

Draft Joint Working Agreement (Version 6) 17/9/2008

Bedford Borough Council  
and  
Bedfordshire County Council  
and  
Central Bedfordshire Council  
and  
Luton Borough Council

Joint Working Agreement  
For the Procurement and Management of  
Residual Waste Treatment

**THIS AGREEMENT** is made the

day of

2008

**BETWEEN**

**BEDFORD BOROUGH COUNCIL** of

**AND**

**BEDFORDSHIRE COUNTY COUNCIL** of

**AND**

**CENTRAL BEDFORDSHIRE COUNCIL** of

**AND**

**LUTON BOROUGH COUNCIL**

**WHEREAS**

- 1 Bedfordshire County Council and Luton Borough Council are each Waste Disposal Authorities under Section 30(2) of the Environmental Protection Act 1990 and is under a duty to dispose of controlled waste within the areas of the County of Bedfordshire and the Borough of Luton respectively under Section 51 of the Environmental Protection Act 1990
- 2 The Bedfordshire (Structural Changes) Order 2008 provides for a re-structuring of local government in Bedfordshire
- 3 Under that Order, the function of Waste Disposal Authority within the area of Bedford Borough will be transferred to Bedford Borough Council as at 1<sup>st</sup> April 2009, and the Bedford Borough Council has been given a new “main transitional function” of preparing for and facilitating the economic, effective, efficient and timely transfer of Bedfordshire County Council’s functions, property, rights and liabilities so far as they relate to Bedford and the inhabitants of Bedford from Bedfordshire County Council to Bedford Borough Council., which function is exercisable by Bedford Borough Council during the transitional period which runs up to 1<sup>st</sup> April 2009.
- 4 Under that Order, the Central Bedfordshire Council has been established as a District Council, to operate as a shadow authority until 1<sup>st</sup> April 2009 and thereafter to be the waste disposal authority for the area of Central Bedfordshire, and has been given the duty by Clause 20 of that Order to prepare for the assumption of local government functions and powers on 1<sup>st</sup> April 2009, and to liaise with the County Council for the purpose of securing continuity of the delivery of public services on and after 1<sup>st</sup> April 2009, and for that purpose has been given all the powers of a non-Metropolitan County Council and a non-Metropolitan District Council.
5. The powers of waste disposal are “executive functions” under Section 13 of the Local Government Act 2000
- 6 For the purpose of the discharge of its functions, each of the above-mentioned authorities has the power under Section 101 and 102 of the Local Government Act 1972, as applied to executive functions by the Local Authorities (Arrangements for the Discharge of Functions) Regulations 2000 made under Section of the Local Government Act 2000, to establish an advisory Project Board of the Executives of each authority, to make their staff available to each of the other Authorities under Section 113 of the Local Government Act 1972 and to

delegate their respective waste disposal functions to officers of their own and seconded staff of the other authorities, and to enter a contract under Section 1 of the Local Government (Contracts) Act 1997 for securing the discharge of their functions.

7. The four Authorities have resolved to work together to seek a long term solution to their current and future duties for the treatment of residual controlled waste by procuring a Contractor who will construct, provide and operate facilities for the treatment and disposal of such residual waste and for managing the resulting Contract on behalf of the Authorities.
8. The process of procurement of such a long term contract will go beyond 1<sup>st</sup> April 2009. Accordingly, it is expedient for the process to be commenced under the existing powers of the Bedfordshire County Council, but the final contract will have to be awarded and managed jointly by Bedford Borough Council, Central Bedfordshire Council and Luton Borough Council. It is therefore expedient for Bedford Borough Council and Central Bedfordshire Council to be involved in the process of procurement prior to 1<sup>st</sup> April 2009, but for the two authorities now to enter into a binding agreement with Luton Borough Council and Bedfordshire County Council under which they determine the arrangements for completing the procurement and undertaking the management of that long-term contract on and after 1<sup>st</sup> April 2009.

**IT IS HEREBY** agreed as follows –

## **1 Interpretation**

- 1.1 In this Agreement unless the context otherwise requires the following expressions have the following meanings –

**“The Agreement”** means this Agreement comprising the terms and conditions together with the Schedules attached hereto.

References to **“the Authorities”** shall be taken for the period from the date of this Agreement until 1<sup>st</sup> April 2009 as comprising references to Bedfordshire County Council, Bedford Borough Council, Central Bedfordshire Council and Luton Borough Council and for the period commencing on 1<sup>st</sup> April 2009 and extending thereafter as comprising references to Bedford Borough Council, Central Bedfordshire Council and Luton Borough Council, and “an authority” shall mean one of the Authorities.

**“The Authority Lead Officer”** shall mean the officer of each Authority appointed by that Authority in accordance with Clause 7 of this Agreement to ensure that that Authority provide sufficient support to secure the effective performance of the Project.

**“The Bidders”** means those organisations who have expressed an interest in, and pre-qualified for, carrying out the Contract and as may be reduced through the competitive dialogue process.

**“The Commencement Date”** means the date on which this Agreement is executed by the Authorities.

**“The Constitution”** means the constitution of the Project Board as set out in Schedule C to this Agreement.

**“The Contract”** means the contract for the provision of facilities for, and the treatment or the treatment and disposal of residual waste on behalf of the Authorities which is procured under this Agreement.

**“The Contractor”** means the contractor appointed by the Authorities to the Contract in accordance with this Agreement.

**“The Direct Contract”** means a contract between the Contractor, the Authorities and a funder for the provision of funding for the Project from the funder to the Contractor

**“The Lead Authority”** means the Authority which, in accordance with this Agreement, the Project Board has appointed to carry out a particular function on behalf of the Project Board.

**“Loss”** includes any loss and liability directly or indirectly suffered by the Authority, including any loss of anticipated income, together with any damage, expense, liability or costs reasonably incurred in contesting any claim to liability and quantifying such Loss and liability.

**“The Officers”** means the officers of the Authorities who are engaged upon the Project.

**“The Preferred Bidder”** means the Bidder selected by the Project Board as preferred bidder.

**“The Procurement”** means the procurement of the Contract, and “the Procurement Phase” means that phase of the Project which relates to the procurement of the Contract.

**“The Procurement Cost Sharing Scheme”** mean the principles and arrangements set out in Schedule A for determining the allocation of costs of the procurement of the Project as between the three Authorities.

**“The Project”** means the shared object of the Authorities to secure the procurement of a Contractor who will construct, provide and operate facilities for the treatment (and, should the Authorities agree, the disposal) of residual waste for the Authorities and such other waste as the Authorities may determine and to manage the Contract to secure the continuing improvement in the effective discharge of the Authorities’ functions in respect of the treatment and disposal of residual waste.

**“The Project Board”** means the officer Project Board established by the Authorities in accordance with the Constitution as set out in Schedule C.

**“The Project Director”** means an officer appointed by the Lead Authority on the instruction of the Authority Lead Officers to direct the Project and to lead the Authorities’ negotiating team in any negotiations with tenderers.

