

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

CONTRACT BETWEEN THE CITY OF DURHAM  
AND WASTE INDUSTRIES, LLC FOR  
TRANSFER, TRANSPORT AND DISPOSAL SERVICES

This Contract is dated, made, and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the City of Durham ("City") and WASTE INDUSTRIES, LLC ("Contractor"), a limited liability company organized and existing under the laws of North Carolina.

Sec. 1. Background and Purpose, and Definitions. The Contractor shall design, permit and construct a Transfer Station, as specified herein, at the City's Waste Disposal and Recycling Center (WDRC) for the receipt and transfer of Acceptable Waste and Recyclable Materials. The Contractor shall accept, transfer, transport and dispose of Acceptable Waste delivered to the Transfer Station or the City's existing transfer station until such time the new Transfer Station is operational. The Contractor also shall accept, transfer, and transport Recyclable Materials to the Designated Materials Recovery Facility (MRF). The Contractor is responsible for the operation and maintenance of the Transfer Station throughout the term of this Contract.

Definitions. As used herein, the following terms shall have the meanings set forth below:

- (1) **Acceptable Waste:** Solid waste that is not a regulated hazardous waste or regulated medical waste as described by North Carolina Solid Waste Management Regulations, or any other applicable State or federal regulation, and will not pose a threat to health or public safety, or cause injury to, or adversely affect the operation of the transfer station, or disposal facility. Acceptable Waste includes "municipal solid waste" (MSW) as defined by N.C.G.S. 130A-290(a)(18a).
- (2) **Applicable Law:** Any law, statute, order, decree, injunction, license, permit, consent, approval, agreement or regulation of any Governmental Authority having jurisdiction over the matter in question, or other legislative or administrative action of a Governmental Authority, or final decree, judgment or order of a court which relates to the performance of Work hereunder or the interpretation or application of this Contract.
- (3) **Base Fuel Price:** The per-gallon value for On Highway Diesel – All Types of the PADD 1C area as reported by the U.S. Energy Information Administration on Monday, September 12, 2012.
- (4) **City:** The City of Durham, North Carolina, including its departments, divisions, personnel and agents.
- (5) **Commencement Date:** The date the Contractor commences with conducting Work pursuant to this Contract, or July 1, 2013.
- (6) **Construction and Demolition (or C&D) Waste:** Solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, or other structures. Construction wastes include, but are not limited to, lumber, wire, sheet rock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics, if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases, or semi-liquids and garbage are not construction wastes.
- (7) **Contract:** This agreement between the City and the Contractor, including any and all attachments, exhibits, and written amendments thereto.
- (8) **Disposal Manager:** The person authorized by the City to oversee the Contract and Contractor's compliance with the terms and conditions of the Contract.

- (9) **Contract Year:** Twelve consecutive months beginning on the Commencement Date and every consecutive twelve (12) months thereafter for the term of the Contract.
- (10) **Contractor:** Waste Industries, LLC.
- (11) **Consumer Price Index (CPI):** The index published by the Bureau of Labor Statistics for All Urban Consumers, US City Average, Base period 1982-84=100 (Series ID# CUUR0000SA0L1E) used to escalate prices either up or down, subject to limits provided herein.
- (12) **Convenience Center:** A site located on the City's WDRC at which residents and businesses may drop off Acceptable Waste, Recyclable Materials, and HHW.
- (13) **Day:** Calendar day unless otherwise specifically designated.
- (14) **Design-Build Work:** All Work required relating to the planning, permitting, design and construction of a Transfer Station pursuant to this Contract. This includes, but is not limited to, all labor, materials, design documents, equipment, transportation, utilities, insurance, temporary facilities and other services necessary to complete planning, design, engineering, and construction.
- (15) **Designated C&D Facility:** Redrock C&D Landfill, located at 7130 New Landfill Drive, Holly Springs, North Carolina 27540, or other facility as approved by the City.
- (16) **Designated Disposal Facility:** Sampson County Landfill, located at 7434 Roseboro Highway, Roseboro, North Carolina, 28382, or other facility as approved by the City.
- (17) **Designated MRF:** The City's contracted processor's MRF located at 111 Rogers Lane, Raleigh, North Carolina 27610, or other facility as approved by the City.
- (18) **Director:** Director of the City of Durham's Solid Waste Management Department.
- (19) **Disposal Facility:** A solid waste disposal facility, which has received all of the necessary permits and approvals from the appropriate environmental regulatory agencies, and which lawfully may receive and dispose of Acceptable Waste.
- (20) **Disposal Fees:** The fees the Contractor may charge the City, on a per Ton basis, for disposal of Acceptable Waste and C&D Waste. Fees may vary by material type.
- (21) **Final Design Documents:** Final detailed plans and specifications, as approved by the City, necessary and to allow complete construction of the Project in conformance with the Technical Specifications and other requirements of this Contract.
- (22) **Fuel Price Index (FPI):** The Lower Atlantic (PADD 1C) No 2 Diesel, All Types, Retail Price (dollars per gallon) as published by the U.S. Energy Information Administration.
- (23) **Governmental Authority:** Any national, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other entity having jurisdiction over the performance of the Work, the project or its operations, or the health, safety or environmental conditions of the project or the site, or otherwise over the parties hereto.
- (24) **Haul Fees:** The fees the Contractor may charge the City, on a per Ton basis, for transporting Acceptable Waste, Recyclables, and C&D Waste. Fees may vary by material type.
- (25) **Hazardous Substances:** Any hazardous or toxic substances, materials or wastes, including those substances, materials, and wastes listed by the Environmental Protection Agency as hazardous substances under 40 CFR part 302 and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law or the equivalent under applicable foreign laws including, without limitation, any materials, waste or substance which include petroleum, asbestos, polychlorinated biphenyls, defined as a "hazardous substance" or "hazardous waste" under applicable local, state or federal law or the equivalent under applicable foreign laws, designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, defined as "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, or defined as

"hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act. Under this Contract, "Hazardous Substances" shall include what are commonly termed "Household Hazardous Wastes," including "Universal Wastes," as defined under the Resource Conservation and Recovery Act, (batteries, (lead-acid or other), fluorescent light tubes) compact fluorescent bulbs, pesticide containers, thermostats, thermometers, paint containers, and household chemicals.

- (26) **Holidays:** The days on which City facilities will be closed, including New Year's Day, Martin Luther King Day, Good Friday, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day, and any other days designated by the City.
- (27) **Household Hazardous Waste (HHW):** Household products or wastes that contain corrosive, toxic, ignitable or reactive ingredients, including products such as paints, cleaners, oils, batteries, and pesticides that contain potentially hazardous ingredients.
- (28) **Load Fees:** The fees the Contractor may charge the City, on a per Ton basis, for the acceptance and loading of Acceptable Waste, Recyclables, and C&D Waste. Fees may vary by material type.
- (29) **Materials Recovery Facility (MRF):** A facility at which Recyclable Materials are processed to recover marketable commodities or Recovered Materials.
- (30) **Non-Acceptable Waste:** Waste that cannot be accepted at the Transfer Station or Designated Disposal Facility because of permitting restrictions. Examples may include explosives, pathological and biological waste; hazardous waste, radioactive materials; foundry sand; sanitary sewage and other dilute liquid waste; human and large quantities of animal remains; motor vehicles; agricultural and farm machinery and equipment; crank case oils; cutting oils; and paints.
- (31) **Project:** All services and work required pursuant to this Contract for the construction of a Transfer Station including Design-Build Work.
- (32) **Project Site (Site):** The site intended for Transfer Station construction located at the WDRC.
- (33) **Recovered Materials:** Materials that have known potential to be feasibly used, reused, or recycled, and have been diverted or removed from the solid waste stream for sale, use, or reuse, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. In order to qualify as a recovered material, a material must meet the requirements of N.C.G.S. §130A-309.05(c).
- (34) **Recyclable Materials (Recyclables):** Materials that are capable of being recycled and that would otherwise be processed or disposed of as solid waste.
- (35) **Request for Proposals (RFP):** The competitive procurement for solid waste services released by the City on October 17, 2012 to which the Contractor responded and was selected for service by the City.
- (36) **Solid Waste:** As defined under N.C.G.S. §130A-290 (a)(35) and referring to any nonhazardous, unrecyclable waste material that must be disposed of as waste.
- (37) **Solid Waste Ordinance:** City Code of Ordinances Part II, Chapter 58 Solid Waste Collection and Disposal.
- (38) **Special Waste:** Solid wastes that are difficult to handle, require special precautions because of hazardous properties, or the nature of the waste creates waste management problems in normal operations. Examples include, but are not limited to, asbestos, noninfectious medical wastes, sludges, fiber mulch, and ash.
- (39) **Subcontractor:** An individual, firm, or corporation having a direct contract with Contractor for the performance of a part the services contracted for by the City this Contract.
- (40) **Technical Specifications:** Conceptual, preliminary or Final Design Documents and/or drawings, and other documents pertaining to the standards, requirements and plans for Transfer Station construction agreed upon by the City and the Contractor.

