

MEMORANDUM

TO: Warren County Board of Commissioners

FROM: Linda T. Worth, County Manager 

DATE: March 1, 2016

RE: First Amendment and Extension of Collection Center and Transfer Station Operation Agreement with Waste Industries, LLC

Attached is the First Amendment and Extension of the County's Collection Center and Transfer Station Operating Agreement with Waste Industries, LLC. Per the original agreement dated July 1, 2013 that is attached hereto, this agreement extends the contract an additional two years.

Mr. Marshall Brothers, Public Works Director, and I have been in contract negotiations with Waste Industries for several weeks, and we are pleased to report that the contract extension holds the costs for services rendered for the next two years at the current contract rates. However, if disposal rates increase, Waste Industries may pass such increases on to the county.

We have also incorporated in the agreement replacing the signage at the collection sites, and installing compactors at the Warrenton and Eaton's Ferry convenience center sites for compaction of commingled recycling materials and old cardboard containers at a rate of \$95 per compactor per month.

Funds to pay for these services will be budgeted in the FY 2017 Solid Waste Fund. We, therefore, respectfully request the Board's consideration to approve the First Amendment and Extension of Collection Center and Transfer Station Operation Agreement with Waste Industries, LLC to commence July 1, 2016 and end on June 30, 2018.

Please advise if there are any questions or concerns regarding this matter. Thank you in advance for your favorable consideration.

cc: Marshall Brothers, Public Works Director
Attachments

**FIRST AMENDMENT AND EXTENSION OF
COLLECTION CENTER AND TRANSFER STATION OPERATION AGREEMENT**

THIS FIRST AMENDMENT AND EXTENSION OF COLLECTION CENTER AND TRANSFER STATION OPERATION AGREEMENT (this "Amendment") is made and entered into this ___ day of March 2016 by and between WASTE INDUSTRIES, LLC, a North Carolina limited liability company ("WI"), and WARREN COUNTY, NORTH CAROLINA (the "County").

RECITALS

- A. WI and the County are parties to a Collection Center and Transfer Station Operation Agreement dated July 1, 2013 (the "Contract").
- B. The Contract has an Initial Term through June 30, 2016 (the "Initial Term") with extension periods thereafter.
- C. The parties have agreed to extend the Initial Term together with certain other amendments as further set forth herein.

AGREEMENTS

NOW, THEREFORE, in consideration of the Recitals, the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Section II of the Contract is hereby amended to provide that the Initial Term shall be through June 30, 2018. Current rates will remain in effect through the end of the Initial Term, as extended hereby; provided, however, that if disposal rates increase, WI may pass through such increase to the County. In such event, WI will promptly notify the County of the amount of the increase in disposal rates and the resulting increase to the rates paid by the County under the Contract. Thereafter, if extended, the rate adjustments set forth in the Contract will apply.
2. WI agrees to replace the signage at the collection sites similar to the signage currently in place at the Drewry site.
3. WI agrees to install compactors at the Warrenton and Eaton's Ferry sites for compaction of the commingled recycling materials and old cardboard containers at a rate of \$95 per compactor per month. Such rates will remain in effect through the end of the Initial Term subject only to changes in disposal fees as set forth in Section 1 above. Thereafter, if extended, the rate adjustments set forth in the Contract will apply.
4. Except as specifically modified herein, the Contract shall remain in full force and effect as written. Capitalized terms used and not otherwise defined herein will have the meanings set forth in the Contract.

IN WITNESS WHEREOF, this First Amendment and Extension of Collection Center and Transfer Station Operation Agreement is executed and delivered on behalf of the undersigned by their duly authorized representatives as of the date first set forth above.

