppidan
- Authorized Agent:** Ashley Honeycutt Terrazas
- Property Addresses:** 0 & 0 Pristine Water Drive & 1251 Burma Drive
- Acreage:** ±83.03 acres
- Property Identification Numbers (PINs):** 0751043020, 0751235497, 0751132324
- 2045 Land Use Map Designation:** Industrial Employment
- Existing Zoning of Properties:** Light Industrial-Conditional Zoning (LI-CZ #21CZ08)
- Proposed Zoning of Properties:** Light Industrial-Conditional Zoning (LI-CZ)

**Public Hearing Location:** Apex Town Hall  
Council Chamber, 2<sup>nd</sup> Floor  
73 Hunter Street, Apex, North Carolina

*Comments received prior to the Planning Board public hearing will not be provided to the Town Council.  
Separate comments for the Town Council public hearing must be provided by the deadline specified below.*

**Town Council Public Hearing Date and Time: April 25, 2023 6:00 PM**

You may attend the meeting in person or view the meeting through the Town's YouTube livestream at:  
<https://www.youtube.com/c/townofapexgov>.

If you are unable to attend, you may provide a written statement by email to [public\\_hearing@apexnc.org](mailto:public_hearing@apexnc.org) or submit it to the Office of the Town Clerk (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Town Council vote. You must provide your name and address for the record. The written statements will be delivered to the Town Council prior to their vote. Please include the Public Hearing name in the subject line.

**Vicinity Map:**



Property owners, tenants, and neighborhood associations within 300 feet of the proposed conditional zoning have been sent this notice via first class mail. All interested parties may submit comments with respect to the application by the means specified above. In addition to the above map, the location of the property may be viewed online at <https://maps.raleighnc.gov/imaps>. The 2045 Land Use Map may be viewed online at [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). You may call 919-249-3426, Planning Department, with questions or for further information. To view the petition and related documents on-line: <https://www.apexnc.org/DocumentCenter/View/42042>.

Dianne F. Khin, AICP  
Planning Director





## TOWN OF APEX

PO BOX 250  
APEX, NORTH CAROLINA 27502  
TELÉFONO 919-249-3426

## NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS

ORDENAMIENTO TERRITORIAL CONDICIONAL #23CZ01

Cash Corporate Center Permitted Uses Update

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-602 y con la Sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del ayuntamiento de Apex, por la presente se notifican las audiencias públicas ante el Consejo Municipal del Ayuntamiento de Apex. El propósito de estas audiencias es considerar lo siguiente:

**Solicitante:** Rockpoint Group, LLC & Oppidan

**Agente autorizado:** Ashley Honeycutt Terrazas

**Dirección des la propiedades:** 0 & 0 Pristine Water Drive & 1251 Burma Drive

**Superficie:** ±83.03 acres

**Números de identificación de las propiedades:** 0751043020, 0751235497, 0751132324

**Designación actual en el Mapa de Uso Territorial para 2045:** Industrial Employment

**Ordenamiento territorial existente de las propiedades:** Light Industrial-Conditional Zoning (LI-CZ #21CZ08)

**Ordenamiento territorial propuesto para las propiedades:** Light Industrial-Conditional Zoning (LI-CZ)

**Lugar de la audiencia pública:** Ayuntamiento de Apex

Cámara del Consejo, 2º piso

73 Hunter Street, Apex, Carolina del Norte

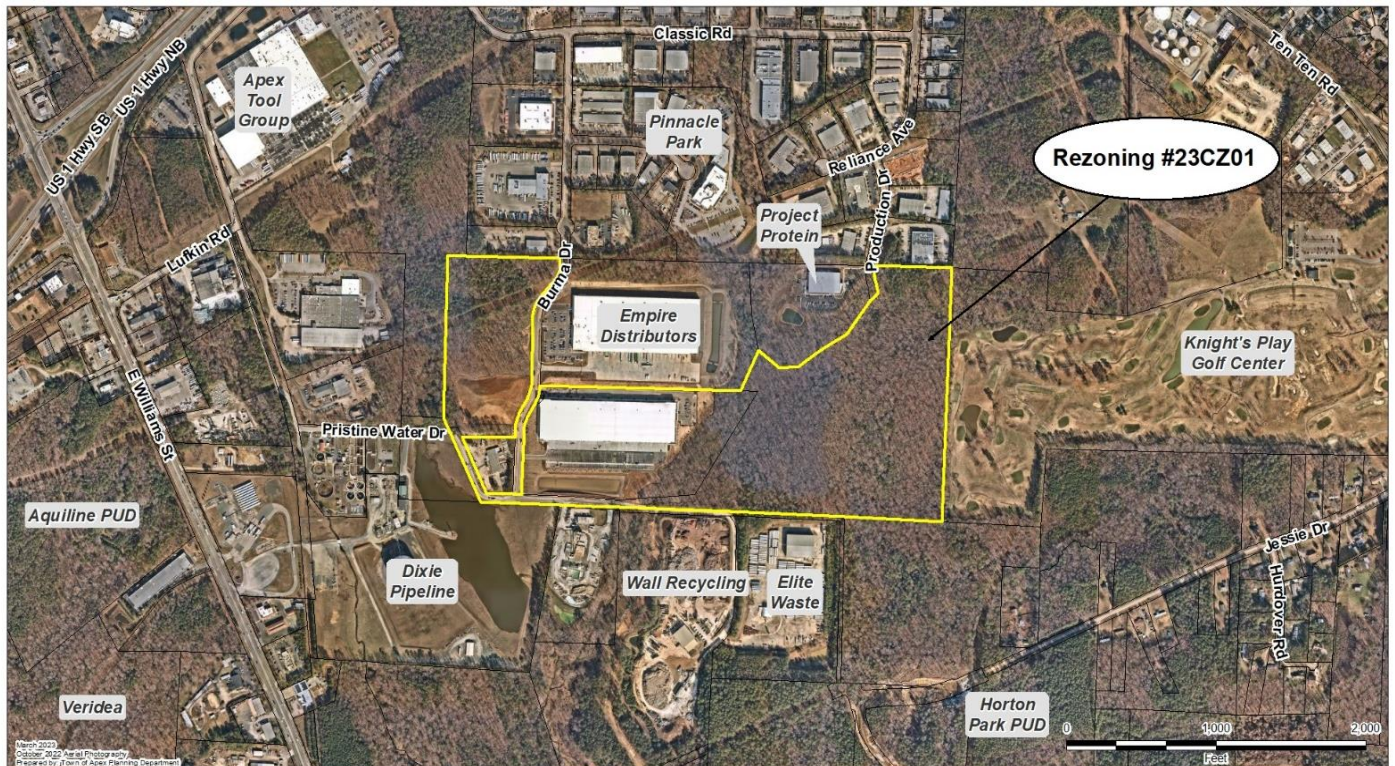
***Los comentarios recibidos antes de la audiencia pública de la Junta de Planificación no se proporcionarán al Consejo Municipal. Los comentarios para la audiencia pública del Consejo Municipal deben presentarse por separado en el plazo especificado a continuación.***

**Fecha y hora de la audiencia pública del Consejo Municipal: 25 de abril de 2023 6:00 P.M.**

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), o presentarla a la oficina del Secretario Municipal (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación del Consejo Municipal. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán al Consejo Municipal antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

### Mapa de las inmediaciones:



Los propietarios, inquilinos y asociaciones de vecinos en un radio de 300 pies del Ordenamiento Territorial Condicional propuesto han recibido esta notificación por correo postal de primera clase. Todas las partes interesadas pueden presentar comentarios sobre la solicitud a través de los medios especificados anteriormente. La ubicación de la propiedad también puede verse aquí: <https://maps.raleighnc.gov/imaps>. Puede ver el Mapa de Uso Territorial para 2045 aquí: [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). Si tiene preguntas o desea obtener más información, puede comunicarse con el Departamento de Planificación al 919-249-3426. Puede ver la solicitud y otros documentos relacionados aquí: <https://www.apexnc.org/DocumentCenter/View/42042>.

Dianne F. Khin, AICP  
Directora de Planificación





**TOWN OF APEX**  
PO BOX 250  
APEX, NORTH CAROLINA 27502  
TELÉFONO 919-249-3426

## NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS

### ORDENAMIENTO TERRITORIAL CONDICIONAL #23CZ01

#### Cash Corporate Center Permitted Uses Update

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-602 y con la Sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del ayuntamiento de Apex, por la presente se notifican las audiencias públicas ante el Consejo Municipal del Ayuntamiento de Apex. El propósito de estas audiencias es considerar lo siguiente:

**Solicitante:** Rockpoint Group, LLC & Oppidan  
**Agente autorizado:** Ashley Honeycutt Terrazas  
**Dirección de las propiedades:** 0 & 0 Pristine Water Drive & 1251 Burma Drive  
**Superficie:** ±83.03 acres  
**Números de identificación de las propiedades:** 0751043020, 0751235497, 0751132324  
**Designación actual en el Mapa de Uso Territorial para 2045:** Industrial Employment  
**Ordenamiento territorial existente de las propiedades:** Light Industrial-Conditional Zoning (LI-CZ #21CZ08)  
**Ordenamiento territorial propuesto para las propiedades:** Light Industrial-Conditional Zoning (LI-CZ)

**Lugar de la audiencia pública:** Ayuntamiento de Apex  
Cámara del Consejo, 2º piso  
73 Hunter Street, Apex, Carolina del Norte

*Los comentarios recibidos antes de la audiencia pública de la Junta de Planificación no se proporcionarán al Consejo Municipal. Los comentarios para la audiencia pública del Consejo Municipal deben presentarse por separado en el plazo especificado a continuación.*

**Fecha y hora de la audiencia pública del Consejo Municipal:** 25 de abril de 2023 6:00 P.M.

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), o presentarla a la oficina del Secretario Municipal (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación del Consejo Municipal. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán al Consejo Municipal antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

#### Mapa de las inmediaciones:



Los propietarios, inquilinos y asociaciones de vecinos en un radio de 300 pies del Ordenamiento Territorial Condicional propuesto han recibido esta notificación por correo postal de primera clase. Todas las partes interesadas pueden presentar comentarios sobre la solicitud a través de los medios especificados anteriormente. La ubicación de la propiedad también puede verse aquí: <https://maps.raleighnc.gov/imaps>. Puede ver el Mapa de Uso Territorial para 2045 aquí: [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). Si tiene preguntas o desea obtener más información, puede comunicarse con el Departamento de Planificación al 919-249-3426. Puede ver la solicitud y otros documentos relacionados aquí: <https://www.apexnc.org/DocumentCenter/View/42042>.

Dianne F. Khin, AICP  
Directora de Planificación

Fechas de publicación: 31 de marzo - 25 de abril de 2023



## TOWN OF APEX

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

### AFFIDAVIT CERTIFYING Public Notification – Written (Mailed) Notice

Section 2.2.11  
Town of Apex Unified Development Ordinance

Project Name: Conditional Zoning #23CZ01  
Cash Corporate Center Amendment

Project Location: 0 & 0 Pristine Water Drive & 1251 Burma Drive

Applicant or Authorized Agent: Ashley Honeycutt Terrazas

Firm: Parker Poe

This is to certify that I, as Director of Planning, mailed or caused to have mailed by first class postage for the above mentioned project on March 31, 2023, a notice containing the time and place, location, nature and scope of the application, where additional information may be obtained, and the opportunity for interested parties to be heard, to the property owners and tenants within 300' of the land subject to notification. I further certify that I relied on information from the Wake County Tax Assessor and the Town of Apex Master Address Repository provided to me by Town of Apex GIS Staff as to accuracy of the list and accuracy of mailing addresses of property owners and tenants within 300' of the land subject to notification.

4/3/2003  
Date

*Jeannae L. Fisher*  
Planning Director

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Sworn and subscribed before me, *Jeri Chastain Pederson*, a Notary Public for the above

State and County, this the 3 day of April, 2023.

*Jeri Chastain Pederson*  
Notary Public



My Commission Expires: 3 / 10 / 2024



Rezoning #23CZ01

Goodworth Dr

Production Dr

Project Protein

Cash Corporate Center

Pristine Water Dr

Burna Dr

Horton Park PUD

Jessie Dr

Public Hearing Signs Posted By

*[Signature]* 2-17-23  
Signature Date





# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PUBLIC HEARING

Meeting Date: April 25, 2023

## Item Details

Presenter(s): Shelly Mayo, Planner II

Department(s): Planning

### Requested Motion

Public hearing and possible motion to approve Rezoning Application #23CZ02 Triangle Home Services Phase II. The applicant, Peak Engineering & Design, PLLC, seeks to rezone approximately 4.55 acres from Rural Residential (RR) to Tech/Flex-Conditional Zoning (TF-CZ). The proposed rezoning is located at 0 US Hwy 64 West.

### Approval Recommended?

The Planning Department recommends approval.

The Planning Board held a Public Hearing on April 10, 2023 and unanimously voted to recommend approval of the rezoning with the conditions offered by the applicant.

### Item Details

The property to be rezoned is identified as PIN 0722047141.

### Attachments

- PH3-A1: Staff Report and Application - Rezoning No. 23CZ01 Triangle Home Services Phase II



## STAFF REPORT

### Rezoning #23CZ02 Triangle Home Services Phase II

April 25, 2023 Town Council Meeting



All property owners, tenants, and neighborhood associations within 300 feet of this rezoning have been notified per UDO Sec. 2.2.11 *Public Notification*.

#### BACKGROUND INFORMATION:

**Address:** 0 US Hwy 64 West  
**Applicant:** Peak Engineering & Design, PLLC  
**Owner:** Shelton Property Investments, LLC

#### PROJECT DESCRIPTION:

**Acreage:** +/- 4.55 acres  
**PIN:** 0722047141  
**Current Zoning:** Rural Residential (RR)  
**Proposed Zoning:** Tech/Flex–Conditional Zoning (TF-CZ)  
**2045 Land Use Map:** Mixed Use: High Density Residential/Office Employment/ Commercial Services  
**Town Limits:** In ETJ

#### ADJACENT ZONING & LAND USES:

	Zoning	Land Use
<b>North:</b>	Tech/Flex (TF)	Triangle Home Services
<b>South:</b>	Planned Unit Development-Conditional Zoning (PUD-CZ #21CZ12)	Vacant (Legacy PUD)
<b>East:</b>	Conservation Buffer (CB)	Greenway (American Tobacco Trail)
<b>West:</b>	Planned Unit Development-Conditional Zoning (PUD-CZ #21CZ12)	Future Apartments (Legacy Station)

#### EXISTING CONDITIONS:

The site consists of one (1) parcel totaling +/- 4.55 acres and is located south of Triangle Home Services and US Hwy 64 West, west of the American Tobacco Trail, and east and north of Legacy PUD. The site is currently wooded and is bisected by a stream.

#### NEIGHBORHOOD MEETING:

The applicant conducted a neighborhood meeting on January 26, 2023. The meeting report is attached to the staff report.

#### 2045 LAND USE MAP:

The 2045 Land Use Map designates the site as Mixed Use: High Density Residential/Office Employment/Commercial Services. The proposed rezoning to Tech/Flex–Conditional Zoning (TF-CZ) is consistent with that Land Use Map designation.

#### PROPOSED ZONING CONDITIONS:

##### Proposed Uses:

The Rezoned Lands may be used for, and only for, the uses listed immediately below. The permitted uses are subject to the limitations and regulations stated in the UDO and any additional limitations or regulations stated below. For convenience, some relevant sections of the UDO may be referenced; such references do not imply that other sections of the UDO do not apply.

1. Security or Caretaker quarters
2. Day care facility

## STAFF REPORT

### Rezoning #23CZ02 Triangle Home Services Phase II

April 25, 2023 Town Council Meeting



- |   |   |
|---|---|
| 3. Drop-in or short- term day care              | 28. Glass sales                                 |
| 4. Government service                           | 29. Grocery, general                            |
| 5. Veterinary clinic or hospital                | 30. Grocery, specialty                          |
| 6. Vocational school                            | 31. Health/fitness center or spa                |
| 7. Utility, minor                               | 32. Kennel                                      |
| 8. Wireless support structure                   | 33. Personal service                            |
| 9. Wireless communication facility              | 34. Printing and copying service                |
| 10. Botanical garden                            | 35. Real estate sales                           |
| 11. Entertainment, indoor                       | 36. Repair services, limited                    |
| 12. Greenway                                    | 37. Retail sales, bulky goods                   |
| 13. Park, active                                | 38. Retail sales, general (%)                   |
| 14. Park, passive                               | 39. Self-service storage                        |
| 15. Youth or day camps                          | 40. Studio for art                              |
| 16. Broadcasting station (radio and television) | 41. Tailor shop                                 |
| 17. Radio and television recording studio       | 42. Upholstery shop                             |
| 18. Commissary                                  | 43. Pet services                                |
| 19. Restaurant, general                         | 44. Automotive Accessory Sales and Installation |
| 20. Dispatching office                          | 45. Contractor's office and storage yard        |
| 21. Medical or dental office or clinic          | 46. Laboratory, industrial research             |
| 22. Medical or dental laboratory                | 47. Warehousing, general                        |
| 23. Office, business or professional            | 48. Woodworking or cabinetmaking                |
| 24. Pilot Plant (S)                             | 49. Wholesaling distribution center             |
| 25. Publishing office                           | 50. Microbrewery                                |
| 26. Research facility                           | 51. Microdistillery                             |
| 27. Artisan Studio                              |   |

#### Proposed Conditions:

1. Non-residential architectural standards:
  - a. The building exterior shall be high quality materials, including but not limited to brick, wood, stacked stone, other native stone, and tinted/textured concrete masonry units.
  - b. EIFS or synthetic stucco shall not be used in the first forty inches (40") above grade.
  - c. The building exterior shall have more than one material color.
  - d. The buildings shall have more than one parapet height.
  - e. Only full cut-off lighting fixtures and fixtures with external house-side shields shall be allowed where non-residential properties are adjacent to residential properties.
2. A buffer shall not be required along the northern boundary adjacent to PIN 0722-04-7652).
3. If the uses "Commissary", "Contractor's office and storage yard", and/or "Wholesale distribution center" are proposed within the zoned property, an 8-foot opaque fence shall be installed to provide additional screening of the stored business vehicles from the American Tobacco Trail. This requirement is above and beyond the required buffer along the American Tobacco Trail.
4. A note shall be added to plans and plats regarding the existing Deck Air Park generally as noted:  
"AVIATION NOTICE: Deck Air Park, an active, general aviation airport open to the public, is located within close proximity to the proposed development. The flight path of aircraft landing, taking off, and flying nearby pass directly over this development. The property identified on this plat may be subject to the impacts of the aviation uses being conducted to, from, at and nearby Deck Air Park for so long as that airport may continue to be used."

## STAFF REPORT

### Rezoning #23CZ02 Triangle Home Services Phase II

April 25, 2023 Town Council Meeting



5. The use “Glass Sales” shall be all indoors except where materials are stored on trucks. Outdoor truck parking for Glass Sales use must be fully screened from any public rights-of-ways.
6. “Self-service storage” shall be limited to parking, drive aisles, and SCMs on the rezoned parcel.
7. “Contractor’s office and storage yard” shall not permit an outdoor storage yard on the zoned parcel with the exception of any company vehicles stored when not in use.

The following EAB zoning conditions shall apply:

1. Post development peak runoff shall not exceed pre-development peak runoff for the 24-hour, 1-year, 10-year, and 25-year storm events in accordance with the Unified Development Ordinance.
2. No clearing or land disturbance shall be permitted within the riparian buffer, except the minimum necessary to install required sewer infrastructure and SCM outlets. The SCM water storage and treatment area shall not be permitted with the riparian buffer. The sewer shall be designed to minimize impacts to the riparian buffer.
3. Plant deciduous shade trees on the southern side of buildings.
4. Plant evergreen trees as a windbreak on northern side of buildings.
5. The project shall select and install tree, shrub and perennial species with special attention to providing diverse and abundant pollinator and bird food sources, including plants that bloom in succession from spring to fall.
6. Of the vegetation used with the development, 75% shall be native species including those planted within the perimeter buffers. Species shall be submitted to the Planning Department in coordination with the Apex [Design & Development Manual](#)).
7. To reduce irrigation requirements, the project shall select and plant only warm season grasses.
8. A minimum of three (3) hardwood tree species shall be used for the landscaping on site.
9. A minimum of two (2) Electric Vehicle Charging Stations shall be installed.
10. Include International Dark Sky Association compliance standards within the design, including:
  - a. Outdoor lighting shall be shielded in a way that focuses lighting to the ground.
  - b. Lighting that minimizes the emission of blue light to reduce glare shall be used.
  - c. Lighting with a color temperature of 3000K or less shall be used for outside installations.
11. All non-residential buildings shall provide solar conduit for future installation of rooftop solar panels.

#### ENVIRONMENTAL ADVISORY BOARD:

The Apex Environmental Advisory Board (EAB) held a pre-application meeting for this rezoning on January 19, 2023. The zoning conditions suggested by the EAB are listed below along with the applicant’s response to each condition.

EAB Suggested Condition	Applicant Response
1. Increase design storm for retention basins in flood-prone areas. <ol style="list-style-type: none"><li>a. Increase design storm pre- and post-attenuation requirement to the 25-year storm.</li></ol>	Added
2. Add a permit condition which does not allow for tree clearing, SCM, or infrastructure in either zone of the riparian buffer; Restricted in Zone one and two of the riparian buffer. Exclude sewer infrastructure.	Added
3. Plant trees as designed for efficiency. <ol style="list-style-type: none"><li>a. Plant deciduous shade trees on southern side of buildings.</li><li>b. Plant evergreen trees as a windbreak on northern side of buildings.</li></ol>	Added

## STAFF REPORT

### Rezoning #23CZ02 Triangle Home Services Phase II

April 25, 2023 Town Council Meeting



EAB Suggested Condition	Applicant Response
4. Increase biodiversity. a. Plant pollinator-friendly flora. b. Plant 75% native flora (Refer to the Apex <u>Design &amp; Development Manual</u> for approved native species).	Added
5. Plant native flora within the buffer.	Added
6. Include landscaping that requires less irrigation and chemical use. a. Plant warm season grasses for drought-resistance.	Added
7. Increase the number of native hardwood tree species planted to 3, preferably 4.	Added
8. Install convenient electric vehicle charging stations.	Added
9. Include energy efficient lighting in building design. a. Lower maximum foot-candles outside of buildings.	Not Added
10. Install timers or light sensors or smart lighting technology.	Not Added
11. Incorporate natural lighting techniques into building design.	Not Added
12. Include International Dark Sky Association compliance standards. a. Outdoor lighting shall be shielded in a way that focuses lighting to the ground. b. Lighting that minimizes the emission of blue light to reduce glare shall be used. c. Lighting with a color temperature of 3000K or less shall be used for outside installations.	Added
13. Preserve tree canopy and prioritize medium to large, healthy, desirable species. a. Preserve existing trees (percentage-based).	Not Added
14. Install community gardens and native pollinator demonstration gardens.	Not Added
15. Include solar conduit in building design.	Added
16. A minimum 10-kilowatt solar PV system shall be installed on the building(s).	Not Added

#### PLANNING BOARD RECOMMENDATION:

Planning Board heard this item at their April 10, 2023 meeting. They unanimously voted to recommend approval of Rezoning Case #23CZ02 Triangle Home Services Phase II as presented by the applicant.

#### PLANNING STAFF RECOMMENDATION:

Planning staff recommends approval of Rezoning #23CZ02 Triangle Home Services Phase II as proposed by the applicant.

#### ANALYSIS STATEMENT OF THE REASONABLENESS OF THE PROPOSED REZONING:

This Statement will address consistency with the Town's comprehensive and other applicable plans, reasonableness, and effect on public interest:

The 2045 Land Use Map designates this area as Mixed Use: High Density Residential//Office Employment/Commercial Services, which includes the zoning district Tech/Flex-Conditional Zoning (TF-CZ). The proposed rezoning is consistent with the 2045 Land Use Map.

The proposed rezoning is reasonable and in the public interest because it will permit additional non-residential uses that are compatible with the surrounding properties, implement stricter environmental conditions than the UDO requires, and allow the property to be developed in conjunction with the



property to the north.

### LEGISLATIVE CONSIDERATIONS

The Town Council shall find the Tech/Flex–Conditional Zoning (TF-CZ) designation demonstrates compliance with the following standards. 2.3.3.F:

The applicant shall propose site-specific standards and conditions that take into account the following considerations, which are considerations that are relevant to the legislative determination of whether or not the proposed conditional zoning district rezoning request is in the public interest. These considerations do not exclude the legislative consideration of any other factor that is relevant to the public interest.

- 1) *Consistency with 2045 Land Use Map.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and consistency with the purposes, goals, objectives, and policies of the 2045 Land Use Map.
- 2) *Compatibility.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and compatibility with the character of surrounding land uses.
- 3) *Zoning district supplemental standards.* The proposed Conditional Zoning (CZ) District use's compliance with Sec 4.4 *Supplemental Standards*, if applicable.
- 4) *Design minimizes adverse impact.* The design of the proposed Conditional Zoning (CZ) District use's minimization of adverse effects, including visual impact of the proposed use on adjacent lands; and avoidance of significant adverse impacts on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration and not create a nuisance.
- 5) *Design minimizes environmental impact.* The proposed Conditional Zoning District use's minimization of environmental impacts and protection from significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.
- 6) *Impact on public facilities.* The proposed Conditional Zoning (CZ) District use's avoidance of having adverse impacts on public facilities and services, including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities.
- 7) *Health, safety, and welfare.* The proposed Conditional Zoning (CZ) District use's effect on the health, safety, or welfare of the residents of the Town or its ETJ.
- 8) *Detrimental to adjacent properties.* Whether the proposed Conditional Zoning (CZ) District use is substantially detrimental to adjacent properties.
- 9) *Not constitute nuisance or hazard.* Whether the proposed Conditional Zoning (CZ) District use constitutes a nuisance or hazard due to traffic impact or noise, or because of the number of persons who will be using the Conditional Zoning (CZ) District use.
- 10) *Other relevant standards of this Ordinance.* Whether the proposed Conditional Zoning (CZ) District use complies with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.



Rezoning #23CZ02

64 US 64 Hwy W

American Tobacco Trail

Lawson Ln

Deck Air Park

AirPark Dr

Smith Farm PUD

Rise and Shine Rd

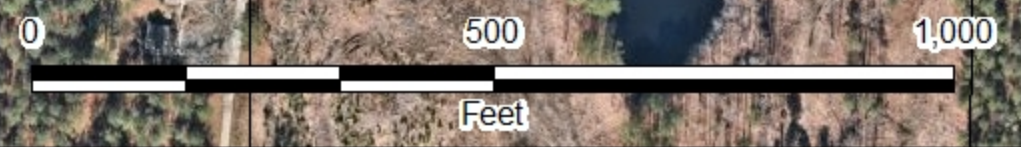
Farmland Aly

Spring Wheat Ct

Shiplap Aly

Metal Roof Way

Watering Can Ln





## PETITION TO AMEND THE OFFICIAL ZONING MAP

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 #: 23CZ02

Submittal Date: 02/01/2023

Fee Paid: yes

### Project Information

Project Name: Triangle Home Services (THS) Phase II

Address(es): 0 US Highway 64 West

PIN(s): 0722-04-7141

Acreage: 4.55 acres

Current Zoning: RR

Proposed Zoning: TF - CZ

Current 2045 LUM Classification(s): High Density Residential/Commercial Services/Office Employment

Is the proposed rezoning consistent with the 2045 LUM Classification(s)? Yes ☐ No ☐

If any portion of the project is shown as mixed use (3 or more stripes on the 2045 Land Use Map) provide the following:

Area classified as mixed use: Acreage: 4.55 acres

Area proposed as non-residential development: Acreage: 4.55 acres

Percent of mixed use area proposed as non-residential: Percent: 100%

### Applicant Information

Name: Peak Engineering & Design, PLLC (attn: Jeff Roach, P.E.)

Address: 1125 Apex Peakway

City: Apex State: NC Zip: 27502

Phone: (919) 439-0100 E-mail: jroach@peakengineering.com

### Owner Information

Name: Shelton Property Investments, LLC (attn: Donnie Shelton)

Address: 2701 Weaver Hill Drive

City: Apex State: NC Zip: 27502

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

### Agent Information

Name: Peak Engineering & Design, PLLC (attn: Jeff Roach, P.E.)

Address: 1125 Apex Peakway

City: Apex State: NC Zip: 27502

Phone: (919) 439-0100 E-mail: jroach@peakengineering.com

Other contacts: fspinnenweber@peakengineering.com

## PETITION INFORMATION

Application #: 23CZ02 Submittal Date: 02/07/2023

An application has been duly filed requesting that the property described in this application be rezoned from RR to TF - CZ. It is understood and acknowledged that if the property is rezoned as requested, the property described in this request will be perpetually bound to the use(s) authorized and subject to such conditions as imposed, unless subsequently changed or amended as provided for in the Unified Development Ordinance (UDO). It is further understood and acknowledged that final plans for any specific development to be made pursuant to any such Conditional Zoning shall be submitted for site or subdivision plan approval, as required by the UDO. Use additional pages as needed.