- (41) **Ton:** A unit of weight equal to 2,000 pounds, also referred to as a short Ton.
- (42) **Trailer:** A wheeled container with a capacity to hold at least 95 cubic yards of materials for transport from the Transfer Station to the appropriate facility.
- (43) **Transfer Station:** The facility constructed by the Contractor, pursuant to the terms and conditions of this Contract, and the existing Transfer Station, for the unloading of Acceptable Waste and Recyclables and the transfer of such materials into Trailers for transport offsite.
- (44) **Uncontrollable Circumstance:** Any act, event or condition beyond the reasonable control of the parties involved that materially expands the scope, interferes with or delays the ability of the party performing under this Contract, to fulfill obligations as required by this Contract. Uncontrollable Circumstances include changes in law; contamination of the Project from groundwater, soil or airborne Hazardous Material not disclosed to or known by the City or Contractor as of the Contract Date; naturally occurring events (except weather conditions normal for the Project Site) such as landslides, underground movement, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics and other acts of God; explosion, terrorism, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance; labor disputes, except labor disputes involving employees of the Contractor, or Subcontractors which affect the performance of the Design-Build Work.
- (45) **Waste Disposal and Recycling Center (WDRC):** The City-owned site located at 2115 East Club Boulevard, Durham, North Carolina 27704, which houses the existing transfer station, Project Site, Convenience Center, and other solid waste activities.
- (46) **Work:** The services that the Contractor is required to perform pursuant to this Contract and all of the Contractor's duties to the City that arise out of this Contract. Unless the context requires otherwise, if this Contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.
- (47) **Yard Trash:** Solid waste consisting solely of vegetative matter resulting from landscaping maintenance as defined in N.C.G.S. §130A-290(45).

Sec. 2. Services and Scope to be Performed: Presumption that Duty is Contractor's.

- (a) The Contractor shall be responsible for the design and construction of the Transfer Station, including all aspects of the Project and the scope of services outlined in Exhibit A, *Scope of Services: Transfer Station Design and Build*.

The Contractor shall be responsible for operating and maintaining the Transfer Station; for accepting, transferring, transporting, and disposing of Acceptable Waste; and for accepting, transferring, and transporting Recyclable Materials as outlined in the scope of services in Exhibit B: *Scope of Services: Transfer, Transport, and Disposal*.

In this Contract, "Work" means the services that the Contractor is required to perform pursuant to this Contract and all of the Contractor's duties to the City that arise out of this Contract. Unless the context requires otherwise, if this Contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Term. The initial term of this Contract shall begin on the Commencement Date of July 1, 2013 and shall continue for a period of ten (10) years ending June 30, 2023 at 11:59 p.m. (the "Initial Term"). At the sole discretion of the City, the Contract may be renewed for two (2) additional terms of five (5) years each.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this Contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor's Billings to City; Compensation. The Contractor shall send invoices to the City on a monthly basis, no later than the 15<sup>th</sup> of each month for the amounts to be paid pursuant to this Contract as described in Exhibit C and adjusted pursuant to Exhibit D. Each invoice shall document, to the reasonable satisfaction of the City, the information required in Section 6; calculation of the fees owed by the City; and such other information as may be reasonably requested by the City. Within twenty (20) days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 6. Reporting and Records.

- (a) Reporting. No later than fifteen (15) calendar days following the Commencement Date of this Contract, the Contractor shall submit to the Disposal Manager, for approval, the format and sample contents of the records to be maintained and the reports to be generated in fulfillment of the requirements of this Contract. The Contractor shall create, maintain, and make available records as defined in and required by all Applicable Law, and any reports as are reasonably necessary to document and track information described herein. All records provided to the City shall be in an Excel spreadsheet or other format as approved by the Disposal Manager.

The Contractor shall provide to the City the following reports:

- (1) Monthly reports: By the fifteenth (15<sup>th</sup>) of each month, the Contractor shall submit to the Disposal Manager an electronic report summarizing the Tons of Acceptable Waste disposed of in the Designated Disposal Facility, broken down by day; Tons of Recyclables delivered to the Designated MRF, broken down by day; and the number of Trailers containing Acceptable Waste and Recyclables departing from the Transfer Station, broken down by material type for each day. Additionally, the Contractor shall include a summary of the activities of the reporting month including, but not limited to, shutdown times, maintenance, summary of the results of random load checks, accident reports, copies of all correspondence and summaries of discussion with regulatory agencies, customer complaints, operating problems or concerns, changes in operations, and other information that the City and Contractor may require from time to time.
- (2) Annual Reports: Contractor shall file an annual report with the City no later than thirty (30) days following the close of a Contract Year. The annual report shall summarize the previous year's operations including a discussion of operating issues that occurred during the year, anticipated operating system issues during the coming fiscal year, planned capital improvements, and any other information pertinent to the maintenance and stewardship of the Transfer Station, permits, and any other related aspects of this Contract.
- (3) Complaint Reports: Contractor shall notify the City within twenty four (24) hours of the Contractor receiving a citizen complaint. Contractor shall maintain a complaint log and document all corrective actions. Contractor shall provide the complaint log upon request.

Records. The City or any of its duly authorized representatives shall have access, within seven (7) calendar days of notification, to all of Contractor's books, records, data and documents related to this Contract for inspection and audit at the Contractor's expense. The Contractor will maintain and allow access to books, records, data, documents, and reports relating to this Contract for three (3) years following the conclusion or termination of this Contract. These records should document, but are not limited to, the following information:

- (1) All information contained in reports as specified in (a) above.
- (2) Detailed maintenance records for all equipment and systems at the Transfer Station.

Sec. 7. Prompt Payment to Subcontractors.

- (a) Within 7 days of receipt by the Contractor of each payment from the City under this Contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this Contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

If the individual assigned to administer this Contract for the City (in this section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the "Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be:

- (1) The amount of interest due to the Subcontractor under subsection (a), and/or
- (2) The amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

#### Sec. 8. Insurance.

Insurance provided pursuant to this Contract shall be provided by companies authorized to do business in the State of North Carolina, and that maintain a Best rating of A-VIII or better.

- (a) Professional Liability, covering:
- Covering claims arising out of professional advisement / consultation services performed in connection with this contract
  - Combined single limit not less than \$5,000,000 per occurrence; if coverage is only available on claims made basis, then additional coverage requirements may apply, subject to review of City Finance Director
- (b) Commercial Liability. The Contractor shall maintain commercial general liability to include Pollution Legal Liability insurance covering premises and operations, products and completed operations, broad form property damage, explosion, collapse, and underground hazards if the hazards exist in the performance of this Contract, contractual liability, and independent contractors, if any are used in the performance of this Contract. City of Durham must be named additional insured. An original of the endorsements to effect the coverage must be attached to the certificate (if blanket endorsements, then agent may so indicate in the GL section, in lieu of an original endorsement). Coverage must include a combined single limit not less than two million dollars (\$2,000,000.00) per occurrence and aggregate limit not less than two million dollars (\$2,000,000.00) per year.
- (c) Automobile Liability Insurance. The Contractor shall maintain automobile liability insurance covering owned, hired, and non-owned vehicles employee-non-ownership, MCS-90 endorsement for transportation of hazardous materials and, where applicable combined single limit not less than

one million dollars (\$1,000,000.00) per accident. City of Durham must be named additional insured. An original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement).

- (d) Worker's Compensation Insurance. The Contractor shall maintain worker's compensation insurance covering statutory benefits, employees, owners partners, officers, and relatives (who work on this Contract, and who must be specifically provided as covered by the policy), employers' liability, with a limit if not less than one million dollars (\$1,000,000.00). Waiver of subrogation must favor of the City of Durham.
- (e) Umbrella Liability. (1) The Contractor shall maintain excess or umbrella liability insurance covering commercial general liability, pollution legal liability, and automobile liability.

**Sec. 9. Performance of Work by Contractor.**

- (a) Construction Bond. Upon execution of this Contract, the Contractor shall deliver to the City a Construction Bond in the amount of \$\_\_\_\_,\_\_\_\_. The bond shall be limited to one and only one surety which shall be issued by a Surety Company authorized to do business in the State of North Carolina and have an A.M. Best rating of "A" or better and the "T" Underwriting limitation is not exceeded by this bond.
- (b) Performance Bond. Upon execution of this Contract, the Contractor shall deliver to the City a Performance and Payment Bond in the amount of \$\_\_\_\_,\_\_\_\_. The bond shall be limited to one and only one surety which shall be issued by a Surety Company authorized to do business in the State of North Carolina and have an A.M. Best rating of "A" or better and the "T" Underwriting limitation is not exceeded by this bond.
- (c) If the Contractor fails to perform the Work in accordance with the provisions of this Contract, the City may, at its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.
- (d) Liquidated Damages. The City and Contractor acknowledge and agree that it is impossible to precisely determine the amount of damages that would be incurred by the City due to those failures or circumstances described in this section and for which the Contractor would otherwise be liable. Accordingly, the parties agree the liquidated damages set forth herein are reasonable under the circumstances. Therefore, the following constitute liquidated damages, not penalties, for the Contractor's failure to perform in accordance with the provisions of this Contract.
  - (1) The City shall notify the Contractor in writing of its decision to assess liquidated damages. If the Contractor desires to challenge the decision, it must do so in writing within seven (7) calendar days after receipt of notice from the City. The request shall specify the grounds upon which the Contractor objects to the assessment of liquidated damages by the City. The matter shall be referred to the City Manager who shall rule on the Contractor's challenge. The City Manager's ruling shall constitute a final determination of the matter.
  - (2) Any assessed liquidated damages will be withheld from amount due Contractor with 30 days of the City Manager's ruling.
  - (3) The City may assess liquidated damages in the amounts listed below:

Violation	Liquidated Damages
(a) Failure to meet the Design-Build completion date unless otherwise approved by the City (Exhibit A, Sections (B)(4) and (D)(1))	\$5,000 per day for each day after the scheduled completion date

(b) Failure to operate the Transfer Station during required operating hours (Exhibit B, Section (B)(5))	\$1,000.00 per occurrence
(c) Receipt of Notice of Violation from State for improper operating	Any fine or corrective action needed to mitigate the violation(s)

Sec. 10. Exhibits. The exhibits listed below are made a part of this Contract. In case of conflict between an exhibit and the text of this Contract excluding the exhibit, the text of this Contract shall control.

