

Interlocal Agreement for Waste Management - 1999

August 2010

The following is a summary of the key components of the agreement, as amended:

- 1. This section is primarily related to the transfer of the waste management system as it existed in 1999 from joint ownership between the Town of Carrboro, Town of Chapel Hill and Orange County to Orange County.**

Operation of the system

- for the benefit of all of the county
- establishing rules and regulations
- operating efficiently and economically
- maintaining properties in sound manner

Provide for disposal facilities

- provide system management facilities for partners
- for accepting waste generated exclusively by Orange County residents

Determine policy

- County has authority and discretion
- to administer and operate the system consistent with the Solid Waste Management Plan and to modify Plan as necessary
- to consult with partners and SWAB frequently and consistently

Take on employees

- transfer of Town employees to County
- maintain compensation package substantially equivalent to current package
- all current components of compensation will transfer

Acquire system assets

- title to all existing system assets will go to County
- except the Greene Tract (see section 5)

Assume system liabilities

- County assumes all liabilities, including environmental liabilities related to ownership of system
- partners retain individual liability related to their respective use of the system

Acquire property

- County can acquire real and personal property as necessary
- there shall be no restrictions on the County's acquisition of additional acreage at the existing landfill

- County does not intend to acquire any properties known as the Blackwood and Nunn properties for system purposes

Provide for compliance with law

- County will comply with all applicable laws, etc. relating to the system
- County will be general responsible for solid waste reporting, planning, regulatory compliance and similar matters
- no prevention of county contesting the applicability or validity of any such law or requirement as long as such contest will not materially impair the system's operation of revenue-producing capability

Make reports

- County will make reports or audits relating to the system as required by law
- partners may request information with regard to the system or its operation, including the advisory board
- County has been designated as the local lead agency and Towns will cooperate in preparing and submitting any reports or solid waste plans that a partner may be required to file with governmental authorities

Approve budget

- County and Chapel Hill will jointly approve FY 99/00 system budget

Effective date

- County will assume responsibility the day following the effective date of the zoning of property described in Exhibit E, which makes non-burial of solid waste uses a permitted use under the Chapel Hill Development Code/Ordinance per Section 5 (Greene Tract).
- the date of this agreement will be January 1, 2000 if agreement is delivered to current owners by September 7, 1999, the zoning change is adopted by the Town of Chapel Hill on or before January 1, 2000 and the Greene Tract owners have, on or before January 1, 2000 agreed to the boundaries of the property described in Exhibit E.
- **NOTE: Actual effective date of employee/department transition was April, 2000.**

2. This section addresses the delivery of waste and recyclables to the system.

Delivery of materials

- towns and County agree to deliver or cause to be delivered all solid waste and recyclables under their respective control to system facilities for disposal and processing.
- County may refuse to accept materials barred by policy or regulation from being accepted.
- any recyclable material that the County begins collecting that was not previously collected by the County but was collected by a Town, must be

shifted to the County recycling program with the Town ceasing its own collection.

3. This section preserves jurisdictional prerogatives with regard to waste collection.

Retention of waste collection prerogative

- partners retain control and responsibility for their own residential and non-residential waste collection operations

4. This section requires County to operate system as an enterprise operation, with discretion to set rates, fees, and charges.

Partners must remain committed

- commitment is key to long-term success in agreement
- goal of waste reduction must be compatible with economic viability of system operations
- County not required to use general fund to underwrite enterprise
- all County entities must bear proportional shares of costs for current and future operations of the waste management enterprise
- County must retain broad authority and flexibility with regard to providing financial resources to meet system objectives

System to be operated as an enterprise fund

- accounting of system money must be segregated and audited separately
- a separate enterprise fund budget should be adopted and accurate records and accounts of costs/expenditures and revenues should be maintained and open to partner inspection

System should be self-supporting

- County to establish system of fees, rates and charges to pay for full cost of the system under this agreement
- rates, fees, etc. may be revised as County deems appropriate

Limitations on material financial charges

- material financial charges cannot be implemented without the consent of the partners
- Towns are responsible for determining if any change or proposed change is a material financial change

MSW Tipping Fee

- County may increase the MSW tipping fee with at least 30 days notice to the partners
- County cannot increase the MSW tipping fee more than 10% without prior consent of the partners

- County will endeavor to adjust the MSW tipping fee only at the beginning of a fiscal year
- County can decrease the MSW tipping fee at anytime without prior notice or approval of partners

Governmental Fees

- County must give 30 days notices to partners of any proposed governmental fee
- a governmental fee can then be imposed only if this fee is subsequently approved by the County and at least one of the of the other partners
- a governmental fee can be increased only with 30 days notice, but can't exceed the previous fee by 10% without all partners consent
- a governmental fee can be decreased anytime without consent

Other Fees

- this provision applies to rates, fees or charges other than the MSW tipping fee or governmental fees – i.e. availability fees
- creation, increase or decrease of any other fee rate, fee or charge under this section will require 30 days notice and Advisory Board consideration of the change
- County may create, increase or decrease minor fees for certain non-MSW classes of waste/recyclables at its discretion
- a minor fee is one that produces less than 1% of the systems total revenue

Time limit on fee change approvals

- any approvals given by a partner relevant to section 4 will not be in effect after 90 days from the date of the approval action if all approvals required to become effective are not obtained

Use of system revenues

- County will use system revenues to carry out system plans and policies, to pay costs of waste disposal, to pay costs of handling recyclables, to pay for public benefits, and to past waste reduction related costs
- system revenues cannot be used to pay for waste collection in unincorporated County areas
- County is not required to use general funds for system purposes

