Dated 10 December 2020

(1) Derbyshire County Council

(2) Derby City Council

Inter Authority Agreement 2

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relating to a Service Agreement for the Provision of Waste Management Services with Renewi UK Services Limited

THIS AGREEMENT is made on 10 December 2020

BETWEEN

(1) Derbyshire County Council of County Hall, Matlock, Derbyshire DE4 3AG; and

(2) Derby City Council of The Council House, Corporation Street, Derby DE1 2FS.

BACKGROUND

(A) The Councils entered into a Long Term Waste Management Contract with Resource Recovery Solutions (Derbyshire) Limited dated 8 December 2009 (**"PPP Contract"**) and the PPP Contract terminated on 2 August 2019.

(B) The Authorities on 3 August 2019 entered into a waste management services contract with Renewi UK Services Limited (the **"Contractor"**) in order to meet the Authorities' statutory duties for waste disposal under section 51 of the Environmental Protection Act 1990, the Authorities have appointed the Contractor to provide the Services and the Contractor has agreed to provide the Services in accordance with that contract (the **"Contract"**). Under the terms of the Contract, the Authorities are jointly and severally liable to the Contractor.

(C) The Authorities have agreed to work together in the implementation and contract management of the Contract, and this Agreement sets out the terms of the joint working arrangements for the Contract and the operation of a Contract Management Board by the Authorities. It also sets out the respective rights and obligations of the Authorities in respect of the Contract.

(D) The Authorities also acknowledge that they wish to pursue a longer term strategic relationship for the management and disposal of their residual waste.

(E) The Authorities wish to enter into this Agreement and implement the Project pursuant to the powers conferred on them by Sections 51 and 55 of the Environmental Protection Act 1990, Section 19 of The Local Government Act 2000, and Regulation 7 Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000.

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement and the Recitals, unless the context otherwise requires, the following terms shall have the meanings given to them below:

"Asset"	has the meaning given to it in the Contract;
"Authorised Officer"	means the person appointed by the Authorities pursuant to **clause 3.1** (Authorised Officer);

"Authorised Officer Matter"	has the meaning given to it in **clause 7.1.2** (Strategic Management Accountability and Decision Making);
"Authority"	means either: (a) the County; or (b) the City, and **"Authorities"** shall mean both of them;
"Business Day"	means any day other than a Saturday or Sunday or a public or bank holiday in England;
"Change"	has the meaning given to it in the Contract;
"Change Control Note"	has the meaning given to it in the Contract;
"Change Control Procedure"	has the meaning given to it in the Contract;
"City"	means Derby City Council of The Council House, Corporation Street, Derby DE1 2FS;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing party to the receiving party and which: (a) is known by the receiving party to be confidential; (b) is marked as or stated to be confidential; or (c) ought reasonably to be considered by the receiving party to be confidential;
"Contract"	has the meaning given to it in Recital (B)
"Contract Management Board"	means the contract management board established pursuant to **clause 4** (Contract Management Board);
"Contract Management Board Matter"	has the meaning given to it in **clause 7.1.4** (Strategic Management Accountability and Decision Making);
"Contract Management Costs"	means the costs of managing the Contract in accordance with the arrangements set out in this Agreement, as determined pursuant to **Schedule 5** (Contract Management Costs);
"Contract Price"	has the meaning given to it in the Contract;

"Contract Waste"	has the meaning given to it in the Contract;
"Contract Year"	a period of 12 months, the first of which commences on the Services Commencement Date, and each subsequent Contract Year commences on the relevant anniversary of the Services Commencement Date;
"Contractor"	has the meaning given to it in Recital (B)
"County"	means Derbyshire County Council of County Hall, Matlock, Derbyshire DE4 3AG;
"Default Allocation"	means: (a) 73.4 per cent in respect of the County; and (b) 26.6 per cent in respect of the City;
"Defaulting Authority"	has the meaning given to it in **clause 9** (Contract Obligations);
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;
"Indexed"	means the multiplication of the relevant sum by: $\frac{RPIX_1}{RPIX_0}$ where: (a) $RPIX_1$ is the value of RPIX published most recently prior to the relevant calculation date; and (b) $RPIX_0$ is the value of RPIX published in January 2008;
"Intellectual Property"	means any and all patents, trademarks, trade names, copyright, moral rights, rights in design, rights in databases, know-how and all or other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to them and the right to apply for registration of them;

"Lead Authority"	means Derbyshire County Council
"Lead Officer"	means: (a) in the case of the County, the Head of Waste Management (or any successor to such post), in consultation with the Assistant Director of Environment (or any successor to such post); and (b) in the case of the City, the Director of Communities and Place or any successor to such post;
"Lead Officers Matter"	has the meaning given to it in **clause 7.1.3** (Strategic Management Accountability and Decision Making);
"Material"	means all data, text, graphics, images and other materials or documents created, used or supplied by an Authority in connection with this Agreement (unless before the first use or supply, that Authority notifies the other that the data, text, graphics, images and other materials or documents supplied by it are not to be covered by this definition);
"Matter Reserved to Authorities"	has the meaning given to it in **clause 7.1.5** (Strategic Management Accountability and Decision Making);
"Monthly Payment"	has the meaning given to it in the Contract;
"NWTF"	means the New Waste Treatment Facility which has been designed and built under the PPP Contract;
"Required Insurances"	has the meaning given to it in the Contract;
"RPIX"	means the Retail Prices Index (All Items excluding mortgages) as published by the Office for National Statistics from time to time (the **"Index"**), or failing such publication or in the event of a fundamental change to the index, such other index as the parties may agree or such adjustments to the index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been in had the index not ceased to be published or the relevant fundamental change not made) or, in the event that no such agreement is reached, as may be determined in accordance with the dispute resolution procedure set out in **clause 19** (Dispute Resolution);
"Sinfin Site"	means the site of the NWTF as described in the PPP

	Contract;
"Site Payment"	has the meaning given to it in **clause 16.3**;
"Term"	has the meaning given to it in the Contract;
"Termination Date"	has the meaning given to it in the Contract;

1.2 **Interpretation**

In this Agreement, except where the context otherwise requires:

1.2.1 each gender includes all genders;

1.2.2 the singular includes the plural and vice versa;

1.2.3 a reference to any clause, sub-clause, paragraph, Schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or annex of and to this Agreement;

1.2.4 any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;

1.2.5 any reference to legislation (including subsidiary legislation), determinations and directions shall be construed as a reference to any legislation, determinations, directions and statutory guidance as amended, replaced, consolidated or re-enacted;

1.2.6 a reference to a public organisation (including to each Authority) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation;

1.2.7 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;

1.2.8 any reference to a requirement for "consent" or "approval" shall be taken to be the prior written consent or approval of the relevant body or person;

1.2.9 the schedule, clause, sub-clause and (where provided) paragraph headings and captions in the body of this Agreement do not form part of this Agreement and shall not be taken into account in its construction or interpretation;

1.2.10 the Schedules hereto all form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement;

1.2.11 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words; and

1.2.12 as at the date of this Agreement, the Parties acknowledge that references to the County's 'Chief Executive' shall mean the Executive Director of Commissioning Communities and Policy unless and until the County notifies the City otherwise.

1.3 **Application of these principles**

The principles set out in **clause 1.2** (Interpretation) shall be borne in mind and applied so far as appropriate in the interpretation of this Agreement and in the resolution of any dispute under this Agreement.

2. **PRINCIPLES AND KEY OBJECTIVES**

2.1 **Legally Binding Agreement**

The Authorities intend this Agreement to be legally binding and mutual commitments between them created by this Agreement shall be construed accordingly.

2.2 **Consents**

Each of the Authorities hereby represents to the other that it has obtained all necessary consents sufficient to ensure the delegation of functions provided for by this Agreement for the proper operation of the Contract.

2.3 **Acting in the best interests of the Project**

The Authorities shall use all reasonable endeavours to ensure that their respective members and officers who are involved in the operation and management of the Contract shall at all times endeavour to act in the best interests of both Authorities and the Contract.

2.4 **Knowledge Sharing**

Without prejudice to **clause 8** (Data and Reporting), the Authorities commit to share data and knowledge relevant to the Project where appropriate.

2.5 **Co-operation and mutual assistance**

In working together, the Authorities agree that they will conduct the relationship between them in accordance with the following principles:

2.5.1 the Authorities undertake to act in accordance with a duty of good faith to each other, be open and trusting in their dealings with each other, make information, data, knowledge and analysis available to each other, use such information to support the management and operation of the Contract, discuss and develop ideas openly and contribute fully to all aspects of the successful achievement of the aims of the Contract;

2.5.2 while respecting the mutual need for commercial confidentiality, the Authorities undertake to be transparent in their dealings with each other and, without prejudice to the foregoing, the Authorities undertake to respect matters of commercial confidentiality and potential sensitivity;

2.5.3 the Authorities undertake to be committed fully to the operation and management of the Contract, will seek to motivate their respective employees, officers and members involved in or attached to the Contract and undertake to address the challenges of the Contract with drive, enthusiasm and a determination to succeed;

2.5.4 the Authorities acknowledge and agree that:

2.5.4.1 each brings complementary skills and knowledge which they will apply creatively to achieving their respective objectives, resolution of difficulties and the development of the Contract and the personnel working within it; and

2.5.4.2 to achieve their respective objectives, it will involve the appreciation and adoption of common values by each of them;

2.5.5 the Authorities undertake to develop and maintain clear roles and responsibilities for each of them and to develop relationships at the appropriate levels within each organisation providing direct and easy access for the other's representatives;

2.5.6 the Authorities acknowledge and agree that they are engaged in a relatively short term Contract but that each wishes to pursue a long term relationship for their mutual benefit through the achievement of a joint long term waste management strategy which needs to develop and adapt, and each will use reasonable endeavours to develop and maintain an effective joint process to ensure that the Contract and the longer term strategic aims are implemented and managed appropriately and in line with the principles set out in this Agreement;

2.5.7 the Authorities each agree that, in relation to this Agreement, the Contract and the longer term strategic objectives generally, they shall pay the utmost regard to the standing and reputation of one another and shall not do or fail to do anything which may bring the standing or reputation of the other into disrepute or attract adverse publicity to the other; and

2.5.8 the Authorities agree that all decisions made in relation to this Agreement and the Project generally shall be made by them acting reasonably.

3. AUTHORISED OFFICER

3.1 Appointment of the Authorised Officer

The Authorities shall appoint a person from the Lead Authority who shall be the **"Councils' Authorised Officer"** for the purposes of clause 24 of the Contract.

3.2 **Functions of the Councils' Authorised Officer**

The Authority which employs the **Councils'** Authorised Officer shall ensure that the **Councils'** Authorised Officer shall have strategic management accountability and shall discharge the functions attributed to the **Councils'** Authorised Officer in:

3.2.1 **Schedule 3** (Required Approvals) of this Agreement; and

3.2.2 the Contract;

subject to and in accordance with the terms of this Agreement, including **clause 7.2** (Maximum Overall Benefit).

3.3 **Term of Appointment**

The **Councils'** Authorised Officer shall hold office until:

3.3.1 a new **Councils'** Authorised Officer is appointed in accordance with **clause 3.1** (Authorised Officer);

3.3.2 he/she ceases to be employed by one of the Authorities; or

3.3.3 he/she resigns from the post of **Councils'** Authorised Officer by notification in writing to the Authority employing him/her.

4. **CONTRACT MANAGEMENT BOARD**

4.1 **Establishment of a Contract Management Board**

The Authorities have formed a Contract Management Board for the purpose of overseeing the implementation and management of the Contract and to carry out the functions set out in **Schedule 2** (Contract Management Board - Constitution).

4.2 **Initial Membership of the Contract Management Board**

The current members of the Contract Management Board are those posts named in **Schedule 1** (Contract Management Board - Membership).

4.3 **Appointment of Deputies**

Each Authority shall be entitled from time to time to appoint a deputy for each of its representatives on the Contract Management Board, but such deputy (in each case) shall only be entitled to attend meetings of the Contract Management Board in the absence of his or her corresponding principal.

4.4 **Invitees to the Contract Management Board**

Each Authority shall be entitled to invite appropriate third parties to observe Contract Management Board meetings and such third parties shall be entitled to take part in such Contract Management Board meetings at the discretion of the Chairman of the Contract Management Board.

4.5 **Replacement of Representatives and Deputies**

Each Authority may, at its discretion, replace its representatives (and their respective deputies) appointed to the Contract Management Board, provided that:

4.5.1 at all times, it has representatives appointed to the Contract Management Board in accordance with the positions identified in **Schedule 1** (Contract Management Board - Membership); and

4.5.2 any such replacement shall have no lesser status or authority than that of his/her predecessor.

4.6 **Frequency of Meetings**

The Authorities shall procure that the Contract Management Board shall meet at least two times per year, but additional meetings may be convened by the Chairman or Vice-Chairman of the Contract Management Board.

4.7 **Constitution of the Contract Management Board**

The details of the ways of working, clerking and other operational matters of the Contract Management Board are set out in **Schedule 2** (Contract Management Board - Constitution).

4.8 **Supply of Information to the Contract Management Board**

Each Authority shall provide all information reasonably required upon request by the Contract Management Board and comply with unanimous decisions of the Contract Management Board to request such information.

5. **LEAD OFFICERS**

The Authorities shall procure that their respective Lead Officers shall meet at least quarterly, together with such appropriate officers as are necessary, to discuss and review the Project.

6. **NOT USED**

7. **STRATEGIC MANAGEMENT ACCOUNTABILITY AND DECISION MAKING**

7.1 **Decision Making**

The Authorities have identified and agreed the following four categories of decisions and other actions to be taken and carried out in respect of the Project, together with the means by which they will be taken:

7.1.1 not used

7.1.2 an **"Authorised Officer Matter"**, being a matter which the **Councils'** Authorised Officer shall have authority to carry out on behalf of the Authorities subject to **clause 7.2** (Maximum Overall Benefit);

7.1.3 a **"Lead Officers Matter"**, being a matter which the Lead Officers shall have authority to carry out on behalf of the Authorities subject to **clause 7.2** (Maximum Overall Benefit);

7.1.4 a **"Contract Management Board Matter"**, being a matter which the representatives of each of the Authorities appointed pursuant to **clause 3** (Contract Management Board) will be able to make a decision upon and have the power to bind the Authority it represents in doing so; and

7.1.5 a **"Matter Reserved To Authorities"**, being a matter which shall be referred to the Authorities for an executive decision under the Local Government Act 2000,

and the category applicable to a particular decision to be made or proposed action to be taken shall be determined in accordance with **Schedule 3** (Required Approvals).

7.2 **Maximum Overall Benefit**

7.2.1 The Authorities:

7.2.1.1 agree that any decision to be made or action to be taken which relates to an Authorised Officer Matter, a Lead Officers Matter or a Contract Management Board Matter shall be made or taken so as to obtain the maximum advantage for both Authorities; and

7.2.1.2 recognise that the financial or other interests of one Authority may not always correspond to those of the other, in which case any decision to be made or action to be taken shall be made or taken so as to create the maximum overall benefit to the Authorities.

7.2.2 Should one Authority gain more than the total benefit arising, giving rise to a loss to the other Authority, a form of compensation should be agreed between the Authorities at that time to rectify the loss.

7.3 **Referral to Contract Management Board**

7.3.1 Where one Authority is either:

7.3.1.1 in any circumstances proposing a change in arrangements under the Contract; or

7.3.1.2 considering taking a decision, or has taken a decision or taken or failed to take action which the other Authority considers will either cause if financial loss or disadvantage in some other way,

then either Authority shall have the right to refer the matter to the Contract Management Board for further discussion and deliberation, including an assessment of whether the proposed change of arrangements;

decision or course of action is for the maximum overall benefit of both Authorities as described in **clause 7.2** above.

7.3.2 The Authority referring the matter to the Contract Management Board pursuant to **clause 7.3.1.1** above shall have the right to request such additional information as may be required in order that the Contract Management Board can give due consideration to the matter in question as described in **clause 7.3.1.2** above. The other Authority shall provide such information within 10 Business Days of any such request.

7.3.3 Should the Authorities disagree as to the course of action that would give the maximum overall benefit to the Authorities, then either party may refer the matter to the Dispute Resolution Procedure. .

7.4 **NWTF Services**

Without prejudice to the remaining provisions of this Agreement, the Authorities agree to comply with their respective obligations in **Schedule 7** (Management of NWTF Services).

8. **DATA AND REPORTING**

The provisions of **Schedule 4** (Data, Reporting and Processing of Payments) shall have effect as regards data collection, sharing and reporting.

9. **CONTRACT OBLIGATIONS**

9.1 **Compliance with the Contract**

Each of the Authorities shall use all reasonable endeavours to ensure that no breach of the Authorities' obligations under the Contract occurs as a result of any act or omission on its part or on the part of any person for whom it is responsible. In particular, both Authorities confirm and commit (subject to any existing contractual arrangements which either Authority had as at 00:00 GMT on the 3 August 2019 with any other contractor) to granting the Contractor an exclusive right for the reception, treatment and disposal of Contract Waste for the term of the Contract in accordance with the requirements of clause 5.6 of the Contract.

9.2 **Defaults under the Contract**

If any liability (to the Contractor or any third party) arises relating to the subject matter of the Contract by virtue of any action, omission, breach of contract or breach of legal duty by either of the Authorities in its capacity as a Waste Disposal Authority (the **"Defaulting Authority"**), the Defaulting Authority shall fully and effectively indemnify the other Authority for all costs (including legal and administrative expenses), damages, awards, claims and demands suffered by the other Authority as a result of such action, omission, breach of contract or breach of legal duty, provided always that the Defaulting Authority shall have the right, having given prior written notice to the other Authority, to take over the administration, conduct and negotiation of any formal claim or legal proceedings which arise from such liability.

