

## **APPENDIX 2**

DRAFT: (3)

Ref: ISLAMSI/EdenC

Date: 22 January 2008

Dated

2008

- (1) Merseyside Waste Disposal Authority
- (2) Halton Borough Council

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## Waste Disposal Inter Authority Agreement

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**THIS AGREEMENT** is made on

2008

**BETWEEN**

- (1) Merseyside Waste Disposal Authority of 6th Floor, North House, 17 North John Street, Liverpool, L2 5QY ("MWDA"); and
- (2) Halton Borough Council of Municipal Building, Kingsway, Widnes, Cheshire, WA8 7QF ("Halton") (together, "the Authorities")

**BACKGROUND**

- (A) The Authorities are the statutory waste disposal authorities for their administrative areas.
- (B) Halton proposes to delegate part of its statutory waste disposal function to MWDA.
- (C) The Authorities have decided to make arrangements for the procurement of the Principal Contracts.
- (D) The Authorities have agreed to enter into this Agreement for the purpose of defining their respective rights and obligations to each other as a consequence of the Delegation.
- (E) MWDA and Halton recognise that opportunities may arise in the future for further delegation of waste disposal functions and/or further joint working which may replace or supplement the Resolution and/or this Agreement as the case may be.
- (F) MWDA and Halton shall work together in accordance with the principles set out in this Agreement.
- (G) The Authorities agree that this Agreement will be amended and varied to incorporate best practice and other matters agreed by the Authorities as a result of adherence to the partnering ethos of this Agreement from time to time and as the case may be.

**OPERATIVE PROVISIONS**

1. **DEFINITIONS**

In this Agreement the following expressions have the following meanings unless inconsistent with the context:

**"1999 Act"**

the Local Government Act 1999

<b>"Commencement Date"</b>	The date of signature if this Agreement
<b>"Confidential Information"</b>	means any and all confidential and/or proprietary information, (including know-how, records, trade secrets and data) whether of a business, marketing, financial, technical or non-technical nature and whether existing in hard copy form, in electronic form or otherwise, whether disclosed orally or in writing, which is regarded as confidential by the disclosing party and which is or has been disclosed to the other party or which comes to the other party's attention as a result of this Agreement. This will include information expressly identified as such as well as any other information which, by reason of its nature or the circumstances under which it is disclosed, might reasonably be expected to be confidential.
<b>"Contractor"</b>	the contractor or contractors appointed under the Principal Contracts.
<b>"Delegation"</b>	the delegation of Halton's waste disposal function in accordance with the Resolution.
<b>"Duty of Best Value"</b>	the duty imposed on the Authorities by Part 1 of the 1999 Act and under which the Authorities are under a statutory duty to continuously improve the way their functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by any Secretary of State, Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the 1999 Act.
<b>"Environmental Information Regulations"</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such

	regulations.
<b>“Expiry Date”</b>	the date on which the last of the Principal Contracts terminates or expires.
<b>“First Stage Procurement”</b>	in relation to each of the Principal Contracts means the selection of the prospective contractor(s) and production of contract documents and compliance with the Public Contracts Regulations 2006 up to but not including the entering into either of the Principal Contracts by MWDA.
<b>“Halton Waste”</b>	has the meaning set out in Schedule 1.
<b>Landfill Contract</b>	shall mean the landfill contract to be entered into between the MWDA and a contractor.
<b>Loss</b>	all liabilities, costs, expenses, damages, charges, claims and losses (including any direct, indirect or consequential losses, loss of cost savings, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses and any amounts due from MWDA under either of the Principal Contracts).
<b>“Persistent Breach”</b>	a breach which has occurred more than five times consecutively in any consecutive 3 months and where the non-breaching Authority has given the breaching Authority not less than 30 days written notice for the breaching Authority to remedy the same.
<b>“Principal Contracts”</b>	the WMRC and RRC
<b>“Procurement”</b>	means First Stage Procurement and where the context allows also includes Second Stage Procurement.
<b>“Resolution”</b>	the resolution of Halton dated 19 July 2007 reference EXB20 appearing as Appendix 1 of this Agreement.
<b>“Representatives”</b>	an individual and/or a number of individuals appointed by an Authority to supervise the

performance of that Authority's respective obligation under this Agreement.

**"RRC"** shall mean the Resource Recovery Contract to be entered into between the MWDA and the Contractor.

**"Second Stage Procurement"** the entering into and administration of the Principal Contracts.

**"Waste"** shall have the meaning ascribed to it in section 75 of the Environmental Protection Act 1990 in such form as such section is at the date of this Agreement

**"Waste Disposal Authority"** as defined in section 30 of the Environmental Protection Act 1990.

**"WMRC"** means the Waste Management and Recycling Contract to be entered into between the MWDA and the Contractor comprising the three elements: (1) Household Waste Centres ("the First Element") (2) Materials to Recycling Facilities ("the Second Element") and (3) bulking-up and transport facilities to recovery or disposal. ("the Third Element").

