

ESSEX COUNTY COUNCIL
and
BASILDON DISTRICT COUNCIL
BRAintree DISTRICT COUNCIL
BRENTWOOD BOROUGH COUNCIL
CASTLE POINT BOROUGH COUNCIL
CHELMSFORD BOROUGH COUNCIL
COLCHESTER BOROUGH COUNCIL
EPPING FOREST DISTRICT COUNCIL
HARLOW DISTRICT COUNCIL
MALDON DISTRICT COUNCIL
ROCHFORD DISTRICT COUNCIL
TENDRING DISTRICT COUNCIL
UTTLESFORD DISTRICT COUNCIL

INTER AUTHORITY AGREEMENT

relating to the Essex Waste Partnership Strategy Programme



N A B A R R O

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INTER AUTHORITY AGREEMENT

DATE

2009

PARTIES

- (1) ESSEX COUNTY COUNCIL of PO Box 11, County Hall, Chelmsford, Essex CM1 1LX (the "**WDA**"); and
 - (2) BASILDON DISTRICT COUNCIL of The Basildon Centre, St Martin's Square, Basildon, Essex, SS14 1DL (subsequently referred to as "**Basildon**");
 - (3) BRAINTREE DISTRICT COUNCIL of Causeway House, Bocking End, Braintree, Essex CM7 9HB (subsequently referred to as "**Braintree**");
 - (4) BRENTWOOD BOROUGH COUNCIL of Town Hall, Ingrave Road, Brentwood, Essex CM15 8AY (subsequently referred to as "**Brentwood**");
 - (5) CASTLE POINT BOROUGH COUNCIL of Kiln Road, Thundersley, Benfleet, Essex, SS7 1TF (subsequently referred to as "**Castle Point**");
 - (6) CHELMSFORD BOROUGH COUNCIL of Civic Centre, Duke Street, Chelmsford, CM1 1JE (subsequently referred to as "**Chelmsford**");
 - (7) COLCHESTER BOROUGH COUNCIL of PO Box 884, Town Hall, Colchester, CO1 1FR (subsequently referred to as "**Colchester**");
 - (8) EPPING FOREST DISTRICT COUNCIL of Civic Offices, High Street, Epping, Essex CM16 4BZ (subsequently referred to as "**Epping Forest**");
 - (9) HARLOW DISTRICT COUNCIL of Civic Centre, The Water Gardens, Harlow, Essex CM20 1WG (subsequently referred to as "**Harlow**");
 - (10) MALDON DISTRICT COUNCIL of Princes Road, Maldon, Essex CM9 5DL (subsequently referred to as "**Maldon**");
 - (11) ROCHFORD DISTRICT COUNCIL of Council Offices, South Street, Rochford, Essex, SS4 1BW (subsequently referred to as "**Rochford**");
 - (12) TENDRING DISTRICT COUNCIL of Town Hall, Station Road, Clacton on Sea, Essex CO15 1SE (subsequently referred to as "**Tendring**"); and
 - (13) UTTLESFORD DISTRICT COUNCIL of Council Offices, London Road, Saffron Walden, Essex CB11 4ER (subsequently referred to as "**Uttlesford**") (together, the "**WCAs**")
- (together the "**Parties**")

BACKGROUND

- (A) Essex County Council is the Waste Disposal Authority under section 30(2) of the Environmental Protection Act 1990.
- (B) Basildon District Council, Braintree District Council, Brentwood Borough Council, Castle Point Borough Council, Chelmsford Borough Council, Colchester Borough Council, Epping Forest District Council, Harlow District Council, Maldon District Council, Rochford District Council, Tendring District Council, and Uttlesford District Council are the Waste Collection Authorities for their respective areas under section 30(3) of the Environmental Protection Act 1990.
- (C) The Waste Strategy for England 2007 issued by the Secretary of State pursuant to the Environmental Protection Act 1990 (the EPA) sets out certain Local Authority targets for recycling. The 1999 Landfill Directive (99/31/EC) requires the diversion of prescribed amounts of biodegradable municipal waste from landfill and this is enforced by the Waste Emissions and Trading Act (2003) (WET Act).
- (D) The Parties wish to establish a clear and accountable framework in this inter authority agreement under which they can work together in delivering their respective waste disposal and waste collection responsibilities and strategies and to promote the economic, environmental and social well-being of their respective areas.
- (E) The WDA intends to publish a contract notice in the Official Journal of the European Union in order to seek expressions of interest for a private sector provider to design build finance and operate waste treatment facilities for residual Municipal Waste (being waste not specifically collected for recycling or composting) and to procure the same through the competitive dialogue procedure pursuant to The Public Contracts Regulations 2006. The Parties acknowledge that as the solutions emerge as part of the competitive dialogue process, there will be a need to further develop and enhance certain details as currently provided for under this inter authority agreement. The parties are flexible and willing to do so, and open to working together towards finalising and refining the details which are in the mutual interest of the Parties.
- (F) Southend-on-Sea Borough Council will work in partnership with Essex County Council as another waste disposal authority and with the WCAs but is not a party to this inter authority agreement.
- (G) The WDA has applied for credits pursuant to the Government's Private Finance Initiative and the Parties acknowledge that this Inter Authority Agreement is further necessary to demonstrate to the sponsoring Central Government Departments, the waste industry and to the funding community that the WCAs and the WDA will work together sufficiently and as necessary to ensure the project is deliverable.
- (H) The WDA also intends to procure capacity in existing waste management facilities together with procuring new facilities to treat Organic Waste which may be collected by the WCAs.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this inter authority agreement ("IAA"), unless the context otherwise requires the following terms shall have the meanings given to them below:

"Adjudicator"

means a suitably qualified and independent adjudicator appointed under **clause 24.3** and **clause 24.4** of this IAA;

"Annual Review"

means the review as described under **clause 9**;

"Appropriate Limit"

means the limit described in **clause 35**;

"Authorised Representative"

means a person who is duly authorised to bind the relevant party or act on that party's behalf in respect of a particular agreement or action;

"Best Value"

local authorities have a duty placed on them as best value authorities by virtue of section 3 of the Local Government Act 1999 "to make arrangements to secure continuous improvements in the way they exercise their functions having regard to a combination of economy, efficiency and effectiveness";

"BMW Landfill Diversion"

means the diversion of biodegradable Waste from Landfill;

"Break Clause"

means the mechanism under which a WCA is entitled to terminate this IAA, as described under **clause 7.8**;

"Business Day"

means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

"Commercial Waste"

means as defined under section 75(7) Environmental Protection Act 1990 together with Section 7 and schedule 4 of the Controlled Waste Regulations 1992;

"Compensation Payment"

means a payment made by the WCA to the WDA in accordance with [Part 2] of **Schedule 6** (Payment and Costs Schedule);

"Compost"

Means, Composting or Anaerobic Digestion as both are defined in National Indicator 192 (as amended or replaced from time to time). If NI 192 (or its replacement) is repealed with no further substitute, then the definition shall remain the definition extant at the date on which the NI (or its replacement) was repealed.

"Compost Credit"

means a payment which the WDA shall make to the WCA in accordance with [Part I Part B] of **Schedule 6** (Payment and Costs Schedule);

"Confidential Information"

means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), and may include information whose disclosure would, or would be likely to, prejudice the commercial interests, trade secrets, intellectual property rights and know-how of any Party (or their staff and employees) and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988;

"Contaminant"

means the presence in Contract Waste or Organic Waste of material in a load which:

- cannot lawfully and be processed in the Facility to which it is delivered or
- cannot be processed technically in the Facility to which it is delivered without detriment to that Facility or its efficiency
- and in both cases which a reasonable contractor acting diligently and in accordance with good industry practice could not remove from that load using reasonable endeavours to do so

as such definition is augmented in the Contract Waste or Organic Waste Contamination Protocols as developed in accordance with **Schedule 7** (Contamination);

"Contingency Delivery Point"

means the alternative Delivery Points set out in **Schedule 9** (Delivery Points) or where no contingency Delivery Points are set out (or the relevant Contingency Delivery Point is unavailable) an alternative Delivery Point meeting the Delivery Point Standards as agreed between the relevant WCA and the WDA;

"Contract Waste"

[means all Municipal Waste arising in Essex and Southend-on-Sea delivered to the PPP Contractor by or on behalf of the WDA, Southend-on-Sea Borough Council, or the WCAs or their contractors but not including:

- (i) the WCA Retained Waste nor
- (ii) [other commodities of Waste not to be included in the PFI, eg abandoned cars?]¹;

"Delivery Point"

means a transfer station or a Facility, which is licensed to receive Waste, which meets the Delivery Point Standards and which is located either within the area of a

¹ ECC to confirm likely Non Contract Waste. SP DN: This is relevant to the PPP. Do we need an equivalent for the Organic Waste Contractor?

WCA or within 5 miles of a WCA's boundary as further described in **Schedule 9** (Delivery Point);

"Delivery Point Standards"

means the standards as agreed between the Parties as further described in **Schedule 9** (Delivery Point);

"Dispute Resolution Procedure"

means the procedure for the resolution of disputes set out at **clause 24**;

"DPA"

means the Data Protection Act 1998;

"Dry Recyclable Waste"

means for each WCA the commodities described as dry recyclables in the relevant WCA Baseline

"EIR"

means the Environmental Information Regulations 2004;

"EPA"

means the Environmental Protection Act 1990;

"Essex Waste Partnership"

means the group of local authorities in Essex and Southend-on-Sea who are working together to deliver the Mutual Aims and consisting of Essex County Council, Southend-on-Sea Borough Council, Basildon, Braintree, Brentwood, Castle Point, Chelmsford, Colchester, Epping Forest, Harlow, Maldon, Rochford, Tendring and Uttlesford;

"European Economic Area"

means from time to time the European Economic Area as created by the Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both that function and responsibilities of the European Economic Area;

"Expiry Date"

means the date which is defined in the Project Agreement as the "Expiry Date"

"Facilities"

means the new facilities for the treatment and disposal of residual waste, which the WDA will procure as part of the Project Agreement;

"Fees Regulations"

means The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

"Financial Close"

means the date the PPP Contractor enters into the Project Agreement with the WDA or, as the context dictates, the date on which it is proposed that the PPP Contractor enters into the Project Agreement with the WDA and in both cases, if relevant, the senior debt funding agreements are entered);

"FOIA"

means the Freedom of Information Act 2000;

"Food Waste"

means biodegradable waste derived from cooked and uncooked food materials typically consisting of vegetable peelings, meat scraps, bones, fish, excess or spoiled prepared food, and other discards from domestic kitchens;

"Force Majeure Event"

means the occurrence after the date of this IAA of:

- (b) war, civil war, armed conflict or terrorism; or
- (c) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of any actions or breach of the WCA; or
- (d) pressure waves caused by devices travelling at supersonic speeds, which directly causes either Party or (in the case of a WCA) all or any of them (the "**Affected Party**") to be unable to comply with all or a material part of its obligations under this IAA;

"Green Waste"

means biodegradable waste such as vegetation and plant matter (includes the yard trimmings, leaves, shrubs, plants, grass, street trees, or tree trunks, park trees or tree trunks etc.) from household gardens; [SP Note: Should this exclude parks, recreational facilities and verges?]

"Good Industry Practice"

Means that a Party or contractor (as applicable) is acting in a manner that is consistent with a reasonable and diligent body or contractor (as applicable) acting in the same circumstances and with reference to published guidance, standards and policy.

"Guidance"

means any applicable guidance or directions with which the PPP Contractor is bound to comply as a matter of law;

"Hazardous Waste"

Means waste set out as hazardous in the Hazardous Waste (England) Regulations 2005 or in Regulations made by the Secretary of State pursuant to s62 of the EPA;

"Household Waste"

has the meaning attributed to it in section 75(5) and section 89 of the EPA and Schedules 1 and 2 of the Controlled Waste Regulations;

"IAA"

means this inter authority agreement (including its schedules);

"IAA Commencement Date"

means for each WCA the date set out in Schedule 11 as being the IAA Commencement Date

"IAA Management Board"

means the body established under **clause 5**;

"Indexed"

means where in this IAA amounts are expressed to be "indexed" shall be with reference to such amounts multiplied by the value of the Retail Price Index (all items) most recently published prior to the relevant calculation date

"Industrial Waste"

means as defined under section 75(6) Environmental Protection Act 1990 together with Section 7 and schedule 3 of the Controlled Waste Regulations 1992;

"Initial Review"

means the review procedure as described under **clause 7**;

"Information"

has the meaning given to it in section 84 of the Freedom of Information Act 2000 and section 2 of the Environmental Information Regulations 2004;

"Joint Municipal Waste Management Strategy"

means the Joint Municipal Waste Management Strategy for Essex 2007 to 2032, being the strategic framework for the management of Municipal Waste, jointly developed, approved and adopted by the WCAs and the WDA as reviewed and updated by the WCAs and the WDA at each Annual Review;

"Key Waste Delivery Parameters"

means the key parameters that may affect the delivery and composition of Contract Waste over the duration of this IAA as set out in **Schedule 4** (Key Waste Delivery Parameters) and which shall be reviewed by the Parties at each Annual Review;

"Landfill"

means:

- (a) for the purposes of BMW Landfill Diversion has the meaning given to it in Waste Emissions Trading Act 2003; and

- (b) for the purposes of Landfill Tax has the meaning attributed to it by section 65(1) of the Finance Act 1996;
and **"Landfilled"** and **"Landfilling"** shall be interpreted accordingly;

"Landfill Tax"

has the meaning set out in Section 39(1) of the Finance Act 1996;

"Landfill Allowances Trading Scheme or "LATS""

means the scheme for the assignment, allocation and/or trading of landfill allowances created under the Waste and Emissions Trading Act 2003 and The Landfill Allowances and Trading Scheme (England) Regulations 2004 (as amended, updated or replaced from time to time) and the term **"Landfill Allowances"** shall be construed accordingly;

"Legislation"

means:

- (a) any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (b) any exercise of the Royal Prerogative; and
- (c) any enforceable community right within the meaning of section 2 of the European Communities Act 1972;

in each case in the United Kingdom;

"Local Area Agreement"

means an agreement that contains (among other matters) desired outcomes in respect of municipal waste recycling and landfill diversion, which is developed by a local authority (all single and upper tier authorities) in agreement with local partners through the Essex Waste Partnership and in agreement with central Government.

"Market Practice"

means that the position proposed between the WDA and the PPP Contractor in respect of the Relevant Issues is

- a) in accordance with SOPC4 published by HM Treasury (or its replacement) PPP/PFI guidance issued by WIDP (including any standard drafting) and is in accordance with market practice in respect of similar contracts being entered into between waste disposal authorities and contractors in the UK waste PPP/PFI market or

- b) not in accordance with limb a of this definition but the WDA has agreed (by express amendments to this IAA as appropriate) to absorb any greater liability which would otherwise accrue to the WCA as a result of the PPP Project Agreement being off Market Practice

"Mileage Payments"

means the amount calculated in accordance with **Schedule 6** (Payment and Costs Schedule);

"Minimum Tonnages"

means the tonnages of Waste described as such in the Relevant Contracts and in respect of which the WDA has an obligation to pay or deliver

"Municipal Waste"

means all waste which by virtue of Legislation a local authority has a statutory duty to collect or has a power to collect and in fact does collect , including (without limitation) Household Waste, Commercial Waste, fly tips and street cleansing arisings;

"Mutual Aims"

means the shared objectives of the Parties to secure the most effective collection and disposal of waste for the council tax-payers of Essex in accordance with this IAA and the Relevant Contracts;

"No Better No Worse Position"

means the position of the PPP Contractor as further described in **clause 15.6**;

"Organic Waste"

means Food Waste and/or Green Waste collected by the WCAs pursuant to section 45 of the EPA;

"Organic Waste Delivery Point"

means a transfer station or an Organic Waste facility, which is licensed to receive Organic Waste, which meets the Delivery Point Standards and which is located either within the area of a WCA or within 5 miles of a WCA's boundary as further described in **Schedule 9** (Delivery Points);

"Organic Waste Contingency Delivery Point"

means the alternative Delivery Points set out in **Schedule 9** (Delivery Points) or where no contingency Delivery Points are set out (or the relevant Contingency Delivery Point is unavailable) an alternative Delivery Point meeting the Delivery Point Standards as agreed between the relevant WCA and the WDA;

"Organic Waste Facility"

means a facility for the treatment and disposal of Organic Waste and which may include existing facilities or new facilities procured by the WDA;

"Organic Waste Service"

means the service to be implemented by the relevant WCAs in accordance with their Service Delivery Plans, as further described in **clause 19**;

"Other Party"

means the other party as described in **clause 35.2**;

"Payment Mechanism"

means the payment mechanism set out under the Project Agreement;

"Personal Data"

means personal data as defined in the DPA which is supplied to the Parties or obtained by the Parties;

"PPP Contractor"

means the contractor that has been appointed by the WDA to deliver the Essex Waste Partnership PPP project (or, as the context dictates, during the procurement the hypothetical contractor that the WDA intends to appoint subject to the outcome of the procurement);

"PPP Service Commencement Date"

means the full service commencement date for the new Facilities described as such in the Project Agreement;

"Project Agreement"

means the Project Agreement (together with its schedules and if relevant financing agreements) to be entered into between the WDA and the PPP Contractor relating to the design, construction, finance and operation of residual waste treatment and disposal facilities;

"RCHW"

means a recycling centre for household waste;

"Recycling"

shall have the meaning set out in National Indicator 192 (as amended or replaced from time to time). If NI 192 (or its replacement) is repealed with no further substitute, then the definition shall remain the definition extant at the date on which the NI (or its replacement) was repealed.

