

RESOLUTION NO. 2025-_____

**RESOLUTION DELEGATING AUTHORITY TO NEGOTIATE, AWARD,
APPROVE AND EXECUTE CONTRACTS AND OTHER INSTRUMENTS**

WHEREAS, the Town of Apex has been granted certain corporate powers, including but not limited to, the power to contract, to acquire and dispose of real and personal property and interests therein, and the power to grant easements in and encroachments on town property and rights of way; and

WHEREAS, pursuant to N.C.G.S. §160A-12, when a power is conferred by charter or general law without direction or restriction as to how it is to be exercised or performed, such power may be carried into execution as provided by resolution of the governing body; and

WHEREAS, the following powers are conferred without direction or restriction as to who must exercise such authority:

- to award and contract for construction and repairs and for the purchase of apparatus, supplies, materials, or equipment in an amount below the formal bid threshold as set forth in N.C.G.S. §143-129 and N.C.G.S. §143-131; and
- to establish written criteria for determining the circumstances under which the design- build or design-build bridging method is appropriate for a project and to award and contract for design-build and design-build bridging projects, pursuant to N.C.G.S. § 143-128.1A and 143-128.1B; and
- to grant or agree to encroachments over, through, under, or across town property or the right of way of any public street or alley; and
- to contract for public enterprises; and

WHEREAS, the governing body may delegate the following authority to the manager:

- the power to award and contract for the purchase of apparatus, supplies, materials and equipment above the formal bid threshold as set forth in N.C.G.S. §143-129 (except sole source and piggyback awards and other exceptions as set forth in N.C.G.S. §143- 129(e)(6) and (g)) (which power may also be delegated to a chief purchasing official or other employee); and
- the power to lease or rent town-owned property for terms of one year or less (which power may also be delegated to another administrative official); and
- the power to acquire real and personal property and interests in real and personal property and accept donations of personal property; and

WHEREAS, pursuant to N.C.G.S. § 160A-148, the manager is the chief administrator for the Town and shall perform such duties as the governing body may

require or authorize; and

WHEREAS, the Town Council of the Town of Apex believes the efficiency of the Town's operations will be enhanced if the Council, in a single resolution, authorizes the Town Manager to negotiate, award, approve, and execute contracts and instruments unless the law requires such award, approval, or execution to be by the Town Council. The Town Council also desires to authorize the Town Manager to delegate to the deputy Town Manager, assistant Town Managers, department directors, or other staff certain of such approval and execution authority this Resolution vests in the manager, unless the law restricts such delegation.

**NOW THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APEX
HEREBY RESOLVES THAT:**

1.1 Authority to execute Council approved contracts and instruments and to amend such approved contracts and instruments.

The Town Manager, or their designee, are authorized to (i) execute contracts and instruments awarded or approved by the Town Council, and (ii) make changes to a contract or other instrument approved or authorized by the Council if the changes do not substantially alter the contract or instrument and do not make the contract, considered as a whole, less favorable to the Town. This authority does not apply to deeds of the Town (unless specific authority is given for such) or to contracts and instruments that the law requires to be executed by the Mayor. Unless specifically prohibited by the contract, instrument, or by law, the Town Manager, or their designee, is further authorized to amend contracts or instruments approved by the Council after execution of such contracts or instruments, declare default under such contracts or amendments, and take any actions contemplated by such contracts or instruments.

1.2. Authority to make, negotiate, award, approve, execute, and amend contracts and other instruments.

When there is no financial obligation for the Town or when the Town Council has approved a sufficient appropriation for the general contract purpose (i) in the current fiscal year's annual operating budget or (ii) as a capital project (jointly sometimes 'budgeted appropriation'), the Town Manager, or their designee, is authorized to award and reject bids and make, negotiate, award, approve, and execute contracts and instruments on behalf of the Town of Apex subject to the limitations set forth below, unless the law, including Town ordinance, specifically requires award, approval, or execution by the Town Council. Contracts and instruments for which the manager, or their designee, is so authorized include:

- A. Informal Range Construction and Repair Contracts. Construction and repair contracts where the expenditure does not exceed the informal bidding range as set forth in N.C.G.S. § 143-131 (a) (as amended from time to time); change orders authorizing an addition, deletion, or revision in the work or an adjustment in the price or times to such contracts provided such change orders (1) fit within the scope of the original project and (2) the reason for the change is something that

was unanticipated or unforeseen at the time the original contract was awarded (requirements (1) and (2) are sometimes called ‘change order criteria’); and amendments to such contracts.

