**CONTRACT TO PURCHASE ASSET(S)**

**UP TO $90,000**

THIS AGREEMENT dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, between the **Town of Holly Springs**, North Carolina, for itself and its Successors & Assigns (hereinafter called the “Town”) and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (herein after called the “Vendor”).

Town hereby desires to enter into a contract for the purchase of certain assets with the Vendor and the Vendor agrees to enter into this contract and deliver the assets to the Town as set forth below or as stated in **Exhibit A**, in the manner and time hereinafter described, and both parties do hereby agree as follows:

**SERVICES OF VENDOR**

The assets to be purchased are described in **Exhibit A** (the “Quote”) as attached hereto and incorporated by reference. Vendor agrees to employ such personnel as may be needed to secure, make, and deliver the assets in the manner and time prescribed herein. Such personnel shall be employees of the Vendor and said Vendor shall be an independent Vendor of the Town.

**BRIEF SUMMARY OF PURCHASE(S) AND/OR SERVICE(S):** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**TOWN’S RESPONSIBILITIES**

The Town shall make available the facilities to the Vendor, as necessary to complete delivery and/or installation of assets, and shall not impede the work of the Vendor, expect as necessary. Any additional Town responsibilities shall be listed in **Exhibit A**.

**CONTRACT MANAGER**

The Town shall comply with the bidding laws of the State of North Carolina. Failure to do so shall make this Contract void. The Town’s Contract Manager for this Contract is:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Name, Department)

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

Phone:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**PAYMENT**

The Town shall pay the Vendor the contract sum in the following manner:

**\_\_** The Vendor shall provide the Town with an invoice upon the receipt of the goods described in Exhibit A, which the Town shall have thirty (30) days to pay. Total not to exceed: **$\_\_\_\_\_\_\_.**

**OR**

**\_\_** Description of Alternative Payment Terms:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**TIME AND MANNER FOR PURHASE OF ASSETS**

The times and manner for the purchase of the assets subject to this Contract are set forth in **Exhibit A**, or as otherwise set forth below:

**All ownership terms shall be F.O.B. 128 S. Main Street, Holly Springs, NC 27540**. The Town’s Contract Administrator hereby directs the Vendor to deliver to:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**GENERAL CONSIDERATIONS**

1. **Standards of Performance.**
   1. The standard of care for all services performed or furnished by Vendor under this Agreement will be the care and skill ordinarily used by members of the Vendor’s profession practicing under similar circumstances at the same time and in the same locality.
   2. Vendor represents that, prior to submitting the Bid and executing this Contract, Vendor became and remains thoroughly acquainted with all matters relating to the performance of this Contract, all applicable laws and all of the terms and conditions of this Contract. All Services under this Contract shall be coordinated under and performed to the satisfaction of the Town Contact. Town is authorized to withhold payment of any funds under this Contract until complete delivery and/or installation of assets as described in Exhibit A.
   3. Vendor shall be responsible for the technical accuracy of its services and documents resulting therefrom, and Town shall not be responsible for discovering deficiencies therein. Vendor shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in Town furnished information.
   4. Vendor and Town shall comply with applicable Laws or Regulations and Town mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Town’s responsibilities or to Vendor’s scope of services, times of performance, or compensation.
   5. Vendor is an independent Vendor of the Town. The Town and the Vendor mutually agree to indemnify and hold harmless each party from any claims of negligence brought forth. Vendor is familiar with the property and its condition.
2. **Warranty.**
   1. Vendor knows and understands the purpose to which the assets are being purchased by the Town. Vendor hereby warrants that the materials that are the subject of this contract are fit for the purpose intended by the Town, and agrees to warrant good craftsmanship for a period of not less than 1 year, or any term longer stated in **Exhibit A**. In the event of any contradictory language in **Exhibit A**, this language shall apply.
3. **Term and Termination.**
   1. The term for this contract is until the receipt of the good(s) described in **Exhibit A**, or one (1) year, whichever is shorter.
   2. The mutual obligations of the Parties contained in this Agreement may be terminated:
      1. For cause by either party upon 30 days written notice in the event of a failure by the other party to perform in accordance with the terms hereof.
      2. For failure to consistently satisfy the Standards of Performance in the opinion of the Town Contract.
      3. Upon mutual agreement.
4. **Controlling Law.**
   1. This agreement is to be governed by the law of the State of North Carolina, regardless of any language in any quote, contract, agreement supplied by the Contractor.
   2. Venue and jurisdiction are proper in the 10th Judicial District of North Carolina (Wake County).
5. **Notices.**
   1. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address below, or given personally, or by regular, registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of the receipt.  
      1. For the Town:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Name, Title)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Department)

