

CONTRACT CONTROL FORM
TOWN OF CARY

CCN: PW 6-005-00

DEPARTMENT: PW
CONTRACT ADMINISTRATOR ..: LEILA GOODWIN
ADMINISTRATOR'S PHONE ...: 3846
CONTRACT NAME: WESTERN WAKE RWWMF OWNERSHIP & OPERATIONS AGRMT
CONTRACTOR'S NAME: WESTERN WAKE PARTNERS
CONTRACT EXPIRATION DATE: AUGUST 31, 2055

8/31/2055

TYPE: 4 1=SERVICE
 2=EQUIPMENT
 3=CONSTRUCTION
 4=AGREEMENT
 5=REIMBURSEMENT

STATUS: 1 1=NEW
 2=RENEWAL
 3=REVISION
 4=CHANGE ORDER

TRANSMITTAL INFORMATION: ACTION DATES
 NOTICE OF AWARD SENT
 BONDS RECEIVED
* NOTICE TO PROCEED SENT ...
* INSURANCE CERTIF.RECEIVED:
* OCCURS AFTER CONTRACT EXECUTION

" " ATTORNEY'S REVIEW NOT
REQUIRED.

FINANCE INFORMATION

CARY BUSINESS LICENSE VERIFIED:
ENCUMBRANCE/PO NUMBER:
ACCOUNT NUMBER:
PROJECT NAME ..:
PROJECT NUMBER:
OBLIGATES REVENUE TO THE TOWN:
OBLIGATES TOWN EXPENDITURE ...:

" " NO CHANGE IN PRESENT ENCUMBRANCE/PO

*Please return
fully executed original
To clerk's office
Thank you
Karen*

COMMITTEE APPROVALS: ACTION DATES
SAFETY/PUBLIC WORKS ...: 7/06/2005
PLANNING & DEVELOPMENT:
FINANCE/PERSONNEL:

OTHER APPROVALS: ACTION DATES
COUNCIL: 7/28/2005
BUDGET ADJUSTMENT:
OTHER:

DEPARTMENT APPROVAL DATE: 8/11/05 *RABE*

FINANCE

INITIALS: DATE IN:

ACTION DATE:

COMMENTS:

TOWN ATTORNEY (Approved as to form only)

INITIALS: *BS* DATE IN: 8/15/05 ACTION DATE: 8/15/05

COMMENTS:

TOWN MANAGER

INITIALS: DATE IN:

ACTION DATE: 8/16/05

COMMENTS: *WJW*

" " TO MAYOR FOR SIGNATURE

TOWN CLERK

INITIALS:

COMMENTS: *WJW*

EXECUTED DATE: 8/30/05

**AGREEMENT FOR DESIGN, CONSTRUCTION, OWNERSHIP, MANAGEMENT
AND OPERATION OF WESTERN WAKE REGIONAL WASTEWATER
MANAGEMENT FACILITIES**

This AGREEMENT FOR DESIGN, CONSTRUCTION, OWNERSHIP, MANAGEMENT AND OPERATION OF WESTERN WAKE REGIONAL WASTEWATER MANAGEMENT FACILITIES, made and entered into this the 22 day of August 2005 (the "Agreement"), by and among the Town of Apex ("Apex"), the Town of Cary ("Cary"), the Town of Holly Springs ("Holly Springs"), and the Town of Morrisville ("Morrisville" and, collectively with Apex, Cary and Holly Springs, the "Project Partners"), each of which is a municipal corporation organized and existing under the laws of North Carolina, as authorized by the provisions of North Carolina General Statutes, Chapter 160A, Article 20.

WITNESSETH

WHEREAS, Apex, Cary, Holly Springs and Morrisville, are each municipalities of the State of North Carolina and each of them is the owner and operator of certain public enterprises within their territorial jurisdictions and service areas, including a wastewater collection, water reclamation and discharge system; and

WHEREAS, Apex, Cary and Morrisville have undertaken the joint planning and permitting, and have determined to undertake the further planning, construction and operation, of certain wastewater management facilities, including the construction of a new 18 million gallon per day water reclamation facility, which includes a biosolids facility, new raw wastewater pumping facilities and treated effluent pumping and conveyance facilities, under a plan in which such parties will share the costs of such planning, permitting, construction and operation in accordance with their entitlement to use and actual use of the facilities as hereinafter provided; and

WHEREAS, said facilities are needed by Apex, Cary and Morrisville to meet the requirements of the North Carolina Environmental Management Commission in its approval to transfer surface waters from one river basin to another that by January 1, 2011, Apex, Cary and Morrisville shall be returning treated wastewater to the Cape Fear River Basin; and

WHEREAS, Holly Springs desires to participate in the further planning, construction and operation of the treated effluent pumping and conveyance system portion of the wastewater management facilities, sharing the cost of further planning, construction and operation in accordance with its entitlement to use and actual use of the facilities as hereinafter provided; and

WHEREAS, the Project Partners have previously entered into the Land Costs and Preliminary Work Agreement, as defined below, to set forth the agreements and understandings of the parties with respect to the costs of certain of the land necessary for the wastewater management facilities covered by this Agreement and certain costs of the preliminary work associated with the planning and permitting of the initial wastewater management facilities covered by this Agreement; and

WHEREAS, the Project Partners have determined to proceed with the facilities to be designed, constructed, owned and operated pursuant to the terms of this Agreement and which are more fully described in Exhibit A hereto and are referred to herein as the "Wastewater Management Facilities" as defined below; and

WHEREAS, the Project Partners desire to enter into this Agreement to set forth the terms, agreements and understandings among the parties with respect to the sharing of the further planning and permitting costs, initial capital costs, capital costs of additional improvements and operating costs of the various components of the wastewater management facilities covered by this Agreement; and

WHEREAS, pursuant to Article 20 of the North Carolina General Statutes, as amended, units of local government such as the Project Partners are authorized to enter into contracts such as this Agreement for the joint exercise by such units of their powers, functions and public enterprises and entering into this Agreement will carry out the interlocal cooperation objective encouraged by said provisions;

NOW, THEREFORE, pursuant to Article 20, of the North Carolina General Statutes Chapter 160A, and in consideration of the respective rights, powers, duties and obligations hereafter set forth to be performed by the Project Partners, the Project Partners mutually agree as follows:

ARTICLE 1

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1 Definitions. In addition to the capitalized terms defined elsewhere in this Agreement, the following capitalized terms shall have the following meanings unless some other meaning is plainly intended:

“Annual Budget” means the budget for Current Expenses of the Wastewater Management Facilities prepared for each Fiscal Year by the Lead Agency.

“Beaver Creek Pump Station” means the pumping station identified as such in Exhibit A hereto, which is designed to pump raw wastewater received from Apex, Cary and Morrisville.

“Capital Costs” of any component of the Wastewater Management Facilities shall include all costs properly allocable to the capital account for that component of the Wastewater Management Facilities in accordance with generally accepted accounting principles, including the following:

- (a) obligations incurred for labor, materials, services provided by contractors, builders and materialmen in connection with the construction, acquisition, and equipping of the Wastewater Management Facilities, machinery and equipment, for the restoration of property damaged or destroyed in connection with such construction and acquisition, for the demolition, removal or relocation of any structures and for the clearing of lands;

- (b) the cost of acquiring by purchase, and the amount of any award or final judgment in any proceeding to acquire by eminent domain, such land, structures and improvements, property, property rights, rights-of-way, franchises, easements and other interests in lands as may be deemed necessary or convenient in connection with such construction or operation of the Wastewater Management Facilities;

- (c) expenses of administration properly chargeable to such construction or acquisition; legal, architectural and engineering expenses and fees; fees and expenses of consultants; premiums of insurance in connection with construction; and all other items of expense not elsewhere in this Section specified that are incident to the financing, construction or acquisition of the Wastewater Management Facilities and the placing of the same in operation;

- (d) the costs of designing the Wastewater Management Facilities; and

- (e) expenses of obtaining permits for the construction and operation of the Wastewater Management Facilities, including required permits from the required State and federal agencies necessary to treat wastewater and discharge the effluent at the permitted point of discharge.

“Current Expenses” of a component of the Wastewater Management Facilities means the current expenses incurred by the Lead Agency for the operation, maintenance and repair of that

component, as determined in accordance with generally accepted accounting principles, except as modified by this definition, including, without limiting the generality of the foregoing,

- (a) all ordinary and usual expenses of operation, maintenance and repair, which may include expenses not annually recurring,
- (b) direct administrative expenses,
- (c) salaries and other compensation,
- (d) operating lease payments,
- (e) payments to any pension or retirement plan or plans properly chargeable to the Wastewater Management Facilities,
- (f) insurance premiums and expenses,
- (g) engineering and architectural expenses relating to the operation, maintenance or repair of the Wastewater Management Facilities, and
- (h) any other similar-type current expenses required to be paid by the Lead Agency by law;

but Current Expenses shall not include

- (a) any reserves for extraordinary replacements or repairs,
- (b) any allowance for depreciation.

“Fiscal Year” means the period commencing on the first day of July of any year and ending on the last day of June of the following year.

“Fixed Current Expenses” means that portion of the Current Expenses of a component of the Wastewater Management Facilities for a given period of time that would remain constant regardless of the quantity, quality or characteristics of the wastewater treated or conveyed during that period. Examples of Fixed Current Expenses include, but are not limited to, administrative expenses, salaries and other compensation, operating lease payments, insurance premiums and expenses and fees and expenses incurred in maintaining permits after their initial issuance for the operation of the Wastewater Management Facilities.

“Land Costs and Preliminary Work Agreement” means the agreement among the Project Partners entitled “Interlocal Agreement for Regional Wastewater Management Facilities Land Acquisition and Preliminary Work,” dated as of July 28, 2004, as amended by Amendment No. 1 thereto dated January 26, 2005

“Lead Agency” means Cary, in its capacity as the lead agency for purposes of managing the planning, designing, permitting and initial construction of the Wastewater Management

Facilities, the operation of the Wastewater Management Facilities and the planning, permitting and construction of any capital additions to the Wastewater Management Facilities.

“Preliminary Work” has the meaning set forth in the Land Costs and Preliminary Work Agreement, which is as follows:

“Preliminary Work: The tasks to be completed under the [Land Costs and Preliminary Work Agreement], exclusive of land acquisition, which are 1) preparation of an [environment impact statement] and [site plan required for environmental approvals, or “201 Facilities Plan”], including preliminary engineering, 2) preparation of interlocal agreements necessary to accomplish final design and construction and specifying how the facilities will be owned and operated, 3) preparation of loan application documents for the [SRF Loan] and 4) preparation of an NPDES discharge permit application and supporting documents.”

“Raw Wastewater Pumping and Conveyance Facilities” means the facilities for the conveyance of collected raw wastewater from Apex, Morrisville and Cary to the Water Reclamation Facility, all as more fully described and mapped in Exhibit A, including the West Cary Pump Station, force mains between the West Cary Pump Station and the Beaver Creek Pump Station, gravity sewer between the West Cary Pump Station and the Beaver Creek Pump Station, the Beaver Creek Pump Station and force mains between the Beaver Creek Pump Station and the Water Reclamation Facility, including, in each case, easements and other real property interests required for the installation of mains and lines, and related equipment and machinery.

“Service Agreement” means each agreement entered into between Cary, as the Lead Agency, on the one hand, and Apex, Morrisville or Holly Springs, on the other hand, setting forth the terms, conditions, standards, and activities to be conducted by the Lead Agency in carrying out the day to day plant operations, as more fully described in Section 3.5 with respect to the wastewater to be treated or conveyed for that Project Partner. The final Service Agreements are expected to be in substantially the forms set forth as Exhibits B, C and D hereto.

“Site” means the site approved by the State of North Carolina and described in the final version of Exhibit A, upon which the Water Reclamation Facility and the pumping station portion of the Treated Effluent Pumping and Conveyance Facilities will be constructed and operated.

“SRF Loan” means the \$5,000,000 loan incurred by the Lead Agency from the State of North Carolina in order to finance certain of the costs of the Preliminary Work and the cost of design of the Water Reclamation Facility.

“Treated Effluent Pumping and Conveyance Facilities” means the facilities constructed to convey the treated effluent from the Water Reclamation Facility and from Holly Springs, including the pumping facilities to be located at the Site, mains and lines, easements and other real property interests required for the installation of mains and lines, and related equipment and machinery, all as more fully set forth in Exhibit A hereto.

“Variable Current Expenses” means that portion of the Current Expenses of a component of the Wastewater Management Facilities for a given period of time that varies based upon the quantity, quality or characteristics of the wastewater treated or conveyed during that period. Examples of Variable Current Expenses include, but are not limited to, electricity costs and chemical costs.

“Wastewater Management Facilities” means, collectively, the Raw Wastewater Pumping and Conveyance Facilities, the Water Reclamation Facility, and the Treated Effluent Pumping and Conveyance Facilities. The general components, geographic locations, design criteria, expected permitted capacities and other descriptions of the planned Wastewater Management Facilities are identified in Exhibit A attached hereto and are shown in the map included in Exhibit A.

“Water Reclamation Facility” means the 18 million gallon per day Western Wake Water Reclamation Facility described and shown in Exhibit A, to be located at the Site, at which the wastewater delivered by Apex, Cary and Morrisville will be treated for ultimate discharge through the Treated Effluent Pumping and Conveyance Facilities.

“West Cary Pump Station” means the pumping station identified as such in Exhibit A hereto, which is designed to pump raw wastewater received from Cary and Morrisville.

Section 1.2. Rules of Interpretation. (a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words used herein shall include the plural as well as the singular number.

(b) References herein to particular articles or sections are references to articles or sections of this Agreement unless some other reference is indicated.

(c) References herein to specific sections or chapters of the General Statutes of North Carolina or to specific legislative acts are intended to be references to these sections, chapters or acts as amended and as they may be amended from time to time by the General Assembly of North Carolina, or any successor statute.

(d) The reiteration in this Agreement of a provision of the Land Costs and Preliminary Work Agreement does not imply that the other provisions of the Land Costs and Preliminary Work Agreement are not still applicable.

ARTICLE 2

ALLOCATIONS OF COSTS AND PAYMENTS

Section 2.1. Allocation of Costs in General. (a) It is the intent of the parties hereto to set forth the understandings of the parties as to the responsibilities among the parties for the Capital Costs and Current Expenses properly allocable to the components of the Wastewater Management Facilities, consisting of the Raw Wastewater Pumping and Conveyance Facilities, the Water Reclamation Facility and the Treated Effluent Pumping and Conveyance Facilities, based on a proportional share of that party's right to the use and actual use of those facilities as herein provided. In general, Capital Costs allocations are based upon the capacities required by each party to meet its needs through 2020, subject, however, to the terms hereof and the terms of the Land Costs and Preliminary Work Agreement.

(b) The Lead Agency shall establish such record keeping and accounting systems as shall be necessary to enable the Lead Agency, as near as shall be practicable, to account properly for all Capital Costs and Current Expenses allocable to the components of the Wastewater Management Facilities. Further, the Lead Agency shall establish such record keeping and accounting systems as shall be necessary to enable the Lead Agency, as near as shall be practicable, to properly identify and categorize the Current Expenses allocable to any component of the Wastewater Management Facilities as Fixed Current Expenses and Variable Current Expenses.

(c) The Lead Agency shall permit each of the parties hereto to conduct such inspections and reviews as such party, in its sole discretion, deems necessary to assure that all Capital Costs and Current Expenses are properly allocated as provided in this Section.

Section 2.2. Payment of Capital Costs; Land Costs and Preliminary Work Cost Agreement; Allocation of Additional Land Costs; Modification of the Land Costs and Preliminary Work Agreement for West Cary Pump Station. (a) Except as provided in subsection (b) below and Section 2.4 below, the Capital Costs of each of the components of the Raw Wastewater Pumping and Conveyance Facilities and the Water Reclamation Facility shall be allocated to and borne by Apex, Cary and Morrisville, as the case may be, in accordance with the respective party's entitlement to capacity of such facilities in accordance with Section 4.1 below. Except as provided in subsection (b) below and Section 2.4 below, the Capital Costs of the Treated Effluent Pumping and Conveyance Facilities shall be allocated to and borne by Apex, Cary, Holly Springs and Morrisville in accordance with the respective party's entitlement to capacity of such facilities in accordance with Section 4.1 below. Except as hereinafter provided, the Capital Costs shall be allocated based upon the capacity entitlement at the time the Capital Costs is paid by the Lead Agency.

(b) The parties hereto have previously entered into the Land Costs and Preliminary Work Agreement, which addresses, among other matters, the allocation of costs of the Site, the sites of the raw wastewater pumping stations and the Preliminary Work. Except as hereinafter provided, it is the intention of the Project Partners that the Land Costs and Preliminary Work Agreement shall remain in full force and effect with respect to the matters covered thereby, and this Agreement is intended to address the allocation of Capital Costs of the Wastewater Management

Facilities among the Project Partners that are not covered by the Land Costs and Preliminary Work Agreement. To this end, to the extent that a payment constitutes an expenditure for costs of Preliminary Work, as defined in the Land Costs and Preliminary Work Agreement, or the cost of land acquisition for the Site or the sites of the raw wastewater pumping stations, such costs shall be shared among the Project Partners in accordance with the Land Costs and Preliminary Work Agreement, notwithstanding that such payments may constitute a Capital Cost of the Wastewater Management Facilities as herein defined.

The land costs addressed by the Land Costs and Preliminary Work Agreement addressed only the costs of the Site and the sites of the raw wastewater pumping stations. It is the intent that the costs of land and interests therein required for the conveyance of wastewater and treated effluent be shared among the Project Partners in the same manner as the cost of the land required for the pumping stations and Water Reclamation Facility (rather than in accordance with the percentages of capacity entitlements of the Project Partners in such various components), except as otherwise provided herein. To this end, the parties hereby further agree that:

(1) Payment of the costs for land or interests therein required for the force mains between the West Cary Pump Station and the Beaver Creek Pump Station, gravity sewer between the West Cary Pump Station and the Beaver Creek Pump Station, and the force mains between the Beaver Creek Pump Station and the Water Reclamation Facility shall be allocated to and borne by Apex, Cary and Morrisville, as the case may be, in accordance with the percentages for cost allocations specified in Exhibit A and Table A-6 included therein.

(2) Payment of the costs for land or interests therein required for the force mains and outfall structure included in the Treated Effluent Pumping and Conveyance Facilities shall be allocated to and borne by Apex, Cary, Holly Springs and Morrisville, as the case may be, in accordance with the respective party's projected capacity and cost allocation for Effluent Pump Station (EPS) Land Cost as presented in the Land Costs and Preliminary Work Agreement. The percentages for cost allocations and the expected costs are summarized in Exhibit A.

Payment of the costs for land or interests therein required for the West Cary Pump Station were allocated among Apex, Cary and Morrisville in the Land Costs and Preliminary Work Agreement as part of the raw wastewater pumping station (RWPS) facilities. Engineering studies done during the Preliminary Work have resulted in an agreement among Apex, Cary and Morrisville that it is more cost-effective for Apex to pump its raw wastewater to the gravity sewer between the West Cary Pump Station and the Beaver Creek Pump Station. Therefore, notwithstanding any other provisions of this Agreement, Apex will not use the West Cary Pump Station or the West Cary Pump Station Force Main and Apex will not share in or be obligated to pay any portion of the costs of the land acquisition for either of those facilities. As a result, the parties hereby agree to modify the terms of the Land Costs and Preliminary Work Agreement as follows:

(1) The allocation of costs for RWPS as defined in Tables A-1 and A-2 in the Land Costs and Preliminary Work Agreement do not apply to the cost of land for the West Cary Pump Station.

(2) The allocation of costs for the West Cary Pump Station will be as set forth in the table below. This table also presents the revised estimated costs for each partner for the land acquisition for the raw wastewater pump stations , along with the original estimates presented in Table A-2 of the Land Costs and Preliminary Work Agreement for comparison purposes.

Municipal Party	West Cary Pump Station Pro-Rata Share of Cost For Each Party	West Cary Pump Station	Revised Estimated RWPS Land Cost (excluding WCPS)	Original Estimated RWPS Land Cost (from Table A-2)	Revised Estimated Total of RWPS (including WCPS Land Costs)
Apex	0.00%	0	\$201,000	\$340,000	\$201,000
Cary	87.5%	\$350,000	\$332,000	\$561,000	\$682,000
Holly Springs	0.00%	0	0	0	0
Morrisville	12.5%	\$50,000	\$47,000	\$79,000	\$97,000
Total	100.0%	\$400,000	\$580,000	\$980,000	\$980,000

(3) Actual land acquisition costs for the raw wastewater pump stations will be based on the pro-rata percentage shares applicable to each party, applied to actual land acquisition costs.

