

2017 CARY/APEX WATER TREATMENT FACILITY AGREEMENT

This **2017 CARY/APEX WATER TREATMENT FACILITY AGREEMENT** (this "Agreement"), made and entered into the date of the last Party to sign and effective July 1, 2017 ("Commencement Date"), by and between the Town of Apex, a municipal corporation organized and existing under the laws of the State of North Carolina ("Apex") and the Town of Cary, a municipal corporation organized and existing under the laws of the State of North Carolina ("Cary"). Apex and Cary are sometimes referred to as "Party" or jointly as the "Parties."

WITNESSETH

THAT WHEREAS, Apex and Cary are the owners and operators of certain public enterprises within their respective service areas; and

WHEREAS, Cary and Apex have, since 1980, jointly conducted a wide range of planning, permitting and construction activities to meet the water supply needs of their respective service areas; and

WHEREAS, Apex and Cary together hold a water supply allocation from the State of North Carolina for 32 percent of the water supply storage in B. Everett Jordan Lake ("Jordan Lake"), of which 23.5 percent is assigned to Cary and 8.5 percent is assigned to Apex; and

WHEREAS, Apex and Cary were jointly granted on March 12, 2015 a modified Interbasin Transfer Certificate from the State of North Carolina ("2015 IBT Certificate"), which replaced the Interbasin Transfer Certificate issued jointly to Cary, Apex, Morrisville and Wake County in 2001; and

WHEREAS, Apex and Cary jointly own and operate the Cary/Apex Water Treatment Facility ("CAWTF") in accordance with an Agreement dated April 26, 1988 as amended January 26, 1989; August 1, 1995; August 3, 1999; April 5, 2000; and December 20, 2011 ("Original Agreement"); and

WHEREAS, Apex's ownership in the CAWTF is 23% and Cary's ownership in the CAWTF is 77%; and

WHEREAS, the CAWTF has a current maximum day capacity of 40 million gallons per day (mgd), of which 77 percent (30.8 mgd) is owned by Cary and 23 percent (9.2 mgd) is owned by Apex; and

WHEREAS, Apex and Cary jointly own related raw water intake and transmission facilities that deliver water from Jordan Lake to the CAWTF, finished water transmission facilities that deliver water from the CAWTF to the Delivery Points (as such term is defined in this Agreement), and related ancillary facilities, some of which are located off the CAWTF site, (collectively "Other Components of the CAWTF" or "Other Components"), all of which Other Components are owned 77 percent by Cary and 23 percent by Apex; and

WHEREAS, Apex and Cary have planned and designed for the expansion of the CAWTF to a maximum day capacity of 56 mgd and desire to proceed with construction of such expansion and with the addition and expansion of certain Other Components, all of which will be owned 77 percent by Cary and 23 percent by Apex; and

WHEREAS, Apex and Cary desire to provide the terms pursuant to which they may, jointly and/or separately, enter into agreements to provide untreated or treated water to other jurisdictions provided such provision of water to others does not infringe on the other Party's ownership interest or ability to use its share of the capacity of the CAWTF and Other Components; and

WHEREAS, Apex and Cary desire to enter into this Agreement to, among other things, address the planned expansion of the CAWTF and Other Components and provide a process for the sale of water to other jurisdictions.

NOW, THEREFORE, in accordance with authority granted under Articles 16 and 20 of Chapter 160A of the North Carolina General Statutes, and in consideration of the respective rights, powers, duties and obligations hereafter set forth to be performed, Apex and Cary agree as follows:

ARTICLE 1 PURPOSE, DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1. Purpose. The Recitals are incorporated into this Agreement. The purpose of this Agreement is to update and replace the Original Agreement and define the terms and conditions pursuant to which Apex and Cary will expand and continue to own and operate the CAWTF and Other Components and:

- a. Allocate and share the rights and responsibilities associated with their joint ownership of the CAWTF and Other Components, as such terms are defined herein, and for the operation of the CAWTF and Other Components;
- b. Allocate the entitlement to the Capacity of the CAWTF and Other Components;
- c. Address the joint holding of a Jordan Lake water supply Allocation;
- d. Address the joint holding of the 2015 IBT certificate;
- e. Address the sale of water and Capacity to others; and
- f. Provide mutual aid water supply to each other.

Section 1.2. 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:

- a. Allocation – A percentage of the water supply storage pool in B. Everett Jordan Lake, as granted by the North Carolina Environmental Management Commission to a unit of local government under the authority of G.S. 143-354(a)(11). At the Commencement Date, Apex and Cary's joint Allocation is as provided in Section 8.1.
- b. Annual Budget – The budget for Current Expenses of the CATWF and Other Components prepared for each Fiscal Year by Cary as the Lead Agency.

- c. Apex Delivery Point – Each point where potable water from the CAWTF is delivered to the Apex Distribution System.
- d. Apex Distribution System – The system of potable water pumps and distribution lines and all appurtenances thereto owned and operated by Apex in order to provide potable water utility services to its customers, as the same may be extended or modified from time to time.
- e. Capacity – The maximum amount of water the CAWTF or a specific Other Component can deliver on a daily basis, unless otherwise specified.
- f. Capital Costs – All costs properly allocable to the capital account for the CATWF and Other Components, including future expansion or upgrade, in accordance with generally accepted accounting principles, including the following:
 - i. Obligations incurred for labor, materials, and services provided by contractors, builders and materialmen in connection with the construction, acquisition, and equipping of the CATWF and Other Components, 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 or equipment and for the clearing of lands;
 - ii. The cost of acquiring by purchase or by eminent domain, including 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 CATWF or Other Components;
 - iii. 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 CATWF or Other Components and the placing of the same in operation;
 - iv. Design costs for the CATWF or Other Components; and
 - v. Expenses of obtaining permits for construction and operation of the CATWF or Other Components, including permits from the required State and federal agencies necessary to withdraw, treat and convey water to the Delivery Points.
 - vi. Expenses described in this subsection do not include compensation or benefits for full time employees of Apex or Cary.
- g. CAWTF – Cary/Apex Water Treatment Facility, including the real property on which it is located.
- h. Cary Delivery Point – Each point where potable water from the Facilities is delivered to the Cary Distribution System.
- i. Cary Distribution System – The system of potable water pumps and distribution lines and all appurtenances thereto owned and operated by Cary in order to provide potable water utility services to its customers, as the same may be extended or modified from time to time.

