

SETTLEMENT AGREEMENT AND RELEASE

This is an AGREEMENT TO SETTLE AND RELEASE CLAIMS (the "Agreement") made and entered into this the 26th day of January, 2011 by, between and among the NEW HILL COMMUNITY ASSOCIATION, its successors and permitted assigns, ("NHCA"), as Petitioner, and the WESTERN WAKE PARTNERS, TOWN OF CARY, TOWN OF APEX AND TOWN OF MORRISVILLE ("the Partners"), as Respondent-Intervenors, in a contested case proceeding before the North Carolina Office of Administrative Hearings, captioned *New Hill Community Association v. North Carolina Department of Natural Resources, et al*, 10 EHR 5615 (the "Contested Case"). By this Agreement, the undersigned (collectively, the "Parties") mutually agree to compromise, settle, and dismiss with prejudice the Contested Case according to the terms and conditions set forth below.

WITNESSETH:

WHEREAS, the Partners have a proposed project to construct the Western Wake Regional Wastewater Management Facilities which generally consist of a water reclamation facility, pump stations, influent and effluent pipelines and a discharge to the Cape Fear River (the "Project"). Part of Project, notably all of the water reclamation facility, is located at a site identified in the Final Environmental Impact Statement dated December 2009 prepared for the Project (the "EIS") as Site 14, which has been annexed by the Town of Apex and is adjacent to an unincorporated part of Wake County known as New Hill (the "New Hill Community"). As part of Project, the Partners submitted a water quality certification application to the N.C. Department of Environment and Natural Resources' ("DENR") Division of Water Quality ("DWQ"); and

WHEREAS, on July 16, 2010, the DWQ signed a 401 water quality certification (the “401 Certification”) authorizing certain water quality impacts associated with construction of the Project; and

WHEREAS, on or about September 9, 2010, the NHCA filed a Petition for a Contested Case Hearing in the North Carolina Office of Administrative Hearings challenging the DWQ’s issuance of the 401 Certification, resulting in the Contested Case action identified above; and

WHEREAS, the Partners sought and were granted leave to intervene as Respondent-Intervenors in the Contested Case by Order dated October 5, 2010; and

WHEREAS, the NHCA and Partners now desire to compromise and settle the issues between them in the Contested Case;

NOW, THEREFORE, in consideration of the promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the NHCA and Partners agree to compromise, settle, and dismiss with prejudice all claims and causes of action arising in the Contested Case upon the terms and conditions set forth below:

1. FUNDING AND CONSTRUCTION OF A COMMUNITY CENTER

A. The recitals are incorporated as terms of this Agreement. The Parties recognize that Project will impact the New Hill Community, and Partners have minimized and mitigated potential negative impacts. Members of the New Hill Community, including NHCA, have identified a general desire for a community center where members of the New Hill Community, together with the general public, can gather

and associate. Partners, recognizing that it may be many years before either Wake County or the Town of Apex are positioned to provide such a center, desire to provide funding for a community center (the "Community Center") as set forth herein.

B. All Parties agree that Community Center, and the land on which it is located, shall be acquired, operated and maintained in accordance with this Agreement. Community Center shall be built within the boundaries shown on Attachment 1. Community Center shall be constructed to best serve the interests and needs of the inhabitants of New Hill Community, but shall be open to the general public regardless of place of residence on the same terms and conditions as inhabitants of New Hill Community. Community Center shall be owned, maintained and continuously operated by a North Carolina non-profit corporation that is an exempt entity under section 501 of the internal revenue code. Such entity (the "Qualified Entity") shall have no members and shall not be affiliated with any church or religious purpose, provided that it shall be permitted to engage in business transactions with any church or religious institution consistent with the purpose and provisions of this Agreement. Its articles of incorporation shall provide that in carrying out its purpose it shall be operated exclusively for ownership, operation and maintenance of Community Center, that no part of its net earnings shall inure to the benefit of any private shareholder or member and that no part of its activities shall be the carrying on of propaganda or otherwise attempting to influence legislation. The articles of incorporation shall also provide that in the event of dissolution, the assets of the corporation will be distributed to another similarly organized corporation or to Wake County or the Town of Apex. Such entity, if it is any entity other than NHCA shall, prior to receiving any funds under this Agreement, execute an

instrument satisfactory to all parties hereto, whereby it effectively binds itself to all of the terms and conditions of this Agreement. Such entity, if it is any entity other than NHCA, shall have no limitations in regards to the composition of its Board of Directors and can include current NHCA officers.

C. Partners agree to pay into an Escrow Fund (the “Escrow Fund”) Five Hundred Thousand Dollars (\$500,000.00) for the purpose of acquiring a suitable site in the New Hill Community (the “Property”) and designing and constructing a Community Center to be located on the Property. The Property shall be made subject to a deed restriction, enforceable by any one or all of the Partners, limiting its use to a community center and related uses serving the general public.

D. The NHCA, provided it meets the requirements set forth herein, or another entity meeting such requirements as may be approved in writing by the Southern Coalition for Social Justice (“SCSJ”), shall be solely responsible for acquisition of the Property and planning, design, construction, use, management, operation, maintenance, repair and all other actions relating to the Property and the Community Center and may draw upon the Escrow Fund for such purposes as allowed by this Agreement.

E. The Partners shall have no responsibility or liability, either individually or collectively, for the Property or the Community Center or any actions or activities related to them other than providing the funds. The NHCA hereby assumes all such responsibility and liability, and agrees to assure that if another entity is to own and operate Property and Community Center, that entity shall have and assume all such responsibility and liability. NHCA further indemnifies and holds the Partners, and each

of them, and their officers and employees, harmless from and against all claims, costs, civil penalties, fines, losses and damages by whomsoever brought or alleged, arising out of or relating to the acquisition, construction, maintenance and operation of Property and Community Center.

F. The Community Center shall be available for use by the general public according to practices, policies and rules generally applicable to not-for-profit community centers. There shall be no discrimination on the basis of race, sex, national origin, or any other illegal basis. Membership in any entity or association shall not be a requirement for use of Community Center.

G. The Escrow Fund and any interest that accrues thereon shall be held by the SCSJ as the Escrow Agent and shall be disbursed according to an escrow agreement substantially in the form of the escrow agreement hereto as Attachment 2, exclusively for acquisition of the Property and design and construction of the Community Center thereon, provided that a portion of the Escrow Funds not to exceed Fifty Thousand Dollars (\$50,000.00) may be used for subsequent furnishing, operating, maintenance and repair costs, if such funds remain after acquisition and construction of Community Center.