- B. Formal Range Construction and Repair Change Orders. Change orders to construction and repair contracts in the formal bidding range under N.C.G.S. § 143-129 (a) (as amended from time to time) when the change order criteria are met.
- C. Design-Build and Design-Build Bridging Contracts; Prequalification for Construction or Repair Work. Design-build and design-build bridging contracts and amendments and change orders to such contracts. The Town Manager is further authorized to establish written criteria for determining the circumstances under which the design-build or design-build bridging method is appropriate for a project pursuant to N.C.G.S. § 143-128.1A and 143-128.1B, and to adopt the assessment tool and criteria for specific construction or repair projects for which prequalification of bidders is appropriate pursuant to N.C.G.S. § 143-135.8.
- D. Purchase Contracts. Purchase contracts for apparatus, supplies, materials, and equipment, including information technology goods and services and purchase with trade-in, and amendments to such contracts. This delegation includes authority to reject bids and to re-advertise. The purchasing manager is also delegated the non-exclusive authority to:
 - (1) Prepare, or cause to be prepared, plans and/or specifications setting forth a complete description of the item(s) to be purchased and the characteristics, features and/or requirements therefore;
 - (2) Include, where appropriate, in specifications for the item(s) to be purchased an opportunity for bidders to purchase as trade-in specified personal property owned by the Town;
 - (3) Advertise, or otherwise secure bids, for such item(s), if required under applicable law;
 - (4) Award contracts for the purchase of the item(s) and where applicable, award contracts for the purchase of the item(s) and the sale of trade-in property;
 - (5) Reject bids;
 - (6) Readvertise to receive bids;
 - (7) Waive bid bond or deposit requirements;
 - (8) Waive performance and payment bond requirements; and
 - (9) Execute and deliver the purchase contract(s).(N.C.G.S. § 143-129, §143-129.7, and § 143-129.8)
- E. Leases
 - (1) Leases of town real or personal property (where town is the property owner) of one year or less on such terms and conditions as the manager determines best suit the town’s needs. In connection with this authority, the manager is

authorized to determine property or portions of property that will not be needed for the term of the lease and is thus temporarily surplus to town needs (N.C.G.S. § 160A-272).

- (2) Leases by the town of equipment and other personal property owned by others. (All such leases should be approved by the Finance Department to ensure that the lease complies with N.C.G.S. § 160A-19 and Article 8 of Chapter 143 and provides the most advantageous procurement method and to determine whether the agreement qualifies as a lease under current GASB standards).
- F. Encroachment agreements, right of entry agreements, and jurisdictional determination requests, as follows:
- (1) NCDOT and public utility provider, such as PSNC and Duke Energy, encroachments onto town property for construction and/or repair projects.
 - (2) Other encroachment agreements permitting encroachment over, through, under, or across town property or the right of way of any public street or alley in accordance with Town of Apex ordinances, standard specifications and details, and policies.
 - (3) Right of entry agreements permitting others to temporarily enter onto Town lands for construction-related or other purposes and permitting the Town to enter onto the lands of others for construction-related or other purposes.
 - (4) Encroachment agreements over the lands of others, including NCDOT encroachment agreements, to locate any and all types of Town of Apex facilities within or crossing NCDOT rights of way.
 - (5) US Army Corps of Engineers jurisdictional determination requests.
- G. Grant applications for funding from any source when the amount of any Town match is within budgeted appropriations, to execute contracts for grant awards from non-profit corporations and other non-government organizations (unless Council authorization is required by the terms of the grant), and to execute associated assurances and certifications.
- H. Service contracts for services provided to the Town. Service contracts are divided into categories below solely for organizational purposes and are not meant to limit the types of service contracts authorized hereby.
- (1) Architectural, engineering, and land surveying professional service contracts (sometimes called ‘AES contracts’) and amendments thereto in accordance with Article 3D of Chapter 143 of the General Statutes (Mini Brooks Act) and Town policies and procedures. This delegation includes authority to approve and execute amendments to AES contracts originally approved by Council. The manager, deputy manager, and assistant managers shall have the exemption authority as set forth for a unit of local government in N.C.G.S. 143-64.32.
 - (2) Other professional and technical service and consulting contracts and

amendments thereto. This delegation includes authority to approve and execute amendments to such contracts originally approved by Council.

