

DATED

2016

(1) BARNSLEY METROPOLITAN BOROUGH COUNCIL

(2) DONCASTER BOROUGH COUNCIL

(3) ROTHERHAM BOROUGH COUNCIL

[IAA3 – DRAFT 16 DECEMBER 2015]

JOINT WORKING AGREEMENT

relating to the management and administration of certain waste management
functions of the parties in their capacity as Waste Disposal Authorities and Waste Collection Authorities

SCHEDULE 1

CONSTITUTION OF THE JOINT WASTE BOARD

1. INTRODUCTION

- 1.1 The Parties have powers and responsibilities under the EPA as WDAs and WCAs and have decided to make arrangements for the carrying out of some of those powers and responsibilities jointly.
- 1.2 The Parties wish to work together to secure the proper exercise of those powers and duties by establishing a joint committee for this purpose.

2. SCOPE OF JWB AND MATTERS RESERVED TO THE COUNCILS

- 2.1 At the commencement of this Agreement the JWB is responsible for the management and administration of the BDR Contract and the Royalty Deed. Thereafter should all Parties agree the JWB may become responsible for the Relevant Contracts that may comprise contractual arrangements between the Parties and a number of Contractors concerning the performance of the Parties' functions as WDAs or WCAs.
- 2.2 The Parties will continue to:
 - 2.2.1 agree their own Municipal Waste Management Strategies for their own administrative areas (including achieving their Government targets relating to waste management);
 - 2.2.2 individually approve the annual budget for performing their responsibilities under the EPA as WDAs and WCAs; and
 - 2.2.3 individually procure, as they see fit, all contracts relating to waste management, subject to the terms of this Agreement.
- 2.3 Unless otherwise stated in this Agreement the JWB will have full delegated powers to make decisions on behalf of the Parties with regard to their responsibilities under the EPA as WDAs or WCAs in so far as these relate to the Relevant Contracts.

3. COMPOSITION

- 3.1 On the date of the coming into force of the Original Agreement there was constituted in accordance with arrangements made under section 101(5) of the Local Government Act 1972 a joint committee, called the Joint Waste Board ("**JWB**") for the purpose of discharging the functions assigned to it as set out in the Original Agreement. Each of the Parties has taken such action as is necessary to abolish the committee also known as the BDR Waste PFI Project Board as it was constituted immediately before the coming into existence of the JWB.
 - 3.2 The JWB shall consist of three (3) members and each of the Parties shall be entitled to appoint one (1) member to the JWB as well as a deputy member who may attend the JWB and vote on behalf of a Party in the absence of their regular member.
 - 3.3 A member appointed to the JWB shall hold office until he is either removed and replaced by the Party that appointed him or shall cease to be a member of the Party by which he was appointed.
4. If and to the extent that the powers and duties of any of the Parties are or become the responsibility of the Executive of the Party in question (in accordance with section 13 of the Local Government Act 2000) then the reference in paragraph 3.1 to section 101 of the Local Government Act 1972 shall be construed where appropriate as including a reference to the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 (SI 2012/1019). If and to the extent that the powers and duties of any of the Parties are or become the responsibility of commissioners of the Party in question then the reference in paragraph 3.1 to section 101 of the Local Government Act

1972 shall be construed where appropriate as including a reference to sections 15(5) and 15(6) of the Local Government Act 1999.

5. APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN

- 5.1 The JWB shall at their annual meeting in each year appoint a chairman (the "**Chairman**") and the Chairman shall unless he resigns his office or ceases to be a member of the JWB continue in office until a successor is appointed at the next available meeting. The Chairman shall be appointed on an annual rotational basis so that each of the Parties represented on the JWB holds the office of Chairman once in every three (3) year period (unless otherwise agreed unanimously by the Parties). In the event of the Chairman ceasing to be Chairman at any time before an annual meeting the JWB may elect a member of the JWB to be a temporary Chairman to hold office until a Chairman shall have been elected at the annual meeting and for the avoidance of doubt any reference in this Agreement to the "**Chairman**" shall be deemed to include a reference to any such temporary Chairman.
- 5.2 The JWB may at their annual meeting in each year appoint one of their number to be vice-chairman (the "**Vice-Chairman**") and the Vice-Chairman shall unless he resigns his office or ceases to be a member of the JWB continue in office until a successor is appointed at the next available meeting. The Vice-Chairman shall be appointed on an annual rotational basis so that each of the Parties represented on the JWB holds the office of Vice-Chairman once in every three (3) year period (unless otherwise agreed unanimously by the Parties). In the event of the Vice-Chairman ceasing to be Vice-Chairman at any time before an annual meeting the JWB may elect a member of the JWB to be a temporary Vice-Chairman until a Vice-Chairman shall have been elected at the annual meeting and for the avoidance of doubt any reference in this Agreement to the "**Vice-Chairman**" shall be deemed to include a reference to any such temporary Vice-Chairman.
- 5.3 Any power exercisable by the Chairman in accordance with this Agreement shall in the absence of the Chairman or if the office of Chairman is vacant be exercisable by the Vice-Chairman.

6. MEETINGS OF THE JWB

- 6.1 The first meeting of the JWB shall be the annual meeting for the year then current and thereafter the first meeting held after 1 April in any year shall be the annual meeting.
- 6.2 At all meetings the Chairman, if present, shall preside. If the Chairman is not present the Vice-Chairman, if present, shall preside. If both the Chairman and the Vice-Chairman are absent the meeting may choose a person to preside at that meeting. Any powers exercisable by the Chairman at a meeting of the JWB shall be exercisable by any other person presiding at the meeting in accordance with this paragraph 6.2.
- 6.3 The JWB shall hold ordinary meetings no less than once a year (including the annual meeting) except that:
- 6.3.1 the Chairman may in his discretion cancel any ordinary meeting if in his opinion there is insufficient business to be transacted; and
 - 6.3.2 a special meeting may be convened at any time on the requisition of the Chairman or at least two (2) members of the JWB or by a member of the BDR Steering Committee.
- 6.4 The standing orders of the Administering Authority shall apply to the proceedings of the JWB as they do to meetings of that Party, except that in the event of those standing orders conflicting with the provisions of this Agreement this Agreement shall prevail.
- 6.5 The quorum shall be at least one (1) representative from each of the Parties. In the event that a quorum is not present at any meeting of the JWB within half an hour of its notified commencement time the meeting shall stand adjourned to the same day in the next week and at the same time and place unless the Chairman otherwise specifies.

