

1. BRIGHTON AND HOVE CITY COUNCIL
2. EAST SUSSEX COUNTY COUNCIL

JOINT WORKING AGREEMENT

Being the Agreement between the Councils pursuant to the
joint Integrated Waste Management Services Contract

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

“Cash Flow Adjustment”	where one Party funds payments under the Principal Contract prior to reimbursement by the other Party the Cash Flow Adjustment shall be a calculation of any cost of borrowing or loss of interest for the period to reimbursement relating to the sums expended such calculation to be made using the Bank of England published base rate applicable at the time.
“Constitution Agreement”	the agreement in Schedule 1.
“Excess Contract Waste”	such amount of Contract Waste as shall be received by the Contractor in any Contract Year in excess of 550,000 tonnes.
“Forecast Share of the Unitary Charge”	the amount of the forecasted components of the Unitary Charge prepared by the Contractor in accordance with Schedule 12 of the Principal Contract as is agreed between the Parties is payable monthly by B&HCC to ESCC.
“Household Waste”	Contract Waste which is Household Waste and excluding Non-Household Waste.
“Household Waste Recycling Sites”	each of the Household Waste Recycling Sites and Household Waste Recycling Site shall refer to each and every one of them.
“Inter Party Reconciliation Amount”	the amount being the difference between the Share of the Unitary Charge and the Forecast Share of the Unitary Charge.
“Inter Party Reconciliation Date”	either of the dates in clause 7.4 .
“Joint Committee”	the committee which shall be formed under the terms of the Constitution Agreement and which shall be made up of representatives of both Parties.
“Non Household Waste”	Contract Waste which is not Household Waste.
“Principal Contract”	the Contract between ESCC and B&HCC and South Downs Waste Services Ltd dated

“Principal Contract Management Arrangements”	the arrangement set out in Schedule 2 pursuant to clause 6B .
“Reduced Contract Waste”	such cumulative amount of Contract Waste as shall be received by the Contractor in any Contract Year where such total amount is less than 300,000 tonnes.
“Review Date”	the date one year after the Commencement Date and every anniversary thereof during the term of this Agreement.
“Share of the Unitary Charge”	the summation of the component elements of the Unitary Charge as listed in paragraph 2.1 of Part 1 of Schedule 12 of the Principal Contract and shared between the Parties as set out in clause 7.7 .
“Transfer Date”	the date the Transferred Properties are transferred to the Parties by the Contractor in accordance with the Principal Contract.
“Transferred Assets”	all assets and equipment provided by the Contractor at all the Waste Management Facilities excluding the Household Waste Recycling Sites.
“Transferred Property”	all the Waste Management Facilities excluding the Household Waste Recycling Sites and Transferred Properties shall mean each and every one of them.
“Trust for Sale”	the trust by which the Parties shall jointly own the Transferred Property from the Transfer Date.
“Unitary Charge”	the amount referred to as such and calculated in accordance with Schedule 12 of the Principal Contract.

2. INTERPRETATION

In this Agreement except where the context otherwise requires:

- 2.1 the masculine includes the feminine and the neuter and vice versa;
- 2.2 the singular includes the plural and vice versa;
- 2.3 a reference in this Agreement to any clause sub-clause paragraph Schedule appendix or annex is except where it is expressly stated to the contrary a reference to such clause sub-clause paragraph Schedule appendix or annex of this Agreement;

- 2.4 any reference to this Agreement or to any other document shall include any permitted variation amendment or supplements to such document;
- 2.5 a reference to a person includes firms and corporations and their successors and permitted assignees or transferees;
- 2.6 references to any statute or statutory provisions (including any EU Instrument) shall unless the context otherwise requires be construed as including references to any earlier statute or the corresponding provisions of any earlier statute whether repealed or not directly or indirectly amended consolidated extended or replaced by such statute or provisions or re-enacted in any such statute or provisions and to any subsequent statute directly or indirectly amending consolidating extending replacing or re-enacting the same and will include any orders regulations instruments or other subordinate legislation made under the relevant statute or statutory provisions;
- 2.7 words preceding “include” “includes” including” and “included” shall be construed without limitation by the words which follow those words unless inconsistent with the context and the rule of interpretation known as ejusdem generis shall not apply;
- 2.8 the list of contents and the headings to the clauses and parts of this Agreement and to the paragraphs of the Schedules are for the ease of reference only and shall not affect the construction of this Agreement; and
- 2.9 the Schedules and appendices hereof all form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement.

3. GUIDING PRINCIPLES AND OBJECTIVES

- 3.1 This clause 3 sets out certain guiding principles and objectives which the Parties agree to apply to their relationship under this Agreement.
- 3.2 In this Agreement the Parties agree to:
- 3.2.1 mutually support and co-operate with each other for the success and performance of the Principal Contract and this Agreement and accordingly agree to be open and trusting in their dealings with each other make information and analysis available to each other regarding the subject matter of the Principal Contract use such information to support the Principal Contract Management Arrangements discuss and develop ideas openly and contribute fully to all aspects of making the Principal Contract Management Arrangements successful;
- 3.2.2 willingly embrace a commitment to transparency in their dealings and in particular a need to comply with statutory access to information requirements and the Freedom of Information Act 2000 and supporting codes of practice;

- 3.2.3 respect the mutual need for commercial confidentiality and be aware of the need for and respect matters of commercial confidentiality and potential sensitivity;
- 3.2.4 be fully committed to the Principal Contract Management Arrangements and seek to fully motivate employees to act in accordance with these guiding principles and address the challenges of the Principal Contract Management Arrangements with drive enthusiasm and a determination to succeed;
- 3.2.5 use all reasonable endeavours to develop and maintain an effective joint process to ensure that the Principal Contract Management Arrangement develops appropriately and in line with these guiding principles and objectives;
- 3.2.6 use their combined skills and experience to understand key issues facing each other's services and commit to work together to ensure improvements throughout the life of this Agreement; and
- 3.2.7 bring to the attention of each other all information which is relevant to the economic effective and efficient performance of the Principal Contract this Agreement and the Constitution Agreement.
- 3.2.8 be flexible in the implementation and operation of all aspects of this Agreement and where necessary, and subject to clause 21, cooperatively give effect to any agreed changes to this Agreement.

4. COMMENCEMENT AND TERM

- 4.1 This Agreement shall commence on the same date and time as the Principal Contract.
- 4.2 This Agreement shall terminate on the earlier of:
 - 4.2.1 the date the Trust for Sale terminates in accordance with **clause 16**; or
 - 4.2.2 the date when the Trust for Sale expires in accordance with the perpetuity period set out in the Trust for Sale; or
 - 4.2.3 such other date as the Parties shall agree in writing.
- 4.3 The termination of this Agreement is without prejudice to the rights duties and liabilities of the Parties accrued prior to termination. All other clauses in this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

5. OBLIGATION OF THE PARTIES TO PERFORM THE PRINCIPAL CONTRACT

5.1 As the same shall fall due from time to time the Parties shall immediately commence and shall each regularly and diligently proceed with carry out and perform each of its obligations under the Principal Contract.

5.2 The Parties shall deliver or procure the delivery of all Contract Waste in accordance with clause 79 of the Principal Contract.

6A. OBLIGATIONS OF THE PARTIES IN RELATION TO THE JOINT COMMITTEE

6A.1 The Parties shall:

6A.1.1 enter into the Constitution Agreement in the form set out in Schedule 1 (Constitution Agreement) immediately upon the execution of this Agreement;

6A.1.2 co-operate in the provision of staff and resources to the Joint Committee as is consistent with the terms of the Constitution Agreement and all costs in connection with the establishment and administration of the Joint Committee shall be borne by the Parties in equal shares;

6A.1.3 recognise the existence of and give prompt effect to any decisions that have been made by the Joint Committee under the terms of the Constitution Agreement.

6A.2 The Parties shall have the right to and shall make individual independent decisions on matters referred to each of them by the Joint Committee for decision and on any matters not delegated or referred to the Joint Committee.

6B. OBLIGATIONS OF THE PARTIES IN RELATION TO PRINCIPAL CONTRACT MANAGEMENT ARRANGEMENTS

6B.1 The Parties shall:

6B.1.1 enter into the Principal Contract Management Arrangements as set out in Schedule 2 immediately upon the execution of this Agreement;

6B.1.2 co-operate in the provision of staff and resources to the Principal Contract Management Arrangements and in the implementation and operation of the Principal Contract Management Arrangements be guided at all times by the requirements of clause 3.

6B.2 All costs incurred in the implementation and operation of the Principal Contract Management Arrangements shall be borne by the Parties in the proportion $\frac{2}{3}$ ESCC and $\frac{1}{3}$ B&HCC.

6C. OBLIGATION OF THE PARTIES IN RELATION TO STANDING ORDERS

- 6C.1 Subject to **clause 6C.2**, for the purposes of the proper administration, implementation and operation of this Agreement and the Principal Contract the Standing Orders or other rules of procedure of ESCC shall take precedence over those of B&HCC.
- 6C.2 Notwithstanding the generality of **clause 6C.1**, either Party shall be entitled at any time to utilise their respective particular Overview and Scrutiny procedures and both Parties will in such circumstances fully cooperate with each other in such Overview and Scrutiny Procedures.

