

**BODY:** Scrutiny  
**DATE:** 5 September 2011  
**SUBJECT:** Waste Contract – Procurement  
**REPORT OF:** Senior Head of Development & Environment

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**Ward(s):** All

**Purpose:** To inform and consult Scrutiny on the specification, inter authority agreement and cost sharing agreement in the procurement of the joint waste contract.

**Contact:** Jefferson Collard, Senior Head of Development & Environment, Telephone 01323 415240 or internally on extension 5240.

**Recommendations:** That Scrutiny considers the following three draft documents:-

1. Specification;
2. Cost Sharing Agreement;
3. Inter-Authority Agreement;

and make comment for consideration by officers to include in the next version of the documents to be deliberated at the Joint Waste Committee meeting on 21 October 2011.

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## **1.0 Background**

1.1 Across East Sussex there is number of waste contracts approaching renewal at about the same time. Eastbourne's contract for the collection of waste and street cleaning is the first for renewal on 1 April 2013. There are similar contracts in Hastings and Rother although these are due to expire at slightly later dates than in Eastbourne. Wealden DC currently provides its waste collection with an in house team but would like to procure a private sector company to carry out the service. Consequently the four authorities have been working in partnership to explore the potential of a joint procurement. Early work has shown there are economies of scale that provide the potential for efficiencies and cost avoidance with a large contract. To this end the authorities have been putting in place the governance and administrating systems to manage a single contract across all four local authority areas.

1.2 The stage now reached is a critical point where key documents are being

prepared and will form part of the tendering exercise. These documents are:-

- Draft Specification
- Cost Sharing Agreement, and
- Inter-authority Agreement

- 1.3 Each of the documents went before the new Joint Waste Committee on 17 August and have been agreed in principle as drafts to be progressed to each authorities Scrutiny Committees.
- 1.4 The purpose of this report is to seek comments from Scrutiny Members on these documents. Any comments will be taken into account before the documents go back to the Joint Waste Committee on 21 October 2011 for further consideration with final approval on 9 November for inclusion in the Tender documentation.

## **2.0 Draft Specification**

- 2.1 The Specification sets forth, in plain terms:-

- details of the works and services to be undertaken;
- the quality standards to which they are to be undertaken or produced;
- timing of works;
- acceptance criteria and any other obligations on the Contractor that are not covered by the Conditions of Contract.

The Specification is a 'technical' document to be read in conjunction the other contract documents (Tendering Instructions, Form of Tender, Contract Conditions, Bills of Quantity and Appendices) which collectively cover all aspects of the Tender process and management of the Contract through which the service will be procured and delivered. The Bills of Quantity will set forth the measured works against which Tenderers will submit prices and will directly relate to works identified in the Specification.

- 2.2 The Specification developed for the contract operations is expressed as three service options:

- Current service;
- Options which are to be priced; and
- Contractor Options (specified by outputs).

- 2.3 The rationale behind this approach is:

Current Service: It is necessary to establish a baseline of costs for the service as it is currently delivered in order to allow comparisons to be made against options being brought forward as well as existing service costs. For all practical reasons it is most likely that an incoming contractor may

choose to commence the contract with the current service to establish operations and familiarise themselves with the area before making significant changes, hence 'current service' is seen as the start point.

Options which are to be priced: Each of the Partners has expressed certain service preferences for future service inclusion/exclusion. While these requirements can be set against specified output requirements in the contract documents, there does need to be some guidance to the Tenderers within the Specification to ensure the Tenderers understand what is required and can price them. This will allow the financial impacts of including/excluding those activities to be assessed, not only for the individual authority concerned, but also the overall financial impact this may have on the Contract.

Contractor Options: Where the Partnership is seeking alternative means of service delivery to bring economies to the Contract, Tenderers will be given the freedom to submit proposals for service change to rationalise and unify collection arrangements across the Partnership area. Tenders for this option are guided by the output specification to ensure sufficient latitude is given to encourage Tenderers to exercise innovative and novel solutions.

- 2.4 Accordingly, existing services are described in detail, by reference to current specifications and supported by schedules and work lists all attached to the document. However, the Specification also seeks to secure bids on the basis of the preferences expressed by each partner authorities, namely:
- Prices for Alternate Weekly Collections of Residual Waste across the Partnership area (see Specification 2.7 and 5.2);
  - Prices for different options for collecting Dry Recyclables across the Partnership, including on the basis of an output specification (see Specification 2.7, 5.4 and 5.5);
  - Prices for different options for collecting Garden Waste (including a free service) across the Partnership (see Specification 2.7, 5.7 and 5.8); and
  - Prices for collecting Food Waste on a weekly basis across the Partnership (see Specification 2.7 and 5.9).
- 2.5 The Specification does include options for some other elements of the service, e.g. Commercial Waste. Other options could be developed for subsequent stages of the process, taking into account the current service submissions as well as the stated options. This is possible as the Tender process is proposed to be by competitive dialogue so options can be explored with contractors before opting for the clients preferred option and seeking prices accordingly.
- 2.6 In carrying out the contract a critical element is who administers what parts and this can range from a light touch by the contractor to a full central team. There are basically 4 options:-

1. Minimum central core; most functions retained at Districts and Boroughs
2. Central contract management
3. Central contract management to include contact centre
4. Full function central team supplied by the contractor

Partners have proposed to opt for Option 2 – Central Contract Management. Under this option, the central function by the contractor includes most of the current waste management and back office functions except the provision of a customer contact centre, local monitoring and resulting enforcement. This option may include a central recycling and education role which individual authorities may opt to supplement in their local areas.

2.7 The draft specification is attached as Appendix 1.

2.8 In developing this Specification, at the Joint Waste Committee (JWC) meeting on 17 August, Members' attention was drawn to the following issues which will require consideration and decision (highlighted within the draft Specification document as detailed below). The JWC's resolution are included in *italics* under the relevant item:

1. Length of Contract (Ref 1 Terms and Conditions);  
*it was the steer of the Committee that in terms of contract length bids on anything ranging from 8 to 20 years would be sought with break clauses. The 20 year maximum will allow future harmonisation to be considered with the ESCC waste disposal contract.*
2. Harmonisation of working hours (Ref 2 Specification 4.1.2);
3. Harmonisation of bank holiday working (Ref 3 Specification 4.1.7);
4. Harmonisation of rectification periods (Ref 4 Specification 4.1.12);
5. Harmonisation of response times (Ref 5 Specification 4.1.25);
6. Harmonisation of communal bin provision (Ref 6 Specification 4.1.49);
7. Harmonisation of charges for dead domestic pets (Ref 7 Specification 4.1.76);  
*it was the steer of the Committee (on the items above – 2 to 7) that these would be dealt with at the Invitation for Submit Outline Solutions stage however the Partner Authorities were requested to raise any arrangements currently in place for any of these areas that they wished to retain.*
8. IT Considerations and contact centre approach (Ref 8 Specification 4.3);
9. Complaints handling - Client or contractor role (Ref 9 Specification 4.3.8);  
*it was the steer of the Committee (on the items above – 8 to 9) that they would like these elements to be included within the draft Specification in order to explore possible options for these elements of*

*the service.*

10. Depots - Availability of existing sites (Ref 10 Specification 4.5);
11. Depots - Future development issues (Ref 11 Specification 4.5);  
*Partner authorities were requested (on the items above – 10 to 11) to provide guidance to the Waste Officers with regards to the availability of any existing depots for the new Contract.*
12. Livery and signage of vehicles (Ref 12 Specification 4.6.13);
13. Harmonisation of bulky waste charge structure and management of customer interface (Ref 13 Specification 5.10.3);  
*discussions would start (on the items above – 12 to 13) within a Communications Officer Group with reports being made to the Joint Waste Committee for their consideration and decisions to be taken at a later stage.*
14. Opportunities for commercial waste collection (Ref 14 Specification 5.12) NB ESCC involvement;  
*it was the steer of the Committee for options around the collection of commercial waste to be explored within the Specification.*
15. Value of recyclable material Share risk and approach between contractor and Partnership (Ref 15 Specification 7.6.1);  
*it was the steer of the Committee that options around maximising income from recycling should be included within the Specification but in the context of the ESCC Waste Disposal Contract.*  
and
16. Uniformity on system of liquidated damages cross reference to refs 4 and 5 (Ref 16 Terms and conditions).  
*this area would be determined at a later date.*

### **3.0 Cost Sharing Agreement**

- 3.1 At the heart of the cost sharing agreement (CSA) has to be an acceptance by all partners that the allocation of costs will be approached on a broad set of principles. The reason for this is that with 4 authorities all operating different arrangements it would be impossible to reach agreement on every detail. Therefore it has been accepted that there is potential for there to be winners and losers for specific aspects/elements of the joint contract but that every authority will be treated fairly if the partnership is to succeed. Ultimately Members will need to focus on the “bottom line” financial impact on their Council.
- 3.2 Officers have concentrated on developing the model that will be applied to sharing costs across the 4 authorities. The 2 main service areas that will affect the majority of costs are the waste & recycling collection costs and the street & beach cleansing costs. Clearly there are other costs, such as clinical waste collection, but these are not significant when compared to the

total cost of the joint service.

- 3.3 The proposed basis for allocating costs is summarised at Appendix 2:

**Collection of Refuse and Dry Recycling**

It is proposed that costs will be allocated on weighted basis to reflect the "rural premium" i.e. the effect of having to deliver the service into the rural area. This premium is derived from current productivity levels comparing rural and urban Councils. The effect of this is to increase the cost to Wealden and Rother when compared to Eastbourne and Hastings.

**Street and Beach Cleansing**

Given the complexities of each Council's current specification and a commitment to maintaining current standards in each authority, it is proposed that this element of the contract will be priced on a per authority basis. This will still have the potential to achieve savings through economies of scale.

**Bring Sites**

It is proposed that the cost of collection from bring sites will be charged to each authority based on the number of bring sites in their area. It is recognised that there are different types and size of sites but the impact on cost is likely to be minimal.

**Green Waste**

It is proposed that each Council will be charged their proportion of the total service cost based on the number of their households using the service compared to the total number of users of the service. Councils will retain their income.

**Demand led Services**

This includes services such as commercial waste, clinical waste, bulky item collection and supply of containers. Costs will be divided between Councils on actual usage of service by customers in each Waste Collection Authority (WCA) area.

**Other costs and income to be apportioned**

Appendix 2 also includes proposals for a number of other items that will need apportioning between the Councils.

- 3.4 Another important element of the CSA is the expectation that costs arising from any specific enhancements or additions requested by an authority will be charged solely to that authority. These will need to be separately identified by the Contractors in their tender submissions. For example currently Wealden, Hastings and Rother have alternate weekly collection and this forms the basis of the draft specification. Should Eastbourne wish to continue with weekly collection of residual waste, then this would be separately identified by the contractor and charged solely to Eastbourne.

- 3.5 It was intended that the CSA would only reflect the ongoing costs of the partnership. However, the Joint Waste Committee will also need to consider any mobilisation costs incurred by partners in readiness for the new contract and how they will be dealt with. The proposed treatment is if costs are an issue for two or more partners then they are shared equally between those partners involved whereas if they are unique to one WCA then they are borne by that WCA.
- 3.6 The capital cost of changes during the life of the contract e.g. to collection methods, will be reflected in the tender price. This has the effect of spreading the costs of any investment over the life of the contract. This assumes that the investment required will be met by the contractor and that any changes required will be subject to the decisions made during the competitive dialogue process.
- 3.7 Attached at Appendix 3 is a copy of the legal agreement. It is intended that this will cover the cost sharing principles and mechanism set out in more detail in this report. In doing so, the authorities will be asked in due course to sign off the agreement, thereby making the cost sharing mechanism a legally binding agreement.

#### **4.0 Inter-authority Agreement**

- 4.1 The inter-authority agreement (IAA) is principally aimed at creating a binding legal relationship between the four authorities as a basis for undertaking the procurement exercise. The first draft of this agreement has been prepared by Rother District Council's legal team. It is currently being circulated and refined with input from each partner's respective legal teams.
- 4.2 Knowledge of the market place shows that contractors are now actively seeking this type of legal agreement between Councils so that they have some certainty that the Councils are committed to proceeding with the project. This is important to the market as the cost of procurement for the companies involved is considerable.
- 4.3 By creating legal relations between the parties, they will be demonstrating their ongoing commitment to this process. This should ensure that the appropriate level of finance is in place to deliver this project, as well as setting out a clear mechanism for cost recovery should any Council seek to subsequently withdraw from the project.
- 4.4 The draft IAA sets out in detail the various legal provisions that are proposed and many of them are fairly standard to agreements of this type of legal relationship.
- 4.5 The most significant aspect of the agreement relates to the procurement

exercise, the award of the contract and the associated costs. The procurement costs in themselves are significant and it is only proper that the legal agreement enshrines how the costs will be distributed between the parties. In addition, there are always risks attached to a sizeable project of this nature. One of the most significant risks is that one of the Councils withdraws from the project at a point after the commencement of the procurement process but prior to the award of the contract. This is a risk as it may result in increased procurement costs being apportioned to the remaining Councils. Similarly it may result in increased contract costs for the remaining Councils.

- 4.6 As a result, a clause has been included in the draft IAA (Clause 9.2) to provide financial comfort to the remaining Councils should such a risk materialise. Given the potential significance of this issue, the Members are being asked to consider this clause and the definition of loss to ensure that it covers all areas of loss and damage that the Councils would expect to see included. In relation to how the clause is drafted, contracts cannot provide for a pure financial 'penalty' rather they need to demonstrate that the other parties to the contract are being recompensed for losses that the parties are able to ascertain in advance of the loss being incurred. The level of damages does need to be based upon a reasonable assessment of the type and value of the loss or additional expenditure that is likely to be incurred due to one of the Councils withdrawing.
- 4.7 A draft of the IAA is included as Appendix 4.

## **5.0 Tender Process**

- 5.1 As mentioned above the procurement is proposed to be run on the competitive dialogue (CD) process. This is similar to the usual tender process with one significant difference – the ability to negotiate during the tender period. This type of process is very useful when the specification is complex and contractors can bring experience to the discussions which can then be tested during the dialogue process. It means that it is quite usual to have draft specifications at the early stages of the tender process which are later refined for the submission of final and best prices by the bidders. The stages are as follows:-
- Publication of a Prior Information Notice (PIN);
  - Publication of the Pre-Qualification Questionnaire (PQQ) together with a Descriptive Document (DD) of what the tender needs to deliver;
  - Invitation to Submit Outline Solutions (ISOS). The Conditions of Contract will be draft and the Specification will be in draft form describing a number of options and likely to include Contractors options.
  - Invitation to Submit Detailed Solutions (ISDS) which is included within a further revised DD; the Conditions of Contract still as draft but refined in

some areas following dialogue and evaluation of ISOS bids: the Specification will still describe a reduced number of options (and may still ask for further Bidders' Options).

- Following competitive dialogue, bidders will submit their Detailed Solutions using a template supplied and these are evaluated. The evaluation will (typically) further reduce the number of bidders and also the number of options that are being considered (again new ones submitted by bidders may be carried forward).
- Following evaluation of Detailed Solutions, the next stage is Final Tenders. At this stage, the documentation will include a (draft) Invitation to Submit Final Tenders (ISFT) which is included within a revised DD; the Conditions of Contract as a final draft; and the Specification which still may include some (limited) options.
- There is then a further process of dialogue. Following dialogue, the Partnership will issue a notice to say dialogue is closed. The ISFT documentation noted above is finalised and the procedure then works (essentially) as Restricted Procedure: bidders will submit their final tenders, using a template supplied, which are then evaluated. The only dialogue is to clarify tenders. The evaluation will determine the successful bidder and which options are to be chosen (or determine no contract is to be awarded).

## **6.0 Implications**

- 6.1 **Environmental** : The new waste contract will be setting higher recycling rates and seeking to minimise waste so will have a positive impact on the environment, inline with the Council's Environment Strategy.
- 6.2 **Other** : there are no detrimental implications as a direct result of this report.
- 6.3 **Strategic Risk** : This report does not increase the identified risks in the corporate strategic risk register and does not create any new strategic risks. On the contrary, there is a vital requirement to progress this project as quickly as possible to minimise the risks of not having a waste contract in place by April 2013.

## **7.0 Financial**

- 7.1 During the 2010/11 a budget of £50k was allocated by the partnership for facilitating the work up to the current financial year. During the last Service and Financial Planning process it was predicted that a budget would be needed during 2011/12 for procurement of the waste contract. Cabinet endorsed the sum of £60k to progress the project during the current year. Each of the other three waste collection partners has allocated the same amount during 2011/12 totalling a sum of £240k and with the £50k from last year makes a total operating budget for the partnership of £290k.

## **8.0 Conclusion**

8.1 The preparation of the documentation for the procurement of the joint waste contract is now at a critical stage. Drafts of the following documents have been prepared :-

- Specification;
- Cost Sharing Agreement, and;
- Inter-Authority Agreement;

Scrutiny Members are asked to consider the documents and make comments. These comments will be considered and the next draft of the documents will be presented to the Joint Waste Committee on 21 October for further consideration.

**Jefferson Collard**  
**Senior Head of Development & Environment**

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### **Background Papers:**

The Background Papers used in compiling this report were as follows:

Cabinet minute of the meeting on 20 October 2010 agreeing to a Memorandum of Understanding to develop a joint procurement contract.

Cabinet minute of the meeting on 15 December 2010 agreeing to the principle of setting up a Joint Waste Committee.

Cabinet minute of the meeting on 8 June 2011 agreeing to the constitution of the Joint Waste Committee and the Administering Authority.

Joint Waste Committee minutes of the meeting on 17 August 2011 discussing the drafts of the specification, cost sharing agreement and inter-authority agreement.

To inspect or obtain copies of background papers please refer to the contact officer listed above.