- j. Credits – Financial credits for surplus materials, sales taxes, court awards, payments for water supplied to others, or any other financial credits arising related to the operation or construction of the Facilities.
- k. Current Expenses – Expenses incurred by the Lead Agency for the administration, management, operation, maintenance and repair of Facilities, as determined in accordance with generally accepted accounting principles, except as expressly modified by this definition, including, but not limited to:
 - i. all ordinary and usual expenses of operation, maintenance and repair, which may include expenses not annually recurring,
 - ii. direct administrative expenses,
 - iii. salaries and other compensation,
 - iv. operating lease payments,
 - v. payments to any pension or retirement plan or plans properly chargeable to the Facilities,
 - vi. insurance premiums and expenses,
 - vii. legal, engineering and architectural expenses relating to the operation, maintenance or repair of the CATWF or Other Components,
 - viii. costs for contracts with service providers such as engineers or attorneys for the development or updates of this Agreement or other agreements relating to the CATWF and Other Components, and
 - ix. any other similar-type current expenses required to be paid with respect to the CATWF or Other Components;

Current Expenses shall not include:

- i. any reserves for extraordinary replacements or repairs, and
 - ii. any allowance for depreciation.
 - iii. Expenses described in this subsection do not include compensation or benefits for full time employees of Apex or Cary.
- l. Delivery Points – The Apex Delivery Points and the Cary Delivery Points.
 - m. Facilities – The jointly owned CATWF and Other Components (including all other related ancillary facilities needed to deliver treated drinking water to the Delivery Points). The Facilities and their general locations are identified in Exhibit A.
 - n. Fixed Current Expenses – That portion of the Current Expenses of the Facilities for a given period of time that would remain constant regardless of the quantity, quality or characteristics of the water supplied 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, Jordan Lake water supply storage Allocation payments, and expenses incurred in maintaining and submitting reports for permits after their initial issuance for the operation of the Facilities.
 - o. IBT – Interbasin Transfer as defined by G.S. 143-215.22G and G.S. 143-215.22L.
 - p. Interconnection Points – Points at which the Apex and Cary Distribution Systems are connected (Exhibit B).
 - q. Lead Agency – The Town of Cary acting in its capacity as the lead agent for purposes of managing the planning, design, permitting, construction, operation and maintenance of the Facilities.

- r. Original Agreement – The Agreement dated April 26, 1988, regarding the ownership and operation of the CAWTF, and defining Utility Service Areas, as amended January 26, 1989; August 1, 1995; August 3, 1999; April 5, 2000; and December 20, 2011.
- s. Other Components – The jointly owned raw water intake and transmission facilities that deliver water from Jordan Lake to CATWF, and all other jointly owned ancillary facilities, appurtenances, land, and interests in land that are necessary to deliver water to the Delivery Points, but are not the CAWTF.
- t. Ownership Share – The portion, expressed as a percentage, of the CATWF or an Other Component owned by a Party to this Agreement, generally applicable to land or an interest in land, facilities built on that land or interest in land, and hydraulic capacity of that CATWF or Other Component, unless otherwise stated herein.
- u. Permits – Permits, certificates or other regulatory instruments required to use, modify or expand the Facilities including, but not limited to, Public Water Supply Operating Permit, Laboratory Certification, Jordan Lake Allocation contract, and IBT requirements and certificates.
- v. Service Area – Area in which water is supplied or planned to be supplied by either Cary or Apex and as defined pursuant to Apex Ordinance No. 2004-1207-07 and Cary Ordinance No. O-2005-01, An Ordinance Revising A Utility Service And Annexation Agreement Between The Town of Apex, North Carolina and The Town of Cary, North Carolina For the Boundary Line Between These Two Municipalities, as may be amended from time to time.
- w. Variable Current Expenses – That portion of the Current Expenses of the Facilities for a given period of time that varies based upon the quantity, quality or characteristics of the water withdrawn, treated or conveyed during that period. Examples of Variable Current Expenses include, but are not limited to, electricity costs and chemical costs.
- x. Water Shortage Response Plan – As required of each of Cary and Apex by the state of North Carolina.

Section 1.3. 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 to particular articles or sections are references to articles or sections of this Agreement unless some other reference is indicated.
- c. References 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.

Section 1.4. Previous Agreements. On the Commencement Date, this Agreement will supersede and terminate the Original Agreement.

Section 1.5 Utility Service Area. An Ordinance Revising A Utility Service And Annexation Agreement Between The Town of Apex, North Carolina and The Town of Cary, North Carolina For the Boundary Line Between These Two Municipalities (Apex Ordinance

No. 2004-1207-07 and Cary Ordinance No. O-2005-01), by its terms superseded and replaced Utility Service Areas defined in Original Agreement, and the following Resolutions:

- a. Joint Resolution of the Towns of Apex and Cary Establishing Jurisdictional Boundaries, dated January 26, 1989;
- b. Joint Resolution of the Towns of Cary and Apex Establishing Jurisdictional Boundaries, dated August 3, 1999; and
- c. Joint Resolution of the Towns of Cary and Apex Establishing Jurisdictional Boundaries, dated April 5, 2000;

and such Resolutions are superseded and terminated.

ARTICLE 2 ALLOCATION OF COSTS AND PAYMENTS

Section 2.1. Allocation of Costs in General.

- a. It is the intent of the Parties to allocate the Capital Costs, Credits, and Current Expenses of the Facilities based on the Parties' respective Ownership Share of Facilities, except where described otherwise.
- b. Cary, as the Lead Agency, will establish such record keeping and accounting systems as shall be necessary to enable it, as near as shall be practicable, to account properly for all Capital Costs, Credits, and Current Expenses of the Facilities, and, as near as shall be practicable, to properly identify and categorize the Current Expenses of the Facilities as Fixed Current Expenses and Variable Current Expenses.
- c. Apex may conduct such reasonable inspections and reviews as Apex deems necessary to assure that all Capital Costs, Credits, and Current Expenses are properly allocated as provided in this Agreement.

Section 2.2. Capital Costs, Credits, and Fixed Current Expenses. Capital Costs, Credits, and Fixed Current Expenses shall be allocated to and borne by Cary and Apex in accordance with their respective Ownership Shares at the time the Capital Cost, the Credit, or the Fixed Current Expense is incurred by the Lead Agency.

Section 2.3. Variable Current Expenses. The Variable Current Expenses shall be allocated to and borne by Cary and Apex in accordance with their proportionate use of the Facilities' Capacity that results in the incurrence of the Variable Current Expense. The proportionate use of Facilities' Capacity will be measured by the Lead Agency as the percentage of the total volume of water produced delivered to each Party at the Delivery Points.

Section 2.4. Billing. Cary, as the Lead Agency, will invoice Apex monthly for its share of Capital Costs, Current Expenses, and any special assessments as provided in Section 3.3.

Section 2.5. Payment. Within 30 days of receipt of the invoice, Apex shall make payment in the amount of the invoice to the Lead Agency. If Apex 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 2.6. Interest. Interest shall be charged on any unpaid balance at the rate of 0.5% per month beginning with the second monthly invoice following (that is, approximately 60 days after) the month in which the unpaid amount was billed. Adjustments will not be made on interest amounts.

Section 2.7. Annual Audit. The Lead Agency will 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 Facilities and provide a report that shall indicate whether the Capital Costs and Current Expenses allocated to each Party during the prior fiscal 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 2.8. No Obligation to Levy Taxes. No provision of this Agreement shall obligate Cary or Apex, whether expressly or by implication, to levy taxes either to make payments falling due hereunder or to pay any judgment entered against it as a result of its breach of this Agreement. Cary covenants with Apex that it will operate the Cary Distribution System, and Apex covenants with Cary that it will operate the Apex Distribution System, so that in each case the respective system will generate revenues sufficient to meet its obligations under this Agreement (in addition to any other obligations payable from such revenues) to the extent funds are not otherwise available for such purpose.

**ARTICLE 3
ENTITLEMENTS TO CAPACITY**

Section 3.1. Facilities Water Supply Capacity.

