

APPENDIX B

DATED

2016

(1) WESTERN RIVERSIDE WASTE AUTHORITY

- and -

**(2) MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF HAMMERSMITH AND FULHAM**

- and -

(3) ROYAL BOROUGH OF KENSINGTON AND CHELSEA

- and -

**(4) MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF LAMBETH**

- and -

**(5) MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF WANDSWORTH**

AGREEMENT

relating to

the apportionment of Waste Disposal Costs

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THIS DEED is made on 20

BETWEEN

- (1) **WESTERN RIVERSIDE WASTE AUTHORITY** of Smugglers Way, Wandsworth, London SW18 1JS (together with its successors in title the "**Authority**");
- (2) **MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH AND FULHAM** of The Town Hall, King Street, London W6 9JU (together with its successors in title the "**LBHF**");
- (3) **ROYAL BOROUGH OF KENSINGTON AND CHELSEA** of The Town Hall, Kensington, London W8 9JU (together with its successors in title the "**RBKC**");
- (4) **MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LAMBETH** of The Town Hall, Brixton Hill, London SW2 (together with its successors in title the "**LBL**"); and
- (5) **MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WANDSWORTH** of The Town Hall, Wandsworth High Street, London SW18 2PU (together with its successors in title the "**LBW**").

BACKGROUND

- A The Authority is a joint waste disposal authority established under the Waste Regulation and Disposal (Authorities) Order 1985 (and named in Schedule 1 to that Order).
- B The Authority may, in accordance with the Joint Waste Disposal Authorities (Levies) (England) Regulations 2006, issue levies on its Constituent Councils to meet all liabilities falling to be discharged by it for which no provision is otherwise made.
- C Regulation 4 of the 2006 Regulations details that the amount to be levied by the Authority in respect of any Financial Year from each of its Constituent Councils shall be determined by apportioning the total amount to be levied by the Authority in that year between the Constituent Councils either in such proportions as all the Constituent Councils may agree; or in the absence of such agreement, by a combination of proportions that are laid down in the 2006 Regulations.

- D This Agreement is to formally record that, as permitted by paragraph (1)(a) of Regulation 4 of the 2006 Regulations, from 1st April 2017, all the Constituent Councils agree that for a period of eight (8) Financial Years the costs incurred by the Authority in the disposal or treatment of Household Waste delivered to it by the Constituent Councils shall be recovered in the manner set out in this Agreement rather than the default methods described in paragraphs (1)(b)(i) and (1)(b)(ii) of Regulation 4 of the 2006 Regulations.
- E The default apportionment method described in paragraph (1)(b)(iii) of Regulation 4 of the 2006 Regulations for other costs not falling within paragraphs (1)(b)(i) and (1)(b)(ii) of Regulation 4 of the 2006 Regulations will continue to apply .
- F The purpose of this Agreement is to enable individual Constituent Councils to receive an immediate and direct benefit from any reduction in the tonnage of residual waste or recyclables that they present to the Authority. It also provides an immediate and direct benefit to Constituent Councils of opting for cheaper post collection waste management treatment methods among those offered by the Authority and protection from any additional costs caused by other Constituent Councils opting for more expensive post collection waste management treatments among those offered by the Authority.
- G Upon termination or expiry of this Agreement, the default method described in paragraphs (1)(b)(i) and (1)(b)(ii) of Regulation 4 of the 2006 Regulations (as amended or replaced by statute) will apply unless the parties enter into a further unanimous written agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“1985 Order” means the Waste Regulation and Disposal (Authorities) Order 1985 (as amended);

“1992 Regulations” means the Levying Bodies (General) Regulations 1992 (as amended);

“2006 Regulations” means The Joint Waste Disposal Authorities (Levies) (England) Regulations 2006 (as amended);

"Agreement" means this agreement including the annexures hereto;

"Authority Waste" means all Waste types delivered to the Authority by, or on behalf of, the Constituent Councils in their capacities as waste collection authorities under the Environmental Protection Act 1990;

"Bulk Recyclables" means Authority Waste consisting of Source Segregated Recyclables of one commodity type delivered in bulk either loose or bagged (as specified by the Authority);

"Clinical Waste" means Authority Waste consisting of Clinical Waste as defined in the Controlled Waste (England and Wales) Regulations 2012;

