

Cary 151
STATE OF NORTH CAROLINA

COUNTY OF WAKE

A G R E E M E N T

THIS AGREEMENT made and entered into this 26th day of April, 1988, by and between the TOWN OF CARY, a municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter called CARY) and the Town of Apex, a municipal corporation organized and existing under the laws of the State of North Carolina, (hereinafter called APEX) as authorized by the provisions of North Carolina General Statutes, 160A, Article 20.

W I T N E S S E T H

THAT WHEREAS, representatives of Cary and Apex have been meeting for some time to determine the possibility of constructing and operating a water treatment plant supplied with raw water from Lake Jordan; and

WHEREAS the two towns have jointly employed CH2M Hill, an engineering firm, to provide a pre-design study on said water treatment plant; and

WHEREAS on the basis the engineering study and other relevant facts, the towns feel it is mutually advantageous for them to jointly own and operate said water treatment plant; and

WHEREAS Cary and Apex have determined that an independent water source must be secured to insure a dependable future source of raw water; and

WHEREAS Cary and Apex agree to cooperate in providing water to their respective citizens.

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

1. Purpose.

This contract will cover water supply and treatment facilities and the portions of major transmission mains that serve both parties.

2. Method of Financing.

- a. All costs, including construction of a plant, portions of major transmission lines, land, engineering fees, legal fees and all other costs both direct and indirect associated with the construction of the plant, will be allocated to each party of this agreement based on its share of the water treatment capacity of the plant.
- b. The unit cost of finished water from the plant to both parties shall be the same as specifically provided below:
- i. Both parties will make payments sufficient to amortize its share of the capital cost and fixed operating cost, regardless of the amount of water actually used. This charge is based on its proportion of allocated capacity.
 - ii. Both parties will meet its share of the variable operating cost in proportion to its actual use of water from the facilities.
 - iii. Payments made to the operating agency from the parties to this contract will be due on the last day of the month following the month the costs were incurred.
- c. Each party shall have an allocated share of the facility's capacity as follows:
- | TOWN | MGD | % |
|----------------------|----------|--------|
| Cary | 9.24 MGD | 77.0% |
| Apex | 2.76 MGD | 23.0% |
| Total Plant Capacity | 12.0 MGD | 100.0% |
- d. Independent consultants (CPA, Cost and/or Engineering) will certify each year the capital and operating cost to be charged to each party and will audit the operating agency's books and management. The first year's capital and operating cost will be estimated by the operating agency.
- e. The capacity of the facilities may be increased at any time by mutual agreement of either party and with the sharing of costs as provided in subsections (1) and (2) of this paragraph for the increased allocation of capacity going to each party.
- f. In the absence of mutual agreement by both parties to increase the capacity of the facilities, either of the parties may increase the facility's capacity by paying all the capital costs (in advance, as outlined in

paragraph 2(a) above) and the proportional share of fixed operating cost to be determined as set forth in paragraph 2(b.1) and variable operating cost as set forth in paragraph 2(b.2). The allocated share of capacity determined in paragraph 2(c) will be adjusted to reflect the increased capacity of the facility.

3. The Advisory Committee

- a. An advisory committee, consisting of the Mayor of Cary, Mayor of Apex, Town Manager of Cary and Town Manager of Apex, will advise the operating agency on all policy matters and select the independent consultants. Any recommendations made by the advisory committee requiring a vote of the members, will be made on the basis of one vote per member.

4. Operations and Appointing Personnel.

Cary shall be the operating agency. Cary will operate the plant, hire employees, account for revenue and expenditures, and provide all administrative and executive management of the plant.

5. Right to Sell Allocation.

- a. Either party has the right to sell a portion of its allocated capacity to the other party to the agreement. The price shall be determined by an independent appraisal by a qualified firm selected by the buyer and seller jointly.

6. Limitations on Sale of Water to Other Political Subdivisions

- a. Each party agrees not to sell water to another political subdivision, except with the approval of each party to this contract. In addition, each party mutually agrees it may continue the current practice to sell water to the Town of Morrisville, the Research Triangle Park (RTP) and the Raleigh-Durham Airport Authority (RDU) which are currently being served by or will be served by Cary and to the Town of Holly Springs and the Feltonville Community Organization (not a political subdivision) which is currently served by Apex.

