

NORTH CAROLINA

WAKE COUNTY

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (the "Lease") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between **DUKE ENERGY PROGRESS, LLC**, a North Carolina limited liability company ("Lessor") and **TOWN OF APEX**, a North Carolina municipal corporation ("APD");

**WITNESSETH:**

**WHEREAS**, LESSOR is the owner of certain lands within the project boundary of the Shearon Harris Nuclear Power Plant (the "Harris Lands");

**WHEREAS**, it is the desire of APD to lease that portion of the Harris Lands described in **Exhibit A** attached hereto and incorporated herein (the "Leased Premises"), for the construction, maintenance, and operation of a facility for the training of police and other security personnel, for the protection of the citizens and property in the APD; and

**WHEREAS**, Lessor has agreed to lease the Leased Premises to APD for such purposes, subject to the terms and conditions herein.

**NOW THEREFORE**, for and in consideration of the terms, covenants, and agreements hereinafter set forth to be paid, kept and performed, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Lessor and APD agree as follows:

**1. Lease of Leased Premises.** Lessor does hereby demise, lease, and let unto APD the Leased Premises for the construction, maintenance, and operation of a facility for the training of police and other security personnel, for the protection of the citizens and property in the APD, subject to the terms and conditions herein.

**2. Term.** The term of this Lease shall be for five (5) years, commencing on \_\_\_\_\_, 20\_\_ (the "Commencement Date") and expiring at 12:00 midnight on \_\_\_\_\_, 20\_\_ (the "Initial Term"), unless sooner terminated in accordance with the terms and conditions hereof. Upon expiration of the Initial Term, and provided APD is not in default, this Lease shall automatically renew on \_\_\_\_\_, 20\_\_, for an additional five (5) year term, unless either party shall give at least sixty (60) days prior written notice to the other party of its intent to terminate this Lease (the Initial Term and such successive periods collectively referred to herein as the "Term"). In the event this Lease shall continue beyond the Initial Term, it shall be upon the same terms and conditions contained herein. This Lease shall create the relationship of landlord and tenant only between Lessor and APD.

3. **Rent.** Lessor is willing to grant this Lease unto APD for no monetary consideration since it is the desire of Lessor that the police and security training benefits of the Leased Premises be made available to APD, so as to add to the quality of life in the area, in addition to the Leased Premises' primary purpose of helping meet the power and energy needs of Lessor's customers.

4. **APD's Use of Leased Premises.** This Lease is granted for the sole purpose of permitting APD to construct, maintain, and operate on the Leased Premises an open air, berm-type firing range for the training of police and security personnel. APD shall not use the Leased Premises for any other purposes without the express written permission of Lessor. APD shall submit to Lessor for advance written approval sufficient documents describing all proposed clearing, construction, and installation on the Leased Premises. After obtaining Lessor's written approval, APD shall have the right to do necessary work consistent with Lessor's written approval. APD's use of the Leased Premises shall not endanger health, create a nuisance, or otherwise be incompatible with Lessor's use of its adjoining property. APD shall identify trees to be cut and removed on the Leased Premises and allow Lessor to exercise an option to leave or remove such marketable timber. Should Lessor exercise the option to remove such timber, a mutually agreed upon time period for such cutting will be established and all proceeds from such timber cutting and sale shall go to Lessor. Before beginning construction activity, APD shall submit to the appropriate governmental agencies, and to Lessor for its written approval, a plan for controlling erosion during and after construction. After construction, APD shall establish a permanent ground cover and APD shall continuously maintain all exposed areas not in active use. No construction, dredging, or filling shall be done in wetlands on the Leased Premises as wetlands are defined in 33 CFR (Code of Federal Regulations) Section 328.3(b). APD will not cause, and will take reasonable measures to prevent, any sewage, garbage, or other polluting substance, (including heated water), chemicals, trash, or other impurities to be discharged, directly or indirectly, from the Premises into Harris Lake.

APD shall have the right to permit other governmental agencies to use the Leased Premises for the purposes stated herein and pursuant to the terms stated herein, provided that APD shall manage and oversee such use by other agencies and such agencies shall sign a statement prior to such use agreeing to abide by all terms of this Lease including, without limitation, all indemnity and insurance provisions.