7. **PAYMENT**

- 7.1 The Parties have a duty under clause 26 of the Principal Contract to pay the Unitary Charge for the Services calculated in accordance with Schedule 12 of the Principal Contract.
- 7.2 ESCC as Lead Authority has an obligation under the Principal Contract to pay the Contractor in full all undisputed amounts of the Unitary Charge for such applicable Payment Period in accordance with clause 28 of the Principal Contract.
- 7.3 Each month B&HCC shall pay ESCC its Forecast Share of the Unitary Charge by electronic transfer into such account as ESCC shall nominate and such Forecast Share to be paid by B&HCC to ESCC on the same day as ESCC pays the relevant undisputed amount of the Unitary Charge to the Contractor.
- 7.4 The Parties agree that the payments of the Forecast Share of the Unitary Charge shall be subject to a six monthly reconciliation based on the information provided in Schedule 12 of the Principal Contract and calculated in accordance with clauses 7.7 to 7.15 on the Inter Party Reconciliation Date which shall be the thirtieth Day after the first Inter Party Reconciliation Date and the second Inter Party Reconciliation Date in each Contract Year.
- 7.5 Provided that the information under clause 7.4 is provided to the Project Director by the Contractor within the period required in Schedule 12 of the Principal Contract the Lead Authority shall on the Inter Party Reconciliation Date calculate the Inter Party Reconciliation Amount together with any Cash Flow Adjustment and inform and invoice the other Party of the Inter Party Reconciliation Amount together with any Cash Flow Adjustment due from or to it within 5 Business Days of the Inter Party Reconciliation Amount.
- 7.6 The Party required to pay the Inter Party Reconciliation Amount shall make such payment to the other Party within 10 Days after the relevant Inter Party Reconciliation Date. Where the paying Party fails to pay the Inter Party Reconciliation Amount within 10 Days the non-paying Party shall be entitled to

interest from the paying Party at the applicable Bank of England published base rate from the Inter Party Reconciliation Date until the date of actual payment.

7.7 Each Party's Share of the Unitary Charge shall be calculated as set out below.

Unitary Charge Elements	Payment [<i>where applicable the Payment Formula is set out at clause 7.7A</i>]
Baseline Payment	<p>For ESCC the Payment shall be calculated according to the total tonnes of Contract Waste excluding Refrigerators (see Refrigerator Payment below) delivered by ESCC to the Contractor provided that the total amount of Contract Waste delivered by both Parties is not less than 300,000 tpa in which case the provisions of clause 7.11 shall apply and not greater than 550,000 tpa in which case the provisions of clause 7.10 shall apply. Contract Waste contains Non Household Waste and Household Waste and for ESCC the payment for Non Household Waste shall be the number of tonnes of Non Household Waste delivered by ESCC to the Contractor multiplied by the highest applicable Baseline Price. For ESCC the payment for Household Waste is calculated according to the ESCC proportions of the total Household Waste arising in the Contract area multiplied by the total Household Waste Baseline Payment. The total Household Waste Baseline Payment shall be calculated by deducting the total Baseline Payment in respect of Non Household Waste arising from both Parties from the total Baseline Price calculated in accordance with Schedule 12.</p> <p>For B&HCC the Payment shall be calculated according to the total tonnes of Contract Waste excluding Refrigerators (see Refrigerator Payment below) delivered by B&HCC to the Contractor provided that the total amount of Contract Waste delivered by both Parties is not less than 300,000 tpa in which case the provisions of clause 7.11 shall</p>

Unitary Charge Elements	Payment [<i>where applicable the Payment Formula is set out at clause 7.7A</i>]
Recovery Supplement	<p>apply and not greater than 550,000 tpa in which case the provisions of clause 7.10 shall apply. Contract Waste contains Non Household Waste and Household Waste and for B&HCC the payment for Non Household Waste shall be the number of tonnes of Non Household Waste delivered by B&HCC to the Contractor multiplied by the highest applicable Baseline Price. For B&HCC the payment for Household Waste is calculated according to the B&HCC proportions of the total Household Waste arising in the Contract area multiplied by the total Household Waste Baseline Payment. The total Household Waste Baseline Payment shall be calculated by deducting the total Baseline Payment in respect of Non Household Waste arising from both Parties from the total Baseline Price calculated in accordance with Schedule 12.</p> <p>For ESCC the payment shall be calculated as a proportion of the total Recovery Supplement paid for the total Household Waste that has been recovered by the Contractor. The payment shall be calculated in accordance with the proportion of ESCC Household Waste divided by the total Household Waste multiplied by the total Recovery Supplement Payment in respect of Household Waste.</p> <p>For ESCC Non Household Waste that is Recovered by the Contractor the ESCC payment shall be the number of ESCC Non Household Waste tonnes Recovered multiplied by the highest applicable Recovery Supplement rate.</p> <p>For B&HCC the payment shall be calculated as a proportion of the total Recovery Supplement paid for the total Household Waste that has been Recovered by the Contractor. The payment shall be calculated</p>

Unitary Charge Elements	Payment [<i>where applicable the Payment Formula is set out at clause 7.7A</i>]
	<p>in accordance with the proportion of B&HCC Household Waste divided by the total Household Waste multiplied by the total Recovery Supplement Payment in respect of Household Waste.</p> <p>For B&HCC Non Household Waste that is Recovered by the Contractor the B&HCC payment shall be the number of B&HCC Non Household Waste tonnes Recovered multiplied by the highest applicable Recovery Supplement rate.</p>
Recycling Supplement	<p>For ESCC the applicable payment shall be calculated according to the tonnes of Contract Waste delivered by ESCC to the Contractor together with Contract Waste collected by the Contractor at HWRSs in the ESCC administrative area and which is Recycled by the Contractor multiplied by the applicable Recycling Supplement.</p> <p>For B&HCC the payment shall be calculated according to the tonnes of Contract Waste delivered by B&HCC to the Contractor together with Contract Waste collected by the Contractor at HWRS in the B&HCC administrative area and which is Recycled by the Contractor multiplied by the applicable Recycling Supplement.</p>
Beneficial Use Supplement	<p>For ESCC the payment shall be calculated as a proportion of the total Beneficial Use Supplement paid for all Household Waste that has been put to Beneficial Use by the Contractor. The payment shall be calculated in accordance with the proportion of ESCC Household Waste divided by the total Household Waste multiplied by the total Beneficial Use Supplement Payment.</p>

Unitary Charge Elements	Payment [<i>where applicable the Payment Formula is set out at clause 7.7A</i>]
Landfill Tax Liability	<p>For ESCC Non Household Waste that is put to Beneficial Use by the Contractor the ESCC payment shall be the number of ESCC Non Household Waste tonnes put to Beneficial Use multiplied by the highest applicable Beneficial Use Supplement rate.</p> <p>For B&HCC the payment shall be calculated as a proportion of the total Beneficial Use Supplement paid for all Household Waste that has been put to Beneficial Use by the Contractor. The payment shall be calculated in accordance with the proportion of B&HCC Household Waste divided by the total Household Waste multiplied by the total Beneficial Use Supplement Payment.</p> <p>For B&HCC Non Household Waste that is put to Beneficial Use by the Contractor the B&HCC payment shall be the number of B&HCC Non Household Waste tonnes put to Beneficial Use multiplied by the highest applicable Beneficial Use Supplement rate.</p> <p>For the purposes of Landfill Tax Liability the total remaining tonnes that attract a landfill tax payment is the sum of the remaining tonnes of ESCC Contract Waste and the remaining tonnes of B&HCC Contract Waste as set out below:</p> <p>For ESCC the payment shall be calculated in accordance with the tonnes of Contract Waste delivered by ESCC to the Contractor less:</p> <ul style="list-style-type: none"> (i) those tonnes of Contract Waste upon which the Recovery Supplement is payable by ESCC and (ii) those tonnes of Contract Waste upon which the Recycling Supplement is payable by ESCC and (iii) those tonnes of Contract Waste upon which the Beneficial Use Supplement is

Unitary Charge Elements	Payment [<i>where applicable the Payment Formula is set out at clause 7.7A</i>]
<p>Landfill Tax Reconciliation for Recycling Failure</p>	<p>payable by ESCC;</p> <p>which remaining tonnes of Contract Waste shall be calculated as a proportion of the total remaining tonnes that attract a landfill tax payment and multiplied by the Landfill Tax Liability to give the ESCC landfill tax payment.</p> <p>For B&HCC the payment shall be calculated in accordance with the tonnes of Contract Waste delivered by B&HCC to the Contractor less:</p> <ul style="list-style-type: none"> (iv) those tonnes of Contract Waste upon which the Recovery Supplement is payable by B&HCC and (v) those tonnes of Contract Waste upon which the Recycling Supplement is payable by B&HCC and (vi) those tonnes of Contract Waste upon which the Beneficial Use Supplement is payable by B&HCC; <p>which remaining tonnes of Contract Waste shall be calculated as a proportion of the total remaining tonnes that attract a landfill tax payment and multiplied by the Landfill Tax Liability to give the B&HCC landfill tax payment.</p> <p>For ESCC the payment shall be calculated according to the proportion of the total recyclable materials delivered to or collected from the HWRS within the administrative area of ESCC to the Contractor multiplied by the Landfill Tax Reconciliation Amount for such Recycling failure as set out in Schedule 12.</p>

Unitary Charge Elements	Payment [<i>where applicable the Payment Formula is set out at clause 7.7A</i>]
Landfill Tax Reconciliation for Recovery Failure	<p>For B&HCC the payment shall be calculated according to the proportion of the total recyclable materials delivered to or collected from the HWRS within the administrative area of B&HCC to the Contractor multiplied by the Landfill Tax Reconciliation Amount for such Recycling failure as set out in Schedule 12.</p> <p>Where there is a remaining balance from Landfill Tax Reconciliation for Recycling Failure because there has also been Recovery Failure the remaining balance shall be apportioned on the following basis:</p> <p>For ESCC the payment shall be calculated according to the proportion of the Landfill Tax Liability Tonnes apportioned to ESCC (as set out above), multiplied by the Landfill Tax Reconciliation Amount for such Recovery Failure as set out in Schedule 12.</p> <p>For B&HCC the payment shall be calculated according to the proportion of the Landfill Tax Liability Tonnes apportioned to B&HCC, as set out above, multiplied by the Landfill Tax Reconciliation Amount for such Recovery Failure as set out in Schedule 12.</p>
Reconciliation Payments	<p>Where the payments of the Unitary Charge elements as set out above have required reconciliation payments by the Parties to the Contractor or from the Contractor to the Parties such reconciliation payments shall be apportioned between the Parties calculated on the basis of the applicable payments for the Unitary Charge Elements, as apportioned or incurred by the Parties as set out in this clause 7.7 (Payment).</p>
Lump Sum Refinancing Gains	<p>Any lump sum Refinancing Gains will be apportioned between the Parties on the basis of ESCC $\frac{2}{3}$ and B&HCC $\frac{1}{3}$</p>
Any amount payable by or reimbursable to	<p>By means of an adjustment to the Unitary</p>