"Recyclable Materials"

means any materials collected separately or otherwise separated from Contract Waste for the purposes of Recycling, including (but not limited to) the materials below:

- (a) paper and cardboard;
- (b) plastics;
- (c) ferrous and non-ferrous materials;
- (d) textiles;
- (e) glass;
- (f) wood;
- (g) organic kitchen and garden waste;
- (h) tyres;
- (i) waste electrical equipment,

or such other materials as shall be agreed in writing between the Parties from time to time;

"Recycling Credit"

means section 52 of the Environmental Protection Act 1990 (EPA 1990) as amended by section 49 of the Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) and with the Environmental Protection (Waste Recycling Payments) (England) Regulations 2006 (the 2006 Regulations);

"Request for Information"

shall have the meaning set out in section 8 of the Freedom of Information Act 2000 or section 5 of the Environmental Information Regulations 2004 as relevant (where the meaning of **"Request"** shall apply);

"Relevant Contract"

means the Project Agreement and/or a contract entered into by the WDA for the purposes of procuring or providing waste management facilities as part of the Organic Waste Service;

"Relevant Contractor"

means the PPP Contractor or a contractor appointed by the WDA in respect of the delivery of the provision or procurement of Organic Waste Facilities;

"Relevant Issues"

shall have the meaning set out in **clause 8.5**;

"Responding Party"

Means the party as described in **clause 35**;

"Review"

means the activity described in **clauses 7, 8, 9 and 10**;

"Review Notice"

means the notice as described in **clause 8**;

"Review Procedure"

means the procedure for review set out at **clauses 10, 11 and 12**;

"Revised and Confirmed IAA"

means this IAA as revised and confirmed following the Initial Review in accordance with **clause 8**;

"Service Delivery Plans or "SDP""

means the service delivery plans agreed between each WCA and the WDA as reviewed in accordance with the Review Procedure. Service Delivery Plans to apply from the IAA Commencement Date are set out in **Schedule 8** (Service Delivery Plans) as shall be amended from time to time in accordance with the review procedures set out in clauses 8 to 10;

"Statutory Targets"

means national performance indicators NI 191, NI 192 and NI 193 or any other performance indicators published in Guidance or Legislation as may be issued by CLG, the Audit Commission, Defra or any other competent authority from time to time relating to recovery and recycling (so enshrined following the Waste Strategy for England 2007) together with the diversion requirements set out in the 1999 Landfill Directive (99/31 /EC) requiring all local authorities to divert prescribed amounts of biodegradable municipal waste from Landfill, as enforced by the Waste Emissions and Trading Act 2003;

"Substitute Waste"

has the meaning given to it in **clause 15.7**;

"Tipping Away Payment"

means a payment made by the WDA to a WCA as described in Part 1, Part A of **Schedule 6** (Payment and Costs Schedule);

"Unitary Charge Adjustment Protocol"

means the mechanism to change the unitary charge as provided for under the Project Agreement;

"Waste"

has the meaning ascribed to it in section 75 of the EPA and in the Waste Framework Directive 2006 together with their attendant subordinate legislation;

"Waste Composition"

means the composition of Waste that is delivered to the Delivery Points or Facility by the WCAs, including how the Waste delivered is constituted, its bio-fraction, the commodities which it comprises, the amount of Recyclable Material contained

within it and whether it is Household Waste or Commercial Waste, Dry Recyclables or other materials;

"Waste Strategy for England 2007"

means the government's Waste Strategy for England 2007 issued by the Secretary of State pursuant to the Environment Protection Act 1990;

"WCA"

means a waste collection authority pursuant to section 30(3) of the EPA, and for the purposes of this IAA means Basildon District Council, Braintree District Council, Brentwood Borough Council, Castle Point Borough Council, Chelmsford Borough Council, Colchester Borough Council, Epping Forest District Council, Harlow District Council, Maldon District Council, Rochford District Council, Tendring District Council, and Uttlesford District Council;

"WCA Baseline"

means the baseline Waste and Recycling service to be delivered by each WCA as set out in **Part I** of **Schedule 8** (Service Delivery Plans) as shall be amended from time to time in accordance with the review procedures set out in clauses 8 to 10;

"WCA Default"

means a WCA commits a substantial and material or persistent and material breach of the terms of this IAA which it fails to redress within a reasonable time of receiving a written notice from the WDA to do so;

"WCA Retained Waste"

means the Recyclable Materials which from time to time each WCAs notifies the WDA that it intends to retain for their own Recycling schemes pursuant to S.48 of the EPA and it is agreed this IAA shall stand as notice that for the time being the WCA Retained Waste shall be that set out in the WCA Baseline and shall only be varied or amended in accordance with this IAA;

"WCA Default Termination Notice"

means a notice served pursuant to **clause 26.1** (Termination for WCA Default) which complies with the requirements of **clause 26** (Termination for WCA Default),

"WDA"

means a waste disposal authority pursuant to section 30(2) of the EPA, and for the purposes of this IAA means Essex County Council;

"WDA Default"

means the WDA commits a substantial and material or persistent and material breach of the terms of this IAA which it fails to redress within a reasonable time of receiving a written notice from an affected WCA to do so;

"WET Act"

means the Waste Emissions Trading Act 2003, as amended from time to time;

"WIDP"

means the Waste Infrastructure Delivery Programme or body established by DEFRA or HMT (or in either case their successor bodies) to deliver a Waste Management PFI or PPP programme in England and Wales.

1.2 Interpretation

In this IAA, except where the context otherwise requires:

- (a) the masculine includes the feminine and vice-versa;
- (b) the singular includes the plural and vice-versa;
- (c) a reference in this IAA to any clause, sub-clause, part, 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 IAA;
- (d) save where stated to the contrary, any reference to this IAA or to any other document shall include any permitted variation, amendment, or supplement to such document;
- (e) any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- (f) references to documents being in the "agreed form" means such documents are either initialled by an Authorised Representative of the WDA and relevant WCA or in respect of which there is written communication from each Authorised Representative that the document is agreed;
- (g) a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- (h) headings are for convenience of reference only;
- (i) words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;
- (j) any obligation on a Party to do any act matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and
- (k) subject to any express provisions to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense.

2. COMMENCEMENT AND DURATION

2.1 This IAA will commence on the IAA Commencement Date and continue in full force and effect until the earlier of:

- (a) the Expiry Date
- (b) the early termination of the Project Agreement howsoever pursuant to the provisions for termination therein (in which circumstance **Part III** of this IAA shall be terminated only and the remaining provisions of this IAA shall continue to have effect)

- (c) the relevant provisions of the EPA and WET Act being amended or repealed or other enactment made that this arrangement is rendered ineffective, inappropriate or unlawful;
 - (d) termination for WDA Default in accordance with **clause 25**;
 - (e) termination in respect of one of more WCAs for WCA Default in accordance with **clause 26** (in which circumstance it shall be terminated in part in respect of the removed WCA(s) and shall continue to have effect in respect of the remaining WCAs (if any));
 - (f) the Break Clause is operated in respect of one or more WCAs in accordance with **clause 7.8** (in which circumstance **Part III** of this IAA shall be terminated only in respect of the relevant WCA and the remaining provisions of this IAA shall continue to have effect);or
 - (g) voluntary termination in respect of one or more WCAs in accordance with **clause 27.5** (in which circumstance it shall be terminated in part in respect of the removed WCA and shall continue to have effect in respect of the remaining WCAs (if any)).
- 2.2 The Parties may agree to extend the term in respect of the WDA and any WCA for further by agreement.

PART I

ESSEX WASTE PARTNERSHIP

3. ACTING IN GOOD FAITH AND REASONABLY

3.1 All the Parties agree to act in good faith and reasonably to:

- (a) resolve any difficulties openly, quickly and honestly, before any such issues has a negative impact on the operation of this IAA or a Relevant Contract;
- (b) provide information to each other that will (or could) impact in the obligations, right and liabilities of the another Party to this IAA or to a Relevant Contractor;
- (c) mitigate any losses, costs or expenses incurred as a result of the application or breach of this IAA.

3.2 The Parties shall act at all times in a way that promotes effective partnership working. In particular, each Party will:

- (a) work in good faith with the other Parties towards the mutual advantage of the Parties;
- (b) use reasonable endeavours to achieve their Statutory Targets including those contained in the Waste Strategy for England 2007;
- (c) provide such reasonable information (as determined by the Party from whom the information is sought) to each of the other Parties in a form that is readily usable and in a full and timely manner. Relevant information shall include, without restriction or limitation:
 - (a) details of contractual arrangements (or amendments to existing arrangements) entered into by the Parties in their roles as WCAs or WDA;
 - (b) early warning of potential failure by a Party or its contractor in meeting their obligations under this IAA;
 - (c) details of actual failure by a Party or its contractor in meeting their obligations under this IAA;

- (d) new initiatives, policies or emerging policies relating to the minimisation, collection, Recycling and disposal of Waste; and
 - (e) any other information that could reasonably be expected to impact upon this IAA or the Parties to this IAA;
 - (f) details of any external funding opportunities which are available (and where appropriate, the Parties shall work together to submit joint bids for such funding);
- (d) work together with the other Parties to achieve the Statutory Targets and as far as is reasonable or practicable, to reduce the detrimental impact on the Parties and council tax payers of any one of them failing to carry out its obligations under this IAA;
 - (e) co-operate in identifying, as early as reasonably possible, any issues or problems which will or may tend to prevent the achievement of the Mutual Aims and to reach and implement solutions to overcome such issues or problems;
 - (f) where practicable and/or feasible work with the other Parties to;
 - (a) influence behavioural change and to give people the knowledge and resources to take action at school, at work and in the community through Waste related education or awareness issues under appropriate campaigns where possible; and
 - (b) make the strategic planning and development of Waste services as transparent as possible to each other and to the public as a whole; and
 - (c) research, develop and implement detailed proposals to achieve the purposes referred to in **clause** 3.2.7 (a) and (b) above; and
 - (d) enhance economic development and employment opportunities as part of these proposals wherever possible whilst embracing the principles of sustainability; and
 - (e) explore other appropriate partnership opportunities with both the private and public sectors in the pursuit of these aims and objectives;
 - (g) take all reasonable steps to ensure that the planning, development and implementation of the Mutual Aims is transparent to all interested parties (including the public);
 - (h) consult with stakeholders having an interest in the Mutual Aims or wider Waste services.

3.3 Any requirement on a Party under this IAA to act reasonably shall be interpreted in the context of the Parties endeavouring to achieve the Mutual Aims while minimising any detrimental impact on the public purse.

4. REPORTS AND RECORDS

4.1 The Parties agree to provide and share information necessary to monitor and measure the any data collection relating to this IAA and the Service Delivery Plans.

4.2 Each WCA shall be responsible for providing accurate data and supporting evidence to demonstrate its performance hereunder and for keeping records of such matters as the WDA may from time to time reasonably require for the purposes of monitoring Waste arisings and Waste management (always in so far as the provision of such information is practicable).

4.3 Each WCA shall submit monthly written monitoring reports to the WDA which report shall include (but not be limited) to the weight of Household Waste removed from the Waste stream through the activities of the WCA.

- 4.4 The WDA shall provide on request reports to each WCA which report shall include (but not be limited) to the weight of Contract Waste which was delivered by that WCA to the relevant Delivery Points or Contingency Delivery Points, any monitoring reports of the Relevant Contractor's performance against the Delivery Point Standards and the deductions made by the WDA in respect of the Relevant Contractor's failure to meet the Delivery Point Standards.
- 4.5 The Parties shall ensure that there is a regular reconciliation between any records kept by the WDA and WCAs.
- 4.6 The Parties shall operate this IAA on an "open book" basis in respect of the management of the Relevant Contracts by the WDA and in respect of the delivery by each WCA of its Service Delivery Plan.

5. IAA MANAGEMENT BOARD

Each Party agrees to participate in the IAA Management Board as set out in **Schedule 5** (IAA Management Board) to this IAA.

6. DECISION MAKING

The Parties will work together to ensure there is clear accountability for all decisions made and actions taken and a true and accurate written record kept and maintained by the WDA for audit purposes.

PART II

REVIEW PROCEDURE AND AMENDMENTS TO THIS IAA

7. INITIAL REVIEW

- 7.1 The Parties shall meet at least every six (6) months during the procurement process for the PPP Contractor and in any event:
- (a) prior to the despatch of the descriptive document;
 - (b) prior to the despatch and finalisation of the invitation to submit detailed solutions;
 - (c) on receipt an initial evaluation of the detailed solutions;
 - (d) prior to final bids being sought; and
 - (e) on final bids being received;

to discuss the development of the Project Agreement and the technology solutions proposed by potential bidders together with any changes in the WCAs Baselines, Key Waste Delivery Parameters and the current position in relation to the matters which will form part of the Initial Review.

- 7.2 The WCAs shall be entitled to make representations to the WDA on any matter which affects this IAA or its operation, the WCAs' liability hereunder and any other matter relevant to the Initial Review and the WDA shall where reasonable and practical to do so take the WCAs representation and comments into account.
- 7.3 Once the preferred bidder has been selected, and the preferred waste technology solution determined, but prior to Financial Close, the Parties shall carry out the Initial Review.
- 7.4 As part of the Initial Review, the Parties shall review inter alia:
- (a) The Minimum Tonnages and any demand risk retained by the WDA or passed to the PPP Contractor;
 - (a) the Delivery Points and the Delivery Point Standards;
 - (b) the Contingency Delivery Points
 - (c) Waste Composition and any composition risk retained by the WDA;
 - (d) the Contamination Protocol; and
 - (e) any charges or costs to be passed onto the WCAs under this IAA by the WDA and how they will be quantified and calculated; for example the Unitary Charge Adjustment Protocol (to the extent that this will determine any liability of a WCA for breach of this IAA in accordance with **Schedule 6** (Payment and Costs Schedule).
 - (f) The Tipping Away Payments
 - (g) Deduction regime and amounts for performance failures
 - (h) Lost Third Party Income liability accepted by the WDA;
 - (i) The Base Case of the PPP Contractor
- 7.5 As part of the Initial Review the WDA shall be required to submit to the WCAs a report in writing setting out the position in respect of each of the issues set out in clause 7.4 (together "the Relevant Issues"). The report shall indicate the position reached with the proposed PPP Contractor in respect of the Relevant Issues and how they will be included in the Project Agreement.
- 7.6 As part of the report issued to the WCAs by the WDA in accordance with clause 7.5 the WDA shall indicate whether the position proposed in respect of each of the Relevant Issues is in accordance with Market Practice. The WCAs shall be entitled to make representations in respect of the report and to appoint their own advisors to advise upon whether the position proposed by the WDA in respect of the Relevant Issues is in accordance with Market Practice.

Break Clause operated where PPP is not Market Practice

- 7.7 Where either the report issued by the WDA accepts or any independent advice obtained by the WCAs, alleges that the WDA is proposing a position in respect of the Relevant Issues (or any of them) that is not in accordance with Market Practice then the Parties shall meet to discuss any implications for this IAA and agree any changes required to accommodate the fact that the WDA is adopting a position which is not in accordance with Market Practice. Such changes may be to this IAA or, in so far as it is still possible and lawful for the WDA to do so, to the Project Agreement. Where acting in its discretion a WCA is not able

- (a) To accept its exposure under Part III of this IAA (and the attendant parts of Schedule 6) or
- (b) to agree the outcome of the discussions or any changes agreed to this IAA pursuant to clause 7.7

such WCA shall have the right to serve a notice to terminate this IAA on the WDA and the other WCAs indicating that it no longer wishes to be part of this IAA (or at its discretion **Part III**) in which circumstances this IAA (or as the case may be **Part III**) shall terminate as between the relevant WCA and the WDA but shall continue to have affect in respect of the remaining WCAs and the WDA (and in respect of the remaining parts between the WCA and the WDA).

- 7.8 Where a WCA exercises its rights to give notice pursuant to clause 7.7 (the Break Clause) to terminate **Part III** only the remaining provisions and clauses of this IAA (including the provision of funding by the WDA in respect of the WCA's Service Delivery Plan in accordance with **Schedule 6** (Payment and Costs Schedule) shall continue to apply.

Break Clause operated where PPP is Market Practice

- 7.9 Notwithstanding the provisions of clauses 7.5 to 7.8 where a WCA is not able to accept any final details in this IAA required to reflect the outcome of the Project Agreement and PPP Contractor procurement process such WCA shall nevertheless have the right to serve a notice to terminate this IAA on the WDA and the other WCAs indicating that it no longer wishes to be part of this IAA (or at its discretion **Part III** only) in which circumstances this IAA (or **Part III**) shall terminate as between the relevant WCA and the WDA but shall continue to have affect in respect of the remaining WCAs and the WDA (and in respect of the remaining parts between the WCA and the WDA, as applicable).
- 7.10 Where a WCA exercises its rights to give notice pursuant to clause 7.9 to terminate all or part of this IAA then the WDA may at its absolute discretion review or terminate any funding provided to the relevant WCA in respect of the WCA's Service Delivery Plan and as set out in **Schedule 6** (Payment and Costs Schedule).

Exercise of the Break Clause (in any circumstance and in whole or in part)

- 7.11 Where a WCA exercises its rights to give notice pursuant to clauses 7.7 and/ or 7.9 the provisions of **clause 28** (consequences of termination) shall apply. If a WCA has exercised its right to terminate in respect of **Part III** only, then **clause 28** shall apply only so far as is applicable.
- 7.12 For the avoidance of doubt, if a WCA exercises its rights to give notice pursuant to clauses 7.7 and/ or 7.9, that WCA shall not be liable for any costs, expenses or losses (additional or otherwise) incurred or wasted by the WDA or the PPP Contractor.
- 7.13 In addition to the issues described above, as part of the Initial Review the Parties may agree to vary this IAA to reflect any changes necessitated by the provisions of the Project Agreement.
- 7.14 Subject to **clause 11** following the Initial Review the Parties shall implement the actions (or an action plan as the case may be) in accordance with a timetable to be agreed by the Parties as part of the Initial Review. The IAA shall be amended to reflect the Project

Agreement and this IAA as amended and revised in accordance with **clause 11** shall be the Revised and Confirmed IAA and effective between the Parties thereafter.

[SP note: At least one WCA would like a break clause also in respect of the Organic Waste service so that they can test the funding offered again tendered prices when received. WDA needs certainty however to determine its facility size. For further consideration by the Parties]

8. ANNUAL REVIEW

8.1 The Parties shall meet annually to review the operation of this IAA, the WCA Baseline and the Service Delivery Plans together with the impact on this IAA of any changes to the Key Waste Delivery Parameters. The Annual Review date shall be on or about the anniversary of Financial Close.

8.2 Where possible the Annual Review shall be programmed to suit each Party's political cycle and shall be brought forward or postponed a reasonable time to allow for elections and any new members to be in situ.

8.3 The Annual Review shall be initiated by the WDA circulating a notice in writing sent to the delivery addresses for notices (contained in **Schedule 10** (Delivery Addresses for Notices) setting out any issues it would like to discuss at a meeting of the IAA Management Board and inviting each WCA to include items for the agenda of the Annual Review meeting. Standing agenda items to include:

- (a) review of the Key Waste Delivery Parameters;
- (b) review of performance of scheme(s) set out in the SDPs and associated costs;
- (c) the WCA Baselines
- (d) review of further annual capital and revenue funding including any efficiency savings that will be realised;
- (e) opportunities for further joint working; and
- (f) Changes to the SDPs or WCA Baselines requested by the WCAs.

the written agenda and supporting papers will then be re-circulated to all Parties by the WDA and should be in sufficient detail and where relevant include supporting papers to enable the Parties to take internal soundings and discuss the contents prior to the Annual Review meeting.

8.4 Where as a result of the Annual Review process changes are proposed to a Relevant Contract or a Relevant Contract is likely to be affected the WDA shall in advance of the meeting to discuss the Annual Review check to see if changes or effect can be accommodated at no additional cost to the WDA or obtain costs from the Relevant Contractor to implement the change. Sufficient time shall be allowed for this process so that the Relevant Contractor can respond to the Authority Change, calculate its no better/no worse position and liaise (as necessary) with its funders and subcontractors.

