

Dated            day of            2015

**Inter Authority Agreement**

in respect of the

management of the

Waste Project between

The Kent County Council

and

Gravesham Borough Council

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THE IAA is made on the                      day of                      2015

**BETWEEN**

1) Gravesham Borough Council of Civic Centre, Windmill Street, Gravesend, Kent DA12 1AU ('GBC') and

2) The Kent County Council of Sessions House, County Hall, Maidstone, Kent ME14 1XQ ('KCC')

Altogether 'Partners'

**1. DEFINITIONS**

<b>Term</b>		<b>Definition</b>
Agreed Collection Methodology (ACM)		The model for the kerbside collection of waste in Gravesham and as outlined in the Cabinet Report dated 7th October 2013 attached at Appendix 2 and as set out in clause 6.1 of this IAA.
Actual Disposal Costs (ADC)		The actual costs per tonne of processing, treating and disposal of any waste stream in each year
Actual Tonnages (AT)		the actual tonnages of waste disposal in each year recorded in the Waste Data Flow for that year
Appendix		An Appendix to this IAA
Baseline Disposal Costs		The baseline costs per tonne of processing, treating and disposal of the Baseline Tonnages for the year 2012-2013 shown in column 3 of Appendix 1 and for each subsequent year the Baseline Disposal Costs as may be calculated in accordance with clause 12.8
Baseline Recycling Percentage		The recycling percentage for GBC for the year 2012-13 (25.1%), as set out in Appendix 1 in column 1, Performance (%) - % Recycled and Composted
Baseline Residual Waste Increase		The baseline residual waste tonnage will be increased or decreased year on year by the GBC average waste growth, which shall be calculated by KCC in accordance with the formulae set out in Appendix 3.
Baseline Tonnages (BT)		The baseline tonnages of GBC's waste disposal included in the Waste Data Flow information for the year 2012-2013 and shown at column 1 of Appendix 1

Term		Definition
Bring Sites		Sites operated by Gravesham Borough Council, with containers for the deposit of separated household waste for recycling, such as glass banks, can banks, paper banks etc,
CIWM		means the nominated representative of not less than Fellow rank of the Chartered Institute of Waste Management;
CLG		means Communities and Local Government
Commencement Date		the date of this Agreement
Disposal Cost Saving(DCS)		The difference between what the cost of processing/ treating/ disposing of any waste stream would have been without the Waste Project and the Actual Disposal Costs of processing/treating/disposing of any waste stream as a result of the implementation of the Waste Project which amount shall be calculated in each year by (i) multiplying by the Baseline Tonnages by the Actual Disposal Costs and (ii) multiplying the Actual Tonnages by the Actual Disposal Costs and (iii) subtracting (ii) from (i)
Fully Co-mingled (excluding glass)		The combined collection of paper, card, cans and plastics food and drink containers through a kerbside recycling collection service
GBC		Gravesham Borough Council
Household		A unit of residential accommodation listed by the Valuation Office Agency as a unit on which Council Tax is payable
IAA		This 2 Way Inter Authority Agreement
IAA Period		The period from the Commencement Date until 31 March 2027
Index		The 'all Items' index figure of the Retail Prices Index published by the Office for National Statistics or any successor body
Initial Period		The period from 9 June 2014 ending 31 March 2015

Term		Definition
Joint Municipal Waste Management Strategy		The Waste & Emissions Trading Act 2003 (Section 32) requires that waste authorities in two-tier areas must, at all times, have for the area a joint strategy for the management of waste from households and other waste that, because of its nature of composition, is similar to waste from households. This is called a joint municipal waste management strategy
KCC		The Kent County Council
Kent Resource Partnership		The KRP supports the constituent councils by providing a forum for discussion about issues relating to the formation and delivery of the Kent Joint Municipal Waste Management Strategy (KJMWMS).
Lead Officer		GBC – Director of Environment, KCC – Head Of Waste Management
MRF Specification		The relevant specification agreed between the Partners and set out in Appendix 4 to this IAA for acceptable materials delivered to KCCs contracted Materials Recycling Facility services
Partners		GBC and KCC
Partnership		The Partners working together in an evolving relationship which will be reflected in this IAA and in any further Joint Working Agreement(s) relating to the Waste Project
the Project		the Waste Project
Recycling Credits		As defined by Section 52(1) of the Environmental Protection Act 1990
Recycling Support Payment (RSP)		Any payment made to GBC in accordance with the calculation set out in 12.3 of this Inter Authority Agreement.
Separate Food Waste Collection		The separately collected food waste from households in accordance with the relevant specification for material to be delivered under KCCs contract for the provision of food waste processing services
Review Date		A date between 1st October and 31st October in each year commencing on 30 September 2015