Unitary Charge Elements	Payment [<i>where applicable the Payment Formula is set out at clause 7.7A</i>]
<p>the Parties in respect of a Council Change arising under clause 24 of the Principal Contract.</p>	<p>Charge, subject to clause 10.5 where there will be no adjustment to the Unitary Charge and where any payment or reimbursement will be paid or received fully by the relevant Party.</p>
<p>Any amount payable by or reimbursable to the Parties in respect of a Change in Law arising under clause 25 of the Principal Contract.</p>	<p>By means of an adjustment to the Unitary Charge, subject to clause 11.2 where there will be no adjustment to the Unitary Charge and where any payment will be paid fully by the relevant Party.</p>
<p>Compensation paid to the Contractor in consequence of any action or inaction by any WCA.</p>	<p>Any amount payable to the Contractor by the Parties in respect of compensation for any action or inaction by any WCA shall be payable in its entirety by the Party in whose administrative area the relevant WCA is geographically located.</p>
<p>Unavailability Deductions</p>	<p>Shall be calculated and shared between the Parties on a proportionate basis according to the forecast tonnes of contract waste in the relevant month multiplied by the amount of the deductions (subject to clause 7.12 where payment will be credited fully to the relevant Party).</p>
<p>Performance Deductions</p>	<p>Shall be calculated and shared between the Parties on a proportionate basis according to the forecast tonnes of contract waste in the relevant month multiplied by the amount of the deductions (subject to clause 7.12 where it will be credited fully to the relevant Party).</p>
<p>Excess Profit Payment</p>	<p>Profits Proportion calculated in accordance with clause 7.9 multiplied by the Excess Profit Payment.</p>
<p>Household Waste Recycling Site Payment</p>	<p>For ESCC shall be the sum of the Household Waste Recycling Site Payments for each of the Household Waste Recycling Sites provided by ESCC within the administrative area of ESCC.</p>

Unitary Charge Elements	Payment [<i>where applicable the Payment Formula is set out at clause 7.7A</i>]
	<p>For B&HCC shall be the sum of the Household Waste Recycling Site Payments for each of the Household Waste Recycling Sites provided by B&HCC within the administrative area of B&HCC.</p>
Interim Service Payment	<p>For ESCC the payment shall be calculated according to the proportion of the total Contract Waste delivered by ESCC multiplied by the applicable Interim Service Payment, as set out in Schedule 12.</p> <p>For B&HCC the payment shall be calculated according to the proportion of the total Contract Waste delivered by B&HCC multiplied by the applicable Interim Service Payment, as set out in Schedule 12.</p>
Run-Out Service Payment	<p>For ESCC the payment shall be calculated according to the proportion of the total Contract Waste delivered by ESCC multiplied by the applicable Run-Out Service Payment, as set out in Schedule 12.</p> <p>For B&HCC the payment shall be calculated according to the proportion of the total Contract Waste delivered by B&HCC multiplied by the applicable Run-Out Service Payment, as set out in Schedule 12.</p>
Excess Contract Waste	<p>The quantity of Excess Contract Waste calculated in accordance with clause 7.10 multiplied by the relevant Excess Contract Waste Baseline Price and paid by the relevant Party.</p>
Reduced Contract Waste	<p>The Reduced Contract Waste payment calculated in accordance with clause 7.11 and paid by the relevant Party.</p>
Refrigerator Payments	<p>For ESCC the payment shall be calculated in accordance with the total number of refrigerators arising for disposal by the Contractor in the administrative area of ESCC.</p>

Unitary Charge Elements	Payment [<i>where applicable the Payment Formula is set out at clause 7.7A</i>]
	For B&HCC the payment shall be calculated in accordance with the total number of refrigerators arising for disposal by the Contractor in the administrative area of B&HCC.
Other Payments	
PFI Credits received from DEFRA	PFI Credit Proportion calculated in accordance with clause 7.9 multiplied by the amount of the PFI credit.
Planning Costs	All costs payable to the Contractor pursuant to clause 8A and clause 8B of the Principal Contract in respect of the Appeal Contingency (and only those so payable) shall be payable in the proportion of ESCC ¹ / ₂ and B&HCC ¹ / ₂ .
CPO Costs	All costs incurred by the Parties in respect of the exercise of Compulsory Purchase Order powers whether or not payable to the Contractor pursuant to the Principal Contract but only in relation to the ERP at Newhaven and any New Technology Waste Management Facility shall be payable in the proportion of ESCC ² / ₃ and B&HCC ¹ / ₃ .
Any other outstanding amounts due under the Principal Contract including additional land costs and insurance premium increases.	By means of an adjustment to the Unitary Charge.

7.7.1 Payment Formulae

7.7.1.1 Baseline Payment

$$\text{ESCC share of Baseline Payment} = \text{ENHB} + \text{EHB}$$

$$\text{B\&HCC share of Baseline Payment} = \text{BNHB} + \text{BHB}$$

$$\text{ENHB} = \text{NHB} * (\text{ENHCW} / \text{NHCW})$$

$$\text{BNHB} = \text{NHB} * (\text{BNHCW} / \text{NHCW})$$

$$\text{EHB} = \text{HB} * (\text{EHCW} / \text{HCW})$$

$$\text{BHB} = \text{HB} * (\text{BHCW} / \text{HCW})$$

$$\text{NHB} = (\text{HBP1} * \text{HWB1}) + (\text{HBP2} * \text{HWB2}) + (\text{HBP3} * \text{HWB3}) + (\text{HBP4} * \text{HWB4}) + (\text{HBP5} * \text{HWB5})$$

$$\text{HB} = \text{B} - \text{NHB}$$

Where:

B = Total Baseline Payment

NHB = Total Non Household Contract Waste Baseline Payment

ENHB = ESCC share of Non Household Contract Waste Baseline Payment

BNHB = B&HCC share of Non Household Contract Waste Baseline Payment

HB = Total Household Contract Waste Baseline Payment

EHB = ESCC share of Household Contract Waste Baseline Payment

BHB = B&HCC share of Household Contract Waste Baseline Payment

NHCW = Non Household Contract Waste

ENHCW = ESCC Non Household Contract Waste

BNHCW = B&HCC Non Household Contract Waste

HCW = Household Contract Waste

EHCW = ESCC Household Contract Waste

BHCW = B&HCC Household Contract Waste

HBP1 = highest Baseline Price per tonne for the applicable phase

HBP2 = second highest Baseline Price per tonne for the applicable phase

HBP3 = third highest Baseline Price per tonne for the applicable phase

HBP4 = fourth highest Baseline Price per tonne for the applicable phase

HBP5 = lowest Baseline Price per tonne for the applicable phase

HWB1 = tonnes of Non Household Contract Waste during the applicable phase in the highest Baseline Price Weight Band

HWB2 = tonnes of Non Household Contract Waste during the applicable phase in the second highest Baseline Price Weight Band

HWB3 = tonnes of Non Household Contract Waste during the applicable phase in the third highest Baseline Price Weight Band

HWB4 = tonnes of Non Household Contract Waste during the applicable phase in the fourth highest Baseline Price Weight Band

HWB5 = tonnes of Non Household Contract Waste during the applicable phase in the lowest Baseline Price Weight Band

7.7.1.2 Recovery Supplement

ESCC share of Recovery Supplement = ENHE + EHE

B&HCC share of Recovery Supplement = BNHE + BHE

ENHE = NHE * (ENHCW / NHCW)

BNHE = NHE * (BNHCW / NHCW)

EHE = HE * (EHCW / HCW)

BHE = HE * (BHCW / HCW)

NHE = (HE1 * WHE1) + (HE2 * WHE2) + (HE3 * WHE3)

HE = E - NHE

Where:

E = Total Recovery Supplement

HE = Total Energy Recovery Supplement paid in respect of Household Contract Waste

NHE = Total Energy Recovery Supplement paid in respect of Non Household Contract Waste

EHE = ESCC share of Total Energy Recovery Supplement paid in respect of Household Contract Waste

BHE = B&HCC share of Total Energy Recovery Supplement paid in respect of Household Contract Waste

HE1 = highest Energy Recovery supplement per tonne

HE2 = second highest Energy Recovery supplement per tonne

HE3 = lowest Energy Recovery supplement per tonne

WHE1 = Tonnes of energy recovery attracting the highest Energy Recovery Supplement

WHE2 = Tonnes of energy recovery attracting the second highest Energy Recovery Supplement

WHE3 = Tonnes of energy recovery attracting the lowest Energy Recovery Supplement

7.7.1.3 Recycling Supplement

ESCC share of Recycling Supplement = ERCW * R

B&HCC share of Recycling Supplement = BRCW * R

Where:

ERCW = tonnes of ESCC contract waste recycled

BRCW = tonnes of B&HCC contract waste recycled

R = Average recycling supplement per tonne (total recycling supplement payable / total tonnes of recycling)

7.7.1.4 **Beneficial Use Supplement**

ESCC share of Beneficial Use Supplement = EHN + ENHN

BHCC share of Beneficial Use Supplement = BHN + BNHN

EHN = N * (EHCW / CW)