8.5 At the Annual Review meeting the WDA shall report on any changes, impact (better or worse) and the costs of implementing any changes requested by the WCAs. Where similar or identical changes are requested by more than one WCA which cannot be accommodated

at no cost to the WDA then the relevant WCAs shall have the option to fund the requested change and share the costs across the relevant WCAs who have requested the change.

- 8.6 Following the meeting of the IAA Management Board to carry out the Annual Review (and following any further work or subsequent correspondence required as a result of the meeting) the Parties shall expediently seek political/senior officer approval as necessary in accordance to their standing orders to any recommendations. The Parties shall reconvene to discuss the impact if any WCA or the WDA is unable to secure such authority (or any further changes or impacts that emerge as a result of the approval process).
- 8.7 For the avoidance of doubt nothing in this IAA shall restrict or fetter the decision making powers of the WCAs in respect of their own SDPS and WCA Baselines (always acknowledging their liability for the impact of any changes as provided by this IAA).
- 8.8 Following the approval process the Parties shall make any changes, implement any actions, or create an action plan in accordance with a timetable for delivery that shall be agreed between the Parties.
- 8.9 It is anticipated through increased partnership working, the provision of new facilities and changes to the collection systems in accordance with this IAA that efficiency savings may be realised in collection costs. As part of the Annual Review the Parties shall review the funding required to continue to support each SDP and the funding may be adjusted by agreement between the relevant WCA and the WDA to reflect any efficiency savings realised with the benefits being shared equally between the relevant WCA and the WDA.

9. REVIEW PROCEDURE FOR HOC REVIEWS

- 9.1 Notwithstanding the **Annual Review process set out in clause 8 above**, any Party to this IAA shall be entitled to call for a review of this IAA to consider:
- (a) Changes to the a Service Delivery Plans and or WCA Baseline;
 - (b) changes in the Key Waste Delivery Parameters;
 - (c) variations to the IAA; or
 - (d) improvements in the services delivered by the Essex Waste Partnership and the Relevant Contractors.
- 9.2 A Review shall be called by a Party on notice in writing (a Review Notice) sent to the delivery addresses for notices (contained in **Schedule 10** (Delivery Addresses for Notices)) to the other Parties setting out in detail and (if necessary supporting information) of:
- (a) the nature of the Review;
 - (b) the reasons for it;
 - (c) the proposed action and/or solution;
 - (d) the Party or Parties potentially affected;
 - (e) how the proposed solution could or should be implemented.
- 9.3 The Parties shall meet at an IAA Management Board to discuss and carry out the Review and to agree actions (or to agree an action plan leading to a decision and subsequent action

(if any) to implement the decision) within two months of the Review Notice having been served. Following such a Review meeting the Parties shall implement the actions (or action plan as the case may be) in accordance with the agreed timetable. The two month notice period provided in this Clause may be reduced by an appropriate time if the Party issuing the Review Notice reasonably considers the Review is urgent and states its reasons on the face of the Review Notice.

9.4 All Parties shall be issued with any Review Notice and shall be entitled to participate in any Review unless the relevant WCA and the WDA acting reasonably determine that the Review applies only to them and:

- (a) will not affect any other Party; and
- (b) is not relevant to any other Party; and
- (c) the issues in question do not similarly apply to any other Party.
- (d) A Party affected by the Review, acting reasonably, considers the subject matter confidential or sensitive (which shall include funding arrangements between the WDA and WCA).

9.5 The provisions of clauses 8.6 to 8.8 shall apply to Ad Hoc Reviews (with the applicable appropriate amendments being deemed to be made).

10. PROVISIONS RELEVANT TO ALL REVIEWS

10.1 Changes to the SDPs and the WCA Baseline shall be at the relevant WCA's absolute discretion except that WDA may acting reasonably review or terminate any funding provided to the relevant WCA in respect of the WCA's Service Delivery Plan and as set out in **Schedule 6** (Payment and Costs Schedule) if the change or variation to the SDP and WCA Baseline

- (a) Materially and detrimentally impacts of the ability of the WDA to achieve its Statutory Targets or
- (b) Is in breach of the Joint Municipal Waste Strategy or materially jeopardises the LAA Targets or
- (c) Is material and made without the matter first having been discussed at an Ad Hoc or Annual Review (whether or not agreed)
- (d) Would create a material liability of the WDA to a Relevant Contractor which is not otherwise compensated for by the provisions of Schedule 6

10.2 The Parties shall attend and participate the Initial Review, Annual Reviews or Ad Hoc Reviews in good faith, fairly, reasonably, in the spirit of partnering set out in **clause 3** above and having regard to each others' budgets and resources.

10.3 The test of reasonableness shall be applied having regard to any Party's obligation to consult its contractors on any matter which might affect such contracts and always subject to clause 8.7

- a) Except as provided for otherwise in this IAA no Party shall be required to agree to any amendment, termination, variation to this IAA as a result of a Review, Initial Review or

an Annual Review but shall always act reasonably and promptly in issuing a response where requested to do so

- 10.4 As a result of a Review, Initial Review or an Annual Review the Parties may agree to vary this IAA by way of a Deed of Variation or to terminate it in whole or in part.

11. AMENDMENTS

Following the execution of this IAA, no amendment or variation to this IAA shall be effective unless it is in writing and signed by an Authorised Representative and appended by way of endorsement to the original IAA.

PART III

PPP PROCUREMENT

12. THE WDA'S RESPONSIBILITIES AND COMMITMENTS

The WDA shall comply with the provisions of **Schedule 2**.

13. THE WCAS' RESPONSIBILITIES AND COMMITMENTS

Each WCA shall comply with the provisions of **Schedule 3**.

14. WCA BASELINES

- 14.1 Each WCA has agreed a WCA Baseline with the WDA as set out at **Schedule 8** (Part 1) ((WCA Baseline) to this IAA.
- 14.2 The purpose of the WCA Baseline is to set out the baseline Waste and Recycling collection service to be delivered by the WCA based upon which the WDA shall procure the PPP Contract.
- 14.3 From the IAA Commencement Date until Financial Close the Parties may review the WCA Baselines annually and as part of the Initial Review and the WDA shall where reasonable accommodate any changes to the WCA Baselines within the procurement of the PPP Contractor.
- 14.4 With effect from Financial Close the Parties may review the WCA Baselines annually as part of the Annual Review conducted in accordance with **clause 8**.

15. LIABILITY OF THE WCAS

- 15.1 Each WCA acknowledges and accepts that the WDA will be required to deliver under the Project Agreement at least guaranteed Minimum Tonnages of Contract Waste for the duration of the Project Agreement and such Contract Waste shall be delivered to the PPP Contractor. Each WCA further acknowledges that the Contract Waste shall fall within certain

composition bands (relating to bio-content, calorific value or similar methods of measurement).

- 15.2 The Waste that the WCAs shall withhold at the date of this IAA for their own Recycling is set out in **Schedule 8** (Part 1 WCA Baseline) and the WDA shall procure that these WCA Baselines as amended in accordance with this IAA will be acknowledged by the PPP Contractor.
- 15.3 The WCAs hereby agree not to retain any Waste pursuant to section 48(2) of the EPA other than as provided for in **Schedule 8** (Part 1 WCA Baseline)
- 15.4 Provided that a WCA has complied with its WCA Baseline and WCA Responsibilities, that WCA shall not be liable to the WDA for any losses, adjusted unitary charge, additional costs, expenses or compensation whatsoever for the Minimum Tonnage not being achieved or for Contract Waste falling outside the composition agreed with the PPP Contractor nor to place the PPP Contractor in a no better/no worse position (even if under the Project Agreement the WDA is liable to the PPP Contractor for the same).
- 15.5 The WCAs acknowledge that if
- (a) Waste is retained by the WCAs other than in accordance with their WCA Baseline and/or
 - (b) The WCAs do not carry out their collection services in accordance with the WCA Baseline and/or

the direct result may be a liability owed by the WDA to the PPP Contractor under the Project Agreement and the Minimum Tonnage provisions or the Unitary Charge Adjustment Protocol may apply to return the PPP Contractor to a No Better No Worse Position. To the extent that is direct result is the case and subject to clause 15.6 and 15.9, the WCA shall be liable in accordance with the provisions of **Schedule 6** (Payment and Costs Schedule).

- 15.6 The WCA shall not pursuant to any provision of this clause 15 nor pursuant to schedule 6 be liable to the WDA (nor the PPP Contractor)
- (a) If the WCA does any of the matters in clause 15.5 as a direct result of a fall in tonnages or change in composition (as opposed to the matters in 15.5. being the cause of the reduction in tonnages or change in composition) or
 - (b) Except to the extent that the matters in 15.5 reduce the tonnages below the Minimum Tonnages, for the impact or costs associated with any increase or decrease in tonnages (from those predicted, forecasted or otherwise) and the concept of no better/no worse and the Unitary Charge Adjustment Protocol shall be applied for this purpose to disregard the impact of any tonnage increase or decrease resulting from the matters in 15.5
- 15.7 Any reference in this IAA to a "No Better No Worse Position" or to leaving the PPP Contractor in a "No Better, No Worse Position" shall be construed by reference to the equivalent phrase in the Project Agreement.
- 15.8 It is acknowledged that the impact of the actions of the WCAs pursuant to clause 15.5 may have a cumulative effect and the liability of the WCAs in clause 15.5 and Schedule 6 shall be

divided fairly between those WCAs whose actions have directly contributed to the cumulative effect.

- 15.9 Under no circumstance shall a WCA be liable to the WDA
- (a) For the disposal costs of any tonne of waste (or the increase in the costs of disposal resulting from tonnage reductions or increases) even if that tonne would not have arisen for disposal but for an action of the WCA pursuant to clause 15.5 (it being acknowledged that disposal is a WDA function)
 - (b) For any WDA's own losses, costs, expenditure, damages, fines or taxes other than its liability to the PPP Contractor in accordance with clause 15.5.
- 15.10 The WCA shall be relieved of any obligations under this clause to the extent that the WDA is relieved from its obligations to deliver Contract Waste under the Project Agreement.
- 15.11 Each Party acknowledges that the WDA may deliver Waste with a Waste Composition similar to Contract Waste (Substitute Waste) to meet its guaranteed Minimum Tonnages obligations under the Project Agreement. In such circumstances, the WCA will provide reasonable assistance to the WDA in meeting such delivery requirements of the WDA.
- 15.12 Where the relevant Delivery Point or Facility is not in accordance with the Delivery Point Standards and the WDA is able to make deductions under the PPP Contract from the PPP Contractor then the WDA shall make a payment to the relevant WCA equivalent to the amount of the deductions.
- 15.13 In the event of dispute relating to this clause, the Dispute Resolution Procedure shall apply.

16. STATUTORY DIRECTIONS AND NOTICES

- 16.1 The Parties acknowledge that they have entered into this IAA on a voluntary basis rather than issuing either:
- (a) a direction of the WDA under section 51(4) of the EPA, directing the WCAs to deliver the Waste collected by it to the Delivery Points or to the Facilities and to separate such Waste before delivery; and/or
 - (b) a notice under s48 (3) of the EPA
 - (c) a notice under section 48(4) of the EPA that the WDA objects to any recycling arrangements made by the WCAs other than those identified in this IAA.
- 16.2 The Parties acknowledge that nothing in this IAA will prevent them from carrying out their respective statutory duties and responsibilities or unduly restrict the decisions to be made with regard to their respective functions.

17. THE PROJECT AGREEMENT

- 17.1 As soon as reasonably practicable after it is entered into, the WDA shall provide each WCA with a copy of the Project Agreement (subject to commercially sensitive information being omitted to the extent required by the terms of the Project Agreement, (unless and to the

extent that the WCA provides a confidentiality undertaking in the form reasonably required by the PPP Contractor and Southend on Sea Borough Council)).

- 17.2 The WDA shall notify the WCAs of any variations or amendments to the Project Agreement agreed between the WDA and the PPP Contractor from time to time.
- 17.3 Without prejudice to the express rights and remedies of the WCAs under this IAA, the WCAs shall not knowingly and deliberately take any action or omit to take any action which would put the WDA in breach of the Project Agreement.

PART IV

SERVICE DELIVERY PLANS

18. SERVICE DELIVERY PLANS

- 18.1 Each WCA has agreed a Service Delivery Plan with the WDA and copies of the first Service Delivery Plans to apply from the IAA Commencement Date are set out at **Schedule 8** (Part II Service Delivery Plans).
- 18.2 In return for delivering their Service Delivery Plans each WCA shall receive the specific capital and revenue funding as detailed in **Schedule 6** (Part II WCA Specific Payments and Costs).
- 18.3 Where a WCA changes or fails to deliver its Service Delivery Plan it shall promptly notify the WDA of the reasons for the deviation or failure and shall seek to agree a rectification plan with the WDA to restore the delivery of the Service Delivery Plan. Were a rectification plan is agreed between the WDA and the relevant WCA the WCA shall implement the rectification plan in accordance with the timescales agreed with the WDA as part of the rectification plan.
- 18.4 In the event that a WCA fails to agree or implement an agreed rectification plan or if having agreed a rectification plan the same failure or change reoccurs the WDA shall be entitled to review the funding as provided in clause 10.4.
- 18.5 The Service Delivery Plans shall be reviewed annually or on an ad hoc basis as part of the Annual Review conducted in accordance with clauses 8-10.
- 18.6 Except in so far as
- (a) clause 15.5 applies (whereby the WCAs may be liable for the impact of a change to the WCA Baseline on the PPP Contractor) or
 - (b) clause [] applies (whereby the WCAs may be liable for the impact of a change to the WCA Baseline on the Relevant Contractor)

the WDAs remedy for the failure of a WCA to meet and comply with its SDP (or for any changes to the SDP made by a WCA agreed or otherwise) shall be strictly and solely limited to the withdrawal of funding (or in WCA Default to the termination of this IAA) and in no circumstances shall a WCA be liable either in contract or tort for any other wasted costs, losses, expenses, liabilities, damages, fines or taxes of the WDA or any Relevant Contractor.

19. ORGANIC WASTE SERVICE

- 19.1 Where the WDA and a WCA have agreed to implement an Organic Waste Service in accordance with its Service Delivery Plan, the provisions of this clause shall apply.
- 19.2 With effect from the relevant implementation date for the Organic Waste Service in accordance with the Service Delivery Plan, the WDA shall arrange for the treatment of all Organic Waste collected by the WCA or its contractor.
- 19.3 At least [six] months prior to the implementation date for the Organic Waste Service the WDA shall notify the WCA of the Organic Waste Delivery Points or Organic Waste Facilities where the WCA can deliver Organic Waste and the Organic Waste Delivery Point Standards.
- 19.4 Where the relevant Organic Waste Delivery Point or Organic Waste Facility is greater than five miles from the WCA's boundary it shall be entitled to receive from the WDA an Onward Haulage of Organic Waste Payment calculated in accordance with Part [] of **Schedule 6** (Payment and Costs Schedule).
- 19.5 Where the Organic Waste Delivery Point or Organic Waste Facility is unavailable the WDA shall direct the WCA to an Organic Waste Contingency Delivery Point or alternative Organic Waste Facility and the WCA shall deliver the Organic Waste to the Organic Waste Contingency Delivery Point or alternative Organic Waste Facility.
- 19.6 Where the WDA directs the WCA to an Organic Waste Contingency Delivery Point or alternative Organic Waste Facility the WCA shall be entitled to receive from the WDA an Onward Haulage of Organic Waste Payment calculated in accordance with Part [] of **Schedule 6** (Payment and Costs Schedule).
- 19.7 Provided that the WCA implements and maintains the Organic Waste Service in accordance with the agreed Service Delivery Plan the WDA shall make a contribution to the capital and revenue costs of implementing and maintaining the Organic Waste Service in accordance with Part [] of **Schedule 6** (Payment and Costs Schedule).
- 19.8 The WCAs acknowledge that if they do not deliver the Organic Waste Service in accordance with their Service Delivery Plans the result may be that the WDA is not able to achieve the Minimum Tonnages. If that is the case, the provisions of Part [] of **Schedule 6** (Payment and Costs Schedule) shall apply.
- 19.9 Where the WCA or its contractor delivers Organic Waste to an Organic Waste Delivery Point or an Organic Waste Facility or an Organic Waste Contingency Delivery Point that contains Contamination then the provisions of **Schedule 7** (Contamination) shall apply.

PART V

JOINT MUNICIPAL WASTE MANAGEMENT STRATEGY

20. WASTE STRATEGY

The Parties shall, through the Joint Municipal Waste Management Strategy, work together in good faith to implement the Joint Municipal Waste Management Strategy and attain the targets

therein which is consistent with the Waste Strategy of England. The waste reduction strategy will be aimed at achieving the targets as further described in **Schedule 1** and the Parties shall comply with **Schedule 1**.

PART VI

INDEMNITIES & CONDUCT OF CLAIMS

21. INDEMNITY

21.1 Each WCA shall, subject to **clause 21.2** be responsible for, and shall release and indemnify the WDA, its employees, agents and contractors on demand from and against all liability for:

- (a) death or personal injury;
- (b) loss of or damage to property (including property belonging to the WDA for which it is responsible);

which may arise out of or in consequence of performance or non-performance by the indemnifying WCA of its obligations under this IAA or in the presence on the Facilities of the WCAs and/or any contractor employed by the WCAs.

21.2 The WCAs shall not be responsible for or be obliged to indemnify the WDA for any injury, loss, damage, cost and expense caused by negligence or wilful misconduct of the WDA (its employees, agents or contractors) or by the breach of the WDA (its employees, agents or contractors) of its obligations under this IAA.

21.3 The WDA shall, subject to **clause 21.4** be responsible for, and shall release and indemnify the WCAs, their employees, agents and contractors on demand from and against all liability for:

- (a) death or personal injury;
- (b) loss of or damage to property (including property belonging to the WCA for which it is responsible);

which may arise out of or in consequence of performance or non-performance by the WDA of its obligations under this IAA.

21.4 The WDA shall not be responsible for or be obliged to indemnify the WCAs for any injury, loss, damage, cost and expense caused by negligence or wilful misconduct of a WCA or a contractor of a WCA (its employees, agents or contractors) or by the breach of a WCA (its employees, agents or contractors) of its obligations under this IAA.

21.5 In no circumstance shall any WCA be liable:

- (a) to any other WCA pursuant to the IAA and nothing in this IAA shall be deemed or construed to imply any liability as between the WCAs;
- (b) to the WDA except to the extent that the WDA is liable to the Relevant Contractor as provided in this IAA and the liability of the WCAs and each of them is limited accordingly.

21.6 The liability of the WCAs under this IAA and of each of them shall be subject to the same limitations of liability and defences available to the WDA as against the Relevant Contractor.