(c) From time to time, and in sufficient time to enable each Project Partner to arrange financing for its share of the Capital Costs of the Wastewater Management Facilities, the Lead Agency shall provide to each of the Project Partners its best estimate of the expected Capital Costs of the initial components of the Wastewater Management Facilities and of that Project Partner's share of those initial costs. In addition, in connection with any improvement to the Wastewater Management Facilities, whether to increase capacity or otherwise, the Lead Agency shall provide its best estimate to each of the Project Partners of their share of the Capital Costs of the improvement to provide it with a reasonable period of time to arrange for the financing of their share of the Capital Cost. The Project Partners hereby acknowledge that the amount so provided shall be an estimate only based upon the information then available to the Lead Agency, and that all Capital Costs, whether less than or greater than the estimate, are to be allocated to and borne by the Project Partners as set forth in this Agreement.

(d) Each Project Partner shall be responsible for the payment of its respective share of the Capital Costs of the Wastewater Management Facilities as the same shall be incurred by the Lead Agency, except as provided in subsection (f) below regarding the West Cary Pump Station. Except as provided in subsection (e) below, as the Lead Agency incurs expenses for the Capital Costs of the Wastewater Management Facilities, the Lead Agency shall submit statements from time to time, but no more often than bi-weekly, to each of the Project Partners of their share, if any, of the Capital Costs. Each Project Partner shall, within 30 days of receipt of the statement, make payment in the amount of the statement to the Lead Agency. If a Project Partner disagrees

with any expense allocated to it, it may notify the Lead Agency of the disagreement and request a review and that an adjustment be made, but shall make the required payment to the Lead Agency pending the resolution of the disagreement. Payments for costs covered by the Land Costs and Preliminary Work Agreement shall be due and payable in accordance therewith.

(e) The Lead Agency has previously incurred the SRF Loan in the amount of \$5,000,000 from the State of North Carolina. Copies of the loan documentation relating to the SRF Loan have previously been made available to all the Project Partners. Approximately \$1,500,000 of the proceeds of the SRF Loan will be applied to pay a portion of the Preliminary Work, which costs are covered by the Land Costs and Preliminary Work Agreement. The balance of the proceeds of the SRF Loan (approximately \$3,500,000), will be applied to pay a portion of the design cost of the Water Reclamation Facility, which costs are "Capital Costs" of the Water Reclamation Facility.

The Lead Agency shall maintain records of the use of the proceeds of the SRF so that the total proceeds may be allocated between the Preliminary Work and the design of the Water Reclamation Facility. Each payment of debt service with respect to the SRF Loan shall be allocated *pro rata* to the component of the SRF Loan incurred for the Preliminary Work and to the component incurred for design of the Water Reclamation Facility. Payments of the portion allocable to the Preliminary Work shall be allocated among the Project Partners in accordance with the Land Costs and Preliminary Work Agreement. Payment of the portion allocable to the design of the Water Reclamation Facility shall be allocated among Apex, Cary and Morrisville in accordance with their entitlements to capacity of the Water Reclamation Facility as provided in Section 4.1 and Exhibit A.

The Lead Agency shall provide to each of the Project Partners a schedule of the debt service payments due on the SRF Loan and of their portion of that debt service. On or before each date the Lead Agency is obligated to make a payment on the SRF Loan, each Project Partner will make a payment to the Lead Agency of the portion of the SRF Loan Payment due from that Project Partner, without further notice, demand, request or other action by the Lead Agency to the Project Partner.

(f) The West Cary Pump Station is to be used by Cary on an interim basis before 2011 for pumping wastewater from Cary to Durham County. The West Cary Pump Station will later be modified for use by Cary and Morrisville to pump wastewater to the Water Reclamation Facility. Cary is therefore incurring some of the costs allocable to the West Cary Pump Station, as described in Exhibit A, earlier than would otherwise be needed. Morrisville shall be responsible for the payment of its respective share of the Capital Costs of the West Cary Pump Station at the time that the first costs for modifying the West Cary Pump Station for use by both Cary and Morrisville in 2011 are incurred.

Section 2.3. Payment of Current Expenses. (a) The Fixed Current Expenses of the components of the Raw Wastewater Pumping and Conveyance Facilities and the Water Reclamation Facility shall be allocated to and borne by Apex, Cary and Morrisville, as the case may be, in accordance with the respective party's entitlement to capacity of such facilities in accordance with Section 4.1 below. The Fixed Current Expenses of the Treated Effluent Pumping and Conveyance Facilities shall be allocated to and borne by Apex, Cary, Holly

Springs and Morrisville in accordance with the respective party's entitlement to capacity of such facilities in accordance with Section 4.1 below. The Fixed Current Expenses shall be allocated based upon the capacity entitlement at the time the Fixed Current Expenses is incurred by the Lead Agency.

(b) The Variable Current Expenses of the various components of the Raw Wastewater Pumping and Conveyance Facilities, the Water Reclamation Facility and the Treated Effluent Pumping and Conveyance Facilities shall be allocated to and borne by Apex, Cary, Holly Springs and Morrisville in accordance with their proportionate use of the conveyance or treatment facilities that result in the incurrence of the Variable Current Expense. The Lead Agency shall apply such methodologies for assessing variable Current Expenses to the Project Partners as shall be reasonable in order that the Variable Current Expenses will be fairly assessed to the Project Partner causing the incurrence of the Variable Current Expense.

(c) Each Project Partner shall be responsible for the payment of its respective share of the Current Expenses of the Wastewater Management Facilities as the same shall be incurred by the Lead Agency. As the Lead Agency incurs costs that result in the incurrence of the Current Expense of the Wastewater Management Facilities, the Lead Agency shall submit statements from time to time, but no more often than bi-weekly, or as may be agreed by separate agreement, to each of the Project Partners of their share, if any, of the Current Expenses. Each Project Partner shall, within 30 days of receipt of the statement, make payment in the amount of the statement to the Lead Agency. If a Project Partner disagrees with any expense allocated to it, it may notify the Lead Agency of the disagreement and request a review and that an adjustment be made, but shall make the required payment to the Lead Agency pending the resolution of the disagreement.

Section 2.4. Special Assessments. The allocations of the Capital Costs of the Wastewater Management Facilities pursuant to Section 2.2, and the allocations of Current Expenses pursuant to Section 2.3, are intended to facilitate a sharing of the costs of construction and operation of the Wastewater Management Facilities based upon (i) the entitlement to use and use of the facilities by the respective Project Partners and (ii) the assumption that the unit-costs of providing and delivering the services of the Wastewater Management Facilities will be the same for all the Project Partners. The parties acknowledge that under certain circumstances the cost of such services to collect, convey and treat wastewater with certain characteristics will be more expensive than for other types of wastewater and that the additional costs should be borne by the party that generates the wastewater that is more expensive to treat and convey.

In the event that any special or additional apparatus, equipment or component is required to be included in any component of the Wastewater Management Facilities, or if any additional Current Expenses are incurred by the Wastewater Management Facilities, on account of the characteristics of the wastewater or treated effluent of one specific Project Partner (such as additional systems to treat wastewater resulting from heavy industrial use or wastewater contaminated by infiltration and inflow or additional facilities or expenses to convey treated effluent on account of the volume from one Partner), then the Lead Agency shall levy a special assessment upon the Project Partner (including the Lead Agency, if applicable) responsible for the delivery of the wastewater or treated effluent requiring the special facilities or additional

Current Expenses so that only that party is responsible for the additional Capital Costs or Current Expenses.

Section 2.5. Annual Audit. The Lead Agency shall arrange for an independent accounting firm (which may be the independent accounting firm that audits the books and records of the Lead Agency) to review the books and records for the Wastewater Management Facilities and provide a report to the Project Partners that shall indicate whether the Capital Costs and Current Expenses allocated to each Project Partner during the prior year are in accordance with generally accepted accounting principles. Such report may be included in the Comprehensive Annual Financial Report of the Lead Agency, so long as the Comprehensive Annual Financial Report includes sufficient detail to provide the information required by this section.

Section 2.6 Termination of Obligations Prior to Commencement of Construction. (a) Prior to the issuance of an authorization to construct by the Lead Agency for the construction of the Wastewater Management Facilities, any Project Partner (a "Withdrawing Project Partner") may elect to terminate its obligations under this Agreement by giving written notice to the other Project Partners, provided, however, that the Withdrawing Project Partner shall be responsible for its share of all costs, direct and indirect, incurred by the Project Partners under this Agreement prior to the time of termination. In addition, the Withdrawing Project Partner shall be responsible for all costs, direct and indirect, associated with any redesign of the Wastewater Management Facilities to accommodate the initial smaller capacities required following the Withdrawing Project Partner's termination of its obligations hereunder and discontinued participation in the use of the Wastewater Management Facilities. Such costs shall include any additional costs incurred to minimize any delay in the initiation of construction caused by any resulting redesign of the Wastewater Management Facilities and shall also include additional costs that may be incurred on account of delays in construction pending redesign of the Wastewater Management Facilities.

(b) To the extent that it is not possible to redesign all of the Wastewater Management Facilities to accommodate the smaller initial capacities such that construction of the Wastewater Management Facilities can be scheduled for completion in time to enable Apex, Cary and Morrisville to meet the requirements of the North Carolina Environmental Management Commission that by January 1, 2011 Apex, Cary and Morrisville shall be returning treated wastewater to the Cape Fear River Basin, then the Wastewater Management Facilities shall be redesigned to the extent practicable while still meeting said January 1, 2011 deadline, and the Withdrawing Project Partner shall be responsible for its share of the cost of construction of the portion of the Wastewater Management Facilities that are not redesigned. The Withdrawing Project Partner shall not be entitled to the use of the Wastewater Management Facilities constructed (notwithstanding its payment of a portion of the costs thereof), nor shall it be responsible for any Current Expenses associated with the operation of the Wastewater Management Facilities. The Withdrawing Partner shall convey its interest in the Wastewater Management Facilities to the remaining Project Partners pursuant to Section 6.2. Notwithstanding the conveyance by the Withdrawing Partner of its ownership interests in the Wastewater Management Facilities, the remaining Project Partners shall not be entitled to the use of the capacity thereof, and such capacity shall not be utilized on a continuous basis, until the

remaining Project Partners reimburse the Withdrawing Partner for the actual costs paid for such capacity as provided in Section 2.6(c).

(c) In the event that (1) one of the Project Partners terminates its further obligations hereunder as described in the second preceding paragraph, (2) some portion of the Wastewater Management Facilities are not redesigned for a smaller size as described in the preceding paragraph, and (3) any of the remaining Project Partners subsequently and continuously (e.g. not on account of an isolated incident not expected to recur, such as a one-time usage following a major storm) utilize the unused capacity attributable to the Wastewater Management Facilities paid for by the Withdrawing Project Partner, then within 90 days of such increased utilization the Project Partners making use of the excess capacity shall reimburse the Withdrawing Project Partner for the actual amounts paid by the Withdrawing Project Partner for the construction of the portion of the Wastewater Management Facilities to be so utilized. If more than one remaining Project Partner uses the excess capacity, the reimbursement shall be shared between them in proportion to their relative excess capacities in the relevant component. The parties to this Agreement agree that the unused capacity constructed and paid for by the Withdrawing Partner must be utilized (and the costs thereof reimbursed to the Withdrawing Partner) before any additional construction or alteration is undertaken to expand the capacity of the component of the Wastewater Management Facilities that has the unused capacity. If more than one of the remaining Project Partners desire to use the unused capacity, then the capacity shall be shared between them in proportion to their relative entitlement to capacity in the relevant component.

(d) If a Project Partner terminates its obligations under this Agreement as provided in Section 2.6(a), the remaining Project Partners shall conduct discussions in good faith with the Withdrawing Partner regarding the extent, if any, that it would be appropriate to reimburse the Withdrawing Partner for costs of the Wastewater Management Facilities paid by the Withdrawing Partner pursuant to this Agreement prior to the time of termination. This agreement to conduct good faith discussions shall not impose upon the remaining Project Partners any obligation to agree to reimburse any such costs and the determination by the remaining Project Partners as to whether to reimburse or not reimburse such costs shall be final. The provisions of this Section 2.6(d) regarding discussions on the subject of costs paid prior to termination shall not in any way affect or alter the operation of the provisions of Section 2.6(c) regarding the right to reimbursement to a Withdrawing Project Partner for costs of construction of the Wastewater Management Facilities paid by a Withdrawing Partner pursuant to Section 2.6(b).

ARTICLE 3

CONSTRUCTION AND OPERATION OF THE WASTEWATER MANAGEMENT FACILITIES

Section 3.1. Construction of the Wastewater Management Facilities. (a) The Lead Agency shall be solely responsible for the procurement of design and construction of the initial Wastewater Management Facilities and all modifications and improvements thereto permitted hereby. The Lead Agency shall enter into one or more contracts or purchase orders providing for the design, construction and renovation of the Wastewater Management Facilities, and shall cause the design, construction and renovation of the Wastewater Management Facilities to be carried on expeditiously in accordance with the plans and specifications and in compliance with all applicable ordinances and statutes and requirements of all regularly constituted authorities having jurisdiction over the same. The Lead Agency shall require each contractor for the construction of the Wastewater Management Facilities to provide performance and labor and materials payment bonds in an amount not less than the amount of the respective contract.

(b) After the Lead Agency has entered into contracts or purchase orders providing for the design and construction of the initial Wastewater Management Facilities, the Lead Agency shall advise each Project Partner of the total expected initial Capital Costs of the Wastewater Management Facilities and of such Project Partner's share of the initial Capital Costs. Prior to the Lead Agency's approving any change order that, together with any other change orders previously approved, if any, results in an increase in the aggregate initial Capital Costs to any Project Partner of its share of any component of the Wastewater Management Facilities by more than five percent (5%), the Lead Agency shall cause the Town Manager of the Lead Agency to consult with the Town Manager of the affected Project Partner, advising the affected Project Partner of the amount of and the reasons for the increase in its share of the Capital Costs.

(c) During the design and construction of the initial Wastewater Management Facilities, the Lead Agency shall make reasonable efforts to inform all the Project Partners fully of the progress of design and construction of the Wastewater Management Facilities. During the design and construction of the initial Wastewater Management Facilities, and during any modifications or improvements thereto, in addition to the meetings of the Advisory Committees required by Section 5.1 and Section 5.2 and any meetings of the Town Managers required by the preceding paragraph, the Lead Agency shall provide the Project Partners with a monthly written report (which may be distributed electronically) that shall include relevant information regarding the design and construction of the facilities. Such report shall include information on the status of design and construction progress, current and future budget and payment schedule estimates, scheduling updates and other relevant information. The Project Partners shall have full access, at reasonable times and in a reasonable manner, to the documents, contracts and sites related to the design and construction of the Wastewater Management Facilities. The Project Partners shall have full access, at reasonable times and in a reasonable manner, to the consultants and contractors retained to assist with the design and construction of the Wastewater Management Facilities.

(d) The Lead Agency shall be the party responsible for attempting to obtain all permits and other governmental approvals necessary for the construction and operation of the

Wastewater Management Facilities, and shall take such actions as shall be necessary to obtain such permits from the appropriate governmental bodies. In the application to the North Carolina Department of Environment and Natural Resources for a National Pollutant Discharge Elimination System (NPDES) permit for the Water Reclamation Facility, the parties shall name Apex, Cary and Morrisville individually in the NPDES permit, with individual capacities, while at the same time recognizing that Cary is the lead agency responsible for operation of the Water Reclamation Facility according to the permit conditions. It is hereby acknowledged that Holly Springs will be responsible for obtaining any required permits to discharge treated effluent delivered by Holly Springs to the Treated Effluent Pumping and Conveyance Facilities for ultimate discharge. Pursuant to the Land Costs and Preliminary Work Agreement, Apex, Cary and Morrisville shall approve the NPDES permit application for the Water Reclamation Facility prior to submission by the Lead Agency to the State of North Carolina. Approval shall be made by each such Project Partner by a notice from the Town Manager in writing within fourteen (14) business days after the submission of the proposed application to Apex, Cary and Morrisville by the Lead Agency. Approval of the NPDES permit application shall not be unreasonably withheld.

(e) It is the intent and expectation of the parties hereto that the Wastewater Management Facilities shall be designed and constructed to meet the specifications and criteria therefor (and related cost estimates) described in Exhibit A. In the event that applicable governmental authorities responsible for issuing permits for the construction and operation of the Wastewater Management Facilities require conditions, restrictions or limitations that require changes in the specifications and criteria set forth in Exhibit A, Exhibit A shall be amended as necessary to reflect the Wastewater Management Facilities that can be constructed and operated in light of such conditions, restrictions or limitations. In the event that any change to Exhibit A pursuant to this subsection will result in an increase in the aggregate initial Capital Costs to any Project Partner of its of its share of any component of the Wastewater Management Facilities by more than five percent (5%), the provisions of Section 3.1(b) above shall be applicable.

Section 3.2. Operation of the Wastewater Management Facilities. (a) The Lead Agency shall be solely responsible for and entitled to the day to day operations of the Wastewater Management Facilities. The Lead Agency shall operate the Wastewater Management Facilities in an efficient and economical manner, maintain the properties constituting the Wastewater Management Facilities in good repair and in sound operating condition for so long as the same are necessary for the operation of the Wastewater Management Facilities, and comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body that are applicable to the Wastewater Management Facilities. Except as provided in Article V, the Lead Agency shall have sole responsibility for determining whether outside consultants shall be retained to render services with respect to the Wastewater Management Facilities and in determining which consultants shall be retained provided, however, nothing in this Agreement is intended to prevent any other Project Partner from retaining any consultant at that Project Partner's sole expense to advise such Project Partner as to matters related to the Wastewater Management Facilities. Additionally, such other Project Partner shall be entitled to full access, at reasonable times and in a reasonable manner, to the Wastewater Management Facilities, and documents related thereto, to review, observe or investigate any aspect of the operation of such facilities. The Project Partners shall be entitled to full access, at reasonable times and in a reasonable manner, to the consultants retained by the Lead Agency. In carrying

out this obligation, the standards for quality and cost the Lead Agency applies shall be comparable to the standards for quality and costs the Lead Agency applies to its other utility assets that are not jointly owned.

(b) At least quarterly, the Lead Agency shall provide the Project Partners with a report showing the data with respect to (1) the quantity, quality and characteristics of the raw wastewater delivered to the Wastewater Management Facilities by Apex, Cary and Morrisville, (2) the treatment functions of the Water Reclamation Facility, and (3) the quantity of the effluent delivered to the Treated Effluent and Conveyance System by Holly Springs, and any other data collected by the Lead Agency with respect to the quality or characteristics of the effluent delivered to the Treated Effluent and Conveyance System by Holly Springs (it being understood that initially the Lead Agency will only monitor the amount of dissolved oxygen in the Holly Springs effluent and being further understood that Holly Springs will be responsible for otherwise monitoring and complying with any treated effluent discharge limitations required of Holly Springs by applicable governmental authorities).

Section 3.3. Budgets and Covenant as to Current Expenses. The Lead Agency shall prepare the Annual Budget for each Fiscal Year and as expeditiously as possible shall provide each of the Project Partners with the Annual Budget. The Lead Agency shall endeavor to prepare and provide to each Project Partner by each March 15 a preliminary Annual Budget for the ensuing Fiscal Year. To the extent possible, the Lead Agency shall prepare the Annual Budget so that it will be possible to determine from such budget the Current Expenses for the Wastewater Management Facilities that will be allocable to each Project Partner during the Fiscal Year.

The Lead Agency shall also adopt a capital improvements budget for the Wastewater Management Facilities for each Fiscal Year which will show, in addition to such other matters as the Lead Agency may determine to include, the amount estimated by the Lead Agency to be necessary for the renovation, improvement, renewal or replacement of the Wastewater Management Facilities, whether the same are to be commenced, continued or completed during such Fiscal Year or thereafter. The Capital Improvements Budget may be part of the Annual Budget.

Section 3.4. Insurance; Uninsured Losses. (a) The Lead Agency covenants that it will maintain or cause to be maintained a practical insurance program, with reasonable terms, conditions, provisions and costs, which the Lead Agency determines (i) will afford adequate protection against loss caused by damage to or destruction of the Wastewater Management Facilities or any part thereof from any cause whatsoever and (ii) will include reasonable liability insurance on all of the Wastewater Management Facilities for bodily injury and property damage resulting from the construction or operation of the Wastewater Management Facilities. The cost of insurance is a Current Expense of the Water Reclamation Facility and shall be borne by the parties as set forth in Section 2.3.

(b) Any insurance coverage pursuant to this Section 3.4 may be subject to such deductible limitations as the Lead Agency shall deem appropriate, or may be pursuant to a program whereby the Project Partners "self-insure" against certain losses up to a stated loss amount, and retain excess coverage for losses in excess of that amount. The proceeds from

insurance shall be used to repair or rebuild the Wastewater Management Facilities or if it is determined not to repair or rebuild the same, then the proceeds shall be distributed to the Project Partners in proportion to their entitlement to capacity in the components of the facilities for which the proceeds were received.

