

**AGENDA MANAGEMENT SHEET**

**Name of Committee** Cabinet

**Date of Committee** 16 October 2008

**Report Title** Outline Business Case for PFI Credits for Project Transform

**Summary** The report provides a summary of the key aspects of the Outline Business Case for Project Transform, focussing on the financial implications of participating in the project (affordability).

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**Would the recommended decision be contrary to the Budget and Policy Framework?** Yes/No

**Background Papers** Project Transform Expression of Interest for PFI Credits

**CONSULTATION ALREADY UNDERTAKEN:-** *Details to be specified*

- Other Committees  Special Environment Overview and Scrutiny Committee 14 October
- Local Member(s)  .....  
(With brief comments, if appropriate)
- Other Elected Members  Councillor J Appleton } For information  
 Councillor K Browne }  
 Councillor Mrs E Goode }
- Cabinet Member  Councillor M Heatley  
(Reports to The Cabinet, to be cleared with appropriate Cabinet Member) Councillor A Cockburn
- Chief Executive  .....
- Legal  I Marriott .....
- Finance  .....

- Other Chief Officers  D Clarke, Strategic Director of Resources
- District Councils  .....
- Health Authority  .....
- Police  .....
- Other Bodies/Individuals  .....

**FINAL DECISION**                      **YES/NO**      *(If 'No' complete Suggested Next Steps)*

**SUGGESTED NEXT STEPS :**

*Details to be specified*

- Further consideration by this Committee  .....
- To Council  21 October 2008
- To Cabinet  .....
- To an O & S Committee  .....
- To an Area Committee  .....
- Further Consultation  .....

## Cabinet–16 October 2008

## Outline Business Case for PFI Credits for Project Transform

## Joint Report of the Strategic Director for Environment and Economy and the Strategic Director of Resources

**Recommendations**

That Cabinet:-

1. Approves the submission of the Outline Business Case for the award of PFI Credits for a residual waste treatment facility to DEFRA by the 31 October 2008.
2. Approves the creation of a Joint Executive Committee of the three authorities (Warwickshire County Council, Coventry City Council and Solihull Metropolitan Borough Council), with Coventry City Council acting as the Lead Authority and the contracting vehicle for implementing the project.
3. For the PFI project approves the funding of the overall predicted affordability gap of £78m - £135m (nominal) over the contract life of 25 years which represents an average affordability range for the PFI project of £3m - £5m per annum over 25 years, for Warwickshire County Council on the basis that the project achieves financial close . In the first year of operations, 2015/16, £7.5- £10.5m will need to be funded.
4. To deliver the Waste Strategy, approves that the Council proceeds with the PFI procurement on the basis of an average affordability range for the whole system costs over the period 2008/09 – 2039/40 per year of £12.6m to £14.4m (nominal) and confirm it is committed to meet this affordability gap on the basis that the PFI project achieves financial close. This affordability range includes some activities that would need to be funded to achieve the wider Waste Strategy regardless of proceeding with the PFI project.
5. Approves the principles of the Sub-Regional Waste Framework for Project Transform as detailed in **Appendix B** of the report.
6. Endorses the recommendations of the Member Advisory Panel of Project Transform to require Officers to investigate possible alternative solutions to ensure that the PFI project represents best value.
7. Approves the Delegation of authority to the Strategic Director for Environment and Economy and the Strategic Director of Resources to make any necessary amendments to the Outline Business Case prior to submission to DEFRA on the 31 October 2008.
8. Approves Warwickshire County Council's contribution of £0.90m to the total procurement costs of £2.1 million.
9. Approves the completion of the joint working agreement between the three authorities on the terms detailed in **Appendix C** of this report.

## 1. Background

- 1.1 Warwickshire County Council, Solihull Metropolitan Borough Council and Coventry City Council have agreed to work collectively together as Project Transform to develop a shared residual waste treatment facility to serve the sub-region.
- 1.2 All three authorities have signed a Memorandum of Understanding (MOU), which establishes the objectives for joint working. The MOU also made reference to the establishment of a joint Member Advisory Panel, which consists of three elected Members per authority.
- 1.3 An Expression of Interest (EOI) for Private Finance Initiative (PFI) Credits was submitted at the end of March 2008. This received a favourable response from the Department for Environment, Food and Rural Affairs (Defra) and therefore the project team has now developing an Outline Business Case (OBC) for PFI Credits which will be submitted at the end of October.
- 1.4 This is the final round for PFI credits so it is essential that the Partners meet the deadline for submitting the OBC.
- 1.5 This report provides a summary of the key aspects of the OBC. Members are asked to note that due to the Committee reporting cycle across the 3 authorities, work will still be ongoing to finesse the final OBC document. However it is not expected that the final report will contain material differences from the main points of this report.
- 1.6 As this is a critical project for Warwickshire County Council a robust approvals process is being followed for this report. Due to the sequencing of committee meetings, the OBC is being presented to Environment Overview and Scrutiny before Cabinet and Council. The approvals timetable for Warwickshire is summarised in the following table.

Meeting	Date
Environment Overview & Scrutiny	25/09/08
Joint SDLT/Cabinet	26/09/08
Special meeting of Overview & Scrutiny (public meeting)	14/10/08
Cabinet	16/10/08
Council	21/10/08

## 2. Development of Outline Business Case for PFI Credits

- 2.1 Following on from the submission of the Expression of Interest for PFI Credits, the Project Transform Project Team and its advisors (legal, technical and financial) have been working to develop an OBC for PFI Credits.
- 2.2 The OBC is a detailed document that needs to demonstrate that the Partnership has carried out a robust evaluation of the potential treatment options for residual

waste treatment and has a detailed financial analysis of how much it will cost to implement the preferred option referred to as the 'Residual Project'.

2.3 The Department for Environment, Food and Rural Affairs (Defra) specifies what the OBC should contain and is prescriptive about the level of information/detail that should be included in the OBC. The OBC has to include the following sections:

- (i) Executive Summary.
- (ii) Background.
- (iii) Strategic Waste Management Objectives.
- (iv) Procurement Strategy and Reference Project.
- (v) Risk Management.
- (vi) Project team and Governance.
- (vii) Sites and Planning.
- (viii) Costs and Budgets.
- (ix) Stakeholder Communications.
- (x) Timetable.

2.4 To support the detail in this report a draft version of the Executive summary is provided in **Appendix A**, however the key aspects of the OBC submission can be summarised as:

- (i) The residual project technology is Energy from Waste Plant (EfW) with Combined Heat and Power.
- (ii) Based on current predictions the plant will need to have a processing capacity of 305,000 tonnes to meet the residual waste requirements of the three partners.
- (iii) It is assumed that the Partners will meet or exceed the target of 50% recycling and composting by 2020.
- (iv) The plant will be operational from April 2015 for a contractual period of 25 years.
- (v) Project Transform will be seeking PFI Credits in the region of £128 million
- (vi) A reference site has been identified adjacent to the existing EfW plant in Coventry.
- (vii) An Outline Planning Application is scheduled to be submitted during the summer of 2009.
- (viii) The Governance model builds upon the MOU and will be a Lead Authority – Joint Executive, with Coventry City Council acting as the lead authority.

2.5 The following sections of this report summarise the key aspects of the OBC including:-

- (i) Sub Regional Waste Framework.
- (ii) Governance arrangements.

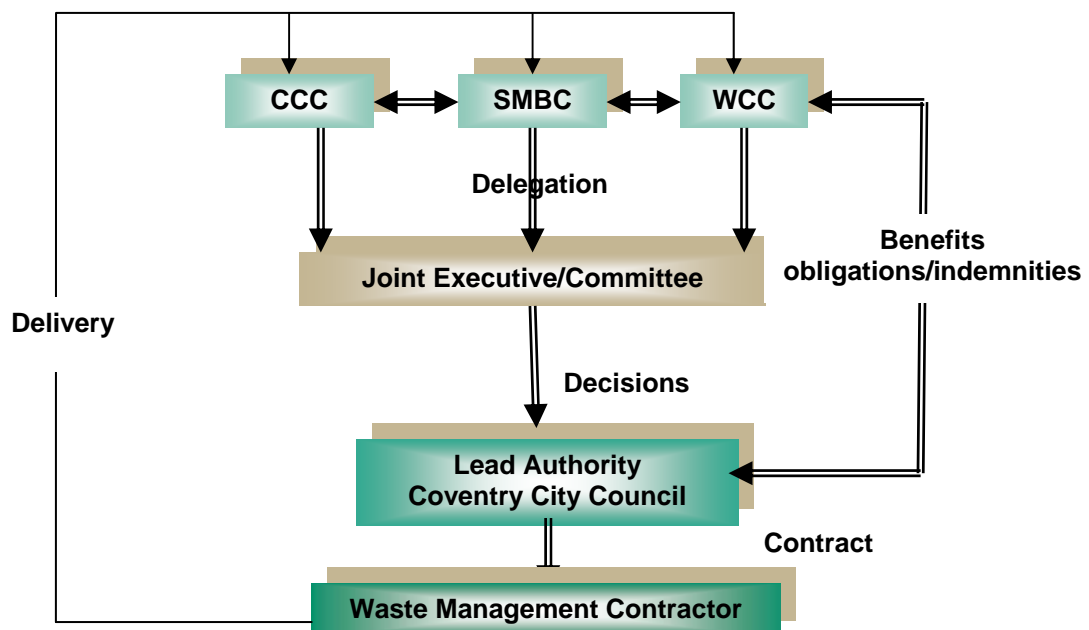
- (iii) Waste flow predictions
- (iv) Residual Project (PFI project).
- (v) Planning.
- (vi) Affordability.

### 3. Sub Regional Framework

- 3.1 The Partners have developed a Sub-regional Waste Framework, which brings together their shared objectives regarding the management of waste.
- 3.2 The Framework compliments Warwickshire’s existing Municipal Waste Management Strategy. It was developed to bring together in one document the principles behind the waste strategies of Warwickshire, Coventry and Solihull, with the aim providing a collective Waste Framework for Project Transform.
- 3.3 The Framework considers the Partners approach to sustainable waste management. A copy of the Sub Regional Waste Framework is provided in **Appendix B**.

### 4. Project Transform – Governance Structure

- 4.1 To take the Partnership forward it is essential that a clear and robust Governance structure is developed and agreed by all three Partners. It is necessary to enter into a more formal arrangement to provide assurance to industry that Project Transform is a credible and robust partnership to contract with. The Governance arrangements must also make it clear what the legal obligations are for each partner with respect to Project Transform.
- 4.2 After seeking external legal advice from consultants Pinsent Masons and consulting the legal representatives from each authority, it was agreed that the most appropriate Governance vehicle for Project Transform is a Joint Executive with a Lead Authority. It has been agreed that Coventry City Council should act as the Lead Authority. The following figure shows the relationships between the different management levels within the lead authority model.



