

APPENDIX 1

TRI-PARTY ANNEXATION AGREEMENT

This Tri-Party Annexation Agreement, dated the ____ day of March, 2011 ("Agreement") between the Town of Apex, North Carolina ("Apex"), the Town of Cary, North Carolina ("Cary"), both municipal corporations of the State of North Carolina ("parties of the first part") and Chatham County a public body politic and a corporate of the State of North Carolina ("County"). Apex, Cary, or the County may be referred to herein as a "Party" and collectively as the "Parties".

RECITALS

Apex and Cary entered into an Interlocal Agreement with the County dated March __, 2011 ("First Agreement") in which they agreed to enter into this Agreement. This Agreement is entered into pursuant to Part 6 of Article 4A of Chapter 160A of the North Carolina General Statutes. This Agreement prohibits Apex or Cary from annexing pursuant to Part 3 of Article 4A of Chapter 160A property located in the area subject to this Agreement unless the County consents to the annexation. This Agreement has a term of twenty (20) years.

NOW, THEREFORE, for and in consideration of the First Agreement, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to satisfy term 3 of the First Agreement and to restrict the ability of Apex and

Cary to complete certain future annexations into Chatham County.

2. Area Subject to Agreement. The area subject to this Agreement is the area located within the boundaries of Chatham County, North Carolina and not currently located within the corporate limits of a municipality.
3. Consent Required for Certain Future Annexations by Apex or Cary. No property in the area subject to this Agreement shall be annexed by either Apex or Cary pursuant to Part 3 of Article 4A of Chapter 160A or pursuant to any other authority contained in the charter of either town or in any local act applicable to Apex or Cary granting the right to involuntarily annex property unless the County consents to such annexation. For the purpose of this agreement “involuntary annexation” means an annexation of land into a municipal corporate limits over the objection of any owner of property within the area to be annexed.
4. Procedure. If either Apex or Cary propose to annex an area located in the area subject to this Agreement pursuant to Part 3 of Article 4A of Chapter 160A (version as of the date of this Agreement), or any charter provision or local act granting involuntary annexation authority, the town proposing such annexation shall, prior to the public hearing provided for in G.S. 160A-49, or prior to initiating any other involuntary

annexation procedure, submit a written Request to Annex (“Request”) to the County. Such Request shall be mailed by first class mail to the Chair of the Board of Commissioners at Post Office Box 1809, Pittsboro, North Carolina 27312-1809 in care of the Clerk of County Board of Commissioners and shall additionally be faxed to Clerk at (919)542-1402. The Request shall be deemed to have been received by the County on the day the Request is faxed to the Clerk of County Commissioners or three days after the Request is mailed, whichever occurs first. The Request shall identify the boundaries of the area proposed for annexation and contain such other information as may be necessary or desired to support the Request. If the County does not adopt a resolution consenting to the annexation within sixty (60) days of receiving the Request from Apex or Cary, it shall be deemed under this Agreement that the County has not consented to the proposed annexation, and the town making the request shall not proceed further with the annexation until the County adopts a resolution consenting to the requested annexation. The County shall promptly send by fax and regular mail to the requesting town any resolution consenting to annexation.

5. Term and Amendment. This Agreement commences on the date first written above and, unless earlier terminated as herein provided, shall exist and continue for a term of twenty (20) years and shall automatically terminate at the end of such twenty (20)

year term. Within the twenty (20) year term, this Agreement shall only be amended or terminated by written agreement of all of the Parties.

6. Amendment and Construction. A future agreement to amend or terminate the Agreement is effective only if effected by a written document executed by all Parties. The times contained in this Agreement are essential terms.
7. Procedural Requirements. Each Party represents to the other Parties that all of the procedural requirements of Part 6 of Article 4A of Chapter 160A of the General Statutes have been complied with.
8. Rights Granted. The rights granted the County under this Agreement are in addition to any other rights which the County has under law to prevent involuntary annexations, including, without limitation, any local act restricting or limiting the rights of Apex or Cary to make involuntary annexations into Chatham County.
9. Approval of Agreement. This Agreement was approved by ordinance duly adopted following a public hearing noticed as provided in N. C. Gen. Stat. § 160A-31(c) by the Town of Apex on _____. This Agreement was approved by ordinance duly adopted following a public hearing noticed as provided in N. C. Gen. Stat. § 160A-31(c) by the Town of Cary on _____. This Agreement was approved by ordinance duly adopted following a public hearing noticed as provided in N. C. Gen. Stat. § 160A-31(c) by Chatham County on _____. Apex and Cary agree that for purposes of this Agreement and enforcing its rights hereunder the County, in addition to Apex and Cary, shall be deemed to be a “participating city”.

10. Good Faith; Recitals. The Parties agree to implement the provisions of this Agreement in good faith and in accordance with North Carolina law. The recitals are material terms of the Agreement. Invalidation of any term of this Agreement shall not affect any other terms of this Agreement, and the remaining portions of this Agreement shall continue in full force and effect.

11. Execution Warranties. Each Party executing the Agreement represent and warrant that (a) entering into the Agreement does not conflict with any other agreements entered into by such Party, and (b) the execution, delivery and performance of the Agreement has been duly authorized by all necessary corporate or governmental action on the part of such Party.