(c) All such policies shall be for the benefit of the Lead Agency and the Project Partners, as named insureds, as their respective interests may appear, shall be made payable to the Lead Agency and shall remain with the Lead Agency, and the Lead Agency shall have the sole right to receive the proceeds of such insurance and to collect and receipt for claims thereunder. From time to time, the Lead Agency shall make available to the Project Partners a report listing the policies of insurance then outstanding and in force, the names of the companies issuing such insurance, the amounts and expiration date or dates of such insurance, the risks covered thereby.

(d) If for any reason there is an uninsured loss, whether resulting from losses less than the deductible amount or losses that are self insured by the Project Partners, lapses in coverage or otherwise, the cost of repairs or replacement shall be Capital Costs of the Wastewater Management Facilities and shall be borne by the parties as provided in Section 2.2.

Section 3.5. Service Agreement. As the Lead Agency, Cary will enter in to individual Service Agreements with Apex in substantially the form of Exhibit B hereto, with Morrisville in substantially the form of Exhibit C hereto and with Holly Springs in substantially the form of Exhibit D hereto. Each Service Agreement will set forth the specific terms for the operation of the Wastewater Management Facilities as such operation relates to the services the Wastewater Management Facilities will provide to that specific Project Partner, the limitations thereof, and as to the obligations of that specific Project Partner. Among other items, the Service Agreement may address the following with respect to the Project Partner joining in the Service Agreement with the Lead Agency:

(1) Technical restrictions on the quality of the wastewater that is delivered to the Water Reclamation Facility for treatment or conveyance;

(2) Any pretreatment requirements with respect to the wastewater to be delivered to the Water Reclamation Facility for treatment;

(3) Monitoring requirements with respect to the wastewater that is delivered to the Water Reclamation Facility for treatment or conveyance, including specifications on the type of monitoring equipment to be utilized, the schedule for monitoring sampling, the record-keeping and retention requirements; and agreements as to how to correct any violations;

(4) Agreements by which the Project Partner agrees to limit its flow to the Water Reclamation Facility to a rate below its capacity entitlement;

(5) Any special assessments levied by the Lead Agency pursuant to Section 2.4 or Section 4.3;

(6) Restrictions necessary to comply with the provisions of the NPDES Permit to be obtained for the Wastewater Management Facilities.

The parties hereto hereby acknowledge that certain of the technical provisions of the Service Agreements cannot be completed until final design of the facility has been completed and certain permits, containing any operating restrictions, have been issued. Each party hereto hereby agrees to negotiate in good faith to reach a final Service Agreement that reflects the party's expectations of the Wastewater Management Facilities as described in Exhibit A in light of any such technical restrictions.

Section 3.6. Liabilities, Indemnification and Contribution. (a) It is the intention of the parties hereto to accomplish the planning, designing, permitting, construction and operation of the Wastewater Management Facilities on a regionally cooperative basis such that the parties will achieve economies of scale from the construction and operation of one system, both in terms of Capital Costs and Current Expenses, while each of the parties will be responsible for its share of the costs and risks (both known and unknown) that might arise from the operation of the Wastewater Management Facilities. To this end, the parties agree as follows with respect to the costs and risks that may result from the ownership and operation of the Wastewater Management Facilities.

(b) In the event that any federal, State or local governmental entity determines that the operation of any component of the Wastewater Management Facilities has resulted in the violation of any applicable law, regulation, permit or other governmental restriction pertaining to the Wastewater Management Facilities, then the Lead Agency shall endeavor to determine the party responsible for the violation, and the responsible party shall take such action as shall be necessary to resolve the violation. If a Project Partner has been required to make a payment to any governmental authority in connection with a violation that is later determined to be the responsibility of another Project Partner, the responsible party shall indemnify and hold harmless the non-responsible party for the amount of such payment.

In the event that the Lead Agency is not able to ascertain the responsible party or parties, then the liability shall be shared among the Project Partners based upon each Project Partner's share of the Fixed Current Expenses of the Wastewater Management Facilities, determined as provided in Section 2.3. If a Project Partner has been required to make a payment to any governmental authority in connection with a violation and it is later determined that the source of the violation cannot be identified, the parties hereto shall make contributions to each other as necessary to share the liability in the manner provided in the preceding sentence.

ARTICLE 4

ENTITLEMENTS TO CAPACITY

Section 4.1 Initial Shares of the Wastewater Management Facilities.

(a) Exhibit A presents design criteria and capacities for each component of the Wastewater Management Facilities and shows the resulting initial capacities for each component for each party based on the percentage allocations. Initially, Apex, Cary, Holly Springs and Morrisville shall be entitled to the percentage of capacity of the individual components of the Wastewater Management Facilities set forth in Exhibit A. Exhibit A may be modified from time to time pursuant to the provisions of this Agreement.

(b) In the event that at any time the flow capacity or the treatment capacity of any component of the Wastewater Management Facilities is such that the maximum month or peak hourly flow capability is less than the amounts set forth above, the maximum month or peak hourly flow volumes per Project Partner shall be reduced during such time in proportion to the percentages of entitlements to the capacity set forth above. The initial percentages set forth above may be adjusted from time to time as permitted by this Agreement.

(c) The environmental documentation and application for an NPDES permit for the Water Reclamation Facility will be based on the 2030 expected needs for Apex, Cary and Morrisville, and will specify the capacity needed by each of them. As provided in Section 3.1(d) above, the application for an NPDES permit for the Water Reclamation Facility will request that the NPDES permit name Apex, Cary, and Morrisville individually in the permit. If the NPDES permit does not set forth the capacity allocated to each party in the permit, then (1) Apex, Cary and Morrisville hereby agree to allocate the total permitted discharge rate and pollutant load allocations among themselves according to the request for each party that is presented in the NPDES permit application and (2) Apex, Cary and Morrisville agree to treat the allocation to each party as belonging to that party, and each agrees to facilitate the others' exercise, use or conveyance of such allocations consistent with the terms of this Agreement.

(d) Except as hereinafter provided, Apex, Cary and Morrisville shall have access to the same initial pro-rata share of the maximum month pollutant loading capacity of the Water Reclamation Facility as is shown in Exhibit A for hydraulic capacity. Apex, Cary and Morrisville hereby acknowledge that there are some variations in the influent characteristics of their respective influent wastewater and there may be some variations from a pro rata share of the limitations for such loadings on a day-to-day basis. Analyses for each of Apex, Cary and Morrisville for the purposes of pollutant load allocations to significant industrial users will be prepared during the design process and will be set forth in the Service Agreements. The potential allocation of day-to-day pollutant load capacity or of capacity for significant industrial users on a basis other than share of hydraulic capacity is subject to the further agreement of Apex, Cary and Morrisville.

Section 4.2. Expansion of the Wastewater Management Facilities. (a) The capacity of the Wastewater Management Facilities may be increased at any time by mutual agreement among all the Project Partners pursuant to an amendment or supplement hereto. In such event,

the Capital Costs of the improvements and the Current Expenses from operations after the installation of the improvements shall be allocated as set forth in the amendment or supplement hereto.

(b) If there is not a mutual agreement among all of the Project Partners to increase the capacity of the Wastewater Management Facilities, any of Apex, Cary or Morrisville (or any two of them), may arrange for the modification or expansion of the Raw Wastewater Pumping and Conveyance Facilities or the Water Reclamation Facility, and any of the Project Partners (or any two or three of them) may arrange for the modification or expansion of the Treated Effluent Pumping and Conveyance Facilities, to increase the capacity thereof as provided in this Section 4.2. The parties agree that if any such expansion is undertaken without full agreement of all parties, that any such expansion shall in no way prejudice the ability of any party not participating in the expansion to expand to the non-participating party's "build out" capacity provided for in the Land Costs and Preliminary Work Agreement. Apex, Cary and Morrisville hereby agree that if any one or two of them arranges to expand the Water Reclamation Facility, such expansion will not exceed their allocated permitted discharge capacity (or combined capacity if more than one of them) as provided in Section 4.1(c). If any one, two or three of the Project Partners arranges to expand the Treated Effluent Conveyance Facilities, such expansion will not exceed the individual or combined capacity envisioned as the "buildout" capacity for the EPS facilities as documented in Table A-1 of the Land Costs and Preliminary Work Agreement.

The party intending to arrange for the increase in the capacity of a component of the Wastewater Management Facilities shall notify the Lead Agency and all other Project Partners of its request. Upon such request, the Lead Agency shall develop, as promptly as reasonably possible, at the expense of the party requesting the expansion, the plans and specifications required for the expansion. The Lead Agency shall be responsible for the supervision of all design, construction, acquisitions and installation of the expansion. Any such increase in capacity shall be procured in a manner so as not to interrupt the operation of the Wastewater Management Facilities and the services it provides to the other parties to this Agreement. The party or parties intending to cause the increase in the capacity shall pay all of the Capital Costs of the modifications to the Wastewater Management Facilities required for the increase in capacity.

Upon completion of such modifications, the party or parties arranging for the additional capacity shall be solely entitled to the use thereof, and Exhibit A shall be updated to reflect the new percentages of entitlement to the Wastewater Management Facilities. Thereafter, except as hereinafter provided, the Current Expenses for the operation of the Wastewater Management Facilities shall be allocated based upon the revised percentages, and otherwise in accordance with Section 2.3. If the expansion of the capacity of the Wastewater Management Facilities results in an increase in the overall Current Expenses such that an allocation based solely upon the percentage of ownership and use does not result in a fair sharing of the Current Expenses following the expansion (e.g., the increase in capacity results in a higher per unit Current Expense charge than would have been the case without the increase), the Lead Agency shall impose a special assessment to the party requiring the increase in capacity in order to allocate the Current Expenses following the increase in capacity more fairly in accordance with generally accepted accounting principles.

(c) Notwithstanding the foregoing, in the event that an expansion of the capacity of any of the Wastewater Management Facilities is undertaken pursuant to this Section 4.2 and in connection therewith the Lead Agency determines that other non-expansion additions and modifications to the existing Wastewater Management Facilities should be installed at the same time, then the Lead Agency may cause the installation at that time and the costs of the additions and modifications shall be allocated as provided in Section 2.2 (based upon capacity entitlements prior to the increase in capacity). The Lead Agency shall allocate the costs of the expansion and modification project so that the party requesting the expansion in capacity bears the Capital Costs of the expansion and the Project Partners bear the cost of the improvements and modifications to the existing facilities in accordance with their entitlements to the use of the capacity thereof.

Section 4.3. Sale of Capacity. (a) Subject to any restrictions imposed by law or permits with respect to wastewater that may be conveyed or treated by the Wastewater Management Facilities, any Project Partner may sell a portion of its allocated capacity to treatment or conveyance of wastewater or effluent to any other Project Partner or to any other political subdivision of the State for any price, for such duration and under any other conditions as shall be agreed upon by the buyer and seller. Except as provided in (b) below, notwithstanding such sale, the seller shall be responsible for the performance of its payment and other obligations hereunder as if such sale had not occurred (although it may have such rights and actions against the buyer as shall be negotiated among the parties).

(b) In addition to sales of capacity permitted by (a), and subject to any restrictions imposed by law or permits with respect to wastewater that may be conveyed or treated by the Wastewater Management Facilities, any Project Partner may enter into a permanent sale of all or a portion of its capacity to another Project Partner, thereby relieving the Project Partner from any responsibility to the other parties to this Agreement with respect to the capacity that is sold. If any Project Partner permanently sells capacity to another Project Partner as described in this subsection, the selling party shall provide notice to the other Project Partners of the sale and the amount of capacity so sold and that it elects to be relieved of any further responsibility with respect to the capacity that has been so sold. The release from further obligations under this Agreement shall only apply to obligations under this Agreement that arise after the date of the sale (and the selling Project Partner shall continue to be liable for obligations that arose prior to the date of sale). The Project Partner selling capacity shall transfer its ownership interest in the property related to the capacity to be sold (in an amount commensurate with the amount of capacity sold) to the transferee Project Partner pursuant to Section 6.2.

ARTICLE 5

ADVISORY COMMITTEES

Section 5.1. The Policy Advisory Committee. (a) A Policy Advisory Committee, consisting of the Mayors and Town Managers of Apex, Cary and Morrisville, or their designees, shall be created to advise the Lead Agency on all policy matters for the Wastewater Management Facilities and in the selection of outside consultants for major capital projects. With respect to matters that relate solely to the Treated Effluent Pumping and Conveyance Facilities, the Mayor and the Town Manager of Holly Springs will also be a member of the Policy Advisory Committee. The Mayor of any Town may designate the Town Manager as the Mayor's designee. The Policy Advisory Committee shall meet at least annually and may determine to meet more often as deemed necessary by the Policy Advisory Committee. The Policy Advisory Committee shall also meet upon the request of any Project Partner.

(b) Any recommendations made by the Policy Advisory Committee requiring a vote of the members will be made on the basis of one vote per Town. Apex, Cary and Morrisville shall be entitled to vote with respect to any matters regarding the Wastewater Management Facilities. Holly Springs shall be entitled to vote with respect to matters that relate solely to the Treated Effluent Pumping and Conveyance Facilities. A majority vote of the Policy Advisory Committee will be binding on the Lead Agency.

Section 5.2. The Technical Advisory Committees. A Technical Advisory Committee, consisting of the Town Managers of each Project Partner, or their designees, shall be created to advise the Lead Agency on technical matters for the Wastewater Management Facilities and the design, construction and management thereof. The Technical Advisory Committee shall be the point of contact between the Lead Agency and the Project Partners for purposes of conveying information regarding the planning, design, permitting, construction, operation and management of the Wastewater Management Facilities and any improvements thereto. In addition to the other information required to be provided to Project Partners by this Agreement, the Lead Agency shall make available to the Technical Advisory Committee such additional information as shall be requested or as shall otherwise be useful to the Technical Advisory Committee in advising the Lead Agency. During the initial construction of the Wastewater Management Facilities, the Technical Advisory Committee shall meet at least quarterly. After completion of initial construction, the Technical Advisory Committee shall meet at least annually and may determine to meet more often as deemed necessary by the Technical Advisory Committee. The Technical Advisory Committee shall also meet upon the request of any Project Partner.

ARTICLE 6

FINANCING; OWNERSHIP OF THE WASTEWATER MANAGEMENT FACILITIES

Section 6.1. Financing. Each party hereto shall be responsible for obtaining its own financing of its share of the Capital Costs and Current Expenses. Each party hereto shall be responsible for determining the method of financing it will pursue, whether by general obligation bonds, revenue bonds, installment contract financing, special obligation bonds or otherwise. The Project Partners shall cooperate generally in assisting the other Project Partners in arranging their financings.

The Project Partners hereby mutually acknowledge and agree that each of the Project Partners intends to finance all or some portion of its costs of the Wastewater Management Facilities with obligations the interest on which is not included in the gross income of the owners thereof for purposes of federal income taxation. The Project Partners hereby mutually covenant that none of them will take any action with respect to their ownership interest in the components of the Wastewater Management Facilities and their use of the capacity thereof that would jeopardize the exclusion of interest on obligations of another Project Partner from such gross income. Each Project Partner agrees to provide to any other Project Partner such certifications and other instruments as may be reasonably requested to evidence compliance with this covenant in connection with the issuance of debt or similar obligations by the other Project Partner.

Section 6.2 Ownership of Property. (a) Ownership of the different components of the Raw Wastewater Pumping and Conveyance Facilities, the Water Reclamation Facility and the Treated Effluent Pumping and Conveyance Facilities shall be held jointly by the respective Project Partners entitled to the capacity thereof as provided in Article 4. In each case, such ownership shall include ownership of all real property and interests therein (including easements in real property) and personal property. All ownership shall be as Tenants-in-Common. Initially, the percentage of ownership of each Project Partner in the respective facilities shall be based upon the capacity entitlements set forth in Exhibit A. The parties hereby agree to execute and deliver such deeds of conveyances or other instruments as shall be necessary in order that the percentage ownership of the property reflects the agreed upon ownership interests described in this Section.

(b) The Project Partners hereby affirm the election set forth in the Land Costs and Preliminary Work Agreement to waive all rights to partition of the jointly owned property for a period ending fifty years from the date of said agreement.

(c) In the event that the initial entitlements to capacity of the Project Partners set forth in Section 4.1 changes in accordance with Section 4.2 or Section 4.3, the parties hereby agree to convey among each other such percentage of their ownership interest such that each Project Partner's ownership interest in the real property associated with the Wastewater Management Facilities is commensurate with its entitlement to the capacity of the Wastewater Management Facilities.

(d) Each party hereto is hereby authorized to grant such mortgages, security interests, liens or other encumbrances with respect to its ownership interest (and solely its ownership interest) in the Wastewater Management Facilities or the revenues thereof or income therefrom in connection with its arranging for financing of its share of the costs hereunder. Any such mortgage or other security interest shall be made expressly subject to the rights of the other parties under this Agreement, including the waiver of the right of partition affirmed in this Section. The instrument creating the mortgage or other lien upon the Project Partner's interest in the property shall provide that upon the occurrence of any foreclosure or similar succession to ownership by a new party, the new owner will enter into an agreement with the parties hereto to carry out the obligations hereunder of the party selling or otherwise disposing of its interest.

ARTICLE 7

MISCELLANEOUS

Section 7.1. Amendments. This Agreement insofar as it relates to the design, construction, operation or sharing of costs of the Raw Wastewater Pumping and Conveyance Facilities or the Water Reclamation Facility may be amended by the mutual agreement of the governing bodies of Apex, Cary and Morrisville. This Agreement insofar as it relates to the design, construction, operation or sharing of costs of the Treated Effluent Pumping and Conveyance Facilities may be amended by the mutual agreement of the governing bodies of the Project Partners. Any amendment hereto shall be in writing.

Section 7.2. Duration. Subject to the provisions of Section 2.6 regarding the termination of obligations prior to the authorization to construct by the Lead Agency for the construction of the Wastewater Management Facilities, this Agreement shall be for an initial fifty (50) year period. Thereafter, this Agreement shall remain binding upon all of the parties hereto unless such party gives written notice to the other parties that it will discontinue its participation under this Agreement. Such notice shall be delivered to the other parties not less than five years from the date the party intends to discontinue its participation. Upon the termination by any party of its participation in this Agreement, such party will no longer be entitled to any capacity of the Wastewater Management Facilities and shall convey to the other parties its ownership interests in the real property as provided in Section 6.2. If a Project Partner withdraws from this Agreement, it shall continue to be liable to the other Project Partners for any obligations or liabilities that arose prior to the date of termination.

Section 7.3. Additional Parties. Except as provided for in Section 6.2, additional parties may be added to this Agreement only by mutual agreement of the parties hereto as evidenced by an amendment hereto.

Section 7.4. Middle Cape Fear River Basin Association. Cary, as the Lead Agency, shall obtain membership in the Middle Cape Fear River Basin Association and is hereby authorized by Apex and Morrisville to take such actions and agree to such conditions with respect to the Water Reclamation Facility in carrying out this membership as the Lead Agency shall find to be in the best interest of the Project Partners. Costs incurred by Cary as a member of the Association shall be Current Expenses of the Water Reclamation Facility pursuant to Section 2.3 hereof.

Section 7.5. Dispute Resolution. Any party to this Agreement may contest any decision by the Lead Agency to allocate certain costs or expenses pertaining to the Wastewater Management Facilities to that party. 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 to, this Agreement shall be subject to and decided by the appropriate general court of justice of Wake County, North Carolina.

Section 7.6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of each of the Project Partners and their respective successors and assigns. Whenever in this Agreement either a specific party is named or referred to, such reference shall be deemed to

include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of any party hereto shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 7.7. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.


Section 7.8. Execution in Counterparts. 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.

Section 7.9. Applicable Law. This Agreement shall be construed and governed in accordance with the laws of the State.

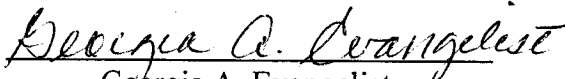
IN WITNESS WHEREOF, the parties hereto have executed and attested this Agreement by their duly authorized representatives as of the day and year first written above.

TOWN OF APEX, NORTH CAROLINA


[SEAL]

By 
Keith H. Weatherly
Mayor

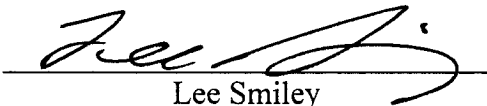
Attest:


Georgia A. Evangelist
Town Clerk

Approved as to form:


Henry C. Fordham, Jr., Esq.
Town Attorney

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


Lee Smiley
Finance Director

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA

COUNTY OF WAKE

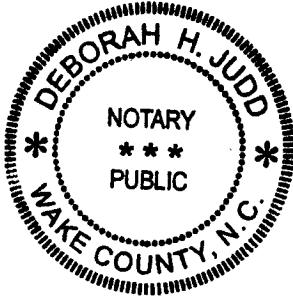
This 15TH day of August, 2005, personally came before me, a Notary Public in and for the said County and State, Georgia A. Evangelist, who, being by me duly sworn, says that she is the Town Clerk of the Town of Apex, North Carolina, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina and acting through its Board of Commissioners, and by authority duly given and as the act of said Town, the foregoing instrument was signed in its name by Keith H. Weatherly, as Mayor of said Town, sealed with its seal, and attested by herself as the Town Clerk.

