

Service Level Agreement

THIS AGREEMENT is made on the [] day of [] 20[]

B E T W E E N

- (1) LANCASHIRE COUNTY COUNCIL of County Hall, Preston, Lancashire, Preston PR1 8XJ ("the County Council ") and
- (2) [] (Company Number 05881147) whose registered office is at County Hall, Preston, PR1 8XJ ("the Company").

INTRODUCTION

This Service Level Agreement (the "Agreement") is made between the County Council and the Company.

The County Council wishes to engage the Company to provide certain services in relation to the operation of the County Council's waste processing facilities at Thornton Cleveleys and Farington ("the Services").

The purpose of the Agreement is to clarify the responsibilities of the parties to it, ensure effective joint working between them and to outline the terms and conditions under which the Services shall be delivered by the Company.

It is the intention of the parties that the Agreement will develop over time in response to any changing needs of the parties and to ensure that the best service possible is delivered for the benefit of the County Council and the people of Lancashire.

1. Definitions and Interpretation

1.1 In this Agreement references to a clause or a schedule is a reference to a clause of or a schedule to this Agreement and reference to persons shall include individuals, bodies corporate, unincorporated associations and partnerships.

1.2 The headings are inserted for convenience only and shall not affect the construction of the Agreement.

1.3 The masculine gender shall include the feminine gender and the singular number shall include the plural and vice versa.

1.4 The schedules form part of this Agreement and have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement shall include reference to the schedules.

1.5 In this Agreement the following expressions except where the context otherwise requires, shall have the following meanings ascribed to them:

"Board of Directors" shall mean the directors of the Company appointed from time to time in accordance with the Company's articles of association.

"Business Day" shall mean any day (excluding Saturday, Sunday and any day on which clearing banks are not open for business in the City of London).

"Company" means the operating company engaged by the County Council to operate the Facilities on its behalf.

"Effective Date" means [] day of [] 20[].

"Environmental Permit" means any authorisation, certificate, appraisal, exemption, transfer note, consignment note, permit, licence or consent (including, without limitation, any planning consent and all conditions attaching thereto) relating to the operations of the Company and/or provision of the Services and/or the occupation, development or use of the Sites

"Facilities" means the Farington and Thornton Waste Recovery Parks.

"Fees" mean the fees payable by the County Council to the Company in accordance with Schedule 2.

"Services" means those services to be provided by the Company under the terms of this Agreement as set out in Schedule 1 and any other services ancillary to the operation of the Facilities that the County Council may from time to time require the Company to provide.

- 3.3 Unless otherwise stated the Fees are inclusive of all costs and expenses which may be incurred by the Company in carrying out its obligations hereunder and no additional charges will be payable by the County Council unless agreed in advance by the parties.
- 3.4 Any payments due in respect of the Services (or otherwise pursuant to this Agreement) shall be made within 30 days of receipt by the County Council of a valid invoice; or as otherwise agreed by with Company.
- 3.5 The Company shall not cease the provision of any of the Services in the event that any sum owed by the County Council is overdue for payment.

4. Warranties

- 4.1 The Company warrants, represents and undertakes that during the Term:-
- (i) the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all reasonable skill, care and diligence in a timely and professional manner and otherwise in accordance with Schedule 1; and
 - (ii) its obligations hereunder shall be performed in accordance with all applicable laws, enactments, orders, regulations and other similar instruments in force from time to time.

5. Duration

5.1 This Agreement will commence on the Effective Date and shall subject to the provisions of clauses 14, 17, 21 and 26, remain in full force and effect for a period of twelve months from the Effective Date; but shall renew automatically if not specifically terminated in accordance with the terms of this Agreement.

6. Review of the Agreement

6.1 The operation of the Agreement and delivery of the Services shall be kept under review by the parties and either party may request a variation to the Agreement at any time by submitting a formal request to the other.

6.2 The County Council shall formally review the provisions of Schedule 1 at least annually with any required variations to be implemented by the Company within such reasonable time as the County Council may specify.

