

# Town of Holly Springs

## Town Council Meeting Agenda Form

Town Clerk's Office Use:	
<b>Agenda Item #:</b>	<b>9d</b>
<b>Attachment #:</b>	<b>8d</b>

**Meeting Date:** 4-17-18

**Agenda Placement:** Consent Agenda

(Special Recognitions (awards, proclamations), Requests & Communications (reports, information presentations), Public Hearings, Consent Agenda, Unfinished Business, New Business, Closed Session)

**Subject Title:** Solid Waste Service Contract Extension

**Presenter Name(s):** n/a

### SUBJECT HIGHLIGHTS:

The Town's solid waste services contract with Waste Industries expires on June 30, 2018. The attached contract is for residential garbage and recycling services, both collection and disposal. We have been pleased with our partnership with Waste Industries over the years. They have a history of promptly responding to homeowner concerns in a mutually beneficial way for homeowner, company, and town government.

We are proposing a 5-year contract extension, including the same level of service (weekly garbage and bi-weekly recycling, both with 96-gallon units). The proposed contract would ensure solid waste service for Holly Springs through June 30, 2023. Please note Waste Industries did not request a cost-of-living adjustment at the start of our current fiscal year, in an effort to show their level of commitment to Holly Springs. The per unit charges remain the same for the upcoming year. Residents would not experience any change in service delivery or monthly fee.

**Number of Motions with this Item:** 1

### Suggested motion(s):

Approve 5-year solid waste contract extension with Waste Industries

### Funds, if applicable, are to be appropriated from account(s) / line item(s):

Funds are will be appropriated in FY 18-19 operating budget

### Staff Review Record

Are there exhibits for this agenda item? **Yes**

List them in order they should appear in packet: **contract**

Department head initials and comments, if applicable:

Finance director initials and comments, if applicable:

Town attorney initials and comments, if applicable:

Town manager initials and / or comments: css by jp

Town clerk initials jp

**STATE OF NORTH CAROLINA  
COUNTY OF WAKE**

**AMENDMENT OF RESIDENTIAL SOLID WASTE COLLECTION and  
DISPOSAL CONTRACT (INCLUDING RECYCLE)**

**BETWEEN THE TOWN OF HOLLY SPRINGS  
AND WASTE INDUSTRIES, LLC DATED JULY 20, 2008**

Amendment of the Contract made between the **Town of Holly Springs** and **Waste Industries, LLC** will be as follows:

**Contract Term**

In consideration for Waste Industries LLC not requesting a Cost of Living increase for contract year July 1, 2017 through June 30, 2018, the Town will extend the term of this contract for an additional Five (5) years ending June 30, 2023.

**Service is to be provided as detailed in the specifications, at the following unit prices:**

Amending previous contract language to the following.

1. Per household charge of \$9.54 for Solid Waste and \$3.94 for recycling. The basis to determine the quantity of containers to be charged will be determined by the water utilities report provided monthly by the Town of Holly Springs. Addresses with additional containers provided will be charged per container at the same rate for regular service. These rates include the vendor supplying containers.
2. The General Terms and Conditions of the original bid, as referenced in the Contract, as well as the contract, are attached here to as Exhibit A.

**All other Terms and Conditions of the entire agreement remain the same.**

In witness whereof, the Town and Contractor have executed this contract amendment as of this day and year first written:

**WASTE INDUSTRIES LLC**

**TOWN of HOLLY SPRINGS**

BY: \_\_\_\_\_  
Greg Yorston – COO

BY: \_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_  
DATE: \_\_\_\_\_

\_\_\_\_\_  
DATE: \_\_\_\_\_

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

\_\_\_\_\_  
Town Finance Officer

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

**RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL  
CONTRACT (INCLUDING RECYCLING)**

THIS AGREEMENT, made and entered into this 20<sup>th</sup> Day of July, 2008 by and between the Town of Holly Springs, North Carolina ("TOWN"), and Waste Industries, Inc. ("Contractor"). Service is for the period from July 1, 2008, to June 30, 2015. Continuation of this agreement is subject to acceptance by both parties.