10. CHANGE CONTROL

10.1 Requesting a Change under the Contract

Neither Authority shall unilaterally request a Change under the Change Control Procedure without the prior written approval of the other. Such approval shall not be unreasonably withheld or delayed, provided that:

10.1.1 an Authority may refuse approval to a proposed Change which would materially prejudice the interests of that Authority; and

10.1.2 an Authority may not refuse approval to a proposed Change that is necessary in order to comply with any change in law.

10.2 Confirmation of a Change (Requested by a Single Authority)

If any Change requested by one Authority is confirmed pursuant to the Change Control Procedure, then as between the Authorities, the Authority requesting that Change shall be responsible for any and all additional costs associated with that Change (as set out in the agreed Change Control Note), unless the Authorities agree otherwise.

10.3 Confirmation of a Change (Requested by Both Authorities)

If the Authorities agree jointly to request a Change, then if such Change is confirmed pursuant to the Change Control Procedure, all additional costs associated with that Change (as set out in the agreed Change Control Note) shall be borne between the Authorities in accordance with the Default Allocation, unless the Authorities agree otherwise.

10.4 Confirmation of a Change (Requested by the Contractor)

If the Contractor requests a Change then the Authorities shall agree the allocation of costs associated with that Change when agreeing the Change Control Note under the Change Control Procedure.

11. PROCESSING OF PAYMENTS

The provisions of **Schedule 4** (Data, Reporting and Processing of Payments) shall apply in respect of:

11.1 payments to be made by the Authorities to the Contractor pursuant to the Contract;

11.2 any reconciliation payments that may be necessary as a result of the operation of **clauses 12** (Contract Costs and Liabilities), **13** (Contract Benefits) and/or **14** (Contract Management Costs) of this Agreement; and

11.3 any other payments due from one Authority to the other Authority pursuant to the terms of this Agreement.

12. CONTRACT COSTS AND LIABILITIES

12.1 Allocation of costs, payments, liabilities and/or claims under the Contract

Subject to **clause 12.2** (Contract Costs and Liabilities) the Authorities agree that, notwithstanding that either the City or the County (or both) may have made payment to the Contractor in accordance with **Schedule 4** (Data, Reporting and Processing of Payments), to the extent that any costs, payments, liabilities, compensation or claims to be paid by the Authorities pursuant to the Contract (including the Contract Price and Monthly Payments) relate to a matter shown in the first column of the table below, such costs, payments, liabilities, compensation or claims shall be borne between them in accordance with the allocation set out the second column of the table below in the row corresponding to the matter in question:

Nature of cost, payment, liability or claim (and Contract reference)	**Allocation**
Costs, payments, liabilities or claims payable pursuant to Schedule 4 (Payment Mechanism) of the Contract	To be borne by the Authorities as specified in **Schedule 6** (Payment Mechanism - Allocation of Liabilities and Benefits)
Breach of Title Warranty (clause 4.5)	(a) to the extent that such compensation is payable in respect of the Sinfin Site, shall be borne by the City Council; and (b) to the extent that such compensation is payable in respect of any other sites, shall be borne by the Authority that owns the relevant site.
Payment for Assets at the end of the Term (clause 16)	In circumstances where such Assets are not paid for by a replacement contractor, shall be borne by the Authority who owns the Site to which the Asset relates
Brexit Change in Law (clause 29A)	To be borne by the Authorities in proportions which are deemed by both Authorities to be equitable in the circumstances, having regard to: (a) the nature of the cost, payment, liability or claim; and (b) the sites to which such cost, payment, liability or claim may relate, provided that the Authorities shall at all times act in good faith and seek to agree proportions that reflect the principles set out in this Agreement

Nature of cost, payment, liability or claim (and Contract reference)	Allocation
Change Control (clause 29)	To be borne in accordance with **clause 10** (Change Control) of this Agreement
Insurance (clause 33)	In respect of the Sinfin Site, shall be allocated according to the Default Allocation In respect of all other Sites, then to the extent that the insurance can be allocated to a specific site shall be borne by the Authority who owns the Site to which the insurance relates; in any other circumstances shall be allocated according to the Default Allocation
Schedule 7 (TUPE)	To be borne by the Authorities in accordance with the Default Allocation
Payment for Identified Rectification Works which the Authorities instruct the Contractor to carry out in accordance with Schedule 12 of the Contract	To be borne by the Authorities as specified in **Schedule 6** (Payment Mechanism - Allocation of Liabilities and Benefits)
Schedule 14 (NWTF Services)	To be borne by the Authorities in accordance with the allocations specified in **Schedule 7** (NWTF Services)
Any costs, payments, liabilities, compensation or claims not referred to above	To be borne by the Authorities in proportions which are deemed by both Authorities to be equitable in the circumstances, having regard to: (a) the nature of the cost, payment, liability or claim; and (b) the sites to which such cost, payment, liability or claim may relate, provided that the Authorities shall at all times act in good faith and seek to agree proportions that reflect the principles set out in this Agreement

12.2 **Single Authority Default**

Where any costs, payments, liabilities, compensation or claims payable pursuant to the terms of the Contract (excluding the Contract Price and the Monthly Payments) are payable solely by reason of the act, omission or negligence of one of the Authorities, then as between the Authorities and without prejudice to **clause 9** (Contract Obligations), the Authority which has committed such act, omission or

negligence shall be solely liable for such payment, and the relevant allocation set out in **clause 12.1** (Contract Costs and Liabilities) shall not apply.

13. **CONTRACT BENEFITS**

The Authorities agree that, notwithstanding that either the City or the County (or both) may have received a payment or deduction (whether by way of set-off or otherwise) from the Contractor pursuant to the Contract or pursuant to a claim made under the Required Insurances, to the extent that any costs, payments, liabilities, compensation or claims are paid by the Contractor pursuant to the Contract (including Deductions)) relate to a matter shown in the first column of the table below, such costs, payments, liabilities, compensation or claims shall be allocated between them in accordance with the allocation set out the second column of the table below in the row corresponding to the matter in question:

Nature of cost, payment, liability or claim (and Contract reference)	**Allocation**
Costs, payments, liabilities or claims received pursuant to Schedule 4 (Payment Mechanism) of the Contract	To be borne by the Authorities as specified in **Schedule 6** (Contract Payment Mechanism - Allocation of Liabilities and Benefits)
Indemnity from the Contractor in circumstances where the Contract is terminated for material breach (clause 43.1.1); an insolvency event (clause 43.1.2) or bribery (clause 45)	To be allocated to the Authority suffering the loss in question which is compensated pursuant to clause 43 of the Contract
Amounts withheld from the final Monthly Payment in respect of rectification works which have not been completed at the due date for such payment in accordance with paragraph 11 of Schedule 12 of the Contract	To be borne by the Authorities in proportions which are deemed by both Authorities to be equitable in the circumstances, having regard to: (a) the nature of the cost, payment, liability or claim; and (b) the sites to which such cost, payment, liability or claim may relate, provided that the Authorities shall at all times act in good faith and seek to agree proportions that reflect the principles set out in this Agreement
Any costs, payments,	To be allocated between the Authorities in proportions

Nature of cost, payment, liability or claim (and Contract reference)	Allocation
Any costs, payments, liabilities, compensation or claims not referred to above	To be allocated between the Authorities in proportions which are deemed by both Authorities to be equitable in the circumstances, having regard to: (a) the nature of the cost, payment, liability or claim borne by the Contractor; and (b) the sites to which such cost, payment, liability or claim borne by the Contractor may relate provided that the Authorities shall at all times act in good faith and seek to agree proportions that reflect the principles set out in this Agreement

14. **CONTRACT MANAGEMENT COSTS**

14.1 The Authorities agree that the Contract Management Costs shall be borne by the Authorities in accordance with the Default Allocation, notwithstanding that either the City or the County (or both) may have actually incurred and paid such costs.

14.2 Where the County Council provides an officer(s) presence at the Sinfin site, the Authorities agree the City Council shall contribute towards the cost of the said officer(s) on a 50/50 basis.

15. **LIABILITIES, IMMUNITIES AND INDEMNITIES**

15.1 **Member and Officer Liabilities**

15.1.1 When working as a member of the Contract Management Board, the members shall be deemed to be working on behalf of their own Authority even where the particular matter under consideration relates solely to the other Authority or relates to both Authorities.

15.1.2 When working on behalf of the Project, officers shall be deemed to be working on behalf of both employing Authorities, and made available and working on behalf of the two Authorities under Section 113 of the Local Government Act 1972.

15.1.3 In consequence of the above, both members and officers shall be treated as falling within the statutory immunity provided by Section 265 of the Public Health Act 1875, as amended, in respect of the Project.

15.2 **Losses to each Authority**

Neither of the Authorities shall have any liability to the other Authority in respect of any loss which that other Authority may suffer as a consequence of any action or

omission by any officer, whilst working on the management and organisation of the Contract on behalf of the Contract Management Board.

16. **SITES**

16.1 **Ownership of the Site**

16.1.1 The Authorities acknowledge that the following Sites are owned by the Authority identified and will be licenced to the Contractor for the purposes of the Contract until such time as the relevant Authority is able to negotiate and agree a lease of each Site with the Contractor:

Sinfin	Derby City Council
Raynesway HWRC	Derby City Council
Bretby (Newhall)	Derbyshire County Council
Ilkeston	Derbyshire County Council
Glossop	Derbyshire County Council
Stonegravels (Chesterfield)	Derbyshire County Council
Loscoe	Derbyshire County Council
Ashbourne	Derbyshire County Council
Northwood	Derbyshire County Council
Clay Cross	Derbyshire County Council

16.1.2 Each Authority shall negotiate in good faith with the Contractor and complete a lease substantially in the form of the lease set out at Schedule 8 of the Contract with the Contractor as soon as reasonable practicable following the date of this Agreement.

16.1.3 The City Council shall ensure that the lease of Sinfin is co-terminus with the NWTF Services under the Contract and shall co-operate with the County (including assisting with the making of any relevant Land Registry Application) to enable the County to register a charge against the title of the Sinfin Site to protect its interests.

16.2 **Site Payment**

Subject to **clauses 16.3** (Calculation of the Site Payment), the County shall pay to the City the Site Payment each Contract Year in accordance with **Schedule 4** (Data, Reporting and Processing of Payments) with effect from the date of this Agreement until the date of expiry or earlier termination of the Contract (and the Site Payment shall be pro-rated in respect of any Contract Year that is not a full period of 12 months).

16.3 **Calculation of the Site Payment**

The Site Payment applicable in respect of each Contract Year shall be £65,000 Indexed on each 1 April from and including 1 April 2010 (the **"Site Payment"**).

16.4 **Continued Use of the Sinfin Site**

At the same time as the Authorities consider whether to grant an extension to the term of the Contract pursuant to clause 3 of the Contract (which shall be a Matter Reserved to Authorities) and in developing their longer term strategic plans for the Sinfin Site and the NWTF:

16.4.1 the Authorities shall consider in good faith whether the NWTF is likely to remain able to accept and process residual waste beyond the Term;

16.4.2 if the NWTF is likely to remain able to accept and process residual waste beyond the Term, the Authorities shall agree the terms on which the County shall be permitted to continue to deliver residual waste to the NWTF (including in the event that the City Council chooses not to continue with such deliveries) subject to the Authorities at all times acting in good faith and using reasonable endeavours to agree the terms on which the County Council shall be permitted to continue to deliver residual waste to the NWTF for processing;

16.4.3 In the event that the Parties are unable to agree terms in accordance with **clause 16.4.2** and/or the County is not permitted to continue delivering residual waste to the NWTF, the City shall re-pay to the County such sum to reflect the County's proportion of the Estimated Fair Value Contribution or any other investment which has been made jointly by the Parties to make the NWTF operational or any similar costs, together with any additional reasonable procurement costs the County may incur as a result of having to make alternative re-processing arrangements; and

16.4.4 if the NWTF is not likely to remain able to accept and process residual waste beyond the Term, the Authorities shall agree the terms on which the NWTF shall be demolished, provided that the costs or benefits arising from any such demolition shall be shared between the Authorities in accordance with the Default Allocation.

16.5 **Raynesway Bunker Site**

The Authorities acknowledge and agree that:

16.5.1 the Raynesway Bunker Site freehold title shall be transferred by the County to the City with an appropriate value uplift clause for no capital transfer sum; and

16.5.2 the Site Payment for the use of the Sinfin Site was deferred until February 2019 for the purposes of the City Council paying the capital value of the Raynesway Bunker Site and the County only became liable for the rental payments for the Sinfin Site at that date.

17. INTELLECTUAL PROPERTY

17.1 Intellectual Property

Each Authority will:

17.1.1 retain all Intellectual Property in its Material; and

17.1.2 grant to the other a non-exclusive, perpetual, non-transferable and royalty free licence to use, modify, amend and develop its Material for the purposes of the Contract and any other purpose resulting from the Contract.

17.2 Jointly Owned Intellectual Property

Without prejudice to **clause 17.1** (Intellectual Property), if both Authorities own or have a legal or beneficial right or interest in any aspect of the Material for any reason (including that no one Authority can demonstrate that it independently supplied or created the relevant Material without the help of the other), both Authorities will grant to the other a non-exclusive, perpetual, non-transferable and royalty free licence to use and exploit such Material as if the other were the sole owner under the Copyright Design and Patents Act 1988 or any other relevant statute or rule of law.

17.3 Right to use Intellectual Property

For the avoidance of doubt, any entity or person who is at the date of this Agreement a party to this Agreement and who has licensed any Intellectual Property under this Agreement will have a non-exclusive, perpetual right to continue to use the licensed Intellectual Property.

17.4 Grant of Licences

Each Authority warrants that it has or will have the necessary rights to grant the licences set out in **clauses 17.1.2** and **17.2** (Intellectual Property) in respect of the Material to be licensed.

17.5 Indemnity

Each Authority shall indemnify the other against any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its intellectual property rights by use of that Authority's intellectual property for the purpose of the Project.

18. REMEDIATION

18.1 Default Notice

At any time the Chief Executive of either of the Authorities (the **"First Authority"**) may serve a notice on the other Authority (the **"Other Authority"**) a notice (a **"Default Notice"**), alleging that that Authority has failed to comply with its obligations under this Agreement, setting out any suggested remedial action and any damage which the First Authority has or is likely to suffer as a result of the alleged failure.

18.2 **Counternotice**

The Authority in receipt of a Default Notice shall have fourteen (14) days within which to serve on the Chief Executive of the First Authority, a notice (a **"Counternotice"**), setting out in respect of every matter contained in the Default Notice proposals for the remediation of the alleged failure and making good any loss which the First Authority has suffered or may suffer as a result of the failure or the reasons why that alleged failure is disputed.

18.3 **Notice of Acceptance**

Within fourteen (14) days of receipt of a Counternotice, the Chief Executive of the First Authority shall send to the Chief Executive of the Other Authority a notice (a **"Notice of Acceptance"**) of any proposals contained in the Counternotice in so far as those proposals are accepted by the First Authority, and may send a notice (a **"Notice of Dispute"**) in so far as any proposals contained in the Counternotice are not accepted by the First Authority, setting out in respect of each proposal which is not accepted by the First Authority why it is considered to be unacceptable.

18.4 **Implementation of Proposals**

Where any proposal in a Counternotice is accepted in a Notice of Acceptance, the Other Authority shall implement that proposal as soon as reasonably practicable.

18.5 **Dispute Resolution**

Where any matter is contained in a Notice of Dispute, it shall fall to be dealt with under the disputes procedure set out in **clause 19** (Dispute Resolution).

19. **DISPUTE RESOLUTION**

19.1 **Disputes**

Any disputes and/or disagreements arising under or in connection with this Agreement shall be resolved in accordance with this **clause 19** (Dispute Resolution).

19.2 **Contract Management Board**

If a dispute and/or disagreement arises in relation to any aspect of this Agreement, then, save in relation to disputes or disagreements relating to a Matter Reserved to Authorities, the Contract Management Board shall meet within ten (10) Business Days of notification of the occurrence of such dispute and attempt to resolve the disputed matter in good faith.

19.3 **Escalation**

In relation to a dispute or disagreement relating to a Matter Reserved to Authorities, or if the Contract Management Board fails to resolve a dispute or disagreement within five (5) Business Days of meeting pursuant to **clause 19** (Dispute Resolution) or fails to meet in accordance with the timescales set out in **clause 19** (Dispute Resolution), then the Contract Management Board or either Authority as appropriate may refer the matter for resolution to:

19.3.1 the Joint Leaders/Members Meeting; or

19.3.2 the Local Government Association or such other party as the Authorities may agree (or the Local Government Association may direct) for resolution by him; or

19.3.3 the exclusive jurisdiction of the Courts of England otherwise.

19.4 **Referral for Determination**

Any dispute and/or disagreement to be determined by the Joint Leaders/Members Meeting, Local Government Association or the Courts of England (as the case may be) under this Agreement shall be promptly referred for determination to him/them.

19.5 **Assistance**

The Authorities shall on request promptly supply to the Joint Leaders/Members Meeting or Local Government Association all such assistance, documents and information as may be required for the purpose of determination and the Authorities shall use all reasonable endeavours to procure the prompt determination of such reference.

19.6 **Acting as Expert and not Arbitrator**

The Local Government Association shall be deemed to act as an expert and not as an arbitrator and its determination shall (in the absence of manifest error) be conclusive and binding upon the Authorities.

19.7 **Costs**

The costs of the resolution of any dispute and/or disagreement between the Authorities under this Agreement shall be borne equally by the Authorities to the dispute in question save as may be otherwise directed by the Joint Leaders/Members Meeting, Local Government Association or the Courts of England (as the case may be).

