

DATED

2006

- 1. BRACKNELL FOREST BOROUGH COUNCIL**
- 2. WOKINGHAM DISTRICT COUNCIL**
- 3. READING BOROUGH COUNCIL**

JOINT WORKING AGREEMENT

Being the Agreement between the Councils pursuant to the
Central Berkshire Waste PFI Project

THIS JOINT WORKING AGREEMENT is made the day of 2006

BETWEEN:-

BRACKNELL FOREST BOROUGH COUNCIL of Easthampstead House Town Square
Bracknell Berkshire RG12 1AQ **WOKINGHAM DISTRICT COUNCIL** of Council Offices
Shute End Wokingham Berkshire [post code] and **READING BOROUGH COUNCIL** of
Civic Offices Civic Centre Reading Berkshire RG1 7TD

BACKGROUND

- (A) Each Party is the statutory waste disposal authority for its respective administrative area.

- (B) The parties have decided to make joint arrangements for the provision of an economic efficient and effective waste management service. The Parties have agreed to enter into this Agreement for the purpose of regulating their respective rights and obligations to each other as a consequence of the joint arrangements for waste management and in order to promote the efficient management of the Principal Contract

- (C) The parties have agreed to appoint Reading Borough Council as administering authority for the purposes of the Principal Contract throughout the Contract Period

OPERATIVE PROVISIONS

1. DEFINITIONS

1.1 The references to words and phrases which are defined in the Principal Contract entered into between the Parties and [] on
[] will have the same meaning in this Agreement unless the context otherwise requires

1.2 In addition in this Agreement the following expressions have the following meanings unless inconsistent with the context:

“Administering Authority”

Reading Borough Council

“Constitution Agreement”	The agreement in the form set out in Schedule
[“Councils Assets”	Those assets of the Parties detailed in [] of the Principal Contract] <u>[Eversheds comment - will need to reflect detailed asset transfer/handback of the contract which needs to be developed as part of negotiations]</u>
“Fund”	Payment by way of lump sum increased Unitary Charge or otherwise in accordance with the Principal Contract
“Joint Waste Disposal Board/ JWDB”	The Committee of that name which shall be formed under the terms of the Constitution Agreement and which shall be made up of representatives of all Parties
“Lakeside Contract”	The Agreement for the provision of energy from waste services made between the Contractor and Lakeside Energy from Waste Limited dated []
“Party” and “Parties”	Each Party and all or some of the Parties to this Agreement as the context requires
“Principal Contract”	The Contract between the Parties and [] dated [] commencing upon the [] and terminating upon [] and including the following additional documentation [] [and any further documentation relating thereto]
	<u>[D.N Consider if direct agreements/collateral warranties need to be included]</u>

“Principal Contract Management Arrangements”	The arrangements set out in Schedule 3 pursuant to clause 7
“Review Date”	The date one year after the Commencement Date and every anniversary thereof during the term of this Agreement
“Share of the Unitary Charge”	The summation of the component elements of the Unitary Charge as listed in [] of the Principal Contract and shared between the parties as set out in [Schedule 1 paragraph]
“Waste Management Facilities”	All the waste management facilities detailed in clause [] of the Principal Contract which are to be leased to the Contractor in accordance with clause [] of the Principal Contract <u>[Eversheds comment - terminology check, depending on lease may be site specific]</u>
“Unitary Charge”	The amount referred to as such and calculated in accordance with Schedule [] of the Principal Contract
“Waste Collection Contractor”	any contractor providing waste collection services to one or more of the Parties <u>including where appropriate any direct labour organisation of any of the Parties</u>

2. INTERPRETATION

In this Agreement except where the context otherwise requires:-

- 2.1 the masculine includes the feminine and the neuter and vice versa;
- 2.2 the singular includes the plural and vice versa;
- 2.3 a reference in this Agreement to any clause sub-clause paragraph Schedule

appendix or annex is except where it is expressly stated to the contrary a reference to such clause sub-clause paragraph Schedule appendix or annex of this Agreement

- 2.4 any reference to this Agreement or to any other document shall include variation amendment or supplements to such document as may be effected from time to time in accordance with the relevant document
- 2.5 a reference to a person includes firms, [partnerships](#) and corporations and their successors and permitted assignees or transferees;
- 2.6 references to any statute or statutory provisions (including any EU Instrument) shall unless the context otherwise requires be construed as including references to any earlier statute or the corresponding provisions of any earlier statute whether repealed or not directly or indirectly amended consolidated extended or replaced by such statute or provisions or re-enacted in any such statute or provisions and to any subsequent statute directly or indirectly amending consolidating extending replacing or re-enacting the same and will include any orders regulations instruments or other subordinate legislation made under the relevant statute or statutory provisions;
- 2.7 reference to Schedule 4 in this Agreement shall unless the context otherwise requires shall include Schedule 4 in the form confirmed by the JWDB in accordance with clause 7.1 of this Agreement**
- 2.8 words preceding “include” “includes” “including” and “included” shall be construed without limitation by the words which follow those words unless inconsistent with the context and the rule of interpretation known as ejusdem generis shall not apply
- 2.9 the list of contents and the headings to the clauses and parts of this Agreement and to the paragraphs of the Schedules are for the ease of reference only and shall not affect the construction of this Agreement; and
- 2.10 the Schedules and appendices hereof all form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement
- 2.11 in the event of an inconsistency between this Agreement and the Principal Contract the provisions of the Principal Contract shall prevail

3. GUIDING PRINCIPLES AND OBJECTIVES

- 3.1 This clause 3 sets out certain guiding principles and objectives which the Parties agree to apply to their relationship under this Agreement in order to facilitate issues relating to the Principal Contract
- 3.2 In this Agreement the Parties agree to:-
- 3.2.1 mutually support and co-operate with each other to ensure the success and performance of the Principal Contract and this Agreement **and further to ensure rectification of any non performance of either contract** and accordingly agree to be open and trusting in their dealings with each other make information and analysis available to each other regarding the subject matter of the Principal Contract use such information to support the Principal Contract Management Arrangements discuss and develop ideas openly and contribute fully to all aspects of making the Principal Contract Management Arrangements and the project successful
- 3.2.2 willingly embrace a commitment to transparency in their dealings and in particular a need to comply with statutory access to information requirements and the Freedom of Information Act 2000 and supporting codes of practice
- 3.2.3 respect the mutual need for commercial confidentiality and be aware of the need for and respect matters of commercial confidentiality and potential sensitivity
- 3.2.4 be fully committed to the Principal Contract Management Arrangements and seek to fully motivate employees **agents and contractors (except the PFI Contractor)** to act in accordance with these guiding principles and address the challenges of the Principal Contract Management Arrangements with drive enthusiasm and a determination to succeed
- 3.2.5 use all reasonable endeavours to develop and maintain an effective joint process to ensure that the Principal Contract Management Arrangement develops appropriately and in line with these guiding principles and objectives
- 3.2.6 use their combined skills and experience to understand key issues facing each other's services and commit to work together to ensure improvements throughout the life of this Agreement

- 3.2.7 bring to the attention of each other all information which is relevant to the economic effective and efficient performance of the Principal Contract this Agreement and the Constitution Agreement of which they become aware and also notify each other in the event of any concerns regarding the performance of the Principal Contract
- 3.2.8 be flexible in the implementation and operation of all aspects of this Agreement and where necessary and subject to clause 27 co-operatively give effect to any agreed changes to this Agreement
- 3.2.9 ensure that they take all reasonable and necessary measures to ensure that the Administering Authority is able to perform its responsibilities detailed in clause 6 including the Parties obligation to make payments to the Administering Authority of their respective Share of the Unitary Charge in accordance with the provisions of clause 11
- 3.2.10 provide to the Project Director and the Administering Authority all notices requests or information that may be received from the Contractor as soon as reasonably practicable
- 3.2.11 provide the certificate required under the Local Government (Contracts) Act 1997 to the Contractor

4. COMMENCEMENT OF TERM

4.1 This Agreement shall commence on the same date and time as the Principal Contract

4.2 This Agreement shall terminate on the later of:-

4.2.1 the date of termination or expiry of the Principal Contract; or

4.2.2 the date of termination or expiry of the Lakeside Contract; or

4.2.3 the date when all the obligations of the Parties under this Agreement have been duly complied with

or such other date as the Parties shall agree in writing

4.3 The termination of this Agreement is without prejudice to the rights duties and liabilities of the Parties accrued prior to termination. All other clauses in this

Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination

5. OBLIGATION OF THE PARTIES TO PERFORM THE PRINCIPAL CONTRACT

5.1 As the same shall fall due from time to time the Parties shall immediately commence and shall each use best endeavours to regularly and diligently proceed with carrying out and performing each of its obligations in a timely manner under the Principal Contract [in accordance with the Principal Contract](#) and each Party shall it use best endeavours to ensure that it does not by any act or omission place the Parties in breach of their obligations under the Principal Contract

6 ADMINISTERING AUTHORITY

6.1 The Parties agree to the appointment of the Administering Authority during the Contract Period and confirm that:-

6.1.1 the Administering Authority is authorised to perform its obligations and functions detailed in the Principal Contract and in this Agreement in accordance with and subject to the requirements and limitations contained in the Principal Contract and this Agreement

6.1.2 insofar as the Administering Authority shall perform its obligations and functions as Administering Authority in accordance with the provisions of clause 6.1.1 the Parties agree to be bound by and comply with any or all outcomes of the exercise of such obligations and functions and each Party indemnifies the Administering Authority accordingly

6.2 The Parties agree that during the term of the Principal Contract the Administering Authority shall be responsible for:-

6.2.1 The administrative arrangements for and associated with the payment of the Unitary Charge to the Contractor in accordance with the requirements of the Principal Contract

6.2.2 The calculation of each Party's Share of the Unitary Charge in accordance with this Agreement

6.2.3 The collection of each Party's Share of the Unitary Charge in order to ensure that payment of the Unitary Charge may be made in accordance with the provisions of the Principal Contract

6.2.4 The functions delegated to it under the Principal Contract

6.3 The Administering Authority shall ensure that where information is received from or requested by the Contractor in accordance with the Principal Contract the Administering Authority shall disseminate to or collate from appropriate officers of each of the Parties such information and (where information is required to be provided to the Contractor) ensure that such information is so provided. The dissemination collation and provision of information shall be effected by the Administering Authority within a timescale which is compatible with any time provisions detailed in the Principal Contract and in any event as soon as reasonably practicable.

