

INTERLOCAL AGREEMENT

This **Interlocal Agreement** is entered into on June 10, 2004 (as supplemented or amended, the "Agreement"), and is among the municipal corporations of **APEX, NORTH CAROLINA** ("Apex"); **CARY, NORTH CAROLINA** ("Cary"); **FUQUAY-VARINA, NORTH CAROLINA** ("Fuquay-Varina"); **GARNER, NORTH CAROLINA** ("Garner"); **HOLLY SPRINGS, NORTH CAROLINA** ("Holly Springs"); **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"); hereinafter collectively referred to as municipal corporations; and **WAKE COUNTY, NORTH CAROLINA** ("the County" or "Wake"), a body politic and corporate and a political subdivision of the State of North Carolina.

RECITALS:

WHEREAS, the Parties intend to establish a collaborative approach to Stormwater Management by commissioning a feasibility study ("the study") to serve both the Municipalities and the County;

WHEREAS, the Parties to this Agreement desire to jointly conduct an extensive evaluation that will consider the range of available options for administration, monitoring, operation and maintenance of a collaborative Stormwater Management Program;

WHEREAS, some or all of the Parties to this Agreement might choose to collaborate in the future to further advance the creation of countywide Stormwater Management Programs based on agreed upon principles as set forth herein;

WHEREAS, the Parties desire to enter into this Agreement pursuant to the statute authorizing interlocal agreements, N.C.G.S. Sections 160A-460 to 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.

"Contract Date" means the date of the Agreement.

"Feasibility Phase" means the study phase which determines the feasibility of implementing a countywide Stormwater Management Program, including a funding study, user group formation and education of the public.

"Feasibility study" means identification of local Stormwater and Floodplain Management needs and infrastructure, assessment of program funding sources and possible billing scenarios.

"Floodplain Management" means a program for correction and prevention measures for

reducing flood damage, including but not limited to, emergency preparedness plans, flood control works, and floodplain management regulations.

“Implementation Phase means the phase following the Feasibility Phase, which includes determination of rate structure and billing structure, draft Ordinance development, rate determination (GIS Exercise), public hearings and local approval (Ordinance Approval), and adoption of Ordinance and Billing Structure for Stormwater Management Program.

“Party” or “Parties” means any municipality or the county, as the context or the usage of such term may require.

“Stakeholders Committee” is a committee consisting of representatives of the Parties chartered to support and further the Feasibility Phase.

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

“Stormwater Management” means programs to maintain quality and quantity of stormwater runoff.

“Unit of Local Government” means a county, city, town or incorporated village.

ARTICLE II

Scope of Work

2.01. **Purpose.** The Parties agree to participate in all components of the Stormwater Management Program Feasibility study (“the study”).

2.02. **Scope of Work.** The Scope of Work shall consist of seven major activities defined below:

- (a) Optional participation in consultant selection process.
- (b) Provide representation on Stakeholders Committee, which will work to implement the Feasibility Phase.
- (c) Define Stormwater Management Program service needs (Operations and Maintenance, Regulatory compliance, and/or Capital Improvement Program needs) and desired levels of service for each Party.
- (d) Provide access to staff; appropriate mapping, GIS, and other data for understanding needs for the defined service needs and desired levels of service; and information on existing commitments in stormwater management.
- (e) Review the Regulations as currently codified and, based on the Party’s defined goals, objectives and requirements, provide a technical opinion on the ability of the existing Regulations to meet applicable requirements. The County and its Consultant will not provide an opinion regarding the legal aspects of the Regulations relative to each party's local Ordinance or the laws of the State of North Carolina.
- (f) Facilitate outreach, education, and public meetings to inform citizenry about comprehensive Stormwater Management Program service needs and desired service

levels. Each Party will hold public meetings as required and the County will provide staff to support these meetings.

- (g) Review and evaluate the results of the Countywide Stormwater Program and Funding Program Feasibility consulting study.

2.04 **Cost of Work.** Wake County shall pay the cost of professional services procured to assist in the Feasibility Phase of the Stormwater Management Program.

2.05 **Ownership of Work.** All of the work product resulting from this project shall be owned by Wake County as the sole funding party under this Agreement. Every Party will receive a copy of all correspondence, documents, preliminary and final reports.

2.06 **Appointment of Personnel.** Each party shall select and appoint personnel to perform the functions of this agreement.

ARTICLE III Duration

This agreement will be in effect until the completion of the Feasibility Phase of the process when the results of the study in the form of a report have been received by all of the Parties. Currently, this Phase is scheduled to end May of 2005.

ARTICLE IV Further Collaboration

4.01. **Further Collaboration Encouraged.** It is understood by the Parties to this Agreement that the desired result from collaboration on the Scope of Work is for all of the Parties to work together further to establish a countywide Stormwater Management Program. To this end, the Parties make a good faith commitment to give favorable consideration to collaboration on such further work; however, it is understood that no Party is obligated to continue in any further work or pursue any recommendations, which might be indicated by the Feasibility Study Report.

