



EVERSHEDS

Dated 20th August 2014

- (1) Derbyshire County Council
- (2) Derby City Council

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## Inter Authority Agreement

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relating to the operation and contract management of a PPP contract for the provision of long term residual waste treatment facilities and associated services

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**THIS AGREEMENT** is made on 20 August 2014

**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) Following a joint procurement process, the Authorities jointly awarded on 8 December 2009 to Resource Recovery Solutions (Derbyshire) Limited (the "**Contractor**") a contract (as varied by deeds of variation dated 4 May 2011 and 31 March 2014) (the "**Project Agreement**") in respect of a project involving the design, build, financing and operation of long term residual waste treatment facilities (the "**Project**"). Under the terms of the Project Agreement, the Authorities are jointly and severally liable to the Contractor.
- (B) The obligations and rights of the Authorities and the Contractor contained in the Project Agreement in relation to the New Waste Treatment Facility were conditional on satisfaction of the Treatment Condition Precedent (as defined in the Project Agreement). The Senior Financing Agreement has been (or shortly will be) entered into and accordingly the Treatment Condition Precedent has been (or shortly will be) satisfied in accordance with the terms of the Project Agreement.
- (C) The Authorities have agreed to work together in the implementation and contract management of the Project, and this Agreement sets out the terms of the joint working arrangements for the Project 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 Project.
- (D) 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:

<b>"Actual Use"</b>	means the actual tonnages delivered to the NWTF by each Authority in its capacity as a Waste Disposal Authority (including waste delivered by WCAs or third party contractors on behalf of that Authority either directly or through a Transfer Station);
<b>"Authorised Officer"</b>	means the person appointed by the Authorities pursuant to <b>clause 4.1</b> (Authorised Officer);
<b>"Authorised Officer Matter"</b>	has the meaning given to it in <b>clause 8.1.2</b> (Strategic Management Accountability and Decision Making);
<b>"Authority"</b>	means either: <ul style="list-style-type: none"> <li>(a) the County; or</li> <li>(b) the City,</li> </ul> and <b>"Authorities"</b> shall mean both of them;
<b>"Business Day"</b>	means any day other than a Saturday or Sunday or a public or bank holiday in England;
<b>"City"</b>	means Derby City Council of The Council House, Corporation Street, Derby DE1 2FS;
<b>"Confidential Information"</b>	means all know-how and other information whether commercial, financial, technical or otherwise relating to the business, affairs or methods of the Authorities, which is contained in or discernible in any form whatsoever (including without limitation software, data, drawings, films, documents and computer-readable media) whether or not marked or designated as confidential or proprietary or which is disclosed orally or by demonstration and which is described at the time of disclosure as confidential or is clearly so from its content or the context of disclosure;
<b>"Contract Management Board"</b>	means the contract management board established pursuant to <b>clause 5.1</b> (Contract Management Board);

<b>"Contract Management Board Matter"</b>	has the meaning given to it in <b>clause 8.1.4</b> (Strategic Management Accountability and Decision Making);
<b>"Contract Management Costs"</b>	means the costs of managing the Project Agreement in accordance with the arrangements set out in this Agreement, as determined pursuant to <b>Schedule 7</b> (Contract Management Costs);
<b>"Contract Manager"</b>	means the person to be appointed by the Authorities pursuant to <b>clause 7.1</b> (Contract Manager);
<b>"Contract Manager Matter"</b>	has the meaning given to it in <b>clause 8.1.1</b> (Strategic Management Accountability and Decision Making);
<b>"Contract Waste Allocation"</b>	the relevant proportion of Contract Waste handled by the Contractor in any Contract Year and attributed to each Council in the Contractor's database;
<b>"Contract Waste"</b>	has the meaning given to it in the Project Agreement;
<b>"Contract Year"</b>	any period of 12 months commencing on 1 April provided that the first Contract Year shall be the period commencing on 8 December 2009 and ending on 31 March 2010, and the last Contract Year shall be the period commencing on 1 April prior to the date on which the Project Agreement expires or terminates and ending on the date of such expiry or termination;
<b>"Council Change"</b>	has the meaning given to it in the Project Agreement;
<b>"Council Notice of Change"</b>	has the meaning given to it in the Project Agreement;
<b>"County"</b>	means Derbyshire County Council of County Hall, Matlock, Derbyshire DE4 3AG;
<b>"Default Allocation"</b>	means: <ul style="list-style-type: none"> <li>(a) 77.4 per cent in respect of the County;</li> </ul>

and

(b) 22.6 per cent in respect of the City;

**"Defaulting Authority"** has the meaning given to it in **clause 10.2** (Project Agreement Obligations);

**"Default NWTF Allocation"** means:

(a) 69 per cent in respect of the County; and

(b) 31 per cent in respect of the City;

**"DPA"** means the Data Protection Act 1998;

**"Estimate"** has the meaning given to it in the Project Agreement;

**"Expiry Date"** has the meaning given to it in the Project Agreement;

**"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, trade marks, 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 Officer"**

means:

- (a) in the case of the County, the Service Director – Transport and Environment or any successor to such post; and
- (b) in the case of the City, the Assistant Director Local Environment or any successor to such post;

**"Lead Officers Matter"**

has the meaning given to it in **clause 8.1.3** (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 8.1.5** (Strategic Management Accountability and Decision Making);

**"NWTF"**

means the new waste treatment facility to be provided by the Contractor in accordance with the provisions of the Project Agreement;

**"Planned Use (NWTF)"**

means, subject to **clause 16** (Changes to the Planned Use):

- (a) 73.4 per cent in respect of the County;  
and
- (b) 26.6 per cent in respect of the City;



<b>"Project"</b>	has the meaning given to it in <b>Recital (A)</b> ;
<b>"Project Agreement"</b>	has the meaning given to it in <b>Recital (A)</b> ;
<b>"Required Insurances"</b>	has the meaning given to it in the Project Agreement;
<b>"RPIX"</b>	means the Retail Prices Index (All Items excluding mortgages) as published by the Office for National Statistics from time to time (the <b>"Index"</b> ), 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 <b>clause 21</b> (Dispute Resolution);
<b>"Sinfin Site"</b>	means the site of the NWTF as described in the Project Agreement;
<b>"Site Payment"</b>	means an amount calculated in accordance with <b>clause 18.3</b> (Sites); and
<b>"Unitary Payment"</b>	means the unitary charge due under the Project Agreement.

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

### 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. **NOT USED**

## 3. **PRINCIPLES AND KEY OBJECTIVES**

### 3.1 **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.

### 3.2 **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 Project.

### 3.3 **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 Project shall at all times endeavour to act in the best interests of the Project.

### 3.4 **Knowledge Sharing**

Without prejudice to **clause 9** (Data and Reporting), the Authorities commit to share data and knowledge relevant to the Project where appropriate.

### 3.5 **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:

- 3.5.1 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 Project, discuss and develop ideas openly and contribute fully to all aspects of the successful achievement of the Project;
- 3.5.2 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;
- 3.5.3 the Authorities undertake to be committed fully to the Project, will seek to motivate their respective employees, officers and members involved in or attached to the Project and undertake to address the challenges of the Project with drive, enthusiasm and a determination to succeed;
- 3.5.4 the Authorities acknowledge and agree that:
  - 3.5.4.1 each brings complementary skills and knowledge which they will apply creatively to achieving their respective objectives, resolution of difficulties and the development of the Project and the personnel working within it; and

- 3.5.4.2 to achieve their respective objectives, it will involve the appreciation and adoption of common values by each of them;
- 3.5.5 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;
- 3.5.6 the Authorities acknowledge and agree that they are engaged in a long term relationship for their mutual benefit through the achievement of the Project which needs to develop and adapt, and each will use reasonable endeavours to develop and maintain an effective joint process to ensure that the Project is implemented and managed appropriately and in line with the principles set out in this Agreement;
- 3.5.7 the Authorities each agree that, in relation to this Agreement and the Project 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
- 3.5.8 the Authorities agree that all decisions made in relation to this Agreement and the Project generally shall be made by them acting reasonably.

#### **4. AUTHORISED OFFICER**

##### **4.1 Appointment of the Authorised Officer**

The Authorities shall, in accordance with **clause 8** (Strategic Management Accountability and Decision Making), appoint a person who shall be the "Councils' Authorised Officer" for the purposes of the Project Agreement.

##### **4.2 Functions of the Authorised Officer**

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

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

- 4.2.2 the Project Agreement;

subject to and in accordance with the terms of this Agreement, including **clause 8.2** (Strategic Management Accountability and Decision Making).

#### 4.3 **Term of Appointment**

The Authorised Officer shall hold office until:

- 4.3.1 a new Authorised Officer is appointed in accordance with **clause 4.1** (Authorised Officer);
- 4.3.2 he/she ceases to be employed by one of the Authorities; or
- 4.3.3 he/she resigns from the post of Authorised Officer by notification in writing to the Authority employing him/her.

### 5. **CONTRACT MANAGEMENT BOARD**

#### 5.1 **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 Project pursuant to the Project Agreement and to carry out the functions set out in **Schedule 2** (Contract Management Board - Constitution).

#### 5.2 **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).

#### 5.3 **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.

#### 5.4 **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.

#### 5.5 **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:



- 5.5.1 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
- 5.5.2 any such replacement shall have no lesser status or authority than that of his/her predecessor.

## 5.6 **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.

## 5.7 **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).

## 5.8 **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.

## 6. **LEAD OFFICERS**

The Authorities shall procure that their respective Lead Officers shall meet at least quarterly, together with their respective Heads of Waste Management and the Contract Manager, to discuss and review the Project.

## 7. **CONTRACT MANAGER**

### 7.1 **Appointment of the Contract Manager**

The County shall appoint a Contract Manager, who shall:

- 7.1.1 be selected by reference to a job description and person specification agreed between the Parties at the relevant time and in accordance with **clause 8** (Strategic Management Accountability and Decision Making);
- 7.1.2 be employed by the County; and
- 7.1.3 report to the City's Head of Waste Management.

## 7.2 **Functions of the Contract Manager**

The County shall procure that the Contract Manager shall discharge the functions attributed to the Contract Manager in:

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

7.2.2 the Project Agreement;

subject to and in accordance with the terms of this Agreement, including **clause 8.2** (Strategic Management Accountability and Decision Making).

## 7.3 **Term of Appointment**

The Contract Manager shall hold office until:

7.3.1 a new Contract Manager is appointed in accordance with **clause 7.1** (Contract Manager);

7.3.2 he/she ceases to be employed by the County; or

7.3.3 he/she resigns from the post of Contract Manager by notification in writing to the County.

## 7.4 **Assistants to the Contract Manager**

The Authorities shall ensure that there is adequate and appropriate resource, which includes representation from both the City and the County, put in place by the Contract Management Board to support the Contract Manager in fulfilling his/her functions.

# 8. **STRATEGIC MANAGEMENT ACCOUNTABILITY AND DECISION MAKING**

## 8.1 **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:

8.1.1 a **"Contract Manager Matter"**, being a matter which the Contract Manager shall have authority to carry out on behalf of the Authorities subject to **clause 8.2** (Maximum Overall Benefit);

8.1.2 an **"Authorised Officer Matter"**, being a matter which the Authorised Officer shall have authority to carry out on behalf of the Authorities subject to **clause 8.2** (Maximum Overall Benefit);

- 8.1.3 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 8.2** (Maximum Overall Benefit);
- 8.1.4 a **"Contract Management Board Matter"**, being a matter which the representatives of each of the Authorities appointed pursuant to **clause 4** (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
- 8.1.5 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).

## 8.2 **Maximum Overall Benefit**

### 8.2.1 The Authorities:

- 8.2.1.1 agree that any decision to be made or action to be taken which relates to a Contract Manager Matter, 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
- 8.2.1.2 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.

- 8.2.2 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.

## 9. **DATA AND REPORTING**

The provisions of **Schedule 5** (Data, Reporting and Processing of Payments) shall have effect as regards data collection, sharing and reporting.

## 10. **PROJECT AGREEMENT OBLIGATIONS**

### 10.1 **Compliance with the Project Agreement**



Each of the Authorities shall use all reasonable endeavours to ensure that no breach of the Authorities' obligations under the Project Agreement 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 to making Contract Waste available to the Contractor under the Project Agreement in accordance with its terms.

## **10.2 Defaults under the Project Agreement**

If any liability (to the Contractor or any third party) arises relating to the subject matter of the Project Agreement 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.

## **11. CHANGES TO THE WORKS OR SERVICES AND REFINANCING**

### **11.1 Submission of a Council Notice of Change under the Project Agreement**

Neither Authority shall unilaterally issue a Council Notice of Change under the Project Agreement without the prior written approval of the other. Such approval shall not be unreasonably withheld or delayed, provided that:

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

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

### **11.2 Confirmation of a Council Notice of Change (Single Authority)**

If any Council Notice of Change issued by one Authority is confirmed pursuant to clause 28.1 of the Project Agreement, then as between the Authorities, the Authority submitting that Council Notice of Change shall be responsible for any and all additional costs associated with that Council Notice of Change (as set out in the agreed Estimate relating to that Council Notice of Change), unless the Authorities agree otherwise.

### 11.3 **Confirmation of a Council Notice of Change (Both Authorities)**

If the Authorities agree jointly to issue a Council Notice of Change, then if such Council Notice of Change is confirmed pursuant to clause 28.1 of the Project Agreement, all additional costs associated with that Council Notice of Change (as set out in the agreed Estimate relating to that Council Notice of Change) shall be borne between the Authorities in accordance with the Default Allocation, unless the Authorities agree otherwise.

### 11.4 **Refinancing**

Neither Authority shall unilaterally request a Refinancing under the Project Agreement without the prior written approval of the other.

## 12. **PROCESSING OF PAYMENTS**

The provisions of **Schedule 5** (Data, Reporting and Processing of Payments) shall apply in respect of:

- 12.1 payments to be made by the Authorities to the Contractor pursuant to the Project Agreement;
- 12.2 any reconciliation payments that may be necessary as a result of the operation of **clauses 13** (Project Agreement Costs and Liabilities), **14** (Project Agreement Benefits) and/or **15** (Contract Management Costs) of this Agreement; and
- 12.3 any other payments due from one Authority to the other Authority pursuant to the terms of this Agreement.