H. The Escrow Fund shall be funded and disbursed as follows:

i. Provided there has been no violation of this Agreement, the Partners shall deposit Two Hundred Thousand dollars (\$200,000.00) into the Escrow Fund within sixty-five (65) days after the issuance by the DENR of the Authorization to Construct for the Western Wake Regional Water Reclamation

Facility, Contract 1 – Treatment Works (“ATC”). Provided there is no violation of this Agreement, the Escrow Agent may disburse to a qualified Entity any amount up to One Hundred Thousand Dollars (\$100,000.00), for the acquisition cost of the Property for the Community Center upon presentation by the Qualified Entity to the Escrow Agent of a valid contract for purchase of the Property and documentation necessary, in the reasonable judgment of the Escrow Agent, to verify the Property meets all applicable zoning requirements or property restrictions regarding use as the Community Center. The Escrow Agent may disburse any funds not used for property acquisition for required expenses for design and construction of Community Center, and other directly related expenses including expenses related to establishing the Qualified Entity, provided that the Qualified Entity shall request such disbursements according to the procedures in subparagraph ii. below.

ii. Provided there is no violation of this Agreement, the Partners shall deposit the remaining Three Hundred Thousand Dollars (\$300,000.00) into the Escrow Fund within one hundred and eighty days (180) after award of the contract for construction of the Western Wake Water Reclamation Facility, Contract 1 – Treatment Works portion of the Project on Site 14. Provided there is no violation of this Agreement, these funds may be disbursed in such amounts as may be requested by the Qualified Entity for required expenses for design, construction, and furnishing of the Community Center and other directly related necessary expenses based on the presentation by Qualified Entity to the Escrow Agent of invoices for such expenses and documentation verifying that restrictions

as required in subsection 1.C. of this Agreement have been recorded on the Property restricting it to the uses described in this Agreement. Upon completion and issuance of a Certificate of Occupancy for the Community Center, remaining funds, not to exceed Fifty Thousand Dollars (\$50,000.00), shall be disbursed for a furnishing, operation, maintenance and repair fund to be maintained by Qualified Entity. Remaining funds, if any, over Fifty Thousand Dollars (\$50,000.00) shall be disbursed to Town of Cary as Lead Agency for the Partners.

I. In the event the Partners decide, for any reason, that the Water Reclamation Facility portion of the Project will not be built at Site 14, any balance remaining in the Escrow Fund, less any expenses already incurred in good faith by the Qualified Entity for which it would otherwise be entitled to pay with Escrow Funds under this Agreement, shall be disbursed to the Town of Cary as Lead Agency for the Partners upon Cary presenting to the Escrow Agent and the Qualified Entity documentation confirming such decision; provided however that there shall be no requirement under this Paragraph. I that any balance remaining in the Escrow Fund be returned to the Town of Cary if a contract has been entered for construction of the Community Center and physical construction has begun at the time such documentation is presented to the Escrow Agent. Provided further in the event the Partners decide, for any reason, that the Water Reclamation Facility portion of the Project will not be built at Site 14 after the Qualified Entity has purchased Property for the Community Center, said Property will continue to be held by the Qualified Entity.

J. In the event that Qualified Entity has not entered a construction contract for and begun physical construction of the Community Center within three hundred and

sixty-five (365) days after the Project begins operation, the Partners' obligation under Section 1 and 2 of this Agreement shall terminate and any balance remaining in the Escrow Fund, less any expenses already incurred in good faith by the Qualified Entity for which it would be entitled to pay with Escrow Funds under this Agreement, shall be disbursed to Cary as the Lead Agency for the Partners in accordance with the disbursement process set forth in the Escrow Agreement upon Cary presenting to the Escrow Agent and the Qualified Entity a written request stating the basis for claiming that a construction contract has not been entered and/or physical construction of the Community Center has not begun. Provided further in the event that the Qualified Entity has purchased land but has failed to enter into a construction contract for and begin physical construction of the Community Center, the purchased Property for the Community Center will continue to be held by the Qualified Entity.

2. WATER AND SEWER SERVICE TO THE COMMUNITY CENTER

A. Provided the condition set forth in subparagraph 2.C. is met and there is no default hereunder, the Partners shall, at their own cost, extend and connect water and sewer service to the Community Center described in Section 1 herein. The Qualified Entity shall grant to the Partners at no cost to the Partners all easements on the Property required for the Partners to connect water and sewer service to the Community Center. The provision of water and sewer service shall be consistent with all applicable policies and ordinances, as may be amended, of the Town of Apex.

B. The extension and connection of water and sewer service shall be completed within a reasonable time after completion of water and sewer lines along New

Hill-Holleman Road. Qualified Entity shall provide written notice to the Partners when the appropriate stage of construction of the Community Center has been reached to enable such extension. The NHCA acknowledges that it understands that service may not be available for up to six (6) months after the Project becomes operational.

C. The Partners' obligation under this Section 2 shall be conditioned upon the Community Center being located within 100 yards of the right-of-way of New Hill-Holleman Road and between New U.S. Highway 1 and the CSX Railroad right-of-way. In the event the Community Center is located outside the above-described areas, the Partners' obligation to extend and connect water and sewer service shall terminate. In the event the Property does not directly abut the right of way of New Hill-Holleman Road, Qualified Entity shall be responsible for obtaining all easements and permissions to extend the utility lines, which is a condition precedent for such extension and connection.

3. CONSTRUCTION OF BUS SHELTERS

A. Partners agree to provide and install, at their cost, in the New Hill Community, two bus shelters of a typical size and construction used in the Town of Cary and the Town of Apex (approximately 4 feet x 8 feet and glass-and-steel construction).

B. The NHCA or Qualified Entity shall be responsible for locating suitable sites for the bus shelters and arranging for the owners to grant easements or other suitable property interests in the sites at no cost or at a reasonable cost not to exceed market value. The Partners shall pay for such sites.

C. The NHCA or Qualified Entity shall hold any required easements or other property interest for the sites, and shall own and maintain the bus shelters. The Partners

shall have no responsibility or liability for the bus shelters or sites or any activities related to them. The NHCA hereby assumes all such responsibility and liability, and agrees to assure that if another entity is to own and operate bus shelters, that entity shall have and assume all such responsibility and liability. NHCA further indemnifies and holds the Partners, and each of them, and their officers and employees, harmless from and against all claims, costs, civil penalties, fines, losses and damages by whomsoever brought or alleged, arising out of or relating to the acquisition, construction, maintenance and operation of bus shelters. The Parties further agree that if in the future there is another Qualified Entity owning and maintaining the bus shelters then it shall succeed NHCA in indemnifying and holding the Partners, and each of them, and their officers and employees, harmless from and against all claims, costs, civil penalties, fines, losses and damages by whomsoever brought or alleged, arising out of or relating to the acquisition, construction, maintenance and operation of bus shelters.