- (3) Building, grounds, and equipment maintenance and other service contracts and amendments thereto. This delegation includes authority to approve and execute amendments to such contracts originally approved by Council.
 - (4) Utility contracts, such as contracts for electric service, including the installation, maintenance, and repair of street lights, the provision of interim utility services in annexations, and for electricity. Also includes authority to consent to replacement of streetlights with 'dual use' poles or similar technology.
- I. Contracts where services are provided by the Town to others, including:
- (1) Intergovernmental mutual aid, intergovernmental participation, and other governmental agreements (including memoranda of agreement and understanding), including agreements to provide mutual aid and assistance in restoring electric, water, sewer, or gas services in the event of natural disasters or other emergencies concerning public enterprises (N.C.G.S. §160A-318), but not including Interlocal Agreements under N.C.G.S. §160A-460 *et seq.* The police chief may enter into agreements for temporary assistance to other law enforcement agencies as provided in N.C.G.S. §160A-288, §160A-288.2 and § 90-95.2. Such assistance may include temporary work, including undercover work, with officers of the requesting agency, and the lending or borrowing of equipment and supplies. The police chief shall develop such further standards and guidelines as may be necessary and appropriate. The fire chief may enter into agreements for mutual and automatic aid for fire protection services pursuant to N.C.G.S. § 160A-293 and § 58-83-1. Any such agreement for mutual or automatic aid shall be in writing. The fire chief shall develop such further standards and guidelines as may be necessary and appropriate.
 - (2) Enterprise service contracts, including contracts for water supply, sewer service, or for other public enterprise services (N.C.G.S. § 160A-322).
- J. Contracts with private solid waste collection firms and fire service reimbursements in annexations (N.C.G.S. § 160A-31.1, § 160A-58.57, § 160A-58.58, § 160A-58.59, and § 160A-324).
- K. Guaranteed energy savings contracts (N.C.G.S. § 143-64.17).
- L. Permits, applications, plans, and other forms or documents required by state or federal entities in connection with Town projects or operations or Town participation in regional organizations or other groups.

1.3 Town Clerk Authority.

In accordance with Town of Apex Code §§ 6-12, 6-30, and 6-67, the Town Clerk is authorized to (i) sell rights of interment in cemetery plots, (ii) approve the transfer of cemetery plots and provide written consent as evidence of such approval, and (iii)

accept reconveyances of rights of interment back to the Town.

1.4 Parks, Recreation, and Cultural Resources Director Authority.

- A. Provided the Town Council shall have approved a sufficient budgeted appropriation, the Parks, Recreation, and Cultural Resources Director, or their designee, is authorized to make, negotiate, award, approve, and execute contracts for (i) program instruction, (ii) officiating of sporting events, (iii) concessions operations, (iv) field trip and program event reservations and registrations, and (v) special events, in connection with any program or event sponsored by the Town's Parks, Recreation, and Cultural Resources Department.
- B. Provided the Town Council shall have approved a sufficient budgeted appropriation, the Parks, Recreation, and Cultural Resources Director is authorized to make, negotiate, award, approve, and execute contracts relating to temporary use rights for the gymnasiums at the John M. Brown Community Center in exchange for the other contracting party granting to the Town of Apex reciprocal use rights for the contracting party's parks, recreation, cultural, or other facilities.
- C. Provided the Town Council shall have approved a sufficient budgeted appropriation, the Parks, Recreation, and Cultural Resources Director is authorized to make, negotiate, award, approve, and execute contracts relating to park maintenance where the cost of such services does not exceed \$50,000.

1.5 Declare Personal Property Surplus; Use of Auction Services; Transfer of Service Animals; Accept Donations of Personal Property.

- A. The purchasing manager is authorized to declare surplus and dispose of any personal property, including motor vehicles, valued at less than thirty thousand dollars (\$30,000) that is no longer necessary for the conduct of public business in accordance with N.C.G.S. § 160A-266, § 160A-267, and Town policies and procedures, and the following:
 - (1) The surplus personal property may be disposed of by any means which the purchasing manager judges is reasonably calculated to secure fair market value for all property disposed of and to accomplish the disposal efficiently and economically, including but not limited to the methods of sale provided in N.C.G.S. Chapter 160A, Article 12. Such sale may be public or private, and with or without notice and minimum waiting period.
 - (2) The surplus personal property shall be (a) sold to the party who tenders the highest offer; (b) exchanged for any property or services useful to the town if greater value may be obtained in that manner; (c) disposed of pursuant to State Surplus Property Agency ("State Surplus") procedures; or (d) if the property is not eligible for State Surplus, donated to another government or a nonprofit organization. The purchasing manager is hereby authorized to

execute and deliver any applicable title documents. If offered for sale or exchange and no offers are received within a reasonable time, the town may retain the property; obtain any reasonably available salvage value; donate the property to another government or a nonprofit organization; or cause it to be discarded.