- 6.6 All decisions of the JWB will be taken on the basis of a majority vote unless otherwise specified under the provisions of:
- 6.6.1 clause 7 (Decisions Reserved to the Parties);
 - 6.6.2 Annex 1 (Delegation of responsibilities to the JWB and JWT) to Schedule 1 (Constitution of the Joint Waste Board);
 - 6.6.3 Appendix 1 (Manner in which the Parties will reach joint decisions under the BDR Contract) of Schedule 2A (BDR Contract) of this Agreement; or
 - 6.6.4 Appendix 1 (Manner in which the Parties will reach joint decisions under the Royalty Deed) of Schedule 2B (Royalty Deed) of this Agreement.
- 6.7 A written resolution signed by a member of the JWB (or deputy member in his or her absence) shall be treated as a vote of that member at the next meeting of the JWB. A written resolution signed by the majority of the members of the JWB shall be treated as a decision of the JWB subject to the provisions of clause 7 (Decisions Reserved to the Parties) and Annex 1 (Delegation of responsibilities to the JWB and JWT) to Schedule 1 (Constitution of the Joint Waste Board) of this Agreement.
- 6.8 Notwithstanding the generality of the foregoing it is expressly agreed that in the event of an equality of votes the Chairman shall not exercise a second or casting vote.
- 7. ESTABLISHMENT OF WORKING PARTIES**
- 7.1 The JWB may appoint working parties as it considers necessary to advise it in the discharge of its functions or to exercise those functions.
- 8. FUNCTIONS OF THE JWB**
- 8.1 The function of the JWB is to administer the operation of the waste services arrangements of the Parties in respect of the Relevant Contracts and in accordance with this Agreement and the Relevant Contracts (once the delegations detailed in this Agreement have been confirmed by the JWB). Without prejudice to the generality of the foregoing the JWB will:
- 8.1.1 (subject to the said confirmation by the JWB) be responsible for the decisions assigned to it under this Agreement; and
 - 8.1.2 exercise such powers as each or all of the Parties may from time to time delegate to the JWB with the agreement of the JWB.
- 8.2 For the avoidance of doubt it is agreed that the JWB will not be responsible for making decisions on:
- 8.2.1 changes to the policies and targets of the Parties;
 - 8.2.2 the determination of the waste disposal budget of the Parties as WDAs; or
 - 8.2.3 the determination of the waste collection budget of the Parties as WCAs.
- 8.3 The JWB shall not be empowered to acquire land or any interest in land.
- 8.4 The JWB will manage a budget for its operation and the management and administration of the Relevant Contracts which will be approved by all the Parties when they approve the annual budget for performing their responsibilities under the EPA as WDAs and WCAs.
- 8.5 If recommended by the JWT the JWB may arrange for work to be carried out directly or on an agency or contract basis on behalf of any of the Parties providing this is within the scope of its responsibilities under this Agreement and the costs do not exceed its annual budget referred to in paragraph 8.4 of this Schedule 1 (Constitution of the Joint Waste Board).

9. **OFFICERS, STAFF AND ACCOMMODATION**

9.1 The Parties may from time to time nominate certain officers (including nominated deputies or alternative officers) to attend meetings of the JWB in an advisory capacity.

9.2 The BDR Manager shall be directly responsible to the BDR Steering Committee.

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

10. **COSTS OF THE JWB**

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

Annex 1

Delegation of responsibilities to the JWB and JWT

For the avoidance of doubt:

"Joint Contracts"	means any contractual arrangements concerning waste management services that the Parties who are party to such a Contract agree pursuant to clause 3.2 (Objectives and Guiding Principles) should be managed and administered by the JWT under this Agreement but which falls outside the scope of delegation for the JWB set out in Schedule 1 (Constitution of the Joint Waste Board), Schedule 2A (BDR Contract) and Schedule 2B (Royalty Deed) of this Agreement
"Managed Contracts"	means any contractual arrangements a Party has individually entered into concerning waste management services that the Party nominates pursuant to clause 3.3 (Objectives and Guiding Principles) should be managed and administered by the JWT under this Agreement but which falls outside the scope of delegation for the JWB set out in Schedule 1 (Constitution of the Joint Waste Board), Schedule 2A (BDR Contract) and Schedule 2B (Royalty Deed) of this Agreement
"Relevant Contracts"	means any contractual arrangements (including the BDR Contract and the Royalty Deed) concerning waste management services that all the Parties agree should be managed and administered by the JWB and JWT under this Agreement pursuant to clause 3.2 (Objectives and Guiding Principles).

