

**COUNCIL**

**7<sup>TH</sup> JULY 2009**

**Report of Portfolio Holder Public Health & Well Being**

**HOUSEHOLD REFUSE & RECYCLING SERVICE**

**Purpose**

To seek Council's approval for:

- i) The implementation of revised Administrative Arrangements for Household Refuse and Recycling Services in Tamworth and Lichfield;
- ii) The establishment of a Joint Committee for Waste Management in Tamworth and Lichfield to administer the revised arrangements;
- iii) The service standards and delivery arrangements of the collection service.

**Executive Summary**

a) **Opportunity for Change:**

In February 2008 the Staffordshire and Stoke on Trent Joint Waste Management Board approved an Action Plan in support of the Joint Municipal Waste Management Strategy for the County and Stoke on Trent.

A key recommendation was for Waste Collection Authorities in South Staffordshire to investigate opportunities for delivering improved quality, lower cost services through joint working in 'clusters'.

At their meeting on 14<sup>th</sup> January, 2009 Cabinet endorsed the Action Plan as the basis for further investigation (**Minute No. 460 refers**).

Subsequently, Officers and Members of the four Boroughs/Districts met and concluded that the most timely opportunity was provided by Tamworth having to replace existing arrangements. Of the authorities ready and able to work with Tamworth, only Lichfield District felt able to secure the political mandate necessary to proceed.

b) **Case for Change:**

With the primary purpose of improving services that in turn improve the social, economic and environmental well-being of the area(s), both authorities chose to exercise their powers under **Section 2 of the Local Government Act 2000**. This provides that every Local Authority has the power to carry out actions that are likely to achieve any one of the following:

- the promotion or improvement of the economic wellbeing of their area;
- the promotion or improvement of social wellbeing in their area;

- The promotion or improvement of the environmental wellbeing of their area.

It is the shared view of both authorities that the revised Administrative Arrangements will contribute to all of the above outcomes.

c) **Powers to Facilitate Change:**

Legal advice was jointly commissioned by both authorities and funded by the West Midlands Regional Improvement and Efficiency Partnership (WMRIEP). The brief was to explore the potential implications of Tamworth and Lichfield establishing an Administrative Arrangement in order to provide an integrated waste collection service.

In summary, there are no legal obstacles which would prevent the two Authorities to provide waste collection services through the use of a joint committee by exercising their powers under Sections 101, 103, 111 and 113 of the Local Government Act 1972 and Section 20 of the Local Government Act 2000. The joint committee would have a constitution and be supported by a number of service level protocols under the umbrella of a delegation protocol to set out the framework within which the two Authorities will work together.

The Councils conclusions relating to the wider implications of the proposals indicated that:

- The provision of an effective and comprehensive waste provision function is essential for public health and safety in the participating Authorities communities;
- An improved service will enhance the overall environmental quality for both Tamworth and Lichfield for example, by reducing the number of days required for collecting refuse thereby improving the carbon footprint and; by providing closed containers to reduce risk of littering;
- An improved service will lead to savings in personnel and fuel and again reduce the carbon footprint and emissions of the participating Authorities;
- Shared use of buildings and infrastructure is a more efficient use of public resources and an effective use of natural assets;
- The partnership will result in an increased recycling rate for the participating Authorities giving residents the ability to recycle more and a greater range of dry recycling.

Based upon this, it is evident that the Administrative Arrangement will result in tangible improvements in respect of economic, social and environmental wellbeing. There are clearly secondary benefits in terms of both effectiveness and efficiencies.

d) **Implementing the Change:**

Details of the revised Administrative Arrangement and new service structure and standards are attached as **Appendix A**. Approval is now sought to establish the Joint Committee for Waste Management (JCWM) with immediate effect in readiness for implementing the revised Administrative Arrangements.

Council are therefore requested to authorise Tamworth Borough Council's representatives as follows:

- **The Leader of the Council or authorised Deputy;**
- **The Portfolio Holder with responsibility for Waste Management or authorised Deputy;**
- **The Council's Chief Executive or authorised Deputy will act as this Council's principal advisor to Members;**
- **The Council's Chief Officer or authorised Deputy with responsibility for Waste Management will act as technical advisor to Members;**

The Council's Scheme of Delegation will, subject to approval, be amended to reflect best practice in Governance arrangements.

**Implications to the Council**

- b) **Policy** – once implemented the arrangements will assist Tamworth Borough Council to achieve its corporate priorities; LAA targets; Sustainable Community Strategy priorities and the Joint Municipal Waste Strategy for Staffordshire and Stoke on Trent
- c) **Risk** – The Project has been fully risk assessed and appropriate measures are in place
- d) **Financial** – The draft financial information indicated the new Administrative Arrangement will result in a "Cost per Household per annum" of approximately £46 which compares very favourably with the reported cost per household for 2007/08 of £59.85.

These costs would place both authorities in top quartile for financial performance on waste collection and recycling services

At this early stage it is anticipated in year 2011/12 the overall level of savings for the Jjoint Administrative Arrangement will be in the region of £700k per annum.

- e) **Equality & Diversity** – all related policies have been EIA'd.

## **RECOMMENDATIONS**

**That Council approve:**

- i) The implementation of revised Administrative Arrangements for Household Refuse and Recycling Services in Tamworth and Lichfield;**
- ii) The establishment of a Joint Committee for Waste Management in Tamworth and Lichfield, as set out in Section d above, to implement the administrative arrangement. :**
- iii) The Service Standards & Delivery Arrangements as set out in Appendix A:**
- iv) The Councils Constitution be amended to reflect the new arrangements;**
- v) That Cabinet be authorised to approve any actions required to implement the proposed Joint Administrative Arrangements.**

## Appendix A - Operational Plan For The Shared Service

### 1.0 Development of the Operational Plan and the Main Drivers

The following drivers were considered and used in the development of the Operational plan for the shared service:

#### Public Consultation and Best Practice

Consultation	<ul style="list-style-type: none"> <li>● Feedback from Tamworth Listens.</li> <li>● Results from Public Consultation exercise undertaken by MEL Research in November 2008.</li> <li>● Information received through the Waste Managements Customer Contact Centre.</li> </ul>
Best Practice	<ul style="list-style-type: none"> <li>● Trends in collection methodology at other Local Authorities – move towards commingled collections.</li> <li>● Information from Recycling Wardens on participation and quality of material.</li> <li>● Results from Lichfield’s dry recycling trial – single stream and dual stream.</li> <li>● Development of technology at Material Reclamation Facilities that have enabled a feasible fully commingled collection system.</li> </ul>

#### Customer Experience

Shared Service Specification	<ul style="list-style-type: none"> <li>● Agreement on a standardised service specification for both authorities – materials, frequency of collections, containers etc.</li> </ul>
Use of use	<ul style="list-style-type: none"> <li>● Simplify service in order to reduce the risk of incorrect use of service.</li> <li>● Recycling container capacity to maximise tonnages.</li> </ul>
Service quality	<ul style="list-style-type: none"> <li>● Monitoring and management of service performance.</li> </ul>
Customer Contact	<ul style="list-style-type: none"> <li>● Maintaining the relationship with customers – CRM.</li> <li>● Communication campaigns.</li> </ul>
Policies and Procedures	<ul style="list-style-type: none"> <li>● Development of a set of policies and procedures to ensure that the service is delivered in an equitable manner.</li> </ul>
Equality Impact Assessment	<ul style="list-style-type: none"> <li>● Development of a service which allows all residents to participate and to recycle the full range of materials.</li> </ul>