## 13. **PROJECT AGREEMENT COSTS AND LIABILITIES**

### 13.1 **Allocation of costs, payments, liabilities and/or claims under the Project Agreement**

Subject to **clause 13.2** (Project Agreement 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 5** (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 Project Agreement (including the Unitary Payment) 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:

<b>Nature of cost, payment, liability or claim (and Project Agreement reference)</b>	<b>Allocation</b>
Costs, payments, liabilities or claims payable pursuant to Schedule 3 (Payment Mechanism) of the Project Agreement	To be borne by the Authorities as specified in Schedule 8 (Payment Mechanism - Allocation of Liabilities and Benefits)
Title Compensation Events	<p>(a) to the extent that such compensation is payable in respect of the Sinfin Site, shall be borne by the Authorities in accordance with the Default NWTF Allocation; and</p> <p>(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.</p>
Qualifying Change in Law (clause 29)	<p>To be borne by the Authorities in proportions which are deemed by both Authorities to be equitable in the circumstances, having regard to:</p> <p>(a) the nature of the cost, payment, liability or claim; and</p> <p>(b) the sites to which such cost, payment, liability or claim may relate,</p> <p>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</p>
Environmental Liabilities arising from Existing Contamination (Schedule 8)	<p>Subject to <b>clause 13.3</b> below,</p> <p>(a) the first one million pounds (£1,000,000) of such liability shall be borne by the City; and</p> <p>(b) any liability above one million pounds (£1,000,000) shall be borne by the Authorities in equal shares.</p>
Council Notice of Change	To be borne in accordance with <b>clause 11</b> (Changes

<b>Nature of cost, payment, liability or claim (and Project Agreement reference)</b>	<b>Allocation</b>
(clause 28.1)	to the Works or Services) of this Agreement
Compensation to reflect differences between the First Employee List and the Final Employee List (clause 50) and the pensions indemnity (clause 51)	Default Allocation
Any costs, payments, liabilities, compensation or claims not referred to above	<p>To be borne by the Authorities in proportions which are deemed by both Authorities to be equitable in the circumstances, having regard to:</p> <ul style="list-style-type: none"> <li>(a) the nature of the cost, payment, liability or claim; and</li> <li>(b) the sites to which such cost, payment, liability or claim may relate,</li> </ul> <p>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</p>

### 13.2 **Single Authority Default**

Where any costs, payments, liabilities, compensation or claims payable pursuant to the terms of the Project Agreement (excluding the Unitary Payment and payment of compensation as a result of termination pursuant to clause 9.12 (Termination as a Result of Planning Failure) of the Project Agreement) 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 10.2** (Project Agreement 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 13.1** (Project Agreement Costs and Liabilities) shall not apply.

### 13.3 **Allocation of liability for environmental liabilities arising from existing contamination of the Sinfin Site**

13.3.1 Should the County be required to contribute to the cost of environmental liabilities resulting from existing contamination on the Sinfin Site pursuant to Schedule 8 of the Project Agreement and **clause 13.1** (Project Agreement Costs and Liabilities) above, the Authorities agree that the County shall only be required to make such contribution to the extent that it receives a reciprocal benefit or interest in the Sinfin Site to recognise the contribution that it has made to the uplift in value of that Site.

13.3.1.1 Within five (5) Business Days of becoming aware that the County is required to make such contribution, the Authorities shall meet to discuss and agree:

- (a) the terms upon which the County will make its contribution;
- (b) the means by which the principle set out at **clause 13.3.1** above can be implemented including a discussion as to the practicalities, legality, appropriateness and desirability of:
  - (i) the freehold interest in a parcel of the Sinfin Site being transferred to the County;
  - (ii) the Authorities sharing the beneficial interest in the site through lease or licence arrangements;
  - (iii) the Authorities sharing the beneficial interest in the site through transferring ownership of the Sinfin Site to a company in which each of the City and the County take equity; and
  - (iv) any other proposals that either the City and/or the County wish to put forward in this regard,
- (c) any amendments that may be required to this Agreement (including to the terms of **clause 18** below) in order to implement the principle set out at **clause 13.3.1** above; and
- (d) the steps that each Authority needs to take to implement the agreed position.

13.4 Within twenty (20) Business Days of having met pursuant to **clause 13.3.1.1** above and agreed the terms upon which the County shall make its contribution, both Authorities shall make the necessary arrangements to implement the agreed position.



#### 14. PROJECT AGREEMENT 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 Project Agreement 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 Project Agreement (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:

<b>Nature of cost, payment, liability or claim (and Project Agreement reference)</b>	<b>Allocation</b>
Costs, payments, liabilities or claims received pursuant to Schedule 3 (Payment Mechanism) of the Project Agreement	To be borne by the Authorities as specified in Schedule 8 (Project Agreement Payment Mechanism - Allocation of Liabilities and Benefits)
Reduction in Unitary Payment as a result of investment of capital contribution	To be borne by the Authorities as specified in Schedule 8 (Project Agreement Payment Mechanism - Allocation of Liabilities and Benefits)
Refinancing Gain (clause 35.4)	To be allocated to the Authorities in accordance with the Default NWTF Allocation
Any costs, payments, liabilities, compensation or claims not referred to above	<p>To be allocated between the Authorities in proportions which are deemed by both Authorities to be equitable in the circumstances, having regard to:</p> <ul style="list-style-type: none"> <li>(a) the nature of the cost, payment, liability or claim borne by the Contractor; and</li> <li>(b) the sites to which such cost, payment, liability or claim borne by the Contractor may relate</li> </ul> <p>provided that the Authorities shall at all times act in good faith and seek to agree proportions that reflect</p>

Nature of cost, payment, liability or claim (and Project Agreement reference)	Allocation
	the principles set out in this Agreement

## 15. **CONTRACT MANAGEMENT COSTS**

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.

## 16. **CHANGES TO THE PLANNED USE AND ANNUAL RECONCILIATION**

### 16.1 **Initial Levels of Planned Use**

The Authorities acknowledge and agree that the Planned Use (NWTF) as at the date of this Agreement has been calculated by reference to the amount of Contract Waste that each Authority proposes to deliver to the Contractor for treatment/processing at the NWTF pursuant to the Project Agreement, expressed as a percentage of the total amount of Contract Waste that the Authorities together propose to deliver to the Contractor for treatment/processing at the NWTF pursuant to the Project Agreement.

### 16.2 **Amendments to the Planned Use (NWTF)**

16.2.1 The Authorities may at any time agree to amend the Planned Use (NWTF) in accordance with this **clause 16.2**. Any agreed amendment to the Planned Use (NWTF) must be evidenced in writing and signed and dated by both Authorities.

16.2.2 The Authorities agree that:

16.2.2.1 the maximum overall economic and environmental benefit of the Project Agreement will result from minimising haulage; and

16.2.2.2 they will seek to minimise haulage distances overall and if necessary, deliveries will be prioritised by reference to the distance travelled to the NWTF – known as the '**proximity principle**'.

16.2.3 Provided that the NWTF is being used to its full capacity, the Authorities agree that the Planned Use (NWTF) be determined according to the proximity principle.

16.2.4 The Authorities agree that where:

16.2.4.1 the NWTF is being used to its full capacity, or

16.2.4.2 both Authorities are using all reasonable endeavours to send all of their respective Contract Waste to the NWTF;

the Planned Use (NWTF) for the following Contract Year should be based on previous Actual Use (adjusted as necessary to take account of the proximity principle described in **paragraphs 16.2.2 and 16.2.3** above).

16.2.5 The Parties agree that in each Contract Year costs will be apportioned between the Parties in accordance with the principles set out in paragraphs 1 and 2 of **Schedule 8** (Payment Mechanism) and reconciled at the end of each Contract Year in accordance with paragraph 3 of **Schedule 8** (Payment Mechanism). Payments will be made in accordance with the procedures described in **Schedule 5** (Data, Reporting and Processing of Payments).

### 16.3 **Failure to agree**

In default of agreement between the Parties, the Planned Use (NWTF) shall remain:

16.3.1 at the percentages set out in this Agreement; or

16.3.2 at any subsequent amendment to those percentages previously agreed between the Parties and evidenced in writing in accordance with **clause 16.2**.

### 16.4 **Annual Reconciliation**

The annual reconciliation shall be dealt with in accordance with the principles set out in Schedule 8 (Project Agreement Payment Mechanism - Allocation of Liabilities and Benefits)

## 17. **LIABILITIES, IMMUNITIES AND INDEMNITIES**

### 17.1 **Member and Officer Liabilities**

17.1.1 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 to or also relates to the other Authority.

17.1.2 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.

17.1.3 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.

## **17.2 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 Project on behalf of the Contract Management Board.

## **18. SITES**

### **18.1 Ownership of the Sinfin Site**

The Authorities acknowledge that the Sinfin Site is owned by the City and will be leased to the Contractor for the purposes of the Project.

### **18.2 Site Payment**

Subject to **clauses 18.3** (Calculation of the Site Payment) and **18.8** (Raynesway Bunker Site), the County shall pay to the City the Site Payment each Contract Year in accordance with **Schedule 5** (Data, Reporting and Processing of Payments) with effect from the date of this Agreement until the date of expiry or earlier termination of the Project Agreement (and the Site Payment shall be pro-rated in respect of any Contract Year that is not a full period of 12 months).

### **18.3 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.

### **18.4 Continued Use of the Sinfin Site**

At the same time as the Authorities consider whether to grant an extension to the term of the Project Agreement pursuant to clause 3.1.3 of the Project Agreement (which shall be a Matter Reserved to Authorities):

- 18.4.1 the Authorities shall consider in good faith whether the NWTF is likely to remain able to accept and process residual waste beyond the Expiry Date (or, if later, the expiry of the term of the Project Agreement as extended pursuant to clause 3.1.3 of the Project Agreement); and
- 18.4.2 if the NWTF is likely to remain able to accept and process residual waste beyond the Expiry Date (or, if later, the expiry of the term of the Project Agreement as extended pursuant to clause 3.1.3 of the Project Agreement), the Authorities shall agree the terms on which the County shall be permitted to continue to deliver residual waste to the NWTF for processing which shall be the same as, or substantially in accordance with, the terms of this Agreement; and
- 18.4.3 if the NWTF is not likely to remain able to accept and process residual waste beyond the Expiry Date (or, if later, the expiry of the term of the Project Agreement as extended pursuant to clause 3.1.3 of the Project Agreement), 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 NWTF Allocation.

#### 18.5 **The Clover Nook Transfer Station Site**

As part of the Project, the County has purchased the Clover Nook Transfer Station Site.

#### 18.6 **Development of the Matlock Site and the Glossop Site**

The County has or shall procure that the Authorities comply with their obligations pursuant to Schedule 16 (Minor Facilities Protocol) of the Project Agreement in respect of the Matlock Site and the Glossop Site. The costs of the development of the Matlock Site and the Glossop Site shall be borne by the County.

#### 18.7 **Not used**

#### 18.8 **Raynesway Bunker Site**

In accordance with the principles set out in the draft heads of terms dated 21 August 2009 (as may be amended as agreed between the Parties):

- 18.8.1 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;
- 18.8.2 the Site Payment for the use of the Sinfin Site shall be deferred for 4.461538 years from the date of this Agreement; and

- 18.8.3 when the capital value has been paid off, the County shall commence rental payments for the Sinfin site.

## 19. **INTELLECTUAL PROPERTY**

### 19.1 **Intellectual Property**

Each Authority will:

- 19.1.1 retain all Intellectual Property in its Material; and

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

### 19.2 **Jointly Owned Intellectual Property**

Without prejudice to **clause 19.1** (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.

### 19.3 **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.

### 19.4 **Grant of Licences**

Each Authority warrants that it has or will have the necessary rights to grant the licences set out in **clauses 19.1.2** and **19.2** (Intellectual Property) in respect of the Material to be licensed.

### 19.5 **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.

## 20. **REMEDIATION**

### 20.1 **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.

### 20.2 **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.

### 20.3 **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.

### 20.4 **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.

### 20.5 **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 21** (Dispute Resolution).

## 21. **DISPUTE RESOLUTION**

### 21.1 **Disputes**

Any disputes and/or disagreements arising under or in connection with this Agreement shall be resolved in accordance with this **clause 21** (Dispute Resolution).

### 21.2 **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.

### 21.3 **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 21.2** (Dispute Resolution) or fails to meet in accordance with the timescales set out in **clause 21.2** (Dispute Resolution), then the Contract Management Board or either Authority as appropriate may refer the matter for resolution to:

21.3.1 the Joint Leaders/Members Meeting; or

21.3.2 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

21.3.3 the exclusive jurisdiction of the Courts of England otherwise.

### 21.4 **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.

### 21.5 **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.



#### 21.6 **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.

#### 21.7 **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).

### 22. **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 Project Agreement.

### 23. **CONSEQUENCES OF TERMINATION**

If the Agreement is terminated in accordance with **clause 22** (Termination), save for the obligations set out in **clause 24** (Confidentiality and Announcements), the Authorities shall be released from their respective obligations described in this Agreement.

### 24. **CONFIDENTIALITY AND ANNOUNCEMENTS**

#### 24.1 **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 Project Agreement.

#### 24.2 **Exclusions**

The obligation set out in **clause 24.1** (Confidentiality and Announcements) shall not relate to information which:

- 24.2.1 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

24.2.2 is required to be disclosed by law; or

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

24.2.4 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

24.2.5 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.

#### 24.3 **Permitted Disclosure**

Where disclosure is permitted under **clause 24.2.3** or **clause 24.2.4** (Confidentiality and Announcements), the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this **clause 24** (Confidentiality and Announcements) and the disclosing Authority shall make this known to the recipient of the information.

#### 24.4 **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 Project Agreement which is not in accordance with the Communications Strategy as set out in **Schedule 6** (Communications Strategy) (excluding any disclosure required by legal or regulatory requirements).

### 25. **FREEDOM OF INFORMATION**

#### 25.1 **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.

#### 25.2 **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):

- 25.2.1 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;
- 25.2.2 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
- 25.2.3 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.

#### 25.3 **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.

#### 25.4 **Disclosure and Exemptions**

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

- 25.4.1 is exempt from disclosure under the FOIA or the EIR; and/or
- 25.4.2 is to be disclosed in response to a request for information.

#### 25.5 **Disclosure**

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



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

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

26. **NO AGENCY OR PARTNERSHIP**

26.1 **No Agency**

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

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

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

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

26.2 **No partnership**

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

27. **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.

28. **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.

29. **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.

30. **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.

31. **WAIVER**

31.1 **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.

31.2 **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.

31.3 **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.

32. **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.

33. **LAW AND JURISDICTION**

This Agreement 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.

34. **NOTICES**

34.1 **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 or facsimile transmission to the address of the Authority set out above or such alternative address as may be notified in accordance with **clause 34.3** (Notices).

## 34.2 **Service of Notices**

A notice served in accordance with **clause 34.1** (Notices) shall be deemed to have been duly served when received except that:

34.2.1 subject to **clause 34.2.2** (Notices) 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;

34.2.2 if given or made by facsimile transmission, it shall be deemed to have been received once an uninterrupted communication report has been generated, provided the Authority to whom the notice is to be transmitted has not notified the Authority giving or making the notice that the facsimile is unintelligible or incomplete.

## 34.3 **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.

## 35. **GENERAL**

### 35.1 **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.

### 35.2 **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:

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

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

35.2.3 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.

35.3 **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.

