

**Inter Authority Agreement 2008**

THIS AGREEMENT is made the 21 day of JAN 2008

**BETWEEN**

- (1) **NORTH YORKSHIRE COUNTY COUNCIL** of County Hall, Northallerton, North Yorkshire DL7 8AH ("North Yorks")
- (2) **CITY OF YORK COUNCIL** of the Guildhall, York, North Yorkshire YO1 9QN ("York")

**WHEREAS**

- A North Yorks and York (together the "Councils" and each a "Council") have agreed to carry out a joint procurement of waste management services (the "Project").
- B In line with Government guidance the Project has been divided into a number of procurements of which one, for the long term treatment of waste (the "Treatment Contract") will be procured under the Government's private finance initiative.
- C The Councils have agreed, notwithstanding the Project is a joint procurement, that North Yorks will act as lead authority and will enter into the Treatment Contract with the Preferred Partner and will at the same time enter into a sub-contract with York (the "Sub-Contract") whereby waste arising in York will be treated under the Treatment Contract.
- D The Councils have agreed to enter into this Agreement for the purpose of setting out their rights and responsibilities in relation to the procurement of the Treatment Contract as well as the other procurements comprising the Project.

**NOW THEREFORE** in consideration of the steps to be taken by the Councils in connection with the Project it is hereby agreed as follows:

**1. Definitions and Interpretation**

- 1.1 In this Agreement the following words or phrases shall, unless the context otherwise requires, have the following meanings:

Agreed Proportions	At the date hereof York's proportion is 25% and North Yorks' proportion is 75% and those proportions may be adjusted by the Parties in line with the principles set out in clause 9.5
"Conflicting Arrangements"	has the meaning given to it in clause 8.3;
"Executive"	the executive for each Council as more particularly described in clause 5.2.1;
Front End Contract	means the contract to be let by North Yorks relating to the management of waste that does not extend to treatment under the Treatment Contract;
"Financial Allocations Principles Paper"	means the paper setting out the cost sharing arrangements for the Councils in relation to the Project attached at Schedule 1 to this Agreement;
"Financial Close"	the date on which the agreements between the Preferred Partner and its funders relating to the funding of the infrastructure to be delivered under the Treatment Contract are signed;
"First Inter Authority Agreement"	has the meaning given to it in clause 5.1;
"Interim Contract	means the contract or contracts for the interim treatment of waste to be let by North Yorkshire to cover the interim period ending with the commencement of services under the Treatment Contract;
"Non-Signing Council"	has the meaning given to it in clause 10.3;
"Preferred Partner"	the bidder selected following the conclusion of the procurement process and who will enter into the Treatment Contract;
"Project"	has the meaning given to it in Recital A;
"Project Board"	has the meaning given to it in clause

5.2.3;

“Strategic Steering Board”	has the meaning given to it in clause 5.2.2;
Sub-Contract	means the sub contract referred to in Recital C whereby North Yorks will contract with York so that municipal solid waste arising within York will be treated under the Treatment Contract
“Treatment Contract”	has the meaning given to it in Recital B;
Wasted Costs	means the costs incurred by the relevant Council in the period from the 1 <sup>st</sup> September 2007 up to the date on which the Provisions of clause 10.4 apply to the other Council, out of or in connection with the Project, including without limitation, all such costs as are referred to in clause 9 (internal costs, external costs and costs in excess of budget). As the same may be agreed or determined following the procedure set out in clause 17;
“Withdrawing Council”	has the meaning given to it in clause 10.1;

- 1.2 In this Agreement the singular includes the plural and vice versa and any gender includes any other gender.
- 1.3 The clause headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 1.4 References to clause(s) and schedule(s) are references to clause(s) and schedule(s) of this Agreement and this Agreement includes the schedules.
- 1.5 Reference to any statute or statutory provision includes a reference to that statute or provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments or orders made under it.
- 1.6 Reference to any post or post holder by any title shall be taken as a reference to the function carried out by the post holder regardless of the title given to the person who carries out that function from time to time

**2. Statement of Intent**

- 2.1 Each of the Councils hereby confirms its intention to act in collaboration with the other with a view to procuring jointly the Treatment Contract and agreeing the Sub Contract.
- 2.2 Each of the Councils agrees to act reasonably towards and in good faith in its dealings with, the other Council in all matters connected with the Project.
- 2.3 Each of the Councils recognises the importance of the PFI credits awarded by DEFRA and agrees not intentionally to jeopardise the payment of the full amount of those PFI credits (£65 million).