4.02. **Principles for Participation in Future Implementation Phase of Collaborative Stormwater Management Effort.** The parties agree that, if a collaborative effort goes into the Implementation Phase, the formula for the cost share for a collaborative Stormwater Management Program will be determined in the Feasibility Phase for each Party.

ARTICLE V Withdrawing Party

Any Party, in its sole discretion, may withdraw from this Agreement by giving thirty (30) days written notice to each of the other Parties. The withdrawal of one or more Parties shall not affect the agreement among the other Parties.

ARTICLE VI Assignments

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

ARTICLE VII

Limited Obligation of Parties

No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of a Party to this Agreement within the meaning of any constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as delegating governmental powers, nor as a donation or a lending of the credit of any Party to this Agreement within the meaning of the State Constitution. This Agreement shall not directly or indirectly or contingently obligate any Party to this Agreement to make any payments beyond those appropriated in each Party's sole discretion for any fiscal year in which this Agreement shall be in effect. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of any Party's moneys, nor shall any provision of the Agreement restrict to any extent prohibited by law, any action or right of action on the part of any future governing body of a Party to this Agreement. To the extent of any conflict between this Article and any other provision of this Agreement, this Article shall take priority.

ARTICLE VIII

Miscellaneous

8.01. Governing Law. The Parties intend that this Agreement shall be governed by North Carolina law.

8.02. Notices

- (a) Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement.
- (b) Any addressee may designate additional or different addresses for communications by notice given under this Section to the other Parties.

8.03. Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

8.04. 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.

8.05. Binding Effect. 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 and their respective successors and assigns.

8.06. Liability of Officers and Agents. No officer, agent or employee of any Party shall be subject to any 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. The officials and employees of each Party shall not be deemed agents or employees of any other Party in performance of this agreement.

8.07. 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.

8.08. Existing Contract. This Agreement shall not affect the existing contracts among the Parties as of May 26, 2004, including but not limited to the Ten-year Solid Waste Disposal Agreement and the Sedimentation and Erosion Control Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

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| <p>TOWN OF APEX, NORTH CAROLINA</p> <p>By: _____</p> <p>Keith H. Weatherly Mayor</p> | <p>This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Lee Smiley Finance Officer Town of Apex, North Carolina</p> |
| <p>TOWN OF CARY, NORTH CAROLINA</p> <p>By: _____</p> <p>Ernie McAlister Mayor</p> | <p>This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Karen A. Mills Finance Officer Town of Cary, North Carolina</p> |
| <p>TOWN OF FUQUAY-VARINA, NORTH CAROLINA</p> <p>By: _____</p> <p>John Byrne Mayor</p> | <p>This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Carla Stephens Finance Officer Town of Fuquay-Varina, North Carolina</p> |
| <p>TOWN OF GARNER, NORTH CAROLINA</p> <p>By: _____</p> <p>Sam Bridges Mayor</p> | <p>This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Lin Jones</p> |

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| | Finance Officer Town of Garner, North Carolina |
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| <p>TOWN OF HOLLY SPRINGS, NORTH CAROLINA</p> <p>By: _____</p> <p>Richard Sears Mayor</p> | <p>This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Drew Holland Finance Officer Town of Holly Springs, North Carolina</p> |
| <p>TOWN OF KNIGHTDALE, NORTH CAROLINA</p> <p>By: _____</p> <p>Doug Boyd Mayor</p> | <p>This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Pam Hinson Finance Officer Town of Knightdale, North Carolina</p> |
| <p>TOWN OF MORRISVILLE, NORTH CAROLINA</p> <p>By: _____</p> <p>Gordon Cromwell Mayor</p> | <p>This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Julia M. Ketchum Finance Officer Town of Morrisville, North Carolina</p> |
| <p>CITY OF RALEIGH, NORTH CAROLINA</p> <p>By: _____</p> <p>Charles Meeker Mayor</p> | <p>This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Perry E. James, III Finance Officer City of Raleigh, North Carolina</p> |
| <p>TOWN OF ROLESVILLE, NORTH CAROLINA</p> | <p>This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.</p> |

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| <p>By: _____</p> <p>Nancy Kelly Mayor</p> | <p>_____</p> <p>Matthew Livingston Finance Officer Town of Rolesville, North Carolina</p> |
| <p>TOWN OF WAKE FOREST, NORTH CAROLINA</p> <p>By: _____</p> <p>Vivian Jones Mayor</p> | <p>This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Aileen Staples Finance Officer Town of Wake Forest, North Carolina</p> |
| <p>TOWN OF WENDELL, NORTH CAROLINA</p> <p>By: _____</p> <p>Tim Hinnant Mayor</p> | <p>This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Timothy C. Burgess Finance Officer Town of Wendell, North Carolina</p> |
| <p>TOWN OF ZEBULON, NORTH CAROLINA</p> <p>By: _____</p> <p>Robert Matheny Mayor</p> | <p>This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Richard D. Hardin Interim Finance Officer Town of Zebulon, North Carolina</p> |
| <p>COUNTY OF WAKE, NORTH CAROLINA</p> <p>By: _____</p> <p>Kenn Gardener</p> | <p>This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Melinda Cannady</p> |

Chairman, Board of Commissioners

Finance Officer
County of Wake, North Carolina