## 2. **INTERPRETATION**

2.1 In this Agreement except where the context otherwise requires:-

2.1.1 any reference to this Agreement or to any other document shall include variation amendment or supplements to such document as may be effected from time to time in accordance with the relevant document;

2.1.2 words preceding "include" "includes" "including" and "included" shall be construed without limitation by the words which follow those words unless inconsistent with the context and the rule of interpretation known as ejusdem generis shall not apply.

## 3. **VIRES**

3.1 The Authorities agree that the relevant statutory powers upon which they are relying to enter into this Agreement are:

3.1.1 section 19 Local Government Act 2000;

- 3.1.2 the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000; and
- 3.1.3 all other enabling powers allowed by law.

the "Relevant Powers"

- 3.2 Halton undertakes not to carry out or otherwise procure the carrying out of any function to the extent that such function has been delegated to MWDA under the Resolution until it shall have revoked the delegation and informed MWDA of such revocation in accordance with this Agreement.

#### 4. **COMMENCEMENT AND DURATION**

- 4.1 This Agreement and the rights and obligations of the Authorities shall commence on the Commencement Date and (subject to the early termination provisions set out in this Agreement) continue until the Expiry Date save for **clauses 21** which continue in force for a period of 6 years after termination and/or Expiry.
- 4.2 The termination or expiry of this Agreement is without prejudice to the rights, duties and liabilities of the Authorities accrued prior to termination or Expiry.

#### 5. **FUNDAMENTAL PRINCIPLES OF THIS AGREEMENT**

- 5.1 The purpose of this Agreement is to provide for the procurement, creation and administration of the Principal Contracts (which involves a delegation of certain functions from Halton to MWDA by means of the Resolution) and to procure delivery by the Contractor of certain waste disposal services.
- 5.2 This Agreement sets out the intended consequences of the use of the Delegation and sets out the general principles underlying the:
  - 5.2.1 responsibility for undertaking the First Stage Procurement;
  - 5.2.2 the responsibility for undertaking the Second Stage Procurement;
  - 5.2.3 the degree of participation in the Principal Contracts by Halton and MWDA;
  - 5.2.4 the approach to separate administration of elements of the Principal Contracts; and
  - 5.2.5 the approach to the financial charges to be paid by Halton in respect of the Principal Contracts.
- 5.3 Neither MWDA nor Halton shall interfere with the statutory functions of the other Authority (save as provided in this Agreement) but intend a relationship designed to share best practice to their mutual benefit.

6. **DELEGATION OF DUTY**

- 6.1 Halton has delegated to MWDA certain of its waste disposal functions as set out in the Resolution.
- 6.2 Halton may at its discretion revoke the Delegation at any time subject always to the rights and remedies of MWDA generally at law and specifically as set out in **clause 16** (Consequences of Termination and/or Revocation of Delegation) of this Agreement.
- 6.3 MWDA and Halton shall liaise promptly and meaningfully on matters arising out of the Principal Contracts affecting both Authorities in accordance with the principles set out in this Agreement.
- 6.4 The Delegation shall not apply to the Second Stage Procurement if Halton (prior to the commencement of the Second Stage Procurement) shall certify to MWDA that it shall not so apply acting by the Strategic Director of Environment (and notwithstanding **clause 27**) serving a notice on MWDA (personally hand delivered to MWDA between Monday and Friday inclusive and only if so delivered between the hours of 10am and 4pm) of such non application. Where Halton does so specify that the Delegation shall not apply to the Second Stage Procurement the provision of **clause 16** shall apply.
- 6.5 For the avoidance of doubt MWDA and Halton agree that any and all obligation that MWDA has under the Delegation shall be deemed to be fulfilled to the full satisfaction of Halton by MWDA complying in all material respects with its obligations to carry out the First Stage Procurement and the Second Stage Procurement.

7. **PARTICIPATION IN THE PRINCIPAL CONTRACTS**

- 7.1 MWDA is procuring the Landfill Contract. When Halton's landfill contract has expired the Parties will consider enabling Halton to deliver Waste under the Landfill Contract.
- 7.2 In fulfilment of the Delegation the Authorities acknowledge that MWDA intends to carry out a number of procurements of certain waste services which are intended to result in the award and carrying out of the WMRC and the RRC.
- 7.3 It is intended that the WMRC shall be implemented as regards the Delegation in to two stages being;
- 7.3.1 First and Second Element of the WMRC from the commencement date of the WMRC and;



7.3.2 the Third Element of the WMRC as agreed by the Authorities from time to time.