**“The Project Manager”** means an officer or consultant appointed by the Lead Authority on the instruction of the Authority Lead Officers to manage the Project on behalf of the Authorities

**“The Reserved Matters”** means the decisions specified in Paragraph 8.3 of Schedule C which are outside the powers delegated by each of the Authorities to the Project Board.

**“Senior Responsible Owner”** means the Officer appointed by the Authorities under Clause 7.6 to take on a role in respect of the Project in line with the role of

Senior Responsible Owner in relevant Guidance issued by the Department for Environment, Food and Rural Affairs and appropriate project management models.

**“The Service Cost Allocation Scheme”** mean the principles and arrangements set out in Schedule B for determining the allocation of costs arising in managing the Contract and arising under the Contract as between the three Authorities.

**“The Service Phase”** means the phase of the Project commencing at the completion of the Procurement Phase and related to the management of the Contract.

**“Unitary Charge”** means the charge made by the contractor to the Authorities in respect of the availability of the Facility and the provision of the Service

**“Working Day”** in respect to an Authority, means any day other than weekends and Bank Holidays.

- 1.2 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended extended or re-enacted.
- 1.3 Words importing the singular include the plural words importing any gender include every gender, the words importing persons include bodies corporate and unincorporated; and (in each case) vice versa.
- 1.4 Reference to Clauses and Schedules are references to clauses and schedules of this Agreement and any reference to a sub provision is unless otherwise stated a reference to a sub provision of the provision in which the reference appears.
- 1.5 The Clause and paragraph headings and titles appearing in this Agreement are for reference only and shall not affect its construction or interpretation.

## **2 Term**

This Agreement shall come into effect on the Commencement Date and shall continue in force in respect of the Authorities until one year after the earlier of –

- 2.1 the expiry or termination of the Contract or
- 2.2 one year after the withdrawal of any Party in accordance with this Agreement, unless the remaining Authorities have by that time agreed that the Agreement shall continue in force, but only in respect of the remaining Authorities.

## **3 General Principles**

- 3.1 This Agreement has been entered into by the Authorities to establish and effect provisions for performance of the Project and to clarify the Authorities' responsibilities in respect thereof and to each other.
- 3.2 The Authorities will work together in good faith and in an open, co-operative and collaborative manner for the duration of this Agreement. The Authorities' members and officers will work together in the spirit of mutual trust in order to endeavour to procure the successful implementation of the Project and will respond in a timely manner to all relevant requests from another Authority/ies.

- 3.3 Each of the Authorities hereby represents to the others that it has obtained all necessary consents sufficient to ensure the delegation of functions provided for by this Agreement for the purposes of the Project
- 3.4 The Authorities shall use all reasonable endeavours to procure that their respective members and officers who are involved in the Project shall at all times act in the best interests of the Project. The Authorities expressly acknowledge that their members and officers involved in carrying out activities under this Agreement or otherwise in connection with the Project will have regard to the benefits to the Authorities and accordingly may be required to act in conflict with their duty to their own Authority, and the Authorities hereby authorise them to act in such a manner.
- 3.5 The Authorities commit to share data and knowledge relevant to the Project where appropriate.
- 3.6 Whilst this Agreement details the arrangements between the Authorities for the Procurement Phase, the Authorities agree to work together in good faith to agree such amendments and amplification of this Agreement as may be necessary to enable the Authorities to work together throughout the Service Phase of the Project.

#### **4 Status of this Agreement**

The Authorities agree that this Agreement shall take the form of a legally binding relationship and mutual commitments between them created by this Agreement shall from the date hereof be construed accordingly.

#### **5 The Project Board**

- 5.1 The Authorities agree to constitute the Project Board as an executive officer team on the terms set out in the Constitution and hereby delegate to the Project Board the powers set out in the Constitution.
- 5.2 The Project Board shall not by virtue of this Agreement have any power to determine any Reserved Matter, but shall make common recommendations to each of the Authorities where a Reserved Matter comes to be considered by that Authority.

#### **6 Overview and Scrutiny**

- 6.1 Each Authority shall use its reasonable endeavours to secure the co-ordination of the overview and scrutiny functions of that authority in respect of the functions and actions of the Project Board with the discharge of similar overview and scrutiny functions in each of the other Authorities.
- 6.2 Where an Overview and Scrutiny Committee of any Authority considers calling in or conducting a review of a decision by or on behalf of the Project Board, consideration shall be given to inviting the appropriate Overview and Scrutiny Committee of the other Authorities to share in such call-in or review.

#### **7 Authority Lead Officers**

- 7.1 Each of the Authorities shall appoint an officer from its to be its Authority Lead Officer
- 7.2 An Authority shall, unless there are over-riding reasons to the contrary, appoint as its Authority Lead Officer the officer at Strategic Director level whose responsibilities include the waste functions within that Authority
- 7.3 The Authority Lead Officer may, where appropriate, arrange for all or any of his/her responsibilities to be undertaken by the officer of the Authority at Head of Service Level who is responsible within that Authority for waste functions
- 7.4 Each Authority Lead Officer shall be responsible for ensuring that his/her Authority provides the support necessary to secure the effective achievement of the Project. In this context, "support" shall include the involvement and time of capable officers, the provision of information and the prompt consideration of matters referred to his/her Authority for determination
- 7.5 Each Authority Lead Officer shall be responsible for ensuring that the Executive of that Authority is kept informed of progress of the Project and shall be accountable for the Project to the appropriate Scrutiny Committee of that Authority.
- 7.6 The Authorities shall appoint an Officer to take the role of "Senior Responsible Owner".

## **8 Authority to Enter Contracts, etc.**

- 8.1 The Contract and the Direct Contract shall only be entered into by the Authorities on the instruction of all of the Authorities, or of the Project Board where that instruction is within the powers delegated to the Project Board
- 8.2 The Project Board, and only the Project Board, shall have the power to authorise entry into, variation, extension or termination of contracts (including consultancy contracts entered into by Bedfordshire County Council) other than the Contract and the Direct Contract on behalf of the Authorities where such contracts would be incidental or conducive to or calculated to facilitate the performance of the Project
- 8.3 Where any person enters any contract, or communicates with any prospective Bidder, Bidder or the Contractor, on behalf of the Project he/she shall make it clear in any such contract or communication that he/she does so on behalf of the Authorities.

## **9 Liabilities, Immunity and Indemnities**

### **9.1 Member and Officer Liability**

- 9.1.1 When working on the Project, Officers shall be deemed to be working on behalf of their employing Authority, and made available and working on behalf of the other Authority/ies under Section 113 of the Local Government Act 1972.
- 9.1.2 In consequence of the above, the Officers shall be treated as falling within the statutory immunity provided by Section 265 of the Public

Health Act 1875, as amended, in respect of their actions or omissions in respect of the Project.

