

Jim Dillon
Chief Executive
Scarborough Borough Council
Town Hall
St Nicholas Street
SCARBOROUGH
YO11 2HG

David Bowe
Corporate Director
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County Hall
NORTHALLERTON
North Yorkshire
DL7 8AH

Your ref:
Our ref: M38AW005.DB
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Date: 18 September 2018

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Notification of County Council decision following Consultation and Notification pursuant to Section 48(4) Environmental Protection Act 1990

I am writing further my letter of the 18 June 2018 consulting you on proposed changes to recycling credit payments for green garden waste.

Responses to the consultation were considered by the County Council's Executive on 4 September 2018. Most respondents identified a preference for Option 2 in comparison to other options set out within the consultation, which involves entering into an agreement with the County Council to replace the Recycling Credit for composting green garden waste with a lower value Green Waste Incentive. The Executive approved this approach on behalf of the County Council and attached to this letter is the Agreement that will implement this Option.

Please note that the Agreement attached to this letter includes the additional option to phase in or defer the reduction in the payment you receive from the County Council. This is in response to feedback that identified some desire for ways in which the short term financial impacts from the changes could be reduced. If your authority wishes to take advantage of the potential to phase in the changes, or defer the impacts for a year then you should ensure you have confirmed this by completing the relevant sections within the agreement. Please be aware that the County Council will not accept any other amendments to the Agreement.

There is of course no obligation on your authority to complete the attached Agreement. However, without an Agreement between us the County Council is only able to deliver its required savings through the mechanisms described as Option 1 in the consultation i.e. where the County Council makes its own arrangements for the composting of green garden waste. Unless and until the Agreement between our respective councils is completed Option 1 is the only mechanism where the County Council can guarantee delivery of its savings therefore I am obliged to pursue Option 1 as a contingency measure.

Continued.../

This letter should therefore be considered as formal notification pursuant to Section 48(4) of the Environmental Protection Act 1990 that North Yorkshire County Council has made its own arrangements for the processing of the green garden waste from 1 April 2019 and, objects to Scarborough Borough Council having green garden waste recycled by way of composting from the said date.

In the event that the Agreement attached to this letter is completed and received by the County Council this formal notification will be withdrawn. To complete the Agreement please arrange for both copies attached to this letter to be signed on behalf of your Authority and return both copies, undated, to me at the address at the top of this letter.

I will write to you separately with directions regarding the place or places you will be required to deliver the green garden waste to for composting but I do not anticipate it being different to existing arrangements where those involve Yorwaste.

I do not want to impose any unrealistic deadlines on the completion of the attached agreement but it needs to be done without delay so as to avoid any unnecessary costs in pursuing the contingency approach under Option 1; where responsibility is transferred to the County Council. I would like to think that a target date of 31 October 2018 is reasonable for completion but please let me know if you believe it will take you longer, or if you do not intend to complete the agreement.

Yours sincerely


DAVID BOWE
Corporate Director Business and Environmental Services

DATED

2018

AGREEMENT

BETWEEN

NORTH YORKSHIRE COUNTY COUNCIL

(THE WASTE DISPOSAL AUTHORITY)

AND

SCARBOROUGH BOROUGH COUNCIL

(THE WASTE COLLECTION AUTHORITY)

THIS AGREEMENT is dated

2018

PARTIES

1. **NORTH YORKSHIRE COUNTY COUNCIL** of County Hall, Northallerton, North Yorkshire, DL7 8AD (the '**WDA**'); and
2. **SCARBOROUGH BOROUGH COUNCIL** of Town Hall, St. Nicholas Street, Scarborough, North Yorkshire, YO11 2HG (the '**WCA**')
separately a '**Party**' and jointly the '**Parties**'.

BACKGROUND

- A. The WDA is a Waste Disposal Authority for the purposes of the Environmental Protection Act 1990 ('the Act'). The WCA is a Waste Collection Authority for the purposes of the Act.
- B. Under section 45 of the Act the WCA must collect household waste (which for the purposes of this agreement includes Green Garden Waste).
- C. Under the Act and the Environmental Protection (Waste Recycling Payments) Regulations 2006/743 where a WCA retains waste it has collected for recycling the WDA must make payments to the WCA (the 'Recycling Credit').
- D. Under section 52(1B) of the Act (as inserted by the Clean Neighbourhoods and Environment Act 2005), WCAs and WDAs have the power to agree the non-payment of the Recycling Credit between themselves.
- E. There is a need for the Parties to review expenditure and identify opportunities to reduce cost.
- F. The Recycling Credit does not currently reflect the cost to the Parties of recycling Green Garden Waste and there is a shared desire between the Parties to better reflect the costs and benefits of dealing with Green Garden Waste between the Parties.
- G. The Parties acknowledge the WDA could make its own arrangements for recycling Green Garden Waste but recognise that it would remove incentives to collect Green Garden Waste for composting for the WCA.
- H. Both Parties desire to retain incentives for recycling Green Garden Waste and reach a mutually beneficial arrangement.