WARREN COUNTY, NC

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

WASTE INDUSTRIES, LLC

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

This instrument, together with the Contract, has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

County Finance Officer

NORTH CAROLINA

WARREN COUNTY

COLLECTION CENTER AND TRANSFER STATION
OPERATION AGREEMENT

This **Collection Center and Transfer Station Operation Agreement** (hereinafter, "Agreement"), is made and entered into this 1st day of, July 2013 between the County of Warren, a North Carolina body politic and corporate ("hereinafter, "the County"), and Waste Industries, LLC, a North Carolina limited liability company with its principal office in Wake County, North Carolina (hereinafter, "Company");

WITNESSETH:

WHEREAS, the County has determined it necessary to provide for the collection and transportation of certain solid waste from throughout the County for health, safety and wellbeing of its citizens, and;

WHEREAS, the County deems it in the best interests of its citizens to make solid waste collection sites available throughout the County therefore; and,

WHEREAS the County requires the solid waste collected at each collection site to be transported to the Warren County Transfer Station, and;

WHEREAS the County, having responsibility to transport the solid waste from said sites to the Warren County Transfer Station, has determined it is necessary to outsource the operation of the Transfer Station as well as the transportation of the solid waste from the various stations throughout the County to the Transfer Station and from the Station to a permitted landfill, and;

WHEREAS, Company has the ability, expertise and desire to provide said transport of the County's solid waste from the various sites throughout the County to the Transfer Station and from the Transfer State to a permitted landfill on a regular basis, as well as to operate the Warren County Transfer Station, and;

WHEREAS, Company also has all the necessary equipment, materials and source labor required for both the transportation and operation needs of the County.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, and the parties' recitals above being fully incorporated herein and throughout, the parties agree as follows:

- I. Definitions - The following definitions will apply in this Agreement:
 - A. Board: The Warren County Board of Commissioners.
 - B. Construction and Demolition (C&D) Waste: Non-putrescible construction or demolition materials.
 - C. CPI: The Consumer Price Index (CPI) for All Urban Consumers, Table 1 –

Water, Sewer and Trash Collection listed under Commodity and Service Group for April CPI. In the event the Consumer Price Index ceases to be published, the parties shall agree to an alternative method of calculating price adjustments.

- D. DENR: The North Carolina Department of Environment and Natural Resources, including any successor department or agency performing the same or similar duties.
- E. Environmental Law: Any federal, state, county or local statute, law, regulation, rule, ordinance, code, directive, policy, license or permit, or any agreement, imposing liability or standards of conduct or responsibility concerning or otherwise relating to environmental or health and safety matters, as amended from time to time and all as now or at any time hereafter may be in effect.
- F. Excluded Waste: Highly flammable substances, Hazardous Waste, liquid waste, certain pathological and biological wastes, explosives, radioactive materials, or any other waste excluded by any applicable Environmental Law or excluded by any terms and conditions of any permits, licenses or approvals. This term shall also include such other waste material (excluding solid waste) which the company finds, in its discretion, following analysis, to pose an unreasonable risk or danger to the operation or safety of the Company or the environment due to the chemical or physical characteristics of such waste.
- G. Hazardous Waste: All materials or substances defined or characterized as hazardous waste by: i) any federal or North Carolina State law; ii) the United States Environmental Protection Agency; iii) the North Carolina Department of Environment and Natural Resources; or, iv) any other regulating governmental agency, having such authority pursuant to any State or federal law and all current and future amendments thereto, and all regulations promulgated there under.
- H. Person: Any individual, company, partnership, firm, organization, corporation, association, or government entity (other than a county or municipality) or any other legal entity, public or private, whether singular or plural, masculine or feminine, as the context may require.
- I. Recyclable Materials: Materials removed from solid waste and transformed into new products in such a manner that the original products lose their identity. Any products or materials which are incinerated or otherwise used to generate steam or energy will not be considered recyclable materials.
- J. Solid Waste: Any solid waste which may be disposed of in sanitary landfills, including, without limitation, garbage, refuse, trash, sludge and other discarded material, whether from residential, commercial, industrial or institutional sources, which wastes are typically found in household, commercial or municipal refuse, but not including any special waste, excluded waste, yard waste or C&D waste.
- K. Special Waste: Any waste which requires special or exceptional handling or requires approval from DENR for disposal, including without limitation, any material other than that which is typically found in household, commercial or municipal refuse; industrial waste; medical waste, ashes; sludge; residues from

incineration; tires and asbestos. This term excludes nuclear and Hazardous Waste.