- a. Generally, each Party is entitled to a percentage of the water producing Capacity of the Facilities that is equal to its Ownership Share.
- b. Exhibit A shows the general location of the Facilities. Facilities include the components listed in Table 1 and all ancillary facilities and appurtenances, some of which are located on real property owned jointly by the Parties and some on jointly owned easements in real property.
- c. Each Party's Ownership Share is as follows.
 - i. Cary – 77%
 - ii. Apex – 23%

Section 3.2. Facilities Capacities. Table 1 lists 2014 Capacities, as well as the Capacities resulting from the CAWTF expansion (referred to as “Phase III Expansion”), which is under construction by the Lead Agency with expected completion in 2017. While components of the Facilities have specific design Capacities as shown in Table 1, if Lead Agency ever determines that actual Capacity is different from the Capacity shown in Table 1, then the actual Capacity will control and Ownership Shares will be applied to the actual Capacity.

<i>Table 1. Facilities 2014 and Phase III Expansion Capacities</i>		
	2014 Capacity or Size	Phase III Expanded Capacity or Size
Aeration Facility	None	2 ResMix units
Raw Water Intake Structure (maximum day)	47 mgd	82 mgd
Raw Water Pump Station (maximum day)	41.5 mgd	63 mgd
Raw Water Pipeline(s)	<ul style="list-style-type: none"> • Parallel 30-inch/42-inch lines (32,000 ft) • 54-inch line (1,800 ft) 	<ul style="list-style-type: none"> • Parallel 54-inch/42-inch lines (1,200 ft) • Parallel 30-inch & (2) 42-inch lines (26,300 ft) • Diverging sets of lines meet at plant entry <ul style="list-style-type: none"> ○ Parallel 30-inch/42-inch lines (4,300 ft), 54-inch line (1,800 ft) ○ 48-inch line (5,500 ft)
Cary/Apex Water Treatment Facility/ High Service Pump Station (maximum day)	40 mgd	56 mgd
Finished Water Pipeline(s)	Parallel 30-inch/42-inch lines (14,000 ft)	Parallel 30-inch/42-inch lines (14,000 ft)

Section 3.3. Future Modification or Expansion. Following the Phase III Expansion, the Capacity of Facilities may be further modified or expanded as follows:

- a. Modifications that are deemed necessary by the Lead Agency in order to maintain or improve regulatory compliance, operational functions, or design Capacity may be undertaken by the Lead Agency with costs shared according to Section 2.2. Any resulting increase in Capacity of Facilities shall be allocated in accordance with each Party's Ownership Share.
- b. Major modifications or expansions, such as increasing the CAWTF Capacity up to 72 mgd with associated expansion of Other Components, will be undertaken by the Lead Agency upon approval by the Advisory Committee. Any costs and expenses and any resulting increase in Capacity shall be allocated in accordance with each Party's Ownership Share.
- c. Either Apex or Cary may modify or expand the Capacity of Facilities without amendment to this Agreement, as follows:
 - i. If Apex desires a modification or expansion, Apex shall notify Cary in a duly authorized writing of its request. Upon receipt of such request, Cary will develop, as promptly as reasonably possible, the plans and specifications required for the modification or expansion and will notify Apex of the expected cost and the basis therefore. If Apex desires to proceed with implementation of the modification or expansion, Apex shall notify Cary in a duly authorized writing of its intent to proceed. Upon receipt of such request, Cary will proceed to implement the modification or expansion.
 - ii. If Cary desires a modification or expansion, Cary will notify Apex in a duly authorized writing of its request and proceed to develop the plans and specifications required for the modification or expansion. If Cary desires to proceed with implementation of the modification or expansion, Cary shall notify Apex in a duly authorized writing and proceed to implement the modification or expansion.
 - iii. The Party requesting the modification or expansion shall be responsible for all costs incurred by Cary in developing plans and specifications, regardless of whether the proposed modification or expansion proceeds and the other Party will have no liability therefore. If the modification or expansion proceeds, the Party requesting the modification or expansion shall pay all the Capital Costs of the modification or expansion to the Facilities and the other Party will have no liability therefore.
 - iv. Upon completion of such modification or expansion, the Party that requested and paid for the modification or expansion shall be solely entitled to the increased Capacity resulting therefrom, and any change in the Ownership Shares shall be determined and documented in a Letter of Agreement signed by the Town Manager of Cary and the Town Manager of Apex. Thereafter, except as hereinafter provided, the Current Expenses for the operation of the Facilities shall be allocated based upon the new Ownership Shares. If the expansion of the Facilities' Capacity results in an increase in the overall Current Expenses such that an allocation based solely upon the Ownership Shares 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), Cary shall impose a special assessment on 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.

- v. Notwithstanding the foregoing, in the event that a modification or expansion of the Capacity of any of the Facilities is undertaken pursuant to this Section 3.3(c), and in connection therewith Cary as the Lead Agency determines that other non-expansion modifications to the existing Facilities should be installed at the same time, then Cary may cause the installation at that time and the costs of the additions and modifications shall be allocated as provided in Section 3.1 (based upon Ownership Shares prior to the increase in Capacity). In such case, Cary shall allocate the costs of the expansion and modification project so that the Party requesting the expansion bears the Capital Costs of the expansion, and Cary and Apex bear the cost of the improvements and modifications to the existing Facilities in accordance with their Ownership Shares.
- d. Any other modifications or expansions, including expansions other than as provided in Section 3.3(c), that would result in any change in Ownership Shares, will require prior written amendment to this Agreement. 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 hereto.
- e. In all events, Cary will be responsible for the supervision of all design, construction, acquisition and installation of the modification or expansion, and will endeavor to minimize disruptions in the operation of the Facilities.

Section 3.4. Use of Capacity of the Other Party.

- a. To the extent that a Party has surplus Capacity resulting from its Ownership Share in Facilities available to it ("Owning Party"), the other Party ("Using Party") may pay for, use and sell water from the Owning Party's Capacity provided such use of or sale of water does not infringe upon the Owning Party's ability to meet the water demands of its customers. Such use will be by Letter of Agreement, signed by the Town Manager of each Party, specifying the surplus Capacity, the amount to be paid, and the duration of use of such Capacity of the Owning Party.
- b. In the event Using Party is using Owning Party's Capacity and the Owning Party reasonably and in good faith determines that it is not able to meet the water demands of its customers, Owning Party shall provide written notice to the Using Party that its ability to meet the demands of its customers has been infringed upon ("Infringement Notice"). Such Infringement Notice may be sent whenever the Owning Party experiences such occurrences as water quality concerns, undesirable hydraulic conditions, unsatisfactory pressure, pressure fluctuation, and other conditions or occurrences that affect or may affect its ability to meet the demands of its customers. Upon receipt of such Infringement Notice, Using Party will discontinue use of Owning Party's Capacity within 24 hours or as soon as is otherwise practical and is agreed to in writing by Owning Party.
- c. Notwithstanding the terms for cost sharing in Article 2, during any month when one Party uses part of the other Party's Capacity, all expenses related to salaries and other personnel expenses will be billed to the Using Party as Variable Current Expenses.

Section 3.5 Sale of Capacity.