Appendices:-

1. Draft Specification
2. Summary of Cost Allocation for the Cost Sharing Agreement
3. Draft Cost Sharing Agreement
4. Draft Inter-Authority Agreement



**Appendix 1**

Draft

**East Sussex  
Waste and Street and Beach  
Cleansing  
Joint Procurement Contract**

**Section 3 - Specification**  
(Draft - version 1.1)

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**1.2 1.0 CONTRACTUAL TERMS** (note – these will need to be expanded and correlated with the Contract Conditions)

**1.3 Administering Authority**

The Authority with which the contractor will enter into a contract for the performances of the Services. The Administering Authority will act on behalf of all the Partner authority through an Inter Authority agreement. It has been determined that Rother DC will perform as the Administering Authority.

**1.4 Contractor**

The Contractor means the person, persons, company or other organisation / legal entity whose Form of Tender is accepted by the Council and who accordingly enters into the Contract with the Council to supply the services.

**1.5 Contract Manager**

Contract Manager means the person appointed from time to time by the Contractor and notified in writing to the Council.

**1.6 Council(s)**

The Council(s) means the Councils of Eastbourne Borough, Hastings Borough, Rother District and Wealden District plus any successor authorities and any body to which all or part of the functions of these Councils may lawfully be transferred.

**1.7 Supervising Officer**

Supervising Officer means any person designated by the Council as responsible for supervising the contract.

**SPECIFICATION DEFINITIONS** (note – these are also likely to be expanded in the final document; some cross-referencing and/or final decisions are also still required)

**"Alternate Weekly Collection"** shall mean a collection service carried out at a frequency of once every other week so that e.g. Household Residual Waste and Household Recyclable Waste are collected on alternate weeks.

**"Assisted Collections"** shall mean those collections where the Contractor is required to collect the waste container from the Stance instead of from the Collection Point and, in the case of Wheeled Bins, return these to the Stance.

**"Collection Point"** shall mean the point from which the Contractor shall collect all Household Waste, contained in a Refuse Receptacle and the point to which the Contractor shall return an emptied Wheeled Bin. The Collection Point shall be determined by the Supervising Officer and shall be one of the following:

- a) A point at which the boundary of the Domestic Property abuts the nearest Public Highway. This shall include for any Refuse Receptacles located within reasonable distance to the boundary of the Domestic Property, not usually exceeding three paces.
- b) A point at which the boundary of the Domestic Property abuts a public or private Footpath which links the Domestic Property to the nearest Public Highway leading to the refuse collection vehicle route (unless the Footpath is obstructed or impassable).
- c) A point at which the boundary of the Domestic Property abuts the refuse collection vehicle access to that Domestic Property.
- d) In respect of Domestic Properties sharing a common passage (e.g. terraced, detached or semi-detached), a point immediately at the boundary of the common passage nearest to the refuse vehicle collection route (without causing an obstruction).
- e) Any other point within or adjacent to the Domestic Property which shall be determined by the Supervising Officer.

**"Communal Wheeled Bins"** shall mean Wheeled Bin(s) used for the storage of household waste from more than one Domestic Property. Wherever possible the Supervising Officer would seek to agree bulk container arrangements, however, it is recognised that local agreements may need to be made based with respect to individual developments.

- 1.8 **"Container" or "Refuse Receptacle"** shall mean any Wheeled Bin or Household Refuse Sack or other type of container approved by the Council for holding Household Waste.

**"Damaged Wheeled Bin"** shall mean a Wheeled Bin damaged to such an extent, or for reasons of health and safety, that it is no longer considered by the Supervising Officer to be suitable for the purpose for which it was supplied.

**"Highway or Public Highway"** shall mean any carriageway, lane, bridle path, footway, footpath, cycle track, walkway, bridge, square, court, alley, passage subway or other area which is a 'highway maintainable at public expense' in accordance with the Highways Act 1980 (or any subsequent enactment) and includes the whole extent of the Public Highway and the carriageways.

**"Household Garden Waste"** shall mean biodegradable waste arising from within the garden or grounds of a Domestic Property but also including cardboard. The Council reserves the right to change this list on giving notice to the Contractor.

**"Household Recyclable Waste"** shall include paper, card, cardboard, glass, textiles, plastic, aluminium and steel cans. The Council reserves the right to change this list on giving notice to the Contractor.

**"Household Residual Waste"** shall mean Household Waste excluding Household Garden Waste and Household Recyclable Waste.

**"Household food waste"** shall mean Biodegradable food waste excluding Household Garden Waste, Household Recyclable Waste and Household Residual Waste.

**"Household Refuse Sack"** shall mean a plastic sack used or provided to contain household waste.

**"Informed in Writing"** shall mean a notification slip, approved by the Supervising Officer, provided to all relevant householders by the Contractor.

**"Missed Collection"** shall mean any report by a resident where a collection has not taken place or where the resident was not informed in writing of a change in the arrangements or any collection which is known by the Council not to have taken place on the prescribed day.

**"Prescribed Day"** shall mean the day of the week on which collections would normally take place.

**"Recycling"** shall mean the collection, storage and/or sorting and/or processing or reprocessing of waste with a view to its re-use.

**"Refuse Collection"** shall mean the collection, transportation and delivery to the Waste Management Site of Household or any similar Waste.

**"Side Waste"** shall mean all or any Waste which is placed for collection at the side of or on top of, but outside, the normal Container. In the case of plastic sack collections the determination of side waste will be identified in the specification separately.

**"Spilled Waste or Spillage"** shall mean any Waste placed for collection which has been displaced from its original Refuse Receptacle other than into a refuse collection vehicle howsoever the spillage is caused.

**"Stance"** shall mean the location at which waste is normally stored by the occupier of the Domestic Property prior to collection.

**"Weekly Collection"** shall mean a Refuse Collection Service carried out at a frequency of once every week with no more than 7 days between each occurrence.

**"Wheeled Bin(s)"** as more particularly described in paragraph 4.1.45 of the Specification.

## **2.1 General Description of Services and Statement of Partnership Policy and Objectives**

2.1 The Contractor is required to provide the following services in the Eastbourne Borough, Hastings Borough, Rother District and Wealden District Areas:

- Domestic Waste Collection and Recycling, including bring site, Services;
- Street and Beach Cleansing Services;
- Commercial waste and recycling services; and
- Cesspool emptying services.

2.2 The Contractor may be required to provide the following services in the Eastbourne Borough, Hastings Borough, Rother District and Wealden District Areas (and is therefore invited to submit costed options):

- The provision of processing capacity/end markets for dry recyclables including any associated haulage from transfer facilities provided;
- Treatment facilities for Garden Waste; and
- Transfer facilities for dry recyclable materials, Food Waste and Garden Waste collected.

2.3 This Contract will provide for Waste and Street and Beach Cleansing services in the Partnership area. This Contract will require certain services to be provided 7 days a week, 365 days of the year.

2.4 The services contained within the Contract will be fundamental to meeting the Partnerships Vision which reflects the needs of each authority within the partnership. The vision seeks to create a prosperous, fair and socially inclusive community which protects people and values and enhances its environment by making the partnership area:

- A healthy place - by protecting health through intervention, education and responsible action; and keeping the areas clean and clear of litter and waste
- A place to enjoy - by maintaining quality spaces for relaxation and play; and developing a wide range of events for residents and in support of the tourism industry
- A place for the future - by promoting and implementing the principles of sustainability; reducing waste and developing and promoting recycling and energy conservation; protecting and enhancing the natural

environment; and promoting the use of environmentally friendly forms of transport

2.5 The Partnership is seeking bids based upon the services as they are currently provided and for certain stated options; together with alternative proposals based upon output specifications offered by the bidders.

2.6 Bidders are required to submit quotations for the current services, the stated compulsory options, any of the stated other options and also any alternative service option which meets the output requirements. Alternative service options must be compliant with the overall objectives of the partnership and the general provisions of the specification and will be subject to detailed discussions during the Competitive Dialogue stages of the procurement process.

2.7 The specific options that the Partnership wishes to explore are:

- For Household Residual Waste: the introduction of Alternate Weekly Collections across the Partnership Area, as described at 5.2. It is **compulsory** for this option to be priced.
- For Household Recyclable Waste: either the introduction of co-mingled, two-stream or source separated collections across the Partnership Area, as described at 5.4. It is **compulsory** for at least one of these options to be priced by each bidder; and all may be priced.
- For Household Recyclable Waste: any other options that meet the overall output requirements of the Partnership as described at 5.5.
- For Household Garden Waste: the introduction of a charged service as described at 5.7 across the Partnership area. It is **compulsory** for this option to be priced.
- For Household Garden Waste: other options as described in 5.8.
- For Food Waste: the introduction of a weekly Food Waste collection service across the Partnership area as described in 5.9. It is **compulsory** for this option to be priced.
- For Commercial Waste: options as described in 5.12.

### **3.0 Legal and Statutory Requirements**

3.1 It is important that bidders fully understand the statutory duties of each Partner Authority because it will be incumbent upon the Contractor to carry out

the services in accordance with those statutory requirements on behalf of the Partner Authorities. Any penalties prescribed by law and any consequential costs resulting from the Contractor failing to carry out those statutory duties must be paid by the Contractor. Payments may be deducted from any monies due to the Contractor.

3.2 The Contractor will be expected to comply with all relevant legislation, guidance and good industry practice. The Contractor's attention is drawn to the provisions of the Environmental Protection Act 1990; The Controlled Waste Regulations 1992; Public Health Act, The Clean Neighbourhood and Environment Act 2005, The Control of Pollution Act, 1974; and the Health and Safety at Work Act, 1974 and all other acts and regulations that have relevance to this Contract.

3.3 The Contractor shall comply with all relevant statutory requirements in respect of waste facilities and ensure the well being and welfare of their employees on the Contract. The Contractor is to provide facilities which comply with necessary consents and do not give rise to any statutory nuisance. The facilities must, in the opinion of the Supervising Officer or his representatives as appropriate, be adequate for complying with this and relevant legislation particularly the Health and Safety at Work Act 1974. This shall include adequate first aid, cleaning, washing and messing facilities.

3.4 The Contractor is required to:

a) Complete an Annual Review of the Contractor's Health and Safety policies and plans in respect of the Contract Services and submit a report to the Supervising Officer. The report is to be submitted by 31st October in respect of the preceding Contract year's performance.

b) Complete a record of all Health and Safety training provided to employees and a record of which employees have completed the training.

c) Comply with all statutory requirements in the recording of accidents, near misses and dangerous occurrences.

d) Comply with all statutory requirements in the recording and reporting of RIDDOR accidents.

#### **4.0 Common and Generic Clauses**

##### **4.1 Quality of service - Waste and recycling services**

###### Hours of Operation and collection times

4.1.1 The Contractor shall provide operational Services between Monday to Friday inclusive each week; but Saturday and Sunday working will occasionally

be required as specified by the Supervising Officer; and Bring Sites will need to be regularly serviced on Saturdays and Sundays.

- 4.1.2 The Contractor shall not be permitted to commence the Waste Collection Services before 0700 without the prior written consent of the Supervising Officer. The Contractor shall observe other restrictions on the Hours of Operation as required by this Specification, for example, the Bring Sites service. The Contractor shall time collections so as to not unnecessarily inconvenience traffic movements (including pedestrian traffic) as well as ensuring safety in particular at sensitive locations such as schools. A precise plan for collections shall be submitted for approval by the Supervising Officer two months before the Commencement Date. (Q -JC ref2 harmonisation of working times)
- 4.1.3 The Contractor must collect Residual Waste, Dry Recyclables, and where required Garden Waste and Food Waste, from domestic and non-domestic properties at regular times and on regular days. Any proposal to change collection days (including at the commencement of the contract) shall be made to the Supervising Officer in writing (who shall approve at his own discretion) not less than two Months in advance of the proposed change. The Contractor shall avoid where possible splitting any road or street into more than one area with different collection days. Where roads are split the Supervising Officer must be informed with full details of the collection arrangements for each property.
- 4.1.4 The Contractor may vary or alter the times, days or frequencies of any collection services only with the prior written approval of the Supervising Officer, and with the Contractor giving not less than two Months notice, as above. Where such Variation or alteration is approved, the Contractor must, at the Contractor's own expense, notify all households and non-domestic premises affected by the Variation or change, not less than one Month before the Variation or change is brought into effect, or such other period of notice as may be reasonably required by the Supervising Officer. In addition the Contractor will include in the notification a dedicated phone line for queries/complaints to be operational between the hours of 08.00 to 17.30 and for a period of 4 weeks from household notification, at the discretion of the Supervising Officer.
- 4.1.5 The Supervising Officer reserves the right to vary the time for Residual Waste, Dry Recyclables, Garden Waste and Food Waste collections should this be deemed beneficial for environmental, safety or other operational reasons and the Contractor will adhere to such restrictions.
- 4.1.6 In any other circumstance, if the Contractor wishes to operate outside the opening hours of the various disposal sites operated by the Waste Disposal Authority they must comply with the conditions of contract (eg waste is not to be left on vehicles overnight other than where an emergency dictates such a course of action) and make arrangements with the Waste Disposal Authority for sites to be available. Any costs associated with such arrangements will be the

responsibility of the Contractor. The Contractor shall seek prior written approval where access is required outside normal working hours.

#### Bank Holiday Working

- 4.1.7 The Contractor shall, within the submitted Tender Price, allow for providing the Waste Collection Services on all Bank and Public Holidays with the exception of Christmas Day, Boxing Day and New Year's Day. Revised collection arrangements for the Christmas and New Year Holiday period will be provided to a schedule approved by the Supervising Officer in writing and with a minimum of 4 months notice to enable the Contractor to prepare appropriately. (Q - JC ref 3 consider the harmonisation of Bank holiday working)

#### Emptying of Wheeled Bins

- 4.1.8 The Contractor will be required to empty fully, the contents of Wheeled Bins. This means that there will be no Waste, Dry Recyclables, or Garden Waste remaining in the Wheeled Bin following the emptying process. The Wheeled Bins are to be collected from the Collection Point or other location as directed by the Supervising Officer and wheeled to the collection vehicle which shall be equipped with mechanical lifting apparatus suitable for the purpose of emptying Wheeled Bins of the sizes described.

#### Collection Points

- 4.1.9 Predominantly the collection point will be within the curtilage of the property. The curtilage of a property is to be taken as just inside its boundary with adjacent land.

- 4.1.10 An occupier shall, by 07.00 on the day appointed for the collection of Waste, Dry Recyclables and Garden Waste from the premises, place such Waste intended for collection at the designated collection point, which has been determined by the Supervising Officer as:

- (a) a point at which the boundary of the premises abuts the nearest public highway;
- (b) a point at which the boundary abuts a public or private driveway or footpath which links the premise to the nearest public highway. (In the case of shared communal driveways the Contractor is not to take vehicles onto private land without the written consent of the landlord or owners, if he does so, it is at his own risk);
- (c) in respect of terraced/town centre premises sharing a common passage, a point immediately at the boundary of the passage nearest to the vehicle collection route (without causing an obstruction);

(d) any other reasonable point within or adjacent to the premise which shall be determined by the Supervising Officer as the collection point.

- 4.1.11 For collections of Bulk Containers of Residual Waste, Recyclables, Garden Waste and Food Waste located at communal properties the Contractor shall collect from a range of locations as specified by the Supervising Officer including, but not limited to, bin storage areas (which may be at the side or rear of premises), or on the boundary of the public highway.
- 4.1.12 The Contractor shall collect and return empty Containers to the inside edge of the appropriate property without hindrance of traffic (including pedestrian) flow. Every effort shall be made to ensure the correct return of the individual resident's Container to the correct location. Complaints of non-return reported to the contractor by 1700 hours shall be rectified by the Contractor within the following working day. (Q - JC ref4 confirm harmonisation of this requirement.)
- 4.1.13 Wheeled Bins shall be left with lids closed and where wheel-locking mechanisms are fitted the wheel locks shall be set in the on position. The Contractor will not place any Container in any position which is likely to cause damage, danger or obstruction to users of the property, public highway or footway. In addition, the Contractor will ensure that no Container is placed in a position which will obstruct any access to a private premise or the public highway. The Contractor shall only use recognised access routes to properties and shall not drive, or walk, on lawns or flowerbeds or other parts of gardens.
- 4.1.14 The Contractor may be required to open and or unlock any gate or door necessary to gain access. Where appropriate such access shall be along paths provided and shortcuts shall not be taken across gardens, hedges or walls. The Contractor will be provided with code numbers and a set of access keys and will be liable for all cost associated with the Contractor's loss of the keys. The Contractor will comply with any local circumstances relating to access or security.
- 4.1.15 The Contractor shall ensure that all gates, doors, locks and latches are properly closed on leaving any site or premises.
- 4.1.16 A list of known properties with restricted access is included in the schedules.
- 4.1.17 For the avoidance of doubt, it is the Contractor's responsibility to gain access to ensure that all collections take place. No additional payments will be made in respect of any additional expenses incurred in complying with access requirements.
- 4.1.18 It is the Contractor's responsibility to ensure that, where vehicular access is difficult or impossible, temporarily or permanently, suitable arrangements are put in place to carry out the Specification in full.

- 4.1.19 It is the Contractor's responsibility to ensure that where pedestrian access is difficult, temporarily or permanently, suitable arrangements are put in place to carry out the Specification in full.

#### Assisted Collections

- 4.1.20 The Council provides an assisted collection Service for elderly, infirm or disabled persons who are physically unable to present their Household Waste, Mixed Dry Recyclables and Garden Waste at the standard Collection Point specified in clause 17.
- 4.1.21 It is estimated that approximately 8% of properties will require an Assisted Collection and it is deemed that the Contractor has allowed for this requirement in his Contract Sum (see schedule of assisted collections). The Supervising Officer will notify the Contractor of actual properties at Commencement Date and on a regular basis thereafter.
- 4.1.22 The Contractor shall continue to operate the Assisted Collection Service and shall collect Household Waste, Dry Recyclables, Food Waste and Garden Waste from the place on the property where the householder normally keeps their Household Waste, Dry Recyclables, Food Waste and Garden Waste Container(s) and return Container(s) to the same location.
- 4.1.23 This Service shall at all times be performed with the utmost care and consideration for those residents who receive it.