"Commercial Waste" has the same meaning as in section 75(7) of the Environmental Protection Act 1990;

"Commencement Date" means 1st April 2017;

"Co-mingled Recyclables" means Authority Waste, delivered loose or in plastic bags, consisting of an acceptable mix (as notified by the Authority to the Constituent Councils from time to time) of one or more Source Segregated Recyclables;

"Constituent Councils" means collectively, in part or whole, the LBHF, the RBKC, the LBL and the LBW each being a council specified in relation to the Authority in Schedule 1 to the 1985 Order;

"Contract Period" means a period of eight (8) Financial Years from the Commencement Date unless terminated earlier pursuant to clauses 7.2 or 7.3 of this Agreement;

"Detritus Waste" means Authority Waste collected by or on behalf of any Constituent Council:

- (a) from Garchey Systems; and
- (b) mechanical street sweeping and gully clearance operations which may be unavoidably wet and require de-watering prior to disposal as a result of its method of collection;

"Financial Year" means any period of twelve months beginning with 1st April;

"General Waste" means MRF Residuals and Authority Waste, but excluding Other Authority Waste delivered to the Authority for disposal or treatment by or on behalf of the Constituent Councils;

"Household Waste" has the same meaning as in section 75 of the Environmental Protection Act 1990;

"Industrial Waste" has the same meaning as in section 75(6) of the Environmental Protection Act 1990;

"Inert Waste" means brick, soil, sand, stone, concrete, paving stones, kerb stones, crushed glass and tarmac and any other such materials that the Authority may notify to the Constituent Councils that it is able to receive from time to time;

"LIBOR" means the London Interbank Offered Rate for 3 month deposits as published daily by the British Bankers' Association;

"MRF" means the materials reclamation facility to be constructed by the Authority at Smugglers Way, Wandsworth SW18 1JS;

"MRF Residuals" means residual Authority Waste which results from the Co-Mingled Recyclables that are delivered by or on behalf of the Constituent Councils and processed at the MRF;

"Other Authority Waste" means Tyre Waste, Inert Waste, Clinical Waste, Bulk Recyclables, Co-mingled Recyclables and Detritus Waste;

"Source Segregated Recyclables" means mixed paper, mixed cans, mixed glass, colour separated glass, textiles, clean timber, scrap metal, green waste and any other such materials that the Authority may notify to the Constituent Councils that it is able to receive from time to time which are segregated prior to delivery to the Authority;

"Tyre Waste" means Authority Waste consisting of motor vehicle tyres;

"Waste" means household, industrial and commercial wastes as defined in Section 75 of the Environmental Protection Act 1990 and any regulations made thereunder, to include detritus, but excluding liquid waste;

"Waste Types" shall have the meaning ascribed to it in clause 3.3 of this Agreement;

“WEEE Waste” means Authority Waste consisting of waste electrical and electronic equipment delivered in bulk (as specified by the Authority) being fridges/freezers, televisions and monitors, small and large electrical equipment, and other any such materials that the Authority may notify to the Constituent Councils that it is able to receive from time to time;

"Working Day" means any day (other than a Saturday, a Sunday or an English Bank Holiday) on which clearing banks in the City of London are open during banking hours.

"WMSA" means the Amended and Restated Waste Management Services Agreement dated 31st July 2008 between the Authority and Cory Environmental Limited.

1.2 In this Agreement unless otherwise specified, reference to:

1.2.1 "includes" and "including" shall mean including without limitation;

1.2.2 recitals, clauses, paragraphs or schedules is to recitals, clauses and paragraphs of and schedules to this Agreement. The schedules form part of the operative provisions of this Agreement and references to "this Agreement" shall, unless the context otherwise requires, include references to the recitals and the schedules;

1.2.3 writing shall include typewriting, printing, lithography, photography and other modes of representing words in a legible form (other than writing on an electronic or visual display screen) or other writing in non-transitory form; and words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

1.3 The index to and the headings in this Agreement are for information only and are to be ignored in construing the same.

2. STATUTORY DEFAULT ARRANGEMENTS

2.1 During the Contract Period, the default levy apportionment described in paragraphs (1)(b)(i) and (1)(b)(ii) of Regulation 4 of the 2006 Regulations shall not apply and the costs incurred by the Authority in the disposal or treatment of Household Waste

delivered to it by the Constituent Councils shall be apportioned by the Authority between the Constituent Councils in the manner set out in this Agreement.