BHN = N * (BHCW / CW)

ENHN = N * (ENHCW / CW)

BNHN = N * (BNHCW / CW)

Where:

EHN = ESCC share of Beneficial Use supplement paid in respect of Household Contract Waste

BHN = BHCC share of Beneficial Use supplement paid in respect of Household Contract Waste

ENHN = ESCC share of Beneficial Use supplement paid in respect of Non Household Contract Waste

BNHN = BHCC share of Beneficial Use supplement paid in respect of Non Household Contract Waste

7.7.1.5 **Landfill Tax Liability**

ESCC share of Landfill Tax Payment = ELT

BHCC share of Landfill Tax Payment = BLT

ELT = (ENRW / NRW) * L

BLT = (BNRW / NRW) * L

ENRW = ECW - ENHET - EHET - ERCW - ENHNT - EHNT

BNRW = BCW - BNHET - BHET - BRCW - BNHNT - BHNT

ENHET = ET * (NHCW / CW) * (ENHCW / NHCW)

BNHET = ET * (NHCW / CW) * (BNHCW / NHCW)

EHET = ET * (HCW / CW) * (EHCW / HCW)

BHET = ET * (HCW / CW) * (BHCW / HCW)

ENHNT = NT * (NHCW / CW) * (ENHCW / NHCW)

BNHNT = NT * (NHCW / CW) * (BNHCW / NHCW)

EHNT = NT * (NHCW / CW) * (EHCW / HCW)

BHNT = NT * (NHCW / CW) * (BHCW / HCW)

Where:

CW = Total Contract Waste

ECW = ESCC Contract Waste

BCW = BHCC Contract Waste

L = Average landfill tax per tonne of waste (total landfill tax payments / total tonnes of landfill)

ENRW = ESCC notional residual waste

BNRW = BHCC notional residual waste

NRW = Total notional residual waste

ENHET = tonnes of Recovery Supplement in respect of Non Household Contract Waste apportioned to ESCC

BNHET = tonnes of Recovery Supplement in respect of Non Household Contract Waste apportioned to BHCC

EHET = tonnes of Recovery Supplement in respect of Household Contract Waste apportioned to ESCC

BHET = tonnes of Recovery Supplement in respect of Household Contract Waste apportioned to BHCC

ENHNT = tonnes of Beneficial Use Supplement in respect of Non Household Contract Waste apportioned to ESCC

BNHNT = tonnes of Beneficial Use Supplement in respect of Non Household Contract Waste apportioned to BHCC

EHNT = tonnes of Beneficial Use Supplement in respect of Household Contract Waste apportioned to ESCC

BHNT = tonnes of Beneficial Use Supplement in respect of Household Contract Waste apportioned to BHCC

ET = Total tonnes of Contract Waste qualifying for Recovery Supplement

NT = Total tonnes of Contract Waste qualifying for Beneficial Use Supplement

7.7.1.6 Landfill Tax Reconciliation for Recovery Failure

ESCC share of Second Landfill Tax Reconciliation in respect of Recovery failure = ERL2E

BHCC share of Second Landfill Tax Reconciliation in respect of Recovery failure = BRL2E

$ERL2E = (RL2E - RL2R) * (ENRW / NRW)$

$BRL2E = (RL2E - RL2R) * (BNRW / NRW)$

Where:

RL2E = Second Landfill Tax Reconciliation Payment in respect of Recovery failure

RL2R = Second Landfill Tax Reconciliation Payment in respect of Recycling failure

7.7.1.7 **Landfill Tax Reconciliation for Recycling Failure**

ESCC share of Second Landfill Tax Reconciliation in respect of Recycling failure = ERL2R

BHCC share of Second Landfill Tax Reconciliation in respect of Recycling failure = BRL2R

$ERL2R = RL2R * (ERCW / RCW)$

$BRL2R = RL2R * (BRCW / RCW)$

7.7.1.8 **Interim Service Payment**

ESCC share of Run-Out Service Payment = EI

BHCC share of Run-Out Service Payment = BI

$EI = I * (EHCW / HCW)$

$BI = I * (BHCW / HCW)$

Where:

I = Total Interim Service Payment

7.7.1.9 **Run-Out Service Payment**

ESCC share of Run-Out Service Payment = EJ

BHCC share of Run-Out Service Payment = BJ

$EJ = J * (EHCW / HCW)$

$BJ = J * (BHCW / HCW)$

Where:

J = Total Run-Out Service Payment

7.7.1.10 **Refrigerator Payment**

ESCC share of Refrigerator Payment = EA

BHCC share of Refrigerator Payment = BA

$EA = EANR * RUP$

$BA = BANR * RUP$

Where:

EANR = number of ESCC refrigerators

BANR = number of BHCC refrigerators

7.8 The PFI Credit Proportion in clause 7.7 shall be calculated as follows:

ESCC : B&HCC

$\frac{2}{3}$: $\frac{1}{3}$

7.9 The Profits Proportion in clause 7.7 shall be calculated as follows:

$\frac{J}{L}$: $\frac{K}{L}$

where J = total of all payments made and due to be made under the Principal Contract by ESCC to the date on which the profits arise in the case of Super Profits and 31 March of the relevant Contract Year in the case of Excess Profits;

K = total of all payments made and due to be made under the Principal Contract by B&HCC to the date on which the profits arise in the case of Super Profits and 31 March of the relevant Contract Year in the case of Excess Profits;

L = J plus K.

7.10 The quantity of Excess Contract Waste in clause 7.7 shall be calculated as follows:

[Note: Provided that the Contract Waste delivered by the Parties does not exceed the Excess Contract Waste figure of 550,000 tpa then neither Party shall incur any additional expenditure in respect of Excess Contract Waste.]

Where Contract Waste exceeds 550,000 tpa the quantity of Excess Contract Waste shall be calculated as follows:

A = tonnes of Contract Waste delivered by ESCC

B = tonnes of Contract Waste delivered by B&HCC

C = tonnes of Excess Contract Waste delivered by ESCC

D = tonnes of Excess Contract Waste delivered by B&HCC

E = Excess Contract Waste Payment by ESCC

F = Excess Contract Waste Payment by B&HCC

(i) where $A > 366667$ and $B > 183333$

$$C = A - 366667$$

$$D = B - 183333$$

$$E = C \times \text{Excess Contract Waste Baseline Price}$$

$$F = D \times \text{Excess Contract Waste Baseline Price}$$

(ii) where $A > 366667$ and $B < 183333$ and $(A + B) > 550,000$

$$C = (A + B) - 550,000$$

$$E = C \times \text{Excess Contract Waste Baseline Price}$$

(iii) where $A < 366667$ and $B > 183333$ and $(A + B) > 550,000$

$$D = (A + B) - 550,000$$

$$F = D \times \text{Excess Contract Waste Baseline Price}$$

7.11 The quantity of Reduced Contract Waste in clause 7.7 shall be calculated as follows:

[Note: Provided that the Contract Waste delivered by the Parties does not fall below the Reduced Contract Waste figure of 300,000 tpa then neither Party shall incur any additional or reduced expenditure in respect of Reduced Contract Waste.]

Where Contract Waste falls below 300,000 tpa the share of the Reduced Contract Waste Deduction shall be calculated as follows:

ESCC still pay for Baseline x 200,000 and B&HCC pay for Baseline x 100,000 less any deductions calculated below.

$$A = \text{tonnes of Contract Waste delivered by ESCC}$$

$$B = \text{tonnes of Contract Waste delivered by B\&HCC}$$

$$C = \text{Reduced Contract Waste reduction per tonne}$$

(i) where $A < 200,000$ and $B < 100,000$ then

$$\text{ESCC} = (200,000 - A) \times C; \text{ and}$$

$$\text{B\&HCC} = (100,000 - B) \times C.$$

(ii) where $A < 200,000$ and $B > 100,000$ and $(A + B) < 300,000$ then

$$\text{ESCC Saving} = (300,000 - A - B) \times C$$

(iii) where $A > 200,000$ and $B < 100,000$ and $(A + B) < 300,000$ then

$$\text{B\&HCC Saving} = (300,000 - A - B) \times C.$$

- 7.12 In accordance with clause 7.7 the proportion Split of each of Performance Deductions and Unavailability Deductions shall be based on forecast contract waste arising in the relevant month unless the Performance Deduction and or Unavailability Deduction in question has been made because of deficient performance of the Services resulting in one Party alone suffering a financial loss in which case the Party which has suffered the financial loss shall be credited fully for the amount of that Performance and or Unavailability Deduction.
- 7.13 Save as otherwise provided in this Agreement any other liability under the Principal Contract shall be met by ESCC which as Lead Authority shall pay the Contractor in full all other amounts properly due or becoming due under the terms of the Principal Contract and in accordance with the Principal Contract.
- 7.14 B\&HCC shall pay ESCC for its proportion of this amount in clause 7.13 which shall be calculated on the basis of ESCC 2/3 and B\&HCC 1/3 within 10 Business Days of written demand by ESCC subject to any applicable Cash Flow Adjustment unless the Parties shall agree that alternative method of calculation is required.

8. **ADDITIONAL GENERAL PROJECT COSTS**

If during the term of the Principal Contract the Parties are required to fund additional investment either by way of payment of lump sum capital investment to the Contractor or via increased Unitary Charge the Parties shall be required to fund such investment in accordance with the relevant provisions of **clause 7** save where such investment is required solely as a result of an act omission default or otherwise of:

- 8.1 ESCC in which case ESCC shall be required to fund all such additional investment; and
- 8.2 B\&HCC in which case B\&HCC shall be required to fund all such additional investment.