## **8. ADMINISTRATION OF THE PRINCIPAL CONTRACTS**

8.1 Subject to such rights of inspection as MWDA may have under the Principal Contracts, MWDA shall invite Halton to visit and inspect facilities operated pursuant to the Principal Contracts at which Halton Waste is received, treated, recycled, composted, recovered and/or otherwise disposed of at such times as the Parties shall agree.

8.2 Where Halton:

8.2.1 identifies any material default in the performance of the Principal Contracts on the part of the Contractor it shall inform MWDA of the same promptly in writing; and

8.2.2 upon receipt of a notice in accordance with clause 8.2.1 MWDA shall consider in good faith with Halton what action if any MWDA should take under the Principal Contracts.

8.3 By mutual agreement MWDA shall be entitled to appoint officers of Halton as Authorised Officers (as defined in the relevant Principal Contract) under either or both of the Principal Contracts.

8.4 Halton shall make available to the WMRC Contractor the household waste recycling centres at Pickow Farm Road and Johnsons Lane and the composting facility at Haddocks Wood by way of lease.

## **9. FINANCIAL CHARGES UNDER THE PRINCIPAL CONTRACTS**

9.1 In consideration of their respective rights and obligations Halton shall pay to MWDA such sums as shall be calculated in accordance with Schedule 2.

## **10. ATTENDANCE AT MEETINGS**

10.1 In furtherance of the Partnering Ethos MWDA shall where appropriate invite Halton to be present at formal meetings during which MWDA reasonably anticipates that matters of substance and of material effect upon Halton are to be discussed.

## **11. PARTNERING ETHOS**

The Authorities agree to:

11.1 mutually support and co-operate with each other to ensure the success and performance of this Agreement and the Principal Contracts;

- 11.2 co-operate in managing the performance of the Contractor under the Principal Contracts;
- 11.3 openness and trust in their dealings with each other;
- 11.4 mutually support and co-operate with each other to ensure as regards the subject matter of this Agreement as far as possible that both Authorities achieve the Duty of Best Value imposed upon each of them.

12. **THE PRINCIPAL CONTRACTS**

- 12.1 The provisions of this **clause 12** are without prejudice to the general commitment of MWDA and Halton to continue with meetings and discussions on an on-going basis designed to assist in the Procurement of the Principal Contracts.
- 12.2 Before a Principal Contract is entered into, MWDA shall provide Halton with a copy of the relevant documentation, and shall discuss it with them in accordance with the Partnering Ethos set out in this Agreement. Halton shall fully and promptly engage in the said discussions.
- 12.3 As soon as reasonably practicable after a Principal Contract is entered into, MWDA shall provide Halton with a copy of it and thereafter send any changes, variations and/or such other documents as may be necessary to ensure that Halton has an up to date version of each Principal Contract.
- 12.4 Where possible MWDA shall notify Halton of any proposed variations or amendments to any of the Principal Contracts from time to time in sufficient time for Halton to be able to make comments on them before they are implemented.
- 12.5 Halton may in writing propose to MWDA variations or amendments to the Principal Contracts for consideration by MWDA.
- 12.6 Without prejudice to the express rights and remedies of MWDA and Halton under this Agreement, after a Principal Contract is entered into, Halton shall use its best endeavours not to do anything which would put MWDA in breach of any of its obligations under any Principal Contracts.

13. **PROCUREMENT COSTS**

The Authorities agree that:

- 13.1 MWDA will invoice Halton monthly in arrears for its share of the costs in accordance with the charging mechanism set out in **Schedule 2**
- 13.2 Halton shall make payment to MWDA so as to comply with the payment terms in the Principal Contracts.

14. **OBLIGATION OF THE AUTHORITIES IN RELATION TO APPROVALS AND STANDING ORDERS**

14.1 For the purposes of the proper administration implementation and operation of this Agreement the Standing Orders and/or other rules of procedure of MWDA shall apply.

14.2 Each Authority shall each use its best endeavours to procure any approval which may be necessary from it in order to facilitate the implementation of this Agreement save that this clause shall not prejudice any determinations under the Town and County Planning Act 1990 by the local planning authority in relation to any matters envisaged under this Agreement and or the Principal Contracts.

15. **TERMINATION OF THIS AGREEMENT**

15.1 Either Authority may terminate this Agreement if the other Authority commits a Persistent Breach.

15.2 During the Second Stage Procurement, but only prior to MWDA entering into the Waste Contracts, either Authority may terminate this Agreement by giving the other Authority written notice being not less than three months.

15.3 Notwithstanding Halton's right to terminate under this **clause 15**, it may only do so where it has revoked the Delegation.