## 9.2 Losses to each Authority

- 9.2.1 Where an Officer is working on the Project, he/she shall be considered to be working on behalf of all the Authorities, and accordingly, in the event that any Loss results to an Authority as the result of any action or omission by any Officer, whilst working on the Project on behalf of the Authorities, that Officer's employing Authority shall not have liability to the other Authorities in respect of that Loss..

## 10 Lead Authority

- 10.1 The Lead Authority for any function shall act on behalf of the Authorities in respect of that function.
- 10.2 The Lead Authority shall act under the direction of and upon the instruction of the Project Board.
- 10.3 Where the Lead Authority for any function incurs any costs or liability in discharging this function, the officer of the Lead Authority discharging that function shall, as far as possible secure the agreement of the Project Board to the costs or liability in advance of incurring it, but in any case shall inform the Project Board promptly of that cost or liability and such cost or liability shall be apportioned between the Authorities pursuant to Clause 12
- 10.4 It is recorded that the intention of the Authorities is that Bedfordshire County Council shall be the Lead Authority up to 31<sup>st</sup> March 2009; that Central Bedfordshire Council shall be the Lead Authority for the remainder of the Procurement Phase, and that the Authority within whose area the main waste treatment facilities which are to be provided under the Contract will be located.
- 10.5 Clause 10.5 is save to the extent that any Lead Authority functions should, for reasons of governance and probity, be provided by another Authority.

## 11 Intellectual Property

- 11.1 All intellectual property in any material created by or on behalf of the Project shall be owned jointly by the Authorities and shall be available equally to each Authority.
- 11.2 Each Authority warrants that any intellectual property created by its officers for the purposes of the Project will not infringe any third party's intellectual property rights.
- 11.3 Each Authority shall indemnify the other Authority/ies against any Loss arising out of any dispute or proceedings brought by a third party alleging infringement of its intellectual property rights by use of the first Authority's intellectual property for the purpose of the Project.
- 11.4 Where existing intellectual property of an Authority has been used for the purpose of the Project, that Authority agrees that, if the Project does not proceed, it will if requested licence the other Authority/ies on Commercial Terms to use that intellectual property for the purpose of its waste disposal functions.

## **12 Cost Allocation**

- 12.1 The Authorities shall share the income arising from and the costs reasonably incurred by any Authority in respect of the Procurement Phase in accordance with the Procurement Costs Allocation Scheme set out in Schedule A.
- 12.2 For clarity, it is recorded that the acquisition of land as a potential site for the facilities to be provided by the Contractor, works for the preparation of that land for development and application for any consents (including planning permission) necessary for the use of that land for the Project do not constitute Procurement Costs, and that any such acquisition, etc., would need to be the subject of a separate agreement between the Authorities.
- 12.3 The Authorities shall share the Unitary Charge and any costs reasonably incurred by any Authority in respect of the Service Phase of the Project in accordance with a Service Cost Allocation Scheme to be agreed by the Authorities giving effect to the Principles set out in Schedule B.

## **13 Remediation and Dispute Resolution**

- 13.1 Where the Project Board fail to agree on any matter, any Authority Lead Officer may require the matter to be “escalated”, in which case the Senior Responsible Owner shall prepare a report on the matter and shall arrange for the matter to be considered at a meeting of the Chief Executives of the Authorities within 14 days of such failure to agree, and any decision which is agreed by each of the Chief Executives within that time shall be deemed to be a decision of the Project Board.
- 13.2 Where an Authority is of the opinion that another Authority/ies is failing to comply with the provisions of this Agreement in respect of any matter, including the provisions of Clause 3.2 to work together in good faith and in an open, co-operative and collaborative manner, the Authorities shall use their best endeavours to resolve any such matter amicably without resort to the formal remediation and dispute resolution procedures set out below.
- 13.3 Notwithstanding Clause 13.2, above, at any time the Chief Executive of an Authority (“the first Authority”) may serve on the Chief Executive of an other Authority/ies (“the second Authority”) a “Default Notice”, alleging that that Authority has failed to comply with its obligations under this Agreement, setting out any suggested remedial action and any damage which the first Authority has or is likely to suffer as a result of the alleged failure.
- 13.4 An Authority in receipt of a Default Notice shall have 14 days within which to serve on the Chief Executive of the first Authority who served the Default Notice a “Counternotice”, setting out in respect of every matter contained in the Default Notice proposals for the remediation of the alleged failure and making good any Loss which the first Authority may have suffered or may suffer as a result of the failure or the reasons why that alleged failure is disputed.
- 13.5 Within 14 days of receipt of a Counter notice, the Chief Executive of the first Authority shall send to the Chief Executive of the second Authority a “Notice of Acceptance” of any proposals contained in the Counternotice in so far as those proposals are accepted by the first Authority, and may send a “Notice of

Dispute” in so far as no proposal satisfactory to the first Authority is contained in the Counternotice, setting out in respect of each proposal which is not accepted by the first Authority why it is considered to be unacceptable.

- 13.6 Where any proposal in a Counternotice is accepted in a Notice of Acceptance, the second Authority shall implement that proposal.
- 13.7 Where any authority serves any notice upon another Authority/ies under this procedure, they shall also copy such notice to any other Authority/ies.
- 13.8 Where any matter is contained in a Notice of Dispute, it shall fall to be dealt with under the Disputes Procedure set out in Clause 18.

#### **14 Withdrawal and Indemnity for Consequences of Withdrawal**

- 14.1 Each Authority acknowledges that, if it withdraws from this Agreement or takes a decision on its own which is within the powers delegated to the Project Board during the Procurement Phase of the Project, that withdrawal or decision is likely to cause additional cost to the other Authority/ies including, but not limited to, the cost of undertaking a separate procurement and the costs attendant upon the delayed availability of the facilities which would enable it to secure the effective treatment and disposal of residual waste, thereby reducing its liability for Landfill Tax and minimising its need to purchase additional LATS (Landfill Allowance Trading Scheme) allowances and the costs of disposing of waste by other means.
- 14.2 Each Authority acknowledges that, if it withdraws from this Agreement or takes a decision on its own which is within the powers delegated to the Project Board during the Service Phase of the Project, that withdrawal or decision is likely to cause additional cost to the other Authority/ies including, but not limited to, any claims which the Contractor may have against the Authorities as a result of the failure on the part of the Authorities to comply with the Contract, the cost to the other Authority/ies of procuring a new contract with a third party or of negotiating a new or renegotiated contract with the Contractor, higher contract costs associated with the smaller scale of the replacement contract, the Loss to the other Authority/ies of the use of the Contractor’s facilities during this process, with the result that the other Authority/ies may incur additional Landfill Tax costs and need to purchase additional LATS (Landfill Allowance Trading Scheme) allowances and any third party claims against the Authorities.
- 14.3 Any Authority may withdraw from this Agreement by giving notice in writing of its intention to withdraw to the other Authority/ies. Such notice shall be no less than three month’s notice in respect of any withdrawal to take place prior to entry into the Contract, and no less than six months’ notice in respect of any withdrawal to take place upon or after entry into the Contract.
- 14.4 In the event that one Authority declines to approve any of the Reserved Matters, or if the final tenders for the Contract materially exceed the financial parameters set out in the Outline Business Case, as amended with the approval of the Authorities, on selection of Preferred Bidder or otherwise, any of the Authorities shall be entitled to withdraw from this Agreement without liability.
- 14.5 Subject to Clause 14.4, each Authority agrees that in the event that it gives notice of withdrawal to the other Authority/ies, or takes its own decision in respect of matter which is within the powers delegated to the Project Board, it

will use its reasonable endeavours to minimise, and will indemnify the other Authority/ies against, any Loss which that other Authority/ies may suffer as a result of its withdrawal from this Agreement or independent decision.