9. **PLANNING COSTS ASSOCIATED WITH PROJECT PLANNING APPLICATIONS AND APPEALS**

The Parties in their capacity as waste disposal authority for the respective administrative areas agree that in accordance with clause 8A and clause 8B of the Principal Contract they will be jointly responsible for nine-tenths of the costs of

Proceedings in excess of the Appeal Contingency as set out in clause 8A and clause 8B of the Principal Contract which sum shall be split between the Parties equally.

10. **CHANGE TO THE WORKS OR SERVICES**

- 10.1 Under clause 24.1 of the Principal Contract the Parties have the right to propose changes to the Works or Services. Either Party shall have the right to independently or jointly propose changes to the Works or Services to the Contractor but only through the Lead Authority.
- 10.2 The Parties shall meet prior to the service of a Council Notice of Change on the Contractor and at reasonable intervals thereafter if required to discuss the proposed change including but not limited to the financial consequences of such change in the Works or Services.
- 10.3 Where both Parties require a Council Change to the Works or Services any amount payable or reimbursable to the Parties as a consequence of such change shall be determined in accordance with clause 7.
- 10.4 Neither Party will be required to agree to any change to the Works or Services and in such circumstances where the Parties do not agree the Party requiring the change shall be entitled to proceed with and finance the change to the Works or Services independently of the other Party, in accordance with clause 7.
- 10.5 Where only one Party requires the change to the Works or Services any amount payable by or reimbursable to such Party in respect of a Council Change arising under clause 24 of the Principal Contract shall be fully apportioned to that Party, in accordance with clause 7.

11. **CHANGE IN LAW**

- 11.1 Where both Parties are affected by a Qualifying Change in Law each Party shall be required to fund its share of the Parties' Share of Capital Expenditure in accordance with clause 7.
- 11.2 Where only one Party is affected by a Qualifying Change in Law that Party shall be required to fund the whole of the Parties' Share of that Capital Expenditure, in accordance with clause 7.
- 11.3 As soon as practicable following notice from either Party or from the Contractor of a Qualifying Change in Law the Parties shall discuss and agree the extent to which each is affected by the Qualifying Change in Law.

11.4 Where one Party is unable or unwilling to pay its share of the Councils Share of Capital Expenditure (“the Non Paying Party”) in accordance with clause 11.1 with the result that the procedures for implementing the change to the Works or Services to comply with or give effect to the Qualifying Change in Law cannot be implemented the Non Paying Party shall be responsible for and shall release and indemnify the other Party who is able to pay its share of the Parties’ Share of Capital Expenditure (“the Paying Party”) from and against all liability for actions claims demands costs charges and expenses (including legal expenses on an indemnity basis) which arise as a consequence of its inability to fund its share of the Parties’ Share of Capital Expenditure.

12. **REFINANCING**

12.1 The Parties shall procure that the Joint Committee shall seek to determine the amount and method of payment from the Contractor of the proposed Parties’ Refinancing Share and or revised Unitary Charge (in the event that there is a revised Unitary Charge) within 60 days of receiving the applicable Refinancing Notice from the Contractor in accordance with Schedule 25 of the Principal Contract.

12.2 Where the Joint Committee fails to determine the method of payment of the proposed Parties’ Refinancing Share the payment shall be made to the Parties by means of an adjustment to the Unitary Charge.

13. **NEWLY ACQUIRED TRANSFERRED PROPERTY**

13.1 All freehold and leasehold interests in the Transferred Properties shall be held jointly by the Parties in accordance with the provisions of and subject to this agreement.

13.2 The Parties’ total financial contributions and any subsequent treatment and disposal of the Transferred Properties shall be dealt with in accordance with **clauses 14.1 to 14.5** inclusive.

14. **TRANSFERRED PROPERTY ON EXPIRY**

14.1 Three years prior to the Expiry Date of the Principal Contract or as soon as reasonably practicable after early termination of the Principal Contract (“the Transferred Property Review Date”) the Parties shall agree each Party’s total financial contribution made or due to be made under the terms of the Principal Contract and the terms of this Agreement taking into consideration but not limited to all contributions towards the Unitary Charge Changes in Law and changes to the Works and Services during the Contract Period (“Proportioned Financial Contribution”).

- 14.2 Every six months from the Transferred Property Review Date to the Expiry Date or the date of earlier termination the Parties shall meet to discuss if following the Transfer Date they shall continue using the Transferred Properties jointly either for a future contract for waste disposal services or for mutual benefit having regard to the Proportioned Financial Contribution.
- 14.3 Three months prior to the Expiry Date of the Principal Contract or as soon as practicable after early termination of the Principal Contract the Parties shall jointly agree revised Proportioned Financial Contributions (“Confirmed Proportioned Financial Contributions”).
- 14.4 If the Parties cannot reach agreement under clause 14.2 by the Transfer Date the Transferred Properties shall be sold under the terms of the Trust for Sale set out in clause 16.
- 14.5 On the Transfer Date the Household Waste Recycling Sites shall revert to the Party in whose administrative area the Household Waste Recycling Site lies.

15. **ASSETS ON EXPIRY**

- 15.1 All Transferred Assets shall on expiry or earlier termination of the Principal Contract be held jointly by the Parties according to their financial contributions calculated in accordance with **clause 14.1**, and shall continue to be used for such joint purposes as are agreed between the Parties or in the absence of such agreement are disposed of in accordance with the Parties’ respective financial contributions.

16. **TRUST FOR SALE FOR TRANSFERRED PROPERTIES**

- 16.1 On the Transfer Date the Parties will enter into a deed setting out the terms of the trust for each of the Transferred Properties either in the transfer of the relevant property or in a separate deed.
- 16.2 The perpetuity period applicable to each trust will be 80 years from the Transfer Date and at the end of that period any of the Transferred Properties which remain unsold will be sold and the sale proceeds split between the Parties in accordance with the Confirmed Proportioned Financial Contributions.
- 16.3 The terms of each trust will provide as follows:
- 16.3.1 that the Parties will hold the relevant Transferred Property on a trust of land for themselves in shares based on the relative size of their Confirmed Proportioned Financial Contributions;

- 16.3.2 if the Parties agree to continue to use the Transferred Property jointly then the consent of both will be required for the sale of the Transferred Property as long as the joint use continues;
- 16.3.3 if the Parties do not agree to continue to use the Transferred Property jointly then the Party with the larger Confirmed Proportioned Financial Contribution (“the Majority Party”) will be able to sell or buy for itself in capacity other than trustee the Transferred Property subject to a right of pre-emption for the Party with the smaller Confirmed Proportioned Financial Contribution (“the Minority Party”) on the following terms:
- (a) the Majority Party will notify the Minority Party when it has agreed terms for the sale of the Transferred Property or for the grant of a lease of the Transferred Property to a third party by serving a notice (“the Offer Notice”) on it containing full details of the terms agreed and offering to sell or lease the Transferred Property to the Minority Party on the same terms;
 - (b) within [six months] of the date of the service of the Offer Notice the Minority Party must serve a notice (“the Acceptance Notice”) on the Majority Party indicating that it accepts the offer set out in the Offer Notice;
 - (c) the Majority Party must then complete the sale or lease of the Transferred Property (as appropriate) within 10 days of the date of service of the Acceptance Notice;
 - (d) if the Minority Party does not respond to the Offer Notice within the six month period or indicates that it does not wish to accept the offer contained in the Offer Notice the Majority Party is free to sell or lease the Transferred Property to the third party on the terms set out in the Offer Notice.
- 16.4 Subject to the provisions of this clause the trusts for each of the Transferred Properties shall be in such form and contain such provisions as the Parties shall agree.
- 16.5 As soon as possible after the Transfer Date the Parties shall apply to HM Land Registry for a restriction to be entered on the registered titles of the Transferred Properties that no disposition by a sole proprietor of the land (not being a trust corporation) under which capital money arises is to be registered except under an order of the registrar or of the Court.

17. **STATUTORY RESPONSIBILITIES**

17.1 In carrying out their statutory duties the powers duties rights and obligations of the Parties shall not be fettered or otherwise affected by the terms of this Agreement.

17.2 The performance of their statutory duties in whatsoever capacity shall not be capable of being construed as a breach by the Parties of any of their obligations under this Agreement.

18. **INSURANCE**

18.1 Each Party shall during the term of this Agreement take out and maintain the insurances described in **clause 18.2**. The cover shall be effective not later than the date on which the relevant risk commences or the date of this Agreement whichever is the earlier.

18.2 Each party shall take out and maintain Insurances in respect of:

18.2.1 Third party liability with an indemnity limit of £30m; and

18.2.2 Officials' Indemnity inclusive of libel and slander cover with an indemnity limit of £5m.

18.3 The indemnity limits in **clause 18.2.1** and **clause 18.2.2** will be reviewed on the first anniversary of the date of this Agreement and on each anniversary thereafter and indemnity limits will be increased or decreased in the same proportion as any increase or decrease in Retail Price Index prevailing at the time of the review.

18.4 Each Party shall:

18.4.1 provide for 90 days prior written notice of their cancellation non-renewal or amendment to be given to the other Party; and

18.4.2 provide for 30 days prior written notice of non-renewal in the event of the non payment of any premium.

18.5 The insurance premiums and all excess payments and costs of any other requirements referred to in this clause shall be the responsibility of each Party as the insured Party.

18.6 Should the Parties determine to procure or require the Contractor to procure Environmental Impairment Liability insurance in respect of an Energy Recovery Plant the costs of such insurance shall be borne between the parties in the proportion ESCC $\frac{2}{3}$ and B&HCC $\frac{1}{3}$.

19. **INDEMNITY**

19.1 ESCC as Lead Authority in respect of the Principal Contract and the Principal Contract Management Arrangements made pursuant to this Agreement shall at all times be guided by the principles set out in **clause 3** herein and shall at all times act with all due care and skill in the discharge of the functions and duties of Lead Authority.