*WIC*  
*8/21/08*

WHEREAS, the Town is a North Carolina municipality authorized by statute to require each resident to participate in a unified solid waste collection service and collect a fee for such; and,

WHEREAS, the Town has advertised for bids and awarded to the Contractor the right to manage and operate the solid waste and recycling collection program for the town for the period stated above

NOW THEREFORE, the Parties do hereby agree as follows:

1. Contractor shall be granted the exclusive right, privilege, and obligation to collect and dispose of the residential household waste and recycling within the corporate limits of the Town, as amended from time to time.
2. Collections may begin at 7:00 AM for residential customers and shall cease by 7:00 PM.
3. The successful bidder will observe the following holidays; July 4<sup>th</sup>, Thanksgiving, Christmas, and New Years. In the event that a residential pickup is scheduled during an observed holiday, the Contractor shall utilize the next business day as a collection day.
4. The Contractor is bound by the General Conditions contained in the Invitation to Bid, dated March 3, 2008 (hereby incorporated by reference and adopted as if set forth herein) and all conditions stated in the Bid which are not inconsistent with the General Conditions.
5. Contractor shall maintain a local or toll free line that is staffed with access to a live person within normal business hours, and shall make the number available to the residents of the Town for customer complaints. Contractor shall inform the Town, through the Public Works department of any customer complaints that cannot be resolved by the Contractor.
6. Contractor is in all respects an independent contractor and is not an employee of the Town. The Town has no right to control the manner or exercise of the Contractor's obligations under this contract other than to require that the obligations are met. Contractor shall satisfy any legal requirement required to collect, transport, dispose, or otherwise manage solid waste collection and disposal.

The Town accepts with the successful bidder's consent, up to one (1) THREE YEAR extension of this contract at the prevailing contract pick up rate at the time of renewal.

**Service is to be provided as detailed in the specifications, at the following unit prices:**

1. Per household charge of \$8.12 for Solid Waste and \$3.20 for recycling. This includes the vendor supplying containers.

**FUEL SURCHARGE CALCULATION**

Consideration for a fuel surcharge shall be based on the original average cost of diesel fuel for the previous month as calculated at the time of submission of the original bid.

The source of this monthly average and any other future price considerations shall be the Energy Information Administration of the U.S. Department of Energy (EIA/DOE)'s weekly posting of Highway Diesel prices for the "Lower Atlantic" NC, SC, GA, FL.

Their web site is [http://www.eia.doe.gov/oc/info/whcdp\\_diesel.asp](http://www.eia.doe.gov/oc/info/whcdp_diesel.asp)

The Town of Holly Springs will consider a fuel surcharge in the event that the average monthly cost of diesel fuel for a consecutive six (6) month period exceed the original average cost by 10% or more.

IN WITNESS OF, THIS THE 30 DAY OF June, 2008.

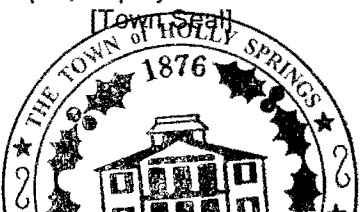
CONTRACTOR WASTE INDUSTRIES LLC

BY: [Signature]

(Corp Seal)

ATTEST: [Signature]

DATE: 6/20/08

<p>TOWN OF HOLLY SPRINGS, NORTH CAROLINA</p> <p>By: <u>[Signature]</u> Carl G. Dean Town Manager</p> <p>Town Contact: Daniel Weeks</p>	<p>This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.</p> <p><u>[Signature]</u> Drew Holland Finance Officer Town of Holly Springs, North Carolina</p>
<p>ATTEST:</p> <p>By: <u>[Signature]</u> <input checked="" type="checkbox"/> Joni Powell, Town Clerk</p> <p><input type="checkbox"/> Linda Harper, Deputy Town Clerk</p> <p>[Town Seal]</p> 	<p>This instrument is approved as to form and legal sufficiency.</p> <p><u>[Signature]</u> John P. Schifano Town Attorney</p>

## GENERAL TERMS AND CONDITIONS

1. **ACCEPTANCE AND REJECTION:** The Town of Holly Springs reserves the right to reject any and all bids, to waive any informality in bids, and unless otherwise specified by the bidder, to accept any item in the bid. If either a unit price or extended price is obviously in error or the other is obviously correct, the incorrect price will be disregarded.
2. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, the offer shall be valid for 45 days from the date of bid opening.
3. **TAXES:** No taxes shall be included in any bid prices.
  - a. **FEDERAL:** Generally, states and political subdivisions are exempt from such taxes, as excise and transportation. Exemption is claimed under Registry No. 56-70-0047K as provided by Chapter 32 of the Internal Revenue Code.
  - b. **OTHER:** Bid prices are not to include any sales, import, or personal property taxes. To the extent applicable, they are to be invoiced as a separate item(s).
4. **PRICE ADJUSTMENTS:** Any price changes, downward or upward, which might be permitted during the contract period, must be due to general market conditions which affect the industry as a whole and not specific costs which pertain only to the vendor participating in this contract.
  - a. **NOTIFICATION:** Must be given to the Town of Holly Springs Town Manger, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of contractor's official notice or other evidence that the change is general in nature.
  - b. **DECREASES:** The Town of Holly Springs shall receive full proportionate benefit immediately at any time during the contract period.
  - c. **INCREASES:** All prices offered herein shall be firm against any increase for 365 days from effective date of the proposed contract. After this period, a request for increase may be submitted once per year with the Town of Holly Springs reserving the right to accept or reject any increase in excess of ten percent of the prevailing rates, or cancel the contract. Requests for increases shall be considered by the Town for the following reasons: 1) Significant Increase in Tipping Fee at a disposal site; 2) increases in the Cost of Living, as published by the United States Department of Labor, Bureau of Labor Statistics- All Urban Consumers, Water and Sewer and Trash Collection. Such approval in increase by the Town of Holly Springs shall occur not later than 15 days after receipt and review by the Town of Holly Springs of a properly documented request for price increase. Any increases accepted shall become effective on a date to be determined by the Town of Holly Springs which:
    - 1) Shall not be later than 30 days after the expiration of the original 15 days reserved by the Town of Holly Springs to evaluate the request for increase;
  - d. **INVOICES:** It is understood and agreed that orders will be shipped at the established contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item.
5. **PAYMENT TERMS:** Payment terms are net, 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The Town of Holly Springs is responsible for all payments under this contract.
6. **AFFIRMATIVE ACTION:** The successful bidder will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without discrimination by reason of race, color, religion, sex, national origin, or physical handicap.
7. **CONDITION AND PACKAGING:** Unless otherwise indicated in the bid, it is understood and agreed that any item offered or shipped on this bid shall be new and in first class condition, that all containers shall be new and suitable for storage or shipment, and that prices include standard commercial packaging.
8. **PERFORMANCE BOND AND DEFAULT:** The Town of Holly Springs requires a performance bond from the successful bidder, as provided by law, without expense to the Town . Otherwise, in case of default by the Bidder, the Town may procure the articles or services from other sources and hold the Bidder responsible for any excess cost occasioned thereby. Default shall occur if the Bidder fails to perform any obligation under the contract and schedule and such failure remains uncured for more than ten (10) days after receipt of written notice thereof from the Town of Holly Springs.
  - a. **This performance bond must be renewed annually**
9. **SAMPLES:** Samples of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request, be returned at the bidder's expense. Request for the return of samples must be made within 10 days following opening of bids. Otherwise the samples will become Town of Holly Springs property. Each individual sample must be labeled with bidder's name and item number. Samples, on which an award is made, will be retained for the contract period. These will be returned, if requested, ten days prior to expiration of the contract.
10. **SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and successful bidder will be held responsible therefore. Deviations must be explained in detail on an attached sheet(s).