### PROPOSED USES:

The Rezoned Lands may be used for, and only for, the uses listed immediately below. The permitted uses are subject to the limitations and regulations stated in the UDO and any additional limitations or regulations stated below. For convenience, some relevant sections of the UDO may be referenced; such references do not imply that other sections of the UDO do not apply.

1		21	
2		22	
3	See attached list of uses	23	
4		24	
5		25	
6		26	
7		27	
8		28	
9		29	
10		30	
11		31	
12		32	
13		33	
14		34	
15		35	
16		36	
17		37	
18		38	
19		39	
20		40	

## **LIST OF PERMITTED USES – TRIANGLE HOME SERVICES PHASE II**

### **Residential Uses (UDO 4.3.1)**

Security or Caretaker quarters

### **Public and Civil Uses (UDO 4.3.2)**

Day care facility

Drop-in or short- term day care

Government service

Veterinary clinic or hospital

Vocational school

### **Utilities (UDO 4.3.3)**

Utility, minor

Wireless support structure

Wireless communication facility

### **Recreation Uses (UDO 4.3.4)**

Botanical garden

Entertainment, indoor

Greenway

Park, active

Park, passive

Youth or day camps

### **Communication (UDO 4.3.5.B)**

Broadcasting station (radio and television)

Radio and television recording studio

### **Food and beverage service (UDO 4.3.5.C)**

Commissary

Restaurant, general

### **Office and Research (UDO 4.3.5.D)**

Dispatching office

Medical or dental office or clinic

Medical or dental laboratory

Office, business or professional

Pilot Plant (S)

Publishing office

Research facility

### **Retail Sales and Services (UDO 4.3.5.G)**

Artisan Studio

Glass sales

Grocery, general

Grocery, specialty

Health/fitness center or spa

Kennel

Personal service

Printing and copying service

Real estate sales

Repair services, limited

Retail sales, bulky goods

Retail sales, general (%)

Self-service storage

Studio for art

Tailor shop

Upholstery shop

Pet services

### **Vehicle Repair and Service (UDO 4.3.5.H)**

Automotive Accessory Sales and Installation

### **Industrial Uses - Industrial Service (UDO 4.3.6.A)**

Contractor's office and storage yard

Laboratory, industrial research

Warehousing, general

Woodworking or cabinetmaking

Wholesaling distribution center

### **Production (UDO 4.3.6.B)**

Microbrewery

Microdistillery

## PETITION INFORMATION

Application #: 23CZ02 Submittal Date: 02/01/2023

## PROPOSED CONDITIONS:

The applicant hereby requests that the Town Council of the Town of Apex, pursuant to the Unified Development Ordinance, approve the Conditional Zoning for the above listed use(s) subject to the following condition(s). Use additional pages as needed.

See the list of proposed zoning conditions following the Legislative Considerations.

## LEGISLATIVE CONSIDERATIONS - CONDITIONAL ZONING

The applicant shall propose site-specific standards and conditions that take into account the following considerations, which are considerations that are relevant to the legislative determination of whether or not the proposed conditional zoning district rezoning request is in the public interest. These considerations do not exclude the legislative consideration of any other factor that is relevant to the public interest. Use additional pages as needed.

1) *Consistency with 2045 Land Use Map.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and consistency with the purposes, goals, objectives, and policies of the 2045 Land Use Map.

The proposed non-residential development is consistent with the 2045 LUM with the commercial/office/employment uses proposed with the conditional zoning.

2) *Compatibility.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and compatibility with the character of surrounding land uses.

The proposed zoning of the 4.55 acres adds to the existing THS development approved in 2022 for the TF/Office building. The major collector (to the west) will buffer the high-density residential while the stream to the south will buffer the non-residential use from low density residential or school (depending upon the final use).

## PETITION INFORMATION

Application #: 23CZ02 Submittal Date: 02/01/2023

3) Zoning district supplemental standards. The proposed Conditional Zoning (CZ) District use's compliance with Sec 4.4 *Supplemental Standards*, if applicable.

The proposed development and uses will comply with the supplemental use standards to the extent such standards are applicable under UDO Section 4.4.

4) *Design minimizes adverse impact.* The design of the proposed Conditional Zoning (CZ) District use's minimization of adverse effects, including visual impact of the proposed use on adjacent lands; and avoidance of significant adverse impacts on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration and not create a nuisance.

The property is an expansion of the recently approved THS development. The non-residential uses will continue south to provide continuity of development along the new major collector abutting existing stream buffers to the south.

5) *Design minimizes environmental impact.* The proposed Conditional Zoning District use's minimization of environmental impacts and protection from significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.

The property will be consistent with the Town's requirements for development, many of which are to minimize the project's impact on environmentally sensitive areas. EAB conditions are being evaluated to minimize the project's impact.

6) *Impact on public facilities.* The proposed Conditional Zoning (CZ) District use's avoidance of having adverse impacts on public facilities and services, including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities.

The addition of the 4.55 acres to the THS development will improve non-residential offerings within a corridor (US 64) which is slated for this type of uses. Addition of the property to the existing development will allow for the orderly extension of future services to properties in the area.

7) *Health, safety, and welfare.* The proposed Conditional Zoning (CZ) District use's effect on the health, safety, or welfare of the residents of the Town or its ETJ.

The proposed zoning is consistent with the Town's long-range plans for the area. Providing additional non-residential development and infrastructure expansion will only increase the health, safety and welfare of surrounding property owners.

## PETITION INFORMATION

Application #: 23CZ02 Submittal Date: 20/01/2023

8) *Detrimental to adjacent properties.* Whether the proposed Conditional Zoning (CZ) District use is substantially detrimental to adjacent properties.

The proposed zoning is consistent with the northern property; is buffered to the west by the new major collector and high-density residential development; separated from low density residential/school to the south by a buffered stream; and providing large buffers along the American Tobacco Trail to the east. No impact on surrounding prop.

9) *Not constitute nuisance or hazard.* Whether the proposed Conditional Zoning (CZ) District use constitutes a nuisance or hazard due to traffic impact or noise, or because of the number of persons who will be using the Conditional Zoning (CZ) District use.

The proposed uses are consistent with the 2045 LUM, are not expected to create major impacts on surrounding properties, and will comply with the Town's expectations for uses within the non-residential nature of the area.

10) *Other relevant standards of this Ordinance.* Whether the proposed Conditional Zoning (CZ) District use complies with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.

Other standards shall be applied through the interpretation of the UDO during Minor Site Plan and Construction Document review and approval.



## **Triangle Home Services Phase II Zoning Conditions (Property includes PIN 0722-04-7141)**

The following zoning conditions shall apply to the development of THS Phase II:

1. Non-Residential architectural standards:
  - A. The building exterior shall be high quality materials, including but not limited to brick, wood, stacked stone, other native stone, and tinted/textured concrete masonry units.
  - B. EIFS or synthetic stucco shall not be used in the first forty inches (40") above grade.
  - C. The building exterior shall have more than one material color.
  - D. The buildings shall have more than one parapet height.
  - E. Only full cut-off lighting fixtures and fixtures with external house-side shields shall be allowed where non-residential properties are adjacent to residential properties.
2. A buffer shall not be required along the northern boundary adjacent to PIN 0722-04-7652).
3. If the use "Commissary", "Contractor's office and storage yard", and/or "Wholesale distribution center" are proposed within the zoned property, an 8-foot opaque fence shall be installed to provide additional screening of the stored business vehicles from the American Tobacco Trail. This requirement is above and beyond the required buffer along the American Tobacco Trail.
4. A note shall be added to plans and plats regarding the existing Deck Air Park generally as noted: "AVIATION NOTICE: Deck Air Park, an active, general aviation airport open to the public, is located within close proximity to the proposed development. The flight path of aircraft landing, taking off, and flying nearby pass directly over this development. The property identified on this plat may be subject to the impacts of the aviation uses being conducted to, from, at and nearby Deck Air Park for so long as that airport may continue to be used."
5. The use "Glass Sales" shall be all indoors except where materials are stored on trucks. Outdoor truck parking for Glass Sales use must be fully screened from any public rights-of-ways.
6. "Self-service storage" shall be limited to parking, drive aisles, and SCMs on the rezoned parcel.
7. "Contractor's office and storage yard" shall not permit an outdoor storage yard on the zoned parcel with the except of any company vehicles stored when not in use.

The following EAB zoning conditions shall apply to the development of THS Phase II:

1. Post development peak runoff shall not exceed pre-development peak runoff for the 24-hour, 1-year, 10-year, and 25-year storm events in accordance with the Unified Development Ordinance.
2. No clearing or land disturbance shall be permitted within the riparian buffer, except the minimum necessary to install required sewer infrastructure and SCM outlets. The SCM water storage and treatment area shall not be permitted with the riparian buffer. The sewer shall be designed to minimize impacts to the riparian buffer.
3. Plant deciduous shade trees on the southern side of buildings.
4. Plant evergreen trees as a windbreak on northern side of buildings.
5. The project shall select and install tree, shrub and perennial species with special attention to providing diverse and abundant pollinator and bird food sources, including plants that bloom in succession from spring to fall.
6. Of the vegetation used with the development, 75% shall be native species including those planted within the perimeter buffers. Species shall be submitted to the Planning Department in coordination with the Apex [Design & Development Manual](#)).
7. To reduce irrigation requirements, the project shall select and plant only warm season grasses.
8. A minimum of three (3) hardwood tree species shall be used for the landscaping on site.
9. A minimum of two (2) Electric Vehicle Charging Stations shall be installed.

10. Include International Dark Sky Association compliance standards within the design, including:
  - A. Outdoor lighting shall be shielded in a way that focuses lighting to the ground.
  - B. Lighting that minimizes the emission of blue light to reduce glare shall be used.
  - C. Lighting with a color temperature of 3000K or less shall be used for outside installations.
11. All non-residential buildings shall provide solar conduit for future installation of rooftop solar panels.

## AGENT AUTHORIZATION FORM

Application #: \_\_\_\_\_

Submittal Date: \_\_\_\_\_

Shelton Property Investments, LLC (Donnie Shelton) is the owner\* of the property for which the attached application is being submitted:

- ☐ Land Use Amendment
- ☒ Rezoning: For Conditional Zoning and Planned Development rezoning applications, this authorization includes express consent to zoning conditions that are agreed to by the Agent which will apply if the application is approved.
- ☐ Site Plan
- ☐ Subdivision
- ☐ Variance
- ☐ Other: \_\_\_\_\_

The property address is: 0 US 64 West

The agent for this project is: Peak Engineering & Design, PLLC

☐ I am the owner of the property and will be acting as my own agent

Agent Name: Jeff Roach, P.E. (for Peak Engineering & Design, PLLC)

Address: 1125 Apex Peakway, Apex, NC 27502

Telephone Number: (919) 439-0100

E-Mail Address: jroach@peakengineering.com

Signature(s) of Owner(s)\*



DONNIE SHELTON

Type or print name

1/17/2023

Date

\_\_\_\_\_

Type or print name

\_\_\_\_\_ Date

Attach additional sheets if there are additional owners.

\*Owner of record as shown on the latest equalized assessment rolls of Wake County. An option to purchase does not constitute ownership. If ownership has been recently transferred, a copy of the deed must accompany this authorization.

Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this application 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 application and any related documents. If electronic signatures are used the application shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

# AFFIDAVIT OF OWNERSHIP

Application #: \_\_\_\_\_

Submittal Date: \_\_\_\_\_

The undersigned, Shelton Property Investments, LLC (Donnie Shelton) (the "Affiant") first being duly sworn, hereby swears or affirms as follows:

1. Affiant is over eighteen (18) years of age and authorized to make this Affidavit. The Affiant is the sole owner, or is the authorized agent of all owners, of the property located at 0 US Highway 64 West and legally described in **Exhibit "A"** attached hereto and incorporated herein (the "Property").
2. This Affidavit of Ownership is made for the purpose of filing an application for development approval with the Town of Apex.
3. If Affiant is the owner of the Property, Affiant acquired ownership by deed, dated 3/24/2021, and recorded in the Wake County Register of Deeds Office on 3/24/2021, in Book 18414 Page 02323.
4. If Affiant is the authorized agent of the owner(s) of the Property, Affiant possesses documentation indicating the agency relationship granting the Affiant the authority to apply for development approval on behalf of the owner(s).
5. If Affiant is the owner of the Property, from the time Affiant was deeded the Property on 3/24/2021, Affiant has claimed sole ownership of the Property. Affiant or Affiant's predecessors in interest have been in sole and undisturbed possession and use of the property during the period of ownership. Since taking possession of the Property on 3/24/2021, no one has questioned Affiant's ownership or right to possession nor demanded any rents or profits. To Affiant's knowledge, no claim or action has been brought against Affiant (if Affiant is the owner), or against owner(s) (if Affiant is acting as an authorized agent for owner(s)), which questions title or right to possession of the property, nor is any claim or action pending against Affiant or owner(s) in court regarding possession of the Property.

This the 17 day of January, 2023.

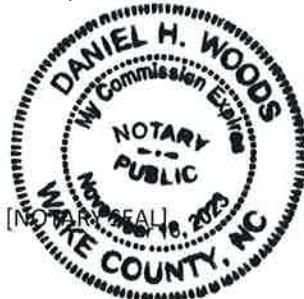
  
\_\_\_\_\_  
DONNIE SHELTON  
Type or print name


(seal)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned, a Notary Public in and for the County of WAKE, hereby certify that DONNIE SHELTON, Affiant, personally known to me or known to me by said Affiant's presentation of said Affiant's DRIVERS LICENSE, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing Affidavit.



  
\_\_\_\_\_  
Notary Public DANIEL H. WOODS  
State of North Carolina  
My Commission Expires: 11/18/2023

## AFFIDAVIT OF OWNERSHIP: EXHIBIT A – LEGAL DESCRIPTION

Application #:

Submittal Date:

**Insert legal description below.**

Exhibit A

BEING all of that certain tract of land containing 4.55 acres (198,211 square feet), more or less, as shown on that certain plat entitled "Exempt Subdivision Plat" prepared by Richard W. Tarby, PLS recorded in Book of Maps 2021, Page 522, Wake County Registry.

Said tract of land being a portion of the same property acquired by Grantor by deed recorded in Book 17531, Page 1052, Wake County Registry.

TOGETHER WITH all of Grantor's right, title and interest in and to the twenty (20) foot access easement described in that certain "Access Easement Agreement" recorded in Book 13 872, Page 2116, as relocated by that certain "Relocation of Access Easement" recorded in Book 18378, Page 1051, Wake County Registry.

**Triangle Home Services / Shelton Property Investments LLC**  
**Rezoning Legal Description**

All those certain parcels of land, situated in White Oak Township, Wake County, Apex, North Carolina, being known and designated as PIN 0722-04-7141, Wake County Records Deed Book 1992 Page 1523 and being more particularly described as follows:

Beginning at an Existing Iron Pipe on the Northeast Property Corner of PIN 0722-03-7373 N/F John W. Long & Faye Long (Deed Book 2070 Page 631) and the Southeast Property Corner of Graydon Holdings, LLC property PIN 0722-04-7141 (Deed Book 17531 Page 1052) Wake County Records having State Plane Coordinates N:723,906.79, E:2,021,015.94 as shown on a certain map entitled "Exempt Subdivision Plat for Graydon Holdings Parcel" made by VHB and recorded in Book of Maps 2021 Page 522 and Deed Book 18414 Page 2323, said point being the **POINT OF BEGINNING**:

thence N88°56'26"W 508.99' to an Existing Iron Pipe being a Common Property Corner with PIN:0722040381 (N/F Deannas Dowry, LLC);

thence N01°57'01"E 417.06' to an Existing Iron Pipe being a Common Property Corner with PIN:0722047652 (N/F Shelton Property Investments, LLC);

thence S87°00'24"E 439.95' to an Existing Iron Pipe along the Common Property Boundary with PIN:0722047652 (N/F Shelton Property Investments, LLC);

thence S87°00'24"E 20.68' to an Existing Iron Pipe being a Common Property Corner with PIN:0722047652 (N/F Shelton Property Investments, LLC) and PIN:0711986221 (N/F North Carolina Department of Transportation – more commonly the American Tobacco Trail property);

thence S04°55'57"E 403.67' to an Existing Iron Pipe being a Common Property Corner with PIN:0722037373 (N/F John W. Long & Faye Long), said point being the **POINT OF BEGINNING**.

Triangle Home Services / Shelton Property Investments LLC Rezoning contains 198,211 square feet or 4.55 acres more or less.





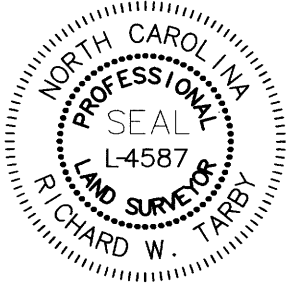
C-3705

940 Main Campus Dr.  
Suite 500  
Raleigh, NC 27606  
919.829.0328  
Richard W Tarby  
Email: RTARBY@VHB.COM

I, RICHARD W. TARBY, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK 17531, PAGE 1052), THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN DEED/PLAT BOOK AS, PAGE SHOWN; THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY AS CALCULATED IS 1:100,000; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER AND SEAL THIS 8th DAY OF March, 2021.

G.S. 47-30 (F)(1)(A). A. THAT THE SURVEY CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND.

PROFESSIONAL LAND SURVEYOR  
LICENSE NUMBER L-4587



LEGEND:  
 EXISTING IRON PIPE/NAIL  
 PRIVATE ACCESS EASE  
 LINES SURVEYED  
 LINES NOT SURVEYED  
 EASEMENT (SEE NOTE FOR TYPE)

No.	Revision	Date	Appvd.

Designed by	Drawn by RWT	Checked by RWT
CAD checked by RWT	Approved by RWT	
Scale 1"=40'	Date FEBRUARY 5, 2020	

## GRAYDON HOLDINGS PARCEL

Apex, North Carolina  
White Oak Twnshp, Wake County  
WAKE CO PIN#0722047141

Owners:  
GRAYDON HOLDINGS, LLC  
1734 REGATTA DR.  
FERNANDINA BEACH, FL 32034

## EXEMPT SUBDIVISION PLAT

Drawing Number

Sv-1

Sheet 1 of 1

Project Number  
39256.00

REFERENCES:  
 1. DB 17531, PAGE 1052 WAKE COUNTY REGISTRY  
 2. DB 18258, PAGE 2648 WAKE COUNTY REGISTRY  
 3. BM 1988, PAGE 794 WAKE COUNTY REGISTRY  
 4. BM 1992, PAGE 1523 WAKE COUNTY REGISTRY  
 5. DB 6660, PAGE 194 WAKE COUNTY REGISTRY  
 6. DB 10172, PAGE 1010 WAKE COUNTY REGISTRY

NOW OR FORMERLY  
SHELTON PROPERTY  
INVESTMENTS, LLC  
DB. 18258, PG. 2648  
BM 1988, PG. 794  
PIN#0722-04-7652

20' PRIVATE ACCESS EASEMENT  
DB 18378 PG 1051  
DB 18372 PG 2116

3/4" EIP FOUND  
1" ABOVE  
GROUND

5/8" EIP FOUND 2" ABOVE  
GROUND AND N 87°00'24" W  
0.53' FROM PROPERTY  
CORNER

5/8" PINCHED EIP FOUND 2"  
ABOVE GROUND

NOW OR FORMERLY  
GRAYDON HOLDINGS, LLC  
DB. 17531, PG. 1052  
BM 1992, PG. 1523  
PIN#0722-25-1162  
AS SHOWN AS PART OF TRACT 1,  
EAST OF NOW OR FORMERLY  
NCDOT (DB 6660 PG 194)  
25.35 ACRES (PER PLAT)

NOW OR FORMERLY  
NORTH CAROLINA  
DEPARTMENT OF  
TRANSPORTATION  
DB. 6660, PG. 194  
PIN#0711-98-6221

NC GRID NAD 83/2011  
COORDINATES  
N = 723,906.79  
E = 2,021,015.94

THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD  
HAZARD AREA, ZONE X MINIMAL FLOOD RISK,  
ACCORDING TO FLOOD INSURANCE RATE MAP #  
3720072200J EFFECTIVE DATE: 05-02-06.

THE FIXED STATION FOR THIS PROJECT IS:  
NGS CORS "NCRD"  
HORIZONTAL POSITION NAD 83(2011)  
NORTH = 733,167.41 (±FT)  
EAST = 2,124,896.39 (±FT)  
ELLIP. HT = 51.789 (meters)  
GEOD HEIGHT = -33.237  
EPOCH DATE = 2010.00  
COMBINED GRID FACTOR = 0.99990429  
COORDINATE REFERENCE SYSTEM IS NAD 83(2011)  
VERTICAL DATUM = NAVD 88  
GEOD DATUM = GEOID12B

BEARING AND DISTANCE FROM FIXED STATION TO SHOWN  
COORDINATE POINT ON MAP IS S 84°54'21" W AT 104,292.41 FEET (GRID)

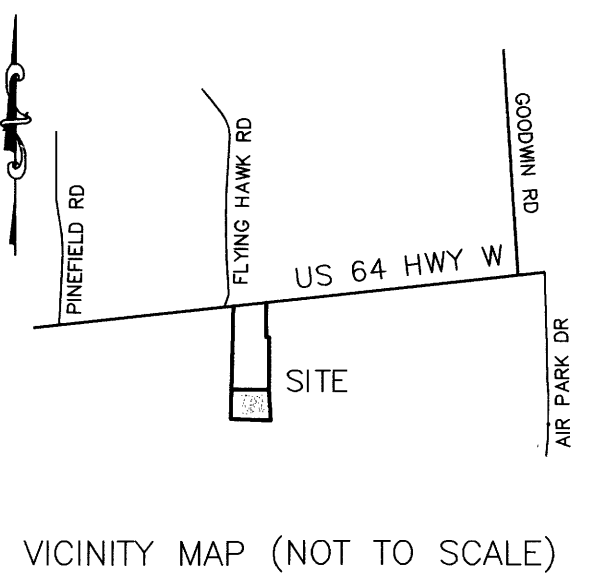
NOW OR FORMERLY  
GRAYDON HOLDINGS, LLC  
DB 17531, PG. 1052  
BM 1992, PG. 1523  
PIN# 0722-04-7141  
198,211 SqFT/4.55 Acres  
CURRENT ZONING: RR  
CURRENT USE: VACANT

AS SHOWN AS PART OF TRACT 1,  
WEST OF NOW OR FORMERLY  
NCDOT (DB 6660 PG 194)  
4.55 ACRES PER PLAT

WAKE COUNTY, NC 172  
TAMMY L. BRUNNER  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
03/15/2021 12:39:44  
BOOK: BM2021 PAGE: 00522

NOTES:  
 1. ALL DISTANCES HORIZONTAL GROUND UNLESS OTHERWISE NOTED.  
 2. AREAS SHOWN ARE BY COORDINATE COMPUTATION.  
 3. THERE WERE NO NC GRID MONUMENTS FOUND WITHIN 2000 FEET OF THIS SITE.  
 4. SURVEY COORDINATE TIE WAS PERFORMED USING HORIZONTAL CONTROL FROM THE NORTH CAROLINA VRS NETWORK WITH A TRIMBLE RB6 VRS RECEIVER. NCGS CORS BASE STATION "NCRD" WAS USED AS THE BASE SURVEY. DATUMS IS HORIZONTAL NAD 83/2011. EPOCH IS 2010.  
 5. PROPERTY WAS VACANT AT THE TIME OF THIS SURVEY.  
 6. RESULTING TRACT IS A PORTION OF TRACT 1 AS SHOWN ON BM 1992, PG 1523, WAKE COUNTY REGISTRY. TOTAL TRACT 1 ACREAGE SHOWN AS 29.899 ACRES. SUBJECT TRACT AS SHOWN 198,211 SQ.FT. / 4.55 ACRES AS SURVEYED.

I, Richard W. Tarby, certify that this plat was drawn under my supervision from an actual boundary retracement survey on 02/01-04/21 made under my supervision (deed description recorded in Book 17531, page(s) 1052; that the boundaries not surveyed are clearly indicated as drawn from information found in Book 18, page SHOWN; that the ratio of precision as calculated is 1: 100,000; that this map meets the requirements of The Standards of Practice for Land Surveying in North Carolina (21 NCAC 58.1600); that the plat correctly shows the relation of buildings and other structures to the property lines indicated; that a GPS survey was conducted under my supervision to obtain ground control and property corner tie to the national geodetic survey network. the GPS survey was performed on 06/10/19 with a Trimble RB6 real-time kinematic survey receiver utilizing the North Carolina Geodetic Survey Real Time Kinematic network and with field procedures and techniques to provide standards of accuracy at the 95% confidence level. the survey was tied to the following North Carolina Geodetic CORS control monument listed below with its respective information:



VICINITY MAP (NOT TO SCALE)

40 0 40 80  
SCALE IN FEET  
1 inch = 40 ft.

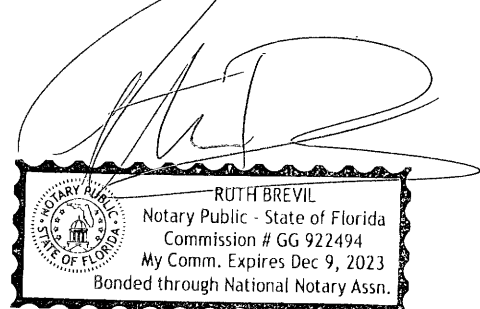
NOW OR FORMERLY  
DEANNAS DOWRY, LLC  
DB. 13139, PG. 920  
BM 2004, PG. 1409  
PIN#0722-04-0381

### CERTIFICATE OF OWNERSHIP

"I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREIN, WHICH IS LOCATED IN THE JURISDICTION OF THE TOWN OF APEX AND ALL SHEETS RELATED HERETO, AND THAT I HEREBY ADOPT THIS EXEMPT PLAT WITH MY FREE CONSENT."

OWNER: *[Signature]* DATE: 3/9/2021

### NOTARY PUBLIC CERTIFICATION



### CERTIFICATE OF APPROVAL FOR RECORDING

"I HEREBY CERTIFY THAT THE PLAT SHOWN HEREON IS EXEMPT FROM THE TOWN OF APEX SUBDIVISION REGULATION, OTHER THAN MEETING MINIMUM MUNICIPAL DIMENSIONAL STANDARDS AS REQUIRED BY N.C.G.S. 47-39(F)(1) AND 160A-376. THIS PLAT HAS BEEN APPROVED BY THE TOWN OF APEX FOR RECORDING IN THE OFFICE OF THE REGISTER OF DEEDS OF WAKE COUNTY."

3-12-2021 DATE: *[Signature]* SUBDIVISION ADMINISTRATOR

### REVIEW OFFICER CERTIFICATE

I, *[Signature]* REVIEW OFFICER OF WAKE COUNTY, CERTIFY THAT THIS PLAT MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

*[Signature]* DATE: 3-12-2021 REVIEW OFFICER



# Instruction Packet and Affidavit for Neighborhood Meetings

Town of Apex  
Planning Dept  
PO Box 250  
Apex, NC 27502

T: 919-249-3426  
F: 919-249-3338

This packet consists of instructions and templates for conducting a required Neighborhood Meeting. Planning staff are available to advise you in the preparation of these materials. Call the Planning Department at (919) 249-3426 for more information.

## WHAT IS THE PURPOSE OF A NEIGHBORHOOD MEETING?

A neighborhood meeting is a required form of community outreach to receive initial feedback regarding certain project types and any long range plan amendments directly associated with such projects prior to submittal to the Planning Department per the standards found in UDO Sec. 2.2.7.B. The intent of the meeting is to initiate neighbor communication and identify issues and concerns early on and provide the applicant an opportunity to address neighbor concerns about the potential impacts of the project prior to submitting an application. A neighborhood meeting is valid for six (6) months prior to the submission of an application; a delay in submission requires a new neighborhood meeting.

## WHEN IS A NEIGHBORHOOD MEETING REQUIRED?

- Rezoning (including Planned Unit Developments);
- Major Site Plans;
- Minor Site Plans for the uses "Day care facility", "Government service", "School, public or private", "Restaurant, drive-through", and "Convenience store with gas sales";
- Residential Master Subdivision Plans (excluding exempt subdivisions); or
- Special Use Permits

## INSTRUCTIONS

Prior to submitting an application for a Rezoning; Major Site Plan; Minor Site Plans for the uses "Day care facility", "Government service", "School, public or private", "Restaurant, drive-through", or "Convenience store with gas sales"; residential Master Subdivision Plan (excluding exempt subdivisions); or Special Use Permit, the applicant must conduct at least one (1) Neighborhood Meeting. **The notices for this Neighborhood Meeting shall not be mailed until after the pre-application meeting with the Technical Review Committee has been held.** This meeting may be held in-person or virtually. Virtual meetings shall provide a dial-in option in addition to a link to participate by internet. The applicant shall submit all forms included in this packet with the initial application submittal.

