

INTERLOCAL AGREEMENT

This **Interlocal Agreement** is dated as of Sept. 5, 2006, among **APEX, NORTH CAROLINA** (“Apex”); **CARY, NORTH CAROLINA** (“Cary”); **FUQUAY-VARINA, NORTH CAROLINA** (“Fuquay-Varina”); **GARNER, NORTH CAROLINA** (“Garner”); **KNIGHTDALE, NORTH CAROLINA** (“Knightdale”); **MORRISVILLE, NORTH CAROLINA** (“Morrisville”); **RALEIGH, NORTH CAROLINA** (“Raleigh”); **ROLESVILLE, NORTH CAROLINA** (“Rolesville”); **WAKE FOREST, NORTH CAROLINA** (“Wake Forest”); **WENDELL, NORTH CAROLINA** (“Wendell”); **ZEBULON, NORTH CAROLINA** (“Zebulon”); all of the above being municipal corporations and public bodies politic of the State of North Carolina; and **WAKE COUNTY, NORTH CAROLINA** (the “County” or “Wake”), a public body politic and corporate of the State of North Carolina.

RECITALS:

WHEREAS, the Parties intend to establish a long-term solution to solid waste disposal needs by the cooperative management of a new South Wake Landfill (the “Landfill”) that will serve both the Municipalities and the County; and

WHEREAS, the intent of this agreement is to establish a joint undertaking (the Interlocal Solid Waste Management System) whereby the Parties agree to share the economic benefits and responsibilities involved in securing an economical 25 year public landfill solution to their Municipal Solid Waste (MSW) disposal needs; and

WHEREAS, Wake currently owns the South Wake Landfill property and permit, but unincorporated areas of Wake County alone do not generate a sufficient amount of Municipal Solid Waste to justify the County’s construction and operation of the South Wake Landfill; and

WHEREAS, the Parties desire to enter into this Agreement pursuant to the statutory authority authorizing interlocal agreements, N.C.G.S. §§160A-460 to 160A-464, in order to pursue the above stated goals.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I Definitions

1.01. **Definitions.** For all purposes of this Agreement, unless the context requires otherwise, the following terms shall have the following meanings:

“Agreement” means this Interlocal Agreement.

“Commercial Solid Waste” means non-residential municipal solid waste that does not pass through a Party’s solid waste system.

“Facility” or “Disposal Facility” means the South Wake Landfill and its related improvements and structures (roads, water and sewer lines, scale houses, administration buildings, and transfer stations). For purposes of determining the cost of providing and operating the disposal facility, the term “facility” includes the Parties’ solid waste management programs providing services specified in G.S. §130A-309.04(a) of the Solid Waste Management Act of 1989.

“Interlocal Solid Waste Management System” or “System” means the collaborative effort being undertaken by the Parties to this Agreement. It includes the Disposal Facility and other facilities and programs as the Parties may incorporate into the System in accordance with such Agreement.

“Landfill” means the South Wake Landfill, more specifically described and identified in NCDENR Permit #92-22.

“Municipal Solid Waste” (MSW) is waste that may be disposed of in the South Wake Landfill and is defined in G.S. §130A-290.

“Residential Municipal Solid Waste” means municipal solid waste from residences and households that passes through a Party’s solid waste collection/disposal system.

“Commercial Municipal Solid Waste” means non-residential MSW and other solid waste that passes through a Party’s solid waste collection/disposal system.

“Party” or “Parties” means either a municipality or the county, as the context or the usage of such term may require, which is a signatory to this Interlocal Agreement.

“Solid Waste Advisory Committee” (SWAC) means the Wake County Solid Waste Advisory Committee established by action of the County Board of Commissioners Resolution R-90-05.

“Solid Waste Management” means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.

“State” means the State of North Carolina and all of its appropriate administrative, contracting and regulatory agencies and offices.

ARTICLE II

Purpose and Structure

2.01. Purpose. The Parties agree to pool their MSW waste streams for disposal in the South Wake Landfill in return for improved economy and predictability in waste

disposal costs during the Landfill's proposed 25-year operation and for participation in the System so that further economies can be implemented in the future.

2.02. Roles and Responsibilities of the Parties. All Parties agree to arrange to dispose of all of their jurisdiction's Residential Municipal Solid Waste and Commercial Municipal Solid Waste at the South Wake Landfill as soon as the Landfill opens until the end of the term specified in this Agreement.