#### Economic

Operational Efficiency	<ul style="list-style-type: none"> <li>● Review of existing operations and rounds in each authority in order to maximise the number of properties served by each crew.</li> </ul>
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	<ul style="list-style-type: none"> <li>● Use of appropriate vehicle for the type of area i.e. urban or rural.</li> <li>● Minimise travelling distance and time to tipping off locations.</li> <li>● Reduce the overcapacity on the green waste service during the winter months.</li> <li>● Provision of service to properties without kerbside access.</li> <li>● Remove the fluctuations in the working hours of the crews.</li> <li>● Level of supervision and managerial arrangements.</li> <li>● Managing vehicle breakdowns and staff absenteeism.</li> </ul>
Income	<ul style="list-style-type: none"> <li>● Increased income from payment of Recycling Credit through additional tonnage.</li> <li>● Maximise opportunities for increasing income from the sale of dry recyclate.</li> <li>● Maintaining quality of dry recyclate by reducing contamination.</li> </ul>
Infrastructure	<ul style="list-style-type: none"> <li>● Utilising and adapting existing vehicles to avoid early termination costs.</li> <li>● Join existing arrangement for the processing of dry recyclate – South Staffordshire Bulking and Baling Consortium and Greenstar.</li> <li>● Utilising existing outlets for the processing of organic waste.</li> </ul>
Gate Fees	<ul style="list-style-type: none"> <li>● Minimise cost.</li> </ul>

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**Infrastructure**

Facilities	<ul style="list-style-type: none"> <li>● Shared use of a depot facility.</li> <li>● Capacity of the depot to deliver a shared service i.e. HGV parking and on site maintenance</li> <li>● Transfer station for dry recyclate in Tamworth.</li> <li>● Availability of In-vessel Composting Facilities.</li> <li>● Availability of Material Reclamation Facility.</li> <li>● Balance the delivery of materials to the various outlets.</li> </ul>
Vehicles	<ul style="list-style-type: none"> <li>● Availability of existing vehicles.</li> <li>● Suitability for collection of different waste streams.</li> </ul>
Manpower	<ul style="list-style-type: none"> <li>● Availability of a trained and motivated workforce.</li> <li>● Review of crew working conditions – Task and finish.</li> </ul>

## Environmental

Carbon Footprint	<ul style="list-style-type: none"><li>● Overall impact of service on environment.</li><li>● Reduction of waste miles.</li><li>● Fuel efficiency of vehicles.</li></ul>
Litter	<ul style="list-style-type: none"><li>● Impact of box collections on littering.</li></ul>
Odour	<ul style="list-style-type: none"><li>● Provision of food waste collections to Tamworth residents.</li></ul>
Sustainability	<ul style="list-style-type: none"><li>● Final destination for dry recycle.</li></ul>

## Waste Policy/Strategic

Recycling Performance	<ul style="list-style-type: none"><li>● Provision of food waste service to Tamworth residents.</li><li>● Expansion of materials that can be recycled.</li><li>● Predicted increases in recycling tonnage and reductions in residual waste.</li></ul>
Waste minimisation	<ul style="list-style-type: none"><li>● Residual waste capacity for the standardised service.</li></ul>
Shared Service	<ul style="list-style-type: none"><li>● To allow for the future expansion of the arrangements - other local authorities joining the partnership.</li></ul>

## Health and Safety

Lifting and carrying of boxes	<ul style="list-style-type: none"><li>● Impact on residents and crews.</li><li>● Communal collection points.</li></ul>
Properties with restricted access	<ul style="list-style-type: none"><li>● Communal bin stores.</li><li>● Collection methodology.</li></ul>

## 2.0 Standardised Service

The adoption of a standardised service across both local authorities is essential if the efficiencies that a shared service will deliver are going to be maximised. This doesn't mean that there cannot be some local flexibility but the fundamentals such as collection frequency and methodologies must be standardised.

The reasons why a standardised service offers the best chances of maximising efficiencies are as follows:

- 1) Vehicles do not have to stop at the shared boundary thus allowing rounds to be designed in order to maximise both productivity and payload capacity.

- 2) Greater flexibility to cover for vehicle breakdowns and staff absenteeism.
- 3) Provides a solution to the issue of excess capacity (i.e. having to resource to the peaks) on the Organic waste services, which both authorities currently experience.
- 4) Balance the delivery of materials in to the various outlets i.e. landfill, MRF and In-vessel
- 5) Competitive advantage when considering contracts with material reprocessors – greater tonnages of the same mix of materials.
- 6) Reduced administration
- 7) Reduced costs at the transfer stations
- 8) Staff training costs are minimised
- 9) Standardised communications with residents.
- 10) Standardised procurement of vehicles bins and boxes etc.

### The Standardised Service

	Residual	Organic	Dry Recycling Single Stream
Frequency	Alternate Weekly	Alternate Weekly	Alternate Weekly
Arrangements	Alternates with organic waste service	Alternates with residual waste service	Provided on same week as Organic Waste service
Materials	Non recycle	Garden and Food	Glass, Cans, Paper, Card, Plastics and Tetrapaks
Containers	<ul style="list-style-type: none"> <li>• 240 litre Bin</li> </ul>	<ul style="list-style-type: none"> <li>• 240 litre Bin</li> </ul>	<ul style="list-style-type: none"> <li>• 240 litre Bin – All Dry Recyclate</li> <li>• 360 litre Bin on request.</li> </ul>
Outlets	<ul style="list-style-type: none"> <li>• Poplars Landfill Site</li> <li>• Kingsbury Landfill Site</li> </ul>	<ul style="list-style-type: none"> <li>• Biffa In vessel facility at Etwall</li> <li>• Jack Moody In vessel facility at Cannock</li> </ul>	<ul style="list-style-type: none"> <li>• Greenstar Materials Recovery Facility at Aldridge. Approximately 50% of material will have to be bulked up at Tamworth.</li> </ul>

### 3.0 Operational Plan

Provision	Justification
<p>The service will operate out of a single depot, which will be Lichfield's existing facility at Burntwood.</p> <p>Lichfield will become the host authority for the employment of all staff engaged in the operation of the administrative arrangement</p>	<ul style="list-style-type: none"> <li>• Effectiveness of service as there will only be one facility to fund. However this will not be a direct saving as it is a current contract cost for Tamworth, and will provide opportunity and risk to TBC in re-letting the industrial units currently leased to the contractor.</li> <li>• All resource and vehicles will be on one site, which makes it much easier to manage staff absenteeism, vehicle breakdowns and other emergencies. TUPE advice has been obtained in this matter and it is a logical method of dealing with the general management of the administrative arrangement. It will also maximise expertise available within the joint team.</li> </ul>
The Residual Waste, Organic Waste and Recycling	<ul style="list-style-type: none"> <li>• Resource can be matched to demand and in particular this will allow the removal of the over</li> </ul>



Services will Operate independently of each other.	<p>capacity which currently exists on the Organic Waste service during the winter months. The additional capacity required in the summer months will be provided using hired vehicles and agency staff.</p> <ul style="list-style-type: none"> <li>Remove the fluctuations in the working hours of the crews throughout the year</li> <li>Enables every property to receive each of the services on the same day during the respective week.</li> </ul>
The Existing Boundary between the two districts will be ignored and the combined area divided into five sectors each containing approximately 14,500 properties. Each sector will be assigned a particular day of the week (Monday to Friday) so that collections can then move from west to east (See table below).	<ul style="list-style-type: none"> <li>The combined fleet will all be in one sector on any particular day, which will make it much easier to manage vehicle breakdowns, adverse weather or sudden staff absenteeism.</li> <li>Rounds can be designed so as to maximise the number of properties served and also ensure vehicles are filled to capacity rather than finishing at the existing borough boundary <math>\frac{3}{4}</math> full.</li> <li>Reduced costs of supervision.</li> <li>Support services such as Recycling Wardens etc will be able to be more efficiently deployed and provide further opportunity within LDC as it is a service not currently offered.</li> </ul>
Each sector will be split into two areas namely Area A and Area B. In week one Area A would receive their Residual Waste collection and Area B would receive their Organic Waste and Dry Recyclate collections. In week two the services would be reversed in each area.	<ul style="list-style-type: none"> <li>Allows the delivery of materials into the various outlets to be balanced.</li> <li>Enables every property to receive each of the services on the same day during the respective week.</li> </ul>