The Neighborhood Meeting must be held in accordance with the following rules:

### These groups and individuals must be invited to the meeting:

- The applicant is required to notify the Planning Department, all property owners and tenants abutting and within 300 feet of the subject property, and any neighborhood association that represents citizens in the notification area via first class mail a minimum of 14 days in advance of the neighborhood meeting, not including the day of mailing. The applicant shall send an email to [addressing.team@apexnc.org](mailto:addressing.team@apexnc.org) to request the notification list as early as possible in order to receive the list in time for the mailing. The list will be provided within 5-10 business

days of the initial request. The applicant shall use their own return address on the envelopes as the meeting is a private meeting between the applicant and the neighbors.

- The applicant shall include with the meeting notice a vicinity map in addition to the materials listed under “Mailing and handout requirements” below.

**The meeting must be held within specific timeframes and meet certain requirements:**

- The meeting must be held for a minimum of two (2) hours, Monday through Thursday, during the 5:00 p.m. - 9:00 p.m. time period. The meeting cannot be held on Town recognized holidays (<http://www.apexnc.org/calendar.aspx>).
- In-person meetings:
  - Meeting shall be held at a place that is generally accessible to neighbors that reside in close proximity to the land subject to the application.
  - A sign-in sheet must be used in order to verify attendance. Ensure each attendee signs in. Please note if any person(s) refuses to sign in. Note if no one attended.
- Virtual meetings:
  - Meeting shall be held via an interactive online video conferencing software such as Microsoft Teams, Zoom, WebEx, or any similar platform of the applicant’s choice. A dial-in option shall be provided.
  - An attendance sheet must be used to log known attendees at the virtual meeting. Note if no one attended.
- Mailing and handout requirements to help facilitate discussion:
  - For rezonings (excluding rezonings to PUD-CZ, TND-CZ and MEC-CZ):
    - A vicinity map and existing zoning map of the area; and
    - An exhibit(s) showing any proposed long range plan amendment(s), if applicable.
  - For rezonings to PUD-CZ, TND-CZ and MEC-CZ; Major Site Plans; Minor Site Plans for the uses “Day care facility”, “Government service”, “School, public or private”, “Restaurant, drive-through”, and “Convenience store with gas sales”; residential Master Subdivision Plans; and Special Use Permits:
    - A vicinity map and preliminary plans of the proposed development. Neighbors may request emailed/mailed copies of the maps or plans from the applicant by checking the “send plans” box on the sign-in sheet; applicant shall provide reduced copies upon request. For virtual meetings, the applicant must ask meeting participants if they would like any materials emailed/mailed to them; and
    - An exhibit showing all proposed long range plan amendments, if applicable.
  - Printed copies must equal the number of notices required to be sent.
  - Contact information for the applicant’s representative and Town Staff must be provided on the attached “Project Contact Information” form.
  - “Common Construction Issues & Who to Call” sheet (attached) must be included as part of the handout.
  - A copy of the handout must be included as part of the Neighborhood Meeting report.
- The agenda of the meeting shall include:
  - Explanation of all processes the meeting is being held for (rezoning, subdivision, etc.).
  - Explanation of future meetings (additional neighborhood meetings, Planning Board, Town Council, etc.).
  - Explanation of development proposal – uses and conditions for rezonings, layout for subdivision and site plans, and builder/end user if known/public knowledge.
- Questions or concerns by attendees, and responses by the applicant, if any, must be noted. For in person meetings, provide blank comment sheets or notecards for neighbors to submit

written comments. For virtual meetings, copy all questions and answers entered into the meeting's chat feature before closing the meeting and save them into a document. The applicant shall also include any questions and concerns received via written correspondence (such as email) or phone call along with responses provided by the applicant.

- The applicant shall be responsible for notifying any neighbors who check the "Send Plans & Updates" box on the sign-in sheet of any additional neighborhood meetings and the actual submittal date to the Town with a link to the Town of Apex's Interactive Development Map.

**For accountability purposes, please submit the following with your application:**

- A copy of the letter mailed to the Planning Department, neighbors, and neighborhood organizations (use attached invitation template);
- A list of those persons and neighborhood organizations invited to the meeting;
- A copy of the sign-in sheet (use attached sign-in sheet template);
- A summary of the meeting and a list of any changes made to the project as a result of the neighborhood comments (use attached meeting summary template);
- The affidavit, signed, dated, and notarized (use attached affidavit template); and
- One (1) reduced copy of the maps and/or plans included in the invitation and presented to the neighbors at the Neighborhood Meeting.

# NOTICE OF NEIGHBORHOOD MEETING

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.

1/5/2023

Date

Dear Neighbor:

You are invited to a neighborhood meeting to review and discuss the development proposal at

0 US 64 HWY W

0722047141

Address(es)

PIN(s)

in accordance with the Town of Apex Neighborhood Meeting procedures. This meeting is intended to be a way for the applicant to discuss the project and review the proposed plans with adjacent neighbors and neighborhood organizations before the submittal of an application to the Town. This provides neighbors an opportunity to raise questions and discuss any concerns about the impacts of the project before it is officially submitted. If you are unable to attend, please refer to the Project Contact Information page for ways to contact the applicant. Notified neighbors may request that the applicant provide updates and send plans via email or mail. Once an application has been submitted to the Town, it may be tracked using the [Interactive Development Map](#) or the [Apex Development Report](#) located on the Town of Apex website at <http://www.apexnc.org/180>.

A Neighborhood Meeting is required because this project includes (check all that apply):

Application Type		Approving Authority
<input checked="" type="checkbox"/>	Rezoning (including Planned Unit Development)	Town Council
<input type="checkbox"/>	Major Site Plan	Technical Review Committee (staff)
<input type="checkbox"/>	Minor Site Plan for the uses "Day care facility", "Government service", "School, public or private", "Restaurant, drive-through", or "Convenience store with gas sales"	Technical Review Committee (staff)
<input type="checkbox"/>	Special Use Permit	Board of Adjustment (QJPH*)
<input type="checkbox"/>	Residential Master Subdivision Plan (excludes exempt subdivisions)	Technical Review Committee (staff)

\*Quasi-Judicial Public Hearing: The Board of Adjustment cannot discuss the project prior to the public hearing.

The following is a description of the proposal (also see attached map(s) and/or plan sheet(s)):

Non-residential development south of the current Triangle Home Services property. The Tech-Flex zoning

district request is consistent with the existing property owned by Shelton Property Investments, LLC for the

Triangle Home Services office building.

Estimated submittal date: February 1, 2023

## MEETING INFORMATION:

Property Owner(s) name(s): Shelton Property Investments, LLC

Applicant(s): Donnie Shelton

Contact information (email/phone): Jeff Roach - Engineer for Applicant (jroach@peakengineering.com)

Meeting Address: Meeting invitation attached

Date/Time of meeting\*\*: January 26, 2023

Welcome: 5:00 - 5:10 PM Project Presentation: 5:10 - 5:30PM Question & Answer: 5:30-

\*\*Meetings shall occur between 5:00 p.m.-9:00 p.m. on a Monday through Thursday (excluding Town recognized holidays). If you have questions about the general process for this application, please contact the Planning Department at 919-249-3426. You may also find information about the Apex Planning Department and on-going planning efforts at <http://www.apexnc.org/180>.

# PROJECT CONTACT INFORMATION

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.

## Development Contacts:

Project Name: Triangle Home Services (THS) Phase II Zoning: RR

Location: US Highway 64 west of Richardson Road

Property PIN(s): 0722-04-7141 Acreage/Square Feet: 4.55 acres

Property Owner: Shelton Property Investments, LLC (attn: Donnie Shelton)

Address: 2701 Weaver Hill Drive

City: Apex State: NC Zip: 27502

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Developer: Shelton Property Investments, LLC

Address: same as above

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Engineer: PeakEngineering & Design, PLLC (attn: Jeff Roach, P.E. )

Address: 1125 Apex Peakway

City: Apex State: NC Zip: 27502

Phone: 919-439-0100 Fax: \_\_\_\_\_ Email: jroach@peakengineering.com

Builder (if known): unknown at this time

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**Please note that Town staff will not have complete information about a proposed development until the application is submitted for review. If you have a question about Town development standards and how they relate to the proposed development, please contact the appropriate staff person listed below.**

Town of Apex Department Contacts	
Planning Department Main Number (Provide development name or location to be routed to correct planner)	(919) 249-3426
Parks, Recreation & Cultural Resources Department Angela Reincke, Parks and Greenways Planner	(919) 249-7468
Public Works - Transportation Russell Dalton, Traffic Engineering Manager	(919) 249-3358
Water Resources Department Jessica Bolin, Environmental Engineering Manager (Stormwater, Sedimentation & Erosion Control)	(919) 249-3537
James Gregg, Utility Engineering Manager (Water & Sewer)	(919) 249-3324
Electric Utilities Division Rodney Smith, Electric Technical Services Manager	(919) 249-3342



### Providing Input to Town Council:

Each Town Council meeting agenda includes a Public Forum time when anyone is permitted to speak for three (3) minutes on any topic with the exception of items listed as Public Hearings for that meeting. The Town Council meets on the 2<sup>nd</sup> and 4<sup>th</sup> Tuesdays of each month at 6:00 p.m. (except for holidays, see schedule of meetings at <http://www.apexnc.org/838/Agendas-Minutes>). You may also contact Town Council by e-mail at [AllCouncil@apexnc.org](mailto:AllCouncil@apexnc.org).

### Private Agreements and Easement Negotiation:

The Town of Apex cannot enforce private agreements between developers and neighbors and is not a party to the easement and right-of-way negotiation that occurs between developers and neighboring property owners for easements or rights-of-way that are necessary to build the project.

It is recommended that all private agreements be made in writing and that if a property owner feels it necessary, they should obtain private legal counsel in order to protect their interests in both private agreements and during easement negotiations. The only conditions that the Town of Apex can enforce are those conditions that are made a part of the conditional zoning of the property by agreement of the developer and the Town.

As an example, if a developer offers to build a fence for a neighbor to mitigate some impact, the Town can only enforce the construction of the fence if the fence becomes a condition of the rezoning. This would occur by the developer offering the condition as part of their conditional zoning application package or at the Town Council public hearing on the conditional zoning and the Town accepting it as a condition. Private agreements regarding a fence being constructed will not be enforced by the Town.

To request that any agreement with a developer is made a part of the conditional zoning at the time of approval, you may ask at the Town Council public hearing if the agreement is included in the conditions. If it is not, you may request that the Town Council not approve the rezoning without the agreement being included in the conditions (note that it is up to Town Council whether to approve or deny the rezoning but they cannot impose conditions that the applicant does not agree to add). The developer's proposed conditions can be viewed any time after a rezoning is submitted on the Interactive Development Map at: <http://apexnc.maps.arcgis.com/apps/OnePane/basicviewer/index.html?appid=fa9ba2017b784030b15ef4da27d9e795>

### Documentation:

Neighbors to a requested new development and/or rezoning are strongly encouraged to fully document (such as through dated photographs) the condition of their property before any work is initiated for the new development. Stormwater controls installed on developed property are not designed to and will likely not remove 100% of the soil particles transported by stormwater runoff. As a result, creeks and ponds could become cloudy for a period of time after rain events.

# COMMON CONSTRUCTION ISSUES & WHO TO CALL

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.

<b>Noise &amp; Hours of Construction:</b>	<b>Non-Emergency Police</b>	<b>919-362-8661</b>
---	-----------------------------	---------------------

Noise from tree removal, grading, excavating, paving, and building structures is a routine part of the construction process. The Town generally limits construction hours from 7:00 a.m. to 8:30 p.m. so that there are quiet times even during the construction process. Note that construction outside of these hours is allowed with special permission from the Town when it makes more sense to have the construction occur at night, often to avoid traffic issues. In addition, the Town limits hours of blasting rock to Monday through Friday from 8:00 a.m. to 5:00 p.m. Report violations of construction hours and other noise complaints to the Non-Emergency Police phone number at 919-362-8661.

<b>Construction Traffic:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
------------------------------	------------------------	---------------------

Construction truck traffic will be heavy throughout the development process, including but not limited to removal of trees from site, loads of dirt coming in and/or out of the site, construction materials such as brick and wood brought to the site, asphalt and concrete trucks come in to pave, etc. The Town requires a construction entrance that is graveled to try to prevent as much dirt from leaving the site as possible. If dirt does get into the road, the Town can require they clean the street (see "Dirt in the Road" below).

<b>Road Damage &amp; Traffic Control:</b>	<b>Water Resources – Infrastructure Inspections</b>	<b>919-362-8166</b>
---	---	---------------------

There can be issues with roadway damage, roadway improvements, and traffic control. Potholes, rutting, inadequate lanes/signing/stripping, poor traffic control, blocked sidewalks/paths are all common issues that should be reported to Water Resources – Infrastructure Inspections at 919-249-3427. The Town will get NCDOT involved if needed.

<b>Parking Violations:</b>	<b>Non-Emergency Police</b>	<b>919-362-8661</b>
----------------------------	-----------------------------	---------------------

Unless a neighbor gives permission, there should be no construction parking in neighbors' driveways or on their property. Note that parking in the right-of-way is allowed, but Town regulations prohibit parking within 15 feet of driveways so as not to block sight triangles. Trespassing and parking complaints should be reported to the Non-Emergency Police phone number at 919-362-8661.

<b>Dirt in the Road:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
--------------------------	------------------------	---------------------

Sediment (dirt) and mud gets into the existing roads due to rain events and/or vehicle traffic. These incidents should be reported to James Misciagno. He will coordinate the cleaning of the roadways with the developer.

<b>Dirt on Properties or in Streams:</b>	<b>James Misciagno</b> <b>Danny Smith</b>	<b>919-372-7470</b> <b><a href="mailto:Danny.Smith@ncdenr.gov">Danny.Smith@ncdenr.gov</a></b>
--	--	--

Sediment (dirt) can leave the site and get onto adjacent properties or into streams and stream buffers; it is typically transported off-site by rain events. These incidents should be reported to James Misciagno at 919-372-7470 so that he can coordinate the appropriate repairs with the developer. Impacts to the streams and stream buffers should also be reported to Danny Smith ([danny.smith@ncdenr.gov](mailto:danny.smith@ncdenr.gov)) with the State.

<b>Dust:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
--------------	------------------------	---------------------

During dry weather dust often becomes a problem blowing into existing neighborhoods or roadways. These incidents should be reported to James Misciagno at 919-372-7470 so that he can coordinate the use of water trucks onsite with the grading contractor to help control the dust.

<b>Trash:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
---------------	------------------------	---------------------

Excessive garbage and construction debris can blow around on a site or even off of the site. These incidents should be reported to James Misciagno at 919-372-7470. He will coordinate the cleanup and trash collection with the developer/home builder.

<b>Temporary Sediment Basins:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
-----------------------------------	------------------------	---------------------

Temporary sediment basins during construction (prior to the conversion to the final stormwater pond) are often quite unattractive. Concerns should be reported to James Misciagno at 919-372-7470 so that he can coordinate the cleaning and/or mowing of the slopes and bottom of the pond with the developer.

<b>Stormwater Control Measures:</b>	<b>Jessica Bolin</b>	<b>919-249-3537</b>
-------------------------------------	----------------------	---------------------

Post-construction concerns related to Stormwater Control Measures (typically a stormwater pond) such as conversion and long-term maintenance should be reported to Jessica Bolin at 919-249-3537.

<b>Electric Utility Installation:</b>	<b>Rodney Smith</b>	<b>919-249-3342</b>
---------------------------------------	---------------------	---------------------

Concerns with electric utility installation can be addressed by the Apex Electric Utilities Department. Contact Rodney Smith at 919-249-3342.



## Triangle Home Services

REID: 0181245  
 PIN: 0722047141  
 PIN Extension: 000  
 Land Value: \$166688  
 Total Value Assessed: \$166688  
 Deed Acres: 4.55  
 Planning Jurisdiction: AP  
 Township: White Oak  
 Owner: SHELTON PROPERTY INVESTMENTS LLC  
 Mailing Address 1: 2701 WEAVER HILL DR  
 Mailing Address 2: APEX NC 27502-6548  
 Deed Book: 018414  
 Deed Page: 02323  
 Deed Date: 3/24/2021  
 Land Class: Vacant  
 Map Name: 0722 03  
 Billing Class: Business

Property Description: GRAYDON HOLDINGS  
 PARCEL BM2021 -00522  
 Site Address: 0 US 64 HWY W  
 Street Name: US 64 HWY W  
 Old Parcel Number: 619-00000-0061  
 Total Structures: 1  
 ZIP: 27523



0 300 600 1200 ft  
 1 inch equals 600 feet

### **Disclaimer**

iMaps makes every effort to produce and publish the most current and accurate information possible. However, the maps are produced for information purposes, and are **NOT** surveys. No warranties, expressed or implied, are provided for the data therein, its use, or its interpretation.

# Neighborhood Meeting Notification List

## List Provided by the Town of Apex

0 US 64 HWY W  
 0 OLIVE CHAPEL RD  
 0 OLIVE CHAPEL RD  
 3437 US 64 HWY W  
 0 US 64 HWY W  
 3501 US 64 HWY W

0722251162 GRAYDON HOLDINGS LLC  
 0722037373 LEGACY APEX LLC  
 0722123898 LENNAR CAROLINAS, LLC  
 0722142656 MOORE, STEPHEN A JR MOORE, PANDA C  
 0711986221 NC DEPARTMENT OF TRANSPORTATION  
 0722047652 SHELTON PROPERTY INVESTMENTS LLC  
 APEX TOWN OF  
 SMITH FARM OF APEX HOMEOWNERS ASSOCIATION INC  
 Current Tenant  
 Current Tenant  
 Current Tenant  
 Current Tenant

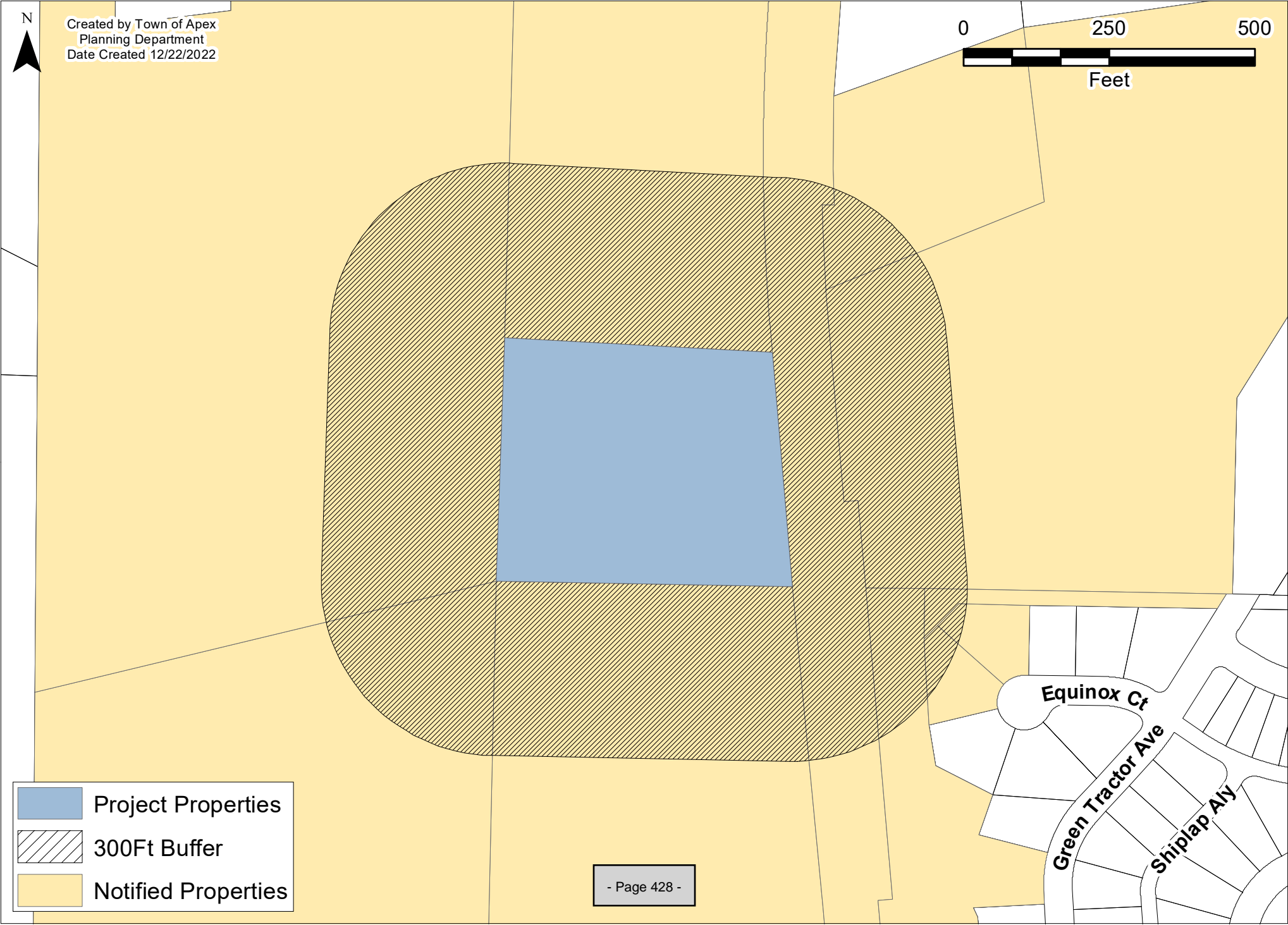
1734 REGATTA DR  
 25101 CHAGRIN BLVD STE 300  
 1100 PERIMETER PARK DR STE 112  
 3437 US 64 HWY W  
 PO BOX 25201  
 2701 WEAVER HILL DR  
 PO BOX 250  
 ELITE MANAGEMENT  
 3018 Equinox CT  
 3024 Equinox CT  
 3437 Us 64 HWY W  
 3501 Us 64 HWY W

FERNANDINA BEACH FL 32034-5534  
 BEACHWOOD OH 44122-5693  
 MORRISVILLE NC 27560-9119  
 APEX NC 27523-8445  
 RALEIGH NC 27611-5201  
 APEX NC 27502-6548  
 APEX NC 27502-0250  
 4112 BLUE RIDGE RD STE 100  
 APEX NC 27523  
 APEX NC 27523  
 APEX NC 27523  
 APEX NC 27523

RALEIGH NC 27612-4652

Created by Town of Apex Planning Department  
 Date Created: 12/22/2022

# Notified Properties Within 300ft of Project Properties



# NEIGHBORHOOD MEETING SIGN-IN SHEET

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.

Meeting Address: virtual meeting held through ZOOM  
Date of meeting: January 26, 2023 Time of meeting: 5:00 - 7:00 pm  
Property Owner(s) name(s): Shelton Property Investments, LLC  
Applicant(s): Peak Engineering & Design, PLLC (attn: Jeff Roach, P.E.)

Please print your name below, state your address and/or affiliation with a neighborhood group, and provide your phone number and email address. Providing your name below does not represent support or opposition to the project; it is for documentation purposes only. For virtual meetings, applicants must include all known participants and request the information below.

	NAME/ORGANIZATION	ADDRESS	PHONE #	EMAIL	SEND PLANS & UPDATES
1.	Stuart Graydon	1734 Regatta Drive Fernandina Beach, FL 32034			
2.					
3.	Jeff Roach	1125 Apex Peakway Apex, NC 27502			
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					

Use additional sheets, if necessary.



# SUMMARY OF DISCUSSION FROM THE NEIGHBORHOOD MEETING

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.

Property Owner(s) name(s): Shelton Property Investments, LLC

Applicant(s): Peak Engineering & Design, PLLC (attn: Jeff Roach, P.E.)

Contact information (email/phone): jroach@peakengineering.com (919) 439-0100

Meeting Address: Virtual meeting held on ZOOM

Date of meeting: January 26, 2023

Time of meeting: 5:00 - 7:00 pm

Please summarize the questions/comments and your responses from the Neighborhood Meeting or emails/phone calls received in the spaces below (attach additional sheets, if necessary). Please state if/how the project has been modified in response to any concerns. The response should not be "Noted" or "No Response". There has to be documentation of what consideration the neighbor's concern was given and justification for why no change was deemed warranted.

Question/Concern #1:

After the presentation, no questions were asked by the one adjacent property owner in attendance.

Applicant's Response:

Question/Concern #2:

Applicant's Response:

Question/Concern #3:

Applicant's Response:

Question/Concern #4:

Applicant's Response:

# AFFIDAVIT OF CONDUCTING A NEIGHBORHOOD MEETING, SIGN-IN SHEET AND ISSUES/RESPONSES SUBMITTAL

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.

I, Jeffrey A. Roach, do hereby declare as follows:

Print Name

1. I have conducted a Neighborhood Meeting for the proposed Rezoning, Major Site Plan, Minor Site Plan, Residential Master Subdivision Plan, or Special Use Permit in accordance with UDO Sec. 2.2.7.B *Neighborhood Meeting*.
2. The meeting invitations were mailed to the Apex Planning Department, all property owners and tenants abutting and within 300 feet of the subject property and any neighborhood association that represents citizens in the notification area via first class mail a minimum of 14 days in advance of the Neighborhood Meeting.
3. The meeting was conducted at virtual zoom meeting (location/address) on January 26, 2023 (date) from 5:00 pm (start time) to 7:00 pm (end time).
4. I have included the mailing list, meeting invitation, sign-in sheet, issue/response summary, and zoning map/reduced plans with the application.
5. I have prepared these materials in good faith and to the best of my ability.


1/27/2023  
Date

By: 

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Sworn and subscribed before me, DANIEL H. WOODS, a Notary Public for the above State and County, on this the 27 day of JANUARY, 20 23.



  
Notary Public  
DANIEL H. WOODS  
Print Name

My Commission Expires: 11/18/23

# PLANNING BOARD REPORT TO TOWN COUNCIL

## Rezoning Case: #23CZ02 Triangle Home Services Phase II

Planning Board Meeting Date: April 10, 2023



### Report Requirements:

Per NCGS §160D-604(b), all proposed amendments to the zoning ordinance or zoning map shall be submitted to the Planning Board for review and comment. If no written report is received from the Planning Board within 30 days of referral of the amendment to the Planning Board, the Town Council may act on the amendment without the Planning Board report. The Town Council is not bound by the recommendations, if any, of the Planning Board.

Per NCGS §160D-604(d), the Planning Board shall advise and comment on whether the proposed action is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

### PROJECT DESCRIPTION:

**Acreage:** +/- 4.55 acres

**PIN(s):** 0722047141

**Current Zoning:** Rural Residential (RR)

**Proposed Zoning:** Tech/Flex-Conditional Zoning (TF-CZ)

**2045 Land Use Map:** Mixed Use: High Density Residential/Office Employment/Commercial Services

**Town Limits:** In ETJ

### Applicable Officially Adopted Plans:

The Board must state whether the project is consistent or inconsistent with the following officially adopted plans, if applicable. Applicable plans have a check mark next to them.

☒ 2045 Land Use Map  
☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

☒ Apex Transportation Plan  
☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

☐ Parks, Recreation, Open Space, and Greenways Plan  
☐ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

PLANNING BOARD REPORT TO TOWN COUNCIL  
Rezoning Case: #23CZ02 Triangle Home Services Phase II

Planning Board Meeting Date: April 10, 2023



**Legislative Considerations:**

The applicant shall propose site-specific standards and conditions that take into account the following considerations, which are considerations that are relevant to the legislative determination of whether or not the proposed conditional zoning district rezoning request is in the public interest. These considerations do not exclude the legislative consideration of any other factor that is relevant to the public interest.