5. **Lessor's Use of Leased Premises.** Lessor shall bear neither expense nor responsibility of any kind for the preparation of the Leased Premises for APD's use or for maintaining the Leased Premises. APD shall bear all such expenses and all such responsibility. In the event APD ceases to use the Leased Premises for the specific purposes herein expressed and such cessation continues for a period of six (6) consecutive months without Lessor's express written consent, this Lease shall automatically terminate on the date that is 183 days after the date of cessation of use by the APD, without notice, and Lessor shall have the right to take possession of the Leased Premises and to dispose of any personal property or improvements made thereon by APD. It is understood that Lessor's permanent and paramount right to use its land adjoining the Leased Premises is essential to the operation, maintenance, and expansion of Lessor's business and that all rights of APD under this Lease must be and are subordinate to the right of Lessor to make full use of its adjoining property for their business and related purposes. Lessor reserves the right for its officers, directors, employees, agents, and contractors to go upon the Leased Premises

for any reasonable purposes, including but not limited to the right reasonable to inspect and to enter the Leased Premises to determine whether APD is complying with the provision of this Lease; to take upon and remove from the Leased Premises Lessor's signs, tools, machinery, conveyances, equipment, and other facilities of any nature, and with their officers, directors, employees, agents, and contractors engage in and perform any business, inspections, work, construction, repairs, or alterations of the Leased Premises in connection with the operation, maintenance, and expansion of their generating plants, and all improvements, changes, extensions, enlargements, and additions thereto, including construction of pipelines and facilities for communications and the generation, transmission, and distribution of electricity. Except in an emergency, Lessor shall not enter APD's buildings or equipment on the Leased Premises without APD's prior written consent. Lessor has the right but not the obligation to perform any work that they may desire to do with respect to controlling erosion, or as may be necessary or desirable to comply with any statutes, rules, regulations, ordinances, orders, requirements, or other laws of any federal, state, or local government authority or agency. APD shall have the right to utilize the existing road (NCSR 1128) for access to the Leased Premises from NCSR 1134 and to use and maintain the existing driveway entrance into the Leased Premises.

**6. Maintenance Responsibilities.** During the term of this Lease, Lessor shall have no responsibility to maintain the Leased Premises, including any improvements constructed thereon. APD shall maintain and keep the Leased Premises and improvements constructed thereon clean and in a good state of repair and usable condition.

**7. No Waste.** APD shall commit no waste with respect to the Leased Premises. At the expiration of this Lease, or at an earlier termination in accordance with any provision hereof; APD agrees to vacate the Leased Premises and leave the same in as good order and condition as they were at the commencement hereof, ordinary wear and tear excepted.

**8. Rights Reserved to Lessor Regarding Electric Facilities and Plant Operations.** Nothing in this Lease shall be construed to limit or deny in any way the right of Lessor to full and unrestricted access to and use of the Leased Premises for the construction of additional electric generation, transmission, and distribution related facilities, including, but not limited to, the implementation and compliance with approved on-site and off-site emergency plans relating to and in support of the Shearon Harris Nuclear Power Plant, and with regard thereto Lessor specifically reserves the following rights:

- (a) To place or have placed at its expense and at locations chosen by Lessor public alerting signal devices and/or signs on the Leased Premises for the purpose of informing the public as to what action should be taken upon hearing an alerting signal;
- (b) To immediately close the Leased Premises and evacuate or cause to be evacuated all persons therefrom in the event of an emergency as declared by Lessor;
- (c) To enter the Leased Premises at any time for the purpose of assessing radiological effects of its operation, an emergency or for practicing the radiological assessment function;

(d) To conduct on-site counts or studies of the usage of the Leased Premises and, in this regard, APD agrees to furnish to Lessor copies of any such usage data that APD acquires;

(e) To limit the usage of the Leased Premises should usage exceed the figures and assumptions factored into the approved emergency plans relating to and in support of Lessor's Shearon Harris Nuclear Power Plant; and

(f) To enter the Leased Premises at any time for the purpose of verifying operability of or performing maintenance on Lessor-owned equipment used during emergency conditions including Lessor's public alerting signal devices (sirens).

**9. No Assignment or Subletting.** Neither this Lease nor any extension thereof may be assigned nor may the Leased Premises or any part thereof be sublet without the express written permission of Lessor. APD shall not mortgage, pledge, or otherwise encumber its interest under this Lease or in the Leased Premises.

**10. Protection Against Liens.** APD shall not permit any mechanics', materialmen's or other types of liens whatsoever to be filed against all or any part of the Leased Premises, nor against APD's leasehold interest in the Leased Premises, by reason of any claims made by, against, through or under APD. If any such lien is filed against the Leased Premises, APD shall cause the same to be discharged of record within ten (10) days after filing thereof. If APD shall fail to discharge such lien within said ten (10) day period, then Lessor may at its election, in addition to any other right or remedy available to it, discharge the lien by paying the amount claimed to be due or by procuring the discharge by giving security or in such other manner as may be allowed by law. If Lessor acts to discharge or secure the lien, then APD shall immediately reimburse Lessor for all sums paid and all costs and expenses (including reasonable attorneys' fees) incurred by Lessor involving such lien, together with interest on the total expenses and costs at the rate of twelve percent (12%) per annum. APD shall give Lessor written notice within three (3) days of the filing of any such lien.