4.3 This model had clear advantages when compared to other possible options and few disadvantages. The following table summarises the main advantages and the disadvantages of the lead authority model.

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• the structure is known to the market and is prevalent on similar projects</li> <li>• legal advisors to the 3 authorities have recommended this model</li> <li>• shares a single procurement cost between 3 authorities</li> <li>• scheme risks are shared between 3 authorities</li> <li>• less expensive to put in place as there are no tax implications or statutory company compliance hurdles to overcome</li> <li>• terms of reference can be flexible with majority voting and/or unanimity</li> <li>• can be implemented without delay</li> <li>• flexibility and working in genuine partnership with local authority partners</li> </ul>	<ul style="list-style-type: none"> <li>• Potential concern that the lead authority will not be supported by the other authorities</li> <li>• delegation of decisions to Joint Executive/Committee because all 3 authorities need to ensure that the same delegation of decision making is given to members and officers</li> </ul>

4.4 To progress this arrangement, the Partners will enter into a Joint Working Agreement to regulate their internal relationship and to manage the procurement of the PFI contract.

4.5 A copy of the Joint Working Agreement is provided in **Appendix C**.

## 5. Forecast Waste Arisings and Waste Growth Assumptions

5.1 In order to build a residual waste treatment facility that meets the future needs of the Partners it is necessary to project forward and forecast future waste arisings.

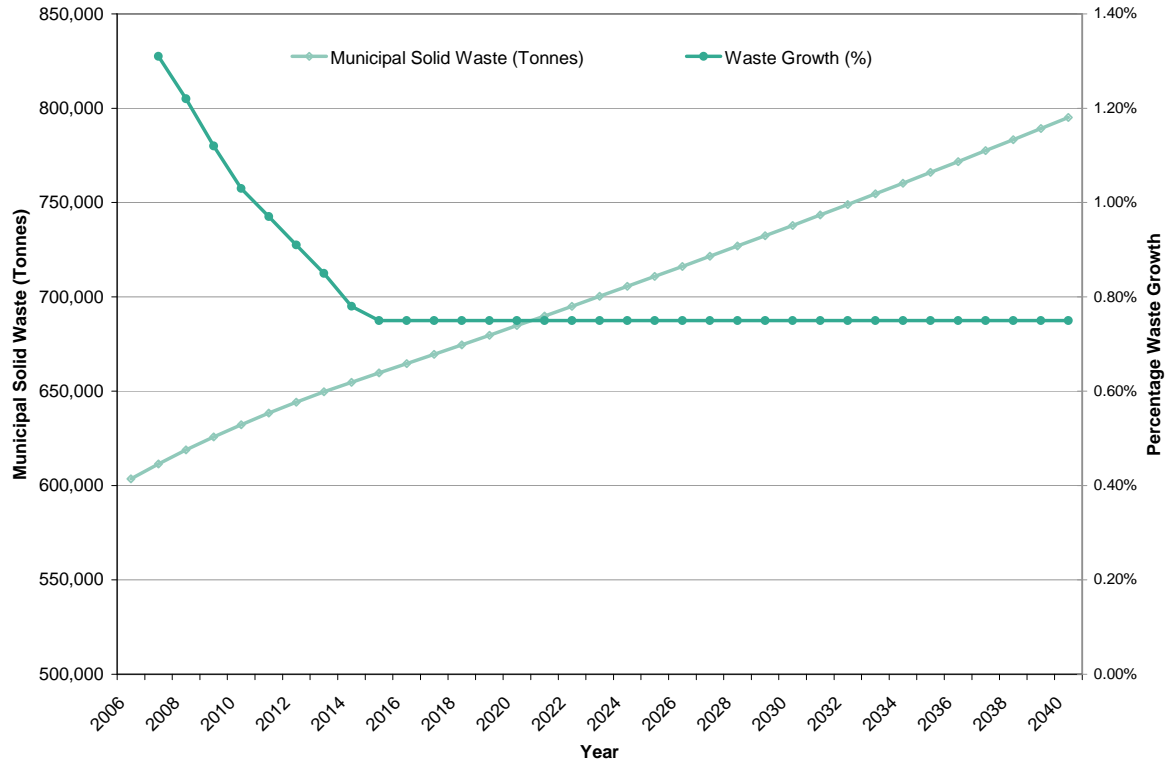
5.2 Waste growth is influenced by many external factors such as increases in number of households and population, the weather and economics. As such, it can be unpredictable. For the purpose of this OBC we have made certain assumptions regarding future waste arisings. In agreeing these assumptions we have been guided by our technical consultants Entec and our Waste Infrastructure Development Programme Transactor (the WIDP Transactor works on behalf of Defra and provides guidance and project assurance to PFI and Public Private Partnership Waste Management Projects).

5.3 The models were developed based on the following assumptions:-

- (i) Reach 50% recycling and composting by 2020
- (ii) Impact of waste minimisation and education campaigns factored into the model.
- (iii) Predicted increases in housing numbers have been included - the projected housing growth rate in the partnership area is approximately

1.4% per annum An overall waste growth of 0.75% per annum has been used for the life of the project.

5.4 The predicted waste growth profile for the project is shown in the following figure.



5.5 The waste flow models predict that the total municipal waste produced by the partners in 2040 will be 795,000 tonnes, therefore in order to process the residual waste the partnership will require a facility capable of dealing with 305,000 tonnes.

5.6 The development of waste flow models is an iterative process and therefore the models will be reviewed periodically throughout the development of the PFI Project. It is intended to review the models before the procurement process commences and before the Full Business Case is submitted. At each of these review points the most up-to-date audited waste data will be used as baseline data.

## 6. Waste Minimisation and Recycling

6.1 All three of the Partners are committed to increasing levels of recycling and composting, while also reducing the amount of residual waste requiring treatment or disposal – the OBC provides details of how each of the Partners and the district and borough councils will contribute to reaching these targets.

6.2 It is a Defra requirement that the Partners meet the Waste Strategy for England 2007, target of recycling and composting 50% by 2020 and that this is clearly demonstrated in the OBC. Using the waste flow model the predicted performance for Project Transform is summarised in the following table:



Year	National Waste Strategy	Coventry	Solihull	Warwickshire	Reference Project
	%	%	%	%	%
2009/10	40	30	45.1	45.1	41.2
2014/15	45	45	48.2	49.2	49.2
2019/20	50	50.2	50	52.4	51.4

## 7. Project Transform – Residual Project

- 7.1 A key part of the development of the OBC has been the assessment of waste treatment options to determine the residual project. The residual project is the waste treatment solution that the Partnership has modelled in detail for the OBC. It is what the cost estimations and calculations for the PFI credit will be based on.
- 7.2 To arrive at a single residual project for a particular technology a robust options appraisal process has been followed.
- 7.3 The project team and the technical and financial advisors held an initial workshop as part of the development of the EOI to develop a long list of residual waste treatment scenarios.
- 7.4 These scenarios were assessed in more detail for the OBC. Environmental assessment of the options was carried out using the Waste and Resources Assessment Tool for the Environment (WRATE) assessment tool (this is a Defra requirement).
- 7.5 The output from the assessments resulted in the following residual project for the Project Transform PFI being selected:

**50% recycling and composting (by 2020), Energy from Waste incorporating Combined Heat and Power.**

- 7.6 The process of developing the residual project has been subject to scrutiny by the Project Transform Member Advisory Panel, who reviewed the process that the project team had undertaken to conclude that EfW/CHP should be the reference case. The Members Advisory Panel agreed with the approach and scoring criteria that was applied.
- 7.7 Members are asked to note that an output based specification for the procurement process will be followed. This will give the opportunity for potential bidders to submit a bid for an alternative to EfW when they bid for the PFI contract. All bids received will be assessed in accordance with the agreed evaluation criteria that is developed for Project Transform.

## 8. Sites and Planning

- 8.1 For the OBC it is assumed that the new residual waste treatment facility will be located in Coventry on land next to the existing EfW facility. The site is currently

in the green belt however it has been proposed to reallocate the site and the process for achieving this has been established.

- 8.2 After consultation with Defra, the Partners have also agreed their proposed approach for applying for planning permission for the site. It is intended to apply for outline planning permission. If outline planning permission is granted the preferred bidder will then be required to submit a detailed planning application.
- 8.3 Preparatory work for the planning application will start once the OBC has been submitted, with the aim of submitting a planning application in summer 2009.

## 9. Finance and Affordability

9.1 In summarising the key financial elements within this report, it is important to note the assumptions made that underpin the financial estimates. These assumptions are critical to the predicted cost and elements of the financial model are especially sensitive to variations. These assumptions include:-

- (i) Predicted waste volumes.
- (ii) Capital cost of the plant.
- (iii) Operating costs of the plant.
- (iv) Electricity generation and sale price.
- (v) Inflation.
- (vi) Interest rates.

9.2 These financial assumptions have to be considered as prudent estimates of how key variables will behave in the future, especially given the time period between the OBC submission and any eventual procurement decision. However, all estimates, including waste predictions will be reviewed before the completion of the final business case in line with 5.6 above.

### 9.3 Procurement Costs

In order to reach financial close a procurement budget of £2.1m is required over the next two years for all three authorities. This primarily covers the cost of external advisors and a Project Director. Internal Council staff resources working on the project are budgeted for within existing directorate staff budgets. The costs of procurement will be shared with our partners on a tonnage basis, Warwickshire's contribution for the next two years will be £0.9m. This has already been set aside in existing budgets.

### 9.4 Cost of PFI Project (Residual) and Affordability

The costs of the project have been extensively modelled by our technical and financial consultants.