WITNESS my hand and notarial seal this 15TH day of August, 2005

Deborah H. Judd
Notary Public

My commission expires:

June 20, 2007



[Counterpart signature page to Agreement for Western Wake Regional Wastewater Facilities]

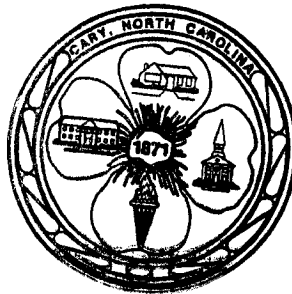
TOWN OF CARY, NORTH CAROLINA

[SEAL]

By: William B. Coleman, Jr.
William B. Coleman, Jr.
Town Manager

Attest:

Sue Rowland
Sue Rowland
Town Clerk



Approved as to form:

Christine B. Simpson
Christine Simpson, Esq.
Town Attorney

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

Karen A. Mills
Karen A. Mills
Finance Director

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA

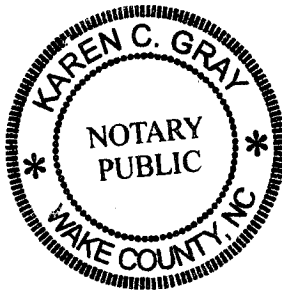
COUNTY OF WAKE

This 22 day of August, 2005, personally came before me, a Notary Public in and for the said County and State, Sue Rowland, who, being by me duly sworn, says that she is the Town Clerk of the Town of Cary, North Carolina, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina and acting through its Town Council, and by authority duly given and as the act of said Town, the foregoing instrument was signed in its name by William B. Coleman, Jr. as Town Manager said Town, sealed with its seal, and attested by herself as the Town Clerk.

WITNESS my hand and notarial seal this 22 day of August, 2005

My commission expires:

12/6/2006



Karen C. Gray
Notary Public

[Counterpart signature page to Agreement for Western Wake Regional Wastewater Facilities]



TOWN OF HOLLY SPRINGS, NORTH
CAROLINA

By: Richard G. Sears
Richard G. Sears
Mayor

Attest:

Joni Powell
Joni Powell
Town Clerk

Approved as to form:

John Schifano
John Schifano, Esq.
Town Attorney

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

Drew Holland
Drew Holland
Finance Director

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA

COUNTY OF WAKE

This 15 day of August, 2005, personally came before me, a Notary Public in and for the said County and State, Joni Powell, who, being by me duly sworn, says that she is the Town Clerk of the Town of Holly Springs, North Carolina, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina and acting through its Town Council, and by authority duly given and as the act of said Town, the foregoing instrument was signed in its name by Richard G. Sears, as Mayor of said Town, sealed with its seal, and attested by herself as the Town Clerk.

WITNESS my hand and notarial seal this 15 day of August, 2005

Linda R. Skye
Notary Public

My commission expires:

4-6-07

[Counterpart signature page to Agreement for Western Wake Regional Wastewater Facilities]



TOWN OF MORRISVILLE, NORTH CAROLINA

By: Gordon Cromwell
Gordon Cromwell
Mayor

Attest:

Jeanne Hooks
Jeanne Hooks
Town Clerk

Approved as to form:

Frank Gray
Frank Gray, Esq.
Town Attorney

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

Julia W. Ketchum
Julia W. Ketchum
Finance Director

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA

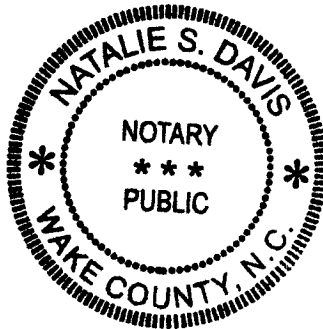
COUNTY OF WAKE

This 19th day of August, 2005, personally came before me, a Notary Public in and for the said County and State, Jeanne Hooks, who, being by me duly sworn, says that she is the Town Clerk of the Town of Morrisville, North Carolina, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina and acting through its Board of Commissioners, and by authority duly given and as the act of said Town, the foregoing instrument was signed in its name by Gordon Cromwell, as Mayor of said Town, sealed with its seal, and attested by herself as the Town Clerk.

WITNESS my hand and notarial seal this 19th day of August, 2005

My commission expires:

27 Aug 2007



Natalie Davis
Notary Public

The Interlocal Agreement was approved by each Western Wake Partner on the following date.

Town of Apex	August 2, 2005
Town of Cary	July 28, 2005
Town of Holly Springs	July 19, 2005
Town of Morrisville	July 25, 2005

Exhibit A
Project Scope Description
Western Wake Regional Wastewater Management Facilities

1.0 Project Description

The Phase I Western Wake Regional Wastewater Management Facilities are shown in Figures A-1 and A-2. The list of shared facilities includes the following:

- 1) West Cary Pump Station (PS)
- 2) West Cary Force Main – from West Cary PS to West Reedy Branch Gravity Sewer PS
- 3) West Reedy Branch Gravity Sewer – from West Cary Force Main to Beaver Creek PS
- 4) Beaver Creek PS
- 5) Beaver Creek Force Main – from Beaver Creek PS to Western Wake Water Reclamation Facility (WRF)
- 6) Western Wake WRF
- 7) Effluent Pump Station – located on the Western Wake WRF site
- 8) Effluent Pipeline and Outfall – from Effluent Pump Station to Cape Fear River below Buckhorn Dam

Wastewater from Cary, Morrisville, and RTP South will enter the system at the West Cary PS. Wastewater from Apex will enter the system at two points along the alignment of the West Reedy Branch Gravity Sewer between the West Cary Force Main and the Beaver Creek PS. The two points of entry for Apex will be along Reedy Branch and Beaver Creek. The Town of Holly Springs plans to continue to use its Utley Creek WRF to treat its wastewater, but the Town will share an outfall with the other communities to discharge Holly Springs' effluent to the Cape Fear River. Treated effluent from Holly Springs' Utley Creek WRF will enter the system at the Effluent Pump Station located at the Western Wake WRF.

Table A-1 summarizes the project components, their Phase 1 hydraulic capacity, capital costs, and land costs.

2.0 Project Partners' Flows and Facility Hydraulic Capacities

Table A-2 presents the Project Partners' projected maximum month flows, which have generally been used to size the facilities. The WRF is sized based on maximum month flows, the discharge is permitted based on maximum month flows, and pump stations and pipelines are sized based on peak hourly flow rates. The effluent pump station, pipeline and outfall are sized based on maximum month flows. Key assumptions that have been made for all partners is that maximum monthly flows are 1.18 times average annual flows, and that peak hourly flow rates are 3.1 times average annual flows. Water quality and loading considerations are discussed in Section 3.0.

Generally, the Phase 1 facilities are based on the partners' needs for 2020. However, consideration for 2030 needs has been included when planning the facilities and in the case of the West Reedy Branch Gravity Sewer, it will be more cost effective to build for 2030 needs in Phase 1 than to parallel the pipeline at a later date.

Table A-2

Flow Projections for Western Wake Regional Wastewater Management Facilities

Town	Maximum Month Flows (mgd)	
	2020	2030
Apex	6.2	9.9
Cary (including RTP South)	10.5	16.3
Holly Springs	6.0	8.28
Morrisville	1.5	2.3
Total	24.2	36.78

Table A-3 presents the partners' pro-rata cost shares and resulting hydraulic capacity in each facility. For the WRF, these pro-rata shares also represent each partners' share of pollutant loading capacity.

3.0 Western Wake WRF Pollutant Removal Capacity

The Western Wake WRF has been planned and will be designed to achieve compliance with NPDES permit limits for discharge to the Cape Fear River below Buckhorn Dam. Speculative effluent discharge limits were documented in a letter dated December 15, 2004 from the N.C. Division of Water Quality (NCDWQ) for two discharges - one from the Western Wake WRF and one from the Utley Creek WWTP. The two discharges will have compliance points upstream of where they join at the Treated Effluent Pump Station site for conveyance to the outfall to the Cape Fear River. The limits apply to a Western Wake WRF discharge rate of 30 mgd and an Utley Creek WWTP discharge rate of 8 mgd, or a total of 38 mgd, and the limits as they apply to the Western Wake WRF are summarized in Table A-4.

Table A-4

Speculative Limits for Western Wake Regional Water Reclamation Facility

Effluent Characteristics	Effluent Limitation			
	Monthly Average	Weekly Average	Daily Maximum	Seasonal Average (April - October)
Flow	30 MGD			
BOD ₅ , Summer	5.0 mg/L	7.5 mg/L		
BOD ₅ , Winter	10.0 mg/L	15.0 mg/L		
TSS	30.0 mg/L	45.0 mg/L		
NH ₃ as N, Summer	1.0 mg/L	3.0 mg/L		
NH ₃ as N, Winter	2.0 mg/L	6.0 mg/L		
DO ¹			6.0 mg/L	
TRC ⁴			28 ug/L	
Fecal coliform (geometric mean)	200 / 100 ml	400 / 100 ml		
TP ²				500 lb/day
TN ³				1501 lb/day

¹ Compliance for DO will be measured at the WRF compliance point and evaluated as a daily average concentration

² Limit based on 2 mg/L TP. For lower flow limits, limit would be based on 2 mg/L and the lower permitted flow

³ Limit based on 6 mg/L TN. For lower flow limits, limit would be based on 6 mg/L and the lower permitted flow

⁴ Limit to be applied only if chlorine is used for disinfection

The Western Wake WRF will provide treatment for raw wastewater flows from the western Cary service area and the western (Haw River) portion of the Apex service area. Wastewater flows from the western Cary service area include flows from the Wake County portion of Research Triangle Park (referred to as RTP South).

4.0 Capital Costs

Preliminary estimates of capital costs have been developed for the Western Wake Regional Wastewater Management Facilities. The cost for each project component and the allocation of

costs for each Project Partner for each facility, based on the pro-rata shares presented in Table A-3, are presented in Table A-5. These costs do not include land costs – those costs are addressed in Section 5.0.

The capital cost estimates include allowances for legal, financial, engineering, construction, and a 15 percent contingency for construction. Preliminary estimates are generally considered to have an accuracy of +20% to -10%. The accuracy of the capital cost estimates will increase as the project moves through the process from preliminary design to detailed design, and eventually to project bidding and actual construction.

Cost estimates developed for the Western Wake Regional Wastewater Management Facilities were prepared using cost curves, vendor quotes for equipment, previous cost estimates for similar projects and unit process equipment of similar size and/or complexity, historical data from comparable work, estimating guides, and handbooks. Final project construction costs at the time of bidding and award will depend on actual labor, materials and equipment costs; competitive market conditions; actual site conditions; final project scope; actual level of treatment required; implementation schedule; and other factors that cannot be quantified at the current level of detail.

The estimated capital costs were developed in fiscal year (FY) 2005 dollars. Where multiple construction phases were anticipated, construction costs were estimated in FY 2005 dollars and inflated to an estimated cost in the year of construction using an inflation rate of 3.5 percent. The 3.5 percent inflation rate for construction costs is consistent with the average rate of change in the ENR Construction Cost Index (ENR CCI) and Building Cost Index (ENR BCI) during the period from January 1980 to January 2004.

Portions of the West Cary PS are being constructed early to allow Cary to pump wastewater north to the Kit Creek PS prior to 2011. Capital costs shown in Table A-1 for the West Cary PS include \$4,943,000 in costs that will be incurred in fiscal years 2006 and 2007. The remainder of the cost (\$7,654,000) represents the cost (developed as described above) of modifying and expanding that pump station by 2011 to serve the project partners' needs through 2020.

5.0 Land Costs

Land costs for the West Cary Pump Station, Beaver Creek Pump Station, Western Wake WRF and Effluent Pump Station are shared among the partners according to the Land Costs and Preliminary Work Agreement, as further amended (for the West Cary Pump Station) in this Agreement. Land costs for the pipelines and the outfall structure will be shared as provided in this Agreement. Table A-6 presents the pro-rata land cost shares for the Wastewater Management Facilities.

6.0 Total Costs

Table A-7 summarizes total estimated project costs for each partner.

Table A-1: Phase 1 Project Component Capacities and Costs

Facility	Capacity (mgd) ¹	Capital Costs (including 3.5% annual inflation)	Land costs, this agreement	Subtotal, this agreement	Land Costs, previous agreement	Total Costs
West Cary PS ⁴	30.7 ²	\$ 12,597,000		\$ 12,597,000	\$ 400,000	\$ 12,997,000
West Cary Force Main	30.7 ²	\$ 8,589,000	\$ 99,000	\$ 8,688,000		\$ 8,688,000
West Reedy Branch Gravity Sewer	54.7 ²	\$ 7,429,000	\$ -	\$ 7,429,000		\$ 7,429,000
Beaver Creek PS	40.4 ²	\$ 20,774,000		\$ 20,774,000	\$ 580,000	\$ 21,354,000
Beaver Creek Force Main	42.7 ²	\$ 9,642,000	\$ 124,000	\$ 9,766,000		\$ 9,766,000
Western Wake WRF	18.0 ³	\$113,698,000		\$ 113,698,000	\$7,585,000	\$ 121,283,000
Effluent Pump Station	24.0 ³	\$ 10,062,000		\$ 10,062,000	\$1,235,000	\$ 11,297,000
Effluent Pipeline and Outfall	24.0 ³	\$ 37,378,000	\$ 1,323,000	\$ 38,701,000		\$ 38,701,000
		\$220,169,000	\$ 1,546,000	\$221,715,000	\$9,800,000	\$ 231,515,000

¹ Based on 2020 flows, except for West Reedy Branch Gravity Sewer which is based on 2030 flows
² Peak hourly flow rate
³ Maximum month flow rate
⁴ Includes \$4,943,000 for a portion of the regional facilities being built early by Cary prior to 2011, plus \$7,654,000 for expanding those facilities to meet the Project Partners' needs in 2011.

Table A-3: Phase 1 Pro-rata Shares and Capacity, Western Wake Regional Wastewater Management Facilities

Facility	Apex	Cary	Holly Springs	Morrisville	Total
West Cary PS					
Pro-rata Share (%)	0%	87.8%	0%	12.2%	100%
Hydraulic Capacity (mgd, peak hourly)	0	27.0	0	3.7	30.7
West Cary Force Main					
Pro-rata Share (%)	0%	87.8%	0%	12.2%	100%
Hydraulic Capacity (mgd, peak hourly)	0	27.0	0	3.7	30.7
West Reedy Branch Gravity Sewer ¹					
Pro-rata Share (%)	10.6%	78.2%	0%	11.2%	100%
Hydraulic Capacity (mgd, peak hourly)	5.8	42.8	0	6.1	54.7
Beaver Creek PS					
Pro-rata Share (%)	22.0%	68.6%	0%	9.4%	100%
Hydraulic Capacity (mgd, peak hourly)	8.9	27.7	0	3.8	40.4
Beaver Creek Force Main					
Pro-rata Share (%)	26.2%	64.9%	0%	8.9%	100%
Hydraulic Capacity (mgd, peak hourly)	11.2	27.7	0	3.8	42.7
Western Wake WRF ²					
Pro-rata Share (%)	34.1%	57.7%	0%	8.2%	100%
Hydraulic Capacity (mgd, maximum month)	6.21	10.4	0	1.5	18.0
Effluent Pump Station					
Pro-rata Share (%)	25.6%	43.4%	24.8%	6.2%	100%
Hydraulic Capacity (mgd, maximum month)	6.1	10.4	6.0	1.5	24.0
Effluent Pipeline and Outfall					
Pro-rata Share (%)	25.6%	43.4%	24.8%	6.2%	100%
Hydraulic Capacity (mgd, maximum month)	6.1	10.4	6.0	1.5	24.0

¹ West Cary Gravity Sewer sizing and capacity allocations are based on 2030 flows

² Por-rata Shares for Western Wake WRF also apply to the pollutant loading capacity allocated to each partner.

Table A-5: Phase 1 Pro-rata Shares and Estimated Capital Costs ¹, Western Wake Regional Wastewater Management Facilities

Facility	Apex	Cary	Holly Springs	Morrisville	Total
West Cary PS ²					
Pro-rata Share (%)	0%	87.8%	0%	12.2%	100%
Capital Cost	0	\$11,060,000	0	\$1,537,000	\$12,597,000
West Cary Force Main					
Pro-rata Share (%)	0%	87.8%	0%	12.2%	100%
Capital Cost	0	\$7,541,000	0	\$1,048,000	\$8,589,000
West Reedy Branch Gravity Sewer					
Pro-rata Share (%)	10.6%	78.2%	0%	11.2%	100%
Capital Cost	\$787,000	\$5,810,000	0	\$832,000	\$7,429,000
Beaver Creek PS					
Pro-rata Share (%)	22.0%	68.6%	0%	9.4%	100%
Capital Cost	\$4,570,000	\$14,251,000	0	\$1,953,000	\$20,774,000
Beaver Creek Force Main					
Pro-rata Share (%)	26.2%	64.9%	0%	8.9%	100%
Capital Cost	\$2,526,000	\$6,258,000	0	\$858,000	\$9,642,000
Western Wake WRF					
Pro-rata Share (%)	34.1%	57.7%	0%	8.2%	100%
Capital Cost	\$38,771,000	\$65,604,000	0	\$9,323,000	\$113,698,000
Effluent Pump Station					
Pro-rata Share (%)	25.6%	43.4%	24.8%	6.2%	100%
Capital Cost	\$2,576,000	\$4,367,000	\$2,495,000	\$624,000	\$10,062,000
Effluent Pipeline and Outfall					
Pro-rata Share (%)	25.6%	43.4%	24.8%	6.2%	100%
Capital Cost	\$9,569,000	\$16,222,000	\$9,270,000	\$2,317,000	\$37,378,000
Total Capital Cost (excluding land)	\$58,799,000	\$131,113,000	\$11,765,000	\$18,492,000	\$220,169,000

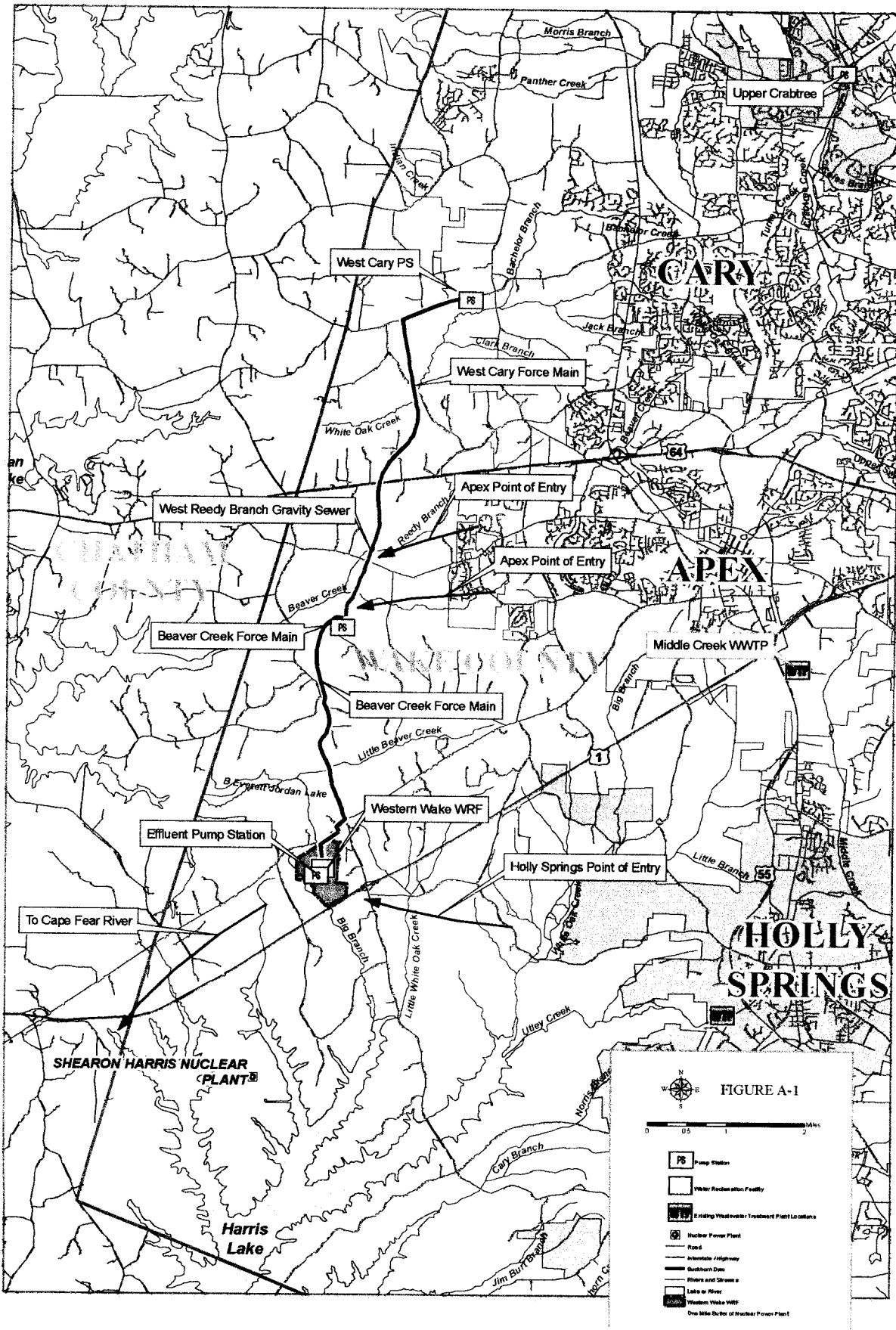
¹ Not including land costs.