15.4 Where MWDA unilaterally varies either of the Principal Contracts without the prior written consent of Halton (such consent not to be unreasonably withheld or delayed) and as a result of such unilateral variation the financial charges under **clause 9** of this Agreement increases by more than 5% of the average monthly financial charges (average being calculated as the mean of the total payment of the last 6 months made by Halton to MWDA prior to the variation and the consequential increase thereof) Halton may terminate this Agreement and where such termination shall take place the amount of Loss to be recovered under **clause 16.1** below from Halton by MWDA shall be assessed without taking into account the increase in cost which has resulted as a result of such unilateral variation by MWDA. This **clause 15.4** shall not apply in relation to any variation of a Principal Contract where such variation arises as a result of a change in law or where MWDA is otherwise obliged pursuant to the terms of the relevant Principal Contract to accept such variation.

16. **CONSEQUENCES OF TERMINATION AND/OR REVOCATION OF DELEGATION**

16.1 Where Halton serves notice pursuant to **clause 6.4**, terminates this Agreement **under clause 15.1 or 15.2** and/or revokes the Delegation in whole or in part it

shall fully indemnify MWDA and keep MWDA indemnified from and against any Loss suffered or incurred by MWDA arising out of or in connection therewith.

- 16.2 Where MWDA terminates this Agreement under **clause 15.2** it shall fully indemnify Halton against any Loss suffered or incurred by Halton arising out of or in connection with such termination of this Agreement save that and for the avoidance of doubt MWDA shall not be liable to Halton where MWDA terminates this Agreement in accordance with the provision of **clause 15.1** and/or as a result of a right to terminate in accordance with any other right as may be available to MWDA as a consequence of breach by Halton of this Agreement.
- 16.3 The termination of this Agreement and/or revocation of the Delegation is without prejudice to the rights duties and liabilities of the Authorities accrued prior to termination and/or revocation of the Delegation. All other clauses in this Agreement which expressly or impliedly have effect after termination and/or revocation of the Delegation shall continue to be enforceable notwithstanding termination and/or revocation of the Delegation.
- 16.4 Any sums as may be outstanding at the time of the termination and/or revocation of the Delegation shall immediately become due and payable where an invoice has been submitted, and where an invoice has not been raised either Authority shall be entitled to submit an invoice where they are due a payment, which shall be payable within 7 days of receipt.
- 16.5 Notwithstanding any other provision of this Agreement the Authorities shall take all reasonable steps to mitigate the Loss suffered or incurred by either of the Authorities arising out of or in connection with **clause 16.1 and 16.2**.

17. **OBLIGATIONS OF MWDA TO ACCEPT HALTON WASTE**

- 17.1 Throughout the term of this Agreement MWDA shall use its reasonable endeavours to ensure that the Contractor fulfils its obligations under the Principal Contracts.
- 17.2 MWDA shall co-operate in the provision of staff and resources to monitor and discuss with Halton the implementation and operation of the Agreement.

18. **OBLIGATIONS OF HALTON TO DELIVER WASTE**

- 18.1 Halton shall:
- 18.1.1 deliver (or arrange to have delivered) all Halton Waste to MWDA (or such third party, including the Contractors, as shall be nominated by MWDA in writing) at such location or locations and on such terms operated pursuant to the Principal Contracts as MWDA may specify; and

- 18.1.2 without prejudice to the provisions of this **clause** 18.1 but subject always to the provisos set out in **Schedule 1**, commit to MWDA (or such third party (including the Contractors) as shall be nominated by MWDA) its Waste, to the extent set out in **Schedule 1** hereto; and
- 18.1.3 co-operate in the provision of staff and resources to monitor and discuss with MWDA the implementation and operation of the Agreement.
- 18.2 Halton acknowledges and accepts that all Halton Waste arising in its administrative area will be delivered exclusively to MWDA and that MWDA will give the Contractors exclusivity in relation to Halton Waste for the duration of the relevant Principal Contracts.
- 18.3 Halton agrees not to retain any Waste other than:
  - 18.3.1 as provided for in **Schedule** Error! Reference source not found. (Waste to be Delivered by Halton); or
  - 18.3.2 as otherwise agreed by the Parties.
- 18.4 Halton acknowledges that breach of clauses 18.1.1 and 18.2.2 may give rise to variations in the cost of the Principal Contracts and/or a claim for compensation by the relevant Contractor against MWDA and Halton indemnifies and shall keep indemnified MWDA against such variations of costs and/or compensation.

## **19 OWNERSHIP OF WASTE AND DUTY OF CARE**

19.1 Halton Waste received by or in the possession of MWDA (or any of its contractors or sub contractors, including the Contractor) shall, as between MWDA and Halton, upon such receipt be acquired by, be in the ownership and at the risk of MWDA, which shall take full responsibility for it as between MWDA and Halton.