**3. Provision of Resource**

- 3.1 (Subject to the necessary budgets having been duly approved on behalf of the respective Councils each Council will make available sufficient personnel and resource to support the procurement as such needs may be determined from time to time by the Project Board.

**4. Appointment of External Advisors**

- 4.1 Each Council agrees to the joint appointment of external advisors to the Project on terms from time to time agreed between those advisors and North Yorks (acting as lead authority) and to keep such appointments under review from time to time.. At the date of this Agreement the following (amongst others) have been appointed as external advisors to the Councils:

<b>Speciality</b>	<b>Advisor</b>
Finance	Ernst & Young
Technical	Enviros
Legal	Ward Hadaway
Insurance	Marsh

- 4.2 Neither Council shall appoint any external advisor to the Project without the prior consent of the other Council however this shall not prevent any Council that feels a need to have independent advice from appointing an independent external advisor for the purpose of providing that advice. Any such independent advice shall be paid for by the Council commissioning it.

- 4.3 The costs of such external advisors will be borne by the Councils in the Agreed Proportions.

## 5. Management of the Procurement

- 5.1 On 18<sup>th</sup> September 2006, the Councils executed an agreement (the "First Inter Authority Agreement") that set up a basic framework for the management of the Project. The First Inter Authority Agreement also established that

- neither Council was committed to entering into the Treatment Contract until the Treatment Contract had been approved by that Council's Executive;
- throughout the procurement itself, when there was any matter that was to be decided by both Councils and, that matter having been put to a vote and the vote being tied, North Yorks would have a casting vote.

- 5.2 The Councils have agreed that in substitution for the project management structure established by the First Inter Authority Agreement, the following governance arrangements should apply:

### 5.2.1 *The Executives*

The executive of each Council is the body by which relevant decisions, not delegated to officers or bodies of that Council, shall be taken. Without limiting the responsibilities of each Executive, the role of each executive shall include the:

- Approval of the strategy for the Project
- Approval of the resources required for the Project
- In the case of North Yorks: Approving the form of the Treatment Contract and taking the decision to enter into the Treatment Contract with the Preferred Partner and approving the form of the Sub-Contract and taking the decision to enter into the Sub-Contract with York
- In the case of York: Approving the form of the Sub-Contract and taking the decision to enter into the Sub-Contract with North Yorks.

### *Strategic Steering Board*

A Strategic Steering Board will be established for the Project. The members of the Strategic Steering Board will be (or will be those persons attending on behalf of) North Yorks' Chief Executive (who will chair meetings of the Strategic Steering Board) York's Chief Executive, North Yorks' Corporate Director Finance and Central Services, York's Director of Resources, North Yorks' Corporate Director Business and Environmental Services and York's Director of City Strategy. Other persons may attend meetings of the Strategic Steering Board at its invitation.

Without limiting the responsibilities of the Strategic Steering Board, the role of the Strategic Steering Board will be to :

- Ensure that the Executive of the relevant Council are kept briefed as to the progress of the Project
- Review the progress of the Project at key stages;
- Ensure strategic direction and alignment of the Project as a whole with the corporate objectives of each Council;
- Ensure that adequate resources are made available by each Council for the Project;
- Provide direction and guidance to the Project Board in the delivery of the key project objectives
- Consider those themes arising in connection with the Project that are common to both Councils or where the interests of one Council differ from those of the other, so as to ensure a joint approach across the Project
- Consider the respective interests of each Council in relation to the other contracts to be procured at or about the same time as the Project, being the Interim Contract and the Front End Contract.

The Strategic Steering Board will meet at such times as its members may agree but normally every 3 months and not less than once every six months until such time as the Treatment Contract achieves Financial Close.

### *The Project Board*

The Councils will delegate such decision making powers as are necessary to progress the project and as are not reserved to the Executive of either Council and as are not inconsistent with that Council's scheme of delegation to a board, established pursuant to s 101 and 102 Local Government Act 1972 (the "Project Board"). The members of the Project Board will include North Yorks' Corporate Director Business and Environmental Services, North Yorks' assistant director Waste Management, an assistant director of finance of each Council, the Project Director, the Project Manager and a representative of the Council's external advisors. The chair of the Project Board will be North Yorks' Corporate Director Business and Environmental Services.