35.4 **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.

36. **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.

37. **COSTS**

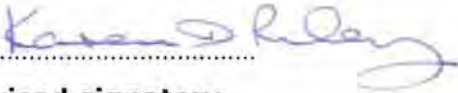
The Authorities shall be responsible for paying their own respective costs and expenses in relation to the preparation, execution and implementation of this Agreement, except as expressly provided in this Agreement.

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

The Common Seal of

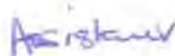
**Derbyshire County Council**

is hereunto affixed in the presence of

.....  


**Authorised signatory**

Number in Seal  
Book 2014/769

 Director of Legal Services

The Common Seal of the

**Derby City Council**

is hereunto affixed in the presence of

.....  


**Authorised signatory**



.....  


**Authorised signatory**

## **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

#### **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.	Strategic 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 Waste Management
3.	Corporate Director of Waste Management

#### **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 Waste PPP 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 design, build, financing and operation of facilities 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; and
- 2.2 the terms of an agreement (the "Project Agreement") entered into between the Authorities and Resource Recovery Solutions (Derbyshire) Limited (the "Contractor") on or around the date of this Agreement.

#### **3. Terms of Reference**

The Contract Management Board shall:

- 3.1 provide strategic leadership of the Project Agreement in collaboration with the Contractor;
- 3.2 oversee the delivery and implementation of the Project Agreement to ensure national, regional and local policy/strategy objectives and targets and the needs and aspirations of local communities are met;
- 3.3 oversee the planning and alignment of resources in Derbyshire including Derby City, where relevant to the delivery of the Project Agreement, to achieve better outcomes for local people;

- 3.4 review and monitor the performance of the Contractor in progressing the priorities and targets agreed in the Project Agreement;
- 3.5 oversee the implementation of the Waste Minimisation and Education plan to ensure effective consultation and engagement with local communities;
- 3.6 ensure wherever possible that knowledge, best practice and experience is shared between the Authorities; and
- 3.7 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.

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

- 4.1 The Contract Management Board shall comprise six full members, two 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 Contract Manager;
  - 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 Contract Manager

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 Contract Manager.

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 Project Agreement:

10.2.6.1 requesting or approving Council Changes pursuant to clause 28.1 of the Project Agreement;

10.2.6.2 issuing any notice of termination pursuant to the Project Agreement;

10.2.6.3 issuing any waiver pursuant to clause 78 of the Project Agreement;

10.2.6.4 requesting or approving any amendments to the terms of the Project Agreement.

## **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 Contract Manager;

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**

<b>Nature of action / decision required</b>	<b>Category (as referred to in clause 8)</b>
Appointment of Contract Manager	Lead Officers Matter
Review and commenting on/approval of Submitted Items pursuant to the Review Procedure	Contract Manager Matter
Agreeing extensions of time, relief from obligations and/or compensation as a result of Compensation/Relief Events	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))
Issue of joint Council Notice of Change	Matter Reserved to Authorities
Approval of a Contractor Notice of Change	Matter Reserved to Authorities
Agreeing the consequences of a Qualifying Change in Law	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))
Decisions relating to the Benchmarking and Market Testing processes	Contract Manager Matter
Decisions relating to the outcome of a Benchmarking and/or Market Testing exercise	Matter Reserved to Authorities
Approval of insurers	Contract Manager Matter
Approval of any Reinstatement Plan	Matter Reserved to Authorities
Extension to the term of the Project Agreement	Matter Reserved to Authorities

<b>Nature of action / decision required</b>	<b>Category (as referred to in clause 8)</b>
Termination of the Project Agreement	Matter Reserved to Authorities
Step-in pursuant to clause 49 of the Project Agreement	Authorised Officer Decision (to be subsequently ratified by the Contract Management Board)
Consent to assignment of the Project Agreement by the Contractor	Matter Reserved to Authorities
Consent to sub-contract	Matter Reserved to Authorities
All actions and decisions relating to the Dispute Resolution Procedure:	
(a) Referral of a dispute to the Chief Executives of each of the Contractor and the Councils pursuant to clause 78.2 of the Project Agreement;	Contract Management Board
(b) Referral of a dispute to adjudication pursuant to clause 78.3 of the Project Agreement;	Contract Management Board
(c) Referral of a dispute to the courts pursuant to clause 78.11 of the Project Agreement;	Matter Reserved to Authorities
Any waiver of any breach by the Contractor of the Project Agreement	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 4**

**NOT USED**

## **SCHEDULE 5**

### **DATA, REPORTING AND PROCESSING OF PAYMENTS**

#### **1. Information Management System**

In accordance with Clause 32 of the Project Agreement, 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 Project Agreement**

2.1 Upon receipt of a Monthly Report and invoice from the Contractor by the tenth (10th) Business Day of each Month during the Services Period, the Contract Manager 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 Contract Manager's absence);

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 32.2 of the Project Agreement; 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 Contract Manager fails to issue the Councils Monthly Reply pursuant to the terms of the Project Agreement, the Councils are deemed, pursuant to clause 32.3 of the Project Agreement 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 32.8 of the Project Agreement; 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 Contract Manager 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 Project Agreement immediately at the end of the Payment Period).
3. **Reconciliations**
- Reconciliation payments will be made between the two Authorities in accordance with the apportionment and timing set out in Schedule 8 (Project Agreement Payment Mechanism - Allocation of Liabilities and Benefits)
4. **Sinfin Site Payment**
- 4.1 The City shall issue to the County on or before the end of each Contract Year an invoice for the Sinfin Site Payment.
- 4.2 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.
5. **Contract Management Costs**
- 5.1 The Contract Manager 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**").
- 5.2 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 15** of this Agreement.
- 5.3 The Contract Management Report must be submitted by the Contract Manager to both Authorities by the 10th business day of the month.
- 5.4 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.

## **SCHEDULE 6**

### **COMMUNICATION STRATEGY**

#### **1. Section 1: The Strategy**

##### **1.1 Background**

Derby City Council and Derbyshire County Council (the "Councils") are jointly procuring facilities to treat residual waste with a view to a waste treatment plant being established by 2017.

This Strategy is designed to raise public awareness to the need for such facilities and alleviate / mitigate negative public perceptions that are often associated with new treatment facilities.

##### **1.2 Our Strategy**

1.2.1 This strategy sets out an approach to:

- 1.2.1.1 communicate the Councils' proposals and explaining the reasons for them to the Derbyshire public as a whole;
- 1.2.1.2 seek to build a consensus of understanding of the waste problems facing Derby and Derbyshire;
- 1.2.1.3 seek widespread public support for the Councils' decisions and actions;
- 1.2.1.4 provide a 'call to action' providing opportunities and inspiration for local people to contribute to waste reduction.

1.2.2 This strategy assumes that some residents living within the immediate vicinity of the proposed treatment plant may never be convinced of the Councils' reasons for building the treatment plant near them.

1.2.3 Separate and individual communication plans will be developed specifically for these communities.

1.2.4 For both city and countywide communications, and community specific campaigns, the communications challenge is to:

- 1.2.4.1 explain the Councils' proposals;



1.2.4.2 explain the reasons why the Councils must reduce waste sent to landfill including costs to the taxpayer and the environment;

1.2.4.3 explain how residents can help tackle the problem;

1.2.4.4 minimise potential adverse publicity.

### 1.3 **Key target audiences**

The key target audiences (not in priority order) are:

1.3.1 All council taxpayers;

1.3.2 Local communities (seen as directly affected by the treatment plant proposal) This will be developed and run in partnership with the Contractor;

1.3.3 Local business;

1.3.4 Partner organisations;

1.3.5 Elected representatives;

1.3.6 District, borough, parish and town councils;

1.3.7 Young people;

1.3.8 Local authority employees.

### 1.4 **Key Messages**

The key messages are:

1.4.1 A new waste management facility is needed to deal with Derbyshire's waste that cannot be recycled or composted;

1.4.2 The aim is to reduce the environmental impact of waste management – the reduction of carbon emissions will be key;

1.4.3 Sustainable waste management is very important and hence the need for waste minimisation, recycling and composting initiatives;

1.4.4 Where and when new waste management facilities may be developed;

1.4.5 The pros and cons of different waste management methods;

1.4.6 The procurement process undertaken;

- 1.4.7 The significant investment made in infrastructure and resources to increase recycling and cut waste;
- 1.4.8 Unless both councils act, council tax bills may soar in future years;
- 1.4.9 Acknowledgement that treatment plants may be unpopular with local residents but they are the most cost-effective and environmentally friendly choice;
- 1.4.10 Best solution for Derby, Derbyshire and its residents;
- 1.4.11 Reducing the quantity of waste produced protects the environment;
- 1.4.12 Everyone has a part to play;
- 1.4.13 We cannot afford to do nothing.

## 1.5 **Key Tasks**

The key tasks are:

- 1.5.1 Development and delivery of information campaigns incorporating the key messages
  - 1.5.1.1 Rationale:
    - (a) The development of campaigns either jointly or individually by both Councils to help convey the key messages. The campaigns will help to outline what we are doing and why, including a general call for residents and business to 'play their part', including useful tips and ideas about how to help;
    - (b) The campaigns will also convey information on waste reduction, reuse and recycling and composting initiatives carried out by the Derbyshire councils and their partners.
  - 1.5.1.2 Proposal:
    - (a) Different communication methods will be used as a part of the campaigns whilst conveying the key messages in a consistent way. Advertising and promotional materials will be created where appropriate to either thank or urge residents to 'play their part'.
- 1.5.2 Co-ordinating existing campaigns
  - 1.5.2.1 Rationale:

- (a) Existing promotional activity such as composting and other recycling campaigns have established communication channels which will be valuable in helping to convey the key messages.

#### 1.5.2.2 Proposal:

- (a) Promotional publicity material and advertising for existing campaigns should incorporate where appropriate the key messages;
- (b) Promotional material and events for waste reduction and recycling publicity campaigns by the Councils should be co-ordinated to maximise publicity opportunities and communicate clear messages.

## 2. **Section 2: Reaching the target groups**

The following plan sets out proposals for delivering the key messages to each of the target groups both County and City wide and community focused.

### 2.1 **All Residents**

#### 2.1.1 News media

##### 2.1.1.1 Rationale:

- (a) There are a large number of media organisations – newspapers, radio and television – covering the county alongside extensive social media opportunities.

##### 2.1.1.2 Proposal:

- (a) Use of common descriptive wording (which explains the context and includes the key messages) to be included in press releases and publicity activities on related issues e.g. composting, recycling, etc;
- (b) Ensure the key messages are communicated by all spokespeople and included in interviews;
- (c) Produce media packs when appropriate with story ideas, photographs and original 'copy' for editors to use at any time;
- (d) For smaller news organisations prepare in-depth news feature to be distributed freely to the news media;

- (e) Encourage local radio to devote airtime to broader coverage of the issues outside normal news bulletins with features and 'phone-ins'.

#### 2.1.2 Council Publications

##### 2.1.2.1 Rationale:

- (a) The use of council publications (where available) to help convey the key messages to residents of the county.

##### 2.1.2.2 Proposal:

- (a) Use of publications as a vehicle for features to explain the actions the Councils are taking;
- (b) Further promotion of waste reduction, reuse and recycling and composting initiatives;
- (c) Explain the proposals for the new waste treatment plant.

#### 2.1.3 Council websites

##### 2.1.3.1 Rationale:

- (a) The Councils' websites ([www.derbyshire.gov.uk](http://www.derbyshire.gov.uk), [www.derby.gov.uk](http://www.derby.gov.uk) and the Derbyshire district/borough council websites) receive well over a 100,000 unique visitors a month. The numbers of households in Derbyshire and Derby connected to the Internet continues to increase and for those not connected free access is available through local or mobile libraries.

##### 2.1.3.2 Proposal:

- (a) Develop further webpages on waste reduction, reuse and recycling and composting to include more information on why and how residents can do more including the key messages;
- (b) Develop specific pages aimed at the local community where the treatment plant is proposed;
- (c) Explain the proposals for the waste treatment plant located in Derby;
- (d) Complete any consultations online;

- (e) Use of an online form for feedback, questions and queries with a specific email address to be considered;
- (f) Work in conjunction with the district and borough councils to develop their web pages to provide consistent messages.

#### 2.1.4 Social Media

##### 2.1.4.1 Rationale:

- (a) Social media, including Facebook, Twitter, Youtube, Flickr and blogs, is a tool which the Councils have been using for some time in order to communicate, engage and deliver services to the residents of Derbyshire.
- (b) The social web means that more people than ever are talking, sharing, publishing and interacting online. The online experience is rapidly moving from being a passive one where information can be read and acted on in some other channel, to an interactive and personalised activity allowing information, conversation and transactions to take place instantly across a number of online locations.
- (c) It is also one of the most cost-efficient ways to promote a message.

##### 2.1.4.2 Proposal:

- (a) Use social media to help convey the key messages and information on initiatives and awareness raising events;

#### 2.1.5 Use of the waste exhibition vehicle

##### 2.1.5.1 Rationale:

- (a) The waste exhibition vehicle is taken to events and venues throughout the county and is a useful tool to help engage with a broad cross section of the public. The vehicle has information displays and interactive resources.

##### 2.1.5.2 Proposal:

- (a) Continue to engage with communities across Derbyshire and Derby City through a programme of events and attendance at selected locations;

- (b) Incorporate appropriate publicity material and resources within the vehicle to help convey key messages.

## **2.2 Local Communities**

### **2.2.1 Rationale:**

- 2.2.1.1 Extensive work will be undertaken with the local communities surrounding the proposed waste treatment facility to help convey the key messages, to reassure residents and tackle any misconceptions which may be held.

### **2.2.2 Proposal:**

- 2.2.2.1 Develop a separate individual communications plan in conjunction with the Contractor.

## **2.3 Local Business**

### **2.3.1 Rationale:**

- 2.3.1.1 The Derbyshire business community can play a vital role in promoting understanding of the key messages and in raising awareness of waste initiatives.

### **2.3.2 Proposal:**

- 2.3.2.1 Seek support from the business community and publicise their support with press releases;
- 2.3.2.2 Request business organisations to circulate publicity to their members and include publicity in their publications;
- 2.3.2.3 Inclusion of information about waste initiatives and the key messages to be included in business to business newsletters;
- 2.3.2.4 Explore ways to support businesses to cut waste, increase recycling and play their part in the campaign.

## **2.4 Partner Organisations And Community Groups**

### **2.4.1 Rationale:**

- 2.4.1.1 Our partners need to understand the key messages and the reasons why we are taking this approach. Their



approval and active participation in helping to promote these issues is invaluable.

2.4.2 Proposal:

2.4.2.1 Approach partner organisations and community groups to explain the key messages and seek their support;

2.4.2.2 Request help to circulate and display publicity material within their organisations including any employee newsletters and events which they may attend.