#### 4.0 Proposed Sectors and Schedule

Sector 1- Round 1	Sector 2 – Round 2	Sector 3- Round 3	Sector 4 – Round 4	Sector 5 – Round 5
Tamworth North Tamworth East Hopwas	Tamworth West Wiggington Comberford Harlaston Edingale Croxall Clifton Campville No Mans Heath	Tamworth South Lichfield South Lichfield East Whittington Swinfen Weeford Canwell Hopwas Fisherwick Huddlesford Alrewas Wychnor Orgreave Fazeley Mile Oak Elford	Lichfield North Lichfield West Shenstone Stonnall Wall Hilton Footherley Little Hay Handsacre Armitage Little Aston Fradley Kings Bromley	Burntwood Upper Longdon Lower Longdon Gentleshaw Brereton Chorley Hammerwich Colton Pipe Ridware Hill Ridware Mavesyn Ridware

**N.B. Collection days will not change on Bank Holidays**

## **Cabinet**

**10<sup>th</sup> March 2010**

### **Report of the Portfolio Holder for Public Health and Well Being**

#### **Service Level Agreement for the Disposal of Domestic Waste and the provision of Waste to Staffordshire County Council's proposed W2R Plant**

##### **Purpose**

To seek Cabinet approval to enter into the above Service Level Agreement with all other Staffordshire District Councils and Staffordshire County Council, to facilitate the disposal of waste.

##### **Executive Summary**

The Staffordshire Joint Waste Management Board have previously agreed to support the production of a Service Level Agreement to formalise the County Council's and District Councils' responsibility for the disposal of waste once the proposed W2R plant becomes the major residual waste disposal point in southern Staffordshire.

In January of 2008 each Staffordshire Chief Executive signed a memorandum of understanding to embracing the terms of these responsibilities while the Service Level Agreement underwent development.

The "SLA" is attached to this report as Appendix A for Members consideration, however an outline of the agreement and its obligations is noted below:

1. The Agreement outlines, in a legally binding way, the respective responsibilities of the all District Councils following their signing of the Memorandum of Agreement, dated January 2008, in respect of the adoption of the Staffordshire and Stoke on Trent Joint Municipal Waste Strategy 2007.
2. This Agreement identifies key targets, dates by which those targets should be met, and actions required to achieve these to produce the outcomes in the County Councils Waste Strategy.
3. The Agreement offers a joined-up strategic approach to waste collection and waste disposal in Staffordshire, and encourages all Councils named to continue to provide these collection and disposal services in the most effective and efficient manner.

All Members of the Staffordshire Joint Waste Management Board have committed via each districts local waste strategy to support the delivery of the overall joint municipal waste strategy, and that obligation is clearly encompassed within this agreement.

## **Risk**

The Service Level Agreement supplied contains several drafting errors, which will need correction prior to sealing, and Members are asked to note that many of the terms contained in the document are quite general and do not go into specific matters. While this is not a key risk to the Council, and many of the other Staffordshire Districts have already signed up to this agreement, Members are asked to note that while the agreement conveys the meaning Districts have previously agreed to, it is not particularly robust. It is suggested that should Members be minded to enter into this agreement, Officers be tasked with correcting the drafting errors prior to sealing.

## **Financial implication**

There are no financial implications directly arising from this report

## **Recommendation**

Subject to the Service Level Agreement being amended to correct typographical and drafting errors, Members approve the Council to enter into the Service Level Agreement with other Staffordshire District Councils and Staffordshire County Council.

# **Service Level Agreement**

**Between**

**Staffordshire County Council**

and

**Cannock Chase District Council**

and

**East Staffordshire Borough Council**

and

**Lichfield District Council**

and

**Newcastle-under-Lyme Borough Council**

and

**South Staffordshire District Council**

and

**Stafford Borough Council**

and

**Staffordshire Moorlands District Council**

and

**Tamworth Borough Council**

**Concerning**

**the Collection and Disposal of Staffordshire Waste  
and the provision of Waste to the  
Staffordshire County Council W2R Plant**

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**John Tradewell, Solicitor  
Director of Law and Governance  
Staffordshire County Council  
County Buildings  
Martin Street  
Stafford, ST16 2LH**

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**THIS SERVICE LEVEL AGREEMENT** is made on the                      day of                      2010

**BETWEEN**

**(1) Staffordshire County Council of County Buildings, Martin Street, Stafford, ST16 2LH** (referred to in this agreement as “the WDA”);

**and**

**(2) Cannock Chase District Council** of Hawk Greek Lane, CANNOCK, Staffordshire, WS11 4BG;

**and**

**(3) East Staffordshire Borough Council** of Town Hall, King Edward Place, BURTON UPON TRENT, Staffordshire, DE14 2EB;

**and**

**(4) Lichfield District Council** of District Council House, Frog Lane, LICHFIELD, Staffordshire, WS13 6YU;

**and**

**(5) Newcastle-under-Lyme Borough Council** of Civic Offices, Merrial Street, NEWCASTLE-UNDER-LYME, Staffordshire, ST5 2AG;

**and**

**(6) South Staffordshire District Council** of Council Offices, CODSALL, South Staffordshire, WV8 1PX;

**and**

**(7) Stafford Borough Council** of Civic Centre, Riverside, STAFFORD, ST16 3AQ

**and**

**(8) Staffordshire Moorlands District Council** of Moorlands House, Stockwell Street, LEEK, Staffordshire, ST13 6HQ;

**and**

**(9) Tamworth Borough Council** of Marmion House, Lichfield Street, TAMWORTH, Staffordshire, B79 7BZ;

(referred to collectively in this Agreement as “the WCAs”)

**A. Purpose of this Agreement**

1. The purpose of this Agreement is to specify in a legally binding agreement the respective responsibilities of the Parties following their signing of the Memorandum of Agreement, dated January 2008, in respect of the adoption of the Staffordshire and Stoke on Trent Joint Municipal Waste Strategy 2007.
2. This Agreement specifies, in a partnership context and in the context of the Staffordshire and Stoke on Trent Joint Municipal Waste Strategy 2007 (“the JMWMS”), key targets, dates by which those key targets should be met and actions required by which Parties in order to achieve the key targets in the Strategy.
3. By adopting this joined-up strategic approach to waste collection and waste disposal in Staffordshire it is the intention of the Parties to continue to provide these services in the most effective and efficient manner.
4. During the term of this Agreement the WDA intends to enter into a long-term PFI procurement contract with a private sector provider for the treatment of

waste received from the WCAs and to manage and control the corporate risks to the WCAs and the WDA (“the PFI Contract”). As a consequence, during the term of this Agreement, the Parties will need to agree together a variation to the terms of this Agreement so as to reflect certain terms in the PFI Contract, which is yet to be finalised, such as waste delivery and other input requirements.

