

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

**AMENDMENT #1 TO THE CONTRACT BETWEEN
THE CITY OF DURHAM AND
WASTE INDUSTRIES, LLC
FOR
TRANSFER STATION
CONSTRUCTION, OPERATION AND TRANSPORT SERVICES**

THIS AMENDMENT #1 (this "Amendment") is made and entered as of this _____ day of _____, 2015, by and between the City of Durham, a North Carolina municipal corporation ("City"), and Waste Industries, LLC, a limited liability company organized and existing under the laws of North Carolina ("Contractor") and is intended to supplement the Contract Between the City of Durham and Waste Industries, LLC for Transfer Station Construction, Operation, Transport and Disposal Services dated July 1, 2013 (the "Contract"). Capitalized terms used and not otherwise defined herein will have the meaning set forth in the Contract.

Background. Contractor petitioned the City for a change order under the Contract, due to additional costs and expenses incurred by Contractor. The City did not agree that these costs and expenses were appropriate for a change order. The City and Contractor have agreed to amend the Contract to settle the issues between them.

1. **Claims.** Contractor's claims that were the subject matter of its request for additional payment are set forth in Sections 1.a and 1.b below. Such matters may be referred to collectively as the "Claims" and the work related thereto may be referred to as the "Claims-related Work".
 - a. The issues for which Contractor claims it should have additional payment at the New Transfer Station are identified in a letter dated April 6, 2015, from Ben Habets, Regional Manager, Waste Industries to Donald Long, Solid Waste Management Director, included as Attachment A (4 pages) (the "April 6 Letter") include:
 - i. increase in size of permanent retention pond, per specifications identified in Sheet C-9 of "City of Durham Transfer Station Construction Drawings" stamped 9/2/14;
 - ii. storm water drainage removal and new lines and structures identified in Sheet C-8 of "City of Durham Transfer Station Construction Drawings" stamped 9/2/14;
 - iii. demolition of 305 linear feet and installation of 351 linear feet and associated structures identified in Sheet C-18 of "City of Durham Transfer Station Construction Drawings" stamped 9/2/14;
 - iv. additional sidewalks identified in Sheet C-9 of "City of Durham Transfer Station Construction Drawings" stamped 9/2/14;
 - v. 321 linear feet of sewer line extension required by City in its regulatory capacity identified in Sheet U-2 of "City of Durham Transfer Station Construction Drawings" stamped 9/2/14;

- vi. sewer line change identified in Sheet U-2, PMH #2 to PMH #3 of "City of Durham Transfer Station Construction Drawings" stamped 9/2/14; and
 - vii. removal of two existing piezometers;
- b. The issues for which Contractor claims it should have additional payment at the Existing Transfer Station are generally identified in the April 6 Letter and are further identified in greater detail in a proposal dated January 14, 2015, from Demolition and Asbestos Removal, Inc., to John Barnard, Waste Industries and a quotation (Quotation #012615) from Olive Hill Welding & Fabrication to Waste Industries included as Attachment B (2 pages):
- i. demolition of compactor chute at existing transfer station, including shoring, cutting, removal and disposal ;
 - ii. repair and replacement of fifteen feet of wall including:
 - 1. Repair of push wall including pulling out to original position and securing in place;
 - 2. Remove anchor angle on bottom of tubes and replace with new angle and new one-inch wedges; and
 - 3. Install 15 linear feet of new push wall and secure to existing push wall.

2. Mutual Settlement and Release.

- a. The City and Contractor were not in agreement regarding the Contractor Claims and the compensation, if any, due from the City to Contractor for performance of the Claims-related Work. The parties have agreed to settle such disagreement as set forth herein. In return for this Amendment and the increased payment and other consideration contained herein, Contractor agrees that (i) the Claims are satisfied in full, (ii) it shall perform in accordance with the terms of the Contract as supplemented hereby, including performing the Claims-related Work contained in Attachments A and B, (iii) it has performed full and in-depth due diligence regarding its performance of those terms with respect to all the Work performed to date and the Claims-related Work, and (iv) the City shall not have to pay any sums additional to those specified in the Contract as amended herein for the construction of the New Transfer Station and the rest of the Design-Build Work, including the Claims-related Work, unless the City requests a change in such Work and agrees to additional payment representing the costs of such request.
- b. With regard to the subject matter addressed herein, the parties hereby agree that the consideration provided to each of them herein is in full resolution and satisfaction of any and all outstanding claims and counterclaims the City and Contractor may presently have as of the date of this Addendum against each other, including, without limitation the Claims. Both parties, for themselves and on behalf of all persons or entities claiming by, through or under them, including, without limitation, their affiliates, representatives, members, managers, and employees, hereby irrevocably and unconditionally release and