20. **COMMENCEMENT, DURATION AND TERMINATION**

This Agreement shall continue in full force and effect from the date of this Agreement until the expiry or earlier termination of the Contract.

21. **CONSEQUENCES OF TERMINATION**

If the Agreement is terminated in accordance with **clause 20** (Commencement, Duration and Termination), save for the obligations set out in **clause 22** (Confidentiality and Announcements), the Authorities shall be released from their respective obligations described in this Agreement.

22. CONFIDENTIALITY AND ANNOUNCEMENTS

22.1 Confidential

Each Authority (the **"Covenanter"**) shall, both during the currency of this Agreement and at all times following its termination or expiry, keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) any Confidential Information about the business of and/or belonging to the other Authority which has come to its attention as a result of or in connection with this Agreement, in particular (but without prejudice to the generality of the foregoing) Confidential Information relating to the Contract.

22.2 Exclusions

The obligation set out in **clause 22.1** (Confidentiality and Announcements) shall not relate to information which:

22.2.1 comes into the public domain or is subsequently disclosed to the public (other than through default on the part of the Covenanter or any other person to whom the Covenanter is permitted to disclose such information under the Agreement); or

22.2.2 is required to be disclosed by law; or

22.2.3 was already in the possession of the Covenanter (without restrictions as to its use) on the date of receipt; or

22.2.4 is required or recommended to be disclosed by the rules of any governmental or regulatory authority including any guidance from time to time as to openness and disclosure of information by public bodies; or

22.2.5 is necessary to be disclosed to provide relevant information to any insurer or insurance broker in connection with obtaining any insurance required by this Agreement.

22.3 Permitted Disclosure

Where disclosure is permitted under **clause 22.2.3** or **clause 22.2.4** (Confidentiality and Announcements), the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this **clause 22** (Confidentiality and Announcements) and the disclosing Authority shall make this known to the recipient of the information.

22.4 Communications Strategy

Neither Authority shall make any public statement or issue any press release or publish any other public document relating, connected with or arising out of this Agreement and/or the Contract which has not been approved by the other Authority (excluding any disclosure required by legal or regulatory requirements).

23. FREEDOM OF INFORMATION

23.1 The Freedom of Information Act and the Environmental Information Regulations

Each Authority acknowledges that both Authorities are subject to the provisions of the Freedom of Information Act 2000 (**"FOIA"**) and the Environmental Information Regulations 2004 (**"EIR"**) and each Authority shall where reasonable assist and co-operate with the other Authority (at its own expense) to enable the other Authority to comply with these information disclosure obligations.

23.2 Receipt of a Request for Information Relating to the Other Authority

Where an Authority (the **"Receiving Authority"**) receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of the other Authority (the **"Other Authority"**) in relation to the Project, the Receiving Authority shall (and shall procure that its consultants and/or sub-contractors shall):

23.2.1 transfer the request for information to the Other Authority as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information;

23.2.2 provide the Other Authority with a copy of all information in its possession or power in the form that the Other Authority requires within ten (10) Business Days (or such longer period as the Other Authority may specify) of the Other Authority requesting that information; and

23.2.3 provide all necessary assistance as reasonably requested by the Other Authority to enable the Other Authority to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

23.3 Receipt of a Request for Information Relating to the Project or Agreement

Where an Authority (the **"Receiving Authority"**) receives a request for information under the FOIA or the EIR which relates to the Agreement or the Project, it shall inform the other Authority (the **"Other Authority"**) of the request for information as soon as practicable after receipt and in any event at least two (2) Business Days before disclosure and shall use all reasonable endeavours to consult with the Other Authority prior to disclosure and shall consider all representations made by the Other Authority in relation to the decision whether or not to disclose the information requested.

23.4 Disclosure and Exemptions

Each Authority shall be responsible for determining in its absolute discretion whether any information requested under the FOIA or the EIR:

23.4.1 is exempt from disclosure under the FOIA or the EIR; and/or

23.4.2 is to be disclosed in response to a request for information.

23.5 **Disclosure**

Each Authority acknowledges that the other Authority may be obliged under the FOIA or the EIR to disclose information:

23.5.1 without consulting the other Authority where it has not been practicable to achieve such consultation; or

23.5.2 following consultation with the other Authority and having taken its views into account.

24. **NO AGENCY OR PARTNERSHIP**

24.1 **No Agency**

Save as expressly provided otherwise in this Agreement or where a statutory provision otherwise requires, neither Authority shall in any way whatsoever:

24.1.1 be, act or hold itself out as an agent of the other; nor

24.1.2 make any representations or give any warranties to third parties on behalf or in respect of the other; nor

24.1.3 bind or hold itself out as having authority or power to bind the other.

24.2 **No partnership**

Nothing in this Agreement shall create, or be deemed to create, a partnership between the Authorities.

25. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Nothing in this Agreement shall confer on any third party any benefit or the right to enforce any term of this Agreement.

26. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding between the Authorities in relation to its subject matter and supersedes all prior representations, arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating to the same.

27. **INCONSISTENCY**

This Agreement and its Schedules shall be read and taken together. In the event of any inconsistency or conflict between the clauses of this Agreement and the contents of any of the Schedules, then the provisions of the clauses shall prevail.

28. **SEVERANCE**

In the event of any provision of this Agreement being or becoming legally ineffective or unenforceable the remaining provisions of this Agreement shall not be invalidated.

29. WAIVER

29.1 Delay

The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute or shall not be construed as a waiver of the right or remedy or a waiver of other rights or remedies nor effect the validity of this Agreement.

29.2 Waiver

A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

29.3 Compliance

A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent an Authority from subsequently requiring compliance with the waived obligation.

30. AMENDMENTS

No amendment to this Agreement shall be binding unless it is in writing and signed by the duly authorised representatives of both of the Authorities and expressed to be for the purpose of such amendment.

31. LAW AND JURISDICTION

This Agreement (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Laws of England and the Authorities irrevocably submit to the exclusive jurisdiction of the English courts.

32. NOTICES

32.1 Notices

Any notice required to be given by either Authority pursuant to or in connection with this Agreement shall not be effective unless given in writing and sent by first class post or delivered by hand to the address of the Authority set out above or such alternative address as may be notified in accordance with **clause 32.3** (Notices).

32.2 Service of Notices

A notice served in accordance with **clause 32.1** (Notices) shall be deemed to have been duly served when received except that if it is received between 4 pm on a Business Day and 9 am on the immediately following Business Day it shall be deemed to have been served at 9 am on the second of such Business Days.

32.3 **Notification of Change of Address**

Each Authority shall notify the other in writing within five (5) Business Days of any change in its address for service.

33. **GENERAL**

33.1 **Local Authority Functions**

Nothing contained or implied herein shall prejudice or affect the Authorities' rights and powers, duties and obligations in the exercise of their functions as local authorities and/or in any other capacity and all rights, powers, discretions, duties and obligations of the Authorities under all laws may at all times be fully and effectually exercised as if the Authorities were not a party to this Agreement and as if the Agreement had not been made.

33.2 **Assignment, Transfer and Sub-Contracting**

This Agreement is personal to the Authorities and neither Authority shall assign, transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this Agreement other than to any public body (being a single entity) acquiring the whole of the Agreement and having the legal capacity, power and authority to become a party to and perform the obligations of that Authority under this Agreement being:

33.2.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;

33.2.2 any local authority which has sufficient financial standing or financial resources to perform the obligations of the relevant Authority under this Agreement; or

33.2.3 any other public body whose obligations under this Agreement are unconditionally and irrevocably guaranteed by the relevant Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Agreement.

33.3 **Mitigation**

Each Authority shall at all times take all reasonable steps to minimise and mitigate any loss for which it is entitled to bring a claim against the other Authority pursuant to this Agreement.

33.4 **Interest**

Save where otherwise provided, the Authorities will pay interest on any amount payable under this Agreement not paid on the due date from that date to the date of payment at a rate equal to 1% above the base rate from time to time of Barclays Bank Plc.

34. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts each of which so executed will be an original but together will constitute one and the same instrument.

35. **COSTS**

The Authorities shall be responsible for paying their own respective costs and expenses in relation to the preparation, execution and implementation of this Agreement, except as expressly provided in this Agreement.

IN WITNESS WHEREOF this Deed has been executed on the day and year first above written.

The Common Seal of

Derby~~shire County~~ City Council

is hereunto affixed in the presence of

.....

Authorised signatory

Authorised Officer

The Common Seal of the

Derby ~~City~~ Shire County Council

is hereunto affixed in the presence of

.....

Authorised signatory

pp Director of Legal Services

.....

Authorised signatory

Number in Seal Book 2020/1266

SCHEDULE 1

CONTRACT MANAGEMENT BOARD - MEMBERSHIP

Project Advisors

The following persons (being, in each case, the officer assigned as having strategic responsibility for the Project from time to time) will be entitled to attend and speak at meetings of the Contract Management Board, but shall not be entitled to vote:

1.	Lead Officer as may be designated by the County
2.	Lead Officer as may be designated by the City
3.	The Authorised Officer

Derbyshire County Council

The persons occupying the following posts (or any replacement thereof) shall be full members of the Contract Management Board:

1.	Leader of Derbyshire County Council
2.	Cabinet Member for Waste Management
3.	Executive Director for Waste Management

Derby City Council

The persons occupying the following posts (or any replacement thereof) shall be full members of the Contract Management Board:

1.	Leader of Derby City Council
2.	Cabinet Member for Communities, Neighbourhoods and Streetpride
3.	Strategic Director for Communities & Place

WCA representation

One person will represent all eight Waste Collection Authorities and be entitled to attend and speak at meetings of the Contract Management Board, but shall not be entitled to vote.

SCHEDULE 2

CONTRACT MANAGEMENT BOARD - CONSTITUTION

This Constitution has been approved by Derbyshire County Council and Derby City Council as the Constitution of the Contract Management Board.

1. **Establishment of the Contract Management Board**

1.1 The Contract Management Board shall be the "Derbyshire County Council and Derby City Council Joint Waste Contract Management Board".

1.2 The Contract Management Board is established under Section 101(5) of the Local Government Act 1972, as applied by Section 20 of the Local Government Act 2000 and Regulation 11 of the Local Authorities (Arrangements for the Discharge of Functions) Regulations 2000 by the Executives of Derbyshire County Council and Derby City Council.

2. **Objectives**

The purpose of the Authorities in establishing the Contract Management Board is to oversee and implement the delivery of a project for the treatment and disposal of Contract Waste, pursuant to:

2.1 the waste disposal functions of the Authorities arising under Section 51 of the Environmental Protection Act 1990;

2.2 the terms of an agreement (the "Contract") entered into between the Authorities and Renewi UK Services Limited (the "Contractor") on 2 August 2019; and

3. **Terms of Reference**

The Contract Management Board shall:

3.1 provide strategic leadership of the Contract in collaboration with the Contractor;

3.2 oversee the delivery and implementation of the Contract and the longer term strategy for the development and use of the NWTF to ensure national, regional and local policy/strategy objectives and targets are met;

3.3 oversee the planning and alignment of resources in Derbyshire including Derby City, where relevant to the delivery of the Contract and the longer term strategy for the development and use of the NWTF;

3.4 review and monitor the performance of the Contractor in progressing the priorities and targets agreed in the Contract including the NWTF Services;

3.5 provide strategic leadership for the longer term strategy for the development and use of the NWTF;

3.6 promote improved coordination of activities and service provision between partner agencies, identify better ways of working, and consider what resources might be shared more effectively; and

3.7 ensure wherever possible that knowledge, best practice and experience is shared between the Authorities.

4. **Membership and Appointment of the Contract Management Board**

4.1 The Contract Management Board shall comprise six full members, three advisors and a non-voting member who shall be a representative of the Waste Collection Authorities. The full members of the Contract Management Board shall be appointed by the Cabinet of each Authority. The representative of the Waste Collection Authorities shall be appointed by the Waste Collection Authorities. Each appointing Authority shall, unless there are overriding reasons to the contrary, appoint to the Contract Management Board the member of the Executive of that Authority who has portfolio responsibility for waste functions within that Authority.

4.2 Each member of the Contract Management Board shall be appointed for the term of office, or the balance of the term of office, of the Executive of the appointing Authority.

4.3 The appointment of members of the Contract Management Board to fill any vacancy for such members shall be made by the Executives of each Authority:

4.3.1 as soon as practicable following the adoption of this Constitution by the Executive of that Authority;

4.3.2 as soon as practicable after the election of the Executive of that Authority in accordance with that Authority's Constitution; and

4.3.3 as soon as practicable after a vacancy arises in respect of a seat on the Contract Management Board to which the Executive of that Authority has the power to make an appointment.

4.4 a member of the Contract Management Board shall cease to be a member of the Contract Management Board, and a vacancy shall automatically arise, where:

4.4.1 the member ceases to be, or is suspended under Part III of the Local Government Act 2000 from acting as:

4.4.1.1 a member of an appointing Authority, or

4.4.1.2 a member of the Executive of the appointing Authority;

4.4.2 the member is removed from membership of the Contract Management Board by notification in writing from the Leader of the appointing Authority to the Secretary of the Contract Management Board;

4.4.3 the member fails to attend at least two (2) meetings of the Contract Management Board within a period of twelve (12) months.

4.5 All appointments to membership of the Contract Management Board shall be made by notification in writing from the Leader of the appointing Authority to the Secretary of the Contract Management Board.

4.6 Upon being made aware of any member ceasing to be a member of the Contract Management Board, the Secretary of the Contract Management Board shall write to that member confirming that he/she has ceased to be a member of the Contract Management Board, and notify the appointing Authority and the other members of the Contract Management Board accordingly.

5. **Chairman and Vice-Chairman of the Contract Management Board**

5.1 At the first meeting of the Contract Management Board after the 1st May in any year, the Contract Management Board shall elect a Chairman of the Contract Management Board (who shall be selected from the representatives of Derbyshire County Council) and a Vice Chairman of the Contract Management Board (who shall be selected from the representatives of Derby City Council) for the following year.

5.2 The Chairman and Vice Chairman of the Contract Management Board shall each hold office until:

5.2.1 a new Chairman or Vice Chairman of the Contract Management Board is elected in accordance with **paragraph 5.1 above**;

5.2.2 he/she ceases to be a member of the Contract Management Board, or

5.2.3 he/she resigns from the office of Chairman or Vice Chairman by notification in writing to the Secretary of the Contract Management Board.

5.3 Where a casual vacancy arises in the office of Chairman or Vice Chairman of the Contract Management Board, the Contract Management Board shall at its next meeting elect a Chairman or Vice Chairman, as the case may be, for the balance of the term of office of the previous Chairman or Vice Chairman, in accordance with **paragraph 5.1 above**.

5.4 Where, at any meeting or part of a meeting of the Contract Management Board, both the Chairman and Vice Chairman of the Contract Management Board are either absent or unable to act as Chairman or Vice Chairman, the Contract Management Board shall elect one of the members of the Contract Management Board representing Derbyshire County Council present at the meeting to preside for the balance of that meeting or part of the meeting, as appropriate.

6. **Secretary of the Contract Management Board**

6.1 The Contract Management Board shall be supported by the Secretary of the Contract Management Board.

6.2 The Secretary of the Contract Management Board shall be an officer of one of the appointing Authorities, appointed by the Contract Management Board for this purpose.

6.3 The functions of the Secretary of the Contract Management Board shall be:

6.3.1 to maintain a record of membership of the Contract Management Board;

6.3.2 to notify the proper officers of each appointing Authority of any anticipated "key decisions" to be taken by the Contract Management Board, to enable such "key decisions" to be included in Forward Plans of each appointing Authority;

6.3.3 to carry out such notification to and consultation with members of any appointing Authority as may be necessary to enable the Contract Management Board to take urgent "key decisions" which have not been included in the Forward Plans of the appointing Authorities;

6.3.4 to summon meetings of the Contract Management Board in accordance with **paragraph 8 below**;

6.3.5 to prepare and send out the agenda for meetings of the Contract Management Board in consultation with the Chairman and the Vice Chairman of the Committee and the Authorised Officer;

6.3.6 to keep a record of the proceedings of the Contract Management Board;

6.3.7 to take such administrative action as may be necessary to give effect to decisions of the Contract Management Board; and

6.3.8 such other functions as may be determined by the Contract Management Board.

7. **Additional observers to the Contract Management Board**

In addition to the members of the Contract Management Board appointed pursuant to **paragraph 4 above**, additional members of the Waste Collection Authorities shall be entitled to attend and to speak at meetings of the Contract Management Board, but shall not be entitled to vote.

8. **Convening of Meetings of the Contract Management Board**

8.1 Meetings of the Contract Management Board shall be held at such times, dates and places as may be notified to the members of the Contract Management Board by the Secretary of the Contract Management Board, being such time, place and location as:

8.1.1 the Contract Management Board shall from time to time resolve;

8.1.2 the Chairman of the Contract Management Board, or if he/she is unable to act, the Vice Chairman of the Contract Management Board, shall notify to the Secretary of the Contract Management Board, or

8.1.3 the Secretary of the Contract Management Board, in consultation where practicable with the Chairman and Vice Chairman of the Contract Management Board, shall determine in response to receipt of a request in writing addressed to the Secretary of the Contract Management Board:

8.1.3.1 from and signed by two members of the Contract Management Board, or

8.1.3.2 from the Chief Executive of any of the appointing Authorities,

which request, shall set out an urgent item of business within the functions of the Contract Management Board.

