

Revised and Amended Agreement Between Morrisville and Durham Defining Water and Sewer Service Areas and Annexation Boundaries

This is an agreement between the **City of Durham** (hereafter "Durham") and the **Town of Morrisville** (hereafter "Morrisville"), both North Carolina municipal corporations.

1. Statutory Authority and Purpose. This agreement is made pursuant to Article 4A, Part 6 and Article 20, Part 1 of Chapter 160A of the North Carolina General Statutes. The purpose of this agreement is to define, for each municipality, service areas for water and sewer service in which the other municipality will not offer water or sewer service and define areas in which each municipality will not conduct future annexations and provide for other miscellaneous matters related to the aforementioned subjects. The parties entered into an agreement for this purpose effective October 1, 1997. This 2013 Agreement replaces the 1997 Agreement.

2. Designated Service Provider. Effective April 2, 2006, the Town of Morrisville ceased providing water and sanitary sewer utility services to Town residents and merged such utility services with the Town of Cary utilities. As of April 2, 2006 the Town of Cary provides all public water and sanitary sewer utility services to businesses and residential customers located within the Town of Morrisville, and is the Designated Service Provider for the Town of Morrisville, for purposes of this agreement.

3. Term. The duration shall be until October 1, 2017, and the effective date of this Revised and Amended Agreement shall be April 1, 2014.

4. Location of Boundary. A boundary line (hereafter, "the boundary line") is hereby established as further described in this Exhibit and as shown on Attachment A, which is incorporated into this agreement. This shall be the boundary line for both water and sewer service (hereafter "service") and future annexations. The boundary line is as follows:

Beginning at the intersection of the Durham/Wake County Line on the east side of Davis Drive (North Carolina State Road 1613), then running along the following lines:

- a. in an easterly direction along the Durham/Wake County Line to a point on the eastern margin of the right of way of Triangle Expressway and the western boundary line of "Revised New Pond Lot #2", which is the property conveyed to Keystone Technology Park Owners Association, Inc. by deed recorded in the Durham County Registry in Book 6650, Page 821 and in the Wake County Registry in Book 14406, Page 369, and that is identified by Wake County tax parcel PIN 0747-00-2469 (said property being "New Pond Lot #2" as shown on a map recorded in the Durham County Registry in Plat Book 149, Pages 19 and 20 and in the Wake County Registry in Book of Maps 2000, Pages 1368 and 1369, less the portion thereof that now is part of the right of way of Triangle Expressway;
- b. then in a southerly direction with the western boundary line and then in an easterly direction with the southern boundary line of Revised New Pond Lot #2 to the southeast corner of Revised New Pond Lot #2, said point also being a common corner with the southwest corner of property that is identified by Wake County tax parcel PIN 0747-10-0467 (said property being "New Tract XI-XII" as shown on a map recorded in the

Durham County Registry in Plat Book 149, Pages 19 and 20 and in the Wake County Registry in Book of Maps 2000, Pages 1368 and 1369);

