



re3 Project Team

REVIEW OF RE3 JOINT WORKING AGREEMENT 2011

Introduction

The Joint Working Agreement forms part of the re3 Joint Waste PFI. It describes the way in which the three councils will work together to bring about the successful delivery of the wider contract and to address their own obligations under it.

Since the commencement of the contract in December 2006, the councils have proposed a number of amendments to the Joint Working Agreement. Some of the proposed changes have been approved by the Joint Waste Disposal Board (JWDB) and some of the changes have been approved by the Contractor. At no time, however, have the changes been signed/sealed by all three councils and thus adopted.

There is a need to conclude the process and to that end a review has been undertaken which considers the previously proposed changes and newly identified ones. In keeping with the expectations of the JWDB (as per the minutes of the meeting on March 16th 2011) it is intended that a final, amended version of the JWA be created in consultation with our appropriate in-house legal advisors. It will pull together the approved, appropriate and necessary changes to the JWA. Once complete, and in an appropriate form, it will be put before the JWDB at its next meeting and, by an agreed date, subsequently adopted.

The changes included within the final version of this document will supersede all previously proposed changes.

	Original Text	Proposed Text
JWDB 30 Sept 2008	15.1.2 where the indemnity arises from Contamination at the Smallmead facility the costs will be split in the ratio 32% Wokingham District Council, 78% Reading Borough Council	15.1.2 where the indemnity arises from Contamination at the Smallmead facility the costs will be split in the ratio 39.5% Wokingham District Council, 60.5% Reading Borough Council
JWDB 30 Sept 2008	<p>PART 3: Apportionment of LATS Allowances as a Consequence of the Principal Contract</p> <p>21. APPORTIONMENT OF LATS ALLOWANCES</p> <p>A surplus or deficit in LATS Allowances may arise as a result of the Principal Contract. LATS Allowances are not a cash asset, but are an asset which may result in a cash flow to the Parties, and as such should be allocated between Parties in accordance with this Part 3 (Financial Allocation Mechanism).</p> <p>Where the Parties send a tonnage of BMW to landfill which differs from the Parties LATS Allowances, the resulting net LATS Allowance surplus or deficit is transferred between the Parties, for a peppercorn, in order that the net total LATS Allowance tonnage surplus or deficit for all Parties is allocated in proportion to the relative contribution of each Party to the Contract Waste Category A.</p>	<p>21. APPORTIONMENT OF LATS ALLOWANCES</p> <p>A surplus or deficit in LATS Allowances may arise as a result of the Principal Contract. LATS Allowances are not a cash asset, but are an asset which may result in a cash flow to the Parties, and as such should be allocated between Parties in accordance with this Part 3 (Financial Allocation Mechanism).</p> <p>Where each Party sends a tonnage of BMW to landfill which differs from their LATS Allowance a net LATS Allowance will result. Each Party shall retain its own LATS surplus or deficit.</p> <p>Any Party or Parties retaining a LATS Allowance deficit will have a first refusal to purchase, on terms to be mutually agreed, the surplus LATS Allowance</p>

		of the other Party or Parties up to the limit of their deficit.
JWDB 30 Sept 2008	<p>A. Allocation of Tonnages at Civic Amenity Sites</p> <p>A2 From the date of signature of this Agreement until the Completion of the MRF at Smallmead Civic Amenity Site related payments will be split on the basis of the proportions of Contract Waste Category A tonnages at the Civic Amenity Sites which are allocated to each of the Parties during the financial year prior to the date of this Agreement.</p> <p>A3 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 Independent 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. Subject to Clause A7 the levels of use established by the Independent Survey shall be used to set the proportion of the payments to be made by each party.</p> <p>A4 The survey detailed in sub-clause A3 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.</p>	<p>A Allocation of Tonnages at Civic Amenity Sites</p> <p>A2 From the date of signature of this Agreement until Full Service Commencement Civic Amenity site related payments will be split on the basis of the proportions of Contract Waste Category A tonnages at the Civic Amenity Sites which are allocated to each of the Parties during the financial year prior to the date of this Agreement.</p> <p>A3 Immediately following Full Service Commencement an Independent Survey will be undertaken by the Parties to establish the levels of use of the Civic Amenity Sites by people living in each Party's [Parties] administrative area. The scope and methodology for this survey and the identity of the person who will carry out the survey will be agreed by the re3 Project Manager. Unless otherwise agreed by the Joint Waste Disposal Board, the independent survey will be completed as part of the Contractual 'User Satisfaction Survey. Subject to Clause A7 the levels of use established by the Independent Survey shall be used to set the proportion of the payments to be made by each party.</p> <p>A4 The survey detailed in sub-clause A3 shall be repeated annually and the results of the same shall:</p>