8.2 The Secretary of the Contract Management Board shall settle the agenda for any meeting of the Contract Management Board after consulting, where practicable:

8.2.1 the Chairman of the Contract Management Board;

8.2.2 the Vice Chairman of the Contract Management Board; and

8.2.3 the Authorised Officer

and shall incorporate in the agenda any items of business and any reports submitted by:

8.2.4 the Chief Executive of any of the appointing Authorities;

8.2.5 the Chief Finance Officer to any of the appointing Authorities;

8.2.6 the Monitoring Officer to any of the appointing Authorities; and

8.2.7 the Authorised Officer.

9. **Procedure at Meetings of the Contract Management Board**

9.1 The Contract Management Board shall, unless the member of the Contract Management Board presiding at a meeting or the Contract Management Board determines otherwise, conduct its business in accordance with the executive decision-making procedure rules of Derbyshire County Council, except in so far as may be specified to the contrary in this Constitution.

9.2 The Chairman of the Contract Management Board, or in his/her absence the Vice Chairman of the Contract Management Board, or in his/her absence the member of the Contract Management Board elected for this purpose, shall preside at any meeting of the Contract Management Board.

9.3 The Contract Management Board shall take decisions as follows:

9.3.1 decisions will be reached by consensus and on the basis of the best course of action for both Authorities;

9.3.2 if no agreement is reached pursuant to **paragraph 9.3.1** then a process will be adopted which maximises the total benefit to the Authorities and agreement will be sought on an appropriate apportionment of cost or other financial arrangement; and

9.3.3 subject to **paragraph 9.4** below, if no agreement is reached pursuant to **paragraph 9.3.1** or **9.3.2**, a dispute procedure shall be used to evaluate the relative benefit or cost of any decision to the individual Authorities.

9.4 Where a decision is required to be taken by the Contract Management Board urgently, then the Chairman may take that decision unilaterally provided that such decision may be challenged by any other member of the Contract Management Board within twenty-eight days of the decision being taken pursuant to the dispute procedure referred to at **paragraph 9.3.3** above.

10. **Powers Delegated to the Contract Management Board**

10.1 The Executive of each of the appointing Authorities has delegated to the Contract Management Board all executive functions and powers of that Authority as may be necessary, calculated to facilitate, incidental or conducive to the discharge of the functions of the Contract Management Board except as specified below.

10.2 The following functions are reserved to the appointing Authorities and shall not be within the powers of the Contract Management Board:

10.2.1 all non-executive functions of any of the appointing Authorities;

10.2.2 any decision which is contrary to or not wholly in accordance with the Budget approved by each appointing Authority for the Contract Management Board, or is contrary to an approved policy or strategy of either of the appointing Authorities;

10.2.3 any decision in respect of which the Chief Executive of either of the appointing Authorities has notified the Secretary of the Contract Management Board in writing of the Authority's formal objection to the proposed decision;

10.2.4 all target setting, and consequent financial commissioning or contractual commitments;

10.2.5 any amendment to the Inter Authority Agreement entered into between the Authorities;

10.2.6 any of the following in relation to the Contract:

10.2.6.1 requesting or approving Changes pursuant to the Change Control Procedure;

10.2.6.2 issuing any notice of termination pursuant to the Contract;

10.2.6.3 issuing any waiver pursuant to clause 45 of the Contract;

10.2.6.4 requesting or approving any amendments to the terms of the Contract.

11. Attendance at Meetings of the Contract Management Board

11.1 The Contract Management Board shall be regarded as a "working group" for the purposes of the Local Government (Access to Information) Act 1985, and consequently meetings of the Contract Management Board shall not be open to the press or public.

11.2 Notwithstanding that a meeting or part of a meeting of the Contract Management Board is not open to the press and public, the officers specified in **paragraph 11.3 below** of each of the appointing Authorities shall be entitled to attend all, and all parts, of such meetings, unless the particular officer has a conflict of interest as a result of a personal interest in the matter under consideration.

11.3 The following are the officers who shall have a right of attendance or ability to nominate a representative in accordance with **paragraph 11.1**:

11.3.1 the Chief Executive of either of the appointing Authorities;

11.3.2 the Chief Finance Officer to either of the appointing Authorities;

11.3.3 the Monitoring Officer to either of the appointing Authorities;

11.3.4 the Authorised Officer;

11.3.5 the senior technical officer of each appointing Authority with responsibility for waste disposal functions.

12. Standing Orders for Contracts, Financial Regulations and Officer Employment Procedure Rules

The Contract Management Board shall operate under the Standing Orders for Contracts, Financial Regulations and Officer Employment Procedure Rules of Derbyshire County Council.

13. Amendment of this Constitution

This constitution can only be amended by resolution of both appointing Authorities.

SCHEDULE 3

REQUIRED APPROVALS

Nature of action / decision required	Category (as referred to in clause 7)
Extension to the term of the Contract (clause 3)	Matter Reserved to Authorities
Decision to carry out an audit of the Contractor's or a sub-contractors Quality Management System (clause 8.3)	Lead Officers Matter
Negotiating, agreeing and granting of the leases for each Site (clause 12)	To be undertaken by the Authority who owns the relevant Site
Step-in (clause 18)	Authorised Officer Decision (to be subsequently ratified by the Contract Management Board)
Monitoring of the Contract (Clause 28)	Lead Officers Matter
Issue a joint Change request under the Change Control Procedure (clause 29)	Matter Reserved to Authorities
Approval of a Change request from the Contractor under the Change Control Procedure (clause 29)	Matter Reserved to Authorities
Agreeing the consequences of a Brexit Change in Law (clause 29A)	Lead Officers Matter (save where one Lead Officer considers that the matter in question should be referred to either the Contract Management Board or the Authorities, the matter shall be referred to the Contract Management Board or the Authorities (as appropriate))
All actions and decisions relating to the Dispute Resolution Procedure (clause 30)	Contract Management Board
Consent to sub-contracting and assignment of the Contract by the Contractor (clause 31)	Matter Reserved to Authorities
Termination of the Contract (clause 43)	Matter Reserved to Authorities
Agreeing the consequences of a Force Majeure Event (clause 44)	Lead Officers Matter (save where one Lead Officer considers that the matter in question should be referred to either the Contract Management Board or the Authorities, the matter shall be referred to the Contract Management Board or the Authorities (as

Nature of action / decision required	Category (as referred to in clause 7)
	appropriate))
Any waiver of any breach by the Contractor of the Contract (clause 48)	Lead Officers Matter (save where one Lead Officer considers that the matter in question should be referred to either the Contract Management Board or the Authorities, the matter shall be referred to the Contract Management Board or the Authorities (as appropriate))
Schedule 14 (NWTF Services)	To be managed in accordance with the procedures outlined in **Schedule 7**. (NWTF Services)

SCHEDULE 4

DATA, REPORTING AND PROCESSING OF PAYMENTS

1. **Information Management System**

In accordance with paragraph 1.2.25 of Schedule 14 of the Contract, the Contractor shall provide an electronic information management system to collate, share and report waste management data. The system will collect data from third parties either by electronic data transfer or by manual entry of hard copy weighbridge tickets. This information is available to both Authorities and is required to enable verification of payments to the Contractor.

2. **Payments pursuant to the Contract**

2.1 Upon receipt of a Monthly Report and invoice from the Contractor by the tenth (10th) Business Day of each month during the Term, a duly authorised representative of the County (who shall be notified to the Contractor) and the City from time to time and be known as the 'County's Invoice Representative'. If no such representative is appointed or notified, it shall be deemed to be the County's Head of Waste Management) shall:

2.1.1 review the Monthly Report and invoice;

2.1.2 immediately forward a copy of the Monthly Report and invoice to both Authorities (and shall make arrangements for an alternate to do so in the absence of the County's Invoice Representative);

2.1.3 within five (5) Business Days of receiving the Monthly Report, provide to the Contractor the Councils' Monthly Reply setting out whether the Councils agree or disagree with that Monthly Report in accordance with the requirements of clause 21.2 of the Contract; and

2.1.4 apportion the invoice between the City and the County in accordance with the information provided in the Monthly Report and invoice, the information management system and the terms of this Agreement.

2.2 The Authorities hereby acknowledge that if the County's Invoice Representative fails to issue the Councils Monthly Reply pursuant to the terms of the Contract, the Councils are deemed, pursuant to clause 21.3 of the Contract to have agreed to the relevant Monthly Report.

2.3 The County shall:

2.3.1 pay to the Contractor the undisputed amount of any invoice in accordance with the provisions of clause 21.8 of the Contract; and

2.3.2 by the fifteenth (15th) Business Day of each month issue the City with an invoice for the City's proportion determined by the County's Invoice Representative pursuant to **paragraph 2.1.4** above.

2.4 The City shall pay the County its share of any invoice by the penultimate Business Day of each month (to ensure that payment for each Payment Period is made by the County under the Contract immediately at the end of the Payment Period).

3. **Sinfin Site Payment**

3.1 The City shall issue to the County on or before the end of each Contract Year an invoice for the Sinfin Site Payment.

3.2 The County shall pay to the City the Sinfin Site Payment by the last Business Day of the first Month of the following Contract Year.

4. **Contract Management Costs**

4.1 The County's Invoice Representative shall prepare each month a monthly report setting out the Contract Management Costs incurred by both Authorities in the previous month (a **"Contract Management Report"**).

4.2 The Contract Management Report shall set out:

5.2.1 the costs which have been incurred by each Authority in the previous month; and

5.2.2 any reconciliation payments that need to be made by either Authority to ensure that the Contract Management Costs are apportioned between the Authorities in accordance with **clause 14** of this Agreement.

4.3 The Contract Management Report must be submitted by the County's Invoice Representative to both Authorities by the 10th business day of the month.

4.4 An invoice for any reconciliation payment must be issued by the 15th business day of the month. Payment of such invoices shall be made by the 20th business day of the month.

5. **Payments for the NWTF Services**

5.1 The Authorities acknowledge that notwithstanding the provisions of paragraph 3.7 of Schedule 14 of the Contract, the Contractor is currently issuing and will continue to issue separate invoices to each of the City and the County in respect of the NWTF Services. Upon receipt of their respective invoices from the Contractor, the County's Invoice Representative and a duly authorised representative of the City (who shall be notified to the Contractor and the County from time to time and be known as the 'City's Invoice Representative' or in the absence or non-appointment of the same shall be deemed to be the City's Head of Waste Management) shall each in respect of their own invoice:

5.1.1 review the invoice and any detailed cost breakdown schedule provided by the Contractor; and

5.1.2 within five (5) Business Days of receiving the invoice and any detailed cost breakdown schedule, provide to the Contractor a response setting out whether the relevant Council agrees or disagrees with that invoice and

highlighting any discrepancies in the supporting information provided and shall supply a copy of the same to the County Council or the City Council as the case may be.

5.2 The County and the City shall each pay to the Contractor the undisputed amount of their relevant invoice in accordance with the provisions of paragraph 3.7 of Schedule 14 of the Contract.

6. **Set Off**

Each of the Parties hereby acknowledges that it shall have no right under this Agreement to set off any amounts owed (or to become due and owing) to the other Party, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by the other Party.

7. **Balancing Payment for Stages 4, 5 & 6 of the NWTF Services**

Following receipt of the invoice from the Contractor in accordance with **paragraph 5.1** of this **Schedule 4**, and within 10 Business Days the County's Invoice Representative and a duly authorised representative of the City, shall:

7.1 using data from the Contractor's invoice and report, calculate and agree the balancing payment due from one Party to the other for the relevant Month (calculated in accordance with **0** of this Agreement); and

7.2 pay such amount agreed to the other Party.

Should the Parties fail to reach an agreement within 10 Business Days, either Party may refer the matter to the dispute resolution procedure in accordance with Clause 19 (Dispute Resolution).

SCHEDULE 5

CONTRACT MANAGEMENT COSTS

1. **Contract Management Costs**

The Contract Management Costs shall comprise the

costs incurred for the purposes of the Project on the instruction of the Contract Management Board, including:

1.1 consultants' fees;

1.2 advertising costs; and

1.3 costs of holding meetings of the Contract Management Board.

1.4 In the event that the Authorities agree that a specific post in respect of contract management shall be established and a person is subsequently employed by either the City or the County the salary and on costs are to be agreed and apportioned between the Authorities in accordance with the principles of this Agreement.

2. **Exclusions from the Contract Management Costs**

The Contract Management Costs shall not include:

2.1 costs incurred by the Authorities in making the Authority's property or information in respect of such property available to the Contractor; and

2.2 members' allowances in respect of attendance by members of the Authorities at meetings of the Contract Management Board.

SCHEDULE 6

CONTRACT PAYMENT MECHANISM

ALLOCATION OF LIABILITIES AND BENEFITS

SCHEDULE 6

Payment Mechanism

Annotated version for the Inter-Authority Agreement 2

1A GENERAL

In the event that any component of payment is due over a period which is less than the full applicable Month (for example due to the impact of a Relevant Event or Relief Event), payments shall be pro-rated as appropriate.

1. MONTHLY PAYMENT

The Monthly Payment in respect of each Month, will be payable following issuance and agreement of the Monthly Report (in accordance with the process set out in clause 32 of the Contract). For the avoidance of doubt, as the Monthly Payment will be based on actual waste flows which will only be available after the relevant Month, the payable amount calculated, reported and agreed will be due to be paid by the 20th Working Day following the end of the relevant Month. For example, for the services provided for the month of January, the Monthly Report stating the Monthly Payment calculated will be submitted in February and will be payable by the last Business Day of the month of February.

1.1 Principal Formula

The Monthly Payment (MPm), representing the payment due to the Contractor for the relevant Month shall be calculated using the following formula:

MPm = HWRCPm + TSPm + LFPm + DRWPm + NNDRm + HAZPm + INSm + LCm +/- OAm - MAm + DSSm + YEFAy

Where:

MPm	=	the Monthly Payment, being the amount payable for services provided in the relevant Month
HWRCPm	=	the HWRC Payment, being the amount payable in respect of HWRC services for the relevant Month, calculated in accordance with

		paragraph 1.2 of this Schedule 3
TSPm	=	the Contract Transfer Station Payment, being the amount payable in respect of Transfer Station services for the relevant Month, calculated in accordance with **paragraph 1.3 of this Schedule 3**
LFPm	=	the Landfill Payment, being the amount payable in respect of Landfill for the relevant Month, calculated in accordance with **paragraph 1.4 of this Schedule 3**
DRWPm	=	the Diverted Residual Waste Payment, being the amount payable in respect of Residual Waste diverted from landfill for the relevant Month shall be calculated in accordance with **paragraph 1.5 of this Schedule 3**
NNDRm	=	the NNDR Payment, being the reimbursement of any NNDR properly payable in respect of the Facilities referred to in **paragraph 1.6 of this Schedule 3**
HAZPm	=	the Hazardous Waste Payment, being the amount payable in respect of Specified Hazardous Waste and/or Clinical Waste Handled for the relevant Month, calculated in accordance with **paragraph 1.7 of this Schedule 3**
INSm	=	the Insurance Payment, being the amount payable in respect of Insurance for the relevant Month, calculated in accordance with **paragraph 1.8 of this Schedule3**
LCm	=	the Lifecycle Payment, being the amount payable in respect of Lifecycle in the relevant Month as agreed to be undertaken in accordance with **paragraph 1.9 of this Schedule 3**
OAm	=	any other amount, whether payable by or to the Councils, as agreed between parties, in all cases without double counting, calculated in

		accordance with **paragraph 1.10 of this Schedule 3**.
MAm	=	the Monthly Adjustments in respect of the relevant Month, calculated in accordance with **paragraph 1.11 of this Schedule 3**.
DSSm	=	the Diversion Saving Sharing, being the amount payable in respect savings generated from avoiding landfill for the relevant Month, calculated in accordance with **paragraph 1.12 of this Schedule 3**.
YEFAy	=	the Year End Floor Adjustment, calculated and applied in accordance with **paragraph 2 of this Schedule 3**.

1.2 HWRC Payment (HWRCPm)

Payment for management of HWRCs (including the associated Composting and haulage) in each full Payment Period (HWRCPm) shall be calculated as follows:

$$\mathbf{HWRCPm = [(HWFAP \times Dm / Dy) + (HWTm \times HWR) + (HCTm \times HCR)] \times IX2y}$$

Where:

			Allocation	
			City	**County**
HWRCPm	=	The amount payable in respect of the HWRCs in the relevant Month		
HWFAP	=	the total fixed annual payment in respect of all the HWRCs, calculated in accordance with **paragraph 1.2.1 of this**	Refer to paragraph 1.2.1 of this Schedule 3.	