21.7 In the event of dispute in relation to an this clause, the Dispute Resolution Procedure shall apply.

22. CONDUCT OF CLAIMS

22.1 This **clause** 22.1 shall apply to the conduct, by a Party from whom an indemnity is sought under this IAA, of claims made by a third person against a Party having (or claiming to have) the benefit of the indemnity. The Party having, or claiming to have, the benefit of the indemnity is referred to as the "**Beneficiary**" and the Party giving the indemnity is referred to as the "**Indemnifier**". Accordingly:

- (a) if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this IAA, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable having regard to any timescale imposed by a notice, demand, letter or any other form of document received by the Beneficiary;
- (b) subject to **clauses** 22.1.3, 22.1.4 and 22.1.5 below, on the giving of a notice by the Beneficiary pursuant to **clause** 22.1.1 above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of at least half of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with an indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action (over and above those which the Beneficiary would otherwise have borne if the Indemnifier had no entitlement to conduct the relevant claim) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- (c) with respect to any claim conducted by the Indemnifier pursuant to **clause** 22.1.2 above:
 - (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute; and
 - (c) the Indemnifier shall not pay or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
- (d) the Beneficiary shall be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
 - (a) the Indemnifier is not entitled to take conduct of the claim in accordance with **clause** 22.1.2 above; or
 - (b) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 20 Business Days of the notice from the Beneficiary under **clause** 22.1.2 above or notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (c) the Indemnifier fails to comply in any material respect with the provisions of **clause** 22.1.3 above;
- (e) the Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or

appeal of any claim (or of any incidental negotiations) to which **clause 22.1.2** above applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this **clause 22.1.5** then the Indemnifier shall be released from any liability under its indemnity under **clause 22** (as the case may be) and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to **clause 22.1.2** in respect of such claim;

- (f) if the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
 - (a) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity; and
- (g) any body taking any of the steps contemplated by **clauses 22.1.2** to **22.1.5** shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.

23. SEVERAL LIABILITY

Unless expressly provided otherwise in this IAA, the liability of each WCA for their respective obligations and liabilities under this IAA shall be several and shall extend only to any loss or damage arising out of their own breaches and actions.

PART V

DISPUTE RESOLUTION

24. DISPUTE RESOLUTION

24.1 This clause 25 shall apply only to disputes or differences which are expressly set out in the IAA as being for referral to the Dispute Resolution Procedure.

24.2 Consultation

Any dispute or difference shall be first referred to a meeting of each of the Parties involved in the dispute. The Parties agree to discuss and, in good faith, attempt to resolve any such dispute or difference in accordance with the spirit of partnering described in **clause 3**. In the event that the relevant Parties are unable to resolve the dispute then the matter shall be referred to the chief executives of each of the Parties involved in the dispute who shall try to resolve the dispute by agreement.

24.3 **Mediation**

- (a) If the chief executives of each of the Parties involved in the dispute are unable to resolve the dispute under **clause** 24.1 then any Party involved in the dispute may invite the others to attempt to resolve the dispute through mediation administered by the Centre for Effective Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU.
- (b) If the Parties fail to resolve the dispute through referring the matter to their chief executives under **clause** 24.1 within fourteen days or, where the dispute was referred to mediation pursuant to **clause** 24.2.1 and the dispute has not been resolved through that process, either Party may refer the matter to an Adjudicator selected in accordance with **clause** 24.3 below.

24.4 **Adjudication²**

Without prejudice to **clauses** 24.1 (Consultation) and **clause** 24.2 (Mediation) above, either Party may give the other notice of the intention to refer the dispute to adjudication and the adjudicator ("**Adjudicator**") shall be selected in accordance with **clause** 24.4 (Identity of Adjudicator).

24.5 **Identity of Adjudicator**

The Adjudicator nominated to consider a dispute referred to him shall be selected on a strictly rotational basis from the relevant panel of experts.

24.6 **Referral of the dispute**

Within 10 Business Days of appointment in relation to a particular dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

24.7 **Adjudicator's decisions**

In any event, the Adjudicator shall provide to both Parties his written decision on the dispute, within 20 Business Days of appointment (or such other period as the Parties may agree after the reference, or 30 Business Days from the date of reference if the Party which referred the dispute agrees). Unless the Parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the Adjudicator or by the courts, the Adjudicator's decision shall be binding on both Parties who shall forthwith give effect to the decision.

24.8 **Adjudicator's costs**

The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

² Parties to consider if adjudication is appropriate process.

24.9 **Adjudicator as expert**

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

24.10 **Adjudicator's powers**

The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this IAA.

24.11 **Confidentiality**

All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by the provisions of this IAA, disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's work.

24.12 **Liability of Adjudicator**

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

24.13 **Parties' obligations**

- (a) The Parties shall continue to comply with, observe and perform all their obligations thereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this clause.
- (b) Nothing in this **clause** 24 shall prevent either Party from resisting enforcement of any decision on the grounds that the decision is invalid in law, whether through excess of jurisdiction by the Adjudicator or by breach of the rules of natural justice or in conflict of interest or in bad faith or otherwise.
- (c) For the avoidance of doubt, nothing in this **clause** 24 shall affect the parties' rights to issue proceedings relating to a dispute that has been decided by an adjudicator. The English courts shall have the exclusive jurisdiction to determine such proceedings:

PART VI

TERMINATION

25. TERMINATION FOR WDA DEFAULT

- 25.1 If a WDA Default has occurred and a WCA wishes to terminate the IAA, it must serve a termination notice on the WDA and copied to all of the other WCAs (for information purposes only) within 30 Business Days of becoming aware of the WDA Default.
- 25.2 The termination notice must specify the type of WDA Default which has occurred entitling the WCA to terminate.
- 25.3 The IAA shall terminate on the day falling 50 Business Days after the date the WDA receives the termination notice, unless the WDA rectifies the WDA Default within 30 Business Days of receipt of the termination notice.
- 25.4 Termination shall be without prejudice to any right or remedy of a WCA which accrued prior to the date of termination. Save for the foregoing the liability of the WDA upon termination shall be limited to the reasonable and proper costs of each WCA which has rolled out its SDP supported to some extent by funding from the WDA
- (a) In dismantling the funded part of it and reverting to the collection service in place prior to the IAA or
 - (b) In continuing the SDP for the five years following the termination in which case the WDAs liability shall be equivalent to the funding that would have been paid by the WDA to the WCA but for the termination during that five year period.
- 25.5 In the event of dispute, the Dispute Resolution Procedure shall apply.

26. TERMINATION FOR WCA DEFAULT

- 26.1 If a WCA Default has occurred and the WDA wishes to terminate the IAA in respect of the relevant WCA(s), the WDA must serve a termination notice on the relevant WCA(s) and copied to all of the other WCAs (for information purposes only) within 30 Business Days of becoming aware of the WCA Default.
- 26.2 The termination notice must specify the type of WCA Default which has occurred entitling the WDA to terminate.
- 26.3 The IAA shall terminate in respect of the relevant WCA(s) on the day falling 50 Business Days after the date the relevant WCA(s) receives the termination notice, unless the WCA(s) rectify the WCA Default within 30 Business Days of receipt of the termination notice.
- 26.4 Termination shall be without prejudice to any right or remedy of a WDA which accrued prior to the date of termination. Save for the foregoing the liability of the WCA upon termination shall be limited to the withdrawal of the funding provided by Schedule 6. In the event of dispute, the Dispute Resolution Procedure shall apply.

SP Note: I accept that we had previously agreed a common law remedy here but now we have honed down the specific liabilities of the parties this is not appropriate any more from either party's perspective.

27. VOLUNTARY TERMINATION

- 27.1 Any of the WCAs may, on giving 12 months' written notice to all other Parties or earlier by mutual agreement with WDA and the other WCAs, terminate this IAA, including the performance of its obligations under this IAA.
- 27.2 Where any of the WCAs gives notice of its termination of this IAA, the Parties shall co-operate and seek to agree the arrangements regarding the relevant WCA's exit from this IAA.
- 27.3 Effective from the date of expiry of the notice referred to in **clause** 27.1 above, the relevant WCA's rights and obligations under this IAA shall cease. However, the WCA will continue to be liable for any financial liabilities and commitments it has incurred in respect of this IAA prior to the date of termination.
- 27.4 The relevant WCA shall, on voluntary termination, be liable for any direct, unavoidable, unmitigated, reasonable, demonstrable and proper additional costs incurred by the WDA as a result of the WCA exiting the IAA. In the event of dispute, the Dispute Resolution Procedure shall apply.
- 27.5 If a WCA chooses to terminate the IAA following the Initial Review (and accordingly wishes not to be a party to the Revised and Confirmed IAA), the provisions of **clause** 27.4 shall not apply.

28. CONSEQUENCES OF TERMINATION

- 28.1 In the event of the termination of this IAA in whole or in part in accordance with the Break Clause or **clauses** 8.10, 25, 26 and 27 in respect of all of the Parties or in respect of one or more WCAs then the relevant Parties shall (acting reasonably) negotiate and seek to agree and execute a legally binding agreement dealing with the matters covered by this IAA.
- 28.2 Where the relevant Parties fail to agree and execute a legally binding agreement within 6 months of the relevant termination of this IAA the WDA shall be entitled to issue:
- (a) a direction of the WDA under section 51(4) of the EPA, directing the relevant WCA(s) to deliver the Waste collected by it to the Delivery Points or to the Facilities and to separate such Waste before delivery; and
 - (b) a notice under section 48(4) of the EPA that the WDA objects to any recycling arrangements made by the WCAs other than those identified in this IAA.
- 28.3 Where a specific part of this IAA only is terminated in accordance with the Break Clause or **clause** 8.10 the remainder of this IAA shall continue to apply in respect of the Parties respective rights and obligations as set out in this IAA.
- 28.4 Where this IAA or part of this IAA is terminated in respect of a specific WCA this IAA or the relevant parts of this IAA shall be terminated only in respect of the relevant WCA and the remaining provisions of this IAA shall continue to have effect in respect of the remaining WCAs.

PART VII

GENERAL

29. INVOICING AND PAYMENT

- 29.1 The Parties shall make payments, pay compensation and make contributions to costs in accordance with **Schedule 6** (Payment and Costs Schedule)
- 29.2 The relevant Party shall submit an invoice to the other Party(ies) at the frequencies set out in **Schedule 6** (Payment and Costs Schedule) for the relevant items.
- 29.3 Each invoice shall contain:
- (a) the Party's name and contact address;
 - (b) an invoice or purchase order reference number; and
 - (c) the invoicing period to which the invoice relates; and
 - (d) *[other information i.e VAT ?]*.
- 29.4 The Party issuing the invoice must ensure that the invoice (in each case in respect of the relevant invoicing period) details:
- (a) Item description;
 - (b) Number of units;
 - (c) Unit rate;
 - (d) Standard terms and conditions;
 - (e) If a WCA is invoicing the WDA the relevant purchase order number; and
 - (f) If the WDA is invoicing a WCA the relevant account number.

[SP note: This list does not seem awfully relevant?]

- 29.5 Each invoice shall be accompanied by the relevant supporting information required in accordance with this IAA (including but not limited to the information set out in Appendix 1 to **Schedule 6** (Payment and Costs Schedule))
- 29.6 Disputed invoices shall be dealt with in accordance with the Dispute Resolution Procedure. The relevant Party shall be entitled to withhold payment of the disputed part of any invoice. Following resolution of the dispute, any amount agreed to be due shall promptly be paid. For the avoidance of doubt, during the period of any such dispute the other Party shall continue to perform all of its obligations under this IAA notwithstanding any such withholding of payment by the other Party.
- 29.7 If any sum is owed to either party and remains outstanding for more than 30 days from the date that it was due, there shall be added to the sum interest at a rate of 2% above the Base Lending rate of the Bank of England per annum calculated from the date that the payment became due. In the event of dispute, the Dispute Resolution Procedure shall apply.

30. INTELLECTUAL PROPERTY/OWNERSHIP OF DOCUMENTS

- 30.1 Subject to the rights of any third parties, the Parties will share equally all data, reports, drawings, specifications, designs, invitations or other material produced or acquired including copyright in the course of their joint work under this IAA. The Parties agree that any proposal

by one party to utilise the documents and materials produced by the Parties shall be subject to the agreement of all other Parties.

- 30.2 Any changes, amendments or updates made to the documents and materials, if made under the terms of this IAA, shall be jointly owned by the Parties.

31. OWNERSHIP OF WASTE AND DUTY OF CARE

- 31.1 The Relevant Contracts will provide that, as between the WDA and the Relevant Contractor all Waste received by or in the possession of the Relevant Contractor (or any of its sub-contractors) shall upon receipt be acquired by, in the ownership and at the risk of the Relevant Contractor, which shall take full responsibility for it.
- 31.2 For the purposes of this IAA until the Relevant Contractor takes ownership of any Waste in accordance with the provisions of the Relevant Contract all Waste collected by the WCAs shall be deemed to held at the entire responsibility of the WCAs and the WDA shall have no responsibility for such Waste.
- 31.3 The WCAs shall keep consignment and transfer notes in respect of all Waste delivered to a Delivery Point, Facility, Organic Waste Delivery Point or Organic Waste Facility for a period of at least two years, and the WCA shall ensure in so far as it is reasonably practicable that it is given correct and accurate transfer notes by the Relevant Contractor.

32. FORCE MAJEURE

32.1 Obligations

- 32.2 No Party shall be entitled to bring a claim for a breach of obligations under this IAA by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party (the **Affected Party**) to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event.

32.3 Notification of Force Majeure Event

- 32.4 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

32.5 Consultations

- 32.6 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the IAA.

32.7 Failure to agree

- 32.8 If no such terms are agreed on or before the date falling 80 Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this IAA for a period of more than 125 Business Days, then either Party

may terminate the IAA by giving 20 Business Days written notice to the other Party. In such circumstances no liability shall be owed by either party to the other arising out of the termination.

32.9 **Mitigation**

32.10 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of a Force Majeure Event.

32.11 **Cessation of Force Majeure Event**

32.12 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this IAA. Following such notification the IAA shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

33. **DATA PROTECTION**

33.1 In relation to all Personal Data, the Parties shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the IAA.

33.2 The Parties shall only undertake processing of Personal Data reasonably required in connection with this IAA and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

34. **CONFIDENTIALITY**

34.1 Subject to **clause** 34.2, the Parties shall keep confidential all Confidential Information received by them in connection with this IAA.

34.2 **Clause** 34.1 shall not apply to:

- (a) any disclosure of information that is in the public domain at the time of disclosure or the receiving party can show is in, or comes into, the public domain after disclosure otherwise than by a breach of these conditions; or
- (b) the receiving party can show was already in its possession free of any such restriction prior to receipt from the disclosing party; or
- (c) the receiving party can show it has lawfully received from a bona fide third party without breach of any obligation to the disclosing party; or
- (d) any disclosure which is required by Legislation or by an order of a court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory board having the force of law; or
- (e) any disclosure of information by the Parties to any other department, office or agency of the government or their respective advisers for the purpose of the examination and certification of the Parties' accounts or any examination or investigation; or
- (f) any disclosure that is required to ensure compliance with the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.

- 34.3 Subject to **clause 35** (FOI and EIR), in respect of all Confidential Information which may be disclosed by one party to the other or acquired by one party from the other under this IAA, the receiving party undertakes:
- (a) to keep the Confidential Information in strict confidence, and not to use the Confidential Information herewith other than for the purposes of this IAA;
 - (b) only to disclose the Confidential Information to such of its employees on a genuinely need-to-know basis for the purposes of this IAA, and then only on the understanding that they agree to be similarly bound by the provisions of this IAA. The receiving party shall be responsible for ensuring that all such employees comply with the confidentiality obligations of this IAA;
 - (c) not to disclose the Confidential Information to any third party whomsoever except with the prior written consent of the disclosing party;
 - (d) not to copy or reduce the Confidential Information to writing except as may be strictly necessary for the purposes of this IAA;
 - (e) to return to the disclosing party on demand or termination all Confidential Information held in any form whatsoever including all copies thereof, and to destroy all notes and any other written reports or documents which may have been made by the receiving party and which contain any part of the Confidential Information, except as authorised in writing by the disclosing party, or as is strictly necessary to complete any outstanding obligations relating hereto between the parties.
- 34.4 The property in all Confidential Information disclosed by either party to the other pursuant to this IAA shall, subject to any right of any other owner, remain vested with the disclosing party.
- 34.5 No licence or other rights are granted in the Confidential Information by the disclosing party to the receiving party.

35. FOI AND EIR

- 35.1 The Parties acknowledge that, as public authorities, each Party is subject to the requirements of the FOIA and the EIR and shall facilitate each other Party's compliance with its information disclosure requirements pursuant to the FOIA or the EIR in the manner provided for below.
- 35.2 Where the Party receiving a Request for Information (the "**Responding Party**") receives a Request for Information that another Party (the "**Other Party**") is holding and which the Responding Party does not hold itself the Responding Party shall refer to the Other Party such Request for Information that it receives as soon as practicable and in any event within five business days of receiving a Request for Information and the Other Party shall:
- (a) provide the Responding Party with a copy of all such Information in the form that the Responding Party requires as soon as practicable and in any event within 10 business days (or such other period as the Responding Party acting reasonably may specify) of the Responding Party's request; and
 - (b) provide all necessary assistance as reasonably requested by the Responding Party in connection with any such Information, to enable the Responding Party to respond to a

Request for Information within time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR.

35.3 Following notification under **clause** 35.2, and up until such time as the Other Party has provided the Responding Party with all the Information specified in **clause** 35.2.1, the Other Party may make representations to the Responding Party as to whether or not or on what basis Information requested should be disclosed, and whether further Information should reasonably be provided in order to identify and locate the Information requested, provided always that the Responding Party shall be responsible for determining at its absolute discretion:

- (a) whether Information is exempt from disclosure under the FOIA and the EIR;
- (b) whether Information is to be disclosed in response to a Request for Information; and
- (c) in no event shall the Other Party respond directly, or allow its contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Responding Party.

35.4 In the event of a request from the Responding Party pursuant to **clause** 35.3, the Other Party shall as soon as practicable, and in any event within five business days of receipt of such request, inform the Responding Party of the Other Party's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Responding Party under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Responding Party's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in section 12(1) of the FOIA and as set out in the Fees Regulations (the "**Appropriate Limit**") the Responding Party shall inform the Other Party in writing whether or not it still requires the Other Party to comply with the request and where it does so require the Other Party to comply with the request the 10 Business Days period for compliance shall be extended by such number of additional days for compliance as the Responding Party is entitled to under section 10 of the FOIA. In such case, the Responding Party shall notify the Other Party of such additional days as soon as practicable after becoming aware of them and shall reimburse the Other Party for such costs as the Other Party incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

35.5 The Parties acknowledge that (notwithstanding the provisions of this **clause** 35) the Responding Party may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the discharge of Functions of Public Authorities under Part I of the FOIA (the "Code"), be obliged under the FOIA or the EIR to disclose Information concerning the Other Party or the Essex Waste Partnership PPP Project:

- (a) in certain circumstances without consulting with the Other Party, or
- (b) following consultation with the Other Party and having taken their views into account;
- (c) where **clause** 35.5 above applies the Responding Party shall, in accordance with the recommendations of the Code, draw this to the attention of the Other Party prior to any disclosure;
- (d) where a Party receives a Request for Information in relation to Information which it does not hold but believes may be held by another Party, it shall transfer the Request for Information to the other Party, in accordance with Part III of the Code.