6.4 In the event that the Administering Authority shall receive a request from the Contractor for a consent or approval from the Parties the Administering Authority shall inform the appropriate officers of each of the Parties of such a request and shall refer the request to the Parties, the JWDB or the Project Director as appropriate and in accordance with the provisions of Schedule 4. Once the consent or approval has been granted or rejected the Administering Authority shall communicate the decision to the Contractor. All referrals and communications shall be effected by the Administering Authority within a timeframe which is compatible with any time provisions detailed in the Principal Contract and in any event as soon as reasonably practicable

6.5 Where the Parties decide in accordance with the appropriate mechanism for the decision detailed in Schedule 4 that a request or notice or other matter should be made to served upon or otherwise communicated to the Contractor the Administering Authority shall ensure that the same is effected as soon as reasonably practicable

7 DECISIONS RESERVED TO THE PARTIES

7.1 The Parties agree that the delegation of responsibilities detailed in **this clause 7 and** Schedule 4 and Appendix A shall apply in respect of those matters detailed within **this clause 7 and** Schedule 4 and Appendix A. **The JWDB shall confirm such delegations at its first meeting held in accordance with Schedule 2 clause 5.1**

and in particular shall be responsible for considering and confirming (with or without alteration) the delegations detailed in Appendix A to Schedule 4

7.2 Within Appendix A to Schedule 4 are contained decisions which require the unanimous agreement of all the Parties or the unanimous agreement of those Parties affected by the decisions. Other decisions to be made in respect of the Project Agreement and detailed in Appendix A are subject to the principles detailed in paragraphs 4 and 5 of Schedule 4 and may as a result of the application of these principles fall to be made by each of the Parties. In the event that decisions are reserved to the Parties and/or require the unanimous agreement of the Parties or some of them in accordance with this clause then the following provisions shall apply:-

7.2.1 those Parties who are required to make the decisions shall do so within a timeframe consistent with the requirements for the particular decision to be communicated to the Contractor in accordance with the Principal Contract

7.2.2 those Parties who are required to make the decision shall having made such decision communicate the same forthwith to the Administering Authority **and (where appropriate) the Project Director** in order that he shall be able to comply with the timeframes for the communication of the decision to the Contractor in accordance with the requirements of the Principal Contract

7.2.3 in the event that that any one or more of the Parties shall fail to make and communicate their decision in accordance with the requirements of clauses 7.2.1 and 7.2.2 then their decision shall be deemed to be the decision detailed in Appendix A to Schedule 4 and the **Administering Authority and (where appropriate) the Project Director** shall be entitled to communicate the deemed decision to the Contractor

7.3 The Parties acknowledge and agree that they shall be jointly and severally liable for all decisions made pursuant to this clause 7 or otherwise made in accordance with Schedule 4 and Appendix A

8 OBLIGATIONS OF THE PARTIES IN RELATION TO THE JOINT WASTE DISPOSAL BOARD

8.1 The Parties shall:-

- 8.1.1 enter into the Constitution Agreement in the form set out in Schedule 2 (Constitution Agreement) immediately upon the execution of this Agreement
- 8.1.2 ensure the appointment of the Project Director by the referral of the appointment agreed by each of them to the JWDB in accordance with Schedule 4**
- 8.1.3 recognise the existence of and give prompt effect to any decisions that have been made by the Joint Waste Disposal Board under the terms of the Constitution Agreement
- 8.2 The Parties and/or the Project Director shall have the right to refer any matters to the JWDB [provided that such matters have been considered in advance in accordance with the Principal Contract Management Arrangements]

9 OBLIGATIONS OF THE PARTIES IN RELATION TO PRINCIPAL CONTRACT MANAGEMENT ARRANGEMENTS

- 9.1 The Parties shall:-
- 9.1.1 enter into the Principal Contract Management Arrangements as set out in Schedule 3 immediately upon the execution of this Agreement
- 9.1.2 co-operate in the provision of staff and resources to the Principal Contract Management Arrangements and in the implementation and operation of the Principal Contract Management Arrangements be guided at all times by the requirements of clause 3
- 9.2 All costs **reasonable and properly incurred** in the implementation and operation of the Principal Contract Management Arrangements shall be borne by the Parties in equal shares **[Directors to note and comment]**
- 9.3 The Parties shall each through the JWDB appoint the Project Director and shall through the JWDB be responsible **for the appointment of and** for the replacement of the Project Director from time to time. The Project Director shall (regardless of the Party who employs him) have the delegated authority to act on behalf of all of the Parties in order to perform his obligations pursuant to the Principal Contract and this Agreement **which delegation shall be authorised by the JWDB in accordance with paragraph 2 of Schedule 4**

9.4 The Parties agree that they will be jointly liable for the acts and omissions of the Project Director (whether or not those acts or omissions are wilful or negligent) in so far as the Project Director acts or purports to act as Project Director pursuant to this Agreement and/or the Principal Contract

9.5 The Parties agree that they shall all use their reasonable endeavours to ensure that the Project Director acts in accordance with the provisions of this Agreement and does not exceed his authority

10 OBLIGATION OF THE PARTIES IN RELATION TO STANDING ORDERS

10.1 **For the purposes of the purposes of the administration of the JWDB the standing orders of [Bracknell/Reading] shall apply and shall take precedence over the standing orders of the other Parties for this purpose**

10.2 Notwithstanding the generality of clause 10 each Party shall be entitled at any time to utilise their respective particular Overview and Scrutiny procedures and each Party will in such circumstances fully co-operate with each other in such Overview and Scrutiny Procedures

11. PAYMENT

General

11.1 Payments that are required to be made under the provisions of the Principal Contract shall be made in accordance with the provisions of Schedule 1 (Payment Provisions)

11.2 ***AW - S. Smith – need to include mechanics of this. Either here or in Schedule 1. we can look at E/Sx agreement for precedent.***

D.N How will we deal with deductions? Will they be allocated on the same basis as the Unitary Charge is paid? Are certain elements to be allocated to the Council who suffers a loss as a result of performance failures? Is it possible to disaggregate to this level.

D.N The payment period in the P.A is 30 days from receipt of invoice.

[\[Eversheds comment - as flagged above, we need to include mechanics to calculate the split and then factor this into the payment mechanism. We may need various payment definitions as, in addition to the tonnage element of the volume payment,](#)

there may be other payments (which together comprise the unitary charge) which need to be split.

[Allocation of Tonnages at CA Sites]

[DN: Consider removal of this clause to the payment schedule]

11.3 The following mechanisms will be used by the Parties for calculating the allocation of tonnages of household waste received at Civic Amenity Sites [for the purposes of ascertaining each Party's Share of the Unitary Charge for CA Site payments?]

11.3.1 *From the date of signature of this Agreement until the second 1 April* of the term of the Principal Contract these payments will be split on the basis of the proportions of household waste 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

11.3.2 During the first complete Contract Year of the term of the Principal Contract 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 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 Joint Waste Disposal Board. The survey will be completed over three 2 week periods in January/February June and October following the first Contract Year of the term of the Principal Contract. The levels of use established by the survey shall be used to set the proportion of the payments to be made by each party which shall be in the same proportion for each party as that parties proportion of use **[D.N I assume that the CA Site Payment could be referred to here specifically?]**

11.3.3 The survey detailed in sub-clause 11.3.2 shall be repeated in the third financial year of the *remaining term* of the Principal Contract and every other financial year thereafter and the results of the same shall be used to establish how payments shall be apportioned between the parties

11.3.4 Payments shall be apportioned between the Parties on the basis of the results of any survey undertaken in accordance with clauses 11.3.2 and 11.3.3 in the next following Contract Year of the term of the Principal Contract

11.4 For the avoidance of doubt all CA 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
[Query if these should be on the same tonnage splits as determined above]

12. ADDITIONAL GENERAL PROJECT COSTS

12.1 If during the term of the Principal Agreement the Parties are required to fund additional investment either by way of payment of lump sum, to the Contractor or via increased Unitary Charge the Parties shall be required to fund such investment in accordance with their payment obligations detailed in paragraph [] of Schedule 1
[D.N suggest that this could be in line with the split of the Unitary Charge] save where such additional investment is required solely or principally as a result of an act, omission, default or otherwise of one or more of the Parties. In the event that an additional investment is required as a result of an act, omission, default or otherwise of one or more of the Parties the following provisions shall apply:-

12.1.1 where the act, omission, default or otherwise is that of one Party only then that Party shall be required to fund all such additional investment

12.1.2 where such act, omission, default or otherwise is that of two Parties then those two Parties shall be required to Fund all such additional investment pro rata to their relative proportions of the Unitary Charge in accordance with the provisions of paragraph [] of Schedule 1

[\[Eversheds comment - general note re pro-rata link to proportions where two of the parties are to contribute. Need to set out mechanics for this as the proportions set out for splitting into 3 need to be adjusted where split into two, so that the relevant two parties contributions total 100% of that required\].](#)

[\[D.N Eversheds to come back with suggested drafting to cover this\]](#)

13. MATTERS ASSOCIATED WITH PROJECT PLANNING APPLICATIONS AND APPEALS

13.1 The Parties in their capacity as waste disposal authority for their respective administrative areas agree that in accordance with clause 8.5 and clause 8.6 of the Principal Contract they will be responsible for all of their proportion of the costs of Proceedings in excess of the Appeal Contingency as set out in clause 8.5 and clause 8.6 of the Principal Contract which sum shall be split equally between the Parties]

[\[Eversheds comment - contract provisions currently in \[\] and discussions will need to take place as to the extent to which the Councils will be responsible for any excess, so drafting here will need to reflect the agreed position\]](#)

13.2 [C.G to provide drafting regarding consultations between all the parties regarding planning applications]?

14. WASTE MANAGEMENT FACILITIES AND ASSETS

14.1 **Bracknell Forest Borough Council and Reading Borough Council** agree that they will grant to the Contractor a leasehold interest in the Waste Management Facilities [\[Eversheds comment - see comments re definition\]](#) in accordance with clause [] of the Principal Contract substantially on the terms of the draft form of leases at Schedule [] in the Principal Contract

14.2 **In the event that Bracknell Forest Borough Council or Reading Borough Council shall incur costs arising from their obligations as Landlord of the Waste Management Facilities in accordance with the terms of the leases of the Waste Management Facilities then these costs will be shared equally between the Parties**

[14.3 BFBC and RBC agree that they will transfer title of the Council's Assets to the Contractor in accordance with clause [] of the Principal Contract] [\[Eversheds comment - needs to be developed as assets provisions in contract progress. Note currently only refers to Bracknell and Reading\]](#)

15. ENVIRONMENTAL PROVISIONS IN RESPECT OF FREEHOLD SITES

15.1 **In the event that the Parties are required pursuant to clause [1.1.1] of the Principal Contract to indemnify the Contractor against Environmental Liabilities arising from or in connection with Existing Contamination then:-**

15.1.1 **where the indemnity arises from Existing 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 Existing Contamination at the Smallmead facility the costs will be split in the ratio 32% Wokingham District Council, 78% Reading Borough Council**

15.2 In the event that the Contractor shall be required to indemnify the Parties against Environmental Liabilities (pursuant to clause [1.1.2] of the Principal Contract arising from or in connection with New Contamination the Parties agree that the indemnity funds will be apportioned between them on a fair and equitable basis taking into consideration which Party or Parties have the actual responsibility for setting the Environmental Liabilities

15.3 In the event that Environmental Liabilities are to be borne by the Parties and the Contractor in accordance with clause [1.1.3] of the Principal Contract then the Parties share of such liability shall be split in the ratios detailed in clause 15.1 of this Agreement dependent upon which facility has given rise to the Environmental Liability

15.4 In the event that the Parties are required following determination of any dispute by an expert in accordance with clause [1.14] of the Principal Contract to pay the fee of that expert the cost of such fee will be borne equally by the Parties

16. PRINCIPLES APPLYING TO DECISIONS AND PROPOSALS AND COUNCIL CHANGE

16.1 Where any decision falls to be made by the Parties or where any proposal needs to be considered by the Parties in respect of the Principal Contract then where such decision or proposal only affects one or more of the Parties the appropriate decision maker (detailed in Schedule 4) shall not withhold its consent to a decision where the Party or Parties so affected unanimously agree to the outcome of the proposed decision or proposal. In this clause 16.1 the word "affects" shall be deemed to include the situation where either a benefit is given to or a detriment is suffered by any Party as a result of the proposed decision or proposal which benefit or detriment may arise through the performance of the Works or Services any payments associated with them or additional costs or savings incurred or made by a Party directly or indirectly as a result of such decision or proposal

16.2 Where all Parties have the benefit of or have accepted a detriment as a result of a decision or proposal or as a result of a Council Change or where there is a Contractor Notice of Change which is accepted by the Parties in accordance with Schedule 4 or where the change is obligatory pursuant to clause 25.3.10 of the Principal Contract any amount payable or reimbursable to the Parties as a

consequence of such change shall be determined in accordance with paragraph [] of Schedule 1 **[E x Y drafting!]**

