

**COUNTY OF WAKE**

**STATE OF NORTH CAROLINA**

**INTERLOCAL AGREEMENT FOR WATER INTAKE SERVICE**

This Interlocal Agreement for Water Intake Service, dated the \_\_ day of \_\_\_\_, 20\_\_ (“**Agreement**”) between the Town of Cary (“Cary”) and the Town of Apex (“**Apex**”), both North Carolina municipal corporations, and the County of Chatham (“**Chatham**”) a body politic in North Carolina. Cary, Apex and Chatham are sometimes referred to individually as “**Party**” and jointly as “**Parties.**”

**RECITALS**

WHEREAS, the State of North Carolina controls the use of the B. Everett Jordan Lake water supply storage and pursuant to GS 143-354(a)(11) and through the Environmental Management Commission of the Department of Environmental Quality (“**Commission**”) allocates water supply storage capacity at Jordan Lake to local governments and water authorities; and

WHEREAS, the Commission has allocated to Cary and Apex a water supply storage allocation of 46.2 million gallons per day (“**mgd**”), including allocations for Morrisville and Wake County which are managed by Cary, and to Chatham a water supply storage allocation of 13 mgd; and

WHEREAS, Cary and Apex own, maintain and operate certain public enterprises including water and wastewater collection, treatment and distribution or discharge systems, portions of which are located in and benefit Chatham County; and

WHEREAS, as part of their jointly owned water collection and treatment system, Cary and Apex constructed pipelines and a water intake facility in Chatham County on Jordan Lake to access their water supply storage allocation (“**Intake Facility**” as more fully defined in Paragraph 2 below), and caused to be constructed a flow diversion structure for Chatham County to access their water supply storage allocation from the Cary/Apex raw water pipeline; and

WHEREAS, Intake Facility has the current capacity to draw up to 63.2 mgd from Jordan Lake (“**Total Intake Capacity**”), some of which Total Intake Capacity is surplus to Cary and Apex needs and which surplus capacity Cary and Apex have used since 1994 to provide water intake service to Chatham allowing Chatham to access up to three (3.0) mgd of its raw water supply storage allocation; and

WHEREAS, such intake service was initially provided by written agreement entitled Water Intake Service Agreement dated January 20, 1994 (“**1994 Intake Agreement**”). Cary and Apex continued to provide water intake service after the

expiration of the 1994 Agreement on terms similar to the 1994 Agreement. The Parties also entered into a Raw Water Intake Use Agreement dated July 30, 2001 (“**Intake Use Agreement**”), pursuant to which Cary and Apex consented, among other things, to Chatham obtaining from the Army Corps of Engineers permission to use a portion of the Chatham County site on which the Intake Facility is constructed for a Chatham pump station and which Chatham pump station is not yet constructed; and

WHEREAS, Chatham desires to continue having Cary and Apex provide water intake service, and Cary and Apex desire to continue to provide such service; and

WHEREAS Cary, Apex and Chatham, are members of the Triangle Water Supply Partnership (“**TWSP**”), and desire to continue working together through the TWSP or separately to evaluate and support opportunities for support and collaboration, including mutual aid interconnections and/or treated water supply, to most cost-effectively provide water to their respective customers; and

WHEREAS, this Agreement is authorized by N.C.G.S. Chapter 160A Articles 16 and 20.

**NOW THEREFORE**, for and in consideration of the recitals and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

1. **Incorporation of Recitals and Purpose.** The Recitals are true and are incorporated into this Agreement. The purpose of this Agreement is to set forth the terms and conditions pursuant to which Apex and Cary will continue to provide the service of drawing up to 3 mgd of Chatham’s raw water supply storage allocation from Jordan Lake and passing that Raw Water into the Flow Diversion Vault for entry into Chatham raw water pipeline. This Agreement is for services only and does not convey any interest in Intake Facility (as such term is defined in Paragraph 2 below), or other real property or property interests of a Party hereto.
2. **Definitions.** In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings unless some other meaning is plainly intended:
  - (a) **Chatham Delivery Point** – means the point of connection described in Paragraph 5.A.3 below where Raw Water from the Intake Facility is delivered to the Chatham Raw Water Pipeline at the Flow Diversion Vault.
  - (b) **Chatham Pipeline** – means the water line leaving the Flow Diversion Vault, installed and used by Chatham to connect its water system to that of Cary and Apex. Chatham Pipeline is the property of Chatham.
  - (c) **Flow Diversion Vault** – means that structure constructed by Cary and Apex to allow Chatham to access its Raw Water from the Intake Facility. Flow Diversion Vault is more fully described in Paragraph 5.A.4 below.