1. *Consistency with 2045 Land Use Plan.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and consistency with the purposes, goals, objectives, and policies of the 2045 Land Use Plan.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

2. *Compatibility.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and compatibility with the character of surrounding land uses.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

3. *Zoning district supplemental standards.* The proposed Conditional Zoning (CZ) District use's compliance with Sec. 4.4 *Supplemental Standards*, if applicable.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

4. *Design minimizes adverse impact.* The design of the proposed Conditional Zoning (CZ) District use's minimization of adverse effects, including visual impact of the proposed use on adjacent lands; and avoidance of significant adverse impacts on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration and not create a nuisance.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

5. *Design minimizes environmental impact.* The proposed Conditional Zoning District use's minimization of environmental impacts and protection from significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

PLANNING BOARD REPORT TO TOWN COUNCIL  
Rezoning Case: #23CZ02 Triangle Home Services Phase II

Planning Board Meeting Date: April 10, 2023



6. *Impact on public facilities.* The proposed Conditional Zoning (CZ) District use's avoidance of having adverse impacts on public facilities and services, including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

7. *Health, safety, and welfare.* The proposed Conditional Zoning (CZ) District use's effect on the health, safety, or welfare of the residents of the Town or its ETJ.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

8. *Detrimental to adjacent properties.* Whether the proposed Conditional Zoning (CZ) District use is substantially detrimental to adjacent properties.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

9. *Not constitute nuisance or hazard.* Whether the proposed Conditional Zoning (CZ) District use constitutes a nuisance or hazard due to traffic impact or noise, or because of the number of persons who will be using the Conditional Zoning (CZ) District use.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

10. *Other relevant standards of this Ordinance.* Whether the proposed Conditional Zoning (CZ) District use complies with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

PLANNING BOARD REPORT TO TOWN COUNCIL  
Rezoning Case: #23CZ02 Triangle Home Services Phase II

Planning Board Meeting Date: April 10, 2023



**Planning Board Recommendation:**

Motion: To recommend approval as presented.

Introduced by Planning Board member: Keith Braswell

Seconded by Planning Board member: Ryan Akers

- ☐ *Approval:* the project is consistent with all applicable officially adopted plans and the applicable legislative considerations listed above.
- ☒ *Approval with conditions:* the project is not consistent with all applicable officially adopted plans and/or the applicable legislative considerations as noted above, so the following conditions are recommended to be included in the project in order to make it fully consistent:

As proposed by applicant.

- ☐ *Denial:* the project is not consistent with all applicable officially adopted plans and/or the applicable legislative considerations as noted above.

With 8 Planning Board Member(s) voting "aye"

With 0 Planning Board Member(s) voting "no"

Reasons for dissenting votes:

This report reflects the recommendation of the Planning Board, this the 10th day of April 2023.

Attest:

Reginald Skinner, Planning Board Chair

Dianne Khin, Planning Director

Digitally signed by Dianne Khin  
Date: 2023.04.10 17:49:28  
-04'00'





## AGENDA

1 / 2



48%



## TOWN OF APEX

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

**PUBLIC NOTIFICATION  
OF PUBLIC HEARINGS**  
CONDITIONAL ZONING #23CZ02  
Triangle Home Services Phase II

Pursuant to the provisions of North Carolina General Statutes §160D-602 and to the Town of Apex Unified Development Ordinance (UDO) Section 2.2.11, notice is hereby given of public hearings before the Planning Board of the Town of Apex. The purpose of these hearings is to consider the following:

**Applicant:** Peak Engineering & Design, PLLC

**Authorized Agent:** Jeff Roach, Peak Engineering & Design, PLLC

**Property Address:** 0 US Highway 64 West

**Acres:** 4.55 acres

**Property Identification Number (PIN):** 0722047141

**2045 Land Use Map Designation:** Mixed Use: High Density Residential/Office Employment/Commercial Services

**Existing Zoning of Property:** Rural Residential (RR)

**Proposed Zoning of Property:** Tech Flex-Conditional Zoning (TF-CZ)

**Public Hearing Location:** Apex Town Hall  
Council Chamber, 2<sup>nd</sup> Floor  
73 Hunter Street, Apex, North Carolina

**Planning Board Public Hearing Date and Time: April 10, 2023 4:30 PM**

You may attend the meeting in person or view the meeting through the Town's YouTube livestream at:  
<https://www.youtube.com/c/townofapexgov>

If you are unable to attend, you may provide a written statement by email to [public\\_hearing@apexnc.org](mailto:public_hearing@apexnc.org), or submit it to the clerk of the Planning Board, Jeri Pederson (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Planning Board vote. You must provide your name and address for the record. The written statements will be delivered to the Planning Board prior to their vote. Please include the Public Hearing name in the subject line.

A separate notice of the Town Council public hearing on this project will be mailed and posted in order to comply with State public notice requirements.

**Vicinity Map:**



Property owners, tenants, and neighborhood associations within 300 feet of the proposed conditional zoning have been sent this notice via first class mail. All interested parties may submit comments with respect to the application by the means specified above. In addition to the above map, the location of the property may be viewed online at <https://maps.raieahinc.gov/maps>. The 2045 Land Use Map may be viewed online at [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). You may call 919-249-3426, Planning Department, with questions or for further information. To view the petition and related documents on-line: <https://www.apexnc.org/DocumentCenter/View/470831>.

Dianne F. Khin, AICP  
Planning Director



## TOWN OF APEX

PO BOX 250  
APEX, NORTH CAROLINA 27502  
TELÉFONO 919-249-3426

## NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS

ORDENAMIENTO TERRITORIAL CONDICIONAL #23CZ02  
Triangle Home Services Phase II

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-602 y con la Sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del ayuntamiento de Apex, por la presente se notifican las audiencias públicas ante la Junta de Planificación de Apex. El propósito de estas audiencias es considerar lo siguiente:

**Solicitante:** Peak Engineering & Design, PLLC

**Agente autorizado:** Jeff Roach, Peak Engineering & Design, PLLC

**Dirección de la propiedad:** 0 US Highway 64 West

**Superficie:** 4.55 acres

**Números de identificación de la propiedad:** 0722047141

**Designación en el Mapa de Uso Territorial para 2045:** Mixed Use: High Density Residential/Office Employment/Commercial Services

**Ordenamiento territorial existente de la propiedad:** Rural Residential (RR)

**Ordenamiento territorial propuesto para la propiedad:** Tech Flex-Conditional Zoning (TF-CZ)

**Lugar de la audiencia pública:** Ayuntamiento de Apex

Cámara del Consejo, 2º piso

73 Hunter Street, Apex, Carolina del Norte

**Fecha y hora de la audiencia pública de la Junta de Planificación:** 10 de abril de 2023 4:30 P.M.

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), o presentarla a la secretaria de la Junta de Planificación, Jeri Pederson (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación de la Junta de Planificación. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán a la Junta de Planificación antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

De conformidad con los requisitos estatales de notificaciones públicas, se enviará por correo y se publicará por separado una notificación de la audiencia pública del Consejo Municipal sobre este proyecto.

**Mapa de las inmediaciones:**



Los propietarios, inquilinos y asociaciones de vecinos en un radio de 300 pies del Ordenamiento Territorial Condicional propuesto han recibido esta notificación por correo postal de primera clase. Todas las partes interesadas pueden presentar comentarios sobre la solicitud a través de los medios especificados anteriormente. La ubicación de la propiedad también puede verse aquí: <https://maps.raleighnc.gov/maps>. Puede ver el Mapa de Uso Territorial para 2045 aquí: [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). Si tiene preguntas o desea obtener más información, puede comunicarse con el Departamento de Planificación al 919-249-3426. Puede ver la solicitud y otros documentos relacionados aquí: <https://www.apexnc.org/DocumentCenter/View/42043/>.

Dianne F. Khin, AICP  
Directora de Planificación





## TOWN OF APEX

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

## PUBLIC NOTIFICATION OF PUBLIC HEARINGS CONDITIONAL ZONING #23CZ02 Triangle Home Services Phase II

Pursuant to the provisions of North Carolina General Statutes §160D-602 and to the Town of Apex Unified Development Ordinance (UDO) Section 2.2.11, notice is hereby given of public hearings before the Planning Board of the Town of Apex. The purpose of these hearings is to consider the following:

**Applicant:** Peak Engineering & Design, PLLC

**Authorized Agent:** Jeff Roach, Peak Engineering & Design, PLLC

**Property Address:** 0 US Highway 64 West

**Acreage:** 4.55 acres

**Property Identification Number (PIN):** 0722047141

**2045 Land Use Map Designation:** Mixed Use: High Density Residential/Office Employment/Commercial Services

**Existing Zoning of Property:** Rural Residential (RR)

**Proposed Zoning of Property:** Tech Flex-Conditional Zoning (TF-CZ)

**Public Hearing Location:** Apex Town Hall  
Council Chamber, 2<sup>nd</sup> Floor  
73 Hunter Street, Apex, North Carolina

### **Planning Board Public Hearing Date and Time: April 10, 2023 4:30 PM**

You may attend the meeting in person or view the meeting through the Town's YouTube livestream at:  
<https://www.youtube.com/c/townofapexgov>.

If you are unable to attend, you may provide a written statement by email to [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), or submit it to the clerk of the Planning Board, Jeri Pederson (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Planning Board vote. You must provide your name and address for the record. The written statements will be delivered to the Planning Board prior to their vote. Please include the Public Hearing name in the subject line.

**A separate notice of the Town Council public hearing on this project will be mailed and posted in order to comply with State public notice requirements.**

### **Vicinity Map:**



Property owners, tenants, and neighborhood associations within 300 feet of the proposed conditional zoning have been sent this notice via first class mail. All interested parties may submit comments with respect to the application by the means specified above. In addition to the above map, the location of the property may be viewed online at <https://maps.raleighnc.gov/imaps>. The 2045 Land Use Map may be viewed online at [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). You may call 919-249-3426, Planning Department, with questions or for further information. To view the petition and related documents on-line: <https://www.apexnc.org/DocumentCenter/View/42043/>.

Dianne F. Khin, AICP  
Planning Director





**TOWN OF APEX**  
PO BOX 250  
APEX, NORTH CAROLINA 27502  
TELÉFONO 919-249-3426

## **NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS**

### **ORDENAMIENTO TERRITORIAL CONDICIONAL #23CZ02**

#### **Triangle Home Services Phase II**

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-602 y con la Sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del ayuntamiento de Apex, por la presente se notifican las audiencias públicas ante la Junta de Planificación de Apex. El propósito de estas audiencias es considerar lo siguiente:

**Solicitante:** Peak Engineering & Design, PLLC  
**Agente autorizado:** Jeff Roach, Peak Engineering & Design, PLLC  
**Dirección de la propiedad:** 0 US Highway 64 West  
**Superficie:** 4.55 acres  
**Números de identificación de la propiedad:** 0722047141  
**Designación en el Mapa de Uso Territorial para 2045:** Mixed Use: High Density Residential/Office Employment/Commercial Services  
**Ordenamiento territorial existente de la propiedad:** Rural Residential (RR)  
**Ordenamiento territorial propuesto para la propiedad:** Tech Flex-Conditional Zoning (TF-CZ)

**Lugar de la audiencia pública:** Ayuntamiento de Apex  
Cámara del Consejo, 2º piso  
73 Hunter Street, Apex, Carolina del Norte

**Fecha y hora de la audiencia pública de la Junta de Planificación: 10 de abril de 2023 4:30 P.M.**

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), o presentarla a la secretaria de la Junta de Planificación, Jeri Pederson (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación de la Junta de Planificación. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán a la Junta de Planificación antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

**De conformidad con los requisitos estatales de notificaciones públicas, se enviará por correo y se publicará por separado una notificación de la audiencia pública del Consejo Municipal sobre este proyecto.**

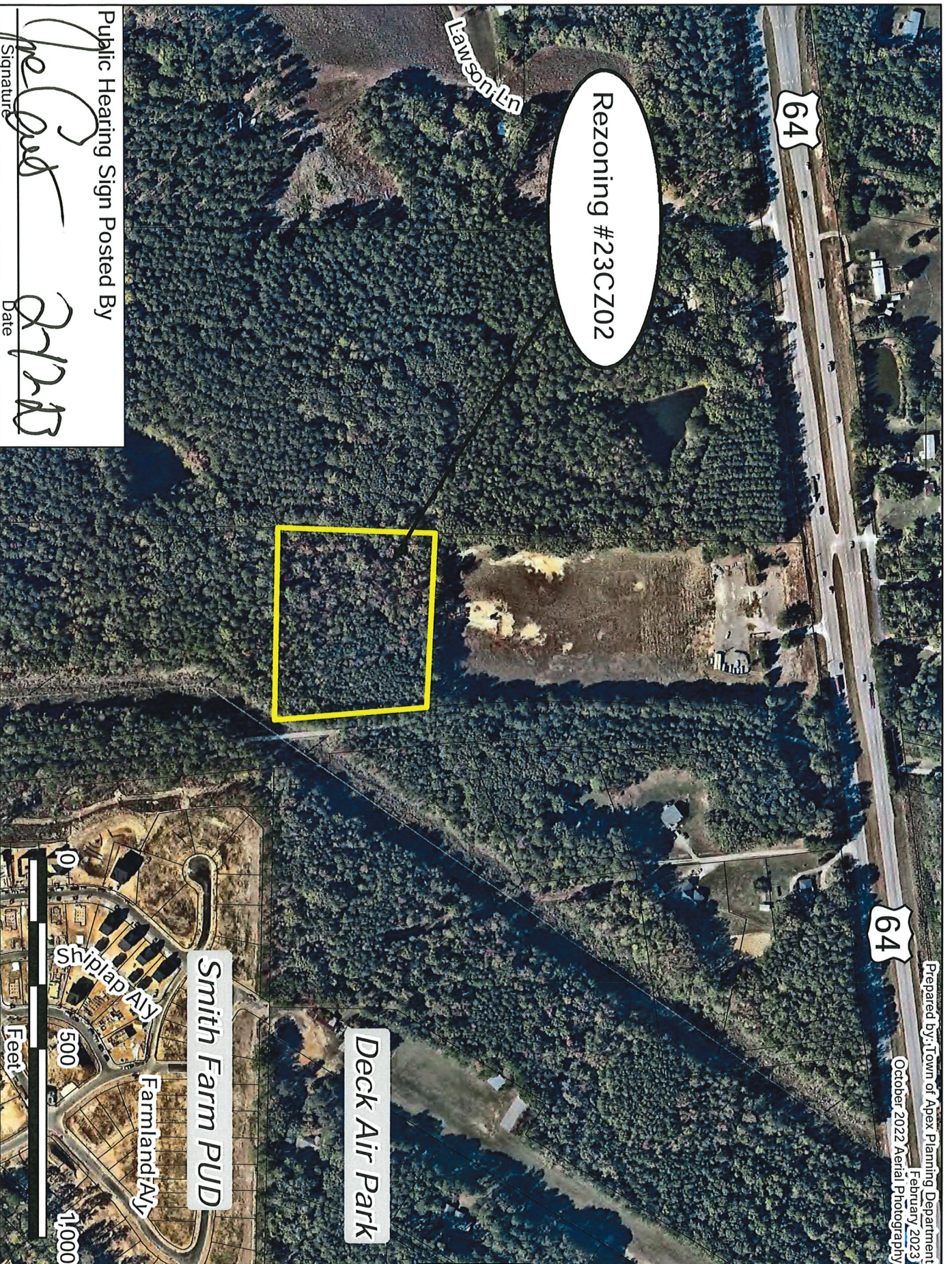
**Mapa de las inmediaciones:**



Los propietarios, inquilinos y asociaciones de vecinos en un radio de 300 pies del Ordenamiento Territorial Condicional propuesto han recibido esta notificación por correo postal de primera clase. Todas las partes interesadas pueden presentar comentarios sobre la solicitud a través de los medios especificados anteriormente. La ubicación de la propiedad también puede verse aquí: <https://maps.raleighnc.gov/imaps>. Puede ver el Mapa de Uso Territorial para 2045 aquí: [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). Si tiene preguntas o desea obtener más información, puede comunicarse con el Departamento de Planificación al 919-249-3426. Puede ver la solicitud y otros documentos relacionados aquí: <https://www.apexnc.org/DocumentCenter/View/42043/>.

Dianne F. Khin, AICP  
Directora de Planificación





Prepared by: Town of Apex Planning Department  
February 2023  
October 2022 Aerial Photography

Rezoning #23CZ02

Lawson Ln

Deck Air Park

Smith Farm PUD

Ship Lap Aly

Farmland Aly

Public Hearing Sign Posted By

Signature: [Signature]  
Date: 2/12/23





## TOWN OF APEX

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

### AFFIDAVIT CERTIFYING Public Notification – Written (Mailed) Notice

Section 2.2.11  
Town of Apex Unified Development Ordinance

Project Name: Conditional Zoning #23CZ02  
Triangle Home Services Phase II

Project Location: 3600 Old US 1 Highway

Applicant or Authorized Agent: Jeff Roach

Firm: Peak Engineering & Design, PLLC

This is to certify that I, as Director of Planning, mailed or caused to have mailed by first class postage for the above mentioned project on March 27, 2023, a notice containing the time and place, location, nature and scope of the application, where additional information may be obtained, and the opportunity for interested parties to be heard, to the property owners and tenants within 300' of the land subject to notification. I further certify that I relied on information from the Wake County Tax Assessor and the Town of Apex Master Address Repository provided to me by Town of Apex GIS Staff as to accuracy of the list and accuracy of mailing addresses of property owners and tenants within 300' of the land subject to notification.

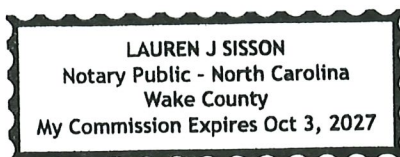
3/28/2023  
Date

Shane L. Khin  
Director of Planning

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Sworn and subscribed before me, Lauren J Sisson, a Notary Public for the above

State and County, this the 28<sup>th</sup> day of MARCH, 2023.



[Signature]  
Notary Public

My Commission Expires: 10 / 3 / 2027





**TOWN OF APEX**  
POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

**PUBLIC NOTIFICATION  
OF PUBLIC HEARINGS**  
**CONDITIONAL ZONING #23CZ02**  
Triangle Home Services Phase II

Pursuant to the provisions of North Carolina General Statutes §1600-602 and to the Town of Apex Unified Development Ordinance (UDO) Section 2.2.11, notice is hereby given of public hearings before the Town Council of the Town of Apex. The purpose of these hearings is to consider the following:

**Applicant:** Peak Engineering & Design, PLLC  
**Authorized Agent:** Jeff Roach, Peak Engineering & Design, PLLC  
**Property Address:** 0 US Highway 64 West  
**Acreage:** 4.55 acres  
**Property Identification Number (PIN):** 0722047141  
**2045 Land Use Map Designation:** Mixed Use: High Density Residential/Office Employment/Commercial Services  
**Existing Zoning of Property:** Rural Residential (RR)  
**Proposed Zoning of Property:** Tech Flex-Conditional Zoning (TF-CZ)

**Public Hearing Location:** Apex Town Hall  
Council Chamber, 2<sup>nd</sup> Floor  
73 Hunter Street, Apex, North Carolina

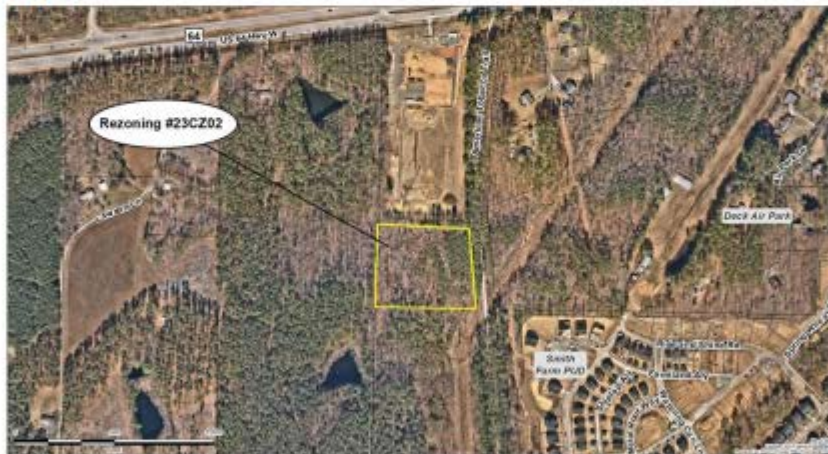
*Comments received prior to the Planning Board public hearing will not be provided to the Town Council.  
Separate comments for the Town Council public hearing must be provided by the deadline specified below.*

**Town Council Public Hearing Date and Time: April 25, 2023 6:00 PM**

You may attend the meeting in person or view the meeting through the Town's YouTube livestream at:  
<https://www.youtube.com/c/townofapexgov>.

If you are unable to attend, you may provide a written statement by email to [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), or submit it to the Office of the Town Clerk (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Town Council vote. You must provide your name and address for the record. The written statements will be delivered to the Town Council prior to their vote. Please include the Public Hearing name in the subject line.

**Vicinity Map:**



Property owners, tenants, and neighborhood associations within 300 feet of the proposed conditional zoning have been sent this notice via first class mail. All interested parties may submit comments with respect to the application by the means specified above. In addition to the above map, the location of the property may be viewed online at <https://maps.raleighnc.gov/imaps>. The 2045 Land Use Map may be viewed online at [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). You may call 919-249-3426, Planning Department, with questions or for further information. To view the petition and related documents on-line: <https://www.apexnc.org/DocumentCenter/View/47043/>.

Dianne F. Khin, AICP  
Planning Director



**TOWN OF APEX**  
PO BOX 250  
APEX, NORTH CAROLINA 27502  
TELÉFONO 919-249-3426

## NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS

ORDENAMIENTO TERRITORIAL CONDICIONAL #23CZ02

Triangle Home Services Phase II

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-602 y con la Sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del ayuntamiento de Apex, por la presente se notifican las audiencias públicas ante el Consejo Municipal del Ayuntamiento de Apex. El propósito de estas audiencias es considerar lo siguiente:

**Solicitante:** Peak Engineering & Design, PLLC

**Agente autorizado:** Jeff Roach, Peak Engineering & Design, PLLC

**Dirección de la propiedad:** 0 US Highway 64 West

**Superficie:** 4.55 acres

**Números de identificación de la propiedad:** 0722047141

**Designación en el Mapa de Uso Territorial para 2045:** Mixed Use: High Density Residential/Office Employment/Commercial Services

**Ordenamiento territorial existente de la propiedad:** Rural Residential (RR)

**Ordenamiento territorial propuesto para la propiedad:** Tech Flex-Conditional Zoning (TF-CZ)

**Lugar de la audiencia pública:** Ayuntamiento de Apex

Cámara del Consejo, 2º piso

73 Hunter Street, Apex, Carolina del Norte

*Los comentarios recibidos antes de la audiencia pública de la Junta de Planificación no se proporcionarán al Consejo Municipal. Los comentarios para la audiencia pública del Consejo Municipal deben presentarse por separado en el plazo especificado a continuación.*

**Fecha y hora de la audiencia pública del Consejo Municipal:** 25 de abril de 6:00 P.M.

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), o presentarla a la oficina del Secretario Municipal (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación del Consejo Municipal. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán al Consejo Municipal antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

**Mapa de las inmediaciones:**



Los propietarios, inquilinos y asociaciones de vecinos en un radio de 300 pies del Ordenamiento Territorial Condicional propuesto han recibido esta notificación por correo postal de primera clase. Todas las partes interesadas pueden presentar comentarios sobre la solicitud a través de los medios especificados anteriormente. La ubicación de la propiedad también puede verse aquí: <https://maps.raleighnc.gov/lmaps>. Puede ver el Mapa de Uso Territorial para 2045 aquí: [www.apexnc.org/DocumentCenter/View/478](https://www.apexnc.org/DocumentCenter/View/478). Si tiene preguntas o desea obtener más información, puede comunicarse con el Departamento de Planificación al 919-249-3426. Puede ver la solicitud y otros documentos relacionados aquí: <https://www.apexnc.org/DocumentCenter/View/47043>.

Dianne F. Khin, AICP  
Directora de Planificación





**TOWN OF APEX**

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

**PUBLIC NOTIFICATION  
OF PUBLIC HEARINGS**  
**CONDITIONAL ZONING #23CZ02**  
**Triangle Home Services Phase II**

Pursuant to the provisions of North Carolina General Statutes §160D-602 and to the Town of Apex Unified Development Ordinance (UDO) Section 2.2.11, notice is hereby given of public hearings before the Town Council of the Town of Apex. The purpose of these hearings is to consider the following:

- Applicant:** Peak Engineering & Design, PLLC
- Authorized Agent:** Jeff Roach, Peak Engineering & Design, PLLC
- Property Address:** 0 US Highway 64 West
- Acreage:** 4.55 acres
- Property Identification Number (PIN):** 0722047141
- 2045 Land Use Map Designation:** Mixed Use: High Density Residential/Office Employment/Commercial Services
- Existing Zoning of Property:** Rural Residential (RR)
- Proposed Zoning of Property:** Tech Flex-Conditional Zoning (TF-CZ)

**Public Hearing Location:** Apex Town Hall  
Council Chamber, 2<sup>nd</sup> Floor  
73 Hunter Street, Apex, North Carolina

*Comments received prior to the Planning Board public hearing will not be provided to the Town Council.  
Separate comments for the Town Council public hearing must be provided by the deadline specified below.*

**Town Council Public Hearing Date and Time: April 25, 2023 6:00 PM**

You may attend the meeting in person or view the meeting through the Town’s YouTube livestream at:  
<https://www.youtube.com/c/townofapexgov>.

If you are unable to attend, you may provide a written statement by email to [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), or submit it to the Office of the Town Clerk (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Town Council vote. You must provide your name and address for the record. The written statements will be delivered to the Town Council prior to their vote. Please include the Public Hearing name in the subject line.

**Vicinity Map:**



Property owners, tenants, and neighborhood associations within 300 feet of the proposed conditional zoning have been sent this notice via first class mail. All interested parties may submit comments with respect to the application by the means specified above. In addition to the above map, the location of the property may be viewed online at <https://maps.raleighnc.gov/imaps>. The 2045 Land Use Map may be viewed online at [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). You may call 919-249-3426, Planning Department, with questions or for further information. To view the petition and related documents on-line: <https://www.apexnc.org/DocumentCenter/View/42043/>.

Dianne F. Khin, AICP  
Planning Director





## TOWN OF APEX

PO BOX 250  
APEX, NORTH CAROLINA 27502  
TELÉFONO 919-249-3426

## NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS

ORDENAMIENTO TERRITORIAL CONDICIONAL #23CZ02

Triangle Home Services Phase II

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-602 y con la Sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del ayuntamiento de Apex, por la presente se notifican las audiencias públicas ante el Consejo Municipal del Ayuntamiento de Apex. El propósito de estas audiencias es considerar lo siguiente:

**Solicitante:** Peak Engineering & Design, PLLC

**Agente autorizado:** Jeff Roach, Peak Engineering & Design, PLLC

**Dirección de la propiedad:** 0 US Highway 64 West

**Superficie:** 4.55 acres

**Números de identificación de la propiedad:** 0722047141

**Designación en el Mapa de Uso Territorial para 2045:** Mixed Use: High Density Residential/Office Employment/Commercial Services

**Ordenamiento territorial existente de la propiedad:** Rural Residential (RR)

**Ordenamiento territorial propuesto para la propiedad:** Tech Flex-Conditional Zoning (TF-CZ)

**Lugar de la audiencia pública:** Ayuntamiento de Apex

Cámara del Consejo, 2º piso

73 Hunter Street, Apex, Carolina del Norte

***Los comentarios recibidos antes de la audiencia pública de la Junta de Planificación no se proporcionarán al Consejo Municipal. Los comentarios para la audiencia pública del Consejo Municipal deben presentarse por separado en el plazo especificado a continuación.***

**Fecha y hora de la audiencia pública del Consejo Municipal: 25 de abril de 6:00 P.M.**

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), o presentarla a la oficina del Secretario Municipal (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación del Consejo Municipal. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán al Consejo Municipal antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

### Mapa de las inmediaciones:



Los propietarios, inquilinos y asociaciones de vecinos en un radio de 300 pies del Ordenamiento Territorial Condicional propuesto han recibido esta notificación por correo postal de primera clase. Todas las partes interesadas pueden presentar comentarios sobre la solicitud a través de los medios especificados anteriormente. La ubicación de la propiedad también puede verse aquí: <https://maps.raleighnc.gov/imaps>. Puede ver el Mapa de Uso Territorial para 2045 aquí: [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). Si tiene preguntas o desea obtener más información, puede comunicarse con el Departamento de Planificación al 919-249-3426. Puede ver la solicitud y otros documentos relacionados aquí: <https://www.apexnc.org/DocumentCenter/View/42043/>.

Dianne F. Khin, AICP  
Directora de Planificación



## TOWN OF APEX

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

### AFFIDAVIT CERTIFYING Public Notification – Written (Mailed) Notice

Section 2.2.11

Town of Apex Unified Development Ordinance

Project Name: Conditional Zoning #23CZ02  
Triangle Home Services Phase II

Project Location: 3600 Old US 1 Highway

Applicant or Authorized Agent: Jeff Roach

Firm: Peak Engineering & Design, PLLC

This is to certify that I, as Director of Planning, mailed or caused to have mailed by first class postage for the above mentioned project on March 31, 2023, a notice containing the time and place, location, nature and scope of the application, where additional information may be obtained, and the opportunity for interested parties to be heard, to the property owners and tenants within 300' of the land subject to notification. I further certify that I relied on information from the Wake County Tax Assessor and the Town of Apex Master Address Repository provided to me by Town of Apex GIS Staff as to accuracy of the list and accuracy of mailing addresses of property owners and tenants within 300' of the land subject to notification.