- 16.3 Where only one Party has the benefit of or has accepted a detriment as a result of a **decision or proposal or a change** to the Works or Services any amount payable by or reimbursable to such Party in respect of **such decision proposal or change** arising under clause 25.1 of the Principal Contract or clause 32.2 of the Principal Contract shall be fully apportioned to that Party in accordance with paragraph [] of Schedule 1
- 16.4 Where two Parties have the benefit of or have accepted a detriment as a result of a **decision proposal or change** to the Works or Services any amount payable or reimbursable to those Parties in respect of **such decision proposal or change** arising under clause 25.1 of the Principal Contract shall be apportioned between those two Parties (pro rata their respective shares of the Unitary Charge) in accordance with paragraph [] of Schedule 1

[\[Eversheds comment - as above, need mechanics to calculate how the split will work in respect of two parties\]](#)

[D.N references to Schedule 1 to be completed]

17. QUALIFYING CHANGE IN LAW

[\[Eversheds comment - as above, need mechanics to calculate how the split will work in respect of two parties\]](#)

- 17.1 Where all Parties are affected by a Qualifying Change in Law each Party shall be required to Fund their share of the cost of change to the Works or Services arising from the Qualifying Change in Law (including Capital Expenditure) or shall be entitled to a share of the reduction in any costs so arising (in proportion to their Share of the Unitary Charge) in accordance with paragraph [] of Schedule 1
- 17.2 Where one or two Parties only are affected by a Qualifying Change in Law that Party or each Party shall be required to Fund the cost of or their share of the cost of change to the Works or Services arising from the Qualifying Change in Law (including Capital Expenditure) or shall be entitled to the reduction or a share in the reduction of any costs so arising. Where two Parties are so affected the costs or reduction of costs shall be apportioned between those two Parties pro rata their respective shares of the Unitary Charge

[D.N references to Schedule 1 to be completed]

18. REFINANCING

18.1 Payment of the future share of any Refinancing Gain shall be credited to each Party in accordance with their current proportion of the Unitary Charge

[D.N Refinancing currently dealt with under clause 30 of the P.H.]

19. TREATMENT OF ASSETS ON TERMINATION OR EXPIRY

[\[Eversheds comment - need to pick up other assets in conjunction with the use of the waste facilities after termination\]](#)

19.1 Five years prior to the Expiry Date of the Principal Contract or as soon as reasonably practicable after any of the parties to the Principal Contract shall have issued a termination notice under the Principal Contract or have otherwise commenced action to terminate the Principal Contract (“the Assets Review Date”) the Parties shall:-

19.1.1 agree each Party’s total financial contribution made or due to be made under the terms of the Principal Contract and the terms of this Agreement taking into consideration but not limited to all contributions towards the Unitary Charge Changes in Law and changes to the Works and Services during the Contract Period (“Provisional Proportioned Financial Contribution”)

19.1.2 consider whether to continue to use the Waste Management Facilities **[DN – check final definition]** or either of them for the purposes of the provision of services similar to the Services (whether by re-tendering, direct provision or otherwise) and if necessary commission a study as to the feasibility of continued usage

19.2 Every six months (or such shorter period as the Parties agree) from the Asset Review Date to the Expiry Date or the date of earlier termination of the Principal Contract the Parties shall meet to review and agree the matters referred to in clause 19.1

19.3 Three months prior to the Expiry Date of the Principal Contract or as soon as practicable after early termination of the Principal Contract the Parties shall jointly agree revised Provisional Proportioned Financial Contributions (“Confirmed Proportioned Financial Contributions”)

19.4 If the Parties agree to continue to use the Waste Management Facilities or either of them for the purpose of services similar to the Services (whether by re-tendering, direct provision or otherwise) then:-

19.4.1 of the Waste Management Facilities or either of them shall continue to be used for such purpose until such time as the Parties decide to cease such joint use in which case the provisions of clause 19.5 shall apply

19.4.2 the Parties shall prepare an implementation plan for the continued use of the Waste Management Facilities or either of them for such period as may be agreed

19.5 In the event that the Parties decide not to continue to use the Waste Management Facilities or any one of them following the Expiry Date or earlier termination of the Principal Contract or in the event that such continued use shall cease at any time thereafter then the following shall apply:-

19.5.1 the Waste Management Facilities (or that facility not used) shall revert to the Party in whom the freehold of the facility is vested

19.5.2 if the Parties (or any one of them) to whom the Waste Management Facilities revert continue to use the facility for services similar to the Services then the residual value of any Works at that Waste Management Facility shall be calculated in accordance with the provisions of clause 19.6 and that value shall be apportioned between the Parties in proportion to their Confirmed Proportioned Financial Contributions **[Eversheds: should this not apply irrespective of what the relevant Council chooses to make of the facilities? DN: Dave disagrees with this. Also consider the extent to which the calculation of the residual value should take into account the value of the facility (excluding the value of the underlying land) leased to the Contractor at the outset. DN: Dave agrees with last point]**

19.5.3 a Party to whom clause 19.5.2 applies shall pay to the other Parties their proportion (calculated in accordance with clause 19.6) of the residual value of the Works as soon as reasonably practicable or upon such terms as the Parties may otherwise agree

19.6 The residual value of the Works shall for the purposes of clause 19.5.3 be established as follows:-

19.6.1 the Parties shall commission a valuation (to be carried out in accordance with the applicable valuation standards and methods in force at the date of the valuation by a Valuer or appropriate professional experience and who is a Fellow or Member of the Institution of Chartered Surveyors or who has equivalent qualification) or failing agreement in the identity of the said Valuer any one of the Parties may make an application to the President of the RICS to appoint a Valuer

19.6.2 the Valuer shall be responsible for the preparation of a report which will establish, having taken into consideration the representations of all the Parties in this respect, the residual value of the relevant Waste Disposal Facilities

19.6.3 the Valuer shall having established the residual value of the relevant Waste Disposal Facilities take into account any appropriate clean up costs or other costs associated with site remediation of the relevant Waste Disposal Facilities and shall deduct such sum from the residual value established in accordance with clause 19.6.2

19.6.4 the Valuer shall act as an expert. He will take into account representations of any of the Parties made in accordance with clause 19.6.2 or any that may be made in respect of such remediation or clean up costs but he shall not be bound by those comments. The valuation or valuations made by the Valuer in accordance with this clause 19.6 shall be final and binding on the Parties

20. TREATMENT OF LANDFILL ALLOWANCES

[DN: To be transferred to finance schedule?]

20.1 At the Commencement Date the number of each Parties Landfill Allowances are as follows:-

[Wokingham/Reading – Bracknell’s allocation to be specified]

The purpose of this clause 20 is to set out the principles that have been agreed by the Parties for the treatment of each Party’s respective Landfill Tax liability and the application of each Party’s Landfill Allowance to such liability. These principles will apply until such time that there is a change in law. In the event of a change in law which affects the operation of these principles the matter will be referred to the JWDB who will agree such replacement principles as may be necessary to achieve the fair application to the Parties of any such change

20.2 The following principles which have been agreed by the Parties shall establish each Party's liability to Landfill Tax and the use of Landfill Allowances as follows:-

20.2.1 That in accordance with the Waste and Emissions Trading Act 2003 and subordinate legislation relating thereto in force at the Commencement Date the Parties shall each be responsible for their own decisions in respect of their respective Landfill Allowances and whether to sell or bank the same. However, in the event that there shall be a change to the said legislation during the Contract Period which shall permit the Parties to pool their Landfill Allowances and to deal with Landfill Allowances jointly with other local authorities then any decisions to do so or decisions leading from the decision to do so shall be referred to and decided by the JWDB

20.2.2 That each Party shall be responsible for the purchase of any additional Landfill Allowances that may be required in order to ensure that it has the requisite number of Landfill Allowances in any Contract Year and each Party shall take financial responsibility for any prior decision to bank or to sell surplus Landfill Allowances allocated to it and the consequences thereof

20.2.3 That in order to determine the utilisation of the number of each Party's Landfill Allowances arising from Landfill of Contract Waste during each Contract Year the Parties shall determine their Respective Proportions (which term is defined in and shall be determined by clause 20.3) of the total of Recyclable Materials delivered to the Contractor during the Contract Year in question. Each Party's Respective Proportion shall be applied to the total tonnage of Contract Waste which has been taken to Landfill by the Contractor for the Contract Year concerned. This Respective Proportion of landfilled Contract Waste shall represent each Party's liability for the purpose of Landfill Allowances and Landfill Tax for that Contract Year

[Difficulties with LATS. EA charge costs on actual delivery to landfill]

20.3 In clause 20.2 the term "Respective Proportions" shall mean each Party's proportion of Recyclable Materials within the Contract Waste. Respective Proportions are to be determined as follows:-

20.3.1 The relative proportion of Recyclable Materials collected by each Party through Kerbside Schemes shall be calculated for each Contract Year by the Contractor who will weigh the Recyclable Materials at their point of delivery by

each Party (or its Waste Collection Contractor) at each Waste Management Facility

20.3.2 The amount of Recyclable Materials delivered to the Parties civic amenity sites by members of the public prior to the Commencement Date which was used for the purposes of the calculation by DEFRA of each Party's Landfill Allowance shall be used to determine the relative proportion of Recyclable Waste deemed to be delivered by members of the public from each Party's administrative area for each Contract Year during the Contract Period

[20.3.3 Bring sites – how might these be taken into account?]

20.3.4 The relative proportions of each Party calculated in accordance with sub-clauses 20.3.1 to 20.2.[3] shall be added together and the total overall proportion shall be calculated accordingly and shall be each Party's Relative Proportion for the purposes of clause 20.2.3

20.4 **[any further provisions dealing with sharing out “profits” from sale of Allowances as a result of WRG performance on recycling: WRG gets 50% share of excess permits]**

21. STATUTORY RESPONSIBILITIES

21.1 In carrying out their statutory duties the powers duties rights and obligations of the Parties shall not be fettered or otherwise affected by the terms of this Agreement

21.2 The performance of their statutory duties in whatsoever capacity shall not be capable of being construed as a breach by the Parties of any of their obligations under this Agreement

22. INSURANCE

[D.N. Eversheds have commented in this clause and Bill has responded to their comments. Suggest that comments referred to inhouse insurers for instructions]

22.1 Each Party shall during the term of this Agreement maintain the insurances described in clause 22.2. [The cover shall be effective not later than the date on which the relevant risk commences or the date of this Agreement whichever is the earlier]

22.2 Each party shall take out and maintain insurances in respect of

22.2.1 Third party liability with a minimum indemnity limit of £30 million; and

22.2.2 Officials' Indemnity with a minimum indemnity limit of £5 million

22.2.3 libel and slander cover with a minimum indemnity limit of £1 million

22.3 The indemnity limits in clause 22.2.1 22.2.2 and 22.2.3 will be reviewed on the second anniversary of the date of this Agreement and on each alternate anniversary thereafter. The indemnity limits may be increased or decreased with the agreement of all Parties

22.4 Each Party shall:-

22.4.1 provide for 30 days prior written notice of their cancellation non-renewal or amendment to be given to the other Parties; and

22.4.2 provide for 30 days prior written notice of non-renewal in the event of the non payment of any premium

22.5 The insurance premiums and all excess payments and costs of any other requirements referred to in this clause shall be the responsibility of each Party as the insured Party subject to any subrogation rights exercisable by an insurer

23. INDEMNITY

23.1 **Reading Borough Council** as Administering Authority in respect of the Principal Contract shall at all times act with all due care and skill in the discharge of its functions and duties detailed in clause 6