7. Property Issues

7.1 From the Effective Date, the County Council shall permit and grant to the Company, any subcontractor and all others authorised by the Company access to and the non-exclusive right to enter upon or remain upon the Sites as and when necessary to perform the Services and/or any of its obligations in connection with this Agreement.

7.2 The right granted under clause 7.1 shall subsist for the purposes of carrying out the Services and all purposes ancillary or related thereto, but for no other purpose and shall be by way of a licence and such licence shall not grant or be deemed to grant any legal right or other interest in land.

7.3 On termination or expiry of this Agreement the licence granted pursuant to this clause 7 shall determine.

8. Confidentiality

8.1 Neither party to this Agreement shall (except if required by law) either before or after the termination of this Agreement disclose to any person not authorised by the party to which it pertains any confidential information relating to such party or to the affairs of such party of which the party disclosing the same shall have become possessed during the period of the Agreement and each party shall use all reasonable endeavours to prevent any such disclosure as aforesaid.

9. Freedom of Information Act/Environmental Information Regulations

9.1 Each party to this Agreement understands and acknowledges that both parties are public authorities to which the Freedom of Information Act 2000 ("the Act") and the Environmental Information Regulations ("the EIRs") apply. The parties shall, as appropriate, co-operate with each other and provide assistance to each other (at their own cost) to enable the other party to comply with its obligations under the Act and the EIRs in respect of information arising from the operation of this Agreement and/or the delivery of the Services.

9.2 The Company agrees to delegate responsibility to the County Council for managing and responding to all requests for information to which the Act or the EIRs apply.

9.3 The Company shall ensure that all information relating to the Agreement and the Services is retained for disclosure and shall permit the County Council to inspect such records as the County Council may request.

9.4 On receipt of a request for information to which the Act or the EIRs apply, the Company shall forward such request to the County Council as soon as practicable and in any event within two (2) Business Days of receiving it.

9.5 Notwithstanding the provisions of clause 9.1, in no event shall the Company respond to a request for information unless expressly authorised to do so by the County Council.

10. Insurance

10.1 The Company shall insure against claims by third parties in respect of the following:

(i) those risks normally insured against by persons carrying on the same class of business as that carried on by it and in particular Public Liability to the sum of [£] million per event or series of events and Employers Liability insurance to the sum of [] million per event or series of events.

(ii) Any other risks which the County Council may reasonably require.

10.2 The Company shall not do or permit anything to be done which makes void or voidable any insurance in connection with clause 10.1 (i) to (ii) above.

10.3 The Company shall promptly pay all premiums and do all other things necessary to keep all of its insurances in force.

10.4 The Company shall upon demand by the County Council provide the policy, certificate or cover note relating to any insurance and the receipt for the payment of any premium for an insurance as the County Council may reasonably request.

11. Limitation of Liability

11.1 The liability of either party to the other under or in connection with this Agreement whether arising from contract, tort, including negligence or otherwise shall be limited as follows:-

(i) In the case of liability arising from death or personal injury to persons resulting from negligence there shall be no limit;

(ii) In the case of liability for loss of or damage to physical property, the limit in respect of any one or series of connected events shall be [£ million];

(iii) In respect of any other liability not covered above, the liability shall in all cases be limited to the amount payable by the County Council in any one year under the terms of this Agreement as provided for in clause 3.

11.2 The County Council shall not be liable for any special, indirect or consequential loss of any nature whatsoever.

12. Title and Risk

12.1 Title and risk in all waste to which this Agreement applies shall pass to the Company:

(a) in respect of a Site, once it is accepted by the Company or one of its subcontractors over a weighbridge at a Site;

(b) in respect of any waste collected by the Company or one of its subcontractors from a location designated by the County Council which has a weighbridge, once a vehicle containing such waste has exited over the weighbridge; and

(c) in respect of any waste collected by the Company or one of its subcontractors from a location designated by the County Council which has no weighbridge, once the vehicle containing such waste has exited over the boundary of the premises from which the waste has been collected.

12.2 In the event of any waste being delivered to a Site or collected by the Company or one of its subcontractors the processing of which would cause the Company to be in breach of an Environmental Permit the provisions of clause 12.1 shall apply to that waste but the County Council shall be responsible for any costs reasonably and properly incurred by the Company in dealing with that waste PROVIDED ALWAYS that the Company shall take such steps as are reasonable to minimise the costs incurred.