14.6 Where any Authority withdraws from this Agreement –

- 14.6.1 The obligations of each Authority in respect of the furtherance of the Project shall cease on such withdrawal;
- 14.6.2 The Agreement shall continue in force as respect any financial liabilities which have or may arise out of the performance of this Agreement and the Contract;
- 14.6.3 The Agreement shall remain in force in respect of any liability of any Authority to indemnify the other Authority/ies under this Clause of the Agreement;
- 14.6.4 Clause 14 of this Agreement shall continue without limit of time and shall survive the termination of this Agreement;
- 14.6.5 The Authorities may agree that all or any parts of this Agreement shall continue in force for such period thereafter as may be agreed in order to secure continuity of service and to minimise the Loss which any Authority may suffer as a result of an Authority withdrawing from this Agreement; and
- 14.6.6 The Disputes Procedure set out in Clause 18 of this Agreement shall remain in force in respect of any of the matters arising from the performance of or withdrawal of any Authority under this Agreement.

**15 Confidential Information**

- 15.1 Subject to Clause 16, the Authorities shall at all times use their reasonable endeavours to keep confidential and ensure that such information is used only for the purpose of the Project (and to procure that their respective employees agents consultants contractors and sub-contractors shall keep confidential and shall use such information only for the purpose of the Project) all Confidential Information concerning the Project or the business and affairs of the other Authority/ies which may now or at any time hereafter be in its possession and shall not disclose it except with the consent of the other Authority/ies, such consent not to be unreasonably withheld.
- 15.2 For the purpose of this Agreement “Confidential Information” means any information imparted to any Authority or their employees agents consultants contractors or sub-contractors (“the Receiving Party”) which was imparted to the Receiving Party on the basis that it is to be kept confidential or would by its nature normally be regarded as being confidential or to the knowledge of the Receiving Party was obtained by the other Authority/ies on the basis that it was to be kept confidential or is of commercial value in relation to the Project but shall not include any information which is for the time being in the public domain otherwise than by reason of its wrongful disclosure by the Receiving Party.
- 15.3 This Clause 19 shall not prevent the disclosure of any Confidential Information relating to the Project which is reasonably disclosed for the furtherance of the Project or the promotion of the Project provided that the Authority or person

disclosing the information takes all steps that are commercially practicable to preserve the confidentiality of the information and shall not prevent the disclosure of any Confidential Information where required by law.

## **16 Compliance with Laws**

- 16.1 The Authorities shall at all times comply with all laws including but not limited to the Data Protection Act 1998 and will, where appropriate maintain a valid and up to date registration or notification under such laws.
- 16.2 Each Authority shall indemnify and keep indemnified the other Authority/ies against all Losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by the other Authority/ies in respect of any breach of this Clause by the Authority and/or any act or omission of any employee, agent, consultant, contractor or sub-contractor.
- 16.3 Each Authority shall grant to the other Authority/ies the right of reasonable access to all records of Personal Data relevant to the Project, as defined in the Data Protection Act 1998, and shall provide reasonable assistance at all times during the currency of this Agreement to ensure the quality and security of data collected.

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

- 17.1 Each Authority acknowledges that the other Authority/ies subject to the requirements of the Freedom of Information Act 2000 ("FoIA") and the Environmental Information Regulations 2004 ("EIR") and each Authority shall where reasonable assist and co-operate with the other Authority/ies (at their own expense) to enable the other Authority/ies to comply with these information disclosure obligations.
- 17.2 Where an Authority receives a request for information under either the Freedom of information Act 2000 or the Environmental Information Regulations 2004 in relation to information which it is holding on behalf of any of the other Authority/ies in relation to the Project, it shall (and shall procure that its sub-contractors shall):
  - 17.2.1 Transfer the request for information to the other Authority/ies as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
  - 17.2.2 Provide the other Authority/ies with a copy of all information in its possession or power in the form that the Authority requires within ten Working Days (or such longer period as the Authority may specify) of the Authority requesting that information; and
  - 17.2.3 Provide all necessary assistance as reasonably requested by the other Authority/ies to enable the Authority to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 17.3 Where an Authority receives a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 which relates to the Agreement or the Project, it shall inform the other Authority/ies of

the request for information as soon as practicable after receipt and in any event at least two Working Days before disclosure and shall use all reasonable endeavours to consult with the other Authority/ies prior to disclosure and shall consider all representations made by the other Authority/ies in relation to the decision whether or not to disclose the information requested.

17.4 The Authorities shall be responsible for determining in their absolute discretion whether any information requested under the Freedom of Information Act 2004 or the Environmental Information Regulations 2004:

17.4.1 Is exempt from disclosure under the FOIA or the EIR;

17.4.2 Is to be disclosed in response to a request for information.

17.5 Each Authority acknowledges that the other Authority/ies may be obliged under the FOIA or the EIR to disclose information:

17.5.1 Without consulting with the other Authority/ies where it has not been practicable to achieve such consultation; or

17.5.2 Following consultation with the other Authority/ies and having taken their views into account.

## **18 Dispute Resolution**

18.1 Upon service of a Notice of Dispute the Authorities will attempt to settle the issue in dispute ("Dispute") by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Authorities. To initiate a mediation, any Authority may give notice in writing (a "Mediation Notice") to the other requesting mediation of the Dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Authorities, asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. If there is any point in respect of the conduct of the mediation upon which the Authorities are unable to agree within ten (10) Working Days from the date of the Mediation Notice, CEDR will, at the request of any Authority, decide that point for the Authorities, having consulted with them. The Authorities will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or, in the absence of such determination, such costs will be shared equally.

18.2 No Authority may commence any court proceedings in relation to any Dispute until they have attempted to settle it by mediation under Clause 18.1 and/or such mediation has terminated. The Authorities will take no further steps in the court proceedings until any such mediation commenced under Clause 18.1 has terminated. Nothing in this Clause 18 shall prevent an Authority from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

18.3 If the Dispute has not been resolved by the mediation procedure detailed in Clause 18.1 within one (1) month of the initiation of such procedure, the Dispute shall be referred to the courts for resolution.

## **19 Severance**

- 19.1 If any condition, provision or Clause of this Agreement shall become or shall be declared by any court of competent jurisdiction to be void, invalid, illegal or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

## **20 Entire Agreement**

- 20.1 This Agreement constitutes the entire agreement and understanding of the Authorities and supersedes any previous agreement between the Authorities relating to the subject matter of this Agreement.