2.5 **District, Borough, Parish And Town Councils**

2.5.1 Rationale:

2.5.1.1 Local councils are an important voice in local communities and play a vital role in assisting local 'calls to action'.

2.5.2 Proposal:

2.5.2.1 Seek the support of the councils in explaining the key messages, requesting their support and providing updates on progress made;

2.5.2.2 Request help to circulate and display publicity material within their organisations including any employee newsletters and events in their local communities which they may attend.

2.6 **Young People**

2.6.1 Rationale:

2.6.1.1 Educating and engaging with young people on the key messages and their role in looking after the environment will help to foster a sense of responsibility and "proactive citizenship" for when they become adults.

2.6.1.2 Proposal:

(a) Use a range of suitable communication methods to inform and engage with young people in an interesting and age appropriate style.

(b) Seek support from the Derbyshire Youth Forums and identify other ways to engage young people on the key messages.

## **2.7 Local Authority Employees**

### **2.7.1 Rationale:**

- 2.7.1.1 Derbyshire County Council employs more than 30,000 people. Around one family in five in the county has a family member who is employed by the County Council. Derby City Council employs over 10,000 people. The district and borough councils also employ local people.

### **2.7.2 Proposal:**

- 2.7.2.1 All Councils to publicise initiatives and key messages to their employees through internal communications e.g. on their Intranets, by regular 'all staff' emails and other appropriate communication methods.

**Derby City Council & Derbyshire County Council**

**July 2014**

## **SCHEDULE 7**

### **CONTRACT MANAGEMENT COSTS**

#### **1. Contract Management Costs**

The Contract Management Costs shall comprise the following:

- 1.1 the salary and on-costs reasonably incurred by the County in employing and supporting the Contract Manager;
- 1.2 any salary and on-costs which may be reasonably incurred by the Authorities in employing any support for the Contract Manager agreed pursuant to **clause 7.4**;
- 1.3 costs incurred for the purposes of the Project on the instruction of the Contract Management Board, including:
  - 1.3.1 consultants' fees;
  - 1.3.2 advertising costs; and
  - 1.3.3 costs of holding meetings of the Contract Management Board.

#### **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 8**

### **PROJECT AGREEMENT PAYMENT MECHANISM - ALLOCATION OF LIABILITIES AND BENEFITS**

#### **1A GENERAL**

##### **1A.1 Rebasing for IX2 in the Period between the Commencement Date and the Amendment and Restatement Date**

As at the Amendment and Restatement Date, the rates and prices contained within Schedule 3 (Payment Mechanism) of the Project Agreement (save for those related to the NWTF Fixed Payment and Electricity Revenues) have been uplifted from a price base date of 1 April 2008 to the revised Price Base Date of 1 April 2011 and have therefore been increased by 12.115% (being the increase in IX2 in the period from 1 April 2008 to 31 March 2011).

##### **1A.2 Part-Year Provisions**

Since the commencement of operations at NWTF included in the Base Case now coincides with the beginning of a Contract Year (on 1 April 2017) and the Expiry Date coincides with the end of a Contract Year (on 31 March 2042), the part-year provisions in the previous version of the Payment Mechanism are no longer applicable and, for clarity, have therefore been deleted. Relevant time-related rates and prices included in this Payment Mechanism therefore equate to the payments which are due in respect of a full Contract Year or a full Payment Period, as applicable. In the event that any component of payment is due over a period which is less than the full applicable period (for example due to the impact of a Relevant Event or Relief Event), payments shall be pro-rated as appropriate.

#### **1. UNITARY CHARGE**

##### **1.1 Principal Formula**

The Unitary Charge ( $UC_y$ ) for each Contract Year following the Initial Services Commencement Date shall be calculated using the following formula:

$$UC_y = NWTF_y + HWRC_y + LF_y + NNDR_y + HCW_y + SPS_y - ER_y$$

Where:

$UC_y$  = the Unitary Charge for the relevant Contract Year

- NWTF<sub>y</sub> = the amount payable in respect of the New Waste Treatment Facility in the relevant Contract Year calculated in accordance with **paragraph 1.2 of Schedule 3** of the Project Agreement
- HWRC<sub>y</sub> = The amount payable in respect of HWRCs and Contract Transfer Stations in the relevant Contract Year calculated in accordance with **paragraph 1.3 of Schedule 3** of the Project Agreement
- LF<sub>y</sub> = the amount payable in respect of Landfill in the relevant Contract Year calculated in accordance with **paragraph 1.4 of Schedule 3** of the Project Agreement
- NNDR<sub>y</sub> = the reimbursement to the Contractor of any NNDR properly payable in respect of the facilities referred to in **paragraph 1.5 of Schedule 3** of the Project Agreement in the relevant Contract Year
- HCW<sub>y</sub> = the amount payable in respect of Specified Hazardous Waste and/or Clinical Waste disposed of by the Contractor in the relevant Contract Year calculated in accordance with **paragraph 1.6 of Schedule 3** of the Project Agreement
- SPS<sub>y</sub> = the amount payable in respect of Strategic Partnering Services in the relevant Contract Year calculated in accordance with **paragraph 1.7.1 of Schedule 3** of the Project Agreement
- ER<sub>y</sub> = baseline electricity revenues in the relevant Contract Year calculated in accordance with **paragraph 1.8 of Schedule 3** of the Project Agreement

## 1.2 New Waste Treatment Facility

From the day after the NWTF Planned Completion Date, payment for NWTF in respect of each full Contract Year (NWTF<sub>y</sub>) shall comprise a fixed payment (in respect of fixed costs) and a tonnage-related payment (in respect of variable costs) and shall be calculated as follows:

$$NWTF_y = \{[(NWTF_{FPI} \times IX1_y) + NWTF_{FPNI}]\} + [(NWTF_{Cap_y} \times NWTF_R \times RPIX_y)]$$

Where:

NWTF <sub>y</sub>	=	the payment in respect of NWTF in the relevant Contract Year	
NWTFPI	=	the fixed payment subject to indexation in respect of NWTF, being £9,325,465 in each Contract Year	Allocated between the Councils based on Actual Use in the relevant Contract Year, capped at 50% in respect of the City
IX1 <sub>y</sub>	=	the Indexation Factor for the relevant Contract Year y calculated in accordance with paragraph 6.1 of Schedule 3 to the Project Agreement	
NWTFPNI	=	the fixed payment not subject to indexation in respect of NWTF, being <u>£ 13,228,500.00</u> in each Contract Year	Allocated between the Councils in accordance with the principles described in paragraph 1.2A below
NWTFCap <sub>y</sub>	=	the tonnage capacity of NWTF being 190,731	Allocated between the Councils based on Actual Use in the relevant Contract Year, capped at 50% in respect of the City
NWTFR	=	the tonnage rate for the treatment of Contract Waste at NWTF being £2.66 per Tonne	
RPIX <sub>y</sub>	=	the Retail Prices Indexation Factor Cumulative for the relevant Contract Year	
		calculated in accordance with paragraph 6.3 of Schedule 3 of the Project Agreement	

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### 1.2A Allocation of NWTF Non-Indexed Fixed Payment

The Unitary Charge payable to the Contractor has been reduced by the Capital Contribution of £50 million which is payable on an equal basis by Derbyshire County Council and Derby City Council. This manifests itself through a reduction in the fixed payment not subject to indexation in respect of NWTF (NWTFNPNI) compared to that which would have been paid had the capital contribution not been made.

The allocation of NWTFNPNI between the Councils shall therefore be calculated as follows:

$$\text{NWTFNPNIDCC} = (\text{PNWTFTS} \times \text{NWTFNPNINCC}) - (50\% \times (\text{NWTFNPNINCC} - \text{NWTFNPNI}))$$

Where:

**NWTFNPNIDCC** = the amount of NWTFNPNI payable by either the City or the County

**PNWTFTS** = allocated between the Councils based on Actual Use in the relevant Contract Year, capped at 50% in respect of the City

**NWTFNPNINCC** = the amount of NWTFNPNI which would have resulted had the capital contribution not been made being £ 18,474,000.00.

**NWTFNPNI** = the fixed payment not subject to indexation in respect of NWTF, being £ 13,228,500.00 in each Contract Year

### 1.3 HWRCs and Contract Transfer Stations

Payment for management of HWRCs and Contract Transfer Stations (including the associated Composting and haulage) in each Contract Year following the Initial Services Commencement Date (HWRC<sub>y</sub>) shall comprise fixed payments and Tonnage-related payments and shall be calculated as follows:

$$\text{HWRC}_y = \{[\text{HWRCFP}_y + (\text{HWT}_y \times \text{HWR}_y) + (\text{HWC}_y \times \text{HWC}_r)_y + \text{TSFP}_y + ((\text{TST}_y - \text{TSTIS}_y) \times \text{TSR}_y)] \times \text{IX2}_y + [(\text{TSTIS}_y \times \text{TSRIS}_y) \times \text{RPIX}_y]\}$$

Where:

**HWRCFP<sub>y</sub>** = the total fixed payments in respect of HWRCs in the relevant

Contract Year, calculated in accordance with **paragraph 1.3.1** of **Schedule 3** of the Project Agreement

- $HWT_y$  = the total Tonnage of Household Waste deposited by members of the public at HWRCs in the relevant Contract Year excluding Rubble, Specified Hazardous Waste and Clinical Waste
- $HWR_y$  = the Tonnage rate for HWRCs being £18.88 per Tonne
- $HWC_y$  = the total Tonnage of Compostable Waste deposited by members of the public at HWRCs in the relevant Contract Year which is then Composted
- $HWCR_y$  = the extra-over Tonnage rate for HWRC Compostable Waste being £47.58 per Tonne
- $TSFP_y$  = the total fixed payments in respect of certain Contract Transfer Stations in the relevant Contract Year, calculated in accordance with **paragraph 1.3.2** of **Schedule 3** of the Project Agreement
- $TST_y$  = the total Tonnage of Contract Waste delivered to Contract Transfer Stations by or on behalf of WCAs in the relevant Contract Year, excluding any Contract Waste delivered to the Derby Transfer Station from the day after the NWTF Planned Completion Date
- $TSR_y$  = the Tonnage rate for Contract Transfer Stations being £13.38 per Tonne
- $TSTIS_y$  = the total Tonnage of Contract Waste delivered to any Contract Transfer Stations which satisfy the requirements of paragraph 4.4.1.3 or paragraph 4.4.1.6 of Schedule 1 by or on behalf of WCAs in the relevant Contract Year up to the NWTF Planned Completion Date after which it will be zero
- $TSRIS_y$  = the reduced initial services Tonnage rate being £8.00 per Tonne
- $IX2y$  = the Indexation Factor for the relevant Contract Year  $y$  calculated in accordance with **paragraph 6.2** of **Schedule 3** of the Project Agreement
- $RPIXC_y$  = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** of **Schedule 3** of the Project Agreement

### 1.3.1 HWRC Fixed Payment

The total fixed payment for HWRCs in respect of each full Contract Year following the Initial Services Commencement Date (HWRCFP<sub>y</sub>) shall be the aggregate of the fixed payments for each HWRC and shall be calculated as follows:

$$\text{HWRCFP}_y = \text{HAs}_y + \text{HBol}_y + \text{HChes}_y + \text{HGlos}_y + \text{HIlk}_y + \text{HLos}_y + \text{HNor}_y + \text{HRay}_y + \text{HBret}_y$$

Where:

HAs<sub>y</sub> = the fixed payment in respect of the HWRC at Ashbourne in the relevant Contract Year being £209,685, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking) **This element is payable by the County**

HBol<sub>y</sub> = the fixed payment in respect of the HWRC at Bolsover in the relevant Contract Year being £192,412, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking) **This element is payable by the County**

HChes<sub>y</sub> = the fixed payment in respect of the HWRC at Stonegravels (Chesterfield) in the relevant Contract Year being £196,659, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking) **This element is payable by the County**

HGlos<sub>y</sub> = the fixed payment in respect of the HWRC at Glossop in the relevant **This element is payable by the County**



Contract Year being  
£190,578, subject to  
Benchmarking pursuant  
to **clause 35.3**  
(Benchmarking)

HIlk<sub>y</sub> = the fixed payment in respect of the HWRC at Ilkeston in the relevant Contract Year being £178,889, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking) **This element is payable by the County**

HLoS<sub>y</sub> = the fixed payment in respect of the HWRC at Loscoe in the relevant Contract Year being £194,519, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking) **This element is payable by the County**

HNor<sub>y</sub> = the fixed payment in respect of the HWRC at Northwood in the relevant Contract Year being £190,206, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking) **This element is payable by the County**

HRay<sub>y</sub> = the fixed payment in respect of the HWRC at Raynesway in the relevant Contract Year being £253,692 subject to Benchmarking pursuant to **clause 35.3** (Benchmarking) **This element is payable by the City**

HBret<sub>y</sub> = the fixed payment in respect of the HWRC at Bretby in the relevant Contract Year being £190,578, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking) **This element is payable by the County**

Contract Year being  
£193,736, subject to  
Benchmarking pursuant  
to **clause 35.3**  
(Benchmarking)

### 1.3.2 **Contract Transfer Station Fixed Payment**

The total fixed payment for Contract Transfer Stations in respect of each full Contract Year following the Initial Services Commencement Date (TSFP<sub>y</sub>) shall be the aggregate of the fixed payments for those Contract Transfer Stations listed below and shall be calculated as follows:

$$\text{TSFP}_y = \text{TClover}_y + \text{TGlos}_y + \text{TDer}_y$$

Where:

- TClover<sub>y</sub> = the fixed payment in respect of the Clover Nook Transfer Station in the relevant Contract Year being £408,243 **This element is payable by the County**
- TGlos<sub>y</sub> = the fixed payment in respect of the Glossop Transfer Station in the relevant Contract Year being £408,243 **This element is payable by the County**
- TDer<sub>y</sub> = the fixed payment in respect of the Derby Interim Transfer Station in the relevant Contract Year being £1,121,012 up to and including the Contract Year ending on 31 **Allocated between the Councils based on the proportion of Contract Waste delivered to the Derby Interim Transfer Station by each Council in the relevant Contract Year**

March 2015 after  
which it shall be  
zero.