7. Utility Service Areas

- a. Utility service areas are established to clearly define which municipality will serve any customer based on geographic location. The service areas of Cary and Apex are defined by a line drawn on the attached map which represented the following description:

Beginning at a point at the Cary two mile extraterritorial jurisdiction and the Durham and Southern Railroad and Apex Morrisville Road, north along Apex Morrisville Road approximately 1500 feet to the northern property line of Tax Map 570 Parcel 9. Then head west approximately 739 feet, southwest approximately 100 feet and south approximately 312 feet. These directions follow property lines in that area. Then head west along the northern boundary of parcels 14 and 106 approximately 480 feet. Then north along the eastern property line of parcel 99 approximately 280 feet then west approximately 300 feet following the northern property line until it meets Howell Road. Follow Howell Road west to the intersection of S.R. 1612 (Holt Road). Follow S.R. 1612 around until it crosses N.C. 55. Then follow S.R. 1601 westward to S.R. 1608. Follow S.R. 1608 northwest until it meets S.R. 1600 the north to the intersection of S.R. 1605, S.R. 1615 and S.R. 1600 or Green Level. West on S.R. 1605 then head north along property lines to subsequently end at the Chatham County Line. (The latter direction actually is the requested three mile E.T.J. under study at this time.)

- b. The Utility Service area as defined in paragraph 7(a) may be changed from time to time with the mutual consent of both parties.
- c. If other parties become parties to this agreement, utility service districts will be established as a part of this agreement.

8. Contracting with Other Political Subdivisions.

- a. Any political subdivision in Wake, Durham, and Chatham Counties (Purchaser), which are not a party to the original agreement, or has not subsequently become a party by the terms of this contract, may become a party to the agreement by one of the following methods which will be selected by the then parties to this agreement:
 - 1) The purchaser may buy existing capacity from the original parties to the contract. The price shall be the sum of payments previously made by the selling parties for capital cost plus interest at $\frac{2}{3}$ of 1% per month beginning the month the plant was completed (9% Annual Percentage Rate) for the amount of allocated capacity sold. Both the amount of capacity sold from each party and the amount of payment received by each party will be in direct proportion to the allocation of the existing capacity prior to the sale.

- 2) If existing capacity is not sufficient to sell a political subdivision wishing to receive water, under paragraph 7.a.1, from the facilities constructed under this agreement, then additional capacity will be constructed. The entire capital cost of the new portion of the plant will be paid by the purchaser. In addition, any portions of the existing plant that are utilized to treat water for the purchaser will be paid for by the purchaser in direct proportion to the purchaser's allocation of the total plant capacity, after the additional capacity has been built plus interest at $\frac{2}{3}$ of 1% per month beginning the month the plant was completed (9% Annual Percentage Rate) for the amount of allocated capacity sold.
- 3) If the existing plants' capacity can be increased without actually constructing additional facilities, (example - increased flow through filters), the purchaser must pay any cost associated with obtaining authority to increase the capacity including engineering fees plus the cost of any portions of the existing plant that are utilized to treat water for the purchaser in direct proportion to the purchaser's allocation of the total plant capacity after the additional capacity has been permitted plus interest at $\frac{2}{3}$ of 1% per month beginning the month the plant was completed (9% Annual Percentage Rate) for the amount allocated capacity sold.

9. Waterline Extension Policies into Unincorporated Areas.

- a. The waterline extension policy of each party to this agreement will be uniform throughout their service area which is outside municipal boundaries. The retail water rate policy for each town that is a party to this agreement, for customers outside the town boundaries, will be double the regular in-town rate, except for those customers listed in paragraph 6(a).