4/3/2023  
Date

*Dianne Fkhin*  
Director of Planning

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Sworn and subscribed before me, Jeri Chastain Pederson, a Notary Public for the above

State and County, this the 3 day of April, 2023.

*Jeri Chastain Pederson*  
Notary Public

JERI CHASTAIN PEDERSON  
Notary Public  
Wake County, North Carolina  
My Commission Expires  
March 10, 2024

My Commission Expires: 3/10/2024

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PUBLIC HEARING

Meeting Date: April 25, 2023

## Item Details

Presenter(s): Amanda Bunce, Current Planning Manager

Department(s): Planning

### Requested Motion

Public Hearing and possible motion to approve Rezoning Application #23CZ03 Veridea Expansion. The applicant, Rebecca D'Eloia, RXR Realty seeks to rezone approximately 24.92 acres from Residential Agricultural (RA) and Rural Residential (RR) to Sustainable Development-Conditional Zoning (SD-CZ) for Veridea. The proposed rezoning is located at 0 & 0 E Williams Street; 0 & 0 Veridea Parkway.

### Approval Recommended?

The Planning Department recommends approval.

The Planning Board held a public hearing on April 10, 2023 and unanimously recommended approval with the conditions offered by the applicant.

### Item Details

The properties to be rezoned are identified as PINs 0740982630, 0740982659, 0740240814, & 0740052449.

### Attachments

- PH4-A1: Staff Report, Vicinity Map, and Application - Rezoning No. 23CZ03 Veridea Expansion





## STAFF REPORT

### Rezoning #23CZ01 Cash Corporate Center (revised uses)

April 25, 2023 Town Council Meeting



All property owners, tenants, and neighborhood associations within 300 feet of this rezoning have been notified per UDO Sec. 2.2.11 *Public Notification*.

#### **BACKGROUND INFORMATION:**

**Location:** 0 & 0 E Williams Street; 0 & 0 Veridea Parkway

**Applicant/Owner:** Rebecca D'Eloia, RXR Realty/RXR Len Apex Owner, LLC

#### **PROJECT DESCRIPTION:**

**Acreage:** ±24.92

**PINs:** 0740982630; 0740982659; 0740240814; 0740052449

**Current Zoning:** Rural Residential (RR) & Residential Agricultural (RA)

**Proposed Zoning:** Sustainable Development-Conditional Zoning (SD-CZ) for Veridea

**2045 Land Use Map:** Regional Mixed Use: Medium Density Residential/High Density Residential/Office Employment/Commercial Services/Industrial Employment

**Town Limits:** ETJ

#### **Adjacent Zoning & Land Uses:**

	Zoning	Land Use
<b>North:</b>	Sustainable Development-Conditional Zoning (SD-CZ #09CZ07); Rural Residential (RR)	Vacant; NC 540 Hwy
<b>South:</b>	Sustainable Development-Conditional Zoning (SD-CZ #09CZ07); Rural Residential (RR)	Vacant
<b>East:</b>	Light Industrial (LI); Rural Residential (RR)	E Williams St; Vacant; Greenway Waste Landfill
<b>West:</b>	Sustainable Development-Conditional Zoning (SD-CZ #09CZ07)	Vacant

#### **Existing Conditions:**

The subject properties total ±24.92 acres. Two properties are located on the west side of E. Williams Street. The other two properties are located south of NC 540 Hwy on either side of Veridea Parkway. All four properties are vacant.

#### **Neighborhood Meeting:**

The applicant conducted a neighborhood meeting on January 30, 2023. The neighborhood meeting report is attached.

#### **2045 Land Use Map:**

The 2045 Land Use Map classifies the subject properties as Regional Mixed Use: Medium Density Residential/High Density Residential/Office Employment/Commercial Services/Industrial Employment. The proposed rezoning to Sustainable Development-Conditional Zoning (SD-CZ) is consistent with that land use classification.

## STAFF REPORT

### Rezoning #23CZ01 Cash Corporate Center (revised uses)

April 25, 2023 Town Council Meeting



#### Proposed Uses and Zoning Conditions:

Sec. 2.3.16.D of the Unified Development Ordinance (UDO) states in part:

“...A parcel or parcels (the “Parcel”) of any size may be added to an existing Sustainable Development Conditional Zoning District if (i) any portion of the Parcel is within 2,000 feet of such existing district, (ii) the Responsible Person of the existing district consents in writing and (iii) the Town Council approves a rezoning of the Parcel to Sustainable Development Conditional Zoning District SD-CZ in accordance with Secs. 2.3.3 and 2.3.16. In such event the SD Plan approved for the existing SD-CZ District shall be applicable to the Parcel(s) added to such existing district, and the development densities authorized in the existing SD Plan (including number of residential units and authorized square footage of other land uses) shall be increased on a pro-rata basis based on the size of the Parcel(s) added to the district, unless the Town Council provides otherwise with the consent of the Responsible Person.”

If the proposed rezoning is approved, the Veridea SD Plan and Environmental Enhancement Plan will be applicable to the subject properties. This is why no additional zoning conditions have been offered for this rezoning. The applicant has indicated that no increase in the number of residential units is desired with the addition of these properties. If approved, the development densities will be as follows:

- Residential dwelling units: 8,000 (no change)
- Retail: 3,584,000 sq ft (2.4% increase)
- Office/Industrial: 12,288,000 sq ft (2.4% increase)

#### ENVIRONMENTAL ADVISORY BOARD:

The Apex Environmental Advisory Board (EAB) held a pre-application meeting for this rezoning on January 19, 2023. The zoning conditions suggested by the EAB are listed below along with the staff’s response to each condition. As stated above, the SD-CZ standards in the UDO allow for additional properties to be rezoned such that the existing SD Plan (zoning conditions) are applicable to the new properties. An Environmental Enhancement Plan (EEP) was approved by Town Council on February 28, 2023 that includes conditions addressing some of the EAB’s suggested conditions.

EAB Suggested Condition	Staff’s Response
Ensure that a public transportation shuttle-like or bus service stop with shelter and seating is located at this development.	The Transit Plan map shows current & future routes in the vicinity of the parcels along E Williams St. Developer already must coordinate with staff on appropriate provision of transit facilities.
Increase design storm for retention basins in flood-prone areas. <ul style="list-style-type: none"><li>• Increase design storm pre- and post-attenuation requirement to the 100-year storm.</li></ul>	EEP requires that “post-development peak flows do not exceed pre-development flows for the 25-year storm event”
Install signage near environmentally sensitive areas in order to: <ul style="list-style-type: none"><li>• Eliminate fertilizer near SCM drainage areas.</li></ul>	Required by EEP
Preserve tree canopy and prioritize medium to large, healthy, desirable species. <ul style="list-style-type: none"><li>• Preserve existing trees (percentage-based).</li></ul>	Not directly addressed by SD Plan or EEP.
Increase biodiversity. <ul style="list-style-type: none"><li>• Plant pollinator-friendly flora.</li><li>• Plant native flora (Refer to the Apex Design &amp; Development Manual for approved native species).</li></ul>	EEP includes the following: <ul style="list-style-type: none"><li>• Pollinator friendly landscaping will be planted in landscaped areas where feasible.</li></ul>

## STAFF REPORT

### Rezoning #23CZ01 Cash Corporate Center (revised uses)

April 25, 2023 Town Council Meeting



EAB Suggested Condition	Staff's Response
	<ul style="list-style-type: none"><li>All landscaping planted within Veridea shall be listed in the Town of Apex's Design and Development Manual.</li></ul>
Include energy efficient lighting in building design. <ul style="list-style-type: none"><li><i>Option 1:</i> Lower maximum foot-candles outside of buildings.</li></ul>	Not addressed by SD Plan or EEP. UDO standards will apply.
Install timers or light sensors or smart lighting technology.	Not addressed by SD Plan or EEP.
Incorporate natural lighting techniques into building design.	Not addressed by SD Plan or EEP.
Include International Dark Sky Association compliance standards. <ul style="list-style-type: none"><li>Outdoor lighting shall be shielded in a way that focuses lighting to the ground.</li><li>Lighting that minimizes the emission of blue light to reduce glare shall be used.</li><li>Lighting with a color temperature of 3,000K or less shall be used for outside installations.</li></ul>	Not addressed by SD Plan or EEP. UDO standards of 3,500K max color temperature and standards requiring certain full cutoff fixtures will apply.
Provide 20% of the estimated electrical consumption be provided by solar.	EEP requires: <ul style="list-style-type: none"><li>Installation of solar facilities in required open spaces</li><li>Conduit for wiring of solar panels in all single-family and townhome dwellings</li></ul>

#### PLANNING STAFF RECOMMENDATION:

Planning staff recommends approval of Rezoning #23CZ03 with the conditions as offered by the applicant.

#### PLANNING BOARD RECOMMENDATION:

The Planning Board held a public hearing on April 10, 2023 and unanimously recommended approval with the conditions as proposed by the applicant.

#### ANALYSIS STATEMENT OF THE REASONABLENESS OF THE PROPOSED REZONING:

This Statement will address consistency with the Town's comprehensive and other applicable plans, reasonableness, and effect on public interest:

The 2045 Land Use Map classifies the subject properties as Regional Mixed Use: Medium Density Residential/High Density Residential/Office Employment/Commercial Services/Industrial Employment. The proposed rezoning to Sustainable Development-Conditional Zoning (SD-CZ) is consistent with that land use classification.

The proposed rezoning is reasonable and in the public interest because it will encourage more efficient and compatible development of the properties, provide for the same development standards as applicable to the undeveloped adjacent properties, and allow for uses that will generate jobs and increase the tax base.

#### CONDITIONAL ZONING STANDARDS:

The Town Council shall find the SD-CZ designation demonstrates compliance with the following standards.  
2.3.3.F:

**Legislative Considerations**

The applicant shall propose site-specific standards and conditions that take into account the following considerations, which are considerations that are relevant to the legislative determination of whether or not the proposed conditional zoning district rezoning request is in the public interest. These considerations do not exclude the legislative consideration of any other factor that is relevant to the public interest.

- 1) *Consistency with 2045 Land Use Map.* The proposed Conditional Zoning District use's appropriateness for its proposed location and consistency with the purposes, goals, objectives, and policies of the 2045 Land Use Map.
- 2) *Compatibility.* The proposed Conditional Zoning District use's appropriateness for its proposed location and compatibility with the character of surrounding land uses.
- 3) *Zoning district supplemental standards.* The proposed Conditional Zoning District use's compliance with Sec 4.4 *Supplemental Standards*, if applicable.
- 4) *Design minimizes adverse impact.* The design of the proposed Conditional Zoning District use's minimization of adverse effects, including visual impact of the proposed use on adjacent lands; and avoidance of significant adverse impacts on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration and not create a nuisance.
- 5) *Design minimizes environmental impact.* The proposed Conditional Zoning District use's minimization of environmental impacts and protection from significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.
- 6) *Impact on public facilities.* The proposed Conditional Zoning District use's avoidance of having adverse impacts on public facilities and services, including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities.
- 7) *Health, safety, and welfare.* The proposed Conditional Zoning District use's effect on the health, safety, or welfare of the residents of the Town or its ETJ.
- 8) *Detrimental to adjacent properties.* Whether the proposed Conditional Zoning District use is substantially detrimental to adjacent properties.
- 9) *Not constitute nuisance or hazard.* Whether the proposed Conditional Zoning District use constitutes a nuisance or hazard due to traffic impact or noise, or because of the number of persons who will be using the Conditional Zoning (CZ) District use.
- 10) *Other relevant standards of this Ordinance.* Whether the proposed Conditional Zoning District use complies with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.



Veridea

540

Veridea Pkwy

RAMP Veridea to NC 540 NB

RAMP NC 540 NB to Veridea

RAMP NC 540 SB to Veridea

NC 540 Hwy SB

540

Rezoning #23CZ03

RAMP Veridea to NC 540 SB





Rezoning #23CZ03

Veridea



55

E Williams St

Bobbitt Rd

Wickham Ridge Rd

Pemberley





## PETITION TO AMEND THE OFFICIAL ZONING MAP

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 #: 23CZ03 Submittal Date: February 1, 2023  
Fee Paid: \$1000

### Project Information

Project Name: Veridea Expansion  
Address(es): 0 E WILLIAMS ST; 0 E WILLIAMS ST; 0 VERIDEA PKWY; 0 VERIDEA PKWY  
PIN(s): 0740982630; 0740982659; 0740240814; 0740052449  
Acreage: 24.92  
Current Zoning: RA, RR Proposed Zoning: SD-CZ  
Current 2045 LUM Classification(s): Regional Mixed Use; Mixed-Use, Office Employment and Industrial Employment  
Is the proposed rezoning consistent with the 2045 LUM Classification(s)? Yes ☒ No ☐

If any portion of the project is shown as mixed use (3 or more stripes on the 2045 Land Use Map) provide the following:

Area classified as mixed use:	Acreage:	<u>30%</u>
Area proposed as non-residential development:	Acreage:	<u>unknown currently</u>
Percent of mixed use area proposed as non-residential:	Percent:	<u>unknown currently</u>

### Applicant Information

Name: Rebecca D'Eloia, RXR Realty  
Address: 625 RXR Plaza  
City: Uniondale State: NY Zip: 11556  
Phone: 516-506-6774 E-mail: rdeloia@rxr.com

### Owner Information

Name: RXR LEN APEX OWNER LLC  
Address: 625 RXR Plaza  
City: Uniondale State: NY Zip: 11556-3815  
Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

### Agent Information

Name: Jason Barron  
Address: 421 Fayetteville Street Suite 530  
City: Raleigh State: NC Zip: 27601  
Phone: 919-590-0371 E-mail: jbarron@morningstarlawgroup.com

Other contacts: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PETITION INFORMATION**Application #: 23CZ03 Submittal Date: February 1, 2023

An application has been duly filed requesting that the property described in this application be rezoned from RA, RR to SD-CZ. It is understood and acknowledged that if the property is rezoned as requested, the property described in this request will be perpetually bound to the use(s) authorized and subject to such conditions as imposed, unless subsequently changed or amended as provided for in the Unified Development Ordinance (UDO). It is further understood and acknowledged that final plans for any specific development to be made pursuant to any such Conditional Zoning shall be submitted for site or subdivision plan approval, as required by the UDO. Use additional pages as needed.

**PROPOSED USES:**

The Rezoned Lands may be used for, and only for, the uses listed immediately below. The permitted uses are subject to the limitations and regulations stated in the UDO and any additional limitations or regulations stated below. For convenience, some relevant sections of the UDO may be referenced; such references do not imply that other sections of the UDO do not apply.

1	<u>See Attachment A</u>	21	<u></u>
2	<u></u>	22	<u></u>
3	<u></u>	23	<u></u>
4	<u></u>	24	<u></u>
5	<u></u>	25	<u></u>
6	<u></u>	26	<u></u>
7	<u></u>	27	<u></u>
8	<u></u>	28	<u></u>
9	<u></u>	29	<u></u>
10	<u></u>	30	<u></u>
11	<u></u>	31	<u></u>
12	<u></u>	32	<u></u>
13	<u></u>	33	<u></u>
14	<u></u>	34	<u></u>
15	<u></u>	35	<u></u>
16	<u></u>	36	<u></u>
17	<u></u>	37	<u></u>
18	<u></u>	38	<u></u>
19	<u></u>	39	<u></u>
20	<u></u>	40	<u></u>

## PETITION INFORMATION

Application #: 23CZ03 Submittal Date: February 1, 2023

### PROPOSED CONDITIONS:

The applicant hereby requests that the Town Council of the Town of Apex, pursuant to the Unified Development Ordinance, approve the Conditional Zoning for the above listed use(s) subject to the following condition(s). Use additional pages as needed.

Consistent with section 2.3.16(D) of the Apex UDO, these parcels are being added to an existing SD-CZ district known as Veridea. Consequently, the existing SD Plan for the existing SD-CZ District shall be applicable to these parcels, and the development densities authorized in the existing SD Plan (including number of residential units and authorized square footage of other land uses) shall be increased on a pro-rata basis based on the size of the parcels being added. Further, all other provisions contained within the Veridea SD Plan will be applicable to these parcels.

### LEGISLATIVE CONSIDERATIONS - CONDITIONAL ZONING

The applicant shall propose site-specific standards and conditions that take into account the following considerations, which are considerations that are relevant to the legislative determination of whether or not the proposed conditional zoning district rezoning request is in the public interest. These considerations do not exclude the legislative consideration of any other factor that is relevant to the public interest. Use additional pages as needed.

1) *Consistency with 2045 Land Use Map.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and consistency with the purposes, goals, objectives, and policies of the 2045 Land Use Map.

Three of these four parcels are designated Regional Mixed Use ("RMU"). The fourth parcel (PIN: 0740052449) is designated Mixed Use, Office Employment and Industrial Employment. SD zoning is allowable in all mixed use centers. Therefore, this rezoning is consistent with land use map designation for all four parcels.

2) *Compatibility.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and compatibility with the character of surrounding land uses.

The purpose of this proposed conditional zoning is to include these four parcels into the existing Veridea Sustainable Development ("Veridea SD"). The Veridea SD surrounds two of these parcels and borders the other two. Therefore, this proposed rezoning will be compatible with the surrounding land uses.

## PETITION INFORMATION

Application #: 23CZ03 Submittal Date: February 1, 2023

3) Zoning district supplemental standards. The proposed Conditional Zoning (CZ) District use's compliance with Sec 4.4 *Supplemental Standards*, if applicable.

All proposed uses will be consistent with the standards provided in the Town of Apex UDO including any applicably supplemental standards.

4) *Design minimizes adverse impact.* The design of the proposed Conditional Zoning (CZ) District use's minimization of adverse effects, including visual impact of the proposed use on adjacent lands; and avoidance of significant adverse impacts on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration and not create a nuisance.

The design of the proposed conditional zoning district will be compatible with the nearby uses because the purpose of this rezoning is to add these parcels to the adjacent Veridea SD. Therefore, these parcels will be part of the same overall scheme as the neighboring parcels.

5) *Design minimizes environmental impact.* The proposed Conditional Zoning District use's minimization of environmental impacts and protection from significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.

This rezoning will facilitate the addition of these four parcels into the Veridea SD, a development of regional importance which puts coexistence with nature and environmental sustainability among its guiding principles.

6) *Impact on public facilities.* The proposed Conditional Zoning (CZ) District use's avoidance of having adverse impacts on public facilities and services, including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities.

The proposed conditional zoning district will avoid having adverse impacts on public facilities and services because the district will merely be an extension of the Veridea SD, and there has been extensive planning that has gone into incorporating the Veridea SD into the town and providing the SD with public services.

7) *Health, safety, and welfare.* The proposed Conditional Zoning (CZ) District use's effect on the health, safety, or welfare of the residents of the Town or its ETJ.

The Veridea SD will provide a healthy and sustainable mixed use community that Apex residents will be happy to call home. Among Veridea's guiding principles are "Creat[ing] safe objects of long-term value" and "Insist[ing] on [the] rights of humanity and nature to co-exist in a healthy, supportive, diverse and Sustainable condition."

PETITION INFORMATION

Application #: 23CZ03 Submittal Date: February 1, 2023

8) *Detrimental to adjacent properties.* Whether the proposed Conditional Zoning (CZ) District use is substantially detrimental to adjacent properties.

These parcels are intended to be a part of the adjacent Veridea SD and be included in the Veridea SD plan. Therefore, these parcels will not be substantially detrimental to adjacent properties.

9) *Not constitute nuisance or hazard.* Whether the proposed Conditional Zoning (CZ) District use constitutes a nuisance or hazard due to traffic impact or noise, or because of the number of persons who will be using the Conditional Zoning (CZ) District use.

These parcels will not be a nuisance or a hazard and will become part of the overall plan for the Veridea SD.

10) *Other relevant standards of this Ordinance.* Whether the proposed Conditional Zoning (CZ) District use complies with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.

This conditional zoning district will comply with all standards imposed on it by all other applicable provisions of the Apex UDO.



## Attachment A

### Proposed Uses:

1. The uses will be consistent with the existing Veridea SD Plan that these parcels are being added to.

## AGENT AUTHORIZATION FORM

Application #: 23CZ03

Submittal Date: February 1, 2023

RXR LEN APEX OWNER LLC

\_\_\_\_\_ is the owner\* of the property for which the attached application is being submitted:

- ☐ Land Use Amendment
- ☒ Rezoning: For Conditional Zoning and Planned Development rezoning applications, this authorization includes express consent to zoning conditions that are agreed to by the Agent which will apply if the application is approved.
- ☐ Site Plan
- ☐ Subdivision
- ☐ Variance
- ☐ Other: \_\_\_\_\_

The property address is:

0 Veridea PKWY (PIN: 0740240814); 0 Veridea PKWY (PIN: 0740052449);  
0 E Williams St (PIN: 0740982630); 0 E Williams St (PIN: 0740982659)

The agent for this project is: \_\_\_\_\_

☐ I am the owner of the property and will be acting as my own agent

Agent Name:

Rebecca D'Eloia

Address:

625 RXR Plaza Uniondale, NY 11556

Telephone Number:

516-506-6774

E-Mail Address:

rdeloia@rxr.com

Signature(s) of Owner(s)\*  
RXR Len Apex Owner LLC

By: \_\_\_\_\_

Todd Rechler, Authorized Person

\_\_\_\_\_  
Type or print name

3/27/23

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type or print name

\_\_\_\_\_  
Date

Attach additional sheets if there are additional owners.

\*Owner of record as shown on the latest equalized assessment rolls of Wake County. An option to purchase does not constitute ownership. If ownership has been recently transferred, a copy of the deed must accompany this authorization.

Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this application 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 application and any related documents. If electronic signatures are used the application shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

**AFFIDAVIT OF OWNERSHIP**Application #: 23CZ03Submittal Date: February 1, 2023

The undersigned, Todd Rechler (the "Affiant") first being duly sworn, hereby swears or affirms as follows:

1. Affiant is over eighteen (18) years of age and authorized to make this Affidavit. The Affiant is the sole owner, or is the authorized agent of all owners, of the property located at 0 E Williams St having Wake County PIN: 0740982659 and legally described in **Exhibit "A"** attached hereto and incorporated herein (the "Property").
2. This Affidavit of Ownership is made for the purpose of filing an application for development approval with the Town of Apex.
3. If Affiant is the owner of the Property, Affiant acquired ownership by deed, dated February 17, 2023, and recorded in the Wake County Register of Deeds Office on February 17, 2023, in Book 019263 Page 02403-02422.
4. If Affiant is the authorized agent of the owner(s) of the Property, Affiant possesses documentation indicating the agency relationship granting the Affiant the authority to apply for development approval on behalf of the owner(s).
5. If Affiant is the owner of the Property, from the time Affiant was deeded the Property on February 17, 2023, Affiant has claimed sole ownership of the Property. Affiant or Affiant's predecessors in interest have been in sole and undisturbed possession and use of the property during the period of ownership. Since taking possession of the Property on February 17, 2023, no one has questioned Affiant's ownership or right to possession nor demanded any rents or profits. To Affiant's knowledge, no claim or action has been brought against Affiant (if Affiant is the owner), or against owner(s) (if Affiant is acting as an authorized agent for owner(s)), which questions title or right to possession of the property, nor is any claim or action pending against Affiant or owner(s) in court regarding possession of the Property.

This the 27<sup>th</sup> day of MARCH, 2023.

RXR Len Apex Owner LLC

By: [Signature] (seal)Todd Rechler, Authorized Person

Type or print name

New York  
STATE OF ~~NORTH CAROLINA~~  
COUNTY OF New York

I, the undersigned, a Notary Public in and for the County of New York, hereby certify that Todd Rechler, Authorized Person, Affiant, personally known to me or known to me by said Affiant's presentation of said Affiant's \_\_\_\_\_, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing Affidavit.

JOHN P FLANAGAN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02FL6399279  
Qualified in Queens County  
My Commission Expires 10-15-2023  
[NOTARY SEAL]

[Signature]  
Notary Public  
State of ~~North Carolina~~ New York  
My Commission Expires: 10-15-2023

**AFFIDAVIT OF OWNERSHIP: EXHIBIT A – LEGAL DESCRIPTION**

Application #: 23CZ03

Submittal Date: February 1, 2023

**Insert legal description below.**

PID- 0740982659

BEING A PORTION OF LOT 13 AS SHOWN ON BOOK OF MAPS 1948, PAGE 18 OF THE WAKE COUNTY REGISTRY. MORE PARTICULARLY DESCRIBED AS: BEGINNING AN IRON PIPE, THE NORTHWEST CORNER OF LOT 12 AS SHOWN ON BOOK OF MAPS 1948, PAGE 18 OF THE WAKE COUNTY REGISTRY, THE POINT OF BEGINNING; THENCE NORTH  $01^{\circ}25'42''$  EAST A DISTANCE OF 49.75 FEET TO AN IRON PIPE, THE SOUTHWEST CORNER OF LOT 14 AS SHOWN ON THE AFORE SAID BOOK OF MAPS; THENCE WITH SAID COMMON LINE SOUTH  $87^{\circ}07'42''$  EAST A DISTANCE OF 125.64 FEET TO A POINT ON THE WESTERN RIGHT OF WAY OF NORTH CAROLINA HIGHWAY 55; THENCE WITH SAID RIGHT OF WAY SOUTH  $01^{\circ}45'44''$  WEST A DISTANCE OF 50.00 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 12; THENCE WITH SAID COMMON LINE NORTH  $87^{\circ}00'54''$  WEST A DISTANCE OF 125.36 FEET TO THE POINT OF BEGINNING. CONTAINING 6,258 SQUARE FEET OR 0.14 ACRES.

**AFFIDAVIT OF OWNERSHIP**Application #: 23CZ03Submittal Date: February 1, 2023

The undersigned, Todd Rechler (the "Affiant") first being duly sworn, hereby swears or affirms as follows:

1. Affiant is over eighteen (18) years of age and authorized to make this Affidavit. The Affiant is the sole owner, or is the authorized agent of all owners, of the property located at 0 E Williams St and having Wake County PIN: 0740982630 and legally described in **Exhibit "A"** attached hereto and incorporated herein (the "Property").
2. This Affidavit of Ownership is made for the purpose of filing an application for development approval with the Town of Apex.
3. If Affiant is the owner of the Property, Affiant acquired ownership by deed, dated February 17, 2023, and recorded in the Wake County Register of Deeds Office on February 17, 2023, in Book 019263 Page 02403-02422.
4. If Affiant is the authorized agent of the owner(s) of the Property, Affiant possesses documentation indicating the agency relationship granting the Affiant the authority to apply for development approval on behalf of the owner(s).
5. If Affiant is the owner of the Property, from the time Affiant was deeded the Property on February 17, 2023, Affiant has claimed sole ownership of the Property. Affiant or Affiant's predecessors in interest have been in sole and undisturbed possession and use of the property during the period of ownership. Since taking possession of the Property on February 17, 2023, no one has questioned Affiant's ownership or right to possession nor demanded any rents or profits. To Affiant's knowledge, no claim or action has been brought against Affiant (if Affiant is the owner), or against owner(s) (if Affiant is acting as an authorized agent for owner(s)), which questions title or right to possession of the property, nor is any claim or action pending against Affiant or owner(s) in court regarding possession of the Property.

This the 27<sup>th</sup> day of MARCH, 2023.

RXR Len Apex Owner LLC

By:



(seal)

Todd Rechler, Authorized Person

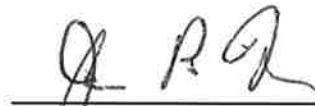
Type or print name

STATE OF ~~NORTH CAROLINA~~  
COUNTY OF New York

I, the undersigned, a Notary Public in and for the County of New York, hereby certify that Todd Rechler, Authorized Person, Affiant, personally known to me or known to me by said Affiant's presentation of said Affiant's \_\_\_\_\_, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing Affidavit.