Term		Definition
WasteDataflow		The web based system for municipal waste data reporting by UK local authorities to Central Government.
Waste Project		The project which has been organised by GBC to achieve effective cost minimisation for Kent County Council's tax payers by putting in place the ACM across GBC's administrative area together with necessary delivery mechanisms
Waste Services		GBC will manage their waste collection and recycling scheme and KCC will manage the transfer, processing and disposal arrangements for materials collected by GBC.
WCA		Waste Collection Authority
WDA		Waste Disposal Authority
Year		The period commencing on each 1 <sup>st</sup> April until the following 31 <sup>st</sup> March

## 2. BACKGROUND

- 2.1 KCC is the WDA for its administrative area.
- 2.2 GBC is the WCA for its administrative area.
- 2.3 The Partners commit themselves to the most economically advantageous and closest co-ordination reasonably possible of Waste Services in the administrative area of Gravesham, within the law and practical achievement, as envisaged within the Waste Project and this IAA.
- 2.4 This IAA sets out the legally binding arrangements of the Partners.
- 2.5 The Partners have agreed that this IAA replaces all other existing arrangements in relation to any payments made by KCC to GBC in regards to any recycling activities as provided for under this IAA, with the exception of the arrangements set out in clause 12.5 which is not covered in this Agreement.

## 3. INTERPRETATION

3.1 Except where the context otherwise requires:

- i. the masculine includes the feminine and the neuter and vice versa;
- ii. the singular includes the plural and vice versa;
- iii. a reference in the IAA 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 to the IAA;
- iv. any reference to the IAA or to any other document shall include variation amendment or supplements to such document as may be effected from time to time in accordance with the relevant document;
- v. a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- vi. 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 where 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;
- vii. 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; and
- viii. the list of contents and the headings to the clauses and parts of the IAA and to the paragraphs of the Schedules are for the ease of reference only and shall not affect the construction of the IAA.

#### **4. VIRES**

4.1 This IAA is entered into by the Partners under the statutory powers contained in Part II of the Environmental Protection Act 1990, S111 of the Local Government Act 1972, and s2 of the Local Government Act 2000.

#### **5. COMMENCEMENT AND DURATION**

5.1 This IAA shall commence on the Commencement Date and will be in force between the parties until 31 March 2027 subject to the provisions for the withdrawal of individual Partners contained in Clause 13 or until superseded by any other agreement among the Partners or by a variation under Clause 7.

5.2 The Parties agree and acknowledge that this IAA has effectively been operated from 9 June 2014 and the Parties hereby agree that the IAA shall take effect as if it had been in operation from 9 June 2014