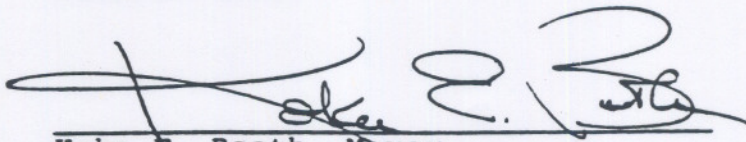
10. South Wake Waterline Agreement.

The terms of the Agreement for the Installation, Operation, Maintenance, and Ownership of the South Wake Water Line Agreement executed between the Towns of Apex, Cary, Fuquay-Varina, Garner and Holly Springs and Wake County on September 6, 1983 are incorporated herein by reference. If there are any differences between the terms of the agreement, this agreement shall govern.

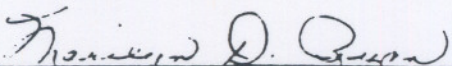
11. Real Property. Legal title to all real property necessary to the undertaking, shall be held jointly by the parties as tenants in common. The proportion of ownership shall be the same as allocated capacity.
12. Amendments. This contract may be amended by the mutual agreement of the governing bodies of the then parties.
13. Duration and Termination. This agreement shall be for an initial twenty (20) year period and shall continue thereafter until terminated by either party upon ten years written notice to the other party. The withdrawing parties shall be paid for its share of the plant and transmission lines on the effective date of the terminations in accordance with Section 5(a) and all rights, title and interest in the said plant and transmission line shall be conveyed to the remaining party or parties.

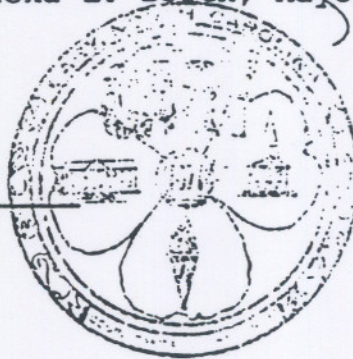
IN WITNESSETH WHEREOF, CARY AND APEX have caused this Agreement to be executed by their respective Mayors, their corporate seals to be affixed and attested by their respective Clerks, all by the authority of the respecting governing bodies of each party to this Agreement, as of the date and year first above written.

TOWN OF CARY

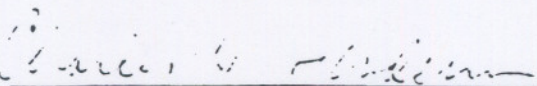

Koka E. Booth, Mayor

ATTEST:


Marilyn D. Ryan, Town Clerk
(SEAL)



APPROVED:


Charles H. Henderson, Town Attorney

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

Gary McConkey
Gary McConkey
Finance Director

TOWN OF APEX

Larry M. Jordan
Larry M. Jordan, Mayor

ATTEST:

Sonja D. Lumley
Sonja D. Lumley, Town Clerk
(SEAL)

APPROVED:

Carl Holleman
Carl Holleman, Town Attorney

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

Sonja D. Lumley
Sonja D. Lumley
Finance Director

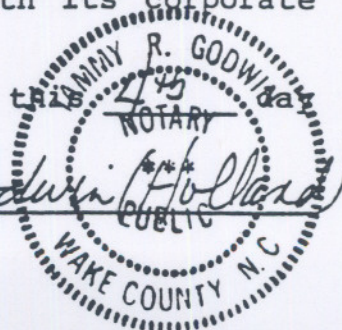
NORTH CAROLINA
WAKE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Marilyn D. Ryan, personally came before me this day and acknowledged that she is the Town Clerk of the Town of Cary, a municipal corporation, and that by authority duly given and as the act of the municipal corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by her as its Town Clerk.

Witness my hand and official stamp or seal, this 4th of April, 19 88.

Jammy R. Goodwin
Notary Public

My Commission Expires: Nov. 2, 1988



NORTH CAROLINA
WAKE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Sonja D. Lumley, personally came before me this day and acknowledged that she is the Town Clerk of the Town of Apex, a North Carolina municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by her as its Town Clerk.

