

Dated

20 August

2014

- (1) Derbyshire County Council and Derby City Council
- (2) Resource Recovery Solutions (Derbyshire) Limited

Deed of amendment and restatement

of the Project Agreement in respect of the Derbyshire and Derby City Long Term Waste Management Project dated 8 December 2009

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THIS DEED is made on

20 August

2014

BETWEEN

- (1) **DERBYSHIRE COUNTY COUNCIL** of County Hall, Matlock, DE4 3AG and **DERBY CITY COUNCIL** of The Council House, Corporation Street, Derby DE1 2FS (together the "**Councils**"); and
- (2) **RESOURCE RECOVERY SOLUTIONS (DERBYSHIRE) LIMITED** (company number 6835759) of Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire MK1 1BU (the "**Contractor**").

BACKGROUND

- (A) The Councils are the waste disposal authorities for their respective administrative areas.
- (B) The Councils and the Contractor entered into a contract on 8 December 2009 for certain waste management facilities and services (as varied by deeds of variation dated 4 May 2011 and 31 March 2014) (the "**Original Project Agreement**").
- (C) The obligations and rights of the Parties contained in the Original Project Agreement in relation to the New Waste Treatment Facility were conditional on satisfaction of the Treatment Condition Precedent (as defined in the Original Project Agreement).
- (D) The Senior Financing Agreement has been (or shortly will be) entered into and accordingly the Treatment Condition Precedent has been (or shortly will be) satisfied in accordance with the Original Project Agreement.
- (E) The Parties have entered into this Deed to:
 - (i) confirm that the Treatment Condition Precedent has been satisfied; and
 - (ii) agree the amendments to the Original Project Agreement set out in the Appendix to this Deed.
- (F) The Restated Project Agreement will be a certified contract for the purposes of the Local Government (Contracts) Act 1997.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the following words and expressions shall have the following meanings given to them, except as expressly provided otherwise:

"Amendment and Restatement Date" means the date of this Deed; and

"Restated Project Agreement" means the Original Project Agreement, as amended and restated by this Deed and as set out in the Appendix.

1.2 The definitions set out in clause 1 (Definitions) of the Restated Project Agreement and the provisions relating to interpretation set out in clause 2 (Interpretation) of the Restated Project Agreement shall apply to this Deed except where the context otherwise requires.

2. **SATISFACTION OF TREATMENT CONDITION PRECEDENT**

The Parties acknowledge and agree that the Treatment Condition Precedent (as defined in the Original Project Agreement) has been satisfied so that those clauses of the Original Project Agreement which were expressed to be conditional upon satisfaction of the Treatment Condition Precedent are now in full force and effect (as amended by this Deed).

3. **AMENDMENTS TO THE ORIGINAL PROJECT AGREEMENT**

3.1 It is hereby agreed that the Original Project Agreement shall be amended and restated on and from the Amendment and Restatement Date in accordance with the procedure set out in clause 9 (Revised Project Plan Protocol) and clause 86 (Amendments) of the Original Project Agreement so that it shall be read and construed as set out in this Deed and the Appendix hereto.

3.2 The Parties agree that for the purposes of this amendment and restatement of the Original Project Agreement it has not been necessary to agree the amendments to the Original Project Agreement set out in the Appendix hereto in accordance with clause 14 (Design Development), clause 15 (Changes to the Works Delivery Plan the Works Programme), clause 28 (Changes to the Works or Services) or otherwise pursuant to the Review Procedure set out in schedule 9 (Review Procedure) of the Original Project Agreement.

4. **COUNTERPARTS**

This Deed may be executed in two counterparts, each of which shall be deemed to be an original and such counterparts shall taken together be deemed to constitute one and the same instrument.

5. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The Parties do not intend that any of the terms of this Deed will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a Party to it.

6. **ENTIRE AGREEMENT**

6.1 This Deed, the Restated Project Agreement and the documents referred to therein set forth the entire agreement between the Parties with respect to the subject

matter covered by it and supersede and replace all prior communications, representations (other than fraudulent representations), warranties, stipulations, undertakings and agreements whether oral or written between the Parties. The Parties acknowledge they do not enter into this Deed in reliance on any warranty, representation or undertaking by any other Party other than those contained in this Deed, the Restated Project Agreement and the documents referred to therein, provided that this shall not exclude any liability:

6.1.1 which the Councils would otherwise have to the Contractor in respect of any statements made fraudulently or negligently by or on behalf of the Councils prior to the date of this Deed; or

6.1.2 which the Contractor would otherwise have to the Councils in respect of any statements made fraudulently or negligently by or on behalf of the Contractor prior to the date of this Deed.

7. NO WAIVER

7.1 No term or provision of this Deed shall be considered as waived by any Party to this Deed unless a waiver is given in writing by that Party.

7.2 No waiver under **clause 7.1** shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and then only to the extent) expressly stated in that waiver.