P.O. Box 8 (Address)

Holly Springs, NC 27540

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Phone)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (e-mail)

* + 1. For the Vendor/Vendor:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Name, Title)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Company)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Address)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Phone)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (e-mail)

1. **Severability.**
   1. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Town and Vendor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
2. **Waiver.**
   1. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
3. **Attorney’s Fees.**
   1. In the event of a breach of this Agreement, the substantially prevailing party shall be entitled to an award of reasonable attorney’s fees and costs relating to compelling performance under this Agreement.
4. **Insurance & Indemnification Requirement.**
   1. **If the Vendor is to provide installation services** on Town property or for Town assets, then Vendor shall provide general liability insurance for a minimum of $1,000,000 per occurrence, $2,000,000 aggregate, or an umbrella policy for at least $5,000,000 for the complete term of the contract. Additionally, the Vendor shall supply workman’s compensation insurance coverage to all employees within the statutory limits. If this requirement is triggered, then the Vendor shall provide a Certificate of Insurance, naming the Town as an additional insured entity for so long as required to complete the installation, which Certificate is attached as **Exhibit B.** Any acceptance of lower insurance limits must be authorized on the **Exhibit B** cover page.
   2. The Contractor agrees to waive any and all claims against the Town from itself or its employees arising from work performed by the Contractor pursuant to this Contract, except for claims related to non-payment of amounts. The Contractor shall protect, defend, indemnify and hold the Town and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of actions of every kind and character in connection with or arising out of this Agreement and the Contractor performance hereof, that are proximately caused by the negligence, willful or wanton conduct, or breach of contract relating to the Contractor’s work in under this Agreement or any addendums or modifications thereto, except to the extent that the same are by the negligence or willful misconduct of the Town. For such claims, the Contractor/Licensee further agrees to investigate, handle, provide defense for and respond to, any such claims at its sole expense and agrees to bear all other costs and expenses related thereto, even if such claims are groundless, false, or fraudulent.
5. **Prohibition Against Sex Offenders.**
   1. In the event that Vendor or its employees are being granted access to the Town’s Park system and/or Town Facilities (collectively “Facility”) during hours of operation. Vendor hereby agrees that it shall not employ or otherwise allow to perform any aspect of the Contract any person who is a registered sex offender for any scope of work requiring such employee or Vendor of the Vendor to access any area of the Facility. Vendor shall have an affirmative duty to ensure compliance with this section by checking the state and national registry for sex offenders against any employee, agent, Vendor, subcontractor, officer, director, or any person that shall in any way perform under this contract. Vendor shall check the registry initially and periodically during the term of the Contract as often as necessary to ensure compliance with this section at all times. Vendor additionally agrees to indemnify and hold the Town harmless for any act or omission that may arise out of the operation of the Contract, the ACP, or any parole agreement among the parties that arise from, directly or indirectly, the Vendor’s failure to ensure compliance with this section. This indemnification includes a duty to provide a legal defense.
6. **Independent Vendor.**
   1. Vendor's status shall be that of an independent Vendor and not an agent, servant, employee, or representative of Town in the performance of the Services. Vendor shall exercise independent judgment in performing duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the workflow and determining how the work is to be performed. No term or provision of this Contract or act of Vendor in the performance of this Contract shall be construed as making Vendor the agent, servant or employee of Town, or making Vendor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker’s compensation, which Town provides its employees.
   2. Vendor’s Control Over Services Provided for Installation. Vendor shall retain the unqualified right of control over the means, manner and methods by which the Installation is performed, and the right to perform such services at the locations and times as required to complete said installation of asset(s), and as approved by the Town. Vendor shall be responsible for providing all equipment, materials and supplies that Vendor determines are needed to timely complete the Installation.
   3. The Vendor agrees to waive any and all claims against the Town from itself or its employees arising from materials supplied, delivery by the Vendor and work performed by the Vendor pursuant to this Contract and to protect, defend, indemnify and hold the Town and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind in character and arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of actions of every kind and character in connection with or arising directly or indirectly out of this Agreement and/or the performance hereof. The Vendor/Licensee further agrees to investigate, handle, provide defense for and respond to, any such claims at its sole expense and agrees to bear all other costs and expenses related thereto, even if such claims are groundless, false, or fraudulent.
7. **Non-Discrimination.**
   1. As a condition of this Contract, Vendor covenants that Vendor will take all necessary actions to insure that, in connection with any operations under this Contract, Vendor, its officers, employees and subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, sexual orientation, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Vendor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Vendor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of Town, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.
8. **Vendor’s Employees.**
   1. Vendor agrees and consents that the Town is allowing access to the Vendor to both publicly used and private sensitive Town facilities. Vendor, and any employee, agent, subagent, volunteer, or any person authorized to act on behalf of the Vendor shall maintain a professional demeanor at all times during the interaction with the Town’s patrons and visitors to Town facilities. Vendor shall refrain from other commercial or political activity while performing this contract on Town Facilities. Vendor shall undergo criminal background checks on all employees and subcontractors working at the direction of the Vendor in this contract, and shall exclude any employees from working in any Town facility any employees that:

1) had a conviction of any felony within the past 10 years;

2) has a conviction in the past 10 years of any violent crime or crime involving theft or dishonesty; or

3) is currently a registered sex offender.

1. **Assignment.**
   1. VEndor shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of the Town. as an express condition of consent to any assignment, Vendor shall remain liable for completion of the Contract work in the event of default by the successor Vendor or assignee.
2. **Right of Review and Audit.**
   1. Town may review any and all of the services performed by Vendor under this Contract. Town is granted the right to audit, at Town’s election, all of Vendor’s records and billings relating to the performance of this Contract. Vendor agrees to retain such records for a minimum of three (3) years following completion of this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to Town’s rights as may be disclosed by an audit under this section.
3. **Non-Appropriations.**

**16.1** No provision of this agreement shall be construed or interpreted as creating a pledge of the faith and credit of the town within the meaning of any constitutional debt limitation. No provision of this agreement shall be construed or interpreted as creating a delegation of governmental powers nor as a donation by or a lending of the credit of the town within the meaning of the constitution of the state. This agreement shall not directly or indirectly or contingently obligate the town to make any payments beyond those appropriated in the sole discretion of the town for any fiscal year in which this agreement is in effect; provided, however, that any failure or refusal by the town to appropriate funds which results in the failure by the town to make any payment coming due hereunder will in no way obviate the occurrence of the event of default resulting from such nonpayment. No deficiency judgment may be rendered against the town in any action for breach of a contractual obligation under this agreement and the taxing power of the town is not and may not be pledged directly or indirectly or contingently to secure any moneys due under this agreement.

1. **Full Agreement.** This Contract is the full agreement of the parties, and neither has, or is relaying on any information not contained in this Contract or its Exhibits. The terms of this Contract supersede any conflicting terms which may be contained in any Exhibit attached hereto and incorporated by reference.
2. **Exhibit List.** The following documents shall be attached hereto and incorporated by reference.

**Exhibit A – Quote or Purchase Agreement**

**Exhibit B – Certificate of Insurance, if installation**

**Exhibit C – Warranty, if applicable**

[Signature Page Follows]

**TOWN OF HOLLY SPRINGS:** **VENDOR:**

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

Randy J. Harrington, Town Manager

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESS:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Linda McKinney, Town Clerk

Date:

Contract Manager: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:

Purchasing Manager: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Brettany DeVolld

Date:

Purchase Order No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (if applicable)

Approved as to form:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Schifano, Town Attorney Date:

This instrument has been pre-audited in the manner

Prescribed by the Local Government Budget and Fiscal

Control Act.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tina Stroupe, Director of Finance Date:

**EXHIBIT A**

**EXHIBIT B**

\_\_\_\_\_\_\_\_ **Insurance requirement waived**

\_\_\_\_\_\_\_\_ **Lower Insurance Limit Approved**

Approved by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

\_\_\_\_\_\_\_\_ **Certificate of Insurance attached**

**COI Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**EXHIBIT C**

**WARRANTY INFORMATION:**

**\_\_\_\_\_** Attached hereto

**\_\_\_\_\_** Found at the following link:

**\_\_\_\_\_** Not Available/Applicable