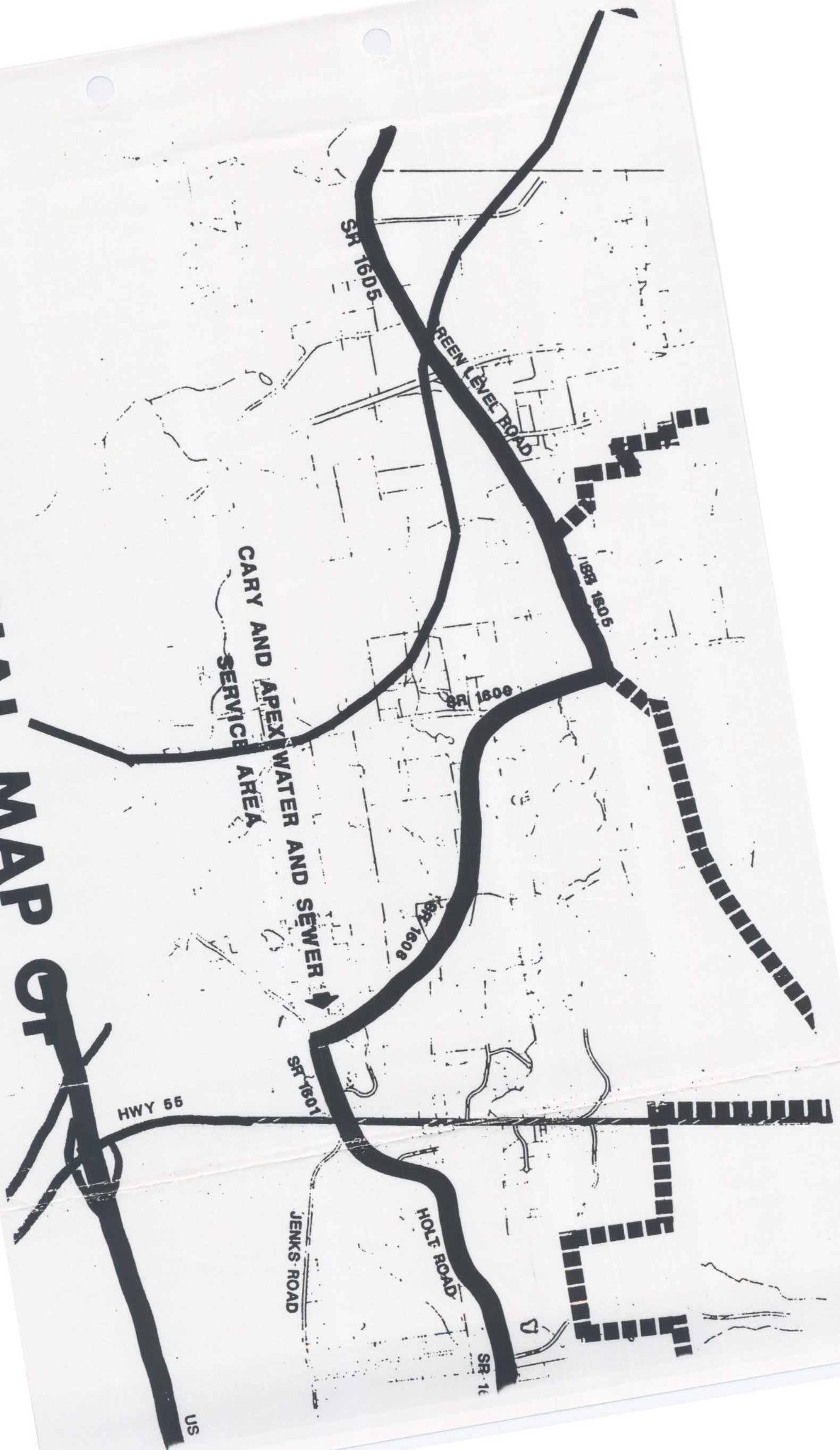
Witness my hand and official stamp or seal, this 26th day
of April, 19 88.