**11. Subordination.** All rights and privileges granted to APD hereunder shall be subordinate to the rights, obligations, and duties of Lessor under the license issued by the Nuclear Regulatory Docket No. 50-400 License No. NPF-63, as now or hereafter amended or renewed, and in the Federal Power Act, both of which are incorporated herein by reference as part of this Lease to the extent applicable to place APD on notice thereof and APD shall be subject to such orders, rules and regulations, as NRC has issued or may issue from time to time. Lessor specifically reserves the right to use and/or maintain the Leased Premises for project purposes as may be contemplated by said NRC license and the Federal Power Act. Further, APD's receipt and exercise of rights and privileges hereunder shall be subject to all matters of record and Lessor's Mortgage and Deed of Trust dated May 1, 1940, as supplemented, and any other mortgage, deed of trust, lien, or hypothecation for security now or hereafter existing. APD agrees to execute any documents required to effectuate such subordination to the lien of any such mortgage, deed of trust or hypothecation, as the case may be, and failing to do so within ten (10) days after written demand by Lessor, does hereby make, constitute and irrevocably appoint Lessor as APD's attorney in fact and in APD's name, place and stead to do so.

**12. Indemnification.** APD assumes all risks incident to the use of the Leased Premises and bears the risk of loss or damage by any casualty. To the extent permitted by law, APD shall defend, indemnify, and hold harmless Lessor, its parent(s) and affiliates, and their respective officers, directors, shareholders, employees, agents and contractors from and against any and all claims, losses, demands, liabilities, damages, fines, penalties, costs, and expenses (including without limitation reasonable attorneys' fees) and claims of every kind suffered by or asserted against Lessor arising directly or indirectly from (a) APD's (or any of APD's officials, employees', invitees', licensees', contractors', or agents') use, possession, occupancy, development, maintenance, or improvement of the Leased Premises; (b) any breach or default by APD in the performance of any obligation on APD's part to be performed under the terms and conditions of this Lease; (c) any negligence or misconduct of APD (or APD's officials, employees, invitees, licensees, contractors, or agents), or (d) APD (or any of APD's officials, employees, invitees, licensees, contractors, or agents) non-compliance with applicable law.

**13. Insurance.** APD shall contract to insure itself and any of its officials, employees, agents, and contractors against liability for wrongful death or negligent or intentional injury or damage to persons or property arising out of matters covered by this Lease, including any contractual liability for personal injury or property damage under this Lease. APD shall name Lessor as an additional insured on such insurance policies. Specifically, APD shall procure and keep in effect during the term of this Lease: (a) Worker's Compensation Insurance with limits required by law for an employer and employer liability insurance; and (b) Comprehensive General Liability insurance with per occurrence minimum limits of \$1,000,000.00 for bodily injury or death and not less than \$500,000.00 property damage per occurrence, or a minimum combined single limit of \$2,000,000.00 per occurrence for bodily injury, death, and damage to property.

**14. Waiver of Claims.** APD further specifically waives any and all rights or claims for relief against Lessor for damage to APD's property located on the Leased Premises, which damage may arise as a result of any activities or events occurring on Lessor's lands adjoining the Leased Premises and utilized in the construction, operation, maintenance of electric generating facilities thereon.

**15. APD's Default.** If APD shall violate or otherwise fail to comply with any of the terms or conditions of this Lease, Lessor may declare APD in default by sending a written notice of default to APD outlining the alleged violation(s) and stating a reasonable period of time, no less than thirty (30) days from APD's receipt of the notice of default, in which APD may cure such alleged violation(s). If APD shall fail to cure the alleged violation(s) within the time specified in the notice of default, then Lessor may declare this Lease terminated and enter upon the Leased Premises and take immediate possession thereof, including any improvements constructed thereon.

**16. Lessor's Default.** If Lessor fails to comply with any of the terms of this Lease or violates any of the conditions hereof, APD may declare Lessor in default by sending a written notice of default to Lessor outlining the alleged violation(s) and stating a reasonable period of time, no less than thirty (30) days from Lessor's receipt of the notice of default, in which Lessor may cure the alleged violation(s). If Lessor fails to cure the alleged violation(s) within the time specified in the notice of default, then APD may declare this Lease terminated.