Subject to timely reporting to the Strategic Steering Board, The Project Board will have power to deal with all project specific issues including but not limited to:

- Approval and publication of the OJEU notice
- Selection and evaluation of bidders at all stages of the procurement
- Issue of all tender documents
- Management of all stages of the procurement
- Appointment of the Preferred Partner and issue of the preferred partner letter.

The Project Board shall meet at least once each month.

- 5.3 The Councils have also agreed that references in the First Inter Authority Agreement to the Treatment Contract should now be read as references to the Treatment Contract and the Sub Contract.

## **6. Sites and Planning**

- 6.1 In line with Government advice the Treatment Contract will be procured by the Councils first identifying sites on which waste management facilities can be situated with the intention that the Preferred Partner, if it elects to develop facilities on such sites, will then obtaining planning permission for the erection on such sites of waste management facilities suitable to deliver the Treatment Contract.

- 6.2 The Councils have commissioned a search for suitable sites and the sites that align closest with the expected requirements of the Preferred Partner are located in North Yorks area. North Yorks will take the lead in the acquisition of options over those sites ("Suitable Sites").
- 6.3 The process of acquiring an option over the Suitable Sites consists of two phases. The first phase ("First Phase") consisted of commissioning land use consultants and other advisors in the process of identifying the Suitable Sites and the negotiation of the terms on which an option might be taken over the Suitable Sites. The second phase ("Second Phase") consists of the exercise of any option over any Suitable Site.
- 6.4 Any costs incurred in connection with the First Phase are to be treated as costs of the Project and are to be apportioned in the Agreed Proportions.
- 6.5 Where, in connection with the Second Phase any option is exercised and as a consequence the freehold or a long leasehold interest in any Suitable Site is acquired, both Councils shall contribute to the relevant purchase price, option exercise fee or assume liability for the payment of rent in the Agreed Proportions, and each Council shall be deemed (subject to any interests granted in favour of the Preferred Partner or its funder) to have acquired a corresponding proportionate interest in the relevant Selected Site and on any subsequent disposal shall be entitled to receive the corresponding proportion of any net gain, or shall be obliged to contribute the corresponding proportion of any net loss, arising on such disposal. The Councils recognise that the provisions of this clause are unlikely to create an interest in the Selected Site and agree to work together as a matter of good faith to procure that whatever interests the Councils have in any Selected Site are appropriately recorded and registered.
- 6.6 The Councils acknowledge that the terms of the Treatment Contract will contain provisions whereby, in certain circumstances, the interest of the Preferred Partner in any site used for the purposes of the Treatment Contract may be transferred to North Yorks and the Councils agree to include in the Sub-Contract provisions to ensure that (so far as practicable and subject to any compensation payment required under the Treatment Contract having been paid in the Agreed Proportions) each Council has its proportionate interest in that site.
- 6.7 Each Council shall be responsible for identifying and procuring appropriate front-end transfer and recycling sites within each Council's respective administrative boundaries.



**7. Duration**

This Agreement shall commence on the date first written above and (subject to the proviso below) shall terminate on the occurrence of any one of the following events:

- 7.1 a decision is made by both Councils that the Project should be abandoned;
- 7.2 full planning permission is not granted for all of the facilities and/or sites required to deliver the Treatment Contract within 3 years from the date of the letter appointing the Preferred Partner as preferred partner following the conclusion of the procurement process;
- 7.3 a decision is made by both Councils to terminate this Agreement;
- 7.4 support from the Government in the form of PFI credits falls below £65 million.

Provided that on the happening of any of the above events the Councils shall meet as soon as practicable with a view to deciding whether or not to continue with the Project in the light of that event having happened. If the Councils agree that the Project is to continue notwithstanding the happening of that event then this Agreement shall not terminate but shall continue in force mutatis mutandis.