- (d) **Intake Facility** - means all facilities now existing or which may be constructed or installed in the future that are owned by Cary and Apex that are used in the collection, transmission and delivery of water from Jordan Lake to the Flow Diversion Vault and includes but is not limited to lake aeration and/or mixing systems (if any), chemical pretreatment apparatus, intake screens, pipeline mains and laterals, pumping stations, pumps, meters, valves, equipment and all appurtenances thereto. Intake Facility includes the Flow Diversion Vault.
- (e) **Permits** – means permits, certificates or other regulatory instruments required to use, modify or expand Intake Facility, or Cary/Apex Water Treatment Facility including, but not limited to, Public Water Supply Operating Permits, Laboratory Certifications, Jordan Lake Allocation contracts, and Interbasin Transfer certificates and requirements.
- (f) **Raw Water** – means water drawn from Jordan Lake by Cary and Apex which may have been aerated, mixed or chemically pretreated as required by Chatham or deemed appropriate by Cary and Apex; and

- 3. **Intake Service.** Cary and Apex shall provide Chatham with Intake Service through Intake Facility in accordance with the terms and conditions set forth in this Agreement.
- 4. **Duration and Term.** This Agreement shall have an initial term of approximately ten (10) years, ending on June 30, 2029, unless terminated earlier in accord with the terms hereof (“**Initial Term**”). Thereafter, provided no Party is in default hereunder, this Agreement shall renew for up to six (6) renewal terms of five (5) years each, unless a Party to this Agreement gives at least three years (3) years written notice to the other Parties that this Agreement shall terminate at the end of its then current term (“**Termination Notice**”).

If not terminated earlier, Agreement shall terminate on June 30, 2059.

This Agreement shall terminate in the event Chatham loses its allocation for Jordan Lake water supply storage (“**Jordan Lake Allocation**”), or upon the construction and commencement of operations of Chatham’s own intake facility to access its Jordan Lake Allocation. This Agreement may be terminated by any party upon 30 days written notice in the event that a court of competent jurisdiction, or any federal or state agency with authority to do so, restricts or limits, directly or indirectly, any of Chatham’s, Cary’s or Apex’s rights to withdraw water from Jordan Lake or to provide this Intake Service. Should such rights be restricted or limited, directly or indirectly for one Party and not the others, this Agreement shall continue, provided the other Parties remain able to perform. Should this Agreement be terminated, Chatham shall pay all accrued and due Capital Charges as of the effective date of termination and Cary and Apex will retain Capital Charges paid by Chatham.

## 5. Roles and Responsibilities of the Parties

### A. Roles and Responsibilities of Cary and Apex

1. Intake Service. Cary and Apex shall draw up to the maximum amount to be supplied to Chatham under this Agreement, as defined in Paragraph 5.B.1, from Jordan Lake through the Intake Facility and send such Raw Water through Cary and Apex pipelines to the Flow Diversion Vault for entry into Chatham Pipeline.

The amount of water to be supplied to Chatham may be suspended or reduced in accordance with this Agreement. Cary and Apex may also, at the written request of Chatham, provide the State of North Carolina with the "Water Use Information Report" described in N.C.G.S. Section 143-355(k).

2. Reduction in Water Supply to Chatham or Suspension of Intake Service. The Parties recognize and understand that a situation or condition may exist or occur from time to time interfering with Cary and Apex's ability to provide Intake Service or reducing the amount of Raw Water that they are able to draw from Jordan Lake and supply to Chatham through the Flow Diversion Vault. When Cary and Apex are not able to draw from Jordan Lake amounts of water sufficient to meet the intake needs of Cary, Apex, Chatham and such other parties for whom such Intake Service is being provided, or when Cary and Apex have implemented water conservation measures in their jurisdictions, then and in those events, Cary and Apex may reduce the amount supplied to Chatham in such amounts and for such a period of time as may be necessary, provided such reduction is similar in length of time the supply to others is reduced and such reduction bears the same proportionate relationship to Chatham's Maximum Supply as the reduction to Cary and Apex bears to their maximum supply. Such reduced supply shall be referred to as "**Reduced Supply**". Cary and Apex shall, except in emergency situations, provide not less than thirty (30) days prior written notification of a Reduced Supply for Chatham, which notice may take the form of email notice, followed up with a telephone notice. Upon receipt of notice of a Reduced Supply, Chatham shall immediately reduce its demand to the level of Reduced Supply and Chatham shall be responsible for assuring that only Reduced Supply passes from the Flow Diversion Vault to Chatham.

