

CONTRACT CONTROL FORM  
TOWN OF CARY

CCN: PW 6-005-01

DEPARTMENT .....: PW  
CONTRACT ADMINISTRATOR ..: LEILA GOODWIN  
ADMINISTRATOR'S PHONE ...: 3846  
CONTRACT NAME .....: WESTERN WAKE RWWMF OWNERSHIP & OPER AGRMT AMDMT 1  
CONTRACTOR'S NAME .....: WESTERN WAKE PARTNERS  
CONTRACT EXPIRATION DATE: AUGUST 31 2055 8/31/2055

TYPE: 4 1=SERVICE STATUS: 4 1=NEW  
2=EQUIPMENT 2=RENEWAL  
3=CONSTRUCTION 3=REVISION  
4=AGREEMENT 4=CHANGE ORDER  
5=REIMBURSEMENT

TRANSMITTAL INFORMATION: ACTION DATES " " ATTORNEY'S REVIEW NOT  
NOTICE OF AWARD SENT .....: REQUIRED.  
BONDS RECEIVED .....:  
\* NOTICE TO PROCEED SENT ...:  
\* INSURANCE CERTIF.RECEIVED:  
\* OCCURS AFTER CONTRACT EXECUTION

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

*Nancy,  
Please return  
a fully executed  
original to the clerk's  
office.  
Thank you.  
Karen*

COMMITTEE APPROVALS: ACTION DATES OTHER APPROVALS: ACTION DATES  
SAFETY/PUBLIC WORKS ...: 5/03/2006 COUNCIL .....: 5/11/2006  
PLANNING & DEVELOPMENT:  
FINANCE/PERSONNEL .....: BUDGET ADJUSTMENT:  
OTHER:

DEPARTMENT APPROVAL DATE: *Robert H. Fisher*  
*June 2, 2006*

FINANCE  
INITIALS: *CSS* DATE IN: *6/6/06* ACTION DATE: *6/7/06*  
COMMENTS:

TOWN ATTORNEY (Approved as to form only)  
INITIALS: *qbs* DATE IN: *6/7/04* ACTION DATE: *6/7/04*  
COMMENTS:

TOWN MANAGER  
INITIALS: *WJ* DATE IN: *6/9/06* ACTION DATE: *WJ*  
COMMENTS:

" " TO MAYOR FOR SIGNATURE

TOWN CLERK  
INITIALS: EXECUTED DATE:  
COMMENTS:

NORTH CAROLINA  
WAKE COUNTY

**AMENDMENT NO. 1 TO THE AGREEMENT FOR DESIGN, CONSTRUCTION,  
OWNERSHIP, MANAGEMENT AND OPERATION OF WESTERN WAKE  
REGIONAL WASTEWATER MANAGEMENT FACILITIES**

This AMENDMENT NO. 1 TO THE AGREEMENT FOR DESIGN, CONSTRUCTION, OWNERSHIP, MANAGEMENT AND OPERATION OF WESTERN WAKE REGIONAL WASTEWATER MANAGEMENT FACILITIES dated August 22, 2005 ("Amendment No. 1"), made and entered into this the 12 day of June 2006, 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, the Project Partners have entered into an Agreement for Design, Construction, Ownership, Management and Operation of Western Wake Regional Wastewater Management Facilities dated August 22, 2005 (the "Agreement"), which Agreement provides in Section 7.1 that amendments relating to "design, construction, operation or sharing of costs of the Treated Effluent Pumping and Conveyance Facilities" (as such terms are defined in Agreement) shall be in writing and by mutual agreement of the governing bodies of the Project Partners; and

WHEREAS, Cary, as the Lead Agency and in accordance with the Agreement, has secured a \$5 million SRF Loan from the State of North Carolina; and

WHEREAS, under the Agreement, the Partners agreed to use SRF Loan funds for Preliminary Work and for design of the Water Reclamation Facility; and

WHEREAS, to gain maximum benefit of the SRF Loan, the Partners desire to agree that SRF Loan funds may be used for design of any of the components of the Wastewater Management Facilities; and

WHEREAS, the Project Partners have agreed to modify the terms and conditions of the Agreement to allow use of the SRF Loan for design of the Wastewater Management Facilities; and

WHEREAS, pursuant to Section 7.1 of Agreement and 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 AMENDMENT NO. 1 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 Section 7.1 of Agreement and 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 and Rules of Construction. For all purposes of this AMENDMENT NO. 1, except as expressly set forth herein, and unless the context requires otherwise, the terms used herein shall have the definitions specified in Agreement and the Rules of Construction shall be as specified in the Agreement.

## ARTICLE 2

### AMENDMENTS TO AGREEMENT

Section 2.1. Amend the Definition of "SRF Loan." The definition of SRF loan contained in ARTICLE 1, Section 1.1 of Agreement shall be amended as follows:

"SRF Loan" means the \$5,000,000 loan incurred by the Lead Agency from the State of North Carolina State Revolving Fund (SRF) in order to finance certain of the costs of the Preliminary Work and the cost of design of the Wastewater Management Facilities.

