

DATED

2017

(1) EASTBOURNE BOROUGH COUNCIL

(2) HASTINGS BOROUGH COUNCIL

(3) LEWES DISTRICT COUNCIL

(4) ROTHER DISTRICT COUNCIL

- and -

(5) WEALDEN DISTRICT COUNCIL

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

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PARTIES:

EASTBOURNE BOROUGH COUNCIL whose principal office is situated at 1 Grove Road, Eastbourne, East Sussex, BN21 4TW ("Eastbourne");

HASTINGS BOROUGH COUNCIL whose principal office is situated at Aquila House, Breeds Place, Hastings, East Sussex, TN34 3UY ("Hastings");

LEWES DISTRICT COUNCIL whose principal office is situated at Southover House Southover Road, Lewes, East Sussex, BN7 1AB ("Lewes");

ROTHER DISTRICT COUNCIL whose principal office is situated at The Town Hall, Bexhill-on-Sea, East Sussex, TN39 3JX ("Rother");

WEALDEN DISTRICT COUNCIL whose principal office is situated at Vicarage Lane, Hailsham, BN27 2AX ("Wealden").

BACKGROUND:

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

AGREED TERMS:

DEFINITIONS AND INTERPRETATION

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

"Administering Authority"	Rother District Council;
"Annual Budget"	the budget agreed by the JWC as necessary expenditure to discharge their functions in respect of this Agreement;
"Bidder"	any person who responds to the OJEU Notice relating to the Project;
"Business Day"	a day (other than a Saturday or a Sunday) on which banks are open for domestic business in the City of London;
"CIWM"	the Chartered Institute of Waste Management;
"Confidential Information"	all know-how and other information whether commercial, financial, technical or otherwise relating to the business, affairs or methods of the Councils, which is contained in or discernible in any form whatsoever (including without

	limitation software, data, drawings, films, documents and computer-readable media) whether or not marked or designated as confidential or proprietary or which is disclosed orally or by demonstration and which is described at the time of disclosure as confidential or is clearly so from its content or the context of disclosure;
"Contract"	the contract between the Councils and the Contractor for the provision of the Waste Services;
"Contractor"	the organisation selected to provide the Waste Services following the completion of the Project;
"Councils"	the Councils of Eastbourne Borough, Hastings Borough, Rother District and Wealden District, including any successor authorities and any body to which all or part of the functions of these Councils may lawfully be transferred;
"Effective Date"	the date of this Agreement;
"EU Procurement Regime"	the Public Contracts Regulations 2015, as may be amended from time to time;
"Intellectual Property"	any and all patents, trade marks, trade names, copyright, moral rights, rights in design, rights in databases, know-how and all or other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to them and the right to apply for registration of them;
"Key Project Functions"	those actions identified as Key Project Functions in the first column of the table set out in Schedule 1 (Project Milestones);
"Lead Officer"	an officer appointed by each of the Councils to represent the Council in all matters relating to the delivery of the Contract;
"Material"	all data, text, graphics, images and other materials and/or documents created, used or supplied by a Council in connection with this Agreement;
"Matter Reserved to Authorities"	those actions, matters and/or functions identified as such in the fourth column in the table set out in Schedule 1 (Project Milestones);
"OJEU Notice"	the notice advertising the Waste Services placed in the Official Journal of the European Union;
"Procurement Costs"	the costs and expenses reasonably incurred by the Councils in respect of the Project;
["Procurement Costs Allocation Scheme"	the mechanism for the allocation of the Procurement Costs, as set out in Schedule 2;]
"Project"	the joint procurement by the Councils for the Waste Services in accordance with the EU Procurement Regime;
"Project Milestones"	the procurement stages set out in Schedule 1 to be carried out in order to procure the Waste Services and as may be

amended from time to time by the Councils in accordance with the terms of this Agreement;

"Partnership Manager"	the officer responsible for the strategic project management and delivery of the Contract in accordance with this Agreement;
"Deputy Project Manager"	the officer responsible for coordinating and administering the project management activities required to enable delivery of the Contract in accordance with this Agreement;
"Services Commencement Date"	the date on which the Contractor will start to provide the Waste Services; and
"Waste Services"	the provision by the Contractor of waste collection, recycling and street and beach cleaning services for the Councils under the Contract.