9.5 The affordability analysis undertaken assesses the PFI project delivered through a PFI contract. The annual costs of the project have been taken from a financial model prepared by the Project's financial advisors (Grant Thornton), which estimated the costs that the private sector would charge for providing the

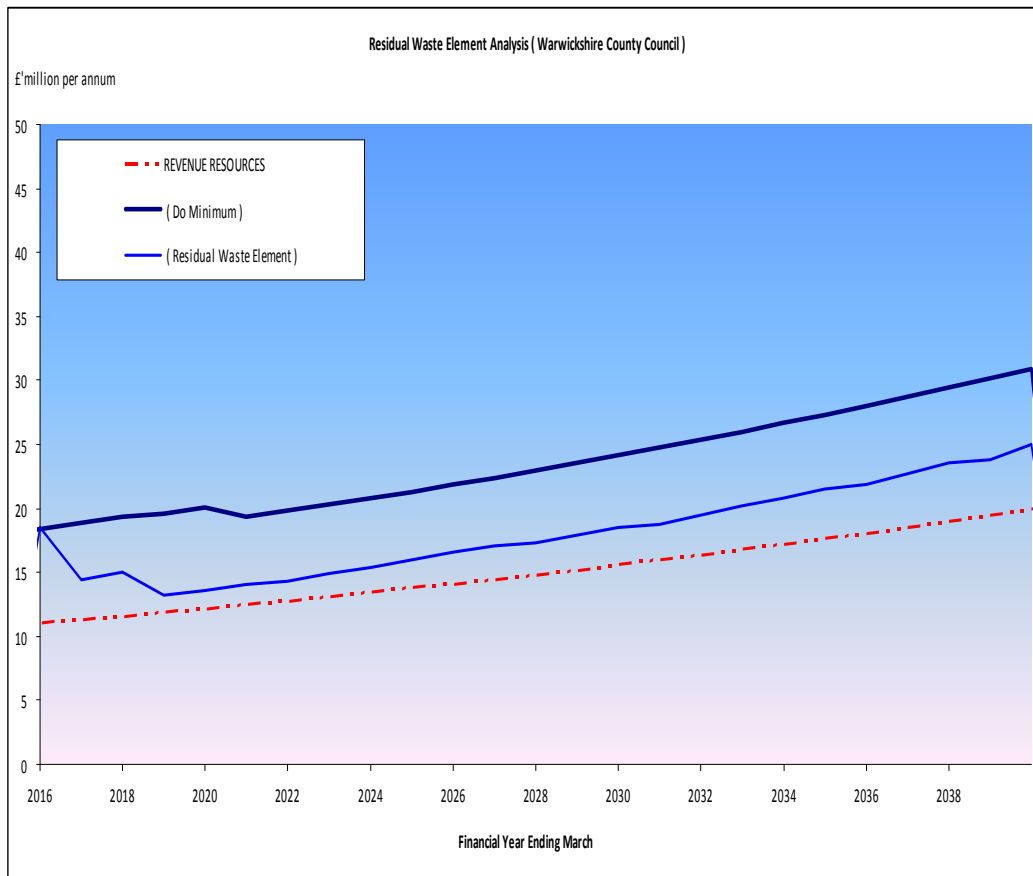
required service (i.e. design, build, finance and operate a 305,000 tonne EfW residual waste treatment facility). The estimated costs have been provided by the Project's technical advisors based on their experience of the construction and operation of similar plants.

9.6 This has then been compared to the costs of the Do Minimum scenario and current budget levels to highlight the affordability gap which will need to be funded. The Do Minimum Option is to continue to landfill any residual waste, and buy LATs allowances when in LATS deficit position. Both the Do Minimum and the PFI project assume that front end recycling is increased to at least 50%.

9.7 **Affordability Analysis Results**

The total cost of the project is in the region of £1billion, over the life of the 25 year contract, which is shared between the three partner authorities on the basis of a tonnage input to the plant. The nominal PFI credit has been estimated to provide total PFI income to the project of £238million over the 25 years. For Warwickshire this level of PFI credits is estimated to be £103m over the 25 years. The PFI credit benefit to Warwickshire is to reduce the cost per tonne by approximately £35. Without the PFI credits, the annual affordability gap (2015/16) based on this model would be higher by approximately £4m.

9.8 The results are summarised below in the graph covering a period of 25 years from the estimated start of operations in 2015/16. The results of this comparison are shown in the graph below. This shows that the proposed project represents value for money when compared to the Do Minimum option.

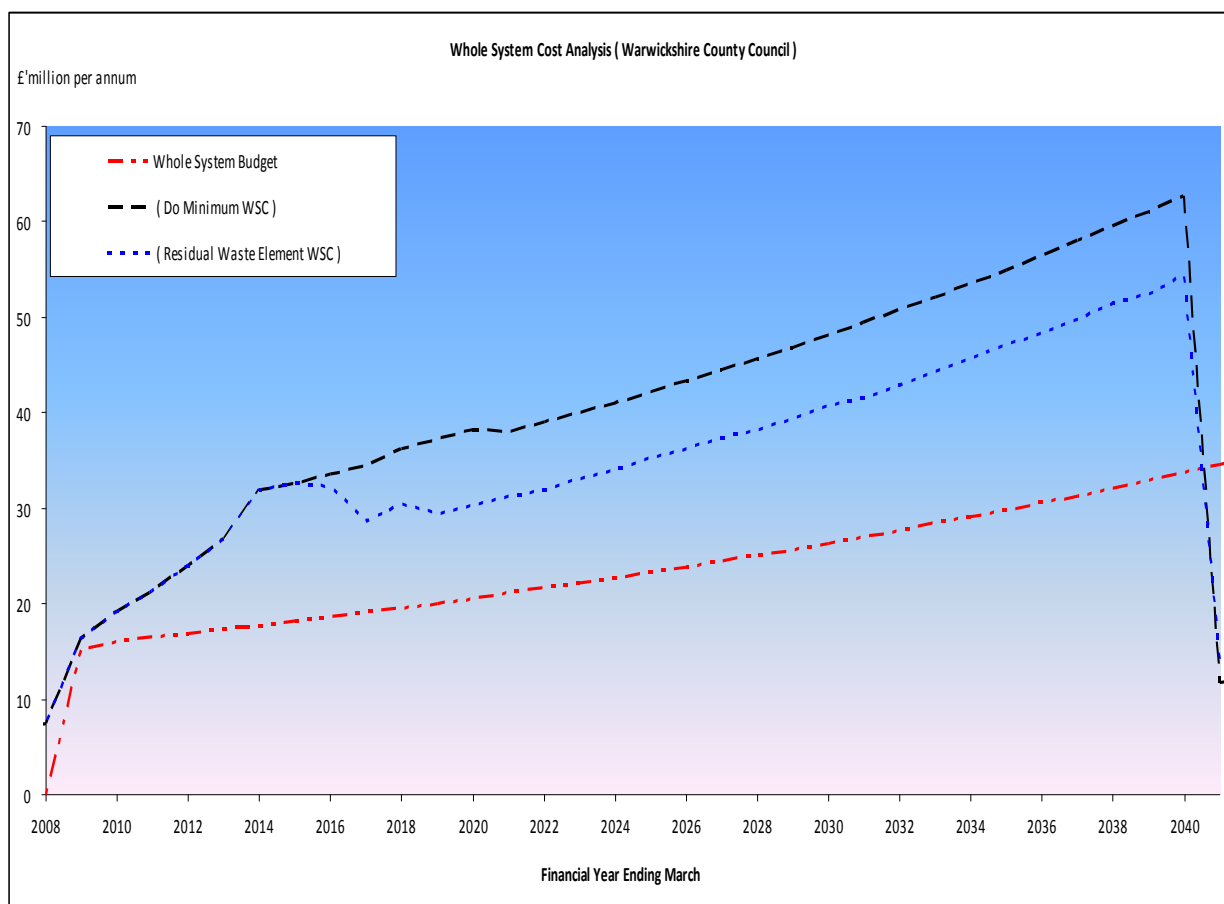


- 9.9 For Warwickshire the total nominal cost of the project is £455m over 25 years as compared to £590m for the Do Minimum and £376m current budget levels. The affordability gap is therefore £78m of which £7.5m will need to be funded in the 2015/16, the first year of operations.
- 9.10 The detailed affordability results for all the partners and project as a whole are presented in **Appendix D**.
- 9.11 Sensitivity analysis has been carried out on the model to factor in events that could have an impact on the costs. These include: Capital and operating cost increases, a delay in start of operations and the impact of increased borrowing costs. If these adverse sensitivities are applied it would give an affordability gap range of £78 - 135m over 25 years and in 2015/16 £7.5m - £10.5m. However, it should be noted that sensitivities eg full utilisation of spare capacity, that could result in reduced costs have not been included in the range quoted above.
- 9.12 The Councils' financial advisors have indicated that the predicted costs of this project are broadly comparable to other similar Waste PFI projects.
- 9.13 The Do Minimum alternative illustrated above is not the only alternative to the proposed project and, as stated in the recommendations to this report, officers will examine other alternatives to ensure that the project continues to represent best value.

9.14 **Whole Systems Costs**

In addition to the costs associated with the operation of the PFI project/residual waste treatment facility, the Council will need to invest further in waste minimisation, re-use and recycling activities to ensure that it meets the 50% target required by the Waste Strategy for England by 2020. The modelling therefore includes scheme costs for proposed initiatives to increase recycling, composting and diversion from landfill. These include : IVC for north of the County, increased recycling credits payments for Districts for improving recycling performance, waste minimisation promotional activities and contracting with Staffordshire's new Energy from Waste facility. However, each of these initiatives will need to demonstrate value for money in terms of landfill costs saved as a result of the initiative. Therefore the Whole System cost represents the cost of Waste Management service plus the cost of proposed initiatives including the PFI project

- 9.15 For Warwickshire the total nominal whole system cost of delivering the Waste Strategy, including the PFI project is £1,160m over the period 2008/9 to 2039/40 as compared to £1,340m for the Do Minimum and £755m current budget levels. The affordability gap is therefore £405m..



## 10. Funding the Affordability Gap

10.1 The base budget used for comparison purposes is the current budget for waste disposal inflated by 2.5% per annum. The budget does not take into account any increases associated with the population growth which has been built into the waste flow projections. The Council's resources through Government grant will increase in line with this population growth and it is envisaged, subject to Council budget decisions, that some of these extra resources could be allocated to fund the affordability gap and the increased costs of recycling, etc. linked to the project to deliver the wider Waste Strategy.

10.2 Council will need to consider as part of its Medium Term Financial Plan how it will plan for waste management costs over the next seven years. Some of the costs to deliver the Waste Strategy and fulfil costs pressures such as a further increase in landfill tax will need to be met with effect from 2009/10 and will continue over the life of the project.

10.3 These additional resources will need to be bid for in the relevant years as part of the Council's budget setting process.

10.4 It is clear that although additional investment will be needed to deliver the Project, the ongoing costs are projected to be substantially less than the cost of the Do Minimum. It should be noted that the affordability analysis does not include any income which the authority may generate from sale of surplus capacity in the early years or the sale of any surplus LATS allowances.

## 11. Next Steps

- 11.1 The OBC will be submitted on the 31 October 2008. A decision on the OBC is expected from Defra in February 2009.
- 11.2 In the intervening period, the project team will start preparing documents to for the procurement phase of the project. The proposed procurement timetable is provided at the end of the OBC - Executive Summary in **Appendix A**.

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10 October 2008

# Appendix A of Agenda No

**Cabinet – 16 October 2008**

## **Outline Business Case for PFI Credits for Project Transform**

### **1 Executive Summary**

#### **1.1 Foreword**

Project Transform, a partnership between Coventry City Council (Coventry), Solihull Metropolitan Borough Council (Solihull) and Warwickshire County Council (Warwickshire) submits this Outline Business Case (OBC) as a key contribution to its plans to improve the management of waste within the sub-region. The Project has also been endorsed by the Warwickshire Districts (Warwickshire's Waste Collection Authorities one of our key objectives is to minimise Landfill. The 3 authorities (The Partners) have also developed a Sub-regional Waste Framework which all The Partners have signed up to as part of the development of this OBC

The residual project for Project Transform constitutes the design, construction and operation, by 2015, of a 305,000 tpa Energy from Waste Plant (EfW) to convert residual waste from The Partners primarily into electricity. The Partners are confident that they can also deliver a Combined Heat and Power (CHP) capability to the local market.