19.2 In the discharge of such functions and duties as Lead Authority the Standing Orders and working practices of ESCC shall apply, subject at all times to the provisions of **clause 6C.2**.

19.3 Both parties shall make their respective management, staffing and financial contributions to the Principal Contract Management Arrangements in good faith, the costs of such provision being borne in the proportions as set out in **clause 6B.2**.

19.4 The Parties (each the Indemnifying Party) be responsible for and shall release and indemnify the other Party (“the Indemnified Party”) including its employees agents and contractors on demand from and against all liability for death or personal injury which may arise out of or in consequence of defective or non performance by the Indemnifying Party of its obligations under the Principal Contract and or this Agreement.

19.5 The Parties (each the Indemnifying Party) shall be responsible for and shall release and indemnify the other Party (“the Indemnified Party”) including its employees agents and contractors on demand from and against all liability for:

19.5.1 loss of or damage to property;

19.5.2 actions claims demands costs charges and expenses (including legal expenses on an indemnity basis); and

19.5.3 any breach of the EPA and any other laws

which may arise out of or in consequence of defective or non performance by the Indemnifying Party of its obligations under the Principal Contract and or this Agreement but only where such defective or non performance by the Indemnifying Party can be reasonably attributed to the fraudulent or knowingly negligent acts or omissions of the Indemnifying Party or which may arise out of or in consequence of the action or inaction of any Waste Collection Authority in the administrative area of the Indemnifying Party.

The Indemnifying Party shall not be responsible or be obliged to indemnify the Indemnified Party for any of **clauses 19.5.1 to 19.5.3** above if such eventuality arises

as a direct result of the Indemnifying Party acting on the Indemnified Party's instruction or as a direct result of any Waste Collection Authority in the administrative area of the Indemnifying Party acting on the Indemnified Party's instruction.

19.6 The Indemnified Party's rights arising under this clause shall be without prejudice to any other right or remedy available to it.

19.7 Each Party shall use reasonable endeavours to mitigate any losses suffered or demands costs charges and expenses including legal expenses which it incurs in connection to which it is entitled to be indemnified against by the other Party.

20. CONDUCT AND CONTROL OF CLAIMS

20.1 In this **clause 20**, and subject to **clause 19**,

20.1.1 **"Indemnified Party"** means, in relation to an indemnity, warranty, covenant, representation or undertaking, the person receiving the benefit of the indemnity, warranty, covenant, representation or undertaking;

20.1.2 **"Claim"** includes a claim by any person or body able to make a claim; and

20.1.3 **"Indemnifying Party"** means in relation to an indemnity, warranty, covenant, representation or undertaking given in this Agreement the person giving the indemnity, warranty, covenant, representation or undertaking to the Indemnified Party.

20.2 Subject to **clause 19**, if the Indemnified Party becomes aware of any matter which might give rise to a Claim for an indemnity, warranty, representation or undertaking from the Indemnifying Party, the following provisions will apply;

20.2.1 The Indemnified Party shall as soon as reasonably practicable give written notice to the Indemnifying Party of the matter which might give rise to a Claim under or pursuant to a covenant, in respect of which the indemnity, warranty, covenant, representation or undertaking (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed) and shall consult with the Indemnifying Party with respect to the matter. If the matter has become the subject of any proceedings the Indemnified Party shall (so far as it is able) give the notice within sufficient time to enable the Indemnifying Party to contest the Proceedings before any first instance judgement in respect of such proceedings is given;

20.2.2 the Indemnified Party shall;

20.2.2.1 take such action and institute such proceedings and give such information and assistance as the Indemnifying Party or its insurers may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against any person (other than the Indemnifying Party) the rights of the Indemnified Party or its insurers in relation to the matter;

20.2.2.2 in connection with any proceedings related to the matter (other than against the Indemnifying Party) use professional advisers nominated by the Indemnifying Party or its insurers and, if the Indemnifying Party or its insurers so request, allow the Indemnifying Party or its insurers the exclusive conduct of the proceedings in each case on the basis that the Indemnifying Party shall fully consult with the Indemnified Party and keep the Indemnified Party fully informed and the Indemnifying Party shall fully indemnify the Indemnified Party for all costs incurred as a result of any such request or nomination by the Indemnifying Party or its insurers; and

20.2.2.3 not admit liability in respect of or settle the matter without the prior written consent of the Indemnifying Party, such consent not to be unreasonably withheld or delayed.

20.2.3 If the Indemnifying Party has notice of any actual or potential Claim, it shall inform the Indemnified Party and if the Indemnifying Party has conduct of any litigation and negotiations in connection with a claim, the Indemnifying Party shall promptly take all proper action to deal with the claim so as not, by any act or omission in connection with the Claim, to cause the Indemnified Party's interests to be materially prejudiced.

20.2.4 If the Indemnifying Party does not elect to have conduct of any litigation and negotiations in connection with a Claim by notice in writing to the Indemnified Party within 7 days of the Indemnified Party giving notice of the matter in accordance with **clause 20.2.3** the Indemnified Party shall be at liberty to take such action in relation to that matter as it considers expedient to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter in question subject to a duty to use all reasonable endeavours to mitigate the liability of the Indemnifying Party in respect of that Claim.

21. **REVIEW AND RENEWAL OF THIS AGREEMENT**

21.1 The Parties shall meet on the Review Date or more frequently if such meeting is reasonably required by either Party to review the terms of this Agreement and the Constitution Agreement entered into in accordance with **clause 6A.1.1** and to agree

any changes that may be required to any of the terms and conditions of either of this Agreement or the Constitution Agreement.

21.2 Where the Parties are unable to agree any changes to this Agreement the matter shall be referred to dispute resolution for determination in accordance with **clause 22**.

22. **DISPUTE RESOLUTION PROCEDURE**

22.1 The Parties intend to settle any disputes or differences that may arise between the Parties in relation to any aspect of this Agreement or the Principal Contract without recourse to any third party adjudicator.

22.2 Any disputes or differences arising between the Parties in relation to this Agreement or to the Principal Contract shall be resolved in accordance with this clause 22 and clause 3.

22.3 Where a dispute or difference is in the opinion of either Party incapable of swift and satisfactory resolution between the Parties the matter shall be referred to the Director of Transport and Environment ESCC and the Director of Environment B&HCC. Where in the opinion of either such Chief Officer the matter remains in dispute the matter shall be referred to the Waste Management Board.

22.4 Where in the opinion of the Waste Management Board the matter remains in dispute the matter shall be referred to the Chief Executive of each Party.

22.5 Where in the opinion of either Chief Executive the matter remains in dispute the matter shall be referred to the Joint Committee.

22.6 Should the Joint Committee, notwithstanding the consideration of reports and any recommendations contained therein remain unable to resolve the matter to the satisfaction of the Parties then any member of the Committee may refer the matter, in the case of an ESCC member to the ESCC Cabinet Committee and in the case of a B&HCC member to the appropriate Committee of B&HCC being either the Policy and Resources Committee or Council.

23. **ASSIGNMENT**

23.1 The Parties shall not sell assign underlet or charge this Agreement or the benefits or obligations arising under or in respect of it but nothing in this Agreement shall restrict any transfer assignment or delegation of this Agreement which may result from any reorganisation of local government or which is compelled by legal requirements binding on one or both of the Parties.

24. **COUNTERPARTS**

24.1 This Agreement may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

25. **EMU CONTINUITY OF CONTRACT**

25.1 The Parties confirm that the occurrence or non-occurrence of an event associated with economic and monetary union in the European Union will not have the effect of altering any term of or discharging or excusing performance under this Agreement or any transaction or give a Party the right unilaterally to alter or terminate this Agreement or any transaction.

25.2 The words “an event associated with economic and monetary union in the European Union” shall include without limitation each and any combination of the following:

25.2.1 the introduction of changeover to or operation of a single or unified European currency (whether known as the Euro or otherwise);

25.2.2 the fixing of conversion rates between a member state’s currency and the new currency or between the currencies of member states;

25.2.3 the substitution of that new currency for the ECU as the unit of account of the European Union;

25.2.4 the introduction of that new currency as lawful currency in a member state;

25.2.5 the withdrawal from legal tender of any currency which before the introduction of the new currency was lawful currency in one of the member states;

25.2.6 the disappearance or replacement of a relevant rate option or other price source for the ECU or the national currency of any member state or the failure of the agreed sponsor (or successor sponsor) to publish or display a relevant rate index price page or screen; or

25.2.7 the withdrawal of any member state from a single or unified European currency.

26. **INFORMATION AND CONFIDENTIALITY**

26.1 The Parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matter relating to the Agreement.

26.2 **Clause 26.1** shall not apply to:

26.2.1 any disclosure of information that is reasonably required by persons engaged in the performance of its obligations under the Agreement;

- 26.2.2 any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;
- 26.2.3 any disclosure which is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory authority having the force of law;
- 26.2.4 any disclosure of information which is already lawfully in the possession of the receiving Party prior to its disclosure by the disclosing Party;
- 26.2.5 any disclosure by the Parties of information relating to the operation and maintenance of the properties and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to any proposed new contractor its advisers and lenders (should either or both Parties decide to re-tender the Principal Contract);
- 26.2.6 any disclosure of information by the Parties to any other department office or agency of the Government;
- 26.2.7 any disclosure by the Parties of any document or part thereof related to this Agreement and which the other Party (acting reasonably) has agreed contains no commercially sensitive information;
- 26.2.8 any disclosure for the purpose of:
 - 26.2.8.1 the examination and certification of accounts; or
 - 26.2.8.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy efficiency and effectiveness with which the Parties have used their resources; and
- 26.2.9 any disclosure by the Parties of any documents or part thereof related to the Agreement or the Agreement itself or any part thereof for the purpose of tendering or making alternative arrangements for the provision of the Services.
- 26.3 Where disclosure is permitted under clause 26.2 other than clauses 26.2.4 26.2.6 26.2.8 and 26.2.9 the recipient of the information shall be placed under a binding obligation of confidentiality the same as that contained in this Agreement.
- 26.4 The Parties shall co-operate fully and in a timely manner with any request from time to time of any auditor (whether internal or external) of either Party including any official of the Environment Agency, Best Value Inspectorate or any other statutory inspectorate to provide documents, or to procure the provision of documents, relating to the Principal Contract and to provide, or to procure the provision of, any oral or

written explanation relating to the same. In particular, any auditor of either Party shall be permitted access to any and all documentation in the possession, custody or control of either Party (who shall procure that any person acting on its behalf who has such documents and/or other information shall also provide such access). This right will include the power to interview staff, examine and take copies of any and all documentation and have access to and take copies of any computer data held for the purposes of the Principal Contract.