13. Indemnity

13.1 Subject to clause 11, the Company shall indemnify and keep indemnified the County Council from and against all loss or damage or liability (whether criminal or civil) suffered together with any legal costs incurred by the County Council resulting from a breach of this Agreement by the Company, its employees, agents or sub-contractors.

13.2 The indemnities contained in this clause shall be continuing indemnities and shall be without prejudice to any other right or remedy of the County Council whether arising under the terms of this Agreement or otherwise.

14. Termination

14.1 The County Council shall be entitled to terminate this Agreement with immediate effect by giving written notice to the Company:

14.1.1 in the event that the Company commits a material breach of any provision of this Agreement which is incapable of remedy or which, being capable of remedy, is not remedied within thirty (30) days after receipt of notice from the County Council specifying the nature of the breach; or

14.1.2 the Company enters into any composition or arrangement with its creditors or enters into liquidation whether compulsory or voluntary (other than for the purposes of a reconstruction or amalgamation) or has a receiver or administrator appointed over all or any part of its assets or undertaking or an administration order is made in relation to it.

14.2 Without affecting any other right or remedy available to it, the County Council may terminate this Agreement at any time by giving three (3) months' written notice to the Company.

15. Arrangements on Termination

15.1 Upon termination of this Agreement:-

- (i) The Company shall give assistance and information as is reasonable and necessary to ensure as far as is reasonably possible the ongoing provision of the Services.
- (ii) Each party undertakes to return to the other any equipment, documentation, information or other materials belonging to the other party in respect of which it has no legal right to retain.
- (iii) Subject to any other rights or remedies available to it under this Agreement, the County Council shall pay to the Company any sums properly due and payable.

16. Disputes

16.1 If a dispute arises between the parties either party may refer the matter for determination in accordance with the procedure set out in this clause 16.

16.2 A dispute referred for determination under this clause shall be resolved as follows:

- 16.2.1 by referral in the first instance to the Interim Executive Director for the Environment of the County Council and the Chief Executive of the Company;

16.2.2 if a dispute is not resolved within twenty one (21) Business Days of its referral pursuant to clause 16.2.1, such dispute shall be referred to the Chartered Institute of Waste Management who shall be entitled to appoint a person or persons to resolve the dispute. The decision of the appointed person or persons will be legally binding.

17. Corruption

17.1 If the Company in relation to this or any other agreement with the County Council shall do or have done any act:

- (i) which amounts to inducement or reward to any person for doing or omitting to do any act in relation to the obtaining of the Agreement; or
- (ii) which is an offence under the Bribery Act 2010 or the Prevention of Corruption Acts 1889 to 1916; or
- (iii) which amounts to the giving of a fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972

the County Council shall be entitled to terminate the Agreement forthwith with immediate effect and recover from the Company all losses, costs, damages and expenses incurred in connection with such termination.

17.2 The Company undertakes to inform the County Council of any improper conduct by any of the Company's employees agents or subcontractors relating to the Agreement or any other arrangements with the County Council.

18. Set Off

18.1 The County Council may claim or exercise any right of set off, counter claim or deduction in respect of any amount payable by the County Council to the Company pursuant to the terms of this Agreement in respect of any claim of the County Council against the Company.

19. Assignment

19.1 Neither party shall assign, transfer, novate or dispose of any interest in this Agreement without the prior written consent of the other party.

20. Sub-Contractors

20.1 The Company may not subcontract any part of its obligations under this Agreement without the written consent given in advance by the County Council. In the event that such consent is given and sought, the Company shall at all times remain liable to the County Council in full for the performance of all obligations hereunder.

21. Force Majeure

21.1 If either party is prevented from fulfilling its obligations under this Agreement by reason of any supervening event beyond its control including but not by way of limitation, war, national emergency, flood, earthquake, strike or lock out, the party unable to fulfil its obligations shall immediately give notice of this to the other party and shall do everything in its power to resume full performance.