- Exhibit A. Scope of Services: Transfer Station Design and Build containing 6 page(s).
- Exhibit B. Scope of Services: Transfer, Transport and Disposal containing 6 page(s).
- Exhibit C. Payments to the Contractor containing 2 page(s).
- Exhibit D. Fee Adjustment Formulas containing 1 page(s).
- Exhibit E. Preliminary Technical Specifications and Conceptual Drawings containing 5 page(s).
- Exhibit F. Schedule for Additional Design-Build Documents containing \_\_ page(s).

Sec. 11. Notice.

- (a) All notices and other communications required or permitted by this Contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:  
Solid Waste Management Department  
Attn: Director  
City of Durham  
101 City Hall Plaza  
Durham, NC 27701-3329  
Office: 919-560-4186  
The fax number is 919-560-1197  
Email: donald.long@dur-hamnc.gov

To the Contractor:  
Waste Industries, LLC  
Attn: Brent Kirchhoff  
3301 Benson Drive, Suite 601  
Raleigh, NC 27609  
Office: 919-325-3000  
The fax number is 919-598-1852  
Email: Brent.Krchhoff@Wasteindustries.com

Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 12. Indemnification.

- (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are

- (1) Interest and reasonable attorneys' fees assessed as part of any such item, and;
- (2) Amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this Contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Contract.

Survival. This section shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this Contract.

Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

### Sec. 13. Miscellaneous.

- (a) Choice of Law and Forum; Service of Process. (i) This Contract shall be deemed made in Durham County, North Carolina. This Contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

Performance of Government Functions. Nothing contained in this Contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

Severability. If any provision of this Contract shall be unenforceable, the remainder of this Contract shall be enforceable to the extent permitted by law.

Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's

defenses and shall be liable for all of the Contractor's duties that arise out of this Contract and all of the City's claims that arise out of this Contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this Contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES 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 CITY CONTRACTS.

EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this Contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this Contract and in every subcontract related to this Contract so that these EEO provisions will be binding upon such subcontractors and vendors.

SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this Contract and/or other appropriate remedies in accordance with the provisions of that article, this Contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

No Third Party Rights Created. This Contract is intended for the benefit of the City and the Contractor and not any other person.

Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this Contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar

day. (8) The word "Work" is defined in Section 2. (9) A definition in this Contract will not apply to the extent the context requires otherwise.

Modifications. Entire Agreement. A modification of this Contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This Contract contains the entire agreement between the parties pertaining to the subject matter of this Contract. 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 Contract.

City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this Contract or the Contractor's services under this Contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

Competition by Contractor. During the term of this Contract, the Contractor shall not charge a lower tipping fee for Solid Waste at its transfer station located at 210 Stone Park Court, Durham, North Carolina than the City charges for Solid Waste at the WDRC.

Sec. 14. Termination for Convenience ("TFC").

- (a) Procedure. Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this Contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice.

Obligations. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this Contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate.

Payment. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 15. Termination for Cause. If the Contractor fails to satisfactorily perform the Work for a period of thirty (30) days after written notice by the City to the Contractor, the City for cause, and at its sole discretion, may terminate this Contract for failure to cure by giving the Contractor written notice.

IN WITNESS WHEREOF, the City and the Contractor have caused this Contract to be executed under seal themselves or by their respective duly authorized agents or officers.

CITY OF DURHAM

\_\_\_\_\_ By: \_\_\_\_\_

WASTE INDUSTRIES, LLC

By: \_\_\_\_\_ (SEAL)  
Manager

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, a notary public in and for said county and state, certify that \_\_\_\_\_ personally (1) appeared before me this day, (2) stated that he or she is a manager of Waste Industries, a limited liability company organized and existing under the laws of the State of \_\_\_\_\_, (3) acknowledged that the foregoing contract with the City of Durham carries on the company's business in the usual way, and (4) acknowledged the due execution, under seal, of the contract on behalf of the company. This the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

My commission expires: \_\_\_\_\_  
Notary Public

NORTH CAROLINA  
COUNTY of \_\_\_\_\_

I, a Notary Public in and for the aforesaid county and state certify that \_\_\_\_\_ personally appeared before me this day, and acknowledged that he or she is \_\_\_\_\_ City Clerk of the city of Durham, a N.C. municipal corporation, and that by authority duly give and as the act of said corporation, the foregoing contract was signed in its name by \_\_\_\_\_, its City Manager, sealed with its corporate seal, and attested by its said City or Deputy City Clerk. This the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

My commission expires: \_\_\_\_\_  
Notary Public

## EXHIBIT A. SCOPE OF SERVICES: TRANSFER STATION DESIGN AND BUILD

### (A) City Responsibilities

- (1) **Ownership of Real Property.** The City owns and shall retain the legal title to the Project Site. The City shall obtain and maintain any and all land use servitudes, easements, and rights-of-way necessary for the performance of the obligations of both the City and the Contractor at the Site pursuant to this Contract. The City shall own all right, title and interest in the land, mineral rights, trees, and permanent improvements to the site.
- (2) **Project Site Access Date.** The City shall provide the Contractor full rights to access the Project Site upon execution of this Contract, or as soon as deemed appropriate by the City according to the schedule provided in Section \_\_. The Contractor shall assume all risks associated with access to the Project Site, and shall indemnify, defend, and hold harmless the City in accordance with Section 12 of the Contract.
- (3) **No Implied Representations or Warranties.** Except as set forth in this Contract, the City shall not be deemed to have made:
  - (a) Any representations or warranties, either express or implied, irrespective of any reviews or other action by the City, or its representatives, with respect to the Project;
  - (b) Any representations or warranties as to compliance with Design-Build Work Requirements, design, operation, fitness for use, condition or capacity, actual or design, of the Project, or any representations or warranties as to the suitability of the Project for the purpose specified in this Contract or for any other purpose specified in this Contract or otherwise.
- (4) **Right to Inspect.** The City reserves the right to monitor, review and inspect the performance of any and all Work by the Contractor pursuant to this Contract, including but not limited to Design-Build Work, site preparation, engineering and construction practices, environmental mitigation measures, quality assurance and control, and repair, replacement and restoration work.

### (B) Contractor Responsibilities

- (1) **General Description.** The Contractor shall be responsible for the design and construction of a Transfer Station and Site Improvements as specified by the preliminary technical specifications and drawing set forth in Exhibits E and the more detailed design documents to be submitted by the Contractor in accordance with Exhibit F, including all Design-Build Work and any additional specifications as agreed to by the City and the Contractor. The Project shall be conducted in accordance with the terms and conditions of this Contract, including schedule requirements outlined in herein.
- (2) **Transition.**
  - (a) Prior to transition, the Contractor shall provide the City a concise transition plan detailing how Acceptable Waste and Recyclables will be handled throughout Design-Build Work until the Transfer Station is fully operational ("Transition Plan"). The Plan will be provided within 30 days of the effective date of the contract. The City will have 15 days to review and approve the plan. ?
  - (b) Transition shall commence upon the effective date of this Contract or upon approval by the City.
  - (c) At no additional cost to the City, the Contractor shall be responsible for any modifications to the existing transfer station necessary to operate during Design-Build Work. This includes, but is not limited to, the removal and disposition of the existing compactor.
  - (d) If necessary during Design-Build Work and only with prior approval by the City, the Contractor shall accept, load, and transfer Acceptable Waste and/or Recyclables at its privately owned transfer station located at 210 Stone Park Court, Durham, North Carolina. The City and the Contractor shall cooperate to coordinate delivery of materials to the Contractor's transfer station; however, the City shall retain control over sources and types of material being diverted to the Contractor's privately owned transfer station.. Upon commencement of operations at the new Transfer Station, the

Contractor shall divert an equivalent amount of Acceptable Waste from the Contractor's transfer station to the Transfer Station.

- (3) End of Term Transition. During any transition period occurring at the end of this Contract, the Contractor shall cooperate with the City and, if applicable, the incoming contractor. Such cooperation includes, but is not limited to, allowing site visits of the Transfer Station by the County and the incoming contractor, upon receipt of reasonable advance notice, and ensuring all facilities are in good condition. The Contractor shall coordinate and cooperate with the newly selected contractor, if applicable, and the City, to minimize any disruptions in the service provided.
- (4) Design-Build Work. In accordance with the Contract provisions herein and the schedule provided by the Contractor pursuant to Section (D)(1) of this Exhibit A, the Contractor shall be responsible for all Design-Build Work and shall conduct the following to the extent required:
  - (a) Apply for, obtain and maintain all permits, licenses, and governmental approvals.
  - (b) Conduct all site preparation work, and prepare and excavate the Project Site.
  - (c) Clear, grub and grade the Project Site.
  - (d) Re-route or replace any utilities.
  - (e) Remove from the Project Site and dispose of any debris resulting from the Design-Build Work and any unused soil excavated therefrom.
  - (f) Construct the Project.
  - (g) Support the City's efforts related to stakeholder involvement and community outreach.
  - (h) Perform all environmental mitigation measures.
  - (i) Conduct equipment testing as necessary.
  - (j) Maintain laydown and staging areas for construction materials located on the Project Site, or at other locations approved by the City.
- (5) Build Permits and Licenses.
  - (a) Contractor shall be responsible for obtaining and maintaining all permits, licenses and government approvals necessary to commence, continue and complete the Design-Build Work, and for all associated costs. Where required under Applicable Law, permits and licenses shall be made in the name of the City. However, the Contractor shall manage the process of obtaining permits and licenses on behalf of the City, and shall afford the City reasonable opportunity to review and comment on submittals and material documentation submitted in relation to obtaining permits and licenses.
  - (b) The City reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Contractor which would contravene any City policies.
  - (c) The City shall provide reasonable assistance to the Contractor with obtaining and maintaining the permits and licenses as required, including signing permit applications, attending public hearings and meetings, and providing the Contractor with relevant data and documents. Any such assistance shall be provided upon the reasonable request of the Contractor.
  - (d) The City shall not take any action that seeks to cause the denial or delay of any application for permits and licenses.
- (6) Good Engineering and Construction Practices.
  - (a) The Contractor shall employ methods, techniques, standards and practices that are generally recognized and accepted as good design, engineering, equipping, installation, construction and commissioning practices for the design, construction and improvement of capital assets in the solid waste industry.
  - (b) The Contractor shall, at a minimum, be responsible for the provision of the following: temporary offices and construction trailers; weather protection for the Project Site and all personnel; clean-up and housekeeping of the Project Site; construction trade management; temporary parking; vehicle

