

CONTRACT ROUTING FORM

1. Complete the information below BEFORE printing and completing items 2 through 7. Items in red are required.

Department: Environmental Quality

Department contract file name (use effective date): WasteIndustriesDurhamEnvironmentalQuality20190701

Project Code: Click here to enter text.

Contract type: Contract

Contracted Services/Goods: Waste Disposal

Contract Component: Master

Change Order Number/Addendum Number: Click here to enter text.

Vendor Name: Waste Industries

Effective Date: 7/1/2019

Approved by: County Manager


Commissioner Approval Date:

Ending Date: Click here to enter a date.

Total Amount: \$47.50/ton

Is this contract funded by federal dollars? Yes No

2. Department Head or his/her designee has read the contract in its entirety.

By:  (Department Head signature required)

3. County Attorney has reviewed and approved the contract

County Attorney has reviewed and rejects the contract Reason: _____

This is an automatic renewal and does not require approval from the County Attorney: Yes No



If this box is checked the County Attorney's Office has reviewed the contract but has not made needed changes to protect the County because the contract is a sole source contract and the services required by the County are not available from another vendor.

4. Technical/MIS Advisor has reviewed the contract if applicable. Yes No

5. Vendor has signed the contract. Yes No

6. A budget amendment is necessary before approval. Yes No

If budget amendment is necessary, please attach to this form.

7. Approval

Requires approval by the BOC - contracts over \$100,000.00, contracts longer than three years and leases longer than one year. Follow Board submission guidelines.

Requires approval by the Manager – contracts \$100,000 or less.

8. Submit to Clerk.

Clerk's Office Only

Finance Officer has signed the contract

The Finance Officer is not required to sign the contract

NORTH CAROLINA
CHATHAM COUNTY

AGREEMENT FOR SERVICES

THIS AGREEMENT FOR GOODS AND/OR SERVICES (this "Agreement"), made and entered into by and between Chatham County ("Customer") and Waste Industries ("Company").

WHEREAS, Company has agreed to provide services in a professional manner in accordance with the standards of Company's industry and as hereinafter set forth; and

WHEREAS, the Customer wishes to enter into an Agreement with Company to provide the services specified in Appendix 1, Scope of Work, attached hereto and incorporated herein by reference.

NOW THEREFORE, in consideration of the mutual agreements described below, the parties agree as follows:

1. **Term of Agreement:** The initial term of this Agreement will commence on July 1, 2019 and shall end on or before June 30, 2020.
2. **Scope of Service:** The Company shall provide to the Customer the Services (the "Services") set forth in the "Scope of Work" attached hereto as Appendix 1, which is incorporated herein and made an integral part of the Agreement.
3. **Compensation:** Compensation for the services to be provided under this contract shall be as set forth in Appendix 1.
4. **Insurance:** Company shall maintain insurance policies at all times with minimum limits as follows:

<u>Worker's Compensation</u>	<u>General/Professional Liability</u>	<u>Automobile Liability</u>
Statutory Limits	\$100,000 bodily injury per person (BI) \$500,000 bodily injury per occurrence (BI) \$100,000 property damage (PD)	\$250,000 bodily injury per person (BI) \$100,000 property damage (PD)

All insurance policies shall be issued by companies authorized to do business under the laws of the State of North Carolina and shall be rated not less than "A" by A.M. Best and Company. Company shall furnish Certificates of Insurance to the Customer, naming the Customer as an additional insured, prior to the commencement of operations. The certificates shall clearly indicate that Company has obtained insurance of the type, amount, and classification as required for strict compliance with this paragraph and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the Customer. Compliance with the foregoing requirements shall not relieve Company from any liability or obligations under this Agreement.