The Partners have undertaken extensive work to identify a site suitable for the development of an EfW facility. This reference site is located in Coventry, adjacent to an existing EfW facility which has been operated successfully by Coventry City Council and Solihull Metropolitan Borough Council for several years,

The site is in an area known for its industrial land use and adjacent to the existing EfW plant. The site is currently owned by Coventry City Council and Project Transform is currently in the process of developing an outline planning application. It is anticipated that the planning application will be submitted during Summer 2009.

The project has been developed to be both affordable and to deliver best value for money for Project Transform

To avoid significant LATS liabilities the Project Transform facility needs to be fully operational before 2015. Therefore, the Project has been designed to maximise its deliverability

Through the implementation of the Sub-regional waste framework the three authorities collectively as Project Transform will work to exceed the targets set in the Waste Strategy for England 2007. The Partners are confident that they

will exceed the target to recycle and compost 50% of household waste by 2020.

## 1.2 Background

This OBC presents the joint proposals of Coventry, Solihull and Warwickshire. The Partnership is collectively referred to as 'Project Transform' and its aim is to deliver The Partnership's objectives through joint working and provision of waste management infrastructure;

- Promote the reduction and re-use of waste.
- Increase recycling and composting performance to maximise diversion from landfill and contribute towards compliance with Landfill Directive targets.
- Develop waste treatment facilities across the sub-region to receive, store and treat municipal waste arisings and manage recyclables.

### 1.2.1 Coventry, Solihull and Warwickshire Authorities

Coventry and Solihull are Metropolitan Boroughs with responsibility for both collection and disposal of waste and the operation of household waste recycling centres (HWRCs). Warwickshire is a shire county operating in a two-tier local government system. Warwickshire is responsible for disposing of waste and the operation of HWRCs, whereas the five District Councils (the Warwickshire Districts) are responsible for the collection of waste and recyclable materials and the provision of bring recycling facilities. The Warwickshire Districts are:

- North Warwickshire Borough Council
- Nuneaton and Bedworth Borough Council
- Rugby Borough Council
- Stratford-on-Avon District Council
- Warwick District Council

In 2008/09 it is estimated that The Partners will manage, treat and dispose of 625,802 tonnes of Municipal Solid Waste (MSW). Collectively, The Partnership should reach a combined recycling and composting rate of 35% in 2008/09. The contribution that each partner will make to the 35% is shown below.

- |                |        |
|----------------|--------|
| • Coventry     | 26.5%  |
| • Solihull     | 38.9%  |
| • Warwickshire | 37.13% |

The Partners recognise the need to improve their performance and are committed to doing this in order collectively to achieve the target set out in the Waste Strategy for England 2007 of 50% recycling and composting by 2020.

The demographics of the different partner authorities will influence the levels of recycling and composting attainable. However The Partners are confident that by working together and with the five Warwickshire Districts, performance can be significantly improved across the sub-region.



### 1.2.2 Historical Waste Arisings

Throughout the late 1980's and into the early 1990's the national trend for waste arisings was upwards with an estimated growth of 2% per annum. It is notoriously difficult to forecast waste arisings as the generation of waste is

affected by many different variables, such as the economic climate, weather and even trends in DIY.

The following tables show the historical waste arisings for the Partners. They show that waste arisings have been subject to variations over the past five years

*Table 1-1 Historic Waste Arisings for Coventry*

Year	WCA Household Collected Waste	WCA Collected Trade Waste	HWRC Collected Household Waste	Other MSW	Total MSW Arising	Percentage change
	Tonnes	Tonnes	Tonnes	Tonnes	Tonnes	%
2003/4	137,000		24,700			
2004/5	140,800	21,200	28,000	0	190,000	
2005/6	140,000	15,750	25,750*	0	181,500	-4.5
2006/7	141,500	15,000	23,500	0	180,000	-0.84

*Table 1-2 Historic Waste Arisings for Solihull*

Year	WCA Household Collected Waste	WCA Collected Trade Waste	HWRC Collected Household Waste	Other MSW	Total MSW Arising	Percentage change
	Tonnes	Tonnes	Tonnes	Tonnes	Tonnes	%
2003/4	N/A	0	N/A	N/A	N/A	N/A
2004/5	71,291	0	20,397	12,402	104,090	----
2005/6	68,487	0	19,556	13,368	101,411	- 2.6%
2006/7	66,314	0	18,987	18,547	103,848	+ 2.4%

*Table 1-3 Historic Waste Arisings for Warwickshire*

Year	WCA Household Collected Waste	WCA Collected Trade Waste	HWRC Collected Household Waste	Other MSW	Total MSW Arising	Percentage change
	Tonnes	Tonnes	Tonnes	Tonnes	Tonnes	%
2003/4	214,025.21	12,281	54,149.84	16357.95	296,814	-
2004/5	232,479.80	12,051	56,404.21	14230.99	315,166	5.8
2005/6	241040.49	11,774	55181.62	5697.89	313,694	-0.5
2006/7	237456.13	10,906	54460.82	13576.05	316,399	0.9

### 1.2.3 Waste Growth Assumptions

For the purpose of this OBC the Partners have assumed an overall waste growth of 0.75% for the duration of the PFI contract. The following table shows a summary of the forecast waste growth in the sub- region for the duration of the PFI contract.

Table 1-4 Predicted Waste Growth for the estimated PFI Contract Period – Combined tonnages

Year	HH Collected	HWRC Collected	Trade Waste	Other MSW	TOTAL MUNICIPAL WASTE	% change
2006	418,862	99,861	38,935	45,877	603,535	
2007	424,567	101,241	39,324	46,336	611,468	1.31%
2008	429,927	102,540	39,678	46,753	618,898	1.22%
2009	434,927	103,753	39,995	47,127	625,802	1.12%
2010	439,612	104,889	40,295	47,480	632,277	1.03%
2011	444,029	105,958	40,597	47,836	638,421	0.97%
2012	448,168	106,956	40,902	48,195	644,221	0.91%
2013	452,019	107,882	41,209	48,556	649,666	0.85%
2014	455,574	108,732	41,518	48,921	654,745	0.78%
2015	458,991	109,548	41,829	49,288	659,656	0.75%
2040	553,262	132,047	50,420	59,411	795,140	0.75%

#### 1.2.4 Performance of existing recycling and composting schemes

The following tables show the recycling & composting performance of The Partners. It shows that recycling & composting rates have increased dramatically over the past four years;

Table 1-5 Recycling and Composting Performance for Coventry

Year	Recycling	Recycling (BVPI)	Composting	Composting (BVPI)
	Tonnage	% of HHW	Tonnage	% of HHW
2004/5	14,100	10.05	9,200	6.55
2005/6	16,700	11.92	8,700	6.17
2006/7	18,600	13.16	16,300	11.51

Table 1-3 Recycling and Composting Performance for Solihull

Year	Recycling	Recycling (BVPI)	Composting	Composting (BVPI)
	Tonnage	% of HHW	Tonnage	% of HHW
2004/5	19,199	17.82%	4,929	4.73%
2005/6	17,837	17.90%	5,849	5.73%
2006/7	14,538	15.28%	7,901	8.10%

Table 1-4 Recycling and Composting Performance for Warwickshire

Year	Recycling	Recycling (BVPI)	Composting	Composting (BVPI)
	Tonnage	% of HHW	Tonnage	% of HHW
2004/5	40,539	14.00	39,858	13.77
2005/6	41,872	14.50	44,469	15.40
2006/7	46,553	15.93	49,067	16.79

#### 1.2.5 Local Authority Waste Disposal Company – CSWDC

Coventry and Solihull Councils currently operate an EfW facility in Coventry which is operated by The Solihull and Coventry Waste Disposal Company (CSWDC), which is wholly owned by Coventry and Solihull Councils. The Partners recognise the need for clarity regarding the role of the LAWDC in the procurement process. Therefore, the shareholders of CSWDC have agreed that should The Partners pursue a PFI deal to financial closure that the

existing LAWDC will not be able to bid or partner with any specific companies for the purposes of submitting a bid for the Project Transform PFI.

## 1.3 Strategic Waste Management Objectives

### Introduction

The Partners are committed to 'transform waste into resources' while following the waste hierarchy and actively promoting waste reduction and reuse. The Partners are investing in recycling and composting schemes to reduce the amount of residual waste that will ultimately require treatment.

#### 1.3.1 Municipal Waste Management Strategies

The Partners have each developed Municipal Waste Management Strategies. The Strategies show how each of The Partners intend to manage waste by moving up the waste hierarchy.

#### 1.3.2 Sub-regional Waste Framework

The Partners have developed a Sub-regional Waste Framework, which brings together their shared objectives regarding the management of waste. The Framework considers The Partners approach to sustainable waste management. The agreed common themes of the sub-regional waste framework are:

- Raise awareness of waste and resource management issues through improved education and communications activities and initiatives.
- Act to tackle the amount of waste arising per head of population through a suite of operational measures & initiatives.
- Strengthen and further develop re-use activity through available outlets and by enabling and encouraging partnerships with the third sector.
- Support both prevention & reuse activities with promotional campaigns and seek funding where available to enhance the performance of services and initiatives.
- Develop and expand collection systems for the recycling of household waste, including a greater range of materials collected and higher tonnages to deliver improved recycling rates.
- Support recycling systems with campaigns to promote participation and reduce contamination (improve quality).
- Individually (and collectively) to deliver 50% household waste recycling rate by 2020.
- Expand Biowaste collections in the form of green waste and/or food waste collections for biological treatment and to extract value from the resource.
- Seek to contribute to the recovery of energy from waste to include a CHP capability.
- Reduce the occurrence of residual household waste through measures designed to prevent waste arising and where waste does

arise to recycle or compost / digest the resource through dedicated collection and treatment systems, thereby substantially reducing the amount of residual waste arising per head.

- Reduce the amount of waste going to landfill through the use of appropriate waste treatment systems for municipal waste.
- Deliver LATS obligations.

### *1.3.3 Raising Awareness*

The Partners recognise the importance of education in increasing participation in schemes and initiatives and each have dedicated promotion and education teams.

The Partners are working collectively to promote waste minimisation and reuse; however they also have authority specific schemes and strategies which have been developed to tackle these issues.

### *1.3.4 Recycling and Composting*

The Partners are committed to increasing their levels of recycling and composting and in conjunction with Warwickshire's District Partners; The Partners are investing in schemes to increase the diversion of biodegradable waste from landfill.

