

DATED

2008

AGREEMENT

BETWEEN

LEICESTERSHIRE COUNTY COUNCIL

AND

BLABY DISTRICT COUNCIL
CHARNWOOD BOROUGH COUNCIL
HARBOROUGH DISTRICT COUNCIL
HINCKLEY AND BOSWORTH BOROUGH COUNCIL
MELTON BOROUGH COUNCIL
NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL
OADBY AND WIGSTON BOROUGH COUNCIL

RELATING TO

RESIDUAL WASTE MANAGEMENT

Leicestershire County Council
County Hall
Glenfield
Leicester

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THIS DEED of AGREEMENT is dated the
2008

day of

BETWEEN:

- (1) LEICESTERSHIRE COUNTY COUNCIL of County Hall, Glenfield, Leicester LE3 8RA (referred to as "the WDA") and
- (2) BLABY DISTRICT COUNCIL of Council Offices, Narborough, Leicester LE19 2EP
- (3) CHARNWOOD BOROUGH COUNCIL of Council Offices, Southfield Road, Loughborough, Leicestershire LE11 2TX
- (4) HARBOROUGH DISTRICT COUNCIL OF COUNCIL OFFICES, ADAM AND EVE STREET, MARKET HARBOROUGH, LEICESTERSHIRE, LE16 7AG
- (5) HINCKLEY AND BOSWORTH BOROUGH COUNCIL OF COUNCIL OFFICES, ARGENTS MEAD, HINCKLEY, LEICESTERSHIRE LE10 1BZ
- (6) MELTON BOROUGH COUNCIL OF COUNCIL OFFICES, NOTTINGHAM ROAD, MELTON MOWBRAY, LEICESTERSHIRE LE13 0UL
- (7) NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL OF COUNCIL OFFICES, COALVILLE, LEICESTERSHIRE LE67 3FJ
- (8) OADBY AND WIGSTON BOROUGH COUNCIL OF COUNCIL OFFICES, STATION ROAD, WIGSTON, LEICESTERSHIRE LE18 2DR

Together the district councils being referred to as the WCAs

1. PURPOSE

- 1.1. This Agreement has been entered into between the parties in support and as part of the WDA's outline business case for its Residual Waste treatment and disposal facilities. It is intended to be contractually binding between the parties and govern relations between the parties until such time as they enter into a long term inter-authority agreement (the "Long Term Agreement") to reflect and support the long term contract with a provider of such facilities (the "PFI Contract").
- 1.2. The parties acknowledge that the principal objective of this Agreement is to provide the pivotal working arrangement between the WCAs and the WDA to ensure that the WDA is able to deliver the long term Residual Waste management project for Leicestershire. It continues the working relationship between the parties as set out in the Leicestershire Waste Management Partnership Memorandum of Understanding (the "MOU") and clarifies and confirms the aims, objectives and commitments of the Parties to ensure that

the respective activities of the parties achieve Best Value in procuring a long term Residual Waste treatment and disposal solution.

- 1.3. As set out in the MOU, all local authorities within Leicestershire have responsibilities for and commitment to the effective planning and delivery of sustainable municipal waste management services and the MOU sets out in simple terms the way the Partnership will work together to achieve this. The parties intend that this Agreement reflects the MOU and that it will promote the effective planning and delivery of the Residual Waste treatment and disposal solution which forms an integral part of the overall municipal waste management services. This Agreement will incorporate and build upon the framework and Partnership for consultation and co-operation set out in the MOU in order to make the best use of their combined resources to mutual advantage.
- 1.4. The parties wish to work together to achieve the Targets, to make the best use of resources and to augment the statutory framework under which they operate as WDA and WCAs.

2. DEFINITIONS AND INTERPRETATION

- 2.1. The following terms shall have the following meanings for the purposes of this Agreement:

Contingency Delivery Points	means contingent Delivery Points meeting the Delivery Point Standards within a reasonable distance of each WCA ;
Delivery Point	means a facility, site or transfer station licensed to receive Waste for treatment and disposal as notified by the WDA to a WCA from time to time. The delivery points will be agreed with each WCA when the Parties enter into the Long Term Agreement and will be set out in a schedule thereto;
Delivery Points Standards	means those standards set out in Schedule 1 to this Agreement
Direction	means any statutory power of a WDA to direct the WCAs to deliver Waste to a Delivery Point;
EPA	means the Environmental Protection Act 1990;
Household Waste	has the meaning attributed to it in Section 75(5) and Section 89 of the EPA and Schedules 1 and 2 of the Controlled Waste Regulations;