36. PUBLIC RELATIONS AND PUBLICITY

- 36.1 The WCAs shall not by themselves, their employees, or their agents, and shall procure that its sub-contractors shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning this IAA without the prior written approval of the WDA.
- 36.2 The WDA shall not by themselves, their employees, or their agents, and shall procure that its sub-contractors shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning this IAA specific to a WCA without the prior written approval of that WCA.

37. NOTICES

- 37.1 No notice required to be served upon any of the Parties under this IAA shall be valid or effective unless it is in writing and served either:
- (a) by delivering the notice by hand to that Party at the relevant address set out in **Schedule 10** (Delivery Addresses for Notices) or to such other address as that Party may notify the other Party in writing, and the notice shall be deemed to have been duly served at the time it is so delivered provided a receipt is obtained; or
 - (b) by posting the notice in a pre paid envelope sent by recorded delivery and addressed to that Party at the relevant address set out in **Schedule 10** (Delivery Addresses for Notices) or such other address as that Party may notify the other Party in writing and the notice shall be deemed to have been duly served two days after the date of posting.
- 37.2 Where any notice is deemed served pursuant to **clause 37.1.1** after 4 p.m. on any day, the notice shall be deemed to have been served on the next working day.

SP: [WCAs have asked for service by fax or email: this does not necessarily accord with court procedures so better to leave it as it is. In practice there is no reason why the notices cannot be copied by email for speed]

38. ENTIRE AGREEMENT

- 38.1 Except where expressly provided in this IAA, this IAA constitutes the entire agreement between the Parties in connection with its subject matter and, in the absence of fraud, supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this IAA.
- 38.2 The Parties acknowledge that they have not entered into this IAA on the basis of any representation that is not expressly incorporated into this IAA.
- 38.3 Without limiting the generality of the foregoing, no Party shall have any remedy in respect of any untrue statement made to him upon which he may have relied in entering into this IAA, and a Party's only remedy is for breach of contract. Nothing in this IAA purports to exclude liability for any fraudulent statement or act.

39. AGENCY

Nothing in this IAA shall constitute a legal partnership or agency between the Parties.

40. ASSIGNMENT

This IAA is personal to the Parties and the rights and/or obligations under this IAA shall not be assigned, novated or otherwise transferred to any person other than to a successor body following a reorganisation within government or to a body which substantially performs any of the functions that previously had been performed by the affected Party. The Parties shall enter into such agreement and/or deed as may reasonably be required to give effect to such assignment, novation or transfer.

41. WAIVER

Failure by one Party to enforce the provisions of this IAA or to require performance by the other Party of any of the provisions contained in this IAA shall not constitute or be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of this IAA or any part thereof or the right of the former Party to enforce any provision in accordance with its terms.

42. SEVERABILITY

If any term, condition or provision of this IAA shall be held to be invalid, unlawful or unenforceable to any extent by a Court of competent jurisdiction, such term, condition or provision shall be severed and shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this IAA.

43. RIGHTS OF THIRD PARTIES

The Parties agree that this IAA shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded.

44. LAW AND JURISDICTION

This IAA shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to **clause 24** (Dispute Resolution), the English courts shall have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this IAA.

45. COUNTERPARTS

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

SCHEDULE 1

Joint Municipal Waste Management Strategy

Joint Municipal Waste Management Strategy targets

Minimum Target	2010	2015	2020
Waste minimisation (kg of Waste not re-used, Recycled or composted, per head of population)	310	270	225
Recycling and composting (as a total of Waste collected)	40%	45%	50%
Essex Waste Partnership aspirational target for Recycling and composting	N/A	N/A	60%

RECYCLING AND COMPOSTING TARGETS

The WCAs shall develop and maintain Waste and Recyclable Materials collection systems in accordance with the Service Delivery Plans which will facilitate the achievement of the following recycling targets as set out in the Joint Municipal Waste Management Strategy, the Local Area Agreement and the Waste Strategy for England 2007. These targets should be regarded as collective targets.

Table 1 – Recycling and Composting Targets in the Joint Municipal Waste Strategy

	In 2010	In 2015	In 2020
Joint Municipal Waste Strategy Targets			
Recycling and composting (%)	40	45	50

Table 2 – Targets in the Local Area Agreements

NI 192 total diversion target (%)	2008/2009	2009/2010	2010/2011
Basildon	33	36	39
Braintree	43	44	45
Brentwood	40	42	42
Castle Point	28	28	28
Chelmsford	36	38	40
Colchester	34	35	40
Epping Forest	40	42	42
Harlow	24	29	29
Maldon	35	36	36
Rochford	25	32	32
Tendring	26	26	26
Uttlesford	55	56	57

The WCAs acknowledge the importance of commitment to and achievement of the targets in the above tables in order to:

assist with the Government's climate change agenda, particularly management of Waste in accordance with the waste hierarchy;

assist with the diversion of Waste away from Landfill and thus the avoidance of LATS penalties;

continue Local Area Agreement funding and support; and

gain PFI credits for the new Facilities.

SCHEDULE 2

Waste Disposal Authority Responsibilities and Commitments

1. DELIVERY POINTS

- 1.1 At least four months prior to the PPP Service Commencement Date the WDA shall confirm to the WCAs the location of the Delivery Points or Facilities where the WCA should deliver Contract Waste and the date from which these will be operational.
- 1.2 With effect from the PPP Service Commencement Date the WDA shall make available the Delivery Points in accordance with **Schedule 9** (Delivery Points) and shall secure to each WCA adequate access to the relevant Delivery Point or direct to a Facility.
- 1.3 The WDA shall ensure that the Waste Delivery Points and Organic Waste Delivery Points shall meet the Delivery Point Standards.
- 1.4 Where the proposed Delivery Point or Facility is greater than five (5) miles from the WCA's boundary it shall be entitled to receive from the WDA Tipping Away Payments calculated in accordance with Part 1 of **Schedule 6** (Payment and Costs).
- 1.5 Where the Delivery Point or Facility is unavailable the WDA shall direct the WCA to a Contingency Delivery Point and the WCA shall deliver the Contract Waste to the Contingency Delivery Point.
- 1.6 Where the WDA directs the WCA to a Contingency Delivery Point and the Contingency Delivery Point is greater than five (5) miles from the WCA's boundary the WCA shall be entitled to receive from the WDA Tipping Away Payments calculated in accordance with Part 1 of **Schedule 6** (Payment and Costs).
- 1.7 The WDA will procure adequate reception and weighing facilities and personnel at the Delivery Points or Facilities to receive the WCAs' vehicles. During the commissioning of the Facilities the WDA may direct the WCAs to deliver Waste to a Facility provided that if the Facility is more than five (5) miles from the WCA's boundary the WCA shall be entitled to receive from the WDA Tipping Away Payments calculated in accordance with Part 1 of **Schedule 6** (Payment and Costs).
- 1.8 The WDA has and will retain the responsibility for the disposal of Contract Waste delivered to the Delivery Points, Facilities or RCHWs and for the provision and maintenance of RCHWs within its boundary.

2. PPP PROCUREMENT

- 2.1 The WDA shall procure Facilities with the aim of avoiding any LATS liabilities and to meet the targets in the Waste Strategy for England 2007 for Landfill for each of the key target years before 2020 as set out in the LATS. The WDA will develop these Facilities in accordance with Best Value obligations relevant to the costs and liabilities of the WDA and where appropriate and reasonable to those of the WCAs.

- 2.2 The WDA shall endeavour to ensure that the PPP Contract represents Market Practice and shall dialogue with bidders and their funders over any matter which could result in an increase to a WCA liability for breach of the WCA Baseline as diligently as if the WDA was accepting such liability itself.
- 2.3 The WDA shall have overall control of but shall continue to consult and take on board the views of the WCAs in respect of the following matters:
- 2.3.1 The Delivery Point Standards
- 2.3.2 the development of the requirements for the Facilities such as but not limited to the type of plant, capacity, inputs, tolerances etc.;
- 2.3.3 the content of the specification for the Facilities, including the Recycling and recovery targets for the Facilities and for the Project Agreement;

3. WASTE VOLUMES

Except where the Minimum Tonnage is breached as a result in a failure by a WCA to comply with the WCA Baseline, the WDA will take the risk of the volume of Contract Waste delivered to the Delivery Points or the Facilities being less than or greater than the waste volume parameters agreed with the Relevant Contractor under the Relevant Contract.

4. WASTE COMPOSITION

Provided that the WCAs deliver their services in accordance with the relevant WCA Baselines the WDA will take the risk of the Composition of Contract Waste delivered to the Delivery Points or the Facilities being outside the waste composition parameters agreed the with Relevant Contractor under the Relevant Contract

SCHEDULE 3

Waste Collection Authority Responsibilities and Commitments

1. GENERAL

- 1.1 The WCAs have and will retain the responsibility for the collection of all Municipal Waste within their own authority boundary.
- 1.2 The method and frequency of the chosen collection system shall remain the sole responsibility and at the discretion of each WCA. However, the WCAs agree to work together as far as is reasonably practicable through this IAA (and subject to political or policy decision) to deliver the current and any future Municipal Waste collection strategy for the area in accordance with their Service Delivery Plans and WCA Baselines and in a way that does not adversely affect the obligations of the WDA under the Project Agreement.
- 1.3 The WCAs will seek to implement best practice wherever practicable to comply with the Waste Strategy for England 2007 wherever practicable and to have regard to good practice developed in consultation with the Waste & Resources Action Programme's general initiatives and particularly with guidance issued from their Recycling and Organics Technical Advisory team.
- 1.4 The WCAs shall not and shall procure that their collection contractors do not damage any Delivery Points, Contingency Delivery Points or Facilities or parts thereof.

2 DELIVERY OF CONTRACT WASTE

Each WCA shall deliver or procure that its contractor delivers Contract Waste to the Delivery Point, Contingency Delivery Point or Facility nominated by the WDA.

3 CONTAMINATION

Where a WCA delivers Waste to a Delivery Point a Contingency Delivery Point or a Facility that contains Contaminants the provisions of **Schedule 7** (Contamination) shall apply.

4 DRY RECYCLABLE WASTE

- 4.1 Within three months of the commencement of each calendar year during the term of this IAA, each WCA shall provide the WDA with an estimate of the types and quantities (including the numbers and sizes of containers to be emptied where relevant) of household Dry Recyclable Waste to be delivered for Recycling (where appropriate) for the forthcoming calendar year in conjunction with the Service Delivery Plans. Each WCA shall supply the WDA with monitoring reports updating the projections of Dry Recyclable Waste quantities by the following dates in each year:

30 September

31 January

15 May (containing final figures for previous financial year).

- 4.2 The WCA shall give the WDA reasonable (approximately 6 months') notice in writing of its intention to make a significant change to the manner in which it discharges its Household Waste collection responsibilities, including where it intends a privatisation or disposal of these services.
- 4.3 Any Household Waste collected by a district or borough council other than in its capacity as WCA (for example, parks and gardens waste, highways maintenance waste, housing maintenance waste) and delivered to the WDA shall be the subject of a separate agreement and the WCAs may make their own arrangements for the disposal of such waste.

5 COMMERCIAL WASTE AND INDUSTRIAL WASTE

[SP note: we are not convinced this section is necessary or relevant. The WCAs have a number of comments. Can we please discuss further whether it is needed]

- 5.1 The WDA shall arrange for the processing and/ or disposal of Commercial Waste and Industrial Waste collected by the WCA and delivered to the Delivery Points or Facilities subject to the WCA obtaining the written approval of the WDA prior to entering into arrangements for the collection of Commercial Waste and Industrial Waste.
- 5.2 Each WCA shall be charged for the actual disposal costs plus administration costs incurred by the WCA in respect of such Waste at a rate set by the WDA. The principles for setting the rates for the disposal costs shall be subject to Annual Review and shall be varied so as to reflect changes in cost to the WDA from disposing of Commercial Waste and Industrial Waste including the introduction of and/or increases in any applicable Landfill Tax, changes in contract costs associated with disposal or treatment of Commercial Waste and Industrial Waste, and any costs associated with LATS. The WDA shall give the WCA no less than 15 months written notice prior to the commencement of the financial year of any likely changes in the rates for budgeting purposes, and its best estimate of any such changes in the rates proposed at least six months prior to the start of the financial year. The rates shall then be confirmed no less than three months prior to the start of the financial year and shall only be subsequently revised during that financial year in the event of any significant and unforeseen changes.
- 5.3 Charges for the disposal of Commercial and Industrial Waste shall be based on actual tonnages delivered where possible. Otherwise, it will be based on estimated tonnages determined by reference to the numbers and sizes of containers emptied and the assumed average weights thereof.
- 5.4 [Within three months of the commencement of each calendar year during the term of this IAA,]
[SP DN: can we standardise these time limits so the WCAs don't inadvertently miss them..given this is an indemnity provision] each WCA shall provide the WDA with an estimate of the types and quantities (including the numbers and sizes of containers to be emptied where relevant) of Commercial and Industrial Waste to be delivered for disposal (where appropriate) for the forthcoming calendar year in conjunction with the Service Delivery Plans. Each WCA shall supply the WDA with monitoring reports updating the projections of Commercial and Industrial Waste quantities by the following dates in each year:

30 September

31 January

15 May (containing final figures for previous financial year).

- 5.5 The WCA shall give the WDA reasonable [approximately 6 months'] notice in writing of its intention to make a significant change to the manner in which it discharges its Commercial and Industrial Waste collection responsibilities, including where it intends a privatisation or disposal of these services.
- 5.6 Any Commercial and/or Industrial Waste collected by a district or borough council other than in its capacity as WCA (for example, parks and gardens Waste, highways maintenance Waste, housing maintenance Waste) and delivered to the WDA shall be the subject of a separate agreement. WCAs may make their own arrangements for the disposal of such Waste.
- 5.7 The WCAs will encourage Recycling and composting of Commercial and/or Industrial Waste where possible.
- 5.8 The WDA will issue the WCA with a monthly invoice setting out the charges levied for reception of Commercial and Industrial Waste.
- 5.9 Where charges are levied on the basis of actual tonnages (as opposed to estimated tonnages subject to adjustment), the WCA shall make payment upon being invoiced.
- 5.10 Where estimated quantities are used, payment shall be recovered on a pro rata monthly basis at the same time as the WDA receives council tax precept payments from the WCAs. Estimated quantities shall be recalculated based on actual numbers of containers when this information is available after the end of the financial year, and the WDA shall issue the WCA with an amended invoice or credit note as appropriate. The necessary financial adjustment shall be made in conjunction with adjustment of the council tax precept payments.]

SCHEDULE 4

Key Waste Delivery Parameters

1. Key Waste delivery parameters (profiled with time if appropriate):
 - 1.1. Waste growth assumptions and definition of key drivers that underpin these;
 - 1.2. Waste minimisation plans;
 - 1.3. Waste content and Waste Composition;
 - 1.4. Target Waste volume profile and allowable tolerances;
 - 1.5. Acceptance protocols for special/abnormal Waste deliveries and for the delivery of Waste covered by the sites licence;
 - 1.6. Waste delivery profiles (number of days per week, collection frequency (weekly fortnightly etc.), seasonal alterations etc.)
 - 1.6.1. access times;
 - 1.6.2. delivery days per week;
 - 1.6.3. access routes;
 - 1.6.4. WCA collection vehicle turnaround times;
 - 1.6.5. services before and after public holidays etc.
 - 1.7. Contingency measure and recovery measures associated with intermittent changes in assumptions or disruptions to service levels (e.g. reactive or planned maintenance, industrial action etc.).
 - 1.8. The future profile of Commercial Waste and Industrial Waste collected assuming that this will not increase by more than 10% from 2008 levels.
 - 1.9. Any foreseeable agreed or funded alterations to the service that may affect the key variables.
 - 1.10. Agreeing key tolerances for the project that effectively create project boundaries (geographically, technically, efficiency, Waste Composition, etc.) which if exceeded would require either variation to the Project Agreement or new facilities to accommodate.
 - 1.11. Facilities other than those to be provided under the Project Agreement to be provided by the parties that support the obligations made in this IAA e.g. bring sites, RCHWs, transfer stations etc.

SCHEDULE 5

IAA Management Board Constitution

This constitution has been approved by the Parties as the constitution of the IAA Management Board. For the avoidance of doubt the Management Board shall be established in such a way for those Parties who participate in it to work together. The Board, however

- shall have no legal identity or personality;
- is not intended to be a joint board for the purposes of s101 of the Local Government Act 1972 or otherwise;
- cannot and is not intended to fetter the discretion of the Member of any Authority but shall take into account the views from time to time expressed at any joint committees or other member fora within the Essex Waste Partnership] ; and
- cannot and is not intended to make decisions which bind or are intended to bind any Authority (except to the extent that any Authority makes a decision *intra vires* upon recommendation of the Board in accordance with that Authority's standing orders).

1. ESTABLISHMENT OF THE IAA MANAGEMENT BOARD

The IAA Management Board shall, unless the IAA Management Board otherwise decide, be the "**IAA Management Board**".

2. OBJECTIVES

The purpose of the Parties in establishing the IAA Management Board is to facilitate the effective discharge of the respective Waste collection and disposal functions of the Parties in accordance with the IAA.

3. MEMBERSHIP AND APPOINTMENT OF THE IAA MANAGEMENT BOARD

- 3.1 The IAA Management Board shall comprise an officer appointed by each of the Parties as the Lead Officer for that authority ("**Lead Officer**"). Unless there are over-riding reasons to the contrary, each party shall appoint an officer with responsibility for Waste functions as the Lead Officer.
- 3.2 Each Lead Officer may appoint an alternate officer of his/her employing authority to act on his/her behalf, and such alternate officer shall be treated for this purpose as if he/she were the Lead Officer.
- 3.3 Each party may at any time appoint another officer to be that party's Lead Officer, and any member of the IAA Management Board shall automatically cease to be a member of the IAA Management Board upon ceasing to be an officer of his/her employing authority.
- 3.4 All appointments to membership of the IAA Management Board shall be made by notification in writing from the authority to the other Lead Officers.

4. CHAIRMAN AND SECRETARY OF THE IAA MANAGEMENT BOARD

The IAA Management Board shall make its own arrangements for the conduct of its meetings, including electing a member of the IAA Management Board to preside at its meetings and an officer to act as secretary to the IAA Management Board.

5. SECRETARY TO THE IAA MANAGEMENT BOARD

- 5.1 The IAA Management Board shall be supported by the secretary to the IAA Management Board.
- 5.2 The secretary of the IAA Management Board shall be an officer of one of the parties appointed by the IAA Management Board for this purpose.
- 5.3 The functions of the secretary of the IAA Management Board shall be:
 - 5.3.1 to maintain a record of membership of the IAA Management Board;
 - 5.3.2 to summon meetings of the IAA Management Board in accordance with **paragraph 6** below;
 - 5.3.3 to prepare and send out the agenda for meetings of the IAA Management Board in consultation with the Lead Officers and the project manager;
 - 5.3.4 to keep a record of the proceedings of the IAA Management Board;
 - 5.3.5 to take such administrative action as may be necessary to give effect to decisions of the IAA Management Board;
 - 5.3.6 such other functions as may be determined by the IAA Management Board.