D. The Partners shall promptly install the bus shelters within one year of issuance of the ATC provided that the NHCA or the Qualified Entity has located suitable sites and has been able to obtain all necessary easements or other suitable property interests as provided in Subsection 3.B.

E. In the event the NHCA or the Qualified Entity is able to locate only one suitable site for a bus shelter and the necessary easements or other property interest within one year after issuance of the ATC, the Partners' obligations under this Section 3 shall be reduced to paying for such site and providing and constructing one bus shelter, upon notification from NHCA that the necessary easement or other property interest has been obtained. In the event the NHCA is unable to locate any suitable site and arrange

for the necessary easement within one year of issuance of the ATC, the Partners' obligations under this Section 3 shall terminate entirely.

4. DISMISSAL OF CONTESTED CASE AND AGREEMENT NOT TO OPPOSE

THE FACILITIES

A. The NHCA shall file and enter a Voluntary Dismissal with Prejudice of Petitioner's Contested Case within one week of receiving notice that all Parties have approved and signed this Agreement. The NHCA further agrees that neither NHCA nor any of its officers, employees, agents, successors or permitted assigns shall file, participate in, or encourage any other legal or administrative action challenging or opposing construction of the Project or any permit, certificate, or regulatory approval of any nature whatsoever required for the Project, provided that this provision shall not prohibit any person from participating in any action pertaining to acquisition of his or her property for the Project. The NHCA agrees that it will, within five (5) days of execution of this Agreement by all parties, urge all of its members by email and, for those without email, by letter as well as in an NHCA meeting, not to take any actions or encourage other persons to take any action opposing the Project, including not to take actions challenging or opposing, or encouraging the challenge or opposition to, the Chatham County effluent pipeline portion of the Project. Further, NHCA will email other allied Chatham County organizations informing them of this settlement and asking them to refrain from using NHCA's name in any further opposition to the Chatham County pipeline portion of the Project. However, the parties recognize that NHCA can only ask and can not guarantee compliance with its requests of allied Chatham County organizations. In the event of a violation of this Subsection 4.A., then the Partners'

obligations under this Agreement shall terminate immediately and any balance remaining in the Escrow Fund shall be disbursed to Cary as the Lead Agency for the Partners.

B. The Parties agree within two (2) days of execution of this Agreement by all parties to jointly issue a news release including the statements set out on Attachment 3 and to take the actions also described in Attachment 3. The Parties agree that the purpose of the joint news release and actions described in Attachment 3 is to confirm publicly that the Parties have reached satisfactory resolution regarding the impacts of the Project, and each Party agrees to make all reasonable efforts to urge their officers, members and employees not to publicly criticize any other party.

5. No Admission of Liability: By signing this Agreement, the Parties acknowledge that they understand that this Agreement is in compromise of disputed claims. Further, the Parties agree that their willingness to enter into this Agreement does not constitute and should not be construed as any admission of liability for any claims made or claims that may be made in the future.

6. Binding Nature of Agreement. This Agreement shall be binding upon the NHCA and the Partners, and their successors and assigns, upon its execution by all Parties.

7. Knowing and Voluntary Agreement. By signing this Agreement, the Parties acknowledge that they have entered into this Agreement knowingly and voluntarily and after reviewing it with counsel of their choice. The Parties agree that, in the event of a dispute under this Agreement, there will be no construction of the wording of this Agreement against any party because this Agreement was jointly prepared by the Parties.

8. Assignment. None of the Parties shall assign any of their rights or obligations under this Agreement without the prior written consent of all other Parties; except that, as provided in Section 1.D., Qualified Entity approved by the SCSJ, after executing an instrument binding itself to all of the terms and conditions of this Agreement as provided in Section 1.B., may assume responsibility for acquisition of the Property and design, construction and operation of the Community Center, and may obtain funds for such purposes from the Escrow Fund in accordance with the terms and conditions as specified in this Agreement.

9. Attorney's Fees, Costs, and Expenses. The Parties agree to bear their own attorney's fees, costs, and other expenses that have been incurred in connection with any stage of the Contested Case.

10. Notice and Resolution of Violations of Agreement. The remedies described in this Section 10 shall be the sole remedies for violations of this Agreement and shall not impair any other rights of any other party to this Agreement.

A. Prior to issuance of a certificate of occupancy for Community Center, the Parties may use any remedy available to them in law or equity to enforce the terms and conditions of this Agreement.

B. After issuance of a certificate of occupancy for Community Center, or as to any matter not provided for herein, if any Party ("Complaining Party") alleges that another Party has failed to satisfy an obligation under this Agreement or is otherwise in violation of this Agreement, the Complaining Party shall notify all other Parties within thirty (30) days of discovering the alleged violation. Such notice of violation must be in writing and must contain sufficient detail to allow the allegedly non-complying Party to

correct the violation. The non-complying Party must either correct the violation within sixty (60) days of the date such written notice is given, or give written notice within thirty (30) days challenging the notice of violation why it is not in violation. If the alleged non-complying Party challenges the notice of violation, and the matter is not resolved by Inter-Party discussions within thirty (30) days, then the Parties consent to non-binding mediation to occur within an additional thirty (30) days to be conducted in the City of Raleigh, NC, unless all Parties consent to a different location. If the matter is not resolved by the mediation, the Parties may seek any appropriate legal remedy.

11. Notices. All notices required or permitted hereunder shall be in writing, and shall be deemed given on the date received if hand delivered, or delivered by courier or overnight or express mail or package delivery; or two days after postmarked if sent by U.S. mail, postage prepaid, certified or registered, return receipt requested, and addressed to the following individuals:

To Respondent-Intervenor Partners:

Town of Cary

Town Manager
Town of Cary
316 N. Academy Street
Cary, NC 27511

Town of Apex

Town Manager
Town of Apex
P.O. Box 250
Apex, NC 27502-0250

Town of Morrisville

Town Manager
Town of Morrisville
100 Town Hall Drive
P.O. Box 166
Morrisville, NC 27560-0166

To Petitioner New Hill Community Association:

Chris Brook
Southern Coalition for Social Justice
115 Market Street, Suite 140
Durham, NC 27701

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

13. Severability. If, for any reason, any paragraph, sentence, term, or clause in this Agreement is held to be invalid or unenforceable, such paragraph, sentence, term, or clause is severable from the Agreement, and such invalidity or unenforceability shall have no effect on the validity or enforceability of the remaining provisions.