(a) No volume guarantees are required.

(b) Parties agree to continue their MSW collection services, to provide such services to newly annexed property, and to continue to encourage sound solid waste management practices.

(c) All Parties who provide transfer station services must provide those services to all other Parties, subject to transfer station facility capacity, at rates and under conditions that provide the same benefits as enjoyed by the Party providing the services.

2.03 Rights and Privileges of the Parties. The County will set tipping fees at the Landfill at rates that encourage appropriate landfill use. In setting the fees, the County will consider, at a minimum, fees at other landfills in the area, the costs of other solid waste management programs under the Solid Waste Act of 1989, and the recommendation of the Parties to this Agreement. Net revenues derived from the Landfill will be distributed among the Parties in accordance with Section 3.04 of this Agreement.

2.04 Liabilities of the Parties.

(a) Environmental remediation. The Parties agree to joint environmental liability for the South Wake Landfill in accordance with this section. To the extent that the cost of remediation exceeds insurance proceeds and the amount of the Environmental Remediation account in the Wake County Solid Waste Enterprise Fund, the Parties agree to contribute to remediation costs based on their proportionate usage of the landfill from the landfill opening date until the date when remediation begins.

(b) Each Party also agrees to indemnify all other for any damages resulting from violations of the Parties' agreement to spend net revenue funds for any purpose other than solid waste management in accordance with G.S. §130A-309.04(a).

2.05 Designation of County as Lead Agency for Matters Related to South Wake Landfill. The Parties agree that the County is the entity to negotiate with Contractor(s) constructing and operating the South Wake Landfill and to monitor construction, operation, closure and post-closure.

ARTICLE III

Financing the System; Apportionment of Costs and Revenues

3.01 South Wake Landfill Operations Costs. The County has expended significant funds to purchase land for the South Wake Landfill, obtain a permit for the landfill, and defend the permit against legal challenges. The County will not seek reimbursement for these costs. The Parties anticipate that the South Wake Landfill Construction and Operation Contractor(s) will charge a per ton solid waste disposal fee to the County for construction and operation of the Landfill ("Contractor's Disposal Fee.")

This Contractor's Disposal Fee will be included in the landfill tipping fees for all users of the Landfill. Other costs to the county directly arising from operation or monitoring of the landfill (including building and operating the landfill scale house and billing/collections for the landfill) will also be included in the landfill tipping fees.

3.02 County Solid Waste Program Charges. The County currently uses Landfill tipping fees to defray costs attributable to portions of the County's solid waste program (County Program Charges) other than the Landfill. This Agreement currently contemplates no County Program Charges will be included in the Municipal Solid Waste Landfill Tipping Fee. The Parties to this Agreement may recommend to the County the nature and amount of County Program Charges to be included in the Landfill Tipping Fees in the future. Allowed County Program Costs will be included in Landfill Tipping Fees and will be a component of the operations cost of the Interlocal Solid Waste Management System (System Operations Cost).

3.03 Other Costs Which May Be Included in the Operations Cost of the Interlocal Solid Waste Management System (System Operations Cost):

(a) Any debt service, financing, construction and operating costs associated with structures or programs supporting the System that the Parties agree to assume for the overall benefit of the System may be included in System Operations Cost.

(b) Any fees lawfully imposed on Landfill operations, other than penalties imposed on the Contractor(s) for improper operation of the Landfill, will be included in the System Operations Cost.

3.04 Revenue from the South Wake Landfill.

(a) Tipping Fees received at the South Wake Landfill minus the Landfill Operations Costs will constitute Net Landfill Revenue. Because of the large volume of waste that Raleigh is committing to be delivered to the landfill over the life of the Agreement, Raleigh will pay a landfill tipping fee for all its Residential Municipal Solid Waste that is \$3.00 per ton less than the landfill tipping fee paid by other Parties to the Agreement for disposal of their Residential Municipal Solid Waste.

(b) Net Landfill Revenue will be divided among the Parties (revenue sharing) at least two times a year in a manner that reflects each Party's usage of the landfill during the previous period. The Parties agree that Net Landfill Revenue will be expended only for Solid Waste programs or operations as provided in G.S. §130A-309.04(a).