## 6. PARTNERS' OBLIGATIONS

- 6.1 GBC shall introduce and maintain for the duration of this IAA a Fully Co-mingled service (excluding glass) method of collecting dry recyclables materials, in accordance with the MRF Specification, together with Separate Food Waste Collection service across its administrative area, referred to as the ACM throughout this agreement.
- 6.2 GBC shall separately manage the collection of glass from its network of Bring Sites, or such other methodology as it sees fit, as opposed to co-mingled collection of glass with other dry recyclables at the kerbside during the term of this IAA and the Partners acknowledge and agree that the collection of glass is outside the realms of this IAA.
- 6.3 GBC shall commit to the ACM across its administrative area so as to reach the maximum number of Households.
- 6.4 GBC shall introduce a wheeled bin sufficient for the collection of residual waste and to increase recycling with an alternate weekly collection for residual/recycling waste, with a separate weekly collection for food waste from June 2017, or earlier.
- 6.5 In advance of any proposed changes to the ACM by GBC, including clause 6.4 above, GBC commits to undertaking dialogue with KCC to assess the impact which such changes may have on the operational service delivery at the specified transfer points and processing facilities, including but without limitation, changes to the configuration, and or specification, of its collection vehicles which change the tipping configuration (ie tipping food waste on the food rather than a skip). For the avoidance of doubt KCCs' written consent is required for any proposed changes by GBC to take effect. GBC agrees that it shall obtain KCC's written consent regarding any proposed changes which impact on the disposal point prior to making any changes to the ACM.
- 6.7 GBC shall deliver recyclates (including Fully Co-mingled, food and composting materials) and residual waste in accordance with the ACM to the transfer points and facilities specified by KCC and in accordance with the Waste Project.
- 6.8 KCC will with effect from 9 June 2014 provide or procure processing capacity and or facilities and necessary haulage and transfer facilities thereto in accordance with the Waste Project for: -

- Fully Comingled (excluding glass) collected by GBC with effect from 9 June 2014 Separate Food Waste Collection by GBC with effect from 9 June 2014

- 6.9 GBC agrees to use best endeavours to ensure Households within its administrative area are informed as to the new methods of waste collection.
- 6.10 The Partners are to work towards providing the most cost effective service to residents within the GBC administrative area for waste/recyclables collection, processing and disposal.
- 6.11 The Partners commit to an open and transparent accounting basis, with the benefit of Kent' taxpayers at the forefront of discussions, and as such each Partner shall, on reasonable request from time to time by the other, as soon as reasonably practicable, provide full details in relation to the cost of waste disposal, recycling, composting and collection and other relevant information necessary for the calculation of the DCS.
- 6.12 KCC and GBC will share any benefits and risks of the Project in accordance with the financial obligations detailed at Clause 12 of this IAA.
- 6.13 KCC shall use reasonable endeavours to maximise the value of income from the sale of materials and minimise the transport and processing costs for such materials.
- 6.14 The Partners shall use reasonable endeavours to reduce contamination and maximise the quality of recyclable/food waste materials collected at the kerbside and bulked at and transported from transfer facilities.

## **7. VARIATION**

- 7.1 The Partners are aware that there may be changes in legislation and / or directions from Central Government that might materially affect the financial impact of this IAA on either or both of the Partners. If such a situation arises then the Partners will negotiate in good faith with a view to amending this IAA to make it workable for the mutual benefit of both Partners.
- 7.2 (Without prejudice to the provisions of Clause 7.1 above) the Partners may vary this IAA at any time, in writing, with the agreement of both Partners if the changes are in relation to any other matter including matters arising from a review in accordance with Clause 9 below.

## **8. PROJECT MANAGEMENT**

8.1 The Partners shall undertake to develop and implement the Waste Project in accordance with their delegated powers of authority and Lead Officers will, where appropriate, refer decisions to their respective executives for determination.

8.2 The Partners shall undertake the management of the Waste Project from commencement of new services in the GBC administrative area.

## **9. REVIEW AND RENEWAL OF ARRANGEMENTS**

9.1 This IAA will be reviewed on at least an annual basis in October of each year. The annual review will consider any relevant matters including but not limited to the following matters (if relevant): -

- Changes in legislation or statutory guidance,
- The functioning of the arrangements,
- Significant changes in the financial environment affecting the Partners,
- The Joint Municipal Waste Management Strategy

9.2 The final review of this IAA shall include consideration of whether to renew this IAA and, if so, the duration of such renewal.

9.3 Reviews will be undertaken by the Partners with assistance from each Partner's s151 LGA 1972 officer and legal representatives, if required.

## **10. MITIGATION**

10.1 Each Partner shall at all times take reasonable steps to minimise and mitigate any loss for which that Partner is entitled to bring a claim against the other Partner pursuant to the IAA.