It is also recognized that as necessity may arise in case of problems at the Intake Facility, including equipment failure, line break, Jordan Lake conditions or any other cause, Cary and Apex may temporarily suspend or reduce Water Intake Service to Chatham in order to make necessary repairs, connections and the like. Cary and Apex will use all reasonable and practical measures to notify Chatham of such reduction or suspension of service in advance of such suspension or reduction and shall make

reasonable efforts to expedite all repairs and minimize the length of time in which the Water Intake Service is suspended or reduced. Such notice may be by email notice, followed up with a telephone notice.

3. Point of Connection to Chatham. The point of connection between the Intake Facility and the Chatham Pipeline shall be at the Flow Diversion Vault located adjacent to US Highway 64 approximately 1300 feet west of Wilsonville.
4. Flow Diversion Vault. The Flow Diversion Vault consists of (1) a flow diversion valve; (2) a metering device; and (3) a telemetry unit.

The flow diversion valve is designed to divert flow from the Cary and Apex pipeline to the Chatham pipeline.

The metering device (hereinafter sometimes referred to as “**Water Meter**”) shall measure the volume of water, in gallons, which is discharged through the Flow Diversion Vault into the Chatham Pipeline. The telemetry unit shall be compatible with Cary’s SCADA system.

Chatham’s installation, use and maintenance of the point of connection of Chatham Pipeline to that of Cary and Apex at Flow Diversion Vault is at Chatham’s sole cost and expense. At the termination of this Agreement for whatever reason Chatham shall sever the point of connection. All connections and any severance of connections shall be in accordance with sound engineering practices and the pipe and connections shall be subject to the prior review and written approval of Cary and Apex as to size, types of materials, workmanship and location.

Cary’s or Apex’s employees or agents will regularly inspect the Flow Diversion Vault and will repair or replace the flow diversion valve, Water Meter or telemetry unit if they are known or suspected to not be operating correctly. The cost of inspection and routine maintenance shall be borne by Cary and Apex, provided, however, that Chatham shall be responsible for all costs and expenses of replacing the flow diversion valve, water meter and telemetry unit. Cary and Apex will attempt to notify Chatham at least three (3) days in advance, in writing which may be delivered by email, followed up with a telephone notice in the event Cary and Apex determine that the flow diversion valve, Water Meter or telemetry unit must be replaced, unless immediate replacement is reasonably determined to be necessary.

In the event that Cary for any reason believes that the Water Meter is measuring incorrectly, Chatham shall be responsible for providing Cary with inflow data from the Chatham County Water Plant to assist Cary in billing preparation. If such information is unavailable or inaccurate, an

estimate of the amount of water furnished through the faulty Water Meter shall be prepared by Cary based on historical consumption computed as the average of the previous three months, or the same month in the prior year, whichever is greater. When fewer than three previous months of correct readings are available or if there was no reading in the same month of the prior year, fewer readings, including some obtained after the period of incorrect registration, may be used.

Cary, Apex, and Chatham shall have access at all times to the Flow Diversion Vault for the purpose of inspection, taking readings, checking instruments for accuracy, performing maintenance, or for any other lawful purpose whatsoever.

5. Pipeline Ownership and Maintenance. The Flow Diversion Vault and all contents are the property of Cary and Apex. Maintenance of the Cary and Apex Pipeline shall be the responsibility of Cary and Apex. Maintenance of the Chatham Pipeline and the point of connection shall be the responsibility of Chatham.