- 26.5 The Parties shall cooperate fully and in a timely manner with any request from time to time of any auditor (whether internal or external) of either Party (including any official of the Environment Agency, Best Value Inspectorate or any other statutory inspectorate) to inspect any Waste Management Facilities and any other premises from which the project is delivered, such request to be made on the giving of reasonable notice to the Party if so requested.
- 26.6 In accordance with the Audit Commission Act 1998 the Parties acknowledge and agree that the Auditor appointed by the Audit Commission may examine such documents and seek such explanations as he or she may require for the purposes of his or her audit.
- 26.7 For the avoidance of doubt neither Party shall be in breach of this clause 26 (Information and Confidentiality) by reason of any disclosure properly and reasonably made pursuant to this clause 26.4, 26.5 and 26.6.
- 26.8 The provisions and obligations set out in this clause shall survive and remain in force upon and following the termination of this Agreement for a period of three years.
- 26.9 The Parties shall not make use of this Agreement or any information issued or provided by or on behalf of the Parties in connection with this Agreement otherwise than for the purpose of this Agreement except with the prior written consent of the other Party which they may withhold in their absolute discretion.
- 26.10 Where one Party in carrying out its obligations under this Agreement is provided with information from or by a third party that Party shall not disclose or make use of any such information otherwise than for the purpose for which it was provided unless that Party has sought the prior written consent of that third party and has obtained the prior written consent of the other Party such consent not to be unreasonably withheld or delayed.

27. **LAW OF CONTRACT AND JURISDICTION**

The Contract shall be governed by the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

28. **MALADMINISTRATION**

The Parties shall co-operate fully with the Local Ombudsman as defined in the Local Government Act 1974 and in any investigations of a complaint.

29. **NOTICES**

29.1 **Form of Notice**

Any demand notice or other communication given in connection with or required by this Agreement shall be made in writing (entirely in the English language) and shall be delivered to or sent by pre-paid recorded delivery to the recipient at its registered office or its address stated in this Agreement (or such other address as may be notified in writing from time to time) or sent by facsimile transmission to the recipient.

29.2 **Service**

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

29.2.1 if delivered by hand when left at the proper address for service; or

29.2.2 if given or made by pre-paid recorded delivery or registered post two Business Days after being posted; or

29.2.3 if sent by facsimile on the day of transmission provided that the facsimile was transmitted before 4.00 pm and a confirmatory copy is on the same day that the facsimile is transmitted sent by pre-paid first class post in the manner provided for in this clause 29.2

provided in each case that if the time of such deemed Service is either after 4.00 pm on a Business Day or on a day other than a Business Day Service shall be deemed to occur instead at 10.00 am on the following Business Day.

30. **PUBLIC RELATIONS AND PUBLICITY**

Each Party shall not by itself its employees or agents knowingly make any detrimental press releases or communicate with representatives of the press television radio or other communications media on any matter concerning the Agreement in a manner which is likely to bring either Party any disrepute without the prior written approval of the other Party which it may in its absolute discretion withhold.

31. **SEVERABILITY**

If any term condition or provision contained in this Agreement shall be held to be invalid unlawful or unenforceable to any extent such condition or provision shall not affect the validity legality or enforceability of the remaining powers of this Agreement.

32. **SUCCESSORS**

This Agreement shall be binding upon and shall ensure to the benefit of each Party's permitted successors and assignees.

33. **THIRD PARTY DETAILS**

The Parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it but this does not affect any right or remedy of a third party which exists or is available apart from such Act.

34. **WAIVER**

34.1 The failure or delay by a Party in exercising any right power or remedy under this Agreement shall not in any circumstances impair such right power or remedy nor operate as a waiver of it. The single or partial exercise by a Party of any right power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right power or remedy.

34.2 Any waiver of a breach of or default under any of the terms of this Agreement shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement.

35. **ENTIRE CONTRACT**

This Agreement sets forth the entire agreement between the Parties with respect to the subject matter covered by it and supersedes and replaces all prior communications representations (other than fraudulent representations) warranties stipulations undertakings and agreements whether oral or written between the Parties. The Parties acknowledge they do not enter into this Agreement in reliance on any warranty representation or undertaking by any other Party other than those contained in this Agreement and that all its remedies for any breach of this Agreement are set out in this Agreement provided that this shall not exclude any liability which the Parties would otherwise have against each other in respect of any statements made fraudulently or negligently by or on behalf of the Party prior to the date of this Agreement.

SCHEDULE 1

Constitution Agreement

DATED

2003



EAST SUSSEX COUNTY COUNCIL

2. BRIGHTON AND HOVE CITY COUNCIL

CONSTITUTION AGREEMENT

For the constitution of the East Sussex County Council and Brighton & Hove City Council Integrated Waste Management Services Contract Committee, pursuant to Section 102 of the Local Government Act 1972.

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THIS AGREEMENT is made on the

day of

2003

1. PARTIES

The parties to this Agreement (known collectively as “the Councils”) are (1) EAST SUSSEX COUNTY COUNCIL of Pelham House St. Andrews Lane Lewes BN7 1UN (the County Council) (2) BRIGHTON AND HOVE CITY COUNCIL of King’s House, Grand Avenue, Hove BN3 2SR (the City Council)

2. RECITALS

2.1 The Councils have powers and responsibilities under the Environmental Protection Act 1990 as waste disposal authorities and have decided to make joint arrangements for the carrying out of those powers and responsibilities.

2.2 On the day of 2003 the Councils entered into a joint Integrated Waste Management Services Contract (“the Principal Contract”) with South Downs Waste Services Ltd for the provision of a joint integrated waste management service.

2.3 On the day of 2003 the Councils mutually entered into a Joint Working Agreement (“the Joint Working Agreement”) to regulate their mutual and reciprocal obligations arising from the Principal Contract.

2.4 The Councils wish to work together to secure the proper implementation and operation of the Principal Contract and the Joint Working Agreement, by the establishment of a joint committee for that purpose.

IT IS HEREBY AGREED AS FOLLOWS

3. CONSTITUTION OF THE EAST SUSSEX COUNTY COUNCIL AND BRIGHTON & HOVE CITY COUNCIL INTEGRATED WASTE MANAGEMENT SERVICES CONTRACT COMMITTEE

3.1 On the day of 2003 there shall be constituted under section 102 of the Local Government Act 1972 a joint committee, to be called the East Sussex County Council and Brighton & Hove City Council Integrated Waste Management Services Contract Committee (“the Committee”) for the purpose of discharging the functions assigned to it as set out in this Agreement.

3.2 The Committee shall consist of 6 members who shall be appointed as follows:

3 by the County Council;

3 by the City Council;

being in the case of East Sussex County Council the Leader, the Lead Member (Finance) and the Lead Member (Environment) and in the case of Brighton & Hove City Council the Leader, a further member selected by the Leader and the member nominated by the Opposition Group.

- 3.3 A member appointed to the Committee shall hold office for four years provided that if the member should cease to be a member of the Council by which he or she was appointed or cease to hold the relevant office in the Council by which he or she was appointed then membership of the Committee shall cease and a fresh appointment shall be made by the Council concerned.
- 3.4 In so far as they apply to Brighton and Hove City Council, the provisions of paragraphs 3.2 and 3.3 above shall take effect subject to the requirements of sections 15 and 16 of the Local Government and Housing Act 1989 and the Local Government (Committees and Political Groups) Regulations 1990.

4. **APPOINTMENT OF CHAIR AND VICE-CHAIR**

- 4.1 The Committee shall at their annual meeting in each year appoint a chair, and the chair shall unless he or she resigns his or her office or ceases to be a member of the Committee continue in office until a successor is appointed.
- 4.2 The Committee may at their annual meeting in each year appoint one of their number to be vice-chair and the vice-chair shall unless he or she resigns his or her office or ceases to be member of the Committee continue in office until a successor is appointed.

5. **MEETINGS OF THE COMMITTEE**

- 5.1 The first meeting of the Committee shall be the annual meeting for the year then current and thereafter the first meeting held after the 1st day of May in any year shall be the annual meeting.
- 5.2 The Committee shall meet two times a year, except that a meeting may be convened at any time at the request of the chair or at least two members of the Committee.
- 5.3 The standing orders of East Sussex County Council shall apply to the meetings of the Committee. In the event of those standing orders conflicting with the provisions of this Agreement this Agreement shall prevail.

5.4 It is expressly agreed that in the event of an equality of votes the chair shall not exercise a second or casting vote. In the event of an equality of votes the matter shall be referred to either or both Councils for advice or determination.

6. ESTABLISHMENT OF WORKING PARTIES

6.1 The Committee may appoint such working parties consisting of either members or officers, as it considers necessary to advise it in the discharge of the functions of the Committee.