## 11. CLAIMS

- 11.1 Each Partner shall advise the Lead Officer for the other Partner of the risks of claims at the earliest opportunity in order to enable any possible mitigation, and shall co-operate with each other in dealing with such claims in respect of this IAA. The Partners shall maintain all material details of claims and provide such details to other Partner promptly upon request.
- 11.2 A Partner carrying out actions in good faith on behalf of the Partnership shall not (other than in the case of fraud and/or clear bad faith) be liable to claims from the other Partner on the grounds that the actions that were taken were not the proper actions carried out properly or that the costs and liabilities incurred were not reasonably and properly incurred (as long as they were in fact incurred).

## 12. FINANCIAL OBLIGATIONS

- 12.1 GBC shall procure and pay for the vehicles, wheeled bins and food waste containers required to deliver the service in accordance with the ACM.
- 12.2 No Recycling Support Payment will be made to GBC by KCC if the GBC recycling performance drops below the Baseline Recycling Percentage in the relevant payment year of this IAA. 12.3 The calculation for the Recycling Support Payment (RSP) from 9 June 2014 until 31 March 2024 will be the difference between the BT (Baseline Tonnages) multiplied by ADC (Actual Disposal Costs) and the AT (actual tonnages) multiplied by ADC, all multiplied by 50%. Using the following formula:

$$((BT \times ADC) - (AT \times ADC)) \times 50\% = RSP$$

For example:

Baseline Tonnes for WtE	22,730.51
Actual Tonnes for WtE	20,000
Actual Disposal Costs	£120.95

$$((22,730.51 \times £120.95) - (20,000 \times £120.95)) \times 50\% = £165,127.59$$

- 12.4 For the period from 1 April 2024 until 31 March 2027 onwards, the percentage used in the formula as set out in clause 12.3 will change in accordance with section 12.7 of this Agreement and shall apply in calculating the RSP.

- 12.5 KCC will continue to pay Recycling Credits, on a tonnage basis, to GBC for all household material recycled and managed through the network of Bring Sites only within the GBC administrative area, subject to the standard requirements of the Recycling Credits scheme in Kent being met by GBC.
- 12.6 KCC will not pay Recycling Credits to GBC for any recyclable or compostable material collected kerbside.
- 12.7 KCC will, provide the Waste Project achieves a DCS for the relevant year pay to GBC:
- (i) In each year until the year ending 31<sup>st</sup> March 2024, 50% of the DCS; and
  - (ii) for the year 1<sup>st</sup> April 2024 to 31<sup>st</sup> March 2025 37.5% of the DCS; and
  - (iii) for the year 1<sup>st</sup> April 2025 to 31<sup>st</sup> March 2026 25% of the DCS; and
  - (iv) for the year 1<sup>st</sup> April 2026 to 31<sup>st</sup> March 2027 12.5% of the DCS

Table 1 below, provides a modelled summary of the indicative benefits to GBC and to KCC for GBC adopting and implementing Fully Co-mingled Service (excluding glass).

**Table 1**

Scheme Ref	Residual	Food	Recycling	GBC Increase	KCC Saving	Overall Cost
CM4	Weekly in sacks	Weekly collected with residual	Fortnightly in 240ltr bin	£265,082	(£210,780)	£54,302
CM8	Weekly in 180ltr bin	Weekly collected with residual	Fortnightly in 240ltr bin	£354,126	(£337,085)	£17,041
CM9	Fortnightly in 180ltr bin	Weekly with either recycling or residual dependant on week	Fortnightly in 240ltr bin	£213,125	(£463,440)	(£250,316)
CM9 (KCC)	Fortnightly in 180ltr bin	Weekly with either recycling or residual dependant on week	Fortnightly in 240ltr bin	£213,125	(£543,552)	(£330,427)

**Fully Co-mingled Service (Excluding Glass)**

**Note:** Table extracted from GBC Cabinet Report dated 7<sup>th</sup> October 2013, and the final row in the table (shown with KCC) provides the estimation of the savings as calculated by officers from Kent County Council.