Sue M. Clark
Notary Public

My Commission Expires: 1-18-93

L150.010

OFFICIAL MAP OF



STATE OF NORTH CAROLINA

COUNTY OF WAKE

**AMENDMENT TO APRIL 26, 1988
AGREEMENT BETWEEN CARY AND APEX**

THIS AMENDMENT AGREEMENT (AMENDMENT) made and entered into this 15th day of AUGUST, 1995, by and between the Town of Apex, a municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter called APEX) and the Town of Cary, a municipal corporation organized and existing under the laws of the State of North Carolina, (hereinafter called CARY) as authorized by the provisions of North Carolina General Statutes, 160A, Article 20.

WITNESSETH

THAT WHEREAS, APEX AND CARY entered into an Agreement dated April 26, 1988 regarding the ownership and operation of the "Cary/Apex Water Treatment Plant" (hereafter "Agreement"), and

WHEREAS, Agreement established each parties' percentage share of ownership interest in the Water Plant (hereafter "Plant") and percentage share of "facility's capacity" as follows:

<u>Town</u>	<u>MGD</u>	<u>Percent</u>
Cary	9.24	77.0%
Apex	<u>2.76</u>	<u>23.0%</u>
Total Plant Capacity	12.0	100.0%

and,

WHEREAS, Agreement calls for the parties to share the cost of finished water in accordance with their percentage share of "facility's capacity", and

WHEREAS, at this time, total Plant capacity is (sixteen million gallons per day (16 mgd));

**AGREEMENT CARY/APEX
"Cary/Apex Water Treatment Plant"**

WHEREAS, Cary finds that, over the next several years, Cary will be able to use and sell more than 77% of the finished water produced by Plant, and

WHEREAS, Apex finds that, over the next several years, Apex will not require its full 23% of the finished water produced by Plant; and

WHEREAS, the parties desire to permit Cary to use, and pay for, any finished water produced by Plant that would otherwise constitute Apex's 23% allocation of finished water; and

WHEREAS, the parties further believe that the method set out in Paragraph 2b., Method of Financing, in Agreement for allocating the cost of finished water needs to be clarified.

NOW, THEREFORE, in consideration of the premises and the terms and conditions set forth herein, the parties agree as follows:

1. The parties agree that Apex shall continue to use and pay for such finished water as Apex requires up to a total of twenty-three percent (23%) of total Plant capacity. The parties agree that Cary may use, sell and pay for, all of its water requirements in excess of seventy-seven percent (77%) of total plant capacity, provided Cary's use of finished water in excess of seventy-seven percent (77%) of total plant capacity does not infringe upon Apex's actual water needs. For this period during which Cary may use more than seventy-seven percent (77%) of total plant capacity, each party shall pay a variable share of all operating costs in proportion to its actual use of water from the Plant. The "actual use" of water shall be specified as a percentage of total water production on a monthly basis. Each party shall continue to pay the capital costs of the Plant in accordance with their ownership interest in the plant, i.e. 77% and 23%, respectively, as set forth in paragraph 2.b.i. of Agreement.

The provisions of the above paragraph shall be effective upon execution of this Amendment by both parties hereto and shall terminate at the earlier of (1) completion of a second expansion of Plant capacity, or (2) approximately fifteen years from the date of execution of this Agreement, on June 30, 2010. This period may be extended by the mutual written agreement of the parties hereto.

**AGREEMENT CARY/APEX
"Cary/Apex Water Treatment Plant"**

After the termination of the period described in paragraph 1 above, cost sharing shall return to the method defined in the original agreement dated April 26, 1988 amended by the following paragraph.

2. In addition to the amendment set forth above, the parties agree that, to clarify the definitions of "variable" and "fixed" costs, paragraph 2.b. of Agreement shall be amended by the addition of a new subparagraph iv. which shall read as follows:

iv. Fixed operating costs include those costs required to operate the water plant that do not vary with the amount of finished water produced. Variable operating costs are those costs that vary with the amount of finished water produced. For purposes of this agreement, all of the direct and indirect operating costs of the Cary/Apex Water Treatment Plant are fixed except for the variable costs of chemicals, utilities (including gas and electric), sludge hauling and a portion of the personnel and benefits costs.