traffic; safety and first aid facilities and equipment; adequate storage area for supplies and materials, necessary workshops and warehouses; temporary fire protection; security of the Project Site; temporary utilities; potable water; sanitary services; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination. The City reserves the right to request additional provisions as deemed necessary to maintain the integrity of Design-Build Work.

- (c) The Contractor shall maintain at the Project Site all design documents and construction documents, including a complete set of record drawings. These documents shall be available to the City for reference, copying and use. Additionally, a complete set shall be delivered to the City upon completion of Design-Build Work.
- (7) Environmental Mitigation Measures. The Contractor shall be responsible for all measures that are taken with respect to mitigation of environmental hazards on the Project Site. This includes any environmental mitigation measures that the Contractor must take in response to environmental hazards encountered as a result of its design and construction activities on the Project Site.
- (8) Sustainability.
  - (a) Contractor shall minimize construction waste and recover, reuse, and recycle C&D Waste, and shall report the total quantities of each diverted from disposal.
  - (b) Contractor shall utilize reusable material during construction whenever possible and appropriate, and shall report the types and total quantities of each.
- (9) Information. The Contractor shall ensure any and all information, plans, drawings, or documents, and warranties made by the Contractor and Subcontractors submitted pursuant to this Contract are true, correct and complete in all material respects.
- (10) Quality Assurance and Quality Control. The Contractor shall have full responsibility for quality assurance and quality control for the Design-Build Work in accordance with standards pursuant to this Contract and specifications herein.
- (11) Damages to Design-Build Work and Project Site.
  - (a) The Contractor shall use care, diligence and take all appropriate precautions to protect the Project Site and Design-Build Work from damage or destruction. The Contractor shall report to the Disposal Manager immediately upon obtaining knowledge thereof, any damage or destruction, and shall submit a full report to the City with twenty-four (24) hours. The Contractor shall also submit to the City within twenty-four (24) hours of receipt, copies of all accident and other reports filed any insurance company, adjuster or governmental body. The Contractor and the City shall cooperate so as to promptly complete any repairs, replacement, or restoration of the Project Site or Design-Build Work to conditions similar to those prior to the loss, damage or destruction. The City shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Contractor.
  - (b) The Contractor shall promptly repair or replace all City property and private property damaged by the Contractor or any, employee, representative or agent of the Contractor. Repair and replacements shall restore the damaged property to its character and condition existing immediately prior to the damage, to the extent reasonably possible.
- (12) Sole Responsibility. The Contractor shall have the sole responsibility and liability for the design, construction and performance of the Project hereunder. The Contractor acknowledges that, in the negotiation process leading to the execution of this Contract, the Contractor had the unrestricted right and opportunity not to execute this Contract if the Contractor had determined that any such term, condition or provision provided herein would impair the Contractor's ability to perform the Design-Build Work in compliance with this Contract.

(C) Minimum Design Standards

The Transfer Station shall have the capability of handling Acceptable Waste and Recyclables over a functional life period of twenty-five (25) years, or the combined terms of this Contract, whichever is longer. All areas of a facility must be sufficiently sized to accept, inspect, handle, and store materials that will be delivered to the facility. The Transfer Station shall meet or exceed the preliminary standards provided in Exhibit E and the more detailed standards and drawings submitted in accordance with Exhibit F and approved by the City.

(D) Project Schedule and Reports

- (1) **Project Schedule.** The Contractor shall provide a detailed Project schedule within thirty (30) days of the effective date of this Contract. Such schedule is subject to approval by the City.
- (2) **Reports.** The Contractor shall provide the City with monthly reports detailing Design-Build Work to date, and any information pertaining to observations or tests as required by Technical Specifications.
- (3) **Meetings.** The Contractor and the City shall meet no less than monthly, or more frequently upon the Disposal Manager's request, to review reports and progress.

(E) Design-Build Payment and Costs

The Contractor shall pay directly all costs and expenses of the Design-Build Work, including all costs of permitting, regulatory compliance, performance bond, required insurance, payments due Subcontractors, or otherwise for all labor and materials, legal, financial, engineering and other professional services, materials and equipment, and all associated taxes, and all other costs required to achieve Project completion.

(F) Design-Build Documents

- (1) **Preparation.** The Contractor shall prepare all design documents necessary or appropriate to carry out and complete the Project and shall submit such document to the Disposal Manager in accordance with the schedule provided in Exhibit F. All working and Final Design Documents shall comply with the Design-Build Work requirements as specified by this Contract and shall ensure that the Project is constructed to a standard of quality, integrity, durability and reliability.
- (2) **City Review of Documents.** The City shall have the right to review and comment on the Contractor's conceptual, preliminary, and final design in order to confirm the compliance and consistency with the Technical Specifications. The Contractor shall give due consideration and provide written responses, in the timely manner to any comments delivered by the City as to the Contractor's design submittals. Neither compliance by the Contractor with the Technical Specifications, nor review and comment by the City of design documents, nor any failure or delay by the City in commenting on any design submittals shall in any way relieve the Contractor of full responsibility for the timely design, construction and performance of the Project in accordance with this Contract.
- (3) **Changes to Design Documents.**
  - (a) **At the request of the City:** The City reserves the right to designate changes in design documents prior to the completion of Design-Build Work as deemed necessary.
  - (b) **At request of the Contractor:** No changes shall be made to design documents except with consent of the City. The Contractor shall provide the City written notice of, and reasonable opportunity to review and comment on any proposed changes by the Contractor. The notice shall contain sufficient information for the City to determine that the proposed change does not significantly diminish the capacity of the Project, does not impair the quality, integrity, durability and reliability of the Project, or is reasonably necessary, advantageous and feasible. The City shall have the absolute right to accept, reject or modify any changes to design documents proposed by the Contractor.
  - (c) **Due to Uncontrollable Circumstances:** In the event of an Uncontrollable Circumstance prior to the completion of Design-Build Work, the Contractor and City shall cooperate to devise and agree upon modifications to design documents as necessary. The design and construction costs resulting from and

such changes, and any related operation, maintenance, repair or replacements costs shall be borne equally by the Contactor and the City.

- (d) The design and construction costs resulting from changes described in (1) and (2) above, and any related operation, maintenance, repair or replacements costs shall be negotiated by the City and the Contactor.

(G) Commencement of Construction

- (1) Level of Design. The Contractor shall not be required to prepare completed Final Design Documents for the entire Project prior to commencing any excavation and construction work. The Contractor may, subject to approval by the City, commence and continue excavation and construction of the Project in stages or phases, determined in accordance with good engineering and construction practice.
- (2) Pre-Construction Requirements. The Contractor shall not commence construction without:
  - (a) Acquisition of all appropriate permits, licenses and government approvals;
  - (b) Completion of a pre-construction meeting with City staff; and
  - (c) Approval by the City of the most recent design documents, modifications to schedules as necessary, and satisfactory completion of site preparation.

(H) Construction Monitoring and Observations

- (1) Observation of Design-Build Work. During the progress of the Design-Build Work through completion, the Contractor shall at all times during normal working hours afford the City every reasonable opportunity for observing all Design-Build Work, and shall comply with the Design-Build Work review procedures. The Contractor shall use its best efforts to provide City employees with safe access to the Design-Build Work. During any such observation, all representatives of the City shall comply with the Contractor's site-specific health and safety plan applicable to areas visited, and shall in no material way interfere with the Contractor's performance of any Design-Build Work.
- (2) Tests and Inspections.
  - (a) The Contractor shall conduct all tests or inspections of the Design-Build Work as required by the Technical Specifications. The Contractor shall give the City advance notice of least ten (10) business days of tests or inspections prior to the conduct thereof; provided that the inability, failure or refusal to attend shall delay the conduct of such test or inspection and consequently the performance of the Design-Build Work. If required, the Contractor shall engage an engineer or architect licensed in the State, at its sole cost and expense to conduct or witness any such test or inspection. All analyses of test samples shall be conducted by persons authorized to perform such tests by the State or federal agency having jurisdiction and shall be subject to the approval of the City, which approval shall not be unreasonably withheld.
  - (b) The City reserves the right, with reasonable notice to the Contractor, to conduct on-site observations and inspections, and such civil, structural, mechanical, electrical or other tests as the City deems necessary or desirable to ascertain whether the Design-Build Work complies with this Contract. The costs of such test, observation or inspection shall be borne by the City unless such test, observation or inspection reveals a material failure of the Design-Build Work to comply with this Contract or Applicable Law, in which event the Contractor shall bear all reasonable costs.
  - (c) The Contractor shall secure and deliver to the City promptly, at the Contractor's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to the Design-Build Work as required, or as requested by the City..