- 12.8 The percentage of the DCS due to GBC for each year will be paid to GBC by the 31<sup>st</sup> July immediately following the relevant year generating the benefit, , subject to GBC confirming completion of WasteDataflow entries for that relevant year by 30 June
- 12.9 The Baseline Disposal Costs shall be varied at 31<sup>st</sup> March for each Year and shall be increased or decreased in line with the indexation of the relevant materials processing or disposal contracts operated by KCC, except for the Recycling Credits, which shall increase by a maximum of 3% each year.
- 12.10 If any year returns a loss, no future payments of DCS will be made to GBC until KCC's share of the loss is recovered by KCC.
- 12.11 Where no DCS is generated no payment will be made by KCC to GBC.
- 12.12 For the avoidance of doubt no disaggregation payments to GBC will be undertaken in respect of any increase in any benefit derived from garden waste collections.
- 12.13 For the avoidance of doubt, there will be no disaggregation of any collection savings to KCC.

### 13 **WITHDRAWAL**

- 13.1 Subject to Clause 13.2 either Partner may withdraw from the IAA, on the 31<sup>st</sup> of March in any given year by the giving of not less than 12 months' notice in writing or any other such period as agreed between the Parties
- 13.2 Notice under Clause 13.2 cannot be given before the Partner proposing to withdraw from the IAA has put forward its proposal to withdraw from the IAA for consideration to the other Partner.
- 13.3 Either Partner may withdraw from this IAA by giving 90 days written notice to the other Partner in the event that the other Partner commits a material breach of the terms of this IAA provided that the Partners have referred the matter to dispute resolution in accordance with clause 15.
- 13.4 This agreement shall terminate immediately once either of the Partners withdraws from this IAA as set out in this clause 13.

## 14 EVENTS LEADING TO COMPENSATION

14.1 Subject to clause 14.2 in any of the following events howsoever arising including but not limited to Partner withdrawal :

- (i) GBC fails to implement or ceases to operate the ACM in accordance with this IAA;
- (ii) GBC fails to implement or ceases to deliver recyclable or compostable material pursuant to this IAA;
- (iii) KCC fails to pay to GBC the DCS due to it under clause 12.7
- (iv) KCC fails to provide or procure processing capacity and/or facilities and necessary haulage and transfer facilities in accordance with this IAA

then to the intent that the non-defaulting Partner is to be put into the position it would have been in had the event not occurred and had the Partner in default performed its obligations in accordance with this IAA the non-defaulting Partner's properly incurred costs and losses arising from it shall (subject to the non-defaulting Partner's duty to mitigate its losses and any reasonably agreed limit of liability agreed by the Partners) be paid by the Partner who has ceased or has failed to carry out its obligations arising under this IAA. Failure to agree to such costs and losses shall be an issue to be dealt with under the dispute resolution procedure as set out in clause 15.

14.2 Neither Partner shall be liable to compensate the other if an event described in clause 14.1 arises solely in consequence of a change in legislation and/or directions from Central Government

## 15 DISPUTE RESOLUTION PROCEDURE

15.1 Any disputes and/or disagreements arising under or in connection with this IAA shall be resolved in accordance with this Clause.

15.2 If a dispute and/or disagreement arises in relation to any aspect of this IAA, then the matter shall initially be referred to the Service Leads (or equivalent officer) of the Partners to the dispute and/or disagreement. The Service Leads shall meet within twenty (20) business days of the matter being referred to them.

15.3 If the Partners' Service Leads are unable to resolve a dispute and/or disagreement arises in relation to any aspect of this IAA, then the matter shall be referred to the Chief Executives (or equivalent officer) of the Partners to the dispute and/or disagreement. The Chief Executives shall meet within twenty (20) business days of the matter being referred to them.