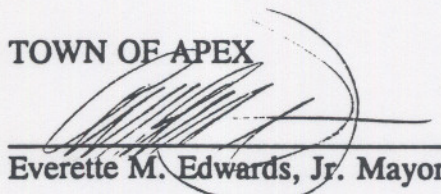
Personnel and benefit costs shall be shared by CARY and APEX, such that the personnel and benefit costs necessary to operate a water treatment plant at a production volume equal to APEX'S full allocated capacity shall be treated as fixed costs. The balance of actual personnel and benefits costs shall be treated as variable costs.

- 2.3 This Addendum Agreement shall become effective upon ratification by resolution of the governing Boards of Cary and Apex, and spread upon their minutes, the last date of which shall be the effective date and shall be entered on page 1 hereof.


IN WITNESS WHEREOF, CARY and APEX have caused this Agreement to be executed by their respective Mayors, their corporate seals to be affixed and attested by their respective Clerks, all by the authority of the respective governing bodies of each party to this Agreement, as of the date and year first above written.

AGREEMENT CARY/APEX
"Cary/Apex Water Treatment Plant"

TOWN OF APEX

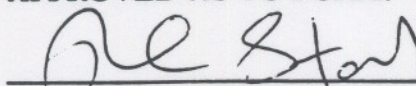

Everette M. Edwards, Jr. Mayor

ATTEST:

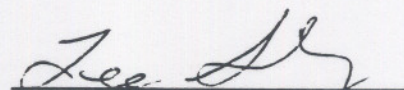

Georgia A. Parker, Town Clerk

(SEAL)

APPROVED AS TO FORM:


Paul Stam, Jr., Town Attorney

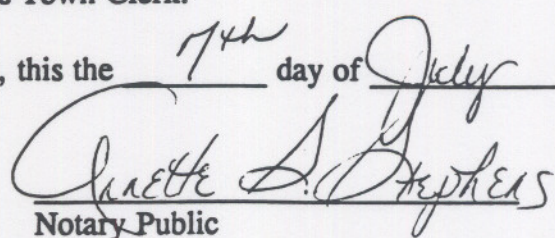
This instrument has been preaudited in the manner required by the local Government Budget and Fiscal Control Act.


Lee Smiley, Finance Director
Town of Apex

NORTH CAROLINA
WAKE COUNTY

I, Quette L. Stephens a Notary Public of the County and State aforesaid, certify that Georgia A. Parker personally came before me this day and acknowledged that she is the Town Clerk of the Town of Apex, a municipal corporation, and that by authority duly given and as the act of the municipal corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by her as its Town Clerk.

Witness my hand and official seal, this the 17th day of July, 1995.


Notary Public

My Commission Expires: 12/13/99

AGREEMENT CARY/APEX
"Cary/Apex Water Treatment Plant"

TOWN OF CARY

Koka E. Booth
Koka E. Booth, Mayor

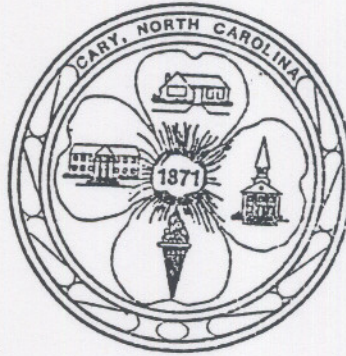
ATTEST:

Sue Rowland
Sue Rowland, Town Clerk

(SEAL)

APPROVED AS TO FORM:

Charles H. Henderson
Charles H. Henderson, Town Attorney



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

Karen A. Mills
Karen Mills, Finance Director
Town of Cary

NORTH CAROLINA
WAKE COUNTY

I, Shirley J. Smith, a Notary Public of the County and State aforesaid, certify that Sue Rowland personally came before me this day and acknowledged that she is the Town Clerk of the Town of Cary, a municipal corporation, and that by authority duly given and as the act of the municipal corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by her as its Town Clerk.

Witness my hand and official seal, this the 1st day of August, 1995.

Shirley J. Smith
Notary Public

My Commission Expires: 12-2-97