#### 1.4 Landfill

Payment for Landfill (which, for the avoidance of doubt, shall include Diversion from Landfill contemplated in this **paragraph 1.4**) shall comprise a performance-related Tonnage payment (LF<sub>y</sub>), intended to cover Landfill costs and Landfill Tax for achieving the level of performance in accordance with the Contract Targets, and shall be calculated at all times during the Contract Period as set out in this **paragraph 1.4** as follows:

$$LF_y = [(CW_y - CDT_y - Rub_y - HCWT_y) \times (LFR_y + LFT_y)] - LDS_y$$

**The calculation of LF<sub>y</sub> needs to be undertaken in respect of each Council separately as follows:**

Where:

		City	County
LF <sub>y</sub>	=	the payment for Landfill in the relevant Contract Year commensurate with the Contractor performing the Services in accordance with the Contract Targets	
CW <sub>y</sub>	=	the total Tonnage of Contract Waste Handled by or on behalf of the Contractor in the relevant Contract Year	<b>allocated between the Councils based on Contract Waste Allocation in the relevant Contract Year</b>
			<b>allocated between the Councils based on Contract Waste Allocation in the relevant Contract Year</b>
CDT <sub>y</sub>	=	the Contract Diversion Tonnage in the relevant Contract Year	



calculated in accordance with **paragraph 1.4.1 of Schedule 3** of the Project Agreement

$Rub_y$  = the total Tonnage of Rubble segregated from Household Waste at HWRCs by the Contractor in the relevant Contract Year

**the total Tonnage of Rubble segregated from Household Waste at Raynesway HWRC by the Contractor in the relevant Contract Year**

**the total Tonnage of Rubble segregated from Household Waste at all HWRCs (other than Raynesway) by the Contractor in the relevant Contract Year**

$HCWT_y$  = the total Tonnage of Specified Hazardous Waste and/or Clinical Waste delivered by users to HWRCs or delivered to Delivery Points by or on behalf of WCAs in the relevant Contract Year

**the total Tonnage of Specified Hazardous Waste and/or Clinical Waste delivered by users to Raynesway HWRC by the Contractor in the relevant Contract Year**

**the total Tonnage of Specified Hazardous Waste and/or Clinical Waste delivered by users to all HWRCs (other than Raynesway) by the Contractor in the relevant Contract Year**

$LFR_y$  = the Tonnage rate for Landfill calculated in accordance with **paragraph 1.4.3 of Schedule 3** of the Project Agreement

$LFT_y$  = the prevailing rate of Landfill Tax per Tonne for the type of Waste

being Landfilled

LDS<sub>y</sub> = the Landfill diversion saving in respect of each Contract Year up to and including the Contract Year commencing on 1 April 2017, calculated in accordance with **paragraph 1.4.4 of Schedule 3** of the Project Agreement **allocated between the Councils based on Contract Waste Allocation in the relevant Contract Year** **allocated between the Councils based on Contract Waste Allocation in the relevant Contract Year**

#### 1.4.1 Contract Diversion Tonnage

The Contract Diversion Tonnage in each Contract Year following the Initial Services Commencement Date shall be calculated as follows:

$$CDT_y = HWRC_{ert} + NWTF_{dtt}$$

Where:

HWRC<sub>ert</sub> = the HWRC Enhanced Recycling Tonnage Target in the relevant Contract Year as calculated in accordance with **paragraph 1.4.2 of Schedule 3** of the Project Agreement

NWTF<sub>dtt</sub> = the NWTF Diversion Tonnage Target in the relevant Contract Year as calculated in accordance with **paragraph 5.1.1 of Schedule 1** (Specification) **allocated between the Councils based on Actual Use in the relevant Contract Year, capped at 50% in respect of the City**

#### 1.4.2 HWRC Enhanced Recycling Tonnage Target

The HWRC Enhanced Recycling Tonnage Target shall be calculated as follows:

$$HWRC_{ert} = (HWT_y \times \{HWRC_{rat} + HWRC_{add}\})$$

The calculation of HWRCert needs to be undertaken in respect of each Council separately as follows:

Where:

		City	County
HWT <sub>y</sub>	=	the total Tonnage of Household Waste deposited by members of the public at HWRCs in the relevant Contract Year, excluding Rubble, Specified Hazardous Waste and Clinical Waste	the total Tonnage of Household Waste deposited by members of the public at all HWRCs (excluding Raynesway) in the relevant Contract Year, excluding Rubble, Specified Hazardous Waste and Clinical Waste
HWRC <sub>rat</sub>	=	the HWRC Re-Use, Recycling and Composting Target in the relevant Contract Year as set out in paragraph 6.2	

of the Specification

$HWRC_{add}$  = the HWRC additional diversion target being:

(a) from the Initial Services Commencement Date up to and including the Contract Year ending on 31 March 2015, zero; and

(b) for each Contract Year commencing on 1 April 2015 up to the earlier of the Termination Date or the Expiry Date or the Extended Expiry Date (as the case may be), 7%

#### 1.4.3 **Tonnage Rate for Landfill**

The Tonnage rate for Landfill shall be calculated as follows:

$$LFR_y = LFGF \times RPIX_{Cy}$$

Where:

LFGF = the Landfill Gate Fee being:

- (a) £18.66 from the Initial Services Commencement Date to 31st March 2015;  
 £21.19 from 1st April 2015 to 31st March 2016;  
 £21.05 from 1st April 2016 to 31st March 2017;  
 £20.91 from 1st April 2017 to 31st March 2018;  
 £20.77 from 1st April 2018 to 31st March 2019;  
 and  
 £20.64 from 1st April 2019 to 31st March 2020
- (b) from the 1st April 2020 up to the earlier of the Termination Date or the Expiry Date or the Extended Expiry Date (as the case may be) the Deflated Market Tested Landfill Rate determined adjusted and deflated in accordance with **paragraph 6.6 of Schedule 3** of the Project Agreement

RPIX<sub>Cy</sub> = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3 of Schedule 3** of the Project Agreement

#### 1.4.4 Landfill Diversion Saving

Up to and including the Contract Year commencing on 1<sup>st</sup> April 2017, the amount which would otherwise be payable by the Councils for Landfill shall be reduced by an amount equal to LDS<sub>y</sub>, as set out in this **paragraph 1.4.4**.

$$LDS_y = (GLDS_y \times RPIX_{Cy}) - ED_y$$

Where:



- GLDS<sub>y</sub> = (i) in respect of the Contract Year commencing on 1 April 2015, an amount equal to the lower of:
- (a) £854,759; and
  - (b) £6.11 x the tonnage of NWTF Residual Waste arising in the relevant Contract Year less 50,000 tonnes;
- (ii) in respect of the Contract Year commencing on 1 April 2016, an amount equal to the lower of:
- (a) £1,664,574; and
  - (b) £23.47 x the tonnage of NWTF Residual Waste arising in the relevant Contract Year less 50,000 tonnes; and
- (iii) in respect of the Contract Year commencing on 1 April 2017, an amount equal to the lower of:
- (a) £1,620,812; and
  - (b) £23.47 x (the tonnage of NWTF Residual Waste – 50,000 tonnes) arising in the Contract Year commencing on 1 April 2016 less the value of GLDS<sub>y</sub> for the Contract Year commencing on 1 April 2016; and

**allocated between the Councils based on Contract Waste Allocation in the relevant Contract Year**

**allocated between the Councils based on Contract Waste Allocation in the relevant Contract Year**

**allocated between the Councils based on Contract Waste Allocation in the relevant Contract Year**



(iv) in all other Contract Years,  
zero

$RPIX_Cy$  = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** of **Schedule 3** of the Project Agreement

$ED_y$  = (i) in respect of the Contract Years commencing on 1 April 2011, 1 April 2012, 1 April 2013 and 1 April 2014 only, the Contractor's share of any additional costs or savings associated with Extra Diversion in the relevant Contract Year where:

**allocated between the Councils based on Contract Waste Allocation in the relevant Contract Year**

(a) if the aggregate costs incurred for the purpose of Extra Diversion (including haulage) are greater than those Landfill and haulage costs which would have been incurred in the relevant Contract Year had the Extra Diversion not taken place (i.e. if  $ED_y$  is positive) and the Councils have agreed to the relevant Extra Diversion pursuant to **clause 25.9:**

$$ED_y = ACED_y - [(LFR_y + LFT_y) \times EDT_y] + ACEDH_y$$

(b) if the aggregate costs incurred for the

purpose of Extra Diversion (including haulage) are less than those Landfill and haulage costs which would have been incurred in the relevant Contract Year had the Extra Diversion not taken place (i.e. if  $ED_y$  is negative):

$$ED_y = 50\% \times \{(ACED_y + ACEDH_y) - [(LFR_y + LFT_y) \times EDT_y]\}$$

Where:

$ACED_y$  = the actual costs (excluding haulage costs) incurred by the Contractor in the relevant Contract Year for the purpose of any Extra Diversion in accordance with **clause 25.9** (Guaranteed Diversion and Extra Diversion) as set out in the Rebate Report required by **Schedule 4** (Reporting)

$ACEDH_y$  = haulage costs, additional to those which would have been incurred by the Contractor in the absence of the relevant Extra Diversion, incurred for the purpose of any Extra Diversion in accordance with **clause 25.9** (Guaranteed Diversion and Extra Diversion) as set out in the Rebate Report required by **Schedule 4** (Reporting)

$EDT_y$  = the tonnage of

Contract Waste which is Extra Diversion in accordance with **clause 25.9.2** (Guaranteed Diversion and Extra Diversion) as set out in the Rebate Report required by **Schedule 4** (Reporting)

LFRy = the Tonnage rate for Landfill calculated in accordance with **paragraph 1.4.3** of **Schedule 3** of the Project Agreement

LFRy = the prevailing rate of Landfill Tax per Tonne

- (ii) in all other Contract Years, zero.

## 1.5 National Non-Domestic Rates

- 1.5.1 In respect of each Contract Year following the Initial Services Commencement Date, where the Contractor (and/or its subcontractors) is liable for and has paid NNDR in respect of the HWRCs, Project Transfer Stations and the New Waste Treatment Facility, NNDR<sub>y</sub> shall equal the amount properly paid by the Contractor (and/or its subcontractors) in respect of NNDR in the relevant Contract Year.

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

**In relation to the NWTF, NNDR shall be allocated between the Councils on the basis of each Council's Actual Use in the relevant Contract Year, capped at 50% in respect of the City.**

- 1.5.2 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 1.5.2 shall be allocated between the Councils according to who owns the relevant Site, save in relation to the NWTF which shall be allocated on the basis of the Default NWTF Allocation.**

## **1.6 Hazardous Waste and Clinical Waste**

- 1.6.1 In respect of each Contract Year, 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 (HCW<sub>y</sub>) 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 Contract Year by third parties for transporting, Recycling, treating and/or disposing of the relevant Specified Hazardous Waste and/or Clinical Waste.
- 1.6.2 For the purposes of this **paragraph** 1.6, costs incurred by the Contractor shall only be Demonstrably Reasonable and Proper Costs where:
- 1.6.2.1 they represent a reasonable market price (in the relevant circumstances) for the services provided; and
  - 1.6.2.2 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.
- 1.6.3 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 1.6 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.**

1.7 Strategic Partnering Services

1.7.1 Principal Formula

The payments made to the Contractor for delivering Strategic Partnering Services (including Waste Minimisation and Education Services) in respect of each Contract Year  $y$  following the Initial Services Commencement Date (SPSy) shall be calculated using the following formula:

$$SPS_y = (WMESP_y \times IX1_y) + IF_y$$

Where:

- $SPS_y$

=

payments for Strategic Partnering Services in the relevant Contract Year.
- $WMESP_y$

=

the annual Waste Minimisation and Education Services Payment being £44,846. **Allocated between the Councils based on the Default Allocation**
- $IF_y$

=

the aggregate of amounts payable in respect of the Initiatives Fund pursuant to **paragraph 2.8 of Schedule 3** (Payment Mechanism) of the Project Agreement. **Allocated between the Councils in proportion to the contribution made by each Council to the Initiatives Fund in the relevant Contract Year**
- $IX1_y$

=

the Indexation Factor for the relevant Contract Year  $y$  calculated in accordance with **paragraph 6.1 of Schedule 3** of the Project Agreement.

1.8 Electricity Revenues

From the day after the NWTF Planned Completion Date a reduction in the Unitary Charge associated with energy revenues (ERY) shall be calculated as follows:



$$ER_y = \sum ER_t$$

Where:

$\sum ER_t$  = The aggregate of baseline electricity revenues deducted during the Contract Year through the Monthly Payment calculated pursuant to **paragraph 2.6 of Schedule 3** of the Project Agreement. **Allocated between the Councils based on Actual Use in the relevant Contract Year, capped at 50% in respect of the City**

## 2. MONTHLY PAYMENT

The Monthly Payment represents a payment on account to the Contractor in respect of each Payment Period, payable on the last Business Day of that Payment Period, which shall be subject to the reconciliation annually in accordance with **paragraph 3** below of **Schedule 3** of the Project Agreement. To the extent that it becomes apparent that the tonnage forecasts used to calculate the Monthly Payment in respect of any Contract Year are or are likely to be at a material variance to the actual tonnages for the relevant element of the Monthly Payment, the Parties shall (acting reasonably) agree whatever changes may be necessary to the tonnage forecasts in order to minimise such variance and the Monthly Payment shall be recalculated accordingly (subject to reconciliation annually in accordance with paragraph 3 below of Schedule 3 of the Project Agreement). Such recalculation shall be subject to agreement by the Operating Contractor, whose agreement the Contractor shall procure is not unreasonably withheld or delayed.