23.2 In the discharge of such functions and duties as Administering Authority the Standing Orders and working practices of **Reading Borough Council** shall apply subject at all times to the provisions of clause 10.2. Notice of any change in the Standing Orders of the Administering Authority shall be promptly given to the other Parties

23.3 All Parties shall make their respective management staffing and share of financial contributions to the Principal Contract Management Arrangements in good faith the costs of such provision being borne in the proportions as set out in clause 9.2

- 23.4 The Parties (each the “Indemnifying Party”) shall be responsible for and shall release and indemnify each other Party (“the Indemnified Party”) including its employees agents and contractors (save for the PFI contractor) on demand from and against all legal liability for death or personal injury which may arise out of or in consequence of defective or non performance by the Indemnifying Party of its obligations under the Principal Contract and or this Agreement
- 23.5 The Parties (each the “Indemnifying Party”) shall be responsible for and shall release and indemnify each other Party (“the Indemnified Party”) including its employees agents and contractors (save for the PFI contractor) on demand from and against all legal liability for:-
- 23.5.1 loss of or damage to property;
- 23.5.2 actions claims demands costs charges and expenses (including legal expenses on an indemnity basis); and
- 23.5.3 any breach of the EPA or any other laws which may arise out of or in consequence of defective or non performance by the Indemnifying Party of its obligations under the Principal Contract and or this Agreement but only where such defective or non performance by the Indemnifying Party can be reasonably attributed to the fraudulent or knowingly negligent acts or omissions of the Indemnifying Party or which may arise out of or in consequence of the action or inaction of any Waste Collection Contractor in the administrative area of the Indemnifying Party
- 23.5.4 the Indemnifying Party shall not be responsible or be obliged to indemnify the Indemnified Party for any of clauses 23.5.1 to 23.5.3 above if such eventuality arises as a direct result of the Indemnifying Party acting on the Indemnified Party’s instruction or as a direct result of any Waste Collection Contractor in the administrative area of the Indemnifying Party acting on the Indemnified Party’s instruction
- 23.6 The Indemnified Party’s rights arising under this clause shall be without prejudice to any other right or remedy available to it
- 23.7 Each Party shall use reasonable endeavours to mitigate any losses suffered or demands costs charges and expenses including legal expenses which it incurs in connection to which it is entitled to be indemnified against by another Party

24. CONDUCT AND CONTROL OF CLAIMS

24.1 In this clause 24 and subject to clause 23:-

24.1.1 "Indemnified Party" means in relation to an indemnity warranty covenant representation or undertaking the person receiving the benefit of the indemnity warranty covenant representation or undertaking;

24.1.2 "Claim" includes a claim over £1000 in value by any person or body able to make a claim; and

24.1.3 "Indemnifying Party" means in relation to an indemnity warranty covenant representation or undertaking given in this Agreement the person giving the indemnity warranty covenant representation or undertaking to the Indemnified Party

24.2 Subject to clause 23 if the Indemnified Party becomes aware of any matter which might give rise to a Claim for an indemnity warranty representation or undertaking from the Indemnifying Party the following provisions will apply:-

24.2.1 The Indemnified Party shall as soon as reasonably practicable give written notice to the Indemnifying Party of the matter which might give rise to a Claim under or pursuant to a covenant in respect of which the indemnity warranty covenant representation or undertaking (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed) and shall consult with the Indemnifying Party with respect to the matter. If the matter has become the subject of any proceedings the Indemnified Party shall (so far as it is able) give the notice within sufficient time to enable the Indemnifying Party to contest the proceedings before any first instance judgement in respect of such proceedings is given;

24.2.2 The Indemnified Party shall:-

24.2.2.1 take such action and institute such proceedings and give such information and assistance as the Indemnifying Party or its insurers may reasonably request to dispute resist appeal compromise defend remedy or mitigate the matter or enforce against any person (other than the Indemnifying Party) the rights of the Indemnified Party or its insurers in relation to the matter;

24.2.2.2 in connection with any proceedings related to the matter (other than against the Indemnifying Party) use professional advisers nominated

by the Indemnifying Party or its insurers and, if the Indemnifying Party or its insurers so request allow the Indemnifying Party or its insurers the exclusive conduct of the proceedings in each case on the basis that the Indemnifying Party shall fully consult with the Indemnified Party and keep the Indemnified Party fully informed and the Indemnifying Party shall fully indemnify the Indemnified Party for all costs incurred as a result of any such request or nomination by the Indemnifying Party or its insurers; and

24.2.2.3 not admit liability in respect of or settle the matter without the prior written consent of the Indemnifying Party such consent not to be unreasonably withheld or delayed

24.2.3 If the Indemnifying Party has notice of any actual or potential Claim it shall inform the Indemnified Party and if the indemnifying Party has conduct of any litigation and negotiations in connection with a claim the Indemnifying Party shall promptly take all proper action to deal with the claim so as not by any act or omission in connection with the Claim to cause the indemnified party's interests to be materially prejudiced

24.2.4 If the Indemnifying Party does not elect to have conduct of any litigation and negotiations in connection with a Claim by notice in writing to the Indemnified Party within 7 days of the Indemnified Party giving notice of the matter in accordance with clause 24.2.3 the Indemnified Party shall be at liberty to take such action in relation to that matter as it considers expedient to dispute resist appeal compromise defend remedy or mitigate the matter in question subject to a duty to use all reasonable endeavours to mitigate the liability of the Indemnifying Party in respect of that Claim

25. DECISION MAKING PROCESSES FOR THE PRINCIPAL CONTRACT

25.1 All decisions that the Parties are required to make pursuant to the Principal Contract shall be made in accordance with the requirements of and procedures detailed in Schedule 4

25.2 Where the **Parties** (in accordance with **the decision processes** detailed in Schedule 4) fail to determine the method of payment or refund arising from any change to the Principal Contract pursuant to the terms of the Principal Contract then payment shall be made by or to the Parties by way of an adjustment of the Unitary Charge

26. FINAL CONTRACTOR PAYMENT AND COMPENSATION EVENTS

[\[Eversheds comment - as above, will need mechanics for split, particularly in relation to two parties\]](#)

Early Termination

- 26.1 In the event of early termination of the Principal Contract (by any of the reasons described in clauses 49 to 59 of the Principal Contract) [Council Default/Contractor Default/Force Majeure/Bribery and Corruption/Voluntary Termination/Breach of Re-financing] the Parties will be required to make payments to the Contractor (such payment dependant upon the reasons for the termination) pursuant to clauses 50 to 61 of the Principal Contract
- 26.2 Should such payments to the Contractor (“the Final Contractor Payment”) arise due to causes other than Council Default then the Parties:-
- 26.2.1 shall agree each parties Confirmed Proportioned Financial Contribution in accordance with clause 19.1.3; and
- 26.2.2. shall apportion between them the Final Contractor Payment in proportion to their Confirmed Proportioned Financial Contributions
- 26.3 Should the Final Contractor Payment arise due to a Council Default the following shall apply:-
- 26.3.1 if the termination has resulted from a Council Default which is the default of one Party only then that Party shall pay the Final Contractor Payment and indemnify the other Parties from and against any claims or damages made by or awarded to the Contractor against the other Parties as a result of termination and shall further be liable to the other Parties for any direct losses of those Parties arising from such termination
- 26.3.2 if the termination has resulted from a Council Default which is the default of two or more Parties the Parties shall agree each Parties Confirmed Proportioned Financial Contribution in accordance with clause 19.1.3 and shall pay the Final Contractor Payment in proportion to their Confirmed Proportioned Financial Contribution (where all Parties have been in default) or pay the Financial Contractor Payment pro rata their respective Confirmed Proportioned Financial Contribution (where two Parties have been in default)

26.3.3 if the termination has resulted from a Council Default which is the default of two Parties only then those Parties shall indemnify the non defaulting Party from and against any claims or damages made by or awarded to the Contractor against the non defaulting Party as a result of termination and shall further be liable to the non defaulting Party for any direct losses of that Party arising from such termination
[\[Eversheds comment - proportions?\]](#)

Compensation Events

26.4 In the event that a Compensation Event shall arise pursuant to clause 17 or a Relief Event shall arise pursuant to clause 18 of the Principal Contract (jointly referred to in this clause as “an Event”) and the Contractor is able to apply for relief from its obligations and/or claim compensation under the Principal Contract then:-

26.4.1 should compensation be payable to the Contractor due to causes other than breach by the Councils of the Principal Contract (“a Council Breach”) then the Parties shall apportion between them the compensation payable to the Contractor in proportion to each Party’s current portion of the Unitary Charge

26.4.2 should compensation arise due to a Council Breach the following shall apply:-

- (a) if compensation has resulted from a Council Breach which is a breach by only one Party then that Party shall pay the compensation due to the Contractor
- (b) if compensation has resulted from a Council Breach which is a breach by two or all of the Parties those Parties shall pay the compensation due to the Contractor in proportion to each Party’s current portion of the Unitary Charge (where all Parties have been in breach) or pay the compensation due to the Contractor pro rata their respective current portion of the Unitary Charge (where two Parties have been in breach)

[Eversheds comment - proportions?]

26.5 should an Event cause any one or more of the Parties to suffer Direct Loss (whether in addition to any payment of compensation to the Contractor pursuant to clause 17 of the Principal Contract or not) then:-

26.5.1 if the Direct Loss was suffered as a result of a Council Breach by the Party suffering the loss then that Party shall bear the loss

26.5.2 if the Direct Loss was suffered as a result of a Council Breach by all the Parties or as a result of no Council Breach then each Party shall bear its own loss

[D.N is this fair?]

26.5.3 if the Direct Loss was suffered as a result of a Council Breach by one or more Party or Parties and one or more other Party or Parties (who are not the Party or Parties responsible for the Council Breach) suffer Direct Loss then:-

26.5.3.1 the Party or Parties who have suffered the Direct Loss shall subject to a duty to mitigate such loss quantify the Direct Loss and provide proof of such Direct Loss to that Party or those Parties who have been in Council Breach

26.5.3.2 the Party or Parties who have been in Council Breach shall indemnify the Party or Parties who have suffered the Direct Loss [pro rata their shares of the Unitary Charge]

[D.N E & Y please help with formula to deal with this]

26.5.4 In this clause 26.5 the term Direct Loss shall include all losses costs expenses damages and liabilities which arise directly from the Event

[D.N We also need to consider if there should be compensation flowing between the Councils where the Contractor is in Default and only one Council suffers a Direct Loss as a result. If we accept the principle that losses will be shared in this event the drafting of clause 26.5.2 will need to be changed]

[\[Eversheds comment - as above, need mechanics for split, particularly in relation to two parties to ensure contribution equals 100%\]](#)

27. REVIEW AND RENEWAL OF THIS AGREEMENT

27.1 The Parties shall meet on the Review Date **[DN: The Parties need to meet after the Contractor meets: final “Annual Contract Review Date” as defined in the PA needs checking]** or more frequently if such meeting is reasonably required by any Party to review the terms of this Agreement and the Constitution Agreement entered into in accordance with clause 8.1.1 and to agree any changes that may be required

to any of the terms and conditions of either of this Agreement or the Constitution Agreement

27.2 Where the Parties are unable to agree any changes to this Agreement the matter shall be referred to dispute resolution for determination in accordance with clause 28

28. DISPUTE RESOLUTION PROCEDURE

[\[Eversheds comment - what happens during any period of dispute - do we need to consider default/interim position?\]](#)

[\[Eversheds to see if Eversheds litigation people have any ideas\]](#)