21.2 If an event occurs and is subject to clause 21.1 above neither party shall be deemed to be in breach of its obligations under the Agreement.

21.3 If and when the period of such incapacity exceeds three months then either party shall have the right to terminate the Agreement forthwith.

22. No Joint Venture

22.1 For all purposes of this Agreement the Company is an independent service provider and shall have no authority to make any contract or do any act whatsoever as the agent of or for or on behalf of the County Council. The Company shall not in any circumstances represent itself to any person as having such authority.

22.2 The County Council and the Company are not partners or joint venturers with each other and nothing herein shall be construed so as to make them such partners or joint venturers or impose any liability as such upon them.

23. Waiver

23.1 No failure on the part of either party to exercise and no delay on its part in exercising any right or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any or further exercise thereof or the exercise of any right or remedy. The rights and remedies provided in this Agreement are in addition to and not exclusive of any rights and remedies provided by law.

23.2 Any express waiver by the County Council of any breach of any of the obligations of the Company under this Agreement shall not be a waiver of any continuing breach or of any other breach of any of these obligations.

24. Entire Agreement

24.1 This Agreement constitutes the entire agreement and understanding between the parties in respect of the matters referred to herein and supersedes any previous agreement whether written or oral between the parties and the parties confirm that they have not entered into this Agreement on the basis of any representations that are not expressly incorporated in this Agreement.

25. Variation

25.1 Save as is provided for herein no purported variation of this Agreement shall be effective unless the same is made in writing and is signed by each party.

26. Severance

26.1 Each provision of this Agreement is severable and distinct from the others and, if any provision is or at any time becomes to any extent or in any circumstances invalid, illegal, or unenforceable for any reason, it shall to that extent or in those circumstances be deemed not to form part of this Agreement but (except to that extent or in those circumstances in the case of that provision) the validity, legality and enforceability of that and all other provisions of the Agreement shall not be affected or impaired, it being the parties' intention that every provision of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

27. Notices

27.1 Any notice or other document to be given under this Agreement shall be in writing and shall be deemed duly given if left or sent by prepaid post to the address stated at the beginning of this Agreement.

27.2 In proving the notice it shall be sufficient to prove that the notice was left or that the envelope containing such notice was properly addressed and posted (as the case may be).

27.3 Any demand, notice or communication shall be deemed to have been duly served:

27.3.1 if delivered by hand, when left at the proper address for service;

27.3.2 if given or made by correctly addressed recorded delivery, at the time at which it would have been delivered in the normal course of the post;

provided that where in the case of delivery by hand such delivery occurs either after 4.00 pm on a Business Day or on a day other than a Business Day service shall be deemed to occur at 10.00 am on the next following Business Day (such times being local time at the address of the recipient).

27.4 The Company shall notify the County Council in writing in the event that it changes its address and shall provide such notice within fourteen (14) days of any such change.

28. Law and Jurisdiction

28.1 The provisions of this Agreement shall be governed by and construed in accordance with English law.

28.2 In respect of all matters arising under this Agreement the parties hereby submit to the non-exclusive jurisdiction of the Courts of England.

This agreement has been entered into on the date stated at the beginning of it.

Signed for and on behalf of

LANCASHIRE COUNTY COUNCIL

.....

.....

Signed by [NAME OF DIRECTOR] for and on behalf of

[NAME OF COMPANY]

.....

Director

SCHEDULE 1 - SERVICES

1. Introduction

- 1.1 The Services to be provided under this Agreement are procured by Lancashire County Council (“County Council”) acting on its own behalf and on behalf of Blackpool Council. The Services provided under this Agreement (including the Facilities, employees and other similar resources) shall be for the exclusive benefit of the two councils. The Company, its subcontractors, employees and agents shall therefore at all times represent themselves as service providers of the two councils. The conduct of the Company its subcontractors, employees and agents shall be consistent with general public service standards and the public service standards of the two councils in particular.
- 1.2 The Company will be bound by and act in accordance with any policies, procedures and practices specified by the County Council from time to time.
- 1.3 The Company its subcontractors and agents shall be under a general obligation in providing the Services to do so in a way that contributes to the corporate objectives of the two councils.
- 1.4 Subject to the Company's articles of association, the Company will have responsibility for all employment and staffing matters relating to the delivery of the Services.