(I) Correction of Work

The Contractor shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Design-Build Work that does not conform with the preliminary technical specifications provided in Exhibits E, the more detailed design documents submitted pursuant to Exhibit F as approved by the City, or other provisions of this Contract.

(J) Design-Build Completion

- (1) Completion Requirements. Completion shall be deemed to have occurred only when all of the following conditions have been satisfied:
  - (a) The Contractor has submitted, and the City has approved in writing, a certification by the Contractor that construction of the Project is physically complete and all other Design-Build Work pertaining to the Project, excepting the minor items approved by the City is complete and in all respects is in compliance with this Contract.
  - (b) A final certificate of occupancy has been issued for the Transfer Station, if required by Applicable Law.
  - (c) Any utilities specified or required under this Contract to be arranged for by the Contractor are connected and functioning properly.
  - (d) The Contractor has provided complete Final Design Documents in electronic format, both pdf and Auto-CAD, and all other documentation required by the Contract or by Applicable Law.
  - (e) The Contractor has provided the City written certification from the equipment manufacturers (including information technology systems and instrumentation and controls) that all major items of machinery and equipment included in the Project have been properly installed and tested in accordance with the manufacturers' recommendations and requirements.
  - (f) The Contractor has provided the City copies of the warranties of machinery, equipment, fixtures and vehicles constituting a part of the Project, together with copies of all related operating manuals supplied by the equipment suppliers.
  - (g) The Contractor has provided the City a claims statement detailing all claims arising out of the Design-Build Work pertaining to the Project.
  - (h) All spare parts and additional materials required by the applicable Technical Specifications have been delivered and are in storage at the Project Site or other area designated by the City.
  - (i) The Contractor has provided the City a draft Operations Plan in accordance with Exhibit B, Section (B)(9).
  - (j) The Contractor has submitted written certification, subject to City approval, that all of the foregoing conditions have been satisfied.
- (2) Notice of Completion. The Contractor shall give the City's Disposal Manager at least 30 days' prior written notice of the expected date of completion.
- (3) Construction Records. The Contractor shall prepare and maintain proper, accurate and complete books and records regarding the Design-Build Work and all other transactions related to the permitting, design, construction and testing of the Project. This includes, but is not limited to all books of accounts, invoices, cost estimates, subcontracts, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents relating to the Design-Build Work, this Contract, and any Subcontract thereunder. All accounting books and records required to be prepared and maintained under this Section shall comply with generally accepted accounting principles. The Contractor shall produce such construction books and records for examination and copying. Information shall be presented in a format such that an independent auditor will be able to perform a review in accordance with generally accepted accounting principles. The Contractor shall keep and maintain all such construction books and records for at least three (3) years after the date of completion, or such longer period during which any legal proceeding with respect to the Project may be pending.

## EXHIBIT B. SCOPE OF SERVICES: TRANSFER, TRANSPORT AND DISPOSAL

### (A) City's Responsibilities

- (1) Ownership of the Transfer Station and Equipment
  - (a) Title and ownership to any structures, improvements, fixtures, machinery, fixed equipment and materials constituting the Project shall pass to the City at the termination of this Contract. The Contractor shall, however, bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until such time as the City obtains title and ownership, regardless of the extent to which the loss was insured or the availability of insurance proceeds.
  - (b) If this Contract is terminated in less than twenty (20) years, the City shall make payment to the Contractor for the unreimbursed capital costs of the Transfer Station based on a straight line depreciation of these costs. Payment shall be calculated as follows:  
$$(\text{capital costs of } \$ \_\_\_\_ \text{ divided by } 240 \text{ months}) \times (240 \text{ months} - \text{total number of Contract in effect})$$
- (2) Delivery of Tons. The City will deliver, or cause to be delivered to the Transfer Station all Acceptable Waste and Recyclables collected by the City or the City's agents.
- (3) WDRC Scale House Operations.
  - (a) The City shall operate the entrance gate, scales, and scale house activities, including recording transaction data. Transaction data shall be made available to the Contractor as necessary.
  - (b) The City shall be responsible for acquiring scale certification.
- (4) Right to Inspect. The City shall have access to the Transfer Station at all times. The City reserves the right to inspect the operation and maintenance of the Transfer Station during operational hours. The inspection may include staff interviews, review of maintenance records, complaint log, monitoring data, and personal observations. Prior notice of an inspection is not required.
- (5) Convenience Center. The City shall retain responsibility for the operation of the Convenience Center.

### (B) Contractor Responsibilities

- (1) General Description.
  - (a) Contractor shall be responsible for and shall bear all costs of the acceptance, transfer, loading, transport, and disposal of all Acceptable Waste received at the Transfer Station.
  - (b) Contractor shall be responsible for and shall bear all costs of the acceptance, transfer, loading and transport of all Recyclables received at the Transfer Station to the Designated MRF.
  - (c) Contractor shall also be responsible for, and shall bear all costs and expenses associated with operating and maintaining the Transfer Station in full compliance with the all necessary permits, operations plans, Applicable Laws, including laws governing highway weight limits, equipment inspections, safety standards, and speed limits, and this Contract. For this purposes of this Exhibit B, the term Transfer Station shall include the City's existing transfer station or other facilities used during the Design-Build Work.
- (2) Material Acceptance and Loading.
  - (a) Beginning on the Commencement Date, the Contractor shall receive, transfer, and load all Acceptable Waste and Recyclables delivered to the Transfer Station during the receiving hours specified herein.
  - (b) Contractor shall inspect all inbound loads delivered to the Transfer Station, and report any Non-Acceptable Waste. Contractor shall remove any Non-Acceptable Waste delivered to the Transfer Station from the waste stream and shall properly manage and dispose of such Non-Acceptable Waste. Contractor shall make every effort to ensure that Non-Acceptable Waste is not loaded into the transfer Trailers.

- (c) Contractor will assume ownership of all Acceptable Waste once tipped at the Transfer Station.
  - (d) Contractor shall load all Acceptable Waste and Recyclables into transfer Trailers for transport to the appropriate Designated Facility.
  - (e) Contractor shall coordinate the movement of empty Trailers to the designated loading locations at the Transfer Station, and move Trailers away from the loading locations immediately after being filled.
  - (f) Contractor shall operate in timely manner as not to impede delivery vehicles or tipping activities.
  - (g) Contractor shall keep and maintain separation of all Solid Waste from Recyclables.
  - (h) Contractor shall store no Recyclables or Recovered Materials outdoors unless fully contained and protected from the elements, unless otherwise approved by the Disposal Manager.
  - (i) Contractor shall obtain accurate scale weights of each load of Recyclables delivered to the Designated MRF and maintain such records for reporting to the City.
- (3) Materials Transport, and Disposal of Acceptable Waste.
- (a) The Contractor shall be responsible for the safe and lawful transport to and disposal of Acceptable Waste at the Designated Disposal Facility.
  - (b) The Contractor shall be responsible for the safe and lawful transport of Recyclables received at the Transfer Station to the Designated MRF.
  - (c) All Trailers shall be securely covered by the Contractor prior to departing from the Transfer Station and shall remain securely covered until unloaded.
  - (d) All Trailers shall be inspected by the Contractor prior to departing the Transfer Station.
- (4) Material Rejection, Disposal of Non-Acceptable Waste.
- (a) Contractor shall not reject any load of Acceptable Waste or Recyclables except as described herein.
  - (b) If the Contractor determines a load contains more than twenty percent (20%) Non-Acceptable Waste by volume, the Contractor shall inform the Disposal Manager of the delivery location, vehicle number, date, time, and estimated quantity and type of such load and the Disposal Manager will work to reduce the quantity of Non-Acceptable Materials or Rejects in the future.
  - (c) The Contractor shall arrange and pay for the disposal of any Non-Acceptable Waste that is removed from the Transfer Station by the Contractor.
  - (d) If any Hazardous Waste is detected within a load of Acceptable Waste or Recyclables, the Contractor will notify the Disposal Manager immediately. The Contractor shall properly isolate and containerize the materials in accordance with all Applicable Laws. After notification is provided by the Contractor to the Disposal Manager concerning the presence of Hazardous Substances, it is the responsibility of the City to remove the Hazardous Substances from the Transfer Station within 24 hours, and properly dispose of Hazardous Substances as required by Applicable Laws.
- (5) Operating Hours. The Contractor shall operate the Transfer Station during the following hours, except on Holidays:
- (a) Monday – Friday 7:30 am – 4:30 pm
  - (b) Saturday 7:30 am – 12:00 pm
  - (c) For additional hours as requested by the City’s Disposal Manager. Requests will be made to the Contractor’s site supervisor at least 15 minutes prior to scheduled closing time for additional hours. The City will compensate the Contractor at the rate of \$100 per hour for all additional hours the Transfer Facility is open in excess of five (5) hours per month.
- (6) Emergency Provisions. In emergency conditions as deemed by the Disposal Manager, including but not limited to severe weather, the Contractor may cease loading and transport operations until emergency conditions recede. The Contractor and Disposal Manager shall agree upon additional operating hours as necessary to compensate for any operation hours lost.