19.2 For the purposes of this Agreement, until MWDA (or any of the Contractor or sub contractors) takes ownership of any Halton Waste all Halton Waste collected by Halton shall be deemed to be held at the entire responsibility and liability of Halton and MWDA shall have no responsibility for such Waste.

19.3 Halton shall keep consignment and transfer notes in respect of Halton Waste delivered pursuant to clause 18.1.1 for a period of at least six years following the date of delivery, and it shall be for Halton to ensure that it is given transfer notes by the relevant site operator.

## **19A. INSURANCE, LIABILITY AND INDEMNITY**

Without limiting the liabilities under the Agreement each Party shall have and maintain in effect for the term of the Agreement and for twelve (12) months thereafter:-

- (i) Employer's Liability Insurance;
- (ii) Public Liability Insurance; and
- (iii) Professional Indemnity Insurance

for such sum and range of cover as shall be prudent and appropriate in all the circumstances, bearing in mind (in particular) the nature and extent of the relevant Parties' obligations and/or liabilities under the Agreement.

19A.2 Halton shall fully indemnify and hold harmless MWDA, its employees, agents and contractors for the Loss suffered or incurred by MWDA directly or indirectly as a result of any act, omission and/or breach of an obligation by Halton (including any liability for the acts and/or omissions of its staff, employees, agents and/or contractors).

19A.3 Without prejudice to **clause 19A.1** and **19A.2** and for the avoidance of doubt Loss shall include but shall not be limited to Losses which arise from:

- (i) death or personal injury;

- (ii) environmental impairment, damage or contamination of water, air or ground;
- (iii) loss of or damage to property (including property belonging to any other party or for which it is responsible);
- (iv) breach of statutory duty;
- (v) actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis)

19A.4 The Parties expressly acknowledge declare and agree that the liabilities contained in the Agreement are, in all the circumstances, fair and reasonable.

## **20 REVIEW AND CHANGE MECHANISM**

### 20.1 Specific Reviews

20.2 Either Authority may call for a review of this Agreement (a "Review") by issuing a "Review Notice" in writing to the other Authority stating the nature of the Review, the reasons for it, the proposed actions and their implementation.

20.3 The Authority issuing the Review Notice shall as soon as practical set out in detail and if necessary provide evidence of the matters to be considered by the Review (the "Review Papers.")

20.4 The Authorities shall carry out the Review. They shall, having regard to budgetary and financial considerations, seek to agree actions or an action plan within two months of the Review Papers having been served.

### 20.5 Periodic Reviews

20.6 In any event within 3 months after the fourth anniversary of this Agreement and each fourth anniversary thereof ("Periodic Review Date") the Authorities shall meet to review ("Periodic Review") the working of this Agreement and consider whether changes are required.

20.7 At least three months prior to each Periodic Review each Authority shall submit to the other in writing a document outlining any issues that Authority wishes to be considered as part of the Periodic Review.

20.8 The Authorities will meet to seek to agree any amendments which it is necessary to make to this Agreement to ensure that MWDA can comply with its obligations under the Principal Contracts.

## **21 DISPUTE RESOLUTION**

21.1 Any disputes arising between the Authorities shall first be discussed by the Representatives of the Authorities in an attempt to resolve the matter in accordance with the Partnering Ethos.

21.2 To that end the Authorities' Representatives shall meet as soon as practicable (and in any event within five Business Days after one or the other Authority identifies and notifies the other in writing that a dispute exists) to seek to resolve the issue.

21.3 If no resolution of the matter can be agreed as a result of Representatives' discussions, in accordance with clauses 21.1 or 21.2 above that dispute shall be referred by either Authority to the Chief Executive (or deputy in the absence of the Chief Executive) in the case of Halton and the Director in the case of MWDA for resolution.

21.4 If any dispute remains unresolved, by the expiry of the seventh Business Day after a referral under clause 21.3 then the dispute shall be determined in accordance with clause 21.5.

21.5 The Authorities will in good faith, seek to resolve that dispute through mediation.

21.5.1 the mediator shall be agreed upon between the Authorities within 14 days of one Authority requesting mediation, failing which the mediator shall be appointed by the then President of the Law Society of England and Wales;



21.5.2 unless otherwise agreed the Authorities shall share equally the costs of the mediation;

21.5.3 if the dispute is not resolved within 30 days, or one of the Authorities refuses to participate in mediation, the dispute may be referred to arbitration and shall be determined in accordance with the Arbitration Act 1996 by a single arbitrator appointed by mutual agreement or where there is no mutual agreement within 14 days nominated on the application of either Authority by the President of the Chartered Institute of Arbitrators.