- a. Cary and Apex agree that both have the right to benefit from any sale of Capacity (which may also refer to any sale of the right to use Capacity without transferring ownership of Capacity) of the CAWTF or Other Components to a third party to the extent they determine to participate in the sale. In the event that Cary or Apex are offered the opportunity by another entity to sell to such entity some portion of the Capacity to which it is entitled by Ownership Share, the Party receiving the offer of such opportunity shall notify the other Party.
- b. If both Apex and Cary wish to participate in the sale of Capacity of the CAWTF and/or some Other Component (which may also refer to any sale of the right to use Capacity without transferring ownership of Capacity), then an agreement will be prepared between and among the third party buying Capacity, Apex and Cary. In addition to such provisions as the Parties shall agree upon, such agreement shall contain provisions to the effect that:
 - i. The sale of Capacity will be shared by Cary and Apex;
 - ii. Revenues from the sale of the Capacity will be equitably allocated to the components of the Facility utilized to deliver the Capacity and shared between Apex and Cary in accordance with their Ownership Shares of the components of the Facility utilized;
 - iii. Arrangements for the use of the Capacity shall be managed by Cary as the Lead Agency;
 - iv. Costs incurred in implementing the use of the Capacity will be equitably allocated to the component of the Facility utilized to deliver the Capacity and shared between Apex and Cary in accordance with their Ownership Shares;
 - v. Operational details of providing water will be dependent on connection points and will be specified in the agreement; and
 - vi. Such other operational details as necessary.
- c. If a third party that is a governmental entity or a non-profit corporation that has a public water operation located in Chatham, Durham Orange, or Wake Counties ("Third Party") proposes to purchase Capacity from Cary or Apex ("Proposed Seller") and the other Party to this Agreement does not choose to participate in the sale as contemplated by subsections a. and b., then the Party desiring to make such a sale ("Proposed Seller") shall first offer to sell the capacity to the other Party ("Proposed Buyer") at a price that is the lesser of (1) the proposed sale price of the Capacity to the Third Party or (2) an amount sufficient for the Proposed Seller to recover its Capital Cost investment in the component of the Facility for which the Capacity is being sold for the period that the Capacity is being sold. If the Proposed Buyer elects to purchase the Capacity, then the Capacity shall be so sold for the purchase price described above. During the time the Capacity is sold to the Proposed Buyer, the Proposed Buyer shall be responsible for the Current Expenses allocable to the Capacity of the component of the Facilities so sold.
- d. If the other Party does not purchase the Capacity as described in c. above, then the Proposed Seller may sell such Capacity to the Third Party (as defined in c. above) at the price described above. If such a sale to Third Party occurs:
 - i. The Capacity so sold will be solely from the Ownership Share of the Proposed Seller;

- ii. The sale may only be made if the sale will not infringe on the ability of the other Party to use its full Ownership Share in the Facilities or otherwise meet the demands of its customers; and
- iii. The Proposed 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 Third Party as shall be negotiated between the Proposed Seller and the Third Party).

ARTICLE 4 REGULAR SALE OF WATER TO OTHERS

Section 4.1. Sale of Water to Others. The Parties may sell water to another person or entity (“Third Party”) on a regular basis (Mutual Aid water supply is described in Article 10).

Section 4.2. Sale of Water by Both Cary and Apex. Cary and Apex both have the right to benefit from any sale of water to Third Parties to the extent they determine to participate in the sale. In the event that Cary or Apex are offered the opportunity by a Third Party to sell to that Third Party some portion of the water to which Cary or Apex is entitled, the Party receiving the offer shall notify the other Party. If both Apex and Cary wish to participate in the sale of water, then an agreement will be prepared among the Third Party, Apex and Cary. In addition to such provisions as the Parties shall agree upon, such agreement shall contain provisions to the effect that:

- a. Allocation (if needed) and Facilities Capacity needed to provide the Third Party with water will be jointly provided by Cary and Apex according to their Ownership Shares.
- b. Costs and revenues related to such Third Party sale will be managed by the Lead Agency and shared between Cary and Apex; any fixed regular payments shall be credited according to the Facilities Ownership Shares and any payments based on variable volume provided will offset Variable Current Expenses.
- c. Operational details of providing water will be dependent on connection points and will be specified in the agreement with the Third Party.

Section 4.3. Sale of Water by Either Cary or Apex. If either Party does not wish to participate in the sale of water and the other Party (for purposes of this Section 4.3 “Selling Party”) can provide water to the Third Party directly or indirectly from Selling Party’s Water Distribution System:

- a. Allocation (if needed) and Facilities Capacity necessary for the water provided to Third Party will be solely from Selling Party.
- b. Any water use by Third Party will be deemed to be water used by Selling Party.
- c. Any Variable Current Expenses incurred by the Lead Agency related to provision of water by the Selling Party to a Third Party will be tracked monthly, subtracted from the Variable Current Expenses before costs are split according to Article 2, and allocated solely to the Selling Party.
- d. Selling Party shall not sell water to a Third Party at any time if such sale would infringe on the ability of the other non-selling Party to use its full Ownership Share in the Facilities or otherwise meet the demands of its customers (e.g., unsatisfactory pressure). Any agreement between Selling Party and a Third Party shall have a condition to this effect and a provision permitting termination of the sale of water upon 24 hours notice.

Section 4.4. Sale of Water by Separate Agreement. None of the provisions in this Article shall prevent Cary and Apex from jointly entering into a separate agreement or amending this Agreement to allow for sale of water to any person or entity under different terms and conditions than those in this Article.

ARTICLE 5 OPERATION OF THE FACILITIES

Section 5.1. Day-to-Day Operation. Cary as the Lead Agency shall be solely responsible for and entitled to manage and implement the day-to-day operations of the Facilities. Cary will operate the Facilities in an efficient and economical manner, maintain the properties constituting the Facilities in good repair and in sound operating condition for so long as the same are necessary for the operation of the 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 Facilities. In carrying out this obligation, the standards for quality and costs that Cary applies will be comparable to the standards for quality and costs Cary applies to its other utility assets that are not jointly owned, and Cary will use due diligence in carrying out the operation of the Facilities. No other warranties, whether express or implied, are made with regards to Cary's operations of the Facilities.

Section 5.2. Potable Water Delivery. As Lead Agency, Cary will operate the Facilities so that the Facilities will deliver potable water meeting the requirements of this Agreement to the Delivery Points. In carrying out such operations, Cary will not interrupt or suspend water treatment service except in cases of crisis, extreme emergency, *force majeure*, or court order. In the event of a crisis, extreme emergency or *force majeure*, Cary may operate the Facilities in the manner it determines is best for the protection of the public health, safety and welfare, and for the protection of the environment. Cary will immediately inform Apex regarding any situations or actions that could affect the flow of potable water to the Apex Distribution System. Apex will immediately inform Cary regarding any situations or actions that could affect the flow of potable water to the Cary Distribution System.

Section 5.3. Retaining Consultants. Except as provided in Article 6, Cary as the Lead Agency shall have sole responsibility for determining whether outside consultants and advisors or legal representatives will be retained to render services with respect to the Facilities and in determining which consultants, advisors or legal representatives will be retained. Nothing in this Agreement shall prevent Apex from retaining any consultant, advisors or legal representatives at its sole expense to advise it as to matters related to the Facilities. Additionally, Apex will be entitled to full access, at reasonable times and in a reasonable manner, to the Facilities, and documents related thereto, to review, observe or investigate any aspect of the operation of such Facilities. Apex will be entitled to access, at reasonable times and in a reasonable manner, to the consultants, advisors and legal representatives retained by Cary.