5. In order to facilitate the procurement and enable the preparation of the PFI Contract documents the WDA will need to receive from the WCAs reliable up-to-date waste data and data projections. For those purposes, the WCAs agree to provide to the WDA within reasonable timescales such data and projections as the WDA may reasonably require.

## **B. Background**

### **Whereas**

- A Pursuant to section 30(2) of the Environmental Protection Act 1990 the WDA is designated a Waste Disposal Authority within its administrative boundary.
- B Pursuant to section 30(3) of the Environmental Protection Act 1990 each WCA is designated a Waste Collection Authority within its administrative boundary.
- C. The WDA has statutory functions in respect of waste disposal and each WCA has statutory functions in respect of waste collection
- D. The WDA and the WCAs are working in collaboration in a spirit of partnership under the aegis of the Staffordshire and Stoke on Trent Waste Partnership and Joint Waste Management Board (“the JWMB”).
- E. Members of the JWMB have each committed to the terms of a Joint Municipal Waste Management Strategy pursuant to which the Parties have agreed to achieve certain specified joint targets in relation to (amongst other things) recycling, the composting of waste and the diversion of biodegradable waste from landfill.
- F. The Joint Municipal Waste Management Strategy (“the JMWMS”) outlines the overall strategy and policies and predicts both the quantities of municipal waste which will need to be collected and the options for recycling and disposal. In keeping with the landfill directive, government policies and Staffordshire’s own “Zero Waste to Landfill by 2020” strategy the JMWMS also indicates, levels of recycling and composting which will need to be



attained in order to achieve our objectives as well as the size and nature of disposal facilities required to deal with residual waste. The JMWMS has been formally adopted by the WDA and by each of the WCAs (and by the City of Stoke on Trent as a Unitary Authority).

F. The WDA and the WCAs are, together with others, members of the Staffordshire Waste Partnership and, in that capacity are parties to a Local Area Agreement (“LAA”) containing (amongst other things) certain targets for the management of waste.

G. The WDA is required by the European Directive 1999/31/EC on the Landfill of Waste to reduce the amount of waste which it disposes of to landfill sites and is subject to certain statutory landfill disposal limits the exceeding of which will give rise to substantial and incrementally increasing Landfill Taxation.

H. The Parties accordingly recognise and endorse the need jointly and severally:

- a) to act in order to address UK and European Union statutory waste minimisation targets,
- b) to divert biodegradable municipal waste from landfill,
- c) to increase recycling and waste recovery, and
- d) to promote sustainable development, including the use of waste as a strategic resource.

III. The WDA is at the date of this Agreement in the process of bidding to Central Government under the Government's Private Finance Initiative (“PFI”) for PFI credits to support the provision by the WDA of a residual waste management facility known as “Project W2R” to achieve diversion away from landfill for all of the residual waste required to be disposed of by the WDA. Due to the urgent time scale for implementation of Project W2R and potential cost of not providing alternative disposal facilities, Project W2R is a strategic priority for the WDA being a vital element in enabling the WDA to avoid the financial penalties associated with landfilling).

- A. One of the principle requirements for the award of PFI credits in respect of Project W2R is that the WDA and the WCAs should enter into binding agreement as to the achieving the targets set out in the JMWMS.
- B. The WDA and the WCAs have agreed to enter into this Agreement in order to regulate the achieving of the targets set out in the JMWMS and the manner in the recyclable municipal waste and biodegradable municipal waste will be dealt with in Staffordshire in the future.
- C. The Parties now wish to establish a clear and accountable framework of respective responsibilities in this Agreement under which they can work together in discharging their respective waste collection and disposal responsibilities with regard to Residual Waste, work towards an overall approach to Composting and Recycling within Staffordshire and to promote the economic, environmental and social well-being of their respective areas. They wish to be able to respond in a more effective and co-ordinated way in relation to the development and implementation of the Staffordshire Joint Municipal Waste Management Strategy and to introduce and promote joint working arrangements that will be in the best interests of the council tax payers of Staffordshire.
- D. In deciding to enter into this Agreement, each of the Parties has had regard to its community strategy prepared by it pursuant to Section 4 of the Local Government Act 2000.

**NOW THE PARTIES HEREBY AGREE** as follows:-

## **1. Definitions, interpretation and Precedence of Documents**

### **1.1 Definitions**

In this Agreement the following terms shall bear the meanings given to them in this clause 1.1.

**"Agreement"** means this Service Level Agreement including its Schedules

**"Announcement"** has the meaning given to it in Clause 8.1;

**"Best Value"** means the duty imposed on waste authorities by 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"*;

**"Biodegradable Waste"** means Waste which is able to decompose through the action of bacteria or other microbes and includes paper, cardboard, Green Waste and Kitchen Waste;

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

**"Commencement Date"** means the date of this Agreement;

**"Commercial Waste"** shall have the meaning given to it in Section 75(7) of the EPA;

**"Composting"** means the process of natural degradation of organic wastes in the presence of oxygen and during which material suitable as fertiliser or soil conditioner is produced;

**"Confidential Information"** means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), whether or not it is marked as proprietary and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of a Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988;

**"EPA"** means the Environmental Protection Act 1990, as amended from time to time;

**"Household Waste"** means as defined under Section 75(5) of the EPA;

**"HWRC"** means a household waste recycling centre established and operated by or on behalf of the WDA pursuant to Section 51 (1)(b) of the EPA;

**"Industrial Waste"** means as defined under Section 75(6) of the EPA;

**"Joint Waste Collection Strategy"** means the strategy to be developed by the WCAs through the JWMB in accordance with clause 3.2

**"Landfill"** has the meaning attributed to it by section 65(1) of the Finance Act 1996 and **"Landfilled"**, **"Landfilling"** and **"Landfill Site"** shall be interpreted accordingly;

**"Landfill Allowances Trading Scheme" and "LATS"** means the landfill allowances trading scheme established pursuant to the Waste and Emissions Trading Act 2003 and the Landfill Allowances and Trading Scheme (England) Regulations 2004;

**"Legislation"** means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and 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) mandatory targets and other 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 local strategic partnership and in agreement with central Government;

**"Memorandum of Understanding" and "MoU"** mean the Memorandum of Agreement dated January 2008 relating to the adoption of the Staffordshire and Stoke on Trent Joint Municipal Waste Strategy 2007

**"Municipal Waste"** means Waste which by virtue of Legislation a local authority has a statutory duty to collect or power to collect (and in fact collects), including (without limitation) Household Waste, Industrial Waste, fly tips and street cleansing arisings but excluding Commercial Waste unless the Parties agree otherwise;

**"Staffordshire Waste Partnership"** means the partnership comprising the Parties all of which have certain responsibilities for the management of waste in Staffordshire whose intention is to work together to develop and deliver coordinated services and infrastructure for more efficient waste collection, transfer, treatment and disposal and to investigate the opportunities for formalising partnership working between the Parties;

**"Party"** means a party to this Agreement unless otherwise expressly provided and the term **"Parties"** shall be read accordingly.