- 15.4 If the Chief Executives fail to resolve a dispute or disagreement within twenty (20) business days of meeting then either Partner may refer the matter for resolution to the CIWM or such other party as the Partners may agree (or the CIWM may direct) for resolution by them or the exclusive jurisdiction of the Courts of England.
- 15.5 Any dispute and/or disagreement to be so determined by the Chief Executives, CIWM or the Courts of England (as the case may be) under this IAA shall be promptly referred for determination to them and the Partners shall, on request, promptly supply to the Chief Executives or CIWM or the Courts all such assistance, documents and information as may be required for the purpose of determination and the Partners shall use all reasonable endeavours to procure the prompt determination of such reference.
- 15.6 The CIWM representative shall be deemed to act as an expert and not as an arbitrator and their determination shall (in the absence of manifest error) be conclusive and binding upon the Partners.
- 15.7 The costs of the resolution of any dispute and/or disagreement between the Partners under this IAA shall be borne equally by the Partners to the dispute and/or disagreement in question save as may be otherwise directed by the Chief Executives, CIWM or the Courts of England (as the case may be).

## **16. DATA SHARING**

- 16.1 Each Partner shall make available to the other free of charge (and hereby irrevocably licences the other Partner to use) all data that might reasonably be required by that Partner in relation to this agreement and each Partner shall ensure that it can make the data available to the other during the term of the IAA.

## **17. ASSIGNMENT**

- 17.1 The rights and obligations of each of the Partners under this IAA shall not be assigned novated or otherwise transferred except to a successor Partner established by statute.



## **18. INFORMATION AND CONFIDENTIALITY**

- 18.1 The Partners will be guided by a presumption of openness and transparency in all matters relating to the Project except to the extent that any information is or relates to:
- (a) Confidential data in the ownership of a third party or
  - (b) Information which either is or may be treated as exempt within the meaning of Schedule 12A to the Local Government Act (as amended)
- 18.2 If a Partner (the **“Receiving Partner”**) receives a request under the Freedom of Information Act 2000 ("FOIA") or Environmental Information Regulations 2004 (EIRs) it shall be for the Receiving Partner to decide if such information should, as a matter of law, be disclosed and having acted reasonably and decided that it is legally obliged to disclose, it shall be entitled to so disclose.
- 18.3 The Receiving Partner shall use its reasonable endeavours to consult with the other Partner that may be affected by such disclosure prior to deciding whether to disclose information pursuant to the FOIA or EIRs but it shall not be obliged to so consult where to do so would put it in breach of this legislation.
- 18.4 The Partners shall comply with the Data Protection Act 1998.

## **19. LAW OF CONDUCT AND JURISDICTION**

- 19.1 This IAA shall be governed by the laws of England and the Partners submit to the exclusive jurisdiction of the courts of England.

## **20. NOTICES**

- 20.1 All notices under this IAA shall be in writing and all certificates, notices or written instructions to be given under the terms of this IAA shall be served by sending the same by first class post, facsimile or by hand, leaving the same at:

Chief Executive  
Gravesham Borough Council  
Civic Centre

Windmill Street,  
Gravesend  
Kent  
DA12 1AU  
Fax: 01474 337256

Corporate Director, Enterprise and Environment  
Kent County Council  
Invicta House, County Hall  
Maidstone  
Kent ME14 1XX

Fax: 01622 694060

**21. SEVERABILITY**

21.1 If any term condition or provision contained in the IAA 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 the IAA.

**22. WAIVER**

22.1 The failure or delay by any Partner in exercising any right power or remedy under the IAA shall not in any circumstances impair such right power or remedy nor operate as a waiver of it.

**23. ENTIRE AGREEMENT**

23.1 This IAA contains the whole agreement between the Partners relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the Partners relating to the Waste Project.

**IN WITNESS** whereof the Partners have executed this Agreement as a Deed

The Common Seal of  
**GRAVESHAM BOROUGH COUNCIL**  
was hereunto affixed to this  
IAA on the authority of:

.....  
Authorised Sealing Officer

The Common Seal of  
**THE KENT COUNTY COUNCIL**  
was hereunto affixed to this  
IAA in the presence of:

.....  
Authorised signatory

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