14. Governing Law. This Agreement, and the rights, duties and obligations of the Parties hereto shall be governed by the construed in accordance with the laws of the State of North Carolina.

15. Authorization to Execute Agreement. Each person signing this Agreement hereby represents that he or she is authorized to bind the party for which he or she signs.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written above.

NEW HILL COMMUNITY ASSOCIATION

Paul Barth President

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA

Durham CAS

COUNTY OF WAKE

This 25th day of January, 2011, personally came before me, a Notary Public in and for the said County and State, Durham Co., NC, who, being by me duly sworn, says that he/she is the President of the New Hill Community Association, a non-profit corporation duly organized and validly existing under the laws of the State of North Carolina and acting through its Board of Directors, and by authority duly given and as the act of said Association, the foregoing instrument was signed in its name by Paul Barth, as President of said Association, sealed with its seal, and attested by himself/herself as the President of said Association.

WITNESS my hand and notarial seal this 25th day of January, 2011

Christopher A Brook
Notary Public

My commission expires:

6-2-2015

CHRISTOPHER A BROOK
NOTARY PUBLIC
ORANGE COUNTY, NC
My Commission Expires 6-2-2015

NEW HILL COMMUNITY ASSOCIATION

[Handwritten Signature]

Vice President

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA

COUNTY OF WAKE

This 26th day of January, 2011, personally came before me, a Notary Public in and for the said County and State, Wake Co., NC, who, being by me duly sworn, says that he/she is the Vice-President of the New Hill Community Association, a non-profit corporation duly organized and validly existing under the laws of the State of North Carolina and acting through its Board of Directors, and by authority duly given and as the act of said Association, the foregoing instrument was signed in its name by David Bristol as Vice-President of the Association, sealed with its seal, and attested by himself/herself as the Vice President of said Association.

WITNESS my hand and notarial seal this 26th day of January, 2011

[Handwritten Signature]
Notary Public

My commission expires:

6-2-2015

CHRISTOPHER A BROOK
NOTARY PUBLIC
ORANGE COUNTY, NC
My Commission Expires 6-2-2015

NEW HILL COMMUNITY ASSOCIATION

James E. Clanton, Jr. Secretary

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA

COUNTY OF WAKE

This 26th day of January, 2011, personally came before me, a Notary Public in and for the said County and State, Wake Co, NC, who, being by me duly sworn, says that he/she is the Secretary of the New Hill Community Association, a non-profit corporation duly organized and validly existing under the laws of the State of North Carolina and acting through its Board of Directors, and by authority duly given and as the act of said Association, the foregoing instrument was signed in its name by James Clanton as Secretary of the Association, sealed with its seal, and attested by himself/herself as the Secretary of said Association.

WITNESS my hand and notarial seal this 26th day of January, 2011

Christopher A Brook
Notary Public

My commission expires:

6-2-2015

CHRISTOPHER A BROOK
NOTARY PUBLIC
ORANGE COUNTY, NC
My Commission Expires 6-2-2015

NEW HILL COMMUNITY ASSOCIATION

John D. Baulahan Treasurer

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA

COUNTY OF WAKE

This 26th day of January, 2011, personally came before me, a Notary Public in and for the said County and State, Wake Co., NC, who, being by me duly sworn, says that he/she is the Treasurer of the New Hill Community Association, a non-profit corporation duly organized and validly existing under the laws of the State of North Carolina and acting through its Board of Directors, and by authority duly given and as the act of said Association, the foregoing instrument was signed in its name by John D. Baulahan as Treasurer of the Association, sealed with its seal, and attested by himself/herself as the Treasurer of said Association.

WITNESS my hand and notarial seal this 26th day of January, 2011

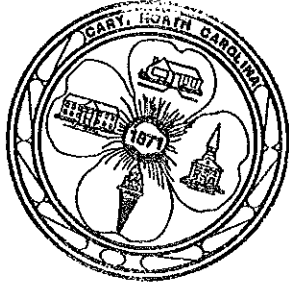
Christopher A. Brook
Notary Public

My commission expires:

6-2-2015

CHRISTOPHER A BROOK
NOTARY PUBLIC
ORANGE COUNTY, NC
My Commission Expires 6-2-2015

[SEAL]



TOWN OF CARY, NORTH CAROLINA

By: *Benjamin T. Shivar*
Benjamin T. Shivar
Town Manager

Attest:

Sue Rowland
Sue Rowland
Town Clerk

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

Karen A. Mills
Karen A. Mills
Finance Director

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA

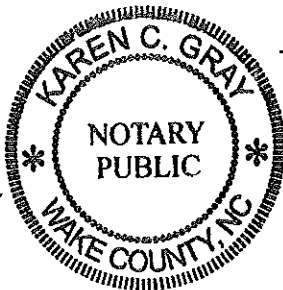
COUNTY OF WAKE

This 25th day of January, 2011, 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 Board of Commissioners, and by authority duly given and as the act of said Town, the foregoing instrument was signed in its name by Benjamin T. Shivar, as Manager 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 January, 2011

My commission expires:

December 6, 2011



Karen C. Gray
Notary Public



[SEAL]

TOWN OF APEX, NORTH CAROLINA

By: *B. Radford*
Bruce Radford
Town Manager

Attest:

Georgia A. Evangelist
Georgia A. Evangelist
Town Clerk

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

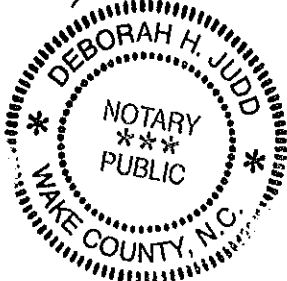
This 25TH day of JANUARY, 2011, personally came before me, a Notary Public in and for the said County and State, Georgia A. Evangelist, who, being by me duly sworn, says that she is the Town Clerk of the Town of Apex, North Carolina, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina and acting through its Town Council, and by authority duly given and as the act of said Town, the foregoing instrument was signed in its name by Bruce Radford, as Manager 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 JANUARY, 2011

Deborah H. Judd
Notary Public
DEBORAH H. JUDD

My commission expires:

June 20, 2012





[SEAL]

TOWN OF MORRISVILLE, NORTH CAROLINA

By: John Whitson
John Whitson
Town Manager

Attest:

Diana R. Davis
Diana R. Davis
Town Clerk

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

Karen Mills
Karen Mills
Finance Director

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA

COUNTY OF WAKE

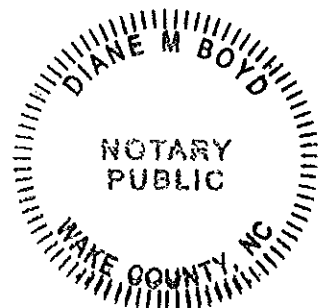
This 25 day of January, 2011, personally came before me, a Notary Public in and for the said County and State, Diana Davis, who, being by me duly sworn, says that she is the Town Clerk of the Town of Morrisville, North Carolina, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina and acting through its Board of Commissioners, and by authority duly given and as the act of said Town, the foregoing instrument was signed in its name by John Whitson, as Manager of said Town, sealed with its seal, and attested by herself as the Town Clerk.

WITNESS my hand and notarial seal this 25 day of January, 2011

Diane M. Boyd
Notary Public
Diane M. Boyd

My commission expires:

05-04-2013



The Southern Coalition for Social Justice hereby enters into and executes this Agreement for the limited purpose of agreeing to approve, as may be required, another person or entity as the Qualified Entity in lieu of the New Hill Community Association for the purposes set out in Paragraphs 1.B and 1.D of this Agreement

SOUTHERN COALITION FOR SOCIAL JUSTICE

Christopher A. Brook

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA

COUNTY OF WAKE

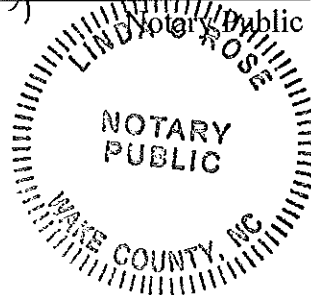
This 27th day of JANUARY, 2011, personally came before me, a Notary Public in and for the said County and State, CHRISTOPHER A. BROOK, who, being by me duly sworn, says that he/she is the STAFF ATTORNEY of the Southern Coalition for Social Justice, a non-profit corporation duly organized and validly existing under the laws of the State of North Carolina and acting through its Board of Directors, and by authority duly given and as the act of said Coalition, the foregoing instrument was signed in its name by HIM, as ATTORNEY of said Coalition, sealed with its seal, and attested by himself/herself as the LEGAL COUNSEL.

WITNESS my hand and notarial seal this 27th day of JANUARY, 2011

Linda C. Rose

My commission expires:

December 15, 2013



ATTACHMENT 1

MAP

AND

DESCRIPTION

APEX

US Hwy 1

Holly Springs New Hill Rd

Friendship Rd

Old US Hwy 1

New Hill Hoffman Rd

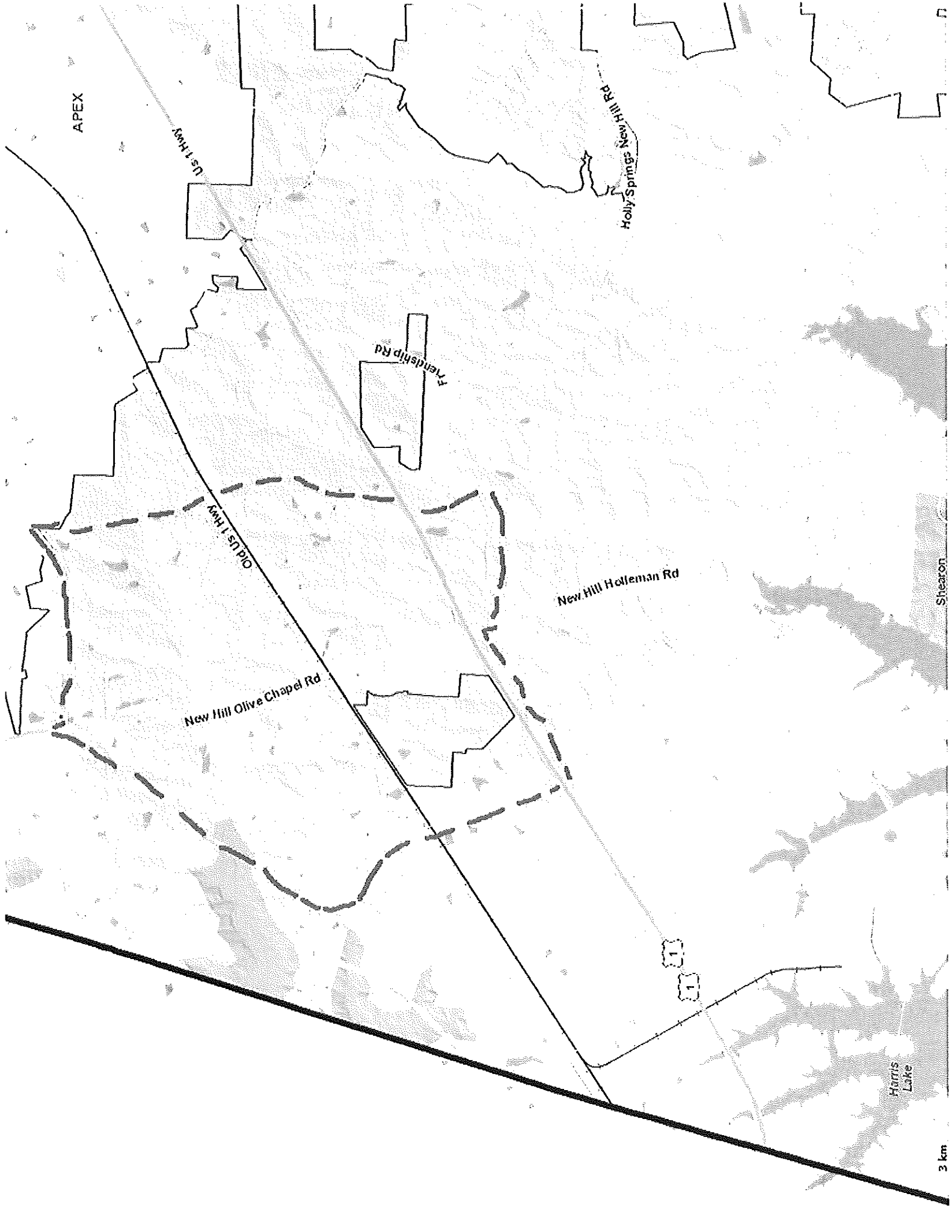
New Hill Olive Chapel Rd

11

Harris Lake

Shearon

3 km



The boundaries for the area shown on the MAP are:

- The Southwest corner is the corner of new US 1 and Shearon Harris road.
- From there up new US 1 until it intersects with New Hill Holleman Road.
- Then south down New Hill Holleman Road to the corner of Friendship Rd.
- At this corner then east to the corner of Friendship and Deer Path.
- At this corner then turn north to take Deer Path. Though neither Deer Path nor Bosco Road make it to US 1, the boundary would go from the end of Deer Path directly to Bosco, crossing back over US 1 on the way.
- Then along Bosco up to Old US Highway 1.
- From the corner of Bosco and Old US Highway 1, then north-northeast to the boundary of the Apex ETJ just south of the end of Richardson Rd.
- Then follow the boundary of the Apex ETJ north and west until it meets Humie Olive Road.
- Then west on Humie Olive Road to New Hill Olive Chapel Road.
- Then travel north on New Hill Olive Chapel Hill Rd. to the railroad.
- Then follow the railroad southwest to Horton Rd.
- Then down Horton Rd. to Old US Highway 1.
- Then down Old US Highway 1 to Shearon Harris Road.

ATTACHMENT 2

ESCROW AGREEMENT

ESCROW AGREEMENT

This Escrow Agreement (the "Agreement") is dated January ____, 2011, among the WESTERN WAKE PARTNERS, TOWN OF APEX, TOWN OF CARY and TOWN OF MORRISVILLE (collectively the "Partners"), the NEW HILL COMMUNITY ASSOCIATION ("NHCA"), and the SOUTHERN COALITION FOR SOCIAL JUSTICE ("Escrow Agent").

A. The Partners have a proposed project to construct the Western Wake Regional Wastewater Management Facilities which generally consist of a water reclamation facility, pump stations, influent and effluent pipelines and a discharge to the Cape Fear River (the "Project"), part of which is proposed to be located in the New Hill Community on a site designated as Site 14 in the Environmental Impact Statement prepared for the Project.

B. The NHCA filed a Petition for a Contested Case hearing with the Office of Administrative Hearings on or about September 9, 2010 seeking to challenge the N.C. Department of Environment and Natural Resources' ("DENR") issuance of a 401 Certification to the Partners which authorized certain water quality impacts associated with construction of the Project, including the water reclamation plant portion of the Project proposed to be located on Site 14 (the "Contested Case").

C. The Partners and the NHCA participated in mediation and agreed to a settlement of the Contested Case, the terms and conditions of which are set forth in a Settlement Agreement pertaining to Contested Case 10 EHR 5615 dated January ____, 2011 (the "Settlement Agreement"). Pursuant to the Settlement Agreement, the Partners agreed, subject to certain conditions, to provide Five Hundred Thousand Dollars (\$500,000.00) to be used by the NHCA for the purchase of land (the "Property"), the design and construction of a community center thereon (the "Community Center") and for subsequent operating, maintenance and repair costs. In order to secure that money and to provide for its proper distribution in accordance with the Settlement Agreement, the Partners and NHCA agreed that the Partners would escrow the sum of \$500,000.00 (the "Escrow Funds") on the terms set forth below.

D. Escrow Agent has agreed to serve as escrow agent for the Escrow Funds as provided below, and the Partners and NHCA agree with Escrow Agent's engagement for the same.

E. All capitalized items used in this Agreement that are defined in the Settlement Agreement are used as so defined unless otherwise defined herein.

The parties agree as follows:

- Deposit and Maintenance of Escrow Funds.

A. Provided there has been no violation of the Settlement Agreement, the Partners shall provide Two Hundred Thousand Dollars (\$200,000) to the Escrow Agent by certified check to the order of Escrow Agent or via wire transfer to the account designated by the Escrow Agent, within, sixty-five (65) days after the issuance by the DENR of the Authorization to Construct for the Western Wake Regional Water Reclamation Facility, Contract 1 – Treatment Works (the "ATC"). Upon receipt of

Escrow Funds from the Partners, Escrow Agent shall transmit to Partners and NHCA a confirmation of receipt of the Escrow Funds substantially in the form of the notice set forth on Attachment 1. The Escrow Agent shall hold the these Escrow Funds, and those funds subsequently provided to Escrow Agent in accordance with Section 1.2 below, in a _____ account with _____ Bank that permits Escrow Agent to withdraw the Escrow Funds without any costs and expenses (including without early withdrawal penalties). Any interest earned and payable on the escrow account shall be part of the Escrow Funds.

B. Provided there has been no violation of the Settlement Agreement, the Partners shall provide the remaining Three Hundred Thousand Dollars (\$300,000) to the Escrow Agent by certified check to the order of Escrow Agent or via wire transfer to the account designated by the Escrow Agent, within one hundred and eighty (180) days after award of the contract for construction of the Western Wake Regional Water Reclamation Facility, Contract 1 – Treatment Works portion of the Project on Site 14. Upon receipt of the additional Escrow Funds from the Partners, Escrow Agent shall transmit to Partners and NHCA a confirmation of receipt of the Escrow Funds in the manner specified above in Section 1.1.

Disbursement of Escrow Funds.

C. The NHCA will be entitled to disbursement from the Escrow Fund as provided in this Section 2 only if NHCA meets the requirements of a Qualified Entity as set forth in the Settlement Agreement. Otherwise, Escrow Funds will be disbursed to the Qualified Entity as approved by the Southern Coalition for Social Justice in accordance with the Settlement Agreement and Section 12 of this Agreement. Escrow Funds may be used to pay expenses necessary to establish a Qualified Entity.

D. Provided there has been no violation of the Settlement Agreement, the NHCA shall be entitled to obtain Escrow Funds to be applied for purchase of the Property to be located within the New Hill Community any time after the NHCA has entered a valid purchase contract for the Property. As a precondition to disbursement of any Escrow Funds to be used for acquisition of the Property, the NHCA shall provide the Escrow Agent with a copy of a valid purchase contract for the Property and documentation necessary, in the reasonable judgment of the Escrow Agent, to verify the Property meets all applicable zoning requirements or property restrictions regarding use for the Community Center.

E. The total amount of Escrow Funds to be used for purchase of the Property shall not exceed One Hundred Thousand Dollars (\$100,000.00)

F. Provided there has been no violation of the Settlement Agreement, the NHCA shall be entitled to utilize available Escrow Funds for payment of the Community Center's design and construction costs and other directly related necessary expenses once: (i) the Property has been purchased, (ii) the NHCA has provided the Escrow Agent with adequate documentation confirming that the Property is subject to a deed restriction enforceable by any one of the Partners limiting its use to a community center and related uses serving the general public.