#### Missed Collections

- 4.1.24 Occasionally a collection will be missed for a number of reasons, such as access difficulties or where Waste has not been presented for collection by the householder.
- 4.1.25 The Contractor shall record all those missed collections or partial collections and the reasons therefore and shall notify the Supervising Officer using the communication method specified. The Contractor should report these incidences to the Supervising Officer as soon as possible and always by 1700 on the same collection day. (Q JC ref5 harmonisation of response times.)
- 4.1.26 In the case of properties where access cannot be obtained because of locked gates where the Contractor does not have the key to unlock them, unfriendly animals or for other similar reasons, the Contractor must arrange for an advisory note, supplied by the Contractor and approved by the Supervising Officer, to be left at, or delivered to, the property to advise the occupant of the reason for the non-collection of Residual Waste and Mixed Dry Recyclables. The Contractor must notify the Supervising Officer immediately of the action taken using the communication method specified in clause xxx and make arrangements to return and collect the Waste within the next working day.

4.1.27 If the occupier contacts the Supervising Officer regarding a Missed Collection and where the Supervising Officer is satisfied that the occupier has presented Residual Waste, Dry Recyclables, Food Waste and Garden Waste for collection in a timely manner and at the correct location the Contractor shall return to the property from where the collection was missed at no additional charge. If the collection is reported as being missed by 1700 hours on the scheduled day of collection to the Contractor, the Contractor shall return to collect the Missed Collection by the end of the next working day, at no additional charge.

4.1.28 The Contractor will be expected to make collections, in accordance with the missed collection clauses, for Residual Waste, Dry Recyclables, Food Waste and Garden Waste from properties where the waste has not been presented on time and clear evidence has been presented by the contractor to support this, unless directed to do so by the Supervising Officer.

Disposal / Processing Locations

4.1.29 The Contractor shall, unless otherwise directed by the Supervising Officer, deliver waste to the following:

a) **Note - To Insert details for each type of Waste**

4.1.30 The Contractor is deemed to have included within the Contract Sum adequate allowance for these locations. Other locations may be introduced during the Contract Period.

4.1.31 Where, during the course of the Contract the Contractor is obliged to use a different disposal / processing location as directed by the Waste Disposal Authority and which incurs additional cost, the Council, on application by the Contractor, will decide what it considers is a reasonable sum to represent any increase in haulage costs. It should be noted that the reasonableness of the sum payable will be based only upon costs incurred by the Contractor in transferring the Waste and/or Recyclables an increased distance beyond where it is currently being discharged to a place of delivery unreasonably far from the Contract Area. No additional payment is payable for any of the locations currently used.

4.1.32 The Contractor shall maintain fully detailed records of all Waste collected and taken to the relevant Delivery Points. Such information is to be supplied in a form prescribed by the Supervising Officer and sent to the Supervising Officer by 1700 each Monday following each completed weekly collection cycle. The Contractor will be expected to demonstrate that all Waste delivered to each of the Delivery Points as part of this Contract resulted solely from this Contract.

4.1.33 Waste removed from properties will be delivered directly to the relevant Delivery Point and deposited there. The Contractor shall not store any Residual

Waste, Dry Recyclables, Food Waste or Garden Waste in any of the Contractor's vehicles overnight unless at premises licensed for such storage.

#### Spillages

- 4.1.34 In respect of Recycling and Waste Collection Services the Contractor shall clean up and remove any spillage of Waste and or Recyclables that arises from the operation occurring at any location, including the public highway, in and around bin storage areas, between the point of collection and the collection vehicle or from a collection vehicle whether or not the spillage was the fault of the Contractor's staff. The site must be left clean and where necessary thoroughly swept.
- 4.1.35 Where any spillages are likely to cause staining of the highway or adjacent area this should be reported to the Supervising Officer immediately using the communication method and remedial action shall be taken by the Contractor.
- 4.1.36 Upon receipt of an instruction (written or verbal) from the Supervising Officer, the Contractor shall be required to return to any location to sweep up, remove and dispose of any spillage as soon as reasonably possible and no later than 24 hours after notification to the Contractor.
- 4.1.37 In order to enable this requirement to be fulfilled, each vehicle used by the Contractor for Recycling and Waste Services collection shall be equipped with a suitable broom and shovel and any other equipment necessary to deal with spillages. In addition the Contractor shall ensure that all Staff are fully instructed and supervised to ensure compliance with this requirement.

#### Overweight Containers or Vehicles

- 4.1.38 Where a Container has been loaded so that the weight creates a risk to Staff or the vehicles lifting mechanism then the Contractor shall leave the Container at the Collection Point. In these circumstances, the Contractor shall affix an advisory tag, supplied by Contractor and authorised by the Supervising Officer, to the Container advising the resident of the reason for non-collection. In the case of properties on sack collection the Contractor will be required to post an advisory leaflet, supplied by the Contractor and authorised by the Supervising Officer through the letter box of the household concerned. The Contractor shall use all reasonable endeavours to record the property location/address where overweight Containers have been presented and, using the communication method specified in 24.1 notify the Supervising Officer of the incident.
- 4.1.39 The following weights are guideline limits for which Wheeled Bins may be regarded as excessively heavy:

Capacity of Wheeled Bin	Maximum Weight Limit
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140 litre	56 kgs
240 litre	96kgs
660 litre	310 kgs
1100 litre	440 kgs

4.1.40 If, after inspection by, and in the opinion of the Supervising Officer, Wheeled Bins notified as not emptied for reasons of excessive weight could have been reasonably expected to be emptied due to being less than the maximum weight limit, the Contractor will be required to empty the Wheeled Bin at that particular Property within 24 hours of being so directed by the Supervising Officer, for which no additional payment shall be made to the Contractor.

4.1.41 The Contractor shall not permit any vehicle to carry a weight above that prescribed for that vehicle and the Contractor shall be responsible for any resulting fines or prosecutions.

#### Inclement Weather

4.1.42 If, in the opinion of the Supervising Officer, the weather on any particular day or part of a day is so inclement as to make work impractical, or if requested by the Contractor, the Supervising Officer may agree to suspend all or part of the normal Recycling and Waste Collection Services for that day or part of a day.

4.1.43 Similarly if the Waste Disposal Authority or Delivery Point operator determines that any Delivery Points have to be temporarily closed on grounds of safety or other reason, the disposal of Waste may be transferred to a different location at very short notice. Notice of the impending closure of Delivery Points is normally given by the Waste Disposal Authority. Services may be suspended and if Waste is redirected this shall be at no cost to the Council.

4.1.44 Following suspended operations due to inclement weather the Contractor shall make collections as soon as possible and within the same working week where practicable or as agreed with the Supervising Officer to all properties omitted from the collection rounds as a result of the suspended services. No additional payment will be made to the Contractor in respect of any additional expenses the Contractor may incur in complying with this requirement.

4.1.45 The Supervising Officer may also direct staff to be redeployed to other duties (e.g. gritting, snow clearing).

#### Collection frequencies

4.1.46 Some streets and multiple occupancy premises will be provided with more frequent collections from those stated, primarily to overcome storage problems, which have resulted in waste being left on the streets.

4.1.47 Schedule xx provides details of those premises that currently receive a twice-weekly collection service because of restricted communal storage facilities. This second collection is not included within the total number of premises listed in the schedules.

Wheeled Bins

4.1.48 The use of Wheeled Bin Containers is not comprehensive in all areas and the partners have invested in different sizes of container to meet their individual scheme requirements. The contractor is required to submit bids against the current container arrangements and may include in any alternative bid submission arrangement for the harmonisation of container type and size.

4.1.49 The current types of Wheeled Bin Container used are set out in the table below:

Size of Container	Partners	Application
120 litre	Eastbourne Hastings Rother Wealden	Restricted number used for single occupancy on request Not used Approx 5,000 on request in preference to standard size
140 litre	Eastbourne Hastings Rother Wealden	Not used Restricted number used for single occupancy on request Not used
180 litre	Eastbourne Hastings Rother Wealden	Standard size for both residual and Garden waste Standard size for residual Not used
240 litre	Eastbourne Hastings Rother Wealden	Only offered to larger families subject to conditions and communal properties Only offered to larger families subject to conditions and communal properties Standard size for both residual and Garden waste
360 litre	Eastbourne Hastings Rother Wealden	Not used Not used Only offered to larger families subject to conditions and communal properties - see schedule
660 litre	Eastbourne Hastings Rother	Provided at some communal premises - see schedules Provided at some communal premises - see schedules Provided at some communal premises - see schedules Provided at some communal premises - see schedules

	Wealden	
1100 litre	Eastbourne Hastings Rother Wealden	Provided at some communal premises - see schedules Provided at some communal premises - see schedules Provided at some communal premises - see schedules Provided at some communal premises - see schedules
1250 litre	Eastbourne Hastings Rother Wealden	Provided at some communal premises - see schedules  Not used Not used

*NB Communal residual waste bins in Eastbourne and Rother (Hasting to confirm) are not provided by the Authority - these containers are the responsibility of the occupier/managing agents (Q - JC ref6 harmonisation)*

#### Container storage, repair and replacement

- 4.1.50 The Contractor will make arrangements for the safe and secure storage of new and used Containers as required to provide the services. Details of the Contractor's proposals in this regard are to be submitted with the method statement.
- 4.1.51 The Contractor is to confirm arrangements for the disposal of containers that are no longer able to be recycled back into use as a waste receptacle for this contract. All costs of disposal are to be included within the contract rates for the disposal of containers.
- 4.1.52 All wheeled bins and recycling boxes supplied by the Contractor through this Contract will be owned by the Council for the collection area in which it is located.
- 4.1.53 The Contractor is required to provide wheeled bins and recycling boxes to additional domestic properties located within the collection areas, on written instructions of the Supervising Officer, and make delivery within 48 hours of receipt of the instruction see clauses **xx** for further information relating to containers.
- 4.1.54 All wheeled containers will be supplied by the Contractor and at the Contractors expense delivered to premises in a manner to be agreed with the Supervising Officer and are to be included within the tender rate of the scheme in the Bill of Quantities.
- 4.1.55 All recycling boxes required for the collection of recyclables will be supplied by the Contractor and delivered to premises in a manner to be agreed

with the Supervising Officer and are to be included within the tender rate of the scheme in the Bill of Quantities.

4.1.56 All new wheeled containers provided shall be clearly and permanently marked with the name of the partnership and shall only be branded with other information as may be agreed by the Supervising Officer.

4.1.57 All new recycling boxes provided shall be clearly and permanently marked with the name of the Partnership and shall only be branded with other information as may be agreed by the Supervising Officer.

Growth in number of properties

4.1.58 The rates tendered by the Contractor shall be deemed to be sufficient for the Contractor to collect and dispose of all household waste and recyclables from all domestic properties for the contract period subject to any adjustment under these paragraphs.

4.1.59 The Schedules in **xxxx** provide information relating to the roads and number of properties for the general guidance only of the Contractor in producing its tender. The Council does not guarantee that the information is accurate. The Contractor must make its own enquiries and inspections in order to determine basic data for its tender.

4.1.60 The Contractor must include for any variation in his operating costs resulting from an increase in the number of domestic premises during the first 12 months of the Contract. Thereafter the Contract price may be increased or decreased on an annual basis for the coming year by the number of new properties recorded in the Council's records on the review dates. The Contractor is required to state in the tender his additional annual costs for the collection of each increment of 100 domestic premises, which will be the basis of the calculation. For the purpose of this Contract, and any additions to this Contract, Registered Houses in Multiple Occupation will be classified according to the number of hereditaments.

4.1.61 The Contractor will be required to provide to the Council at his own expense, agreed leaflets which enable occupiers to request collection from new properties. The Contractor will be responsible for ensuring that such leaflets are distributed as necessary to newly built properties, newly occupied properties or to site offices where large scale development is taking place.

4.1.62 The Contractor will be responsible for any alterations to his operations made necessary by increases or changes in the number of properties to be serviced. Any changes to collection days will be subject to the relevant clauses within this specification.

- 4.1.63 The Contractor will be responsible for collections of household waste and recyclables from all new domestic premises as soon as they are occupied and a request for collection has been received.

#### Reports

- 4.1.64 The Contractor is required to provide weekly and calendar monthly records of the amount of household waste collected and hauled by each round, the amounts of material disposed of for recycling and composting (broken down by type) and Bulky Waste sent for disposal and any other information which may reasonably be required by the Supervising Officer for the purposes of demonstrating performance against local or national performance indicators, see clause 3.32.

- 4.1.65 For all the Contractor's loads, unless agreed otherwise with the Supervising Officer in writing, the Contractor shall 'weigh in' and 'weigh out' at the disposal or processing point, individual loads of these wastes to obtain a net weight of waste disposed of.

- 4.1.66 The gross and tare weights shall be printed onto tickets using an electronic printer. A triplicate ticket system shall be operated with each ticket uniquely numbered and copies of each completed ticket shall be sent to the Supervising Officer on a weekly basis. Signed tickets must be presented to the Supervising Officer from the receiving disposal point operator/recycler detailing the material description, weight/volume, time of delivery, vehicle registration, round number and clearly identifying the origin of the waste as being waste from within one of the collection authority areas (the Collection Authority area must be stated). By agreement with the Supervising Officer, data in respect of this clause may be submitted direct to the Supervising Officer in electronic format from the originators database. Electronic data forwarded from the Contractor's database will not satisfy the requirements of this clause under any circumstance.

- 4.1.67 The Contractor shall provide the Council with access to any records kept in relation to the operation of the Service as may be reasonably required.

#### Unacceptable practices

- 4.1.68 The Contractor shall at the direction of the Supervising Officer investigate unacceptable methods or practices reported to him by the Partner Authorities and take appropriate action to ensure the immediate cessation of such practices and to prevent any recurrence

- 4.1.69 The adoption of unacceptable practices or methods may result in a default being invoked by the Supervising Officer.

- 4.1.70 The following are examples of Methods or Practices considered to be unacceptable in the performance of this Contract:

- (a) Methods of collection which would impair safe working arrangements or give rise to nuisance, littering, loss of amenity or damage to property or inconvenience to residents.
- (b) The "pulling out" of refuse ahead of the arrival of the collection vehicle in the same road, other than as allowed for in the Specification or as may be agreed to in writing by the Supervising Officer.
- (c) Failure to leave unlocked any defined storage area or container for waste or recyclables that is required to be locked. Such facilities will be identified by the Supervising Officer or as may be found by the Contractor.
- (d) Soliciting and acceptance of gratuities.
- (e) Unauthorised collection of Commercial Waste.
- (f) Totting.
- (g) The collection, transportation and disposal of mixed loads of Household and Non-Household waste including Commercial Waste other than as allowed for in the Specification or as may be agreed to in writing by the Supervising Officer.
- (h) The riding on or conveyance of any unauthorised person in or on any vehicle used in pursuance of this Contract.
- (i) The re-depositing of waste and litter back onto the street, whether loose or bagged prior to its removal. (Accepting that street arisings which must be removed by the Contractor within 3 hours of their deposit on the street may be so deposited in a bag which is fit for purpose being sealed and being resistant to attack by birds, vermin and animals.
- (j) Leaving any vehicle unattended with its engine running or operable.

#### Conduct

- 4.1.71 The Contractor will ensure that any person employed in the performance of the Contract will behave in an orderly and polite manner at all times and particularly whilst visiting each property and will comply with the particular wishes of the occupants of all property in order to keep disturbance to a minimum. Should the Contractor consider a request by an occupier to be unreasonable it shall be referred to the Supervising Officer for investigation.
- 4.1.72 The Contractor shall confine his operations to public highways, private roads, paths and driveways, relevant land or areas incorporated within this Service or other designated accesses and shall ensure that his employees do not trespass elsewhere on private property.

- 4.1.73 The Contractor shall not place any receptacle on a public footpath, private footpath, public or private highway or in a position which is likely to cause damage, danger or obstruction to users of public footpaths or highways. The Contractor shall ensure that no container is placed in a position which will obstruct any access to private premises.

Method statement

- 4.1.74 The Contractor shall submit with their Final Tender for this service a separate method statement for each part of the service setting out information on the method of working for the collection of household waste and collection of recyclables including round schedules, street cleansing routes and beach cleaning arrangements, to include staffing, vehicles, and any other equipment and resources required to provide the services. This information is required to be provided by the Contractor at least eight weeks prior to the start of the service unless an earlier submission is required to fulfil the tender submission requirements.

Miscellaneous

- 4.1.75 The Contractor shall supply weekly or as otherwise directed, to the properties listed in schedule **xx** and the Bill of quantities Bill Number **xxx**, plastic sacks to the appropriate British Standard specification at no cost to the occupier.
- 4.1.76 The Contractor shall collect dead domestic pets on request at no cost to the person making the request. Dead domestic pets will be delivered to the designated disposal facility. (Q - JC ref7 harmonisation of whether this should be chargeable.)
- 4.1.77 The collection of recyclables including garden waste and food waste if collected are to be carried out on the same day as the Refuse Collection Service wherever possible or in the case of alternate weeks the same weekday.

Vehicle safety

- 4.1.78 The Contractor shall take all reasonable steps to avoid inconvenience or obstruction to traffic including pedestrians.
- 4.1.79 Vehicles are to be fitted with audible reversing warning devices and whilst reversing on the public highway should meet all legal requirements. Where reversing is required the contractor shall ensure risk assessments have been undertaken.