**The bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**
11. **SAFETY STANDARDS:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or L.P gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization, such as the American Society of Mechanical Electrical Engineers for pressure vessels; the Underwriters' Laboratories and/or National Electrical

organization, such as the American Society of Mechanical Electrical Engineers for pressure vessels; the Underwriters' Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type(s) of devices offered and furnished. Further, all items furnished by the successful bidder shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

All bidders must comply with *North Carolina Occupational Safety and Health Standards for General Industry, 29CFR 1910*. Construction bidders must comply with *North Carolina Occupational Safety and Health Standards for the Construction Industry, 29CFR 1926*. In addition, bidders shall comply with all applicable occupational health and safety and environmental rules and regulations. Bidders shall effectively manage their safety and health responsibilities including:

**1. Accident Prevention**

Prevent injuries and illnesses to their employees and others on or near their job site. Bidder managers and supervisors shall ensure Employer's personnel safety by strict adherence to established safety rules and procedures.

**2. Environmental Protection**

Protect the environment on, near, and around their work site by compliance with all applicable environmental Regulations.

**3. Employee Education and Training**

Provide education and training to all bidders' employees before they are exposed to potential workplace or other Hazards as required by specific OSHA Standards.

**12. INFORMATION AND DESCRIPTIVE LITERATURE:** Bidders are to furnish all information requested and in the spaces provided on the bid form. Further, as may be specified elsewhere, each bidder must submit with his proposal: cuts, sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous bid does not satisfy this provision. Bids, which do not comply with these requirements, will be subject to rejection.

**13. PROMPT PAYMENT DISCOUNTS:** Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.

**14. AWARD OF CONTRACT:** As directed by statute, qualified bids will be evaluated and acceptance made of the lowest and best bid most advantageous to the Town of Holly Springs as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the bid; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by the Town to be pertinent or peculiar to the purchase in question. Unless otherwise specified by the Town or the bidder, the Town reserves the right to accept any items or groups of items on a multi-item bid.

**15. GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship or performance of the items offered on this proposal prior to their delivery, it shall be the responsibility of the successful bidder to notify the Town of Holly Springs Purchasing Manager at once, indicating in his letter the specific regulation which required such alterations. The Town of Holly Springs reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.

**16. M/WBE:** Pursuant to General Statute 143-48 and Executive Order #77, the Town of Holly Springs invites and encourages participation in this procurement process by businesses owned by minorities, women, and the handicapped.

**17. INSURANCE:**

**COVERAGE** - During the term of the contract, the bidder at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the bidder shall provide and maintain the following coverage and limits:

**a. Worker's Compensation** - The bidder shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$1,000,000, covering all bidders' employees who are engaged in any work under the contract. If any work is sublet, the bidder shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.

**b. Commercial General Liability** - General Liability Coverage, on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)

**c. Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$1,000,000 bodily injury and property damage; \$1,000,000 uninsured/under-insured motorist; and \$1,000,000 medical payment.

**REQUIREMENTS:** Town shall be named as additional insured to all insurance contracts. Providing and maintaining adequate insurance coverage is a material obligation of the bidder and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The bidder shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any of such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the bidder shall not be interpreted as limiting the bidder's Liability and obligations under the contract. It is agreed that the coverage as stated shall not be canceled or changed until thirty (30) days after written notice of such termination or alteration has been sent by registered mail to the Town of Holly Springs town manager.

**18. PATENTS AND COPYRIGHTS:** The Bidder shall hold and save the Town of Holly Springs, its officers, agents, and employees, harmless from liability of any kind, including costs and expenses on account of any patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.

Any and all copy, art, designs, negatives, photographs, or other tangible items created pursuant to bidder's performance of this project shall be the property of Town of Holly Springs and shall be delivered to Town upon completion of the project. Such property shall be transferred to Town in excellent, reusable condition.

In addition, the copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of the bidder's performance of this project shall vest in the Town, and the bidder agrees to assign all rights therein to the Town. Bidder further agrees to provide the Town with any and all reasonable assistance, which the Town may require to obtain copyright registrations or to perfect its title in any such work, including the execution of any documents submitted by the Town.