Section 5.4. Permits. Cary represents 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 Facilities and to deliver potable water. Cary is authorized to take all actions as are in its control to maintain all such permits necessary for the lawful operation of the Facilities in full force and effect for the term hereof. Apex shall cooperate with Cary in taking any actions required to maintain such permits. Apex and Cary both represent that they have received or will receive all permits, licenses, and authorizations necessary to operate their respective Distribution Systems.

ARTICLE 6
DUTIES OF CARY AND APEX; ADVISORY COMMITTEE

Section 6.1. Duties of Cary as Lead Agency. In addition to the other provisions of this Agreement, Cary, in its role as Lead Agency, agrees with respect to the Facilities that it will, in accordance with this Agreement:

- a. Manage, operate and maintain the Facilities.
- b. Provide all administrative and executive management of Facilities.
- c. Manage planning, designing, permitting and constructing improvements, modifications, and expansions of Facilities.
- d. Account for revenue and expenditures, track costs for the planning, permitting, design, construction, maintenance and operation of the Facilities, allocate such revenues and expenditures between Cary and Apex in accordance with this Agreement, report such allocations to Apex, and invoice Apex for its share of the costs.
- e. Determine the scope for, solicit proposals from, and contract with and pay service providers to perform work for the planning, permitting, design, construction, maintenance, and operation of the Facilities.
- f. Obtain permits for Facilities and manage compliance with regulatory requirements.
- g. Keep Apex informed of the status of construction, management, maintenance and operations, and provide opportunities for input from the town staff of Apex as determined by Cary or upon request of Apex.

Section 6.2. Mutual Interests. In carrying out its role as Lead Agency, Cary will endeavor to act in the best mutual interests of Apex and Cary as partners in the undertaking that is the subject of this Agreement.

Section 6.3. Duties of Apex. Apex shall cooperate with Cary in carrying out its duties as Lead Agency and will endeavor to act in the best mutual interests of Apex and Cary as partners in the undertaking that is the subject of this Agreement.

Section 6.4. Water Distribution Systems. Each Party is solely responsible for management of its own Distribution System once water passes from the Delivery Points into the Apex or Cary Distribution System, respectively, including but not limited to, management of water quality, permit compliance, and billing customers for water use.

Section 6.5. Advisory Committee. An Advisory Committee, consisting of the Mayor of Cary, Mayor of Apex, Town Manager of Cary and Town Manager of Apex, or their designees, will meet at least annually, or upon request of either Party, to:

- a. Recommend an annual budget for each upcoming fiscal year.
- b. Advise the Lead Agency on policy matters, which may include moving forward with major Facilities modification or expansion as described in Article 3.
- c. Based on recommendations by the Lead Agency, recommend selection of independent consultants and contractors for contracts exceeding \$430,000 for study, design or other consultants, or exceeding \$4,300,000 for construction or equipment. Upon approval of such selection recommendations by the Advisory Committee, the Lead Agency will proceed with its own contract approval process for the selected consultant or contractor.

- d. Any recommendations made by the Advisory Committee shall be based on a vote of the Mayors and will be made on the basis of one vote per Town. In the absence of a Mayor, the Town Manager may vote. Apex and Cary shall be entitled to vote with respect to any matters regarding the Facilities.

Section 6.6. Water Resources Planning and Management. Cary and Apex will continue to work together to plan for future water supply needs and participate in regional planning activities, such as the Jordan Lake Partnership (or a similar group if re-formed to be broader in membership, as is anticipated). Both parties acknowledge the need to encourage customers to use water wisely and recognize the value of having consistent water use messages and Water Shortage Response Plans so that customers in adjacent water supply service areas receive consistent information.

Section 6.7. Participation in Regional Water Resources Organizations. As the Lead Agency Cary will, at its discretion, participate in and/or join regional organizations that conduct activities related to water resources affecting Jordan Lake or any of the water sources that may provide water to Cary and Apex under mutual aid agreements. At Cary's request, to best represent the Towns' mutual water resources interests, Apex will consider participating in and/or joining such organizations. If Cary joins on behalf of both towns, then any costs will be shared accordingly as Current Expenses. If both towns join, costs to each town will be borne independently. Such organizations may include, but not be limited to, the Jordan Lake Partnership, the Upper Cape Fear River Basin Association, and the Triangle Area Water Supply Monitoring Project.

ARTICLE 7 FINANCING; OWNERSHIP OF FACILITIES

Section 7.1. Financing. Each of Cary and Apex shall be responsible for obtaining its own financing of its respective share of the Capital Costs and Current Expenses of the Facilities. Each Party shall be responsible for determining the method of financing it will pursue, whether by expenditure of legally available funds, general obligation bonds, revenue bonds, installment contract financing, special obligation bonds or otherwise. Cary and Apex will cooperate generally in assisting the other in arranging their financings.

Cary and Apex acknowledge that each of them intends to finance a portion of its share of the costs of the Facilities with obligations the interest on which is not included in the gross income of the owners thereof for purposes of federal income taxation. Each of Cary and Apex covenants with the other that it will not take any action with respect to its ownership interest in the Facilities and its use of the Capacity thereof that would jeopardize the federal income tax treatment of interest on obligations the other issues to finance its share of costs of the Facilities. Each of Cary and Apex agree to provide to the other such certifications and other instruments as may be reasonably requested to evidence compliance with this covenant in connection with the issuance by the other of debt or similar obligations for such costs.

Section 7.2 Ownership of Property.

- a. Ownership of the Facilities shall be held jointly by Apex and Cary based upon their respective Ownership Shares as provided in Article 3. 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 Cary and Apex in the respective Facilities shall be based upon the Ownership Shares set forth in Section 3.1.
- b. Cary and Apex each waives any and all rights to partition the jointly owned real property for a period ending June 30, 2065. This provision shall survive the termination of this Agreement should the Agreement terminate for any reason before June 30, 2065.
- c. In the event that the Ownership Shares of Cary or Apex set forth in Section 3.1 change in accordance with Sections 3.2, 3.3 or 3.5 the Parties agree to convey among each other such percentage of their ownership interest such that the ownership interest in the real property associated with the Facilities is commensurate with each Party's Ownership Share of the Facilities. The Parties further agree to execute and deliver such deeds of conveyances or other instruments as shall be necessary in order that the percentage ownership of the real property reflects the agreed upon Ownership Shares described in this Section 7.2. Compensation will be made for changes in land ownership or interests (exclusive of improvements thereto) based on the original cost of the real property which the Parties agree was \$375,000.
- d. Each Party is authorized to grant such mortgages, security interests, liens or other encumbrances with respect to its ownership interest (and solely its ownership interest) in the 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 Party, including the waiver of the right of partition affirmed in this section. The instrument creating the mortgage or other lien upon Cary's or Apex'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 remaining Parties to this agreement to carry out the obligations under this agreement of the Party selling or otherwise disposing of its interest.