2. Overall Service Objective

2.1 The fundamental objective of the Services is the management and operation of the Facilities and delivery of the Services in an environmentally and economically sustainable manner. In general terms the Services should:

2.1.1 enable the County Council and Blackpool Council to fulfil their statutory obligations under Section 51(1)(a) of the Environmental Protection Act 1990 and any other legislation governing the collection, transportation, handling, processing and disposal of waste;

2.1.2 minimise waste arisings;

2.1.3 maximise levels of recycling;

2.1.4 minimise landfill disposal;

2.1.5 assist the County Council in achieving local and national performance requirements and standards;

2.1.6 assist the County Council in achieving the aims and objectives of the Lancashire Municipal Waste Management Strategy;

2.1.7 assist the County Council in all areas of its services with the aim of reducing the unit cost per tonne of dealing with municipal waste arisings in Lancashire;

2.1.8 prioritise the health, welfare and safety of staff and protection of assets;

2.1.9 minimise operating costs through efficiency and best practice without compromising other objectives; or the priorities, practices or policies of the County Council; and

2.1.10 be affordable and offer value for money.

3. Scope of Services

The scope of the Services shall comprise the following:

3.1 The receipt and processing of all waste delivered by waste collection authorities, agents of the County Council, or other parties who the County Council may direct to deliver waste to the Facilities; along with the onward transportation of waste and residues as required. Processing to include the following specific arrangements which include management of processing equipment:

- (i) The transfer of residual, garden and co-mingled or source separated wastes at the Thornton facility to onward destinations.
- (ii) The transfer of residual, garden and co-mingled or source separated wastes at the Farington facility to onward destinations.
- (iii) The operation of the Materials Recovery Facility (MRF) at the Farington facility.
- (iv) Preparation of redundant processing equipment and/or other assets for a state of preservation.
- (v) The protection and preservation of unused processing equipment and/or other assets to enable such equipment or assets to be re-introduced into service.

3.2 A general obligation on the Company to endeavour to process as much of the waste delivered to each facility within the agreed limits of

the Facilities and equipment therein.

- 3.3 The operation of the Facilities in accordance with an agreed Quality Management System (as detailed in paragraph 4), good industry practice and in a manner which maximises reliability and performance of the Facilities and protects the integrity and value of all assets.
- 3.4 The management and operation of the Facilities in accordance with all environmental permits and any other regulatory requirements in force for the time being and from time to time.
- 3.5 The monitoring, control and reporting of all environmental emissions including, but not limited to, noise, dust, NMVOC, ammonia, odour and bio-aerosols.
- 3.6 Maintenance of the Facilities, buildings and grounds.
- 3.7 Provision of suitable data management and reporting systems and assisting the County Council in all of its waste management related data monitoring and reporting requirements.
- 3.8 Actively engaging with local communities and assist the County Council in its waste related promotional activities in the county.
- 3.9 Agreement with the County Council of a joint contingency plan and the maintenance of robust contingency arrangements to be implemented in the event of any interruption to the Services or the operation of the Facilities.
- 3.10 Production of a Business Continuity Plan for agreement with the County Council by no later than three (3) months following the

Effective Date to be updated annually by no later than the anniversary of the Effective Date.

4. Quality Management System

4.1 The Company will operate the Facilities in accordance with a Quality Management System ("QMS") to be agreed with the County Council within three months of the Effective Date of this Agreement.

4.2 As a minimum, the QMS will include all policies and procedures for the following areas of the Company's operations:

- daily operations and reporting
- technical and environmental systems
- maintenance
- health and safety
- human resources
- finance

4.3 The Company will inform the County Council on a quarterly basis of any changes made to the QMS and issue a consolidated revised QMS on an annual basis.

4.4 The County Council reserves the right to object to any changes made to the QMS by the Company. In the event of such objection, details of the change, and the County Council's objection to the change, will be referred to the Board of Directors for a decision as to whether the change to the QMS shall be implemented, revised or removed.