**8 Exclusivity**

- 8.1 Both Councils recognise the mutual advantage of a joint procurement; however both Councils recognise that there may from time to time be tensions caused by the differing needs of the two authorities both of which have differing political and demographic complexions.
- 8.2 Both Councils recognise that the withdrawal from the procurement of one of them could make the continued procurement of the Treatment Contract and the Sub Contract unaffordable or may otherwise have an adverse effect on the Project. In particular, but without limitation, both Councils recognise that the withdrawal from the procurement of the Treatment Contract and/or the Sub Contract could result in the amount of PFI Credit paid in respect of the Treatment Contract being reduced or being made unavailable.
- 8.3 For the term of this Agreement neither Council shall (subject to 8.4) without the consent of the other Council (not to be unreasonably withheld) do anything which in the view of the other Council acting reasonably will undermine, prejudice or adversely affect the

procurement and/or terms of the Treatment Contract including, but not limited to, entering into any agreement for the treatment of waste ("**Conflicting Arrangements**") or the issuing of any briefing or any press release Provided that the entry by the Councils into the Sub Contract will not constitute a Conflicting Arrangement.

- 8.4 At the date hereof, York has entered into a landfill contract with Yorwaste Limited and North Yorks has advertised its intention (by way of a prior information notice published in the Official Journal of the European Union under number 2007/S 101-124687) to procure interim waste management services. In both cases those waste management contracts (when awarded) are intended to run until services commence under the Treatment Contract and the entry by either Council into such contract and any extension thereof in accordance with its terms will not constitute a Conflicting Arrangement.
- 8.5 Where, pursuant to clause 8.3 either Council wishes to obtain the consent of the other Council to the first Council entering into any Conflicting Arrangements, the consent of the other Council may be given or withheld. If that consent is withheld and the first Council enters into any Conflicting Arrangements then the provisions of clause 10.4 will apply. If that consent is given it may be given on such terms as may be agreed (and in default of agreement shall be deemed not to have been given).

## 9. Cost Sharing

- 9.1 *Internal Costs of the Councils.* These shall be borne by the relevant Council and shall not bear any mark up or margin.
- 9.2 *External Costs.* Any external costs incurred by either Council in bringing this Project to fruition, including but not limited to the use of external advisors pursuant to clause 4.1, shall be borne by the Councils in the Agreed Proportions.
- 9.3 The Councils agree at the earliest opportunity to establish a budget for the Project which shall fix limits on expenditure for internal and external costs. Any Council that expends in excess of the budgeted limit shall not be reimbursed for the excess expenditure unless such expenditure is approved by the Councils.
- 9.4 Unless otherwise agreed all costs specifically relating to the Project will, in the first instance be paid by North Yorks . Thereafter North Yorks will on a quarterly basis issue an invoice to York for York's Agreed Proportion of those costs together with the appropriate supporting documents. York will pay such invoice within 30 days. In any case

where the Councils are unable to agree the amount due under an invoice then the matter shall be resolved by following the procedure set out in clause 16 or clause 17.

- 9.5 The Agreed Proportions have been arrived at by taking the waste arisings in the areas of each Council as a percentage of the total arisings across the areas of both Councils. At the date hereof those percentages are 75% and 25%. It may be the case that from time to time those percentages may change and whenever either Council can demonstrate to the reasonable satisfaction of the other Council that the Agreed Proportions have changed by more than 2% then the Agreed Proportions shall be taken to have changed accordingly.

#### 10. **Withdrawal**

- 10.1 Where either Council (the "**Withdrawing Council**") expresses the intention to enter into Conflicting Arrangements, without the consent having been given or obtained from the other Council, in breach of clause 8.3 then it shall first give notice to the other Council of its intention whereupon the Councils will work together (including but not limited to submitting to mediation) to minimise the impact on the Project of such intention.
- 10.2 If notwithstanding the efforts of the Councils pursuant to clause 10.1, the Withdrawing Council enters into any Conflicting Arrangements then the provisions of clause 10.4 shall apply.
- 10.3 If either Council (the "**Non-Signing Council**"), whether or not expressing the intention to enter into Conflicting Arrangements, fails to enter into the Treatment Contract or the Sub Contract or any analogous contract (as the case may be) with the effect that the Treatment Contract does not come into force or comes into force in an amended version with a resulting further cost for the Council that does enter into the Treatment Contract then the provisions of clause 10.4 shall apply.
- 10.4 If either Council enters into Conflicting Arrangements, without consent having been given or obtained from the other Council, in breach of clauses 8.3 and 8.5, or if either Council is a Withdrawing Council or a Non-Signing Council (as the case may be) then such Council shall within 30 days of demand in writing from the other Council reimburse to the other Council all of the other Council's Wasted Costs.