These schemes complement the waste minimisation and reuse initiatives, The types of schemes in operation and planned all differ slightly between The Partners, however they all seek to achieve the same aim which is to increase recycling and composting, aiming to reach the targets established in Waste Strategy for England 2007, which are:

- 40% recycling and composting by 2010
- 45% recycling and composting by 2015
- 50% recycling and composting by 2020

The Partners are committed to achieving these as a minimum and will strive to exceed these targets wherever possible.

### *1.3.5 Landfill Objectives*

The Partners have differing starting positions with respect to the amount of waste that is sent to landfill. Coventry and Solihull both send the majority of their residual waste to the existing EfW facility in Coventry, whereas Warwickshire sends over half of its residual waste to landfill for disposal.

Both Coventry and Solihull will continue to send the majority of their waste to the existing EfW for treatment until the new facility is operational.

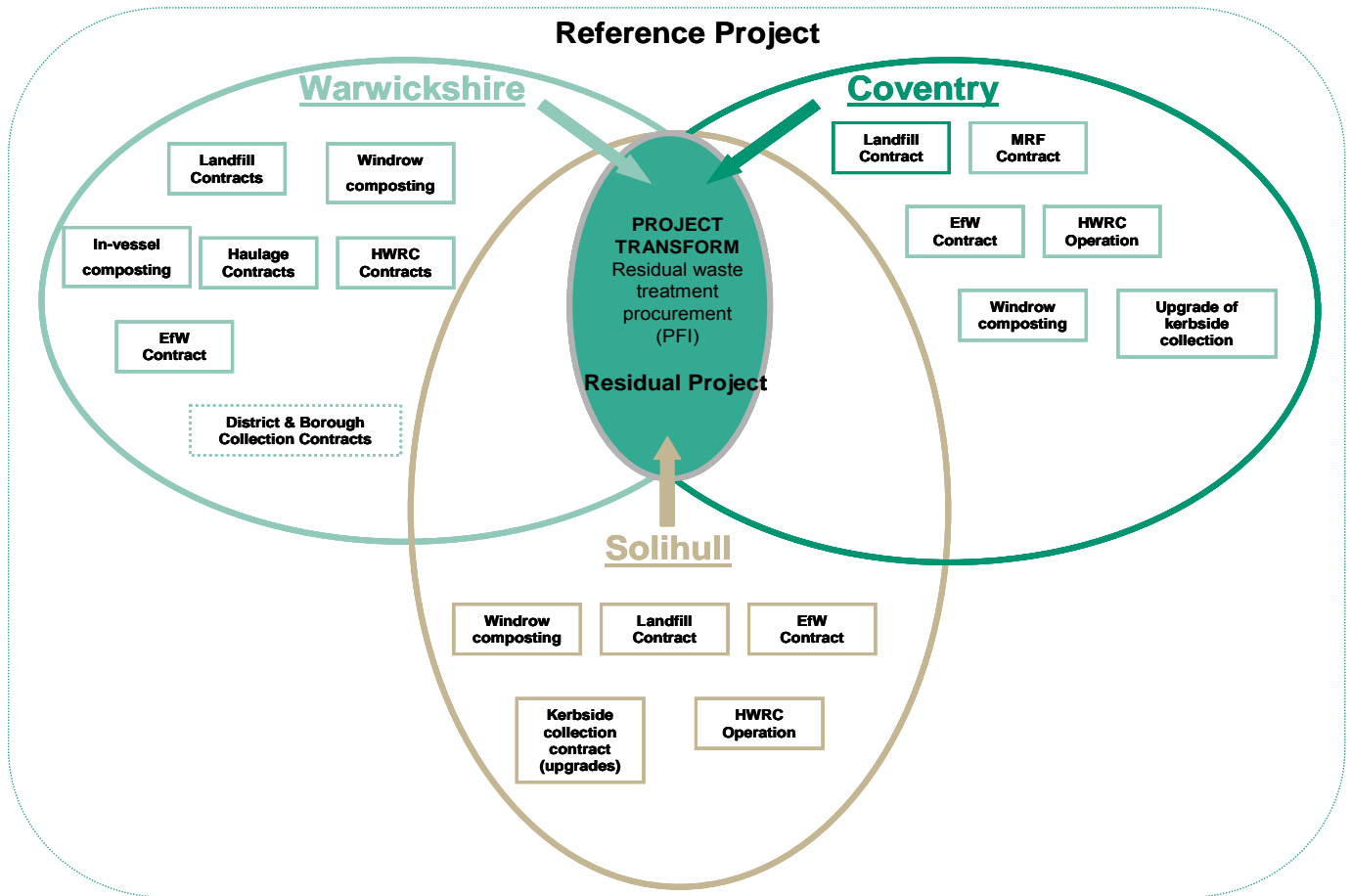
## **1.4 Procurement Strategy and Reference Project**

The Partners are working together to procure a shared residual waste treatment facility; The Residual Project. This is defined as the infrastructure and services to be provided by the contractor as part of the PFI Contract.

For Project Transform this will include the development and operation of a residual waste treatment facility. Therefore the costs referred to in Section 8 of the OBC relating to the reference case refer to the costs of developing, operating and maintaining the treatment facility developed through the PFI project.

The following diagram shows the reference project and reference case for Project Transform. The diagram summarises the key contracts that will be included in the reference project but excluded from the PFI reference case.

Figure 1-1 Project Transform residual project and reference project



### *1.4.1 Summary of procurement activities*

Funding has been allocated in the respective Partners Medium Term Financial Strategies to cover the future procurements required to underpin the development of Project Transform and meet the shared objectives of The Partners Sub-regional Waste Framework.

### *1.4.2 Output Specification for the Project*

The service that will be provided by the successful bidder will receive and treat all the residual waste delivered by The Partners. This will include residual waste from household kerbside collections, residual waste arising from HWRCs and authority trade waste collections.

### *1.4.3 Determination of the Residual Project and Reference Project*

The Partners have undertaken a detailed and comprehensive options appraisal to develop the reference case for residual waste treatment for Project Transform.

Taking into account the outputs from the options appraisal and waste flow modelling, it is proposed that the Residual Project for Project Transform consists of the following:

#### **Energy from waste facility with Combined Heat and Power**

- The contract will be for the provision and operation of the residual waste infrastructure only.
- It will include the development of a single facility
- The facility will be developed with CHP potential
- The facility will have a process capacity in the region of 305,000 tonnes of residual waste (based on the final contract year tonnage of 2039/40)
- Capital expenditure estimated at £158,000,000 (nom)
- It is anticipated that the facility will be operational from October 2015 and will be operated and maintained by the contractor for a period of 25 years

The Reference Project encompasses The Partners ambitions to attain recycling and composting levels of 50%, in conjunction with the EfW/CHP to maximise the diversion of waste from landfill, therefore this includes The Partners commitments to:

- Maximise levels of recycling and composting – attaining or exceeding 50% by 2020.
- Invest in enhance kerbside collections, including food waste collections.
- Pro-actively encourage waste reduction in the sub-region

## 1.5 Risk Management, Risk Allocation and Contractual Structures

### Introduction and Risk Management Framework

A Risk Management Strategy has been approved by the Project Transform Project Board and sets out the risk management methodology, risk management responsibilities and the risk management hierarchy adopted for the project. The Project Director and the Project Team have responsibility for monitoring and ensuring that the Project Risk Register is updated and delivered.

#### *1.5.1 Risk Management*

Operational and strategic risks have been identified and assessed for all of the pre-procurement stages of the project. It is intended that the Risk Register will be fully reviewed at the procurement stage of the process to ensure that all risks are monitored.

#### *1.5.2 Project Agreement and other contractual documents*

Coventry City Council, acting as the lead authority for and on behalf of itself and Solihull Metropolitan Borough Council and Warwickshire County Council, intends to propose a contract based on HM Treasury's Standardisation of PFI Contracts guidance and drafting (version 4 dated March 2007) (SoPC4) as amended by the Defra Standardisation of Waste Management PFI Contracts:

#### *1.5.3 Payment Mechanism*

The Payment Mechanism will be based on the principles and core areas of the guidance issued by Defra (July 2008) and any subsequent modifications. Built into the guidance are a number of core principles which should apply to the Payment Mechanism and which the Council will adopt.

## 1.6 Project Team and Governance

The Partners fully recognise that an effective Project Team and a robust cohesive governance model will be critical to the successful delivery of this Project.

The Partners have adopted a Joint Executive/Committee with a Lead Authority governance model with Coventry City Council acting as the Lead Authority. To support and facilitate this model, The Partners have entered into a Joint Working Agreement to regulate their internal relationship and to manage the procurement of the PFI contract. The Partners have established a Project Board, comprising of equal representation from each Partner, which will be the main decision-making body for the Project and will report back to their respective Cabinets as appropriate.

The Partners recognise the importance of constant Member involvement and, following on from their proactive involvement through the Member Advisory

Panel, the Members will continue to scrutinise developments within the Project and provide support for the main objectives through the Steering Group.

The Project Team is supported by external advisors in all key areas where it needs the additional expertise and resource.

### 1.6.1 Legal Governance – Joint Executive/Committee with Lead Authority

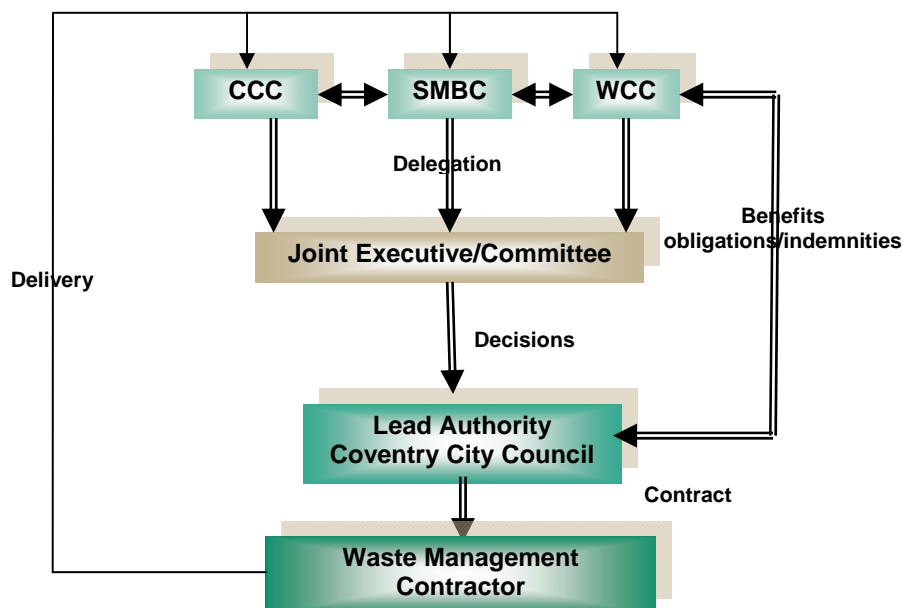
The governance option available to The Partnership can be summarised as follows:

- a proposal to the Secretary of State for the establishment of a Joint Waste Authority;
- a contractual arrangement between the three Partners where the statutory decision making is retained by The Partners themselves;
- an administrative arrangement between The Partners where statutory decision making is delegated to all The Partners jointly and one or more Partners enters into contractual relationships to implement the decisions (i.e.a Lead Authority model);
- a corporate arrangement where The Partners form a corporate entity.