**4.2 Joint Municipal Waste Management Strategy**

- 4.2.1 The Contractor's attention is drawn to the Joint Municipal Waste Management Strategy that has been agreed by all the Waste Collection Authorities and East Sussex County Council for the future of waste management

in the County. Specifically, Contractors must note the targets on waste minimisation, recycling rates and carbon footprint reductions set out in the strategy document.

- 4.2.2 This is an evolving strategy that will be reviewed during the life of this contract. Contractors should include within their bid submissions any proposed service solutions that will enhance this strategy and/or bring forward the delivery of any targets set.

### **4.3 Communications and Customer Service**

Communications and Information Technology (Q - JC ref8 Consider implications for multiple as opposed to single IT systems re following clauses - Contact centre approach)

- 4.3.1 All Customer Contacts must be recorded in each of the Council's Systems. These contacts will start processes as appropriate in order to deliver requested services or to fix problems with existing services. The successful Contractor will be required to collect instructions and provide feedback utilising this application. Proposals for integration with any other system will be considered but it is the preferred opinion of the Council that the Contractor updates the application directly. It will be the Contractor's responsibility to develop any such integration, which must comply with the requirements for integration to the Contact management system, as defined by the system. Personal customer data must not be recorded on any other system without the approval of the Supervising Officer. It will be the Contractor's liability to ensure any such integration.
- 4.3.2 The successful Contractor will be required to comply with and sign up to the Council's security policy. Any staff that will have access to the Council's network either directly or remotely will be required individually to sign to confirm that they understand the security policies of the Council and may be liable for a baseline security check. Individual user logins will be provided for each member of the Contractor's staff that need access to the Council's network. No generic logins will be allowed. The Contractor is responsible for ensuring that the Supervising Officer is notified of all relevant staff changes within timescales specified in the Council's security policy.
- 4.3.3 The Council will provide the Contractor with a remote access connection to the Contact Management system that will be provided via a secure VPN connection. The connection will only be for access to the Contact Management system and will not be for the provision of any other software for example, Microsoft Word or Microsoft Excel. Hardware will be provided by the Council if necessary, for this dedicated task. The Council will provide some basic training, in advance of the Commencement Date, on the use of the system.
- 4.3.4 The Council requires the Contractor to update the system with information from each working day not later than 1700 on that working day with individual property details in respect of the following:

- (a) all properties, premises or locations where it was not possible to carry out or complete collections of Residual Waste, Recyclables, Garden Waste, Food Waste, Bulky Household Waste or Clinical Waste (e.g. Missed Collections), or to perform any of the specified Services, including streets or other locations where scheduled cleansing was not possible;
- (b) location of properties where excess Residual Waste has been presented and details of the incidence;
- (c) location of properties where contaminated Recyclables, Garden Waste or Food Waste have been presented and details of the incidence;
- (d) location of properties where Garden Waste has been presented mixed with Residual Waste;
- (e) location of properties where uncontained Residual Waste or Recyclables was discovered including repeated incidences of uncontained Residual Waste presented at Bulk Container storage areas;
- (f) location of any property where Unauthorised Waste is presented for collection;
- (g) location of properties where Containers were regarded as being unacceptably heavy;
- (h) location of properties where Wheeled Bin lids are continually left open by residents due to excess Residual Waste;
- (i) location of any property having acquired an additional unofficial Container;
- (j) location of incidences where Residual Waste and Recyclables are persistently left by residents on the public highway;
- (k) location of non-domestic properties where 'Excess Waste' notifications have been issued;
- (l) properties where Commercial Waste is suspected to be presented as Household Waste;
- (m) properties and locations with damaged Containers;
- (n) crew sheet per round;
- (o) Clinical Waste collection Service completion record (where appropriate);

- (p) Bulky Household Waste collection Service completion record (where appropriate);
- (q) locations and nature of any fly-tips removed;
- (r) any other information as reasonably required by the Supervising Officer.

#### Promotion and Publicity

4.3.5 The Partnership acknowledges the major impact change of service will have on its Residents and has identified the necessity to communicate clearly those changes, to keep the press and the public informed and involved, and as far as is practically possible, to minimise disruption, with a smooth change to any different service provision. In addition there will be an on-going need to promote waste reduction and recycling to encourage and engage Residents in the Partnership's aims and objectives.

4.3.6 The Partnership has made provision for a programme of Publicity and Promotion and would seek to undertake this in conjunction with the Contractor and other partners. This programme, and the requirements for the Contractor's participation, will be part of the Competitive Dialogue process.

4.3.7 The Contractor shall not produce any promotional material in connection with the Partnership's activities without prior consent of the Manager. Material produced by the Contractor shall be devoid of any offensive, prejudicial and discriminatory content. It shall make clear the relationship between the partnership and the Contractor and shall be devoid of gratuitous advertising although formal sponsorship in line with the Partnership's aims and objectives may be approved.

#### Complaints / service requests [Q -JC ref9 does this element of the service transfer to the contractor](#)

4.3.8 The Contractor shall provide an efficient system for receipt of complaints and the resolution of complaints as shall be approved by the Supervising Officer or such other improved systems as shall be developed with the agreement of the Supervising Officer at the expense of the Contractor.

4.3.9 The Contractor shall deal with any complaints from any source in a prompt courteous and efficient manner. The Contractor shall keep a written record of all complaints received and of action taken.

4.3.10 The Contractor shall, at the request of the Supervising Officer, arrange for its employees whilst carrying out the Services to be in possession of notices, in a form approved by the Council, giving information as to how complaints about provision of the Services may be made.

4.3.11 Should the Contractor receive complaints direct from the public it shall immediately inform the Supervising Officer of the details of the complaint and the action taken. It should be noted that from time to time the Supervising Officer will check this aspect of the Services. Complaints found not to be informed to the Supervising Officer shall be considered a breach of Contract and will result in default action being taken.

#### **4.4 Contractor Staffing**

##### Contractor staffing

4.4.1 The Contractor will employ sufficient employees with appropriate skills to their duties for the delivery of services. The Contractor is to submit full details of the staffing levels for each of the partner areas. In addition a structure chart identifying posts and location of all support service and managerial posts required. Contractor's attention is drawn to the requirement for compliance with the Transfer of Undertakings, Protection of Employment Regulations.

#### **4.5 Depots** (Note - needs to be cross referenced to Conditions including leases etc) Q JS ref 10 confirm option for existing sites to be included. Q JS ref11 future developments that ties in with length of contract.

4.5.1 Schedule **xx** provides details of the current depots used to perform the services. The Contractor is required to identify which of these depots they would wish to use in performing the services (all method statements must be compliant to this request).

4.5.2 The Contractor will submit his proposals for the use of existing depots together with any proposals for the delivery of revised facilities providing details of costs and efficiency savings derived from such proposals.

4.5.3 The Contractor is required to present a business case detailing the acquisition and development costs of any new facilities, the timetable for delivery, the estimated annual value of future maintenance costs including rents, rates, utilities and any licensing requirements. (**This may be unrealistic at Outline stage**)

4.5.4 The Contractor will be responsible for all maintenance of existing facilities to ensure they are maintained to current standards. Any improvements to bring existing facilities up to recognised Health and Safety standards or other standard in respect of an employer's legal responsibilities will be the full responsibility of the Contractor. No additional payments will be made in respect of any improvements required.

4.5.5 The Contractor shall be responsible for the payment of all rents, rates, utilities, maintenance and repairs under a separate agreement (**agreement name and details**). No additional payments will be made for any costs not included by the Contractor in their submissions.

4.5.6 The Contractor will deliver existing and new facilities back to the employer in either the current condition subject to any improvements or, for new sites, an acceptable condition based upon the use of the facilities during the contract period.

4.5.7 The Contractor will enter into separate agreement with the relevant partners for the use of each site nominated by the contractor for use in delivering the services. *(Legal advise/comment needed re peppercorn rents)*

## **4.6 Vehicles**

### Vehicle details

4.6.1 Schedule **xx** provides bidders with a list of those vehicles that will be made available to the Contractor in preparing their bid. The schedule provides full details of each vehicle and item of plant including any leasing arrangements, age of item and value assigned to the item at the start of the contract.

4.6.2 Contractors will be expected to satisfy themselves of the condition of each item. No consideration will be given to claims in respect of condition after the Contractor has taken responsibility for the item.

4.6.3 Included in the schedule is the value of any outstanding lease commitment. This value will be taken into full consideration as a liability on the partnership for any item that the Contractor expressly wishes to exclude from their bid and not take ownership or responsibility for.

4.6.4 The Contractor shall fully indemnify the Partnership against damage to the public highway and any private highway fabric, structures, surfaces, and take all reasonable precautions to prevent such damage occurring. The employer will arrange for any damage caused by the actions of the Contractor to be repaired and recharged in full to the Contractor.

4.6.5 The Partnership expects that the Contractor will be allowed to continue any historical arrangements concerning access over Private Roads unless objections are received from Owners of that road.

4.6.6 The Partnership places a high importance on visual appearance and all vehicles must be maintained to a good standard. Any vehicle considered by the Supervising Officer to be in such a condition as a result of accumulated dirt, stains, rust, damage or other cause of deterioration shall, if required, be removed from service within 24 hours of notification until such a time as the defects are rectified or the vehicle replaced.

4.6.7 The Contractor is required to submit details of all proposed vehicles to be used in connection with this service. Details shall include the make, model, age, any lifting equipment, safety features and environmental/emission standards.

- 4.6.8 The Contractor shall provide and maintain purpose built closed refuse collection vehicles, plant and equipment sufficient to ensure the smooth running of the Service. At the commencement of the contract no vehicle shall be more than 12 months other than those included in schedule xx and available to the Contractor, and throughout the period of the contract no vehicle shall be more than 10 years old.
- 4.6.9 The Contractor shall provide and update the employer throughout the Contract Period, in advance, details of all vehicles used in fulfilment of the Service. Failure to notify the Supervising Officer could result in the vehicle being refused access to the disposal point. Any costs incurred in these circumstances by the Contractor will not be reimbursed by the employer.
- 4.6.10 The use of hire vehicles as temporary replacements will be permitted, providing the Supervising Officer has been given prior notice. Permanent replacement through vehicle hire arrangements will conform with the Partnership requirements on livery.
- 4.6.11 The Partnership supports the use of environmentally friendly vehicles. This includes the use of electric, LP gas, low emission diesel and particulate removal engine management systems where these can be proven to offer an environmentally sustainable and efficient service delivery.
- 4.6.12 Specific attention must be given to the suitability of the vehicle for:
- (a) Access to streets and areas across the partnership areas, whose width or access to may be restricted by physical barriers, parked vehicles or other similar conditions.
  - (b) Use on landfill sites where site conditions, particularly during wet or adverse weather, may cause vehicles to experience access difficulties. It must be noted that on site problems resulting from the use of unsuitable vehicles or as a result of a driver error will not be considered as justification for failing to complete any scheduled work.
  - (c) Use at any other disposal point which may be provided by ESCC, Contractor on behalf of ESCC, or any other Contractor. The Contractor will be required to provide documented evidence that each of his drivers who are instructed or permitted to drive on the landfill sites have been fully trained before entering the site to deposit waste.
- 4.6.13 All vehicles operated by the Contractor as part of this Contract must be in a consistent and agreed livery and display only such logos, advertising or wording as may be required or agreed by the Supervising Officer. (Q JC ref12 preferences)
- 4.6.14 The Contractor shall ensure through constant monitoring that no vehicles are overloaded in the course of providing this Service. The Contractor shall

comply with any request by the Supervising Officer for his vehicle to be test weighed.

- 4.6.15 The Contractor shall be required to inform the Waste Disposal Authority of the details of all vehicles used for the delivery of services. Failure to do so will result in vehicles being refused entry to disposal/processing facilities and any costs incurred will be at the expense of the Contractor.

## **4.7 Performance management**

### Monitoring of Contractor's Performance

- 4.7.1 The Council will monitor the Contractor's performance in respect of the Service. For that purpose, the Supervising Officer will make random inspections and checks, and require information in relation to the performance and health and safety of the Contractor. The Contractor must supply all information reasonably required by the Supervising Officer in full and without undue delay.
- 4.7.2 Nothing in 4.7.1 shall relieve the Contractor of his own responsibility to monitor performance.

### Performance Management data and Key Performance Indicators

- 4.7.3 The Contractor shall identify and keep all data required to satisfy the requirement of reporting on all the performance indicators set out in schedule **xx**.
- 4.7.4 All data collected by the Contractor shall be submitted to the Supervising Officer for ratification and reconciliation. All data shall become the property of the employee once received from the Contractor.
- 4.7.5 The Partnership will be deemed to have intellectual rights over all data in respect of the services collated by the Contractor. Any such data will not be disclosed or used for any purpose not connected with the express purposes of delivering or complying with this Contract without the written consent of the Supervising Officer.
- 4.7.6 Data shall be submitted to the Supervising Officer in accordance with the monitoring periods identified in Schedule **xx**. Failure to submit data in accordance with the reporting dates will result in deductions for liquidated damages and additionally be regarded as a fundamental breach of contract.
- 4.7.7 The Contractor will submit a statement on performance management providing details of the data to be supplied to meet satisfy the employer's needs in reporting on the performance indicators as listed in Schedule **xx**.
- 4.7.8 The Contractor shall be required to attend formal monthly meetings with the Supervising Officer to discuss performance; and on up to two occasions per

year shall be required to report on such data to a formal meeting of the Council or the Partnership Board.

#### **4.8 Dayworks / Schedule of Rates**

4.8.1 Additional services may be required from time to time for which additional payments will be made. Such circumstances may include the provision of resources to clear waste from outdoor events such as carnivals, fairs and other similar events. Payments for such events will be in accordance with contract rates. The contractor will be required to provide appropriate resources to fulfil such requests.

#### **4.9 Emergency works and Civil Emergencies**

4.9.1 Notwithstanding the Contractor's responsibilities, he may be requested to provide labour and plant on a billed rate basis, as required, for dealing with civil emergencies such as flooding, oil pollution, clearance of snow or ice and other similar matters.

4.9.2 The Manager shall not call upon the workforce unless absolutely necessary and will not require personnel to carry out tasks needing specialist training or for which they are not suited.

4.9.3 By agreement with the Contractor, the Manager may request certain key personnel be trained in dealing with aspects of civil emergencies. All administration, training, wages and other costs will be paid by the partnership.

#### **4.10 Programme of work**

4.10.1 Once a formal contract has been entered into the Contractor will be required to prepare and submit a detailed Programme of Works to the Supervising Officer for approval which will include, amongst other matters, details of:

- (a) the number of collection rounds;
- (b) the actual number of operatives in each collection round;
- (c) the type and size of vehicles and equipment to be used on each collection round;
- (d) a detailed plan for each collection authority area showing areas covered by each collection round;
- (e) details of arrangements to cater for any disruption to the normal work programme howsoever caused;

(f) any other operational details that are requested by the Supervising Officer or his representative by not later than 6 weeks following the date of notification to the Contractor of the Council's decision to award the Contract.

4.10.2 If the submitted Programme of Works is found to be satisfactory, approval will be given by the Supervising Officer or his representative within two weeks.

4.10.3 In the event of a Programme of Works not being acceptable to the Supervising Officer or his representative and not being in place by the 1<sup>st</sup> day of commencement of the services the Contractor will be required to work to a Scheme put forward by the Supervising Officer until such time as the Contractor's Scheme is accepted by the Supervising Officer.

4.10.4 The Contractor must provide whatever resources are necessary, in manpower, plant, equipment and machinery to ensure that the specified standards and frequencies are achieved whether or not the Programme of Works submitted by the Contractor is approved.

## **5.0 Service methods**

### **5.1 Household Residual Waste collection services - current arrangements**

5.1.1 The partner authorities currently provide Household Residual Waste collections to residential properties as set out in Section 4 schedules X, Y and Z. The frequency of collection is either weekly or fortnightly as stated (except for certain properties and locations using bulk containers, where the frequency may be more than once per week). The method of containment is as stated (wheeled container, bulk container, sack or other container).

5.1.2 The Contractor is to provide services that as a minimum requirement meet with the current arrangements if this method is selected.

5.1.3 The Contractor shall collect Household Residual Waste on a regular day each week or fortnight from the Collection Point of each domestic dwelling and remove to a designated disposal point (as set out in Schedule PQ).

### **5.2 Household Residual Waste collection services - compulsory option**

5.2.1 The Contractor is required to submit alternative collection arrangements providing full details of the methods of containment and frequency of collections based on the option below:

- Alternate Weekly Collection services using the existing containment method for each collection authority area (except for certain properties and locations using bulk containers, where the frequency will remain as the current service and which may be more than once per week).

5.2.2 All submissions for this option must include the Contractor's financial models for funding any new and replacement containers and similar assets plus details of the Contractor's proposals in respect of existing containers and other similar assets.

5.2.3 At this Outline stage no other options for the collection of Household Residual Waste are invited.

### **5.3 Household Dry Recyclable Waste services - current arrangements**

5.3.1 The partner authorities currently provide Household Recyclable Waste kerbside collections to residential properties as set out in [Section 4 schedules 2](#). The frequency of collection is either weekly or fortnightly as stated (except for certain properties and locations using bulk containers, where the frequency may be more than once per week). The method of containment is as stated (wheeled container, recycling box, sack or other container).

5.3.2 The Contractor is to provide services in accordance with the current arrangements as a minimum.

5.3.3 The Contractor shall collect Household Recyclable Waste set aside by the householder in a separate recycling box or other container on a regular day each week (or fortnight in the case of Hastings) from the Collection Point of each domestic dwelling and remove to the designated disposal points as set out in [schedule xx](#).