- (7) Safety. The Contractor shall be responsible for the personal safety of its personnel when they are at the Transfer Station. The City may require all persons entering the Transfer Station to comply with reasonable safety rules established by the City.
- (8) Cooperation with City Solid Waste Staff. The Contractor's activities at the Transfer Station will necessarily interface with activities of the City Solid Waste staff, including waste haulers. The Contractor shall not impede or interfere with the City's efforts to implement and ensure the efficient ingress, unloading, and egress of waste hauling vehicles. Similarly, the City shall not impede or interfere with the Contractor's duties and responsibilities under this Contract.
- (9) Facility Maintenance and Safety Plan Prior to the acceptance of any materials by the Contractor, the Contractor shall provide a detailed facility maintenance and safety, subject to approval by the Disposal Manager that describes how the Contractor shall on a day-to-day basis conduct, perform or adhere to the following and any other provisions as requested by the Disposal Manager:
- (a) Maintain all equipment utilized by the Contractor at the Transfer Station in safe and good working order following normal preventive maintenance procedures as specified by the various equipment manufacturers.
  - (b) Maintain and repair the facility for the life of the Contract. Maintain the floor and institute repairs/replacements as needed to wear surfaces and prevent damage to structural components.
  - (c) Contain and manage odors, noise and dust, including the installation of odor and noise abatement devices as needed.
  - (d) Maintain all building grounds, roadways, parking and storage areas, tipping floors, and drive-through areas in a clean manner to help control litter and odor.
  - (e) Direct and maintain on-site traffic flow in a safe and efficient manner.
  - (f) Proper pre- and post-inspections to all vehicles from the Transfer Station.
  - (g) Develop emergency plan addressing procedures in the event of an emergency or spill during transit.
  - (h) Manage and maintain site safety.
- (10) Vehicle Traffic.
- (a) The Contractor shall direct all incoming and outgoing traffic as specified in the approved Operations Plan described in Section 9 above. The Contractor's methods and procedures for delivering and removing its transfer Trailers shall be subject to review and approval by the Disposal Manager.
  - (b) The Transfer Station shall be operated to facilitate delivery vehicle access during operations. The daily average time taken by all delivery vehicles on a given day from the point of arrival at the Transfer Station to exit from the facility site known as 'turnaround time' shall not exceed fifteen (15) minutes. Delays caused by equipment failure or other cause not due to negligence of the Contractor shall not be included in the turn-around time computation.
  - (c) Contractor must travel approved trucking routes for vehicles transporting Acceptable Waste and Recyclables from the Transfer Station.
- (11) Facility and Equipment Maintenance.
- (a) Contractor shall be responsible for the maintenance and repair, and all cost associated with such maintenance and repair, of the Transfer Station and Site throughout the term of this Contract.
  - (b) Contractor shall maintain and keep in good condition and repair the Transfer Station buildings, interior and exterior, including repair of any damages as well as wear and tear from normal operations.
  - (c) Contractor shall provide and maintain all of the systems and equipment at the Transfer Station in safe and good working order following normal preventive maintenance procedures as specified by the various equipment manufacturers, including but not limited to, all labor and parts.

- (d) Contractor shall be responsible for all tipping floor maintenance, repairs, resurfacing, and replacement. Contractor shall replace the tipping floor every six (6) years unless an alternate schedule is approved by the City.
- (e) Contractor shall be responsible for all utility costs, including water, sewer, electrical and telecommunication associated with Transfer Station operations, and shall in a timely manner pay all utility costs and associated taxes and other governmental charges.
- (f) Contractor shall maintain the Transfer Station buildings and grounds in neat, clean, and litter free condition. Transfer Station ground consists of everything affected by facility operations and traffic arriving and departing, including maneuvering and storage area, pavements, roadways, curbs, gutters and storm drains. Maintenance includes, but is not limited to, weekly, or as needed based on seasonality, and collection of litter as necessary.
- (g) Contractor shall wash the ceiling, walls and tip floor in a manner to sufficiently remove dirt and residue, at least once every Contract Year, and as often as deemed necessary by the Disposal Manager.
- (h) Contractor shall maintain all electrical and mechanical features including HVAC, tip floor lights, and interior/exterior lighting.
- (i) Contractor shall be responsible for roadways and parking areas that are installed during the construction of the facility, including repair, resurfacing, restriping, and any other maintenance needs as part of this contract.
- (j) Contractor shall take corrective action immediately to all requests by the Disposal Manager to improve care and maintenance of the Transfer Station grounds, buildings, equipment, and systems according to the terms of this Contract. Contractor shall resolve all issues within the timeframe as specified by the Disposal Manager.

(12) Transfer Trailers.

- (a) Contractor shall be responsible for all associated costs of hauling, including maintaining road legal vehicles, ensuring road limits are met, and paying any associated fines.
- (b) Contractor shall provide and maintain sufficient empty Trailers at the Transfer Station to accommodate daily loading operations. The Contractor shall make arrangements for or have access to additional trucks and Trailers, if necessary, to ensure there is no interruption in the operation of the Transfer Station.
- (c) The Contractor shall replace the trucks and Trailers as necessary to ensure that the Contractor has the ability to provide reliable service under this Contract.
- (d) Contractor shall maintain transfer Trailers such that leaks and litter are prevented, and loaded Trailers utilize approved covers at all times.
- (e) Contractor shall wash the exterior of tractors and Trailers as needed to maintain clean equipment. Washing of commercial vehicles must be done in an approved location and avoid any contamination of the City's Storm Water system or watershed areas. Dirty wash water is to flow to the sanitary sewer system
- (f) Each truck used by the Contractor to transport the City's Acceptable Waste or Recyclables shall bear the name and phone number of the Contractor in letters that are plainly visible and at least four inches high. Each trailer shall be labeled by the Contractor in the same manner on each side and on the tail gate. The Contractor's signs on the Trailers shall be subject to the Disposal Manager's prior written approval.

(13) Personnel.

- (a) Contractor shall provide sufficient personnel to operate the Transfer Station in a safe and efficient manner.

- (b) Contractor shall provide and maintain, throughout the term of this agreement, a minimum of two contact names and phone numbers of the Contractor's representatives with the ability to respond within sixty (60) minutes of being contacted by an authorized representative of the City.
- (c) Contractor shall routinely train personnel for safety and operator certification requirements. A properly certified operator must be on the facility site whenever material is being received and when facility equipment is operating. Contractor shall provide appropriate operating and safety training for all personnel, including meeting OSHA training requirements.
- (d) Each vehicle operator shall at all times carry a valid driver's license for the type of vehicle that is being driven.
- (e) Conditions of employment shall be published and conspicuously posted so all employees may be informed. Contractor shall furnish reasonable uniforms, rain gear, and safety equipment.
- (f) Contractor shall comply with all Applicable Law relating to wages, hours, and all other laws relating to the employment or protection of employees, now or hereafter in effect.

(14) Operations Permits and Licenses.

- (a) The City shall be responsible for and shall bear all costs of obtaining and maintaining permits, licenses and Federal, state and local governmental approvals for the operation of new facilities, and for permit amendments as required for existing facility renovations and operations. The Contractor shall bear the cost of permit modifications requested for their benefit.
- (b) The City hereby acknowledges that some agencies may require the City to be named as owner in their permits and approvals, and the City will coordinate with the Contractor and permitting agency to help achieve that outcome.
- (c) The Contractor shall perform and pay for any groundwater, surface water, leachate, or other routine environmental monitoring at the Transfer Station that is required by any regulatory agency with jurisdiction over the activities at the Transfer Station.
- (d) The Contractor shall be responsible for compliance with all environmental and operational permits. The Contractor shall take immediate action to remedy the violation and regain compliance. The Contractor shall bear any and all costs associated with remedying a violation and regaining compliance.

(15) Contractor's Testing Rights. The Contractor may, at its sole expense, test the air, soil, water, or leachate, at the Transfer Station at any time. The Contractor shall immediately furnish to the City the results of any tests, reports, or other documents resulting from said tests.

(C) Designated Facilities

- (1) Designated Disposal Facility. The Contractor shall dispose of all Acceptable Waste at the Designated Disposal Facility. The Contractor shall not take the City's Acceptable Waste to any other facility without prior written approval by the Disposal Manager.
- (2) Designated MRF. The Contractor shall deliver all Recyclables at the Designated MRF. The Contractor shall not take the City's Recyclables to any other facility without prior written approval by the Disposal Manager.
- (3) Communication. The Contractor shall maintain telephone communication capability at all Designated Facilities and shall provide such contact information to the Disposal Manager and keep such information up-to-date.

(D) Spills and Emergencies in Transit

If the Contractor's activities under this Agreement result in a spill or emergency on the highway, the Contractor shall implement the emergency plan that is contained in the Contractor's Operation Plan. The Contractor shall promptly notify the Highway Patrol or local sheriff, as required by law. The Contractor shall promptly initiate

and complete clean-up activities, if necessary. The Contractor shall notify the Disposal Manager verbally within twelve (12) hours and shall provide a written report to the Disposal Manager within twenty-four (24) hours concerning the cause of the spill or emergency, the clean-up activities that were implemented, and the current status of the situation.

(E) C&D Waste Service

At a date as mutually agreed upon by the City and the Contractor, the Contractor shall accept, load, transport, and dispose of C&D Waste at the Designated C&D Facility for the Fees specified in Exhibit C, adjusted as described in Exhibit C and Exhibit D. The Contractor shall not take C&D Waste delivered to the WDRC to any other facility without prior written approval by the Disposal Manager. The Contractor shall not charge for these services until provided.

## EXHIBIT C. PAYMENT TO THE CONTRACTOR

### (A) Transfer Station Fees

The City shall be responsible for collecting appropriate fees from those entities that deliver Acceptable Waste and Recyclables to the Transfer Station. The City shall determine the amounts of such fees.