forever discharge each other from any and all liabilities, actions, causes of action, claims and demands of any kind whatsoever, in law or equity, whether known or unknown, suspected or unsuspected, fixed or contingent apparent or unapparent, which the parties had or now have through the date of this Addendum, including without limitation, any and all claims and counter claims arising out of or relating to any disputed issues regarding the Claims and the Contract.

3. **Additional Payment by City.** In connection with settlement of the Claims, the additional payment from the City to the Contractor related to the New Transfer Station shall be \$141,988. The additional payment from the City to the Contractor related to the Existing Transfer Station shall be \$18,599.50. Payment to the Contractor for these two amounts shall be in the form of a \$0.073 per ton surcharge for all Solid Waste delivered by the City to the Transfer Station, beginning October 1, 2015, with application of this surcharge ending when the sum of the \$0.073 per ton surcharges paid reaches \$160,587.50. Monthly invoices from the Contractor shall include a separate line item identifying the total surcharge for the month (number of tons x \$0.073). The amount of \$141,988 shall be added to the capital costs of the New Transfer Station. Should the City terminate the Contract prior to the sum of the surcharges paid equaling \$160,587.50, the City shall pay the Contractor the balance within ninety days of the Contract's termination.
4. **No Admissions.** This Addendum includes a compromise of disputed claims, and nothing contained herein shall be construed as an admission of liability on the part of either of the parties.
5. **Entire Agreement.** This Addendum, together with the Contract, comprises the entire agreement of the parties as to the matters addressed herein, and no other writing shall have any legal effect regarding the terms of the Contract as supplemented hereby. Except as modified or supplemented hereby, the Contract remains in full force and effect as written.

[Signature page follows.]

IN WITNESS WHEREOF, the City and the Contractor have caused this Addendum to be executed by their duly authorized officers under seal.

WASTE INDUSTRIES, LLC

BY: _____

TITLE: _____

State of _____

County of _____

**ACKNOWLEDGMENT BY
WASTE INDUSTRIES, LLC**

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he or she is _____ of Waste Industries, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the limited liability company, he or she signed the foregoing Addendum to the Contract with the City of Durham and the corporate seal was affixed thereto. This the _____ day of _____, 20_____.

Notary Public

My commission expires:

ATTEST:

CITY OF DURHAM

By:

City Clerk

Thomas J. Bonfield, City Manager

Attachment A



WASTE INDUSTRIES

www.wasteindustries.com

3301 Benson Drive | Raleigh, NC 27609

April 6, 2015

Mr. Donald Long, Director
City of Durham Solid Waste Management
1833 Camden Ave. Durham, NC 27704

Re: Updated Change Order Request for City of Durham Transfer Station

Dear Mr. Long,

As a follow up to our meeting on March 20th, 2015 and previous letters dated March 9th and March 16th, 2015 requesting approval of the Change Order to the Contract between the City of Durham (the "City") and Waste Industries, LLC ("Waste Industries") for Transfer Station Construction, Operation, Transport and Disposal Services dated July 1st, 2013 (the "Contract") I am providing an updated Change Order request along with a proposed method to finance the Change Order.

New Transfer Station

The bid costs were developed based upon our experience with similar projects, available GIS data and the stipulated bid requirements. Waste Industries, in conjunction with our Contractor and Engineer, developed conceptual level drawings for the bid that depicted enough information for us to provide a bid. However, the provided costs were predicated upon certain assumptions that could not be verified until during the detailed design phase. The information that led to necessary changes in the design was not information that was available to us during the conceptual design phase. Once discovered, actual changes in the designs were required.

As outlined in our initial letter, the fact that the City considers the parcel to be part of a Planned Common Development required us to use a different method of determining stormwater requirements than simply looking at the impervious area being added. This resulted in the permanent pond size being increased and additional storm drainage lines and structures being added to meet requirements. In addition, during the initial conversations with the Planning Department, after execution of the Contract, we were informed a sidewalk would be required. We had not included costs for this because we understood that, because the project was being constructed on a previously developed parcel with no current or planned access to a public right of way, no improvements, including sidewalks, would be required along Glenn Road. After several discussions with the City over several weeks, the sidewalk was moved to Club Boulevard, which required additional surveying and design work resulting in additional time and costs beyond the cost to construct the sidewalk. Finally, during our initial site walkover during the bid process, we found a sewer manhole adjacent to the existing transfer station. Due to the flat grades across the existing maneuvering

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area, we felt this would be an appropriate location to tie-in the proposed sewer lines for the project. However, we did not learn, until we were having initial conversations with the City, that this manhole was plumbed to an existing oil/water separator. Because we were including an office with bathroom facilities, we were not allowed to connect our new sewer line to this manhole. The restroom effluent cannot flow through the oil/water separator therefore we had to realign the outfall to a manhole further downstream. As with the above items, this necessitated a design change and resulted in increased costs.

Our initial Change Order request amounted to \$260,808.50 and included a number of other significant items that we have agreed to omit from this request. Therefore, the updated Change Order request is for \$141,988 and its components are outlined as an attachment to this letter.

Existing Transfer Station

As outlined in John Barnard's Memo to City Staff dated January 11, 2015 regarding damage to the existing transfer station push wall and associated structure we recommended the chute structure be completely removed in the near future and the push wall be realigned and have 15 ft. of additional push wall added. These changes would allow the City to properly operate the facility in the future. We also had previously provided a quotation for this work at \$37,199.00 and as discussed in our recent meeting we are agreeable to splitting the cost of repairs. Therefore, this updated Change Order includes \$18,599.50 for these repairs.

Method to Finance Change Order

We are open to being paid for the increase in cost of construction and repair through a small adjustment in the total fee, which is currently \$39.56 per ton for solid waste. The impact of the Change Order through an increase in the rate was calculated by taking the amount of the Change Order (\$160,587.50) and dividing by the estimated tonnage over the remaining term of the Contract. Using 2013/14 fiscal year figures of 123,399.76 tons as an annual assumption over the remaining term of the Contract the impact of the Change Order would equate to just above \$.07 per ton depending on the timing of the rate change. We would propose making this adjustment effective either on July 1, 2015, which is the beginning of the next fiscal year, or October 1, 2015, which is the anticipated completion date of the new transfer station. Listed below are the amounts based on the calculation described above and the timing of the rate change:

July 1, 2015 \$.072 increase per ton (CPI for loading, hauling and disposal not included)

October, 1 2015 \$.073 increase per ton (CPI for loading, hauling and disposal not included)

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www.wasteindustries.com

3301 Benson Drive | Raleigh, NC 27609

We look forward to gaining your approval of this updated Change Order and documenting resolution. If you are in agreement to the rate change as a result of the attached increased costs, please let me know and we will prepare a brief formal document for mutual execution.