#### 11. **Interim Nature of this Agreement**

- 11.1 This Agreement is intended to deal with the procurement of the Treatment Contract. In drawing up the terms of the Sub Contract

(which shall contain a proportionate pass-down of the terms of the Treatment Contract) the agree to work together to draw up the principles to be applied in the management of the Treatment Contract and all other aspects of the Councils working together as joint procuring authorities and such principles (including but not limited to the matters the subject of the Financial Allocations Principles Paper) will be in addition to and not in substitution for this Agreement

**12. Confidentiality and Publicity**

- 12.1 The Councils agree to work together to develop and thereafter comply with a joint communication strategy in relation to the procurement, which will include, but not be limited to, the approval process in relation to the type and extent of information that may be made available to the public and the manner in which it may be made available.
- 12.2 Without prejudice to clause 12.1, each Council agrees that it will not make public (unless required by law and in which case only to the extent so required) any information relating to the Project without the agreement of the other Council (such agreement not to be unreasonably withheld or delayed).
- 12.3 The Councils' acknowledge that they are subject to the Freedom of Information Act 2000 and Environmental Information Regulations 2004 and nothing within this clause 12 is intended to derogate from the Councils' obligations thereunder.

**13. No Partnership**

The Councils recognise that this Agreement requires an element of cost sharing but it is not their intention that any partnership should come into being between the Councils

**14. No Assignment**

Neither Council may assign or otherwise deal with the rights or obligations arising from this Agreement unless otherwise agreed by the other Council or as may be required by law to implement any reorganisation of local government in England.

**15. Variations**

No variation, modification or waiver of any provision of this Agreement, or consent to any departure therefrom, shall in any event be of any force or effect unless confirmed in writing and signed on behalf of each of the Councils.

## 16 **Dispute Escalation**

- 16.1 Any dispute between the Councils as to any matter connected with the Project ("Dispute") will first be referred to the next meeting of the Strategic Steering Board for determination.
- 16.2 If the Dispute is not determined by the next meeting of the Strategic Steering Board (or if the Dispute is of such urgency that it can not await the next meeting of the Strategic Steering Board) then the Dispute shall be referred to the Chief Executives of the Councils for determination.
- 16.3 If the Dispute is not determined by the Chief Executives of the Councils within 10 days of being referred to them then the Dispute may (without prejudice to either Council's right to require the matter to be determined by the High Court) be referred an Adjudicator in the manner set out in clause 17.

## 17 **Dispute Resolution**

- 17.1 Any Dispute shall be resolved in accordance with this clause.
- 17.2 If a Dispute arises, the Councils shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.
- 17.3 Without prejudice to clause 16.3, either party may give the other notice of its intention to refer the Dispute to adjudication ("the **Notice of Adjudication**"). The Notice of Adjudication shall include a brief statement of the issue to be referred and the redress sought. The party giving the Notice of Adjudication ("the **Referring Party**") shall on the same day and by the same means of communication send a copy of the Notice of Adjudication to an adjudicator selected in accordance with clauses 17.4 and 17.5 (Identity of Adjudicator).
- 17.4 The Adjudicator nominated to consider a dispute referred to him shall be selected by agreement between the parties.
- 17.5 If the Councils are unable to agree on the identity of the Adjudicator within five (5) Business Days either party may request, the President for the time being of the Chartered Institute of Arbitrators to appoint an Adjudicator within ten (10) Days of any application for such appointment by either party.
- 17.6 Within seven (7) days of the service of the Notice of Adjudication, or as soon thereafter as the Adjudicator is appointed, the Referring Party shall serve its statement of case ("the **Referral Notice**") on the Adjudicator and the other party ("the **Responding Party**"). The Referral Notice shall include a copy of this Agreement, details of the circumstances giving rise to the dispute as set out in the Notice of Adjudication, the reasons why the Referring Party is entitled to the redress sought, and the evidence upon which it relies.