JOHN P FLANAGAN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02FL6399279  
Qualified in Queens County  
My Commission Expires 10-15-2023

[NOTARY SEAL]



Notary Public

State of ~~North Carolina~~ New York

My Commission Expires: 10-15-2023



**AFFIDAVIT OF OWNERSHIP: EXHIBIT A – LEGAL DESCRIPTION**

Application #: 23CZ03

Submittal Date: February 1, 2023

**Insert legal description below.**

PID: 0740982630

BEING A PORTION OF LOT 11 AS SHOWN ON BOOK OF MAPS 1948, PAGE 18 OF THE WAKE COUNTY REGISTRY. MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT AN IRON PIPE, THE SOUTHWEST CORNER OF LOT 12 AS SHOWN ON BOOK OF MAPS 1948, PAGE 18 OF THE WAKE COUNTY REGISTRY, THE POINT OF BEGINNING; THENCE WITH SAID COMMON LINE SOUTH  $86^{\circ}50'20''$  EAST A DISTANCE OF 115.40 FEET TO A POINT ON THE WESTERN RIGHT OF WAY OF NORTH CAROLINA HIGHWAY 55; THENCE WITH SAID RIGHT OF WAY SOUTH  $14^{\circ}56'39''$  WEST A DISTANCE OF 51.10 FEET TO A CONCRETE RIGHT OF WAY MONUMENT ON THE NORTHERN LINE OF LOT 10 AS SHOWN ON THE AFORE SAID BOOK OF MAPS; THENCE WITH SAID COMMON LINE NORTH  $86^{\circ}52'56''$  WEST A DISTANCE OF 103.53 FEET TO AN IRON PIPE THE NORTHWESTERN CORNER OF LOT 10; THENCE NORTH  $01^{\circ}30'52''$  EAST A DISTANCE OF 50.12 FEET TO THE POINT OF BEGINNING. CONTAINING AN AREA OF 5,480 SQUARE FEET OR 0.13 ACRES.

**AFFIDAVIT OF OWNERSHIP**Application #: 23CZ03Submittal Date: February 1, 2023

The undersigned, Todd Rechler (the "Affiant") first being duly sworn, hereby swears or affirms as follows:

1. Affiant is over eighteen (18) years of age and authorized to make this Affidavit. The Affiant is the sole owner, or is the authorized agent of all owners, of the property located at 0 Veridea PKWY and having Wake County PIN: 0740240814 and legally described in **Exhibit "A"** attached hereto and incorporated herein (the "Property").
2. This Affidavit of Ownership is made for the purpose of filing an application for development approval with the Town of Apex.
3. If Affiant is the owner of the Property, Affiant acquired ownership by deed, dated February 17, 2023, and recorded in the Wake County Register of Deeds Office on February 17, 2023, in Book 019263 Page 02403-02422.
4. If Affiant is the authorized agent of the owner(s) of the Property, Affiant possesses documentation indicating the agency relationship granting the Affiant the authority to apply for development approval on behalf of the owner(s).
5. If Affiant is the owner of the Property, from the time Affiant was deeded the Property on February 17, 2023, Affiant has claimed sole ownership of the Property. Affiant or Affiant's predecessors in interest have been in sole and undisturbed possession and use of the property during the period of ownership. Since taking possession of the Property on February 17, 2023, no one has questioned Affiant's ownership or right to possession nor demanded any rents or profits. To Affiant's knowledge, no claim or action has been brought against Affiant (if Affiant is the owner), or against owner(s) (if Affiant is acting as an authorized agent for owner(s)), which questions title or right to possession of the property, nor is any claim or action pending against Affiant or owner(s) in court regarding possession of the Property.

This the 27<sup>th</sup> day of March, 2023.

RXR Len Apex Owner LLC

By:



(seal)


Todd Rechler, Authorized Person

Type or print name

STATE OF ~~NORTH CAROLINA~~  
COUNTY OF New York

I, the undersigned, a Notary Public in and for the County of New York, hereby certify that Todd Rechler, Authorized Person, Affiant, personally known to me or known to me by said Affiant's presentation of said Affiant's \_\_\_\_\_, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing Affidavit.

JOHN P FLANAGAN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02FL6399279  
Qualified in Queens County  
My Commission Expires 10-15-2023  
[NOTARY SEAL]

  
Notary Public

State of ~~North Carolina~~ New YorkMy Commission Expires: 10-15-2023

**AFFIDAVIT OF OWNERSHIP: EXHIBIT A – LEGAL DESCRIPTION**

Application #: 23CZ03

Submittal Date: February 1, 2023

**Insert legal description below.**

BEING A PORTION OF THE PROGRESS ENERGY TRACT AS SHOWN ON BOOK OF MAPS 2007, PAGE 1132 IN THE WAKE COUNTY REGISTER OF DEEDS. BEING MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT A POINT AT THE INTERSECTION OF THE EASTERN RIGHT OF WAY LINE OF VERIDEA PARKWAY AND THE SOUTHERN RIGHT OF WAY LINE OF THE N.C. HIGHWAY 540 RAMP, AS DESCRIBED IN DEED BOOK 15539, PAGE 1855 IN THE WAKE COUNTY REGISTER OF DEEDS, THE POINT OF BEGINNING; THENCE WITH THE SOUTHERN RIGHT OF WAY LINE OF THE N.C. HIGHWAY 540 RAMP, NORTH 48°17'55" EAST A DISTANCE OF 3.48 FEET TO A POINT; THENCE SOUTH 76°02'09" EAST A DISTANCE OF 316.69 FEET TO A CONCRETE MONUMENT; THENCE SOUTH 77°42'22" EAST A DISTANCE OF 224.13 FEET TO A CONCRETE MONUMENT; THENCE NORTH 74°21'52" EAST A DISTANCE OF 186.60 FEET TO A CONCRETE MONUMENT; THENCE NORTH 46°45'41" EAST A DISTANCE OF 297.04 FEET TO A CONCRETE MONUMENT; THENCE NORTH 47°49'13" EAST A DISTANCE OF 182.30 FEET TO A CONCRETE MONUMENT; THENCE NORTH 64°40'03" EAST A DISTANCE OF 179.28 FEET TO A POINT, BEING THE NORTHWEST CORNER OF LANDS NOW OR FORMERLY OWNED BY GREENWAY WASTE SOLUTIONS OF APEX, LLC, AS DESCRIBED IN DEED BOOK 9099, PAGE 1039; THENCE WITH SAID COMMON LINE, SOUTH 06°34'16" EAST A DISTANCE OF 760.63 FEET TO AN IRON PIPE ON THE NORTHERN LINE OF LANDS NOW OR FORMERLY OWNED BY HH TRINITY APEX INVESTMENTS, LLC, AS DESCRIBED IN DEED BOOK 12826, PAGE 2489; THENCE WITH SAID COMMON LINE, NORTH 78°40'10" WEST A DISTANCE OF 164.41 FEET TO A POINT; THENCE NORTH 77°01'58" WEST A DISTANCE OF 181.30 FEET TO A POINT; THENCE NORTH 65°53'37" WEST A DISTANCE OF 301.08 FEET TO A POINT; THENCE NORTH 71°44'05" WEST A DISTANCE OF 452.53 FEET TO A POINT; THENCE NORTH 71°58'44" WEST A DISTANCE OF 280.51 FEET TO THE POINT AND PLACE OF BEGINNING, CONTAINING AN AREA OF 316,750 SQUARE FEET OR 7.27 ACRES.

# AFFIDAVIT OF OWNERSHIP

Application #: 23CZ03

Submittal Date: February 1, 2023

The undersigned, Todd Rechler (the "Affiant") first being duly sworn, hereby swears or affirms as follows:

1. Affiant is over eighteen (18) years of age and authorized to make this Affidavit. The Affiant is the sole owner, or is the authorized agent of all owners, of the property located at 0 Veridea PKWY and having Wake County PIN: 0740052449 and legally described in **Exhibit "A"** attached hereto and incorporated herein (the "Property").
2. This Affidavit of Ownership is made for the purpose of filing an application for development approval with the Town of Apex.
3. If Affiant is the owner of the Property, Affiant acquired ownership by deed, dated February 17, 2023, and recorded in the Wake County Register of Deeds Office on February 17, 2023, in Book 019263 Page 02403-02422.
4. If Affiant is the authorized agent of the owner(s) of the Property, Affiant possesses documentation indicating the agency relationship granting the Affiant the authority to apply for development approval on behalf of the owner(s).
5. If Affiant is the owner of the Property, from the time Affiant was deeded the Property on February 17, 2023, Affiant has claimed sole ownership of the Property. Affiant or Affiant's predecessors in interest have been in sole and undisturbed possession and use of the property during the period of ownership. Since taking possession of the Property on February 17, 2023, no one has questioned Affiant's ownership or right to possession nor demanded any rents or profits. To Affiant's knowledge, no claim or action has been brought against Affiant (if Affiant is the owner), or against owner(s) (if Affiant is acting as an authorized agent for owner(s)), which questions title or right to possession of the property, nor is any claim or action pending against Affiant or owner(s) in court regarding possession of the Property.

This the 21<sup>st</sup> day of MARCH, 2023.

RXR Len Apex Owner LLC  
By: Todd Rechler (seal)

Todd Rechler, Authorized Person

Type or print name

STATE OF ~~NORTH CAROLINA~~  
COUNTY OF New York

I, the undersigned, a Notary Public in and for the County of New York, hereby certify that Todd Rechler, Authorized Person, Affiant, personally known to me or known to me by said Affiant's presentation of said Affiant's \_\_\_\_\_, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing Affidavit.

JOHN P FLANAGAN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02FL6399279  
Qualified in Queens County  
My Commission Expires 10-15-2023  
[NOTARY SEAL]

John P. Flanagan  
Notary Public  
State of ~~North Carolina~~ New York  
My Commission Expires: 10-15-2023

**AFFIDAVIT OF OWNERSHIP: EXHIBIT A – LEGAL DESCRIPTION**

Application #:

23CZ03

Submittal Date:

February 1, 2023

**Insert legal description below.**

BEING ALL OF THE LAND DESCRIBED IN DEED BOOK 15535, PAGE 1727 IN THE WAKE COUNTY REGISTER OF DEEDS. BEING MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT A CONCRETE MONUMENT ON THE NORTHERN LINE OF LANDS AS SHOWN ON BOOK OF MAPS 1986, PAGE 1865 IN THE WAKE COUNTY REGISTER OF DEEDS, THE POINT OF BEGINNING; THENCE WITH SAID COMMON LINE, NORTH 71°59'15" WEST A DISTANCE OF 337.68 FEET TO AN IRON PIPE; THENCE NORTH 86°29'50" WEST A DISTANCE OF 829.07 FEET TO AN IRON PIPE, BEING THE SOUTHEAST CORNER OF LANDS NOW OR FORMERLY OWNED BY HH TRINITY APEX INVESTMENTS, LLC, AS DESCRIBED IN DEED BOOK 12651, PAGE 1128; THENCE WITH SAID COMMON LINE, NORTH 00° 41'54" EAST A DISTANCE OF 661.29 FEET TO A POINT ON THE SOUTHERN LINE OF LANDS NOW OR FORMERLY OWNED BY HH TRINITY APEX INVESTMENTS, AS DESCRIBED IN DEED BOOK 12830, PAGE 1996; THENCE WITH SAID COMMON LINE, SOUTH 89°13'28" EAST A DISTANCE OF 647.67 FEET TO AN IRON PIPE; THENCE NORTH 02°26'42" EAST A DISTANCE OF 29.55 FEET TO A POINT ON THE SOUTHERN RIGHT OF WAY LINE OF N.C. HIGHWAY 540; THENCE WITH THE SOUTHERN RIGHT OF WAY LINE OF N.C. HIGHWAY 540, WITH A CURVE TO THE LEFT A RADIUS OF 4375.00 FEET, AN ARC LENGTH OF 456.34 FEET, A CHORD BEARING OF SOUTH 65°10'37" EAST, A CHORD LENGTH OF 456.13 FEET TO A CONCRETE MONUMENT; THENCE SOUTH 49°00'55" EAST A DISTANCE OF 133.17 FEET TO A POINT AT THE INTERSECTION OF THE SOUTHERN RIGHT OF WAY LINE OF N.C. HIGHWAY 540 AND THE WESTERN RIGHT OF WAY LINE OF VERIDEA PARKWAY, AS DESCRIBED IN DEED BOOK 15539, PAGE 1885; THENCE WITH THE WESTERN RIGHT OF WAY LINE OF VERIDEA PARKWAY, WITH A CURVE TO THE LEFT A RADIUS OF 1680.00 FEET, AN ARC LENGTH OF 355.38 FEET, A CHORD BEARING OF SOUTH 05°50'57" WEST, A CHORD LENGTH OF 354.72 FEET TO A POINT; THENCE WITH A CURVE TO THE LEFT A RADIUS OF 1680.00 FEET, AN ARC LENGTH OF 205.93 FEET, A CHORD BEARING OF SOUTH 03°43'21" EAST, A CHORD LENGTH OF 205.80 FEET TO THE POINT AND PLACE OF BEGINNING, CONTAINING AN AREA OF 757,143 SQUARE FEET OR 17.38 ACRES.



## **Veridea Expansion - Metes and Bounds Legal Description**

### **PARCEL 1**

PID: 0740982659

BEING A PORTION OF LOT 13 AS SHOWN ON BOOK OF MAPS 1948, PAGE 18 OF THE WAKE COUNTY REGISTRY. MORE PARTICULARLY DESCRIBED AS:

BEGINNING AN IRON PIPE, THE NORTHWEST CORNER OF LOT 12 AS SHOWN ON BOOK OF MAPS 1948, PAGE 18 OF THE WAKE COUNTY REGISTRY, THE POINT OF BEGINNING; THENCE NORTH 01°25'42" EAST A DISTANCE OF 49.75 FEET TO AN IRON PIPE, THE SOUTHWEST CORNER OF LOT 14 AS SHOWN ON THE AFORE SAID BOOK OF MAPS; THENCE WITH SAID COMMON LINE SOUTH 87°07'42" EAST A DISTANCE OF 125.64 FEET TO A POINT ON THE WESTERN RIGHT OF WAY OF NORTH CAROLINA HIGHWAY 55; THENCE WITH SAID RIGHT OF WAY SOUTH 01°45'44" WEST A DISTANCE OF 50.00 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 12; THENCE WITH SAID COMMON LINE NORTH 87°00'54" WEST A DISTANCE OF 125.36 FEET TO THE POINT OF BEGINNING. CONTAINING 6,258 SQUARE FEET OR 0.14 ACRES.

### **PARCEL 2**

PID: 0740982630

BEING A PORTION OF LOT 11 AS SHOWN ON BOOK OF MAPS 1948, PAGE 18 OF THE WAKE COUNTY REGISTRY. MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT AN IRON PIPE, THE SOUTHWEST CORNER OF LOT 12 AS SHOWN ON BOOK OF MAPS 1948, PAGE 18 OF THE WAKE COUNTY REGISTRY, THE POINT OF BEGINNING; THENCE WITH SAID COMMON LINE SOUTH 86°50'20" EAST A DISTANCE OF 115.40 FEET TO A POINT ON THE WESTERN RIGHT OF WAY OF NORTH CAROLINA HIGHWAY 55; THENCE WITH SAID RIGHT OF WAY SOUTH 14°56'39" WEST A DISTANCE OF 51.10 FEET TO A CONCRETE RIGHT OF WAY MONUMENT ON THE NORTHERN LINE OF LOT 10 AS SHOWN ON THE AFORE SAID BOOK OF MAPS; THENCE WITH SAID COMMON LINE NORTH 86°52'56" WEST A DISTANCE OF 103.53 FEET TO AN IRON PIPE THE NORTHWESTERN CORNER OF LOT 10; THENCE NORTH 01°30'52" EAST A DISTANCE OF 50.12 FEET TO THE POINT OF BEGINNING. CONTAINING AN AREA OF 5,480 SQUARE FEET OR 0.13 ACRES.

### **PARCEL 3**

BEING A PORTION OF THE PROGRESS ENERGY TRACT AS SHOWN ON BOOK OF MAPS 2007, PAGE 1132 IN THE WAKE COUNTY REGISTER OF DEEDS. BEING MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT A POINT AT THE INTERSECTION OF THE EASTERN RIGHT OF WAY LINE OF VERIDEA PARKWAY AND THE SOUTHERN RIGHT OF WAY LINE OF THE N.C. HIGHWAY 540 RAMP, AS DESCRIBED IN DEED BOOK 15539, PAGE 1855 IN THE WAKE COUNTY REGISTER OF DEEDS, THE POINT OF BEGINNING; THENCE WITH THE SOUTHERN RIGHT OF WAY LINE OF THE N.C. HIGHWAY 540 RAMP, NORTH 48°17'55" EAST A DISTANCE OF 3.48 FEET TO A POINT; THENCE SOUTH 76°02'09" EAST A DISTANCE OF 316.69 FEET TO A CONCRETE MONUMENT; THENCE SOUTH 77°42'22" EAST A DISTANCE OF 224.13 FEET TO A CONCRETE MONUMENT; THENCE NORTH 74°21'52" EAST A DISTANCE OF 186.60 FEET TO A CONCRETE MONUMENT; THENCE NORTH 46°45'41" EAST A DISTANCE OF 297.04 FEET TO A CONCRETE MONUMENT; THENCE NORTH 47°49'13" EAST A DISTANCE OF 182.30 FEET TO A CONCRETE MONUMENT; THENCE NORTH 64°40'03" EAST A DISTANCE OF 179.28 FEET TO A POINT, BEING THE NORTHWEST CORNER OF LANDS NOW OR FORMERLY OWNED BY GREENWAY WASTE SOLUTIONS OF APEX, LLC, AS DESCRIBED IN DEED BOOK 9099, PAGE 1039; THENCE WITH SAID COMMON LINE, SOUTH 06°34'16" EAST A DISTANCE OF 760.63 FEET TO AN IRON PIPE ON THE NORTHERN LINE OF LANDS NOW OR FORMERLY OWNED BY HH TRINITY APEX INVESTMENTS, LLC, AS DESCRIBED IN DEED BOOK 12826, PAGE 2489; THENCE WITH SAID COMMON LINE, NORTH 78°40'10" WEST A DISTANCE OF 164.41 FEET TO A POINT; THENCE NORTH 77°01'58" WEST A DISTANCE OF 181.30 FEET TO A POINT; THENCE NORTH 65°53'37" WEST A DISTANCE OF 301.08 FEET TO A POINT; THENCE NORTH 71°44'05" WEST A DISTANCE OF 452.53 FEET TO A POINT; THENCE NORTH 71°58'44" WEST A DISTANCE OF 280.51 FEET TO THE POINT AND PLACE OF BEGINNING, CONTAINING AN AREA OF 316,750 SQUARE FEET OR 7.27 ACRES.

### **PARCEL 4**

BEING ALL OF THE LAND DESCRIBED IN DEED BOOK 15535, PAGE 1727 IN THE WAKE COUNTY REGISTER OF DEEDS. BEING MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT A CONCRETE MONUMENT ON THE NORTHERN LINE OF LANDS AS SHOWN ON BOOK OF MAPS 1986, PAGE 1865 IN THE WAKE COUNTY REGISTER OF DEEDS, THE POINT OF BEGINNING; THENCE WITH SAID COMMON LINE, NORTH 71°59'15" WEST A DISTANCE OF 337.68 FEET TO AN IRON PIPE; THENCE NORTH 86°29'50" WEST A DISTANCE OF 829.07 FEET TO AN IRON PIPE, BEING THE SOUTHEAST CORNER OF LANDS NOW OR FORMERLY OWNED BY HH TRINITY APEX INVESTMENTS, LLC, AS DESCRIBED IN DEED BOOK 12651, PAGE 1128; THENCE WITH SAID COMMON LINE, NORTH 00°41'54" EAST A DISTANCE OF 661.29 FEET TO A POINT ON THE SOUTHERN LINE OF LANDS NOW OR FORMERLY OWNED BY HH TRINITY APEX INVESTMENTS, AS DESCRIBED IN DEED BOOK 12830, PAGE 1996; THENCE WITH SAID COMMON

LINE, SOUTH 89°13'28" EAST A DISTANCE OF 647.67 FEET TO AN IRON PIPE; THENCE NORTH 02°26'42" EAST A DISTANCE OF 29.55 FEET TO A POINT ON THE SOUTHERN RIGHT OF WAY LINE OF N.C. HIGHWAY 540; THENCE WITH THE SOUTHERN RIGHT OF WAY LINE OF N.C. HIGHWAY 540, WITH A CURVE TO THE LEFT A RADIUS OF 4375.00 FEET, AN ARC LENGTH OF 456.34 FEET, A CHORD BEARING OF SOUTH 65°10'37" EAST, A CHORD LENGTH OF 456.13 FEET TO A CONCRETE MONUMENT; THENCE SOUTH 49°00'55" EAST A DISTANCE OF 133.17 FEET TO A POINT AT THE INTERSECTION OF THE SOUTHERN RIGHT OF WAY LINE OF N.C. HIGHWAY 540 AND THE WESTERN RIGHT OF WAY LINE OF VERIDEA PARKWAY, AS DESCRIBED IN DEED BOOK 15539, PAGE 1885; THENCE WITH THE WESTERN RIGHT OF WAY LINE OF VERIDEA PARKWAY, WITH A CURVE TO THE LEFT A RADIUS OF 1680.00 FEET, AN ARC LENGTH OF 355.38 FEET, A CHORD BEARING OF SOUTH 05°50'57" WEST, A CHORD LENGTH OF 354.72 FEET TO A POINT; THENCE WITH A CURVE TO THE LEFT A RADIUS OF 1680.00 FEET, AN ARC LENGTH OF 205.93 FEET, A CHORD BEARING OF SOUTH 03°43'21" EAST, A CHORD LENGTH OF 205.80 FEET TO THE POINT AND PLACE OF BEGINNING, CONTAINING AN AREA OF 757,143 SQUARE FEET OR 17.38 ACRES.

## Wake County Residential Development Notification

Please complete each section of this form and submit with your application.

Town of Apex staff will enter this information into the online WCPSS form.

Please send any questions about this form to:

[studentassignment-gis-group@wcpss.net](mailto:studentassignment-gis-group@wcpss.net)

Developer Company Information	
<b>Company Name</b>	RXR Realty
<b>Company Phone Number</b>	
<b>Developer Representative Name</b>	Jason Barron
<b>Developer Representative Phone Number</b>	919-590-0371
<b>Developer Representative Email</b>	jbarron@morningstarlawgroup.com

New Residential Subdivision Information	
<b>Date of Application for Subdivision</b>	2/1/2023
<b>City, Town or Wake County Jurisdiction</b>	Apex
<b>Name of Subdivision</b>	Veridea
<b>Address of Subdivision (if unknown enter nearest cross streets)</b>	Hwy 55 and E Williams St; NC 540 and Veridea Pkwy
<b>REID(s)</b>	0407982; 0407981; 0182511; 0063384
<b>PIN(s)</b>	0740982630; 0740982659; 0740240814; 0740052449

Projected Dates Information	
<b>Subdivision Completion Date</b>	unkown
<b>Subdivision Projected First Occupancy Date</b>	unkown

Lot by Lot Development Information																	
Unit Type	Total # of Units	Senior Living	Studio	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	Square Foot Range		Price Range		Anticipated Completion Units & Dates					
								Min	Max	Low	High	Year	# Units	Year	# Units	Year	# Units
	unkown	unkown	unkown														
<b>Single Family</b>		unkown	unkown	unkown	unkown	unkown	unkown	unkown	unkown	unkown	unkown	unkown	unkown	unkown	unkown	unkown	unkown
<b>Townhomes</b>		unkown	unkown	unkown	unkown	unkown	unkown										
<b>Condos</b>		unkown	unkown	unkown	unkown	unkown	unkown										
<b>Apartments</b>		unkown	unkown	unkown	unkown	unkown	unkown										
<b>Other</b>	23CZ03	23CZ03	February 1, 2023	February 1, 2023	February 1, 2023												

# NOTICE OF NEIGHBORHOOD MEETING

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.

1/10/23

Date

Dear Neighbor:

You are invited to a neighborhood meeting to review and discuss the development proposal at

0 E WILLIAMS ST; 0 E WILLIAMS ST;

0740982630; 0740982659;

0 VERIDEA PKWY; 0 VERIDEA PKWY

0740240814; 0740052449

Address(es)

PIN(s)

in accordance with the Town of Apex Neighborhood Meeting procedures. This meeting is intended to be a way for the applicant to discuss the project and review the proposed plans with adjacent neighbors and neighborhood organizations before the submittal of an application to the Town. This provides neighbors an opportunity to raise questions and discuss any concerns about the impacts of the project before it is officially submitted. If you are unable to attend, please refer to the Project Contact Information page for ways to contact the applicant. Notified neighbors may request that the applicant provide updates and send plans via email or mail. Once an application has been submitted to the Town, it may be tracked using the [Interactive Development Map](#) or the [Apex Development Report](#) located on the Town of Apex website at <http://www.apexnc.org/180>.

A Neighborhood Meeting is required because this project includes (check all that apply):

Application Type		Approving Authority
<input checked="" type="checkbox"/>	Rezoning (including Planned Unit Development)	Town Council
<input type="checkbox"/>	Major Site Plan	Technical Review Committee (staff)
<input type="checkbox"/>	Minor Site Plan for the uses "Day care facility", "Government service", "School, public or private", "Restaurant, drive-through", or "Convenience store with gas sales"	Technical Review Committee (staff)
<input type="checkbox"/>	Special Use Permit	Board of Adjustment (QJPH*)
<input checked="" type="checkbox"/>	Residential Master Subdivision Plan (excludes exempt subdivisions)	Technical Review Committee (staff)

\*Quasi-Judicial Public Hearing: The Board of Adjustment cannot discuss the project prior to the public hearing.

The following is a description of the proposal (also see attached map(s) and/or plan sheet(s)):

The proposal is to add these four parcels into the existing Veridea sustainable development.

Therefore, this application is requesting to rezone the parcels to SD-CZ.

Estimated submittal date: February 1, 2023

## MEETING INFORMATION:

Property Owner(s) name(s): VERIDEA APEX PARCEL 10, LLC; VERIDEA HOLDINGS LLC; HH TRINITY APEX IN

Applicant(s): Jason Barron

Contact information (email/phone): jlbarron@morningstarlawgroup.com; 919-590-0371

Meeting Address: Webinar Registration Link: <https://morningstarlaw.group/1302023>

Date/Time of meeting\*\*: January 30, 2023; 5:00PM

Welcome: 5PM - 5:05PM Project Presentation: 5:05PM to 5:15PM Question & Answer: 5:15PM - 7PM

\*\*Meetings shall occur between 5:00 p.m.-9:00 p.m. on a Monday through Thursday (excluding Town recognized holidays). If you have questions about the general process for this application, please contact the Planning Department at 919-249-3426. You may also find information about the Apex Planning Department and on-going planning efforts at <http://www.apexnc.org/180>.



# PROJECT CONTACT INFORMATION

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.

## Development Contacts:

Project Name: Veridea Expansion Zoning: Currently: RA RR

Location: Along Highway 55 and around the intersection of Veridea Parkway and 540.

Property PIN(s): 0740982630; 0740982659; 074 Acreage/Square Feet: 24.92

Property Owner: VERIDEA APEX PARCEL 10, LLC; VERIDEA HOLDINGS LLC; HH TRINITY APEX INVESTMENTS, LLC

Address: 570 LEXINGTON AVE STE 2200

City: New York State: NC Zip: 10022-6837

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Developer: RXR Realty

Address: 1330 6th Ave #500

City: New York State: NY Zip: 10019

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Engineer: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Builder (if known): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**Please note that Town staff will not have complete information about a proposed development until the application is submitted for review. If you have a question about Town development standards and how they relate to the proposed development, please contact the appropriate staff person listed below.**

Town of Apex Department Contacts	
Planning Department Main Number (Provide development name or location to be routed to correct planner)	(919) 249-3426
Parks, Recreation & Cultural Resources Department Angela Reincke, Parks and Greenways Planner	(919) 249-7468
Public Works - Transportation Russell Dalton, Traffic Engineering Manager	(919) 249-3358
Water Resources Department Jessica Bolin, Environmental Engineering Manager (Stormwater, Sedimentation & Erosion Control)	(919) 249-3537
James Gregg, Utility Engineering Manager (Water & Sewer)	(919) 249-3324
Electric Utilities Division Rodney Smith, Electric Technical Services Manager	(919) 249-3342

# COMMON CONSTRUCTION ISSUES & WHO TO CALL

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.

<b>Noise &amp; Hours of Construction:</b>	<b>Non-Emergency Police</b>	<b>919-362-8661</b>
---	-----------------------------	---------------------

Noise from tree removal, grading, excavating, paving, and building structures is a routine part of the construction process. The Town generally limits construction hours from 7:00 a.m. to 8:30 p.m. so that there are quiet times even during the construction process. Note that construction outside of these hours is allowed with special permission from the Town when it makes more sense to have the construction occur at night, often to avoid traffic issues. In addition, the Town limits hours of blasting rock to Monday through Friday from 8:00 a.m. to 5:00 p.m. Report violations of construction hours and other noise complaints to the Non-Emergency Police phone number at 919-362-8661.