G. Provided there has been no violation of the Settlement Agreement, within ninety (90) days after construction of the Community Center is complete and a certificate of occupancy has been issued for it, the NHCA may withdraw from the Escrow Fund in a lump sum to be maintained and managed by the NHCA, an amount not to exceed Fifty-Thousand Dollars (\$50,000.00) to be used by the NHCA for any outstanding, and future, operating, maintenance and repair costs. The Partners shall be entitled to the return of any balance remaining in the Escrow Fund after distribution of such lump sum payment to the NHCA requested for the Community Center's operating, maintenance and repair costs.

H. In accordance with the Settlement Agreement, in the event either: (i) the Partners make a determination that the water reclamation facility portion of the Project will not be located at Site 14, or (ii) the NHCA has not entered a contract for construction, and physical construction of the Community Center has not begun, within three hundred and sixty-five (365) days after the Project begins operation, then the Partners shall be entitled to the return of any balance remaining in the Escrow Fund at that time, less any funds required to pay for any obligations for which the NHCA would otherwise be entitled to pay with Escrow Funds that were incurred in good faith by the NHCA prior to its receipt of notice from the Partners that the Western Wake Regional Water Reclamation Facility will not be built at Site 14, or prior to its receipt of notice of a Claim filed pursuant to Section 2.7 based on NHCA's failure to enter a contract and begin physical construction within the allotted time, whichever is applicable.

I. The procedure to be followed for disbursement of Escrow Funds shall be as follows: Any claim for disbursement of Escrow Funds under this Agreement (a "Claim") shall be made by the NHCA, or by the Town of Cary, as Lead Agency for the Partners, as applicable ("Claimant"), by giving written notice to the Escrow Agent and to the other party(ies) to this Agreement ("Notified Party") stating with particularity the nature and amount of the Claim, including for the NHCA's claims providing invoices or other similar proof of an incurred obligation supporting the Claim (except for the NHCA's Claim for final disbursement for operation, maintenance and repair costs as provided in Section 2.4 above). If the Notified Party has not given notice objecting to part or all of the Claim to the Escrow Agent (the "Objection Notice") and the Claimant within ten (10) business days from the date that notice was given to the Notified Party under the preceding sentence (the "Notice Period"), then, after the Escrow Agent's confirmation to the Notified Party that the Notice Period has elapsed, the Escrow Agent shall promptly pay to Claimant the amount of the Claim or such portion thereof as to which Notified Party has not objected, from the Escrow Amount.

J. Each disbursement of Escrow Funds shall be accompanied by a notice of disbursement of Escrow Funds to Claimant and Notified Party substantially in the form of the notice set forth on Attachment 2.

Disputed Claims. If there is any disagreement between Claimant and Notified Party as to the retention or disbursement of all or any portion of the Escrow Funds, or if Escrow Agent is in doubt as to what action it should take hereunder (a "Disputed Claim"), Escrow Agent shall retain such portion of the Escrow Funds, until Escrow Agent shall have received evidence that the

disagreement has been resolved as set forth in Section 5, below, in which case Escrow Agent shall disburse such portion of the Escrow Funds in accordance with that resolution.

Release Date. In the event Escrow Funds remain three (3) years after the Project begins operation, then such remaining Escrow Funds shall be released to the Town of Cary as Lead Agency for the Partners. Upon the Town of Cary's submittal of a Claim for such remaining funds in accordance with Section 2.7 of this Agreement, the Escrow Agent shall release to the Town of Cary such remaining Escrow Funds less any amounts of the Escrow Funds that are the subject of a Disputed Claim.

Resolution of Disputed Claims. In the event of a Disputed Claim, the NHCA and the Partners shall use reasonable efforts to resolve any Disputed Claims by providing written instructions to the Escrow Agent, but if they do not obtain a final resolution within thirty (30) days after the receipt of the Objection Notice, the NHCA and the Partners shall jointly retain a dispute resolution service reasonably acceptable to the parties (the "Firm") to resolve any remaining disagreements. The parties shall direct the Firm to render a determination within thirty (30) days after its retention and the parties and their respective agents shall cooperate with the Firm during its engagement. The determination of the Firm shall be conclusive and binding upon the parties. Any costs and expenses (including costs and expenses previously advanced) of the Firm shall be borne equally by the NHCA, on the one hand, and the Partners, on the other hand. At any time, the parties may deliver to the Escrow Agent written instructions from NHCA and the Partners jointly agreeing to the resolution of such Claim or portion thereof.

Term of Escrow. The term of this Agreement shall continue until the earlier of (i) the date all of the Escrow Funds are disbursed by Escrow Agent as provided herein, or (ii) or the date all of the parties enter into an agreement terminating this Agreement. Notwithstanding anything to the contrary in this Agreement, termination of this Agreement shall not terminate any of the indemnification obligations of NHCA and the Partners to Escrow Agent under this Agreement, all of which shall survive termination of this Agreement.

Duties of Escrow Agent.

K. Holding of Escrow Amount. Escrow Agent agrees to hold in the escrow account and distribute the Escrow Amount under the terms and conditions of this Agreement and to perform the acts and duties expressly set forth in this Agreement. This Agreement expressly sets forth all the duties of the Escrow Agent with respect to any and all matters pertinent hereto. No implied duties or obligations shall be read into this Agreement against Escrow Agent.

L. Reliance. Escrow Agent shall be entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service thereof. Escrow Agent may act in reliance upon any instrument or signature believed by it to be genuine and may assume that the person purporting to give receipt or advice or make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so. Escrow Agent may conclusively presume that the undersigned representative of

any party hereto has full power and authority to instruct Escrow Agent on behalf of that party unless written notice to the contrary is delivered to Escrow Agent.

M. Liability. Escrow Agent shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Agreement, and may consult with counsel of its choice and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

N. Resignation, Successor Escrow Agent. Escrow Agent may resign and thus be discharged from its duties or obligations hereunder by giving thirty (30) days notice in writing of such resignation to both the Partners and the NHCA, specifying a date when such resignation shall take effect. A successor escrow agent shall be appointed in writing by NHCA and the Partners. If no successor escrow agent shall have been named at the expiration of the thirty (30) day notice period, the Escrow Agent shall have no further obligations hereunder except to hold the Escrow Funds as a depository. Upon notification by the Partners and the NHCA of the appointment of a successor escrow agent, the Escrow Agent shall promptly deliver the Escrow Funds and all materials and instruments in its possession which relate to the Escrow Funds to such successor, and the duties of the resigning Escrow Agent shall terminate in all respects, and it shall be released and discharged from all further obligations herein.