L. Transfer Station: The transfer station operating under Permit Number 93-02T issued by NC DENR, located at 559 Baltimore Road, Warrenton, North Carolina, and owned by the County.

M. Waste: Solid waste and special waste.

N. Yard Waste: Stumps, trees and vegetative matter resulting from landscaping maintenance, such as leaves, grass, limbs and trimmings.

II. TERM:

Except as provided otherwise herein, this Agreement shall be binding upon all parties for a minimum period of thirty-six (36) months beginning July 1, 2013 and ending June 30, 2016 (the "Initial Term"). Unless one of the parties has notified the other party in writing a minimum of 60 (sixty) days prior to the date this Agreement is set to expire, the parties hereby agree that this Agreement shall automatically renew for a period of one (1) year with the same terms in effect. The parties agree that with no written notice of termination, this Agreement may automatically renew for a year each July 1st, up to two (2) years past the initial termination date of June 30, 2016.

It is further agreed that during the first quarter of each calendar year (and at least two months prior to that year's June 30th, managing representatives from both the Company and the County will meet to discuss the Company's performance during the preceding twelve (12) month period.

III. Insurance Coverage:

At all times while this Agreement is in effect, whether during the initial term or during any renewal hereof, the Company acknowledges and agrees that it shall maintain in full force and effect: a) Workers' Compensation, b) Employers' Liability, c) Automobile Liability, and; d) General Liability insurance coverages, with at least the minimum coverage amounts outlined below, and underwritten by one or more reputable insurance companies licensed to do business in the State of North Carolina. Each required policy shall name the County as an additional insured along with Company. Upon full execution of this Agreement, the Company shall furnish to the County proper certificates of each insurance policy as proof that such insurance has been procured and is in full force and effect. The certificates shall further contain a provision that the policies will not be cancelled without providing the County at least 30 days written notice.

Type of Insurance	Policy Limits
Workers' Compensation	Statutory
Employers' Liability	
- Bodily Injury by Accident	\$100,000 each accident
- Bodily Injury by Disease	\$100,000 each employee
- Bodily Injury by Disease	\$500,000 policy limit
Automobile Liability	

- Bodily Injury & Property Damage	\$1,000,000 each accident
Commercial General Liability	
- Bodily Injury & Property Damage	\$1,000,000 each occurrence
Excess Liability	\$5,000,000 each occurrence

IV. Indemnification – The Company shall indemnify and hold harmless the County from all claims, damages, losses and/or injuries, including reasonable attorney’s fees, occurring within the scope of Company’s duties hereunder, and/or arising out of any act or omission of the Company in the performance of its work under this Agreement where it is finally, judicially determined that such claim resulted directly from the sole negligence of the Company.

V. Performance:

- A Company does hereby agree to furnish all necessary equipment, materials and labor to provide collection, transportation and operation services.
- B Company shall perform its obligations in a fair and efficient manner. If the County reasonably concludes that the Company is not performing as required under the terms of this Agreement, the County shall notify the Company in writing of the deficiencies and allow the Company fifteen (15) days in which to object to said deficiencies in writing. The Company shall be allowed up to thirty (30) days in which to make necessary adjustments to remedy said deficiencies. In the event the Company fails to correct such deficiencies or fails to comply with the terms of this Agreement within thirty (30) days after written notice of the deficiencies or default, then the County may terminate this Agreement for cause and without penalty, with one exception: if it is determined by the parties that the deficiency/ies causing Company to default hereunder *cannot* be corrected within thirty (30) days, even though Company has acted in good faith to correct:
 - a. The County may request the Company evidence its good faith efforts by supplying a detailed writing of Company’s good faith measures being taken, and;
 - b. The County may *not* terminate this Agreement so long as the Company endeavors to correct the deficiencies in good faith, so long as said deficiencies are corrected within ninety (90) days of the County’s original notice thereof to Company.
- C By the 10th day of each month, the County shall pay to the Company the monthly fees set out in Exhibit A, B and C of this Agreement for each month under this Agreement; provided, however, that if the Company fails to comply with the terms of this Agreement after thirty (30) days written notice, the County is authorized to withhold payment for said breach, until either: i) Company has corrected the breach, or; ii) The County has terminated this Agreement and Company’s final payment becomes due.
- D Company will not be deemed to be in default (or to have breached this Agreement) if, at any time, Company’s breach is determined to have been caused by a major condition beyond Company’s control including, but, not limited to: civil disorder, natural disasters, inclement weather so severe that