5. **Confidentiality:** All proprietary data and information, if any, furnished to Company by the Customer shall be regarded as confidential, shall remain the sole property of the Customer and shall be held in confidence and safekeeping by Company for the sole use of the Customer and Company under the terms of this Agreement. Company agrees that its officers, employees and agents will not disclose to any person, firm or entity other than the Customer or its designated legal counsel, accountants or practice management consultants any information about the Customer. Company agrees to carry out its obligations to the Customer in compliance with all privacy and security regulations required by law.

6. **Status of Parties:** Nothing contained in this Agreement shall be construed as establishing a partnership or joint venture relationship between Company and the Customer. Company and its employees and representatives are independent contractors, solely responsible for its or their performance under this Agreement and shall have no legal authority to bind the Customer.

7. Assignment and Subcontracting: Neither this Agreement nor any rights or obligations hereunder shall be subcontracted, assigned, or delegated by Company without prior written consent of the Customer, which consent may be withheld in the Customer's sole discretion.

8. Binding Effect: This Agreement shall be binding upon the parties hereto, their heirs, administrators, executors, successors and assigns, if such assignment has been approved by the Customer.

9. Notices: Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the date delivered personally or deposited in the United States Postal Service, certified mail, return receipt requested, with adequate postage affixed, addressed as follows:

Chatham County
Attn: Dan LaMontagne
PO Box 1803
Pittsboro, North Carolina 27312

Waste Industries
Attn: William Davidson/General Manager II
148 Stone Park Court
Durham, North Carolina 27703
1-800-207-6618 Ext. 33820

Either party may change its address for notices under this Agreement by giving written notice of such change to the other party in accordance with the terms of this paragraph.

10. Governing Law: This Agreement and the rights and obligations to the parties hereunder shall be construed and governed by the laws of the State of North Carolina and venue for any proceedings arising hereunder shall be in the state court of appropriate jurisdiction located in Chatham County, North Carolina.

11. Modifications: This Agreement may be amended or modified by the mutual written consent of the parties. A modification is not enforceable against the Customer unless it is signed by the County Manager, Purchasing Agent, or other duly authorized official.

12. Entire Agreement: This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.

13. Waiver: A waiver of any provision of this Agreement must be in writing, designated as such, and signed by the party against whom enforcement of the waiver is sought. The waiver of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach thereof.

14. Termination: This Agreement may be terminated as follows:

(i) Cause: If the services provided by the Company under this Agreement are determined to be unsatisfactory or unacceptable, as determined by the County Manager, this Agreement may be terminated by the Customer for default. Grounds for termination for default shall include, but not be limited to:

- (a) Failure to respond to all reasonable requests from the Customer to provide services covered by this Agreement.
- (b) Failure to maintain equipment in accordance with the requirements of this Agreement and with all laws.
- (c) Lack of proper insurance as required under this Agreement.
- (d) Charging rates or fees in excess of those provided in this Agreement.
- (e) Inefficient, or unsafe practices in providing services.
- (f) Other actions which impact unfavorably on the faithful performance of this Agreement.

(ii) Convenience: The Customer reserves the right to terminate this Agreement upon thirty (30) days

written notice to Company for any reason deemed by the Customer to serve the public interest. This termination for convenience will not be made when termination is authorized under any other provisions of this Agreement. In the event of such termination the Customer shall pay the Company those costs directly attributable to services received by the Customer in compliance with the Agreement prior termination. Provided, however, that no costs will be paid to the Company which are recoverable in the Contractor's normal course of doing business. The Customer is not liable for loss of any profits anticipated to be made hereunder, nor for any special, consequential or similar damage.

15. Annual Appropriations and Funding: This Agreement is subject to the annual appropriation of funds by the Chatham County Commissioners. Notwithstanding any provision herein to the contrary, in the event that funds are not appropriated for this Agreement, the Customer shall be entitled to immediately terminate this Agreement, without penalty or liability, except the payment for all service satisfactorily provided under this Agreement up to and through the Contractor's receipt of notice of termination.