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

TERM

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

KEY PRINCIPLES

- 3.1 The Councils intend this Agreement to be legally binding and mutual commitments between them created by this Agreement shall be construed accordingly.
- 3.2 The Councils agree to work together to carry out the Project Milestones in accordance with the terms of this Agreement.
- 3.3 Each of the Councils hereby acknowledges to the others that it has obtained all necessary authorities sufficient to ensure the delegation of functions provided for by this Agreement for the Project.

3.4 The Councils shall use all reasonable endeavours to procure that their respective members and officers who are involved in the Project shall at all times act in the best interests of the Project. The Councils expressly acknowledge that their members and officers involved in carrying out activities under this Agreement or otherwise in connection with the Project may be required to act in conflict with their duty to their own Council, and the Councils hereby authorise them to act in such a manner.

3.5 In working together the Councils agree that they will conduct the relationship between them in accordance with the following principles:

3.5.1 Mutual Trust and Co-operation

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

3.5.2 Effective Relationships

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

3.5.3 Reasonableness of Decision-Making

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

3.5.4 Contractual Liability

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

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

PROJECT OFFICERS

4.1 The Administering Authority shall be responsible for the appointment of a Deputy Project Manager for the purpose of the Project. The Administering Authority shall make the Deputy Project Manager available full-time for the management of the Project under the supervision and guidance of the Partnership manager.

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

DECISION-MAKING AND AUTHORITY

- 5.1 The Councils have identified the following three categories of decisions and other actions to be taken and carried out during the Project Milestones together with the means by which they will be taken:
- a) a "Project Team Matter", being a matter which the Project Team shall have authority to carry out on behalf of the Councils;
 - b) a "Joint Committee Matter", being a matter reserved to the JWC or which the JWC shall have authority to carry out pursuant to its Constitution (attached to this Agreement as Schedule 3); and
 - c) a "Matter Reserved To Authority", being a matter which shall be reserved to a Council for an executive decision under the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007 and, for the avoidance of doubt, that matter requiring a decision would not be dealt with by the JWC until the decision shall have been taken; and, in each case, such matters are identified in Schedule 1 (Project Milestones).
- 5.2 The following persons shall be authorised to enter any contracts in respect of the Project are:
- a) the Project Director in respect of contracts which, according to the Standing Orders for Contracts of the Administering Authority, do not require to be entered into by the Head of Legal Services; and

- b) the legal consultant to the JWC acting on the instruction of the Lead Director.
- 5.3 The only persons authorised to communicate with any prospective Bidder, or actual Bidder in respect of the Project shall be:
- a) the Lead Director;
 - b) the legal consultant to the JWC;
 - c) the financial consultant to the JWC;
 - d) the technical consultant to the JWC;
 - e) the procurement adviser to the JWC;
 - f) the Partnership Manager; and
 - g) any officers or consultants specifically authorised by the Lead Director for the purpose of a negotiation with any prospective Bidder or actual Bidder in respect of the Project.
- 5.4 Where any person enters into a contract or communicates with any prospective Bidder or actual Bidder on behalf of the Project, he/she shall make it clear in any such contract or communication that he/she does so on behalf of the Councils.

PROJECT COSTS

- 6.1 The Councils have through the JWC agreed an Annual Budget for carrying out the Project based on their best estimate of their respective costs. The costs and expenses of the JWC incurred in accordance with the Annual Budget shall be reimbursed by the Councils and arrangements for such reimbursement shall be agreed between the Councils. For the avoidance of doubt, the consent of all Councils shall be required to change the basis on which costs are apportioned.
- 6.2 The costs and expenses of the JWC for the financial year 2017-2018 and 2018-2019 will be reimbursed as follows:
- a) each of the Councils agrees in principle to pay any costs required to achieve this position as agreed by the JWC; and
 - b) the costs shall be met equally by the Councils.
- 6.3 The Procurement Costs shall be shared between the Councils in accordance with the Procurement Costs Allocation Scheme set out in Schedule 2, save as otherwise agreed between the Councils under this Agreement.
- 6.4 On completion of each stage of the Project Milestones, each Council will notify the Administering Authority of its actual costs properly and reasonably incurred during that stage.
- 6.5 The Administering Authority shall, at quarterly intervals (or such other intervals as may be agreed by the Councils from time to time), review the budget and produce a statement showing the Procurement Costs incurred by the Councils and each Council shall serve a request for reimbursement of its share of the Procurement Costs incurred to the date of that statement.
- 6.6 Any dispute between the Councils as to the allocation of Procurement Costs shall be resolved in accordance with Clause 17 (Dispute Resolution Procedure).