**"PFI Service Provider"** means the service provider appointed by the WDA under the PFI Contract referred to in clause A4;

**"Project W2R"** means the new residual waste treatment facility to be developed by the WDA.

**"Recycling"** means the reprocessing of non-hazardous waste material either into the same or a different product;

**"Residual Waste"** means that waste which remains after Recycling and Composting;

**"Statutory Targets"** means the targets for composting and recycling of Household Waste as set out in Waste Strategy for England 2007;

**"Waste"** means Household Waste, Commercial Waste, Industrial Waste as defined in Section 75 of the EPA;

**"Waste Collection Authority" and "WCA"** mean a waste collection authority pursuant to section 30(3) of the EPA, and for the purposes of this Agreement means each of the WCAs;

**"Waste Disposal Authority" and "WDA"** mean a waste disposal authority pursuant to section 30(2) of the EPA and for the purposes of this Agreement means Staffordshire County Council

**"WEEE"** means Waste Electrical and Electronic Equipment

**"WET Act"** means the Waste Emissions Trading Act 2003 as amended from time to time.

## **1.2 Interpretation**

In this Agreement 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) reference to any Clause, Paragraph, Table or Schedule is, except where expressly stated otherwise, a reference to such clause, paragraph, table or schedule of and to this Agreement;
- d) the Schedules to this Agreement shall form part of this Agreement;
- e) save where stated otherwise, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to the Agreement;
- f) any reference to any guidance, code of practice, government strategy document, enactment, order, regulation or other similar instrument shall be construed as a reference to the guidance, code of practice document, enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;
- g) reference to a person shall include a firm, partnership and corporation, and to their lawful successors and permitted assignees and transferees;
- h) headings are for convenience of reference only;
- i) words preceded by “include”, “includes”, “including” and “included” shall be construed without limitation by the words following those words;
- j) any obligation imposed on a Party to do or not to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that that act, matter or thing is done or not done (as the case may be);
- k) subject to any express contrary provisions of this Agreement, the obligations of a Party are to be performed at the entire cost and expense of that Party;
- l) This Agreement shall be construed and interpreted as a whole provided always that Clause 2.1 shall take precedence over all other provisions in this Agreement;
- m) In the event of any inconsistency or conflict between the provisions of the main body of this Agreement and the Schedules herein, the main body of the Agreement shall prevail.

### **1.3 Precedence of Documents**

- a) To the extent that there appears any conflict between any provision or provisions of this Agreement and any provision or provisions of the MoU then the provision or provisions of this Agreement shall prevail.
- b) The provisions of this Agreement shall be construed as complementary in all respects to, and not in any way in substitution for, the provisions of the LAA or of the JMWMS.

## **2. General provisions**

### **2.1 Vires**

- h) The WDA and the WCAs have entered into this Agreement in their capacities as a Waste Disposal Authority and Waste Collection Authorities respectively and pursuant to their respective powers under the Environmental Protection Act 1990, the Waste Emissions Trading Act 2003, section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and all other enabling powers.
- i) No provision of this Agreement shall prevent, prejudice or affect the County Council's rights, powers, duties and obligations in relation to the exercise of its functions as a county council and nothing herein shall have the effect of fettering or limiting the County Council in that regard.

### **Compliance with the General Law**

- a) The Parties shall at all times comply with all directives, statutes, orders, regulations, codes of practice and rules of law including, but not limited to, the collection and disposal of waste and related health and safety matters. Without prejudice to the generality of the foregoing, the Parties shall comply with the provisions of the Sex Discrimination Act, 1975; the Equal Pay Act 1979 (as amended); the Race Relations Act, 1976; the Race Relations (Amendment) Act, 2000; the Disability Discrimination Act, 1995; the Data Protection Act, 1998; the Human Rights Act, 1998; the Employment Relations Act, 1999 and the Freedom of Information Act 2000.
- b) No Party shall have any remedy in respect of any untrue statement made at any time by any other Party and upon which he may have relied in entering into this Agreement. The only remedy in respect of any rights and obligations arising under or in connection with this Agreement shall be for breach of contract.
- c) Nothing in this Agreement shall exclude the liability of any Party to any or all of the other Parties for any fraudulent statement or act by that Party or on their behalf.

## **3. General Responsibilities**

### **Waste Collection Authorities**

- 3.1 The WCAs have and will at all times retain full responsibility for the collection of all municipal waste within their own administrative boundaries.
- 3.2 The method and frequency of the chosen collection system(s) in each WCA shall remain the sole responsibility of the respective WCA. However, the WCAs agree to work together through the JWMB to develop a Joint Waste Collection Strategy which will aim to maximise the efficiency and effectiveness of waste collection and recycling across Staffordshire.

- 3.4 The WCAs shall take in to full account any Joint Waste Collection Strategy when developing or altering their collection systems.
- 3.5 The WCAs agree to take in to full account the requirements of the WDA in terms of their deliveries of residual waste and recyclable and compostable materials to WDA waste disposal facilities.

### **Waste Disposal Authority**

- 3.6 The Waste Disposal Authority has and will retain the responsibility for the disposal of Municipal Waste and for the provision and maintenance of Household Waste Recycling Centres (HWRCs) within Staffordshire.
- 3.7 The WDA will develop a new residual waste treatment facility (“Project W2R”) with the aim of avoiding any LATS liabilities and achieving Zero Waste to landfill by 2020. The WDA will develop this facility with Best Value principals in respect to both the costs and liabilities of the County and those of the WCAs.

### **Waste Minimisation**

- 3.8 The WDA and the WCAs shall, through the JWMB, work together to provide a waste minimisation strategy and implementation plan. The waste minimisation strategy will be aimed at achieving the targets set out Table 1.

**Table 1**

	<b>2010</b>	<b>2015</b>	<b>2020</b>
Household waste per head of population not re-used, recycled or composted	310 kg	270kg	To be Agreed

### **Recycling and Composting Targets**

- 3.9 The WCAs shall develop and maintain waste and recyclable material collection systems which will facilitate the achievement of the recycling targets set out in the Joint Municipal Waste Strategy 2007, LAA and Waste Strategy for England 2007. These targets, restated in Table 2, are to be regarded as both individual and collective targets of the WCAs.

**Table 2**

	<b>2009/10</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2019/20</b>
Joint Waste Strategy Targets				
Percentage of Household waste recycled or composted	<b>45</b>	<b>48</b>	<b>50</b>	<b>55</b>

Combined (% of MSW)	<b>41</b>	<b>44</b>	<b>46</b>	<b>50</b>
National Waste Strategy				
Combined % of Household waste recycled or composted	40		45	50
LAA (Block 5)	40			

9.1 The WCAs recognise the importance of commitment to and achievement of the above targets in order to:

- a) Assist with the diversion of waste away from landfill and thus the avoidance of LATS penalties
- b) Gaining PFI credits for project W2R
- c) Continuation of LAA funding and support

3.11 Each WCA shall agree to produce an implementation plan for waste collection and recycling to demonstrate how the above targets will be achieved and any necessary works funded. The plan shall be produced at least two years prior to the key target dates in Table 2.

3.12 Where a WCA has already achieved or exceeded the above targets no implementation plans will be required. However, the authority shall be required to commit to retaining and where practicable improving recycling and composting levels.

3.13 WCAs shall work in conjunction with the WDA and the other Staffordshire WCAs to ensure that their implementation plans are consistent with the Waste Strategy, waste collection strategy and or any other collective county wide policies.

### **Dry Recyclables**

3.14 WCAs shall implement systems for the kerbside collection of dry recyclables commensurate with the targets for dry recyclables set out in Section 6 of the JMWMS and Table 2 above. WCAs shall also maintain a network of bring sites. The extent and nature of the bring sites to be agreed as part of any implementation plan.

3.15 WDA shall maintain a network of HWRCs at which it will offer a complimentary range of dry recycling including WEEE, wood, building materials, scrap metal, bulky green waste, bulky household waste etc.

1.1 WCAs may:

- a) Arrange for the collection and or sale of dry recyclables through a third party procured by the WCA; or



- b) Arrange for the collection and or sale of dry recyclables through a third party procured by a consortium of WCAs; or
- c) Arrange for the collection and delivery of dry recyclables to a facility procured by the WDA on behalf of one or more WCAs.

or any combination of any of these three options

3.17 The WDA shall pay to each WCA an agreed recycling credit for each tonne of recyclable material diverted from final disposal and certified by the respective WCA as having been recycled.