Section 7.3. Use of Jointly Owned Property. Each of Apex and Cary, as a joint owner of the real property, may make use of the real property for purposes of facilitating the operation of the Apex Distribution System or the Cary Distribution System, as the case may be, provided, however, that no such use shall impede or disrupt the current or future operation of the Facilities. Such use of the real property may include utilizing unused areas of the real property for temporary storage, the installation of pumps and mains and lines that are part of each Party's Distribution System, and use of unused areas for training purposes. Cary, as Lead Agency, shall be responsible for determining whether any such use disrupts the operation of the Facilities.

Section 7.4. Annual Funding. Cary and Apex will include their cost shares, as recommended by the Advisory Committee, in their respective annual budgets. No contracts awarded by the Lead Agency above the amounts in Section 6.5 that were not in the approved annual budget will be binding upon Apex until monies are approved by the Apex Town Council.

**ARTICLE 8
JORDAN LAKE ALLOCATION**

Section 8.1. Current Allocation. The Parties jointly hold a water supply Allocation from the State of North Carolina for 32 percent of the water supply storage in Jordan Lake, of which 73.4 percent of that total Allocation is assigned to Cary and 26.6 percent of that total Allocation is assigned to Apex. Table 2 shows the historic Allocations and how they have been shared. While the current safe yield of the total water supply storage is estimated at 100 mgd, the Parties recognize that the Allocations are granted as a percentage of the water supply storage, so the percentages listed in Table 2 govern each Party's Allocation and take precedence over the current estimated safe yield.

Table 2. Cary and Apex Jordan Lake Allocations

	Total Cary/Apex Allocation	Cary Portion		Apex Portion	
		Incremental	Resulting Total	Incremental	Resulting Total
Original (1993)	12% (12 mgd)	77% (9.24 mgd)	77% (9.24 mgd)	23% (2.76 mgd)	23% (2.76 mgd)
Round 1 (1996)	16 % (16 mgd)	77% (3.08 mgd)	77% (12.32 mgd)	23% (0.92 mgd)	23% (3.68 mgd)
Round 2 (2001)	21% (21 mgd)	77% (3.85 mgd)	77% (16.17 mgd)	23% (1.15 mgd)	23% (4.83 mgd)
Round 3 (2002)	32% (32 mgd)	66.6% (7.33 mgd)	73.4% (23.5 mgd)	33.4% (3.67 mgd)	26.6% (8.5 mgd)

Section 8.2. Round 3 Payment. The Parties recognize that since the Round 3 Allocation in 2002 and continuing through the payment to the state for calendar year 2012, Cary continued billing Apex for 23 percent of all Allocation costs without accounting for Apex's larger share of the Round 3 incremental Allocation. Within 30 days of the date on which Cary and Apex enter into this Agreement, Apex shall pay Cary \$88,190.05 for the difference in what was billed and what should have been billed by Cary. This amount is the sum of i) the incremental Round 3 Allocation capital payments (33.4% instead of 23% of \$766,611.60) and ii) the O&M and Administration payments (26.6% instead of 23% of \$235,067.83).

Section 8.3. Round 4 and Future Allocations. The Parties are participating with other members of the Jordan Lake Partnership in Round 4 of the Jordan Lake water supply storage Allocation process and submitted a final application in November 2014 to increase the joint Cary/Apex Allocation from 32 % (32 mgd) to 46.2 % (46.2 mgd) as shown in Table 3. Of the requested increase, 3.5 % or 3.5 mgd represents transfer of the existing Wake County (for RTP South) 3.5% Allocation to Cary, and 3.5 % or 3.5 mgd represents the existing Town of Morrisville Allocation managed by Cary under separate agreement. The final Round 4 Allocations, as well as any future incremental Allocation(s) granted will be documented by updating Table 2 in a Letter of Agreement signed by the Town Manager of Cary and the Town Manager of Apex.

Total Cary/Apex Allocation	Cary Portion			Apex Portion	
	Incremental	Transfer from Wake County and Managed for Morrisville	Resulting Total	Incremental	Resulting Total
46.2% (46.2 mgd)	70.8% (5.1 mgd)	7.0% (7.0 mgd)	77% (35.6 mgd)	29.2% (2.1 mgd)	23% (10.6 mgd)

Section 8.4. Allocation Contract Conditions. Each Party shall maintain compliance with applicable conditions in the current and any future Allocation contracts with the state. Cary shall prepare and submit reports required by the state; Apex shall supply any data needed regarding Apex activities for such reports.

ARTICLE 9 INTERBASIN TRANSFER

Section 9.1. Interbasin Transfer Certificate. The Parties jointly hold an Interbasin Transfer Certificate granted by the State of North Carolina on March 12, 2015.

Section 9.2. Compliance Management.

- a. The Lead Agency will manage the regulatory tasks associated with certificate modification, management and reporting.
- b. Cary and Apex will each maintain compliance with applicable programmatic conditions in the 2015 IBT Certificate, including any future amendments or modifications made to the jointly held 2015 IBT Certificate or replacement certificate.

Section 9.3. Costs of Management.

- a. Costs of management and compliance, including, but not limited to, hiring, will be treated as Fixed Current Expenses.
- b. Compliance with the operational aspects of the 2015 IBT Certificate, including compliance with any future amendments or modifications of the 2015 IBT Certificate or any replacement certificate, that vary depending on the amount of water being produced and used, including, but not limited to, any mutual aid water purchase costs from other water supply providers, will generally be treated as Variable Current Expenses.
- c. Each Party shall be wholly responsible for any and all costs associated with improvements or modifications made to facilities solely owned by that Party to comply with current or future requirements related to the 2015 IBT Certificate or any replacement certificate.

Section 9.4. Certificate Modification. If any 2015 IBT Certificate amendment, modification or replacement results in any change in the responsibilities of Cary and Apex, such responsibilities will be documented in a Letter of Agreement signed by the Town Manager of Cary and the Town Manager of Apex.

ARTICLE 10 MUTUAL AID

Section 10.1. Mutual Aid between Cary and Apex. Both Parties agree to provide water to the other upon request, on a mutual aid basis, at one or more of the Interconnection Points shown in Exhibit B, as long as providing such water supply will not infringe upon the providing Party's ability to meet the water demands of its own customers. For billing and payment purposes, at the sole discretion of the providing Party any water provided at the Interconnection Points may be counted as water entering the receiving Party's Distribution System from Facilities, and deducted from the amount delivered from Facilities to the providing Party's system at the Delivery Points. The ownership and maintenance responsibilities of each Interconnection Point shall be shared jointly by Apex and Cary based upon their respective Ownership Shares as provided in Article 3

Section 10.2. Mutual Aid with Other Jurisdictions. Either Party may enter into mutual aid agreements with other jurisdictions for water supply to their systems. Such mutual aid agreements may be long-term agreements, but shall address only the supply of water to the other non-party jurisdiction on a short-term basis while emergency, technical, weather-related, or other operational conditions are being addressed by such jurisdiction. Any mutual aid agreement shall include a provision permitting denial of mutual aid and the cessation of water supply, and such provision can be invoked if providing such water supply will infringe upon the other Party's ability to meet the water demands of its customers. Any costs for mutual aid water obtained by either Party to address issues unrelated to Facilities shall be borne solely by that Party.