### 2.1 Principal Formula

The Monthly Payment (MP<sub>t</sub>) for each Payment Period (except for the third Payment Period in each Contract Year other than the first Contract Year) shall be calculated using the following formula:

$$MP_t = NWTF_t + HWRC_t + LF_t + NNDR_t - ER_t + HCW_t + SPS_t - MA_{t-1}$$

The Monthly Payment (MP<sub>t</sub>) for the third Payment Period in each Contract Year shall be calculated using the following formula:



$$MP_t = NWTF_t + HWRC_t + LF_t + NNDR_t - ER_t + HCW_t + SPS_t - MA_{t-1} + ARA_{y-1}$$

Where in each case:

- $MP_t$  = the Monthly Payment payable for the relevant Payment Period
- $NWTF_t$  = the amount payable in respect of NWTF in the relevant Payment Period in accordance with **paragraph 2.2** **Allocated between the Councils based on Planned Use (NWTF)**
- $HWRC_t$  = The amount payable in respect of HWRC Services in the relevant Payment Period in accordance with **paragraph 2.3** of **Schedule 3** of the Project Agreement
- $LF_t$  = The amount payable in respect of Landfill in the relevant Payment Period in accordance with **paragraph 2.4** of **Schedule 3** of the Project Agreement
- $NNDR_t$  = the reimbursement to the Contractor of any NNDR properly payable in respect of the Facilities referred to in **paragraph 2.5** of **Schedule 3** of the Project Agreement
- $ER_t$  = the amount payable in respect of electricity revenues calculated in accordance with **paragraph 2.6** of **Schedule 3** of the Project Agreement
- $HCW_t$  = the amount payable in respect of Specified Hazardous Waste and/or Clinical Waste Handled by the Contractor in the relevant Contract Year

calculated in accordance with **paragraph 2.7 of Schedule 3** of the Project Agreement

$SPS_t$  = the amount payable in respect of Strategic Partnering Services in the relevant Payment Period in accordance with **paragraph 2.8 of Schedule 3** of the Project Agreement

$MA_{t-1}$  = subject to **paragraph 4.1A of Schedule 3**, Monthly Adjustments in respect of the preceding Payment Period, calculated in accordance with **paragraph 4 of Schedule 3** of the Project Agreement

$ARA_{y-1}$  = the Annual Reconciliation Amount for the preceding Contract Year calculated in accordance with **paragraph 3.1 of Schedule 3** of the Project Agreement

## 2.2 New Waste Treatment Facility

From the day after the NWTF Planned Completion Date, payment for each full Payment Period shall be calculated as follows:

$$NWTF_t = NWTF_y \div 12$$

Where:

$NWTF_t$  = The payment in respect of NWTF in the relevant Payment Period

$NWTF_y$  = The payment in respect of NWTF in the relevant Contract Year calculated in accordance with **paragraph 1.2 of Schedule 3** of the Project Agreement

## 2.3 HWRCs and Contract Transfer Stations

Payment for management of HWRCs and Contract Transfer Stations (including the associated Composting and haulage) in each full Payment Period (HWRC<sub>t</sub>) shall be calculated as follows:

$$\text{HWRC}_t = \{[(\text{HWRCFP}_y + (\text{HWTF}_y \times \text{HWR}_y) + (\text{HWCF}_y \times \text{HWCR}_y) + \text{TSFP}_y + ((\text{TSTF}_y - \text{TSTFIS}_y) \times \text{TSR}_y)) \times \text{IX2}_y + (\text{TSTFIS}_y \times \text{TSRIS}_y) \times \text{RPIX}_y] \div 12\}$$

The calculation of HWRC<sub>t</sub> needs to be undertaken in respect of each Council separately as follows:

Where:

		City	County
HWRCFP <sub>y</sub>	= the total fixed payments in respect of HWRCs in the relevant Contract Year, calculated in accordance with paragraph 1.3.1 of Schedule 3 of the Project Agreement	the total fixed payments in respect of Raynesway HWRC in the relevant Contract Year, calculated in accordance with paragraph 1.3.1 of Schedule 3 to the Project Agreement	the total fixed payments in respect of all HWRCs (excluding Raynesway) in the relevant Contract Year, calculated in accordance with paragraph 1.3.1 of Schedule 3 to the Project Agreement
HWTF <sub>y</sub>	= the total Tonnage of Household Waste forecast to be deposited by members of the public at HWRCs in the relevant Contract Year (less Rubble, Specified Hazardous Waste and Clinical Waste),		

calculated in accordance with **paragraph 2.3.1 of Schedule 3** of the Project Agreement

$HWR_y$  = the Tonnage rate for HWRCs being £18.88 per Tonne

$HWCF_y$  = the total Tonnage of Compostable Waste forecast to be deposited by members of the public at HWRCs and be Composted in the relevant Contract Year calculated in accordance with **paragraph 2.3.2 of Schedule 3** of the Project Agreement

$HWCR_y$  = the extra-over Tonnage rate for HWRC Compostable Waste being £47.58 per Tonne

$TSFP_y$	= the total fixed payments in respect of certain Contract Transfer Stations in the relevant Contract Year, calculated in accordance with <b>paragraph 1.3.2 of Schedule 3</b> of the Project Agreement	calculated on the basis of the actual proportion of Contract Waste delivered to the Derby Interim Transfer Station by the City Council during the full calendar year (between 1 <sup>st</sup> January and 31 <sup>st</sup> December)	calculated on the basis of the actual proportion of Contract Waste delivered to the Derby Interim Transfer Station by the County Council during the full calendar year (between 1 <sup>st</sup> January and 31 <sup>st</sup> December)
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		immediately preceding the relevant Contract Year	immediately preceding the relevant Contract Year plus, the total fixed payments in respect of County owned Transfer Stations in the relevant Contract Year, calculated in accordance with paragraph 1.3.2 of Schedule 3 to the Project Agreement
TSTF <sub>y</sub>		the total Tonnage of Contract Waste forecast to be delivered to Contract Transfer Stations by or on behalf of WCAs in the relevant Contract Year calculated in accordance with <b>paragraph 2.3.3 of Schedule 3</b> of the Project Agreement	
TSR <sub>y</sub>	=	the Tonnage rate for Contract Transfer Stations being £13.38 per Tonne	
TSTFIS <sub>y</sub>	=	the total Tonnage of Contract Waste forecast to be	

delivered to any Contract Transfer Stations which satisfy the requirements of paragraph 4.4.1.3 or paragraph 4.4.1.6 of Schedule 1 by or on behalf of WCAs in the relevant Contract Year as set out in the Base Case up to the NWTF Planned Completion Date or as otherwise agreed between the Parties acting reasonably

$TSRIS_y$  = the reduced initial services Tonnage rate being £8.00 per Tonne

$IX2_y$  = the Indexation Factor for the relevant Contract Year  $y$  calculated in accordance with **paragraph 6.2 of Schedule 3** of the Project Agreement

$RPIX_Cy$  = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3 of Schedule 3** of the Project Agreement



### 2.3.1 Forecasting the Tonnage of Household Waste delivered by users to HWRCs

2.3.1.1 In the first three Contract Years commencing on the Initial Services Commencement Date, the total Tonnage of Household Waste forecast to be deposited by members of the public at HWRCs in the relevant Contract Year (less Rubble, Specified Hazardous Waste and Clinical Waste) shall be as set out in the Base Case.

2.3.1.2 In subsequent Contract Years, the total Tonnage of Household Waste forecast to be deposited by members of the public at HWRCs in the relevant Contract Year (less Rubble, Specified Hazardous Waste and Clinical Waste) shall be calculated as follows:

$$HWTF_y = HWTC_y \times (CWB_y \div CWB_{y-1})$$

Where:

		City	County
HWTF <sub>y</sub>	=	the total Tonnage of Household Waste forecast to be deposited by members of the public at HWRCs in the relevant Contract Year (less Rubble, Specified Hazardous Waste and Clinical Waste)	
HWTC <sub>y</sub>	=	the total Tonnage of Household Waste	total Tonnage of Household Waste (less

(less Rubble, Specified Hazardous Waste and Clinical Waste) actually deposited by members of the public at HWRCs during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year	<b>Rubble, Specified Hazardous Waste and Clinical Waste) actually deposited by members of the public at Raynesway HWRC during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year</b>	<b>Rubble, Specified Hazardous Waste and Clinical Waste) actually deposited by members of the public to all HWRCs other than Raynesway during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year</b>
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$CWB_y$  = the total Tonnage of Contract Waste forecast to be arising in the relevant Contract Year in the Base Case

$CWB_{y-1}$  = the total Tonnage of Contract Waste forecast to be arising in the preceding Contract Year in the Base Case

## 2.3.2 Forecasting the Tonnage of Compostable Waste arising at HWRCs

2.3.2.1 In the first three Contract Years commencing on the Initial Services Commencement Date, the total Tonnage of Compostable Waste forecast to arise at HWRCs in the relevant Contract Year and be Composted shall be as set out in the Base Case.

2.3.2.2 In subsequent Contract Years, the total Tonnage of Compostable Waste forecast to arise at HWRCs and be Composted in the relevant Contract Year shall be calculated as follows:

$$\text{HWCF}_y = \text{HWCC}_y \times (\text{CWB}_y \div \text{CWB}_{y-1})$$

Where:

		City	County
HWCF <sub>y</sub>	= the total Tonnage of Compostable Waste forecast to be deposited by members of the public at HWRCs and be Composted in the relevant Contract Year		
HWCC <sub>y</sub>	= the total Tonnage of Compostable Waste actually arising at HWRCs and which was Composted during the full calendar year	the total Tonnage of Compostable Waste actually arising at Raynesway HWRC and which was Composted	the total Tonnage of Compostable Waste actually arising at all HWRCs other than Raynesway and which

(between 1st January and 31st December)	during the full calendar year	was Composted during the full calendar year
immediately preceding the relevant Contract Year	(between 1st January and 31st December) immediately preceding the relevant Contract Year	(between 1st January and 31st December) immediately preceding the relevant Contract Year

$CWB_y$  = the total Tonnage of Contract Waste forecast to be arising in the relevant Contract Year in the Base Case

$CWB_{y-1}$  = the total Tonnage of Contract Waste forecast to be arising in the preceding Contract Year in the Base Case

### 2.3.3 Forecasting the Tonnage of Contract Waste to be delivered to Contract Transfer Stations

2.3.3.1 In the first three Contract Years commencing on the Initial Services Commencement Date, the total Tonnage of Contract Waste forecast to be delivered to Contract Transfer Stations by or on behalf of WCAs shall be as set out in the Base Case.



- 2.3.3.2 In subsequent Contract Years, the total Tonnage of Contract Waste forecast to be delivered to Contract Transfer Stations by or on behalf of WCAs in the relevant Contract Year shall be calculated as follows:

$$\text{TSTF}_y = \text{TSTC}_y \times (\text{CWB}_y \div \text{CWB}_{y-1})$$

Where:

		City	County
TSTF <sub>y</sub>	=	the total Tonnage of Contract Waste forecast to be delivered to Contract Transfer Stations by or on behalf of WCAs in the relevant Contract Year	
TSTC <sub>y</sub>	=	the total Tonnage of Contract Waste actually delivered to Contract Transfer Stations by or on behalf of WCAs during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year	the total Tonnage of Contract Waste actually delivered to Contract Transfer Stations by or on behalf of all WCAs (except Derby City Council) during the full calendar year (between 1st January and 31st January and



December) 31st  
 immediately December)  
 preceding immediately  
 the relevant preceding the  
 Contract relevant  
 Year Contract Year

$CWB_y$  = the total Tonnage of Contract Waste forecast to be arising in the relevant Contract Year in the Base Case

$CWB_{y-1}$  = the total Tonnage of Contract Waste forecast to be arising in the preceding Contract Year in the Base Case

## 2.4 Landfill

Payment for Landfill (LFt) in each Payment Period shall be calculated as follows:

$$LF_t = \{[CWF_y - [(HWF_y \times (HWRC_{rat} + HWRC_{add})) + RubF_y + HCWTF_y + NWTF_{dtt}] \div 12] \times (LFR_y + LFT_y)\} - (GLDS_y \times RPIX_y / 12)$$

Where:

$CWF_y$  = the total Tonnage of Contract Waste forecast to be Handled by or on behalf of the Contractor in the relevant Contract Year, calculated in accordance with **paragraph 2.4.1 of Schedule 3** of the Project Agreement

$HWTF_y$  = the total Tonnage of Household Waste forecast to be deposited by members of the public at HWRCs

in the relevant Contract Year (less Rubble, Specified Hazardous Waste and Clinical Waste), calculated in accordance with **paragraph 2.3.1 of Schedule 3** of the Project Agreement

$RubF_y$  = the total Tonnage of Rubble forecast to be segregated from Household Waste at HWRCs by the Contractor in the relevant Contract Year, calculated in accordance with **paragraph 2.4.2 of Schedule 3** of the Project Agreement

$HWRC_{rat}$  = the HWRC Re-Use, Recycling and Composting Target (expressed as a percentage) in the relevant Contract Year as set out in paragraph 6.2 of the Specification

$HWRC_{add}$  = the HWRC additional diversion target being:

up to and including the Contract Year ending on 31 March 2015, zero

from the Contract Year commencing on 1 April 2015, 7%

$NWTF_{dtt}$  = the NWTF Diversion Tonnage Target in the relevant Contract Year as calculated in accordance with **paragraph 5.1.1 of Schedule 1** (Specification) **allocated between the Councils based on Planned Use (NWTF)**

$HCWTF_y$  = the total Tonnage of Specified Hazardous Waste and/or Clinical Waste forecast to arise at HWRCs or delivered by or on behalf of WCAs in the relevant Contract Year calculated in accordance with **paragraph 2.4.3 of Schedule 3**

of the Project Agreement

$LFR_y$  = the Tonnage rate for Landfill in the relevant Payment Period calculated in accordance with **paragraph 1.4.3** or of **Schedule 3** of the Project Agreement

$LFT_y$  = the prevailing rate of Landfill Tax per Tonne in the relevant Payment Period for the type of Waste being Landfilled

$GLDS_y$  = the relevant amount set out in **paragraph 1.4.4** of **Schedule 3** of the Project Agreement

$RPIX_Cy$  = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** of **Schedule 3** of the Project Agreement

#### 2.4.1 **Forecasting the Tonnage of Contract Waste**

2.4.1.1 In the first three Contract Years commencing on the Initial Services Commencement Date, the total Tonnage of Contract Waste forecast to be Handled by or on behalf of the Contractor shall be as set out in the Base Case.

2.4.1.2 In subsequent Contract Years, the total Tonnage of Contract Waste forecast to be Handled by or on behalf of the Contractor shall be calculated as follows:

$$CWF_y = CWC_y \times (CWB_y \div CWB_{y-1})$$

Where:

City

County

CWF<sub>y</sub> = the total Tonnage of Contract Waste forecast to be Handled by or on behalf of the Contractor in the relevant Contract Year

CWC <sub>y</sub>	= the total Tonnage of Contract Waste actually Handled by or on behalf of the Contractor during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year	<b>the total Tonnage of Contract Waste arising in Derby City and actually Handled by or on behalf of the Contractor during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year</b>	<b>the total Tonnage of Contract Waste arising in the administrative areas of all WCAs (except for Derby City) and actually Handled by or on behalf of the Contractor during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year</b>
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CWB<sub>y</sub> = the total Tonnage of Contract Waste forecast to be arising in the relevant Contract Year in the Base Case



$CWB_{y-1}$  = the total Tonnage of Contract Waste forecast to be arising in the preceding Contract Year in the Base Case

## 2.4.2 Forecasting the Tonnage of Rubble arising at HWRCs

2.4.2.1 In the first three Contract Years commencing on the Initial Services Commencement Date, the total Tonnage of Rubble forecast to be segregated from Household Waste at HWRCs by the Contractor in the relevant Contract Year shall be as set out in the Base Case.