		Schedule 3		
Dm	=	The number of days in the relevant Month, in the Contract Period		
Dy	=	the number of days in the relevant year (being the 12 month period from the 1st September to 31st August) in which the relevant Month falls. For the avoidance of doubt this will be 365 or 366.		
HWTm	=	the total Tonnage of Household Waste actually deposited by members of the public at HWRCs in the relevant Month (excluding Rubble, Specified Hazardous Waste and Clinical Waste)	The total Tonnage of Household Waste actually deposited by members of the public at Raynesway HWRC in the relevant month.	The total Tonnage of Household Waste actually deposited by members of the public at all HWRCs (other than Raynesway) in the relevant month.
HWR	=	the Tonnage rate for HWRCs being **£18.88** per Tonne (Price Base April 2011)		
HCTm	=	the total Tonnage of Compostable Waste actually deposited by members of the public at HWRCs in the relevant month which is sent for Composting	The total Tonnage of Compostable Waste actually deposited by members of the public at Raynesway HWRC in the relevant month.	The total Tonnage of Compostable Waste actually deposited by members of the public at all HWRC (other than Raynesway) in the relevant

				month.
HCR	=	the extra-over Tonnage rate for HWRC Compostable Waste being **£47.58** per Tonne (Price Base April 2011)		
IX2y	=	the Indexation Factor for the relevant Contract Year y, applicable to the relevant Month calculated in accordance with **paragraph 1.13 of this Schedule 3**		

1.2.1 HWRC Fixed Annual Payment (HWFAP)

The HWRC Fixed Annual Payment (HWFAP) for management of HWRCs shall be the aggregate of the fixed payments for each HWRC and shall be calculated as follows:

HWFAP = HAshy + HBoly + HChesy + HGIosy + Hilky + HLosy +

Where:

			Allocation	
			City	City
HAshy	=	the fixed annual payment in respect of the HWRC at Ashbourne being **£209,685** (Price Base April 2011).	n/a	Payable by the County
HBoly	=	the fixed annual payment in respect of the HWRC at Bolsover being **£192,412** (Price Base April 2011).	n/a	Payable by the County
HChesy	=	the fixed annual payment in respect of the HWRC at Stonegravels (Chesterfield) being	n/a	Payable by the

		£196,659 (Price Base April 2011).		County
HGlosy	=	the fixed annual payment in respect of the HWRC at Glossop being **£190,578** (Price Base April 2011).	n/a	Payable by the County
Hilky	=	the fixed annual payment in respect of the HWRC at Ilkeston being **£178,889** (Price Base April 2011).	n/a	Payable by the County
HLosy	=	the fixed annual payment in respect of the HWRC at Loscoe being **£194,519** (Price Base April 2011).	n/a	Payable by the County
HNory	=	the fixed annual payment in respect of the HWRC at Northwood being **£190,206** (Price Base April 2011).	n/a	Payable by the County
HRayy	=	the fixed annual payment in respect of the HWRC at Raynesway being **£253,692** (Price Base April 2011)	Payable by the City	n/a
HBrety	=	the fixed annual payment in respect of the HWRC at Bretby being **£193,736** (Price Base April 2011).	n/a	Payable by the County

1.3 Contract Transfer Station Payment

Payment for management of Contract Transfer Stations (including the associated haulage) in each full Payment Period (TSPm) shall be calculated as follows:

Where:

			Allocation	
			City	**County**
TSPm	=	the total amount payable in respect of Contract Transfer Stations in the relevant Month		
TSFAP	=	the total annual fixed payment fee in respect of all Contract Transfer Stations, calculated in accordance with	Refer to paragraph 1.3.1 of this Schedule 3.	

		paragraph 1.3.1 of this Schedule 3		
Dm	=	The number of days in the relevant Month, in the Contract Period		
Dy	=	the number of days in the relevant year (being the 12 month period from the 1st September to 31st August) in which the relevant Month falls. For the avoidance of doubt this will be 365 or 366.		
TST1m	=	the total Tonnage of Contract Waste actually delivered to the Clover Nook and Glossop Transfer Stations by or on behalf of WCAs in the relevant Month	Based on the actual tonnage of Contract Waste delivered to Clover Nook and Glossop Transfer Stations by the City, in the relevant Month.	Based on the actual tonnage of Contract Waste delivered to Clover Nook and Glossop Transfer Stations by the County, in the relevant Month.
TSR1	=	the Tonnage rate for Clover Nook and Glossop Transfer Stations being **£13.38** per Tonne (Price Base April 2011)		
TST2m	=	the total Tonnage of Contract Waste actually delivered to the Chesterfield, Willshee, and Stanton Transfer Stations by or on behalf of WCAs in the relevant Month	Based on the actual tonnage of Contract Waste delivered to Chesterfield, Willshee and Stanton Transfer Stations by the City, in	Based on the actual tonnage of Contract Waste delivered to Chesterfield, Willshee and Stanton Transfer Stations by the County,

			the relevant Month.	in the relevant Month.
TSR2	=	the Tonnage rate for Chesterfield, Willshee and Stanton Transfer Stations being **£23.34** per Tonne (Price Base April 2019)		
TST3m	=	the total Tonnage of Contract Waste actually delivered to London Road Contract Transfer Station by or on behalf of WCAs in the relevant Month	Based on the actual tonnage of Contract Waste delivered to London Road Transfer Station by the City, in the relevant Month.	Based on the actual tonnage of Contract Waste delivered to London Road Transfer Station by the County, in the relevant Month.
TSR3	=	the Tonnage rate for London Road Transfer Station being **£30.27** per Tonne (Price Base April 2019)		
TST4m	=	the total Tonnage of Contract Waste actually delivered to Raynesway Transfer Station by or on behalf of WCAs in the relevant Month	Based on the actual tonnage of Contract Waste delivered to Raynesway Transfer Station by the City, in the relevant Month.	Based on the actual tonnage of Contract Waste delivered to Raynesway Transfer Station by the County, in the relevant Month.
TSR4	=	the Tonnage rate for Raynesway Transfer Station being **£17.85** per Tonne (Price Base April 2019)		

TRaynesy	=	the fixed annual payment in respect of Raynesway Transfer Station being **£574,000** (Price Base April 2019).	Based on the actual proportion of Contract Waste delivered to the Raynesway Transfer Station by the City, in the relevant Month. **(See additional note below #1)**	Based on the actual proportion of Contract Waste delivered to the Raynesway Transfer Station by the County, in the relevant Month. **(See additional note below # 1)**
IX2y	=	the Indexation Factor for the relevant Contract Year y, applicable to the relevant Month, calculated in accordance with **paragraph 1.13 of this Schedule 3**		
RPIXy	=	the Retail Prices Indexation Factor calculated in accordance with **paragraph 1.13 of this Schedule 3**		

NOTE #1: As set out above the TRaynesy amount will be split between the Councils based on the proportion of actual Contract Waste delivered by each.

Both Councils recognize there is a risk of underutilization of this Transfer Station as a result of waste that would normally go through this transfer station being direct delivered to the NWTF.

As reference the £574,000 was set by the Contractor on the basis of a guaranteed minimum tonnage through put of 35,000 per annum.

Therefore with respect to the allocation, should the total Contract Waste delivered by the Councils in the relevant month be less than 2,916 tonnes (35,000 / 12), then the "**Default Raynesway Allocation**" will apply.

The "**Default Raynesway Allocation**" being the actual proportion of Contract Waste delivered to the Raynesway Transfer Station by each Council in the 6 months prior to this relevant month (using only those months where the total Contract Waste delivered by the Councils was greater than 2,916 tonnes in each month).

1.3.1 Contract Transfer Station Fixed Annual Payment (TSFAP)

The Contract Transfer Station Fixed Annual Payment (TSFAP) for management of Contract Transfer Stations shall be the aggregate of the fixed payments for each Contract Transfer Station and shall be calculated as follows:

TSFAP = TClovery + TGlosy

Where:

			Allocation	
			City	**County**
TClovery	=	the fixed annual payment in respect of Clover Nook Transfer Station being **£408,243** (Price Base April 2011)	Based on the actual tonnage of Contract Waste delivered to Clover Nook Transfer	Based on the actual tonnage of Contract Waste delivered to Clover Nook Transfer Stations by

			Stations by the City, in the relevant Month.	the County, in the relevant Month.
TGlosy	=	the fixed annual payment in respect of Glossop Transfer Station being **£408,243** (Price Base April 2011).	Based on the actual tonnage of Contract Waste delivered to Glossop Transfer Stations by the City, in the relevant Month.	Based on the actual tonnage of Contract Waste delivered to Glossop Transfer Stations by the County, in the relevant Month.

1.4 Landfill Payment (LFPm)

Payment for Landfill (LFPm) in each relevant Month shall be calculated as follows:

LFPm = HLFPm + TLFPm

Where:

LFPm	=	the total amount payable in respect of Landfill in the relevant Month
HLFPm	=	the total amount payable in respect of Landfill derived from HWRCs in the relevant Month, calculated in accordance with **paragraph 1.4.1 of this Schedule 3**
TLFPm	=	the total amount payable in respect of Landfill derived from the Transfer Stations in the relevant Month, calculated in accordance with **paragraph 1.4.2 of this Schedule 3**

1.4.1 *HWRC derived Landfill Payment (HLFP)*

The HWRC derived Landfill Payment (HLFP) for the relevant Month shall be calculated as follows:

HLFPm = HWTm x (1-(HWRCrat. + HWRCadd)) x [(HLGFR x RPIXCy) + LFTy]

Where:

			Allocation	
			City	County
HLFPm	=	the total amount payable in respect of Landfill derived from HWRCs in the relevant Month		
HWTm	=	the actual total Tonnage of Household Waste deposited by members of the public at HWRCs in the relevant Month (excluding Rubble, Specified Hazardous Waste and Clinical Waste actually Handled)	The total Tonnage of Household Waste (excluding Rubble, Specified Hazardous Waste and Clinical Waste) deposited by members of the public at Raynesway HWRC in the	The total Tonnage of Household Waste (excluding Rubble, Specified Hazardous Waste and Clinical Waste) deposited by members of the public at all HWRCs (other than Raynesway) in the

			relevant month.	relevant month.
HWRCrat	=	the HWRC Re-Use, Recycling and Composting Target (expressed as a percentage) for the relevant Contract Year applicable for the relevant Month, as set out in **Schedule 1 (Specification)**		
HWRCadd	=	the HWRC additional diversion target being **7%**		
HLGFR	=	the Tonnage rate for HWRC Landfill being **£20.64** per tonne (Price Base 2011)		
RPIXCy	=	the Retail Prices Indexation Factor Cumulative calculated in accordance with **paragraph 1.13 of this Schedule 3**		
LFTy	=	the prevailing rate of Landfill Tax per Tonne in the relevant Contract Year applicable for the relevant Month for the type of Waste being Landfilled		

1.4.2 Transfer Station derived Landfill Payment (TLFP)

The Transfer Station derived Landfill Payment (TLFP) for the relevant Month shall be calculated as follows:

TLFPm = (TSTm + BUXTm + 2ZLFTm – WEEEm – HAZTm – DRWTm – NWTFTm) x (TLGFRm + LFTy)

Where:

	Allocation	
	City	**County**

TLFPm	=	the total amount payable in respect of Landfill derived from Transfer Stations in the relevant Month		
TSTm	=	the actual total Tonnage of Contract Waste delivered to the Contract Transfer Stations (Clover Nook, Glossop, Willshees, Stanton, London Road, Chesterfield and Raynesway) by or on behalf of WCAs in the relevant Month	The actual tonnage of Contract Waste delivered to these Transfer Stations by the City, in the relevant Month.	The actual tonnage of Contract Waste delivered to these Transfer Stations by the County, in the relevant Month.
BUXTm	=	the actual total Tonnage of Contract Waste delivered to the Buxton Transfer Station (operated by a third party) by or on behalf of WCAs in the relevant Month.	n/a – City do not deliver to Buxton	The actual tonnage of Contract Waste delivered to Buxton Transfer Stations by the County, in the relevant Month.
2ZLFTm	=	the actual total Tonnage of Contract Waste delivered to the 2ZLFT Transfer Station by or on behalf of WCAs in the relevant Month.	The actual tonnage of Contract Waste delivered to 2ZLFT Transfer Station by the City, in the relevant Month.	The actual tonnage of Contract Waste delivered to 2ZLFT Transfer Station by the County, in the relevant Month.
WEEEm	=	the actual total Tonnage of Waste Electrical and Electronic Equipment (WEEE) delivered to the Contract Transfer Stations (Clover Nook, Glossop, Willshees, Stanton, London Road, Chesterfield and	The actual tonnage of WEEE delivered to these	The actual tonnage of WEEE delivered to these

		Raynesway) by or on behalf of WCAs in the relevant Month.	Transfer Stations by the City, in the relevant Month.	Transfer Stations by the County, in the relevant Month.
HAZTm	=	the actual total tonnage of Specified Hazardous Waste and/or Clinical Waste delivered to the Contract Transfer Stations (Clover Nook, Glossop, Willshees, Stanton, London Road, Chesterfield and Raynesway) by or on behalf of the WCAs in the relevant Month.	The actual tonnage of Hazardous Waste and/or Clinical Waste delivered to these Transfer Stations by the City, in the relevant Month.	The actual tonnage of Hazardous Waste and/or Clinical Waste delivered to these Transfer Stations by the County, in the relevant Month.
DRWTm	=	the actual total Tonnage of Diverted Residual Waste away from landfill and treated at alternative Treatment Outlets (e.g. alternative energy from waste facility, sweepings facility etc) as secured by the Contractor in the relevant Month. For the avoidance of doubt this excludes any Residual Waste sent to the NWTF for treatment in the relevant Month	Allocated between the Councils based on the "**TST Contract Waste Allocation**" being the relevant proportion of Contract Waste delivered to the Transfer Stations (for clarity being Clover Nook, Glossop, Willshees, Stanton, London Road, Chesterfield Raynesway, Buxton and 2ZLFT) by each Council in the relevant Month	
NWTFTm	=	the actual total Tonnage of Residual Waste sent by the Contractor to the NWTF for treatment in the relevant Month. For the avoidance of doubt this excludes any waste delivered directly to the NWTF by the WCA's in the relevant Month (as this will not be Contract Waste passing through the Transfer Stations to start with).	Allocated between the Councils based on the "**TST Contract Waste Allocation**" (as defined above).	

TLGFRm	=	the relevant Tonnage rate for Transfer Station Landfill in the relevant Month, applicable as follows: • From Services Commencement Date to 31st March 2020 = **£20.53** per tonne • From 1st April 2020 to 31st March 2021 = **£21.78** per tonne • From 1st April 2021 onwards = **£23.04** per tonne For the avoidance of doubt, these rates are fixed, no indexation is applicable to these rates		
LFTy	=	the prevailing rate of Landfill Tax per Tonne in the relevant Contract Year applicable for the relevant Month for the type of Waste being Landfilled		

1.5 Diverted Residual Waste Payment (DRWPm)

Payment for Residual Waste from Contract Transfer Stations, diverted from landfill (DRWPm) in each relevant Month shall be calculated as follows:

$$\mathbf{DRWPm = \sum(DRWTm \times DRWRm) + (AHAULm - PHAULm)}$$

Where:

			Allocation	
			City	County
DRWPm	=	the total amount payable in respect of Diverted Residual Waste in the relevant Month		
DRWTm	=	the actual total Tonnage of Diverted Residual Waste away from landfill and treated at the alternative Treatment Outlet (e.g. alternative energy from waste facility, sweepings facility etc)as secured by the Contractor in the relevant Month. For the avoidance of doubt this excludes any Residual Waste sent to the NWTF for treatment in the relevant Month	Allocated between the Councils based on the **"TST Contract Waste Allocation"** (as defined above).	
DRWRm	=	the actual Tonnage rate paid by the Contractor applicable to the Treatment Outlet (e.g. alternative energy from waste facility, sweepings facility) used in the relevant Month, as evidenced by the Contractor and set out in the Monthly Report as required by Schedule 4 (Reporting). However, for any Tonnage of Diverted Residual Waste which is put through the Contractors own network of facilities to produce RDF and be treated, this rate will be **£96.57** per tonne (Price Base April 2019) indexed in accordance with the Retail Prices Indexation Factor (RPIxy) calculated in accordance with **paragraph 1.13 of**		

		this Schedule 3	
AHAULm	=	the actual total haulage costs of hauling Residual Waste in the relevant Contract Month, from the relevant Contract Transfer Station to the i) alternative Treatment Outlet and ii) the NWTF, without double counting any haulage costs that may have been included in DRWRm on the basis the Treatment Outlet provider incorporated such cost in that rate charged.	
PHAULm	=	the total amount already paid for haulage as included in the relevant TSR1, TSR2, TSR3 and TSR4 rates for the total tonnes of Residual Waste sent from the Contract Transfer Stations to the i) alternative Treatment Outlet and ii) the NWTF, in the relevant Contract Month. Appendix 1 sets out the haulage rate element that is included in each of the TSR's to be used in determining this amount already paid.	Allocated between the Councils based on the **"TST Contract Waste Allocation"** (as defined above).

Should the Contractor seek to divert Residual Waste that would cost more than sending the same waste to Landfill (i.e. by comparing i) the relevant Treatment Outlet gate fee plus associated haulage to ii) the landfill gate fee plus landfill tax plus associated haulage), the Contractor will be required to obtain approval from the Councils prior to sending such waste to the Treatment Outlet.

1.6 National Non-Domestic Rates (NNDRm)

Payment to the Contractor for National Non-Domestic Rates (NNDRm) for the relevant Month in respect of the Facilities (being HWRCs and Project Transfer Stations (Glover Nook and Glossop only)) shall be equal to the NNDR amount properly paid by the Contractor (and/or its subcontractors) in that relevant Month.

In relation to each HWRC and Transfer Station, NNDR shall be payable by the Council (City or County) that owns the relevant Site.

In relation to the NWTF, NNDR for the relevant Month shall be allocated between the Councils based on the Default Allocation.

If directed by the Councils, the Contractor shall appeal the quantum of NNDR. All costs reasonably incurred by the Contractor in pursuing such an appeal shall be reimbursed at cost by the Councils, provided that the Contractor's invoice relating to the same is supported by satisfactory documentary evidence that such costs have been incurred and properly calculated.

Any costs incurred pursuant to this paragraph 1.6 shall be allocated between the Councils according to who owns the relevant Site, save in relation to the NWTF which shall be allocated to each Council based on the Default Allocation.

1.7 Specified Hazardous Waste and/or Clinical Waste Payment (HAZPm)

In the relevant Month, where the Contractor is required to dispose of Specified Hazardous Waste and/or Clinical Waste accepted at HWRCs or delivered by or on behalf of WCAs to Delivery Points, except where such Waste is mixed with other Waste such that it is visually indistinguishable, payment in respect of the disposal of Specified Hazardous Waste and Clinical Waste (HAZPm) shall equal the sum of all Demonstrably Reasonable and Proper Costs (excluding VAT but including Landfill Tax (if applicable)) invoiced to the Contractor in the relevant Month by third parties for transporting, Recycling, treating and/or disposing of the relevant Specified Hazardous Waste and/or Clinical Waste.