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions:

Agreement	means this agreement;
Applicable Laws	means all applicable United Kingdom and European Union legislation relating to the collection and recycling of waste and any guidance issued by the United Kingdom government;
Business Day	means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
CEDR	means the London Centre for Effective Dispute Resolution;
Change	means an alteration to the obligations contained in clauses 3 and 4 and/or a variation to the terms of this Agreement;
Commencement Date	means []
Composting	means household waste which has been through the process of controlled biological decomposition of biodegradable materials under managed conditions that are predominantly aerobic and which allow the development of thermophilic temperatures as a result of biologically produced heat and which would otherwise lead to the payment of Recycling Credits;
Green Garden Waste	means materials falling within the definition of household waste under the Act and within the definition of input materials given in PAS 100: 2011 Specification for Composted Materials published January 2011 and of the type and quality collected by the WCA prior to this Agreement coming in to force in exchange for Recycling Credits;
Green Waste Incentive (GWI)	means one of the sums set out in the table at Appendix 1 per tonne of Green Garden Waste collected for Composting to be paid by the WDA to the WCA in accordance with clause 7 (Charges and Payment) subject to inflation according to the annual Consumer Price Index published in November each year by the Office for National Statistics;
Green Waste Legislation	means the Act and any regulations made thereunder including the Environmental Protection

(Waste Recycling Payments) Regulations 2006/743;

Legislation Change	means a change or proposed change to the Green Waste Legislation that will affect the operation and/or intention of this Agreement
Legislation Change Notice	means a notice sent between the WCA Manager and the WDA Manager in the event of Legislation Change specifying the nature of the Legislation Change, how the Legislation Change will affect the operation of this Agreement and any proposals for the amendment or termination of the Agreement;
Term	means the period up to the 31 March following the 10 th anniversary of the Commencement date;
WCA Manager	means a senior officer appointed by the WCA to represent the WCA in discharging the terms of this Agreement and who has authority to bind the WCA on all matters relating to this Agreement under the terms of the WCA's constitution; and
WDA Manager	means the Waste Service Manager appointed by the WDA to represent the WDA in discharging the terms of this Agreement and who has authority to bind the WCA on all matters relating to this Agreement under the terms of the WCA's constitution.

1.2 The Contract shall be governed by English Law.

1.3 References to: -

- (a) any Act, Order, Regulation, Statutory Instrument, etc., include any amendment or re-enactment.
- (b) one gender include any other gender
- (c) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (d) a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (e) singular includes the plural
- (f) clauses are to clauses in the Agreement

(g) the Contractor's staff include the Contractor's partners, directors, employees, agents and subcontractors.

1.4 The Contract represents the entire agreement between the Council and the Contractor and supersedes all other undertakings, statements and agreements relating to the subject matter of this Agreement.

2. COMMENCEMENT AND DURATION

2.1 This Agreement shall commence on the Commencement Date and shall continue, unless extended in accordance with clause 2.2 or terminated earlier in accordance with Clause 9 (Termination), for the Term.

2.2 This Agreement may be extended by agreement in writing between the two Parties in accordance with their own internal rules and policies.

3. WCA'S RESPONSIBILITIES

3.1 The WCA shall:

- (a) perform its obligations as set out in the Green Waste Legislation;
- (b) appoint a WCA Manager and notify the WDA of their name and contact details;
- (c) immediately notify the WDA of any change to the WCA manager and provide notice of the new WCA Manager's name and contact details to the WDA;
- (d) waive their entitlement to the Recycling Credit in respect of any Green Garden Waste ;
- (e) provide the WDA with data and appropriate evidence that collected Green Garden Waste has been Composted equivalent to that required to support the payment of a Recycling Credit.

4. WDA'S RESPONSIBILITIES

4.1 The WDA shall:

- (a) perform its obligations as set out in the Green Waste Legislation;
- (b) appoint a WDA Manager and notify the WCA of their name and contact details;
- (c) immediately notify the WCA of any change to the WDA Manager and provide notice of the new WDA Manager's name and contact details to the WCA; and
- (d) pay the Green Waste Incentive.