## **21 Waiver**

- 21.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.
- 21.2 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.
- 21.3 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent an Authority from subsequently requiring compliance with the waived obligation.

## **22 General**

- 22.1 Nothing contained or implied herein shall prejudice or affect the Authorities' rights and powers duties and obligations in the exercise of their functions as local authorities and/or in any other capacity and all rights powers discretions duties and obligations of the Authorities under all laws may at all times be fully and effectually exercised as if the Authorities were not party to this Agreement and as if this Agreement had not been made.
- 22.2 The Authorities shall only represent themselves as being an agent partner or employee of the other Authority/ies to the extent specified by this Agreement and shall not hold themselves out as such nor as having any power or authority to incur any obligation of any nature express or implied on behalf of the other Authority/ies except to the extent specified in this Agreement.
- 22.3 This Agreement shall be governed by and construed in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales.
- 22.4 This Agreement is personal to the Authorities and no authority shall assign transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this Agreement.
- 22.5 No person other than the Authorities shall be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

22.6 Any notice required or permitted to be given by an Authority to the other Authority/ies under this Agreement shall be in writing and addressed to the Chief Executive of the other Authority/ies at its principal office.

**IN WITNESS** hereof the parties hereto have executed this Agreement as a Deed the day and year first written

The Common Seal of **Bedfordshire County Council** was affixed hereto in the presence of the undersigned authorised signatory for and on behalf of **Bedfordshire County Council**

.....Authorised Signatory

The Common Seal of **Bedford Borough Council** was affixed hereto in the presence of the undersigned authorised signatory for and on behalf of **Bedford Borough Council**

.....Authorised Signatory

The Common Seal of **Central Bedfordshire Council** was affixed hereto in the presence of the undersigned authorised signatory for and on behalf of **Central Bedfordshire Council**

.....Authorised Signatory

The Common Seal of **Luton Borough Council** was affixed hereto in the presence of the undersigned authorised signatory for and on behalf of **Luton Borough Council**

.....Authorised Signatory

## Schedule A

### Procurement Cost Allocation

- 1 The costs of undertaking the Procurement Phase shall be borne by Bedfordshire County Council (two thirds) and Luton Borough Council (one third) up to 1<sup>st</sup> April 2009. Thereafter, the costs shall be borne equally between the remaining three Authorities.
- 2 For this purpose the costs of undertaking the Procurement Phase” (“Procurement Costs”) shall comprise:
  - 2.1 The salary and on-costs reasonably incurred by the Lead Authority in employing any officers specified for this purpose by the Project Board.
  - 2.2 The salary and on-costs reasonably incurred by the Authorities in employing and supporting any officers specified for this purpose by the Project Board calculated pro rata in respect of the time which they actually spend working on the Project on behalf of the Project Board.
  - 2.3 “On costs” shall include, but not be limited to, National Insurance, employers’ pension contributions, costs of providing working tools, telephones, computers and ICT services and facilities, costs of providing office accommodation, and travel and subsistence costs.
  - 2.4 Costs incurred for the purposes of the Project on the instruction of the Project Board including, but not limited to –
    - 2.4.1 consultant’s fees;
    - 2.4.2 advertising costs; and
    - 2.4.3 costs of holding meetings of the Project Board;
  - 2.5 Redundancy costs reasonably incurred by any Authority in respect of Officers who are employed principally for the purpose of the Project where those costs arise as a result of the transition to the Contract and the implementation of new arrangements for managing the Contract, and
  - 2.6 Such other costs as may be agreed by the Project Board for this purpose and which do not come within Paragraph 3 (below).
- 3 For this purpose, the Procurement Costs shall not include:
  - 3.1 The salary and on-costs incurred by the Authorities in employing any officer in so far as that officer actually spend time working on the Project on behalf of their employing Authority.
  - 3.2 The salary and on-costs incurred by any officer of any Authority when not working on the Project.
  - 3.3 Costs incurred by the Authorities in preparing the schedule of the Authority’s property and securing valuations thereof for the purpose of the Project, or in making

such property or information in respect of such property available to prospective Bidders, Bidders or the Contractor.

3.4 Costs incurred by any Authority in undertaking any remedial action arising under Clause 14 of the Agreement.

4 Where any Authority receives any payment from the Contractor or a third party in consequence of the procurement process (such as reimbursement of any of the Procurement Costs by the Contractor, that Authority shall arrange for such income to be shared between the Authorities in exactly the same manner as the Procurement Costs.

5 Each Authority shall be responsible for securing that any Procurement Costs incurred by that Authority are notified to the Project Board.

6 The Project Board shall arrange for –

6.1 Receipt of all notifications of claimed Procurement Costs and confirming that such Costs have been properly incurred for the purpose of this Schedule.

6.2 Maintaining a record of all such accepted claims for Procurement Costs and calculating on a quarterly basis any payment required from one Authority to the other to achieve the principle set out in Paragraph 1 above.

6.3 Providing the Project Board and each Authority with a monthly statement of Procurement Cost expenditure against the Budget approved for the Procurement Phase of the Project by the Project Board, including a statement of the payment (“Equalisation Payment”) required to be made by any Authority to achieve the Principle set out in Paragraph 1 above.

7 Within 30 days of receipt of a quarterly statement from the Project Board to the Project Board, each Authority shall make any Equalisation Payment to the other Authority/ies as set out in that statement.

## Schedule B

### Service Cost Allocation

The Authorities will use all reasonable endeavours to agree, prior to entry into the Contract, a supplementary agreement applying the following Principles in the allocation between the Authorities of the costs arising from the Contract on behalf of the Authorities (“the Contract Management Costs”), unless the Authorities agree otherwise –

#### 1 Service Management Costs

1.1 That such costs for any period shall be met by each Authority in proportion to that Authority’s tonnage of residual domestic waste delivered to the Contractor as a proportion of the aggregate tonnage of residual domestic waste delivered to the Contractor by the Authorities over the same period.

1.2 For this purpose, the Contract Management Costs shall comprise –

1.2.1 the salary and on-costs reasonably incurred by the Lead Authority in employing and supporting any officers specified for this purpose by the Project Board;

1.2.2 the salary and on-costs reasonably incurred by the Authorities in employing and supporting any officers specified for this purpose by the Project Board calculated pro rata in respect of the time which they actually spend working on the Project on behalf of the Project Board;

1.2.3 costs incurred for the purposes of the Project on the instruction of the Project Board, including, but not limited to –

1.2.3.1 consultant’s fees

1.2.3.2 advertising costs

1.2.3.3 costs of holding meetings of the Project Board

1.2.3.4 members’ allowances in respect of attendance at meetings of the Project Board by members of the Project Board

1.3 For this purpose, the Contract Management Costs shall not include:

1.3.1 The salary and on-costs incurred by the Authorities in employing any officers specified for this purpose by the Project Board in so far as they actually spend time working on the Project on behalf of their employing Authority.