5.3.4 All submissions must be based upon the existing arrangements for processing recyclables. For those recyclables where a gate fee is payable, the Contractor is to provide details of the gate fees. Where there is an income the Contractor is invited to submit proposals for sharing the income. Bids should include the value of the income from the Contractor's proposal based on current amounts of materials collected and processed outside the IWMSC from each Authority area. [Q – JC ref 15 – Principle of who receives income and how this may be shared. Potential to refine through CD process.](#)

### **5.4 Household Dry Recyclable Waste Services - compulsory and stated options**

5.4.1 The Contractor is required to submit proposals against at least one of (and if desired all of) the alternative collection options as listed below:

- All dry recyclables presented as and collected as fully co-mingled;
- Dry recyclables collected as a two stream mix (with paper as one of the two streams; and, if desired, as glass as one of the two streams);

- All dry recyclables presented as co-mingled and subsequently source separated at the kerbside.

5.4.2 All submissions must include the Contractor's financial models for funding any new and replacement containers and similar assets plus details of the Contractor's proposals in respect of existing containers and other similar assets.

5.4.3 All submissions must include full details of the methods of containment, range of materials and frequency of collection.

5.4.4 All submissions must include details of the Contractor's proposals for delivery and treatment of the Household Recyclable waste collected together with the Contractor's financial model for any such infrastructure and delivery and treatment costs.

## **5.5 Household Dry Recyclable Waste services - contractor options**

5.5.1 The Contractor may submit other options also. All submissions must include the Contractor's financial models for funding any new and replacement containers and similar assets plus details of the Contractor's proposals in respect of existing containers and other similar assets.

5.5.2 All submissions must include full details of the methods of containment, range of materials and frequency of collection.

5.5.3 All submissions must include details of the Contractor's proposals for delivery and treatment of the Household Recyclable waste collected together with the Contractor's financial model for any such infrastructure and delivery and treatment costs.

5.5.4 All submissions must comply with the following outputs:

- The overall recycling/composting rate shall be no less than that currently achieved.
- The frequency of collection shall be not less than fortnightly (and for certain properties e.g. using bulk containers shall be more frequent).
- A minimum of six materials (paper, card, glass, plastic, aluminium and steel cans) to be collected.

## **5.6 Household Garden Waste collection services - current arrangements**

5.6.1 The partner authorities currently provide Household Garden Waste collections to residential properties as set out in [Section 4 schedule 3](#). The frequency of collection is either weekly or fortnightly as stated. The method of containment is as stated (wheeled container, recycling box, sack or other receptacle).

5.6.2 The Contractor is to provide services in accordance with the current arrangements.

## **5.7 Household Garden Waste collection services - compulsory options**

5.7.1 The Contractor is required to submit proposals against the alternative collection option as listed below:

- Chargeable services to all areas (which shall be administered by, and monies retained by, the Councils)

5.7.2 All submissions must include the Contractor's financial models for funding any new and replacement containers and similar assets plus details of the Contractor's proposals in respect of existing containers and other similar assets.

5.7.3 All submissions must include full details of the methods of containment and frequency of collection.

5.7.4 All submissions must include details of the Contractor's proposals for delivery and treatment of the Household Garden Waste collected together with the Contractor's financial model for any such infrastructure and delivery and treatment costs.

5.7.5 Household Garden Waste collections currently include card and cardboard (where stated) in the input specification. The Contractor will include in his proposals any requirements for a change to the current input specification for this material.

## **5.8 Household Garden Waste collection services - alternative options**

5.8.1 The Contractor is invited to submit bids against alternative collection methods as listed below:

- No collection services to all areas
- Free collection to all areas (opt-in)
- Free collection to all areas (opt-out)

5.8.2 All submissions must include the Contractor's financial models for funding any new and replacement containers and similar assets plus details of the Contractor's proposals in respect of existing containers and other similar assets.

5.8.3 All submissions must include full details of the methods of containment and frequency of collection.

5.8.4 All submissions must include details of the Contractor's proposals for delivery and treatment of the Household Garden Waste collected together with the Contractor's financial model for any such infrastructure and delivery and treatment costs.

5.8.5 Household Garden Waste collections currently include card and cardboard (where stated) in the input specification. The Contractor will include in his proposals any requirements for a change to the current input specification for this material.

## **5.9 Food Waste collection services - compulsory option**

5.9.1 The Contractor is required to submit proposals for the weekly collection of Food Waste from all properties where feasible. The Contractor shall collect Food Waste on a regular day each week or fortnight (and on the same day as the collections for Household Residual Waste and/or Household Recyclable waste) from the Collection Point of each domestic dwelling and remove to a designated disposal point (see schedule of disposal/ processing facilities). As an alternative, the Contractor may submit proposals for the treatment of food waste collected.

5.9.2 All submissions must include the Contractor's financial models for funding any new and replacement containers and similar assets.

5.9.3 At this Outline stage no details are required in terms of the following (they may be required at detailed stage):

- **Communication programme**
- **Carbon footprint implications - not for ISOS**

5.9.4 The Contractor shall comply with all general requirements of the specification in respect of this element of the service.

## **5.10 Bulky Household Waste collection services**

5.10.1 The current service is a chargeable bulky Household Waste collection Service, charges for which are administered by the Council. The Contractor shall continue to provide a bulky Household Waste collection Service. The Supervising Officer will administer this Service and will agree a collection Day which shall be within five working days from instruction customer and based on a time period not exceeding two hours in duration (e.g. between 9am and 11am).

5.10.2 The Contractor shall collect bulky household items such as furniture etc, metal items and also items of household WEEE (being items that fall under the EU Directive on Waste Electrical and Electronic Equipment) including, but not limited to, televisions, computers, fridges, freezers, washing machines, tumble driers, cookers etc, from individual households, as specified by the Supervising Officer. In addition, the Contractor will be required to collect all bulky Household Waste via the use of non-compaction vehicles and deliver to the appropriate Delivery Point. The Contractor shall ensure that no CFC gases escape from refrigerators or freezers whilst they are under his control.

- 5.10.3 The Contractor shall collect the following categories of bulky Household Waste as instructed by the Supervising Officer: (Q - JC ref13- Harmonisation of charging structure / on-line service / contractor management.)
- (a) Up to six items of bulky household items. (Number to be finalised)
  - (b) Up to one lorry load of bulky household items: this quantity will be based on a 7.5 tonne GVW flatbed vehicle for this Service equipped with a suitable mechanical lifting attachment and provided with tie-down sheeting or netting as appropriate to secure the load.
- 5.10.4 The Contractor shall normally only collect bulky Household Waste that is placed within the property boundary however exceptions may be made when collecting from the elderly or disabled persons or on instruction from the Supervising Officer. The Contractor is deemed to have allowed for this requirement within the Contract Sum.
- 5.10.5 The collection of bulky Household Waste shall be programmed in order that collections are made throughout the Contract Area on a weekly basis.
- 5.10.6 The Supervising Officer shall set up and maintain arrangements for the receipt of requests for this Service directly from households. Requests made to the Contractor for this Service should immediately be referred to the Supervising Officer.
- 5.10.7 Unless otherwise instructed by the Supervising Officer, the Contractor shall remove bulky Household Waste within five working days from the receipt of the instruction from the Supervising Officer. The Contractor shall record the date that the instruction was received and the date that the collection was made and supply to the Supervising Officer with this data at the end of each day using the agreed communication method.
- 5.10.8 The Contractor shall ensure that all items of bulky Household Waste are delivered to the appropriate Delivery Points specified. The Contractor shall ensure that all metals, Recyclables and Garden Waste are delivered to an appropriate Delivery Point and consequently, such items must be collected in a manner to enable this requirement.
- 5.10.9 Vehicle drivers on the household waste collection service and recycling service shall carry a stock of Bulky Collection Leaflets. These are for issue to residents on request or to be left at the premises where bulky items are put out for collection but are not removed with the normal weekly refuse collection service.
- 5.10.10 The Contractor shall provide a service to collect items of Hazardous and Special Waste from Domestic Households as part of the Bulky Waste Service. Items collected are to be transported and disposed of at a licensed facility. This

will include items such as storage heaters which may contain asbestos elements. Any such collections will be paid for on a dayworks or 'cost plus' basis.

- 5.10.11 The Contractor will be required to comply with all legislation relating to the handling, recording, transport, operative safety, storage and disposal of hazardous waste.

### **5.11 Commercial waste collection services - current arrangements**

- 5.11.1 The partner authorities currently provide commercial waste collections to customers as set out in Section 4 schedules x. The frequency of collection is either weekly or fortnightly as stated. The method of containment is as stated (wheeled container, sack or other receptacle).

- 5.11.2 The Contractor is to provide services on the basis that Household Waste and Commercial Waste require separate collections (unless specifically allowed by the Supervising Officer e.g. in the case of remote premises; and the Contractor shall price for separate collection of Commercial Waste and Commercial Recyclables.

- 5.11.3 The Contractor shall provide a Commercial Waste Service to the premises listed, and at the frequencies indicated, in **Schedule 5** that have a Commercial Waste agreement with the Council. The Supervising Officer will notify the Contractor of any changes to this Schedule at the Commencement Date and on a regular basis throughout the Contract Period and the Contractor shall revise collections as appropriate. The Contractor shall ensure that any new customers entering into a Commercial Waste agreement with the Council will commence collections within 24 hours of the instruction unless otherwise specified by the Supervising Officer. The Supervising Officer will notify the Contractor of changes to the premises for collection or of changes to the quantities or of additional ad hoc collections for the Commercial Waste Service using the communication method specified.

- 5.11.4 The Contractor shall ensure that accurate details are recorded on worksheets where it is found that a Commercial Waste customer:-

a) has closed its business;

b) is presenting Commercial Waste for collection in excess of that specified in their Commercial Waste agreement and/or in Containers not specified by the Supervising Officer;

c) is failing to properly contain liquid or other Wastes within the Container used, such that Litter, stains, slipping or tripping hazards are caused or are likely to be caused;

and the Supervising Officer will investigate and take action as appropriate.

5.11.5 In the case of b), the Contractor shall collect all Commercial Waste presented including excess. In these incidences the Contractor shall, where possible, post an advisory leaflet supplied by the Supervising Officer, at the premises concerned notifying the customer of the nature of the problem and that the Council is being informed. The Contractor shall record the location where excess Commercial Waste has been presented on the daily worksheet and notify the Supervising Officer of the incident including the number of excess sacks/loose Waste presented. This procedure shall continue for repeated incidences of excess Commercial Waste which shall continue to be collected, at no additional cost, unless instructed otherwise by the Supervising Officer.

5.11.6 The Supervising Officer shall agree the points of collection for Commercial Waste with the customer who has entered into a Commercial Waste agreement with the Council and advise the Contractor accordingly using the communication method specified. The Contractor shall be required to make all collections regardless of the distance between the collection point and the nearest vehicular access.

5.11.7 As part of this operation, the Contractor is prohibited from using resources allocated to this Contract to collect Commercial Waste from premises that do not have a Commercial Waste agreement with the Council. Any breach of this Paragraph will be grounds for termination of the Contract.

**5.12 Commercial waste collection services - alternative arrangements Q JC ref14** *There may be an opportunity to discuss this during CD in conjunction with ESCC as disposal authority for the mutual benefit of all partners.*

5.12.1 The Contractor is invited to submit proposals against alternative collection options as listed below

- Purchase of the Commercial waste portfolio from the Councils; or
- Expansion of the Commercial waste services to the benefit of the Councils, the Contractor and customers (including expanding the recycling service).

**5.13 Clinical Waste collection services - current service**

5.13.1 The Contractor is required to provide a Clinical Waste collection service within the Partnership administrative areas to Households on request from the Council and undertaken at the specified frequency. A list of properties currently receiving a clinical waste collection together with collection day is shown in Section 4 Schedule xx. *(NB need to check details re signing duty of care etc)*

5.13.2 The Contractor is required to supply replacement purpose-designed orange sacks/receptacles to households at the time of collection. In 2010/11 a total of xx sacks were distributed to households.

5.13.3 The Contractor will be paid for the supply and delivery of sacks/receptacles to Householders in accordance with Bill of Quantity Rates.

- 5.13.4 The Contractor shall abide by all reasonable requests of the occupier of the premises relating to arrangements for storage and point collection of Clinical and/or sharps Waste.
- 5.13.5 The Contractor shall be as discreet as possible, whilst collecting Clinical Waste, ensuring that the service is provided in a manner which is sensitive to the needs of service recipients.
- 5.13.6 The Contractor shall immediately notify the Supervising Officer of any collections that are cancelled or cease to be left out for collection.
- 5.13.7 The Contractor shall submit a safe working practice for the collection of Clinical Waste for the approval of the Supervising Officer. All collections shall comply with the approved safe working practices.
- 5.13.8 All Clinical Waste collected under the Agreement shall be taken for disposal at a designated site to be specified by ESCC. Current disposal sites are listed in Section 4, schedule **xx**.
- 5.13.9 Clinical Waste collections shall be made separately from any other collections and the two waste streams kept apart for disposal using a separate vehicle which shall not be used to carry any other material or waste whilst engaged in the collection and transportation of Clinical Waste.
- 5.13.10 The Contractor is required to include provision of a Household Sharps Box collection.
- 5.13.11 The Contractor will be paid for the supply and delivery of containers to Pharmacies in accordance with Bill of Quantity Rates.
- 5.13.12 Clinical Waste collections from premises other than Households or Sharps Boxes from pharmacies shall not form part of the Contract.

#### **5.14 Bring Sites**

- 5.14.1 The Councils currently operate **XYZ** recycling 'bring sites' across the Contract Area. Banks for paper, glass, textiles, cans, plastic and Tetrapaks are provided at these sites, although some locations do not have facilities for all materials. The Contractor is required to supply, maintain and service a number of the Containers located at these sites and as agreed with the Supervising Officer.
- 5.14.2 Other materials (e.g. textiles) will be collected by a range of third party contractors and not-for-profit organisations. Banks owned and serviced by others shall continue to be used unless the Contractor can propose alternative arrangements more beneficial to the Council in terms of cost or recycling achieved.

- 5.14.3 The Contractor shall collect Recyclable materials from all of the Council's existing 'bring sites' at a frequency to ensure that there is always at least 25% spare capacity in each of the Containers used for collecting Recyclable Waste for the public to leave Recyclable materials. Appendix J lists the current sites, number of Containers and 2010/11 tonnages; and the current emptying frequency which shall not be taken as an indication of the required Service. At the start of the Contract, the Contractor is required to supply the current number of Containers; and during the Contract Period is invited to suggest changes to the number and size of Containers at the existing locations to be approved by the Supervising Officer. The Contractor should also be aware that it is the Council's aim is to rationalise the number of 'bring sites'. The Contractor will be paid pro-rata for any reductions or additions to 'bring site' collections.
- 5.14.4 The Service shall be provided throughout the year including Saturdays, Sundays, Bank and Public Holidays with the exception of Christmas Day, Boxing Day and New Year's Day. The Service shall commence no earlier than 07:00 Hours and finish at 17:00 Hours.
- 5.14.5 All Contracts for the provision and servicing of the bring banks are due to terminate at the Commencement Date other than those provided by charitable organisations as per schedule xxx. The Contractor must make arrangements to ensure no break in Service occurs, in particular the provision of Containers.
- 5.14.6 The Contractor shall have full responsibility for Health and Safety in regard the condition and use of bring bank Containers located at the existing sites and must include within his Contract Sum for all necessary inspection and testing of bring bank Containers, including lifting mechanisms, access points and material deposit points on the bring bank Containers.
- 5.14.7 The Contractor shall cleanse (by sweeping, litter picking and all other methods necessary) all sites (including the immediate surrounding area) of all overflowing Recyclable materials, non-recyclable materials and detritus including flytipping to ensure that at all times each site is clear of non-Recyclable Waste, detritus and other extraneous matter and dispose of the arisings at an authorised licensed disposal site, while ensuring that all recyclable material collected is recycled. Sites will be cleaned to the equivalent of Grade B or above standard to correspond with the requirements of the Local Environmental Quality Survey of England (LEQSE) indicators used to measure the level of cleanliness for the former NI195 performance indicator ([www.ni195.com](http://www.ni195.com)), and to the satisfaction of the Supervising Officer within 24 Hours of notification being received by the Contractor. The Contractor will be responsible for ensuring that bring bank Containers that are vandalised or suffer arson attacks are replaced within 24 Hours of notification and all related spillage and contamination is disposed of at an authorised licensed disposal site.
- 5.14.8 The Contractor must ensure that: -

- (a) The appearance of the bring bank Containers should be kept clean and in good order and conform to standard colours and the correct approved signage as agreed with the Supervising Officer.
- (b) A detailed list of emptying frequencies is provided to the Supervising Officer at the start of the Contract and any changes to that list within 24 hours to the Supervising Officer.

5.14.9 Where the Contractor requires that a bring bank Container be removed from an existing site for a temporary period for repair or servicing, the Contractor shall ensure that the bank is replaced at the time of its removal, with a bring bank Container as approved by the Supervising Officer.

5.14.10 The Supervising Officer reserves the right to relocate, within the Contract Area, under-utilised bring bank 'Containers' at his discretion.

5.14.11 The Contractor shall ensure that each single type of Recyclable material is kept separate from all other Recyclable materials. All Recyclables collected by the Contractor from the recycling 'bring sites' shall become the property of the Contractor. The Contractor is responsible for the processing of the Recyclables at a suitable facility, the sale of this Recyclable material and for ensuring they are Recycled. No recycling credits will be paid to the Contractor in respect of Waste ultimately recycled.

5.14.12 The Contractor is required to submit to the Council details of all weights of each Recyclable material collected through each of the 'bring bank' sites on a Monthly basis. This shall be supported by information from a licensed weighbridge.

## **5.15 Street and Beach cleansing services - current provision**

5.15.1 The Partnership requires the Contractor to cleanse all streets, roads and other paved areas, soft landscapes in highway areas, parades, beaches and downland, and empty all litter bins, throughout the Partnership area to a specified standard, disposing of all arisings in a responsible manner to the entire satisfaction of the Supervising Officer.