## **B. Role, Rights and Responsibilities of Chatham**

1. Chatham Water Allocation. For so long as Chatham retains a Jordan Lake Allocation of at least three (3) mgd, Chatham may call for up to three (3) mgd to be drawn from Jordan Lake. The amount of Raw Water supplied to Chatham shall be measured by Water Meter at the Flow Diversion Vault on a monthly basis and monthly supply shall not exceed an amount equal to 3 mgd times the number of days in the particular monthly billing cycle being measured, which shall hereinafter be referred to as “**Maximum Monthly Supply**.” For example, the Maximum Monthly Supply for a billing cycle that consists of thirty (30) days shall be ninety million (90,000,000) gallons of Raw Water. Chatham shall accept such Raw Water into Chatham Pipeline at a maximum rate not to exceed two thousand eighty-three (2,083) gallons per minute (“**Maximum Rate of Flow**”). Both Maximum Monthly Supply and Maximum Rate of Flow are hereinafter referred to jointly as “**Maximum Supply**” which shall be supplied at the Flow Diversion Vault.
2. Future Allocations. Modification of Chatham’s Jordan Lake Allocation shall not affect the Maximum Supply provided herein, unless Chatham’s Jordan Lake Allocation is reduced below three (3) mgd.
3. Water Storage Charge. Certain payments are required by users of water storage space in Jordan Lake as set forth in that contract between the United States of America and the State of North Carolina for water storage space in B. Everett Jordan Lake dated April 10, 1988, as amended and revised from time to time. Chatham is responsible for all payments due to the State of North Carolina or due to the United States of America for

Chatham's utilization of storage space in Jordan Lake and withdrawal of water from said Lake. The Capital Charge, O&M Charge and other amounts paid to Cary and Apex under this Agreement covers only the Water Intake Service.

4. Allocation Contract Conditions. Each Party shall maintain compliance with applicable conditions in the current and any future allocation contracts with the State of North Carolina. Chatham shall prepare and submit reports required of Chatham by the State, although Cary and Apex may also, at the written request of Chatham, provide the State of North Carolina with the "**Water Use Information Report.**"
5. Chatham acknowledges that Cary and Apex's Intake Facility directly benefits Chatham and that Cary and Apex's water and wastewater systems benefit Chatham County residents. The Parties agree to continue their good faith participation in the TWSP and Chatham acknowledges its consent to the acquisition of real property located in Chatham County by Cary and/or Apex when such acquisition is required:
  - (a) to provide water under this Agreement to Chatham and its citizens; or
  - (b) for expansion, maintenance or repair of the raw water pipelines between the Intake Facility and the Cary/Apex Water Treatment Facility.

Chatham County agrees to consider in good faith requests from Cary or Apex with regard to the acquisition of easements in other areas of the county as needed for repair, expansion or construction of water distribution and wastewater collection pipelines to serve utility customers in Chatham County. This Agreement, when executed by the Parties shall serve as evidence of Chatham's approval and consent as hereinabove set forth. The Parties agree to reasonably support each other as Apex and Cary seek Permits and regulatory approvals for their water and wastewater systems and as Chatham seeks similar permits and regulatory approvals for its system.

## **6. Costs and Payments**

- A. Allocation of Costs in General.** Chatham shall pay Cary and Apex for all water that passes through the Water Meter at a Water Intake Service rate ("**Rate**") established by Cary and Apex, which Rate may be revised annually by Cary and Apex. The Rate shall be set so as to generate for Cary and Apex revenues sufficient to permit Cary and Apex to recover (1) a proportionate share of the direct and indirect costs to Cary and Apex of delivering Raw Water from Jordan Lake through the Water Intake to the Chatham Pipeline connection at the Flow Diversion Vault, including reserves for such purposes, and (2) such sums established by Cary and Apex which recognize Cary and

Apex's existing and future capital investment in Intake Facility, including all easements and other real property interests and all Permits. Rate includes, but is not limited to, recovery of a portion of the Intake Facility depreciation, interest and reasonable return on investment.

The Rate shall therefore be composed of two components, (1) an annual capital charge for each fiscal year defined as June 30 to July 1 ("**Capital Charge**") payable in lump sum in advance on or before July 31 of each year which shall be based on Chatham Maximum Supply, and (2) a monthly operation and maintenance charge ("**O&M Charge**") payable monthly within 30 days of date of invoice which shall be based on the amount of Raw Water that is passed into Chatham Pipeline during the previous monthly billing cycle.