1.3.2 The salary and on-costs incurred by any officer of any Authority when not working on the Project.

1.3.3 Costs incurred by the Authorities in making the Authority’s property or information in respect of such property available to the Contractor.

- 1.3.4 Costs incurred by any Authority in undertaking any remedial action arising under Clause 14 of the Agreement.

## 2 Contract Costs

- 2.1 The exact formula for cost allocation between the Authorities of the charges from the Contractor to the Authorities cannot be determined until the terms of the Contract are ascertained, at which time the Project Board will recommend to each Authority for approval an amendment to this Schedule which applies the following principles to the terms of the Contract.
- 2.2 The principles which the Authorities will seek to apply to the allocation between the Authorities of the charges by the Contractor to the Authorities under the Contract (“the Contract Costs”) are as follows –
  - 2.2.1 that each Authority shall be solely responsible for the cost of delivering or securing the delivery of waste arising within its own area to the facilities provided by the Contractor under the Contract.
  - 2.2.2 that each Authority shall meet that proportion of these costs which is proportional in any period to the proportion of the total tonnage of residual domestic waste delivered to the Contractor by or on behalf of the three Authorities which is delivered by or on behalf of that Authority in the same period (“the tonnage proportion”);
  - 2.2.3 that each Authority shall be responsible for any extra charges which arise from the fact that its own delivery of residual domestic waste to the Contractor in any period exceeds that proportion of the specified maximum tonnage which equates to the population of that Authority’s area as a proportion of the population of the Authorities’ areas at the commencement of the same period (“the population proportion”), and
  - 2.2.4 that each Authority shall have an obligation to deliver to the Contractor that proportion of the specified minimum tonnage which equates to the population of that Authority’s area as a proportion of the population of the Authorities’ areas at the commencement of the same period.
  - 2.2.5 Where the contractor makes an extra charge because a delivery of waste for or on behalf of one Authority is not in accordance with the standard required by the Contract that Authority shall be responsible for any extra charge arising as a consequence of that non-conformity.
- 2.3 For the purpose of illustrating how the Authorities understand that the principle will be applied to the actual terms of the Contract, it is assumed –
  - 2.3.1 that the Contract will be entered by the Authorities and that each Authority shall be jointly and severally liable for the entire Service Costs arising under the Contract;
  - 2.3.2 that the Contract Management Costs will exclude the costs set out in Paragraph 3, below;

2.3.3 that the Contract will specify a charge to the Authorities per tonne of residual waste delivered to the Contractor, and that this charge will be constant where the aggregate tonnage of residual waste delivered by the Authorities in a defined period is no more than a specified maximum tonnage and no less than a specified minimum tonnage (“the standard charge”), but that a higher charge per tonne will be specified in respect of any residual waste delivered in excess of the specified maximum tonnage in any period (“the excess tonnage charge”), and that a higher (but not necessarily the same) charge per tonne for all residual waste delivered and/or a minimum total charge irrespective of tonnage will be specified where the aggregate tonnage falls below the specified minimum tonnage in any period.

2.4 On the basis of the assumptions set out in Paragraph 2.3 –

2.4.1 Where the aggregate tonnage delivered to the Contractor in a period falls between the specified maximum and the specified minimum tonnages, each Authority shall meet the tonnage proportion of the Contract Costs arising at the standard charge rate in respect of the actual tonnage delivered to the Contractor in that period.

2.4.2 Where the aggregate tonnage delivered to the Contractor in a period exceeds the specified maximum tonnage –

2.4.2.1 Where one Authority has delivered no more than that Authority’s population proportion of the specified maximum tonnage in that period, that Authority shall be liable only for the standard charge on the tonnage which that Authority has actually delivered to the Contractor in the period and the other Authority/ies shall be liable for all other contract costs including all charges arising at the excess tonnage charge rate.

2.4.2.2 Where each Authority has delivered more than that Authority’s population proportion of the specified maximum tonnage in that period, each Authority shall be liable for the standard charge in respect of that tonnage which it has delivered to the Contractor and which does not exceed the Authority’s population proportion of the specified maximum tonnage, and shall be liable for the excess tonnage charge in respect of that tonnage which the Authority has delivered to the Contractor in excess of the Authority’s population proportion of the specified maximum tonnage in that period.

2.4.3 Where the aggregate tonnage delivered by the Authorities to the Contractor in a period is less than the specified minimum tonnage –

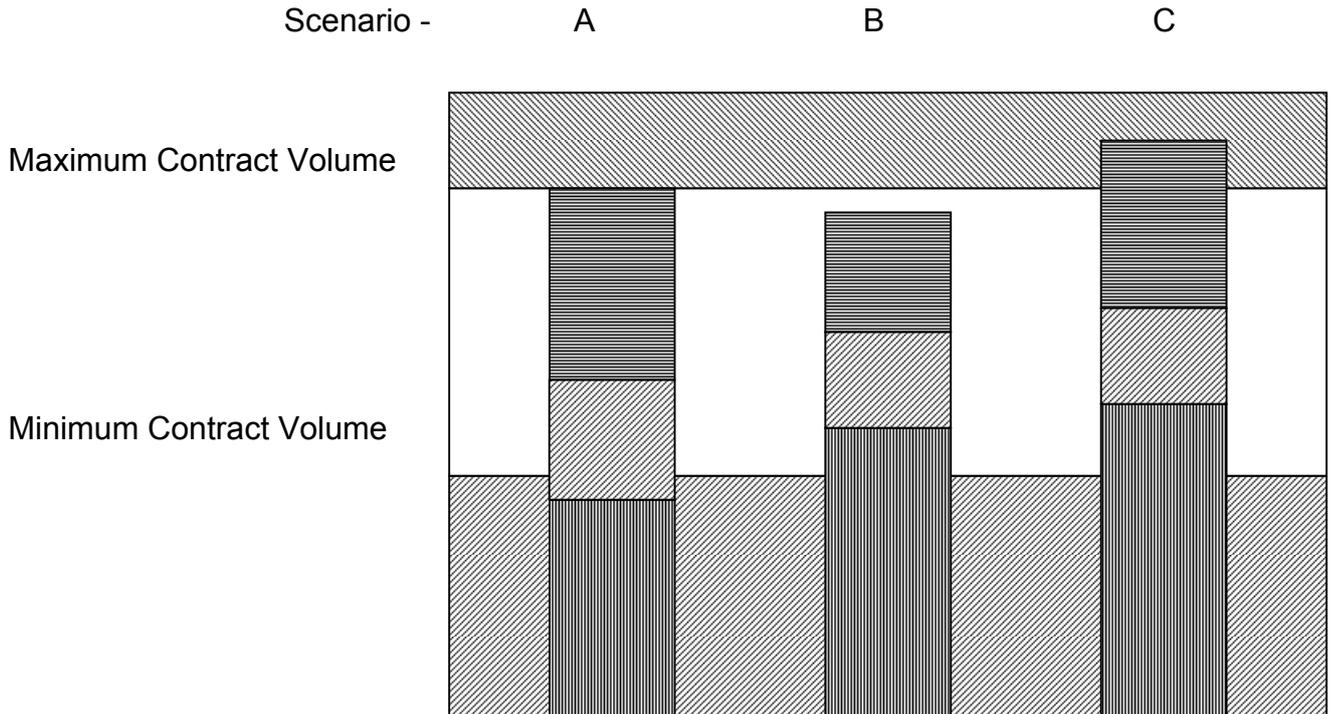
2.4.3.1 Where one Authority has delivered to the Contractor a volume equal to or greater than the Authority’s population proportion of the specified minimum tonnage, that Authority shall be liable only for the standard charge on the tonnage which that Authority has actually delivered to the Contractor in the period

and the other Authority/ies shall be liable for all other contract costs arising in that period.