<b>Construction Traffic:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
------------------------------	------------------------	---------------------

Construction truck traffic will be heavy throughout the development process, including but not limited to removal of trees from site, loads of dirt coming in and/or out of the site, construction materials such as brick and wood brought to the site, asphalt and concrete trucks come in to pave, etc. The Town requires a construction entrance that is graveled to try to prevent as much dirt from leaving the site as possible. If dirt does get into the road, the Town can require they clean the street (see "Dirt in the Road" below).

<b>Road Damage &amp; Traffic Control:</b>	<b>Water Resources – Infrastructure Inspections</b>	<b>919-362-8166</b>
---	---	---------------------

There can be issues with roadway damage, roadway improvements, and traffic control. Potholes, rutting, inadequate lanes/signing/stripping, poor traffic control, blocked sidewalks/paths are all common issues that should be reported to Water Resources – Infrastructure Inspections at 919-249-3427. The Town will get NCDOT involved if needed.

<b>Parking Violations:</b>	<b>Non-Emergency Police</b>	<b>919-362-8661</b>
----------------------------	-----------------------------	---------------------

Unless a neighbor gives permission, there should be no construction parking in neighbors' driveways or on their property. Note that parking in the right-of-way is allowed, but Town regulations prohibit parking within 15 feet of driveways so as not to block sight triangles. Trespassing and parking complaints should be reported to the Non-Emergency Police phone number at 919-362-8661.

<b>Dirt in the Road:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
--------------------------	------------------------	---------------------

Sediment (dirt) and mud gets into the existing roads due to rain events and/or vehicle traffic. These incidents should be reported to James Misciagno. He will coordinate the cleaning of the roadways with the developer.

<b>Dirt on Properties or in Streams:</b>	<b>James Misciagno</b> <b>Danny Smith</b>	<b>919-372-7470</b> <b><a href="mailto:Danny.Smith@ncdenr.gov">Danny.Smith@ncdenr.gov</a></b>
--	--	--

Sediment (dirt) can leave the site and get onto adjacent properties or into streams and stream buffers; it is typically transported off-site by rain events. These incidents should be reported to James Misciagno at 919-372-7470 so that he can coordinate the appropriate repairs with the developer. Impacts to the streams and stream buffers should also be reported to Danny Smith ([danny.smith@ncdenr.gov](mailto:danny.smith@ncdenr.gov)) with the State.

<b>Dust:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
--------------	------------------------	---------------------

During dry weather dust often becomes a problem blowing into existing neighborhoods or roadways. These incidents should be reported to James Misciagno at 919-372-7470 so that he can coordinate the use of water trucks onsite with the grading contractor to help control the dust.

<b>Trash:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
---------------	------------------------	---------------------

Excessive garbage and construction debris can blow around on a site or even off of the site. These incidents should be reported to James Misciagno at 919-372-7470. He will coordinate the cleanup and trash collection with the developer/home builder.

<b>Temporary Sediment Basins:</b>	<b>James Misciagno</b>	<b>919-372-7470</b>
-----------------------------------	------------------------	---------------------

Temporary sediment basins during construction (prior to the conversion to the final stormwater pond) are often quite unattractive. Concerns should be reported to James Misciagno at 919-372-7470 so that he can coordinate the cleaning and/or mowing of the slopes and bottom of the pond with the developer.

<b>Stormwater Control Measures:</b>	<b>Jessica Bolin</b>	<b>919-249-3537</b>
-------------------------------------	----------------------	---------------------

Post-construction concerns related to Stormwater Control Measures (typically a stormwater pond) such as conversion and long-term maintenance should be reported to Jessica Bolin at 919-249-3537.

<b>Electric Utility Installation:</b>	<b>Rodney Smith</b>	<b>919-249-3342</b>
---------------------------------------	---------------------	---------------------

Concerns with electric utility installation can be addressed by the Apex Electric Utilities Department. Contact Rodney Smith at 919-249-3342.

## How to Participate in the January 30, 2023 Neighborhood Meeting

To participate by PC, Mac, iPad, iPhone or Android device,  
Go to <https://morningstarlaw.group/1302023> to register for the meeting.

(Registration is necessary as we are required by the Town of Apex to have a record of attendance.)

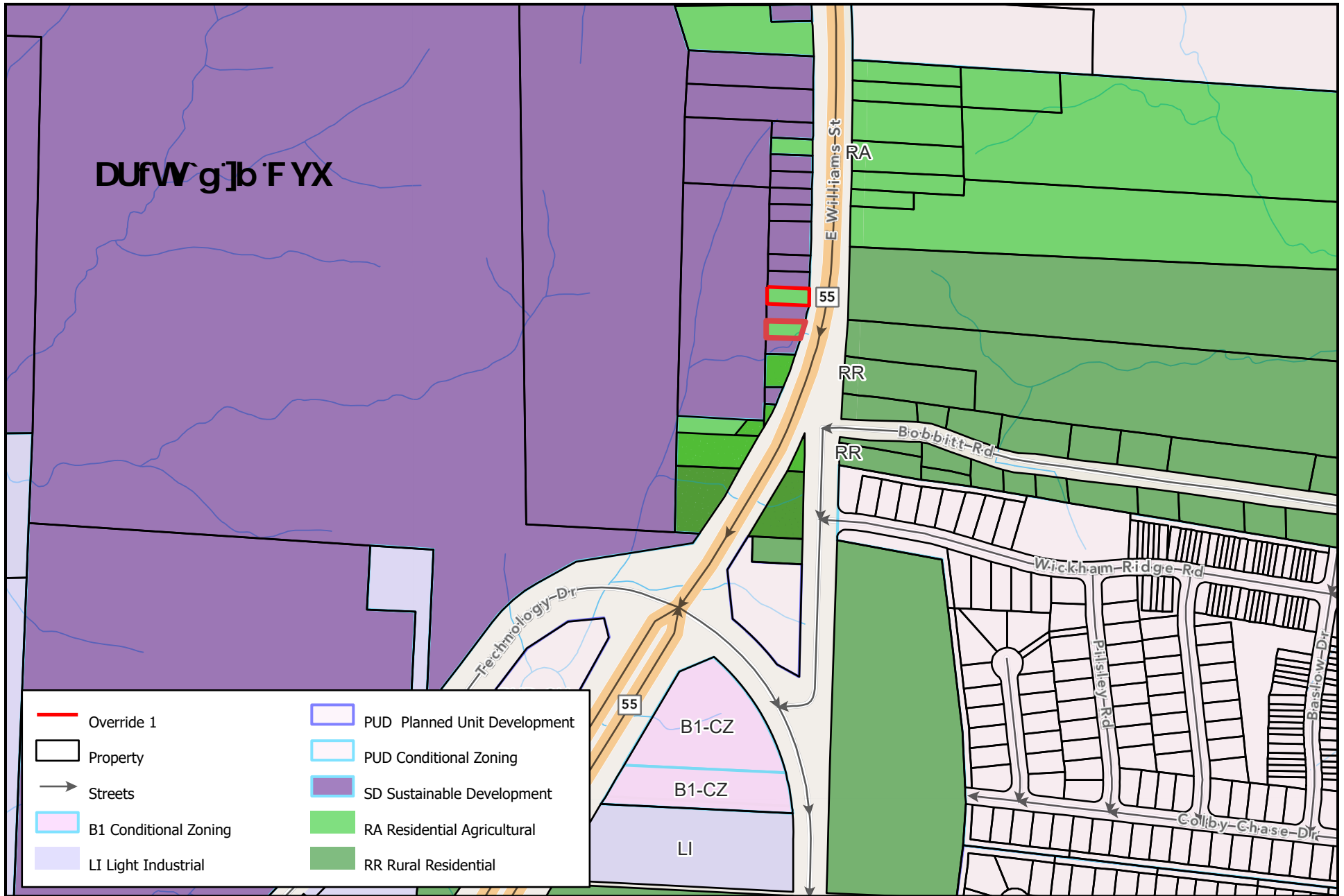
- Upon registration, you will receive a confirmation email with instructions on how to access the meeting.
- To participate by phone,
- Dial one of the following numbers:
  - +1 646 931 3860
  - +1 929 436 2866
  - +1 301 715 8592
  - +1 305 224 1968
  - +1 309 205 3325
  - +1 312 626 6799
  - +1 719 359 4580
  - +1 253 205 0468
  - +1 253 215 8782
  - +1 346 248 7799
  - +1 360 209 5623
  - +1 386 347 5053
  - +1 507 473 4847
  - +1 564 217 2000
  - +1 669 444 9171
  - +1 669 900 6833
  - +1 689 278 1000
  -
- Webinar ID: 823 1876 6960
- Passcode: 233676

For attendance purposes as required by the Town of Apex, individuals participating via telephone will be unmuted and asked to identify themselves including their name and address.

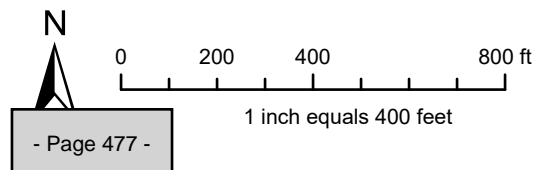
If you have difficulty connecting or have technical difficulties during the meeting, you can email us at [meetings@mstarlaw.com](mailto:meetings@mstarlaw.com) or call 919-590-0371. During the meeting, participants will be muted by default. Also, participants' video will be off by default, i.e. only the presenters will be visible.

If you are participating via your computer, iPhone or Android device, you can submit questions/comments by using the Raise Hand and/or Chat features. If you use Raise Hand, a panelist will either unmute you to allow you to speak or will chat with you to solicit your questions/comments.

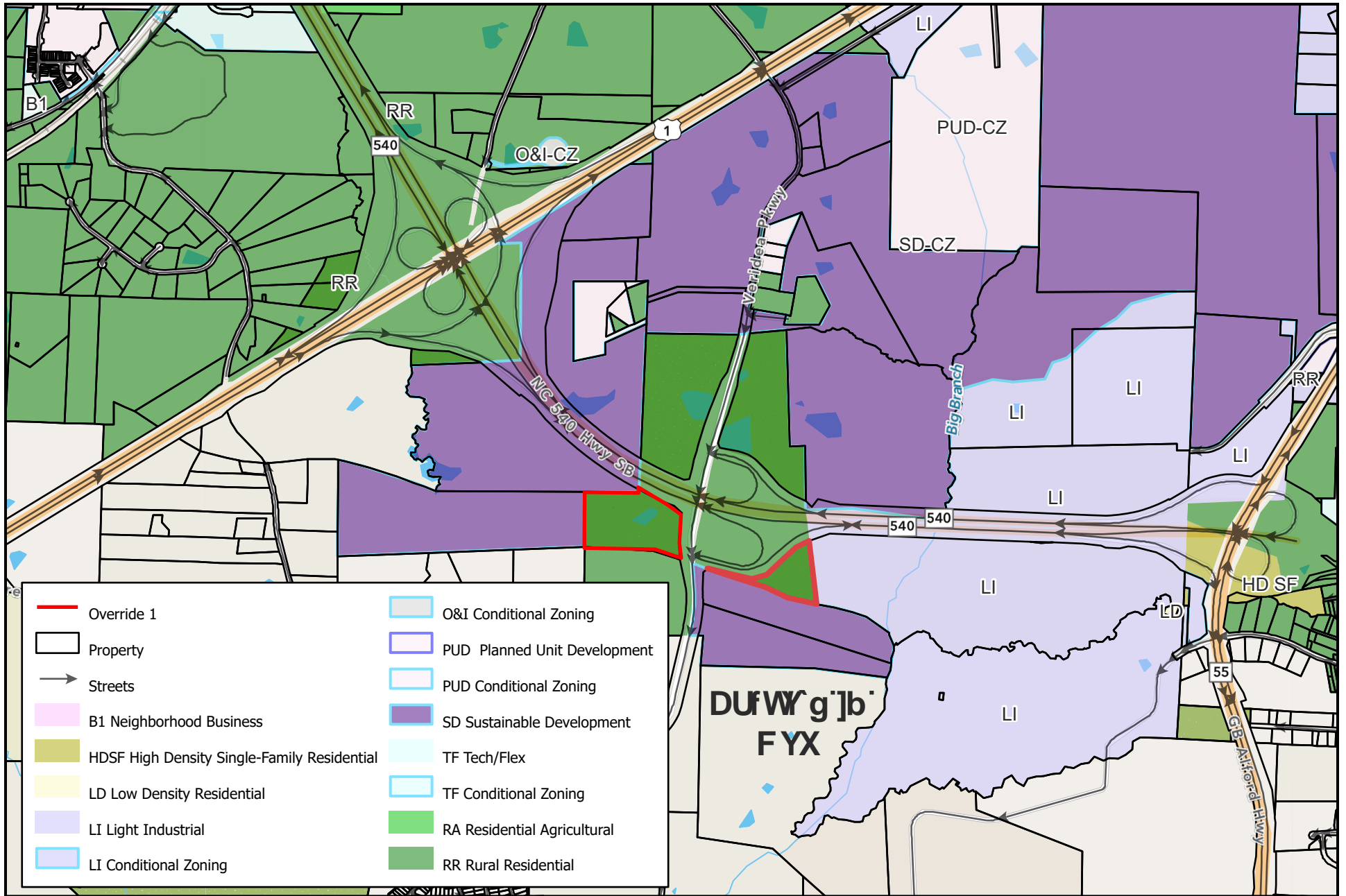
If you are participating via telephone, you can submit questions/comments prior to and during the meeting via email at [meetings@mstarlaw.com](mailto:meetings@mstarlaw.com). At the end of the Q&A period of the meeting, all callers will be unmuted to allow for questions/comments.



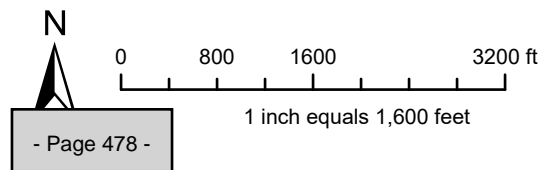
J [M]b]mUbX'Ncb]b[ 'A Ud %  
fG\ck ]b[ '&'cZ h Y ( 'dUfW`gk



**Disclaimer**  
iMaps makes every effort to produce and publish the most current and accurate information possible. However, the maps are produced for information purposes, and are **NOT** surveys. No warranties, expressed or implied, are provided for the data therein, its use, or its interpretation.



J [M]b]mUbX'Ncb]b[ 'A Ud' &  
fG\ck ]b[ 'h\Y'ch\Yf'hk c'dUfW'gk



**Disclaimer**  
iMaps makes every effort to produce and publish the most current and accurate information possible. However, the maps are produced for information purposes, and are **NOT** surveys. No warranties, expressed or implied, are provided for the data therein, its use, or its interpretation.

# NEIGHBORHOOD MEETING SIGN-IN SHEET

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.

Meeting Address: Online Zoom Platform

Date of meeting: 1/30/23 Time of meeting: 5:00 PM

Property Owner(s) name(s): VERIDEA APEX PARCEL 10, LLC; VERIDEA HOLDINGS LLC; HH TRINITY APEX INVESTMENTS, LLC

Applicant(s): Rebecca D'Eloia

Please print your name below, state your address and/or affiliation with a neighborhood group, and provide your phone number and email address. Providing your name below does not represent support or opposition to the project; it is for documentation purposes only. For virtual meetings, applicants must include all known participants and request the information below.

	NAME/ORGANIZATION	ADDRESS	PHONE #	EMAIL	SEND PLANS & UPDATES
1.	William Sowter	4801 Louis Stephens Dr, Morrisville, NC		<div></div>	
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					

Use additional sheets, if necessary.



# SUMMARY OF DISCUSSION FROM THE NEIGHBORHOOD MEETING

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.

Property Owner(s) name(s): VERIDEA APEX PARCEL 10, LLC; VERIDEA HOLDINGS LLC; HH TRINITY APEX INVESTMENTS, LL

Applicant(s): Rebecca D'Eloia

Contact information (email/phone): jbarron@morningstarlawgroup.com/919-590-0371

Meeting Address: Webinar Registration Link: https://morningstarlaw.group/1302023

Date of meeting: 1/30/23

Time of meeting: 5:00PM

Please summarize the questions/comments and your responses from the Neighborhood Meeting or emails/phone calls received in the spaces below (attach additional sheets, if necessary). Please state if/how the project has been modified in response to any concerns. The response should not be "Noted" or "No Response". There has to be documentation of what consideration the neighbor's concern was given and justification for why no change was deemed warranted.

## Question/Concern #1:

What is going to be built on these parcels?

### Applicant's Response:

That's not clear at this moment. These parcels will be added to the Veridea SD and, therefore, these parcels will become part of the masterplan.

## Question/Concern #2:

When will Veridea be completed?

### Applicant's Response:

Construction will hopefully begin soon, but there have been years of delays.

## Question/Concern #3:

What is a sustainable development?

### Applicant's Response:

The SD district is a zoning district created by Apex to allow for large sustainable developments of regional importance like Veridea. A sustainable development is master planned and it incorporates many sustainability concepts into that master plan.

## Question/Concern #4:

What does the master plan include?

### Applicant's Response:

Veridea currently has entitlements approved for 8,000 residential units, 12 million square feet of office/industrial space, and 3.5 million square feet of retail space.

# AFFIDAVIT OF CONDUCTING A NEIGHBORHOOD MEETING, SIGN-IN SHEET AND ISSUES/RESPONSES SUBMITTAL

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.

I, Keenan Conder, do hereby declare as follows:

Print Name

1. I have conducted a Neighborhood Meeting for the proposed Rezoning, Major Site Plan, Minor Site Plan, Residential Master Subdivision Plan, or Special Use Permit in accordance with UDO Sec. 2.2.7.B *Neighborhood Meeting*.
2. The meeting invitations were mailed to the Apex Planning Department, all property owners and tenants abutting and within 300 feet of the subject property and any neighborhood association that represents citizens in the notification area via first class mail a minimum of 14 days in advance of the Neighborhood Meeting.
3. The meeting was conducted at online on the zoom platform (location/address) on 1/30/23 (date) from 5:00 PM (start time) to 7:01 PM (end time).
4. I have included the mailing list, meeting invitation, sign-in sheet, issue/response summary, and zoning map/reduced plans with the application.
5. I have prepared these materials in good faith and to the best of my ability.

1/31/23

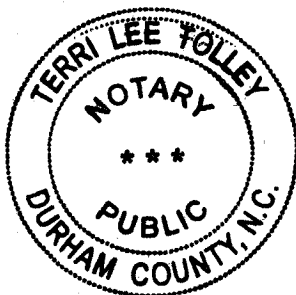
Date


By: 

STATE OF NORTH CAROLINA  
COUNTY OF ~~WAKE~~ Durham

Sworn and subscribed before me, Terri Lee Tolley, a Notary Public for the above State and County, on this the 31st day of January, 2023.

SEAL



  
Notary Public  
Terri Lee Tolley  
Print Name

My Commission Expires: 8/25/2023

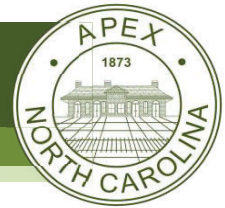
# Notification List

Site Address	PIN	Owner	Mailing Address		
5940 OLD SMITHFIELD RD	0740448719	GREENWAY WASTE SOLUTIONS OF APEX LLC	19109 W CATAWHA AVE STE 110	CORNELIUS NC 28031-5613	
0 OLD HOLLY SPRINGS APEX RD	0730852539	HH TRINITY APEX INVESTMENTS LLC	VERIDEA HOLDINGS LLC	570 LEXINGTON AVE STE 2200	NEW YORK NY 10022-6837
5528 BOBBITT RD	0740986423	JONES, MARILYN S	5528 BOBBITT RD	APEX NC 27539-8767	
0 E WILLIAMS ST	0750084420	JONES, PATRICIA A	435 EYAM HALL LN	APEX NC 27502-4758	
1801 E WILLIAMS ST	0740985947	LUNSFORD, LORINE HEIRS	1801 E WILLIAMS ST	APEX NC 27539-7708	
0 E WILLIAMS ST	0740981395	NC DEPARTMENT OF TRANSPORTATION	815 STADIUM DR	DURHAM NC 27704-2713	
5524 BOBBITT RD	0740985325	NYBE, BATOUL	104 BORDEAUX LN	CARY NC 27511-6463	
0 WOODFIELD DEAD END RD	0730942647	SHENANDOAH HOMES LLC	3724 NATIONAL DR STE 220	RALEIGH NC 27612-4873	
0 OLD HOLLY SPRINGS APEX RD	0740044546	SOWTER, WILLIAM J SOWTER, SHERYL R	4801 LOUIS STEPHENS DR	MORRISVILLE NC 27560-8677	
0 E WILLIAMS ST	0750085838	TRINITY APEX NORTH 100 LLC	CHET MANN	1508 VON CANNON CIR	SANFORD NC 27330-8256
0 E WILLIAMS ST	0740982630	VERIDEA APEX PARCEL 10	VERIDIA HOLDINGS LLC	570 LEXINGTON AVE STE 2200	NEW YORK NY 10022-6837
0 E WILLIAMS ST	0740982659	VERIDEA APEX PARCEL 10 LLC	VERIDIA HOLDINGS LLC	570 LEXINGTON AVE STE 2200	NEW YORK NY 10022-6837
		APEX TOWN OF	PO BOX 250	APEX NC 27502-0250	
		Current Tenant	5524 Bobbitt RD	APEX NC 27539	

# PLANNING BOARD REPORT TO TOWN COUNCIL

Rezoning Case: 23CZ03 Veridea Expansion

Planning Board Meeting Date: April 10, 2023



## Report Requirements:

Per NCGS §160D-604(b), all proposed amendments to the zoning ordinance or zoning map shall be submitted to the Planning Board for review and comment. If no written report is received from the Planning Board within 30 days of referral of the amendment to the Planning Board, the Town Council may act on the amendment without the Planning Board report. The Town Council is not bound by the recommendations, if any, of the Planning Board.

Per NCGS §160D-604(d), the Planning Board shall advise and comment on whether the proposed action is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

## PROJECT DESCRIPTION:

**Acreage:** ±24.92

**PIN(s):** 0740982630; 0740982659; 0740240814; 0740052449

**Current Zoning:** Rural Residential (RR) & Residential Agricultural (RA)

**Proposed Zoning:** Sustainable Development-Conditional Zoning (SD-CZ Veridea)

**2045 Land Use Map:** Regional Mixed Use: Medium Density Residential/High Density Residential/Office Employment/Commercial Services/Industrial Employment

**Town Limits:** ETJ



## Applicable Officially Adopted Plans:

The Board must state whether the project is consistent or inconsistent with the following officially adopted plans, if applicable. Applicable plans have a check mark next to them.

☒ 2045 Land Use Map  
☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

☒ Apex Transportation Plan  
☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

☐ Parks, Recreation, Open Space, and Greenways Plan  
☐ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

# PLANNING BOARD REPORT TO TOWN COUNCIL

Rezoning Case: 23CZ03 Veridea Expansion

Planning Board Meeting Date: April 10, 2023



## Legislative Considerations:

The applicant shall propose site-specific standards and conditions that take into account the following considerations, which are considerations that are relevant to the legislative determination of whether or not the proposed conditional zoning district rezoning request is in the public interest. These considerations do not exclude the legislative consideration of any other factor that is relevant to the public interest.

1. *Consistency with 2045 Land Use Plan.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and consistency with the purposes, goals, objectives, and policies of the 2045 Land Use Plan.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

2. *Compatibility.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and compatibility with the character of surrounding land uses.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

3. *Zoning district supplemental standards.* The proposed Conditional Zoning (CZ) District use's compliance with Sec. 4.4 *Supplemental Standards*, if applicable.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

4. *Design minimizes adverse impact.* The design of the proposed Conditional Zoning (CZ) District use's minimization of adverse effects, including visual impact of the proposed use on adjacent lands; and avoidance of significant adverse impacts on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration and not create a nuisance.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

5. *Design minimizes environmental impact.* The proposed Conditional Zoning District use's minimization of environmental impacts and protection from significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.

☒ Consistent ☐ Inconsistent Reason: \_\_\_\_\_

## PLANNING BOARD REPORT TO TOWN COUNCIL

Rezoning Case: 23CZ03 Veridea Expansion

Planning Board Meeting Date: April 10, 2023



6. *Impact on public facilities.* The proposed Conditional Zoning (CZ) District use's avoidance of having adverse impacts on public facilities and services, including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities.

☒ Consistent

☐ Inconsistent

Reason: \_\_\_\_\_

7. *Health, safety, and welfare.* The proposed Conditional Zoning (CZ) District use's effect on the health, safety, or welfare of the residents of the Town or its ETJ.

☒ Consistent

☐ Inconsistent

Reason: \_\_\_\_\_

8. *Detrimental to adjacent properties.* Whether the proposed Conditional Zoning (CZ) District use is substantially detrimental to adjacent properties.

☒ Consistent

☐ Inconsistent

Reason: \_\_\_\_\_

9. *Not constitute nuisance or hazard.* Whether the proposed Conditional Zoning (CZ) District use constitutes a nuisance or hazard due to traffic impact or noise, or because of the number of persons who will be using the Conditional Zoning (CZ) District use.

☒ Consistent

☐ Inconsistent

Reason: \_\_\_\_\_

10. *Other relevant standards of this Ordinance.* Whether the proposed Conditional Zoning (CZ) District use complies with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.

☒ Consistent

☐ Inconsistent

Reason: \_\_\_\_\_



# PLANNING BOARD REPORT TO TOWN COUNCIL

Rezoning Case: 23CZ03 Veridea Expansion

Planning Board Meeting Date: April 10, 2023



## Planning Board Recommendation:

Motion: To recommend approval of rezoning request as presented.

Introduced by Planning Board member: Alyssa Byrd

Seconded by Planning Board member: Steven Rhodes

- ☐ *Approval:* the project is consistent with all applicable officially adopted plans and the applicable legislative considerations listed above.
- ☒ *Approval with conditions:* the project is not consistent with all applicable officially adopted plans and/or the applicable legislative considerations as noted above, so the following conditions are recommended to be included in the project in order to make it fully consistent:

As proposed by applicant.

- ☐ *Denial:* the project is not consistent with all applicable officially adopted plans and/or the applicable legislative considerations as noted above.

With 7\* Planning Board Member(s) voting "aye"

With 0 Planning Board Member(s) voting "no"

Reasons for dissenting votes:

\*Ryan Akers was recused.

This report reflects the recommendation of the Planning Board, this the 10th day of April 2023.

Attest:

Reginald Skinner, Planning Board Chair

Dianne Khin

Digitally signed by Dianne Khin  
Date: 2023.04.10 17:51:06  
-04'00'

Dianne Khin, Planning Director



**TOWN OF APEX**

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

**PUBLIC NOTIFICATION  
OF PUBLIC HEARINGS  
CONDITIONAL ZONING #23CZ03  
Veridea Expansion**

Pursuant to the provisions of North Carolina General Statutes §160D-602 and to the Town of Apex Unified Development Ordinance (UDO) Section 2.2.11, notice is hereby given of public hearings before the Planning Board of the Town of Apex. The purpose of these hearings is to consider the following:

- Applicant:** Rebecca D’Eloia, RXR Realty
- Authorized Agent:** Jason Barron, Morningstar Law Group
- Property Addresses:** 0 & 0 E Williams Street; 0 & 0 Veridea Parkway
- Acreage:** ±24.92 acres
- Property Identification Numbers (PINs):** 0740982630; 0740982659; 0740240814; 0740052449
- 2045 Land Use Map Designation:** Regional Mixed Use: Medium Density Residential/High Density Residential/Office Employment/Commercial Services/Industrial Employment
- Existing Zoning of Properties:** Residential Agricultural (RA) and Rural Residential (RR)
- Proposed Zoning of Properties:** Sustainable Development Conditional Zoning District (SD-CZ) for Veridea

**Public Hearing Location:** Apex Town Hall  
Council Chamber, 2<sup>nd</sup> Floor  
73 Hunter Street, Apex, North Carolina

**Planning Board Public Hearing Date and Time: April 10, 2023 4:30 PM**

You may attend the meeting in person or view the meeting through the Town’s YouTube livestream at: <https://www.youtube.com/c/townofapexgov>.

If you are unable to attend, you may provide a written statement by email to [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), or submit it to the clerk of the Planning Board, Jeri Pederson (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Planning Board vote. You must provide your name and address for the record. The written statements will be delivered to the Planning Board prior to their vote. Please include the Public Hearing name in the subject line.

**A separate notice of the Town Council public hearing on this project will be mailed and posted in order to comply with State public notice requirements.**

**Vicinity Maps:**



Property owners, tenants, and neighborhood associations within 300 feet of the proposed conditional zoning have been sent this notice via first class mail. All interested parties may submit comments with respect to the application by the means specified above. In addition to the above map, the location of the property may be viewed online at <https://maps.raleighnc.gov/imaps>. The 2045 Land Use Map may be viewed online at [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). You may call 919-249-3426, Planning Department, with questions or for further information. To view the petition and related documents on-line: <https://www.apexnc.org/DocumentCenter/View/42044>.

