

STATE OF NORTH CAROLINA)
WAKE COUNTY)

VEHICLE LEASE

This Lease of a vehicle (hereinafter "Lease" or "Agreement"), described below, is made and entered into by the Town of Holly Springs ("Holly Springs" or "Lessee") and the Town of Apex ("Apex" or "Lessor"), (collectively the "Parties") has an effective date of the later of the date of signature, and is made under the following terms and conditions:

WHEREAS, the Parties are each North Carolina Municipalities in close proximity and desire to assist each other in the provision of public service when necessary and convenient for each party; and,

WHEREAS, each Party operates separate public utilities departments that, among other things, collect residential leaves by the use of one or more vacuum trucks, and currently Apex has one that is currently surplus to the needs of Apex for a period of time until February 2024, and Holly Springs has a need for an additional truck; and,

WHEREAS, no joint agency or partnership shall be established through this Agreement or Lease.

NOW THEREFORE, in accordance with N.C.G.S. §160A-274, for the good and valuable consideration necessary to effectuate this Lease, the recitation of which the Parties agree is not necessary, and in consideration of the foregoing precatory language, the Parties do hereby additionally agree as follows:

1. From the Execution Date until at least February 28, 2024 ("Term"), or until terminated by the mutual consent of the Parties, Apex shall Lease the following vacuum truck to Holly Springs for \$1 for the entire Term of the lease:
 - a. A 2014 Freightliner M2 106 Leaf Truck (VIN 1FVACYCY0EHFW2024), (the "Truck").
2. The Town of Holly Springs shall be responsible for the daily maintenance of the Truck, as well as any damage (reasonable wear and tear excepted) and shall add it to Holly Springs' insurance list for the fair market value so determined by the North Carolina League of Municipalities. In the event of any catastrophic damage or mechanical failure due to misuse not covered by insurance during the Term and during use by Holly Springs, Holly Springs shall work cooperatively with Apex to ensure that Apex receives fair market value of the Truck and/or a replacement truck of equal or greater value.
3. **Termination.** This Agreement may be terminated by written agreement of both Parties. Either Party may terminate this Agreement because of substantial breach of this Agreement by the other Party, provided that the terminating Party has given thirty (30) days' written notice to the breaching Party and the breaching Party has not cured the breach during that period. Either Party may terminate this Agreement without cause provided that the terminating Party has given ninety (90) days' written notice to the other Party. This section does not limit the Parties' rights to enforce this Agreement through any other action or

remedy. Upon termination, it is agreed that all obligations that are still executory on both sides are discharged but any right based on prior breach or performance survives.

4. **Notices.** Unless otherwise provided, all notices provided for herein shall be in writing and shall be sent properly addressed by first class mail and electronic mail to the parties at the addresses shown below:

Town of Apex
PO Box 250
Apex, North Carolina 27502-250
Attention: Town Manager

With copies to the Public Works & Transportation Director

Town of Holly Springs
P.O. Box 8
Holly Springs, NC 27540
Attention: Town Manager

With copies to the Solid Waste Manager

All notices shall be effective three (3) days after having been deposited, properly addressed and postage prepaid, in the US Postal Service. Any party hereto may change the person to whom or the address to which notices should be provided by giving written notice to the other parties of the change.

5. **Entire Agreement/Amendments.** This Agreement constitutes the entire agreement between the Parties with respect to its general subject matter. This Agreement may not be changed except in writing signed by all the parties.
6. **Representations and Warranties.** The Parties each represent, covenant and warrant for the other's benefit as follows:
 - (a) Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and this Agreement has been authorized by each Party's governing body. This Agreement is a valid and binding obligation of each Party.
 - (b) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which either Party is now a party or by which either is bound, or constitutes a default under any of the foregoing.

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

(d) The Truck and its components are in proper mechanical condition and may be placed in service for the purpose it is intended.

7. **Dispute Resolution.** In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice of Wake County, North Carolina.
8. **No Waiver of Non-Compliance with Agreement.** No provision of this Agreement shall be deemed to have been waived by any party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any party hereto at any time to require strict performance by the other of any provision hereof shall in no way affect the right of the other party to thereafter enforce the same. In addition, no waiver or acquiescence by a party hereto of any breach of any provision hereof by another party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.
9. **Governing Law.** The parties intend that this Agreement be governed by the law of the State of North Carolina. Proper venue for any action shall solely be Wake County.
10. **Assignment.** Neither Party may sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other Party.
11. **Liability of Officers and Agents.** No officer, agent or employee of any party will be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This section will not relieve any such officer, agent or employee from the performance of any official duty provided by law.
12. **Execution in Counterparts/Electronic Version of Agreement.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Either Party may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of

Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.

13. **Verification of Work Authorization.** The Parties, and all subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.
14. **No third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
15. **Termination of Prior Leases.** The parties hereby agree that execution of this Lease effectively terminates and replaces any and all previous leases, agreements, or arrangements between the parties for the use of the vacuum truck identified in Section 1 of this Lease.

IN TESTIMONY WHEREOF, the Town of Apex and the Town of Holly Springs, both pursuant to authorizations of their respective governing boards spread upon their minutes, have caused this Agreement to be executed and attested by their duly authorized officers and their official seals affixed, the day and year first written above.

[SEAL]

**TOWN OF HOLLY SPRINGS, NORTH
CAROLINA**

By: _____
Randy J. Harrington, Town Manager

Date: _____

Attest:

Linda C. McKinney, Town Clerk

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

Tina Stroupe, Finance Director
Town of Holly Springs

[SEAL]

TOWN OF APEX, NORTH CAROLINA

By: _____
Shawn Purvis, Interim Town Manager

Date: _____

Attest:

Allen Coleman, Town Clerk

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

By: _____
Antwan Morrison, Finance Director
Town of Apex