2.4.3.2

Where any Authority has delivered to the Contractor that Authority's population proportion of the specified minimum tonnage in that period, each Authority shall be liable for the population proportion of the total contract costs arising in that period.

Table One - Illustration of Contract Cost Allocation



The diagonally striped areas represent volumes in excess of the maximum contract volume and below the minimum contract volume. The assumption is that for aggregate volumes within the un-striped area, there will be a contract price per tonne of waste delivered.

In Scenario A, Authority A (vertical lines), Authority B (diagonal lines) and Authority C (horizontal lines) are the delivering waste in proportion to their respective current populations, and the total waste delivered does not exceed the maximum contract volume. Accordingly, each authority pays per tonne at the ordinary contract price per tonne.

In Scenario B, Authority A has increased its tonnage above the proportion of the total contract capacity to which it is entitled by reason of its current population. But because Authorities B and C have reduced their tonnages and the aggregate tonnage delivered does not exceed the maximum contract tonnage, Authority A continues to pay per tonne at the ordinary price per tonne.

In Scenario C, Authority A is still delivering more than the proportion of the total contract capacity to which it is entitled by reason of its current population. However, because Authority B and Authority C are continuing to deliver at or near their full population entitlement, the aggregate tonnage delivered exceeds the maximum contract tonnage. As it

is Authority A's over-production which is responsible for the excess tonnage charges which the contractor will make, it is Authority A which is responsible for meeting any such excess tonnage charges.

### 3 Contract Damages

3.1 For this purpose, "Contract Costs" shall not include any damages, penalties or other payments which the Contractor may be entitled to receive as a result of any breach of the Contract by any or all Authority/ies ("Contract Damages").

3.2 The Principles to be applied in respect of Contract Damages are –

3.2.1 that each Authority shall be liable for any Contract Damages arising from its own failure to comply with the Contract, and

3.2.2 that each Authority shall be liable for the population proportion applicable to that Authority of any Contract Damages arising from the failure of the Authorities to comply with the Contract, unless the Authorities agree an alternative division of liability in any particular case to reflect the relative responsibility of each Authority for the events giving rise to the Contract Damages.

### 4 Contract Income

4.1 The intention is that income arising under the Contract shall be dealt with similarly, as follows.

4.1.1 Where income arises to the Authorities together, as may be the case for proceeds from the sale of waste derived energy that income shall be allocated between the Authorities in proportion to each Authority's current tonnage.

4.1.2 Where income arises in relation to a particular Authority, for example in compensation from the Contractor for delay to vehicles operating on behalf of a particular Authority, the income thus arising shall accrue to the individual Authority.

### 5 Application of the Principles

5.1 The Authorities may need to vary the Principles set out in this Schedule to reflect the provisions agreed with respect to the Contract charges prior to completion of the Contract.

5.2 Such supplemental agreement shall include:

5.2.1 drafting based on the Principles; and

5.2.2 such other provisions as the Authorities agree (or as may be determined by the dispute resolution procedure in Clause 19) as a consequence of the terms of the Contract.

- 5.3 The Authorities shall use all reasonable endeavours to negotiate and agree such supplemental agreement prior to and in conjunction with the negotiation and agreement of the Contract.
- 5.4 The reference to “all reasonable endeavours” in paragraph 5.3 shall include a requirement on all Authorities to:
- 5.4.1 (without prejudice to paragraph 5.3) at all times act in good faith;
  - 5.4.2 acknowledge that the Authorities have agreed the Principles but accept that they may need to be expanded to reflect the Contract and, accordingly, no Authority shall attempt to move significantly away from their intention or purpose;
  - 5.4.3 ensure that sufficient time is set aside to conduct the negotiations on the terms of the Principles either through correspondence or by holding meetings or a combination of both to ensure that the terms of such supplemental agreement are agreed in accordance with the timetable envisaged in paragraph 5.3;
  - 5.4.4 If a dispute or difference arises between the Authorities in relation to a proposed provision of such supplemental agreement and such dispute or difference cannot be settled by the Authorities within ten (10) Working Days of it first arising, any Authority may refer such dispute or difference for determination in accordance with clause 19.

## Schedule C

# The Bedfordshire County Council, Bedford Borough Council, Central Bedfordshire Council and Luton Borough Council

## Joint Waste Disposal Project Board

### Constitution

This Constitution has been approved by Executives of Bedfordshire County Council, Central Bedfordshire Council and Luton Borough Council and the Implementation Executive of Bedford Borough Council as the Constitution of the Project Board.

#### **1 Establishment of the Project Board**

- 1.1 The Project Board shall, unless the Project Board otherwise decide, be the "Bedfordshire and Luton Joint Waste Disposal Project Board".
- 1.2 The Project Board is established under Section 101(5) of the Local Government Act 1972, as applied by Section 20 of the Local Government Act 2000 and Regulation 11 of the Local Authorities (Arrangements for the Discharge of Functions) Regulations 2000.

#### **2 Objectives**

The purpose of the four Authorities in establishing the Project Board is to facilitate the joint procurement of, and the subsequent operation and management of, facilities for the treatment and (subject to the agreement of the Authorities) the disposal of residual waste in pursuance of the current and future waste disposal functions of the Authorities arising under Section 51 of the Environmental Protection Act 1990, and to secure the continuing improvement in the effective discharge of those functions by the Authorities.