Sincerely

Waste Industries

Ben Habets, Regional Manager

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Attachment B

<p><u>Company Trades</u></p> <p>Asbestos Removal Selective Demolition Interior Strip Out Mold Abatement Other Hazardous Material Concrete Sawing and Drilling/Removal</p>	 PROPOSAL DEMOLITION AND ASBESTOS REMOVAL, INC. 421 Raleigh View Road, Raleigh, NC 27610 PHONE 919-772-4711 FAX 919-772-4320	
Proposal Submitted To: Waste Industries Attn: John Barnard, P.E. JOB Name: Durham Transfer Station Trash Chute Location: 2115 E. Club Blvd, Durham, NC Phone: 704-421-3067 Fax:	Date: January 14, 2015 Glenn Collins Project Manager/Estimator NC Raleigh Division Mobile: 919-369-7477 Email: dgcollins@dhgriffin.com Email: john.barnard@wasteindustries.com	
<p>Based on site inspection, and/or verbal descriptions, Demolition & Asbestos Removal, Inc. (DARI) proposes the following scope of services:</p> <ol style="list-style-type: none"> 1. Provide necessary labor, equipment, materials, insurance, etc. to perform work. 2. DARI will provide shoring, cutting and removal suspended trash chute / hopper in its entirety. 3. Included in estimate is proper transportation and disposal of the waste stream. 4. Work is to be performed per NC-DHHS, EPA and OSHA rules and regulations. <p>We propose hereby to perform the work as listed above, in accordance with above specifications, for the sum of: Even Thousand Two Hundred and Thirty Dollars (\$11,230.00) <i>Price includes (1) mobilization</i></p> <p>We hereby include the following assumptions, limitations and clarifications:</p> <ul style="list-style-type: none"> • Final schedule of work to be negotiated between DARI and owner/GC. • Pricing based upon off hours to include night & weekend work. • DARI shall have an un-obstructed and exclusive access to all work areas. • DARI retains rights to salvaged materials. • Work to be executed after signing a mutually agreeable contract between all parties. • DARI is not responsible for delays due to factors outside of our control. • Power and water to be provided by owner/GC. <p>If awarded contract, DARI requests that a signed copy of this proposal become a part of Contract Documents.</p> <p>Payment to be made as follows: Upon Completion</p> <p>We hereby exclude the following: Relocation and disconnection of utilities, responsibility for locating and marking utilities within the demolition/abatement limits; protection of utilities which are not marked within the limits of demolition/abatement; shoring and bracing of structures to remain; cost of performance and payment bonds; removal and disposition of any hazardous or asbestos materials except those items, if any, which are described and itemized above, whether concealed or not.</p> <p>All payments are due and payable as noted. Whenever retainage is <u>required</u> to be withheld, upon completion of Demolition & Asbestos Removal, Inc.'s (DARI) scope of work (contract or sub-contract) DARI will issue an invoice for work performed and a separate final invoice for retainage. All retainage is to be paid in full no later than ninety (90) days from date of final invoice. The undersigned further agrees to pay to Demolition & Asbestos Removal, Inc., a reasonable attorney's fee if the obligation evidenced hereby be collected by an attorney-at-law after maturity. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. Salvage rights of demolished material is retained by DARI unless otherwise noted.</p> <p style="text-align: right;"><i>NOTE: This proposal may be withdrawn by DARI if not accepted within 30 days.</i></p>		
Authorized Signature: _____ <div style="text-align: right;">Glenn Collins-Project Manager/Estimator Mobile# 919-369-7477</div>		
<p>PLEASE SIGN, DATE AND RETURN ORIGINAL <u>Acceptance of Proposal</u> – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.</p>		
Signature	Name and Title	Date of Acceptance

Structural Steel Fabrication (Shop/Field)
Press Brake
Aluminum Fabrication & Repair
Plate Rolling
Heavy Equipment Repair (Shop & Field)
Angle Roll
In Plant Fabrication & Repair
Machine Shop
Boom Truck Service
Pipe Bending
Portable Bore Welding
Portable Line Boring

OLIVE HILL WELDING



FABRICATION, INC.

1940 Semora Road · Roxboro, NC 27574 · (336) 599-5800 · Fax (336) 599-9772

Quote: Waste Industries #012615

- Repair push wall and add 15' of new wall
- Existing wall will be pulled out to original position
- Gouge off anchor angle on bottom of tubes and replace with new angle and new 1" wedge anchors
- Fab and install 15' of new wall and weld to existing
- Work to be completed on weekend

Material: \$10,839.00
Shop labor: \$3,100.00
Install: \$10,230.00
Forklift rent: \$1,800.00
15' total: **\$25,969.00**

- Add 25' of new wall

Material: \$15,035.00
Shop labor: \$4,600.00
Install: \$12,100.00
Forklift rent: \$1,800.00
25' total: **\$33,535.00**