	<p>A7 For the purposes of the allocation of tonnages of household waste received at Smallmead Civic Amenity Site, Contract Waste arising from West Berkshire BC, shall be deemed to arise at Reading BC.</p>	<p>(i) apply from the beginning of the next Contract Year for a period of one year.</p> <p>(ii) be used to establish how payments shall be apportioned between the parties until the next survey results are applied.</p> <p>A7 For the purposes of the allocation of tonnages of household waste received at Smallmead Civic Amenity site, 50 % of Contract Waste arising from West Berkshire BC shall be deemed to arise at Reading BC and 50% of Contract Waste arising from West Berkshire BC shall be deemed to arise at Wokingham BC.</p>
	<p>B. Allocation of Tonnages at Bring Sites</p> <p>B2. From the date of signature of this Agreement until the Completion of the MRF at Smallmead, payments will be split, in accordance with this Schedule 1 (Financial Allocation Mechanism), on the basis of the proportions of Contract Waste Category A tonnages at the Bring Sites which are allocated to each of the Parties during the financial year prior to the date of this Agreement.</p> <p>B3 During the first complete Contract Year of the term of the Principal Contract, after the completion of the MRF at Smallmead, a Survey will be undertaken by the Parties to establish the levels of use of the Bring 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</p>	<p>B Allocation of Tonnages at Bring Sites</p> <p>B2. Contract Waste Category A Bring Site tonnages shall be allocated between the Parties based upon actual tonnage data provided by the Contractor and collected from Bring Sites falling within the relevant Borough.</p> <p>B3. In the event of actual Borough defined tonnage data no longer being available, a Survey will be undertaken by the Parties to establish the levels of use of the Bring 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. The levels of use established by the survey shall be used to set the proportion of</p>

	<p>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 party's proportion of use.</p> <p>B4 The survey detailed in sub-clause B3 shall be repeated two years after the First Survey 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.</p> <p>B5. Payments shall be apportioned between the Parties on the basis of the results of any survey undertaken in accordance with clauses B3 and B4 in the next following Contract Year of the term of the Principal Contract.</p> <p>B6. For the avoidance of doubt Bring Sites Site Payments arising from Contract Waste delivered to the Bring Sites by members of the public outside the administrative areas of the Parties shall be apportioned equally between the Parties.</p>	<p>the payments to be made by each party which shall be in the same proportion for each party as that party's proportion of use.</p> <p>B4. The survey detailed in sub-clause B3 shall be repeated two years after the First Survey 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.</p> <p>B5. Payments shall be apportioned between the Parties on the basis of the results of any survey undertaken in accordance with clauses B3 and B4 in the next following Contract Year of the term of the Principal Contract.</p> <p>B6. For the avoidance of doubt Bring Sites Site Payments arising from Contract Waste delivered to the Bring Sites by members of the public outside the administrative areas of the Parties shall be apportioned equally between the Parties.</p> <p>B7. For the avoidance of doubt Bring Site Payments arising from new Sites established at the request of one of the Parties via the Schedule of Additional Rates in the Principal Contract shall thereafter be apportioned to the requesting Party.</p>
	<p>(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 Key Project and in order to promote the efficient management of the Principal Contract</p>	<p>BACKGROUND</p> <p>(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</p>