8. LOCAL GOVERNMENT (CONTRACTS) ACT 1997 CERTIFICATES

The Parties acknowledge clause 85 (Local Government (Contracts) Act 1997) of the Restated Project Agreement.

9. CONTINUING EFFECT

This Deed shall take effect as a continuing obligation on and from the date of this Deed and shall notwithstanding the occurrence of any of the events stipulated in **clause 8** of this Deed, remain in full force and effect until the later of expiry of the Restated Project Agreement and the date on which every obligation of the Parties under the Restated Project Agreement shall have been discharged and performed and all amounts payable or repayable to the Contractor under the Restated Project Agreement have been discharged in full.

10. PARTIAL INVALIDITY

If any provision of this Deed or part of it is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In such event, the Parties shall use their reasonable endeavours to negotiate an acceptable substitute provision or part as soon as possible.

11. **LAW AND JURISDICTION**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law and shall be subject to the dispute resolution procedure as set out in clause 78 (Dispute Resolution) of the Restated Project Agreement as if incorporated into this Deed mutatis mutandis.

12. **NOTICES**

Any notices under this Deed shall be dealt with in accordance with clause 83 (Notices) of the Restated Project Agreement.

13. **ASSIGNMENT AND SUB-CONTRACTING**

Except as set out in clause 73 (Assignment and Sub-Contracting) of the Restated Project Agreement no party to this Deed shall assign, sub-contract, delegate or in any other way part with its rights or obligations under this Deed without the prior written consent of the other party to this Deed.

14. **ORIGINAL PROJECT AGREEMENT REMAINS IN FULL FORCE AND EFFECT**

Save as expressly provided in this Deed, all the provisions of the Original Project Agreement shall remain in full force and effect.

15. **SUCCESSORS/BENEFIT OF THIS AGREEMENT**

This Deed will be binding upon and benefit each Party and their successors, and assigns, provided that any interest given by a Party to each successor or assign is given in accordance with clause 73 (Assignment and Sub-Contracting) of the Restated Project Agreement.

16. **FURTHER ASSURANCE**

The Parties agree that they shall execute and deliver all necessary documents and do all necessary acts and things in order to give full effect to this Deed.

17. **NO PARTNERSHIP**

Nothing in this Deed shall be deemed to constitute a partnership between the Parties nor constitute either Party the agent of the other Party for any purpose. Neither of the Parties shall have the authority to bind or pledge the credit of the other Party without the prior written consent of the other Party.

18. **AMENDMENTS IN WRITING**

This Deed may not be varied except by an agreement in writing signed by duly authorised representatives of the Parties to this Deed.

19. **COUNCILS' CONSENT**

19.1 The Councils hereby give their written consent to the entry into by the Contractor of the following new or amended or varied or replacement documents pursuant to clause 6 (Delivery of Initial and Changed Project Documents) and clause 13 (Construction Contractor and Operating Contractor) of the Original Project Agreement and for the purposes of clause 13.5 of the Original Project Agreement:

19.1.1 the Construction Contract;

19.1.2 the Operating Contract;

19.1.3 the Independent Certifier's Appointment; and

19.1.4 the Financing Agreements (including the Initial Financing Agreements, the Senior Financing Agreement and the Subordinated Financing Agreements).

in each case in the form produced by the Contractor at Financial Close together with all other documents necessary or ancillary thereto in connection with the amendment and restatement of the Original Project Agreement as envisaged by this Deed and the arrangements contemplated hereby. For the avoidance of doubt, the Parties agree that it has not been necessary for the Contractor to submit the new or amended or replaced Project Documents set out above to the Councils under the Review Procedure in accordance with clause 6.3 (Delivery of Initial and Changed Project Documents) of the Original Project Agreement.

19.2 The Councils hereby consent to the sub-contracting by the Contractor of the Works at the Sinfin Site to Interserve Construction Limited (company number 00303359) in accordance with clause 73.3.1 of the Original Project Agreement.

This document is executed as a deed and delivered on the date stated at the beginning of this document.

Executed as a deed by affixing)
the common seal of)
DERBYSHIRE COUNTY COUNCIL)
in the presence of:)

Karen D Riley

Assistant Director of Legal Services

Authorised signatory

Number in Seal
Book 2014/769

Executed as a deed by affixing)
the common seal of)
DERBY CITY COUNCIL)
in the presence of:)



Annie Berry

Authorised Officer

[Signature]

Authorised Officer

Signed as a deed by *(Kieron Parker)*)
as attorney for **RESOURCE RECOVERY**)
SOLUTIONS (DERBYSHIRE) LIMITED)
Under a power of attorney dated *28 JULY 2014*)
in the presence of *[Signature]*)

Kieron Parker

Signature of attorney

Signature of witness

[Signature]

Name of witness

ALISON THOMSON

Occupation of witness

TRAINEE SOLICITOR

Address of witness

Ashurst LLP
Broadwalk House
5 Appold Street
London EC2A 2HA

APPENDIX

Amended and Restated Project Agreement