28.1 The Parties intend to settle any disputes or differences that may arise between the Parties in relation to any aspect of this Agreement or the Principal Contract without recourse to any third party adjudicator

28.2 Any disputes or differences arising between the Parties in relation to this Agreement or to the Principal Contract shall be resolved in accordance with this clause 28 and clause 3

28.3 Where a dispute or difference is in the opinion of any Party incapable of swift and satisfactory resolution between the Parties the matter shall be referred to the appropriate senior officers of each Party. Where in the opinion of any such Chief Officer the matter remains in dispute the matter shall be referred to the Chief Executive and each Leader of the Council of each Party

28.4 Where in the opinion of the Chief Executive and Leaders of the Council of each Party the matter remains in dispute the matter **shall** be referred to mediation administered by the Centre for Effective Dispute Resolution, Exchange Tower, 1 Harbour Exchange Square, London E14 9GB

28.5 In the event of a dispute or difference the officers of the Parties (detailed in clause 28.3) shall endeavour to agree an interim solution to the dispute or difference to best ensure that the effect of such dispute or difference is minimised so far as practicable. This may include the agreement of appropriate interim arrangements pending the resolution of the dispute or difference

29. ASSIGNMENT

29.1 The rights and obligations of each and/or any of the Parties under this Agreement shall not be assigned novated or otherwise transferred (whether by virtue of any legislation or any scheme pursuant to any legislation or otherwise) to any person other than an assignment novation or transfer of the whole of each and/or any Parties rights and obligations under this Agreement being assigned novated or otherwise transferred to a single entity but so that the rights and obligations of individual Parties may be transferred to separate entities having the legal capacity power and authority to become a party to and to perform the obligations of the relevant Party under the Principal Contract and being one of those people detailed in clause 67.1 of the Principal Contract and in each case being the WDA in respect of the Contract Area of the Party whose rights and obligations under the Principal Contract have been assigned novated or otherwise transferred to it

30. COUNTERPARTS

30.1 This Agreement may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument

31. EMU CONTINUITY OF CONTRACT

31.1 The Parties confirm that the occurrence or non-occurrence of an event associated with economic and monetary union in the European union will not have the effect of altering any term of or discharging or excusing performance under this Agreement or any transaction or give a party the right unilaterally to alter or terminate this Agreement or any transaction

31.2 The words “an event associated with economic and monetary union in the European union” shall include without limitation each and any combination of the following:-

31.2.1 the introduction of changeover to or operation of a single or unified European currency (whether known as the Euro or otherwise);

31.2.2 the fixing of conversion rates between a member state’s currency and the new currency or between the currencies of member states;

31.2.3 the substitution of that new currency for the ECU as the unit of account of the European Union;

31.2.4 the introduction of that new currency as lawful currency in a member state;

31.2.5 the withdrawal from legal tender of any currency which before the introduction of the new currency was lawful currency in one of the member states;

31.2.6 the disappearance or replacement of a relevant rate option or other price source for the ECU or the national currency of any member state or the failure of the agreed sponsor (or successor sponsor) to publish or display a relevant rate index price page or screen; or

31.2.7 the withdrawal of any member state from a single or unified European currency

32. INFORMATION AND CONFIDENTIALITY

32.1 The Parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matter relating to the Agreement

32.2 Clause 32.1 shall not apply to:-

32.2.1 any disclosure of information that is reasonably required by persons engaged in the performance of its obligations under the Agreement

32.2.2 any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause

32.2.3 any disclosure which is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory authority having the force of law

32.2.4 any disclosure of information which is already lawfully in the possession of the receiving Party prior to its disclosure by the disclosing Party

32.2.5 any disclosure by the Parties of information relating to the operation and maintenance of the properties and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to any proposed new contractor its advisers and lenders should any or all of the Parties decide to re-tender the Principal Contract)

32.2.6 any disclosure of information by the Parties to any other department office or agency of the Government

32.2.7 any disclosure by the parties of any document or part thereof related to this Agreement and which the other Parties (acting reasonably) have agreed contains no commercially sensitive information

32.2.8 any disclosure for the purpose of:-

32.2.8.1 the examination and certification of accounts; or

32.2.8.2 any examination pursuant to **the Audit Commission Act 1998 (as amended by the Local Government Act 2003)** of the economy efficiency and effectiveness with which the Parties have used their resources; and

32.2.9 any disclosure by the Parties of any documents or part thereof related to the Agreement or the Agreement itself or any part thereof for the purpose of tendering or making alternative arrangements for the provision of the Services

32.3 Where disclosure is permitted under clause 32.2 other than clauses 32.2.4 32.2.6 32.2.8 and 32.2.9 the recipient of the information shall be placed under a binding obligation of confidentiality the same as that contained in this Agreement

32.4 The Parties shall co-operate fully and in a timely manner with any request from time to time of any [auditor](#) (whether internal or external) of any Party including any official of the Environment Agency, Best Value Inspectorate or any other statutory inspectorate to provide documents or to procure the provision of documents relating to the Principal Contract and to provide or to procure the provision of any oral or written explanation relating to the same. In particular any auditor of any Party shall be permitted access to any and all documentation in the possession custody or control of any Party (who shall procure that any person acting on its behalf who has such documents and/or other information shall also provide such access). This right will include the power to interview staff examine and take copies of any and all documentation and have access to and take copies of any computer data held for the purposes of the Principal Contract

32.5 The Parties shall co-operate fully and in a timely manner with any request from time to time of any auditor (whether internal or external) of any Party (including any official

of the Environment Agency, Best Value Inspectorate or any other statutory inspectorate) to inspect any Waste Management Facilities and any other premises from which the project is delivered such request to be made on the giving of reasonable notice to the Party

- 32.6 In accordance with the Audit Commission Act 1998 the Parties acknowledge and agree that the Auditor appointed by the Audit Commission may examine such documents and seek such explanations as he or she may require for the purposes of his or her audit
- 32.7 For the avoidance of doubt no Party shall be in breach of this clause 30 (Information and Confidentiality) by reason of any disclosure properly and reasonably made pursuant to this clause 32.4 32.5 and 32.6
- 32.8 The provisions and obligations set out in this clause shall survive and remain in force upon and following the termination or expiry of this Agreement for a period of three years
- 32.9 The Parties shall not make use of this Agreement or any information issued or provided by or on behalf of the parties in connection with this Agreement otherwise than for the purpose of this Agreement except with the prior written consent of the other Parties which they may withhold in their absolute discretion
- 32.10 Where one Party in carrying out its obligations under this Agreement is provided with information from or by a third party that Party shall not disclose or make use of any such information otherwise than for the purpose for which it was provided unless that Party has sought the prior written consent of that third party and has obtained the prior written consent of the other Parties such consent not to be unreasonably withheld or delayed

[D.N any for consideration?]

33. LAW OF CONDUCT AND JURISDICTION

The Contract shall be governed by the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales

34. MALADMINISTRATION

The Parties shall co-operate fully with the Local Ombudsman as defined in the Local Government Act 1974 and in any investigations of a complaint

35. NOTICES

35.1 Form of Notice

Any demand notice or other communication given in connection with or required by this Agreement shall be made in writing (entirely in the English language) and shall be delivered to or sent by pre-paid recorded delivery to the recipient at its registered office or its address stated in this Agreement (or such other address as may be notified in writing from time to time) or sent by facsimile transmission to the recipient

35.2 Service

Any such demand notice or communication shall be deemed to have been duly served:-

35.2.1 if delivered by hand when left at the proper address for service; or

35.2.2 if given or made by pre-paid recorded delivery or registered post two Business Days after being posted; or

35.2.3 if sent by facsimile on the day of transmission provided that the facsimile was transmitted before 4.00 pm and a confirmatory copy is on the same day that the facsimile is transmitted sent by pre-paid first class post in the manner provided for in this clause 35.2

provided in each case that if the time of such deemed Service is either after 4.00 pm on a Business Day or on a day other than a Business Day Service shall be deemed to occur instead at 10.00 am on the following Business Day

In this clause the term "Business Day" means any day other than weekends or bank or public holidays

[**Eversheds comment - thoughts about electronic service between Councils?**](#)

36. PUBLIC RELATIONS AND PUBLICITY

Each Party shall not by itself its employees or agents knowingly make any press releases or communicate with representatives of the press television radio or other communications media on any matter concerning the Agreement without the prior

written approval of all the Parties which any Party may in its absolute discretion withhold

37. SEVERABILITY

If any term condition or provision contained in this Agreement shall be held to be invalid unlawful or unenforceable to any extent such condition or provision shall not affect the validity legality or enforceability of the remaining powers of this Agreement

38. SUCCESSORS

This Agreement shall be binding upon and shall ensure to the benefit of each Party's permitted successors and assignees

39. THIRD PARTY DETAILS

The Parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it but this does not affect any right or remedy of a third party which exists or is available apart from such Act

40. WAIVER

40.1 The failure or delay by a Party in exercising any right power or remedy under this Agreement shall not in any circumstances impair such right power or remedy nor operate as a waiver of it. The single or partial exercise by a Party of any right power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right power or remedy

40.2 Any waiver of a breach of or default under any of the terms of this Agreement shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement

41. ENTIRE CONTRACT

This Agreement and the Constitution Agreement (once it has been duly executed by the Parties in accordance with this Agreement) sets forth the entire agreement between the Parties with respect to the subject matter covered by it and supersedes and replaces all prior communications representations (other than fraudulent

representations) warranties stipulations undertakings and agreements whether oral or written between the Parties. The Parties acknowledge they do not enter into this Agreement in reliance on any warranty representation or undertaking by any other Party other than those contained in this Agreement and that all its remedies for any breach of this Agreement are set out in this Agreement provided that this shall not exclude any liability which the Parties would otherwise have against each other in respect of any statements made fraudulently or negligently by or on behalf of the Party prior to the date of this Agreement

SCHEDULE 1

Payment Provisions

[Eversheds comment - as flagged above, various mechanisms needed to cover scenarios on payment/reduction proportions. Also reference to clause 2.6 of the contract or repeat text regarding rounding up of figures or calculations between the parties may not split equally]

SCHEDULE 2

Constitution Agreement

[Eversheds general comment - decision making timing to be further discussed. Urgent decisions seem to conflict with the efforts of the Councils to hedge each other around with limitations. The Councils need to consider the scope of delegations to the project officer and/or other officers or acknowledge that there are limitations of time which flow from a joint arrangement and the reservations included. We note the reference to Schedule 3 (which we have not seen) which may overcome the potential timing difficulties]

DATED

2006

- (1) **BRACKNELL FOREST BOROUGH COUNCIL**
- (2) **READING BOROUGH COUNCIL**
- (3) **WOKINGHAM DISTRICT COUNCIL**

CONSTITUTION AGREEMENT

Pursuant to Section 102 of the Local Government Act 1972 for
the constitution of the []
Joint Waste Disposal Board

EVERSHEDS

Eversheds House
70 Great Bridgewater Street
Manchester M15 5ES
Tel: 0161 831 8000
Fax: 0161 832 5337

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THIS AGREEMENT is made on day of

2006

1. Parties

The parties to this Agreement (known collectively as “the Councils”) are (1) BRACKNELL FOREST BOROUGH COUNCIL of Easthampstead House Town Square Bracknell Berkshire RG12 1AQ (Bracknell) (2) READING BOROUGH COUNCIL of Civic Offices, Civic Centre Reading Berkshire RG1 7TD (Reading) and WOKINGHAM DISTRICT COUNCIL (3) of Council Offices Shute End, Wokingham Berkshire (Wokingham)

2. Recitals

- 2.1 The Councils have powers and responsibilities under the Environmental Protection Act 1990 as waste disposal authorities and have decided to make arrangements for the carrying out of those powers and responsibilities jointly.
- 2.2 The parties wish to work together to secure the proper exercise of those powers and duties by establishing a joint committee for this purpose.