6.2 The Committee may arrange for work in connection with the discharge of the functions of the Committee to be undertaken directly or on an agency or contract basis by either of the Councils.

7. FUNCTION OF THE COMMITTEE

7.1 The function of the Committee is to administer the operation of the waste management arrangements of the Councils in accordance with the Joint Working Agreement entered into by the Councils and dated the day of 2003 and in accordance with the Principal Contract entered into by the Councils and dated the day of 2003.

7.2 Within the policy and budget frameworks set by each Council the Committee will:

7.2.1 be responsible for the operational and management issues to ensure the effective implementation and operation of the Joint Working Agreement and the Principal Contract;

7.2.2 be responsible for the administration of the budgets set by each Council;

7.2.3 be responsible for the administration of any contract management arrangements as set out in the Joint Working Agreement; and

7.2.4 exercise such powers as each Council may from time to time delegate to the Committee.

7.3 The Joint Committee will not be responsible for and may not make decisions in respect of:

7.3.1 the determination of the budget of either Council regarding waste management;

- 7.3.2 any change to the waste management policies and waste management targets of either Council;
 - 7.3.3 the selection and development of sites for waste management and any associated acquisition and planning procedures; and
 - 7.3.4 any change of policy or procedure regarding the source separation of waste.
- 7.4 The Committee shall not be empowered to acquire land or any interest in land.
- 7.5 The Committee may at any time refer any matter to either or both Councils for advice or determination.
- 7.6 Nothing in this Agreement shall prevent either Council from exercising any of the powers described or referred to in this Clause 7.

8. **COMMITTEE ADMINISTRATION**

- 8.1 As soon as is reasonably practical the Committee shall appoint the following:

A Project Director;

A Treasurer to the Committee;

A Legal Adviser to the Committee;

A Clerk to the Committee.

- 8.2 The Project Director shall be the principal adviser and executive officer of the Committee and shall be directly responsible to the Committee.
- 8.3 The Committee may provide the Project Director with such staff, accommodation and other resources as the Committee may consider necessary but only as is consistent with the terms of the Joint Working Agreement entered into by the Councils.
- 8.4 In the event of any difficulty arising with regard to the performance of the Project Director's duties, either he or she or the Committee shall be able to call on the assistance of the Chief Executive of either or both of the Councils.

9. **TERMINATION OF THIS AGREEMENT**

- 9.1 This Agreement shall have effect for the duration of the Joint Working Agreement entered into by the Councils.

9.2 The Councils agree to review the terms of this Agreement at each annual meeting, and subject to the agreement of the Councils any provisions of this Agreement may be amended accordingly.

9.3 Notwithstanding the above the provisions of this Agreement may be amended at any time subject to the agreement of the Councils.

THE COMMON SEAL of EAST SUSSEX)

COUNTY COUNCIL)

was hereunto affixed in the presence of:

THE COMMON SEAL of BRIGHTON)

& HOVE CITY COUNCIL was)

hereunto affixed in the presence of:

SCHEDULE 2

Principal Contract Management Arrangements

1. A Joint Waste Board (“JWB”) shall be established to manage the implementation and operation of the waste disposal services provided under the Principal Contract
 - 1.1 The JWB will consist of officers from both Councils as follows:
 - 1.1.1 ESCC:

The Director of Transport and Environment.

The Assistant Director responsible for the JIWMSC and either an appropriate Finance Officer or an appropriate Legal Officer.
 - 1.1.2 B&HCC:

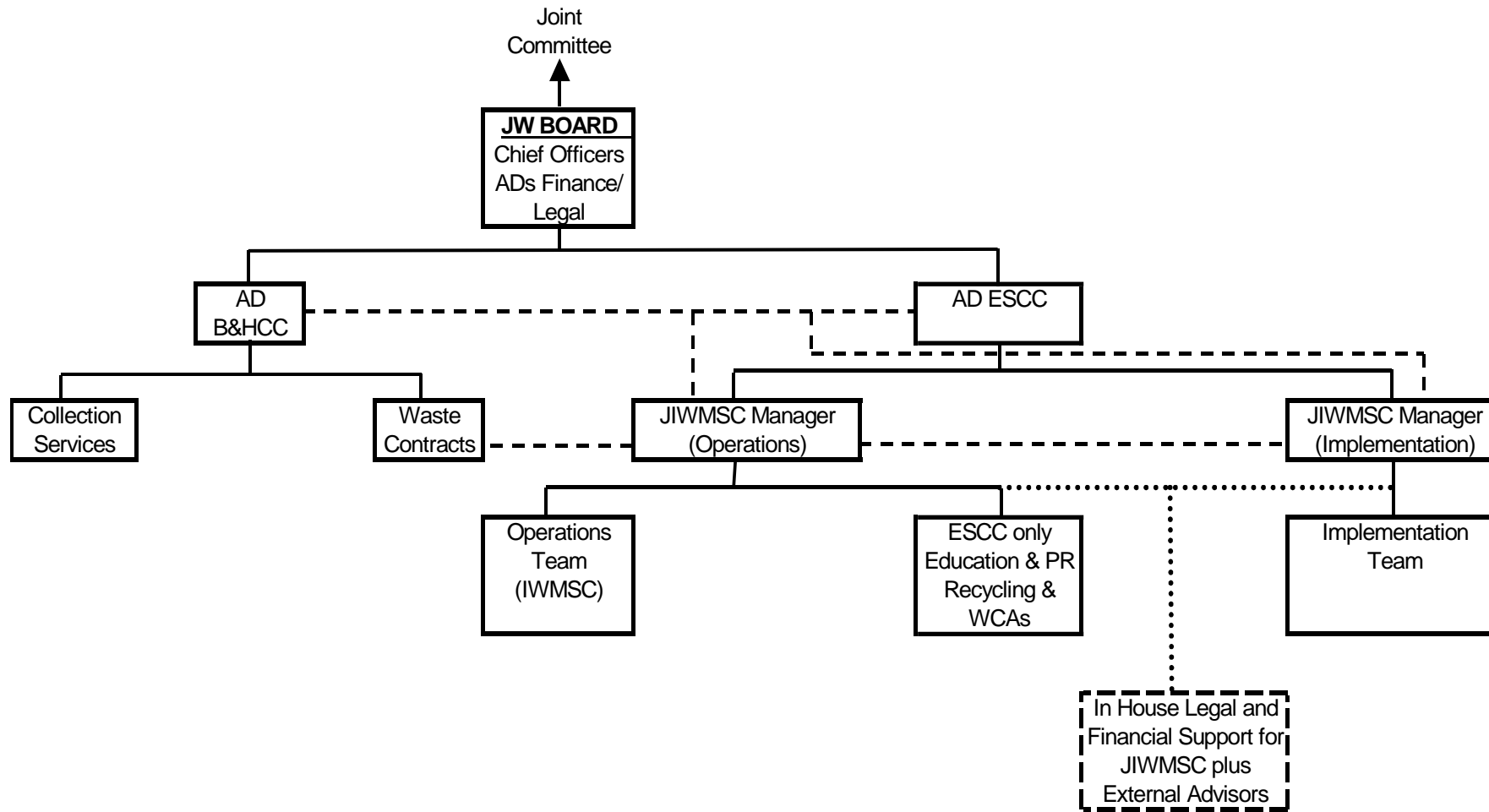
The Director of Environment

The Assistant Director responsible for waste disposal services and either an appropriate Finance Officer or an appropriate Legal Officer
 - 1.2 The Director of Transport and Environment ESCC shall be the Project Director and Lead Chief Officer.
 - 1.3 The Assistant Director ESCC shall be the Project Manager.
 - 1.4 The JWB will meet not less that four times a year, and will report directly to the Joint Committee.
 - 1.5 The JWB may appoint additional officers to the JWB as may be considered appropriate by the JWB from time to time.
2. The Assistant Director ESCC (Project Manager) shall;
 - 2.1 be responsible for the services provided under the JIWMSC and shall have line management responsibility for the JIWMSC Implementation Team and the JIWMSC Operations Team;
 - 2.2 work closely and cooperatively with waste disposal services officers of B&HCC and in particular the Assistant Director B&HCC so as to ensure the interests of both

Parties are properly and fairly considered in the operation and administration of the JIWMSC.

- 2.3 Both Parties will supervise the daily operation of the HWR Sites in their respective administrative areas and fully facilitate the integration of such daily operation into the wider operation of the Principal Contract through the JIWMSC Operations Team, as described in paragraph 4 below.
3. A JIWMSC Implementation Team shall be established to manage the implementation of the JIWMSC. The JIWMSC Implementation Team will report to the Assistant Director ESCC (Project Manager).
 - 3.1 The JIWMSC Implementation Team shall work closely with the Assistant Director B&HCC (CityClean) and the Head of Contracts and Performance B&HCC to ensure that collection arrangements for B&HCC are fully integrated into and are consistent with the disposal services under the JIWMSC.
4. A JIWMSC Operations Team shall be established to manage the operation of the JIWMSC. The JIWMSC Operations Team will report to the Assistant Director ESCC (Project Manager).
 - 4.1 The JIWMSC Operations Team shall work closely with the Assistant Director B&HCC (CityClean) and the Head of Contracts and Performance B&HCC to ensure that collection arrangements for B&HCC are fully integrated into and are consistent with the disposal services under the JIWMSC.
5. The Principal Contract Management Arrangements are set out in diagrammatic form in Appendix 1 attached hereto.

JIWMSC MANAGEMENT STRUCTURE



- - - - - Joint Working and Reporting
- Line Management and Reporting
- Additional Specialist Resources

THE COMMON SEAL of EAST SUSSEX)

COUNTY COUNCIL)

was hereunto affixed in the presence of:

THE COMMON SEAL of BRIGHTON)

& HOVE CITY COUNCIL was)

hereunto affixed in the presence of:
