

Re3 Joint Waste Disposal Board, September 30 2008

Appendix 1 - Proposed changes to Joint Working Agreement.

Significant Change 1

This change is intended to reflect the agreement of Reading and Wokingham to share the costs relating to West Berkshire patronage of Smallmead HWRC.

The original wording contained both a mathematical error (the percentage added up to 110) and a miscalculation of the relative liabilities. The new wording shares liability on the same basis as the 'old' share of costs and performance between Reading and Wokingham.

It is important to note that this issue relates to Existing Contamination (contamination which is proved to be present on site at contract commencement) so the 'old' percentages are applicable - rather than the more recently identified percentages which resulted from the November 2007 patronage survey.

It is most unlikely that any claim for Existing Contamination will be forthcoming now but the provision should be retained. While it is retained it should be equitable.

Proposed Text

15. ENVIRONMENTAL PROVISIONS IN RESPECT OF FREEHOLD SITES

15.1 In the event that the Parties are required pursuant to Schedule 34 Paragraph 1.1.1 of the Principal Contract to indemnify the Contractor against Environmental Liabilities arising from or in connection with Council Contamination Existing Contamination and Council Off Site Contamination (jointly referred to in this clause as "Contamination") then:-

15.1.1 where the indemnity arises from Contamination at the Longshot Lane facility the costs will be split in the ratio 41% Wokingham District Council, 59% Bracknell Forest Borough Council; or

15.1.2 where the indemnity arises from Contamination at the Smallmead facility the costs will be split in the ratio 39.5% Wokingham District Council, 60.5% Reading Borough Council

Significant Change 2

The purpose of this change is to correct an imbalance inherent in the original text. Under the original wording an authority may have a LATS deficit and have it wiped-out, at no cost, by a partner authority. Moreover, the original methodology for the apportionment of LATS could result in the 'deficit' authority being re-allocated a greater number of LATS allowances than the sum of its deficit, enabling it to profit (through trading) despite its original failing.

The new text establishes a more meritocratic arrangement but with an important partnership element. The LATS surplus or deficit is retained by each Party. However, any authority with a LATS allowance deficit will have first call, up to the limit of their deficit, to trade with one or more of the other parties.

In this way all parties continue to be encouraged to strive for landfill diversion but none are left to the vagaries of the market in the event that they find themselves with a deficit.

Proposed Text

PART 3: Apportionment of LATS Allowances as a Consequence of the Principal Contract

21. APPORTIONMENT OF LATS ALLOWANCES

A surplus or deficit in LATS Allowances may arise as a result of the Principal Contract. LATS Allowances are not a cash asset, but are an asset which may result in a cash flow to the Parties, and as such should be allocated between Parties in accordance with this Part 3 (Financial Allocation Mechanism).

Where each Party sends a tonnage of BMW to landfill which differs from their LATS Allowance a net LATS Allowance will

result. Each Party shall retain its own LATS surplus or deficit.

Any Party or Parties retaining a LATS Allowance deficit will have a first refusal to purchase, on terms to be mutually agreed, the surplus LATS Allowance of the other Party or Parties up to the limit of their deficit.

Significant Change 3

There are a number of changes in this section of Annex A of Schedule 1 of the Joint Working Agreement.

The first change at A2 is simply to correct a mistaken understanding of the construction timetable. Originally the text referred to the completion of the Smallmead facility as the point at which the interim arrangement would cease. The intention was for the interim arrangement to remain until Full Service Commencement which would, until the construction timetable was re-ordered during negotiations, have coincided with the completion at Smallmead.

The changes at A3 are intended to reflect what we now understand to be the requirement and timing of the patronage surveys. The new wording also enables the re3 Project Manager to commission the patronage surveys rather than needing to bring the selection process to the Joint Waste Disposal Board.

The change at A4 is intended to clarify the term over which the results of each successive patronage survey will apply. The survey will occur during year -1 and the results of that survey will apply from the beginning of the very next Contract Year (April) for two years. During the second of these years a new survey will commence and the cycle thus repeats.

The change at A7 is simply to mirror the sharing of costs relating to Smallmead between Reading BC and Wokingham BC as previously referred to. In the event that West Berkshire residents were barred from using Smallmead A7 could be deleted.

Proposed Text

A Allocation of Tonnages at Civic Amenity Sites

- A1 The following mechanisms will be used by the Parties for calculating the allocation of tonnages of Contract Waste Category A received at Civic Amenity Sites.
- A2 From the date of signature of this Agreement until **Full Service Commencement** Civic Amenity site related payments will be split on the basis of the proportions of Contract Waste Category A tonnages at the Civic Amenity Sites which are allocated to each of the Parties during the financial year prior to the date of this Agreement.
- A3 **Immediately following Full Service** Commencement an Independent Survey will be undertaken by the Parties to establish the levels of use of the Civic Amenity Sites by people living in each Party's [Parties] administrative area. The scope and methodology for this survey and the identity of the person who will carry out the survey will be agreed by the **re3 Project Manager**. The Independent Survey will be completed over three **1-week** periods in January/February June and October. Subject to Clause A7 the levels of use established by the Independent Survey shall be used to set the proportion of the payments to be made by each party.
- A4 **The survey detailed in sub-clause A3 shall be repeated biennially thereafter and the results of the same shall**
- (i) apply from the beginning of the next Contract year for a period of two years**
 - (ii) be used to establish how payments shall be apportioned between the parties until the next survey results are applied.**
- A5 Payments shall be apportioned between the Parties on the basis of the results of the survey undertaken in accordance with clauses A3 and A4 in the next following Contract Year of the term of the Principal Contract.
- A6 For the avoidance of doubt , with the exception of Contract Waste arising from West Berkshire BC at Smallmead Civic Amenity site, all

Civic Amenity site Payments arising from Contract Waste delivered to the Civic Amenity Site by members of the public outside the administrative areas of the Parties shall be apportioned equally between the Parties.

- A7 For the purposes of the allocation of tonnages of household waste received at Smallmead Civic Amenity site, 50 % of Contract Waste arising from West Berkshire BC shall be deemed to arise at Reading BC and 50% of Contract Waste arising from West Berkshire BC shall be deemed to arise at Wokingham BC.

Significant Change 4

This change addresses a development which was not known about at the time the original Joint Working Agreement was drafted.

The Principal Contract includes a Schedule of Additional Rates which covers costs the Contractor may levy against infrequent requests for additional works. One item on the Schedule is the establishment of new Bring Banks Sites. The costs for items on the Schedule of Additional Rates are included in the Unitary Charge at xxxxx

To ensure that the councils only pay for the new Bring Bank Sites that they have requested, B7 has been added.

Proposed Text

B Allocation of Tonnages at Bring Sites

- B7 For the avoidance of doubt Bring Site Payments arising from new Sites established at the request of one of the Parties via the Schedule of Additional Rates in the Principal Contract shall thereafter be apportioned to the requesting Party.