- (3) With respect to motor vehicles, the purchasing manager is authorized to sign powers of attorney granting authorized representatives of the North Carolina Department of Administration authority to sign certificate of title documents on behalf of the Town of Apex in order to facilitate the sale of such motor vehicles.
- (4) The purchasing manager shall keep a record of all property disposed of under this authority and that record shall generally describe the disposed property, to whom it was sold, exchanged, or given to, and the amount of money or other consideration received, if any.
- B. The police chief is authorized to determine that any service animal is no longer fit or needed for public service and to transfer ownership of that service animal to any person, organization, or program authorized for such transfer in N.C.G.S. § 17F-21.
- C. The manager, or their designee, is authorized to accept donations of personal property provided such donations do not impose any restrictions on the Town and do not exceed a value of \$50,000.

1.6 Exempt Certain Professional Services from Procurement Process

Pursuant to N.C.G.S. § 143-64.32, the Town Manager is authorized to exempt in writing particular projects from the requirements of N.C.G.S. § 143-64.31 to select firms qualified to provide such services where the estimated professional fee is less than \$50,000. The requirements of N.C.G.S. § 143-64.31 apply to architectural, engineering, surveying, construction management at risk services, design-build services, and public-private partnership construction services.

1.7 Appeal and Settlement Authority; Defense of Employees.

Provided the Town Council shall have approved a sufficient budgeted appropriation, the Town Manager, with the concurrence of the Town Attorney, are each authorized to approve and to execute contracts and instruments on behalf of the Town and to take such actions as follows:

- A. To contest or appeal any fine or other liability imposed against the Town by a governmental authority.
- ~~B.~~ **Except for claims against the Town for personal injury or damage to property, as limited by Town Chater Section 6.2,** the Town Manager is authorized to settle worker's compensation claims in any amount provided such settlement is within the guidelines of the North Carolina Workers' Compensation Act (N.C.G.S. Chapter 97)

- and the Workers' Compensation Rules of the North Carolina Industrial Commission, the administrative agency that oversees and administers such claims and/or settlements; to settle construction contract claims; to settle tort claims in accordance with the Town's insurance contract and the recommendations of the Town's insurance adjuster; and to settle other claims by and against the town, including employment related claims, for which there is no other settlement authority, up to \$50,000.
- C. To file proof of claims; join creditor committees; negotiate plan treatment; vote for or oppose the plan, as deemed appropriate by the manager; and otherwise act for the Town when the Town is a creditor in any bankruptcy proceeding where the Town's claim is \$50,000 or less.
 - D. To provide for the defense of current and former council members and employees in any civil or criminal action or proceeding brought against them either in their official or individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of their employment or duty as an employee or officer of the city, pursuant to NCGS 160A-167; and to pay any claims made or judgment entered against current and former council members and employees, pursuant to N.C.G.S. § 160A-167.

1.8 Trespass

The Town Manager, deputy Town Manager, assistant Town Managers, police chief, and the deputy police chief are granted the non-exclusive authority to exercise such authority as may reside in the Town Council to notify others not to enter or remain on Town property and to declare a trespass as provided in N.C.G.S. § 14-159.13.

1.9 Disaster Assistance Funds

The Town Manager (Primary Agent) and deputy Town Manager (Secondary Agent) are hereby authorized to execute and file applications for federal and/or state assistance on behalf of the Town for the purpose of obtaining certain state and federal financial assistance under the Robert T. Stafford Disaster Relief & Emergency Services Act. (Public Law 93-288 as amended) or as may otherwise be available for any declared disaster. The above-designated agents are further authorized to execute such documents and take such actions as required to comply with the terms of any resulting disaster assistance agreement, grant, or the like. The above-designated agents are authorized to act severally.