- 2.2 The default apportionment method described in paragraph (1)(b)(iii) of Regulation 4 of the 2006 Regulations for other costs not falling within paragraphs (1)(b)(i) and (1)(b)(ii) of Regulation 4 of the 2006 Regulations will continue to apply during the Contract Period.
- 2.3 During the Contract Period, the payment of the element of the levy described in paragraph (1)(b)(iii) of Regulation 4 of the 2006 Regulations for all other costs for which no provision is otherwise made by the Constituent Councils shall be annually in advance in the manner set out in this Agreement and no longer by monthly payments.
- 2.4 Appendix 1 to this Agreement contains confirmation, from authorised persons, that the agreement of each Constituent Council and the Authority has been properly obtained in accordance with the procedures laid down in their respective rules and regulations.

3. RECOVERY OF AUTHORITY COSTS

- 3.1 The Authority will use the process described in paragraphs 3.3 to 3.10 to recover its costs in respect of Household Waste, Commercial Waste and Industrial Waste delivered to it by the Constituent Councils or their agents.
- 3.2 The Authority has the power under Section 52 (9) of the Environmental Protection Act 1990 to recover its costs with respect to Commercial Waste and Industrial Waste.
- 3.3 The Authority shall, by the 15th February each year, notify the Constituent Councils, in its absolute discretion, the rate per tonne that the Constituent Councils must pay to the Authority, in the following Financial Year, for each of the following types of waste delivered to the Authority by the Constituent Councils or their agents:
 - 3.3.1 General Waste;
 - 3.3.2 Detritus Waste;
 - 3.3.3 Tyre Waste;
 - 3.3.4 WEEE Waste;

- 3.3.5 Clinical Waste;
- 3.3.6 Inert Waste;
- 3.3.7 Co-mingled Recyclables; and
- 3.3.8 Bulk Recyclables;

together known as "Waste Types".

3.4 There are cost variables, outside of the Authority's control, which cannot be known by the Authority prior to 15th February in each Financial Year when the rates per tonne for each Waste Type must be set. The Authority shall therefore set rates per tonne which reasonably reflect the Authority's anticipated costs and incomes for each Waste Type in the following Financial Year. In setting such rates the factors that will be considered by the Authority will include, but not be limited to:

- 3.4.1 the anticipated contract rates as laid out in the WMSA;
- 3.4.2 the cost of landfill tax by individual Waste Type;
- 3.4.3 in the case of Co-Mingled Recyclables, handled through the MRF, the cost of repayment of the Authority's capital loan used to construct the MRF and the cost of further treating any MRF Residuals. For the avoidance of doubt, should there be a material change in the tonnage of Co-Mingled Recyclables delivered by one, or more, Constituent Councils, from the levels anticipated when assessing the rate per tonne for Co-Mingled Recyclables, the Authority reserves the right to re-charge the costs associated with the repayment of the capital loan used to construct the MRF, or a proportion of those costs in accordance with the provisions specified in clause 2.2;
- 3.4.4 in the case of Co-Mingled Recyclables, handled prior to construction of the MRF, based on anticipated tonnages, other costs, such as rent and business rates, directly associated with the operations;
- 3.4.5 in the case of Bulk Recyclables, the costs or income received from third parties on the commodity markets; and
- 3.4.6 transport costs.