**17. Title to Improvements.** Until the termination or expiration of this Lease or any extension or renewal thereof, in whatever manner and whenever terminated, all improvements (including any berm) constructed upon the Leased Premises by APD shall remain the property of APD, and shall be removed by it prior to the date of termination or expiration, unless Lessor consents in writing to specific improvements remaining on the Leased Premises. APD shall repair promptly any damage that may result from removing said improvements. All improvements that with Lessor's written consent are not so removed by APD shall become the property of Lessor. Any improvements that remain on the Leased Premises without Lessor's written consent may be removed by Lessor and APD shall pay for the costs of that removal upon Lessor presenting APD with a written statement of said costs.

**18. Laws Affecting Lease.** Lessor's utilization of the Harris Nuclear Plant and the adjoining lands, including the Leased Premises, is subject to statutes, rules, regulations, ordinances, orders, requirements, or other laws of federal, state, or local government authorities or agencies. Accordingly, in the event any of said government authorities or agencies impose such laws upon Lessor at any time, or from time to time, that require modification or termination of this Lease, Lessor shall have the right to modify or terminate this Lease to comply fully with any such laws imposed on Lessor. Lessor shall notify APD as soon as is practically possible of any such law necessitating the modification or termination of this Lease.

**19. Compliance with Laws.** APD shall comply with all applicable federal, state, and local laws, regulations, and ordinances, including those relating to erosion and sedimentation control and environmental, and shall indemnify, defend, and save harmless Lessor from and against any and all accidents, actions, claims, compliance orders, costs, damages, demands, enforcement actions, fines, liabilities, losses, notices of violation or noncompliance, or suits which arise in any way from APD's violation of such laws, regulations, and ordinances.

**20. Hazardous Substances.** APD shall not cause or permit any Hazardous Substance (defined below) to be used, stored, generated or disposed of on or in the Leased Premises without first obtaining Lessor's written consent. If Hazardous Substances are used, stored, generated or disposed of on or in the Leased Premises, whether with or without Lessor's consent, or if the Leased Premises become contaminated in any manner for which APD is legally liable, APD shall, to the extent permitted by law, indemnify and hold harmless Lessor from any and all claims, damages, fines judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Leased Premises or improvements, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the term hereof and arising as a result of such use, storage, generating, disposal, or contamination by APD. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision. Without limitation of the foregoing, if APD causes or permits the presence of any Hazardous Substance on the Leased Premises and such results in contamination, said party shall promptly, at its sole expense, take any and all necessary actions to return the Leased Premises to the condition existing prior to the presence of any such Hazardous Substance on the Leased Premises after first obtaining Lessor's approval for such

remedial action. Pesticides, herbicides, and insecticides, shall not be used on the Leased Premises without the express consent of Lessor.

APD agrees to comply with the United States Environmental Protection Agency's "Best Management Practices for Lead at Outdoor Shooting Ranges" (EPA-902-B-01-001 Revised June 2005 Region 2) in exercising its rights under this Lease.

"Hazardous Substances" shall mean any hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, any substance which is toxic, ignitable, reactive, or corrosive, whether solids, liquids or gases, including but not limited to substances defined as "hazardous waste", "extremely hazardous waste", "hazardous substances," "toxic substances," "pollutants," "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. §§ 9601 *et seq.*; the Toxic Substance Control Act (TSCA), 15 U.S.C. §§ 2601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1802 *et seq.*; the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 9601 *et seq.*; The Clean Water Act (CWA), 33 U.S.C. §§ 1251 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §§ 300(f) *et seq.*; the Clean Air Act (CAA), 42 U.S.C. §§ 7401 *et seq.*; all as amended; any law, rule, or regulation, federal, state or local, now or hereafter in existence, governing or relating to the creation, use, storage, sale, retention, or transportation of hazardous or toxic substances and wastes; in the plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar laws, regulations, rule or ordinance now or hereafter in effect; and any other substances, constituents or wastes subject to environmental regulations under any applicable federal, state or local law, regulation or ordinance now or hereafter in effect. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), and petroleum (in any form or nature).

**21. Taxes.** Lessor shall pay all taxes assessed and levied against the Leased Premises in its unimproved condition. APD shall indemnify, reimburse, and hold Lessor harmless for any tax increase attributable to any structures, other improvements, and facilities located thereon.