safe travel is made impossible, or a material act or omission by the County. Further, Company shall be relieved of its obligation to perform if, at any time, an act of God, war or public enemy, civil commotion, riot or insurrection, or governmental interference renders its performance substantially impossible. During such periods, a mutually agreed-upon reduction in charges reflecting the reduction in services shall be made. The Company shall make all reasonable efforts to resume its full obligated servicing as expeditiously as possible.

- E The County is responsible for providing safe and adequate ingress into collection sites and the disposal facility during sufficient hours to allow the Company to perform its obligations hereunder.

VI. Transportation

- A. All solid waste hauled by the Company shall be so contained that leaking, spilling, or blowing of the contents from the vehicle or container is prevented. In the event of any spillage the Company will promptly clean up the litter. The Company will not be required to accept or transport any Hazardous Waste as defined by the U.S. Environmental Protection Agency or any other waste that would not be acceptable for disposal at the Transfer Station; provided that the Company will promptly notify the Solid Waste Director or his/her designee if it detects any illegal or Hazardous Waste.
- B. The Company shall make available to the County, a permitted sanitary landfill for the final disposal of solid waste. Cost of performance under this Agreement is based on utilizing the landfill located in Brunswick County, Virginia (the "Brunswick Landfill"), and operated by Allied Brunswick Landfill. The current rate of disposal at the Brunswick Landfill is \$20.00 per ton. Any increases in the rate of disposal shall be passed along to the County on a dollar-for-dollar basis in the exact amount of the increase.

Should the Brunswick Landfill become unavailable to accept waste, the County and the Company will mutually seek an alternate permitted sanitary landfill for the final disposal of solid waste and will negotiate in good faith any differences in disposal and transportation costs. At any time during the Initial Term and any Extension Term of this Agreement, alternative disposal sites may be considered and utilized upon the mutual agreement of the County and the Company.

VII. Responsibility of the Company:

- A. The Company shall assign qualified personnel to manage and operate the collection and transportation system. The Company agrees that all employees will be required to wear clean uniforms that display the name of the Company and identify the individual as an employee of the Company. Each employee will carry a valid operator's license for the type of vehicle such employee is required to operate. The Company shall provide operation and safety training for all operational personnel. The Company will attempt to recruit and hire qualified Warren County residents as site attendants. The County will assist the Company by providing an ongoing list of interested, qualified citizens for any vacancies.

- B. The Company agrees that in the performance of this Agreement the Company shall not discriminate against any employee or applicant because of race, color, creed, national origin, sex, age or ancestry.
- C. The Company shall comply with the applicable solid waste laws of the State of North Carolina, the rules and regulations promulgated there under and the rules and regulations of the County, and with any and all other federal, state and County laws and regulations applicable hereto.
- D. The Company shall be responsible for obtaining all permits or licenses required for the operation of a business in the State of North Carolina.
- E. The Company shall provide cleanup inside the area of the container sites including general housekeeping and cleanup of any spillage resulting from emptying of containers.

