

COUNTY OF WAKE

STATE OF NORTH CAROLINA

**INTERLOCAL AGREEMENT BETWEEN HOLLY SPRINGS AND APEX FOR YARD
WASTE TRANSPORT**

This Interlocal Agreement for Yard Waste Disposal (“Agreement”) between the Town of Apex (“Apex”) and the Town of Holly Springs (“Holly Springs”), both being North Carolina municipal corporations. Apex and Holly Springs are sometimes referred to individually as “Party” and jointly as “Parties.”

RECITALS

WHEREAS the Town of Apex is in need of a temporary solution for the transportation of yard waste for disposal by a third party; and

WHEREAS, the Town of Holly Springs is able and willing to provide yard waste transportation services to Apex from Holly Springs’ transfer site (as defined below) to Apex’s disposal contractor (as defined below) on a temporary basis; and

WHEREAS, this Agreement is authorized by NCGS §160A-460 *et.seq.*

NOW THEREFORE, for and in consideration of the recitals and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

1. **Incorporation of Recitals and Purpose.** The Recitals are true and are incorporated into this Agreement. The purpose of this Agreement is for Holly Springs to provide yard waste transportation services to Apex. For purpose of clarity, this Agreement deals with Holly Springs’ transportation of Apex’s grass clippings, leaf material, and other untreated wood material such as small tree branches (“Material”) that would ordinarily be collected by Apex or Holly Springs from residences as normal yard waste.
2. **Effective Date; Duration and Term.** This Agreement shall become effective upon the date it is properly authorized and executed by the last of Apex and Holly Springs (“Effective Date”). The term of this Agreement shall be for six (6) months from the Effective Date. This Agreement may be extended by the Parties through a written request for an extension by Apex to Holly Springs’ town manager so long as such request is received at least thirty (30) days prior to the expiration of the term
3. **Obligations of Holly Springs.**
 - a. Holly Springs shall accept deliveries Apex’s Material from Apex personnel at the Holly Springs transfer station located at 3420 New Hill Holleman Road, New Hill, North Carolina 27562 (“Transfer Station”) during normal business hours (8 AM through 5 PM, Monday through Friday, excluding town holidays).

- b. Holly Springs shall designate an area at the Transfer Station for the temporary storage of Material delivered by Apex. The parties shall endeavor to keep Material from its customers separate from the Material from the other party at the Transfer Station.
- c. Holly Springs shall continue to maintain the Transfer Station. Apex is not responsible for the maintenance and repair of the Transfer Station.
- d. Holly Springs shall store Apex's walker trailer at the Transfer Station when it is not being used for deliveries of Material to the third party end user, and aside from normal wear and tear will be responsible for the safe operation and utilization of the trailer. No bailment is created through the storage of this trailer or Material at the Transfer Station. Apex shall be responsible to maintain insurance on its trailer in an amount satisfactory to Apex.
- e. Holly Springs shall make deliveries from the Transfer Station to Earth Tec Environmental in Bear Creek, NC ("Contractor") for disposal of the Material by that company. In the event that the Contractor refuses such Material disposal, Holly Springs shall return the Material to the Transfer Station and inform Apex, who shall collect such Material within three (3) business days.

4. Obligations of Apex.

- a. Apex shall deliver Material to the Transfer Station.
- b. Apex shall provide a walker trailer to Holly Springs to use in transporting Material from the Transfer Station to the Contractor for disposal by the Contractor
- c. Apex shall inform Holly Springs immediately in the event of any change in the contractual relationship between Apex and the Contractor that might interfere with the delivery of the material by Holly Springs.
- d. Apex shall pay the Contractor directly for the per-ton fee for the Material according to the terms of any agreement those parties may have, and shall abide by the terms of that agreement. In the event of any change in the contractual terms between Apex and Contractor that would material effect the delivery of the material by Holly Springs, Apex shall contact Holly Springs immediately but in no event longer than two (2) business days.
- e.

5. Material Charges and Billing.

- a. **Rate.** Holly Springs shall charge Apex \$185.00 per walker trailer-load of Material transported from the Transfer Station to the Contractor. Apex shall be billed directly by the Contractor on the basis of weight, as agreed between Apex and the Contractor.
- b. **Payment.** Holly Springs shall invoice Apex on a monthly basis and payments shall be due net thirty (30) days from receipt of invoice.
- c. Holly Springs shall in its sole and absolute discretion determine the safe amount of Material to load onto the Apex trailer for delivery to the Contractor. Because of factors such as varying density of material, liquid saturation, or other factors contributing to weight variation, each load to the Contractor may not be of equal tonnage. Holly

Springs' drivers shall use their best judgment to determine the appropriate weight load of each delivery.

6. Right to Limit Volume of Material Disposal.

- a. Holly Springs reserves the right to limit the volume of Material that it will accept from Apex on a daily, weekly, or monthly basis. Holly Springs shall provide reasonable notification to Apex of its intent to limit the volume it accepts.
- b. In the event that Contractor becomes unable or unwilling to accept additional truckloads of Material, Holly Springs reserves the right to suspend or terminate this Agreement.