16. Indemnify: Each Party shall indemnify and hold that the other Party and its subsidiaries and affiliates, and their respective directors, officers, members, managers, agents and employees, harmless from and against any and all liabilities, losses, assessments, fines, penalties, forfeitures, damages, costs, expenses and disbursements, including reasonable legal fees, expert witness fees, litigation related expenses, and court costs in any litigation, investigation, proceeding or other matter (collectively, "Losses"), whether arising out of a claim or loss of, or damage to property or injury to or death of any person, caused by or arising out of a breach of this Agreement, the disposal of Unacceptable Waste in the Facility, or the transportation of Waste. This indemnification will apply regardless of whether such Losses result from or arise out of the joint or concurring negligence of Customer and Company.

17. Customer Policy: The Customer opposes discrimination on the basis of race and sex and requires all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under Customer contracts.

18. E-Verify: Effective September 4, 2013 North Carolina local government units are prohibited from entering into certain contracts unless the Company and the contractor's subcontractors, if any, comply with the requirements of N.C. Gen. Stats. §64-26(a). Prior to providing any services hereunder, Company and Contractor's subcontractors, if any, shall complete and return to the Customer the E-Verify affidavit, attached hereto as Appendix 2). If Company or any Contractor's subcontractors, are subject to the provisions of N.C. Gen. Stats. §64-26(a), Company agrees to fully comply with such statute and require Contractor's subcontractors, if any, to fully comply with such statute.

IN WITNESS WHEREOF, the parties have executed this Agreement in their official capacities with legal authority to do so.

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


Vicki McConnell, Finance Director

Chatham County:

By: 
Dan LaMontagne, County Manager

Contractor

By: 
William Davidson, General Manager II
Waste Industries

APPENDIX 1

SCOPE OF WORK

PROJECT NAME: Waste Disposal
FACILITY ADDRESS: 210 Stone Park Court, Durham NC 27703

Pricing:

- Disposal Fee: \$47.50 per ton– rate inclusive of all fees, CPI will be added annually on the anniversary date of contract – CPI Index All Urban Consumers

1. **SERVICES:** Subject to the terms and conditions contained herein, Company agrees to accept at the landfill or transfer station indicated above (the "Facility") Acceptable Waste (as defined below) delivered by Customer to the Facility. Customer shall collect, transport and deliver Acceptable Waste to the Facility in compliance with all Applicable Laws (as defined below). Company agrees to (a) operate the Facility in compliance with all Applicable Laws; and (b) provide equipment, material and personnel sufficient to accept Customers Acceptable Waste at the Facility.

2. ACCEPTABLE AND UNACCEPTABLE WASTE:

(a) "Acceptable waste" means all solid waste that is authorized to be disposed of at the Facility under then applicable federal, state and local laws, regulations, ordinances, rules, permits, licenses and governmental orders or directives (collectively "Applicable Laws"), including municipal solid waste and construction and demolition debris, and that is not Unacceptable Waste (as defined below).

(b) "Unacceptable Waste" means (i) any material that is not Acceptable Waste; (ii) any material that by reason of its composition, characteristics or quantity is defined as a "hazardous material", "hazardous waste," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "toxic Substance," "toxic waste," "toxic pollutant," "contaminant," "pollutant," "infectious waste," "medical waste," "radioactive waste," or "sewage sludge" under any Applicable Law; (iii) any material that requires other than normal handling, storage, management, transfer or disposal; or (iv) any other material that is reasonably likely to present a substantial endangerment to public health or safety, is reasonably likely to cause applicable air quality or water effluent standards to be violated by the normal operation of the Facility, or because of its size, durability or composition cannot be disposed of at the Facility or has a reasonable possibility of otherwise adversely affecting the operation or useful life of the Facility.

3. **TITLE TO WASTE:** Customer represents and warrants to Company that Customer shall hold clear title, free of all liens, claims and encumbrances, to the waste delivered by Customer to the Facility. Title to, and risk of loss and responsibility for, Acceptable Waste delivered to the Facility by Customer shall pass at the time such Acceptable Waste is removed from the delivery vehicle at the Facility. Title to Unacceptable Waste shall remain with Customer and shall never be deemed to pass to Company.