- c. then with the southern boundary line in an easterly direction and then in a northerly direction with the eastern boundary line of said New Tract XI-XII to a point on the Durham/Wake County Line, said point also being in the western boundary line of property that is identified by Durham County PIN 0747-03-10-9647 and by Wake County PIN 0747-10-9501 (said property being owned now or formerly by KCR Developers LLC – see deed recorded in the Durham County, North Carolina Registry in Book 7398, Page 754 and in the Wake County, North Carolina Registry in Book 15504, Page 1009);
- d. then with the western boundary line in a northerly direction, the northern boundary line in an easterly direction, and the eastern boundary line in a southerly direction of said property owned now or formerly by KCR Developers LLC to a point on the northern boundary line of Lot No. 405 in Kitts Creek Subdivision in the Town of Morrisville (see map recorded in the Wake County Registry in Book of Maps 2013, Pages 1224 through 1226 and Ratification of Plats recorded in the Wake County Registry in Book 15468, Page 2077 – such point on the northern boundary line of Lot 405 being where the dashed line running in a north/south direction intersects with said northern boundary line as shown on Book of Maps 2013, Page 1225);
- e. then in an easterly direction with the northern boundary lines of the following Lots in Kitts Creek Subdivision: 405, 404, 403, 402, 401, 400, 399, 398, 397, 396, 395, 394, 393, and 392 (all of which are shown on the map recorded in the Wake County Registry in Book of Maps 2013, Pages 1224 through 1226) to the northeast corner of Lot 392 on the western margin of the right of way of Roundhouse Lane);
- f. then continuing in an easterly direction on a line across the right of way of Roundhouse Lane that connects the northeast corner of Lot 392 with the northwest corner of Lot No. 1001 in Kitts Creek Subdivision on the eastern margin of the right of way of Roundhouse Lane (see map recorded in the Wake County Registry in Book of Maps 2011, Pages 884 through 886);
- g. then in an easterly direction with the northern boundary lines of the following Lots in Kitts Creek Subdivision (all of which are shown on a map recorded in Book of Maps 2011, Pages 884 through 886): 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, and 1018 to the northeast corner of Lot 1018, said northeast corner being a common corner with the northwest corner of property owned now or formerly by William E. Green, Jr. and identified by Wake County PIN 0747400465 (see deed recorded in the Wake County Registry in Book 9687, Page 2710);
- h. then in an easterly direction along the northern boundary of said property owned now or formerly by William E. Green, Jr. to the northeast corner of said property owned now or formerly by William E. Green, Jr. in the western margin of the right of way of Church Street;
- i. then continuing along the same line in an easterly direction across the right of way of Church Street, then across a railroad right of way, and then across the right of way of NC Highway 54 (also known as Chapel Hill Road) to a point in the right of way of NC Highway 54 at the intersection of lines L24 and L25 as shown on a map recorded in the Wake County Registry in Book of Maps 2008, Pages 1942 through 1948 (referred to herein as the “Town Of Morrisville ETJ Line”);

- j. then in an easterly direction along said Town of Morrisville ETJ Line on Page 1943 of the Shiloh Crossing Map (which line runs through Lot 1 and then through Lot 14 on the Shiloh Crossing Map) to the northwest corner of Lot 13 on Page 1943 of the Shiloh Crossing Map;
- k. then running with the northern boundary line of Lot 13 on Page 1943 of the Shiloh Crossing Map to the point that is the common corner of the northeast corner of Lot 13 and the northwest corner of Lot 15 on Page 1943 of the Shiloh Crossing Map;
- l. then running along the northern boundary line of Lot 15 on Page 1943 of the Shiloh Crossing Map to a point on said northern boundary line that intersects with a line identified on Pages 1943 and 1947 of the Shiloh Crossing Map as "Town Of Morrisville ETJ Line";
- m. then running in a southeasterly direction with said Town Of Morrisville ETJ Line on Pages 1943 and 1947 of the Shiloh Crossing Map to a point on the Town of Morrisville ETJ Line;
- n. then running in an easterly direction with the Town of Morrisville ETJ Line to a point where it intersects with the northern margin of the right of way of Shiloh Glenn Drive on Page 1947 of the Shiloh Crossing Map;
- o. then running along the northern margin of the right of way of Shiloh Glenn Drive in an easterly direction to the point where line L10 intersects with the Durham/Wake County Line on Page 1947 of the Shiloh Crossing Map;
- p. then continuing along the northern margin of the right of way of Shiloh Glenn Drive in an easterly direction to the point where it next intersects with the Durham/Wake County Line on Page 1947 of the Shiloh Crossing Map;
- q. then along the Durham/Wake County Line to a point on the southeastern margin of the right of way of Interstate 540;
- r. then northeast along the southeastern margin of the right of way of Interstate 540 to the southwestern margin of the right of way of Interstate 40;
- s. then southeast along the southwestern margin of the right of way of Interstate 40 to the Durham/Wake County Line.

5. Water and Sewer Service Areas. Morrisville shall not authorize or request its designated service provider to supply water or sewer service to areas north of the boundary line and Durham agrees not to supply water or sewer service to areas south of the boundary line, except as further described in this paragraph and in paragraph 6 below. If the boundary line splits a parcel, service shall be provided by the party in whose jurisdiction the buildings on the parcel lie, or, if there are buildings on both sides of the boundary line, by agreement of the managers of Durham and Morrisville. Morrisville may consult its designated service provider in such matters. Notwithstanding the limitations above, Durham shall have the right to provide service to any area within Wake County located in either Cary's or Raleigh's existing or future extraterritorial jurisdiction if such service is allowed under an agreement with Cary or Raleigh.