COMMITMENT TO THE PROJECT AND CONTRIBUTIONS

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

8 [INTENTIONALLY LEFT BLANK]

WITHDRAWAL DURING THE PROCUREMENT PROCESS

- 9.1 Each Council acknowledges that, if it withdraws from this Agreement, that withdrawal is likely to cause additional cost to the other Councils including, but not limited to, the cost of undertaking a separate procurement, the costs attendant upon the delayed availability of the Waste Services and the increased costs that the Councils may incur in relation to the Waste Services.
- 9.2 Each Council agrees that in the event that it gives notice of withdrawal (such notice to be in writing to the other Councils), it will:
- a) indemnify the other Councils against any additional costs associated with either increased procurement costs, or all or any costs associated with the need to re-commence a procurement process due to the withdrawal of any one or more Councils;
 - b) indemnify the other Councils against any damage, expense, liability or costs reasonably incurred in contesting any claim resulting or attributable to the withdrawal of any one or more Councils;
 - c) indemnify the other Councils against all or any increased costs that the Councils may incur in relation to the Waste Services, such costs to be capped at a maximum level of £100,000 (one hundred thousand) per withdrawing Council; and
 - d) not be entitled to recover any contributions it has made to the Annual Budget up to the date of withdrawal.
- 9.3 Where any Council withdraws from this Agreement:
- a) the obligations of that Council in respect of the furtherance of the Project shall cease on such withdrawal;
 - b) the Agreement shall continue in force as respect any financial liabilities of that Council which have arisen or may arise out of the performance of this Agreement;

- c) the Agreement shall remain in force in respect of any liability of any Council to indemnify the other Councils under this Clause 9 of the Agreement; and
- d) Clause 17 (Dispute Resolution Procedure) of this Agreement shall remain in force in respect of any of the matters arising from the performance of or withdrawal of any Council under this Agreement.

MUTUAL LIABILITIES

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

TERMINATION

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

CONSEQUENCES OF TERMINATION

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

INTELLECTUAL PROPERTY

- 13.1 Each Council will retain all Intellectual Property in its Material.
- 13.2 Each Council will grant all of the other Councils a non exclusive, perpetual, non-transferable and royalty free licence to use, modify, amend and develop its Material for the Project Milestones and any other purpose resulting from the Project Milestones whether or not the Council granting the licence remains a party to this Agreement or the Project Milestones.
- 13.3 Without prejudice to Clause 13.1, if more than one Council owns or has a legal or beneficial right or interest in any aspect of the Material for any reason (including that no one Council can demonstrate that it independently supplied or created the relevant Material without the help of one or more of the other Councils), each of the Councils who contributed to the relevant Material will grant to all other Councils to this Agreement a non-exclusive, perpetual, non-transferable and royalty free licence to use and exploit such Material as if all the other Councils were the sole owner under the Copyright Design and Patents Act 1988 or any other relevant statute or rule of law.

- 13.4 For the avoidance of doubt, any entity or person who is at the date of this Agreement a party to this Agreement and who has licensed any Intellectual Property under this Agreement will have a non-exclusive, perpetual right to continue to use the licensed Intellectual Property.
- 13.5 Each Council warrants that it has or will have the necessary rights to grant the licences set out in Clauses 13.2 and 13.3 in respect of the Material to be licensed. Each Council shall indemnify the other Councils against any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its intellectual property rights by use of that Council's intellectual property for the purpose of the Project.