6. CONVENING OF MEETINGS OF THE IAA MANAGEMENT BOARD

- 6.1 Meetings of the IAA Management Board shall be held at such times, dates and places as may be notified to the members of the IAA Management Board by the secretary to the IAA Management Board, being such time, place and location as:
 - 6.1.1 the IAA Management Board shall from time to time resolve;
 - 6.1.2 the secretary of the IAA Management Board, in consultation where practicable with the Lead Officers, shall determine in response to receipt of a request in writing addressed the secretary of the IAA Management Board from any member of the IAA Management Board, which request sets out an urgent item of business within the functions of the IAA Management Board.
- 6.2 The secretary of the IAA Management Board shall settle the agenda for any meeting of the IAA Management Board and shall incorporate in the agenda any items of business and any reports submitted by any of:
 - 6.2.1 the Lead Officers;
 - 6.2.2 the IAA Management Board;
 - 6.2.3 the Chief Executive of an authority;
 - 6.2.4 the Chief Finance Officer to an authority ; and

6.2.5 the Monitoring Officer to an authority.

[SP Note: To be considered by each Authority]

7. PROCEDURE FOR DECISIONS OF THE IAA MANAGEMENT BOARD

- 7.1 The IAA Management Board shall take decisions collectively, so that a decision of the IAA Board shall not be effective unless each member of the IAA Management Board has concurred in that decision.
- 7.2 The IAA Management Board shall normally take decisions at formal meetings of the IAA Management Board, at which a decision shall be of no effect unless it is taken in the same terms by each of the members of the IAA Management Board present at the meeting.
- 7.3 Notwithstanding **paragraph** 7.2 above, where all the Lead Officers agree that a decision is urgent, such a decision may be taken without a meeting by the secretary to the IAA Management Board securing the individual agreement of each of the Lead Officers.
- 7.4 A meeting of the IAA Management Board shall be inquorate unless the member from the WDA is present together with nine (9) other members of the IAA Management Board.
- 7.5 Any decision of the Board shall stand as a recommendation to each of its members and such decision shall not bind that Member unless and until the member makes that decision in accordance with its own powers and Standing Orders.

8. POWERS OF THE IAA MANAGEMENT BOARD AS AN EXECUTIVE OFFICER BOARD

The IAA Management Board shall be an executive advisory officer board and shall not have any delegated powers.

9. ATTENDANCE AT MEETINGS OF THE IAA MANAGEMENT BOARD

- 9.1 Notwithstanding that a meeting or part of a meeting of the IAA Management Board may not be open to the press and public, the officers specified out in **paragraph** 9.2 below of each party shall be entitled, in person or by another officer nominated by that officer, to attend all, and all parts, of such meetings, unless the particular officer has a conflict of interest as a result of a personal interest in the matter under consideration.
- 9.2 The following are the officers who shall have a right of attendance in accordance with **clause** 9.1:
- 9.2.1 the chief executive of any of the authority;
- 9.2.2 the chief finance officer to any of the authority;
- 9.2.3 the monitoring officer to any of the authority;
- 9.2.4 the officers of authorities with responsibility for waste functions (if they are not the Lead Officer), and
- 9.2.5 the secretary to the IAA Management Board.

SCHEDULE 6

Payment and Costs Schedule

1. INTRODUCTION

- 1.1 This Schedule is divided into the following sections:
- (a) general payment and cost sharing arrangements;
 - (b) PPP payment and cost sharing arrangements;
 - (c) Organic Waste Service payment and cost sharing arrangements; and
 - (d) WCA specific payment and cost sharing arrangements.

PART 1 GENERAL

Part A (Statutory Funding to the WCAs)

[The payments in this section reflect the statutory funding provided to WCAs at present and are included in the IAA to acknowledge that these are payable. Once the PPP contract is operating certain payments i.e. Tipping Away Payment will be replaced by Mileage Payments.]

2. RECYCLING CREDITS

- 2.1 The WDA shall pay Recycling Credits to the WCAs on the basis of each tonne of material that is sent for Recycling.
- 2.2 With effect from the IAA Commencement Date the Recycling Credit payable for each tonne of material sent for Recycling by a WCA shall be fifty two pounds and thirty four pence (£52.34).
- 2.3 The level of Recycling Credit shall increase annually by three percent (3%) on the 1st April in each year of this IAA.
- 2.4 In accordance with Appendix A to this Schedule the WCA shall supply weighbridge data detailing source, type and quantity of household waste sent for Recycling by the WCA to reprocessing outlets, MRFs or material merchants procured by the WCA within four weeks of the end of each month.
- 2.5 The WDA shall audit the information provided by the WCA in accordance with paragraph 2.4 to check for completeness and the eligibility of submitted tonnage for payment of Recycling Credits within 10 Business Days of receipt of the required data. Following successful completion of the audit the WDA shall issue the WCA with a purchase order number to raise an invoice for the Recycling Credits.
- 2.6 The WDA shall make payments in respect of Recycling Credits to the WCAs following receipt of a valid invoice in accordance with **clause 29**.

2.7 The Parties acknowledge that the payment and level of Recycling Credits is set out in Legislation (primarily the 2006 Regulations) and in the event that the 2006 Regulations or any other relevant Legislation is amended or repealed then the payment and level of Recycling Credits shall be amended accordingly. [SP: I am not sure about this. If the scheme is simply going to follow the statutory scheme, why is an IAA necessary?]

2.8 **Failure of Recyclates Markets**

- (a) In the event that there ceases to be an outlet for any of the Recyclable Materials that a WCA is collecting in accordance with its Service Delivery Plans and provided that the reason that there is no outlet for the Recyclable Materials is not due to a failure by a WCA or its contractor to deliver its services in accordance with its Service Delivery Plan then the WDA and relevant WCA shall promptly meet to discuss how to proceed.
- (b) At the meeting the WDA and the relevant WCA shall discuss the steps taken by the WCA to find an outlet for the relevant Recyclable Materials and where an alternative outlet can be identified then the WCA shall use reasonable endeavours to secure an alternative outlet for the relevant Recyclable Materials.
- (c) Where having used its reasonable endeavours to secure an alternative outlet no outlet has been identified by either the WCA or the WDA acting reasonably then the provisions of paragraph 2.8.4 shall apply until such point as the WDA or WCA identify a suitable outlet at which point the responsibility for sourcing the outlet for the relevant Recyclable Materials shall transfer back to the relevant WCA.
- (d) Where in accordance with paragraphs 2.8.1 to 2.8.3 a WCA is unable to secure outlets for the relevant Recyclable Materials the WDA shall make arrangements to accept the relevant Recyclable Materials collected by the WCA in accordance with its Service Delivery Plan and shall make arrangements for either the sale, transfer, storage or disposal of the relevant Recyclable Materials. The WDA shall use its reasonable endeavours to secure an outlet other than disposal by Landfill.
- (e) Where the WDA takes on responsibility for the relevant Recyclable Materials in accordance with paragraph 2.8.4 then it shall be entitled to retain any income received from the sale of the relevant Recyclable Materials and no Recycling Credits shall be payable to the relevant WCA in respect of the relevant Recyclable Materials.

3. **TIPPING AWAY PAYMENTS IN RESPECT OF RESIDUAL WASTE**

3.1 The WDA shall pay Tipping Away Payments to the WCAs calculated in accordance with this paragraph and Section 51 of the EPA.

3.2 With effect from the IAA Commencement Date until the PPP Service Commencement Date where the delivery or disposal point nominated by the WDA or an alternative delivery or disposal point identified by the WDA is greater than five miles from the relevant WCA boundary the WCA shall be entitled to Tipping Away Payments for each tonne of Waste it is required to transport to an alternative delivery or disposal point as directed by the WDA.

3.3 Tipping Away Payments shall be calculated in accordance with the following formula:

- (a) *[£0.78 per laden tonne x no. of miles (> than 5 miles from WCA boundary) to alternative delivery or disposal point]*
- 3.4 The Tipping Away Payment shall be Indexed annually on 1 April.
- 3.5 The data required to support payments of Tipping Away Payments shall be provided by the operator of the relevant delivery or disposal point in accordance with Appendix A to this Schedule on a weekly basis. Following receipt of this data the WDA shall audit to check for completeness and accuracy within 10 Business Days of receipt of the required data. Following successful completion of the audit the WDA shall issue the WCA with a purchase order number to raise an invoice for the Tipping Away Payments.
- 3.6 The WDA shall make payments to the WCAs in respect of Tipping Away Payments on a quarterly basis following receipt of a valid invoice in accordance with **clause 29**.

[SP Note: We would expect the tipping away under the PPP to be higher than this amount to take into account fixed costs . That is certainly market practice at the moment in my experience]

Part B (Non-statutory Funding to the WCAs)

4. COMPOST CREDITS

- 4.1 The WDA shall pay Compost Credits to the WCAs in respect of Green Waste that is sent for processing at a windrow composting facility provided by the WDA calculated in accordance with this paragraph.
- 4.2 The WDA shall pay Compost Credits on the basis of each tonne of Green Waste that is sent for processing at a windrow composting facility provided by the WDA in accordance with the following formula:
- (a) *[Compost Credits = $[RC - GF] \times \text{tonnage of Green Waste sent for processing}$]*
- Where: RC = Recycling Credit, GF = Gate fee for the relevant compost facility
- 4.3 Where a WCA makes its own arrangements for the composting of Green Waste it shall not be entitled to receive Compost Credits but shall be entitled to payment of Recycling Credits in respect of the Green Waste sent for Composting.
- 4.4 The data required to support payments of Compost Credits shall be provided by the operator of the relevant facility in accordance with Appendix A to this Schedule on a weekly basis. Following receipt of this data the WDA shall audit to check for completeness and accuracy within 10 Business Days of receipt of the required data.
- 4.5 The WDA shall make payments in respect of Compost Credits to the WCAs on a monthly basis in arrears following receipt of a valid invoice in accordance with **clause 29**.
- 4.6 The WDA shall not make any payment of Compost Credits or Recycling Credits to a WCA where the WCA in accordance with its Service Delivery Plan collects both Green Waste and Food Waste on a comingled basis or Food Waste seperately and delivers these to an Organic Waste Delivery Point or Organic Waste Facility provided by the WDA.

5. AVOIDED DISPOSAL PAYMENTS

- 5.1 Where a WCA exceeds the targets for Recycling contained within its Local Area Agreement the WDA shall make the following payments to the WCA in addition to Recycling Credits to reflect the WDA's Avoided Disposal Payments.
- 5.2 In each financial year from the IAA Commencement Date until 30 March 2012 the WDA shall pay Avoided Disposal Payments calculated in accordance with the following formula:
- 5.3 $[\text{Avoided Disposal Payments} = (\text{LT} + \text{ALD}) - \text{RC}] \times \text{no. of tonnes sent for Recycling or Composting}$
- Where: LT = Landfill Tax per tonne at the prevailing rate for the relevant financial year, ALD = Average landfill disposal costs per tonne payable under the WDAs disposal contracts for the relevant financial year) and RC = Recycling Credit for the relevant financial year] [SP Note: How does this formula
- 5.4 With effect from 1st April 2012 the rate of Avoided Disposal Payments shall remain at the level calculated in the 2011/2012 financial year until such time as the rate of Avoided Disposal Payments is zero due to the increase in Recycling Credits.
- 5.5 Once the rate of Avoided Disposal Payments is zero then Avoided Disposal Payments shall cease to apply and the WCAs shall continue to receive Recycling Credits.
- 5.6 A WCA shall also be entitled to claim Avoided Disposal Payments calculated in accordance with the formula in paragraph 5.3 where it has exceeded the targets for Recycling and Composting contained within its Local Area Agreement in respect of the Organic Waste it sends for Composting provided always that such Organic Waste is not sent for processing at a facility provided by the WDA.
- 5.7 As set out in Appendix A to this Schedule the data required to support payments of Avoided Disposal Payments shall be based on the weighbridge data substantiating household waste diversion rate for the financial year provided by the relevant Recycling merchants, operators of Material Recycling Facilities together with operators of the relevant Composting and disposal or delivery points/facilities on a monthly basis.
- 5.8 Following receipt of this data the WDA shall audit to check for completeness and accuracy within 6 weeks of the end of each financial year. Following successful completion of the audit the WDA shall issue the WCA with a purchase order number to raise an invoice for the Avoided Disposal Payments.
- 5.9 The WDA shall make payments to the WCAs in respect of Avoided Disposal Payments following conclusion of its audit in accordance with paragraph 5.8 on an annual basis in accordance with **clause 29**.

PART 2 PPP

6. PAYMENTS

- 6.1 With effect from the PPP Service Commencement Date the WDA shall continue to make the following payments to the WCAs in accordance with Part 1 of this Schedule:
- (a) Recycling Credits;

- (b) Compost Credits; and
- (c) Avoided Disposal Payments.

7. MILEAGE PAYMENTS

- 7.1 The Parties acknowledge that under the Project Agreement the WDA is able to make deductions from the PPP Contractor where it fails to make available a Delivery Point or Facility for the WCAs to deliver Contract Waste.
- 7.2 With effect from the PPP Service Commencement Date where the WDA does not provide a Delivery Point or Contingency Delivery Point at the location or within the location parameters set out in **Schedule 9** (Delivery Points) the WDA shall pay the WCAs sums calculated in accordance with the following formula:
- (a) *[£x per laden tonne x no. of miles (> than 5 miles from WCA boundary) to alternative delivery or disposal point]*
- 7.3 The level of Mileage Payment per laden tonne to apply from the PPP Service Commencement shall be set with reference to the level of Tipping Away Payment payable immediately prior to the PPP Service Commencement date and thereafter shall be Indexed annually on 1 April.
- 7.4 The data required to support payments of Mileage Payments shall be provided by the PPP Contractor on a weekly basis. Following receipt of this data the WDA shall audit to check for completeness and accuracy within 10 Business Days of receipt of the required data. Following successful completion of the audit the WDA shall issue the WCA with a purchase order number to raise an invoice for the Mileage Payments.
- 7.5 The WDA shall make payments to the WCAs in respect of Mileage Payments on a quarterly basis following receipt of a valid invoice in accordance with **clause 29**.
- 7.6 The WCAs shall provide any further information requested by the WDA to substantiate any payments claimed under this paragraph and where requested by the WDA shall provide assistance to the WDA in respect of any claim made by the WDA against the PPP Contractor for Mileage Payments.

8. COMPENSATION PAYMENTS

- 8.1 Where:
- (a) Waste is retained by the WCAs other than in accordance with their WCA Baseline and/or
 - (b) The WCAs do not carry out their collection services in accordance with the WCA Baseline and/or
 - (c) the provisions of paragraph 3 of **Schedule 7** (Contamination) apply

and this results in an increase to the unitary charge or a payment due from the WDA to the PPP Contractor then the relevant WCA may be required to make a Compensation Payment to the WDA calculated in accordance with this paragraph.

8.2 A WCA shall be liable to make a Compensation Payment to the WDA where as a direct result of the relevant failure in accordance with paragraph 8.1 the WDA is required under the Project Agreement to either:

- (a) revise the unitary charge in accordance with the Unitary Charge Adjustment Protocol to place the PPP Contractor in a no better/no worse position; or
- (b) make a payment to the PPP Contractor which would not have been payable under the Project Agreement but for the circumstances set out in paragraph 8.1.

8.3 The WCA shall not pursuant to any provision of this schedule 6 or Clause 15 be liable to the WDA (nor the PPP Contractor)

- (a) If the WCA does any of the matters in paragraph 8.1 as a direct result of a fall in tonnages or change in composition (as opposed to the matters paragraph 8.1 being the cause of the reduction in tonnages or change in composition) or
- (b) Except to the extent that the matters in paragraph 8.1 reduce the tonnages below the Minimum Tonnages, for the impact or costs associated with any increase or decrease in tonnages (from those predicted, forecasted or otherwise) and the concept of no better/no worse and the Unitary Charge Adjustment Protocol shall be applied for this purpose to disregard the impact of any tonnage increase or decrease resulting from the matters in paragraph 8.1.

8.4 In respect of any sums claimed by the WDA in respect of this paragraph the WDA shall:

- (a) be under a duty to mitigate any revisions to the unitary charge or sums claimed by the PPP Contractor; and
- (b) pursue or defend any claim made/or against the PPP Contractor in respect of the proposed revisions to the unitary charge or sums claimed by the PPP Contractor with the same effort and care as if the WDA was unable to recover a Compensation Payment from the relevant WCA.

8.5 In respect of any payments due from a WCA under paragraph 8 the WCA shall make such payments on the same basis as such payments are required to be made to the PPP Contractor. Where the WDA has a choice over the frequency of such payments it shall consult with the relevant WCA as to its preferred method and frequency of payment.

8.6 The WDA shall submit an invoice or invoices to the relevant WCA based on the method and frequency agreed between the WDA and WCA in accordance with **clause 29**.

From the WDA

8.7 Where the relevant Delivery Point or Facility is not in accordance with the Delivery Point Standards and the WDA is able to make deductions under the PPP Contract from the PPP Contractor then the WDA shall make a payment to the relevant WCA equivalent to the amount of the deductions.

PART 3 ORGANIC WASTE SERVICE

9. CONTRIBUTION TO COST OF DELIVERING ORGANIC WASTE SERVICE

- 9.1 Where in accordance with the Service Delivery Plan the WDA and a WCA have agreed to implement and maintain an Organic Waste Service then the provisions of this paragraph shall apply.
- 9.2 The WDA shall make the following payments to the WCA in respect of the Organic Waste Service:
- (a) a capital contribution to the costs of the WCA in implementing the service (the agreed capital contribution for each WCA is set out in Part 4 of this Schedule); and
 - (b) a contribution to the annual revenue cost to the WCA of providing the Organic Waste collection Service (the agreed annual revenue contribution for each WCA is set out in Part 4 of this Schedule);
- 9.3 In respect of the payments due from the WDA under paragraph 9.2.1 the WDA shall make such payments following the successful implementation of the Organic Waste Service in accordance with the relevant Service Delivery Plan once they have been incurred by the WCA and subject to a satisfactory audit by the WDA of the payments in accordance with Appendix A to this Schedule. [SP Note: We need to be clear as to whether the funding is therefore a cap – so that only the sums actually incurred (in what service?) are payable, or whether the funding is provided in any event]
- 9.4 In respect of the payments due from the WDA under paragraph 9.2.2 the WDA shall make such payments following the successful implementation of the Organic Waste Service in accordance with the relevant Service Delivery Plan on an annual basis subject to a satisfactory audit by the WDA of the payments in accordance with Appendix A to this Schedule.
- 9.5 The WCA shall submit an invoice or invoices to the WDA for payments due under paragraphs 9.3 and 9.4 in accordance with **clause 29**.