2.4.2.2 In subsequent Contract Years, the total Tonnage of Rubble forecast to be segregated from Household Waste at HWRCs by the Contractor in the relevant Contract Year shall be calculated as follows:

$$RubF_y = RubT_y \times (CWB_y \div CWB_{y-1})$$

Where:

		City	County
$RubF_y$	=	the total Tonnage of Rubble forecast to be Handled by or on behalf of the Contractor in the relevant Contract Year	
$RubT_y$	=	the total Tonnage of Rubble actually Handled by or on behalf of the Contractor during the full calendar year (between 1st January and 31st December)	the total Tonnage of Rubble arising in the administrative areas of all WCAs (except for Derby City) and



immediately  
preceding the  
relevant Contract  
Year

**Contractor  
during the  
full calendar  
year  
(between  
1st January  
and 31st  
December)  
immediately  
preceding  
the relevant  
Contract  
Year**

**actually  
Handled by or  
on behalf of  
the Contractor  
during the full  
calendar year  
(between 1st  
January and  
31st  
December)  
immediately  
preceding the  
relevant  
Contract Year**

$CWB_y$  = the total Tonnage  
of Contract Waste  
forecast to be  
arising in the  
relevant Contract  
Year in the Base  
Case

$CWB_{y-1}$  = the total Tonnage  
of Contract Waste  
forecast to be  
arising in the  
preceding Contract  
Year in the Base  
Case

### 2.4.3 **Forecasting the Tonnage of Hazardous Waste and Clinical Waste**

2.4.3.1 In the first three Contract Years commencing on the Initial Services Commencement Date, the total Tonnage of Specified Hazardous Waste and Clinical Waste forecast to be Handled by the Contractor shall be as set out in the Base Case.

2.4.3.2 In subsequent Contract Years, the total Tonnage of Specified Hazardous Waste and Clinical Waste forecast to be Handled by the Contractor in the relevant Contract Year shall be calculated as follows:

$$HCWTF_y = HCWT_y \times (CWB_y \div CWB_{y-1})$$

Where:

		City	County
HCWTF <sub>y</sub>	= the total Tonnage of Specified Hazardous Waste and Clinical Waste forecast to be Handled by the Contractor in the relevant Contract Year		
HCWT <sub>y</sub>	= the total Tonnage of Specified Hazardous Waste and Clinical Waste actually Handled by the Contractor during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year	the total Tonnage of Specified Hazardous Waste and Clinical Waste arising in derby City and actually Handled by the Contractor during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year	the total Tonnage of Specified Hazardous Waste and Clinical Waste arising in the administrative areas of all WCAs (except for Derby City) and actually Handled by the Contractor during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year

$CWB_y$  = the total Tonnage of Contract Waste forecast to be arising in the relevant Contract Year in the Base Case

$CWB_{y-1}$  = the total Tonnage of Contract Waste forecast to be arising in the preceding Contract Year in the Base Case

## 2.5 National Non-Domestic Rates

In respect of each Payment Period (t), payment to the Contractor in respect of National Non-Domestic Rates (NNDR<sub>t</sub>) in respect of the Facilities identified in **paragraph 1.5** shall equal the amount properly paid by the Contractor (and/or its subcontractors) in respect of NNDR in the preceding Payment Period (t-1).

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

**In relation to the NWTF, NNDR shall be allocated between the Councils on the basis of each Council's Actual Use in the relevant Contract Year, capped at 50% in respect of the City.**

## 2.6 Electricity Revenues

The payment for electricity revenues in each Payment Period (ER<sub>t</sub>) (which shall be applied through the Monthly Payment from the day after the NWTF Planned Completion Date) shall be calculated as follows:

$$ER_t = (ELECRev / 12) \times IXElec$$

Where:

ER<sub>t</sub> = Payment for electricity revenues in each Payment Period

ELECR<sub>EV</sub> = The baseline electricity revenue allocated between the Councils based on Planned Use (NWTF) to be produced by NWTF calculated as follows:

- (a) from the Initial Services Commencement Date up to and including the NWTF Planned Completion Date, being £0.00;
- (b) from the day after the NWTF Planned Completion Date up to and including the day which is 12 months following the NWTF Planned Completion Date, being £3,547,896 per Payment Period;
- (c) from the day after the day which is 12 months following the NWTF Planned Completion Date up to and including the day which is 24 months following the NWTF Planned Completion Date, being £ 3,645,098 per Payment Period;
- (d) from the day after the day which is 24 months following the NWTF Planned Completion Date up to and including the day which is 36 months following the NWTF Planned Completion Date, being £3,725,290 per Payment Period ; and



- (e) from the day after the day which is 36 months following the NWTF Planned Completion Date up to and including the Expiry Date being £3,790,902 per Payment Period.

IXElec = the electricity indexation factor for the preceding Payment Period calculated in accordance with **paragraph 6.5** of **Schedule 3** of the Project Agreement

## 2.7 Hazardous Waste and Clinical Waste (HCW<sub>t</sub>)

Payment for Handling Specified Hazardous Waste and Clinical Waste (HCW<sub>t</sub>) in each Payment Period shall be calculated as follows:

$$HCW_t = HCWPF_y \div 12$$

Where:

HCW<sub>t</sub> = payment for Handling Specified Hazardous Waste and Clinical Waste in the relevant Payment Period

HCWPF<sub>y</sub> = the Payment for Specified Hazardous Waste and Clinical Waste forecast to be Handled by the Contractor in the relevant Contract Year being:

- (a) £80,000 (indexed in accordance with **clause 2.1.11**) in the first three Contract Years commencing on the Initial Services Commencement

**Allocated in proportion to the amounts incurred by each Council in respect of Hazardous and Clinical Waste during the full calendar year (between 1<sup>st</sup> January and 31<sup>st</sup> December) immediately preceding the relevant Contract Year**



Date; and

- (b) in subsequent Contract Years, the Payment in respect of Specified Hazardous Waste and Clinical Waste actually Handled by the Contractor during the full calendar year (between 1st January and 31 December) immediately preceding the relevant Contract Year

## 2.8 Strategic Partnering Services

### 2.8.1 Principal Formula

The payments made to the Contractor for delivering Strategic Partnering Services (including Waste Minimisation and Education Services) in respect of each Payment Period  $t$  ( $SPS_t$ ) shall be calculated using the following formula:

$$SPS_t = (WMESP_y \div 12) + IF_t$$

Where

$SPS_t$  = payments for Strategic Partnering Services in the relevant Payment Period

$WMESP_y$  = payments for annual Waste Minimisation and Education Services in the relevant Contract Year, calculated in accordance with **paragraph 1.7 of Schedule 3** of the Project Agreement **Allocated between the Councils based on the Default Allocation.**

$IF_t$  = payments made to the Contractor for implementing and **Allocated between the Councils in proportion to the contribution made by**

achieving the objectives set out in the Waste Minimisation and Education Plan, calculated in accordance with **paragraph 8.2** of **Schedule 1** (Specification) **each Council to the Initiatives Fund in the relevant Contract Year.**

### 3. ANNUAL RECONCILIATION AMOUNT

The Annual Reconciliation Amount represents an amount added to (where the Annual Reconciliation amount is positive), or deducted from (where the Annual Reconciliation Amount is negative), the payment otherwise due to the Contractor on the last Business Day of the third Payment Period in each Contract Year (in accordance with **paragraph 2.1** above), in order to reconcile differences between payments which should have been made to the Contractor during the relevant Contract Year and payments actually made through Monthly Payments during the relevant Contract Year. No interest for late payment shall be due from either Party to the other in respect of any period occurring before such due date for payment.

#### 3.1 Principal Formula

The Annual Reconciliation Amount (AR<sub>Ay</sub>) for each Contract Year shall be calculated using the following formula:

$$AR_{Ay} = UC_y - MA_y - AA_y - MP_y$$

Where:

- AR<sub>Ay</sub> = the Annual Reconciliation Amount
- UC<sub>y</sub> = the Unitary Charge payable for the relevant Contract Year calculated in accordance with **paragraph 1** of **Schedule 3** of the Project Agreement
- AA<sub>y</sub> = the Annual Adjustments incurred during the relevant Contract Year, calculated in accordance with **paragraph 5** of **Schedule 3** of the Project Agreement
- MA<sub>y</sub> = the aggregate of Monthly Adjustments accrued in respect of the relevant Contract Year, calculated in accordance with **paragraph 4**

of **Schedule 3** of the Project Agreement

$MP_y$  = the aggregate of Monthly Payments made to the Contractor in respect of the relevant Contract Year, calculated in accordance with **paragraph 2 of Schedule 3** of the Project Agreement

### 3.2 The Final Contract Year

The Annual Reconciliation Amount for the final Contract Year shall be payable in accordance with **clause 32.12** (Final Reconciliation).

## 4. MONTHLY ADJUSTMENTS

Monthly Adjustments shall comprise Unavailability Deductions in respect of HWRCs and Contract Transfer Stations not being Available in accordance with the requirements of the Specification, calculated in accordance with **paragraph 4.2 of Schedule 3** of the Project Agreement, Monthly Performance Adjustments in respect of the Services not being delivered in accordance with Key Performance Indicators, calculated in accordance with **paragraph 4.3 of Schedule 3** of the Project Agreement, and Tipping Away Payments in respect of costs incurred by WCAs as a result of diversion of Contract Waste from Primary Delivery Points, calculated in accordance with **paragraph 4.4 of Schedule 3** of the Project Agreement.

### 4.1 Principal Formula

The Monthly Adjustment ( $MA_t$ ) applicable in respect of each Payment Period (which shall be applied through the Monthly Payment one Payment Period in arrears and as part of the Annual Reconciliation) shall be calculated using the following formula:

$$MA_t = UD_t + MPD_t + TAP_t + RFD_t$$

Where:

$MA_t$  = the Monthly Adjustment applicable in respect of the relevant Payment Period

$UD_t$  = Unavailability Deductions **See para 4.2 below** applicable in respect of the relevant Payment Period, calculated in accordance with **paragraph 4.2 of Schedule 3** of the Project Agreement



- MPD<sub>t</sub> = Monthly Performance Adjustments applicable in respect of the relevant Payment Period, calculated in accordance with **paragraph 4.3** of **Schedule 3** of the Project Agreement **See para 4.3 below**
- TAP<sub>t</sub> = Tipping Away Payments applicable in respect of the relevant Payment Period, calculated in accordance with **paragraph 4.4** of **Schedule 3** of the Project Agreement **See para 4.4 below**
- RFD<sub>t</sub> = Reporting Failure Deductions applicable in respect of the relevant Payment Period calculated pursuant to **Schedule 14** (Performance Mechanism) **Allocated between the Councils as follows:**
- **Where the reporting failure relates to the NWTF, Actual Use, capped at 50% in respect of the City;**
  - **Where the reporting failure relates exclusively to any Facility other than the NWTF, the Council that owns that relevant Facility; and**
  - **In all other cases, the Default Allocation.**

#### 4.1A **Monthly Adjustments in Excess of the Monthly Payment**

In respect of any Payment Period, the Councils may not make Monthly Adjustments which in aggregate exceed the amount of the Monthly Payment for the relevant Payment Period calculated in accordance with **paragraph 2.1** (Principal Formula) of **Schedule 3** of the Project Agreement but without deductions for Monthly Adjustments (the "Pre-Adjustment Amount"). To the extent that the Monthly Adjustments in respect of any Payment Period do exceed the relevant Pre-Adjustment Amount, the amount of any excess Monthly Adjustments shall be deducted from the Pre-Adjustment Amount in respect of the next following Payment Period, and each subsequent Payment Period until

such Monthly Adjustments have all been deducted from amounts due to the Contractor. For the avoidance of doubt, this **paragraph 4.1A** shall not apply to Annual Adjustments.

## 4.2 Unavailability Deductions

Unavailability Deductions in respect of each Payment Period shall be calculated using the following formula:

$$UD_t = [\Sigma (HUH_t \times HUR) + \Sigma (TSUH_t \times TSUR)] \times IX2_y$$

Where:

$UD_t$  = Unavailability Deductions applicable in respect of the relevant Payment Period

$HUH_t$  = 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 Payment Period **Allocated to the Council that owns the relevant HWRC**

$HUR$  = the HWRC Unavailability Rate set out in **Table 4.2.1** below for each HWRC subject to Benchmarking

$TSUH_t$  = the number of hours (or part thereof) within the specified Delivery Point Opening Hours that any Primary Delivery Point listed in **Table 4.2.2** failed to meet the Delivery Point Availability Criteria in the relevant Payment Period. 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 **Allocated to the Council that owns the relevant Transfer Station**



TSUR = The Transfer Station Unavailability Rate set out in **Table 4.2.2** below for each Contract Transfer Station

IX<sub>2y</sub> = the Indexation Factor for the relevant Contract Year y calculated in accordance with **paragraph 6.2 of Schedule 3** of the Project Agreement

**Table 4.2.1: HWRC Unavailability Rates**

Site Name	Rate per hour £ (HUR)
Glossop;	55.42
Stonegravels (Chesterfield);	57.19
Loscoe;	56.57
Ilkeston;	52.02
Ashbourne;	60.98
Raynesway	70.09
Bolsover;	55.96
Northwood; and	55.32
Bretby.	56.34

**Table 4.2.2: Transfer Station Unavailability Rates**

Site Name	Rate per hour £ (TSUR)	Applicable from	Applicable to
Clover Nook Transfer Station	141.08	Initial Services Commencement Date	Expiry Date
Glossop Transfer Station	141.08	Initial Services Commencement Date	Expiry Date
Derby Interim Transfer Station	432.09	Initial Services Commencement Date	31 March 2015

Derby Transfer Station	29.06	the later of the day after the NWTF Planned Completion Date and the day after the actual NWTF Completion Date	Expiry Date
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#### 4.3 Monthly Performance Adjustments

Monthly Performance Adjustments in respect of each Payment Period shall be calculated using the following formula:

$$\text{MPD}_t = \text{MPP}_t \times \text{PPR} \times \text{IX1y}$$

$\text{MPD}_t$  = Monthly Performance Adjustments applicable in respect of the relevant Payment Period

$\text{MPP}_t$  = the number of Monthly Performance Points levied in respect of the relevant Payment Period, determined in accordance with **Schedule 14** (Performance Mechanism)

**Allocated between the Councils as follows:**

- **Where the Monthly Performance Points relate to the NWTF, Actual Use, capped at 50% in respect of the City;**
- **Where the Monthly Performance Points relate exclusively to any Facility other than the NWTF, the Council that owns that relevant Facility; and**
- **In all other cases, the Default Allocation.**

$\text{PPR}$  = the performance point rate being

IX1<sub>y</sub> = the Indexation Factor for the relevant Contract Year y calculated in accordance with **paragraph 6.1 of Schedule 3** of the Project Agreement

Monthly Performance Deductions shall only be capable of being levied in relation to the Services provided at the NWTF in the period following the Planned NWTF Completion Date.

#### 4.4 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 according to the following formula:

$$TAP_t = TAPT_t \times TAPM_t \times TAPR \times IX1_y$$

TAP<sub>t</sub> = Tipping Away Payments applicable in respect of the relevant Payment Period

TAPT<sub>t</sub> = the Tonnage of Contract Waste diverted from the Primary Delivery Points in the relevant Payment Period 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 Payment Period as a result of the relevant Primary Delivery Point being Unavailable and/or as instructed by the Contractor**

TAPM<sub>t</sub> = 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

IX1<sub>y</sub> = the Indexation Factor for the relevant Contract Year y calculated in accordance with **paragraph 6.1 of Schedule 3** of the Project Agreement

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

- 4.4.1.1 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
- 4.4.1.2 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
- 4.4.1.3 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 Councils that the alternative Delivery Point should be used.