CONFIDENTIALITY AND ANNOUNCEMENTS

- 14.1 Each Council shall, both during the term of this Agreement and at all times following its expiry or termination, keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) any confidential information about the business of and/or belonging to any other Council which has come to its attention as a result of or in connection with this Agreement.
- 14.2 The obligations set out in this Clause 14 shall not relate to information which:
- a) any matter which the recipient Council can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 14;
 - b) any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Council making the disclosure or the rules of any governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the governmental or regulatory authority concerned;
 - c) any disclosure of information which is already lawfully in the possession of the recipient Council, prior to its disclosure by the disclosing Council;
 - d) any disclosure of information by any Council to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Council for any purpose related to or ancillary to the Project or the Contract; or
 - e) any provision of information to the Councils' own professional advisers or insurance advisers.
- 14.3 Where disclosure is permitted under Clause 14.2, the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this Clause 14 and the disclosing Council shall make this known to the recipient of the information.
- 14.4 No Council shall make any public statement or issue any press release or publish any other public document relating, connected with or arising out of this Agreement and/or the Cost-Sharing Agreement and/or the Contract without the remaining Councils' written consent (excluding any disclosure required by legal or regulatory requirements).

FREEDOM OF INFORMATION

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

- 15.2 Where a Council receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of any of the other Councils in relation to the Project, it shall (and shall procure that its consultants and/or sub-contractors shall):
- a) transfer the request for information to the other Council as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;
 - b) provide the other Council with a copy of all information in its possession or power in the form that the Council requires within ten Business Days (or such longer period as the Council may specify) of the Council requesting that information; and
 - c) provide all necessary assistance as reasonably requested by the other Council to enable the Council to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 15.3 Where a Council receives a request for information under the FOIA or the EIR which relates to the Project or the Waste Services, it shall inform the other Councils of the request for information as soon as practicable after receipt and in any event at least two Business Days before disclosure and shall use all reasonable endeavours to consult with the other Councils prior to disclosure and shall consider all representations made by the other Council in relation to the decision whether or not to disclose the information requested.
- 15.4 The Councils shall be responsible for determining in their absolute discretion whether any information requested from them under the FOIA or the EIR:
- a) is exempt from disclosure under the FOIA or the EIR;
 - b) is to be disclosed in response to a request for information.
- 15.5 Each Council acknowledges that the other Council may be obliged under the FOIA or the EIR to disclose information:
- a) without consulting the other Council where it has not been practicable to achieve such consultation; or
 - b) following consultation with the other Councils and having taken their views into account.

NOTICES

- 16.1 Except as expressly stated to the contrary, all notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been properly given if delivered by hand or by courier, or sent by prepaid first-class post or registered post to the relevant authorised officer at the Administering Authority.
- 16.2 Any notice shall be treated as having been served on delivery if:
- a) delivered by hand, at the time of delivery;
 - b) delivered by courier, two Business Days after despatch;
 - c) in the case of pre-paid first-class post or registered post, three Business Days from the date of posting.

DISPUTE RESOLUTION PROCEDURE

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

- 17.2 If the event of a dispute and/or disagreement the JWC shall meet within ten Business Days of notification of the occurrence of such dispute and attempt to resolve the disputed matter in good faith.
- 17.3 If the JWC fails to resolve a dispute or disagreement within five Business Days of meeting pursuant to Clause 17.2, or fails to meet in accordance with the timescales set out in Clause 17.2, then the JWC may refer the matter for resolution to the Councils' Leaders and Chief Executives.
- 17.4 If, having been so referred, the dispute is not resolved within a further ten Business Days, such dispute may be referred to, by agreement between the parties:
- a) the CIWM; or
 - b) the Centre for Effective Dispute Resolution; or
 - c) to a mutually agreed Mediator; or
 - d) the exclusive jurisdiction of the Courts of England.
- 17.5 The Councils shall on request promptly provide to the relevant organisation all such assistance, documents and information as may be required for the purpose of determination of the dispute and the Councils shall use all reasonable endeavours to procure the prompt determination of such reference.
- 17.6 The CIWM and the Centre for Effective Dispute Resolution shall each be deemed to act as an expert and not as an arbitrator and their determination shall (in the absence of manifest error) be conclusive and binding upon the Councils.
- 17.7 The costs of the resolution of any dispute and/or disagreement between the Councils under this Agreement shall be borne equally by the Councils to the dispute in question save as may be otherwise directed by the CIWM, the Centre for Effective Dispute Resolution, the appointed Mediator or the Courts of England (as the case may be).