IT IS HEREBY AGREED AS FOLLOWS

3. CONSTITUTION OF THE JOINT WASTE DISPOSAL BOARD

- 3.1 On **the date of the coming into force of the Joint Working Agreement** there shall be constituted in accordance with arrangements made under Section 101 (5) of the Local Government Act 1972 a joint committee, to be called the Joint Waste Disposal Board (“the Committee”) for the purpose of discharging the functions assigned to **it** as set out in this Agreement. **Each of the Councils will take such action as is necessary to abolish the Committee also known as the Joint Waste Disposal Board as it was constituted immediately before the coming into existence of the Committee**
- 3.2 The Committee shall consist of **6** members and each of the Councils shall be entitled to appoint **2** members to the Committee.
- 3.3 A member appointed to the Committee shall hold office for four years **and shall be eligible for re-election upon the expiry of such term** provided that if the member should cease to be a member of the Council by which he was appointed then membership shall cease.

- 3.4 If and to the extent of the powers and duties of any of the Councils are or become the responsibility of the Executive of the Council in question (in accordance with Section 13 of the Local Government Act 2000) then the reference in clause 3.1 to Section 101 of the Local Government Act 1972 shall be construed where appropriate as including a reference to Regulation 11 of the Local Authorities Arrangement for the Discharge of Functions) (England) Regulations 2000

4. **APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN**

- 4.1 The Committee shall at their annual meeting in each year appoint a chairman and the chairman shall unless he resigns his office or ceases to be a member of the Committee continue in office until a successor is appointed **at the next available meeting. In the event of the Chairman ceasing to be Chairman at any time before an annual meeting the Committee may elect a member of the Committee to be a temporary Chairman to hold office until a Chairman shall have been elected at the annual meeting and for the avoidance of doubt any reference in this Agreement to “the Chairman” shall be deemed to include a reference to any such temporary Chairman**
- 4.2 The Committee may at their annual meeting in each year appoint one of their number to be Vice-Chairman and the Vice-Chairman shall unless he resigns his office or ceases to be member of the Committee continue in office until a successor is appointed **at the next available meeting. In the event of the Vice-Chairman at any time before an annual meeting the Committee may elect a member of the Committee to be a temporary Vice-Chairman until a Vice-Chairman shall have been elected at the annual meeting and for the avoidance of doubt any reference in this Agreement to “the Vice-Chairman” shall be deemed to include a reference to any such temporary Vice-Chairman**
- 4.3 **The Chairman and Vice-Chairman shall not be members of the same Council (unless (but only for as long as) the non-availability or unwillingness to serve of any member or members at any relevant time shall prevent this clause from being observed)**

4.4 Any power exercisable by the Chairman in accordance with this Agreement shall in the absence of the Chairman or if the Office of Chairman is vacant be exercisable by the Vice-Chairman

5. MEETINGS OF THE COMMITTEE

5.1 The first meeting of the Committee shall be the annual meeting for the year then current and thereafter the first meeting held after 30th June in any year shall be the annual meeting.

5.2 At all meetings the Chairman if present shall preside. If the Chairman is not present the Vice-Chairman if present shall preside. If both the Chairman and the Vice-Chairman are absent the meeting may choose a person to preside at that meeting. Any powers exercisable by the Chairman at a meeting of the Committee shall be exercisable by any other person presiding at the meeting in accordance with this clause

5.3 The Committee shall hold ordinary meetings no less than 4 times a year (including the annual meeting) except that:-

5.3.1 the Chairman may in his discretion cancel any ordinary meeting if in his opinion there is insufficient business to be transacted;

5.3.2 a special meeting may be convened at any time on the requisition of the Chairman or at least two members of the Committee

5.4 The standing orders of the [Bracknell/Reading] shall apply to the proceedings of the Committee as they do to meetings of that Council, except that in the event of those standing orders conflicting with the provisions of this Agreement this Agreement shall prevail

5.5 The quorum shall be no less than three representatives which must comprise at least one representative from each of the Councils. In the event that a quorum is not present at any meeting of the Committee within half an hour of its notified commencement time the meeting shall stand adjourned to the same day in the next week and at the same time and place unless the Chairman otherwise agrees.

5.6 If at the adjourned meeting a quorum is not present within half an hour of the time appointed the representative or representatives present shall constitute a

quorum and shall have power to decide upon all matters which could properly have been disposed of at the meeting which was adjourned. **[Can powers be conferred on an inquorate meeting? Would there not need to be a delegation to individual members?]**

5.7 Notwithstanding the generality of the foregoing it is expressly agreed that in the event of an equality of votes the Chairman shall not exercise a second or casting vote.

5.8 **Where any decision which would otherwise fall to be taken by the Committee is urgent and is accordingly required to be taken before the next available meeting of the Committee the decision may be taken by the Chairman who shall before taking the decision consult the Project Director and any other Officer considered appropriate by the Chairman or by the Project Director**

6. ESTABLISHMENT OF WORKING PARTIES

6.1 The Committee may appoint working parties as **it** considers necessary to advise **it** in the discharge of **its** functions or to exercise those functions.

7. FUNCTIONS OF THE COMMITTEE

7.1 The function of the Committee is to administer the operation of the waste disposal arrangements of the Councils in accordance with the Joint Working Agreement and in accordance with the Principal Contract (as defined in the Joint Working Agreement **and in particular Schedule 4 thereto once the delegations detailed in Schedule 4 have been confirmed by the Committee**)

Without prejudice to the generality of the foregoing the Committee will:-

7.1.1 **subject to the said confirmation by the Committee be responsible for the decisions assigned to it in Schedule 4 of the Joint Working Agreement; and**

7.1.2 exercise such powers as **each or all of the Councils** may from time to time delegate to the Committee with the agreement of the Committee; and

7.1.3 **arrange for the exercise by the Project Director and any other designated officers of the powers allocated to them either in**

**Schedule 4 to the Joint Working Agreement (as may be varied
by the Committee) or in this Constitution**

- 7.2 For the avoidance of doubt, it is agreed that the Committee will not be responsible for making decisions on:
- 7.2.1 change to the policies and targets of the Councils
 - 7.2.2 the determination of the budget of the Councils regarding waste management
- 7.3 The Committee shall not be empowered to acquire land or any interest in land.
- 7.4 The Committee may arrange for work to be carried out directly or on an agency or contract basis by any of the Councils. **[DN: to note potential consultancy costs may arise from this power]**
- 7.5 Where any power exercisable by the Committee or by the Chairman or Vice-Chairman commits or is likely to commit the Councils to expenditure in excess of [£100,000] or to result in the aggregate expenditure of the Councils under the Project for the then current financial year exceeding [£100,000] then any such decision shall notwithstanding the other provisions of this Constitution shall be referred to the Councils for the decision to be taken by them. The figure of [£100,000] shall be reviewed by the Councils at [five] yearly intervals the first such review to take place on the [fifth] anniversary of the review and in respect of each such review the reference in this clause to [£100,000] shall be deemed to have been amended by the substitution therefor of the appropriate reviewed figure**
- 8. OFFICERS, STAFF AND ACCOMMODATION**
- 8.1 The proper office within [Bracknell/Wokingham] [being the head of democratic services] shall be the Clerk to the Committee and the Section 151 Officer of the Administering Authority shall be the Treasurer to the Committee
- 8.2 The Borough Solicitor or otherwise the chief legal advisor of [Bracknell/Wokingham] shall be the Legal Adviser to the Committee.
- 8.3 The Project Director (herein called “the Project Director”) shall be directly responsible to the Committee.

8.4 The Committee shall **secure the provision of** (but not employ) such staff, accommodation and other resources as the Committee shall consider necessary for the discharge of its obligation under this Agreement.

9. **COSTS OF THE JOINT COMMITTEE**

All costs in connection with the establishment and administration of the Committee shall be borne by the Parties in equal shares.

10. **TERMINATION OF THIS AGREEMENT**

10.1 This Agreement shall be effective for the duration of the Contract Period (as defined in the Project Agreement between the Councils and [] of even date hereto) and for such other extended period as the Councils may agree

10.2 The Councils agree to review **this Agreement** for such period and with such modifications as they consider appropriate at any time after the fifth anniversary of its commencement.

10.3 The provisions of this Agreement may be amended at any time subject to the agreement of the Councils.

11. **INTERPRETATION**

11.1 In this Agreement any reference to any Act of Parliament or statutory instrument shall be construed as a reference to any Act of Parliament or Statutory Instrument amending the first mentioned Act or Instrument and for the time being in force

THE COMMON SEAL of BRACKNELL

FOREST BOROUGH COUNCIL)

was hereunto affixed)

in the presence of:)

THE COMMON SEAL of READING)

BOROUGH COUNCIL was hereunto)

affixed in the presence of:)

THE COMMON SEAL of WOKINGHAM)

DISTRICT COUNCIL was hereunto)

affixed in the presence of:)

SCHEDULE 3

[Management Arrangements]

[Consider including reservation of third party consultants as part of the management arrangements]

SCHEDULE 4

Delegation of responsibilities

Approval, consents and decisions under the Principal Contract

1. The Principal Contract envisages that the Parties will be responsible to the Contractor for the reaching of decisions in respect of the following:-
 - (i) the need for contractual change
 - (ii) the giving or withholding of consents or approvals
 - (iii) whether an event described in the Principal Contract has or has not occurred
 - (iv) whether a methodology plan or report is satisfactory
 - (v) whether action should be taken or not taken
 - (vi) other issues and matters requiring consideration and decision pursuant to the Principal Contract **or arising from the Lakeside Contract**

2. In order to facilitate the decision making process of the Parties, the Parties **will** put the following arrangements in place:-
 - (i) the granting of the necessary authority **(through the Joint Waste Disposal Board)** to the Project Director Section 151 Officers **and other Officers of the Parties** to make those decisions delegated to them in Schedule 4 to this Agreement
 - (ii) the creation of the Joint Waste Disposal Board as a Joint Executive Committee in accordance with the Constitution attached as Schedule 2 to this Agreement
 - (iii) the Parties each undertake that they have passed the necessary resolutions as required by the Constitution of each Council to ensure that the delegated powers detailed in this Schedule 4 have been properly given to the Project Director **and other appropriate officers** and that proper authority has been vested in the Joint Waste Disposal Board to enable it to operate and make decisions that bind the Parties in accordance with the provisions of this Agreement

3. The Parties agree that they will abide by the decisions of the Project Director the Section 151 Officers and the Joint Waste Disposal Board so far as those decisions are properly made in accordance with the provisions of this Agreement

4. The Parties have agreed that certain matters should be reserved to be decided by themselves. In this event the decision of all Parties shall be unanimous in order for the decision to become effective save in

circumstances where the decision will only affect (both financially and in respect of service provision) the Parties or Party making the decision **and the provisions of clause 16 of this Agreement will apply in this respect.**

5.1 The Parties hereby agree that their decisions will be made in the manner described in Appendix A to this Schedule 4 **(as approved by the JWDB)** provided that the operation of the decision making process detailed in Appendix A will not **(where the decision is to be made other than by each of the Parties unanimous agreement):-**

5.1.1 result in a Manifest Injustice to one or more Parties as a result of that Party or those Parties being unable to operate a veto on the decision

5.1.2 **commit or is likely to commit the Parties to expenditure in excess of [£100,000] or to result in the aggregate expenditure of the Parties under the Project for the then current financial year exceeding [£100,000] in which event the decision shall be reserved to be made unanimously by all the Parties. The figure of [£100,000] shall be reviewed by the Parties at [five] yearly intervals the first such review to take place on the [fifth] anniversary of the review**