5.15.2 Without prejudice to the specific terms of the Contract Documents, the service shall be as follows:

- (a) A Regular Service shall be provided by the Contractor at locations and to the standards specified within the Contracts Documents. This Service is intended, in the main, to cleanse areas categorised by the Council as Zones 1,2,3,4,5,6 and 7 as defined in the Environmental Protection Act and the Code of Practice.

- (b) Rapid Response Environmental Teams shall be provided and will be responsible to the Supervising Officer or his representative at all times for their workload.
- (c) As part of the Regular Service, the carriageways and footways specified within the Schedules are to be cleansed in accordance with the requirements of the Specification, at the frequencies required for each area and variously described within each Schedule. The cleansing of litter bins is to be included as part of the Regular Service.
- (d) In addition to the Cleansing required in (c), all areas within the boundary of the Highway, including the Carriageway, Footway and Other Highway Areas, are to be swept in accordance with the requirements of the Specification, to the standards required for each area and variously described within each Schedule.
- (e) The Regular Service also extends to the cleansing and/or litter picking of Car Parks, Recycling Areas, Litter Bins, Subways, Adopted Passageways, Beaches and Promenades, all of which are specified in the Schedules.
- (f) The Regular Service also extends to the collection and storage of shopping trolleys pending their collection by a rightful owner.

5.15.3 The current detailed service specifications for the individual Councils are included as **Annexes 1, 2 and 3**. The contractor should note that, in various details, these extend further than the basic legal and other requirements as noted above. The Contractor is, at Outline Stage, to work on the basis that the current services as individually specified shall continue to be delivered: and individual prices for each partner are to be provided.

## **5.16 Street and Beach cleansing services - alternative provision**

5.16.1 The Councils will wish to explore as part of the Dialogue and the subsequent stages (Detailed and Final) alternative service delivery options for these services.

5.16.2 In providing alternative options contractors must submit details of their proposals in respect of the following:

- Daily mobilisation plan and schedule of resources to be engaged on this element of the service (staffing, vehicles and equipment)
- Details of how the resources will be used to achieve the minimum required standards as set out in the Environmental Protection Act and all subsequent legislation
- Full details of management and supervision arrangements
- Details of the bidders proposals for performance management.

5.16.3 The contractor will be required to comply with all the provisions of clause 4 in providing these services.

**5.17 Cesspool Emptying Service** NB add additional option as per commercial waste

5.17.1 The partner authorities currently provide cesspool emptying services to customers as set out in Section 4 schedules x.

5.17.2 The Contractor is to provide services on the basis of the current service.

**6.0 Service specific requirements - street and Beach cleaning**

Eastbourne BC requirements

6.1 To be added based on current specific needs

Hastings BC requirements

6.2 To be added based on current specific needs

Rother DC requirements

6.3 To be added based on current specific needs

Wealden DC requirements

6.4 To be added based on current specific needs

**7.0 Processing of recyclables**

7.1 Schedule xx provides details (including input specifications and operating hours) of the current facilities provided by ESCC under the IWMS Contract. In addition to these facilities the Partnership currently owns and operates facilities as set out in schedule xx. Bidders attention is also drawn to further facilities (schedule xx) currently not operated by any of the Local Authorities within East Sussex but may be available to bidders for the delivery of this contract.

7.2 Bidders are required to submit bids based upon the following scenarios for each and every submission. For each submission the bidders are required to identify for each partnership area where each type of recyclable material will be delivered:

- All recyclable materials delivered to a facility provided by the IWMSC (transfer station or processing facility)
- All recyclable materials delivered to facilities outside the IWMSC (providing details of which facilities are to be used)
- The use of both IWMSC and non IWMSC facilities.

7.3 Bidders electing to use facilities currently operated by any of the partnership authorities will be subject to clause 4.1.27.

#### 7.4 **Use of existing partnership Materials Recycling Facilities**

7.4.1 Schedule **x** provides details of the existing facilities currently provided by the partnership for the management and processing of recyclable materials.

7.4.2 Bidders are invited to submit bids for the management and operation of these facilities based upon the current throughputs of materials as set out in the schedule. Such bids shall exclude the value of any recyclable materials processed through the facilities.

7.4.3 The contractor will be responsible for all maintenance of existing facilities to ensure they are maintained to current standards. Any improvements to bring existing facilities up to recognised Health and Safety standards or other standard in respect of an employers legal responsibilities will be the full responsibility of the Contractor. No additional payments will be made in respect of any improvements required.

7.4.4 In all other regards the conditions of clause 3.54 shall be applicable to the contractor in managing these facilities.

#### 7.5 **Processing of garden waste materials**

7.5.1 Schedule **xx** provides details (including input specifications and operating hours) of the current facilities provided by ESCC under the IWMS contract. Bidders attention is also drawn to further facilities (schedule **xx**) currently not operated by any of the Local Authorities within East Sussex but may be available to bidders for the delivery of this contract.

7.5.2 Bidders are required to submit bids based upon the following scenarios for each and every submission. For each submission the bidders are required to identify for each partnership area which facilities are to be used and the quantity by percentage to be delivered to that facility.

- All green waste materials delivered to a facility provided by the IWMSC (transfer station or processing facility)
- All green waste materials delivered to facilities outside the IWMSC
- The use of both IWMSC and non IWMSC facilities for green waste.

7.5.3 Bidders must satisfy themselves that the input specification for each and every facility that is to be used meets the requirements of this contract. Bidders will confirm the input specification it is offering in using these facilities. for example, bidders are to state whether the green waste specification for each authority area will include cardboard, card and food waste.



## Appendix 2

### Summary of Cost Allocation for the Cost Sharing Agreement

Draft

No.	Service	Recommended Formulae
1	Residual Household Waste Collection	<u>WCA Weighted</u> Each WCA responsible for proportion of costs based on their % number of residential properties in the total area covered by contract. Adjusted for one factor: population sparsity.
	Dry Recycled Material Collection	
	Food Waste if introduced across the whole partnership (or else treat as 4)	
2	Street Cleaning	Each WCA responsible for the cost of their own area identified in the bill of quantities.
	Beach Cleaning	
3	Bring Sites	Based on number of sites in WCA area divided by number of sites in the partnership.
4	Green Waste & Food Waste if introduced across less than the whole partnership	<u>WCA Weighted – service specific</u> Each WCA responsible for proportion of costs based on their % number of residential properties receiving this service in the total area covered by contract. Adjusted for one factor: population sparsity.
<b>Demand Responsive Services</b>		
5	Commercial Waste Collection	Costs divided between WCAs on actual usage of service by customers in each WCA area.
	Clinical Waste collection	
	Bulky item collection	
	Cesspool Emptying	
	Purchase of Containers	
6	Day Work and schedule of rates	Actual cost per authority based on bills of quantity.
<b>Other Costs/Income to be apportioned</b>		
7	Recycling Income	In proportion to recycling material generating an income.
8	Client Back Office	Equal Shares per partner WCA based on Option 2 of business case. This could change depending on option selected for Client Back Office
9	Procurement Costs	Equal shares per partner WCA.
10	Depots and Assets	The benefit or liability resulting from the provision of an asset to the contractor should sit with the providing

No.	Service	Recommended Formulae
		authority.
11	Mobilisation Costs (readiness for start of contract) e.g. Property, IT Systems, vehicles	If mobilisation cost is an issue for two or more partners then share equally between partners involved.  If mobilisation cost is unique to one WCA then cost borne by that WCA.
12	All Chargeable services e.g. Green Waste Income	Income achieved from charges retained by WCA making the charge.
13	Pension Costs	HR advice being sought – cost sharing will depend on approach taken.
14	Cost Stabilisation	The Joint Waste Committee will reserve the right to implement a cost stabilisation method where it is in the interests of all parties for the continued success of the partnership.

In order to operate the cost sharing agreement the officers are drawing up a detailed definition of the data sources and cross referencing this with the specification.

DATED

2011

- (1) EASTBOURNE BOROUGH COUNCIL
- (2) HASTINGS BOROUGH COUNCIL
- (3) ROTHER DISTRICT COUNCIL
- (4) WEALDEN DISTRICT COUNCIL

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**COST-SHARING AGREEMENT**  
relating to the joint  
**Waste Collection, Recycling and Street & Beach Cleaning Services Contract**

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Chief Legal Officer  
Wealden District Council  
Council Offices  
Pine Grove  
Crowborough  
East Sussex TN6 1DH

## **CONTENTS**

## COST-SHARING AGREEMENT

Draft

**THIS AGREEMENT** is dated

2011

**BETWEEN:**

- (1) **EASTBOURNE BOROUGH COUNCIL** whose principal office is at 1 Grove Road, Eastbourne, East Sussex, BN21 4TW ("Eastbourne");
- (2) **HASTINGS BOROUGH COUNCIL** whose principal office is at Hastings Town Hall, Queens Road, Hastings, East Sussex, TN34 1QR ("Hastings");
- (3) **ROTHER DISTRICT COUNCIL** whose principal office is at Town Hall, Bexhill-on-Sea, East Sussex, TN39 3JX ("Rother"); and
- (4) **WEALDEN DISTRICT COUNCIL** whose principal office is at Pine Grove, Crowborough, East Sussex, TN6 1DH ("Wealden"),

together, the "Authorities".

**BACKGROUND:**

- (A) The Authorities have established a Joint Waste Committee (the "JWC") for the purpose of facilitating the Authorities in working together to improve the quality and effectiveness of the discharge of their waste collection functions.
- (B) The Authorities have agreed to work together, through the JWC, in the joint procurement of waste collection, recycling and street and beach cleaning services (the "Waste Services"), the terms of which are set out in the Inter-Authority Agreement between the parties.
- (C) The Authorities wish to enter into this Agreement which sets out the terms and conditions governing the mechanisms for the equitable sharing of the costs and revenues arising from or in connection with the contract for the provision of the Waste Services.

**TERMS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, the following terms shall have the following meanings:

Agreed Form	in relation to any document, the form of the document agreed between the Authorities and initialled by or on behalf of the Authorities for the purpose of identification;
Assets	in respect of each Authority, all employees, systems, vehicles and Sites that will transfer to the Contractor on the Waste Services Commencement Date;
Business Day	a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

Change in Law	any change in any Law which impacts on the performance of the Waste Services and which comes into force after the Effective Date, including any applicable judgment of a relevant court of law which changes a binding precedent;
CIWM	the Chartered Institute of Waste Management;
Clinical Waste	has the meaning given in Section 1(2) of the Controlled Waste Regulations 1992;
Commencement Date	the date of the Contract;
Commercial Waste	has the meaning given in Section 75(7) of the Environmental Protection Act (EPA);
Contract	the contract between the Authorities and the Contractor for the provision of the Waste Services;
Contract Period	the contract period of [ ] years from the Commencement Date;
Contract Waste	all Municipal Waste arising delivered by or on behalf of the Authorities. [Contract Waste does not include for the avoidance of doubt [any specific exclusions to be included here]];
Contract Year	a period of twelve (12) months commencing on the Commencement Date, provided that :  (a) the first Contract Year shall be the period commencing on the Service Commencement Date and ending on the immediately following 31 March; and  (b) the final Contract Year shall be the period commencing on 1 April immediately preceding the last day of the Contract Period and ending on that day;
Contractor	the organisation selected to provide the Waste Services following the completion of the Procurement;
Costs	[all costs and revenue associated with the Waste Services;]

Dispute Resolution Procedure	the dispute resolution procedure set out in Clause [ ];
Dry Recycled Material	[ ]
Effective Date	the date of this Agreement;
Food Waste	[ ]
Green Waste	[composted recycled material]
Green Waste Income	[the income collected by the Contractor associated with the collection of Green Waste;]
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;
Inter-Authority Agreement	the agreement between the Authorities which sets out the terms and conditions of the joint working arrangements between them for the procurement of the Waste Services;
Landfill Tax	has the meaning set out in Section 39(1) of the Finance Act 1996;
LATS	the Landfill Allowance Trading Scheme as defined in the Waste and Emissions Trading Act 2003;
Lead Authority	Rother District Council;
Legislation	(a) any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;  (b) any exercise of the Royal Prerogative; and  (c) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

Municipal Waste	all waste which by virtue of Legislation a local authority has a statutory duty or power to collect, including (without limitation) Household Waste, Commercial Waste, [Green Waste], [Food Waste], fly tips and street and beach cleansing arisings;
Procurement	the joint procurement by the Authorities for the Waste Services in accordance with the Public Contracts Regulations 2006;
Recycling Income	[the Contractor's income associated with the recycling of [Dry Recycled Material] under the Contract;]
RPIX	the All Items Retail Prices Index Excluding Mortgage Interest Payments published by the Office for National Statistics or failing such publication or in the event of a fundamental change to such index, such other index as the Authorities may agree, or such adjustments to the index as the Authorities may agree (in each case with the intention of putting the Authorities in no better nor worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such Contract is reached, as may be determined in accordance with the Dispute Resolution Procedure;
[Sites]	[the depot facilities and all other supporting infrastructure used for the provision of the Waste Services;]
Termination Date	the date of expiry or early termination of this Agreement in accordance with its terms;
Termination Notice	a notice of termination issued in accordance with Clause [ ];
Third Party Waste	all waste received at the Facility other than Contract Waste;
Third Party Income	the Contractor's income from third parties (other than the Authorities under the Contract) associated with the Waste Services including without limitation that derived from the sale of [ ] [(less

the marginal costs of generating such income)];

Transition Costs costs incurred by the Authorities in connection with the transfer to the Contractor of the Assets;

Unitary Charge the payment due to the Contractor under the Contract;

Waste Services the provision by the Contractor of waste collection, recycling and street and beach cleaning services for the Authorities under the Contract;

Waste Services Commencement Date the date on which the Contractor will start to provide the Waste Services.

1.2 Clause and Schedule headings are purely for ease of reference and do not form part of or affect the interpretation of this Contract.

1.3 Where the context so admits or requires, words denoting the singular include the plural and vice versa and words denoting any gender include all genders.

1.4 References to Clauses and Schedules are, unless otherwise provided, reference to the clauses and schedules to this Contract.

1.5 Any phrase introduced by the words "including", "includes", "in particular" or similar shall be construed without limitation by the related general words.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.7 In the event of any inconsistency between the Clauses of this Contract and the Schedules, the former shall prevail to the extent of the inconsistency.

1.8 Unless a right or remedy is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party's other rights or remedies.

## 2. **TERM**

2.1 This Agreement shall come into effect on the Effective Date and shall continue in force in respect of the Authorities during the Contract Period unless and until terminated in accordance with Clause [6] (Termination).

## 3. **KEY PRINCIPLES**

3.1 The Authorities intend this Agreement to be legally binding and mutual commitments between them created by this Agreement shall be construed accordingly.

3.2 In working together the Authorities agree that they will conduct the relationship between them in accordance with the terms of the Inter-Authority Agreement.

#### **4. COST ALLOCATION – PRINCIPLES / MECHANISM**

[TO BE COMPLETED]

4.1 All Costs arising or derived from the Contract will be shared between the Authorities in accordance with the [Cost Allocation Mechanism] set out in Schedule 1.

4.2 [All cost and income associated with the LATS regime will be allocated in accordance with the [LATS Allocation Mechanism] set out in Schedule [1].]

4.3 [If the cost to the Contractor of performing the Waste Services increases as a result of a Change in Law, any such increase will be shared between the Authorities in proportions which accord with their relative tonnages of Municipal Waste.]

#### **5. LIABILITY TO THE CONTRACTOR CAUSED BY ONE AUTHORITY / INSURANCE**

[TO BE COMPLETED]

[Actions taken by one Authority may give rise to a liability for that Authority or all other Authorities to the Contractor. The extent of recompense to the Contractor and/or to the other Authorities will need to be agreed. Where a particular liability cannot be attributed to the actions of a single Authority, liabilities will need to be shared on an agreed basis.]

#### **6. TERMINATION**

6.1 This Agreement shall terminate at the earliest of the following occurrences:

- a) the termination or expiry of the Contract;
- b) the Authorities agreeing in writing to its termination; or
- c) there is only one remaining Authority who has not withdrawn from the Inter-Authority Agreement in accordance with its terms.

#### **7. CONSEQUENCES OF TERMINATION**

- 7.1 If the Agreement is terminated in accordance with Clause 6, save for the obligations set out in Clause [ ] (Commitment of the Authorities and Contributions) of the Inter-Authority Agreement and the Authorities' obligations to pay the Unitary Charge, the Authorities shall be released from their respective obligations described in this Agreement.
- 7.2 Where an Authority withdraws from the Procurement and the Inter-Authority Agreement in accordance with Clause [ ] (Withdrawal during Procurement) of the Inter-Authority Agreement, the [Cost Allocation Mechanism] shall be amended in accordance with the [formula set out in Schedule [3]].

[TO BE COMPLETED]

## 8. CONFIDENTIALITY AND ANNOUNCEMENTS

- 8.1 Each Authority shall, both during the term of this Agreement and at all times following its expiry or termination, keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) any confidential information about the business of and/or belonging to any other Authority which has come to its attention as a result of or in connection with this Agreement.
- 8.2 The obligations set out in this Clause 8 shall not relate to information which:
- a) any matter which the recipient Authority can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 8;
  - b) any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Authority making the disclosure or the rules of any governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the governmental or regulatory authority concerned;
  - c) any disclosure of information which is already lawfully in the possession of the recipient Authority, prior to its disclosure by the disclosing Authority;
  - d) any disclosure of information by any Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Contract; or
  - e) any provision of information to the Authorities' own professional advisers or insurance advisers.

- 8.3 Where disclosure is permitted under Clause 8.2, the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this Clause 8 and the disclosing Authority shall make this known to the recipient of the information.
- 8.4 No Authority shall make any public statement or issue any press release or publish any other public document relating, connected with or arising out of this Agreement and/or the Inter-Authority Agreement and/or the Contract without the remaining Authorities' written consent (excluding any disclosure required by legal or regulatory requirements).