VIII. Responsibility of the County:

- A. The County shall be responsible for the landscaping, fencing, construction and repairs to the collection sites and the Transfer Station. The County will ensure that such facilities are now, and remain in full compliance with all applicable laws, including without limitation, maintenance of all required permits. The County shall be responsible for insuring that the Company has reasonable egress and ingress at times convenient to the Company into and out of all collection sites and into the Transfer Station.
- B. The County shall provide site location and development at all manned sites, including concrete pads, power service, utilities, wash down water where available, fencing and lighting.

IX. Service Level:

The County currently operates eight (8) collection sites. The Company will service the sites at a sufficient level to insure the cleanliness of the sites and that adequate volume is available for use by the public.

Changes in the number and location of sites and type of service will be as mutually agreed to by the County and the Company. Such changes will be carried out as provided for in Section X.

X. Compensation for Service:

- A. The County shall compensate the Company for services rendered under this Agreement based upon the rates and charges set forth in Exhibit A, B and C. Except as may be required under Section V.B, such rates (i) shall be fixed for the Initial Term, and (ii) will be capped at 3% per year for each Extension Term.
- B. If requested by the Company, the Company will be granted a monthly oil/energy adjustment based on the following:

Convenience Site Hauls:

If the price of fuel exceeds \$4.20 per gallon, an oil/energy surcharge will be calculated as follows for Convenience Site Hauls:

For each \$0.01 (one cent) increase in fuel cost above \$4.20 per gallon, the adjustment to each haul will be an additional \$0.04 (four cents).

Transfer Station Hauling:

If the price of fuel exceeds \$4.20 per gallon, an oil/energy surcharge will be calculated as follows for Transfer Station Hauls:

For each \$0.01 (one cent) increase in fuel cost above \$4.20 per gallon, the adjustment to each haul will be an additional \$0.20 (twenty cents).

- C. The Company will be compensated for the following additional services as required by the County:

Front End Service:

Jack's Landing Subdivision:
Two (2) 8 YDS (County Owned)
Once Per Week Service
(Memorial Day through Labor Day)
Cost per month total: \$404.94

Two (2) 8 YDS (County Owned):
Twice Per Month Service for the other nine months of the year
Cost per month total: \$224.97

Warren County Jail:
One (1) 8 YD (Company Owned)
Twice Per Week Service
Cost per month total: \$489.32

Annual & Monthly Front End Billing:

Jack's Landing Subdivision:

Three (3) Months at \$404.94/month: (Memorial Day thru Labor Day)	\$1214.82
Nine (9) Months at \$224.97/month:	<u>\$2024.73</u>
Total Annual Billing for Jack's Landing:	\$3239.55
Total Monthly Billing for Jack's Landing:	\$ 269.96

Total Annual Billing for all Front End Service:

Warren Co. Jail: \$489.32/month x 12 months:	\$5,871.84
Jack's Landing Annual Billing:	<u>3239.55</u>

Total Annual Front End Billing	\$9111.39
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Total Monthly Billing for all Front End Service:	\$ 759.28
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XI. Collection System Improvement:

The County and the Company agree and understand that from time to time it may be in the best interest of the County and the Company to effect certain operational changes within the solid waste collection system. These changes may include, but are not limited to the following:

1. Adding or reducing the number of sites.
2. Adding or reducing the number of containers.
3. Increasing or decreasing the level of service.
4. Redesigning the system to take advantage of technological changes in operational procedures or in response to changes in governmental regulations.
5. The providing of additional services such as residential services, recycling services, convenience centers or other improvements.

The County and Company hereby agree to effect such changes and to negotiate, in good faith, the changes and compensation that may result from such operational changes.

XII. Recycling Services:

Commingled recycling services provided by the Company are described in Exhibits A and B.