5.2 In this paragraph 5 the term “Manifest Injustice” shall mean any situation where:-

(a) The implementation of a decision will have a financial impact on a Party which is significantly disproportionate to the gain or benefit bestowed upon that Party by the decision

(b) A decision will have a significant financial impact as a result of its implementation which will place undue and unreasonable budget pressures on the Party as a result of the decision

(c) The implementation of a decision would conflict with a fundamental policy of any Party

5.3 Where decisions are to be made by the JWDB the members of that JWDB shall have at all times due regard to advice of the technical offers of all the Parties relevant to the decisions to be made

5.4 Where decisions are to be made by the Project Director he will seek advice and make those decisions taking into account the advice of the technical officers of all the Parties relevant to the decisions to be made **and shall report the decision to the next meeting of the JWA**

5.5 The Parties agree to use all reasonable endeavours to convene the JWDB in sufficient time to comply with timescales for decisions detailed in the Principal Contract where such decisions fall to be made by the JWDB

5.6 **In the event of an urgent decision being required by the Parties and in the event that it is not possible to call a meeting of the JWDB to consider such decision (where such decision is delegated to the JWDB) then:-**

- 5.6.1 The Project Director shall be entitled to make such decision with the agreement of the Chairman of the JWDB (or in the absence of the Chairman the Vice Chairman of the JWDB); and**
- 5.6.2 Details of the decision and the reason for its urgency shall be reported to the next meeting of the JWDB**

APPENDIX A

Manner in which the Parties will reach joint decisions under the Principal Contract

In this Appendix all references are to clause numbers and clause headings in the Principal Contract. All terms used shall have the meanings assigned to them in the body of the Agreement

[\[Eversheds general comment - may need to consider unanimous decisions or reference other than to JWDB, as joint committee arrangements legislative provisions refer to majority decisions\]](#)

Clause Number	Clause Heading	Description of decision to be made	Description of manner in which the decision is to be made	Deemed Decision where no decision is reached
5.13	Changes to Financing Agreements	Consents to amendment, waiver or exercise of a right under Financing Agreements	Section 151 Officer of Administrative Authority in consultation with Section 151 Officers of other Councils	No
6.5	Project Director	Appointment of Project Director and scope of authority	JWDB	N/A
6.6	Removal of Project Director	Removal or a replacement of Project Director	JWDB	N/A
6.13.1	Conflict between Council's Project Director and Authorised Officer	Resolution of conflict	(1) The Chief Executive of the Councils or (2) JWDB in the event that conflict not resolved	N/A

8.1.4	Contractor to obtain Planning Permission for the Facilities	Further measures to be taken by Contractor	Project Director	Deemed no measures required
8.3.1.3	Obligations of Contractor	Variations to Planning Permission	Project Director	Deemed no
8.4	Proceedings	Appointment of Leading Counsel	Project Director	N/A
8.4.2/8.4.4/ 8.4.5	Proceedings	(1) Pursuing proceedings within budget (2) Pursuing proceedings where exceeded budget	(1) Project Director (2) Unanimous agreement of the Councils	Deemed no
8.4.3/8.9.10	Proceedings/Satisfactory Planning Permission	Requirement for opinion of Leading Council	Project Director	Deemed no
8.5.1	Cost of proceedings	Approval of cost of proceedings	Project Director	Deemed no
8.6	Costs awarded in proceedings	Manner of cost reimbursement	Project Director	Adjustment to Unitary Charge
8.8.1	Satisfactory Planning Permission	Decision to proceed during Challenge Period	Project Director	No
8.8.6/ 8.8.7/ 8.8.8	Satisfactory Planning Permission	(1) Decision as to whether planning permission is unsatisfactory and (2) Decision to refer to expert	(1) Project Director (2) Project Director	(1) N/A (2) Deemed no

8.8.8.1/ 8.8.10	Satisfactory Planning Permission	Decision whether to issue Council Notice of Change	JWDB	Deemed no
8.9	Failure to obtain Planning Permission	Decision to terminate or require a Revised Project Plan	All Councils unanimous agreement	Revised Project Plan required
8.9	Failure to obtain Planning Permission	Agreement of dates	Project Director	Deemed no extension of time
8.10	Revised Project Plan	Agree Revised Project Plan or reject, suggest modifications and consider revised plan	Project Director	N/A
8.12	Termination of a result of Planning Failure	Decision to terminate	Unanimous decision of all the Councils	Decision deemed not to have served a notice
8.13.3	Delays and Extensions of Time	Agreement of Revised Project Plan Date	Project Director	Deemed no extensions
8.8.1/8.14	Challenge Period	Direction to proceed to implement Planning Permission	Project Director	Deemed no
9.5	Necessary Consents	Consents to variations relaxation or waiver of Necessary Consents	Project Director	Deemed no

11.1	Engagement of Construction Contractor and Operating Contractor	Terminate, waive rights to or Variation to the Ancillary Documents	Project Director	Deemed no
12.2.2	Procedures for commenting on the Designs	Notification inconsistencies of	Project Director	Deemed no inconsistencies
13.1.1	Materials	Substitution of materials	Project Director	N/A
13.2	Compliance with Council Notices	(1) Issue of Notices and (2) Subsequent written consent	(1) Project Director (2) Project Director	(1) N/A (2) Deemed no
15.1.2	Right of Inspection	Decision to open up Works for inspection	Project Director	N/A
15.1.3	Right of Inspection	Notification of non compliance	Project Director	N/A
15.2	Supply information of	Need for information from the Contractor	Project Director	N/A
16.2	Supply information of	Further information request	Project Director	N/A

17.2/17.3	Delays due to a Compensation Event	<p>(1) Agreement to the claim for compensation;</p> <p>(2) Means of payment of any costs claimed and</p> <p>(3) The amount of compensation and any resultant time extension or other relief from obligations are reasonable</p>	<p>(1) Unanimous agreement of the Councils</p> <p>(2) Project Director</p> <p>(3) Project Director</p>	<p>(1) Deemed no</p> <p>(2) Adjustment to unitary charge</p> <p>(3) Not agreed</p>
18	Delays due to a Relief Event	<p>(1) Agreement to the claim for relief and</p> <p>(2) Any resultant time extension</p>	<p>(1) Project Director</p> <p>(2) Project Director</p>	<p>(1) Deemed no</p> <p>(2) Not agreed</p>
19.2.1/ 19.2.3	Completion of relevant facility	Agreement to date and arrangements for diverting contract waste to facility and assistance required	Project Director	Agreement deemed upon date of Certificate of Completion of Acceptance Tests
21.3	Deposit and Access to As Built Drawings	Access to drawings	Project Director	N/A
22.2	Emergencies	<p>(1) Determination as to whether an emergency exists and scope of services required</p> <p>(2) Agreement of charges relating thereto and/or dispute referral</p>	<p>(1) Project Director</p> <p>(2) Project Director</p>	<p>N/A</p> <p>(2) Deemed not agreed</p>

23.5	Planned Maintenance	Information request to verify report	Project Director	N/A
23.7	Planned Maintenance	To agree deficiencies in maintenance	Project Director	Deemed disputed
23.10	Sinking Fund	Decision whether survey required, dates for the same and assistance required	Project Director	No survey required
23.11	Sinking Fund	To agree survey on different date	Project Director	Not agreed
23.13.2	Sinking Fund	Rectification period	Project Director	Within a reasonable time dependant upon the circumstances
25.1	Council Change to the Works or Services	<p>(1) Proposals by the Parties for change resulting in savings (including the resultant Estimate, means of payment of reduction and related matters)</p> <p>(2) Agreement of payment arrangements for cost of change</p> <p>(3) Proposals by the Parties for change resulting in additional costs (including the resultant Estimate means of payment and related matters)</p> <p>(4) All other related matters</p>	<p>(1) Project Director</p> <p>(2)(8)&(4) Project Director if within budget</p> <p>(2)(3)&(4) Unanimous Agreement of all the Councils if budget exceeded</p>	<p>(1) No request deemed to be given</p> <p>(2) Through adjustment to unitary charge</p> <p>(3) No request deemed to be given</p> <p>(4) Deemed no Council change or Council notice of change withdrawn</p>

25.1.14.3	Change to the Works or Services	Approval of third party costs estimate and requirement for those costs to be incurred	Project Director	Not agreed
25.2	Small Works Changes	Agreement relating to small works changes Agreement to schedule of rates	Project Director	Deemed acceptance
25.3	Contractor Changes in Works or Services	(1) Consideration of the Contractors proposals for change including subsequent modifications (2) Agreement to implementation of change resulting in savings (3) Agreement to implementation of change resulting in additional costs (4) All other related matters	(1) Project Director (2) JWDB (3) Unanimous agreement of each affected Party through the JWA (ref: clause 16 of this Agreement) (4) JWDB	(1) Deemed No (2) Deemed No (3) Deemed No (4) Deemed No
26.1.1	Qualifying Change in Law	Decision as to whether notice issued expressing an opinion	Project Director	N/A
26.1.2	Qualifying Change in Law	Discussion and agreement and agreement to mitigation	Project Director	Deemed not agreed
26.1.3	Qualifying Change in Law	Agreement to incurring capital expenditure	Unanimous decision of the Councils	Deemed not agreed
26.1.4	Qualifying Change in Law	(1) Consideration/determination of Councils Share	(1) Unanimous decision of the Councils	(1) N/A

		(2) Means of payment if Contractor cannot obtain funding	(2) Project Director	(2) Payment through Unitary Charge
26.2	Urgent Qualifying Change in Law	(1) Consideration/determination of matters under clause 26.2 (2) Considering costs	(1) Project Director (2) Project Director	N/A (2) Costs deemed not agreed
26.3	Unaffordable Qualifying Change in Law	Consideration of affordability of Change in Law and whether to serve a Council Notice of Change	Unanimous decision of the Councils	N/A
28	VAT	Payment of VAT, VAT elections, requests for information	Unanimous agreement of S.151 Officers of all the Councils	Deemed No
29.2	Project Director to reply by issuing Council's Monthly Reply	Agreement to Monthly Report	Project Director	Deemed agreed
29.3	Councils may suspend payment if no Monthly Report	Decision to suspend payment	Project Director	No payment suspension
29.6	Contractor disagrees with Councils Monthly Reply	Decision to confirmation or modification of the Councils Monthly Reply	Project Director	Deemed confirmed
29.7.1	Referral to Dispute Resolution Procedure	Decision to refer to dispute	Project Director in consultation with Chair of JWDB	N/A

30	Refinancing	(1) Consent to Qualifying Refinancing and (2) Agreement relating to manner of receipt of share basis and method of calculation	(1) Unanimous decision of the Councils (2) Unanimous decision of the Councils	(1) Deemed no (2) Through reduction in Unitary Charge
31.1.5	Market Testing	Agreement of Invitation to Tender	Project Director	Deemed not agreed
31.1.10	Market Testing	Agreement to grouping of market tested services	Project Director	Deemed not agreed
31.1.12	Market Testing	Veto of tenderers	Project Director	No veto
31.1.16	Market Testing	Dispute selection of replacement provider	Project Director	No dispute
31.1.21	Market Testing	Agreement to Market Testing proposal	Project Director and S.151 Officers of the Councils	N/A
32.1	Best Value Duty	Request for and scope of assistance under clause 32.1.2	Each affected party	N/A
32.2	Best Value Reviews	(1) Need for the Parties to affect a best value review (2) Parties requirements for Contractor involvement in review	(1) Project Director (2) Project Director	(1) N/A (2) N/A