5. Annual Business Plan

- 5.1 The Company shall produce an Annual Business Plan ("ABP") for approval by the Board of Directors by no later than 1st March each year.
- 5.2 The ABP will detail key operational and performance targets along with operational, environmental, facility management and financial strategies.
- 5.3 As a minimum the ABP shall include:
- Key performance targets
 - Key financial targets
 - Annual budget proposal (the Fees)
 - Business development and commissioning strategy
 - Operations plan (to incorporate environmental, technical and transport)
 - Maintenance Plan
 - Annual Lifecycle Plan
 - Offtake plan
 - Health and Safety plan
 - Fire prevention plan
- 5.4 The Company will consult with the County Council in the production of its ABP in order to incorporate the County Council's waste service objectives and corporate budget strategy.

6. Reporting Requirements

6.1 Along with any statutory reporting requirements the Company will produce the following reports for the Board of Directors and the County Council:

- (i) Annual report against ABP
- (ii) Annual asset condition and lifecycle review
- (iii) Annual fire risk review
- (iv) Annual value for money assessment

and any other reports that the Board of Directors shall request.

6.2 The Company shall produce the following report for the County Council:

- (i) Monthly performance assessment split by spend type, department and full year projection against budget

and any other reports that the County Council shall reasonably request.

7. Lifecycle Provisions

7.1 The County Council will make an annual provision within its reserves based on the agreed Annual Lifecycle Plan. Lifecycle payments to the Company will be made subject to the approval of the Board of Directors. Any lifecycle provision required not included within the Annual Lifecycle Plan will require the additional approval of the relevant County Council Cabinet Member.

SCHEDULE 2 - FEES

1. The Fees

- 1.1 Payment of the fees shall be by quarterly payment in advance, or other such schedule of payments agreed by the parties to accommodate seasonality or anticipated costs.
- 1.2 Payment of the Fees shall be by quarterly payment in advance, or other such schedule of payments agreed by the parties to accommodate seasonality or anticipated costs.
- 1.3 Each payment shall be based on the budget proposal as agreed in the Annual Business Plan.
- 1.4 The Company shall proactively monitor spend against budget throughout the course of the year and shall report any variance (actual or anticipated) to the County Council on a monthly basis, split by type of spend and department in accordance with the County Council budget monitoring timescales.
- 1.5 No later than three (3) months following the end of each financial year the Company will refund the County Council any overpayment against the actual annual operating costs by means of credit note against the next scheduled payment to the Company.
- 1.6 The County Council may request refund of any overpayment 'in year', if it is clear that such overpayment is likely to occur. It shall be for the Board of Directors to decide in its absolute discretion whether to agree to any 'in year' refund of an overpayment.

- 1.7 The parties accept and understand that the Fees may vary each year based on the level of service required by the County Council and influenced by, inter alia, tonnage throughput levels, staffing levels, offtake arrangements, maintenance requirements etc.
- 1.8 Should the Company consider that a deficit may occur in any financial year a request must be presented to the Board of Directors for an adjustment of the Fees, detailing the reasons for the anticipated overspend and the implications should the Fees not be adjusted. The Board of Directors will need to submit an application for an increase in the Fees to the relevant County Council Cabinet Member who may, or may not, agree to adjust the Fees.

2. Pass-through Costs and Income

- 2.1 Any routine costs incurred by the Company in the normal course of delivering the Services in addition to the Fees will be met by the County Council ("Pass-through Costs"). Such costs may include:
- Transport
 - Utilities
 - Process Residue Offtake
 - Hazardous Waste
 - Rates and Taxes
- 2.2 The Company shall agree the nature of all Pass-through Costs with the County Council. For the avoidance of doubt the Company shall not incur additional Pass-through Costs to those agreed nor enter into any third party contracts that may result in Pass-through Costs; without the approval of the County Council.

- 2.3 Income for products produced by the Facilities such as recyclable materials and green waste compost, or any other income not otherwise accounted for in the agreed annual operating cost, shall be re-paid to the County Council as such income is received by the Company.
- 2.4 Pass-through Costs payment and income repayment shall be made through a combined monthly invoice.