## 5. ANNUAL ADJUSTMENTS

Annual Adjustments shall comprise: Annual Performance Deductions in respect of the Services not being delivered in accordance with Annual KPIs, calculated in accordance with **paragraph 5.2 of Schedule 3** of the Project Agreement; a Landfill adjustment to reflect variance between the Actual Diversion Tonnage and the Contract Diversion Tonnage and the Councils' share of excess Third Party Income.

### 5.1 Principal Formula

The Annual Adjustment (AAy) applicable in respect of each Contract Year (which shall be applied as part of the Annual Reconciliation) shall be calculated using the following formula:



$$AA_y = APD_y + TLFA_y + TPI_y$$

Where:

$AA_y$  = the Annual Adjustments incurred during the relevant Contract Year

$APD_y$  = Annual Performance Deductions applicable in respect of the relevant Contract Year, calculated in accordance with **paragraph 5.2 of Schedule 3** of the Project Agreement

$TLFA_y$  = the aggregate of:

- a) the Landfill Adjustment ( $LFA_y$ ) calculated in accordance with paragraph 5.3.1 of Schedule 3 of the Project Agreement; and
- b) the Council's share of savings associated with the use of offtakers to Divert Contract Waste from Landfill, over and above the Contract Diversion Target, calculated in accordance with paragraph 5.3.2 of Schedule 3 of the Project Agreement

$TPI_y$  = the Councils' share of Third Party Income in respect of the relevant Contract Year calculated in accordance with **paragraph 5.4 of Schedule 3** of the Project Agreement

## 5.2 Annual Performance Deductions

Annual Performance Deductions in respect of each Contract Year shall be calculated using the following formula.

$$APD_y = APP_y \times PPR \times IX1_y$$

Where:

$APD_y$  = Annual Performance Deductions applicable in respect of the relevant Contract Year

$APP_y$  = the number of Annual Performance Points levied in respect of the relevant Contract Year, determined in accordance with **Allocated between the Councils as follows:**

- **Where the Annual Performance Points relate**



with **Schedule 14**  
(Performance Mechanism)

**to the NWTF, Actual Use, capped at 50% in respect of the City;**

- **Where the Annual Performance Points relate exclusively to any Facility other than the NWTF, the Council that owns that relevant Facility; and**
- **In all other cases, the Default Allocation.**

PPR = the performance point rate being £1.12

IX1y = the Indexation Factor for the relevant Contract Year y calculated in accordance with **paragraph 6.1 of Schedule 3** of the Project Agreement

### 5.3 Landfill Adjustment

#### 5.3.1 Diversion from HWRCs and NWTF

This limb of the Landfill Adjustment (LFA<sub>y</sub>) provides the Councils with a share of savings where the Actual Diversion Tonnage is greater than the Contract Diversion Tonnage in the relevant Contract Year due to:

- a) the Diversion at HWRCs exceeding the HWRC Enhanced Recycling Tonnage Target (defined in paragraph 1.4.2 of Schedule 3 of the Project Agreement); and/or **allocated between the Councils based on the allocation of HWTy set out in paragraph 1.3**
- b) the Diversion at NWTF exceeding the NWTF Diversion Tonnage Target; **allocated between the Councils based on Actual Use in the relevant Contract Year, capped at 50% in respect of the**

- 5.3.1.1 From the Initial Services Commencement Date to the NWTF Planned Completion Date:

$$LFA_y = 0$$

- 5.3.1.2 From the day after the NWTF Planned Completion Date:

- (a) If the Actual Diversion Tonnage is greater than the Contract Diversion Tonnage but less than the Maximum Contract Diversion Tonnage (i.e.  $MCDT_y > ADT_y > CDT_y$ )

$$LFA_y = (ADT_y - CDT_y) \times (LFR_y + LFT_y)$$

or

- (b) If the Actual Diversion Tonnage is greater than the Maximum Contract Diversion Tonnage (i.e.  $ADT_y > MCDT_y$ )

$$LFA_y = \{(MCDT_y - CDT_y) \times (LFR_y + LFT_y)\} + \{(ADT_y - MCDT_y) \times (LFR_y + LFT_y) \times 50\%\}$$

Where:

$LFA_y$  = the Landfill Adjustment in the relevant Contract Year

$CDT_y$  = the Contract Diversion Tonnage in the relevant Contract Year calculated in accordance with **paragraph 1.4.1 of Schedule 3** of the Project Agreement

$MCDT_y$  = the Maximum Contract Diversion Tonnage being the Contract Diversion Tonnage which would apply in the relevant Contract Year corresponding to an NWTF Diversion Tonnage Target specified at **paragraph**

#### 5.1.1.5 of Schedule 1 (Specification)

$ADT_y$  = the Tonnage of Contract Waste which was actually Diverted by the Contractor in the relevant Contract Year as a result of the operation of the HWRCs and/or the Diversion of NWTF Residual Waste which was treated at the NWTF (excluding any Tonnage of Contract Waste Diverted via delivery to third party offtakers where the cost savings of such Diversion have been shared with the Councils under paragraph 5.3.2)

$LFR_y$  = the tonnage rate for Landfill as if the Waste had been Landfilled calculated in accordance with **paragraph 1.4.3 of Schedule 3** of the Project Agreement;

$LFT_y$  = the prevailing rate of Landfill Tax per Tonne;

provided always that if  $LFA_y$  calculated in accordance with the formula above is less than zero,  $LFA_y$  shall be deemed to be zero.

To the extent that the effect of the calculations set out in paragraph 5.3.1.2 above is to rebate to the Councils more than 50% of the landfill diversion savings achieved at the HWRCs, the calculated value of  $LFA_y$  shall be amended so as to ensure that only 50% of HWRC landfill diversion savings are rebated to the Councils.

#### 5.3.2 Diversion via Offtakers

If, from the NWTF Planned Completion Date, the Contractor Diverts NWTF Residual Waste from Landfill by delivery to third party offtakers (excluding, for the avoidance of doubt, delivery of fly ash and bottom ash to third party offtakers) then to the extent that such Diversion:

- a) results in the tonnage of NWTF Residual Waste which is Landfilled being less than the tonnage which would have been Landfilled had the Contractor achieved the Contract Diversion Tonnage in the relevant Contract Year calculated in accordance with paragraph 1.4.1 of Schedule 3 of the Project Agreement; and
- b) results in a cost saving over and above the cost of treating 12,000 Tonnes per annum of RDF tonnage as included in the Base Case at a rate of £52.21 (indexed by the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with paragraph 6.3 of Schedule 3 of the

Project Agreement) per Tonne compared with the alternative costs had the relevant NWTF Residual Waste been landfilled (taking into account the cost of such Diversion but excluding any recycling revenues, the alternative cost of Landfill set out in paragraph 1.4.3 of Schedule 3 of the Project Agreement and associated transfer/haulage costs which accrue or would have accrued in each instance, by reference to rates and prices in Schedule 3 of the Project Agreement and costs in the Base Case as appropriate)

the associated cost savings shall be shared 50:50 between the Councils and the Contractor.

**Allocated entirely to the County Council provided that this does not disadvantage the City Council. To the extent that the City Council considers that it is disadvantaged, the parties shall meet and agree an allocation of the savings between them which are deemed by both Authorities to be equitable in the circumstances 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.**

#### 5.4 Third Party Income

Subject to **clause 25.3** (Third Party Waste), where the Contractor generates Third Party Income in relation to the Services provided under this Contract in excess of that assumed in the Base Case from those activities referred to below, the Councils shall be entitled to a share of the excess income. The Contractor shall calculate the share of such Third Party Income due to the Councils in the relevant Contract Year according to the following formula:

$$TPI_y = [(RRA_y - (RRB_y \times RPIXC_y)) \times 50\%] + [(TSR_y + CTR_y) \times 80\%] + POWER_y \times POWER_{\%}$$

Where:

$TPI_y$  = the Councils' share of Third Party Income in respect of the Contract Year which shall never be less than zero

$RRA_y$  = the actual nominal revenue from the sale of Recyclable Materials from NWTF generated by the Contractor **Allocated between the Councils based on Actual Use, capped at 50% in respect of the City.**



in the relevant Contract Year

RRB <sub>y</sub>	= the revenue forecast to be generated by the Contractor from the sale of Recyclable Materials from NWTF in the relevant Contract Year being zero up to and including that in which the NWTF Planned Completion Date occurs and £737,072 per annum thereafter.	Allocated between the Councils based on Actual Use, capped at 50% in respect of the City.
TSR <sub>y</sub>	= Revenue (net of reasonably incurred associated costs) from the receipt of Third Party Waste at Project Transfer Stations and NWTF in the relevant Contract Year (excluding any Third Party Waste accepted by the Contractor to make up a shortfall in accordance with <b>clause 25.4.1</b> )	<p>In the case of Project Transfer Stations, allocated to the County.</p> <p>In the case of the NWTF, allocated between the Councils based on Actual Use, capped at 50% in respect of the City.</p>
CTR <sub>y</sub>	= Revenue (net of reasonably incurred associated costs) from carbon trading in the relevant Contract Year	Allocated between the Councils based on the Default Allocation
RPIX <sub>Cy</sub>	= the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with <b>paragraph 6.3</b> of <b>Schedule 3</b> of the Project Agreement	
POWER <sub>y</sub>	= Revenue from the sale of power generated at the NWTF	Allocated between the Councils based on the Default NWTF Allocation
POWER <sub>%</sub>	= The Councils' share of revenue from the sale of power generated at the NWTF up to and including the NWTF	



Planned Completion Date  
being 50% up to and  
including the NWTF Planned  
Completion Date and zero  
thereafter

## 6. INDEXATION

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

### 6.1 Indexation Factor – New Waste Treatment Facility

The Indexation Factor ("IX1y") for the relevant Contract Year shall be calculated as follows:

$$IX1_y = (RPIXC_y \times 77.54\%) + (AWEIC_y \times 22.46\%)$$

Where:

$RPIXC_y$  = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3 of Schedule 3** of the Project Agreement

$AWEIC_y$  = the Average Weekly Earnings Indexation Factor – Cumulative ("AWEICy") for the relevant Contract Year calculated in accordance with **paragraph 6.4 of Schedule 3** of the Project Agreement

### 6.2 Indexation Factor – HWRCs and Contract Transfer Stations

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

$$IX2_y = (RPIXC_y \times 91.9\%) + (AWEIC_y \times 8.1\%)$$

Where:

$RPIXC_y$  = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** of

**Schedule 3** of the Project Agreement

AWEIC<sub>y</sub> = the Average Weekly Earnings Indexation Factor – Cumulative ("AWEICy") for the relevant Contract Year calculated in accordance with **paragraph 6.4 of Schedule 3** of the Project Agreement

**6.3 Retail Prices Indexation – Cumulative**

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

$$\text{RPIXC}_y = \text{RPIX}_{y-1} \div \text{RPIX}_0$$

Where:

RPIXC<sub>y</sub> = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year

RPIX<sub>y-1</sub> = the published RPIX for the January immediately preceding the relevant Contract Year; and

RPIX<sub>0</sub> = the RPIX published for January 2011 being 228.2

**6.4 Average Weekly Earnings Indexation – Cumulative**

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

$$\text{AWEIC}_y = \text{AWEI}_{y-1} \div \text{AWEI}_0$$

Where:

AWEIC<sub>y</sub> = the Average Weekly Earnings Indexation Factor – Cumulative ("AWEICy") for the relevant Contract Year

AWEI<sub>y-1</sub> = the Average Weekly Earnings Index (Whole Economy not seasonally adjusted excluding bonuses and including arrears Reference KA5H) for the January immediately preceding the relevant Contract Year

AWEI<sub>0</sub> = the Average Weekly Earnings Index (Whole Economy not seasonally adjusted excluding bonuses and including arrears Reference KA5H) published for January 2011 being 143.4.

## 6.5 Electricity Indexation

The electricity indexation factor ("IXElec") shall be calculated as follows:

$$\text{IXElec} = \text{IXElecP}_m \div \text{IXElec}_0$$

Where:

IXElec = The electricity indexation factor for the relevant Payment Period

IXElecP<sub>m</sub> = the average (mean) (in pounds) of the:

- (a) London Energy Brokers Association "Working Days (07:30 - 5:00pm)" baseload index for (and which shall be applied in respect of) each Business Day;
- (b) London Energy Brokers Association "Day Ahead Weekend (07:30am - 5:00pm)" baseload index for (and which shall be applied in respect of) each Saturday and Sunday; and
- (c) London Energy Brokers Association "1st Bank Holiday Working Days (07:30 am - 5:00pm)" index or "2nd Bank Holiday Working Days Index (07:30 am - 5:00pm)" baseload index as the case may be for (and which shall be applied in respect of) each bank holiday,

in respect of each day (between the day after the NWTF Planned Completion Date and the Expiry Date) in the relevant Payment Period (including where the relevant Payment Period is the final Payment Period).

IXElec<sub>0</sub> = the base index for electricity, being the average (mean) (in pounds) of the London Energy Brokers Association "All Days" UK Power Index (Trade Date), (including, where relevant, the relevant "All Days" index in respect of a Saturday, Sunday or bank holiday) for each day in the 12 month period ending on 30 September 2008, being £65.47141.

## 6.6 Calculating the Deflated Market Tested Landfill Rate

Pursuant to **paragraph 1.4.3 of Schedule 3** of the Project Agreement, the Deflated Market Tested Landfill Rate shall be calculated as follows:

$$\text{DMTLR} = \text{AMTLR} \div \text{RPIXC}_y$$

Where:

DMTLR = the Deflated Market Tested Landfill Rate

AMTLR = the Adjusted Market Tested Landfill Rate, determined in accordance with **paragraph 6.6.1** below

RPIXC<sub>y</sub> = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** above

#### 6.6.1 Calculating the Adjusted Market Tested Landfill Rate

The Adjusted Market Tested Landfill Rate shall be calculated as follows:

$$\text{AMTLR} = \text{BLR} + \text{EMLR}$$

Where:

AMTLR = the Adjusted Market Tested Landfill Rate

BLR = The base Landfill rate being the lower of:

- (a) the average (mean, weighted as appropriate based on forecast tonnages of Contract Waste expected to be disposed of at each Landfill site) nominal market tested tonnage rate for Landfill for the relevant Contract Year, determined in accordance with **clause 35**; and
- (b) the product of £20.41 and the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** above for the relevant Contract Year.

EMLR = the Excess Market Landfill Rate being:

- (a) the average (mean, weighted as appropriate based on forecast tonnages of Contract Waste expected to be disposed of at each Landfill

site) nominal market tested tonnage rate for Landfill for the relevant Contract Year, determined in accordance with **clause 35**; less

- (b) the product of £28.15 and the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** above for the relevant Contract Year,

provided always that EMLR shall not be less than zero