Having considered these options with The Partner's external legal advisers, it has been agreed that the most suitable option is to adopt a Joint Executive/Committee with a Lead Authority. This option is supported by all three Partners. Under this governance model, The Partners accept that, once the PFI contract has been procured, the benefits and obligations under that contract will be "stepped down" by the Lead Authority to the other two Partners.

The diagram below illustrates the structure:

Figure 1-2 Governance Structure





### *1.6.2 Decision Making*

The Partners have identified the key decisions and actions to be taken to facilitate the procurement of the Project and have agreed the decision making mechanism set out in the Joint Working Agreement. In summary, decision have been categorised as follows:

- "Project Director Matters" – being a matter which the Project Director shall have the authority to carry out on behalf of The Partners;
- "Project Board Matter" – being a matter which the board officers of the Project Board (including equal representation from each Partner) shall have the power to bind The Partner it represents in doing so; and
- "Matters Reserved to the Councils" – being a matter which will have to be referred to each Partner and the matter shall not be dealt with by Project Director or the Project Board until the unanimous decision shall have been agreed by all The Partners.

### *1.6.3 Project Management*

To ensure that the correct level of expertise has been assigned to the Project a project management structure has been adopted following the principles of Prince 2. Overall the Project has been managed at a strategic level by the Project Board, a group of senior officers from each of the authorities including technical and financial. This group of officers has provided support to the Project Team who will be responsible for the procurement of the Project. The Project Team has been headed by a Project Director who has been the key individual to ensure that the strategic ambitions of Project Transform are incorporated in this OBC.

### *1.6.4 District Involvement and Support*

Warwickshire is a two tier administration, therefore the waste management function is split between Warwickshire County Council (the Waste Disposal Authority) and the five District and Borough Councils (the Waste Collection Authorities).

The six authorities work collectively as the Warwickshire Waste Partnership to primarily deliver Warwickshire's Municipal Waste Management and Waste Minimisation Strategies.

Therefore to support the overall residual waste treatment strategy of working in partnership with Coventry and Solihull, Warwickshire (County Council) will develop a Memorandum of Understanding, leading potentially to a service level agreement with each of the waste collection authorities that will be delivering residual waste to the treatment facility.

## 1.7 Sites, Planning and Design

### 1.7.1 The Planning Process

The planning process associated with this OBC has included;

- the completion of a Planning Health Framework.
- an outline of the site selection process;
- proposals to strengthen the planning environment by dealing with policy conflicts;
- proposals for integrating design into the procurement process ,
- a programme setting out the parallel procurement and planning processes.

The site selection exercise initially identified over 80 areas or sites of potential interest within the Project Transform area. These were screened resulting in an initial shortlist of 21 sites that were then evaluated in terms of their suitability and availability. A further analysis resulted in further reductions, which left 2 sites for consideration. These two remaining sites comprised the land adjacent to the existing Coventry EfW and the former Arden Brickworks at Bickenhill, Solihull. Both sites are situated in the Green Belt.

The Coventry site has the advantage of an established EfW use and has significant potential to utilise CHP in view of the proximity of potential customers and the existing infrastructure that is in place. Advanced discussions with one potential customer are ongoing we also know that the City Council is in the process of reviewing Green Belt boundaries and has been positive about removing the site from the Green Belt in the future. Conversely, Solihull currently has no plans to review Green Belt boundaries in the Bickenhill area. The land adjacent to the existing EfW facility was therefore the preferred site.

Project Transform recognises that the normal route is for the bidder to seek detailed planning permission. Following careful consideration of the advantages and disadvantages attached to each possible planning application approach, The Partners have decided to adopt the following strategy:

- The Partners to make an outline application for planning permission to Coventry City Council as the Local Planning Authority (LPA).
- At the same time, The Partners will pursue the allocation of the site for an EfW facility through Coventry's Local Development Framework (LDF)1 and the removal of the Green Belt designation at this location.
- If outline planning permission is granted, the preferred bidder then submits the reserved matters / detailed application to the LPA once appointed.
- As a fallback position if the outline application does not succeed, the preferred bidder to submit a detailed application once appointed by which time the site should have a favourable policy context: the

site allocated for EfW purposes and the land consequently removed from the Green Belt.

Feedback from potential bidders, received at a bidder's day on 8th September in Coventry and through questionnaires circulated in advance, has also supported the proposed approach.

The application is scheduled to be submitted in August 2009, with a determination expected in 2010. The preferred bidder is expected to be appointed in September 2010, Should the application not proceed then the fall back and parallel route would be through seeking removal of the land from the Green Belt as part of Coventry's Core Strategy and Site Allocations DPD. The outcome of a Green Belt review is expected by the end of 2008. This will form part of the Evidence Base for the Core Strategy which is expected to be adopted in October 2010.

### *1.7.2 Design*

Project Transform consider that good design, layout and aesthetic treatment are essential when delivering waste infrastructure projects and that this not only facilitates community acceptance of potentially contentious projects, it can also maximise the sustainability credentials and waste management opportunities for the site. The highest standards will be achieved in the procurement, design and delivery of the facility which means that design and sustainability considerations will be integrated throughout the procurement process.

A Design Champion will be appointed, as recommended by CABE, who will develop the design vision and objectives for the project and ensure that design quality is maintained at all stages.

Finally, there have been extensive consultations with planners at each of The Partner authorities, primarily in terms of the site search but also surrounding the planning strategy. A dedicated officer has been allocated by the City Council to provide advice and Project Transform will seek to enter into a Planning Performance Agreement with the LPA which will provide greater certainty with regard to the speed and quality of the decision-making process.

## **1.8 Costs and Budgets**

Each Authority within Project Transform has prepared financially for meeting its obligations to undertake procurement of long term waste infrastructure through a PFI contract.

### *1.8.1 The Costs of Procurement*

Each of The Partners has established budgets in their respective Medium Term Financial Strategy (MTFS) to support the implementation of Project Transform. This amounts to a total procurement budget over the 2 years, for all three authorities of £2.1m for the whole project. This primarily covers the cost of external advisors and a Project Director, as internal Council staff resources are budgeted for within existing departmental staff budgets

### 1.8.2 Value for Money (VfM)

HM Treasury's Value for Money Assessment Guidance has been used to perform a qualitative VfM assessment, which produced a clear indication in terms of viability, desirability and achievability, that PFI is an appropriate procurement route for this project.

A quantitative assessment of the procurement was also undertaken, using HM Treasury guidelines and VFM model. The assessment has produced a high indicative PFI VFM percentage of 10.3%. The robustness of the base case has also been demonstrated through sensitivity analysis. The sensitivity analysis conducted has provided indifference points within comfortable distance of the benchmarks as outlined in the Guidance.

Taking these two assessments together provides a clear indication that PFI can deliver value for money for the Reference Project.

### 1.8.3 Affordability

Financial models have been developed to assess the affordability implications of the Reference Project delivered through a PFI procurement. The costs derived have been compared to the Do Minimum option, and each of The Partners baseline budgets project forward. The modeling has been expanded to cover the total cost of waste management for The Partners, so that the impact of implementing the wider waste strategy can be seen. In each case the impact of the Project has been considered on a whole project basis, and the implication for each of The Partner authorities (assuming that the costs are shared based on each of their tonnage input).

Sensitivity analysis has been undertaken which looks at a range of factors that could impact on the costs of each of the options, and to create an affordability range for Members to be aware of.

PFI Credits have been calculated using the guidance set out by Defra and the standard DCLG annuity calculator. This derives PFI Credits with a value of £128m, which derives a total revenue stream of £238m receivable in an annuity of £9.56m per annum (adjusted in the first & last year) over the life of the contract.

The result of the affordability analysis shows that the Reference Project has the lowest expected cost compared to the Do Minimum for residual waste management over the life of the project. The profile of the Do Minimum for each of The Partners varies, as in the early years of the project Coventry and Solihull assume continued usage of their existing EfW contract, whereas Warwickshire are always assumed to be reliant on increasingly expensive landfill.

There is an affordability gap for each of The Partners. A summary of the affordability analysis is set out in the table below:

Table 1-6 Affordability analysis

£ millions	Total Nominal Costs	NPV as at April 2008	2015/16 (1st full yr)
<b>Coventry City Council</b>			
Reference Project	391	120	11
"Do Minimum"	794	234	6
Budgets	187	72	5
<b>Solihull District Council</b>			
Reference Project	184	56	5
"Do Minimum"	277	84	3
Budgets	122	47	3
<b>Warwickshire County Council</b>			
Reference Project	455	142	19
"Do Minimum"	688	261	18
Budgets	446	172	11
<b>Total</b>			
<b>Reference Project</b>	<b>1,030</b>	<b>318</b>	<b>35</b>
<b>"Do Minimum"</b>	<b>1,759</b>	<b>579</b>	<b>27</b>
<b>Budgets</b>	<b>755</b>	<b>291</b>	<b>19</b>

#### 1.8.4 Members Approval of Affordability Implications

Full Council approval has been received from each of The Partners of Project Transform at their respective meetings. The approval was given based on a robust range of sensitivities and in the knowledge that the financial position could change during the procurement process, due to factors outside of the Project's control and that any requirement for additional funding will be met by The Partners.

### 1.8.5 LATS Strategy

One of the key drivers for the formation of Project Transform has been the recognition of the benefits of a Sub-regional working. Warwickshire currently faces a deficit LATS position with effect from 2010/11. This is one of the key drivers for the long term management of residual waste in the region and is also an important justification for the project.

The Partners are keen to work within the LATS scheme rules to trade allowances and to optimise value for money if an opportunity arises to sell surplus allowances held. However, The Partners have agreed, for the best interests of Project Transform, any LATS shortfalls will be met by one or both of the Authorities that have a LATS surplus at a 10% discounted market price.

The success of future sales will depend on the prevailing market conditions at the time. Project Transform have been prudent about income from sale of surplus LATS, and have assumed no income beyond that traded between partners to fulfil Warwickshire short to medium term LATS deficit position.

## 1.9 Stakeholder communications

### 1.9.1 Identification and Analysis of Stakeholder Issues

The procurement of long-term residual waste management infrastructure in the subregion will involve and affect a large number of stakeholders. The Partners appreciate the importance of engaging fully with stakeholders

### 1.9.2 Communications Strategy

Working and managing communications across three authorities is a challenge that The Partners recognise needs effective monitoring and management. The Partners have developed a communications strategy. This will also focus on identifying key groups specific to the sub-region.

Key features of the Strategy are:

- The development of a dedicated website
- Members information packs
- Key stakeholder information packs
- Members awareness sessions,

Key aims of the strategy are:

- To raise the profile of the Project Transform programme and highlight its successes.
- To improve understanding of the way Solihull, Warwickshire & Coventry Councils are working together to develop a realistic and sustainable solution to the challenge of tackling waste.
- To actively engage stakeholders in Project Transform
- To provide a consistent and united response to any criticisms of the project

- To provide members and officers from all three councils with timely, accessible information about the progress of the project throughout its life
- To promote successful joint sub-regional working to tackle major challenges.

### 1.9.3 *Market Interest*

A market sounding event was undertaken in September 2008 to explain Project Transforms current waste strategy to the market and to establish interest and obtain feedback regarding the project.

The event demonstrated significant market interest with over 20 companies attending the event, which included waste management companies, construction companies and technology providers. Feedback was positive with several companies expressing significant interest in the project.

## 1.10 Timetable

### Introduction

The Project Team has given careful consideration to the many factors that may influence the project timetable for delivery of Project Transform, including;

- the advanced nature of the project with respect to identification of a preferred technology thereby reducing the potential for a complex procurement process;
- the ownership of the reference case site by Coventry City Council for the development of a 305,000tpa Energy from Waste plant, which also allows for a 'level playing field' for Participants that will assist in making the procurement an efficient process;
- early submission of an Outline Planning Application, which the Project Team believes will be successful may reduce planning risk, or identify planning delay early enough in the process to allow suitable mitigation concurrent with the procurement process;
- the market response to Project Transform,
- The Project Team consider this will incentivise the market to apply appropriate resource to achieve an efficient procurement; and
- Project Transform has procured early involvement from experienced advisors, who between them have been involved in the last 8 waste projects to achieve financial close.

The indicative timetable for the procurement process is as set out below:

<b>Procurement Stages</b>	<b>Indicative Date</b>
OJEU Posted	March 2009
Issue ISOS	July 2009
Issue ISDS	December 2009
Dialogue with Bidders on proposed solutions	December 2009 to August 2010
Bidders submit Final Tenders	August 2010
Financial Close	March 2011

## **OBC APPROVAL**

The OBC and key supporting documents have been approved by the Cabinets of all 3 Authorities, the Project Board, and other relevant bodies as detailed below:

	<b>Warwickshire County Council</b>	<b>Coventry City Council</b>	<b>Solihull Metropolitan Council</b>
<b>Scrutiny Panels</b>	25 <sup>th</sup> September 14 <sup>th</sup> October	8 <sup>th</sup> October 20 <sup>th</sup> October	2 <sup>nd</sup> September 1 <sup>st</sup> October
<b>Council Cabinet</b>	16 <sup>th</sup> October	21 <sup>st</sup> October	2 <sup>nd</sup> October
<b>Full Council</b>	21 <sup>st</sup> October	28 <sup>th</sup> October	14 <sup>th</sup> October



## Cabinet 16 - October 2008

### Outline Business Case for PFI Credits for Project Transform

#### SUB-REGIONAL FRAMEWORK FOR PROJECT TRANSFORM

##### 1 Introduction / Background

Project Transform is a sub-regional partnership formed between Coventry City Council (CCC), Solihull Metropolitan Borough Council (SMBC) and Warwickshire County Council (WCC) to provide a joint approach to future sustainable management of waste within the three authorities.

The partnership was formalised in December 2007 when the individual authorities signed a Memorandum of Understanding (MoU). The first work stream for Project Transform is the provision of suitable residual waste treatment capacity for the sub-region.

Each authority has developed its own Municipal Waste Management Strategy<sup>1</sup> and this framework seeks draw these three documents together. This sub-regional framework also provides overarching strategic direction for the sub-regional partnership to maximise the efficiencies and benefits of joint working.

The three individual municipal waste management strategies have different durations. In order to maintain a common approach this sub-regional framework follows both Waste Strategy for England 2007 and Coventry's Draft Municipal Waste Management strategy by running until 2020. This will provide all partners with a suitable level of strategic direction for future waste management planning, whilst recognising the current uncertainty in the future delivery methods for sustainable waste management. This sub-regional framework will not, however, supersede the refreshing of all three strategies at the appropriate juncture.

Given the different levels of future recycling in each individual authority's waste strategy this sub-regional waste strategy commits the partners to achieving a minimum of 50% recycling by 2020. The framework seeks to do this by drawing on the common themes from all three waste strategies and projecting this work forward to 2020 in line with the targets set in Waste Strategy for England 2007.

The individual strategies on the partner authorities currently prescribe the following recycling/composting targets:

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<sup>1</sup> Coventry's Draft Municipal Waste Management Strategy is currently being consulted upon (consultation ends 10<sup>th</sup> November 200).

	2009/10	2014/15	2019/2020
Coventry City Council	32%	40%	50%
Solihull Metropolitan Borough Council	30% <sup>2</sup>	33% <sup>3</sup>	No Target Set
Warwickshire County Council	40-45%	No Target Set	No Target Set

## 2 Future review of the Sub-Regional framework

Both Solihull and Warwickshire's municipal waste management strategies were adopted before the publication of Waste Strategy for England 2007 and are due for review / refresh in 2009. In addition to updating both of these strategies to reflect the targets prescribed in Waste Strategy for England 2007, both authorities will include the shared aims and objectives of this sub-regional framework.

Coventry's Draft Municipal Waste Management Strategy has a review / refresh built in every five years and so far is the only strategy that reflects the targets prescribed in Waste Strategy for England 2007

It is therefore the partners intention that following the review of Solihull's and Warwickshire's individual strategies that this framework should also be subject to regular reviews as outlined below:

- 2009 (Re-view following the refresh of SMBC & WCC strategies)
- 2013 (all three partner authorities)
- 2018 (all three partner authorities)
- 2020 (all three partner authorities)

The 2009 review will also include the setting of sub-regional performance indicators for the future sustainable management of wastes, that reflect all three Municipal Waste Management Strategies. Key performance indicators for this framework will include:

- percentage change in municipal waste arising
- (NI 191) – amount of residual waste per household
- (NI 192) – amount of household waste reused / recycled / composted
- (NI 193) – amount of municipal waste landfilled

<sup>2</sup> Target from Waste Strategy 2000 adopted by Solihull Metropolitan Borough Council

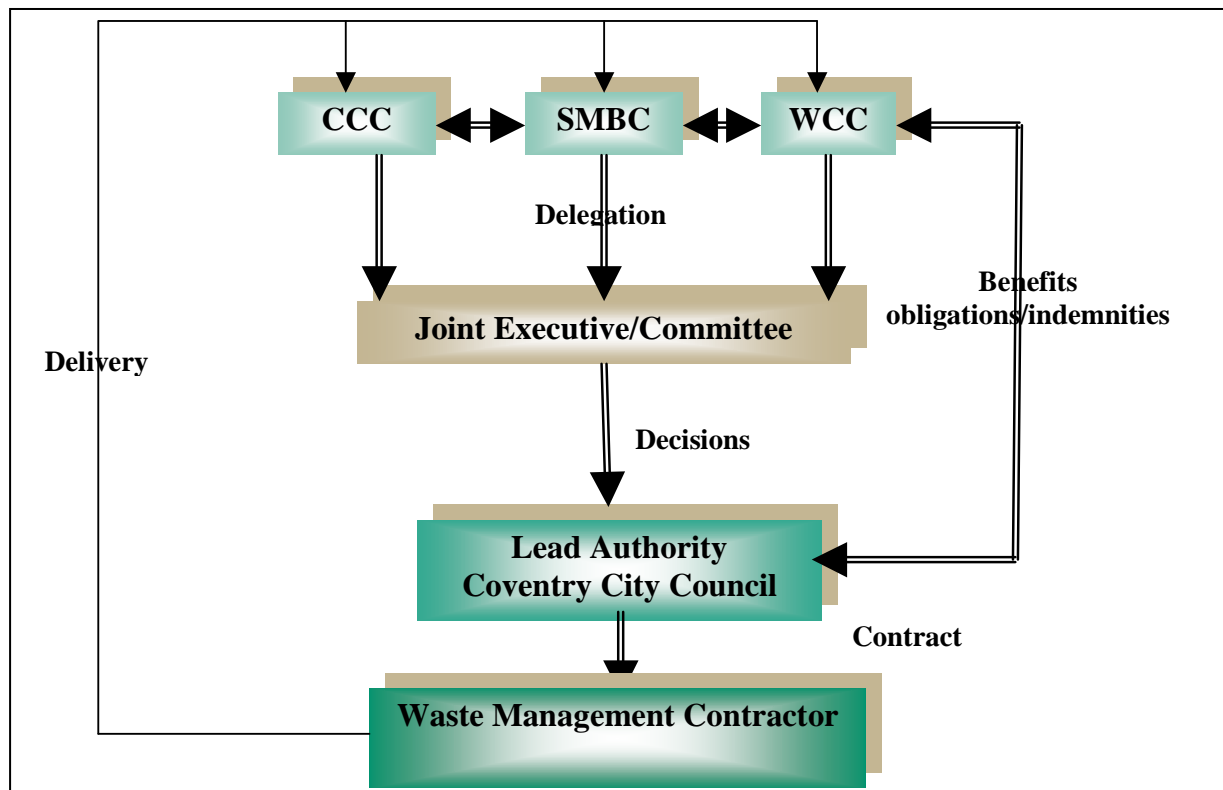
<sup>3</sup> Target from Waste Strategy 2000 adopted by Solihull Metropolitan Borough Council

It is likely that the 2013 review of all three strategies will consider the setting of binding sub-regional targets as well as authority specific targets as the authorities become increasingly strategically aligned.

### 3 Project Transform – Governance

As part of Project Transform's first work stream (future residual waste management capacity) a governance structure based upon a joint committee with a lead contracting authority has been agreed. This governance structure is shown in diagram 1 below.

Diagram 1 – Project Transform governance structure.