5. CHANGE CONTROL

- 5.1 Without prejudice to the other relevant provisions of this Agreement, any Party may at any time during the Term request a Change to the terms of this Agreement.
- 5.2 No deletion from, addition to, or variation of this Agreement or the Schedules shall be valid unless agreed in writing and signed by authorised signatories on behalf of each of the Parties.

6. GREEN WASTE LEGISLATION

- 6.1 If either Party becomes aware of a Legislation Change they must send a Legislation Change Notice to the other Party as soon as reasonably practicable.
- 6.2 If the Legislation Change will materially affect the ability of either Party to carry out their obligations in accordance with clauses 3 or 4 or to pay the Green Waste Incentive then both Parties will have an option to terminate this Agreement and the provisions of clause 10 shall apply.
- 6.3 Following either Party's receipt of a Legislation Change Notice:
 - (a) the WCA Manager and the WDA Manager shall attempt in good faith to agree necessary changes to this Agreement if any;
 - (b) if for any reason the WCA Manager and the WDA Manager are unable to come to an agreed position within 30 days of service of the Legislation Change Notice, the matter shall be dealt with in accordance with clause 25 (Dispute Resolution)

7. CHARGES AND PAYMENT

- 7.1 In consideration of the WCA carrying out its obligations in accordance with Clause 3, the WDA shall pay the Green Waste Incentive to the WCA on receipt of a valid invoice as set out in Clause 7.3.
- 7.2 The WCA shall provide the WDA with monthly data regarding any Green Garden Waste collected for Composting including the amount collected in metric tonnes. The WDA may also measure the volume of green waste collected for recycling using any means agreed on between the WCA Manager and the WDA Manager.
- 7.3 The WDA shall use the data collected in clause 7.1 to calculate the appropriate Green Waste Incentive and shall issue a purchase order to the WCA against which the WCA shall raise an invoice. The WDA will pay invoices within 30 days of receipt of an undisputed invoice.

7.4 The WCA may dispute a payment of the Green Waste Incentive made by the WDA under clause 7.3 at any time and such dispute may be dealt with in accordance clause 12 (Dispute Resolution).

7.5 In the event that payment of the Green Waste Incentive is delayed by the WDA for any reason, except in the case of a disputed invoice, then interest will be payable at the Bank of England Base Rate after the period of six months has elapsed from the Green Waste Incentive first becoming due.

8. LIMITATION OF LIABILITY

8.1 Nothing in this Agreement:

(a) shall limit or exclude the WCA's or the WDA's liability for:

- (i) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- (ii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) any other liability which cannot be limited or excluded by applicable law; or
- (iii) fraud or fraudulent misrepresentation.

8.2 Subject to clause 8.1 neither Party to this Agreement shall have any liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this Agreement; and

8.3 The rights of the WDA under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by the common law.

9. TERMINATION

9.1 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

- (a) the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than ninety days after being notified in writing to make such payment;
- (b) the other Party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of sixty days after being notified in writing to do so;
- (c) the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that

its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

- (d) either Party issues a notice under s.114 of the Local Government and Finance Act 1988;
- (e) either Party resolves under the terms of its constitution and publicly announces that they will cease all spending which they are not required to make by law; and
- (f) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(d) or clause 9.1(e).

9.2 For the purposes of Clause 9.1(b), material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from:

- (a) a substantial portion of this Agreement; or
- (b) any of the obligations set out in clause 3 (WCA's Responsibilities), clause 4 (WDA's Responsibilities)

over the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

10. CONSEQUENCES OF TERMINATION

10.1 Where the WCA has chosen payment options (b) or (c) as set out in Appendix 1, in the event this Agreement is terminated prior the end of the Term, in accordance with the provisions of clauses 6.2, 9 or 13.1, the WDA shall be entitled to recover from the WCA such amounts as are necessary (if any) so that the total amount of GWI paid by the WDA over the period of this Agreement would be no greater than would have been paid under payment option (a) in Appendix 1.

10.2 On the expiry or earlier termination of this Agreement:

- (a) the WCA shall, if so requested by the WDA, provide all assistance reasonably required by the WDA to facilitate the smooth transition of the performance of its obligations in accordance with Clause 3 to the WDA or any replacement supplier appointed by it; and
- (b) the following clauses shall continue in force: Clause 1 (Interpretation), Clause 8 (Limitation of Liability), Clause 10 (Consequences of Termination), Clause 11 (Data Protection and Freedom of Information), Clause 12 (Dispute Resolution), Clause 13.3 (Waiver), Clause 13.5 (Severance), Clause 13.6 (Conflict) and Clause 13.11 (Jurisdiction).