21.6 Nothing in this clause 21 or any other provision of this Agreement shall prevent either Authority seeking a preliminary injunction or other judicial relief at any time if in its judgement such action is necessary to prevent irreparable damage.

21.7 Each Authority shall mobilise sufficient resources to ensure that progress on resolution of any dispute is not unreasonably delayed.

## **22 DATA PROTECTION ACT 1998 ("DPA")**

22.1 The Authorities do not anticipate that the DPA shall apply to this Agreement save that where the DPA shall apply the Authorities shall comply with all the relevant provisions of the DPA as may be appropriate.

22.2 Each Authority shall indemnify and keep indemnified the other against all losses claims damages liabilities judgments penalties fines charges costs and expenses (including reasonable legal costs) arising from or incurred by it as a result of any breach by it of this clause 22.

## **23 CONFIDENTIALITY**

23.1 Each Authority:

23.1.1 shall treat all Confidential Information belonging to another Authority as confidential and safeguard it accordingly;

23.1.2 shall not disclose any Confidential Information belonging to another Authority to any other person without the prior written consent of the other Authority, except to such persons and to such extent as may be necessary for the performance by it of its obligations hereunder or except where disclosure is otherwise expressly permitted by the provisions of this Agreement or the Freedom of Information Act 2000 ("FOIA") and/or the Environmental Information Regulations.

23.2 No Authority shall use any Confidential Information received otherwise than for the purposes of this Agreement.

23.3 The provisions of clauses 23.1 to 23.2 shall not apply to any Confidential Information received by one Authority from another:

23.3.1 which is or becomes public knowledge (otherwise than by breach of this clause 23 or through act or default on the part of the receiving Authority or the receiving Authority's agents or employees);

23.3.1.1 which the receiving Authority lawfully obtained from a third party who:

23.3.1.1.1 lawfully acquired it;

23.3.1.1.2 did not derive it directly or indirectly from the disclosing Authority; and

23.3.1.1.3 is under no obligation restricting its disclosure;

- 23.3.1.2 which the receiving Authority can prove by documentary evidence was developed independently by an agent or employee of the receiving Authority without access to the disclosing Authority's Confidential Information; or
- 23.3.1.3 which must be disclosed pursuant to a legal obligation (including for the avoidance of doubt under the FOIA) placed upon the Authority making the disclosure, including any requirements for disclosure or otherwise in accordance with a court order, or the recommendation, notice or decision of a competent authority.
- 23.3.2 Without prejudice to the generality of clause 23.3.1, Confidential Information shall not be deemed to be generally available to the public by reason that it is known only to a few of those people to whom it might be of commercial interest, and a combination of two or more portions of the Confidential Information shall not be deemed to be generally available to the public by reason only of each separate portion being so available.
- 23.4 Nothing in this clause 23 shall prevent any Authority from using any techniques ideas or know how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information.
- 23.5 The provisions of this clause 23 shall continue following expiry or termination for any reason of this Agreement without limit in time.

## **24 FREEDOM OF INFORMATION**

- 24.1 Notwithstanding clause 22 (Data Protection Act 1998) and clause 23 (Confidentiality) each Authority acknowledges that it and the other Authority are subject to the requirements of the FOIA, the Environmental Information Regulations and shall assist and co-operate with the other Authority to comply with these disclosure requirements.

## **25 LATE PAYMENTS**

- 25.1 Save where otherwise provided, the Authorities will pay interest on any amount payable under this Agreement not paid on the due date for the period from that date to the date of payment at a rate equal to 4% above the Bank of England base rate from time to time (the "Prescribed Rate").

## **26 SET-OFF**

- 26.1 MWDA may retain or set off any amount owed to it by Halton under this Agreement which has fallen due and payable against any amount due to the Halton under this Agreement.
- 26.2 Halton may retain or set off any amount owed to it by MWDA under this Agreement which has fallen due and payable against any amount due to MWDA under this Agreement.
- 26.3 If the payment or deduction of any amount referred to in clauses 26.1 and 26.2 is disputed, then any undisputed element shall be paid and the disputed element shall be dealt with in accordance with clause 21 (Dispute Resolution).

## **27 NOTICES**

27.1 All notices (save the notice to be issued pursuant to clause 6.3 of this Agreement such notice only being valid if personally hand delivered between Monday and Friday and only if so delivered between the hours of 10am and 4pm) which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient Authority set out in Schedule 4 or such other address in the United Kingdom as a Authority may designate from time to time by giving not less than five (5) Business Days notice of the same in accordance with this clause 27. All notices may be delivered personally or by first class pre-paid letter or facsimile transmission and in the absence of evidence of earlier receipt shall be deemed to have been served if by hand when delivered, if by first class post forty-eight (48) hours after posting and if by facsimile transmission when properly dispatched (and subject to receipt of a successful transmission report).