3.18 If a WCA opts to send materials to a WDA-procured facility it shall not receive a recycling credit. However, the WDA may arrange suitable payments to ensure that the WCA is in a no worse financial situation than had it procured the facility itself.

### **Compostable Wastes**

#### **Green waste (windrow composting)**

3.19 WCAs shall implement suitable systems for the kerbside collection of green waste commensurate with the targets for compostable waste set out in Section 6 of the Waste Management Strategy and Table 2 to this Agreement.

3.20 WCAs may:

- Arrange for the collection and or composting of green waste through a third party procured by the WCA.
- Arrange for the collection and or composting of green waste through a third party procured by a consortium of WCAs.

or a combination of these options.

3.21 The WDA shall pay an agreed recycling credit to each WCA for each tonne of material diverted from final disposal and certified by the respective WCA as having been composted.

#### **Green waste and or food waste (in-vessel composting (IVC)) or Anaerobic Digestion (“AD”)**

3.22 No WCA shall be obliged to collect food waste, either separately or as part of a green waste collection. However, WCAs will need to demonstrate in their implementation plans, how the Waste Strategy targets can be met without such collection and treatment of food waste.

1.0 WCAs may:

- a) Arrange for the collection and or composting of green/food waste through a third party procured by the WCA.

- b) Arrange for the collection and or composting of green/food waste through a third party procured by a consortium of WCAs.
- c) Arrange for the collection and delivery of green/food waste to a facility procured by the WDA on behalf of one or more WCAs

or any combination of these three options

- 3.24 The WDA shall pay an agreed recycling credit to the WCA for each tonne of recyclable material diverted from landfill and certified as having been composted or processed.
- 3.25 If the WCA opts to send materials to a WDA procured facility, it shall not receive a recycling credit. However, the WDA may arrange suitable payments to ensure that the WCA is in a no worse financial situation than had it procured the facility its self.
- 3.26 Where a WCA puts forward a firm proposal for the introduction of food and or mixed food and green waste collection, the WDA shall if practical procure suitable local facilities for the treatment of the waste or suitable transfer arrangements for the treatment of the waste at a more distant facility.
- 3.27 The WDA recognises that AD may in some instances be a more environmentally beneficial treatment system than invessel composting. However, any procurement of one or other of these systems can only be completed using an open tender and best value assessment of any proposals received.

### **Statutory Functions**

- 3.28 The WDA has statutory power to direct the WCAs as to how the waste the WCAs collect is to be separated and delivered to the WDA. The arrangements set out in this Agreement and any subsequent agreement in respect of its subject matter are entirely without prejudice to that continuing statutory power.
- 3.29 Each WCA has a statutory right to receive 'recycling credits' (being in general terms a payment to reflect the saving made by the WDA in the cost of its waste disposal operations when WCAs divert waste from the waste stream by recycling or composting). The operation of this Agreement will not extinguish or be construed as a waiver of such right.
- 3.30 The parties will co-operate so far as lawful to enable the obtaining of planning and other necessary consents, licences, permissions and other authorisations required for the provision and operation of the infrastructure to be provided in accordance with this Agreement.

### **Delivery of Residual Waste to Treatment Facilities**

- 3.31 The WDA shall ensure that no WCA is placed in a significantly worse situation in regard to delivery of waste to either the W2R facility or any existing facilities than is the current situation.
- 3.32 Where travel distances or travel times to the treatment facilities are significantly increased the WDA shall if reasonable to do so provide appropriate transfer facilities.
- 3.33 The WCAs recognise that the benefits of travelling to a transfer facility or direct to a treatment plant, will compensate for any minor increases of travelling time and mileage.
- 1.1 Prior to Project W2R and any other new facilities opening and if new systems of working are instigated at any time by any WCA, the WCA and the WDA shall agree a waste delivery schedule in order to facilitate a managed flow of waste to the plant and or transfer facility. This waste delivery schedule shall also be agreed with any neighbouring WCAs and others who deliver waste to the facility.

### **Financial Incentives**

- 14.1 The WDA and the WCAs shall agree a financial incentive scheme which will encourage recycling and composting. This scheme will be based on the Recycling credits currently paid by the WDA to the WCAs.
- 14.2 The WDA and the WCA may agree a financial incentive scheme for the distribution of any LATS income and or LATS penalties which may arise.

### **Commercial Waste**

- 14.3 Each WCA may arrange for the collection of Commercial Waste. Waste suitable for treatment at the W2R or Hanford plants may be delivered directly to those plants or via WDA transfer facilities. WCA will make specific arrangements with the WDA for waste not suitable for treatment, so that alternative disposal methods can be arranged.
- 14.4 Each WCA shall be charged for the actual disposal costs plus administration costs incurred by the WDA 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 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 any costs associated with the Landfill Allowance Trading System (LATS).
- 14.5 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.

- 14.6 Within 3 months of the commencement of each calendar year during the term of this agreement, each WCA shall provide the WDA with an estimate of the types and quantities of Commercial and Industrial Waste to be delivered for disposal (where appropriate) for the forthcoming calendar year. 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.
- 14.7 The WCA shall give the WDA no less than six months notice in writing of its intention to discontinue, initiate, significantly reduce or expand commercial and industrial waste collections, including where it intends a privatisation or disposal of these services.
- 14.8 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.
- 14.9 The WCAs will encourage recycling and composting of Commercial and/or Industrial Waste where possible.
- 14.10 Where charges are levied on the basis of actual tonnages the WCA shall make payment upon being invoiced.

### **Responsibilities of all of the Parties**

Each Party shall in the performance of this Agreement and to the extent that it is lawful, and reasonably practicable to do so -

- a) Ensure that the planning, development and implementation of their services is as transparent as possible to the public and to the other Parties;
- b) consult in a timely fashion with all stakeholder groups in Staffordshire in relation to significant waste management issues which are or are likely to affect them;
- c) act in the best interests of all council taxpayers, give consideration to the implications for each Party of their actions and take fully into account what is fair and equitable for each of the Parties;
- d) provide effective, efficient and financially viable waste services.
- e) explore the development of joint initiatives between all or some of the Parties in respect of waste minimisation, recovery, collection and disposal;
- f) act in a spirit of mutual trust, support and respect, and ensure that if and when difficulties or differences of opinion arise between any of the Parties they are addressed quickly, honestly and openly.
- g) share in a fair and equitable manner (having regard to respective statutory responsibilities and the provisions of clause 4) the cost and work involved in complying with this Agreement;