Key Principles	means the key principles of transparency, consultation, co-operation and information as more particularly set out at paragraph 4 to the MOU;
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 Tax	has the meaning set out in section 39(1) of the Finance Act 1996;
LATS	means Landfill Allowance Trading Scheme set out in the WET Act and its attendant Regulations or (as the context permits) a single permit under the scheme
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 (“LAA”)	means the Local Area Agreement between central Government and the County setting out the priorities for Leicestershire;
Long Term Agreement	means the long term inter-authority agreement between the Parties and the other WCAs entered into to reflect and support the PFI Contract and dealing among other things with the matters listed in Schedule 1
MOU	means the Leicestershire Waste Management Partnership Memorandum of Understanding as set out in Schedule 3 to this Agreement
Partnership	means the Leicestershire Waste Management Partnership established by the Parties the other WCAs and Leicester City Council pursuant to the MOU;

PFI Contract	means the agreement entered into between the WDA and the PFI Contractor pursuant to which the PFI Contractor will provide for the benefit of the WDA and the WCA the Residual Waste treatment and disposal services;
PFI Contractor	means the contractor to be appointed by the WDA to provide Residual Waste treatment and disposal services;
Recyclable Waste	means Waste which is recycled or composted in accordance with the Recycling and Composting Plans;
Recycling and Composting Plans	means those plans set out in Schedule 2 to this Agreement;
Residual Waste	means Waste that is not Recyclable Waste;
Residual Waste Standards	means those standards set out in Schedule 2 to this Agreement;
Targets	means the targets described in clause 4.3 of this Agreement. Such targets are to the extent that they are apportioned to the WCA transposed in to the Recycling and Composting Plans;
Waste	has the meaning set out in Section 75 of the EPA;
WCA	means waste collection authority in Leicestershire for the purposes of section 30 of the EPA;
WDA	means a waste disposal authority for the purposes of section 30 of the EPA;
WET Act	means the Waste Emissions Trading Act 2003.

- 2.2. References in this Agreement to words in the singular include the plural and vice versa.
- 2.3. Clause headings are for ease of reference only and shall not affect the spirit or construction of this Agreement
- 2.4. Reference to any Legislation or any particular instrument of Legislation by name shall be construed as a reference to the particular Legislation for the time being in force, or as amended or re-enacted by any subsequent Legislation.

- 2.5. In the case of any inconsistency between the provisions of these clauses and the Schedules to this Agreement, the clauses of this Agreement shall prevail.

3. TERM

- 3.1. This Agreement commences on 1st April 2008 and shall take effect from that date.
- 3.2. This Agreement shall terminate on the earlier of:
 - 3.2.1. the Long Term Agreement between the parties being entered into; or
 - 3.2.2. the relevant provisions of the EPA and WET Act being amended or repealed or any other enactment is made such that this arrangement is rendered ineffective, inappropriate or unlawful or
 - 3.2.3. A decision by the WDA not to progress with the PFI Contract. .

4. LEGAL CONTEXT AND STANDING

- 4.1. The County is a WDA and the District Councils are WCAs for the purposes of section 30 of the EPA.
- 4.2. The European Union and the Government are keen to reduce biodegradable municipal waste being Landfilled, to increase recovery of value from waste and to promote and increase recycling. This is a strategy endorsed by the Parties And the other WCAs.
- 4.3. The National Waste Strategy 2007 issued by the Secretary of State pursuant to the EPA requires local authorities to achieve targets for recovery and recycling of 40% by 2010, 45% by 2015 and 50% by 2020 and the Leicestershire Municipal Waste Management Strategy 2006 includes targets for recycling and composting of 50% by 2010 and 58% by 2017. The Government is developing National Indicators for Local Authority performance framework standards which will include a number of waste performance indicators. The new National Indicators will form the basis of targets within the LAA for Leicestershire. The 1999 Landfill Directive (99/31/EC) requires all waste disposal authorities to divert prescribed amounts of biodegradable municipal waste from Landfill and this is enforced by the Waste Emissions and Trading Act 2003. Together the targets and requirements set out in this clause 4.3 shall be known as "the Targets".
- 4.4. The parties recognise that nothing in this Agreement will prevent them from carrying out their individual statutory duties and responsibilities or unduly fetter the decisions to be made with regard to their respective functions.
- 4.5. The contents of this Agreement stand as Direction by the WDA under section 51(4) of the EPA, directing the WCAs to deliver the Waste collected by it to the Delivery Points