- 3.5 Prior to setting its budget for the subsequent Financial Year the Authority shall review the estimated cost allocation for each Waste Type and the estimated tonnages used to calculate the rate per tonne for each Waste Type against the actual costs incurred by the Authority in respect of those Waste Types and the actual tonnages received in the current Financial Year to assess whether the actual cost per tonne incurred by the Authority in respect of each Waste Type is greater or less than the estimate. Should the estimated rate per tonne for any Waste Type in the Financial Year under review vary significantly from the actual rate per tonne then the Authority shall reclaim or rebate such shortfall or surplus by appropriate adjustment of the rate per tonne for that Waste Type in the following Financial Year.
- 3.6 Should the mechanism for recovery under clause 3.5 result in the Authority being unable to recover its costs in the following Financial Year the Authority shall recover those and any other shortfalls or costs, in accordance with the provisions specified in clause 2.2.
- 3.7 No later than 15th February in each Financial Year, the Authority shall inform each of the Constituent Councils their portion of the costs incurred by the Authority under section 1(b)(iii) of Regulation 4 of the 2006 Regulations. Each Constituent Council shall pay the full annual levy due from them to the Authority under paragraph (1)(b)(iii) of Regulation 4 of the 2006 Regulations by 5 April in each Financial Year.
- 3.8 As soon as possible following the end of each calendar month the Authority will raise an invoice for the Authority Waste delivered to it by each Constituent Council during the previous calendar month calculated using the cost per tonne rates applicable for the current Financial Year.
- 3.9 All invoices raised by the Authority will have attached sufficient supporting information to enable proper verification of the invoice to be carried out.
- 3.10 Authority invoices raised by the Authority under clause 3.8 shall be settled by the Constituent Councils within fifteen (15) Working Days of the invoice date.
- 3.11 The Authority will charge interest on all amounts outstanding on unpaid invoices from the date that the invoice was raised. Such interest shall accrue and be calculated on a daily basis at the rate of two percent (2%) above the published LIBOR rates from time to time.

4. THE AUTHORITY'S OBLIGATIONS

- 4.1 The Authority shall set rates per tonne for each of the Waste Types that reasonably and properly reflect its costs including any significant gains or shortfalls from the current Financial Year as referred to in clause 3.5.
- 4.2 The Authority shall raise invoices as promptly as reasonably possible.
- 4.3 The Authority warrants to the other parties to this Agreement that immediately prior to the execution of this Agreement:
 - 4.3.1 it has the power to enter into and perform its obligations under this Agreement;
 - 4.3.2 it has all necessary consents to enter into and perform its obligations, under this Agreement.

5. THE CONSTITUENT COUNCILS OBLIGATIONS

- 5.1 The Constituent Councils shall promptly inform the Authority of any change in their circumstances that might significantly alter either the tonnage of Authority Waste or the proportions of different Waste Types that it might deliver in the following Financial Year.
- 5.2 The Constituent Councils shall promptly settle all invoices in the timeframes set out in this Agreement.
- 5.3 The Constituent Councils each warrant to the other parties to this Agreement that immediately prior to the execution of this Agreement:
 - 5.3.1 it has the power to enter into and perform its obligations under this Agreement;
 - 5.3.2 it has all necessary consents to enter into and perform its obligations, under this Agreement.

6. RECORDS AND INFORMATION

- 6.1 The Authority shall aim to publish as soon as possible and generally within one Working Day, details of the daily tonnages of Authority Waste and the Waste Types delivered by each of the Constituent Councils or their agents.
- 6.2 Such publication will be by way of a web site that is freely available for the Constituent Councils to view and download data.

7. DURATION & TERMINATION

- 7.1 This Agreement shall continue in full force and effect for the Contract Period.
- 7.2 Any party may terminate this Agreement by notice in writing to the other parties in the event that:
 - 7.2.1 a change in law has occurred that significantly alters the circumstances under, or the purpose for, which this Agreement was entered into; or
 - 7.2.2 to continue with this Agreement would, or would be likely to, put it in breach of any of its statutory duties.
 - 7.2.3 an unforeseeable change in circumstances has occurred, or would be likely to occur, that puts it in a significantly disadvantaged position. For the avoidance of doubt, nothing in this Agreement shall entitle the Constituent Councils to terminate this Agreement due to any increase in the costs payable by any of them to the Authority hereunder arising from the suspension of the statutory default position under clauses 2.1 and 2.2 of this Agreement.
- 7.3 Any three Constituent Councils may terminate this Agreement by serving notice in writing to the Authority and the other Constituent Councils.
- 7.4 Any termination notice must be served in writing, addressed, as applicable, to the Chief Executive or Clerk of each of the other parties.
- 7.5 The following notice periods shall apply in relation to termination of this Agreement under clauses 7.2 and 7.3:

7.5.1 any termination notice served before 15th August in any Financial Year shall terminate this Agreement on 31st March of that Financial Year. For example, a notice served on 14th August 2017 would terminate this Agreement on 31st March 2018; and

7.5.2 any termination notice served after 15th August in any Financial Year shall terminate this Agreement on 31st March of the Financial Year following the then current Financial Year. For example, a notice served on 16th August 2017 would terminate this Agreement on 31st March 2019.