**19. PATENT AND COPYRIGHT INDEMNITY:** BIDDER will defend or settle, at its own expense, any action brought against Customer to the extent that it is based on a claim that the product(s) provided pursuant to this agreement infringe any U.S. copyright or patent; and will pay those costs, damages and attorney's fees finally awarded against Customers in any such action attributable to any such claim, but such defense, settlements and payments are conditioned on the following (1) that BIDDER shall be notified promptly in writing by Customer of any such claim; (2) that BIDDER shall have sole control of the defense of any action on such claim and of all negotiations for its settlement or compromise; (3) that Customer shall cooperate with BIDDER in a reasonable way to facilitate the settlement of defense of such claim; (4) that such claim does not arise from Customer modifications not authorized by the BIDDER or from the use of combination of products provided by the BIDDER with products provided by the Customer or by others; and (5) should such product(s) become, or in the BIDDER's opinion likely to become, the subject of such claim of infringement, then Customer shall permit BIDDER, at Bidder's option and expense, either to procure for Customer the right to continue using the product(s), or replace or modify the same so that it becomes non-infringing and performs in a substantially similar manner to the original product; or (c) upon failure of (a) or (b) despite the reasonable efforts of the BIDDER for a sold product or licensed software, return the price paid for the licensed software and any product dependent thereon.

**20. ADVERTISING:** Bidder agrees not to use the existence of this contract or the name of the Town of Holly Springs as a part of any commercial advertising without prior approval of the Town of Holly Springs.

**21. EXCEPTIONS:** All proposals are subject to the terms and conditions outlined herein. All responses will be controlled by such terms and conditions and the submission of other terms and conditions, price catalogs, and other documents as part of a Bidder's response will be waived and have no effect on this Request for Proposal or any other contract that may be awarded resulting from this solicitation. The submission of any other terms and conditions by a Bidder may be grounds for rejection of the Bidder's proposal. The Bidder specifically agrees to the conditions set forth in the above paragraph by affixing his name on the signatory page contained herein.

**22. CONFIDENTIAL INFORMATION:** As provided by statute and rule, the Town of Holly Springs will consider keeping trade secrets which the bidder does not wish DISCLOSED confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the bidder. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.

**23. ASSIGNMENT:** No assignment of the bidder's obligations or the bidder's right to receive payment hereunder shall be permitted. In no event shall such approval and action obligate the Town of Holly Springs to anyone other than the bidder and the bidder shall remain responsible for fulfillment of all contract obligations.

**24. ACCESS TO PERSONS AND RECORDS:** The Town's Auditor may have access to persons and records as a result of all contracts or grants entered into by the Town in accordance with General Statute 147-64.7, including but not limited to information regarding revenues generated from recycling.

**25. INSPECTION AT BIDDER'S SITE:** The Town of Holly Springs reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective bidder prior to contract award, and during the contract term as necessary for the Town of Holly Springs's determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.

**26. AVAILABILITY OF FUNDS:** Any and all payments of compensation of this specific transaction, its continuing or any renewal or extension are dependent upon and subject to the allocation of appropriation of funds to the Town for the purpose set forth in this agreement.

**27. GOVERNING LAWS:** All contracts, transactions, agreements, etc., are made under and shall be governed by and construed in accordance with the laws of the State of North Carolina. Forum selection is with Wake County.

**28. ADMINISTRATIVE CODE:** Bids, proposals, and awards are subject to applicable provisions of the North Carolina Administrative Code.

**29. EXECUTION:** Failure to sign under EXECUTION section will render bid invalid.

**30. ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) Town of Holly Springs General Contract Terms and Conditions, and (4) Town of Holly Springs Bid Terms and Conditions.

**31. CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the Purchasing Manager of the Town of Holly Springs named on the cover sheet of this document. Any and all revisions to this document shall be made only by written addendum from the Town of Holly Springs Purchasing Manager. The bidder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source is of no effect.