5. **GOVERNANCE AND SPIRIT OF PARTNERING**

- 5.1. The parties will work together in a spirit of partnering in connection with their dealings with each other in respect of the subject matter of this Agreement so that wherever possible the activities of one complement and enhance the activities of the others for the benefit of all residents, businesses and visitors to Leicestershire.
- 5.2. The parties will act in accordance with the Key Principles and agree that such Key Principles shall underpin the way in which their collective responsibilities are fulfilled.
- 5.3. In consulting and liaising with each other concerning Waste services the parties agree that this shall include, without limitation, planning and implementing future proposals for the management of Waste and the reduction, reuse, recycling, composting and disposal of Waste.
- 5.4. For the purposes of this Agreement, the spirit of partnering referred to in clause 5.1 above means, without limitation, that each party will:
- 5.4.1. work in good faith with the other parties towards the mutual advantage of the parties
 - 5.4.2. adopt an approach of identifying and resolving problems together rather than taking an adversarial stance;
 - 5.4.3. act reasonably (the same to be interpreted in the context of the requirement for the parties to maintain or achieve (as appropriate) as a minimum, the Targets);
 - 5.4.4. provide relevant information to each other in plain English and in a form that is readily usable and in a full and timely manner as soon as reasonably practicable. Relevant information shall include, without restriction or limitation:
 - 5.4.4.1. early warning of potential failure by a party or its contractor in meeting their obligations under this Agreement;
 - 5.4.4.2. actual failure by a party or its contractor in meeting their obligations under this Agreement;
 - 5.4.4.3. new initiatives, policies or emerging policies relating to the minimisation, collection, recycling and disposal of Waste;
 - 5.4.4.4. any other information that could reasonably be expected to impact upon this Agreement/the parties to this Agreement;
 - 5.4.5. take all reasonable steps to mitigate any losses arising from a party's failure under this Agreement or any losses arising from a failure by another WCA to meet its obligations under similar arrangements relating to the subject matter of this Agreement;
 - 5.4.6. work together with the other parties to achieve the Targets and as far as is reasonable or practicable to reduce the detrimental impact on the

parties and council tax payers of any of them failing to carry out its obligations under this Agreement;

- 5.4.7. work with the other parties to enhance economic development and employment opportunities as part of Waste management proposals wherever possible whilst embracing the principles of sustainability.

6. DISCHARGING OF OBLIGATIONS

- 6.1. Where a party is required by this Agreement to ensure that any act or thing is done or not done, or has any other obligation, such provision shall mean:
 - 6.1.1. the party intends to or does carry out the obligation itself, that it will use reasonable endeavours to do so; or
 - 6.1.2. where the party discharges the obligation through a contractual relationship with a third party, that the party will use reasonable endeavours to:
 - 6.1.2.1. incorporate such rights and remedies in the third party contract as are widely accepted by the private sector in similar local government contracts; and
 - 6.1.2.2. enforce those contractual rights unless it would be impractical or unreasonably expensive or unaffordable to do so.

7. THE COUNTY'S COMMITMENTS

- 7.1. The WDA shall provide the Delivery Points and shall do so in accordance with the Delivery Points Standards.
- 7.2. The WDA will require bidders in its procurement process to provide Contingency Delivery Points which meet the Delivery Points Standards.
- 7.3. The WDA shall continue to consult the WCA in the preparation of its procurement of the Residual Waste treatment and disposal facilities, the specification for such facilities, the evaluation criteria and the location, standard and turnaround times at each Delivery Point taking into account the full implications on the WCAs. The WDA shall take any reasonable comments of the WCAs into account subject to affordability, procurement law, transparency and fairness in the procurement process and to the extent that such comments do not conflict with the views of other WCAs.

8. THE WCAS COMMITMENTS

- 8.1. The WCA will implement and thereafter operate and continue to operate the Recycling and Composting Plans and shall meet any roll out dates therein unless the Parties agree otherwise.
- 8.2. The WCA will deliver all Residual Waste to the Delivery Points during their opening hours and in accordance with Residual Waste Standards.

- 8.3. The WCA will consult with the WDA prior to the introduction of new schemes that lead to an increase in the amount of trade waste that the WCA collects. The WCA will work with the WDA to ensure that there is no adverse financial impact on the WDA through landfill tax and LATS liabilities as a result of the introduction of the new schemes. The WDA will support the introduction of schemes that target the recycling of 100% biodegradable Waste.