7. Appointment of Personnel. The Holly Springs Town Manager shall designate persons to carry out Holly Springs' obligations under this Agreement. The Apex Town Manager shall designate persons to carry out Apex's obligations under this Agreement.

8. Indemnification. Each party shall indemnify and hold harmless the other party, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the other party, its elected and appointed officials, employees, agents, and volunteers to the extent caused by any negligence of the indemnifying party. Apex shall indemnify Holly Springs against any claim involving the characteristics of the Material supplied by Apex, such as the Material contains any type of contamination or otherwise no suitable for disposal by the Contractor. Such claims include but are not limited to any notice of violation by a regulatory agency of the state or federal government.

9. Insurance.

- a. The Town of Apex shall provide to the Town of Holly Springs, proof of General Liability and Automobile Liability insurance coverage in minimum amounts of \$1,000,000 each coverage; and provide proof of Workers Compensation, and Employer's Liability insurance coverage.
- b. The Town of Holly Springs shall provide to the Town of Apex, proof of General Liability and Automobile Liability insurance coverage in minimum amounts of \$1,000,000 each coverage; and provide proof of Workers Compensation, and Employer's Liability insurance coverage.

10. Termination. This Agreement may be terminated by written agreement of both Parties. Either Party may terminate this Agreement because of substantial breach of this Agreement by the other Party, provided that the terminating Party has given thirty (30) days' written notice to the breaching Party and the breaching Party has not cured the breach during that period. Either Party may terminate this Agreement without cause provided that the terminating Party has given ninety (90) days' written notice to the other Party. This section does not limit the Parties' rights to enforce this Agreement through any other action or remedy. Upon termination, it is agreed that all obligations that are still executory on both sides are discharged but any right based on prior breach or performance survives.

11. Breach and Default. In the event of breach of this Agreement, the Parties shall be entitled to such legal or equitable remedy as may be available, including specific performance.

12. Notices. Unless otherwise provided, all notices provided for herein shall be in writing and shall be sent properly addressed by first class mail and electronic mail to the parties at the addresses shown below:

Town of Apex
PO Box 250
Apex, North Carolina 27502-250
Attention: Town Manager

With copies to the Public Works & Transportation Director

Town of Holly Springs
P.O. Box 8
Holly Springs, NC 27540
Attention: Town Manager

With copies to the Solid Waste Manager

All notices shall be effective three (3) days after having been deposited, properly addressed and postage prepaid, in the US Postal Service. Any party hereto may change the person to whom or the address to which notices should be provided by giving written notice to the other parties of the change.

13. Entire Agreement/Amendments. This Agreement constitutes the entire agreement between the Parties with respect to its general subject matter. This Agreement may not be changed except in writing signed by all the parties.

14. Representations and Warranties. The Parties each represent, covenant and warrant for the other's benefit as follows:

(a) Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and this Agreement has been authorized by Resolution spread upon the minutes of each Party's governing body. This Agreement is a valid and binding obligation of each Party.

(b) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which either Party is now a party or by which either is bound, or constitutes a default under any of the foregoing.

(c) To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such Party (or against any other person) affecting such Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither such Party's execution and delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

- 15. Dispute Resolution.** In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice of Wake County, North Carolina.
- 16. No Waiver of Non-Compliance with Agreement.** No provision of this Agreement shall be deemed to have been waived by any party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any party hereto at any time to require strict performance by the other of any provision hereof shall in no way affect the right of the other party to thereafter enforce the same. In addition, no waiver or acquiescence by a party hereto of any breach of any provision hereof by another party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.
- 17. Governing Law.** The parties intend that this Agreement be governed by the law of the State of North Carolina. Proper venue for any action shall solely be Wake County.
- 18. Assignment.** Neither Party may sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other Party.
- 19. Liability of Officers and Agents.** No officer, agent or employee of any party will 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 will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This section will not relieve any such officer, agent or employee from the performance of any official duty provided by law.
- 20. Execution in Counterparts/Electronic Version of Agreement.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Either Party may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.
- 21. Verification of Work Authorization.** The Parties, and all subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.

22. No third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

IN TESTIMONY WHEREOF, the Town of Apex and the Town of Holly Springs, both pursuant to resolutions of their respective governing boards spread upon their minutes, have caused this Agreement to be executed and attested by their duly authorized officers and their official seals affixed, the day and year first written above.

[SEAL]

**TOWN OF HOLLY SPRINGS, NORTH
CAROLINA**

By: _____
Randy J. Harrington, Town Manager

Date: _____

Attest:

Linda C. McKinney, Town Clerk

This instrument has been pre-audited in the
manner required by the Local Government Budget
and Fiscal Control Act.

Antwan Morrison, Interim Finance Director
Town of Holly Springs

[SEAL]

TOWN OF APEX, NORTH CAROLINA

By: _____
Catherine Crosby, Town Manager

Date: _____

Attest:

Donna B. Hosch, Town Clerk

This instrument has been pre-audited in the manner required by the Local Budget and Fiscal Control Act.

By: _____
Vance Holloman, Finance Officer
Town of Apex