O. Compensation. The NHCA shall be responsible for payment of the Escrow Agent's reasonable and customary compensation for the services to be rendered hereunder and for the reasonable expenses, disbursements and costs incurred or paid by Escrow Agent in connection with carrying out its duties hereunder.

P. Indemnification. NHCA and the Partners agree to indemnify Escrow Agent for, and to hold it harmless against, any loss, liability or expense incurred without gross negligence or bad faith on the part of Escrow Agent, by reason of its compliance in good faith with the terms of this Agreement, including, without limitation, the attorneys' fees and costs of defending itself against any Claim or liability.

Ownership for Tax Purposes. The parties agree that, for purposes of federal and other taxes based on income, NHCA will be treated as the owner of 100% of the Escrow Funds, and that NHCA will report all income and gains, if any, that are earned on, or derived from, the Escrow Funds as its income, in the taxable year or years in which such income is properly includable, and shall pay any taxes attributable thereto. NHCA will provide Escrow Agent with appropriate Internal Revenue Service Forms W-9 for tax identification number certification, or non-resident alien certifications.

Notices. Notice under this Agreement must be in writing and shall be deemed to be duly given only if delivered by facsimile, personally, by a nationally-recognized overnight delivery service, or mailed by certified or registered mail, postage prepaid, return receipt requested, and addressed to the following (or to such other addresses as a party may designate by notice to the other parties):

If to the Partners:

Facsimile:

With a copy to:

Poyner Spruill LLP
301 Fayetteville Street, Suite 1900
Raleigh, NC 27601
Attn: Glenn Dunn
Facsimile: 919-783-1075

If to NHCA:

Paul Barth

Facsimile:

With a copy to:

Chris Brook

Facsimile:

If to Escrow Agent:

Attn: _____

Facsimile: _____

No Conflict of Interest. If Escrow Agent is affiliated with or becomes affiliated with either NHCA or the Partners, or any other person who may be a third party beneficiary of this Agreement, the other party or parties acknowledge and consent to Escrow Agent's relationship with the affiliated party or third party and Escrow Agent's relationship with any of the affiliated party's affiliates or the affiliated third party's affiliates, and agrees such relationship does not and shall not constitute a conflict of interest. To the extent a conflict or a perceived conflict develops, or if it is later determined that one existed at the time the parties entered into this Agreement, the parties waive such conflict.

Amendments. This Agreement shall not be amended except by a written agreement signed by all parties hereto.

Successors. This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns including, without limitation, any successor escrow agent appointed in accordance with the terms of this Agreement. In the event the NHCA does not assume the role of the Qualified Entity as set forth in the Settlement Agreement, then such other

entity approved as the Qualified Entity pursuant to Section 1.D. of the Settlement Agreement shall assume the NHCA's rights and obligations under this Agreement after such Qualified Entity executes an instrument binding itself to all of the terms and conditions of this Agreement. This Agreement shall not be for the benefit of any other third parties.

Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same, and shall become effective when one or more counterparts have been signed by each party hereto and delivered to the other party.

Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of North Carolina without regard to conflicts of laws principles that could result in the application of the laws of another jurisdiction.

Captions. The headings or captions under sections of this Agreement are for convenience and reference only and do not in any way modify, interpret or construe the intent of the parties or effect any of the provisions of this Agreement.

The parties have executed this Agreement as of the day and year first above written.

THE PARTNERS:

[add individual signature pages]

NEW HILL COMMUNITY ASSOCIATION:

By:____
Name:____
Title:____

ESCROW AGENT:

By:____
Name:____
Title:____

Attachment 1
(Confirmation Receipt)

Escrow Agent's Deposit Receipt

To:

From: _____, as Escrow Agent

Date:

Subject: Escrow Deposit

_____, as Escrow Agent, hereby acknowledges receipt, as of the date indicated above, of the sum of \$ _____ ("Escrow Funds") from _____ said Escrow Funds being delivered to and received by Escrow Agent pursuant to and in accordance with the terms and conditions of that certain Escrow Agreement dated _____, by and between the Western Wake Partners, Town of Apex, Town of Cary and Town of Morrisville, and the New Hill Community Association, and the Southern Coalition for Social Justice as Escrow Agent. The Escrow Funds have been placed in account: _____; the account is entitled _____ Escrow Account; and the account bears interest at the per annum rate of _____%; funds may be withdrawn from time to time from the account on _____ days notice.

_____, as Escrow Agent

By: _____
Name: _____
Title: _____

Attachment 2
(Notice of Disbursement)

Notice of Disbursement of Escrow Funds

To:

From: _____, Escrow Agent

Copy:

Date:

Subject: Escrow Account _____

_____, as Escrow Agent, on the date indicated above, disbursed to _____ from the escrow account identified above the sum of \$_____.

The disbursement was transmitted as follows:

By check transmitted to _____ at the following address _____.

By wire transfer of funds to the following bank account: _____.

The following amount remains in the escrow account after taking into account the disbursement evidenced by this notice: \$_____.

_____, as Escrow Agent

By: _____

Name: _____

Title: _____

ATTACHMENT 3

Statements for News Release

- 1) With the settlement agreement, the New Hill Community Association ends all protests to the Western Wake Regional Wastewater Management Facilities (“Project”).
- 2) We, the officers of the New Hill Community Association, encourage all of our association’s members and community’s advocates to accept the Project.
- 3) NHCA will not oppose the Chatham County pipeline and will not encourage other groups to use NHCA’s name in opposing the Chatham pipeline.
- 4) The bus shelters, community center, and extension of services to those closest to the plant (water reclamation facility) will go a long way in moving our community forward.
- 5) The Partners and NHCA have made a concerted effort to mitigate impacts to New Hill.
- 6) This has been a vigorous, robust debate in which the parties have worked together to address concerns.
- 7) Over the years, each of us has learned a lot about the other and come to appreciate the others’ perspectives.
- 8) The project has brought the New Hill community closer.

Actions:

- 1) News release
- 2) Post news release on NHCA web page.
- 3) Email news release to association members and advocates.
- 4) Email news release to Independent, News & Observer, Apex Herald, Cary News, Southwest Wake News.
- 5) NHCA officers will ask members to remove anti-project signage and displays in the community.
- 6) NHCA officers will not participate in interviews, marches, or other activities that are negative toward the project and will encourage all members to do the same.
- 7) NHCA officers will not speak before the Chatham Commissioners regarding the pipeline and will encourage all members to do the same.

- 8) The parties agree the mediation process and settlement, and the roles played by both parties, will be discussed in positive terms.