(c) Net Landfill Revenue generated from the total tons of waste disposed at the landfill at or below a designated threshold each year (the Revenue Share Threshold) will be shared proportionally among the Parties on a per-ton basis. Net Landfill Revenue generated from the total tons of waste disposed at the landfill above the Revenue Share Threshold will be shared proportionally among the Parties based on total dollars paid for landfill tipping fees. The Revenue Share Threshold is 350,000 tons in FY08 and escalates at 2.8% per year.

ARTICLE IV
Personnel Necessary to Operation of the System

4.01 All Parties will continue to staff and operate their own Solid Waste Programs and will continue to participate in the Solid Waste Advisory Committee.

4.01. The County will continue to staff the Solid Waste Advisory Committee.

4.02. County will provide for operation of the Landfill Scale House/Office and for monitoring and oversight of its Contractor(s) Landfill construction and operation, and will provide relevant information and accounting for the Landfill's revenue (Tipping Fees) and expenses (Landfill Operations Costs) to all other Parties through the Solid Waste Advisory Committee.

ARTICLE V
Term

5.01. This agreement shall become effective on the date when the South Wake Landfill opens for acceptance of MSW. The initial term of this Agreement shall be for the operating life of the South Wake landfill, or 25 years, whichever is less, and maybe extended by agreement of the Parties.

ARTICLE VI
Ownership of System Property

6.01. Ownership of Real and Personal Property Involved in the System. All Parties will continue to own the property they have at the inception of this agreement. Wake County, as permit holder and owner of the South Wake Landfill will remain the owner. Any Party that currently owns a transfer station will remain its owner.

6.02. Transfer Stations. This Agreement contemplates that Raleigh will either own and obtain (or having obtained) the permit for a transfer station at or near Wilder's Grove, or provide transfer station services through a private transfer station in the same location to serve eastern and northern Wake County.

6.03 Additional Transfer Stations. To the extent that the Parties agree that one or more additional transfer stations will enhance the System, the Parties may agree to include them in the System after reaching agreement on costs, ownership, and financing.

ARTICLE VII
Limitation to Original Parties

7.01. No Additional Parties. No additional Parties will be allowed to participate during the initial term of this agreement.

7.02. Agreement to Withdraw. No Party shall have the right to withdraw from participation in this agreement without the consent of all other Parties.

ARTICLE VIII

Miscellaneous

8.01. Governing Law. The Parties intend that North Carolina law shall govern this Agreement.

8.02. Severability. If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

8.03. Entire Agreement; Amendments. This Agreement constitutes the entire contract between the Parties, and this Agreement shall not be changed except in writing signed by all the Parties.

8.04. Binding Effect; Third Party Beneficiaries. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties, their respective successors and assigns. The Operator of the South Wake Landfill will be a third party beneficiary of this Interlocal Agreement authorized to enforce its provisions.

8.05. Liability of Officers and Agents. No officer, agent or employee of any Party shall 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 shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

8.06. Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

8.07. Existing Contracts. The Parties agree not to enter into any contract for MSW collection, hauling or disposal that is inconsistent with this Agreement. This Agreement shall not affect existing contracts between the Parties and private solid waste collectors which require municipal solid waste disposal in a location other than the South Wake Landfill after the South Wake Landfill is open for MSW disposal, provided that such contracts will be modified if possible to comport with this Agreement, and, if such modification is not possible, such contract will not be extended or renewed. It is the intent of this provision that all Parties commit to disposing of their MSW stream at the South Wake Landfill when it opens or as soon as possible thereafter.

8.08. Survival of Obligations. The liabilities and obligations of the Parties specified in Section 2.04 shall survive the original term of this agreement and shall be enforceable after closure of the South Wake Landfill.

8.09. Assignment. No Party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the Parties.

8.10. Termination Prior to End of Initial Term. This Agreement shall not be terminated prior to the end of its original term except by agreement of all Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be ratified by resolution of their governing Boards or Councils as evidenced by the minutes of their governing Boards or Councils, and executed by their duly authorized officers as of the date first above written.