## 9. **FREEDOM OF INFORMATION**

- 9.1 Each Authority acknowledges that all of the Authorities are subject to the provisions of the Freedom of Information Act 2000 (“FOIA”) and the Environmental Information Regulations 2004 (“EIR”) and each Authority shall where reasonable assist and co-operate with any other Authority (at their own expense) to enable that other Authority to comply with these information disclosure obligations.
- 9.2 Where an Authority receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of any of the other Authorities in relation to the Waste Services, it shall (and shall procure that its consultants and/or sub-contractors shall):
- a) transfer the request for information to the other Authority as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;
  - b) provide the other Authority with a copy of all information in its possession or power in the form that the Authority requires within ten Business Days (or such longer period as the Authority may specify) of the Authority requesting that information; and
  - c) provide all necessary assistance as reasonably requested by the other Authority to enable the Authority to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 9.3 Where an Authority receives a request for information under the FOIA or the EIR which relates to this Agreement or the Waste Services, it shall inform the other Authorities of the request for information as soon as practicable after receipt and in any event at least two Business Days before disclosure and shall use all reasonable endeavours to consult with the other Authorities prior to disclosure and shall consider all representations made by the other Authority in relation to the decision whether or not to disclose the information requested.

- 9.4 The Authorities shall be responsible for determining in their absolute discretion whether any information requested from them under the FOIA or the EIR:
- a) is exempt from disclosure under the FOIA or the EIR;
  - b) is to be disclosed in response to a request for information.
- 9.5 Each Authority acknowledges that the other Authorities may be obliged under the FOIA or the EIR to disclose information:
- a) without consulting the other Authority where it has not been practicable to achieve such consultation; or
  - b) following consultation with the other Authorities and having taken their views into account.

## 10. **NOTICES**

- 10.1 Except as expressly stated to the contrary, all notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been properly given if delivered by hand or by courier, or sent by prepaid first-class post or registered post, or by fax, to the relevant authorised officer at the Lead Authority.
- 10.2 Any notice shall be treated as having been served on delivery if:
- a) delivered by hand, at the time of delivery;
  - b) delivered by courier, two Business Days after despatch;
  - c) in the case of pre-paid first-class post or registered post, three Business Days from the date of posting;
  - d) in the case of fax, on the day of transmission if sent before 4.00 pm on any Business Day and otherwise at 9.00 am on the next Business Day, subject to confirmation of transmission.

## 11. **DISPUTE RESOLUTION PROCEDURE**

- 11.1 Any disputes and/or disagreements arising under or in connection with this Agreement shall be resolved in accordance with this Clause 11.
- 11.2 If the event of a dispute and/or disagreement the JWC shall meet within ten Business Days of notification of the occurrence of such dispute and attempt to resolve the disputed matter in good faith.

- 11.3 If the JWC fails to resolve a dispute or disagreement within five Business Days of meeting pursuant to Clause 11.2, or fails to meet in accordance with the timescales set out in Clause 11.2, then the JWC may refer the matter for resolution to:
- a) [the Joint Leaders/Members Meeting];
  - b) the CIWM or such other party as the Authorities may agree (or the CIWM may direct) for resolution by him; or
  - c) the exclusive jurisdiction of the Courts of England.
- 11.4 Any dispute and/or disagreement to be determined by the [Joint Leaders Meeting], CIWM or the Courts of England (as the case may be) under this Agreement shall be promptly referred for determination to him/them.
- 11.5 The Authorities shall on request promptly supply to the [Joint Leaders Meeting or] CIWM all such assistance, documents and information as may be required for the purpose of determination and the Authorities shall use all reasonable endeavours to procure the prompt determination of such reference.
- 11.6 The CIWM shall be deemed to act as an expert and not as an arbitrator and his determination shall (in the absence of manifest error) be conclusive and binding upon the Authorities.
- 11.7 The costs of the resolution of any dispute and/or disagreement between the Authorities under this Agreement shall be borne equally by the Authorities to the dispute in question save as may be otherwise directed by the [Joint Leaders Meeting,] CIWM or the Courts of England (as the case may be).

## **12. LAW AND JURISDICTION**

- 12.1 The construction, validity and performance of this Contract shall be governed by English law and, subject to Clause 11, the parties irrevocably submit to the exclusive jurisdiction of the English courts.

## **13. GENERAL**

### **13.1 Entire Agreement**

- a) This Agreement, together with the schedules and all other documents attached or referred to in, or executed contemporaneously with, this Agreement constitutes the entire agreement between the Authorities regarding its subject matter and supersedes any prior agreement, arrangement and understanding between the parties.

- b) No representation, promise or undertaking shall be taken to have been made or implied from anything said or written in negotiations between the Authorities prior to the Effective Date, except as expressly stated in this Agreement. Each Authority acknowledges and agrees that it has not relied upon any information given or representation made by or on behalf of the other in entering into this Agreement.
- c) No Authority shall have any remedy in respect of any untrue statement made by any other Authority upon which that Authority relied in entering into this Agreement and that Authority's only remedies shall be for breach of contract.
- d) Nothing in this Clause 13.1 shall operate to limit or exclude any liability or either party for, or remedy against any Authority in respect of, any fraudulent misrepresentation.

### **13.2 Third Party Rights**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Contract may enforce any provision of it.

### **13.3 Waiver**

The failure of any Authority to enforce or exercise at any time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall not affect that Authority's right to enforce it at a later stage.

### **13.4 Severability**

If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.

### **13.5 Survival**

Provisions of this Agreement which either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such termination, shall remain in full force and effect notwithstanding such expiry or termination.

### **13.6 Independent Parties**

The relationship of the Authorities is that of independent contractors dealing at arm's length and nothing in this Agreement shall constitute any Authority as the

agent, employee or representative of the other, or empower any Authority to act for, bind or otherwise create or assume any obligation on behalf of any other Authority, and no Authority shall hold itself out as having authority to do the same.

### 13.7 **No Assignment**

This Agreement is personal to the Authorities and no Authority shall assign, transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this Agreement.

### 13.8 **Variations**

No alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the Authorities by a duly authorised representative.

### 13.9 **Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

### **DULY EXECUTED:**

The common seal of  
**EASTBOURNE BOROUGH COUNCIL**  
is hereunto affixed in the presence of

---

Authorised Signatory

The common seal of  
**HASTINGS BOROUGH COUNCIL**  
is hereunto affixed in the presence of

---

Authorised Signatory

The common seal of  
**ROTHER DISTRICT COUNCIL**  
is hereunto affixed in the presence of

---

Authorised Signatory

The common seal of  
**WEALDEN DISTRICT COUNCIL**  
is hereunto affixed in the presence of

---

Authorised Signatory

## **SCHEDULES**

**Appendix 4**

Draft

DATED

2011

(1) EASTBOURNE BOROUGH COUNCIL

(2) HASTINGS BOROUGH COUNCIL

(3) ROTHER DISTRICT COUNCIL

- and -

(4) WEALDEN DISTRICT COUNCIL

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**INTER-AUTHORITY AGREEMENT  
relating to the joint  
Waste Collection, Recycling and Street & Beach Cleaning Services  
Contract**

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**CONTENTS**

Page no

**THIS AGREEMENT** is made on                      day of                      2011

**PARTIES:**

- (1) **EASTBOURNE BOROUGH COUNCIL** whose principal office is situated at 1 Grove Road, Eastbourne, East Sussex, BN21 4TW (“Eastbourne”);
- (2) **HASTINGS BOROUGH COUNCIL** whose principal office is situated at Hastings Town Hall, Queens Road, Hastings, East Sussex, TN34 1QR (“Hastings”);
- (3) **ROTHER DISTRICT COUNCIL** whose principal office is situated at The Town Hall, Bexhill-on-Sea, East Sussex, TN39 3JX (“Rother”);
- (4) **WEALDEN DISTRICT COUNCIL** whose principal office is situated at Pine Grove, Crowborough, East Sussex, TN6 1DH (“Wealden”).

**BACKGROUND:**

- (A) The Councils have established a Joint Waste Committee (the "JWC") for the purposes of facilitating the Councils in working together to improve the quality and effectiveness of the discharge of their waste collection, recycling and cleansing functions. The JWC also includes East Sussex County Council as the disposal authority underpinning the work of the JWC in the business case.
- (B) The Councils have agreed to work together, through the JWC, in the joint procurement of waste collection, recycling and street and beach cleaning services (the "Waste Services") and this Agreement sets out the terms of the joint working arrangements for the procurement of the Waste Services.
- (C) The Councils wish to enter into this Agreement pursuant to the powers conferred on them by Section 45 and 55 of the Environmental Protection Act 1990, Section 19 of the Local Government Act 2000 and Regulation 7 of the Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations 2000.

**AGREED TERMS:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, the following expressions shall have the following meanings:

“Agreed Form”	in relation to any document, the form of the document agreed between the Councils and initialled by or on behalf of the Councils for the purpose of identification;
"Annual Budget"	the budget agreed by the JWC as necessary expenditure to discharge their functions in respect of this Agreement;
"Bidder"	any person who responds to the OJEU Notice relating to the Project;

"Business Case"	the business case in relation to the Waste Services;
"Business Day"	a day (other than a Saturday or a Sunday) on which banks are open for domestic business in the City of London;
"CIWM"	the Chartered Institute of Waste Management;
"Confidential Information"	all know-how and other information whether commercial, financial, technical or otherwise relating to the business, affairs or methods of the Authorities, which is contained in or discernible in any form whatsoever (including without limitation software, data, drawings, films, documents and computer-readable media) whether or not marked or designated as confidential or proprietary or which is disclosed orally or by demonstration and which is described at the time of disclosure as confidential or is clearly so from its content or the context of disclosure;
"Contract"	the contract between the Councils and the Contractor for the provision of the Waste Services;
"Contractor"	the organisation selected to provide the Waste Services following the completion of the Project;
"Councils"	the Councils of Eastbourne Borough, Hastings Borough, Rother District and Wealden District, including any successor authorities and any body to which all or part of the functions of these Councils may lawfully be transferred;
"Effective Date"	the date of this Agreement;
"EU Procurement Regime"	the Public Contracts Regulations 2006;
"Intellectual Property"	any and all patents, trade marks, trade names, copyright, moral rights, rights in design, rights in databases, know-how and all or other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to them and the right to apply for registration of them;

"Key Project Functions"	those actions identified as Key Project Functions in the first column of the table set out in Schedule 1 (Project Milestones);
"LATS"	the Landfill Allowance Trading Scheme as defined in the Waste and Emissions Trading Act 2003;
"Lead Authority"	Rother District Council;
"Material"	all data, text, graphics, images and other materials and/or documents created, used or supplied by a Council in connection with this Agreement;
"Matter Reserved to Authorities"	those actions, matters and/or functions identified as such in the fourth column in the table set out in Schedule 1 (Project Milestones);
"OJEU Notice"	the notice advertising the Waste Services placed in the Official Journal of the European Union;
"Procurement Costs"	the costs and expenses reasonably incurred by the Councils in respect of the Project;
"Procurement Costs Allocation Scheme"	the mechanism for the allocation of the Procurement Costs, as set out in Schedule [2];
"Project"	the joint procurement by the Councils for the Waste Services in accordance with the EU Procurement Regime;
"Project Milestones"	the procurement stages set out in Schedule 1 to be carried out in order to procure the Waste Services and as may be amended from time to time by the Councils in accordance with the terms of this Agreement;
"Project Manager"	the officer responsible for the project management of the delivery of the Contract in accordance with this Agreement;
"Waste Services"	the provision by the Contractor of waste collection, recycling and street and beach cleaning services for the Councils under the Contract;
"Waste Services Commencement Date"	the date on which the Contract will start to provide the Waste Services.

- 1.2 Clause and Schedule headings are purely for ease of reference and do not form part of or affect the interpretation of this Agreement.
- 1.3 Where the context so admits or requires, words denoting the singular include the plural and vice versa and words denoting any gender include all genders.
- 1.4 References to Clauses and Schedules are, unless otherwise provided, reference to the clauses and schedules to this Agreement.
- 1.5 Any phrase introduced by the words "including", "includes", "in particular" or similar shall be construed without limitation by the related general words.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 In the event of any inconsistency between the Clauses of this Agreement and the Schedules, the former shall prevail to the extent of the inconsistency.
- 1.8 Unless a right or remedy is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party's other rights or remedies.

## 2. **TERM**

- 2.1 This Agreement shall commence on Effective Date and shall remain in force until the Waste Services Commencement Date or such other date as the Councils agree in writing is to be the date for termination of this Agreement in accordance with Clause 11 (Termination).

## 3. **KEY PRINCIPLES**

- 3.1 The Councils intend this Agreement to be legally binding and mutual commitments between them created by this Agreement shall be construed accordingly.
- 3.2 The Councils agree to work together to carry out the Project Milestones in accordance with the terms of this Agreement.
- 3.3 Each of the Councils hereby acknowledges to the others that it has obtained all necessary authorities sufficient to ensure the delegation of functions provided for by this Agreement for the Project.
- 3.4 The Councils shall use all reasonable endeavours to procure that their respective members and officers who are involved in the Project shall at all times act in the best interests of the Project. The Councils expressly acknowledge that their members and officers involved in carrying out activities under this Agreement or otherwise in connection with the Project may be required to act in conflict with their duty to their own Council, and the Councils hereby authorise them to act in such a manner.
- 3.5 In working together the Councils agree that they will conduct the relationship between them in accordance with the following principles:

### 3.5.1 **Mutual Trust and Co-operation**

- a) The Councils shall at all times co-operate fully with each other and be open and trusting in their dealings with each other to achieve the most practical and economically advantageous methods of working together for the successful achievement of the Project in accordance with the Project Milestones.
- b) While respecting the mutual need for commercial confidentiality, the Councils undertake to be transparent in their dealings with each other and, without prejudice to the foregoing, the Councils undertake to respect matters of confidentiality and political sensitivity.

### 3.5.2 **Effective Relationships**

- a) The Councils hereby acknowledge and agree that they are engaged in a long term relationship for their mutual benefit through the achievement of the Project and each Council will use reasonable endeavours to develop and maintain an effective joint process to ensure that the Project develops appropriately and in line with the principles set out in this Agreement.
- b) The Councils hereby undertake to develop and maintain clear roles and responsibilities for each of them and to develop relationships at the appropriate levels within each Council, providing direct and easy access for the others' representatives.

### 3.5.3 **Reasonableness of Decision-Making**

The Councils agree as between each other that all decisions made in relation to this Agreement and the Project generally shall be made by them acting reasonably.

### 3.5.4 **Contractual Liability**

Save as expressly provided in this Agreement or otherwise agreed in writing, none of the Councils shall:

- a) incur any liabilities on behalf of the others; or
- b) make any representations or give any warranty on behalf of the others; or
- c) enter into any contract or obligation on behalf of the others; or
- d) commit to any expenditure where the other Councils will be required to reimburse that Council so committing.

## 4. **PROJECT OFFICERS**

- 4.1 The Lead Authority shall appoint a Project Manager for the purpose of the Project. The Project Manager shall be appointed to the employment of the Lead Authority, and the Lead Authority shall make the Project Manager available full-time for the performance of his/her functions, as detailed in Schedule 3.

- 4.2 The JWC shall be supported in its functions by a Project Team, which shall have the functions set out in Schedule 3. The Project Team shall comprise the following officers:
- a) the Project Director;
  - b) the Secretary to the JWC;
  - c) the financial adviser to the JWC;
  - d) the legal adviser to the JWC;
  - e) [the procurement adviser to the JWC;] and
  - f) the Waste Authority Lead Officer for each Council.
- 4.3 Each of the Councils shall make any such other of its officers available as may be necessary for the purposes of the Project (the "Project Officers").
- 4.4 The Project Manager and the Project Officers shall act under the direction of the JWC and the Project Team.
- 4.5 The Waste Authority Lead Officers shall be responsible to the JWC for ensuring that his/her Council provides the support necessary to secure the effective achievement of the Project. In this context, "support" shall include the involvement and time of capable officers, the provision of information and the prompt consideration of matters referred to his/her Council for determination.

## **5. DECISION-MAKING AND AUTHORITY**

- 5.1 The Councils have identified the following three categories of decisions and other actions to be taken and carried out during the Project Milestones together with the means by which they will be taken:
- a) a "Project Team Matter", being a matter which the Project Team shall have authority to carry out on behalf of the Councils;
  - b) a "Joint Committee Matter", being a matter reserved to the JWC or which the JWC shall have authority to carry out pursuant to its Constitution (attached to this Agreement as Schedule [4]); and
  - c) a "Matter Reserved To Authority", being a matter which shall be reserved to a Council for an executive decision under the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007 and, for the avoidance of doubt, that matter requiring a decision would not be dealt with by the JWC until the decision shall have been taken;
- and, in each case, such matters are identified in Schedule 1 (Project Milestones).
- 5.2 The following persons shall be authorised to enter any contracts in respect of the Project are:

- a) the Project Director in respect of contracts which, according to the Standing Orders for Contracts of the Lead Authority, do not require to be entered into by the Head of Legal Services; and
  - b) the legal adviser to the JWC acting on the instruction of the Project Director.
- 5.3 The only persons authorised to communicate with any prospective Bidder, or actual Bidder in respect of the Project shall be:
- a) the Project Director;
  - b) the legal adviser to the JWC;
  - c) the financial adviser to the JWC;
  - d) the technical adviser to the JWC;
  - e) [the procurement adviser to the JWC;] and
  - f) any officers or consultants specifically authorised by the Project Director for the purpose of a negotiation with any prospective Bidder or actual Bidder in respect of the Project.
- 5.4 Where any person enters into a contract or communicates with any prospective Bidder or actual Bidder on behalf of the Project, he/she shall make it clear in any such contract or communication that he/she does so on behalf of the Councils.