8. MISCELLANEOUS

8.1 Any notice to be given under this Agreement shall either be delivered personally or sent by first class recorded delivery post or by fax. The address for service of each party shall be its registered office or such other address as either party may have previously notified to the other party in writing. A notice shall be deemed to have been served as follows:

8.1.1 if personally delivered, at the time of delivery given prior to 5.00pm on a Working Day and if given after 5.00pm on the next Working Day;

8.1.2 if posted, at the expiration of two Working Days after the date of posting; and

8.1.3 if sent by fax, at the time of transmission if sent prior to 5.00pm on a Working Day and if sent after 5.00pm on the next Working Day.

In proving such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class, recorded delivery or that the correct transmission report was received from the fax machine sending the notice as the case may be.

8.2 This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all previous agreements and understanding between the parties with respect hereto whether written or oral and whether express or implied. Nothing in this clause 8.2 shall operate to exclude any party's liability to the other for fraud or fraudulent misrepresentation.

- 8.3 No delay or omission of any party in exercising any right under this Agreement will impair that right or be construed as a waiver of that right, nor will any single or partial exercise of any right preclude any further exercise of that right or the exercise of any other rights. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by the general law.
- 8.4 If any provision of this Agreement is held to be invalid, unenforceable or void, such decision shall not have the effect of invalidating or rendering void the remainder of this Agreement. If any provision of this Agreement shall be held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, such provision shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement and the validity of the remaining provisions shall not be affected. In the event that any such deletion materially affects the interpretation of this Agreement then the parties shall negotiate in good faith with a view to agreeing a substitute provision which as closely as possible reflects the original intention of the parties.
- 8.5 This Agreement is intended and agreed to be for the benefit solely of the parties and their lawful successors and permitted assigns and is not intended to create any right enforceable by any other person.
- 8.6 A person who is not a party to this Agreement shall have no rights to enforce the same under or pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 8.7 No amendment to this Agreement shall be binding unless in writing and signed by duly authorised representatives of the Authority and the Constituent Councils.
- 8.8 This Agreement may be executed in any number of counterparts which together shall constitute one Agreement. Any party may enter into this Agreement by executing a counterpart and this Agreement shall not take effect until it has been executed by all parties.
- 8.9 This Agreement shall be binding on and shall inure for the benefit of each party's successors and permitted assigns. Subject to the other provisions of this Agreement none of the parties may, without the written consent of the others, assign any of their respective rights or obligations under this Agreement save that any of the parties may assign their rights under this Agreement to any public body (being a single entity) which is a successor body on their amalgamation or reconstruction having the legal

capacity, power and authority to become a party to and to perform the obligations of that party under this Agreement

9. DISPUTE RESOLUTION

9.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between the Chief Executive or Clerk of each of the Parties. If the dispute is not resolved within 30 days of receipt of a written request to enter into negotiations, the parties shall attempt to resolve the dispute in good faith through mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure.

9.2 The mediation shall be conducted by a single mediator appointed by the parties in dispute or, if the parties are unable to agree on the identity of the mediator or if the person appointed is unable or unwilling to act, the mediator shall be appointed by CEDR on the application of either party.

9.3 If the dispute has not been resolved by mediation within sixty (60) days of the initiation of that procedure, any party may commence court proceedings.

10. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law and, subject to the provisions of clause 9, shall be subject to the exclusive jurisdiction of the English courts.

IN WITNESS whereof this Agreement has been executed as a deed and delivered on the date first above written.

THE COMMON SEAL of WESTERN)
RIVERSIDE WASTE AUTHORITY was)
hereunto affixed in the presence of:)
)
)

THE COMMON SEAL of MAYOR AND)
BURGESSES OF THE LONDON BOROUGH)
OF HAMMERSMITH AND FULHAM was)
hereunto affixed in the presence of:)
)

THE COMMON SEAL of ROYAL)
BOROUGH OF KENSINGTON AND)
CHELSEA was hereunto affixed in the presence)
of:)
)

THE COMMON SEAL of MAYOR AND)
BURGESSES OF THE LONDON BOROUGH)
OF LAMBETH was hereunto affixed in the)
presence of:)
)

THE COMMON SEAL of MAYOR AND)
BURGESSES OF THE LONDON BOROUGH)
OF WANDSWORTH was hereunto affixed in)
the presence of:)
)

ANNEXURES

Constituent Council and Authority Authorisations

Please see the attached documents.