		Key Project Facilities 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	(C) The parties have agreed to appoint Reading Borough Council as Administering Authority for the purposes of the Principal Contract throughout the Contract Period
	<p>"Principal Contract"</p> <p>The Contract between the Parties and RE3 Limited dated October 2006 commencing upon the and terminating upon</p> <p>and including the following additional documentation :-</p> <p>(i) a Direct Agreement dated the of October 2006 between the Parties NIBC Bank NV and RE3 Limited</p>	<p>"Principal Contract" The Contract between the Parties and RE3 Limited dated 31 October 2006 commencing upon the 4 December 2006 and terminating upon 3 December 2031 and including the following additional documentation</p> <p>and including the following additional documentation:-</p> <p>(1) a Direct Agreement dated the 31st of October 2006 between the Parties NIBC Bank NV and RE3 Limited</p>
	10.1 For the purposes of the administration of the JWDB the standing orders of Bracknell shall apply and shall take precedence over the standing orders of the other Parties for this purpose	10.1 For the purposes of the administration of the JWDB the standing orders of Bracknell Forest Borough Council shall apply and shall take precedence over the standing orders of the other Parties for this purpose
	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	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 Final Contractor Payment Pro Rata their respective Confirmed

	Confirmed Proportioned Financial Contribution (where two Parties have been in default) such calculation to be effected in accordance with the principles of apportionment contained in paragraph 23.3 and 23.4 of Schedule 1	Proportioned Financial Contribution (where two Parties have been in default) such calculation to be effected in accordance with the principles of apportionment contained in paragraph 23.3 and 23.4 of Schedule 1
	27.1 The Parties shall meet on Review Date and at least 18 months but not more than 30 months before the Expiry Date of the Principal Contract 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	27.1 The Parties shall within two months of the Review Date and at least 18 months but not more than 30 months before the Expiry Date of the Principal Contract 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
	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	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, 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

	of any computer data held for the purposes of the Principal Contract	purposes of the Principal Contract
	<p>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</p>	<p>36. PUBLIC RELATIONS AND PUBLICITY 36.1 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</p> <p>36.2 The Administering Authority will maintain and periodically review, in consultation with the Parties, a Communications Protocol which will describe the co-ordination of communications between the Parties.</p>
	<p>6. ENERGY RECOVERY PAYMENT</p> <p>6.1 Introduction</p> <p>The Energy Recovery Payment is allocated between the Parties in the proportions set out in Appendix 4, and in accordance with the following formula:</p> <p>EX=E*PROX</p> <p>Where:</p> <p>EX Is the Energy Recovery Payment for the relevant Contract Month attributable to the relevant Party</p> <p>E Is the Energy Recovery Payment for the relevant</p>	<p>6. ENERGY RECOVERY PAYMENT</p> <p>6.1 Introduction</p> <p>The Energy Recovery Payment is allocated between the Parties in the proportions set out in Appendix 4, and in accordance with the following formula:</p> <p>$E_x = (ERL + (TLm * EHRL) * I + X) * PRO_x + (GRL + TGm * EHRG * I) * PRG_x$</p> <p>Where:</p> <p>E_x Is the Energy Recovery Payment for</p>

	<p>Contract Month as calculated in accordance with Schedule 24 (Payment Mechanism) of the Principal Contract</p> <p>PROX Is the proportion share for the relevant Party as set out in Appendix 4</p>	<p>the relevant Contract Month attributable to the relevant Party</p> <p>ERL Is the Lakeside Gate Fee (excluding the Haulage Element) multiplied by the Lakeside Chargeable Tonnage</p> <p>TLm Is the Lakeside Chargeable Tonnage and any tonnage above the “Maximum Annual Quantity” (as defined in the WPSA) delivered by the Contractor where such deliveries have been approved by the Councils pursuant to Schedule 2 (Lakeside Interface)</p> <p>EHRL Is the Haulage Price for Lakeside</p> <p>I Is Indexation</p> <p>X Without double counting, other amounts payable by or to be indemnified by the Council under Schedule 2 (Lakeside Interface)</p> <p>PRO_x Is the proportion share for the relevant Party as set out in Appendix 4</p>
--	---	--