Dianne F. Khin, AICP  
Planning Director





## TOWN OF APEX

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

## PUBLIC NOTIFICATION OF PUBLIC HEARINGS CONDITIONAL ZONING #23CZ03 Veridea Expansion

Pursuant to the provisions of North Carolina General Statutes §160D-602 and to the Town of Apex Unified Development Ordinance (UDO) Section 2.2.11, notice is hereby given of public hearings before the Planning Board of the Town of Apex. The purpose of these hearings is to consider the following:

**Applicant:** Rebecca D'Eloia, RXR Realty

**Authorized Agent:** Jason Barron, Morningstar Law Group

**Property Addresses:** 0 & 0 E Williams Street; 0 & 0 Veridea Parkway

**Acreage:** ±24.92 acres

**Property Identification Numbers (PINs):** 0740982630; 0740982659; 0740240814; 0740052449

**2045 Land Use Map Designation:** Regional Mixed Use: Medium Density Residential/High Density Residential/Office Employment/Commercial Services/Industrial Employment

**Existing Zoning of Properties:** Residential Agricultural (RA) and Rural Residential (RR)

**Proposed Zoning of Properties:** Sustainable Development Conditional Zoning District (SD-CZ) for Veridea

**Public Hearing Location:** Apex Town Hall

Council Chamber, 2<sup>nd</sup> Floor

73 Hunter Street, Apex, North Carolina

**Planning Board Public Hearing Date and Time:** April 10, 2023 4:30 PM

You may attend the meeting in person or view the meeting through the Town's YouTube livestream at: <https://www.youtube.com/c/townofapexgov>.

If you are unable to attend, you may provide a written statement by email to [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), or submit it to the clerk of the Planning Board, Jeri Pederson (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Planning Board vote. You must provide your name and address for the record. The written statements will be delivered to the Planning Board prior to their vote. Please include the Public Hearing name in the subject line.

A separate notice of the Town Council public hearing on this project will be mailed and posted in order to comply with State public notice requirements.

### Vicinity Maps:



Property owners, tenants, and neighborhood associations within 300 feet of the proposed conditional zoning have been sent this notice via first class mail. All interested parties may submit comments with respect to the application by the means specified above. In addition to the above map, the location of the property may be viewed online at <https://maps.raleighnc.gov/imaps>. The 2045 Land Use Map may be viewed online at [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). You may call 919-249-3426, Planning Department, with questions or for further information. To view the petition and related documents on-line: <https://www.apexnc.org/DocumentCenter/View/42044>.

Dianne F. Khin, AICP  
Planning Director

Published Dates: March 27, 2023 – April 10, 2023





**TOWN OF APEX**  
PO BOX 250  
APEX, NORTH CAROLINA 27502  
TELÉFONO 919-249-3426

## NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS

### ORDENAMIENTO TERRITORIAL CONDICIONAL #23CZ03

#### Veridea Expansion

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-602 y con la Sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del ayuntamiento de Apex, por la presente se notifican las audiencias públicas ante la Junta de Planificación de Apex. El propósito de estas audiencias es considerar lo siguiente:

**Solicitante:** Rebecca D'Eloia, RXR Realty

**Agente autorizado:** Jason Barron, Morningstar Law Group

**Dirección de la propiedades:** 0 & 0 E Williams Street; 0 & 0 Veridea Parkway

**Superficie:** ±24.92 acres

**Números de identificación de la propiedades:** 0740982630; 0740982659; 0740240814; 0740052449

**Designación actual en el Mapa de Uso Territorial para 2045:** Regional Mixed Use: Medium Density Residential/High Density Residential/Office Employment/Commercial Services/Industrial Employment

**Ordenamiento territorial existente de la propiedades:** Residential Agrícola (RA) and Rural Residential (RR)

**Ordenamiento territorial propuesto para la propiedades:** Sustainable Development-Conditional Zoning District (SD-CZ) Veridea

**Lugar de la audiencia pública:** Ayuntamiento de Apex  
Cámara del Consejo, 2º piso  
73 Hunter Street, Apex, Carolina del Norte

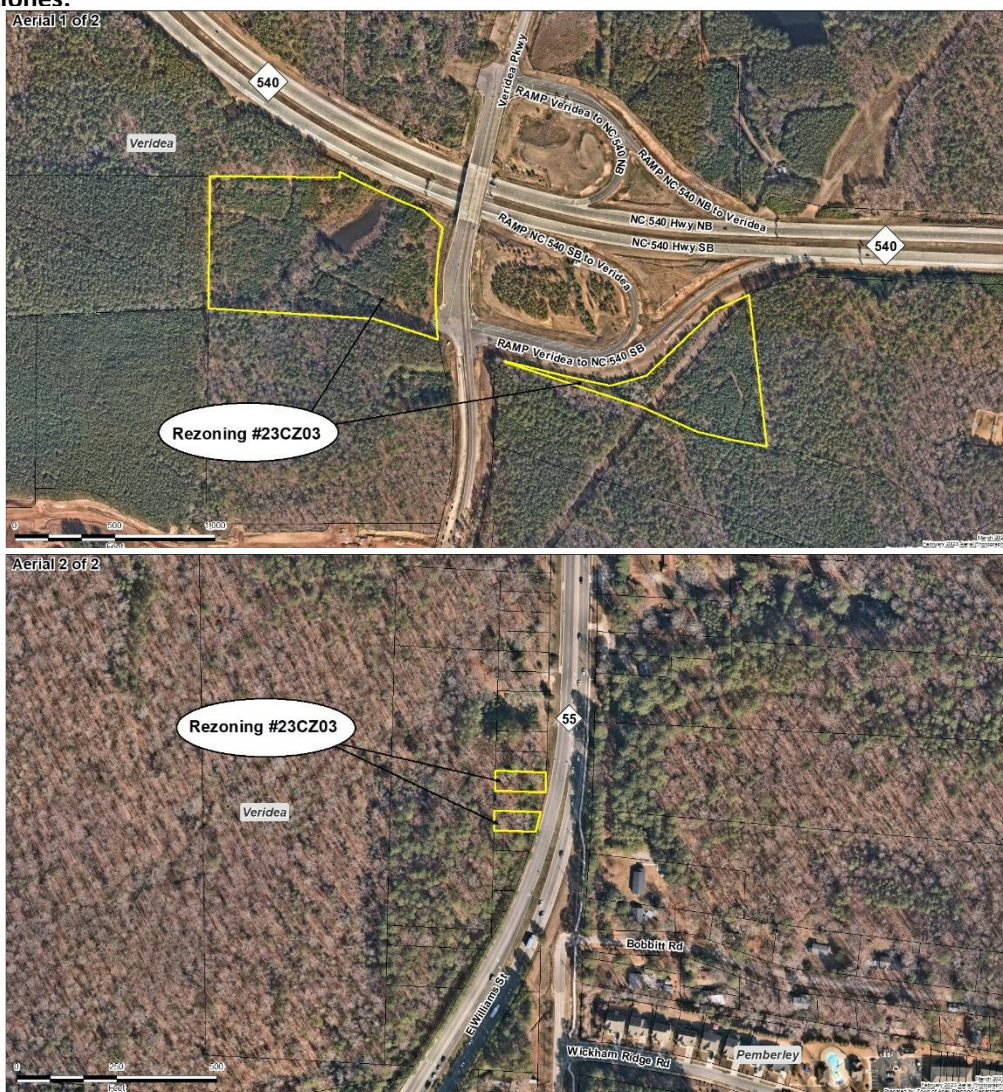
**Fecha y hora de la audiencia pública de la Junta de Planificación:** 10 de abril de 2023 4:30 P.M.

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), o presentarla a la secretaria de la Junta de Planificación, Jeri Pederson (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación de la Junta de Planificación. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán a la Junta de Planificación antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

**De conformidad con los requisitos estatales de notificaciones públicas, se enviará por correo y se publicará por separado una notificación de la audiencia pública del Consejo Municipal sobre este proyecto.**

**Mapa de las inmediaciones:**



Los propietarios, inquilinos y asociaciones de vecinos en un radio de 300 pies del Ordenamiento Territorial Condicional propuesto han recibido esta notificación por correo postal de primera clase. Todas las partes interesadas pueden presentar comentarios sobre la solicitud a través de los medios especificados anteriormente. La ubicación de la propiedad también puede verse aquí: <https://maps.raleighnc.gov/imaps>. Puede ver el Mapa de Uso Territorial para 2045 aquí: [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). Si tiene preguntas o desea obtener más información, puede comunicarse con el Departamento de Planificación al 919-249-3426. Puede ver la solicitud y otros documentos relacionados aquí: <https://www.apexnc.org/DocumentCenter/View/42044>.

Dianne F. Khin, AICP  
Directora de Planificación





## TOWN OF APEX

PO BOX 250  
APEX, NORTH CAROLINA 27502  
TELÉFONO 919-249-3426

## NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS

ORDENAMIENTO TERRITORIAL CONDICIONAL #23CZ03

### Veridea Expansion

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-602 y con la Sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del ayuntamiento de Apex, por la presente se notifican las audiencias públicas ante la Junta de Planificación de Apex. El propósito de estas audiencias es considerar lo siguiente:

**Solicitante:** Rebecca D'Eloia, RXR Realty

**Agente autorizado:** Jason Barron, Morningstar Law Group

**Dirección de la propiedades:** 0 & 0 E Williams Street; 0 & 0 Veridea Parkway

**Superficie: ±24.92 acres**

**Números de identificación de la propiedades:** 0740982630; 0740982659; 0740240814; 0740052449

Designación actual en el Mapa de Uso Territorial para 2045: Regional Mixed Use: Medium Density Residential/High Density Residential/Office Employment/Commercial Services/Industrial Employment

**Ordenamiento territorial existente de la propiedades:** Residential Agricultural (RA) and Rural Residential (RR)

**Ordenamiento territorial propuesto para la propiedades:** Sustainable Development-Conditional Zoning District (SD-CZ)

Veridea

**Lugar de la audiencia pública:** Ayuntamiento de Apex

Cámara del Consejo, 2º piso

73 Hunter Street, Apex, Carolina del Norte

**Fecha y hora de la audiencia pública de la Junta de Planificación: 10 de abril de 2023 4:30 P.M.**

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), o presentarla a la secretaria de la Junta de Planificación, Jeri Pederson (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación de la Junta de Planificación. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán a la Junta de Planificación antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

De conformidad con los requisitos estatales de notificaciones públicas, se enviará por correo y se publicará por separado una notificación de la audiencia pública del Consejo Municipal sobre este proyecto.

**Mapa de las inmediaciones:**



Los propietarios, inquilinos y asociaciones de vecinos en un radio de sus pies del Urbanamiento Territorial Condicional propuesto han recibido esta notificación por correo postal de primera clase. Todas las partes interesadas pueden presentar comentarios sobre la solicitud a través de los medios especificados anteriormente. La ubicación de la propiedad también puede verse aquí: <https://maps.raleighnc.gov/#maps>. Puede ver el Mapa de Uso Territorial para 2045 aquí: [www.apexnc.org/DocumentCenter/View/4278](http://www.apexnc.org/DocumentCenter/View/4278). Si tiene preguntas o desea obtener más información, puede comunicarse con el Departamento de Planificación al 919-249-3426. Puede ver la solicitud y otros documentos relacionados aquí: <https://www.apexnc.org/DocumentCenter/View/42044>.

Dianne F. Khin, AICP  
Directora de Planificación

Fechas de publicación: 27 de marzo de 2023 – 10 de abril de 2023



## TOWN OF APEX

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

### AFFIDAVIT CERTIFYING Public Notification – Written (Mailed) Notice

Section 2.2.11  
Town of Apex Unified Development Ordinance

Project Name: Conditional Zoning #23CZ03  
Veridea Expansion

Project Location: 0 & 0 E Williams Street; 0 & 0 Veridea Parkway

Applicant or Authorized Agent: Jason Barron

Firm: Morningstar Law Group

This is to certify that I, as Director of Planning, mailed or caused to have mailed by first class postage for the above mentioned project on March 27, 2023, a notice containing the time and place, location, nature and scope of the application, where additional information may be obtained, and the opportunity for interested parties to be heard, to the property owners and tenants within 300' of the land subject to notification. I further certify that I relied on information from the Wake County Tax Assessor and the Town of Apex Master Address Repository provided to me by Town of Apex GIS Staff as to accuracy of the list and accuracy of mailing addresses of property owners and tenants within 300' of the land subject to notification.

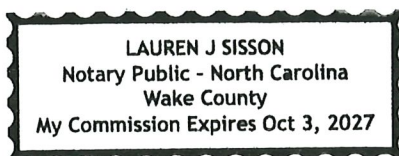
3/28/2023  
Date

*Dinae L. Khen*  
Planning Director

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Sworn and subscribed before me, LAUREN J Sisson, a Notary Public for the above

State and County, this the 28<sup>th</sup> day of MARCH, 2023.



*[Signature]*  
Notary Public

My Commission Expires: 10 / 3 / 2027





**TOWN OF APEX**

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

**PUBLIC NOTIFICATION  
OF PUBLIC HEARINGS  
CONDITIONAL ZONING #23CZ03  
Veridea Expansion**

Pursuant to the provisions of North Carolina General Statutes §160D-602 and to the Town of Apex Unified Development Ordinance (UDO) Section 2.2.11, notice is hereby given of public hearings before the Planning Board of the Town of Apex. The purpose of these hearings is to consider the following:

- Applicant:** Rebecca D’Eloia, RXR Realty
- Authorized Agent:** Jason Barron, Morningstar Law Group
- Property Addresses:** 0 & 0 E Williams Street; 0 & 0 Veridea Parkway
- Acreage:** ±24.92 acres
- Property Identification Numbers (PINs):** 0740982630; 0740982659; 0740240814; 0740052449
- 2045 Land Use Map Designation:** Regional Mixed Use: Medium Density Residential/High Density Residential/Office Employment/Commercial Services/Industrial Employment
- Existing Zoning of Properties:** Residential Agricultural (RA) and Rural Residential (RR)
- Proposed Zoning of Properties:** Sustainable Development Conditional Zoning District (SD-CZ) for Veridea

**Public Hearing Location:** Apex Town Hall  
Council Chamber, 2<sup>nd</sup> Floor  
73 Hunter Street, Apex, North Carolina

**Town Council Public Hearing Date and Time: April 25, 2023 6:00 PM**

You may attend the meeting in person or view the meeting through the Town’s YouTube livestream at: <https://www.youtube.com/c/townofapexgov>.

If you are unable to attend, you may provide a written statement by email to [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), or submit it to the Office of the Town Clerk (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Town Council vote. You must provide your name and address for the record. The written statements will be delivered to the Town Council prior to their vote. Please include the Public Hearing name in the subject line.

**Vicinity Map:**



Property owners, tenants, and neighborhood associations within 300 feet of the proposed conditional zoning have been sent this notice via first class mail. All interested parties may submit comments with respect to the application by the means specified above. In addition to the above map, the location of the property may be viewed online at <https://maps.raleighnc.gov/imaps>. The 2045 Land Use Map may be viewed online at [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). You may call 919-249-3426, Planning Department, with questions or for further information. To view the petition and related documents on-line: <https://www.apexnc.org/DocumentCenter/View/42044>.





## TOWN OF APEX

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

## PUBLIC NOTIFICATION OF PUBLIC HEARINGS CONDITIONAL ZONING #23CZ03 Veridea Expansion

Pursuant to the provisions of North Carolina General Statutes §160D-602 and to the Town of Apex Unified Development Ordinance (UDO) Section 2.2.11, notice is hereby given of public hearings before the Planning Board of the Town of Apex. The purpose of these hearings is to consider the following:

**Applicant:** Rebecca D'Eloia, RXR Realty

**Authorized Agent:** Jason Barron, Morningstar Law Group

**Property Addresses:** 0 & 0 E Williams Street; 0 & 0 Veridea Parkway

**Acreage:** ±24.92 acres

**Property Identification Numbers (PINs):** 0740982630; 0740982659; 0740240814; 0740052449

**2045 Land Use Map Designation:** Regional Mixed Use: Medium Density Residential/High Density Residential/Office Employment/Commercial Services/Industrial Employment

**Existing Zoning of Properties:** Residential Agricultural (RA) and Rural Residential (RR)

**Proposed Zoning of Properties:** Sustainable Development Conditional Zoning District (SD-CZ) for Veridea

**Public Hearing Location:** Apex Town Hall  
Council Chamber, 2<sup>nd</sup> Floor  
73 Hunter Street, Apex, North Carolina

### Town Council Public Hearing Date and Time: April 25, 2023 6:00 PM

You may attend the meeting in person or view the meeting through the Town's YouTube livestream at: <https://www.youtube.com/c/townofapexgov>.

If you are unable to attend, you may provide a written statement by email to [public\\_hearing@apexnc.org](mailto:public_hearing@apexnc.org), or submit it to the Office of the Town Clerk (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Town Council vote. You must provide your name and address for the record. The written statements will be delivered to the Town Council prior to their vote. Please include the Public Hearing name in the subject line.

### Vicinity Map:



Property owners, tenants, and neighborhood associations within 300 feet of the proposed conditional zoning have been sent this notice via first class mail. All interested parties may submit comments with respect to the application by the means specified above. In addition to the above map, the location of the property may be viewed online at <https://maps.ralighnc.gov/imaps>. The 2045 Land Use Map may be viewed online at [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). You may call 919-249-3426, Planning Department, with questions or for further information. To view the petition and related documents on-line: <https://www.apexnc.org/DocumentCenter/View/42044>.

Dianne F. Khin, AICP  
Planning Director

Published Dates: March 31, 2023 – April 25, 2023





**TOWN OF APEX**  
PO BOX 250  
APEX, NORTH CAROLINA 27502  
TELÉFONO 919-249-3426

## NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS

### ORDENAMIENTO TERRITORIAL CONDICIONAL #23CZ03

#### Veridea Expansion

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-602 y con la Sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del ayuntamiento de Apex, por la presente se notifican las audiencias públicas ante la Junta de Planificación de Apex. El propósito de estas audiencias es considerar lo siguiente:

**Solicitante:** Rebecca D'Eloia, RXR Realty

**Agente autorizado:** Jason Barron, Morningstar Law Group

**Dirección de la propiedades:** 0 & 0 E Williams Street; 0 & 0 Veridea Parkway

**Superficie:** ±24.92 acres

**Números de identificación de la propiedades:** 0740982630; 0740982659; 0740240814; 0740052449

**Designación actual en el Mapa de Uso Territorial para 2045:** Regional Mixed Use: Medium Density Residential/High Density Residential/Office Employment/Commercial Services/Industrial Employment

**Ordenamiento territorial existente de la propiedades:** Residential Agrícola (RA) and Rural Residential (RR)

**Ordenamiento territorial propuesto para la propiedades:** Sustainable Development-Conditional Zoning District (SD-CZ) Veridea

**Lugar de la audiencia pública:** Ayuntamiento de Apex

Cámara del Consejo, 2º piso

73 Hunter Street, Apex, Carolina del Norte

*Los comentarios recibidos antes de la audiencia pública de la Junta de Planificación no se proporcionarán al Consejo Municipal. Los comentarios para la audiencia pública del Consejo Municipal deben presentarse por separado en el plazo especificado a continuación.*

**Fecha y hora de la audiencia pública del Consejo Municipal:** 25 de abril de 2023 6:00 P.M.

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), o presentarla a la oficina del Secretario Municipal (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación del Consejo Municipal. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán al Consejo Municipal antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

**Mapa de las inmediaciones:**



Los propietarios, inquilinos y asociaciones de vecinos en un radio de 300 pies del Ordenamiento Territorial Condicional propuesto han recibido esta notificación por correo postal de primera clase. Todas las partes interesadas pueden presentar comentarios sobre la solicitud a través de los medios especificados anteriormente. La ubicación de la propiedad también puede verse aquí: <https://maps.raleighnc.gov/imaps>. Puede ver el Mapa de Uso Territorial para 2045 aquí: [www.apexnc.org/DocumentCenter/View/478](https://www.apexnc.org/DocumentCenter/View/478). Si tiene preguntas o desea obtener más información, puede comunicarse con el Departamento de Planificación al 919-249-3426. Puede ver la solicitud y otros documentos relacionados aquí: <https://www.apexnc.org/DocumentCenter/View/42044>.

Dianne F. Khin, AICP  
Directora de Planificación





**TOWN OF APEX**  
PO BOX 250  
APEX, NORTH CAROLINA 27502  
TELÉFONO 919-249-3426

## NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS

### ORDENAMIENTO TERRITORIAL CONDICIONAL #23CZ03

#### Veridea Expansion

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-602 y con la Sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del ayuntamiento de Apex, por la presente se notifican las audiencias públicas ante la Junta de Planificación de Apex. El propósito de estas audiencias es considerar lo siguiente:

**Solicitante:** Rebecca D'Eloia, RXR Realty

**Agente autorizado:** Jason Barron, Morningstar Law Group

**Dirección de la propiedades:** 0 & 0 E Williams Street; 0 & 0 Veridea Parkway

**Superficie:** ±24.92 acres

**Números de identificación de la propiedades:** 0740982630; 0740982659; 0740240814; 0740052449

**Designación actual en el Mapa de Uso Territorial para 2045:** Regional Mixed Use: Medium Density Residential/High Density Residential/Office Employment/Commercial Services/Industrial Employment

**Ordenamiento territorial existente de la propiedades:** Residential Agricultural (RA) and Rural Residential (RR)

**Ordenamiento territorial propuesto para la propiedades:** Sustainable Development-Conditional Zoning District (SD-CZ) Veridea

**Lugar de la audiencia pública:** Ayuntamiento de Apex  
Cámara del Consejo, 2º piso  
73 Hunter Street, Apex, Carolina del Norte

*Los comentarios recibidos antes de la audiencia pública de la Junta de Planificación no se proporcionarán al Consejo Municipal. Los comentarios para la audiencia pública del Consejo Municipal deben presentarse por separado en el plazo especificado a continuación.*

**Fecha y hora de la audiencia pública del Consejo Municipal:** 25 de abril de 2023 6:00 P.M.

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a [public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), o presentarla a la oficina del Secretario Municipal (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación del Consejo Municipal. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán al Consejo Municipal antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

**Mapa de las inmediaciones:**



Los propietarios, inquilinos y asociaciones de vecinos en un radio de 300 pies del Ordenamiento Territorial Condicional propuesto han recibido esta notificación por correo postal de primera clase. Todas las partes interesadas pueden presentar comentarios sobre la solicitud a través de los medios especificados anteriormente. La ubicación de la propiedad también puede verse aquí: <https://maps.raleighnc.gov/imaps>. Puede ver el Mapa de Uso Territorial para 2045 aquí: [www.apexnc.org/DocumentCenter/View/478](http://www.apexnc.org/DocumentCenter/View/478). Si tiene preguntas o desea obtener más información, puede comunicarse con el Departamento de Planificación al 919-249-3426. Puede ver la solicitud y otros documentos relacionados aquí: <https://www.apexnc.org/DocumentCenter/View/42044>.

Dianne F. Khin, AICP  
Directora de Planificación

Fechas de publicación: 31 de marzo de 2023 – 25 de abril de 2023



## TOWN OF APEX

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

### AFFIDAVIT CERTIFYING Public Notification – Written (Mailed) Notice

Section 2.2.11  
Town of Apex Unified Development Ordinance

Project Name: Conditional Zoning #23CZ03  
Veridea Expansion

Project Location: 0 & 0 E Williams Street; 0 & 0 Veridea Parkway

Applicant or Authorized Agent: Jason Barron

Firm: Morningstar Law Group

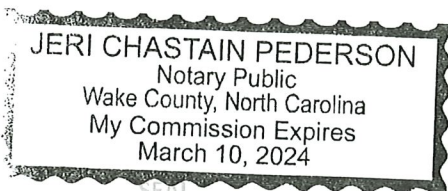
This is to certify that I, as Director of Planning, mailed or caused to have mailed by first class postage for the above mentioned project on March 31, 2023, a notice containing the time and place, location, nature and scope of the application, where additional information may be obtained, and the opportunity for interested parties to be heard, to the property owners and tenants within 300' of the land subject to notification. I further certify that I relied on information from the Wake County Tax Assessor and the Town of Apex Master Address Repository provided to me by Town of Apex GIS Staff as to accuracy of the list and accuracy of mailing addresses of property owners and tenants within 300' of the land subject to notification.

4/3/2023  
Date

*Sharon F. Khan*  
Planning Director

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Sworn and subscribed before me, *Jeri Chastain Pederson*, a Notary Public for the above  
State and County, this the 3 day of April, 2023.



*Jeri Chastain Pederson*  
Notary Public

My Commission Expires: 3 / 10 / 2024

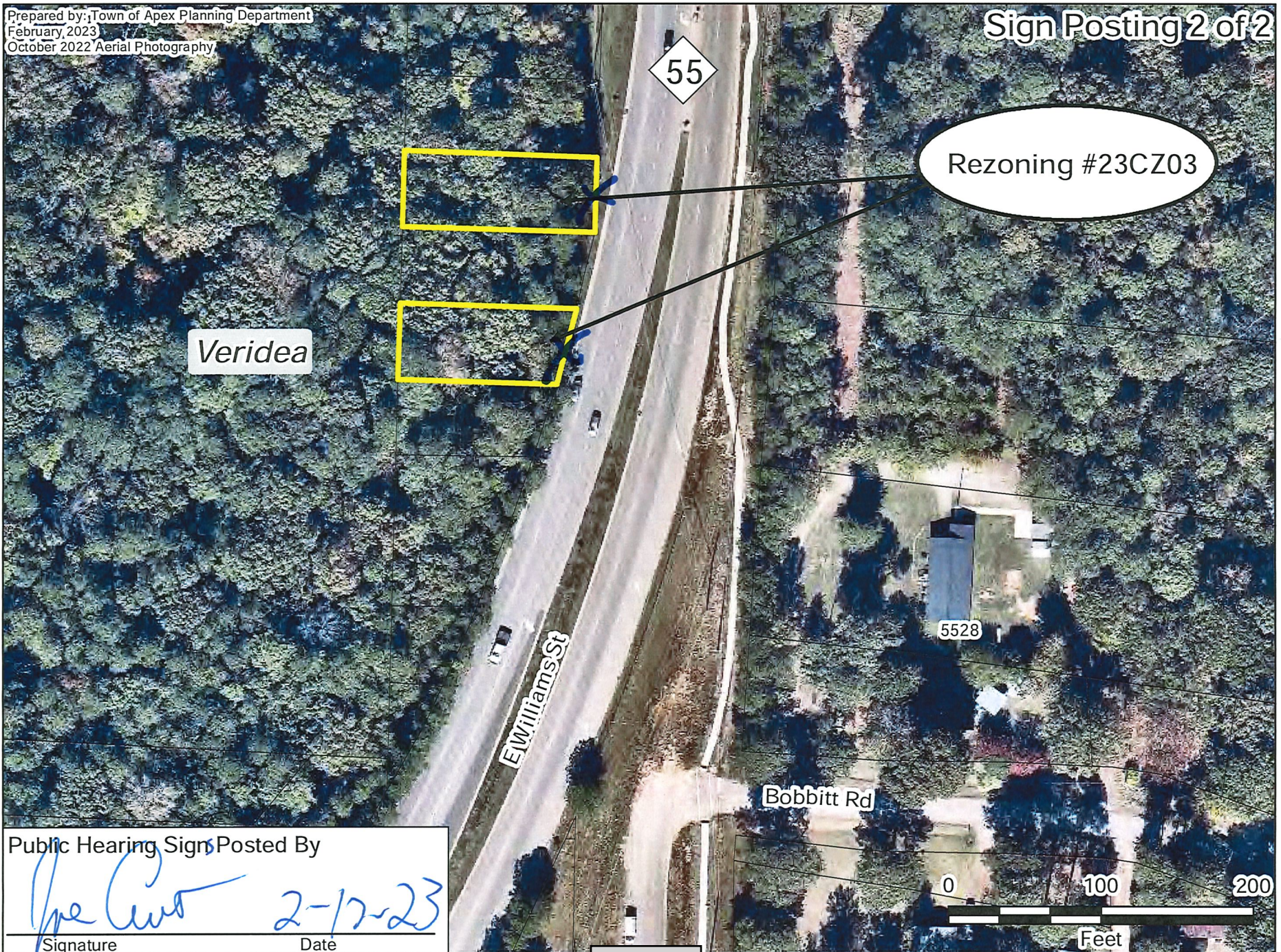


# Sign Posting 1 of 2

Prepared by: Town of Apex Planning Department  
February 2023  
October 2022 Aerial Photography







Public Hearing Sign Posted By

*[Signature]*

2-17-23

Signature

Date