## 6. **PROJECT COSTS**

- 6.1 The Councils have through the JWC agreed an Annual Budget for carrying out the Project based on their best estimate of their respective costs. The costs and expenses of the JWC incurred in accordance with the Annual Budget shall be reimbursed by the Councils and arrangements for such reimbursement shall be agreed between the Councils. For the avoidance of doubt, the consent of all Councils shall be required to change the basis on which costs are apportioned.
- 6.2 The costs and expenses of the JWC for the financial year 2011-2012 will be reimbursed as follows:
- a) each of the Councils agrees in principle to pay any costs required to achieve this position as agreed by the JWC; and
  - b) the costs shall be met equally by the Councils.
- 6.3 The Procurement Costs shall be shared between the Councils [equally]/[in accordance with the Procurement Costs Allocation Scheme set out in Schedule [ ]], save as otherwise agreed between the Councils under this Agreement.
- 6.4 On completion of each stage of the Project Milestones, each Council will notify the Lead Authority of its actual costs properly and reasonably incurred during that stage.

- 6.5 The Lead Authority shall, at [monthly] intervals, review the budget and produce a statement showing the Procurement Costs incurred by the Councils and each Council shall serve a request for reimbursement of its share of the Procurement Costs incurred to the date of that statement.
- 6.6 Any dispute between the Councils as to the allocation of Procurement Costs shall be resolved in accordance with the Dispute Resolution Procedure.

## **7. COMMITMENT TO THE PROJECT AND CONTRIBUTIONS**

- 7.1 The Councils agree and undertake to commit to the Project in accordance with the terms of this Agreement and not to commission and/or undertake any procurement and/or project that seeks or would procure the delivery of all or any part of the Waste Services outside the terms of this Agreement unless and until it shall have withdrawn from the Project in accordance with Clause 9 (Withdrawal during the Procurement Exercise).
- 7.2 The costs associated with providing internal resources in relation to the Project Milestones shall, upon submission of a request by the relevant Council, be reimbursed in equal contributions from the Councils. Any additional and external costs required shall similarly be financed by equal contributions from the Councils.
- 7.3 The Councils hereby agree that if one of the Councils carries out any work or incurs any cost or expenses or requests the Project Team (or any member of the Project Team) to carry out any work relating to the Project or to incur any cost or expense that is not envisaged by the Project Director to be an efficient use of time and/or resources, that matter shall be referred to the JWC for a decision as to whether such work, cost or expense is part of the Project or whether such work, cost or expense should be the entire responsibility of the Council so carrying it out or requesting it (as the case may be).

## **8. ADMISSION OF LEWES DISTRICT COUNCIL**

- 8.1 The Councils may vary the terms of this Agreement, including admitting Lewes District Council to the JWC for the purposes of the Project, the terms of such admission to be agreed by the Councils.
- 8.2 If Lewes District Council is admitted to the JWC it shall enter into a Deed of Variation in an Agreed Form and, from the date of its admittance to the JWC all the provisions of this Agreement shall apply to Lewes District Council and the definition of "Councils" shall apply to it.

## **9. WITHDRAWAL DURING THE PROCUREMENT PROCESS**

- 9.1 Each Council acknowledges that, if it withdraws from this Agreement, that withdrawal is likely to cause additional cost to the other Councils including, but not limited to, the cost of undertaking a separate procurement, the costs attendant upon the delayed availability of the Waste Services and the increased costs that the Councils may incur in relation to the Waste Services.
- 9.2 Each Council agrees that in the event that it gives notice of withdrawal (such notice to be in writing to the other Councils), it will

- a) indemnify the other Councils against any **Loss\*** which those other Councils may suffer as a result of its withdrawal from this Agreement; and

**\*"Loss": this term needs to be defined but will include "any loss and liability directly suffered by the Councils together, or any one Council, together with any damage, expense, liability or costs reasonably incurred in contesting any claim to liability and quantifying such loss and liability".**

- b) not be entitled to recover any contributions it has made to the Annual Budget up to the date of withdrawal.

9.3 Where any Council withdraws from this Agreement:

- a) the obligations of that Council in respect of the furtherance of the Project shall cease on such withdrawal;
- b) the Agreement shall continue in force as respect any financial liabilities of that Council which have arisen or may arise out of the performance of this Agreement;
- c) the Agreement shall remain in force in respect of any liability of any Council to indemnify the other Councils under this Clause 9 of the Agreement; and
- d) Clause 17 (Dispute Resolution) of this Agreement shall remain in force in respect of any of the matters arising from the performance of or withdrawal of any Council under this Agreement.

## 10. **MUTUAL LIABILITIES**

- 10.1 Members of the JWC shall, when working for the JWC, be deemed to be working on behalf of their own Council even where the particular matter under consideration relates to one of the other Councils.
- 10.2 The Project Team and Project Officers shall, when working on the Project, be deemed to be working on behalf of all the Councils, and shall be deemed to be made available and working on behalf of the other Councils under Section 113 of the Local Government Act 1972.
- 10.3 None of the Councils shall have any liability to the other Councils in respect of any loss which those other Councils may suffer as a consequence of any action or omission by any of its officer while working on the Project.

## 11. **TERMINATION**

- 11.1 This Agreement shall terminate at the earliest of:
  - a) the Waste Services Commencement Date;
  - b) the Councils agreeing in writing to its termination; or
  - c) there is only one remaining Council who has not withdrawn from this Agreement in accordance with Clause 9.

**Consideration will be given to termination in respect of a Council found to be in persistent default of its obligations under this Agreement.**

**12. CONSEQUENCES OF TERMINATION**

12.1 Following any termination of this Agreement in accordance with Clause 11, the Councils shall cease to be bound by their respective obligations under this Agreement (save for the provisions of Clauses 6 (Project Costs), 7 (Commitment to the Project and Contributions) and 14 (Confidentiality and Announcements)) and without prejudice to the satisfaction of any liability owed to the other Councils at that date.

**13. INTELLECTUAL PROPERTY**

13.1 Each Council will retain all Intellectual Property in its Material.

13.2 Each Council will grant all of the other Councils a non exclusive, perpetual, non-transferable and royalty free licence to use, modify, amend and develop its Material for the Project Milestones and any other purpose resulting from the Project Milestones whether or not the Council granting the licence remains a party to this Agreement or the Project Milestones.

13.3 Without prejudice to Clause 13.1, if more than one Council owns or has a legal or beneficial right or interest in any aspect of the Material for any reason (including that no one Council can demonstrate that it independently supplied or created the relevant Material without the help of one or more of the other Councils), each of the Councils who contributed to the relevant Material will grant to all other Councils to this Agreement a non-exclusive, perpetual, non-transferable and royalty free licence to use and exploit such Material as if all the other Councils were the sole owner under the Copyright Design and Patents Act 1988 or any other relevant statute or rule of law.

13.4 For the avoidance of doubt, any entity or person who is at the date of this Agreement a party to this Agreement and who has licensed any Intellectual Property under this Agreement will have a non-exclusive, perpetual right to continue to use the licensed Intellectual Property.

13.5 Each Council warrants that it has or will have the necessary rights to grant the licences set out in Clauses 13.2 and 13.3 in respect of the Material to be licensed. Each Council shall indemnify the other Councils against any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its intellectual property rights by use of that Council's intellectual property for the purpose of the Project.

**14. CONFIDENTIALITY AND ANNOUNCEMENTS**

14.1 Each Council shall, both during the term of this Agreement and at all times following its expiry or termination, keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) any confidential information about the business of and/or belonging to any other Council which has come to its attention as a result of or in connection with this Agreement.

14.2 The obligations set out in this Clause 14 shall not relate to information which:

f) any matter which the recipient Council can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 14;

- g) any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Council making the disclosure or the rules of any governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the governmental or regulatory authority concerned;
- h) any disclosure of information which is already lawfully in the possession of the recipient Council, prior to its disclosure by the disclosing Council;
- i) any disclosure of information by any Council to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Council for any purpose related to or ancillary to the Project or the Contract; or
- j) any provision of information to the Councils' own professional advisers or insurance advisers.

14.3 Where disclosure is permitted under Clause 14.2, the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this Clause 14 and the disclosing Council shall make this known to the recipient of the information.

14.4 No Council shall make any public statement or issue any press release or publish any other public document relating, connected with or arising out of this Agreement and/or the Cost-Sharing Agreement and/or the Contract without the remaining Councils' written consent (excluding any disclosure required by legal or regulatory requirements).

## 15. **FREEDOM OF INFORMATION**

15.1 Each Council acknowledges that all the Councils are subject to the provisions of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and each Council shall where reasonable assist and co-operate with any other Authority (at their own expense) to enable that other Council to comply with these information disclosure obligations.

15.2 Where a Council receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of any of the other Councils in relation to the Project, it shall (and shall procure that its consultants and/or sub-contractors shall):

- d) transfer the request for information to the other Council as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;
- e) provide the other Council with a copy of all information in its possession or power in the form that the Council requires within ten Business Days (or such longer period as the Council may specify) of the Council requesting that information; and
- f) provide all necessary assistance as reasonably requested by the other Council to enable the Council to respond to a request for information within the time for compliance set out in the FOIA or the EIR;

15.3 Where a Council receives a request for information under the FOIA or the EIR which relates to the Project or the Waste Services, it shall inform the other Councils of the request for information as soon as practicable after receipt and in any event at least two Business Days before disclosure and shall use all reasonable endeavours to consult with the other Councils

prior to disclosure and shall consider all representations made by the other Council in relation to the decision whether or not to disclose the information requested.

15.4 The Councils shall be responsible for determining in their absolute discretion whether any information requested from them under the FOIA or the EIR:

- c) is exempt from disclosure under the FOIA or the EIR;
- d) is to be disclosed in response to a request for information.

15.5 Each Council acknowledges that the other Council may be obliged under the FOIA or the EIR to disclose information:

- c) without consulting the other Council where it has not been practicable to achieve such consultation; or
- d) following consultation with the other Councils and having taken their views into account.

## 16. **NOTICES**

16.1 Except as expressly stated to the contrary, all notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been properly given if delivered by hand or by courier, or sent by prepaid first-class post or registered post, or by fax, to the relevant authorised officer at the Lead Authority.

16.2 Any notice shall be treated as having been served on delivery if:

- e) delivered by hand, at the time of delivery;
- f) delivered by courier, two Business Days after despatch;
- g) in the case of pre-paid first-class post or registered post, three Business Days from the date of posting;
- h) in the case of fax, on the day of transmission if sent before 4.00 pm on any Business Day and otherwise at 9.00 am on the next Business Day, subject to confirmation of transmission.

## 17. **DISPUTE RESOLUTION PROCEDURE**

17.1 Any disputes and/or disagreements arising under or in connection with this Agreement shall be resolved in accordance with this Clause 17.

17.2 If the event of a dispute and/or disagreement the JWC shall meet within ten Business Days of notification of the occurrence of such dispute and attempt to resolve the disputed matter in good faith.

17.3 If the JWC fails to resolve a dispute or disagreement within five Business Days of meeting pursuant to Clause 17.2, or fails to meet in accordance with the timescales set out in Clause 17.2, then the JWC may refer the matter for resolution to the Councils' Chief Executives.

- 17.4 If, having been so referred, the dispute is not resolved within a further ten Business Days, such dispute may be referred to, by agreement between the parties:
- d) the CIWM; or
  - e) the Centre for Effective Dispute Resolution; or
  - f) the exclusive jurisdiction of the Courts of England.
- 17.5 The Councils shall on request promptly provide to the relevant organisation all such assistance, documents and information as may be required for the purpose of determination of the dispute and the Councils shall use all reasonable endeavours to procure the prompt determination of such reference.
- 17.6 The CIWM and the Centre for Effective Dispute Resolution shall each be deemed to act as an expert and not as an arbitrator and their determination shall (in the absence of manifest error) be conclusive and binding upon the Councils.
- 17.7 The costs of the resolution of any dispute and/or disagreement between the Councils under this Agreement shall be borne equally by the Councils to the dispute in question save as may be otherwise directed by the CIWM, the Centre for Effective Dispute Resolution or the Courts of England (as the case may be).

## 18. **LAW AND JURISDICTION**

- 18.1 The construction, validity and performance of this Agreement shall be governed by English law and, subject to Clause 17, the parties irrevocably submit to the exclusive jurisdiction of the English courts.

## 19. **GENERAL**

### 19.1 **Entire Agreement**

- e) This Agreement, together with the schedules and all other documents attached or referred to in, or executed contemporaneously with, this Agreement constitutes the entire agreement between the Councils regarding its subject matter and supersedes any prior agreement, arrangement and understanding between the Councils.
- f) No representation, promise or undertaking shall be taken to have been made or implied from anything said or written in negotiations between the Councils prior to the Effective Date, except as expressly stated in this Agreement. Each Council acknowledges and agrees that it has not relied upon any information given or representation made by or on behalf of the other in entering into this Agreement.
- g) No Council shall have any remedy in respect of any untrue statement made by any other Council upon which that Council relied in entering into this Agreement and that Council's only remedies shall be for breach of contract.
- h) Nothing in this Clause 19.1 shall operate to limit or exclude any liability or either party for, or remedy against any Council in respect of, any fraudulent misrepresentation.

### 19.2 **Third Party Rights**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement may enforce any provision of it.

**19.3 Waiver**

The failure of any Council to enforce or exercise at any time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall not affect that Council's right to enforce it at a later stage.

**19.4 Severability**

If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.

**19.5 Survival**

Provisions of this Agreement which either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such termination, shall remain in full force and effect notwithstanding such expiry or termination.

**19.6 Independent Parties**

The relationship of the Councils is that of independent contractors dealing at arm's length and nothing in this Agreement shall constitute any Council as the agent, employee or representative of the other, or empower any Council to act for, bind or otherwise create or assume any obligation on behalf of any other Council, and no Council shall hold itself out as having authority to do the same.

**19.7 No Assignment**

This Agreement is personal to the Councils and no Council shall assign, transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this Agreement.

**19.8 Variations**

No alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the Councils by a duly authorised representative.

**19.9 Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

**In witness whereof the Councils have set their common seals the day and year first before written**

The common seal of )

**Eastbourne Borough Council** )

was hereunto affixed in the )

presence of: )

Authorised Signatory

The common seal of )

**Hastings Borough Council** )

was hereunto affixed in the )

presence of: )

Authorised Signatory

The common seal of )

**Rother District Council** )

was hereunto affixed in the )

presence of: )

Authorised Signatory

The common seal of )

**Wealden District Council** )

was hereunto affixed in the )

presence of: )

Authorised Signatory

**SCHEDULE 1**

**PROJECT MILESTONES**

**\*These functions/milestones are indicative only\***

<b>MILESTONE KEY PROCUREMENT FUNCTION</b>	<b>PROJECT TEAM MATTER</b>	<b>JOINT COMMITTEE MATTER</b>	<b>MATTER RESERVED TO AUTHORITIES</b>
1 Procurement of external advisers to the Project	Yes		
2 Approval and confirmation of external advisers to the Project	Yes		
3 Review of the Business Case		Yes	
4 Drafting and issuing Prior Indicative Notice	Yes		
5 Preparation of the Descriptive Document and Pre Qualification Questionnaire ("PQQ")	Yes		
6 Agreeing final version of the Descriptive Document and PQQ		Yes	
7 Drafting OJEU Notice	Yes		
8 Agreeing OJEU Notice		Yes	
9 Issuing OJEU Notice	Yes		
10 Preparation of Evaluation Criteria for all stages of the procurement process.	Yes		
11 Agreeing Evaluation Criteria for all stages of the procurement process.		Yes	
12 Organising open days prior to return of PQQ's and Expressions of Interest	Yes		
13 Evaluation and Long-listing of Bidders	Yes		
14 Agreement of long list		Yes	
15 Inform successful and unsuccessful applicants	Yes		
16 Drafting ISOS	Yes		
17 Reviewing ISOS		Yes	
18 Agreeing ISOS		Yes	
19 Issue ISOS	Yes		
20 Arrange the interviews/bidder presentations	Yes		
21 Evaluation and short listing of	Yes		

<b>MILESTONE KEY PROCUREMENT FUNCTION</b>	<b>PROJECT TEAM MATTER</b>	<b>JOINT COMMITTEE MATTER</b>	<b>MATTER RESERVED TO AUTHORITIES</b>
ISOS bidders			
22 Provisional agreement to ISOS shortlist		Yes	
23 Final agreement to ISOS shortlist		Yes	
24 Drafting ISDS	Yes		
25 Reviewing ISDS		Yes	
26 Agreeing ISDS		Yes	
27 Issue of ISDS	Yes		
28 Evaluation of initial responses to ISDS	Yes		
29 Organising clarification meetings	Yes		
30 Provisional selection of Bidders to go to Final Stage	Yes		
31 Review of evaluation and selection of Bidders to go to Final Stage		Yes	
32 Final approval of evaluation and selection bidders to go to Final Stage		Yes	
33 Evaluation of final Bids and selection of Preferred Bidder	Yes		
34 Review of final Bids and selection of Preferred Bidder		Yes	
35 Agreement to selection of Preferred Bidder			Yes
36 Clarification and Final Close	Yes		Yes
37 Dispatch of Alcatel letters			
38 Agreement and execution of Project Agreement and Second Inter Authority Agreement			Yes
39 Collation of information and provision of information in respect of Project Agreement award procedures required under Regulation 23 Public Services Contracts Regulations	Yes		
40 Approval of additional expenditure for the Project in excess of the £ million budget referred to in the Business Case			Yes

**SCHEDULE 2**

**PROCUREMENT COSTS ALLOCATION SCHEME**

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**SCHEDULE 3**

**PROJECT TEAM KEY FUNCTIONS**

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**SCHEDULE 4**  
**JWC CONSTITUTION**

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