1.10. Further Delegation; Successor Departments and Positions.

The grants of authority herein are non-exclusive. The Town Manager may, in any case and for any reason, refer any contract or instrument within their approval authority to Council for award or approval. The Town Manager may, in writing, delegate authority to negotiate, make, award, approve, execute and amend any contract or instrument (1) described in section 1.2 that are within the Town Manager's authority to the deputy town

manager, an assistant town manager, or a department director. The manager, deputy town manager, assistant town managers, finance director, purchasing manager, parks, recreation, and cultural resources director, and any delegate of the manager, shall comply with all statutory requirements related to any contract or instrument awarded or approved under the authority of this Resolution.

Any reference in this Resolution to a specific department name or position title shall be a reference to any successor department name or any successor or equivalent position title.

1.11 Supplemental Authority.

This grant of authority is in addition to authority granted in statutes, ordinances, and other policies.

1.12. Effect of Resolution.

This Resolution supersedes and replaces the following Resolutions:

- “Resolution Adopting a Policy for Mutual Assistance with Other Law Enforcement Agencies” adopted on July 25, 1989.
- Resolution No. 020305-07, “Resolution Authorizing the Director of the Town of Apex Parks, Recreation, and Cultural Resources Department to Approve and Execute Contracts on Behalf of the Town of Apex” adopted on March 5, 2002.
- Resolution No. 02-1001-37, “Resolution Authorizing the Town Manager to Approve and Execute Contracts on Behalf of the Town of Apex” adopted on October 1, 2002.
- Resolution No. 03-0805-15, “Resolution Authorizing the Director of the Town of Apex’s Parks, Recreation and Cultural Resources Department to Approve and Execute Contracts on Behalf of the Town” adopted on August 5, 2003.
- “An Ordinance Delegating Authority to Purchase Apparatus, Supplies, Materials, or Equipment” adopted on February 1, 2004.
- “An Ordinance Prescribing Procedures for Disposing of Personal Property Valued at Less Than \$5,000” adopted on February 1, 2004.
- “A Resolution Authorizing the Purchasing Manager to Sign Powers of Attorney to the State to Dispose of Surplus Motor Vehicles” adopted on July 20, 2004.
- Resolution Authorizing Finance Director and Purchasing Manager to Declare Surplus Property Valued at Less Than Thirty Thousand Dollars” adopted on November 15, 2005.
- Resolution Authorizing the Town Manager to Make Bankruptcy Decisions for Claims of \$25,000.00 or Less” adopted on October 6, 2009.
- “A Resolution Authorizing the Director of Parks, Recreation and Cultural Resources to Approve and Execute Certain Contracts on Behalf of the Town of

Apex” adopted on December 17, 2013

- Resolution No. 14-0415-10, “A Resolution Authorizing the Town Manager or His Designee to Approve and Execute Standard Encroachment Agreements” adopted on April 15, 2014.
- Resolution No. 14-0603-19, “Resolution to Authorize the Town Manager to Exempt Certain Projects from the Procurement Process Described in N.C.G.S. § 143-64.31” adopted on June 3, 2014.
- Resolution No. 16-1220-20, “Resolution Authorizing Town Manager to Exempt Projects Where the Estimated Professional Fee for the Procurement of Architectural, Engineering, and Surveying Services is Less Than \$50,000” adopted on December 20, 2016.
- Resolution No. 18-0904-11, “Resolution Delegating Leasing Authority to the Town Manager” adopted on September 4, 2018.
- Resolution 19-0716-24, “Resolution Delegating Cemetery Plot Transfer Authority to the Town Clerk” adopted on July 17, 2019.
- Resolution No. 20-0505-05, “Resolution Authorizing Town Manager to Approve and Execute Right of Way Encroachment Agreements with the North Carolina Department of Transportation on Behalf of the Town of Apex” adopted on May 5, 2020.
- Resolution 21-0413-10, “Resolution Delegating Cemetery Plot Rights of Interment Sale and Reconveyance Authority to the Town Clerk” adopted on April 13, 2021.
- “Resolution Authorizing Town Manager to Approve and Execute Right of Way Encroachment Agreements with the North Carolina Department of Transportation on Behalf of the Town of Apex” adopted on December 13, 2022.

Adopted and effective the _____ day of _____, 2025.

Jacques K. Gilbert
Mayor

ATTEST:

Allen Coleman, CMC, NCCCC
Town Clerk