XIII. Miscellaneous Provisions:

- A. This Agreement is non-transferable without the written agreement of the non-transferring party.
- B. This Agreement shall be binding upon the successors, assigns, agents, officials and employees of the parties to this Agreement.
- C. All Exhibits to this Agreement are attached hereto and fully incorporated by reference herein.
- D. This Agreement, together with all attached and referenced Exhibits, shall constitute the entire understanding and agreement of the parties and supersede and replace any and all previous discussions, negotiations, and/or agreements entered into by the parties relating to the subject matter herein.
- E. The Company shall comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances regarding toxic, hazardous and solid waste and any other pollutants, public and private nuisances; health or safety; and zoning, subdivision or other land usage controls.
- F. The Company will take all reasonable, necessary, proper and required safety, preventive and remedial measures in accordance with any and all regulations

and directives from the North Carolina Department of Human Resources, U.S. Environmental Protection Agency, North Carolina Department of Environmental Management and any other federal, state or local agency having jurisdiction.

- G. This Agreement may only be modified, amended or changed in writing and executed by the parties with the same formality as this original Agreement.
- H. By their signatures below, each party's authorized representative acknowledges they have had opportunity to review this Agreement with legal representation of their choosing.

IN WITNESS WHEREOF, the County of Warren has caused this Agreement to be duly executed in its name and behalf with the seal affixed and the Company has caused this Agreement to be duly executed in its name and behalf with its corporate seal to be affixed hereto the day and year first above written.

WASTE INDUSTRIES, LLC

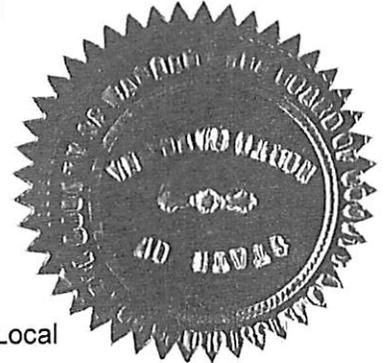


ATTEST:


Assistant Secretary

Burtadean W. Baker
Chairman, Warren County Board
of Commissioners

ATTEST:


Clerk to the Board of the Warren
County Commissioners

This document has been pre-audited in conformance with the Local Environmental Fiscal Control Act.

[Signature] 7-9-13
Warren County Finance Officer

This document has been reviewed as to legal sufficiency.


County Attorney

EXHIBIT A

The following rates and charges will apply to services provided by the Company:

1. The Company will provide the following hourly services and equipment at the convenience/recycling sites established by the County:

- One (1) site will be operated 47 hours per week.
- One (1) site will be operated 48 hours per week.
- One (1) site will be operated 66 hours per week.
- Five (5) sites will be operated 44 hours per week.
- Eaton's Ferry Site #1 will operate seven days a week, twelve (12) hours per day from Memorial Day through Labor Day.
- Operators' house
- Telephone service
- Entrance sign
- Sanitary facility
- Trash Compactor and Container
- Containers for bulky items
- At least one commingle and one cardboard recycling container at each site.
- Hauling service for all material

2. The Company will provide the following commingled services at the eight (8) manned convenience sites established by the County:

- Recycling
- Newsprint
- Glass – brown – green – clear
- Aluminum beverage container
- Old corrugated cardboard
- Plastic Bottles
- Metal Cans
- Any other items that may be recycled at the processor if mutually agreed by the Company and the County

The monthly charge for services listed above at eight (8) sites will be \$50,019.33 at the inception of this agreement.

EXHIBIT B

As part of the manned site operation the Company shall provide recycling containers as outlined in Exhibit A. The Company shall transport, process and market all recyclable materials collected at the sites provided that the Company shall not be required to collect, process or transport material for which no market exists, in the sole discretion of the Company or to process materials that the Company reasonably believes are contaminated.

All revenues generated by the sale of the recyclable materials will be retained by the Company.

EXHIBIT C

The following rates and charges will apply to services provided by the Company:

The Company shall provide the following services at the Transfer Station established by the County:

- Transfer Station will be operated forty-five (45) hours per week, Monday through Friday.
- Trash Compactor (County Owned)
- Disposal Trailers
- Tractor
- Backhoe for loading
- Hauling and disposal services for all material

The charge for services listed above at the Transfer Station will be \$62.67 per ton at the inception of this agreement.

As the County is the owner of the compactor they will be responsible for all operation and maintenance costs associated with the trash compactor.