- 10.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

11. DATA PROTECTION AND FREEDOM OF INFORMATION

11.1 Data Protection

- (a) Both Parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 11.1 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation. Each Party shall bear its own costs in relation to compliance with this clause 11.1 and the Data Protection Legislation.
- (b) Each Party shall and shall ensure that the Personnel shall, in performing its obligations under this Agreement, comply in all respects with the Data Protection Legislation.
- (c) Each Party shall and shall ensure that the Personnel shall not do or permit anything to be done which might jeopardise or contravene the other Party's compliance with the Data Protection Legislation.

11.2 Freedom of Information

Both Parties are under a statutory duty which may require the release of information under the Freedom of Information Act 2000 ("FOIA") and or the Environmental Information Regulations 2004 ("EIR"). Such information may include matters relating to or arising out of or under this Agreement. Either Party shall be entitled to disclose such information in the event that it receives a request to do so and the other Party shall assist and cooperate with that Party to enable the other Party to comply with any information disclosure requirements. The Parties will not usually disclose information which is subject to an exemption under the FOIA or the EIR however both Parties acknowledge that the final decision whether to disclose such information will rest with the Party that has received the request and not with the other Party. Nothing contained in this Agreement or any documents or negotiations relating to this Agreement shall prevent the Parties from disclosing any information which (in that Party's reasonable opinion or in accordance with any recommendation, notice or decision of a competent authority) it is required to disclose under the FOIA or the EIR. Each Party shall indemnify the other against all claims, demands, actions, costs, proceedings and liabilities that the Party receiving the request directly incurs due to the other Party's or any sub-contractor's breach of this clause 11.2 or any part of it.

12. DISPUTE RESOLUTION

12.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then the Parties shall follow the procedure set out in this clause:

- (a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the WCA Manager and the WDA Manager shall attempt in good faith to resolve the Dispute;
- (b) if for any reason the WCA Manager and the WDA Manager are unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the directors or assistant directors responsible for waste for each of the Parties who shall attempt, in good faith, to resolve it;
- (c) if the directors or assistant directors responsible for waste for each of the Parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Dispute shall be referred to the Chief Executives of each of the Parties who shall attempt, in good faith, to resolve it;
- (d) if the Chief Executives of each of the Parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (**ADR notice**) to the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 20 days after the date of the ADR notice.

12.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under Clause 13.11 (Jurisdiction) which clause shall apply at all times.

12.3 Clause 12.1 is subject to any separate joint working agreement in place between the Parties that the Parties consider to be relevant.

13. GENERAL

13.1 Force Majeure

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled

to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 6 months, the party not affected may terminate this agreement by giving 6 months written notice to the affected party.

13.2 Assignment and Other Dealings

- (a) The WCA shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- (b) The WDA may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that it gives prior written notice of such dealing to the WCA.

13.3 Waiver

A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13.4 Rights and Remedies

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

13.5 Severance

- (a) If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- (b) If one Party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.6 **Conflict**

If there is an inconsistency between any of the provisions of this Agreement and the provisions of the schedules, the provisions of this Agreement shall prevail.

13.7 **No Partnership or Agency**

- (a) Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- (b) Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

13.8 **Third Party Rights**

- (a) Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- (b) The rights of the Parties to rescind or vary this Agreement are not subject to the consent of any other person.

13.9 **NOTICES**

Notices under the Agreement must be in writing and may be served by either fax, personal delivery or recorded delivery to the addresses referred to in the Agreement.

13.10 **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

13.11 **JURISDICTION**

Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

This Agreement has been entered into on the date stated at the beginning of it.

Executed as a deed and delivered by)
NORTH YORKSHIRE COUNTY)
COUNCIL affixing the common seal)
in the presence of:)

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) Authorised Officer
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) Print name

Executed as a deed and delivered by)
SCARBOROUGH BOROUGH)
COUNCIL affixing the common seal)
in the presence of:)

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APPENDIX 1 – CHARGES

Table 1 shows the levels of Green Waste Incentive payable to the WCA under a 3 year taper and with a one year continuation of the existing recycling credit value (a 1 year deferment).

The WCA shall indicate its chosen option by selecting one option only.

Table 1

Payment Option	Year 1	Year 2	Year 3 Onwards	Option chosen (✓)
a) GWI Without a Taper	£30.18	£30.18	£30.18	
b) GWI With a Taper	£43.22	£34.92	£ 26.63	
c) GWI with 1 year deferment	£51.51	£26.63	£26.63	