- 17.7 The Responding Party shall serve its statement of case (“the **Response**”) on the Adjudicator and the Referring Party within a period of time to be directed by the Adjudicator. The Response shall include any arguments in response to the Referral Notice of the dispute set out in the Notice of Adjudication and any additional evidence on which the Responding Party relies.
- 17.8 Subject to clause 17.12, the Adjudicator shall have absolute discretion as to how to conduct the adjudication, including whether a meeting is necessary. He shall establish the procedure and timetable subject to any limitation within this Agreement. The Councils shall comply with any request or direction of the Adjudicator in relation to the adjudication.
- 17.9 In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty eight (28) days after the date of receipt of the Referral Notice (or such other period as the parties may agree). The Adjudicator shall be entitled to extend the said period of twenty eight (28) days by up to fourteen (14) days with the consent of the Referring Party. The Adjudicator shall state any reasons for his decision. Unless and until revised, cancelled or varied by the English courts, the Adjudicator’s decision shall be binding on both Councils who shall forthwith give effect to the decision.
- 17.10 The Adjudicator’s costs of any referral shall be borne as the Adjudicator shall specify or, in default, equally by the Councils. Each Council shall bear its own costs arising out of the referral, including legal costs and the costs and expenses of any witnesses.
- 17.11 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.
- 17.12 The Adjudicator shall act fairly and impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.
- 17.13 All information, data or documentation disclosed or delivered by a Council to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Council disclosing or delivering the same and all copies shall be returned to such Council on completion of the Adjudicator’s work.
- 17.14 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

17.15 Either Council may (within ninety (90) calendar days of receipt of the Adjudicator's decision or where the Adjudicator fails to give a decision pursuant to clause 17.9) give notice to the other party of its intention to refer the dispute to the courts of England and Wales for final determination.

17.16 The Councils shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this clause and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this clause.

**18. Entire Agreement**

This Agreement and the Agreement of the 18<sup>th</sup> September 2006 and the Joint Municipal Waste Management Strategy contain and embody the entire agreement of the Councils and no representations, inducement, or agreements, oral or otherwise, between the Councils not contained and embodied in this Agreement shall be of any force or effect.

**19. Severance**

In the event that any provision of this Agreement is deemed to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not effect the other provisions of this Agreement that shall remain in full force and effect

**20. Governing Law, Language and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of England the parties hereby submit to the non exclusive jurisdiction of the English Courts.

**21. Notices**

Any notice or communication to be given pursuant to this Agreement shall be given in writing and delivered by hand or sent by both (i) mail and (ii) email to the addresses given below or to such other address as may be notified in writing by the relevant Council from time to time:

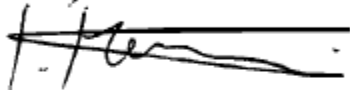


North Yorks - marked for the attention of Legal Services at County Hall,  
Northallerton, North Yorkshire DL7 8AH

York - marked for the attention of the City Solicitor at Guildhall, York, North  
Yorkshire YO1 9QN

22. **Contract (Rights of Third Parties) Act**

The Councils do not intend that any of the terms of this agreement should be enforceable by anyone who is not a party to this Agreement. Any rights of any person to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

**IN WITNESS WHEREOF** the hands of the authorised representatives of the Councils were hereunto set the day and year first before written

<p>SIGNED for and on behalf of <b>NORTH YORKSHIRE COUNTY COUNCIL</b> in the presence of:</p> <p>i. <u>FIELDING</u></p> 	 <p>(G.S. GREEN) 21/1/08</p>
<p>SIGNED for and on behalf of <b>CITY OF YORK COUNCIL</b> in the presence of:</p> <p><b>SIAN HANSON</b> Sian Hanson 21/1/08</p> <p>Sheekley 22/1/08.</p>	 <p>Cohiney Humphrey</p>