For the purposes of this paragraph 1.7, costs incurred by the Contractor shall only be Demonstrably Reasonable and Proper Costs where:

- they represent a reasonable market price (in the relevant circumstances) for the services provided; and

- the Contractor's invoice relating to such Demonstrably Reasonable and Proper Costs is supported by satisfactory documentary evidence (including details of the total Tonnage of Specified Hazardous Waste and Clinical Waste), showing that such costs have been incurred and properly calculated.

No payment shall be made by the Councils in respect of Specified Hazardous Waste and/or Clinical Waste other than in respect of Demonstrably Reasonable and Proper Costs

Any costs incurred pursuant to this paragraph 1.7 shall be allocated between the Councils according to who owns the Site at which the relevant Specified Hazardous Waste and/or Clinical Waste was deposited, or in circumstances where neither Council owns the Site, according to which WCA delivered such Waste to the Delivery Point.

1.8 Insurance (INSm)

Payment to the Contractor for Insurance (INSm) for the relevant Month in respect of the Facilities (being HWRCs and Project Transfer Stations (Glover Nook and Glossop only)) shall be equal to the Insurance Premium amount properly paid by the Contractor in that relevant Month, to cover the Required Insurances.

Any costs incurred pursuant to this paragraph 1.8 shall be allocated as follows:

- In respect of the Sinfin Site, shall be allocated according to the Default Allocation

- In respect of all other Sites, then to the extent that the insurance can be allocated to a specific site shall be borne by the Authority who owns the Site to which the insurance relates; in any other circumstances shall be allocated according to the Default Allocation

1.9 Lifecycle (LCm)

Payment to the Contractor for Lifecycle (LCm) in respect of the Facilities (being HWRCs and Project Transfer Stations (Clover Nook and Glossop only)) shall be that which is not routine maintenance (**as described in the paragraph 3.16 of the Specification);** has been agreed with the Councils as requiring to be undertaken; and the cost budget of such lifecycle work is agreed prior to work being undertaken.

Such Lifecycle payment to be made once the work is complete shall be equal to the amount properly paid by the Contractor, which will be supported by satisfactory documentary evidence that such costs have been incurred and properly calculated.

In relation to each HWRC and Contract Transfer Station, Lifecycle shall be payable by the Council that owns the relevant Site.

1.10 Other Amounts (OAm)

Payments to or from the Contractor for Other Amounts (OAm) will be as agreed by the parties at the time, to the extent applicable, both acting reasonably. As agreed between the Councils and the Contractor, this will be used to cover amounts including, but not limited to:

i. any Price Adjustment for Overheads **as applicable and as set out in Paragraph 3 of this Schedule 3** with respect to Office Space Rent and Rates; and
ii. Conditions Surveys, as applicable and as set out in paragraph 3.16 of the Specification and Schedule 12 (Lifecycle).

The Default Allocation basis.

1.11 Monthly Adjustments (MAm)

To the extent applicable, Monthly Adjustments (MAm) for the relevant Month shall be applied comprising of:

- Unavailability Deductions in respect of HWRCs and /or Project Transfer Stations (being Clover Nook, Glossop and Raynesway for which have a fixed payment) not being Available in accordance with the requirements of the Specification,
- Performance Adjustments in respect of the Services not being delivered in accordance with Key Performance Indicators
- Tipping Away Payments in respect of costs incurred by WCAs as a result of diversion of Contract Waste from Primary Delivery Points
- Reporting Failure Deductions in respect of finding failure by the Contractor in reporting.

The Monthly Adjustments for the relevant Month shall be calculated using the following formula:

$$MAm = UDm + PDm + TAPm + RFDm + PPAm$$

			Allocation	
			City	County
MAm	=	the Monthly Adjustment applicable in the relevant Month		
UDm	=	Unavailability Deductions applicable in respect of the relevant Month, calculated in accordance with **paragraph 1.11.2 of this Schedule 3**	Refer to paragraph 1.11.2 of this Schedule 3.	
PDm	=	Performance Adjustments applicable in respect of the relevant Month, calculated in accordance with **paragraph 1.11.3 of this Schedule 3**	Refer to paragraph 1.11.3 of this Schedule 3.	
TAPm	=	Tipping Away Payments applicable in respect of the relevant Month, calculated in accordance with **paragraph 1.11.4 of this Schedule 3**	Refer to paragraph 1.11.4 of this Schedule 3.	
RFDm	=	Reporting Failure Deductions applicable in respect of the relevant Month calculated pursuant to **Schedule 14 (Performance Mechanism)**	Where the reporting failure relates exclusively to any Facility that the relevant Council owns, the allocation will be to that Council, otherwise the Default Allocation.	
PPAm	=	Previous Period Adjustments applied in the relevant Month in respect of errors or omissions from previous Months as agreed to be corrected with the Councils pursuant to **Schedule 14 (Performance Mechanism)**	Where the Previous Period Adjustment relates exclusively to a Council, the allocation will be to that Council, otherwise the Default Allocation.	

1.11.1 Monthly Adjustments in Excess of the Monthly Payment

In respect of any relevant Month, the Authority may not make Monthly Adjustments which in aggregate would result in the Monthly Payment being negative for the relevant Payment Period. To the extent that the Monthly Adjustments in respect of

any Payment Period would result in a negative Monthly Payment, the Monthly Payment for that Payment Period will be nil, and the amount of any excess Monthly Adjustments not applied shall be rolled forward and deducted from the next Payment Period, and at each subsequent Payment Period until such Monthly Adjustments have all

been deducted from amounts due to the Contractor.

1.11.2 Unavailability Deductions

Unavailability Deductions in respect of the relevant Month shall be calculated using the following formula:

$$UDm = [\sum(HUHm \times HUR) + \sum(TSUHm \times TSUR)] \times IX2y] + [\sum(RTSUHm \times RTSUR) \times RPIXy]$$

Where:

			Allocation	
			City	County
UDm	=	the Unavailability Deductions applicable in respect of the relevant Month		
HUHm	=	the number of hours (or part thereof) within the specified HWRC Opening Hours that each HWRC failed to meet the HWRC Availability Criteria in the relevant Month	To the Council that owns the relevant HWRC.	
HUR	=	the HWRC Unavailability Rate set out in **Table A** below applicable for each HWRC		
TSUHm	=	the number of hours (or part thereof) within the specified Delivery Point Opening Hours that any of the Delivery Points listed in **Table B** failed to meet the Delivery Point Availability Criteria in the relevant Month. For the avoidance of doubt, to the extent that the Contractor has provided an alternative	n/a	To the County for Clover Nook and Glossop

		Delivery Point which meets the Delivery Point Availability Criteria, then no failure will have arisen.		
TSUR	=	The Transfer Station Unavailability Rate set out in **Table B** below applicable for each Contract Transfer Station		
IX2y	=	the Indexation Factor for the relevant Contract Year y, applicable to the relevant Month, calculated in accordance with **paragraph 1.13 of this Schedule 3**		
RTSUHm	=	the number of hours (or part thereof) within the specified Delivery Point Opening Hours that the Raynesway Transfer Station failed to meet the Delivery Point Availability Criteria in the relevant Month. For the avoidance of doubt, to the extent that the Contractor has provided an alternative Delivery Point which meets the Delivery Point Availability Criteria, then no failure will have arisen.	To the City for Raynesway	n/a *(albeit it is noted County may use Raynesway but based on expected utilisation it will be the City whom are most affected).*
RTSUR	=	The Transfer Station Unavailability Rate set out in **Table C** below applicable for the Raynesway Transfer Station		
RPIXy	=	the Indexation Factor for the relevant Contract Year y, applicable to the relevant Month, calculated in accordance with **paragraph 1.13 of this Schedule 3**		

Table A: HWRC Unavailability Rates

Site Name	Rate per hour (Price Base April 2011)
Glossop	55.42
Stonegravels (Chesterfield)	57.19
Loscoe	56.57
Ilkeston	52.02
Ashbourne	60.98
Raynesway	70.09
Bolsover	55.96
Northwood	55.32
Bretby.	56.34

Table B: Transfer Station Unavailability Rates

Site Name	Rate per hour (Price Base April £ (TSUR)	Applicable from	Applicable to
Clover Nook Transfer Station	141.08	Effective Date	Expiry Date
Glossop Transfer Station	141.08	Effective Date	Expiry Date

Table C: Raynesway Transfer Station Unavailability Rate

Site Name	Rate per hour (Price Base April £ (RTSUR)	Applicable from	Applicable to
Raynesway Transfer Station	176.18	Effective Date	Expiry Date

1.11.3 ***Performance Deductions***

Performance Deductions in respect of the relevant Month shall be calculated using the following formula:

PDm = PPm x PPR x IX2y

Where:

			Allocation	
			City	**County**
PDm	=	the Performance Deduction applicable in respect of the relevant Month		
PPm	=	the number of Performance Points levied in respect of the relevant Month, determined in accordance with **Schedule 14 (Performance Mechanism)** covering those measured monthly and / or annually applicable for that Month.	Allocated between the Councils as follows: - Where the Monthly Performance Points relate exclusively to any Facility, the Council that owns that relevant Facility; and - In all other cases, the Default Allocation.	
PPR	=	the performance point rate being £1.12 (Price Base April 2011)		
IX2y	=	the Indexation Factor for the relevant Contract Year y, applicable to the relevant Month, calculated in accordance with **paragraph 1.13 of this Schedule 3**		

1.11.4 Tipping Away Payments

Where a WCA delivers, at the direction of the Contractor, Contract Waste to a Delivery Point which is not a Primary Delivery Point for such WCA, the Contractor shall be liable to a deduction in the relevant Month according to the following formula:

TAPm = TAPTm x TAPMm x TAPR x IX2y

Where:

			Allocation	
			City	**County**
TAPm	=	the Tipping Away Payment applicable in respect of the relevant Month		
TAPTm	=	the Tonnage of Contract Waste diverted from the Primary Delivery Points in the relevant Month as a result of the relevant Primary Delivery Point being Unavailable and/or as instructed by the Contractor	Allocated to the Council whose Contract Waste has been diverted from the Primary Delivery Points in the relevant Month as a result of the relevant Primary Delivery Point being Unavailable and/or as instructed by the Contractor	
TAPMm	=	the distance in miles from the relevant Primary Delivery Point to the alternative Delivery Point travelling along the most direct adopted highway that provides a safe and legal route from the relevant Primary Delivery Point to the relevant alternative Delivery Point		

TAPR	=	the Tipping Away Payment mileage rate being £1.46 per tonne per mile (Price Base April 2011)		
IX2y	=	the Indexation Factor for the relevant Contract Year y, applicable to the relevant Month, calculated in accordance with **paragraph 1.13 of this Schedule 3**		

Provided always that the Contractor shall not be liable to pay Tipping Away Payments:

- if a WCA delivers to a Delivery Point which is not a Primary Delivery Point as a result of a WCA having delivered Rejectable Waste, or Contract Waste to that Primary Delivery Point in excess of the maximum capacity of that Primary Delivery Point as set out in the SDPs; and/or

- in respect of each Primary Delivery Point which is a Landfill Site, for any period of Unavailability in excess of 18 days in aggregate (excluding Sundays and bank holidays) during any Contract Year; and/or

- when the location of the alternative Delivery Point complies with the location requirement for the relevant Primary Delivery Point as set out in **paragraph 4.4 of Schedule 1 (Specification)** and that alternative Delivery Point is Available at the material time and the Contractor has given reasonable notice to the WCA that the alternative Delivery Point should be used.

For the avoidance of doubt, should Contract Waste be directed to the Sinfin site and so directly delivered by a WCA, no Tipping Away Payment would apply with respect to that event.

1.12 Diversion Savings Share (DSSm)

The Diversion Saving Share (DSSm) is intended to share with the Contractor cost savings resulting from diverting Residual Waste from Contract Transfer Stations, away from Landfill, calculated in accordance with the following formula:

$$\mathbf{DSSm = [[DRWTm \times (TLGFRm + LFTy)] - DRWPm] \times 50\%}$$

Where:

			Allocation	
			City	**County**
DSSm	=	the Diversion Savings Share in the relevant Month		
DRWTm	=	the actual total Tonnage of Diverted Residual Waste away from landfill and treated at the alternative energy from waste facilities as secured by the Contractor in the relevant Month. For the avoidance of doubt this excludes any Residual Waste sent to the NWTF for treatment in the relevant Month	Based on the same allocation of DRWTm set out in paragraph 1.5 of this schedule 3, being the "**TST Contract Waste Allocation**"	
TLGFRm	=	the relevant Tonnage rate for Transfer Station Landfill in the relevant Month, applicable as follows: • From Services Commencement Date to 31st March 2020 = **£20.53** per tonne • From 1st April 2020 to 31st March 2021 = **£21.78** per tonne • From 1st April 2021 onwards = **£23.04** per tonne		

		For the avoidance of doubt, these rates are fixed, no indexation is applicable to these rates.		
LFTy	=	the prevailing rate of Landfill Tax per Tonne in the relevant Contract Year applicable for the relevant Month for the type of Waste being Landfilled		
DRWPm	=	the total amount payable in respect of Diverted Residual Waste in the relevant Month, as calculated in accordance with **paragraph 1.5 of this Schedule 3**	Being the value for each Council as determined by calculating DRWPm for set out in paragraph 1.5 of this schedule 3.	

1.13 Indexation

All rates and prices in this Payment Mechanism are either at the Price Base Date of 1 April 2011 or 1 April 2019. Indexation where applicable, shall be applied annually from 1 April (being each Indexation Year) as follows:

1.13.1 Indexation Factor (IX2y)

The Indexation Factor ("IX2y") for the relevant Indexation Year shall be calculated as follows:

$$IX2y = (RPIXCy \times 91.9\%) + (AWEICy \times 8.1\%)$$

Where:

RPIXCy	=	the Retail Prices Indexation Factor Cumulative for the relevant Indexation Year calculated in accordance with **paragraph 1.13.2 of this Schedule 3**

AWEICy	=	the Average Weekly Earnings Indexation Factor - Cumulative ("AWEICy") for the relevant Indexation Year calculated in accordance with **paragraph 1.13.3 of this Schedule 3**

1.13.2 Retail Prices Indexation Cumulative (RPIXCy)

The Retail Prices Indexation Factor - Cumulative ("RPIXCy") for the relevant Contract Year shall be calculated as follows:

$$\mathbf{RPIXCy = RPIXy\text{-}1 \div RPIX_0}$$

Where:

RPIXCy		the Retail Prices Indexation Factor Cumulative for the relevant Contract Year
RPIXy-1	=	the published RPIX for the January immediately preceding the relevant Indexation Year (the 'Indexation Year' is each 12 month period commencing on 1st April)
RPIXo	=	the RPIX published for January 2011 being 228.2

1.13.3 Average Weekly Earnings Indexation Cumulative (AWEIC)

The Average Weekly Earnings Indexation Factor - Cumulative ("AWEICy") for the relevant Contract Year shall be calculated as follows:

$$\mathbf{AWEICy = AWEIy\text{-}1 \div AWEIo}$$

Where:

AWEICy	=	the Average Weekly Earnings Indexation Factor for the relevant Contract Year
AWEIy-1	=	the Average Weekly Earnings Index (Whole Economy not seasonally adjusted excluding bonuses and including arrears Reference KASH) for the January immediately preceding the relevant Indexation Year (the 'Indexation Year' is each 12 month period commencing on 1st April)
AWEIo	=	the Average Weekly Earnings Index (Whole Economy not seasonally adjusted excluding bonuses and including arrears Reference KASH) published for January 2011 being 143.4.

1.13.4 Retail Prices Indexation (RPIXy)

The Retail Prices Indexation Factor ("RPIXy") for the relevant Contract Year shall be calculated as follows:

$$\mathbf{RPIXy = RPIXy\text{-}1 \div RPIX_B}$$

Where:

RPIXy		the Retail Prices Indexation Factor Cumulative for the relevant Contract Year
RPIXy-1	=	the published RPIX for the January immediately preceding the relevant Indexation Year (the 'Indexation Year' is each 12 month period commencing on 1st April)

$RPIX_B$	=	the RPIX published for January 2019 being 283.4

2. YEAR END FLOOR ADJUSTMENT

The Year End Floor Adjustment (YEFAy) is to be calculated once every year, following the month in which the 1st and 2nd anniversary of the Effective Date occurs. For clarity, if the Effective Date is a day in September 2019, the YEFA will be calculated, reported and applied in October 2020 (covering the period from the Effective Date to the month end of September 2020) and October 2021 (covering the period from and including October 2020 to the month end of September 2021). The YEFA shall be calculated based on the following:

Principles and parameter

The principle of the YEFA is to provide a floor profit level to the Contractor, as parties acknowledge that a reduction in tonnage throughput at the Contract Transfer Stations will erode the Contractors profit for a reason which has not been the Contractors fault.

The Parties acknowledge this could arise should tonnages be required to be direct delivered to the NWTF at the Sinfin site. The Parties also acknowledge that should tonnages not be at a level such that the profit is eroded to below the floor level, should the Councils have incurred insurance deductibles or rectification costs from an insurable event, the Councils will be entitled to recoup such cost subject to the floor position not being breached.