- h) take a broader view on waste management in Staffordshire than that of any individual WCA or WDA in seeking to meet the collective objectives of the Parties;
- i) as existing waste collection contracts expire, seek as soon as possible to procure new waste collection contracts consistent with and to facilitate the performance of this Agreement;
- j) promptly provide all information reasonably requested by another Party in so far as is reasonably practicable to do so and without incurring undue cost in a timely fashion and in a readily usable form, including but not limited to -
  - a) details of contractual arrangements (or amendments to existing arrangements) of the Party associated with its statutory duties as a Waste Collection Authority or a Waste Disposal Authority (as the case may be);
  - b) early warning of potential failure by a Party or its contractor in meeting the Party's obligations under this Agreement;
  - c) actual failure by a Party or its contractor in meeting the Party's obligations under this Agreement;
  - d) new initiatives, policies or emerging policies relating to the minimisation, collection, recycling and disposal of Waste;
  - e) any other information that could reasonably be expected to impact upon this Agreement or the Parties to this Agreement;
- a) take all reasonable steps to mitigate any losses arising from the failure of any other Party properly to comply with the provisions of this Agreement.
- b) to the extent that any Party fails to comply with the provisions of this Agreement, to take all reasonable steps to mitigate the effects of such non-compliance on each of the other Parties and the agreed outcomes and outputs from this Agreement;
- c) actively work with the other Parties so far as is lawful and economically and environmentally reasonably practicable, to achieve the inputs, targets, outcomes and outputs specified in this Agreement.
- d) In particular, use all reasonable endeavours, working with the other Parties as appropriate, to minimise Waste and to increase the amount of Waste that is recovered and recycled in Staffordshire in line with Government targets, the Strategy, new Legislation and in particular the 1999 Landfill Directive, to educate the public and the commercial sector in Staffordshire about Recycling schemes, and why their participation in these schemes is crucial, and to ensure that as much Municipal Waste as possible is (in order of priority) reduced, reused, recycled or recovered in order that each of the Parties complies with its obligations under this Agreement;
- e) 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 Staffordshire's Waste services as transparent as possible to each other and to the public as a whole; and
- c) research and develop and implement detailed proposals to achieve the purposes referred to in Paragraph (ii) above; and
- d) develop, implement, support and continue to enhance such schemes as are decided upon and in particular, included in the Strategy; and
- e) enhance economic development and employment opportunities as part of these proposals wherever possible whilst embracing the principles of sustainability; and
- f) explore other appropriate partnership opportunities with both the private and public sectors in the pursuit of these aims and objectives.

## **18. Costs**

- 18.1 Unless otherwise provided by this Agreement or by operation of law each Party shall bear its own expenses, costs, risks and liabilities in or arising out of, or pursuant to the preparation and performance of this Agreement and the preparation and performance of any variation hereto.

## **19. Breach and Termination**

- 5.1 Subject to Clause 5.2 if any Party to this Agreement ("the Party in Breach") has committed a breach of its obligations under this Agreement and one or more of the other Parties suffers loss as a direct result of such breach, the Party in Breach shall indemnify such other Party or Parties to the full extent permitted by law (including complying with any restriction or control or limitation on the ability of the Party in Breach to incur expenditure) or by any regulatory authority or authority to whose instructions or directions the Party in Breach is subject, against all and any loss, cost, expense or liability (including legal and other professional costs and expenses on a full indemnity basis) suffered or incurred by the other Party as a result of such breach.
- 5.3 To the extent that a breach of this Agreement results from circumstances which are beyond the reasonable resources or the ability of the Party in Breach to control (for example where demographic changes have exceeded or fallen short of that Party's prudent estimates) the Party in Breach shall to that extent be relieved of its indemnity obligations set out in Clause 5.1.

- 5.4 Each WCA undertakes to procure to the extent that it can reasonably and lawfully do so that the acts or omissions of any person, firm or corporation which provides goods or services to it in connection with the discharge of its functions as a Waste Collection Authority shall not in any material way prejudice the position of the WDA under the PFI Contract.
- 5.5 Save as otherwise expressly provided for in this Agreement expiry or termination of this Agreement shall not affect the operation of Clause 4 (Costs), Clause 5 (Breach and Termination), Clause 6 (Confidentiality), Clause 7 (Freedom of Information Act 2000 and Environmental Information Regulations 2004), Clause 8 (Joint Statements and Publicity), Clause 9 (Dispute Resolution), Clause 10 (Notices), Clause 17 (Assignment), Clause 18 (Law and Jurisdiction) and Schedule 1 (Definitions) or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

## **6 Confidentiality**

- 6.1 Subject to Clause 6.2 and Clause 7 (Freedom of Information Act 2000 and Environmental Information Regulations 2004), the Parties shall keep confidential all Confidential Information received by them in connection with this Agreement.
- 6.2 Clause 6.1 shall not apply in respect of –
- (c) 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
  - (d) the receiving Party can show was already in its possession free of any such restriction prior to receipt from the disclosing Party; or
  - (e) 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
  - (f) any disclosure which is required by UK or EU legislation or by an order of a tribunal of competent jurisdiction, any Parliamentary obligation or pursuant to the requirements of any governmental or regulatory body having the force of law; or
  - (g) any disclosure of information by a Party to any department, office or agency of the Government or their respective advisors or the Audit Commission and any person appointed by the Audit Commission for the purpose of the examination and certification of the Party's accounts or any examination or investigation; or

- (h) any disclosure that is required to ensure compliance with the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.

6.3 Subject to Clause 6.2 and to Clause 7 (Freedom of Information Act 2000 and Environmental Information Regulations 2004), in respect of all Confidential Information which may be disclosed by one Party to another or acquired by one Party from another under this Agreement, 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 Agreement;
- (b) only to disclose the Confidential Information to such of its members, officers, employees, advisors and contractors (including any sub-contractors) as genuinely need-to-know for the purposes of this Agreement, and then only on the understanding that they agree to be similarly bound by the provisions of this Agreement. The receiving Party shall be responsible for ensuring that all such employees comply with the confidentiality obligations of this Agreement;
- (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 Agreement;
- (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.

6.4 The property in all Confidential Information disclosed by any Party pursuant to this Agreement shall, subject to any right of any other owner, remain vested with the disclosing Party.

6.5 No licence or other rights are granted in the Confidential Information by the disclosing Party to the receiving Party except such licence to copy any writing or other document recording the Confidential Information to the extent authorised by the other sub-clauses of this Clause 6 and Clause 7 or to authorise the copying as a consequence of the receipt from the disclosing Party and downloading by the receiving Party of any electronic communication or document.

## **7 Freedom of Information Act 2000 and Environmental Information Regulations 2004**



7.1 Each of the Parties acknowledges that it and each of the others is subject to the requirements of the Freedom of Information Act 2000 (“**FoIA**”) and the Environmental Information Regulations 2004 (“**EIR**”) and each Party shall where reasonable assist and co-operate with the other Parties (at each Party's own expense) to enable the other Parties to comply with these information disclosure obligations.

7.2 Where any Party receives a request for information under either the FoIA or the EIR in relation to information which it is holding on behalf of any of the other Parties in connection with this Agreement, it shall-

- (a) transfer the request for information to such of the other Parties as are the subject of the request as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;
- (b) provide the other Party or Parties with a copy of all information in its possession or power in the form that the Party requires within ten Business Days (or such longer period as the Party may specify); and
- (c) provide all necessary assistance as reasonably requested by the other Party to enable the Party to respond to a request for information within the time for compliance set out in the FoIA or the EIR.

3.23 Where a Party receives a request for information under the FoIA or the EIR which relates to this Agreement or the Staffordshire Waste Partnership, it shall inform the other Parties of the request for information as soon as practicable after receipt and in any event at least two Business Days before disclosure and shall use all reasonable endeavours to consult with the other Parties prior to disclosure and shall consider all representations made by the other Parties in relation to the decision whether or not to disclose the information requested.

3.24 The Party which received the request for information shall be responsible for determining in its absolute discretion whether any information requested -

- (a) is exempt from disclosure under the FoIA or the EIR;
- (b) is to be disclosed in response to a request for information.

7.5 Each Party acknowledges that the other Parties may be obliged under the FoIA or the EIR to disclose information:

- (a) without consulting with the other Parties where it has not been practicable to achieve such consultation; or
- (b) following consultation with the other Parties and having taken their views into account.