9. LONG TERM INTER AUTHORITY AGREEMENT

- 9.1. The WDA intends to procure facilities requiring a considerable investment by the WDA and the private sector, and potentially Central Government through PFI Credits. The facilities and therefore the resulting PFI Contract are likely to have a life of at least 25 years
- 9.2. The parties will work together and in good faith to agree the Long Term Agreement to reflect and support the PFI Contract
- 9.3. The Long Term Agreement will provide certainty so that the parties can move forward with their own strategies with a full commitment and understanding of each other's activities
- 9.4. It is acknowledged by the parties that the Long Term Agreement will be intended for at least a 25 year term but will be subject to review and termination provisions.
- 9.5. The WDA is to keep the WCAs updated on a regular basis of the progress of the implementation of the PFI Contract

DISPUTES

- 10.1 the parties agree that any complaints or disputes which cannot be resolved by routine liaison between officers of the parties then the parties shall be referred to a meeting of the parties chief executives to try to resolve the issue
- 10.2 the parties shall take all reasonable steps that shall lie within their power to conciliate and resolve disputes or differences whether by negotiation, mediation or other appropriate form of dispute resolution procedure and the parties shall only have recourse to any legal or arbitration proceedings in the event of the failure of such bona fide endeavours to resolve the dispute or difference in question by alternative methods of dispute resolution.

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RIGHTS OF THIRD PARTIES

- 11.1 No person who is not a party to this Agreement has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.

12 LAW AND JURISDICTION

12.1 This Agreement shall in all respects be governed and construed in accordance with the laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.

13 CONFIDENTIALITY AND FREEDOM OF INFORMATION

13.1 Each party to this agreement shall use its best endeavours to keep in strict confidence and shall bind all its employees and agents to keep in strict confidence all and any commercial and technical information or confidential information relating to the scheme or the affairs of or concerning any other party in whatever form acquired by it (whether directly or indirectly) in consequence of this agreement. the foregoing restriction shall not apply to information in the public domain nor to any information which is required to be revealed in response to a request made in accordance with the Freedom of Information Act 2000.

13.2 the WDA shall deal with and co-operate with any requests for information regarding this agreement in accordance with the Freedom of Information Act 2000 and shall immediately upon receipt of such request notify the wcas to enable the parties to recommend a response to that request for information

14 GENERAL

14.1 No amendment to this Agreement shall be binding unless it is in writing and signed by the parties.

14.2 This Agreement may be entered into in the form of several counterparts each executed by one or more of the parties but taken together, executed by all and provided that all the parties shall so enter into the Agreement, each of the executed counterparts, shall be deemed to be an original but, taken together, they shall constitute one instrument

The Common Seal of

Leicestershire County Council

was hereunto affixed

in the presence of :

**The Common Seal of
Blaby District Council
was hereunto affixed
in the presence of :**

**The Common Seal of
Charnwood Borough Council
was hereunto affixed
in the presence of :**

**The Common Seal of
Harborough District Council
was hereunto affixed
in the presence of :**

**The Common Seal of
Hinckley and Bosworth Borough Council
was hereunto affixed
in the presence of :**

**The Common Seal of
Melton Borough Council
was hereunto affixed
in the presence of :**

**The Common Seal of
North West Leicestershire District Council
was hereunto affixed
in the presence of :**

**The Common Seal of
Oadby and Wigston Borough Council
was hereunto affixed
in the presence of :**

SCHEDULES

Schedule 1 - Heads of terms for Long Term Agreement

Delivery Point Standards

Access Times

Delivery Points will be available to receive Waste delivered by the WCAs for the minimum core opening hours (between 0830 and 1700 Monday to Saturday and between 0830 and 1630 Sunday, except Christmas Day, Boxing Day and New Years Day - are subject to agreement with the WCAs and the PFI contractor) or such other 8.5 hour core period as agreed subject to conditions imposed by the Planning Authority and the Licensing Authority.

Access Routes

There are no restrictions on the routing of collection vehicles to the Delivery Points. WCAs may choose the most advantageous route for the time of day based on distance or travel time subject to conditions imposed by the Planning Authority and the Licensing Authority.

WCA collection vehicle turnaround times

Turnaround time for vehicles at the Delivery Points measured from weighbridge in to weighbridge out will be 20 minutes (subject to agreement with the WCAs and the PFI contractor). The final version and protocol on delays at Delivery points will be incorporated into the Long Term Agreement.

Access outside Core Opening Hours

The Delivery Point will be available outside core opening hours subject to a request notice being submitted by a WCA at least 4 hours in advance. (Subject to agreement with the WCAs and the PFI contractor)

Services before and after Public Holidays

(Subject to agreement with the WCAs and the PFI contractor)

Residual Waste Standards

The WCA shall:

- Deliver Waste during core opening hours
- Not damage the facilities
- Use all reasonable endeavours not to deliver Waste which is Unacceptable (to be defined with PFI Contractor when PFI Contract is let (would essentially set out Waste which would not be covered by licence)
- Etc

Schedule 2 – Recycling and Composting Plans

Party

Recycling and Composting Plans

[Insert details of targets from LAA; LMWMS and National Waste Strategy 2007]

Schedule 3 – Memorandum of Understanding

Leicestershire Waste Management Partnership Memorandum of Understanding