### (B) Service Fees

#### (1) Acknowledgement

Contractor hereby acknowledges and accepts the rates and formulas outlined herein shall be used to calculate payment to the Contractor throughout the term of the Contract. Any and all additional costs associated with services required by the Contract shall be the responsibility of the Contractor. The Contractor shall not charge the City any amount other than the service fees provided herein.

Material Type	Load Fees (per Ton)	Haul Fees (per Ton)	Disposal Fees (per Ton)	Total (per Ton)
Solid Waste	\$5.65	\$17.20	\$13.97	\$36.82
Recyclables	\$3.60	\$13.86	NA	\$17.46
C&D Waste	\$5.56	\$11.28	\$16.40	\$33.24

#### (2) Billing

The City shall provide a report to the Contractor of the previous month's inbound Tons of Acceptable Waste and Recyclables as measured by the WDRC Scale House, by the tenth (10<sup>th</sup>) of each month. The Contractor shall calculate the total revenue due to the Contractor based on the number of inbound Tons of material during the previous month and the appropriate service rate as defined above and adjusted as described in Section 4.

### (C) Fee Adjustments

#### (1) Annual Adjustments

Fees shall remain the same through the first Contract Year. Effective July 1, 2014 and July 1 of each Contract Year thereafter, adjustments to the Load Fees and Disposal Fees shall be made as specified herein and demonstrated in Exhibit D.

- (a) The fees shall be adjusted based on ninety (90) percent of the change in the Consumer Price Index (CPI) between the month of January in the previous year and the month of January in the current year.
- (b) The total adjustment to each service fee in any given year shall not exceed five percent (5%) of the previous year's fee.

#### (2) Fuel Adjustment

Haul Fees will be adjusted monthly based on the change in the Lower Atlantic (PADD 1C) No. 2 Diesel, All Types, Retail Price (dollars per gallon) as specified herein and demonstrated in Exhibit D. The base Fuel Price Index of \$4.051 per gallon shall be compared to the first published price (Week 1) in the month for which payment is being made. For every \$0.08 change (up or down) in the index, the Haul Fees shall be adjusted (up or down) by one percent (1.0%). Changes in fees shall be rounded to the nearest cent.

#### (3) Changes to CPI or Fuel Index

If the CPI or Fuel Index is discontinued or substantially altered, the City may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices.

(4) Change in Law

The Contractor may petition the City for an additional rate adjustment resulting from a change in law. The Contractor's request shall contain sufficient proof and justification to support the need for the rate adjustment. The City may request from the Contractor such further information as may be reasonably necessary in making its determination. Within sixty (60) calendar days of receipt of the request and all other additional information required by the City, the Disposal Manager shall make a determination regarding the fairness of the request, and shall make a recommendation to the City Council at a regular meeting. Rates adjusted due to change in law shall become effective the month following approval by the City Council or when the law in question becomes effective, whichever is later.

## EXHIBIT D. FEE ADJUSTMENT FORMULAS

### LOAD FEES AND DISPOSAL FEES ADJUSTMENT FORMULA:

Effective July 1, 2014 and July 1 of each Contract Year thereafter, adjustments to the Load Fees and Disposal Fees shall be made as specified herein. Fees shall be adjusted based on ninety (90) percent of the change in the Consumer Price Index (CPI) between the month of January in the previous year and the month of January in the current year. The total adjustment to each service fee in any given year shall not exceed five percent (5%) of the previous year's fee.

New Fee = Current Fee (CF) + CPI Adjustment  
CPI Adjustment = Round [ ((CPI2-CPI1)/CPI1) x .90 x CF, 2]  
(CPI 2 minus CPI 1, divided by CPI 1, times .90, times CF, rounded 2 places)  
"CPI" = Consumer Price Index for All Urban Consumers, US City Average, Base period 1982-84=100 (Series ID# CUUR0000SA0L1E)  
"CPI1" = published CPI average for the month of January of the prior year  
"CPI2" = published CPI average for the month of January of the current year

### SAMPLE CALCULATION:

Assumptions: CF = \$5.71      New Fee = (CF) + Round [ ((CPI2-CPI1)/CPI1) x .90 x CF, 2]  
CPI1 = 227.663  
CPI2 = 232.116      New Fee = [\$5.71] + [\$0.10] = \$5.81

Maximum Increase Allowed = [CR] x 5% = \$6.00

New Fee = \$5.81

### HAUL FEES ADJUSTMENT FORMULA:

Haul Fees will be adjusted monthly based on the change in the Lower Atlantic (PADD 1C) No. 2 Diesel, All Types, Retail Price (dollars per gallon) as specified herein. The base Fuel Price Index of \$4.051 per gallon shall be compared to the first published price (Week 1) in the month for which payment is being made. For every \$0.08 change (up or down) in the index, the Haul Fees shall be adjusted (up or down) by one percent (1.0%). Changes in fees shall be rounded to the nearest cent.

New Haul Fee = Haul Fee in Exhibit C (HF) + Fuel Adjustment  
Fuel Adjustment = Round ((FI - \$4.051) x (1.0%/\$0.08) x HF, 2)  
(\$4.051 minus FI 1, multiplied by 1.0% divided by \$0.08, times HF, rounded to the nearest cent)  
"FI" = shall be the per-gallon price for Lower Atlantic (PADD 1C) No. 2 Diesel, All Types first published in the month for which payment is being made (Week 1)

### SAMPLE CALCULATION:

Assumptions: HF = \$17.20  
FI = \$4.110  
New Haul Fee = (HF) + (Round ((FI - \$4.051) x (1.0% / \$0.08) x HF, 2))  
New Haul Fee = [\$17.20] + [\$0.13] = \$17.33

## EXHIBIT E. PRELIMINARY TECHNICAL SPECIFICATIONS AND CONCEPTUAL DRAWINGS

Provided herein are preliminary technical specifications and conceptual drawings for the Transfer Station and Project Site. These are subject to revision, upon approval by the City, as the Design-Build Work progresses. The Contractor shall complete all Site and building designs in accordance with North Carolina Building Code and all City and State regulations.

### (A) General Description

The Project will consist of a nominal 15,000 square foot Transfer Station, a small office/break room, and associated Site improvements located at the City's WDRC. Conceptual designs of the Site plan, Transfer Station floor plan, and elevations are included in this exhibit.