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 Charges and O&M Charges for Water Intake Service. Cary and Apex agree, upon written request, to provide Chatham with information and data that is available to, and being used by, Cary and Apex to develop capital costs, Capital Charge, O&M costs, O&M Charge, Billing Unit Rate and Adjusted Unit Rate, as defined in Paragraph 6.C below.

- B. Capital Charges.** The Capital Charge shall be based on Cary and Apex's actual, documented Capital Cost of acquiring, upgrading and expanding the Intake Facility, including all easements and other real property interests and all Permits. The term "**Capital Cost**" shall include the purchase price of the Intake Facility as well as the costs of construction and expansion; labor and materials; machinery and equipment; improvements including capacity expansion and Raw Water quality management facilities; lands, property rights, easements and franchises acquired; financing charges; interest, including interest prior to and during construction; preparation of plans and specifications; surveys and estimates of cost and of revenues; engineering and legal services; all other expenses necessary or incident to determining the feasibility or practicability of such construction; administrative expense; and such other expenses including reasonable provision for working capital as may be necessary or incident to the financing of the Intake Facility.

Chatham shall pay its proportionate share of Cary and Apex's Capital Cost, which share shall be 4.75%.

Construction activities have been completed for improvements to Intake Facility and expansion to a firm capacity of 63.2 mgd. Such activities will benefit Cary, Apex and Chatham and are included in Capital Cost.

If a change in the Capital Charge is reasonably required due to necessary expenditures by Cary and Apex, the Capital Charge component of the rate



change shall be effective thirty (30) days after written notice to Chatham. The Capital Charge will be calculated annually to reflect Cary and Apex's Capital Cost for the previous fiscal year. The first Capital Charge that will be billed pursuant to this Water Intake Service Agreement will be for fiscal year 2019 (July 1, 2018 through June 30, 2019). Such Capital Charge will be due upon execution of this Agreement.

- C. O&M Charge.** The monthly O&M Charge shall be determined by applying a unit rate to Chatham's actual transfers during each monthly billing cycle.

A Billing Unit Rate shall be set by Cary and Apex annually. The Billing Unit Rate shall be set to reflect Chatham's proportionate share of Cary and Apex's projected annual direct and indirect costs for administering, operating and maintaining the Intake Facility, raw water pipeline, and Flow Diversion Vault, hereafter referred to as "**O&M Costs.**" Chatham's share of O&M Costs shall bear the same ratio to total O&M Costs as Chatham's transfers bear to the total volume withdrawn from Jordan Lake via Intake Facility.

At the end of each of Cary and Apex's fiscal years, if there is a difference between actual and projected O&M Costs, an Adjusted Unit Rate shall be established to reflect the increase or decrease over projected O&M Costs. In the event actual O&M Costs exceed the projected O&M Costs, Chatham shall be responsible for paying any difference between the Billing Unit Rate and the Adjusted Unit Rate for all water consumed by Chatham over the previous fiscal year which amount shall be due within 30 days of billing by Cary and Apex. In the event projected O&M Costs exceed the actual O&M Costs, Cary and Apex shall refund to Chatham, within 30 days, the difference between the Billing Unit Rate and the Adjusted Unit Rate for all water consumed by Chatham over the previous fiscal year.

In addition to adjusting the O&M Charge at the end of each of Cary and Apex's fiscal years as set forth above, Cary and Apex shall annually, as part of their budgetary process, establish a new Billing Unit Rate to be applied to water consumption for the next fiscal year.

The Billing Unit Rate for fiscal year July 1, 2018 through June 30, 2019 is \$0.36 per 1,000 gallons.

- D. Billing.** Cary and Apex shall bill Chatham for the annual Capital Charge in advance on July 1 of each year. Cary and Apex shall bill Chatham for the O&M Charge for water provided during the previous month on a monthly basis.

The Water Meter readings made for purposes of billing Chatham shall be made by Cary or Apex once every calendar month on a date established by Cary and Apex.