Table A-6: Phase 1 Pro-rata Shares and Estimated Land Costs, Western Wake Regional Wastewater Management Facilities

Facility	Apex	Cary	Holly Springs	Morrisville	Total
West Cary PS (included in previous agreement)					
Pro-rata Share (%)	0%	87.5%	0%	12.5%	100%
Capital Cost	0	\$350,000	0	\$50,000	\$400,000
West Cary Force Main					
Pro-rata Share (%)	0%	87.5%	0%	12.5%	100%
Capital Cost	0	\$87,000	0	\$12,000	\$99,000
West Reedy Branch Gravity Sewer					
Pro-rata Share (%)	10.6%	78.2%	0%	11.2%	100%
Capital Cost	\$0	\$0	0	\$0	0
Beaver Creek PS (included in previous agreement)					
Pro-rata Share (%)	34.7%	57.2%	0%	8.1%	100%
Capital Cost	\$201,000	\$332,000	0	\$47,000	\$580,000
Beaver Creek Force Main					
Pro-rata Share (%)	34.7%	57.2%	0%	8.1%	100%
Capital Cost	\$43,000	\$71,000	0	\$10,000	\$124,000
Western Wake WRF (included in previous agreement)					
Pro-rata Share (%)	34.7%	57.2%	0%	8.1%	100%
Capital Cost	\$2,632,000	\$4,339,000	0	\$614,000	\$7,585,000
Effluent Pump Station (included in previous agreement)					
Pro-rata Share (%)	26.9%	44.3%	22.5%	6.3%	100%
Capital Cost	\$332,000	\$547,000	\$278,000	\$78,000	\$1,235,000
Effluent Pipeline and Outfall					
Pro-rata Share (%)	26.9%	44.3%	22.5%	6.3%	100%
Capital Cost	\$356,000	\$586,000	\$298,000	\$83,000	\$1,323,000
Total Cost This Agreement	\$399,000	\$744,000	\$298,000	\$105,000	\$1,546,000
Total Cost Previous Land Purchase Agreement	\$3,304,000	\$5,447,000	\$278,000	\$771,000	\$9,800,000
Adjustments to Previous Land Purchase Agreement	\$(139,000)	\$121,000	\$0	\$18,000	\$0
Total Land Cost	\$3,564,000	\$6,312,000	\$576,000	\$894,000	\$11,346,000

Table A-7: Phase 1 Total Costs, Western Wake Regional Wastewater Management Facilities

	Apex	Cary	Holly Springs	Morrisville	Total
Capital Costs, excluding Land	\$58,799,000	\$131,113,000	\$11,765,000	\$18,492,000	\$220,169,000
Land Costs, this Agreement	\$399,000	\$744,000	\$298,000	\$105,000	\$1,546,000
Adjustments to Land Costs in Land Costs and Preliminary Work Agreement	-\$139,000	\$121,000	\$0	\$18,000	\$0
Subtotal, this Agreement	\$59,059,000	\$131,978,000	\$12,063,000	\$18,615,000	\$221,715,000
Land Costs, previous Agreement	\$3,304,000	\$5,477,000	\$278,000	\$771,000	\$9,800,000
Total Estimated Cost	\$62,363,000	\$137,425,000	\$12,341,000	\$19,386,000	\$231,515,000



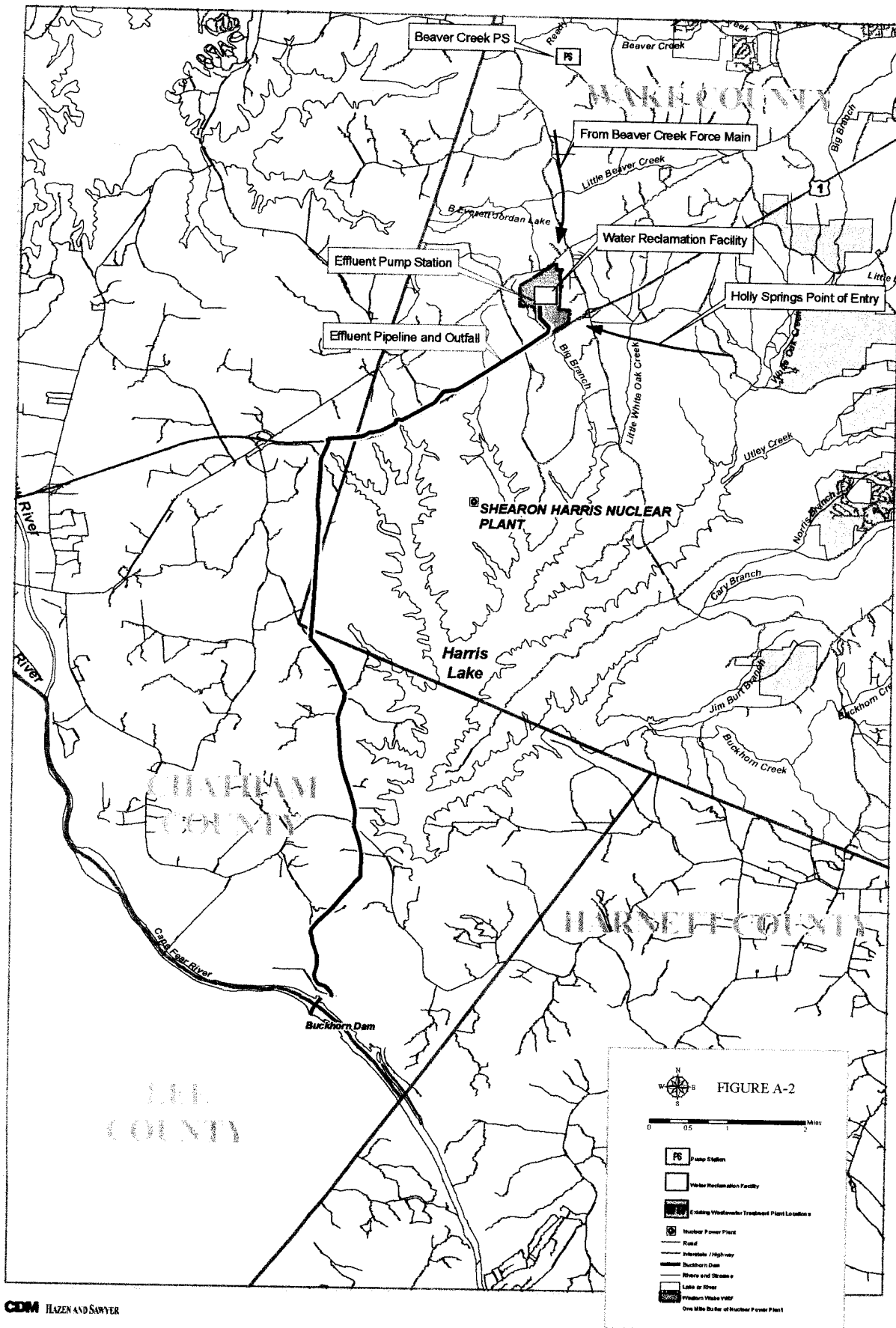


EXHIBIT B

[THE DRAFTING ASSUMPTION IS THAT THIS SERVICE AGREEMENT WILL BE ENTERED INTO BETWEEN CARY, AS THE LEAD AGENCY, AND APEX WHEN THE WASTEWATER MANAGEMENT FACILITIES ARE NEARING COMPLETION OF CONSTRUCTION, PERMITS HAVE BEEN ISSUED AND FINAL COSTS OF THE WASTEWATER MANAGEMENT FACILITIES ARE KNOWN]

RECIPROCAL APEX-CARY WASTEWATER MANAGEMENT FACILITIES SERVICE AGREEMENT

This **WASTEWATER MANAGEMENT FACILITIES SERVICE AGREEMENT** (the "Service Agreement"), is made and entered into this _____ day of _____, 20__ by and between the **Town of Cary, North Carolina**, a municipal corporation organized and existing under the laws of the State of North Carolina (the "Lead Agency"), and the **Town of Apex, North Carolina**, also a municipal corporation organized and existing under the laws of the State of North Carolina (the "Participant").

WITNESSETH:

WHEREAS, the Participant, the Lead Agency and the Towns of Holly Springs and Morrisville ("Morrisville"), are each municipalities of the State of North Carolina and each of them is the owner and operator of certain public enterprises within their territorial jurisdictions and service areas, including a wastewater collection, water reclamation and treated effluent discharge facilities (collectively, the "Project Partners"); and

WHEREAS, the Project Partners, have undertaken a joint effort for the design, construction, ownership and operation of regional wastewater management facilities, consisting generally of raw wastewater conveyance facilities, an 18 million gallon ("mgd") per day Water Reclamation Facility (the "Water Reclamation Facility") and facilities for conveying treated effluent to the point of discharge (the "Treated Effluent Pumping and Conveyance Facilities"), said facilities being referred to herein collectively as the "Wastewater Management Facilities"; and

WHEREAS, the Participant has an ownership interest in, and entitlement to capacity in, the gravity sewers connecting the West Cary Regional Pump Station to the Beaver Creek Pump Station, the Beaver Creek Pump Station, the mains connecting the Beaver Creek Pump Station to the Water Reclamation Facility, the Water Reclamation Facility and the Treated Effluent Pumping and Conveyance Facilities (as each of such terms is defined in the hereinafter mentioned Ownership and Operating Agreement); and

WHEREAS, pursuant to the agreement entitled "Agreement for Design, Construction, Ownership, Management and Operation of Western Wake Regional Wastewater Management Facilities," dated _____, 2005 (the "Ownership and Operating Agreement"), the Project Partners have heretofore entered into certain agreements with respect to the sharing of the costs of construction and operation of the Wastewater Management Facilities, as well as certain agreements with respect to the operation of the Wastewater Management Facilities; and

WHEREAS, pursuant to the Ownership and Operating Agreement, the Lead Agency is responsible for managing the operation of the Wastewater Management Facilities; and

WHEREAS, the parties hereto desire to enter into this Service Agreement for the purposes of setting forth certain technical provisions relating to the use of the Wastewater Management Facilities by the Lead Agency, the Participant and the other Project Partners; and

WHEREAS, construction of the Wastewater Management Facilities is substantially complete and is expected to be completed and the Wastewater Management Facilities placed in service by _____; and

WHEREAS, pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes, as amended, units of local government such as the Lead Agency and the Participant are authorized to enter into contracts such as this Service Agreement for the joint exercise by such units of their powers, functions and public enterprises and entering into this Service Agreement will carry out the interlocal cooperation objective encouraged by said provisions;

NOW, THEREFORE, pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes, as amended and in consideration of the respective rights, powers, duties and obligations hereafter set forth to be performed by the Lead Agency and the Participant, Lead Agency and the Participant mutually agree as follows:

Section 1. Defined Terms. Capitalized terms used in the recitals shall have the meanings set forth therein. In addition, the following terms shall have the following meanings in this Service Agreement:

“Lead Agency’s Point of Connection with the Wastewater Management Facilities” means each point where Lead Agency’s wastewater is delivered to the Wastewater Management Facilities for handling in accordance with the Ownership and Operating Agreement. Initially, the Lead Agency’s Point of Connection with the Wastewater Management Facilities shall be the West Cary Pump Station, as identified in Exhibit A to the Ownership and Operating Agreement.

“Letter of Agreement” means any agreement entered into from time to time between the Lead Agency and the Participant in which the parties thereto agree to terms with respect to the operation of the Wastewater Management Facilities and the handling of wastewater of the Participant or the Lead Agency by the Lead Agency in a way that differs from the terms set forth in this Service Agreement.

“Participant’s Point of Connection with the Wastewater Management Facilities” means each point where Participant’s wastewater is delivered to the Wastewater Management Facilities for handling in accordance with the Ownership and Operating Agreement. Initially, the Participant’s Point of Connection with the Wastewater Management Facilities shall be at two different locations on the gravity sewer between the West Cary Pump Station and the Beaver Creek Pump Station, as identified in Exhibit A to the Ownership and Operating Agreement as the West Reedy Branch Gravity Sewer.

“Special Assessment” means a special charge to the Participant or Lead Agency levied on account of the Participant’s or the Lead Agency’s exceeding the limitations on the volumes of

flow and quality of wastewater set forth herein. Such amount is also a “Special Assessment” within the meaning of the Ownership and Operating Agreement.

“Water Reclamation Facility NPDES Permit” means the National Pollution Discharge Elimination System Permit issued by the North Carolina Department of Environment and Natural Resources on _____ to **[the owners of the Water Reclamation Facility]**, authorizing the discharge of treated effluent from the Water Reclamation Facility, including all permit conditions, stipulations or other terms, whether included expressly therein or incorporated by reference.

Section 2. Effective Date and Term of this Service Agreement. This Service Agreement shall become binding upon the parties hereto upon the execution and ratification of this Service Agreement by the governing boards of the Lead Agency and the Participant. The Agreement shall remain in effect until either the Participant or the Lead Agency discontinues its participation under the Ownership and Operating Agreement. Notwithstanding the foregoing, the parties hereto agree to mutually review and update this agreement from time to time, and at least every ten years, to reflect such matters as shall be necessary, such as changes in permit conditions, changes in the Wastewater Management Facilities, and the application of new technologies.

Section 3. Lead Agency’s and Participant’s General Obligations and Representations. The Lead Agency and the Participant hereby agree that:

(a) The Wastewater Management Facilities will accept and treat wastewater from the Participant and Lead Agency beginning when the Wastewater Management Facilities become operational, subject to the terms of this Service Agreement. The Lead Agency shall not interrupt or suspend such wastewater treatment service except in cases of extreme emergency, force majeure, or court order. In the event of a crisis or extreme emergency, the Lead Agency shall act in the operation of its Wastewater Management Facilities for the protection of the public health, safety and welfare and for the protection of the environment. The Lead Agency will keep the Participant immediately informed regarding any situations or actions that will affect the flow of wastewater to the Wastewater Management Facilities from the Participant or Lead Agency.

(b) The wastewater delivered by the Participant and the Lead Agency to the Wastewater Management Facilities shall be delivered respectively at the Participant’s Point of Connection to the Wastewater Management Facilities and the Lead Agency’s Point of Connection to the Wastewater Management Facilities. .

(c) The Lead Agency represents and warrants that it has received or will receive all permits, licenses, and authorizations necessary from the United States of America, the State of North Carolina and any department or agency of either, to operate the Wastewater Management Facilities and to discharge treated effluent from the Wastewater Management Facilities to the Cape Fear River. The Lead Agency shall take all such actions as are in the control of the Lead Agency to maintain all such permits necessary for the lawful operation of its Wastewater Management Facilities in full force and effect for the term hereof.

(d) The Lead Agency recognizes that there may be times when unplanned events cause the Participant's or Lead Agency's wastewater flows to the Wastewater Management Facilities to temporarily exceed the levels set forth herein. If the Participant's or Lead Agency's wastewater flows to the Wastewater Management Facilities exceed the amounts specified herein, the Lead Agency may take whatever actions are necessary to prevent the Participant's or Lead Agency's wastewater flows to the Wastewater Management Facilities from causing the Water Reclamation Facility to exceed its permitted limits for treating wastewater.

(e) Unless otherwise agreed between the Lead Agency and the Participant, as set forth in a Letter of Agreement, the Lead Agency will limit the wastewater flows from the Lead Agency to the Water Reclamation Facility to no more than¹:

(i) 8.92 mgd on an average annual basis.

(ii) 27.66 mgd on a peak hourly basis.

(iii) 10.53 mgd on an maximum monthly basis.

(f) Unless otherwise agreed between the Lead Agency and the Participant, as set forth in a Letter of Agreement, the Lead Agency will enter into a Service Agreement with Morrisville containing provisions that will limit the wastewater flows from Morrisville to the Wastewater Management Facilities to no more than:

(i) 1.24 mgd on an average annual basis.

(ii) 3.84 mgd on a peak hourly basis.

(iii) 1.46 mgd on an maximum monthly basis.

(g) The Participant may begin sending wastewater flow to the Lead Agency at any time after it receives notification from the Lead Agency that the Wastewater Management Facilities will be operational. Unless otherwise agreed between the Lead Agency and the Participant, as set forth in a Letter of Agreement, the Participant will limit its wastewater flows to the Wastewater Management Facilities to no more than:

(i) 5.22 mgd on an average annual basis.

(ii) 16.18 mgd on a peak hourly basis.

(iii) 6.16 mgd on an maximum monthly basis.

¹ The data set forth in the tables in Section 3(e), (f), (g) and (h) is based upon the design criteria for the Water Reclamation Facility, which are based upon the expected permitted discharge limitations to be included in the final NPDES Permit for the Water Reclamation Facility. In the event that the final permit does not permit discharges at the anticipated levels, the tables in the final agreement will be revised to allocate the respective limits among the participating Project Partners in accordance with their capacity entitlement in the Water Reclamation Facility.

(h) Unless otherwise agreed between the Lead Agency and the Participant, as set forth in a Letter of Agreement, the Lead Agency and the Participant agree to limit the wastewater flow it sends to the Wastewater Management Facilities to the concentrations listed in the following table, and the Lead Agency agrees to enter into a service agreement with Morrisville providing the same limits.

Component or Characteristic	Concentration Limit Average Annual mg/l	Concentration Limit Maximum Month mg/l
BOD5	224	231
Chloride	250	250
Mercury	0.00003	0.00003
Total Suspended Solids	226	234
TKN	41	43
NH3-N	32	33
Total Phosphorus	7	7

(i) The Lead Agency represents and warrants that it has in full effect for all of its wastewater customers an industrial pretreatment program which has been approved by and conforms with the requirements of the Division of Water Quality of the State of North Carolina, and conforms with all the requirements of the Clean Water Act of 1972, as amended. The Lead Agency further represents and warrants that it will maintain such program, uninterrupted, throughout the life of this Service Agreement. In addition, the Lead Agency shall require that Morrisville, or any other user of the Water Reclamation Facility, have in full effect for all of that entity's wastewater customers an industrial pretreatment program which has been approved by and conforms with the requirements of the Division of Water Quality of the State of North Carolina, and conforms with all the requirements of the Clean Water Act of 1972, as amended, and will require that entity to maintain such program, uninterrupted, throughout the life of this Service Agreement.

(j) If the wastewater, as measured at the sampling stations described in Section 6, exceeds the strengths provided above, the Lead Agency may take whatever actions are necessary to prevent the Lead Agency's, Participant's or Morrisville's wastewater flows to the Wastewater Management Facilities from causing the Wastewater Management Facilities to exceed its permitted limits for treating wastewater or discharging treated wastewater.

(k) The Lead Agency and Participant represent and warrant that it has in full effect for all of its wastewater customers an industrial pretreatment program which has been approved by and conforms with the requirements of the Division of Water Quality of the State of North Carolina, and conforms with all the requirements of the Clean Water Act of 1972, as amended. The Participant further represents and warrants that it will maintain such program, uninterrupted, throughout the life of this Service Agreement.

The Participant will provide contact information for the Lead Agency pretreatment program coordinator to its Significant/Categorical Industrial permitted users. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine,

episodic nature, a non-customary batch discharge, or a slug load, that may cause potential problems for the Wastewater Management Facilities (Non-routine Discharge”), the Participant or a Participant’s permitted Significant/Categorical Industrial user, the Participant shall immediately notify the Lead Agency by telephone upon discovery of the discharge event. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions planned or taken by the Participant or the Participant’s permitted Significant/Categorical Industrial user. The telephone notification will be followed within 24 hours by facsimile and e-mail transmittals of the notification information. The Lead Agency shall keep similar records for Non-routine Discharge by itself or of its customers.

Within five (5) days following a Non-routine Discharge, the Lead Agency or Participant as the case may be shall, unless the Lead Agency or Participant receives a written waiver from the Lead Agency, submit a detailed written report describing the cause(s) of the discharge and the measures taken, or to be taken, by the Lead Agency or Participant to prevent future similar occurrences. Such notification or report shall not relieve the Lead Agency or Participant of any liability for any expense, loss, damage, personal injury, or other claim which may be suffered or incurred as a result of damage to the Wastewater Management Facilities, damage to natural resources, or any other damage to person or property specifically resulting from the Lead Agency’s or Participant’s wastewater; nor shall such notification or report relieve the Lead Agency or Participant of any fines, penalties, or other liability which may be imposed pursuant to Section 7, provided the Lead Agency uses all due diligence in operating the Wastewater Management Facilities to minimize any such expense, loss, damage, or personal injury.