		<p>GRL Is the Grundon Gate Fee (excluding the Haulage Element) multiplied by the Grundon Chargeable Tonnage</p> <p>TGm Is the Grundon Chargeable Tonnage delivered by (or on behalf of) the Contractor</p> <p>EHRG Is the Haulage Price for Grundon</p> <p>PRG_x Is the proportion share for the relevant Party as set out in Appendix 4</p>
	<p>7.2 The Monthly Landfill Payment</p> <p>The Monthly Landfill Payment (excluding Recovery Performance Deductions and Diversion Performance Deductions) is calculated in accordance with the following formula:</p> <p>$L_x = L * PCL_x$</p> <p>Where:</p> <p>L_x Is the Monthly Landfill Payment for the relevant Contract Month attributable to the relevant Party</p>	<p>7.2 The Monthly Landfill Payment</p> <p>The Monthly Landfill Payment (excluding Recovery Performance Deductions and Diversion Performance Deductions) is calculated in accordance with the following formula:</p> <p>$L_x = L * PCL_x$</p> <p>Where:</p>

<p>L Is the Monthly Landfill Payment for the relevant Contract Month calculated in accordance with Schedule 24 (Payment Mechanism) of the Principal Contract</p> <p>PCL_x Is the Percentage Contribution by the relevant Party to the total Residual Contract Waste Category A delivered to the Contractor in the relevant Contract Month</p> <p>7.3 Percentage Contribution to Residual Contract Waste Category A</p> <p>PCL_x = (TL_x) / (Σ_{xyz} TL)</p> <p>Where:</p> <p>PCL_x Is the Percentage Contribution by the relevant Party to the total Residual Contract Waste Category A delivered to the Contractor in the relevant Contract Month</p> <p>TL_x Is the tonnage of Residual Contract Waste Category A attributable to the relevant Party for the relevant Contract Month</p> <p>Σ_{xyz} TL Is the total tonnage of Residual Contract Waste Category A for the relevant Contract Month</p>	<table> <tr> <td data-bbox="1234 248 1381 280">L_x</td><td data-bbox="1402 248 1881 370">Is the Monthly Landfill Payment for the relevant Contract Month attributable to the relevant Party</td></tr> <tr> <td data-bbox="1234 402 1266 435">L</td><td data-bbox="1402 402 1881 613">Is the Monthly Landfill Payment for the relevant Contract Month calculated in accordance with Schedule 24 (Payment Mechanism) of the Principal Contract</td></tr> <tr> <td data-bbox="1234 646 1308 678">PCL_x</td><td data-bbox="1402 646 1881 857">Is the Percentage Contribution by the relevant Party to the total tonnage of Contract Waste Category A sent to landfill by the Contractor in the relevant Contract Month</td></tr> </table> <p>7.3 Percentage Contribution to Residual Contract Waste Category A</p> <p>PCL_x = (TL_x) / (TI)</p> <p>Where:</p>	L_x	Is the Monthly Landfill Payment for the relevant Contract Month attributable to the relevant Party	L	Is the Monthly Landfill Payment for the relevant Contract Month calculated in accordance with Schedule 24 (Payment Mechanism) of the Principal Contract	PCL_x	Is the Percentage Contribution by the relevant Party to the total tonnage of Contract Waste Category A sent to landfill by the Contractor in the relevant Contract Month
L_x	Is the Monthly Landfill Payment for the relevant Contract Month attributable to the relevant Party						
L	Is the Monthly Landfill Payment for the relevant Contract Month calculated in accordance with Schedule 24 (Payment Mechanism) of the Principal Contract						
PCL_x	Is the Percentage Contribution by the relevant Party to the total tonnage of Contract Waste Category A sent to landfill by the Contractor in the relevant Contract Month						

		<p>PCL_x Is the Percentage Contribution by the relevant Party to the total tonnage of Contract Waste Category A sent to Landfill by the Contractor in the relevant Contract Month</p> <p>TL_x Is the tonnage of Contract Waste Category A sent to landfill attributable to the relevant Party for the relevant Contract Month</p> <p>TI Is the tonnage of Contract Waste Category A sent to Landfill by the Contractor in the relevant Contract Month excluding for the avoidance of doubt the Burghfield Direct Tonnage</p>
--	--	---