## **28 REPRESENTATIVES**

28.1 A Representative shall be appointed by each of the Authorities to supervise the performance of their respective obligations under this Agreement. The Representatives shall be managers of suitable experience to be the relevant Authority main interface and point of contact from the Commencement Date to the date of Expiry.

28.2 Any changes by either Authority to the identity of its Representative shall be promptly notified to the other Authority.

28.3 Each Representative shall be entitled at any time, by notice to the other Authority, to authorise any other person to exercise the functions and powers of the Authority delegated to him pursuant to this clause 28, either generally or specifically, and all references to the Authorities' Representative(s) in the Agreement (apart from this clause 28.3) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.

## **29 PRIVACY**

29.1 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

29.2 For the avoidance of doubt the Authorities may amend, vary or rescind the Agreement (in accordance with its terms) without the consent of any third party.

## **30 AMENDMENTS**

30.1 This Agreement may not be varied except by an agreement in writing signed by the Authorities.

30.2 Neither Authority shall be obliged to agree to any requested or recommended change but neither Authority shall withhold or delay its agreement to such change unreasonably.

30.3 Until such time as a requested or recommended change is agreed, reduced to writing and signed in accordance with this clause 30 the Authorities shall continue to perform their respective obligations under this Agreement without taking account of the requested or recommended change.

## **31 WAIVER**

31.1 Any relaxation, forbearance, indulgence or delay (together an "indulgence") of any Authority in exercising any right shall not be construed as a waiver of the right and

shall not affect the ability of that Authority subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether or not against that Authority or any other person).

31.2 No term or provision of this Agreement shall be considered as waived by any Authority to this Agreement unless a waiver is given in writing by that Authority.

31.3 No waiver under clause 31.2 shall be a waiver of a post or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

### **32 ENTIRE AGREEMENT**

32.1 The Agreement (including the documents referred to in it) constitutes the entire agreement and understanding of the Authorities relating to its subject matter, and supersedes any previous agreement between the Authorities relating thereto.

32.2 Subject to clause 12.6, each Authority acknowledges and agrees that in entering into the Agreement it does not rely on and shall have no remedy in respect of any statement representation warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement.

32.3 No amendment of the Agreement shall be of any force or effect unless and until reduced to writing and signed by an authorised representative of each Authority.

### **33 SEVERABILITY**

33.1 If any provision of the Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability shall not affect any other provision of the Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Authorities hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

### **34 LAW OF THE CONTRACT AND JURISDICTION**

34.1 This Agreement shall be governed by the laws of England and Wales and subject to clause 21 (Dispute Resolution) the Authorities submit to the non-exclusive jurisdiction of the courts of England and Wales.

**IN WITNESS** whereof this Agreement has been entered into on the date set out at the beginning of this Agreement.

**THE COMMON SEAL** of )  
MERSEYSIDE WASTE DISPOSAL )  
AUTHORITY affixed and is authenticated by:)

Authorised Officer

**THE COMMON SEAL** of )  
HALTON BOROUGH COUNCIL )  
affixed and is authenticated by: )

Authorised Officer

## **SCHEDULE 1**

### **Part A: Waste to be delivered by Halton**

The delivery by Halton of Halton Waste to MWDA.





## **SCHEDULE 2**

### **Charging Mechanism**

#### **1. Procurement Project Costs Prior to Commencement of the Waste Contracts**

Halton will share in the external advisor and MWDA internal procurement team costs [calculated at 8% of the tonnage of waste managed]. [DN: Should this just say that Halton will reimburse MWDA with 8% of these costs?]

#### **2. Capital Investment by MWDA in the Provision of Facilities**

Halton will pay a contribution to the provision of each facility assessed at 8% of the tonnage of waste managed.

#### **3. The Landfill Contract**

Halton will not take part in the landfill contract except as provided in Clause 7.1, at which time a charging mechanism will be agreed between the Parties.

#### **4. The WMRC**

Halton will pay in relation to the WMRC: -

- 4.1 the actual contractual costs for Halton's Household Waste Recycling Centres (HWRC.)
- 4.2 All other costs that MWDA incur (excluding transport and transfers) will be apportioned to Halton relative to its tonnage throughput under the WMRC as a component of the total tonnage under the WMRC. [DN: so how do Halton pay their share of "transport and transfers"?)

#### **5. RRC**

Halton will pay in relation to the RRC all costs that MWDA incur apportioned to Halton relative to its tonnage throughput under the RRC as a component of the total tonnage.