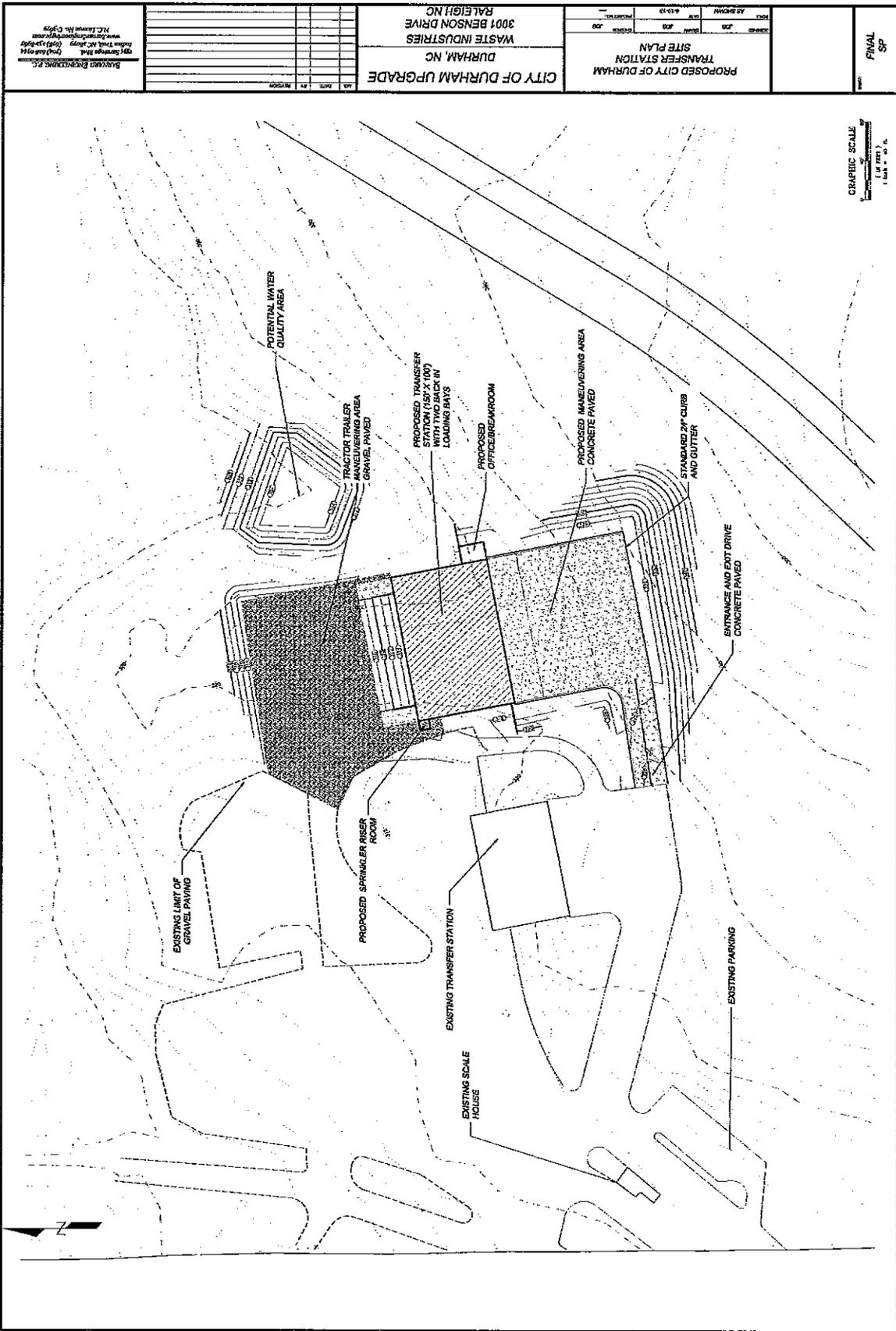
### (B) Transfer Station

- (1) The Transfer Station will consist of a pre-engineered metal building by Nucor Building systems measuring 150 feet wide by 100 feet deep.
- (2) The main frames of the building will be set on the 100-foot dimension.
- (3) Eave height will be set such that there will be 28-feet clear from the finished tipping floor surface to the lowest element of the building frame.
- (4) The Transfer Station will be equipped with 18-foot wide by 24-foot tall coiling roll-up doors at each of the four entrances to the tipping floor.
- (5) The loading pit will be equipped with coiling doors measuring 12-feet wide by 18-feet tall at each entrance and exit.
- (6) The tipping floor finished will be 8-feet nominally higher than the loading pit finished elevation.
- (7) A 4-foot nominal height wall will separate the loading pit from the tipping floor in the loading area.
- (8) Ten-foot nominal height push walls will separate the loading pit from the tipping floor outside of the loading area. These 10-foot walls will also be present along the back wall of the building from loading pit to loading pit. A short section of this type of wall will be included to separate the solid waste operations from the recyclable material operations.
- (9) Each type of wall will be clad on the interior side with 3/8-inch steel plate that is cast into the wall. Stiffened 3/8-inch steel plates will be attached to the top of the 10-foot push wall where applicable and will extend to the metal building side to minimize the intrusion of waste behind the wall.
- (10) The tipping floor system will consist of two separate, unbonded layers. The lower layer is the structural element and will consist of an 8-inch thick, 4,000 psi concrete slab reinforced as recommended based upon site-specific soil conditions. The second, upper layer will consist of 6-inch thick 5,000 psi concrete specifically designed for abrasion resistance. This layer will also be reinforced based upon the Structural Engineer's recommendations.
- (11) The loading pits will be equipped with steel decked hydraulic axle scales to be located to measure the tractor drive axles and the trailer axles to allow more accurate loading. An electronic scoreboard-type display will be mounted on the building wall to allow the loader operator to view the current load.
- (12) A deflector system will be mounted on the building wall in the loading area to direct waste from the loader bucket into the trailer. This system will consist of stiffened 3/8-inch plates mounted on a hinge assembly at the top and supported by a spring assembly at the bottom to lessen impact loads on the building. The loads associated with this assembly will be incorporated into the building design by Nucor Building Systems and verified by the Structural Engineer.

- (13) The building will be equipped with a dry type fire suppression system as required by code. The system will be designed and installed by a fire suppression system supplier with experience with this type of system.
- (14) A riser/mechanical room will be supplied to house the required valves and compressors.
- (15) Lighting will be provided for both the tipping floor and the loading pits. Fixtures will be metal halide or equivalent and will be designed to provide illumination in accordance with the current NC Energy Code.
- (16) General use receptacles will be provided in certain areas where needed. Power will be provided through a new power panel located on the outside of the transfer building.
- (17) Water will be provided in at least four locations for use as wash down water. This water is not intended for fire-fighting purposes and will not be connected to the fire system.
- (18) A small office/break room will be attached to the main transfer building. It will consist of a unisex rest room, a small office and a break room. The building is intended for use by the employees of the transfer station and will not be accessible to transfer station customers. The building will be approximately 430 square feet in floor plan area.

(C) Site Improvements

- (1) Site improvements will consist of clearing, erosion control, grading, paving, utilities, storm water and water quality/detention.
- (2) The building site will be cleared and organic materials removed where required. Structural fill will be placed to achieve the required grades. Excess material will be stockpiled on site if possible or removed to an offsite location. Erosion control will be provided and maintained as required throughout the project and will be removed upon final stabilization of the site.
- (3) A storm water conveyance system consisting of drop inlets, pipes and/or swales will be incorporated to control storm water within the perimeter and vicinity of the project. Water quality will be provided for the new impervious area. The final configuration of the system will be determined during the detailed design phase of the project. Detention will be provided if required. The site is close to mapped floodplain and detention may not be advisable. This will also be finalized during the detailed site design phase.
- (4) Final pavement will consist of Portland cement concrete paving for customer accessed areas and gravel paving for the tractor trailer areas. The final pavement sections will be determined during design based upon soil conditions. A minimum section for each type is as follows:
  - (a) Portland Cement Concrete: 6-inches, 4,000 psi fibermesh reinforced concrete.
  - (b) Gravel: 8-inches compacted NCDOT Aggregate Base Course over a separator geotextile.
- (5) Curb and gutter will be provided in the customer accessed areas to assist with stormwater management.



NO.	DATE	REVISION

CITY OF DURHAM UPGRADE  
 WASTE INDUSTRIES  
 DURHAM, NC  
 3001 BENSON DRIVE  
 RALEIGH, NC

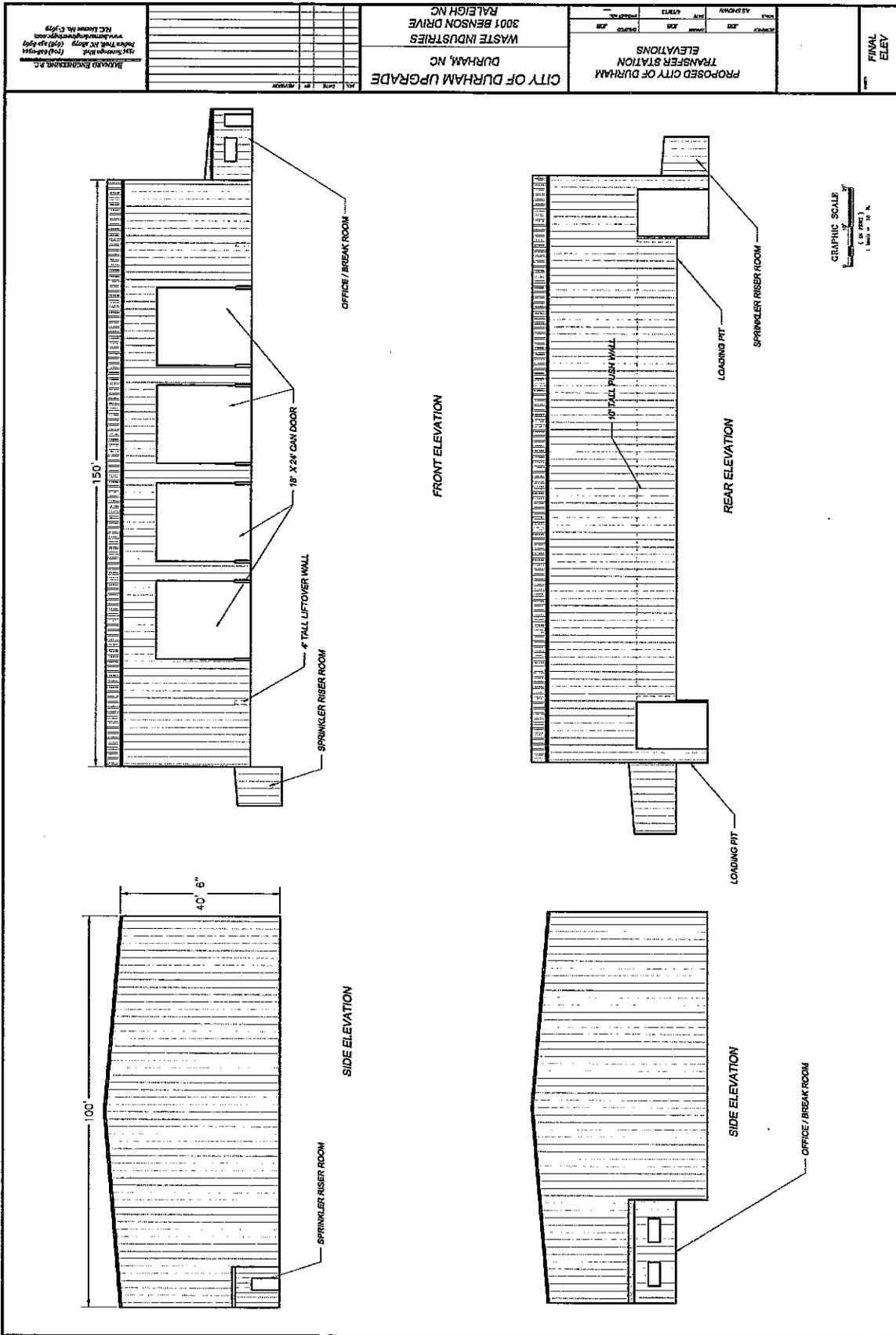
DATE	2/28
PROJECT	4-13-13
DESIGNER	JOB
CHECKER	JOB

PROPOSED CITY OF DURHAM  
 TRANSFER STATION  
 SITE PLAN  
 FINAL  
 SP

BURKARD ENGINEERING, P.C.  
 193 S. Orange Blvd.  
 Durham, NC 27701  
 www.burkardengineering.com  
 Tel: 919.286.1234  
 Fax: 919.286.1235

GRAPHIC SCALE  
 1" = 40' 0" (1:480)





**EXHIBIT F. SCHEDULE FOR ADDITIONAL DESIGN-BUILD DOCUMENTS**

**NOTE: Sherri, Waste Industries is working on this timeline**

*[Recommend WI submit a schedule for submitting more detailed design specifications and drawings for approval by the City]*