6. Exceptions. Either party may install or cause to be installed water and sewer service facilities within the service area of the other party, assuming compliance with applicable legal requirements. These facilities may not be used to serve customers located within the other party's service area, with the exception of other governmental entities or utility systems, except by written agreement of the managers of Morrisville and Durham. Such written agreements are intended solely to allow for limited service or temporary service, and shall not be used to permanently alter the boundary

line, which may only be altered pursuant to written agreement between the governing bodies of Morrisville and Durham pursuant to paragraph 8 below.

7. Annexation Boundary. The boundary line shall also constitute an annexation boundary line. Durham agrees not to annex property south of the boundary line. Morrisville agrees not to annex property north of the boundary line. "Annex property" means to effect an "annexation" as defined by N.C.G.S. §160A-58.22(2), and includes extending corporate limits as authorized by N.C.G.S. Chapter 160A, a municipal charter, or a local act applicable to either party, as such statutory authority exists now or as hereafter amended.

The parties shall notify each other of all annexations 60 or more days prior to the adoption of each annexation ordinance, as required by N.C.G.S. §160A-58.24(a)(5). Notices shall describe the area to be annexed by a legible map as required under N.C.G.S. §160A-58.24(b). Morrisville shall send one copy of each annexation notice to the attention of the Durham City Planning Director, and a second copy to the attention of the Finance Director for the City of Durham. Durham shall send a copy of each annexation notice to the Town Manager of Morrisville.

8. Limitations on Service to Other Utilities. Morrisville shall not request its designated service provider to supply water to any other governmental entity or utility that provides water service to any customer in Durham County unless Durham agrees in writing, or unless the provision of such service is pursuant to a written agreement that predates October 1, 1996, and a copy of such agreement is furnished to Durham or unless the provision of such service is pursuant to a written agreement between Durham and Morrisville's designated service provider.

9. Amendment and Termination. This agreement may be modified or terminated by subsequent written agreement of both parties. The agreement regarding annexation (paragraph 6 and related paragraphs necessary to the interpretation of paragraph 6) may be terminated by either party in the manner prescribed by N.C.G.S. §160A-58.24(f). Substantial breach of the terms of this agreement by a party is grounds for unilateral termination by the other party provided that the terminating party has given 90 days' written notice to the breaching party and the breaching party has not cured the breach during that period. This provision does not limit the rights to enforce this agreement through any other action or remedy authorized under law.

10. Procedures for Adoption or Amendment. Prior to the approval of this agreement each party shall hold a public hearing, give notice, and adopt an ordinance as prescribed by N.C.G.S. §160A-58.24(c) and (d). These requirements shall also be followed for any amendments related to annexation.

11. Forum. Any litigation arising out of this Agreement shall be determined in the courts in the county of the party bringing the suit, with the exception of petitions filed under N.C.G.S. §160A-58.27, which shall be brought in the courts specified therein. A party adjudged by the court to be in breach of this agreement shall pay the reasonable attorney's fees of the other party related to enforcing this agreement.

[SIGNATURE PAGE FOLLOWS]

TOWN OF MORRISVILLE

ATTEST:

_____, Town Clerk

_____, Mayor

CITY OF DURHAM

ATTEST:

_____, City Clerk

_____, Mayor

**STATE OF NORTH CAROLINA
COUNTY OF _____**

I, _____, a Notary Public in and for the aforesaid County and State, certify that _____, Mayor of the TOWN OF MORRISVILLE, personally appeared before me this day and acknowledged, by authority given, the execution of the foregoing contract with the City of Durham.

This the _____ day of _____, 2013.

My Commission Expires:

Notary Public

**STATE OF NORTH CAROLINA
COUNTY OF _____**

I, _____, a Notary Public in and for the aforesaid County and State, certify that _____ personally appeared before me this day and acknowledged that she is _____ City Clerk of the CITY OF DURHAM, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by himself as its said City Clerk or Deputy City Clerk.

This the _____ day of _____, 2013.

My Commission Expires:

Notary Public

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

This the ____ day of _____, 2013.

Town of Morrisville Finance Officer

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

This the ____ day of _____, 2013.

City of Durham Finance Officer