10. COMPENSATION FOR HAULAGE OF ORGANIC WASTE

- 10.1 With effect from the relevant implementation date for the Organic Waste Service where the WDA does not provide a Organic Waste Delivery Point at the location or within the location parameters set out in **Schedule 9** (Delivery Points) the WDA shall pay the WCAs sums calculated in accordance with the following formula:
- (a) *[£x per laden tonne x no. of miles (> than 5 miles from WCA boundary) to alternative delivery or disposal point]*
- 10.2 The level of Compensation for Haulage of Organic Waste per laden tonne to apply from the relevant implementation date for the Organic Waste Service shall be set with reference to the level of Tipping Away Payment payable immediately prior to the relevant implementation date for the Organic Waste Service and thereafter shall be Indexed annually on 1 April.

- 10.3 The data required to support payments of Compensation for Haulage of Organic Waste shall be provided by the contractor(s) delivering the Organic Waste Service on a weekly basis. Following receipt of this data the WDA shall audit to check for completeness and accuracy within 10 Business Days of receipt of the required data. Following successful completion of the audit the WDA shall issue the WCA with a purchase order number to raise an invoice for the Compensation for Haulage of Organic Waste.
- 10.4 The WDA shall make payments to the WCAs in respect of Compensation for Haulage of Organic Waste on a quarterly basis following receipt of a valid invoice in accordance with **clause 29**.
- 10.5 The WCAs shall provide any further information requested by the WDA to substantiate any payments claimed under this paragraph and where requested by the WDA shall provide assistance to the WDA in respect of any claim made by the WDA against the relevant contractor for Compensation for Haulage of Organic Waste.

11. COMPENSATION PAYMENTS IN RESPECT OF THE ORGANIC WASTE SERVICE

From the WCA

- 11.1 Where:
- (a) a WCA fails to deliver the Organic Waste Service in accordance with its Service Delivery Plan or
 - (b) the provisions of paragraph 2 of **Schedule 7** (Contamination) apply

and this results in the WDA breaching its Minimum Tonnages under the Relevant Contract Target or results in a load or part of a load being rejected the WCA shall be liable to the WDA where as a direct result of the relevant failure in accordance with paragraph 11.1 the WDA is required under the Relevant Contract to make a payment to the contractor which would not have been payable under the relevant contract but for the circumstances set out in paragraph 11.1.

- 11.2 In respect of any sums claimed by the WDA in respect of this paragraph the WDA shall:
- (a) be under a duty to mitigate any revisions to the sums claimed by the relevant contractor; and
 - (b) pursue or defend any claim made/or against the contractor in respect of the proposed sums claimed by the contractor with the same effort and care as if the WDA was unable to recover a Compensation Payment from the relevant WCA.
- 11.3 In respect of any payments due from a WCA under paragraph 11 the WCA shall make such payments on the same basis as such payments are required to be made to the Relevant Contractor. Where the WDA has a choice over the frequency of such payments it shall consult with the relevant WCA as to its preferred method and frequency of payment.
- 11.4 The WDA shall submit an invoice or invoices to the relevant WCA based on the method and frequency agreed between the WDA and WCA in accordance with **clause 29**.

From the WDA

11.5 Where the relevant Organic Waste Delivery Point or Contingency Point or Facility is not in accordance with the Delivery Point Standards and the WDA is able to make deductions under the Relevant Contract from the Relevant Contractor then the WDA shall make a payment to the relevant WCA equivalent to the amount of the deductions.

12. Disputes

Disputes under this Schedule 6 shall be referred to the Dispute Resolution Procedure

PART 4 WCA SPECIFIC ARRANGEMENTS

Appendix A

IAA Reference	Title of Payment	Data Description	Original Source of Data	Typical Data Flow		Data Received by WDA to Calculate/Audit any Required Payment	Data Submission Frequency	Deadline for WCAs to Submit Data	Audit and Calculation Process	Anticipated Audit Duration	Information submitted to WCA by WDA for agreement	Invoice Process	Invoice frequency	Payment Calculation Mechanism and Review	Payment Flow		Notes
				From	To										From	To	
Sch.6 Part1 A Para. 2	Recycling Credit	Weighbridge data detailing source, type and quantity of household waste sent for recycling by the WCA to reprocessing outlets, MRFs or material merchants procured by the WCA	Reprocessors Recycling Merchants Material Recycling Facilities	WCA	WDA	Weighbridge tickets from WCA. Reprocessor statement from WCA. Summary statement from WCA	Monthly	Within 4 weeks of month end. Data not available for month of activity to be included in following month or when data has become available. All data to be received and agreed within 6 weeks of year end.	WDA audits claim to check for completeness and the eligibility of submitted tonnage for recycling credit payment WDA applies per tonne credit rate to eligible tonnage.	10 working days from receipt of data	Summary of eligible tonnage Required invoice value.	Raised by WCA on receipt of WDA audit outcome against notified ECC order number	Monthly	Calculated in accordance with the Environmental Protection (Waste Recycling Payments) Regulations 2006. Standard Recycling Credit rate for 2009/10: £52.34 per tonne Rate will be uplifted by 3% on the 1st April each year.	WDA	WCA	The standard recycling credit rate only applies to recycled waste where recycling is arranged by the WCA and where producer responsibility regulations (PRR) do not apply. If PRR recycle is mixed with other recycle i.e. WEEE mixed with metal then the eligible tonnage will be adjusted to take account of the amount of WEEE contained within the co-mingled recycle.
Sch.6 Part1 A Para. 3	Tipping Away	Weighbridge data detailing the quantity of residual household waste transported by the WCA more than 5 miles from the district border to the designated disposal point.	Disposal point contractor	WDA	WCA	Weighbridge ticket from operator of designated disposal point	Weekly (From disposal point contractor to WDA)	N/A	WDA audits landfill data for accuracy. WDA applies a per tonne/mile rate to eligible tonnage (household residual tonnage only). Distance from WCA boundary to disposal	10 working days from end of month	Mileage matrix detailing distance (above 5 miles) between WCAs and disposal points. Summary of eligible tonnage. Required invoice value.	Raised by WCA on receipt of WDA audit outcome.	Quarterly	Calculated in accordance with Environmental Protection Act 1990 Standard tipping away payment rate for 2009/10 is £0.78 Annual rate review in accordance with RPI to	WDA	WCA	No requirement on WCA to supply data to calculate tipping away payments, all data will be supplied by the operator of the designated disposal point

IAA Reference	Title of Payment	Data Description	Original Source of Data	Typical Data Flow		Data Received by WDA to Calculate/Audit any Required Payment	Data Submission Frequency	Deadline for WCAs to Submit Data	Audit and Calculation Process	Anticipated Audit Duration	Information submitted to WCA by WDA for agreement	Invoice Process	Invoice frequency	Payment Calculation Mechanism and Review	Payment Flow		Notes
				From	To										From	To	
									point is calculated using agreed mileage matrix.					take effect in April.			
	Trade Waste	Details of WCA commercial waste customers and service provided.	Waste Collection Authority	WCA	WDA	Full customer list detailing name and address of customer, number and type of containers provided and frequency of lift. Order number (if required) for WDA to raise invoice against	Monthly	Within 4 weeks of month end. Data not available for month of activity to be included in following month or when data has become available.	WDA will periodically check accuracy of customer list and service provision. WDA will calculate commercial waste tonnage using agreed volume to weight conversion factor	10 working days from receipt of data	Commercial waste landfill rates per tonne. Summary of eligible tonnage. Value of invoice to be submitted to WCA.	Raised by WDA following agreement of audit outcome.	Monthly	Average gate fee for WCA designated disposal points plus administration fee. Rate uplifted on the 1st April each year in line with gate fees. Volume to weight conversion factor will be subject to annual review	WCA	WDA	
	Disposal Credit	Weighbridge data detailing quantity of household waste rejected at MRF for recycling due to level of contamination and subsequently sent for disposal, outside of any WDA	Materials Recycling Facility	WCA	WDA	Details of average MRF contamination rate from MRF operator or outcome of waste analysis undertaken on WCA MRF throughput using WDA approved methodology	Minimum of once a year or following significant change to collection methodology or MRF operation	Within 12 months of previous submission or 8 weeks of significant change to collection frequency or change to MRF operation	Agreed contamination level will be applied to all material sent to a MRF for sorting by WDA. Tonnage will be subtracted from recycling tonnage. WDA applies a per tonne	10 working days from receipt of recycling credit data	Summary of eligible tonnage. Required invoice value.	Raised by WCA on receipt of WDA audit outcome.	Monthly	Recycling credit rate applied	WDA	WCA	

IAA Reference	Title of Payment	Data Description	Original Source of Data	Typical Data Flow		Data Received by WDA to Calculate/Audit any Required Payment	Data Submission Frequency	Deadline for WCAs to Submit Data	Audit and Calculation Process	Anticipated Audit Duration	Information submitted to WCA by WDA for agreement	Invoice Process	Invoice frequency	Payment Calculation Mechanism and Review	Payment Flow		Notes	
				From	To										From	To		
		contract							credit rate to all contamination.									
Sch.6 Part1 B Para. 4	Compost Credit	Weighbridge data detailing quantity of separated household waste sent for composting at WDA contracted windrow composting facilities	Compost Contractor	WDA	WCA	Weighbridge tickets from composting contractor	Weekly (From Contractor to WDA)	N/A	WDA audits claim to check for completeness and the eligibility of submitted tonnage for compost credit payment WDA applies per tonne credit rate to eligible tonnage.	10 working days from end of each month	Summary of eligible tonnage Required invoice value.	Raised by WCA on receipt of WDA audit outcome	Monthly	Difference between recycling credit rate and average compost gate fee plus transport costs (if borne by WDA) Standard Recycling Credit rate for 2009/10: £20.28 per tonne. Rate reviewed on the 1st April each year.	WDA	WCA	No requirement on WCA to supply data to calculate compost credit payments.	

IAA Reference	Title of Payment	Data Description	Original Source of Data	Typical Data Flow		Data Received by WDA to Calculate/Audit any Required Payment	Data Submission Frequency	Deadline for WCAs to Submit Data	Audit and Calculation Process	Anticipated Audit Duration	Information submitted to WCA by WDA for agreement	Invoice Process	Invoice frequency	Payment Calculation Mechanism and Review	Payment Flow		Notes
				From	To										From	To	
Sch.6 Part1 B Para. 5	Avoided Disposal	Weighbridge data substantiating household waste diversion rate for the financial year	Reprocessors Recycling Merchants Material Recycling Facilities Composting Contractor Disposal Point Operator	WDA	WCA	Weighbridge tickets detailing all household tonnage Household waste diversion targets as contained within the LAA 2008-2011	Monthly (minimum)	N/A	WDA audits data for completeness and accuracy. Annual tonnage diversion required to meet LAA target is calculated and per tonne credit rate is applied to all material diverted through recycling or composting above the required tonnage.	Within 6 weeks of year end	Tonnage diversion required to meet LAA target Actual tonnage diversion from WCA activities within calendar year Tonnage eligible for Avoided Disposal payment	Raised by WCA on receipt of WDA audit outcome	Annually	Difference between recycling credit rate for applicable year and average per tonne disposal cost, as calculated at year end. Average disposal cost will be recalculated each year until 1st April 2012 when the disposal cost used will remain at 2011/12 level.	WDA	WCA	No requirement on WCA to supply additional data to calculate avoided disposal payments.
Sch.6 Part3 Para. 10.2.1	Capital Contribution to Delivery of Organic Waste Service	Data as requested by WDA to substantiate delivery of service delivery plan	Waste Collection Authority	WCA	WDA	Invoices and any other records to substantiate payment for capital purchases required to implement, maintain agreed organic waste service.	Annually	By 31st March of year of purchase	WDA or its appointed auditors will undertake an audit of capital expenditure commensurate with the amount of funding provided to ensure compliance with agreed service delivery plan. Payment of	Within 6 weeks of submission	Outcome of audit	Raised by WCA on receipt of WDA confirmation of capital claim eligibility	-	Eligible payment up to agreed capital support	WDA	WCA	

IAA Reference	Title of Payment	Data Description	Original Source of Data	Typical Data Flow		Data Received by WDA to Calculate/Audit any Required Payment	Data Submission Frequency	Deadline for WCAs to Submit Data	Audit and Calculation Process	Anticipated Audit Duration	Information submitted to WCA by agreement	Invoice Process	Invoice frequency	Payment Calculation Mechanism and Review	Payment Flow		Notes
				From	To										From	To	
									capital expenditure will be made up to the agreed contribution level								
Sch.6 Part3 Para. 10.2.2	Revenue Contribution to Delivery of Organic Waste Service	Data as requested by WDA to substantiate delivery of service delivery plan	Waste Collection Authority	WCA	WDA	Invoices substantiating required revenue payments to implement, maintain agreed organic waste service and wider service delivery plan.	Annually	Within 4 weeks of end of year end	WDA or its appointed auditors will undertake an audit of revenue expenditure commensurate with the amount of funding provided to ensure compliance with agreed service delivery plan. Payment of revenue expenditure will be made up to the agreed contribution level	Within 6 weeks of year end	Outcome of audit	Raised by WCA on receipt of WDA confirmation of revenue claim eligibility	Annually	Eligible payment up to agreed revenue support	WDA	WCA	
Sch.6 Part2 Para. 8	Disposal Cost	Weighbridge data detailing quantity of waste delivered by the WCA to a delivery/disposal point, as directed by	Disposal Point Operator	WDA	WCA	Weighbridge data from disposal point operator Data to substantiate additional costs resulting from delivery of contaminated	As required	N/A	WDA audits data for completeness and accuracy.	10 working days from receipt of data	Details of contaminated load Additional cost to dispose of waste	Raised by WDA following agreement of audit outcome.	Quarterly	Additional reasonable costs incurred by the WDA as a direct result of the delivery of contaminated waste by the WCA to	WCA	WDA	

IAA Reference	Title of Payment	Data Description	Original Source of Data	Typical Data Flow		Data Received by WDA to Calculate/Audit any Required Payment	Data Submission Frequency	Deadline for WCAs to Submit Data	Audit and Calculation Process	Anticipated Audit Duration	Information submitted to WCA by WDA for agreement	Invoice Process	Invoice frequency	Payment Calculation Mechanism and Review	Payment Flow		Notes
				From	To										From	To	
		the WDA, which by virtue of contamination results in the WDA incurring additional costs to dispose of the waste.				material								a designated disposal point.			
Sch.6 Part2 Para. 9	Compensation Payments	Information to substantiate delivery of WCA service in accordance with the agreed service delivery plan, WCA baseline and IAA terms.	Waste Collection Authority PFI Contractor	WCA	WDA	Reasonable information as requested by WDA to substantiate delivery of WCA service in accordance with the agreed service delivery plan, WCA baseline and IAA terms.	Annually	Within 4 weeks of end of year	WDA audit WCA service to assess compliance with agreed service delivery plan, WCA baseline and IAA terms. Where service has not been delivered as agreed WDA will assess whether this has led to a revision to the unitary charge or additional payments to be made to the PFI contractor.	4 weeks from year end	Details of non compliance with IAA terms, WCA baseline or service delivery plan. Details of direct link between failure and revision to unitary charge or additional payments to the PFI contractor	Raised by WDA following notification of audit outcome.	Annually	Additional costs incurred as a direct result of relevant failure			

IAA Reference	Title of Payment	Data Description	Original Source of Data	Typical Data Flow		Data Received by WDA to Calculate/Audit any Required Payment	Data Submission Frequency	Deadline for WCAs to Submit Data	Audit and Calculation Process	Anticipated Audit Duration	Information submitted to WCA by WDA for agreement	Invoice Process	Invoice frequency	Payment Calculation Mechanism and Review	Payment Flow		Notes
				From	To										From	To	
Sch.6 Part3 Para. 11	Organic Waste Haulage	Weighbridge data detailing the quantity of organic waste transported by the WCA more than 5 miles from the district border to the designated organic waste delivery point or facility.	Organic Waste Delivery Point/Facility operator	WDA	WCA	Weighbridge ticket from operator of organic waste delivery point/facility	Weekly (From operator of organic waste delivery point/facility to WDA)	N/A	WDA audits weighbridge data for accuracy. WDA applies a per tonne/mile rate to eligible tonnage. Distance from WCA boundary to disposal point is calculated using agreed mileage matrix.	10 working days from end of month	Mileage matrix detailing distance (above 5 miles) between WCAs and disposal points. Summary of eligible tonnage. Required invoice value.	Raised by WCA on receipt of WDA audit outcome.	Quarterly	Tipping away rate applied	WDA	WCA	No requirement on WCA to supply data to calculate tipping away payments, all data will be supplied by the operator of the designated disposal point
Sch.6 Part4 Para. 12	Efficiency Savings	Details of any efficiency savings in WCA operations as a result of implementation of service delivery plans, joint working, provision of transfer stations or other actions resulting from the IAA..	Waste Collection Authority	WCA	WDA	Financial summary of waste service provision against budget and qualitative assessment from WCA of any efficiencies made	Annually	Within 8 weeks of request from WDA	No defined process set. WCA will work with WDA and provide any data reasonably requested to identify any efficiency savings and agree to share 50% of any identified efficiency savings with the WDA		Adjustment made to revenue support to reflect any agreed efficiency savings	N/A	50% of identified and agreed efficiency saving	WCA	WDA		

SCHEDULE 7

Contamination

1. INTRODUCTION

The Relevant Contract entered into by the WDA shall contain provisions that if a Relevant Contractor identifies Contaminants in the Contract Waste or Organic Waste delivered by the WCAs, this Contract Waste or Organic Waste may be rejected from the Facility and processed by an alternative method. The cost of such alternative disposal may be an additional cost for which the WDA is liable.

2. ORGANIC WASTE SERVICE

- 2.1 At least two months prior to the implementation of the Organic Waste Service in respect of each WCA that has agreed to implement an Organic Waste Service in accordance with **Part IV** the WDA shall prepare the Organic Waste Contamination Protocol, with reference, *inter alia*, to the Relevant Contract and shall submit it to the WCA for review. The WCA shall review the Organic Waste Contamination Protocol and provide a mark up and comments within 15 working days of its submission to the WCA. The WDA and WCA shall (both acting reasonably) agree the Organic Waste Contamination Protocol. For the avoidance of doubt, the Organic Waste Contamination Protocol may be different for different WCAs.

[SP DN: But this service is already in place for some of them, and others imminently. Can the protocol not be agreed now ?]