#### **3 Membership and Appointment of the Project Board**

- 3.1 The Project Board shall comprise :
  - 3.1.1 An officer appointed by each of the Authorities as the Authority Lead Officer for that Authority. Up to 1<sup>st</sup> April 2009, one such officer would be appointed by each of each of Bedford Borough Council, Bedfordshire County Council, Central Bedfordshire Council, and Luton Borough Council. From 1<sup>st</sup> April 2009, one such officer would be appointed by each of Bedford Borough Council, Central Bedfordshire Council and Luton Borough Council. Unless there are over-riding reasons to the contrary, each Authority shall appoint the officer with responsibility for waste functions as the Authority Lead Officer (Voting Members)
  - 3.1.2 The Project Director, if he/she is an employee of one of the Authorities (Non-Voting)
  - 3.1.3 The Project Manager, if he/she is an employee of one of the Authorities (Non-Voting)

- 3.1.4 An officer of one of the Authorities agreed by the Authority Officers to be the Financial Adviser to the Project Board (Non-Voting), and
- 3.1.5 An officer of one of the Authorities agreed by the Authority Lead Officers to be the Legal Adviser to the Project Board (Non-Voting).
- 3.2 The Project Board may at any time appoint additional advisers from among the employees of the Authorities for any specific purpose and may invite them to attend meetings of the Project Board.
- 3.3 Each Authority 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 Authority Lead Officers
- 3.4 Each Authority may at any time appoint another officer to be that Authority's Authority Lead Officer, and any member of the Project Board shall automatically cease to be a member of the Project Board upon ceasing to be an officer of his/her employing Authority.
- 3.5 All appointments to membership of the Project Board shall be made by notification in writing from the Authority to the Secretary of the Project Board.
- 3.6 Upon being made aware of any Officer ceasing to be a member of the Project Board, the Secretary of the Project Board shall write to that Officer confirming that he/she has ceased to be a member of the Project Board, and notifying the Authority and the other members of the Project Board accordingly.
- 3.7 The Project Board shall agree arrangements for the executive member of each Authority with responsibility for waste functions and the appropriate officer of the Department for Environment, Food and Rural Affairs to be invited to attend meetings of the Project Board as an observer.

#### **4 Chair and Vice-Chair of the Project Board**

- 4.1 The Project Board shall make its own arrangements for the conduct of its meetings.
- 4.2 Meetings of the Project Board shall be chaired by the Senior Responsible Owner or ,in his absence, by such Authority lead officer as the Project Board shall elect on the day to preside at that meeting.

#### **5 Secretary to the Project Board**

- 5.1 The Project Board shall be supported by the Secretary to the Project Board.
- 5.2 The Secretary of the Project Board shall be an officer of one of the Authorities, appointed by the Project Board for this purpose.
- 5.3 The functions of the Secretary of the Project Board shall be –
- To maintain a record of membership of the Project Board
  - To notify the proper officers of each Authority of any anticipated “key decisions” to be taken by the Project Board, to enable such “key decisions” to be included in the Forward Plans of each Authority as required by the Local Authorities (Access to Information)(England) Regulations 2001

- To carry out such notification to and consultation with members of any Authority as may be necessary to enable the Project Board to take urgent “key decisions” which have not been included in the Forward Plans of the three Authorities
- To summon meetings of the Project Board in accordance with Paragraph 6 below
- To prepare and send out the agenda for meetings of the Project Board in consultation with the Authority lead Officers and the Project Manager
- To keep a record of the proceedings of the Project Board
- To take such administrative action as may be necessary to give effect to decisions of the Project Board
- Such other functions as may be determined by the Project Board

## **6 Convening of Meetings of the Project Board**

6.1 Meetings of the Project Board shall be held at such times, dates and places as may be notified to the members of the Project Board by the Secretary to the Project Board, being such time, place and location as –

6.1.1 the Project Board shall from time to time resolve

6.1.2 The Secretary of the Project Board, in consultation where practicable with the Authority Lead Officers, shall determine in response to receipt of a request in writing addressed the Secretary of the Project Board from any member of the Project Board, which request sets out an urgent item of business within the functions of the Project Board.

The Secretary of the Project Board shall settle the agenda for any meeting of the Project Board and shall incorporate in the agenda any items of business and any reports submitted by any of –

- The Authority Lead Officers
- The Project Board
- The Chief Executive of an Authority
- the Chief Finance Officer to an Authority
- the Monitoring Officer to an Authority
- the Legal Adviser to the Project Board
- the Project Manager

## **7 Procedure for Decisions of the Project Board**

7.1 The Voting Members of the Project Board shall take decisions collectively, so that a decision shall not be effective on behalf of the Project Board unless and until all Voting Members have signified their agreement to that decision, and each Voting Member of the Project Board shall be taking a decision on behalf of each of the Authorities as opposed to acting just on behalf of their employing authority, and a decision of the Project Board shall be a decision of each of the Authorities

7.2 The Project Board shall normally take decisions at formal meetings of the Project 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 Project Board present at the meeting

7.3 Notwithstanding Paragraph 7.2 above, where all the Authority Lead Officers agree that a decision is urgent, such a decision may be taken without a meeting by the Secretary to the Project Board securing the individual agreement of each of the

Authority Lead Officers and the Project Manager (if he/she is an officer of an Authority) to the decision.

- 7.4 A meeting of the Project Board shall be inquorate unless there are present at least four members of the Project Board.

## **8 Powers of the Project Board as an Executive Officer Board**

- 8.1 The Project Board shall be an executive Officer Board.
- 8.2 The Executives of each of the Authorities have delegated to the Project Board all executive functions and powers of that Authority as may be necessary, calculated to facilitate, incidental or conducive to the discharge of the functions of the Project Board except as specified below, and such functions and powers shall include the power to delegate the discharge of any such function or power to an individual officer of any of the Authorities, including, but not limited to, the Project Director
- 8.3 The following functions (the “Reserved Matters”) are reserved to the Authorities and shall not be within the powers of the Project Board –
- 8.3.1 All non-executive functions of any of the Authorities
  - 8.3.2 Any decision which is contrary to or not wholly in accordance with the budget approved by each Authority for the Project Board, or is contrary to an approved policy or strategy of any of the Authorities.
  - 8.3.3 The approval of the Outline Business Case for the Project
  - 8.3.4 Agreement of the evaluation criteria to be applied throughout the procurement process
  - 8.3.5 Selection of a preferred bidder following evaluation of the responses to the Invitation to Submit Detailed Submissions.
  - 8.3.6 The decision to award the Contract if the final Bid proposed by the Project Board for acceptance is materially outside the financial parameters set out in the Outline Business Case
  - 8.3.7 Approval or amendment of any Joint Working Agreement between the Authorities in respect of the discharge of the Authorities’ waste disposal functions
- 8.4 Where a Reserved matter comes to be considered by one or more of the Authorities, it shall be the function of the Project Board to prepare and present a common report and recommendation on that matter to the Authority/ies which are considering the matter.

## **9 Attendance at Meetings of the Project Board**

- 9.1 Notwithstanding that a meeting or part of a meeting of the Project Board may not be open to the press and public, the officers specified out in Paragraph 9.2 below of each Authority 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 –

- the Chief Executive of any of the Authorities
- the Chief Finance Officer to any of the Authorities
- the Monitoring Officer to any of the Authorities
- the Project Manager if he/she is not an officer of an Authority
- the officers of each Authority with responsibility for waste disposal functions (if they are not the Authority Lead Officer), and
- the Secretary to the Project Board

## **10 Amendment of this Constitution**

This Constitution can only be amended by resolution of all of the Authorities.