TOWN OF APEX, NORTH CAROLINA

By: *Keith H. Weatherly*
Keith H. Weatherly
Mayor

ATTEST:

Georgia A. Evangelist
Georgia A. Evangelist, Clerk
Town of Apex, North Carolina

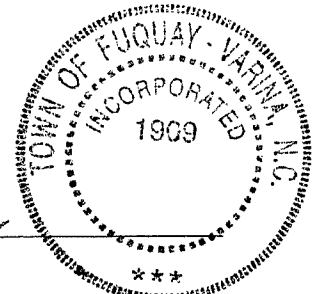


TOWN OF FUQUAY-VARINA, NORTH CAROLINA

By: *John W. Byrne*
John W. Byrne
Mayor

ATTEST:

Rose H. John
Rose H. John, Clerk
Town of Fuquay-Varina, North Carolina



TOWN OF GARNER, NORTH CAROLINA

By: *Ronnie S. Williams*
~~Sam Bridges~~ Ronnie S. Williams
Mayor

ATTEST:

Judy Bass
Judy Bass, Clerk
Town of Garner, North Carolina



TOWN OF KNIGHTDALE, NORTH CAROLINA

By: *Doug Boyd*
Doug Boyd
Mayor

ATTEST:

Suzanne Yeatts
Suzanne Yeatts, Clerk
Town of Knightdale, North Carolina

TOWN OF MORRISVILLE, NORTH CAROLINA

By: Jan Faulkner
Jan Faulkner
Mayor

ATTEST:

Diana R. Davis
Diana R. Davis, Clerk
Town of Morrisville, North Carolina



CITY OF RALEIGH, NORTH CAROLINA

By: Charles Meeker
Charles Meeker
Mayor

ATTEST:

Gail Smith
Gail Smith, Clerk
City of Raleigh, North Carolina

THIS INSTRUMENT APPROVED AS TO FORM

Andrew McEwen
CITY ATTORNEY

TOWN OF ROLESVILLE, NORTH CAROLINA

By: Nancy Kelly
Nancy Kelly
Mayor

ATTEST:

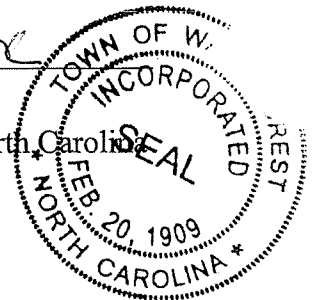
Lynn House
Lynn House, Clerk
Town of Rolesville, North Carolina

TOWN OF WAKE FOREST, NORTH CAROLINA

By: Vivian Jones
Vivian Jones
Mayor

ATTEST:

Joyce Wilson
Joyce Wilson, Clerk
Town of Wake Forest, North Carolina



TOWN OF WENDELL, NORTH CAROLINA

By: Timothy A. Hinnant
Timothy A. Hinnant
Mayor

ATTEST:

Timothy C. Burgess
Timothy C. Burgess, Clerk
Town of Wendell, North Carolina

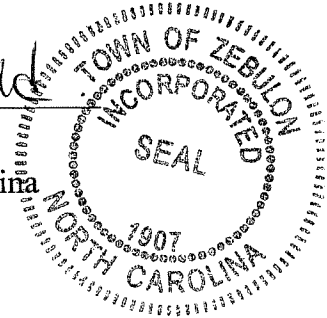
TOWN OF ZEBULON, NORTH CAROLINA

By: _____

Robert S. Matheny
Mayor

ATTEST:

Lisa M. Markland
Lisa M. Markland, Clerk
Town of Zebulon, North Carolina



COUNTY OF WAKE, NORTH CAROLINA

By: _____

Tony Gurley
Chairman, Board of Commissioners

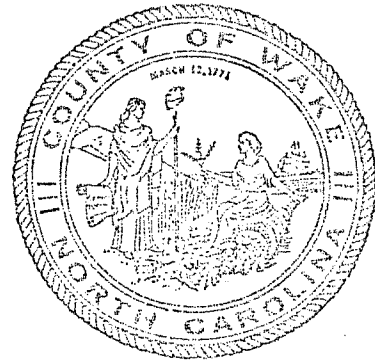
ATTEST:

Susan Banks
Susan Banks, Clerk
County of Wake, North Carolina

THIS INSTRUMENT APPROVED AS TO FORM

Michael R. Fend
WAKE COUNTY ATTORNEY

6-14-06



TOWN OF CARY, NORTH CAROLINA

By: _____

Ernest F. McAlister
Mayor

ATTEST:

Sue Rowland
Sue Rowland, Clerk
Town of Cary, North Carolina