**22. Notice.** Except as otherwise provided herein, all notices under this Lease shall be in writing and shall be delivered to the other party by personal delivery, commercially recognized overnight courier service, or prepaid U.S. registered or certified mail, return receipt requested, addressed as follows: **If to Lessor:** Duke Energy Progress, LLC, Attn: Data Management, 550 South Tryon Street, DEC22A, Charlotte, NC 28202; **with a copy to:** Duke Energy Progress, LLC, Harris Nuclear Plant, Regulatory Affairs Section, P. O. Box 165, New Hill, NC 27562. **If to APD:** Town of Apex, Attn: Chief Jason Armstrong, Apex Police Department, P.O. Box 250, Apex NC 27502. Notice shall be effective upon the earlier of: (a) actual receipt; or (b) three (3) days after deposit with the U.S. mail service or other commercially recognized overnight courier service. Each party shall be responsible for notifying the other of any change of address.

**23. Miscellaneous.** (a) **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina. (b) **Lessor's Obligations and Limitation of Liability.** In the event that subsequent to the execution of this Lease any State

or Federal statute, or rule adopted thereunder, regulating or affecting any duty or obligation imposed upon Lessor pursuant to this Lease is enacted, amended or repealed, Lessor may, at its option, elect to perform in accordance with such statute or rule amendment, or act of repeal in lieu of complying with the analogous provision of this Lease. If Lessor shall be in default under this Lease, and if as a consequence of such default, APD shall recover a money judgment against Lessor, such judgment shall be satisfied only out of the right, title and interest of Lessor in the Leased Premises as the same may then be encumbered and neither Lessor nor any other person or entity comprising Lessor shall be liable for any deficiency. (c) **Entire Agreement/Modification.** This Lease, and any Exhibits made a part hereof constitute the entire Lease agreement between Lessor and APD. There are no promises or other agreements, oral or written, express or implied, between Lessor and APD other than as set forth in this Lease. Lessor and APD acknowledge that this Lease supersedes all prior agreements, written or oral, between them. No change or modification of, or waiver under, this Lease shall be valid unless it is in writing and signed by Lessor and APD. (d) **Severability.** If any provision of this Lease shall be determined to be invalid or unenforceable or in conflict with any Law of a Federal, State or local government having jurisdiction over this Lease, the validity of the remaining provisions shall not be affected thereby, and every provision of this Lease shall remain in full force and effect and enforceable to the fullest extent permitted by law. (e) **Survival.** The covenants contained in this Lease which, by their terms, require their performance after the expiration or termination of this Lease shall be enforceable notwithstanding the expiration or other termination of this Lease. (f) **Waiver.** Neither Lessor's or APD's waiver of the other's breach of any term, covenant or condition contained in this Lease shall be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition in this Lease. (g) **Lessor's Remedies Cumulative.** The rights and remedies of Lessor provided in this Lease are cumulative and not exclusive and are in addition to any other rights and remedies, now or hereafter provided by Law. (h) **Binding Effect.** The provisions of this Lease shall be binding on and inure to the benefit of the parties hereto, their respective successors and permitted assigns. (i) **Lease Not an Offer.** Lessor gave this Lease to APD for review. It is not an offer to lease. This Lease shall not be binding unless signed by both parties. (j) **Headings.** Headings of paragraphs or subparagraphs are for convenience only and shall not be considered in construing the meaning of the contents. The plural or singular shall be substituted for the other number, in any place in which the context may require such substitution. (k) **Authority.** The individuals signing this Lease personally warrant that they have the right and power to enter into this Lease on behalf of Lessor and APD, to grant the rights granted hereunder and to undertake the obligations undertaken in this Lease. (l) **No Recording.** This Lease shall not be recorded. At the request of either party, the parties shall execute a short-form memorandum of lease, in recordable form, specifying the term of the Lease, a description of the Leased Premises and other provisions that the parties mutually agree to incorporate therein. (m) **Counterparts.** This Lease may be executed in several identical counterparts, each of which shall be deemed to be an original.

*[Signature Page(s) Follow]*



IN WITNESS WHEREOF, Lessor and APD have caused this Lease to be executed in their respective names by their respective officials hereunto duly authorized all as of the day and year first above written.

**LESSOR:**

DUKE ENERGY PROGRESS, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TOWN OF APEX

By: \_\_\_\_\_  
Name: Catherine Crosby  
Title: Town Manager

Attest: \_\_\_\_\_  
Allen Coleman, Town Clerk

**EXHIBIT A**  
(Description of Leased Premises)

A 2.5-acre tract of land owned by Duke Energy Progress, LLC, and located adjacent to Shooting Ln. on the site formerly operated as an open-air firing range and as further identified in the Order Approving Lease of Property by the State of North Carolina Utilities Commission (Docket No. E-2, Sub 333A; Docket No. E-2, Sub 537A). (Picture included below.)