- E. Payment.** Within 30 days of receipt of the invoice, Chatham shall make payment in the amount of the invoice to Cary. If Chatham disagrees with the amount invoiced, it may notify Cary of the disagreement within 10 days of receiving the invoice and request a review and that an adjustment be made, but shall make the required payment to Cary pending the resolution of the disagreement.
- F. Interest.** Chatham shall be subject to a late payment penalty of 2/3 of one percent per month (9% annual) on unpaid balance in the event any of its payments are not made in a timely fashion. Cary and Apex may from time to time adjust the late payment penalty, effective with 30 days written notice to Chatham. Additionally, Chatham shall pay an increased amount for any water transfer at the Flow Diversion Vault in excess of Maximum Supply or Reduced Supply. It is agreed, however, that the imposition of either the late payment penalty or the increased Rates shall not constitute a waiver of Cary and Apex's right to demand timely payment of all amounts due by Chatham nor shall such imposition constitute a waiver of Cary and Apex's right to demand that consumption not exceed Maximum Supply or Reduced Supply.

In the event Chatham exceeds the Maximum Supply, without the prior approval of Cary and Apex, all water in excess of Maximum Supply shall be billed and paid at a unit rate equal to one hundred twenty five percent (125%) of the Billing Unit Rate.

In the event Chatham exceeds any Reduced Supply without the prior approval of Cary and Apex, all water in excess of Reduced Supply shall be billed and paid at a unit rate equal to one hundred fifty percent (150%) of the Billing Unit Rate.

- 7. Breach and Default.** In the event of breach of this Agreement, the Parties shall be entitled to such legal or equitable remedy as may be available, including specific performance.

The following events shall constitute events of default under this Agreement.

- (a) If Chatham fails to pay, when due, a bill for Water Intake Service; or
- (b) If Chatham fails to pay any other sum that may be due to Cary or Apex pursuant to this Agreement on its due date, and fails to cure such default within thirty (30) days of written notice of default; or
- (c) If any Party fails to keep, perform, or abide by any term, condition, or covenant of this Agreement to be performed or observed by such Party and the party in default does not cure such default within (30) thirty days after written notice thereof or, if such default cannot be cured in such period, does not within (30) thirty days commence with diligence and dispatch such act or acts as shall be necessary to cure the default and does not, in fact, cure such default within a reasonable time; or

(d) If Chatham exceeds the Maximum Supply or Reduced Supply without Cary and Apex's prior written approval by more than 50 % for any two or more months in any (12) twelve month period, or exceeds the Maximum Supply or Reduced Supply by less than 50% for any three or more months in any twelve (12) month period.

**A. Termination for Default.** In the event of a default, at any time thereafter so long as the default continues, the non-defaulting party may terminate this Agreement by giving written notice of termination to defaulting party, and this Agreement shall terminate (30) thirty days after the date of such notice.

**B. Suspension of Intake Service.** In addition to the foregoing, and at the option of Cary and Apex, in the event of an uncured default by Chatham, following notice as hereinabove required, Cary and Apex may suspend Water Intake Service to Chatham upon ten days written notice to Chatham. Such suspension of Water Intake Service may continue for the period specified in the notice or until such time Chatham has cured any breach of this Agreement to the reasonable satisfaction of Cary and Apex.

At the end of the suspension period, if Chatham has not cured the breach, Cary and Apex may terminate this Agreement upon ten (10) days written notice to Chatham.

**8. Notices.** Unless otherwise provided, all notices provided for herein shall be in writing and shall be sent properly addressed by certified or registered mail, return receipt requested, postage prepaid addressed to the Parties at the addresses shown below.

Town of Cary  
PO Box 8005  
Cary, North Carolina 27512-8005  
Attention: Sean R. Stegall, Town Manager  
Email address: sean.stegall@townofcary.org

Town of Apex  
PO Box 250  
Apex, North Carolina 27502-0250  
Attention: Drew Havens, Town Manager  
Email address: drew.havens@apexnc.org

With a copy to the Director of Water Resources:

Town of Apex  
PO Box 250  
Apex, North Carolina 27502-0250  
Attention: Marty Stone, Director of Water Resources  
Email address: marty.stone@apexnc.org

County of Chatham  
P.O. Box 1809  
Pittsboro, NC 27312  
Attention: Dan LaMontagne, Interim County Manager  
Email address: dan.lamontagne@chathamnc.org

With a copy to the Utilities Director:

County of Chatham  
P.O. Box 1809  
Pittsboro, NC 27312  
Attention: Larry Bridges, Utilities Director  
Email address: larry.bridges@chathamnc.org

Mailed notices shall be effective three (3) days after having been deposited, properly addressed and postage prepaid, in the US Postal Service. Any party hereto may change the person to whom or the address to which notices should be provided by giving written notice to the other parties of the change. Email notice, where permitted by the terms of this Agreement, are effective upon sending, provided the email notice is followed up with a telephone notice.