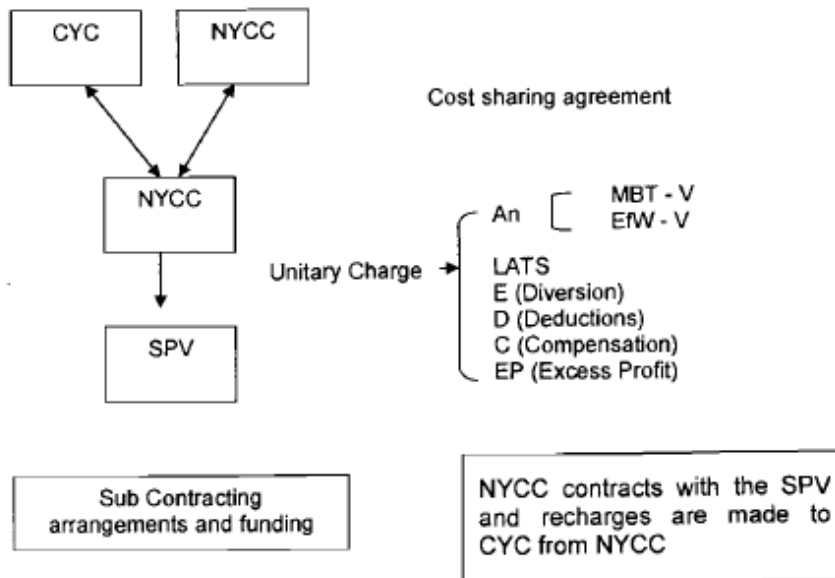
**Schedule 1**  
**FINANCIAL ALLOCATIONS MECHANISM**  
**PRINCIPLES PAPER**

Introduction

This paper supplements the Financial Allocation Mechanism Discussion Document and outlines the principles underpinning the mechanisms to share the costs associated with the PFI Reference Project between North Yorkshire County Council and City of York Council.

The Financial Allocation Mechanism reflects the Payment Mechanism for the Residual Waste Treatment facilities as outlined in the Reference Project.

The diagram below represents diagrammatically the arrangements for the payment of the Unitary Charge to the Contractor



**Payment Mechanism**

$$\text{Unitary Charge} = \text{An} +/- \text{V} +/- \text{E} +/- \text{LATS} + \text{C} + \text{W} + \text{NC} - \text{EP} - \text{D}$$

**Principles**

We set out below the basis for allocating each of the cost elements between the Councils.

	<b>Cost Allocation Method</b>
<b>Payment Mechanism</b>	
An (Unadjusted Unitary Charge)	Volume of waste delivered into the contract based on annual forecast inputs to the project.
V (Volume Adjustment)	Regular adjustments to An based upon forecast inputs to each facility.
E (Diversion adjustment)	A year end reconciliation is performed based upon actual inputs to each facility of each Council. Forecast levels of waste to be landfilled each year. Diversion deduction or bonus based upon weighted average/landfill gatefee for both Councils.
LATS	Volume of waste delivered into the contract based on annual forecast input to each facility.
C (Compensation) - For WCA's Actions/inactions which impact the contractor.	The Council responsible for deviation from the input specification will bear the associated additional costs
W (Waste Minimisation)	The Councils share of waste minimisation works will be pro-rata to An.
EP (Excess Profit)	The Councils share would be pro-rata to An.
D (Deductions) - unavailability/ poor performance	Volume of waste delivered into the contract based on annual forecast input to each facility.
PFI Credit	The total PFI credits will be used to net down An prior to calculating each Councils' respective share of An.
<b>Other Cost Share Considerations</b>	
Site and Planning costs (RWT Only)	The following costs will be based on a fixed 3:1(NYCC: CYC) basis:

	<b>Cost Allocation Method</b>
Benchmarking of costs	<ul style="list-style-type: none"> <li>• Site acquisition costs</li> <li>• Value of sites returned to Councils at end of contract.</li> <li>• Planning costs in excess of appeal contingency.</li> <li>• CPO compensation payable.</li> </ul> <p>Such changes would adjust the payments made to the contractor (Unitary Charge - An). The financial implications will therefore automatically flow through the adjustment to the payment mechanism elements set out earlier.</p>
Contract Change - Council	<p>If the change is requested by both Councils the additional costs will be agreed at the time dependent on the nature of the change.</p> <p>Where only one Council requires a change then such costs will be for the relevant Council to account for.</p>
Contractor (qualifying change)	<p>Where both Councils are affected by a qualifying change - the costs will be agreed at the time.</p> <p>Where only one Council is affected - that Council should be required to fund the associated costs.</p>
Termination of the Contract - Council Default	<p>Where due to both Councils default, the final payment to the Contractor will be apportioned to the Councils based upon the cause of the termination. The cost will be agreed at the time.</p> <p>Where only one Council causes the default, the Council at fault will bear the full costs.</p>
Failure to Agree	<p>Failure to agree issues will go for decision by the arbiter.</p>
VAT	<p>It is assumed that VAT will be payable by NYCC on the contract and recharges to CYC will be made and VAT applied.</p>