The Lead Agency and Participant hereby acknowledges that costs incurred on account of action taken by the Lead Agency in response to a Non-routine Discharge will constitute Variable Current Expenses under the Ownership and Operating Agreement for which the Lead Agency or Participant, as the case may be, will be responsible.

(l) The Lead Agency or Participant will pay when due all payments required under the Ownership and Operating Agreement as the same are due and payable.

Section 4. Prohibited Discharges. (a) Neither the Lead Agency nor the Participant shall intentionally or willfully discharge wastewater into the Wastewater Management Facilities, directly or indirectly, which causes interference with the biological processes of the Wastewater Management Facilities or which cannot be removed or reduced in concentration by the Water Reclamation Facility, thereby causing a violation of the Water Reclamation Facility NPDES permit. The Lead Agency and the Participant may be responsible for any costs to the Project Partners related to treating the Lead Agency’s or the Participant’s wastewater if it exceeds the limits set forth in Section 3 pursuant to the provisions of the Ownership and Operating Agreement.

(b) Neither the Lead Agency nor the Participant shall intentionally or willfully discharge wastewater or permit the discharge of wastewater into the Wastewater Management Facilities that contains, or has the characteristics of, any of the following:

- (i) Pollutants that create a fire or explosive hazard in the Wastewater Management Facilities, including, but not limited to, waste streams with a

closed cup flashpoint of less than one hundred forty (140) degrees Fahrenheit (sixty (60) degrees Celsius) using the test methods specified in 40 CFR 261.21, as amended from time to time.

- (ii) Solid or viscous substances which may cause obstruction of the flow in the Wastewater Management Facilities. This includes, but is not limited to, grease, garbage with particles greater than one-half (1/2) inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or flesh, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, and wood.
- (iii) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference with the wastewater biological processes or pass through Wastewater Management Facilities with no reduction in concentration.
- (iv) Any wastewater having a pH less than 5.0 or more than 10.0 or wastewater having any other corrosive property capable of causing damage to the Wastewater Management Facilities.
- (v) Any wastewater containing pollutants, including oxygen-demanding pollutants (BOD, etc.), in sufficient quantity (flow or concentration), either singly or by interaction with other pollutants, to cause interference with the wastewater biological processes.
- (vi) Any wastewater having a temperature that is greater than one hundred fifty (150) degrees Fahrenheit (sixty-six (66) degrees Celsius), or that will inhibit biological activity in the Wastewater Management Facilities resulting in interference. In no case shall the Participant contribute wastewater, the temperature of which, acting alone or in conjunction with other wastewater, causes the temperature at the introduction into the Water Reclamation Facility to exceed one hundred four (104) degrees Fahrenheit (forty (40) degrees Celsius).
- (vii) Any pollutants which result in the presence of toxic gases, vapors or fumes within the Wastewater Management Facilities in a quantity that may cause acute worker health or safety problems.
- (viii) Any trucked or hauled pollutants or wastewater, unless it is with the approval of the Lead Agency, and then only at discharge points designated by the Lead Agency.
- (ix) Any substance that may cause the Wastewater Management Facilities effluent or any other product of the Wastewater Management Facilities, such as residues, residual solids, or scums, to be unsuitable for reclamation and reuse or which interferes with the reclamation process. In no case shall a substance discharged to the Wastewater Management Facilities and

within the control of the parties hereto cause the Wastewater Management Facilities to be in noncompliance with residual solids use or disposal criteria, including, but not limited to, guidelines, regulations, or permits issued under the Clean Water Act; the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; or state criteria, guidelines, regulations, or permits applicable to the residual solids management method being used.

- (x) Any substance which will cause the wastewater to violate the Water Reclamation Facility NPDES Permit or any other permit.
- (xi) Any wastewater that imparts color that cannot be removed by the treatment process (including, but not limited to, dye wastes and vegetable tanning solutions) and that imparts sufficient color to the Wastewater Management Facilities effluent to render the waters injurious to public health or secondary recreation or aquatic life and wildlife or which adversely affect the palatability of fish or their aesthetic quality or which impairs the receiving waters for any designated use.
- (xii) Any wastewater containing any radioactive wastes or isotopes, except as specifically approved by the Lead Agency in compliance with applicable state and federal regulations.
- (xiii) Any wastewater which causes a hazard to human life or creates a public nuisance.
- (xiv) Fats, oils, or greases of animal or vegetable origin in concentrations greater than that determined by the Lead Agency, or a state recognized environmental regulatory agency, to cause sewer pipe blockages or in amounts causing adverse consequential accumulation in sewer pipes, resulting in sewer blockage.
- (xv) Any medical wastes, except as specifically authorized by the Lead Agency.
- (xvi) Any solids residuals, screenings, or other residues from the pretreatment of industrial wastes, other than what may be permitted by the Participant through individual industrial pretreatment permits.
- (xvii) Any material which will produce metallic complexes that interfere with the Wastewater Management Facilities.
- (xviii) Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer, except as may be specifically authorized by the Lead Agency.

- (xix) Any wastewater causing the Wastewater Management Facilities effluent to violate state water quality standards for toxic substances as described in 15A NCAC 2B .0200, as amended from time to time.
- (xx) Recognizable portions of the human or animal anatomy.
- (xxi) Any wastes containing detergents, surfaces active agents, or other substances which may cause excessive foaming in the Wastewater Management Facilities.
- (xxii) Any wastewater that has two (2) successive readings on an explosion hazard meter of more than five (5) per cent or any single reading on such meter more than ten (10) per cent of the lower explosive limit (LEL) of the meter. Such readings may be taken at the flow measurement and sampling station described in Section 7 by the Lead Agency at its discretion.

(c) The Lead Agency shall require of Morrisville the same agreement from Morrisville with respect to its use of the Wastewater Management Facilities as is required of the Participant in this Section.

Section 5. Connection to Wastewater Management Facilities; Construction and Installation of Flow Measurement and Sampling Equipment. (a) The Lead Agency and the Participant shall be responsible respectively, at Lead Agency's or Participant's sole cost and expense, for the construction, acquisition and installation of all additions and improvements to Lead Agency's or Participant's water and sewer system necessary to convey the Lead Agency's or Participant's wastewater flows to the Lead Agency's or Participant's Point of Connection with the Wastewater Management Facilities, including all required permitting, design, property and easement acquisition, NCDOT encroachment costs, and construction. The Lead Agency and Participant shall respectively be responsible for all costs associated with its water and sewer system prior to the Lead Agency's or Participant's Point of Connection with the Wastewater Management Facilities. The Lead Agency and the Participant may from time to time agree upon different or additional points of connection at which the Lead Agency or Participant shall deliver wastewater to the Wastewater Management Facilities. The Lead Agency and the Participant shall cooperate in establishing additional points of connection at any location designated by the Lead Agency or Participant, provided that the Lead Agency shall not be required to accept any additional Point of Connection to the Wastewater Management Facilities that will materially impair the operating efficiency of the Wastewater Management Facilities.

(b) Prior to discharging any wastewater to the Wastewater Management Facilities, or adding any additional Lead Agency's or Participants' Point of Connection to the Wastewater Management Facilities, the Lead Agency and the Participant shall respectively at it's sole cost and expense, construct, acquire and install a flow measurement and sampling station at a suitable location that is prior to each of Lead Agency's or Participant's Point of Connection with the Wastewater Management Facilities. The exact location of the flow measurement and sampling stations shall be established by mutual agreement of the Lead Agency and the Participant, and shall be at a locations determined to be mutual convenient and that will render accurate measurements. The flow measurement and sampling equipment at the stations shall include a

flow proportional, refrigerated, sequential sampler housed in a locked compartment. The flow measurement and sampling equipment shall be of such type as may be designed or designated by the Lead Agency and Participant, and approved, prior to construction, by the Lead Agency.

[To the extent either the exact location of the station or the exact type of flow measurement and sampling equipment is determined at the time the Service Agreement is entered, the foregoing section will be revised to reflect the technical terms so agreed upon.]

(c) The Participant shall permit the Lead Agency to have access to the flow measurement and sampling station and the Participant's Point of Connection with the Wastewater Management Facilities for purposes of performing all operations and maintenance of the flow measurement and sampling station. When construction is complete and accepted by the Lead Agency, the Lead Agency shall be responsible for the operation and maintenance of the flow measurement and sampling stations. The Lead Agency and Participant shall be responsible for all reasonable costs of operations and maintenance for their respective flow measurement and sampling stations, and for any costs of replacing or updating the flow measurement and sampling station as may be reasonably required.

(d) The Lead Agency will review design drawings for all connection facilities and flow measurement and sampling stations and provide comments in a timely manner, generally within two weeks of receiving plans for review.

Section 6. Flow Measurement and Wastewater Sampling. (a) The flow meters of the Lead Agency and Participant shall be read at least once a month by the Lead Agency, which shall maintain accurate records of each reading and shall promptly convey the results of each reading to the Participant.

(b) The Lead Agency will calibrate the flow meters at least annually or as recommended by the manufacturer, whichever is more often. All calibration practices, procedures and records shall be performed in and conform to a manner consistent with State of North Carolina regulations for flow metering at wastewater treatment facilities. Documentation of the meter calibration shall be maintained by the Lead Agency. In addition, the Lead Agency will recalibrate the flow meters at the request of the Participant at any time, up to four times per year. The Participant will pay the cost of any such requested recalibrations.

(c) If calibration pursuant to subsection (b) shows the flow meters to be inaccurate by two (2) percent, plus or minus, the flow meters shall be recalibrated and corrected. If calibration per subsection (b) shows flow meters to be inaccurate by at least ten (10) percent, plus or minus, the measured quantity of the meters for invoicing purposes shall be corrected for a period of time extending back to the time such inaccuracy began, if ascertainable, and if the beginning time is not ascertainable, and cannot be reasonably estimated, for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event further back than a period of six months. If, for any reason, a flow meter is out of service so that the flow quantity cannot be ascertained or computed from a reading, the quantities during the estimated period of malfunction shall be reasonably estimated by the Lead Agency on the basis of the best data available.

(d) The Lead Agency will collect flow proportional composite samples at the sampling stations on the schedule and as required by the Water Reclamation Facility NPDES Permit and in any event at least on a weekly basis. All samples will be split into two equal volumes, one for testing by the Participant and one for testing by the Lead Agency. The Lead Agency shall perform all splitting of samples. The Lead Agency will analyze the Lead Agency's splits of the samples for the components and characteristics listed in Section 4. The Lead Agency shall submit written reports documenting the analysis results to the Participant on a monthly basis.

(e) Any discovery by the Lead Agency, through analysis of a split sample as described in subsection (d), of wastewater flow delivered by Lead Agency or Participant that exceeds the limitations for such flow as defined in Section 3 shall be reported by the Lead Agency to the Participant within 72 hours of the analysis identifying such violation.

(f) The Participant shall have access to the flow measurement and sampling station for the purposes of inspection, meter reading, and pickup of samples which have been split by the Lead Agency at all times.

Section 7. Payment of Lead Agency's and Participant's Share of Costs of Wastewater Management Facilities. (a) The Lead Agency's and Participant's share of the monthly Current Expenses of the Wastewater Management Facilities shall be computed and payable in accordance with the Ownership and Operating Agreement.

(b) For any period where the wastewater flow volume from the Lead Agency or Participant exceeds the amounts specified in Section 3, there will be a Special Assessment for the volume of flow that exceeds the threshold flow volume. The amount of the Special Assessment shall be determined by the Lead Agency in accordance with the Ownership and Operating Agreement.

(c) For any day or month where the total loading of specified constituents in the Lead Agency's or Participant's wastewater exceeds the thresholds shown in the table set forth in Section 3, a Special Assessment will be applied for the cost of handling the wastewater with concentration levels above the permitted limit. The amount of the Special Assessment shall be determined by the Lead Agency in accordance with the Ownership and Operating Agreement.

(d) Notwithstanding the foregoing, the Lead Agency and the Participant may at any time enter into one or more Letters of Agreement in which the limitations set forth above, and the amounts of the Special Assessments, may be reduced or increased as mutually agreed among the parties.

Section 8. Waiver. The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party to thereafter enforce the same. Nor shall waiver by either party of any breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. No provision of this Service Agreement shall be deemed to have been waived by either party unless such waiver shall be in writing and executed by the same formality as this Service Agreement.

Section 9. Notices. (a) Unless otherwise provided, all notices provided for herein shall be in writing and shall be sent properly addressed by first class mail to the parties at the addresses shown below:

Town of Cary
PO Box 8005
Cary, North Carolina 27512-8005
Attention: Town Manager

Town of Apex
PO Box 250
Apex, North Carolina 27502-0250
Attention: Town Manager

(b) All notices shall be effective three (3) days after having been deposited, properly addressed and postage prepaid, in the U.S. Postal Service.

(c) Unless specifically provided otherwise, the Lead Agency and the Participant shall be represented by and act through the party designated in this section.

Section 10. Miscellaneous. (a) This Service Agreement may be amended from time to time by the mutual agreement of the parties hereto. Any amendment hereto shall be in writing.

(b) This Service Agreement shall be binding upon and inure to the benefit of each of the Project Partners and their respective successors and assigns. Whenever in this Service Agreement either a specific party is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Service Agreement contained by or on behalf of any party hereto shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

(c) In the event any provision of this Service Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

(d) This Service 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.

(e) This Service Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.

(f) In the event of any inconsistency between the terms of the Ownership and Operating Agreement and this Service Agreement, the Ownership and Operating Agreement shall control, unless the parties have agreed otherwise in a Letter of Agreement.

(g) Captions to sections throughout this Service Agreement are for ease of reference only and shall not affect the meaning or interpretation of this Service Agreement.

Section 11. Dispute Resolution. Any claims, disputes or other controversies arising out of this Service Agreement which may ensue shall be subject to and decided by the appropriate general court of justice of Wake County, North Carolina.

IN TESTIMONY WHEREOF, the Lead Agency has caused this Service Agreement to be executed by its [Town Manager], its corporate seal to be affixed and attested by its Town Clerk, all by the authority of the Town Council, and the Participant has caused this Service Agreement to be executed by its [Mayor], its corporate seal to be affixed and attested by its Town Clerk, all by the authority of the Town Commissioners, on the day and year first written above.

TOWN OF CARY, NORTH CAROLINA

[SEAL]

By: _____
Town Manager

Attest:

Town Clerk

Approved as to form:

Town Attorney

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

Finance Director

[Counterpart signature page to Service Agreement]

TOWN OF APEX, NORTH CAROLINA

[SEAL]

By: _____
Mayor

Attest:

Town Clerk

Approved as to form:

Town Attorney

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

Finance Director

EXHIBIT C

[THE DRAFTING ASSUMPTION IS THAT THIS SERVICE AGREEMENT WILL BE ENTERED INTO BETWEEN CARY, AS THE LEAD AGENCY, AND MORRISVILLE WHEN THE WASTEWATER MANAGEMENT FACILITIES ARE NEARING COMPLETION OF CONSTRUCTION, PERMITS HAVE BEEN ISSUED AND FINAL COSTS OF THE WASTEWATER MANAGEMENT FACILITIES ARE KNOWN]

RECIPROCAL MORRISVILLE-CARY WASTEWATER MANAGEMENT FACILITIES SERVICE AGREEMENT

This **WASTEWATER MANAGEMENT FACILITIES SERVICE AGREEMENT** (the "Service Agreement"), is made and entered into this _____ day of _____, 20__ by and between the **Town of Cary, North Carolina**, a municipal corporation organized and existing under the laws of the State of North Carolina (the "Lead Agency"), and the **Town of Morrisville, North Carolina**, also a municipal corporation organized and existing under the laws of the State of North Carolina (the "Participant").

WITNESSETH:

WHEREAS, the Participant, the Lead Agency and the Towns of Holly Springs and Apex ("Apex"), are each municipalities of the State of North Carolina and each of them is the owner and operator of certain public enterprises within their territorial jurisdictions and service areas, including a wastewater collection, water reclamation and treated effluent discharge facilities (collectively, the "Project Partners"); and

WHEREAS, the Project Partners, have undertaken a joint effort for the design, construction, ownership and operation of regional wastewater management facilities, consisting generally of raw wastewater conveyance facilities, an 18 million gallon ("mgd") per day Water Reclamation Facility (the "Water Reclamation Facility") and facilities for conveying treated effluent to the point of discharge (the "Treated Effluent Pumping and Conveyance Facilities"), said facilities being referred to herein collectively as the "Wastewater Management Facilities"; and

WHEREAS, the Participant has an ownership interest in, and entitlement to capacity in, the West Cary Regional Pump Station, the force main and the gravity sewers connecting the West Cary Regional Pump Station to the Beaver Creek Pump Station, the Beaver Creek Pump Station, the mains connecting the Beaver Creek Pump Station to the Water Reclamation Facility, the Water Reclamation Facility and the Treated Effluent Pumping and Conveyance Facilities (as each of such terms is defined in the hereinafter mentioned Ownership and Operating Agreement); and

WHEREAS, pursuant to the agreement entitled "Agreement for Design, Construction, Ownership, Management and Operation of Western Wake Regional Wastewater Management Facilities," dated _____, 2005 (the "Ownership and Operating Agreement"), the Project Partners have heretofore entered into certain agreements with respect to the sharing of the costs of construction and operation of the Wastewater Management Facilities, as well as certain agreements with respect to the operation of the Wastewater Management Facilities; and

WHEREAS, pursuant to the Ownership and Operating Agreement, the Lead Agency is responsible for managing the operation of the Wastewater Management Facilities; and

WHEREAS, the parties hereto desire to enter into this Service Agreement for the purposes of setting forth certain technical provisions relating to the use of the Wastewater Management Facilities by the Lead Agency, the Participant and the other Project Partners; and

WHEREAS, construction of the Wastewater Management Facilities is substantially complete and is expected to be completed and the Wastewater Management Facilities placed in service by _____; and

WHEREAS, pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes, as amended, units of local government such as the Lead Agency and the Participant are authorized to enter into contracts such as this Service Agreement for the joint exercise by such units of their powers, functions and public enterprises and entering into this Service Agreement will carry out the interlocal cooperation objective encouraged by said provisions;

NOW, THEREFORE, pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes, as amended and in consideration of the respective rights, powers, duties and obligations hereafter set forth to be performed by the Lead Agency and the Participant, Lead Agency and the Participant mutually agree as follows:

Section 1. Defined Terms. Capitalized terms used in the recitals shall have the meanings set forth therein. In addition, the following terms shall have the following meanings in this Service Agreement:

“Lead Agency’s Point of Connection with the Wastewater Management Facilities” means each point where Lead Agency’s wastewater is delivered to the Wastewater Management Facilities for handling in accordance with the Ownership and Operating Agreement. Initially, the Lead Agency’s Point of Connection with the Wastewater Management Facilities shall be the West Cary Pump Station, as identified in Exhibit A to the Ownership and Operating Agreement.

“Letter of Agreement” means any agreement entered into from time to time between the Lead Agency and the Participant in which the parties thereto agree to terms with respect to the operation of the Wastewater Management Facilities and the handling of wastewater of the Participant or the Lead Agency by the Lead Agency in a way that differs from the terms set forth in this Service Agreement.

“Participant’s Point of Connection with the Wastewater Management Facilities” means each point where Participant’s wastewater is delivered to the Wastewater Management Facilities for handling in accordance with the Ownership and Operating Agreement. Initially, the Participant’s Point of Connection with the Wastewater Management Facilities shall be at the West Cary Pump Station, as identified in Exhibit A to the Ownership and Operating Agreement as the Reedy Branch Outfall and the Beaver Creek Outfall.

“Special Assessment” means a special charge to the Participant or Lead Agency levied on account of the Participant’s or the Lead Agency’s exceeding the limitations on the volumes of

flow and quality of wastewater set forth herein. Such amount is also a "Special Assessment" within the meaning of the Ownership and Operating Agreement.

"Water Reclamation Facility NPDES Permit" means the National Pollution Discharge Elimination System Permit issued by the North Carolina Department of Environment and Natural Resources on _____ to **[the owners of the Water Reclamation Facility]**, authorizing the discharge of treated effluent from the Water Reclamation Facility, including all permit conditions, stipulations or other terms, whether included expressly therein or incorporated by reference.

Section 2. Effective Date and Term of this Service Agreement. This Service Agreement shall become binding upon the parties hereto upon the execution and ratification of this Service Agreement by the governing boards of the Lead Agency and the Participant. The Agreement shall remain in effect until either the Participant or the Lead Agency discontinues its participation under the Ownership and Operating Agreement. Notwithstanding the foregoing, the parties hereto agree to mutually review and update this agreement from time to time, and at least every ten years, to reflect such matters as shall be necessary, such as changes in permit conditions, changes in the Wastewater Management Facilities, and the application of new technologies.