Approval, consents and decisions under the Relevant Contracts

1. In accordance with the Relevant Contracts the Parties will be responsible for the reaching of decisions in respect of the following:
 - 1.1 the need for contractual changes;
 - 1.2 the giving or withholding of consents or approvals;
 - 1.3 whether an event described in a Relevant Contract has or has not occurred;
 - 1.4 whether a methodology plan or report is satisfactory;
 - 1.5 whether action should be taken or not taken; and
 - 1.6 other issues and matters requiring consideration and decision pursuant to or arising from the Relevant Contracts.
2. In order to facilitate the decision making process of the Parties, the Parties have put the following arrangements in place:
 - 2.1 the creation of the Joint Waste Board as a joint executive committee with authority to manage and administer the Relevant Contracts;
 - 2.2 the granting of the necessary authority to the BDR Manager and BDR Steering Committee to make those decisions delegated to them under this Agreement;

- 2.3 the Parties each undertake that they have passed the necessary resolutions as required by the constitution of each Party to ensure that the delegated powers detailed in this Annex 1 (Delegation of responsibilities to the JWB and JWT) have been properly given to the BDR Manager, BDR Steering Committee and other appropriate officers and that proper authority has been vested in the Joint Waste Board to enable it to operate and make decisions that bind the Parties in accordance with the provisions of this Agreement; and
- 2.4 that the Administering Authority's scheme of delegation will apply to officers that comprise the JWT.
3. The Parties agree that they will abide by the decisions of the BDR Manager, BDR Steering Committee, the Joint Waste Board and JWT so far as those decisions are properly made in accordance with the provisions of this Agreement.
4. The Parties have agreed that certain matters should be reserved to be decided by themselves. In this event the decision of all Parties shall be unanimous in order for the decision to become effective save in circumstances where the decision will only affect (both financially and in respect of service provision) the Parties or Party making the decision and the provisions of clause 7.3 (Decisions Reserved to the Parties) of this Agreement will apply in this respect.
5. The Parties hereby agree that their decisions will be made in the manner described in this Agreement (as such manner, but not any such decision, is approved by the Joint Waste Board) provided that the operation of the decision making process will not (where the decision is to be made other than by each of the Parties' unanimous agreement) result in a Manifest Injustice to one (1) or more Parties as a result of that Party or those Parties being unable to operate a veto on the decision.
6. In paragraph 5 the term "**Manifest Injustice**" shall mean any situation where:
- 6.1 the implementation of a decision will have a financial impact on a Party which is disproportionate to the gain or benefit bestowed upon that Party by the decision;
- 6.2 a decision will have a financial impact as a result of its implementation which will place undue and unreasonable budget pressures on the Party as a result of the decision; and
- 6.3 the implementation of a decision would conflict with any policy of any Party.
7. Where decisions are to be made by the Joint Waste Board the members of that Joint Waste Board shall have at all times due regard to advice of the officers of all the Parties relevant to the decisions to be made.
8. Where decisions are to be made by the BDR Steering Committee they will seek advice and make those decisions taking into account the advice of the officers of all the Parties relevant to the decisions to be made and shall report the decision to the next meeting of the Joint Waste Board.
9. The Parties agree to use reasonable endeavours to convene the Joint Waste Board in sufficient time to comply with timescales for decisions detailed in any Relevant Contract where such decisions fall to be made by the Joint Waste Board.
10. In the event of an urgent decision being required by the Parties and in the event that it is not possible to call a meeting of the Joint Waste Board to consider such decision (where such decision is delegated to the Joint Waste Board) or use written procedures under paragraph 5.7 of Schedule 1 (Constitution of the Joint Waste Board) then:
- 10.1 the BDR Steering Committee shall be entitled to make such a decision with the agreement of the Chairman of the Joint Waste Board (or in the absence of the Chairman the Vice-Chairman of the Joint Waste Board);
- 10.2 in the event that it is not possible to call a meeting of the BDR Steering Committee to consider such decision under paragraph 10.1 or use written procedures under paragraph 4 of Appendix 1 (Manner in which the Parties will reach joint decisions under the BDR Contract) in Schedule 2A (BDR Contract) then the BDR Manager shall be entitled to make such decision with the agreement of the

Chairman of the Joint Waste Board (or in the absence of the Chairman the Vice-Chairman of the Joint Waste Board); and

- 10.3 details of the decision and the reason for its urgency shall be reported to the next meeting of the Joint Waste Board.