- 2.2 The Organic Waste Contamination Protocol shall reflect the definition of Contaminant I nthis IAA and include the following:

- 2.2.1 the methodology for inspection of Organic Waste delivered to the Organic Waste Delivery Points or Organic Waste Facilities provided by the WDA;
- 2.2.2 the types and quantities of Contaminants which will be accepted and treated by the relevant contractor at no additional treatment or disposal cost;
- 2.2.3 the types of Contaminants that will still be accepted and treated by the Relevant Contractor but which may result in an additional processing and/or disposal cost;
- 2.2.4 the types of Contaminant which may cause all or part of the Organic Waste load delivered by the WCA or it is contractor to the Organic Waste Delivery Point or the Organic Waste Facility to be rejected and will be alternatively disposed of by the WDA or the contractor;
- 2.2.5 any Contaminants which if delivered by the WCA or its contractor to a Organic Waste Delivery Point or a Organic Waste Facility would legally require the Organic Waste Delivery Point or a Organic Waste Facility to be shut down and/or require clean-up or decontamination (i.e. the delivery of Hazardous Waste or unexploded ordinance, etc); and
- 2.2.6 the measures which the WDA would expect the operator of the Organic Waste Delivery Point and/or Organic Waste Facility to take in the management of the Organic Waste Delivery Point and/or Organic Waste Facility so as to minimise disruption, additional costs

and rejection of Organic Waste notwithstanding the presence of Contaminants from time to time.

- 2.3 The Organic Waste Contamination Protocol shall be reviewed by the WDA and the relevant WCAs where there is any proposed change to the Organic Waste Facility used to treat the Organic Waste and the relevant parties shall work together in good faith to agree any changes to the Organic Waste Contamination Protocol.
- 2.4 Where
 - 2.4.1 to the extent such costs exceed the normal price the WDA would have paid to dispose of the load as residual waste
 - 2.4.2 to the extent such costs exceed the normal price the WDA would have paid to dispose of the load as residual waste
 - 2.4.3 the Contamination could have been avoided by the WCA acting (and procuring its contractors) act in accordance with Good Industry Practice
- 2.5 then this additional cost shall be payable by the relevant WCA in accordance with the provisions of **Schedule 6** (Payments and Costs Schedule).
- 2.6 Where the delivery of Contaminants by a WCA causes the relevant Organic Waste Delivery Point or a Organic Waste Facility to be closed by law either in part or in whole then the WDA shall be entitled to recover from the relevant WCA its reasonable additional costs incurred as a result of the delivery by the WCA or its contractor of the relevant Contaminants to the Organic Waste Delivery Point or a Organic Waste Facility provided that the Contamination could not have been avoided by the WCA acting (and procuring its contractors act) in accordance with Good Industry Practice .

3 CONTRACT WASTE

- 3.1 As part of the Initial Review the Parties shall agree the Waste Contamination Protocol.
- 3.2 The Waste Contamination Protocol shall include the following:
 - 3.1.1 the methodology for inspection of Waste delivered to the Delivery Points or Facilities provided by the WDA.
 - 3.1.2 The types of Contaminants which will be accepted and treated by the PPP Contractor at no additional treatment or disposal cost;
 - 3.1.3 the types of Contaminants that will still be accepted and treated by the PPP Contractor but which will result in an additional processing and/or disposal cost;
 - 3.1.4 the types of Contaminant which may cause all or part of the Waste delivered by the WCA or it is contractor to the Delivery Point or the Facility to be rejected and will need to be disposed of by the WDA or the PPP Contractor;
 - 3.1.5 any Contaminants which if delivered by the WCA or its contractor to a Delivery Point or a Facility would legally cause the Delivery Point or Facility to be shut down and/or require clean-up or de-contamination (i.e. the delivery of Hazardous Waste or unexploded ordinance, etc); and

3.1.6 the measures which the WDA would expect the operator of the Delivery Points and/or the Facilities to take in the management of the Delivery Points and/or Facilities so as to minimise disruption, additional costs and rejection of Contract Waste notwithstanding the presence of Contaminants from time to time.

3.3 Where

3.1.1 having itself followed the Waste Contamination Protocol and having procured that the PPP Contractor follows the Waste Contamination Protocol the WDA is required pursuant to its the PPP Contract to pay additional costs for the treatment or disposal of a load or part as a result of Contamination and

3.1.2 to the extent such costs exceed the normal price the WDA would have paid to dispose of the load as residual waste and

3.1.3 the Contamination could not have been avoided by the WCA acting (and procuring its contractors) act in accordance with Good Industry Practice

then this additional cost shall be payable by the relevant WCA in accordance with the provisions of **Schedule 6** (Payments and Costs Schedule).

3.1 Where the delivery of Contaminants by a WCA causes the relevant Delivery Point or a Facility to be closed by law either in part or in whole then the WDA shall be entitled to recover from the relevant WCA its reasonable, mitigated and proper additional costs incurred as a result of the delivery by the WCA or its Contractor of the relevant Contaminants to the Delivery Point or Facility.

2. Any disputes relating to the application of this Schedule 7 including the

3.1 Preparation, agreement and review of the Waste Contamination Protocol

3.2 Presence or otherwise of Contamination

3.3 The definition of Contamination

3.4 Compliance by any party or by the Relevant Contractor with the agreed Waste Contamination Protocol

3.5 Whether it was a legal requirement for a Delivery Point to be closed as a result of Contamination

3.6 The amount (if any) of any additional cost incurred by the WDA

shall be referred to the Dispute Resolution Procedure.

SCHEDULE 8
Service Delivery Plans

Part 1 WCA Baseline

	Example	2009/10	2010/11	2011/12	2012/13	2013/14 & ongoing
RESIDUAL WASTE						
Material type	<i>General Household waste</i>					
Container Type	<i>240Lt wheeled bin</i>					
Approx Number of properties served	<i>62,400</i>					
% of total props	<i>100%</i>					
Frequency of collection	<i>Weekly</i>					
FOOD & GARDEN						
Material type	<i>All kitchen waste (cooked & uncooked) & green garden waste</i>					
Container type	<i>Kitchen caddy with bio bag & external caddy.</i>					
Approx Number of properties served	<i>56,800</i>					
Approx % of total props	<i>91%</i>					
Frequency of collection	<i>fortnightly</i>					
Number of Months per year	<i>12</i>					
Material to be delivered to . . .	<i>ECC facility</i>					
Promotional activity	<i>Leaflet to all h/h. 2 x Newspaper adverts</i>					
GARDEN WASTE ONLY						
Material type	<i>N/A</i>					
Container type	<i>-</i>					
Approx Number of properties served	<i>-</i>					
Approx % of total props	<i>-</i>					
Number of Months per year	<i>-</i>					
Frequency of collection	<i>-</i>					

Material to be delivered to . . .	-					
Promotional activity						
KITCHEN WASTE ONLY	N/A					
Material type						
Container type	-					
Approx Number of properties served	-					
Approx % of total props	-					
Frequency of collection	-					
Material to be delivered to . . .	-					
Promotional activity						
DRY RECYCLING						
Materials	<i>Mixed recycle inc cans, glass, plastic bottles all paper & card.</i>					
Container type	<i>75lt sack</i>					
Approx Number of properties served	<i>60,800</i>					
Approx % of total props	<i>97.5</i>					
Frequency of collection	<i>fortnightly</i>					
Material to be delivered to . . .	<i>Holman MRF</i>					
Promotional activity						
TEXTILES	N/A					
Materials						
Container type						
Approx Number of properties served						
Approx % of properties						
Frequency of collection						
Promotional activity						
BRING BANK SITES						
Materials	<i>Glass, Cans, Paper, Card & textiles</i>					
Container type	<i>Modular Banks & Euro bins</i>					
Number of sites	<i>36</i>					
Material to be delivered to . . .	<i>Contractors facilities</i>					
BULKY WASTE						
Bulky waste	<i>5 items collected for £20</i>					

collection						
Material to be delivered to . . .	<i>ECC facility</i>					
OTHER WASTE COLLECTION? <i>Eg WEEE</i>	<i>Separate collection no charge.</i>					
Material to be delivered to . . .	<i>ECC facility</i>					
OTHER WASTE COLLECTION Eg Dog bins	<i>97 Emptied weekly</i>					
Material to be delivered to . . .	<i>ECC facility</i>					
Commercial Waste Collection	<i>Approx 157 SMEs</i>					
Collected with hh waste or separately						

Part II Service Delivery Plans

The purpose of this document is twofold, it is to:

- Identify the waste & recycling services you are providing and plan to provide for the next 5 years.
- To inform the procurement process for waste facilities on the nature and quantity of waste, recycle and composting for the next 25 years.

The Service Delivery Plan is a rolling 5 year document and will be annually updated in accordance with the procedures set out in the Inter Authority Agreement.

The information contained within this document is the minimum required. If you consider further information relevant to the above purposes this should also be included.

[SP: We need to make clear that this information is not warranted. For discussion].

CONTENT

1. Introduction
2. Residual Waste
3. Recycling Services
4. Other Waste Collection Services
5. Waste Minimisation activities
6. Waste & Recycling Education Initiatives
7. Tabulated Five Year Service Delivery Plans.

INTRODUCTION

1.1 Brief description of District *eg. Rural/urban split, conurbations, socio/economics etc.*

1.2 Proposed housing development for next 25 years including source of the forecast.

1.3 Historic demographic trends and waste arising for the Borough have been as follows: Table 1: Demographic Trends & Waste Arising

	2003/04	2004/05	2005/06	2006/07	2007/08
Size of Authority [area in Hectares]					
Population: [number]					
Population Density					
Number of Households:					
Number of Multiple Occupation households					
Number of Households with a garden					

% Household Waste Recycled & Composted					
Tonnes Household Waste Recycled & Composted					
% Residual Waste per Household					
Kg Residual Waste per Household					
Tonnes MSW to Landfill					

CURRENT WASTE & RECYCLING SERVICES

2. RESIDUAL WASTE

2.1 Service Description

- Frequency
- Container type/s & % of households covered.
- Any special instructions e.g. no side waste and non-acceptable materials e.g. asbestos, bulky items etc.

2.2 Provisions for flats etc. & % of households

2.3 In house or contracted out

Table 2: Details of waste collection contractor / DS

Service	Details
Waste Collection Contractor/DSO	
Contract start date	
Contract expiry date	

2.4 Normal collection times

Table 3: Normal Collection Times.

Collection day	First delivery to disposal site & last delivery to disposal site.
Monday	
Tuesday	
Wednesday	
Thursday	
Friday	

Saturday	
----------	--

2.5 Collection schedule & times after Bank Holidays

Table 4: Bank Holiday catch up arrangements

Public Holiday	Arrangement	Hours of operation
Good Friday		
Easter Monday		
May Day		
Spring Bank Holiday		
August Bank Holiday		
Christmas Day		
Boxing Day		
New Year's Day		

2.6 Vehicles used

Table 5: Schedule of residual waste collection vehicles

Type of RCV e.g. cage tipper, rear end compactor, roll-on-off etc.	No. of vehicles	Gross weight	Nett Payload	Average number of trips to the tip per day
Active Vehicles				
Back up vehicles				

2.7 Number of refuse crews

3. RECYCLING SERVICES

3.1 Kerbside dry household recyclables collections. Co mingled or sorted?

Table 6: Dry Recycling Collection Details

Materials collected	Collection Frequency	Container Provided	Number of Properties

3.2. Kerbside Garden Waste Only collection. (NB food or food & garden dealt with later)

3.2.1

- Material included in collection
- Frequency of collection
- Container provided
- Number of props covered
- All year round?
- Currently taken to ECC facility or
- privately contracted – contract expiry date

3.2.2 Table 7: Vehicles used for collection of green waste

Type of RCV e.g. cage tipper, rear end compaction, split body, roll-on-off, etc	No. of vehicles	Gross Weight	Nett Payload	Average number of trips to the tip per vehicle per day.

3.2.3 Number of crews

3.2.4 The average percentage of garden waste that is collected throughout the year. Please confirm, or indicate otherwise, if your seasonal variations are not in accordance with the average Essex seasonal variations as set out in the table below.

Table 8: Seasonal collection rates for green waste

Month	Average % of green waste collected in Essex	Please indicate if yours is 5% or more different.
January	3	
February	5	
March	5	
April	12	
May	11	
June	13	
July	13	
August	12	
September	10	
October	9	
November	6	
December	3	

3.3. Food Waste Only collection

3.3.1

- Material included in collection
- Frequency of collection
- Container provided
- Number of props covered
- Currently taken to ECC facility, location, or

- privately contracted – contract expiry date

3.3.2 Table 9: Vehicles used for collection of food

Type of RCV e.g. cage tipper, rear end compaction, split body, roll-on-off, etc	No. of vehicles	Gross Weight	Nett Payload	Average number of trips to the tip per vehicle per day.

3.3.3 Number of crews

3.4. Food & Garden waste collected together

3.4.1

- Material included in collection
- Frequency of collection
- Container provided
- Number of props covered
- All year round?
- Currently taken to ECC facility, location, or
- privately contracted – contract expiry date

3.4.2 Table 10: Vehicles used for combined collection of food & garden waste.

Type of RCV e.g. cage tipper, rear end compaction, split body, roll-on-off, etc	No. of vehicles	Gross Weight	Nett Payload	Average number of trips to the tip per vehicle per day.

Table 11: Seasonal collection rates for green waste

Month	% of green waste collected
January	
February	
March	
April	
May	
June	
July	
August	
September	

October	
November	
December	

3.4.3 Number of crews.

3.5 Bring sites

3.5.1. Table12: Number of Bring sites & types of material that can be recycled.

Number of Bring Sites	Material collected

4. OTHER WASTE COLLECTION MECHANISMS

4.1. Recycling Centres for Household Waste

4.1.1 Number & location

4.2.1 Collection of Waste which is not standard refuse or recycling (this is to inform the contractor of the totality of your waste which they may expect to receive, what type of vehicle & frequency) eg:

- Bulky household waste collection service,
- WEEE,
- Fly tipping,
- Street sweepings
- Tyres
- Dog bins &
- Any other waste collected by WCA not accounted for above.

Table 13: All other waste material collected by WCA

Collection Description of items	Charge Levied £?	How many items	Number of collections 08/09	Dedicated vehicle or refuse, give details.

4.3 Commercial/Industrial and other Non Household Waste

- collected in which vehicles (normal refuse rounds or dedicated, if dedicated describe vehicle)
- likely trade waste tonnage 08/09

5. WASTE MINIMISATION INITIATIVES

5.1 Briefly describe the Waste Minimisation activities undertaken eg promoting nappy laundering, home compost units etc.

5.2 Planned future waste minimisation schemes, activities or educational programmes for the next 5 years.

6. WASTE EDUCATION INITIATIVES

6.1 General waste & recycling campaigns, educational programmes & awareness raising activities planned for next 5 years. Eg leaflet production, displays, events, etc.

7. FUTURE PLANNED DELIVERY OF WASTE & RECYCLING SERVICES

7.1 XXX Council is working with the County Council to increase recycling and composting in order to achieve the targets and aspirations in Joint Municipal Waste Management Strategy.

7.2 The purpose of the table below is to indicate what tonnage of waste, recycle, compost and all other waste types collected and where it is going for the next 5 years. If not all types of waste you collect are described here please add them in the 'other' sections.

Notes for completion.

The table assumes

- 1. If you have a scheme funded by ECC in the recent funding offers (FFV2 & IAA funding) it is assumed you will deliver this in accordance with the agreed timetable. This information needs to be included in the table.*
- 2. If you are to start a new food waste collection scheme, the relevant tonnage needs to be deducted from your residual waste.*
- 3. The Data in this table broadly reflects that which is captured by WCAs in DEFRA's Waste Data Flow therefore should be easy to transpose from WDF.*
- 4. It is understood that weather variation will affect green waste productivity*
- 5. The data in the table should reflect all municipal waste, recycling & organic collection schemes in existence and planned over the next 5 years whether funded by ECC or other sources.*

Table 14: Total tonnage waste arising anticipated for 5 years.

Parameter	2009/10 tonnage (Funded)	2010/11 tonnage	2011/12 tonnage	2012/13 tonnage	2013/14 tonnage
Population					
Number of Households					
Household residual waste					
Trade Waste					
Fly tipped waste					
Street sweepings					
Bulky mixed waste					
Clinical waste					
Dog bin					
Other [define]					
Sub-Total Mixed Waste					
Paper					
Cardboard					
Tetra Pac					
Glass					
Textiles					
Mixed cans					
Foil					
Aerosols					
Plastics					
Plastic Film					
Tyres					
WEEE [Fridges]					
WEEE [CRTs]					
WEEE Lamps]					
WEEE [Other]					
Metals					
Wood					
Other [define]					
Other [define]					
Sub-Total Dry Recyclables					
Green Garden waste					
Kitchen / Food waste					
Sub-Total Organics					
Total Arisings					
Recycling/Reuse/Composting rate (%) NI192					
Residual Household Waste / HH (Kg) NI 191					

SCHEDULE 9**Delivery Points and Delivery Point Standards**

Opening Days and Hours	
Vehicle waiting times from the time the vehicle crosses the weighbridge	
Facilities (mess facilities, vehicle washing etc)	
Restrictions, if any, on vehicle type or size	
Parameters location for Delivery Points	Either within WCA area or within 5 miles of WCA boundary or where it is known, the specific location can be identified. <i>[list the ones that are known here]</i>
Contract Waste	
Organic Waste	
Parameters for location of Contingency Delivery Point.	
Contract Waste	
Organic Waste	

5 miles is measured [SP note: how?]

SCHEDULE 10

Delivery Addresses for Notices

Waste Disposal Authority

ESSEX COUNTY COUNCIL of PO Box 11, County Hall, Chelmsford, Essex CM1

Waste Collection Authorities

BASILDON DISTRICT COUNCIL of The Basildon Centre, St Martin's Square, Basildon, Essex, SS14 1DL

BRAINTREE DISTRICT COUNCIL of Causeway House, Bocking End, Braintree, Essex CM7 9HB

BRENTWOOD BOROUGH COUNCIL of Town Hall, Ingrave Road, Brentwood, Essex CM15 8AY

CASTLE POINT BOROUGH COUNCIL of Kiln Road, Thundersley, Benfleet, Essex, SS7 1TF

CHELMSFORD BOROUGH COUNCIL of Civic Centre, Duke Street, Chelmsford, CM1 1JE

COLCHESTER BOROUGH COUNCIL of PO Box 884, Town Hall, Colchester, CO1 1FR

EPPING FOREST DISTRICT COUNCIL of Civic Offices, High Street, Epping, Essex CM16 4BZ

HARLOW DISTRICT COUNCIL of Civic Centre, The Water Gardens, Harlow, Essex CM20 1WG

MALDON DISTRICT COUNCIL of Princes Road, Maldon, Essex CM9 5DL

ROCHFORD DISTRICT COUNCIL of Council Offices, South Street, Rochford, Essex, SS4 1BW

TENDRING DISTRICT COUNCIL of Town Hall, Station Road, Clacton on Sea, Essex CO15 1SE

UTTLESFORD DISTRICT COUNCIL of Council Offices, London Road, Saffron Walden, Essex CB11 4ER

Schedule 11

IAA Commencement Dates for each WDA