Section 3. Lead Agency's and Participant's General Obligations and Representations. The Lead Agency and the Participant hereby agree that:

(a) The Wastewater Management Facilities will accept and treat wastewater from the Participant and Lead Agency beginning when the Wastewater Management Facilities become operational, subject to the terms of this Service Agreement. The Lead Agency shall not interrupt or suspend such wastewater treatment service except in cases of extreme emergency, force majeure, or court order. In the event of a crisis or extreme emergency, the Lead Agency shall act in the operation of its Wastewater Management Facilities for the protection of the public health, safety and welfare and for the protection of the environment. The Lead Agency will keep the Participant immediately informed regarding any situations or actions that will affect the flow of wastewater to the Wastewater Management Facilities from the Participant or Lead Agency.

(b) The wastewater delivered by the Participant and the Lead Agency to the Wastewater Management Facilities shall be delivered respectively at the Participant's Point of Connection to the Wastewater Management Facilities and the Lead Agency's Point of Connection to the Wastewater Management Facilities. .

(c) The Lead Agency represents and warrants that it has received or will receive all permits, licenses, and authorizations necessary from the United States of America, the State of North Carolina and any department or agency of either, to operate the Wastewater Management Facilities and to discharge treated effluent from the Wastewater Management Facilities to the Cape Fear River. The Lead Agency shall take all such actions as are in the control of the Lead Agency to maintain all such permits necessary for the lawful operation of its Wastewater Management Facilities in full force and effect for the term hereof.

(d) The Lead Agency recognizes that there may be times when unplanned events cause the Participant's or Lead Agency's wastewater flows to the Wastewater Management Facilities to temporarily exceed the levels set forth herein. If the Participant's or Lead Agency's wastewater flows to the Wastewater Management Facilities exceed the amounts specified herein, the Lead Agency may take whatever actions are necessary to prevent the Participant's or Lead Agency's wastewater flows to the Wastewater Management Facilities from causing the Water Reclamation Facility to exceed its permitted limits for treating wastewater.

(e) Unless otherwise agreed between the Lead Agency and the Participant, as set forth in a Letter of Agreement, the Lead Agency will limit the wastewater flows from the Lead Agency to the Water Reclamation Facility to no more than¹:

(i) 8.92 mgd on an average annual basis.

(ii) 27.66 mgd on a peak hourly basis.

(iii) 10.53 mgd on an maximum monthly basis.

(f) Unless otherwise agreed between the Lead Agency and the Participant, as set forth in a Letter of Agreement, the Lead Agency will enter into a Service Agreement with Apex containing provisions that will limit the wastewater flows from Apex to the Wastewater Management Facilities to no more than:

(i) 5.22 mgd on an average annual basis.

(ii) 16.18 mgd on a peak hourly basis.

(iii) 6.16 mgd on an maximum monthly basis..

(g) The Participant may begin sending wastewater flow to the Lead Agency at any time after it receives notification from the Lead Agency that the Wastewater Management Facilities will be operational. Unless otherwise agreed between the Lead Agency and the Participant, as set forth in a Letter of Agreement, the Participant will limit its wastewater flows to the Wastewater Management Facilities to no more than:

(i) 1.24 mgd on an average annual basis.

(ii) 3.84 mgd on a peak hourly basis.

(iii) 1.46 mgd on an maximum monthly basis.

¹ The data set forth in the tables in Section 3(e), (f), (g) and (h) is based upon the design criteria for the Water Reclamation Facility, which are based upon the expected permitted discharge limitations to be included in the final NPDES Permit for the Water Reclamation Facility. In the event that the final permit does not permit discharges at the anticipated levels, the tables in the final agreement will be revised to allocate the respective limits among the participating Project Partners in accordance with their capacity entitlement in the Water Reclamation Facility.

(h) Unless otherwise agreed between the Lead Agency and the Participant, as set forth in a Letter of Agreement, the Lead Agency and the Participant agree to limit the wastewater flow it sends to the Wastewater Management Facilities to the concentrations listed in the following table, and the Lead Agency agrees to enter into a service agreement with Apex providing the same limits.

Component or Characteristic	Concentration Limit Average Annual mg/l	Concentration Limit Maximum Month mg/l
BOD5	224	231
Chloride	250	250
Mercury	0.00003	0.00003
Total Suspended Solids	226	234
TKN	41	43
NH3-N	32	33
Total Phosphorus	7	7

(i) The Lead Agency represents and warrants that it has in full effect for all of its wastewater customers an industrial pretreatment program which has been approved by and conforms with the requirements of the Division of Water Quality of the State of North Carolina, and conforms with all the requirements of the Clean Water Act of 1972, as amended. The Lead Agency further represents and warrants that it will maintain such program, uninterrupted, throughout the life of this Service Agreement. In addition, the Lead Agency shall require that Apex, or any other user of the Water Reclamation Facility, have in full effect for all of that entity's wastewater customers an industrial pretreatment program which has been approved by and conforms with the requirements of the Division of Water Quality of the State of North Carolina, and conforms with all the requirements of the Clean Water Act of 1972, as amended, and will require that entity to maintain such program, uninterrupted, throughout the life of this Service Agreement.

(j) If the wastewater, as measured at the sampling stations described in Section 6, exceeds the strengths provided above, the Lead Agency may take whatever actions are necessary to prevent the Lead Agency's, Participant's or Apex's wastewater flows to the Wastewater Management Facilities from causing the Wastewater Management Facilities to exceed its permitted limits for treating wastewater or discharging treated wastewater.

(k) The Lead Agency and Participant represent and warrant that it has in full effect for all of its wastewater customers an industrial pretreatment program which has been approved by and conforms with the requirements of the Division of Water Quality of the State of North Carolina, and conforms with all the requirements of the Clean Water Act of 1972, as amended. The Participant further represents and warrants that it will maintain such program, uninterrupted, throughout the life of this Service Agreement.

The Participant will provide contact information for the Lead Agency pretreatment program coordinator to its Significant/Categorical Industrial permitted users. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine,

episodic nature, a non-customary batch discharge, or a slug load, that may cause potential problems for the Wastewater Management Facilities (Non-routine Discharge”), the Participant or a Participant’s permitted Significant/Categorical Industrial user, the Participant shall immediately notify the Lead Agency by telephone upon discovery of the discharge event. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions planned or taken by the Participant or the Participant’s permitted Significant/Categorical Industrial user. The telephone notification will be followed within 24 hours by facsimile and e-mail transmittals of the notification information. The Lead Agency shall keep similar records for Non-routine Discharge by itself or of its customers.

Within five (5) days following a Non-routine Discharge, the Lead Agency or Participant as the case may be shall, unless the Lead Agency or Participant receives a written waiver from the Lead Agency, submit a detailed written report describing the cause(s) of the discharge and the measures taken, or to be taken, by the Lead Agency or Participant to prevent future similar occurrences. Such notification or report shall not relieve the Lead Agency or Participant of any liability for any expense, loss, damage, personal injury, or other claim which may be suffered or incurred as a result of damage to the Wastewater Management Facilities, damage to natural resources, or any other damage to person or property specifically resulting from the Lead Agency’s or Participant’s wastewater; nor shall such notification or report relieve the Lead Agency or Participant of any fines, penalties, or other liability which may be imposed pursuant to Section 7, provided the Lead Agency uses all due diligence in operating the Wastewater Management Facilities to minimize any such expense, loss, damage, or personal injury.

The Lead Agency and Participant hereby acknowledges that costs incurred on account of action taken by the Lead Agency in response to a Non-routine Discharge will constitute Variable Current Expenses under the Ownership and Operating Agreement for which the Lead Agency or Participant, as the case may be, will be responsible.

(l) The Lead Agency or Participant will pay when due all payments required under the Ownership and Operating Agreement as the same are due and payable.

Section 4. Prohibited Discharges. (a) Neither the Lead Agency nor the Participant shall intentionally or willfully discharge wastewater into the Wastewater Management Facilities, directly or indirectly, which causes interference with the biological processes of the Wastewater Management Facilities or which cannot be removed or reduced in concentration by the Water Reclamation Facility, thereby causing a violation of the Water Reclamation Facility NPDES permit. The Lead Agency and the Participant may be responsible for any costs to the Project Partners related to treating the Lead Agency’s or the Participant’s wastewater if it exceeds the limits set forth in Section 3 pursuant to the provisions of the Ownership and Operating Agreement.

(b) Neither the Lead Agency nor the Participant shall intentionally or willfully discharge wastewater or permit the discharge of wastewater into the Wastewater Management Facilities that contains, or has the characteristics of, any of the following:

- (i) Pollutants that create a fire or explosive hazard in the Wastewater Management Facilities, including, but not limited to, waste streams with a

closed cup flashpoint of less than one hundred forty (140) degrees Fahrenheit (sixty (60) degrees Celsius) using the test methods specified in 40 CFR 261.21, as amended from time to time.

- (ii) Solid or viscous substances which may cause obstruction of the flow in the Wastewater Management Facilities. This includes, but is not limited to, grease, garbage with particles greater than one-half (1/2) inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or flesh, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, and wood.
- (iii) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference with the wastewater biological processes or pass through Wastewater Management Facilities with no reduction in concentration.
- (iv) Any wastewater having a pH less than 5.0 or more than 10.0 or wastewater having any other corrosive property capable of causing damage to the Wastewater Management Facilities.
- (v) Any wastewater containing pollutants, including oxygen-demanding pollutants (BOD, etc.), in sufficient quantity (flow or concentration), either singly or by interaction with other pollutants, to cause interference with the wastewater biological processes.
- (vi) Any wastewater having a temperature that is greater than one hundred fifty (150) degrees Fahrenheit (sixty-six (66) degrees Celsius), or that will inhibit biological activity in the Wastewater Management Facilities resulting in interference. In no case shall the Participant contribute wastewater, the temperature of which, acting alone or in conjunction with other wastewater, causes the temperature at the introduction into the Water Reclamation Facility to exceed one hundred four (104) degrees Fahrenheit (forty (40) degrees Celsius).
- (vii) Any pollutants which result in the presence of toxic gases, vapors or fumes within the Wastewater Management Facilities in a quantity that may cause acute worker health or safety problems.
- (viii) Any trucked or hauled pollutants or wastewater, unless it is with the approval of the Lead Agency, and then only at discharge points designated by the Lead Agency.
- (ix) Any substance that may cause the Wastewater Management Facilities effluent or any other product of the Wastewater Management Facilities, such as residues, residual solids, or scums, to be unsuitable for reclamation and reuse or which interferes with the reclamation process. In no case shall a substance discharged to the Wastewater Management Facilities and

within the control of the parties hereto cause the Wastewater Management Facilities to be in noncompliance with residual solids use or disposal criteria, including, but not limited to, guidelines, regulations, or permits issued under the Clean Water Act; the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; or state criteria, guidelines, regulations, or permits applicable to the residual solids management method being used.

- (x) Any substance which will cause the wastewater to violate the Water Reclamation Facility NPDES Permit or any other permit.
- (xi) Any wastewater that imparts color that cannot be removed by the treatment process (including, but not limited to, dye wastes and vegetable tanning solutions) and that imparts sufficient color to the Wastewater Management Facilities effluent to render the waters injurious to public health or secondary recreation or aquatic life and wildlife or which adversely affect the palatability of fish or their aesthetic quality or which impairs the receiving waters for any designated use.
- (xii) Any wastewater containing any radioactive wastes or isotopes, except as specifically approved by the Lead Agency in compliance with applicable state and federal regulations.
- (xiii) Any wastewater which causes a hazard to human life or creates a public nuisance.
- (xiv) Fats, oils, or greases of animal or vegetable origin in concentrations greater than that determined by the Lead Agency, or a state recognized environmental regulatory agency, to cause sewer pipe blockages or in amounts causing adverse consequential accumulation in sewer pipes, resulting in sewer blockage.
- (xv) Any medical wastes, except as specifically authorized by the Lead Agency.
- (xvi) Any solids residuals, screenings, or other residues from the pretreatment of industrial wastes, other than what may be permitted by the Participant through individual industrial pretreatment permits.
- (xvii) Any material which will produce metallic complexes that interfere with the Wastewater Management Facilities.
- (xviii) Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer, except as may be specifically authorized by the Lead Agency.

- (xix) Any wastewater causing the Wastewater Management Facilities effluent to violate state water quality standards for toxic substances as described in 15A NCAC 2B .0200, as amended from time to time.
- (xx) Recognizable portions of the human or animal anatomy.
- (xxi) Any wastes containing detergents, surfaces active agents, or other substances which may cause excessive foaming in the Wastewater Management Facilities.
- (xxii) Any wastewater that has two (2) successive readings on an explosion hazard meter of more than five (5) per cent or any single reading on such meter more than ten (10) per cent of the lower explosive limit (LEL) of the meter. Such readings may be taken at the flow measurement and sampling station described in Section 7 by the Lead Agency at its discretion.

(c) The Lead Agency shall require of Apex the same agreement from Apex with respect to its use of the Wastewater Management Facilities as is required of the Participant in this Section.

Section 5. Connection to Wastewater Management Facilities; Construction and Installation of Flow Measurement and Sampling Equipment. (a) The Lead Agency and the Participant shall be responsible respectively, at Lead Agency's or Participant's sole cost and expense, for the construction, acquisition and installation of all additions and improvements to Lead Agency's or Participant's water and sewer system necessary to convey the Lead Agency's or Participant's wastewater flows to the Lead Agency's or Participant's Point of Connection with the Wastewater Management Facilities, including all required permitting, design, property and easement acquisition, NCDOT encroachment costs, and construction. The Lead Agency and Participant shall respectively be responsible for all costs associated with its water and sewer system prior to the Lead Agency's or Participant's Point of Connection with the Wastewater Management Facilities. The Lead Agency and the Participant may from time to time agree upon different or additional points of connection at which the Lead Agency or Participant shall deliver wastewater to the Wastewater Management Facilities. The Lead Agency and the Participant shall cooperate in establishing additional points of connection at any location designated by the Lead Agency or Participant, provided that the Lead Agency shall not be required to accept any additional Point of Connection to the Wastewater Management Facilities that will materially impair the operating efficiency of the Wastewater Management Facilities.

(b) Prior to discharging any wastewater to the Wastewater Management Facilities, or adding any additional Lead Agency's or Participants' Point of Connection to the Wastewater Management Facilities, the Lead Agency and the Participant shall respectively at it's sole cost and expense, construct, acquire and install a flow measurement and sampling station at a suitable location that is prior to each of Lead Agency's or Participant's Point of Connection with the Wastewater Management Facilities. The exact location of the flow measurement and sampling stations shall be established by mutual agreement of the Lead Agency and the Participant, and shall be at a locations determined to be mutual convenient and that will render accurate measurements. The flow measurement and sampling equipment at the stations shall include a

flow proportional, refrigerated, sequential sampler housed in a locked compartment. The flow measurement and sampling equipment shall be of such type as may be designed or designated by the Lead Agency and Participant, and approved, prior to construction, by the Lead Agency.

[To the extent either the exact location of the station or the exact type of flow measurement and sampling equipment is determined at the time the Service Agreement is entered, the foregoing section will be revised to reflect the technical terms so agreed upon.]

(c) The Participant shall permit the Lead Agency to have access to the flow measurement and sampling station and the Participant's Point of Connection with the Wastewater Management Facilities for purposes of performing all operations and maintenance of the flow measurement and sampling station. When construction is complete and accepted by the Lead Agency, the Lead Agency shall be responsible for the operation and maintenance of the flow measurement and sampling stations. The Lead Agency and Participant shall be responsible for all reasonable costs of operations and maintenance for their respective flow measurement and sampling stations, and for any costs of replacing or updating the flow measurement and sampling station as may be reasonably required.

(d) The Lead Agency will review design drawings for all connection facilities and flow measurement and sampling stations and provide comments in a timely manner, generally within two weeks of receiving plans for review.

Section 6. Flow Measurement and Wastewater Sampling. (a) The flow meters of the Lead Agency and Participant shall be read at least once a month by the Lead Agency, which shall maintain accurate records of each reading and shall promptly convey the results of each reading to the Participant.

(b) The Lead Agency will calibrate the flow meters at least annually or as recommended by the manufacturer, whichever is more often. All calibration practices, procedures and records shall be performed in and conform to a manner consistent with State of North Carolina regulations for flow metering at wastewater treatment facilities. Documentation of the meter calibration shall be maintained by the Lead Agency. In addition, the Lead Agency will recalibrate the flow meters at the request of the Participant at any time, up to four times per year. The Participant will pay the cost of any such requested recalibrations.

(c) If calibration pursuant to subsection (b) shows the flow meters to be inaccurate by two (2) percent, plus or minus, the flow meters shall be recalibrated and corrected. If calibration per subsection (b) shows flow meters to be inaccurate by at least ten (10) percent, plus or minus, the measured quantity of the meters for invoicing purposes shall be corrected for a period of time extending back to the time such inaccuracy began, if ascertainable, and if the beginning time is not ascertainable, and cannot be reasonably estimated, for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event further back than a period of six months. If, for any reason, a flow meter is out of service so that the flow quantity cannot be ascertained or computed from a reading, the quantities during the estimated period of malfunction shall be reasonably estimated by the Lead Agency on the basis of the best data available.

(d) The Lead Agency will collect flow proportional composite samples at the sampling stations on the schedule and as required by the Water Reclamation Facility NPDES Permit and in any event at least on a weekly basis. All samples will be split into two equal volumes, one for testing by the Participant and one for testing by the Lead Agency. The Lead Agency shall perform all splitting of samples. The Lead Agency will analyze the Lead Agency's splits of the samples for the components and characteristics listed in Section 4. The Lead Agency shall submit written reports documenting the analysis results to the Participant on a monthly basis.

(e) Any discovery by the Lead Agency, through analysis of a split sample as described in subsection (d), of wastewater flow delivered by Lead Agency or Participant that exceeds the limitations for such flow as defined in Section 3 shall be reported by the Lead Agency to the Participant within 72 hours of the analysis identifying such violation.

(f) The Participant shall have access to the flow measurement and sampling station for the purposes of inspection, meter reading, and pickup of samples which have been split by the Lead Agency at all times.

Section 7. Payment of Lead Agency's and Participant's Share of Costs of Wastewater Management Facilities. (a) The Lead Agency's and Participant's share of the monthly Current Expenses of the Wastewater Management Facilities shall be computed and payable in accordance with the Ownership and Operating Agreement.

(b) For any period where the wastewater flow volume from the Lead Agency or Participant exceeds the amounts specified in Section 3, there will be a Special Assessment for the volume of flow that exceeds the threshold flow volume. The amount of the Special Assessment shall be determined by the Lead Agency in accordance with the Ownership and Operating Agreement.

(c) For any day or month where the total loading of specified constituents in the Lead Agency's or Participant's wastewater exceeds the thresholds shown in the table set forth in Section 3, a Special Assessment will be applied for the cost of handling the wastewater with concentration levels above the permitted limit. The amount of the Special Assessment shall be determined by the Lead Agency in accordance with the Ownership and Operating Agreement.

(d) Notwithstanding the foregoing, the Lead Agency and the Participant may at any time enter into one or more Letters of Agreement in which the limitations set forth above, and the amounts of the Special Assessments, may be reduced or increased as mutually agreed among the parties.

Section 8. Waiver. The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party to thereafter enforce the same. Nor shall waiver by either party of any breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. No provision of this Service Agreement shall be deemed to have been waived by either party unless such waiver shall be in writing and executed by the same formality as this Service Agreement.

Section 9. Notices. (a) Unless otherwise provided, all notices provided for herein shall be in writing and shall be sent properly addressed by first class mail to the parties at the addresses shown below:

Town of Cary
PO Box 8005
Cary, North Carolina 27512-8005

Attention: Town Manager

Town of Morrisville
PO Box 166
Morrisville, North Carolina
27560-0166

Attention: Town Manager

(b) All notices shall be effective three (3) days after having been deposited, properly addressed and postage prepaid, in the U.S. Postal Service.

(c) Unless specifically provided otherwise, the Lead Agency and the Participant shall be represented by and act through the party designated in this section.

Section 10. Miscellaneous. (a) This Service Agreement may be amended from time to time by the mutual agreement of the parties hereto. Any amendment hereto shall be in writing.

(b) This Service Agreement shall be binding upon and inure to the benefit of each of the Project Partners and their respective successors and assigns. Whenever in this Service Agreement either a specific party is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Service Agreement contained by or on behalf of any party hereto shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

(c) In the event any provision of this Service Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

(d) This Service 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.

(e) This Service Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.

(f) In the event of any inconsistency between the terms of the Ownership and Operating Agreement and this Service Agreement, the Ownership and Operating Agreement shall control, unless the parties have agreed otherwise in a Letter of Agreement.

(g) Captions to sections throughout this Service Agreement are for ease of reference only and shall not affect the meaning or interpretation of this Service Agreement.