9. **Entire Agreement/Amendments.** This Agreement supersedes and replaces any prior agreement with respect to the subject matter hereof and constitutes the entire agreement between the Parties with respect to Water Intake Service. This Agreement may not be modified or amended except in writing signed by all the parties.
10. **Representations and Warranties.** The Parties each represent, covenant and warrant for the other's benefit as follows:
  - A. Chatham represents and warrants that Chatham has been given or granted water withdrawal rights by the State of North Carolina and that Chatham has obtained all the certificates, permits, licenses that may be required of Chatham by the United States of America, the State of North Carolina or any department or agency of either, for drawing or releasing water from Jordan

Lake. Chatham is, and shall be, responsible for paying all fees and any other costs or charges in connection with storage or drawing of Chatham's water allocation from Jordan Lake.

Chatham further represents and warrants that it will maintain all necessary permits and approvals and pay for all fees, costs and charges in connection with Chatham, storage and the drawing or releasing of water from Jordan Lake by or on behalf of Chatham.

- B.** Cary and Apex, jointly and severally, represent and warrant that they have obtained and will maintain all the certificates, permits, licenses that may be required of them by the United States of America, the State of North Carolina, or any department or agency of either, for drawing water from Jordan Lake.

**11. Indemnification.** Chatham agrees to indemnify and hold harmless Cary and Apex and their officers, representatives, employees and agents from any and all loss, cost and expense, including attorney's fees and expert fees, arising out of or caused by any act or omission of Chatham, including all damages, charges, claims and causes of action brought or asserted by any person, including, but not limited to agents, representatives, and employees and customers of Chatham, the United States of America and the State of North Carolina, based upon or rising out of any damages, losses, expenses, charges, costs, injuries or illness sustained or incurred by any such person or persons resulting from or in any way directly or indirectly related to an act or omission of Chatham connected with the provision of the Water Intake Service described herein, including claims that the method of releasing or discharging water is improper, that the quality of water has been impaired by the withdrawal or release of the Raw Water drawn under this Agreement or by its return to the stream following its use, that Raw Water drawn under this Agreement has been diverted without authority from the basin from which it was withdrawn, or that Raw Water resulting from augmentation of the natural stream flow to control water quality has been withdrawn under this Agreement.

**12. Dispute Resolution.** In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice.

**13. No Waiver of Non-Compliance with Agreement.** No provision of this Agreement shall be deemed to have been waived by any 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 another party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

14. **Governing Law.** The parties intend that this Agreement be governed by the law of the State of North Carolina.
15. **Assignment.** Neither Party may sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other Party.
16. **Liability of Officers and Agents.** No officer, agent or employee of any Party will be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This section will not relieve any such officer, agent or employee from the performance of any official duty provided by law.
17. **Execution in Counterparts/Electronic Version of Agreement.** 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. Any of the Parties may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.
18. **Iran Divestment Act.** The Parties hereby certify that they, and all permitted subcontractors, if any, are not on the Iran Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58.
19. **No third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
20. **Further Assurances/Corrective Instruments; Good Faith/Due Diligence.** The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention and purpose of this Agreement. The Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Agreement.

**IN TESTIMONY WHEREOF**, the Town of Cary, the Town of Apex, and the County of Chatham, each pursuant to resolutions of their respective governing boards spread upon their minutes, have caused this Agreement to be executed and attested by their duly authorized officers and their official seals affixed, the day and year first written above.

**ATTEST:**

**TOWN OF CARY:**

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Virginia Johnson  
Town Clerk

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Harold Weinbrecht, Jr.  
Mayor, Town of Cary

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

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Karen A. Mills, C.P.A.  
Finance Officer, Town of Cary

**ATTEST:**

**TOWN OF APEX:**

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Donna Hosch  
Town Clerk

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Lance Olive  
Mayor, Town of Apex

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

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Vance Holloman  
Finance Officer, Town of Apex



**ATTEST:**

**COUNTY OF CHATHAM:**

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Lindsay Ray  
Clerk to the Board

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Mike Dasher, Chair  
Chatham County Board of Commissioners

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

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Vicki McConnell  
Finance Director, Chatham County