The following parameters apply to the YEFA:

- The "Base Case Annual Tonnage Throughput at the Contract Transfer Stations" (BCTT) is 226,732 tonnes (as per the forecast provided by the Councils)
- The Annual Base Case Net Profit to the Contractor is £803,185
- The Annual Net Profit Floor is £500,000
- The difference between the Annual Base Case Net Profit and the Annual Net Profit Floor is £303,185
- For each shortfall in tonnage throughput at the Contract Transfer Stations, the erosion of profit to the Contractor is set at £3.97 per tonne
- Therefore, the tonnage through put that would result in the Annual Net Profit Floor to be reached is 150,363 (being 226,732 tonnes less 76,369 tonnes, where 76,369 is determined by the calculation £303,185 / £3.97).

The YEFA will apply as follows under the following circumstances:

1) If ATT < 150,363 tonnes

- Should the "Actual Tonnage Throughput at the Contract Transfer Stations" (ATT) be 150,363 tonnes or lower, the YEFA adjustment will apply to make the Contractor whole to the Annual Net Profit Floor after taking account of 50% of the Diversion Saving Sharing the Contractor has received in the year (DSSy) via paragraph 1.12 of this Schedule 3.
- The YEFA adjustment, which will be a payment to the Contractor will be applied as follows:

  YEFAy = (£3.97 x (150,363 - ATT)) – (50% x DSSy)

  Should the YEFA be less than zero (i.e. negative), then YEFA will be nil in this circumstance

The YEFA amount so paid to the Contractor at the year-end in this instance will be allocated to the Councils based on the following:

City = based on the annual reduction in tonnage throughput at the Transfer Stations (excluding Buxton and 2ZLF) as compared to the annual base position of 57,500 tonnes, expressed as a % of the total reduction.

County = based on the annual reduction in tonnage throughput at the Transfer Stations (excluding Buxton and 2ZLF) as compared to the annual base position of 169,232 tonnes, expressed as a % of the total reduction.

Example:

Example	City Tonnes	County Tonnes	Total Tonnes
Base position throughput	57,500	169,232	**226,732**
Actual throughput	45,000	100,000	**145,000**
Reduction	(12,500)	(69,232)	**(81,732)**
Reduction as %	15%	85%	100%

In the example, City would be allocated 15% and County 85%.

2) If ATT > 150,363 tonnes

- Should the "Actual Tonnage Throughput at the Contract Transfer Stations"

(ATT) be higher than 150,363 tonnes, no adjustment is made with respect to making the Contractor whole to the Annual Net Profit Floor.

- However, should the Councils have made payments to the Contractor pursuant to the indemnity at clause 33.5 the Councils can claim this from the Contractor via the YEFA Adjustment, with such claim being limited to the Annual Net Profit Floor after taking account of 50% of the Diversion Saving Sharing the Contractor has received in the year (DSSy) via paragraph 1.12 of this Schedule 3.
- The YEFA Adjustment which will be a rebate to Councils will be as follows:

YEFAy = The lower of:

1) The deductible or rectification cost incurred by the Councils or

2) (£3.97 x (ATT - 150,363)) + (50% x DSSy)

For the avoidance of doubt if there has been no deductible or rectification cost incurred by the Councils then YEFA will be nil in this circumstance

- In the event the Councils were not made whole for the deductible or rectification cost incurred under this mechanism in the first year, the balance remaining will be rolled forward to the next year and be applied in that year, subject to the same mechanism above.

The YEFA amount claimed at the year-end in this instance (i.e. rebate) will be allocated to the Council that has incurred the deductible or rectification cost.

In a scenario where both the Councils have incurred a cost as a result of events (a deductible or rectification cost) for which the Councils are not made whole for through the operation of the YEFA mechanism, then the YEFA rebate amount so claimed, will be split proportionally between the Councils on based on

i) each of the Council's deductible / rectification cost
divided by
ii) to total deductible / rectification cost incurred by both Councils.

3. PRICE ADJUSTMENT FOR OVERHEADS

The below table provides a breakdown of the annual overheads and management cost the Contractor has budgeted for.

OH Expense cost item	£ (Price Base April 2019)
Employment costs for 5 FTE	£368,114
Office Space Rent and Rates	£42,000

Mgmt Charge & Central OHs	£332,789
Whitespace IT system	£30,000
Total	**£772,903**

Should the Contractor be able to utilize the Sinfin Education Centre as office space, the Contractor will therefore not incur the Office Space Rent and Rates it has budgeted for, being £42,000 per annum. Should this arise, that avoided cost / saving will be passed back to the Councils through a reduction to the Monthly Payment, via the "Other Amounts" limb. The monthly reduction will be £3,500 (£42,000 / 12) index by RPIXy, in accordance with paragraph [1.13.4] of this Schedule 3.

Any adjustment, which will be done through the 'Other Amounts' limb, will be on the Default Allocation basis.

APPENDIX 1 – HAULAGE ELEMENT IN THE TRANSFER STATION RATES

The below table sets out the haulage element within the Contract Transfer Station rates for TSR1, TSR2, TSR3 and TSR4 to be used when calculating the PHAULm in paragraph 1.5.

Relevant Transfer Station Rate	**Haulage Element (price per tonne – Price Base April 2019)**
TSR1: Clover Nook	£9.31pt
TSR1: Glossop	£11.67pt
TSR2: Chesterfield	£9.23pt
TSR2: Willshee	£12.87pt
TSR2: Stanton	£11.21pt
TSR3: London Road	£11.20pt
TSR4: Raynesway	£11.20pt

SCHEDULE 7

MANAGEMENT OF NWTF SERVICES

1. **General**

1.1 The Authorities agree that Schedule 14 (NWTF Services) of the Contract will require close and careful monitoring and oversight by the Authorities.

1.2 The Authorities each commit to making such resources available as may be required from time to time to ensure that there is adequate oversight, management, monitoring and engagement from the Authorities to ensure that the NWTF Services are delivered by the Contractor in a robust and sustainable manner, are delivered within the budgets which have been scrutinised and agreed by the Authorities and which ultimately creates the maximum overall benefit to the Authorities.

1.3 The Authorities acknowledge and agree that costs related to the NWTF Services are to be defined and agreed with the Contractor pursuant to Schedule 14 (NWTF Services) of the Contract and that each Authority will need to diligently review, scrutinise and approve such costs in accordance with the procedures outlined in this Schedule 7. (NWTF Services) and their own financial management rules.

1.4 Without prejudice to the remaining provisions of this Agreement, the Authorities therefore agree to comply with their respective obligations set out in this Schedule 7. (NWTF Services).

1.5 The Authorities agree that should either Authority fail to provide a response and/or comments to any item within the timescales provided within this Schedule 7 (NWTF Services), then save to the extent that a revised timescale has been agreed with the other Authority, that Authority shall be deemed to have no comments or approved the relevant course of action (as applicable)

2. **NWTF Service Delivery Plan**

2.1 The Authorities acknowledge that the Contractor must carry out the NWTF Services in accordance with the requirements of Schedule 14 (NWTF Services) of the Contract and the NWTF Service Delivery Plan ("NWTF SDP").

2.2 The Authorities acknowledge that pursuant to paragraph 1.2.1(c) and Annex 1 to Schedule 14 (NWTF Services) of the Contract, the Contractor must develop and maintain an NWTF SDP. The NWTF SDP will be developed in stages representing the six stages of the NWTF Services as follows:

2.2.1 **Stage 1: Stabilise:** To be delivered to the Authorities within 7 days following the Services Commencement Date;

2.2.2 **Stage 2: Condition Survey:** To be delivered to the Authorities within 1 month following the Services Commencement Date;

2.2.3 **Stage 3: Fix Critical to Comply:** To be confirmed;

2.2.4 **Stage 4: Performance Survey:** To be confirmed;

2.2.5 **Stage 5: Evaluate Status:** To be confirmed;

2.2.6 **Stage 6: Transition Services:** To be confirmed.

2.3 Further, the Authorities acknowledge that pursuant to paragraph 3.8 of Schedule 14 (NWTF Services) of the Contract, the Contractor must within 28 days of the Services Commencement Date develop and provide to the Authorities a Base Budget Forecast which sets out in an appropriate level of detail, the forecast costs to be incurred by the Contractor and the payments to be made by the Authorities, covering Stages 1 and 2 above.

2.4 The Authorities acknowledge that the Contractor is required to provide, in good faith, a base budget forecast for subsequent Stages prior to their commencement.

2.5 The Authorities shall each diligently engage with the Contractor in developing and agreeing the NWTF SDP and the Base Budget Forecasts. Each Authority shall deploy adequate resource to ensure that the NWTF SDP and each Base Budget Forecast is agreed in a timely manner to enable the Contractor to comply with its obligations under Schedule 14 (NWTF Services) of the Contract. That includes as a minimum each Authority ensuring that:

2.5.1 Lead Officers review and comment on drafts of the NWTF SDP and Base Budget Forecasts submitted by the Contractor, liaising with each other and submitting a combined set of comments and observations to the Contractor as soon as reasonably practicable following receipt of such drafts;

2.5.2 Lead Officers engage with the Contractor, including attending such meetings as may be necessary to discuss the NWTF SDP and Base Budget Forecasts, both between the Authorities and with the Contractor; and

2.5.3 Lead Officers ensure that the proposals included within the NWTF SDP comply with the requirements of Schedule 14 (NWTF Services) of the Contract, and in particular that any cost proposals comply with paragraph 3.2 and the Base Budget Forecasts comply with paragraph 3.8 of Schedule 14 (NWTF Services) of the Contract and the Authorities' existing approvals for the Contract.

2.6 The Authorities shall each ensure that their Lead Officers consult with appropriate officers and members of their respective Authorities in delivering the requirements of this Error! Reference source not found. (NWTF Services). Lead Officers may delegate and/or appoint substitutes to undertake the activities described provided that there is continuity of understanding and approach within each Authority.

2.7 The Authorities agree that final approval of each stage of the NWTF SDP; and costs and benefits associated with each stage (including the appropriate Base Budget Forecast and any third party income) shall be allocated as follows:

SCHEDULE 7

MANAGEMENT OF NWTF SERVICES

1. **General**

1.1 The Authorities agree that Schedule 14 (NWTF Services) of the Contract will require close and careful monitoring and oversight by the Authorities.

1.2 The Authorities each commit to making such resources available as may be required from time to time to ensure that there is adequate oversight, management, monitoring and engagement from the Authorities to ensure that the NWTF Services are delivered by the Contractor in a robust and sustainable manner, are delivered within the budgets which have been scrutinised and agreed by the Authorities and which ultimately creates the maximum overall benefit to the Authorities.

1.3 The Authorities acknowledge and agree that costs related to the NWTF Services are to be defined and agreed with the Contractor pursuant to Schedule 14 (NWTF Services) of the Contract and that each Authority will need to diligently review, scrutinise and approve such costs in accordance with the procedures outlined in this **Schedule 7.** (NWTF Services) and their own financial management rules.

1.4 Without prejudice to the remaining provisions of this Agreement, the Authorities therefore agree to comply with their respective obligations set out in this **Schedule 7.** (NWTF Services).

1.5 The Authorities agree that should either Authority fail to provide a response and/or comments to any item within the timescales provided within this **Schedule 7** (NWTF Services), then save to the extent that a revised timescale has been agreed with the other Authority, that Authority shall be deemed to have no comments or approved the relevant course of action (as applicable)

2. **NWTF Service Delivery Plan**

2.1 The Authorities acknowledge that the Contractor must carry out the NWTF Services in accordance with the requirements of Schedule 14 (NWTF Services) of the Contract and the NWTF Service Delivery Plan ("NWTF SDP").

2.2 The Authorities acknowledge that pursuant to paragraph 1.2.1(c) and Annex 1 to Schedule 14 (NWTF Services) of the Contract, the Contractor must develop and maintain an NWTF SDP. The NWTF SDP will be developed in stages representing the six stages of the NWTF Services as follows:

2.2.1 **Stage 1: Stabilise:** To be delivered to the Authorities within 7 days following the Services Commencement Date;

2.2.2 **Stage 2: Condition Survey:** To be delivered to the Authorities within 1 month following the Services Commencement Date;

2.2.3 **Stage 3: Fix Critical to Comply:** To be confirmed;

2.2.4 **Stage 4: Performance Survey:** To be confirmed;

2.2.5 **Stage 5: Evaluate Status:** To be confirmed;

2.2.6 **Stage 6: Transition Services:** To be confirmed.

2.3 Further, the Authorities acknowledge that pursuant to paragraph 3.8 of Schedule 14 (NWTF Services) of the Contract, the Contractor must within 28 days of the Services Commencement Date develop and provide to the Authorities a Base Budget Forecast which sets out in an appropriate level of detail, the forecast costs to be incurred by the Contractor and the payments to be made by the Authorities, covering Stages 1 and 2 above.

2.4 The Authorities acknowledge that the Contractor is required to provide, in good faith, a base budget forecast for subsequent Stages prior to their commencement.

2.5 The Authorities shall each diligently engage with the Contractor in developing and agreeing the NWTF SDP and the Base Budget Forecasts. Each Authority shall deploy adequate resource to ensure that the NWTF SDP and each Base Budget Forecast is agreed in a timely manner to enable the Contractor to comply with its obligations under Schedule 14 (NWTF Services) of the Contract. That includes as a minimum each Authority ensuring that:

2.5.1 Lead Officers review and comment on drafts of the NWTF SDP and Base Budget Forecasts submitted by the Contractor, liaising with each other and submitting a combined set of comments and observations to the Contractor as soon as reasonably practicable following receipt of such drafts;

2.5.2 Lead Officers engage with the Contractor, including attending such meetings as may be necessary to discuss the NWTF SDP and Base Budget Forecasts, both between the Authorities and with the Contractor; and

2.5.3 Lead Officers ensure that the proposals included within the NWTF SDP comply with the requirements of Schedule 14 (NWTF Services) of the Contract, and in particular that any cost proposals comply with paragraph 3.2 and the Base Budget Forecasts comply with paragraph 3.8 of Schedule 14 (NWTF Services) of the Contract and the Authorities' existing approvals for the Contract.

2.6 The Authorities shall each ensure that their Lead Officers consult with appropriate officers and members of their respective Authorities in delivering the requirements of this **Schedule 7**. (NWTF Services). Lead Officers may delegate and/or appoint substitutes to undertake the activities described provided that there is continuity of understanding and approach within each Authority.

2.7 The Authorities agree that final approval of each stage of the NWTF SDP; and costs and benefits associated with each stage (including the appropriate Base Budget Forecast and any third party income) shall be allocated as follows:

Stage	Costs / Benefits
Stage 1: Stabilise	To be borne by the Authorities in accordance with the Default Allocation
Stage 2: Condition Survey	To be borne by the Authorities in accordance with the Default Allocation
Stage 3: Fix Critical to Comply	To be borne by the Authorities in accordance with the Default Allocation
Stage 4: Performance Survey	To be borne by the Authorities in accordance with the Default Allocation adjusted by way of a balancing payment payable from one Party to the other, calculated in accordance with the formula set out in **0** (Balancing Payment for Stages 4 & 5 & 6 of the NWTF Services)
Stage 5: Evaluate Status	To be borne by the Authorities in accordance with the Default Allocation adjusted by way of a balancing payment payable from one Party to the other, calculated in accordance with the formula set out in **0** (Balancing Payment for Stages 4 & 5 & 6 of the NWTF Services)
Stage 6: Transition Services	To be borne by the Authorities in accordance with the Default Allocation adjusted by way of a balancing payment payable from one Party to the other, calculated in accordance with the formula set out in **0** (Balancing Payment for Stages 4 & 5 & 6 of the NWTF Services))
Amendments to the NWTF SDP	To be borne by the Authorities in accordance with the Default Allocation, unless otherwise agreed between the Parties

3. **Weekly Reporting**

3.1 The Authorities acknowledge that pursuant to paragraph 1.2.32 of Schedule 14 (NWTF Services) of the Contract, the Contractor must submit to the Authorities a weekly report by close of business on each Monday during the Term;

3.2 The County's Head of Waste Management or nominated officer shall check that the report submitted by the Contractor each Monday complies fully with the requirements of Schedule 14 (NWTF Services) of the Contract and the NWTF SDP, and circulate the Contractor's report plus his or her own observations (including any deviations from the Contract or the NWTF SDP) to the Lead Officers by close of business each Tuesday;

3.3 The Lead Officers shall consider the Contractor's report, in conjunction with other officers and members within their respective Authorities as they consider necessary from time to time, and respond to the County's Head of Waste Management or nominated officer with either their approval of the report, or their comments and observations by close of business each Thursday;

3.4 The County's Head of Waste Management or nominated officer shall confirm the Authorities' approval of the weekly report, or advise the Contractor of any comments and observations on the report by close of business each Friday;

3.5 Where comments and observations are raised on a weekly report, the County's Head of Waste Management or nominated officer shall maintain a log of those comments and observations and liaise with the Contractor and the Lead Officers until those matters are resolved. To the extent that they are not resolved prior to the next monthly report

submitted by the Contractor, the County's Head of Waste Management or nominated officer must ensure that those outstanding issues are formally raised with the Contractor for a second time in the comments submitted on the next monthly report.