Reservation of County's rights

- This agreement notwithstanding, County may use its reasonable and necessary discretion to comply with the law, court order, administrative decree, etc., environmental remediation, or requirements to secure system debt

5. This section relates to the Greene Tract asset

Partners agree that the Greene Tract remains a landfill asset

- County will receive title to the 60 acre portion of the Greene Tract described on Exhibit E for use for system purposes
- County states its intent to not use this property for burial of waste
- Chapel Hill agrees to complete a process to make solid waste management uses (not including burial) that could include transfer station or materials recovery facility as “permitted uses” under the Chapel Hill Development Ordinance, subject only to staff level site plan review and not subject to an SUP process
- Chapel Hill is not required to agree to zone the Greene Tract in any particular way
- Greene Tract owners will bargain in good faith in a specific time period to determine future use of the remainder of the Greene Tract
- Greene Tract issues subject to bargaining are future uses of the remaining property and use restrictions
- public comment will be accommodated
- during the bargaining period no partner shall file a legal action to force sale of the property or enter into an agreement to sale its ownership interest
- at the end of the bargaining period no partner shall file a legal action to force sale of the property, enter into an agreement to sale its ownership interest, or other action without 60 days notice
- partners agree that any non-system use of the jointly owned portion of the Greene Tract shall result in payment to the enterprise fund of a reimbursement amount

6. This section relates to County financing of community benefits by County from system funds

Partners will cooperate to provide public benefits to the residents and property owners in the landfill neighborhood

- each partner governing board to discuss proposals in report from Landfill Benefits Committee
- consider legal constraints to using system funds to pay for benefits
- partners to work together to agree on benefits to be provided, obtaining neighborhood input
- finalize benefits to be provided, financing and implementation mechanisms and all partners must agree
- payments for benefits, to the extent permitted by law, can be treated as an expense of the system
- benefits provided are to be considered separate from any compensation determined to be owed for an “taking” as determined by law

7. This section establishes an advisory board

Partners establish the Orange County Solid Waste Management Advisory Board to advise the BOCC on matters related to the system and the Solid Waste Management Plan and Policies

- partners will work with Landfill Owners Group until SWAB begins to meet
- each partner shall appoint two members
- Exhibit C sets forth SWAB responsibilities, procedures, appointment and terms of office
- if UNC agrees to comply with Section 2 provisions of the agreement then partners will grant UNC one voting membership to the SWAB
- Exhibit C limitations excluding employees of partners serving on the SWAB do not apply

Exhibit A – Contains certain definitions that apply to this agreement

Exhibit B contains certain additional provisions of this agreement

Amendments
Notices
No Third-Party Beneficiaries
Survival of Covenants
Severability
Entire Contract
Counterparts
Recordable Form
Withdrawal
Actions by a Party
Agreed-Upon Procedures
Effective Date; Term

Exhibit C regards the Advisory Board

Responsibilities

- to recommend programs, policies, expansions and reductions of services and other system related matters
- to suggest amendments to the Solid Waste Management Plan and Policies
- to provide advice to the County Manager on the budget
- to act as a conduit for public input
- to advise the BOCC with regard to rates, fees and charges
- other matters as referred

Members, Terms

- two members appointed by each partner governing board and serve at the pleasure of that board
- three year terms to be staggered

- partners have discretion in appointments, except that no employee of any partner may be appointed
- appointments to fill vacancies will be for the remainder of the vacant term

Procedures

- SWAB to adopt its own rules
- BOCC to review and approve rules and procedures proposed by the SWAB
- each member shall have one vote, except that in the absence of a member, the other member is may cast two votes
- any UNC member shall have one vote with no vote cast when absent
- a majority affirmative votes of the number of SWAB members is necessary to take any action
- the SWAB's presiding officer will vote as a member with no additional voting privileges
- member of any partner who has given notice of its withdrawal from the Agreement will have no vote on matters affecting the system beyond the effective date of the withdrawal

Exhibit D regards the legal description of the Greene Tract

Exhibit E regards the legal description of the 60 acre portion of the Greene Tract being conveyed to the County

2003 Amendment to the Interlocal Agreement

1. Deletion of paragraph Acquire property in Section 1 and replacing it with:
 - further acknowledgement of the flexibility the County has with regard to acquiring property, including additional property in the Eubanks Road area, except for the Blackwood and Nunn properties
2. Deletion of effective date in Section 1 and replacing it with:
 - County to assume control upon the approval of the partner governing boards and execution of the Agreement , and
 - agreement on the boundaries of the Greene Tract as described in Exhibit E
3. Deletion of Section 5 and replacing it with:
 - the Greene Tract will remain a landfill asset; sixty acres will be reserved for system purposes and that the three owners will cooperate to determine the use of the remainder
 - establishes a more detailed process by which the future use of the remainder of the Greene Tract will be determined

- partners agree that any non-system use of any portion of the Greene Tract shall result in payment to the County of the “reimbursement amount” for deposit in the system enterprise fund
4. Replacement of the date in the first paragraph of Section 7 with:
 - one month after the effective date of this Agreement
 5. Amending subsection (c) of Exhibit C (Members; Terms) with:
 - the first year of the term of each initial SWAB member shall be deemed to expire on June 30, 2001
 - afterward, each year of the term of a SWAB member will run from July 1 through June 30, but each member shall continue to serve until a successor has been appointed