## **8 Publicity**

10.1 A WCA shall not itself make or authorise the making of by any person on its behalf any public statement or issue any media release or publish any other public document (an "**Announcement**") relating to, connected with or arising

out of this Agreement or the PFI Contract without consulting with the WDA in respect of its content and the manner of its presentation and publication.

- 10.2 The Parties expressly confirm that this Clause 8 does not limit or restrict any issue by a WCA of a public statement, press, release, advertisement, public notice or any other public document in the discharge of any of its functions except that of a WCA (in particular but without limitation its functions as a local planning authority, building control, health and safety or other regulatory authority) and that any statement, press release or other communication (in any media) issued by any member of a WCA in his constituency role or by any member of a minority political group on a WCA shall not be deemed to be made or authorised by the WCA.
- 10.3 Prior to the WDA making any announcement in relation to this Agreement, the WDA shall consult with the WCAs, and shall give due consideration to, such reasonable comments as are received.
- 10.4 Each Party shall actively promote the policies and objectives of the JWMB including those relating to recycling, waste minimisation and energy conservation insofar as such policies and objectives of the JWMB and shall support the WDA by co-ordinating and distributing advertising and publicity material. In particular, the Parties shall promote the key achievements and milestones of the PFI Contract.

## **9 Dispute Resolution**

- 1.1 Any dispute or difference concerning this Agreement 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 a spirit of partnering.
- 1.2 In the event that the dispute or difference is not resolved within a reasonable period by the Parties in accordance with Clause 9.1, the dispute or difference shall be referred to a meeting of the chief officers of each of the Parties involved, who shall enter into good faith negotiations to attempt to resolve the matter.
- 9.2 In the event that the dispute or difference remains unresolved on the expiry of the period of 28 calendar days from the date of the referral under Clause 9.2 above, or such longer period as the Parties may agree, it shall be referred to a mediator nominated by the Chartered Institution of Water and Environmental Management (“**CIWEM**”) or in the event that no mediator is nominated by CIWEM, nominated by the Law Society of England and Wales (“**the Mediator**”).
- 1.3 The Parties shall use their reasonable endeavours to conclude the mediation within 40 Business Days of referral of the dispute to mediation.
- 1.4 The Mediator shall determine the rules and procedures by which the mediation shall be conducted, save that-

- (c) each Party shall be entitled to make a written statement of its case to the Mediator prior to the commencement of the mediation provided that such statement shall be provided to the Mediator not less than 14 calendar days or such other period as may be agreed by the Mediator before the mediation is to commence; and
  - (d) within 14 calendar days of the conclusion of the mediation the Mediator shall provide a written report to the Parties which report shall set out the nature of the dispute and the nature of its resolution if any.
- 9.6 The Parties shall each bear their own costs incurred in relation to any mediation and the Mediator shall be entitled to be paid his reasonable fees, which the Parties shall pay in equal shares.
- 9.7 Any dispute or difference which any legislation requires to be referred to a particular form of dispute resolution such as arbitration or adjudication shall be so referred in the event that mediation in accordance with this Clause 9 has failed to resolve.
- 9.8 No Party shall be entitled to commence litigation or arbitration procedures against any other Party in respect of any dispute or difference arising under or as a consequence of this Agreement unless and until the completion of the mediation in accordance with this Clause 9. Nothing in this Clause 17 (Dispute Resolution) shall prevent a Party at any time from seeking any interim or interlocutory relief from the courts.

## **10. Amendment of the Agreement**

- 10.1 No amendment or variation to this Agreement shall be effective unless and until agreed in writing and signed by a representative of each Party authorised to do so.

## **11. Notices**

- 11.1 No notice required to be served upon any of the Parties under this Agreement 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 at the beginning of this Agreement or to such other address as that Party may notify the other Parties 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 at the beginning of this Agreement 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.

- (c) Where any notice is deemed served pursuant to this Clause 11 after 16.00hours on any day, the notice shall be deemed to have been served on the next Business Day.

## **12. Entire agreement**

- 1.0 Except where otherwise expressly provided in this Agreement and save in the absence of fraud this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes and replaces any and all other previous understandings, commitments or Agreements, oral or written, relating to the basis upon which this Agreement was entered into or relating to any contract award which may result from this Agreement.

## **13. Agency**

- 13.1 Nothing in this Agreement shall constitute a legal partnership or agency between the Parties.

## **14. Assignment of Rights and Obligations**

- 10.1 This Agreement is personal to the Parties and the rights and obligations arising under this Agreement shall not be assigned, novated or otherwise transferred to any person by any Party hereto other than as set out in this clause 14.
- 10.2 For the purposes of this clause 22, the rights and obligations of any Party arising under this Agreement may be assigned, novated or otherwise transferred as follows –
  - c) the WDA may at any time or times and for any period discharge its obligations through the PFI Service Provider under the PFI Contract or any related document or documents.
  - d) the WDA and the WCAs may assign, novate or otherwise transfer all or any of their rights and / or obligations arising under this Agreement to any successor body consequent upon a formal reorganisation of local government and / or to any organisation which substantially performs any of the relevant functions that previously had been performed by that Party under or pursuant to this Agreement.
- 10.3 In the event of any assignment, novation or other transfer in accordance with this clause 22, the Parties shall enter into such written agreement or agreements as may reasonably be required in order to give effect to such assignment, novation or transfer and in order to continue to achieve the purposes and objectives of this Agreement.

## **15. Waiver**

- 15.1 Failure by any Party to enforce any right contained in or other provision of this Agreement or to require performance by any other Party of any obligation arising under this Agreement shall not constitute or be construed as being a

waiver of or as creating an estoppel in connection with any such right or obligation or other provision and shall not affect the validity of this Agreement or any part thereof.

**16. Severance of Terms**

16.1 If any term, condition or other provision of this Agreement 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 Agreement.

**17. Rights of Third Parties**

17.1 This Agreement does not confer upon any third party any rights or entitlements under the Contracts (Rights of Third Parties) Act 1999.

**18. Governing Law and Jurisdiction**

12.1 The formation, interpretation and operation of this Agreement will be subject to English Law and, subject to Clause 9 (Dispute Resolution) the Parties hereto submit irrevocably to the exclusive jurisdiction of the courts of England and Wales.

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**The Parties hereto have executed and delivered this Agreement as a deed on the date first appearing in this Agreement.**

The Common Seal of )

**Staffordshire County )**

**Council** was hereto affixed )

in the presence of: )

----- Authorised Signatory

Name: .....

The Common Seal of )

**Cannock Chase District )**

**Council** was hereto affixed )

in the presence of: )

----- Authorised Signatory

Name: .....

The Common Seal of )

**East Staffordshire Borough** )

**Council** was hereto affixed )

in the presence of: )

----- Authorised Signatory

Name: .....

The Common Seal of )

**Lichfield District** )

**Council** was hereto affixed )

in the presence of: )

----- Authorised Signatory

Name: .....

The Common Seal of )

**Newcastle Borough** )

**Council** was hereto affixed )

in the presence of: )

----- Authorised Signatory

Name: .....

The Common Seal of )

**Stafford Borough** )

**Council** was hereto affixed )

in the presence of: )

----- Authorised Signatory

Name: .....

The Common Seal of )

**Staffordshire Moorlands District** )

**Council** was hereto affixed )

in the presence of: )

----- Authorised Signatory

Name: .....

The Common Seal of )

**South Staffordshire District** )

**Council** was hereto affixed )

in the presence of: )

----- Authorised Signatory

Name: .....

The Common Seal of )

**Tamworth Borough** )

**Council** was hereto affixed )

in the presence of: )

----- Authorised Signatory

Name: .....



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