		(3) Consideration of results of review and decision to issue a Best Value Service Change Notice (4) Agreement to a Best Value Review Plan	(3) JWDB (4) JWDB	(3) N/A (4) Deemed Best Value Change Service Notice withdrawn
33.3	Councils Monitoring	Election to monitor	Project Director	N/A
33.6	Increased Monitoring	Requirement for additional monitoring etc	Project Director	N/A
33.7	Increased Monitoring	Service of Notice	Project Director	N/A
34	Audit Access	Request for audit access	Project Director	N/A
35.1/35.4	Insurance	Request sign up to Letter of Undertaking by Broker, decisions to request policies, evidence of premiums, inspect and request information generally	Section 151 Officer of Administrative Authority in consultation with Section 151 Officers of other Councils	N/A
35.6	Breach	Payment of premiums	S.151 Officer of Administering Authority in consultation with S.151 Officers of other Councils	N/A
35.7	Notification of Claims	Request information claims	Project Director and S.151 officer of Administering Authority in Consultation	N/A

			with S.151 officer of Councils	
35.10	Councils Approval	Approval of Insurers	Project Director	Deemed approval
35.11	Councils Change	Need for additional Contractor insurance	Unanimous agreement of the Councils	N/A
35.16.1	Obligations	(1) Approval of reinstatement contractor (2) Approval of terms and timetable for Reinstatement Works	(1) Project Director (2) Project Director	(1) Deemed approved (2) Deemed approved
35.16.2/3/6	Obligations	(1) Approval or rejection of Reinstatement Outline and consideration of any revised outlines. (2) Approval of person to effect reinstatement works	(1) Project Director (2) Project Director	(1) Deemed approved (2) Deemed approved
35.19	Risks that become uninsurable	Agreement that risk uninsurable and means of management	Unanimous agreement of S.151 Officers of all the Councils	Deemed not agreed
35.20	Consequences	(1) Consideration of consequences (2) decision to continue or terminate due to uninsurable risks and related matters	(1) Project Director (2) Unanimous agreement of all Councils	(1) N/A (2) Deemed decision to continue

35.22	Terms and Conditions become unavailable and that	Determination of whether terms are or are not available and any consequences	(1) s.151 Officer of administering Authority in consultation with S.151 Officers of other Councils in event of no dispute (2) JWDB in event of dispute	(1) Deemed terms not available (2) Deemed terms not available
36.2	Investigations	Scope of co-operation in investigations and requirement for documentation etc	Project Director	N/A
38	Intellectual Property	Requirement for data or licensing issues	Project Director	N/A
39	Regular meetings of the Councils and Contractor	Attendance of staff at meetings	Project Director	N/A
40	Operational Manuals	Request for Operation Manuals	Project Director	N/A
41	Contractor's Records	Request for and any inspection information of	Project Director	N/A
42	Environmental Protection and Annual Environmental Report	Considering Environmental Report	Project Director	N/A

43	Data Protection	Decisions in relation to DPA issues	Project Director	N/A
44	Council Step-In	(1) Decision for Councils to step-in step out and any assignment where non urgent scope of action (2) Decision for Councils to step-in and scope of action where urgent	(1) Unanimous agreement of the Councils (2) Project Director who must then refer the matter to the Councils for appropriate budgetary provision to be made	(1) N/A (2) N/A
44.2.4	Right of access	Exercise right of access and remedy breach	JWDB	N/A
46	Employees	(1) Employment information considerations (2) Considering implications of transfers and requirement of the Council	(1) Project Director (2) Project Director	(1) N/A (2) N/A
47	Equal Opportunity	Considering equal opportunities issues and requesting information	Project Director	N/A
49	Termination on Council Default	Considering action on receipt of termination notice	Unanimous decision of the Councils	N/A
49.5	Expropriation Event	Agreement of action in event of Expropriation Event	Project Director	N/A

50	Compensation and Council Default	<p>(1) Agreement to the calculation of compensation</p> <p>(2) Consideration of asset transfer where all Parties interested</p> <p>(3) Consideration of asset transfer where not all Parties interested</p>	<p>(1) Agreement of all Section 151 Officers</p> <p>(2) JWDB for a recommendation to be confirmed by the Councils</p> <p>(3) Each affected Party</p>	<p>(1) N/A</p> <p>(2) N/A</p> <p>(3) N/A</p>
51.1	Right to Termination Contractor Default	<p>(1) Decisions to terminate as a result of Contractor Default</p> <p>(2) Agreement of rectification programme</p> <p>(3) Agreement that rectification effected</p>	<p>(1) Unanimous agreement of all Councils</p> <p>(2) Project Director</p> <p>(3) Project Director</p>	<p>(1) N/A</p> <p>(2) N/A</p> <p>(3) N/A</p>
51.2	Persistent Breach	<p>(1) Decision to serve warning notice</p> <p>(2) Decision giving final warning notice</p>	<p>(1) Project Director</p> <p>(2) Unanimous agreement of all Councils</p>	<p>(1) N/A</p> <p>(2) N/A</p>
52.1	Retendering Election	If the Councils can elect to re-tender decisions to re-tender Principal Contract or requirement expert determination	Unanimous decision of the Councils	Deemed decision to re-tender
52.2	Retendering Procedure	Tendering process and agreement of tender terms	Project Director	N/A
52.2.11	Retendering Procedure	Determination of the highest compliant price	Agreement of Project	N/A

			Director and S.151 Officers of the Councils	
52.2.17	Retendering Procedure	Agreement to post termination service amounts	Agreement of all S.151 officers of the Councils	N/A
52.3	No retendering procedure	Agreement of the Estimated Fair Value of the Contract	Agreement of all S.151 officers of the Councils	N/A
53.3	Termination on Force Majeure	Determination of occurrence of Force Majeure Event	Unanimous agreement of the Councils	N/A
53.4	Termination on Force Majeure	Agreement of terms to mitigate event	Project Director	N/A
53.5/53.6	Termination on Force Majeure	Consideration of whether to terminate the Principal Contract	Unanimous agreement of all the Councils	N/A
53.7	Termination on Force Majeure	Consideration of Contractors Notice	Unanimous agreement of the Councils	Notice not accepted
54	Compensation on termination for Force Majeure	Agreement to calculation of compensation	Unanimous agreement of all S.151 Officers of all the Councils	N/A
55	Termination on Corrupt Gifts and Fraud	Decision related to Prohibited Act and Decision to Terminate	Unanimous agreement of all the Councils	Deemed no termination
56.1	Corrupt Gifts and Fraud	(1) Consideration of transfer of assets (2) Calculation of	(1) As per clause 50 (2) Unanimous	(1) N/A

		compensation	agreement of all Section 151 Officers of the Councils	(2) N/A
57	Voluntary Termination by the Councils	(1) Decision to terminate (2) Consideration of transfer of assets (3) Calculation of compensation	(1) Unanimous agreement of the Councils (2) As per clause 50 (3) Unanimous agreement of all Section 151 Officers of the Councils	(1) N/A (2) N/A (3) N/A
59	Termination by the Councils for Breach of the Refinancing Provisions	(1) Decision to terminate (2) Consideration of transfer of assets (3) Calculation of compensation	(1) Unanimous agreement of the Councils (2) as per clause 50 (3) Unanimous agreement of all Section 151 Officers of the Councils	(1) N/A (2) N/A (3) N/A
61.1	Method of Payment	(1) Decisions regarding method of making payment (2) Agreement of all termination payments	(1)&(2) Agreement of all S.151 officers of the Councils	(1) N/A (2) N/A
62/87	Expiry of Contract Period	Consideration and agreement of all matters arising from the expiry or early termination of the Principal Contract not specifically dealt with elsewhere in this Agreement	Project Director and agreement of all S.151 Officers of the Councils	N/A
62.5.3	Surveys on Termination	Agreement of dates for surveys	Project Director	Revised Contractor dates acceptable

62.5.6	Surveys on Termination	Agreement of rectification or maintenance required and period for rectification etc	Project Director	N/A
62.5.9	Surveys on Termination	Consideration of whether work satisfactory	Project Director	N/A
64	Conduct and Control of claims	Decisions in relation to any claims whether conducted by the Contractor or any of the Councils	Section 151 Officers of Administrative Authority in consultation with Section 151 Officers of other Councils	N/A
66	Change of ownership	Considerations relating to change of ownership and consent to change	Section 151 Officers of Administrative Authority in consultation with Section 151 Officers of other Councils	N/A
67.2	Restriction on transfer of the Contract by the Contractor	Decisions on any transfer/assignment by Contractor or approval of any new sub-contractor	Section 151 Officers of Administrative Authority in consultation with Section 151 Officers of other Councils	No
67.7	No variation of LEFW Agreement	Agreement to vary etc	Unanimous agreement of the Councils	N/A
69	Information and Confidentiality	Decisions on disclosure of confidential information	Project Director	N/A

70	Public Relations and Publicity	Approval of press releases etc	Project Director	N/A
71	Dispute Resolution	All decisions under this clause	Project Director	N/A
72.3	Waver	Decisions regarding any waiver	Project Director	No waiver
79	Amendments	Decisions regarding any amendments to the contract	Unanimous agreement of the Councils	N/A
N/A	N/A	All other matters upon which a party decision must be reached and is not covered by the above	Project Director or where appropriate the unanimous decision of the Councils	N/A

[DN: The following are extracts from the current draft of Environmental Provisions]

1.2.1	Joint Responsibilities	Notice of Trigger Condition	Project Director	N/A
1.2.3/1.2.4	Joint Responsibilities	All provisions in connection with any action	Project Director	N/A
1.2.6	Joint Responsibilities	(1) Notification of indemnity claim (2) Settling amount to be paid	(1) Project Director (2) Project Director and	N/A N/A

			S.151 Officers of the Councils	
1.3.1	Contractor Responsibilities	Consent of Councils to works etc	Project Director	No consent
1.4.2.3	Further Joint Responsibilities	Consent of Councils to notify	Project Director	No consent
1.7.1	Appointment of Remediation Handback Consultant	Requirement for survey	Project Director	N/A
1.7.2/1.7.3	Appointment of Remediation Handback Consultant	Approval of deed of appointment	Project Director	Not approved
1.7.7.2/1.7.8	Appointment of Remediation Handback Consultant	Approval of Handbook Specification and time extensions	Project Director	Not approved
1.8.1	The Tender Process	Agreement to 3 proposed Contractors and form of Contract	Project Director	Not agreed
1.8.4	The Tender Process	Councils approval to Tender	Project Director	Not approved
1.9.2.5/1.9.2.6	Remediation Handback Works	Request for information and site visits	Project Director	N/A

1.9.2.7	Remediation Handback Works	Representations of the Councils	Project Director	N/A
1.9.2.9	Remediation Handback Works	Authority to disclose	Project Director	Not agreed
1.9.2.10	Remediation Handback Works	Exercise of right to attend meetings and/or request correspondence	Project Director	N/A
1.9.2.13	Remediation Handback Works	Agreement variations to Handback Specification	Project Director	Not agreed
1.11.4	Remediation Handback Completion	Referral to Expert	Project Director	N/A
1.11.5	Remediation Handback Completion	Agreement to further works	Project Director	N/A
1.14	Expert Determination	Representations from Councils	Project Director	N/A

**THE COMMON SEAL of BRACKNELL
FOREST BOROUGH COUNCIL** was hereunto
affixed in the presence of:-

.....
MAYOR

.....
BOROUGH SOLICITOR

**THE COMMON SEAL of WOKINGHAM
DISTRICT COUNCIL** was hereunto
affixed in the presence of:-

**THE COMMON SEAL of READING
BOROUGH COUNCIL** was hereunto
affixed in the presence of:-

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