4. **DELIVERY & REJECTION OF UNACCEPTABLE WASTE:** (a) Customer represents and warrants to Company that all waste material delivered by Customer to the Facility shall be Acceptable Waste, and Customer agrees that it shall not deliver any Unacceptable Waste to the Facility. If Customer delivers waste that contains both Acceptable Waste and Unacceptable Waste, the entire delivery shall constitute Unacceptable Waste if the Unacceptable

Waste cannot be separated from the Acceptable Waste through the reasonable efforts of Company, as Customer's agent to cause such separation, with the cost of such separation to be paid by Customer.

(b) Company shall weigh all waste at the Facility using scales that are in compliance with Applicable Laws and the weight so determined shall be final and conclusive on both Customer and Company. Company shall have the right, but not the obligation, to inspect any of Customer's trucks to determine whether the waste delivered is Acceptable Waste or Unacceptable Waste. Customer acknowledges and agrees that any failure by Company to perform any such inspection or to detect Unacceptable Waste despite such inspection shall in no way relieve Customer from its obligation to deliver only Acceptable Waste or from its other obligations under this Agreement.

(c) If Customer delivers Unacceptable Waste to the Facility, Company may, in its sole discretion: (i) reject such Unacceptable Waste at Customer's expense; or (ii) if Company does not discover such Unacceptable Waste in time to reject and reload such Unacceptable Waste, after giving Customer telephonic notice thereof and a reasonable opportunity to dispose of such Unacceptable Waste. Company may, as Customer's agent, dispose of such Unacceptable Waste at a location authorized to accept such Unacceptable Waste in accordance with all Applicable Laws and charge Customer all reasonable direct costs incurred due to the handling, delivery and disposal of such Unacceptable Waste, unless Customer otherwise elects to arrange for disposal of the Unacceptable Waste. If Customer elects to dispose of such Unacceptable Waste, it shall do so within such time period as Company reasonably deems necessary or appropriate in connection with the operation of the Facility, including the preservation of the health and safety of its employees. If after electing to do so, Customer does not dispose of the Unacceptable Waste within such time period, Company may dispose of such Unacceptable Waste as Customer's agent, without further notice to Customer, and Customer shall pay the reasonable direct costs set forth above. Notwithstanding the foregoing, no notice shall be required by Company to Customer for Company to dispose of Unacceptable Waste as Customer's agent in emergency situations where in Company's reasonable judgment a delay in such disposal could constitute a hazard to the Facility or any person on, about or near the premises.

5. **FEES:** (a) Customer shall pay Company the disposal fee set forth on the front page of this Appendix 1 (the "Disposal Fee") for all Acceptable Waste Customer delivers to the Facility. The Disposal Fee is inclusive of all other fees, taxes, or other charges in effect as of the date hereof.

(b) Company shall transmit an itemized invoice to Customer of all Disposal Fees on a 151 weekly or 0 monthly basis. Customer shall *pay* all invoices within 30 days after date of invoice. If Customer does not make payment by such date, Company may impose a late payment fee in an amount equal to the lesser of (i) 1.5% per month on the amount past due or (ii) the maximum amount allowed by Applicable Law. Customer also shall pay a fee of \$50 for each check submitted by Customer that is an insufficient funds check or is returned or dishonored. At any time after Company reasonably becomes concerned about Customer's creditworthiness or after Customer has made multiple late payments, Company *may* request, and if requested Customer shall *pay*, a deposit in an amount equal to one month's charges under this Agreement.