Section 10.3. Purchase for Facilities Operation. If the Lead Agency obtains water from another jurisdiction in order to operate Facilities so that water can be delivered to both Cary and Apex's Distribution Systems (including maintaining compliance with the 2015 IBT Certificate, or compliance with any future amendments or modifications of the 2015 IBT Certificate or replacements thereof), any costs for such water obtained will be treated as a Variable Current Expense.

ARTICLE 11 MISCELLANEOUS

Section 11.1. Assignment. Neither Party may assign this Agreement without the written consent of the other Party.

Section 11.2. Amendments. This Agreement may be amended by the mutual agreement of the governing bodies of Cary and Apex.

Section 11.3. Duration and Termination. This Agreement shall be for an initial period of approximately 30 years ending June 30, 2047. It shall continue thereafter until June 30, 2057, unless terminated by either Party by written notice to the other Party before June 30, 2042. It shall continue thereafter until June 30, 2067, unless terminated by either Party by written notice to the other Party before June 30, 2052. On the effective date of the termination, the terminating Party shall be paid for its share of the Facilities in accordance with Article 3 and all rights, title and interest in said Facilities and real property or property interest shall be conveyed to the remaining Party. The price shall be determined by an independent appraisal by a qualified firm selected by the Parties.

Section 11.4. No Waiver of Non-Compliance with Agreement. No provision of this Agreement shall be deemed to have been waived by a Party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any Party hereto at any time to require strict performance by the other of any provision hereof shall in no way affect the right of the other Party to thereafter enforce the same. In addition, no waiver or acquiescence by a Party hereto of any breach of any provision hereof by the other Party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

Section 11.5. Breach. In the event of breach of this Agreement, the Parties shall be entitled to all such legal or equitable remedy as may be available, including specific performance.

Section 11.6. Dispute Resolution. If any dispute or other matter arising under this Agreement cannot be informally resolved, such dispute or other matter shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims 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 11.7. Additional Parties. Additional parties may be added to this Agreement only by mutual agreement of Cary and Apex as evidenced by an amendment hereto.

Section 11.8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of Cary and Apex, 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 11.9. 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 11.10. 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 11.11. Applicable Law. This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.

Section 11.12. Notices. Unless otherwise provided, all notices 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

With a copy to the Director of Water Resources

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

With a copy to the Water Resources Director

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

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties hereto have caused this CARY/APEX WATER AGREEMENT to be duly executed in their corporate names by their duly authorized officers, such CARY/APEX WATER AGREEMENT having been ratified by resolution of their respective governing boards and spread upon their minutes, all as of the date first above written.

TOWN OF APEX

By: 
Town Manager

Date: April 10 2017



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

By: T. Vance Hollen
Finance Officer
Town of Apex

TOWN OF CARY

By: Sean R. Stegall
Sean R. Stegall, Town Manager

Date: 04.30.17



Town Seal added
by Virginia H. Johnson
Town Clerk 4-30-17

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




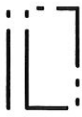


By: Michelle Brooks
Finance Officer
Town of Cary

Exhibit A. Overall location map showing all the jointly owned Facilities and defining “Delivery Points” (where joint ownership ends and flow splits off to Cary or Apex service areas).

1. Intake structure, pump station
2. Raw water pipeline(s)
3. CAWTF
4. Finished water pipeline(s)
5. Delivery Points

Exhibit B. Interconnection Points

Exhibit A

	Cary Town Limit		Delivery Point
	Cary Water Line		County Line
	Apex Town Limit		
	Apex Water Line		