LAW AND JURISDICTION

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

GENERAL

19.1 Entire Agreement

- a) This Agreement, together with the schedules and all other documents attached or referred to in, or executed contemporaneously with, this Agreement constitutes the entire agreement between the Councils regarding its subject matter and supersedes any prior agreement, arrangement and understanding between the Councils.
- b) No representation, promise or undertaking shall be taken to have been made or implied from anything said or written in negotiations between the Councils prior to the Effective Date, except as expressly stated in this Agreement. Each Council acknowledges and agrees that it has not relied upon any information given or representation made by or on behalf of the other in entering into this Agreement.
- c) No Council shall have any remedy in respect of any untrue statement made by any other Council upon which that Council relied in entering into this Agreement and that Council's only remedies shall be for breach of contract.

d) Nothing in this Clause 19.1 shall operate to limit or exclude any liability or either party for, or remedy against any Council in respect of, any fraudulent misrepresentation.

19.2 Third Party Rights

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

19.3 Waiver

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

19.4 Severability

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

19.5 Survival

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

19.6 Independent Parties

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

19.7 No Assignment

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

19.8 Variations

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

19.9 Counterparts

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

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

The common seal of)

Eastbourne Borough Council)

was hereunto affixed in the)

presence of:)

Authorised Signatory

The common seal of)

Hastings Borough Council)

was hereunto affixed in the)

presence of:)

Authorised Signatory

The common seal of)

Lewes District Council)

was hereunto affixed in the)

presence of:)

Authorised Signatory

The common seal of)

Rother District Council)

was hereunto affixed in the)

presence of:)

Authorised Signatory

The common seal of)

Wealden District Council)

was hereunto affixed in the)

presence of:)

Authorised Signatory

SCHEDULE 1

PROJECT MILESTONES

These functions/milestones and dates are indicative only

DATES	MILESTONE KEY PROCUREMENT FUNCTION	PROJECT TEAM MATTER	JOINT COMMITTEE MATTER	MATTER RESERVED TO AUTHORITIES
June 2017	Procurement of external advisers to the Project	Yes		
June 2017	Approval and confirmation of external advisers to the Project	Yes		
Oct 2017	Preparation of the Descriptive Document and Pre-Qualification Questionnaire (“PQQ”)	Yes		
Oct 2017	Preparation of Evaluation Criteria for all stages of the procurement process	Yes		
Oct 2017	Drafting OJEU Notice	Yes		
Nov 2017	Agreeing OJEU Notice		Yes	
Nov 2017	Agreeing Evaluation Criteria for all stages of procurement process		Yes	
Nov 2017	Issuing OJEU Notice	Yes		
Dec 2017	Organising open days prior to return of PQQ’s and Expressions of Interest	Yes		
Dec 2017	Preparing applicant questions response document	Yes		
Jan 2018	Evaluation and Shortlisting of responses	Yes		
Feb 2018	Agreement of short list		Yes	
Feb 2018	Inform successful and unsuccessful applicants	Yes		
Feb 2018	Issue invitation to tender	Yes		
June 2018	Deadline for receipt of tender proposals	Yes		
July/ August 2018	Negotiation Stage – staged process	Yes		
End August 2018	Agreement to shortlist for final Invitation To Tender		Yes	
End August 2018	Inform all remaining tenders of conclusion and issue final shortlist for ITT		Yes	
End August 2018	Issue of final ITT	Yes		
Nov 2018	Evaluation of responses to final ITT	Yes		
Dec 2018	Evaluation of final tenders and selection of Preferred Bidder	Yes		
Dec	Review of final tenders and selection of Preferred		Yes	

DATES	MILESTONE KEY PROCUREMENT FUNCTION	PROJECT TEAM MATTER	JOINT COMMITTEE MATTER	MATTER RESERVED TO AUTHORITIES
2018	Bidder			
Dec 2018	Agreement to selection of Preferred Bidder			Yes
Dec 2018	Final Close Dispatch of Alcatel letters	Yes		Yes
Dec 2018	Agreement and execution of Waste Services Contract			Yes
Dec 2018	Collation of information and provision of information in respect of Waste Services Contract award procedures required under Regulation 86 Public Services Contracts Regulations	Yes		
Dec 2018	Approval of additional expenditure for the Project in excess of the Annual Budget			Yes

SCHEDULE 2
PROCUREMENT COSTS ALLOCATION SCHEME

(19/05/17: to be completed pending council commitments to proceed June '17)

SCHEDULE 3
JWC CONSTITUTION

(website link - <http://www.rother.gov.uk/article/7906/Joint-Waste-Committee> - under related documents).