#### **6. Management Fees**

In relation to the following costs Halton will pay 8% of: -

- 6.1 prior capital investment utilised for the delivery of the WMRC with the exclusion of the existing HWRC.
- 6.2 the reserve that MWDA is currently accruing in order to provide a smooth cost curve transition to the RRC,

- 6.3 ongoing contract management costs incurred by MWDA. For the avoidance of doubt this excludes the management of historical liabilities.
- 6.4 the total cost (including VAT and other taxes and duties) of the Procurement of the Principal Contracts up to and including the Commencement Date of each Principal Contract;
- 6.5 the cost of any negotiation by professional advisors of any amendment and/or variation to the Principal Contracts during the Second Stage Procurement.

## **SCHEDULE 3**

### **Halton Borough Council Resolution EXB20**

#### **EXECUTIVE BOARD**

##### **EXB 20 INTER AUTHORITY AGREEMENT AND WASTE ACTION PLAN - KEY DECISION**

The Board considered a report of the Strategic Director - Environment setting out the way in which the Council intended to discharge part of its Waste Disposal functions and seeking approval to move forward with the development and implementation of enhanced waste recycling services in Halton.

It was noted that a Members' Seminar had been held on waste management issues on 12<sup>th</sup> June 2007. This Seminar had set out the proposed future strategic and operational plans, including the implementation of enhanced recycling services and the partnership arrangement with the Mersey Waste Disposal Authority (MWDA). The Seminar had highlighted the significant financial implications associated with waste management and the major investment required in both the short and long term.

The Executive Board was now requested to consider and approve the delegation of defined aspects of the Council's waste disposal functions to allow MWDA to procure contracts on behalf of Halton, the principles of which would be detailed in a formal inter-authority agreement (IAA) with the MWDA. Members were also asked to consider and approve Halton's Waste Action Plan, which had been updated following the Members' Seminar. Further information was provided within the report regarding the IAA and the Waste Action Plan.

The Board considered a number of issues including:

- the responsibility of contractors to replace splitting bins;
- who green bins were to be delivered to and how, if they were not required by a resident, the Council would collect the bin if requested to do so;
- the fact that the policy previously agreed, of not taking side refuse, was being phased in gradually;
- how a further 20 "bring sites" were to be identified across the Borough; and
- the fact that recycling facilities were being incorporated into developments as part of the planning process.

##### Reason for Decisions

A formal partnership agreement with the MWDA was

required in order for Halton to be included in the procurement of Waste Treatment Services and facilities by the MWDA.

#### Alternative Options Considered and Rejected

The options that had been considered, and had led to a decision to work in partnership with the MWDA, were detailed in previous reports presented to the Executive Board.

#### Implementation Date

Implementation was expected by September 2007, following consultation between relevant Officers and Elected Members.

RESOLVED: That

- (1) the Council, acting under the authority of the Relevant Powers and in accordance with the Partnership Ethos, enter into an arrangement with the Merseyside Waste Disposal Authority ("MWDA") for the discharge by the MWDA of the functions of the Council (in its capacity as Waste Disposal Authority) specified in this resolution ("the Arrangement") to achieve the Purpose;
- (2) the Strategic Director – Environment, in consultation with the Strategic Director – Corporate and Policy, the Portfolio Holder for Environment, Leisure and Sport, and the Portfolio Holder for Corporate and Policy, be authorised to take all actions and to make any decisions deemed appropriate in connection with and in the furtherance of the Arrangement (including entering into the Inter Authority Agreement referred to below), and any modifications to the Arrangement which may be agreed with MWDA from time to time;
- (3) in this resolution:

"the Relevant Powers" mean section 19 Local Government Act 2000, the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 and all other enabling powers allowed by law;

"the Partnership Ethos" means that in the discharge of the Arrangement the Council and MWDA shall act in a spirit of openness and trust in their dealings with each other and shall mutually support and co-operate with each other to ensure the success and performance of the Arrangement;

"the Purpose" means achieving the provision of the procurement, creation and administration of the Principal Contracts which will facilitate the delivery of the Council's waste management targets;

"the Principal Contracts" mean the contracts proposed to be entered into by MWDA and a contractor or contractors in relation to firstly, Waste Management and Recycling, and secondly, Resource Recovery;

"the Inter Authority Agreement" means the Inter Authority Agreement defined in paragraph (4);

(4) "The Arrangement":

the Council delegates to MWDA that part of its waste disposal function as relates to the procurement of the subject matter set out in the Principal Contracts subject to the terms, restrictions and limitations contained or to be contained in a document entitled "Inter Authority Agreement" in respect of the procurement and management of the Principal Contracts, a draft of which has been produced to the Council;

(5) the principles of the Waste Action Plan and the delivery of the pilot study contained within it be approved; and

**(6)** the financial expenditure required to deliver the enhanced recycling services, as contained within Halton's Waste Action Plan, are considered following the monitoring of the pilot study, and during the budget setting process for 2008/09.