Section 11. Dispute Resolution. Any claims, disputes or other controversies arising out of this Service Agreement which may ensue shall be subject to and decided by the appropriate general court of justice of Wake County, North Carolina.

IN TESTIMONY WHEREOF, the Lead Agency has caused this Service Agreement to be executed by its [Town Manager], its corporate seal to be affixed and attested by its Town Clerk, all by the authority of the Town Council, and the Participant has caused this Service Agreement to be executed by its Mayor, its corporate seal to be affixed and attested by its Town Clerk, all by the authority of the Town Commissioners, on the day and year first written above.

TOWN OF CARY, NORTH CAROLINA

[SEAL]

By: _____
Town Manager

Attest:

Town Clerk

Approved as to form:

Town Attorney

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

Finance Director

[Counterpart signature page to Service Agreement]

TOWN OF MORRISVILLE, NORTH CAROLINA

[SEAL]

By: _____
Mayor

Attest:

Town Clerk

Approved as to form:

Town Attorney

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

Finance Director

EXHIBIT D

[THE DRAFTING ASSUMPTION IS THAT THIS SERVICE AGREEMENT WILL BE ENTERED INTO BETWEEN CARY, AS THE LEAD AGENCY, AND HOLLY SPRINGS WHEN THE WASTEWATER MANAGEMENT FACILITIES ARE NEARING COMPLETION OF CONSTRUCTION, PERMITS HAVE BEEN ISSUED AND FINAL COSTS OF THE WASTEWATER MANAGEMENT FACILITIES ARE KNOWN]

HOLLY SPRINGS WASTEWATER MANAGEMENT FACILITIES SERVICE AGREEMENT

This **WASTEWATER MANAGEMENT FACILITIES SERVICE AGREEMENT** (the "Service Agreement"), is made and entered into this _____ day of _____, 20__ by and between the **Town of Cary, North Carolina**, a municipal corporation organized and existing under the laws of the State of North Carolina (the "Lead Agency"), and the **Town of Holly Springs, North Carolina**, also a municipal corporation organized and existing under the laws of the State of North Carolina (the "Participant").

WITNESSETH:

WHEREAS, the Participant, the Lead Agency and the Towns of Apex and Morrisville (collectively, the "Project Partners"), are each municipalities of the State of North Carolina and each of them is the owner and operator of certain public enterprises within their territorial jurisdictions and service areas, including a wastewater collection, reclamation and discharge facility; and

WHEREAS, the Project Partners, have undertaken a joint effort for the design, construction, ownership and operation of regional wastewater management facilities, consisting generally of raw wastewater conveyance facilities, an 18 million gallon ("mgd") per day Water Reclamation Facility (the "Water Reclamation Facility") and facilities for conveying treated effluent to the point of discharge (the "Treated Effluent Pumping and Conveyance Facilities"), said facilities being referred to herein collectively as the "Wastewater Management Facilities"; and

WHEREAS, the Participant has an ownership interest in, and entitlement to capacity in, the Treated Effluent Pumping and Conveyance Facilities; and

WHEREAS, pursuant to the agreement entitled "Agreement for Design, Construction and Operation of Western Wake Regional Wastewater Management Facilities," dated _____, 2005 (the "Ownership and Operating Agreement"), the Project Partners have heretofore entered into certain agreements with respect to the sharing of the costs of construction and operation of the Wastewater Management Facilities, as well as certain agreements with respect to the operation of the Wastewater Management Facilities; and

WHEREAS, pursuant to the Ownership and Operating Agreement, the Lead Agency is responsible for managing the operation of the Treated Effluent Pumping and Conveyance Facilities; and

WHEREAS, the parties hereto desire to enter into this Service Agreement for the purposes of setting forth certain technical provisions relating to the use of the Treated Effluent Pumping and Conveyance Facilities by the Participant; and

WHEREAS, construction of the Wastewater Management Facilities is substantially complete and is expected to be completed and the Wastewater Management Facilities placed in service by _____; and

WHEREAS, pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes, as amended, units of local government such as the Lead Agency and the Participant are authorized to enter into contracts such as this Service Agreement for the joint exercise by such units of their powers, functions and public enterprises and entering into this Service Agreement will carry out the interlocal cooperation objective encouraged by said provisions;

NOW, THEREFORE, pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes, as amended, and in consideration of the respective rights, powers, duties and obligations hereafter set forth to be performed by the Lead Agency and the Participant, Lead Agency and the Participant mutually agree as follows:

Section 1. Defined Terms. Capitalized terms used in the recitals shall have the meanings set forth therein. In addition, the following terms shall have the following meanings in this Service Agreement:

“Letter of Agreement” means any agreement entered into from time to time between the Lead Agency and the Participant in which the parties thereto agree to terms with respect to the operation of the Treated Effluent Pumping and Conveyance Facilities and the conveyance of treated effluent of the Participant by the Lead Agency in a way that differs from the terms set forth in this Service Agreement.

“Participant’s Point of Connection with the Wastewater Management Facilities” means the point where Participant’s treated effluent is delivered to the Treated Effluent Pumping and Conveyance Facilities for conveyance to the point of discharge in accordance with the Ownership and Operating Agreement.

“Participant’s NPDES Permit” means the National Pollution Discharge Elimination System Permit issued by the North Carolina Department of Environment and Natural Resources on _____ to the Participant, authorizing the discharge by the Participant of the treated effluent to be conveyed through the Treated Effluent Pumping and Conveyance Facilities, including all permit conditions, stipulations or other terms, whether included expressly therein or incorporated by reference.

“Site” means the site described in Exhibit A and Exhibit B to the Ownership and Operating Agreement, upon which the Water Reclamation Facility and the pumping station portion of the Treated Effluent Pumping and Conveyance Facilities will be constructed and operated.

“Water Reclamation Facility NPDES Permit” means the National Pollution Discharge Elimination System Permit issued by the North Carolina Department of Environment and

Natural Resources on _____ to the Lead Agency on behalf of the owners of the Water Reclamation Facility, authorizing the discharge of treated effluent from the Water Reclamation Facility, including all permit conditions, stipulations or other terms, whether included expressly therein or incorporated by reference.

“Special Assessment” means a special charge to the Participant levied on account of the Participant’s exceeding the limitations on the volumes of flow set forth in Section 4(a). Such amount is also a “Special Assessment” within the meaning of the Ownership and Operating Agreement.

Section 2. Effective Date and Term of this Service Agreement. This Service Agreement shall become binding upon the parties hereto upon the execution and ratification of this Service Agreement by the governing boards of the Lead Agency and the Participant. The Agreement shall remain in effect until either the Participant or the Lead Agency discontinues its participation under the Ownership and Operating Agreement. Notwithstanding the foregoing, the parties hereto agree to mutually review and update this agreement from time to time, and at least every ten years, to reflect such matters as shall be necessary, such as changes in permit conditions, changes in the Wastewater Management Facilities, and the application of new technologies.

Section 3. Lead Agency’s General Obligations and Representations. The Lead Agency and the Participant hereby agree that:

(a) The Treated Effluent Pumping and Conveyance Facilities will accept treated effluent from the Participant beginning no later than _____, 20__ for conveyance to the point of discharge in the Cape Fear River, in accordance with the Ownership and Operating Agreement and subject to the terms of this Service Agreement. The Lead Agency will not interrupt or suspend such acceptance of treated effluent except in cases of extreme emergency, force majeure, or court order. In the event of a crisis or extreme emergency, the Lead Agency shall operate the Treated Effluent Pumping and Conveyance Facilities for the protection of the public health, safety and welfare and for the protection of the environment. The Lead Agency will keep the Participant informed regarding any situations or actions that will affect the acceptance of treated effluent to the Treated Effluent Pumping and Conveyance Facilities from the Participant.

(b) The treated effluent delivered by the Participant to the Treated Effluent Pumping and Conveyance Facilities shall be delivered at the Participant’s Point of Connection to the Wastewater Management Facilities.

(c) The Lead Agency represents and warrants that it has received or will receive all permits, licenses, and authorizations necessary from the United States of America, the State of North Carolina and any department or agency of either, to operate the Treated Effluent Pumping and Conveyance Facilities. The Lead Agency will maintain in full force and effect for the term hereof all such permits necessary for the lawful operation of the Treated Effluent Pumping and Conveyance Facilities. The Lead Agency shall operate the Water Reclamation Facility in accordance with all permits, licenses, laws, permits and other governmental rules, regulations, statutes, administrative orders or similar governmental restrictions such that the discharge of

treated effluent of the Water Reclamation Facility through the Treated Effluent Pumping and Conveyance Facilities is in compliance therewith.

(d) The Lead Agency will maintain accurate records of the volumes and quality of the treated effluent delivered to the Treated Effluent Pumping and Conveyance Facilities from the Water Reclamation Facility. Such records shall be in sufficient detail to determine whether the Water Reclamation Facility is in compliance with all restrictions, limitations, conditions or other terms of the permits and other governmental rules, regulations, statutes, administrative orders or similar governmental restrictions regarding the discharge of treated effluent by the Water Reclamation Facility. The Lead Agency shall make such records available to the Participant upon request.

(e) The services to be provided by the Wastewater Management Facilities to the Participant, under the direction of the Lead Agency, shall consist solely of the pumping and other conveyance by the Treated Effluent Pumping and Conveyance Facilities of the treated effluent delivered to the Treated Effluent Pumping and Conveyance Facilities for discharge in accordance with the terms of this Service Agreement and the Ownership and Operating Agreement. The Lead Agency shall have no responsibility or duty to Participant to monitor the quality of the treated effluent delivered by Participant to the Treated Effluent Pumping and Conveyance Facilities for compliance with the restrictions of the Participant's NPDES Permit, any other permit or any other rule, regulation, statute, administrative order or similar governmental restriction regarding the quality or quantity of treated effluent or to take any action to remedy any non-compliance by Participant with any such restriction.

Section 4. The Participant's Obligations and Undertakings.

(a) The Participant may begin sending treated effluent to the Treated Effluent Pumping and Conveyance Facilities at any time after it receives notification from the Lead Agency that the Treated Effluent Pumping and Conveyance Facilities are operational, and the Lead Agency shall provide such notification to the Participant no later than beginning no later than _____, 20___. Unless otherwise agreed between the Lead Agency and the Participant, as set forth in a Letter of Agreement, the Participant will limit its treated effluent flows to the Treated Effluent Pumping and Conveyance Facilities to no more than:

(i) 5.08 mgd on an average annual basis.

(ii) 15.76 mgd on a peak hourly basis.

(b) The Participant has participated in the joint ownership of the Treated Effluent Pumping and Conveyance Facilities to obtain a resource for the conveyance and discharge of the treated effluent from the operation of its wastewater collection, treatment and discharge facility delivered to the Treated Effluent Pumping and Conveyance Facilities. The Participant acknowledges that the services to be provided by the Treated Effluent Pumping and Conveyance Facilities to the Participant, under the direction of the Lead Agency, shall consist solely of the pumping and other conveyance for discharge of the treated effluent delivered to the Treated Effluent Pumping and Conveyance Facilities in accordance with the terms of this Service Agreement and the Ownership and Operating Agreement.

(c) The Participant represents and warrants that it has received or will receive all permits, licenses, and authorizations necessary from the United States of America, the State of North Carolina and any department or agency of either, to operate the wastewater facilities that will deliver treated effluent to the Treated Effluent Pumping and Conveyance Facilities and to discharge such treated effluent from the Participant's wastewater system to the Cape Fear River. The Participant will maintain in full force and effect for the term hereof all such permits necessary for the lawful operation of its wastewater management facilities. The Participant shall operate its wastewater system in accordance with all permits, licenses, laws, permits and other governmental rules, regulations, statutes, administrative orders or similar governmental restrictions such that the discharge by Participant of treated effluent through the Treated Effluent Pumping and Conveyance Facilities is in compliance therewith.

(d) The Participant will maintain accurate records of the volumes and quality of the treated effluent delivered by the Participant for discharge through the Treated Effluent Pumping and Conveyance Facilities. Such records shall be in sufficient detail to determine whether the Participant is in compliance with all restrictions, limitations, conditions or other terms of the permits and other governmental rules, regulations, statutes, administrative orders or similar governmental restrictions regarding the delivery by Participant of treated effluent to the Treated Effluent Pumping and Conveyance Facilities. Participant shall make such records available to the Lead Agency upon request.

(e) The Participant will pay when due all payments required under the Ownership and Operating Agreement as the same are due and payable thereunder.

Section 5. Connection to Wastewater Management Facilities; Construction and Installation of Flow Measurement and Monitoring Equipment. (a) The Participant shall be responsible, at Participant's sole cost and expense, for the construction, acquisition and installation of all additions and improvements to Participant's water and sewer system necessary to convey the Participant's treated effluent flows to the Participant's Point of Connection with the Wastewater Management Facilities, including all required permitting, design, property and easement acquisition, NCDOT encroachment costs, and construction. The Participant shall be responsible for all costs associated with its water and sewer system prior to the Participant's Point of Connection with the Wastewater Management Facilities.

(b) Prior to delivery of any treated effluent to the Treated Effluent Pumping and Conveyance Facilities by the Participant, the Participant shall at Participant's sole cost and expense, construct, acquire and install a station containing equipment to constantly measure the volume of the flow of treated effluent delivered to the Treated Effluent Pumping and Conveyance Facilities by the Participant and the amount of dissolved oxygen in that flow. The measurement and monitoring station shall be located at a suitable location that is prior to Participant's Point of Connection with the Wastewater Management Facilities, which shall be a location determined to be mutually convenient and that will render accurate measurements. The monitoring equipment shall contain apparatus to measure on a constant basis the amount of dissolved oxygen contained in the treated effluent at a given point in time. The flow measurement and monitoring equipment shall be of such type as may be designed or designated by the Participant, and approved, prior to construction, by the Lead Agency.

[To the extent either the exact location of the station or the exact type of flow measurement and monitoring equipment is determined at the time the Service Agreement is entered, the foregoing section will be revised to reflect the technical terms so agreed upon.]

(c) The Participant shall permit the Lead Agency to have access to the flow measurement and monitoring station described in (b) and the Participant's Point of Connection with the Wastewater Management Facilities for purposes of performing maintenance on connection apparatus and all operations and maintenance of the flow measurement and monitoring station. When construction is complete and accepted by the Lead Agency, the Lead Agency shall be responsible for the operation and maintenance of the connection apparatus and the flow measurement and monitoring station. The Participant shall be responsible for all reasonable costs of such operations and maintenance, and for any costs of replacing or updating the flow measurement and monitoring station as may be reasonably required.

(d) The Lead Agency will review design drawings for all connection facilities and the Participant's flow measurement and monitoring station and provide comments in a timely manner, generally within two weeks of receiving plans for review.

(e) Prior to delivery of any treated effluent to the Treated Effluent Pumping and Conveyance Facilities from the Participant, the Lead Agency shall, at no cost to Participant, construct, acquire and install a flow measurement and monitoring station at a suitable location that is prior to the point of delivery of the treated effluent conveyed from the Western Wake Water Reclamation Facility to the Treated Effluent Pumping and Conveyance Facilities. The exact location of this flow measurement and monitoring stations shall be a location determined by the Lead Agency that will render accurate measurements. In any event, the flow measurement and monitoring station shall be located at a point prior to where the treated effluent from the Water Reclamation Facility is blended with the treated effluent delivered to the Treated Effluent Pumping and Conveyance Facilities by the Participant. The flow measurement and monitoring equipment at the station shall contain apparatus to measure on a constant basis the amount of dissolved oxygen contained in the treated effluent at a given point in time. The flow measurement and monitoring equipment shall be of such type as may be designed or designated by the Lead Agency, and approved, prior to construction, by the Participant. Said flow measurement and monitoring equipment may be intergrated into other measuring and monitoring equipment associated with the Water Reclamation Facility.

(f) The Lead Agency shall permit the Participant to have access to the flow measurement and monitoring station described in (e) for purposes of observing all operations and maintenance of the flow measurement and monitoring equipment. The Lead Agency shall be responsible for the operation and maintenance of the flow measurement and monitoring equipment described in (e) and for the cost of operations and maintenance, and for any costs of replacing or updating the flow measurement and monitoring station. No costs of the flow measurement and monitoring equipment described in (e) shall be allocable to the Participant under the Ownership and Operating Agreement.

Section 6. Flow Measurement and Wastewater Monitoring of Wastewater. (a) The flow meters described in Section 5 shall be read at least once a month by the Lead Agency, which

shall maintain accurate records of each reading and shall promptly convey the results of each reading to the Participant.

(b) The Lead Agency will calibrate the flow meters at least annually or as recommended by the manufacturer, whichever is more often. All calibration practices, procedures and records shall be performed in and conform to a manner consistent with State of North Carolina regulations for flow metering at wastewater treatment facilities. Documentation of the meter calibration shall be maintained by the Lead Agency. In addition, the Lead Agency will recalibrate the flow meters at the request of the Participant at any time, up to four times per year. The Participant will pay the cost of any such requested recalibrations.

(c) If calibration pursuant to subsection (b) shows the flow meters to be inaccurate by two (2) percent, plus or minus, the flow meters shall be recalibrated and corrected. If calibration per subsection (b) shows flow meters to be inaccurate by at least ten (10) percent, plus or minus, the measured quantity of the meters for invoicing purposes shall be corrected for a period of time extending back to the time such inaccuracy began, if ascertainable, and if the beginning time is not ascertainable, and cannot be reasonably estimated, for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event further back than a period of six months. If, for any reason, a flow meter is out of service so that the flow quantity cannot be ascertained or computed from a reading, the quantities during the estimated period of malfunction shall be reasonably estimated by the Lead Agency on the basis of the best data available.

Section 7. Payment of Participant's Share of Costs of Wastewater Management Facilities. (a) The Participant's share of the monthly Current Expenses of the Wastewater Management Facilities shall be computed and payable in accordance with the Ownership and Operating Agreement.

(b) For any period where the treated effluent flow volume from the Participant exceeds the amounts specified in Section 4(a), there may be a Special Assessment for the volume of flow that exceeds the threshold flow volume. The amount of the Special Assessment shall be determined by the Lead Agency in accordance with the Ownership and Operating Agreement.

(c) Notwithstanding the foregoing, the Lead Agency and the Participant may at any time enter into one or more Letters of Agreement in which the limitations set forth above, and the amounts of the Special Assessments, may be reduced or increased as mutually agreed among the parties.

Section 8. Waiver. The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party to thereafter enforce the same. Nor shall waiver by either party of any breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. No provision of this Service Agreement shall be deemed to have been waived by either party unless such waiver shall be in writing and executed by the same formality as this Service Agreement.

Section 9. Notices. (a) Unless otherwise provided, all notices provided for herein shall be in writing and shall be sent properly addressed by first class mail to the parties at the addresses shown below:

Town of Cary
PO Box 8005
Cary, North Carolina 27512-8005
Attention: Town Manager

Town of Holly Springs
PO Box 8
Apex, North Carolina 27540-0008
Attention: Town Manager

(b) All notices shall be effective three (3) days after having been deposited, properly addressed and postage prepaid, in the U.S. Postal Service.

(c) Unless specifically provided otherwise, the Lead Agency and the Participant shall be represented by and act through the party designated in this section.

Section 11. Miscellaneous. (a) This Service Agreement may be amended from time to time by the mutual agreement of the parties hereto. Any amendment hereto shall be in writing.

(b) This Service Agreement shall be binding upon and inure to the benefit of each of the Project Partners and their respective successors and assigns. Whenever in this Service Agreement either a specific party is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Service Agreement contained by or on behalf of any party hereto shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

(c) In the event any provision of this Service Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

(d) This Service 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.

(e) This Service Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.

(f) In the event of any inconsistency between the terms of the Ownership and Operating Agreement and this Service Agreement, the Ownership and Operating Agreement shall control, unless the parties have agreed otherwise in a Letter Agreement.

(f) Captions to sections throughout this Service Agreement are for ease of reference only and shall not affect the meaning or interpretation of this Service Agreement.

Section 12. Dispute Resolution

Any claims, disputes or other controversies arising out of this Service Agreement which may ensue shall be subject to and decided by the appropriate general court of justice of Wake County, North Carolina.

IN TESTIMONY WHEREOF, the Lead Agency has caused this Service Agreement to be executed by its [Town Manager], its corporate seal to be affixed and attested by its Town Clerk, all by the authority of the Town Council, and the Participant has caused this Service Agreement to be executed by its Mayor, its corporate seal to be affixed and attested by its Town Clerk, all by the authority of the Town Commissioners, on the day and year first written above.

TOWN OF CARY, NORTH CAROLINA

[SEAL]

By: _____
Town Manager

Attest:

Town Clerk

Approved as to form:

Town Attorney

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

Finance Director

[Counterpart signature page to Service Agreement]

TOWN OF HOLLY SPRINGS, NORTH
CAROLINA

[SEAL]

By: _____
Mayor

Attest:

Town Clerk

Approved as to form:

Town Attorney

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

Finance Director