3.6 The County's Head of Waste Management or nominated officer and the Lead Officers may delegate and/or appoint substitutes to undertake the activities described in this **paragraph 3** provided that there is continuity of understanding and approach within each Authority

4. **Monthly Reporting**

4.1 The Authorities acknowledge that:

4.1.1 pursuant to paragraph 1.2.33 of Schedule 14 (NWTF Services) of the Contract, the Contractor must submit to the Authorities a monthly report by the 7th day following the end of each month during the Term; and

4.1.2 pursuant to paragraph 3.8.4 of Schedule 14 (NWTF Services) of the Contract, the Contractor must submit to the Authorities a variance analysis on the previous month's budgeted forecast versus actuals, and any projected changes to forecast costs in future months, including reasonable justification and explanations for such variances;

4.2 The County's Head of Waste Management or nominated officer shall check that each monthly report submitted by the Contractor complies fully with the requirements of Schedule 14 (NWTF Services) of the Contract and the NWTF SDP, and circulate the Contractor's report plus his or her own observations (including any deviations from the Contract or the NWTF SDP or the Base Budge Forecast) to the Lead Officers no later than 4 days following receipt;

4.3 The Lead Officers shall consider the Contractor's report, in conjunction with other officers and members within their respective Authorities as they consider necessary from time to time, and respond to the County's Head of Waste Management or nominated officer with either their approval of the report, or their comments and observations within 2 Business Days;

4.4 The County's Head of Waste Management or nominated officer shall confirm the Authorities' approval of the monthly report, or advise the Contractor of any comments and observations on the report within 2 Business Days. Such advice shall also include any matters raised in respect of the weekly reports and which still remained outstanding at the end of the previous month;

4.5 Where comments and observations are raised on a monthly report, the County's Head of Waste Management or nominated officer shall maintain a log of those comments and observations and liaise with the Contractor and the Lead Officers until those matters are resolved. To the extent that they are not resolved prior to the next monthly report submitted by the Contractor, the County's Head of Waste Management or nominated officer must ensure that those outstanding issues are formally raised with the Contractor for a second time in the comments submitted on the next monthly report.

4.6 The County's Head of Waste Management or nominated officer and the Lead Officers may delegate and/or appoint substitutes to undertake the activities described in this **paragraph 4** provided that there is continuity of understanding and approach within each Authority.

5. **Meetings**

The Authorities shall each ensure that representation at an appropriate level from within their organisation is available to attend meetings to discuss the implementation of the NWTF Services and associated outcome as and when such meetings are required either between the Authorities, or with the Contractor.

6. **Key Decisions**

The Authorities agree that the following key decisions will be required throughout the delivery of the NWTF Services, and such decisions shall be taken as follows:

Decision	**Required Approvals**
Approval of each Stage of the NWTF SDP (including any subsequent amendments and the Base Budget Forecast)	As specified in the table at **paragraph 2.7** above Lead Officers Matter
Agreeing timescales for the delivery Stage 2 of the NWTF SDP with the Contractor (paragraph 2.2.1 of Schedule 14)	Lead Officers Matter
Agreeing the detailed scope of each of Stages 3 to 6 of the NWTF SDP with the Contractor (paragraph 2.2.2 of Schedule 14)	Lead Officers Matter
Agreeing the required standards for any rectification works to be undertaken; any other requirements in respect of the rectification works and arrangements for the certification of the rectification works (paragraphs 2.2.3 – 2.2.5 of Schedule 14)	Lead Officers Matter
Agreeing arrangements for the review and approval of the Fix Critical Plan and other plans to be developed by the Contractor from time to time (paragraph 2.2.6 of Schedule 14)	Lead Officers Matter
Agreeing the Contract Governance Process (paragraph 2.2.7 of Schedule 14)	Contract Management Board Matter
Agreeing details of incentive payments pursuant to Paragraph 3 of Schedule 14 (paragraph 2.2.8 of Schedule 14)	Matter Reserved to the Authorities
Agreeing the review procedure for the review and approval of amendments to the NWTF SDP	Lead Officers Matter
Agreeing timescales for the delivery Stages 3 - 6 of the NWTF SDP with the Contractor (paragraph 2.2.10 of Schedule 14)	Lead Officers Matter
Approval of any Deed of Variation or alternative contract required to implement	Matter Reserved to the Authorities

any of Stages 3 – 6 in Schedule 14 of the Contract (paragraph 2.4 of Schedule 14)	
Implementation of paragraph 2.5 of Schedule 14 meaning that the NWTF Services come to an end 3 months following the Service Commencement Date	Matter Reserved to the Authorities

7. **Costs of delivering the requirements of this Schedule 7. (NWTF Services)**

Each Authority shall bear its own costs in respect of the requirements of this **Schedule 7** save that:

7.1 advisor costs shall be split in accordance with the Default Allocation; and

7.2 the County's provision of an officer at the Sinfin Site to monitor the performance of the NWTF Services shall be split as described in **clause 14.2** (Contract Management Costs).

8. **Payment of invoices for the NWTF Services Costs**

Payment of invoices submitted by the Contractor under the Contract in respect of the NWTF Services Costs shall be paid in accordance with the procedure described in **paragraph 6** of **Schedule 4** to this Agreement. Any balancing payment due in respect of the same shall be paid in accordance with **paragraph 7** of **Schedule 4** to this Agreement.

SCHEDULE 8

BALANCING PAYMENT FOR STAGES 4 & 5 & 6 OF THE NWTF SERVICES

The Pain Gain Sharing mechanism set out in this Schedule 8 applies during Stage 4, 5 and 6 of the NWTF Services programme and reflects the key commercial principle objective agreed between Parties that no one Party (City or County) should be at a financial loss for using the NWTF whilst the other is benefiting from not using the NWTF.

9. Principal Formula – Pain Gain Sharing Payment (PGSPm)

The Pain Gain Sharing Payment (PGSPm) represents a reconciliation balancing payment which is due from one Party to the other, which is based on comparing the Target Net Cost of each of the City and County to the Actual Net Cost incurred of each of the City and County, with the difference being payable by one Party and receivable by the other so the Target Net Cost is achieved.

The Parties agree that this Pain Gain Sharing Payment shall apply during Stages 4, 5 and 6 of the NWTF Services programme, and be calculated and applied each month, for the relevant Month (m), using the following formula:

For the City:	For the County:
$\mathbf{PGSPm_{CITY} = TNCm_{CITY} - ANCm_{CITY}}$	$\mathbf{PGSPm_{COUNTY} = TNCm_{COUNTY} - ANCm_{COUNTY}}$

Where:

$PGSPm_{CITY}$ **$PGSPm_{COUNTY}$**	=	the Pain Gain Sharing Payment, being the amount payable or receivable by one Party to the other in the relevant Month (m). Where the Pain Gain Sharing Payment calculated for the City is a positive value ($PGSPm_{CITY}$), this represents a payment to be made by the City to the County. Where the Pain Gain Sharing Payment for the City is a negative value, this represents the City should receive a payment from the County. For the avoidance of doubt the value derived for both ($PGSPm_{CITY}$) and ($PGSPm_{COUNTY}$) should be the same, the only difference being the negative and positive sign which determines which Party is due to make a payment and the other receive such payment.
$TNCm_{CITY}$ **$TNCm_{COUNTY}$**	=	the Target Net Cost associated with the provision of waste into the NWTF for the City ($TNCm_{CITY}$) and the County ($TNCm_{COUNTY}$) for the relevant Month (m) calculated in accordance with **paragraph 10** of this **Schedule 8**.
$ANCm_{CITY}$ **$ANCm_{COUNTY}$**	=	the Actual Net Cost associated with the provision of waste into the NWTF for the City ($ANCm_{CITY}$) and the County ($ANCm_{COUNTY}$) for the relevant Month m calculated in accordance with **paragraph 11** of this

		Schedule 8.

10. **Target Net Cost (TNCm)**

The Target Net Cost associated with the provision of waste into the NWTF, is the calculated target cost allocation between the Authorities for the relevant Month (m), calculated as follows:

$TNCm_{CITY}$ = **(ANWTFCm x 26.6%) + $ARaynesm_{CITY}$ – $RRaynesm_{CITY}$ – (NGm x 26.6%)**	**$TNCm_{COUNTY}$ =** **(ANWTFCm x 73.4%) + $ARaynesm_{COUNTY}$ – $RRaynesm_{COUNTY}$ – (NGm x 73.4%)**

Where:

$TNCm_{CITY}$ **$TNCm_{COUNTY}$**	=	the Target Net Cost associated with the provision of waste into the NWTF for the City ($TNCm_{CITY}$) and the County ($TNCm_{COUNTY}$) for the relevant Month (m).
ANWTFCm	=	the actual total NWTF Services costs incurred by the relevant Authority in the relevant Month (m)
$ARaynesm_{CITY}$ **$ARaynesm_{COUNTY}$**	=	the actual Raynesway Transfer Station fixed payment cost incurred as calculated and allocated between the Authorities in accordance with Paragraph 1.3 of Schedule 6 (Payment Mechanism) in the relevant Month (m).
$RRaynesm_{CITY}$ **$RRaynesm_{COUNTY}$**	=	the Reimbursement of the Raynesway Transfer Station fixed payment for each of the Authorities, as calculated in accordance with **Paragraph 10.1** of this **Schedule 8** in the relevant Month (m).
NGm	=	the Net Gain for sharing between the Authorities, allocated on the Default Basis between the Authorities as calculated in accordance with **Paragraph 10.2** of this **Schedule 8**.

10.1 **Reimbursement of Raynesway Transfer Station fixed payment (RRaynesm)**

The Reimbursement of the Raynesway Transfer Station fixed payment (RRaynesm) allows for the Authorities to each take account of and offset from the Avoided Disposal and Handing costs, the amount each have incurred in relation to the Raynesway Transfer Station fixed payment. This is calculated as follows:

$RRaynesm_{CITY}$ = **Lower of:** **a) $ARaynesm_{CITY}$** **and** **b) ($ADHCm_{CITY}$ + $ADHCm_{COUNTY}$) x [$ARaynesm_{CITY}$ / ($ARaynesm_{CITY}$ + $ARaynesm_{COUNTY}$)]**	**$RRaynesm_{COUNTY}$ =** **Lower of:** **a) $ARaynesm_{COUNTY}$** **and** **b) ($ADHCm_{CITY}$ + $ADHCm_{COUNTY}$) x [$ARaynesm_{COUNTY}$ / ($ARaynesm_{CITY}$ + $ARaynesm_{COUNTY}$)]**

For the avoidance of doubt, the reimbursement of the Raynesway cost is only applicable when there are avoided disposal and haulage costs deriving from such waste now being disposed of via the NWTF instead of under the Contract.

Where:

$RRaynesm_{CITY}$ **$RRaynesm_{COUNTY}$**	=	the Reimbursement for Raynesway amount for the City ($RRaynesm_{CITY}$) and the County ($RRaynesm_{COUNTY}$) for the relevant Month (m).
$ARaynesm_{CITY}$ **$ARaynesm_{COUNTY}$**	=	the actual Raynesway Transfer Station fixed payment cost incurred as calculated and allocated between the Authorities in accordance with **paragraph 1.3** of **Schedule 6** (Payment Mechanism) in the relevant Month (m).
$ADHCm_{CITY}$ **$ADHCm_{COUNTY}$**	=	the Avoided Disposal and Handling Costs resulting from waste being processed at the NWTF in the relevant Month (m) as calculated in **paragraph 11.1**. below

10.2 **Net Gain (NGm)**

The Net Gain is the amount of Avoided Disposal and Handling Costs that would have been incurred if the same tonnage(s) had been disposed of under the Contract (which is after taking account of the amount to be reimbursed the Authorities for the fixed Rayneway cost) with such amount then being shared between the Authorities.

This shall be calculated as follows:

$$NGm = (ADHCm_{CITY} + ADHCm_{COUNTY}) - (RRaynesm_{CITY} + RRaynesm_{COUNTY})$$

For the avoidance of doubt, the calculation of the Net Gain is to be undertaken on a totals basis in this section with the allocation between parties undertaken in **paragraph 10.**

Where:

NGm	=	the Net Gain for sharing between the Authorities.
$ADHCm_{CITY}$ **$ADHCm_{COUNTY}$**	=	the Avoided Disposal and Handling Costs resulting from waste being processed at the NWTF in the relevant Month (m), as calculated in **paragraph 11.1**. below
$RRaynesm_{CITY}$ **$RRaynesm_{COUNTY}$**	=	the amount Reimbursed for the Raynesway Transfer Station fixed payment for the City ($RRaynesm_{CITY}$) and the County ($RRaynesm_{COUNTY}$) for the relevant Month (m), as calculated in accordance with **paragraph 10.1** above.

11. Actual Net Cost (ANCm)

The Actual Net Cost associated with the provision of waste into the NWTF is a calculation of the actual costs incurred by each of the Authorities under the Contract for the relevant Month (m) which takes account of:

(1) The actual cost of the NWTF Services incurred for the relevant Month (m), as paid by each Authority.

(2) The avoided Disposal and Handling costs (as appropriate) for the relevant Month (m), where tonnage has been supplied to the NWTF by the Authorities, as avoided by each Authority.

(3) The Raynesway Fixed Payment made for the relevant Month (m), as paid by each Authority.

$ANCm_{CITY}$ = (ANWTFCm x 26.6%) – $ADHCm_{CITY}$ + $ARaynesm_{CITY}$	**$ANCm_{COUNTY}$ = (ANWTFCm x 73.4%) – $ADHCm_{COUNTY}$ + $ARaynesm_{COUNTY}$**

Where:

$ANCm_{CITY}$ $ANCm_{COUNTY}$	=	the Actual Net Cost associated with the provision of waste into the NWTF for the City ($ANCm_{CITY}$) and the County ($ANCm_{COUNTY}$) for the relevant Month (m)
ANWTFCm	=	the actual total NWTF Services costs incurred in the relevant Month (m).
$ADHCm_{CITY}$ $ADHCm_{COUNTY}$	=	the Avoided Disposal and Handling costs resulting from waste being provided to the NWTF in the relevant Month (m) as calculated in accordance with **paragraph 11.1 below**.
$ARaynesm_{CITY}$ $ARaynesm_{COUNTY}$	=	the actual Raynesway Transfer Station fixed payment cost incurred as calculated and allocated between the Authorities in accordance with **Paragraph 1.3** of **Schedule 6** (Payment Mechanism) in the relevant Month (m).

11.1 Avoided Disposal and Handling Costs (ADHCm)

The Avoided Disposal and Handling Costs is the Disposal and Handling costs which have been avoided under the Contract as a result of waste being provided to the NWTF in each relevant Month (m), calculated as follows:

$ADHCm_{CITY}$ = **($DDTm_{CITY}$ x [(HTR_{CITY} x RPIXy) + DTRm])** **+** **(($NDDTm$ x $TST\%m_{CITY}$) x DTRm)**	**$ADHCm_{COUNTY}$ =** **($DDTm_{COUNTY}$ x [(HTR_{COUNTY} x RPIXy) + DTRm])** **+** **(($NDDTm$ x $TST\%m_{COUNTY}$) x DTRm)**

ADHCm$_{CITY}$ **ADHCm$_{COUNTY}$**	=	the Avoided Disposal and Handling Costs resulting from waste being processed at the NWTF in the relevant Month (m).
DDTm$_{CITY}$	=	the actual Direct Delivered Tonnage to the NWTF, by the City, that would have otherwise been delivered to a Contract Transfer Station by or on behalf of WCAs in the relevant Month (m).
DDTm$_{COUNTY}$	=	the actual Direct Delivered Tonnage to the NWTF, by the County, that would have otherwise been delivered to a Contract Transfer Station by or on behalf of WCAs in the relevant Month (m).
HTR$_{CITY}$	=	the Handling Tonnage Rate as agreed between parties being £17.85 per Tonne (Price Base April 2019). For reference the Parties agreed this rate as being the best proxy for the handling cost that would be avoided by the City (specifically based on the Raynesway rate).
HTR$_{COUNTY}$	=	the Handling Tonnage Rate as agreed between parties being £22.21 per Tonne (Price Base April 2019). For reference the Parties agreed this rate as being the best proxy for the handling cost that would be avoided by the County (a blended rate).
NDDTm	=	the actual tonnages that have been delivered to the NWTF via a Contract Transfer Station in the relevant Month (m), being Not Direct Delivered Tonnage.
TST%m$_{CITY}$	=	the calculated %, being the relevant proportion of the actual Total Contract Waste delivered to Contract Transfer Stations by the City in the relevant Month (m). For the avoidance of doubt this is the same as "TST Contract Waste Allocation" used and calculated in **Paragraph 1.3** of **Schedule 6** (Payment Mechanism).
TST%m$_{COUNTY}$	=	the calculated %, being the relevant proportion of the actual Total Contract Waste delivered to Contract Transfer Stations by the County in the relevant Month (m). For the avoidance of doubt this is the same as "TST Contract Waste Allocation" used and calculated in **Paragraph 1.3** of **Schedule 6** (Payment Mechanism).
DTRm	=	the Disposal Tonnage Rate for the relevant Month (m), is the average disposal cost rate incurred on the waste not sent to the NWTF[1] but disposed of through the Service Continuity Contract, calculated as: $\frac{TLFPm + DRWPm + DSSm}{TTDm}$ Where: TLFPm = as per **paragraph 1.4.2** of **Schedule 6** (Payment Mechanism),

[1] The average disposal cost rate calculated is used as a best proxy of what it would cost if the waste had been disposed of in the Service Continuity Contract, and so is the disposal cost rate per tonne avoided

		being the total 'Transfer Station derived Landfill Payment' amount calculated for the relevant Month (m). DRWPm = as per **paragraph 1.5** of **Schedule 6** (Payment Mechanism), being the total 'Diverted Residual Waste Payment' amount calculated for the relevant Month (m). DSSm = as per **paragraph 1.12** of **Schedule 6** (Payment Mechanism), being the total 'Diversion Savings Share' amount calculated for the relevant Month m. TTDm = being the total tonnage transfer station waste disposed of to landfill and/or diverted to alternative facilities in the relevant Month (m), based on the formula $TST_m + BUXT_m + 2ZLFT_m - WEEE_m - HAZT_m - NWTFT_m$, where each are as defined in **paragraph 1.4.2** of **Schedule 6** (Payment Mechanism).
RPIXy	=	the Retail Prices Indexation Factor calculated in accordance with **paragraph 1.13** of **Schedule 6** (Payment Mechanism).