(c) The Disposal Fee is inclusive of all federal, state, local or other taxes, fees (including host fees), surcharges or similar charges related to the acceptance or disposal of Acceptable Waste or the operations or activities of the Facility that are imposed by law, ordinance, regulation, agreement with a governmental authority, governmental audit or otherwise. Company shall have the right to increase the Disposal Fee from time to time as a result of a change in Applicable Laws effected after the Effective Date which affects Company's disposal cost. Any such increase shall be effective 30 days following written notice by Company to Customer. Subject to Customer's approval, the Disposal Fee also may be adjusted for other reasons.

6. DEFAULT: (a) It shall be an event of default by either *party* if such party fails to perform any material term, covenant or agreement contained herein on its part to be performed (including payment of Disposal Fees and charges) and such failure continues for a period of 14 days after written notice to such party specifying the nature of such failure and requesting that it be remedied.

(b) Whenever any event of default shall have occurred and be continuing, the non-defaulting party shall have the following rights and remedies, which shall be in addition to *any* other remedies provided by Applicable Law or this Agreement: (i) upon the end of any applicable grace period in this Section 7, such party shall have the option to immediately terminate this Agreement unless during such period the defaulting party has taken remedial steps the effect of which would be to enable such party to cure such event of default within a reasonable period following the expiration of such grace period; and (ii) if Customer is then in default, Company shall have the option, without terminating this Agreement, to stop accepting Acceptable Waste delivered by Customer until such default is cured or this Agreement is terminated.

7. FORCE MAJEURE: Except for the Customer's obligations to make payments hereunder, neither *party* shall be in default for its failure to perform or delay in performance caused by events beyond its reasonable control, including, but not limited to strikes, riots, acts of terrorism, imposition of laws or governmental orders, fires, acts of God, inability to obtain equipment, changes to permits and regulations, and other restrictions (including land use) therein, and the affected party shall be excused from performance during the occurrence and continuation of such events, so long as such party takes reasonable and timely steps to mitigate or cure the force majeure event.

8. INDEMNITY: Each Party shall indemnify and hold that the other Party and its subsidiaries and affiliates, and their respective directors, officers, members, managers, agents and employees, harmless from and against *any* and all liabilities, losses, assessments, fines, penalties, forfeitures, damages, costs, expenses and disbursements, including reasonable legal fees, expert witness fees, litigation related expenses, and court costs in any litigation, investigation, proceeding or other matter (collectively, "Losses"), whether arising out of a claim or loss of, or damage to property or injury to or death of any person, caused by or arising out of a breach of this Agreement, the disposal of Unacceptable Waste in the Facility, or the transportation of Waste. This indemnification will apply regardless of whether such Losses result from or arise out of the joint or concurring negligence of Customer and Company.

9. MISCELLANEOUS: This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their permitted assigns. The indemnities contained herein will survive the termination of this Agreement. Signatures to this Agreement are valid whether original, copied, emailed or faxed, and this Agreement may be signed in counterparts, all of which will constitute one original. This Agreement will be binding on Customer whether signed by an authorized officer or an agent of Customer. Customer *may* not assign this Agreement or *any* of its rights or obligations hereunder without Company's prior written consent, which consent will not be unreasonably withheld. For purposes of this Agreement, assignment will include sale of more than 50% of Customer's voting securities, merger, or other assignment by operation of law. Any provision of this Agreement which is unenforceable under Applicable Law will be ineffective to the extent that it is prohibited or unenforceable without invalidating the remainder or any portion or provision of this Agreement. The parties hereto agree that this Agreement is made and entered into in the State of North Carolina and will be constructed and controlled under the laws of North Carolina. Company will not be deemed to have waived any of its rights or remedies unless the waiver is in Writing and signed by Company. This Agreement *may* not be waived, changed, discharged, or terminated orally or by any course of dealing between the parties, but only by an instrument in writing signed by the party against whom any waiver, change, discharge or termination is sought. This Agreement supersedes all prior and contemporaneous agreements between the parties with respect to all matters contained herein, and this Agreement constitutes the sole and entire agreement between the parties hereto with respect to the subject matter hereof.