Section 2.2. Amend Section 2.2 (e) of Agreement. Section 2.2 (e) contained in ARTICLE 2 of Agreement shall be amended as follows:

(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 costs of the Wastewater Management Facilities, which costs are "Capital Costs" of the Wastewater Management Facilities.

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 Wastewater Management Facilities. 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 Wastewater Management Facilities. 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 each component of the Wastewater Management Facilities shall be allocated among Apex, Cary, Holly Springs and Morrisville in accordance with their entitlements to capacity of each component of the Wastewater Management Facilities financed with the SRF Loan as provided in Section 4.1 and Exhibit A of the Agreement.

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.

### **ARTICLE 3**

#### **MISCELLANEOUS**

Section 3.1. Effective Date. This Amendment No. 1 shall be effective upon execution by all the parties.

Section 3.2 Agreement Remains in Full Force and Effect. Except as specifically amended by this Amendment No. 1, all terms, conditions and provisions of the Agreement remain the same and continue in full force and effect.

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.



[SEAL]

TOWN OF APEX, NORTH CAROLINA

By Keith H. Weatherly  
Keith H. Weatherly  
Mayor

Attest:

Georgia A. Evangelist  
Georgia A. Evangelist  
Town Clerk

Approved as to form:

Henry C. Fordham, Jr.  
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  
Lee Smiley  
Finance Director

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA

COUNTY OF WAKE

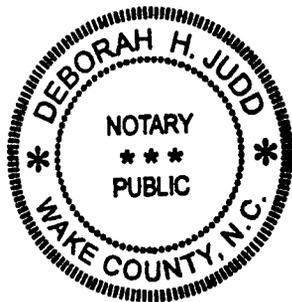
This 22<sup>nd</sup> day of June, 2006, personally came before me, a Notary Public in and for the said County and State, Georgia A. Evangelist, who, being by me duly sworn, says that she is the Town Clerk of the Town of Apex, North Carolina, a municipal corporation duly organized and validly existing 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 22<sup>nd</sup> day of June, 2006

Deborah H. Judd  
Notary Public

My commission expires:

June 20, 2007



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

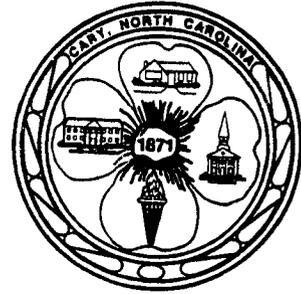
TOWN OF CARY, NORTH CAROLINA

[SEAL]

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

Attest:

Sue Rowland  
Sue Rowland  
Town Clerk



Approved as to form:

Christine 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.

Cheryl J. Spivey  
~~Karen A. Mills~~ Cheryl J. Spivey  
Deputy Finance Director

**ACKNOWLEDGEMENT**

STATE OF NORTH CAROLINA

COUNTY OF WAKE

This 13<sup>th</sup> day of June, 2006, 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.

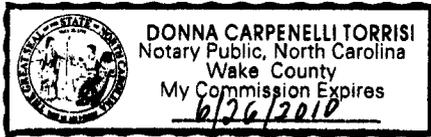
WITNESS my hand and notarial seal this 13<sup>th</sup> day of June, 2006

*Donna Carpenelli Torrisi*

Notary Public

My commission expires:

6/26/2010



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

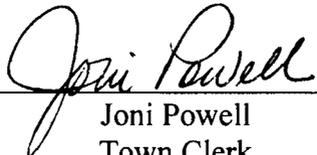
[SEAL]



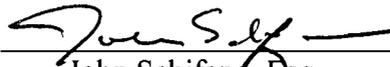
TOWN OF HOLLY SPRINGS, NORTH CAROLINA

By:   
Richard G. Sears  
Mayor

Attest:

  
Joni Powell  
Town Clerk

Approved as to form:

  
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  
Finance Director

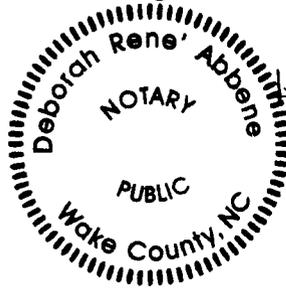
**ACKNOWLEDGEMENT**

STATE OF NORTH CAROLINA

COUNTY OF WAKE

This 25th day of September 2006, 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 25th day of September, 2006



Deborah Rene Abbene  
Notary Public

My commission expires:

2-22-2011

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

TOWN OF MORRISVILLE, NORTH

[SEAL]

By: Jan Faulkner  
Jan Faulkner  
Mayor

Attest:

Diana Davis  
Diana Davis  
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 27<sup>th</sup> day of October, 2006, personally came before me, a Notary Public in and for the said County and State, Diana Davis, who, being 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 Jan Faulkner, as the Mayor of said Town, sealed with its seal, and attested by herself as the Town Clerk.

WITNESS my hand notarial seal this 27<sup>th</sup> day of October, 2006

Brenda L. Lyndes  
Notary Public

My Commission expires:

May 14, 2011