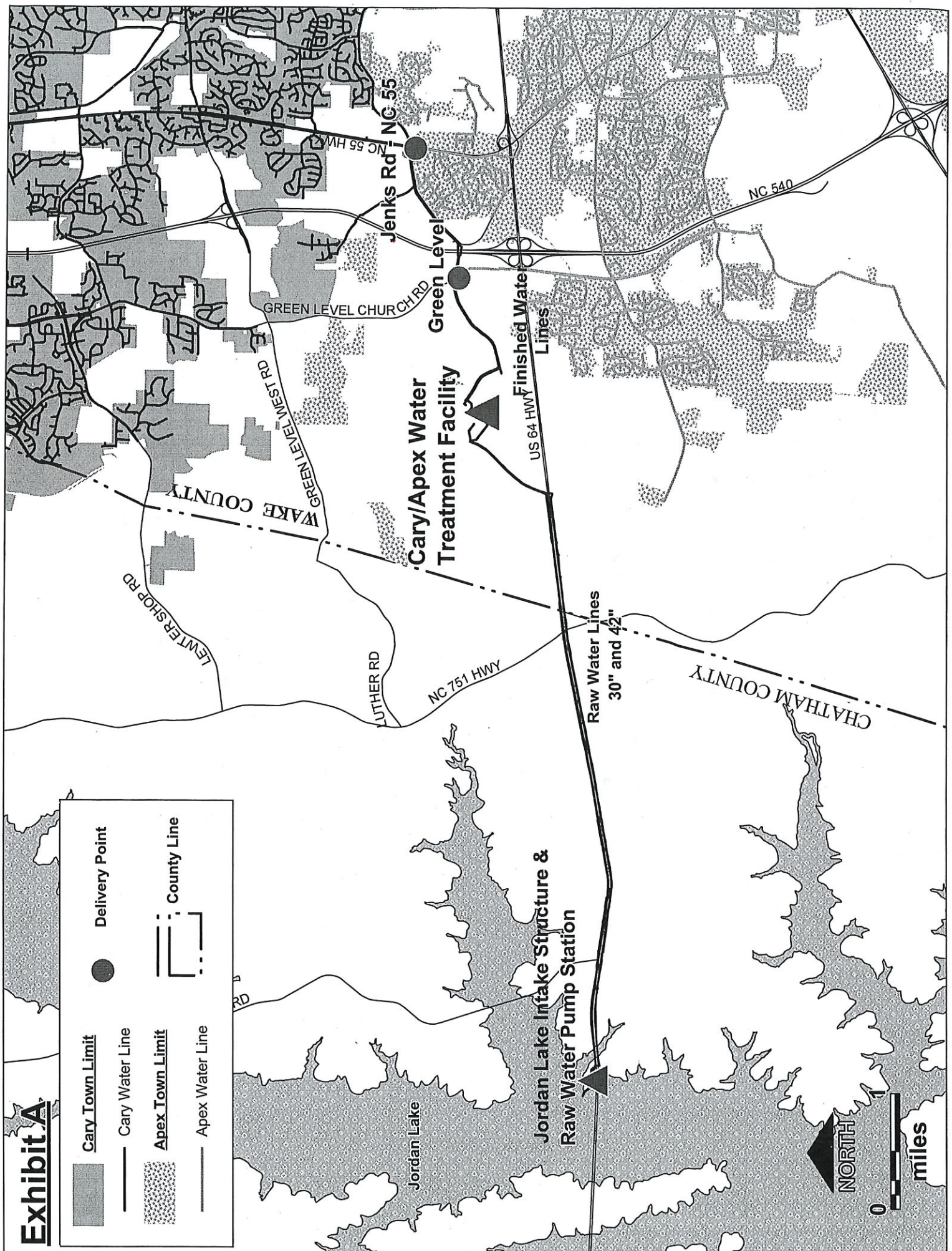




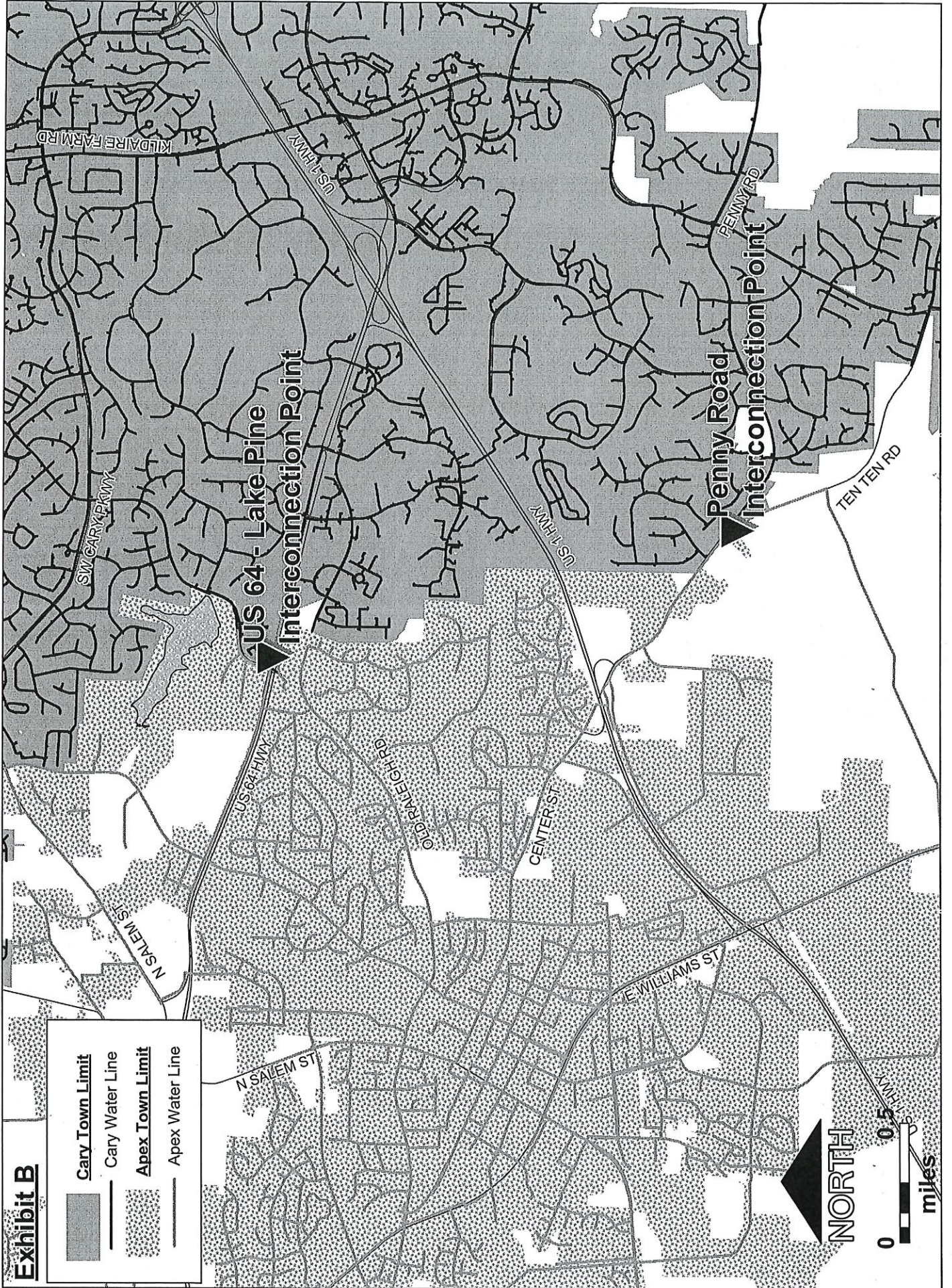


Exhibit B

-  Cary Town Limit
-  Cary Water Line
-  Apex Town Limit
-  Apex Water Line



RESOLUTION NO. 2017-0404-04

RESOLUTION AUTHORIZING 2017 CARY/APEX WATER TREATMENT FACILITY AGREEMENT

WHEREAS, Apex and Cary have jointly conducted a wide range of planning, permitting and construction activities to meet the water supply needs of their respective service areas since 1980; and

WHEREAS, Apex and Cary together hold a water supply allocation from the State of North Carolina for water supply storage in B. Everett Jordan Lake ("Jordan Lake"), of which 23.5 percent is assigned to Cary and 8.5 percent is assigned to Apex; and

WHEREAS, Apex and Cary were jointly granted a new Interbasin Transfer certificate from the State of North Carolina on March 12, 2015, which replaced the previous Interbasin Transfer Certificate that had been issued jointly to Cary, Apex, Morrisville and Wake County in 2001; and

WHEREAS, Apex and Cary entered into an Agreement dated April 26, 1988 regarding the ownership and operation of the Cary/Apex Water Treatment Facility ("CAWTF") which was amended January 26, 1989; August 1, 1995; August 3, 1999; April 5, 2000; January 15, 2005; and December 20, 2011; and

WHEREAS, Apex and Cary jointly own the CAWTF which has a current maximum day capacity of 40 million gallons per day (mgd), of which 77 percent (30.8 mgd) is owned by Cary and 23 percent (9.2 mgd) is owned by Apex; and

WHEREAS, Apex and Cary jointly own related raw water intake and transmission facilities as well as finished water pipelines and other ancillary facilities that deliver water to the service areas of Apex and Cary, all of which is owned 77 percent by Cary and 23 percent by Apex; and

WHEREAS, Apex and Cary have planned and designed for the expansion of the CAWTF to a maximum day capacity of 56 mgd and have commenced with construction of such expansion and the addition and expansion of other related water supply facilities, all of which 77 percent will be owned by Cary and 23 percent will be owned by Apex; and

WHEREAS, Apex and Cary desire to provide the terms pursuant to which they may, jointly and/or separately, enter into agreements to provide untreated or treated water to other jurisdictions provided such provision of water to others does not infringe on the other party's ownership interest or ability to use its share of the capacity; and

WHEREAS, Apex and Cary desire to enter into this Agreement to, among other things, address the CAWTF expansion and provide a process for the sale of water to other jurisdictions; and

WHEREAS, the North Carolina General Statutes §160A-322 authorizes the Town to enter into contracts for the supply of water and other public services and §153A-278 authorizes two or more units of local government to cooperate in the exercise of certain powers in accordance with the provisions of Chapter 160A, Article 20, Part 1.

NOW THEREFORE, the Town Council of the Town of Apex resolves that:

The 2017 Cary/Apex Water Agreement is hereby approved and the Town Manager is authorized and directed to execute the Cary/Apex Water Treatment Facility Agreement in substantially the form attached to this Resolution.

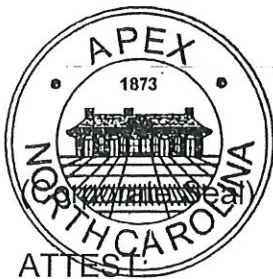
This Resolution shall be effective upon adoption.

Adopted: April 4, 2017

THE TOWN OF APEX

By: _____

Lance Olive, Mayor



Donna B. Hosch
Donna B. Hosch, Town Clerk, CMC, NCCMC