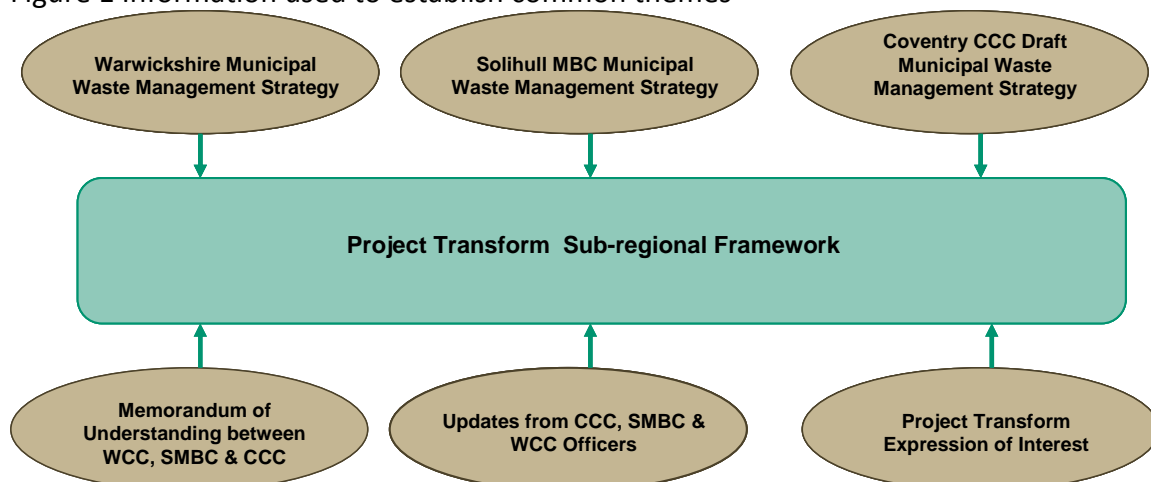
## 4. Methodology used for producing a Sub-regional Waste Framework.

The aim of the framework is to define areas of common objectives, targets, policies and operational practice across the partner authorities. These areas of commonality have been derived from the Municipal Waste Management Strategies published by Coventry (draft), Solihull and, Warwickshire. Additional information has been obtained through interviews with the Waste Management Officers of each authority to inform this sub-regional framework.

Common guiding themes emerge from this study and this provides a framework to inform the direction that the sub-region is moving forward the management of its municipal waste. Tables 1 – 5 (in Appendix 1) presents the key policy statements and operational decisions relating to municipal waste management for each of the authorities. Appendix 1 also sets these against the fundamental targets prescribed in Waste Strategy for England 2007.

Further analysis of Appendix 1 illustrates the commitment from all partners to deliver on the key priorities in Waste Strategy for England 2007 such as: improving performance in waste prevention, reuse, recycling and landfill diversion. Figure 1 below illustrates the sources of information used for the Framework.

Figure 1 Information used to establish common themes



Key common themes arising from the Project Transform partners are highlighted in section 5.

## 5. Common Themes & Direction of the Partners

There is a strong commitment from all partners to deliver the key requirements and ambitions of the Waste Strategy for England 2007 as identified in tables 1-5 in the appendix. In terms of the fundamental and challenging deliverables of waste prevention & reuse, recycling, energy recovery and landfill diversion, each of the authorities has agreed targets<sup>4</sup> and/ or actions to substantially improve performance.

The agreed common themes arising from this study of the project partners are as follows:-

- Raise awareness of waste and resource management issues through improved education and communications activities and initiatives.
- Act to tackle the amount of waste arising per head of population through a suite of operational measures and initiatives.
- Strengthen and further develop re-use activity through available outlets and by enabling and encouraging partnerships with the third sector.
- Support both prevention & reuse activities with promotional campaigns and seek funding where available to enhance the performance of services and initiatives.
- Develop and expand collection systems for the recycling of household waste, including a greater range of materials collected and higher tonnages to deliver improved recycling rates.
- Support recycling systems with campaigns to promote participation and reduce contamination (improve quality).
- Individually (and collectively) to deliver 50% household waste recycling rate by 2020. Progress toward the 50% will be regularly reviewed. The collective aim of the Partners is to exceed this target, while acknowledging the challenges that this may pose.
- Expand Biowaste collections in the form of green waste and/or food waste collections for biological treatment and to extract value from the resource.
- Seek to contribute to the recovery of energy from waste.
- Seek to contribute to the recovery of energy from waste.
- Reduce the occurrence of residual household waste through measures designed to prevent waste arising and where waste does arise to recycle or compost /

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<sup>4</sup> For Coventry City Council the targets and commitments from the MWMS are draft targets as the Strategy is currently out to public consultation (consultation ends on 10<sup>th</sup> November 2008).

digest the resource through dedicated collection and treatment systems, thereby substantially reducing the amount of residual waste arising per head.

- Reduce the amount of waste going to landfill through the provision and use of appropriate waste treatment systems for municipal waste.
- Deliver LATS obligations of all three authorities.

## 6. Conclusion

This framework along the attached appendix, summarises the targets that have been set for the sub-region and how each partner authority will contribute towards these.

This framework will be a key guiding document for the sub-region and will be further developed as the three individual waste strategies are refreshed.

## 10 Appendix 1 Identification of Sub Regional policies, targets and activities related to key WS2007 themes

Table 1	Warwickshire County Council	Solihull Metropolitan Borough Council	Coventry City Council	National Drivers: Relevant WS 2007 targets / themes for municipal waste
<b>Raising Awareness</b>	<p><u>JMWMS M&amp;E Strategic Objective:</u> Encourage public participation in the implementation and review of the Waste Strategy</p> <p><u>Actions to deliver waste awareness performance improvement:</u> Long running Recycle for Warwickshire campaign actively seeking funds and undertaking initiatives to promote waste prevention and participation and proper usage of recycling systems</p>	<p><u>MWMS Objective:</u> None relevant</p> <p><u>Actions to deliver waste awareness performance improvement:</u> Campaigns team to undertake at least 20 school visits / year to promote sustainable waste management practices</p> <p>Variety of schools initiatives including competitions and recycling schemes in place</p> <p>Roadshows to explain recycling change, encourage participation and promote waste prevention initiatives</p>	<p><u>Draft MWMS Objective:</u> Develop and support through proactive education, engagement and enforcement, higher levels of waste prevention, reuse, recycling and composting, which is consistent with national standards of good practice for an urban environment</p> <p><u>Actions to deliver waste awareness performance improvement:</u> extensive promotional and awareness raising activity, including commitment to support at least thirty events per year promoting sustainable waste management practices including prevention, reuse, recycling and composting</p>	<p><u>Policy:</u> Helping to change the behaviour of business and the public through information, advice and awareness raising, including extending the campaign for recycling to awareness and action on reducing waste and demonstrating the benefits of greater resource efficiency</p>

Table 2	Warwickshire County Council	Solihull Metropolitan Borough Council	Coventry City Council	National Drivers: Relevant WS 2007 targets / themes for municipal waste
<b>Prevention &amp; Reuse</b>	<p><u>JMWMS Objective:</u> To minimise the amount of waste generated in Warwickshire</p> <p><u>JMWMS Target:</u> household waste arisings target of 544kg / person / year</p> <p><u>Actions to deliver waste prevention /</u></p>	<p><u>MWMS Objective:</u> None relevant</p> <p><u>Actions to deliver waste prevention / reuse performance improvement:</u> numerous actions currently being delivered including campaign for reusable shopping bags, giving away ~10,000 bags in the borough by the end</p>	<p><u>Draft MWMS Objective:</u> Develop and support through proactive education, engagement and enforcement, higher levels of waste prevention, reuse, recycling and composting, which is consistent with national standards of good practice for an urban environment</p> <p><u>Draft MWMS Objective:</u> Manage wastes</p>	<p><u>Government WS2007 Key objective:</u> decouple waste growth (in all sectors) from economic growth and put more emphasis on prevention and reuse</p> <p><u>Waste Prevention Target for residual h.h. waste:</u> 2010: 29% reduction from 2000 levels</p>

Table 2	Warwickshire County Council	Solihull Metropolitan Borough Council	Coventry City Council	National Drivers: Relevant WS 2007 targets / themes for municipal waste
	<p><u>reuse performance improvement:</u> numerous actions cited as part of the waste minimisation strategy (2007) including targets on junk mail, reusable nappies, home composting, community composting, smart shopping and work in schools. Reuse activity and third sector partnering, whilst already prominent to be strengthened.</p>	<p>of 08/09, promotion of Real Nappies, plus starter packs, support of WRAP Home Composting scheme etc.</p> <p>In 2009 review of HWRC, it is intended to introduce a charity re-use scheme at the site</p>	<p>arising in Coventry in a sustainable manner to reduce both its quantity and impact on climate change, and to maximise the benefits of saving energy and materials</p> <p><u>Draft MWMS Target:</u> Coventry City Council to seek to stabilise household waste arisings per head of population by 2010 and reduce household waste arisings per head to 2000 levels (454kg / person / year) by 2015</p> <p><u>Actions to deliver waste prevention / reuse performance improvement:</u> Wide range of actions involving third sector re-use initiatives, Junk mail initiatives, home composting promotion, freecycle promotion.</p>	<p>2015: 35% reduction from 2000 levels 2020: 45% reduction from 2000 levels</p>

Table 3	Warwickshire County Council	Solihull Metropolitan Borough Council	Coventry City Council	National Drivers: Relevant WS 2007 targets / themes for municipal waste
<b>Recycling &amp; Biowaste treatment</b>	<p><u>JMWMS Objective:</u> To maximise the amount of material recycled and composted in Warwickshire</p> <p><u>JMWMS target:</u> 40-45% Recycling Target for Warwickshire by 2009/10. This is on course for delivery.</p> <p><u>JMWMS Target:</u> 60% recycling and composting target for HWRCs. This is on course for delivery.</p>	<p><u>MWMS Objective:</u> None relevant</p> <p><u>MWMS Target:</u> superceded by events (see below)</p> <p><u>Changes since the MWMS, 2004:</u> Increasing emphasis on recycling. Elected members have agreed a series of service improvements in this area and enhanced recycling performance, leading to:-</p> <ul style="list-style-type: none"> <li>• Whole borough on fortnightly</li> </ul>	<p><u>Draft MWMS Objective:</u> Develop and support through proactive education, engagement and enforcement, higher levels of waste prevention, reuse, recycling and composting, which is consistent with national standards of good practice for an urban environment</p> <p><u>Draft MWMS Objective:</u> Manage wastes arising in Coventry in a sustainable manner to reduce both its quantity and impact on climate change, and to maximise the benefits of saving energy and materials</p>	<p><u>Government WS2007 Key objective:</u> get the most environmental benefit from [that] investment, through increased recycling of resources and recovery of energy from residual waste using a mix of technologies</p> <p><u>Recycling &amp; Composting Target for h.h. waste:</u> 2010: 40% 2015: 45% 2020: 50%</p>



Table 3	Warwickshire County Council	Solihull Metropolitan Borough Council	Coventry City Council	National Drivers: Relevant WS 2007 targets / themes for municipal waste
	<p><u>LAA Target:</u> Warwickshire to achieve 43.5% recycling by 2009/10, 46% by 2010/11.</p> <p><u>Project Transform:</u> 50% Recycling &amp; Composting target by 2020</p> <p><u>Actions to deliver recycling performance improvement:</u> all Districts improving recycling collections. One District already collecting food waste from kerbside, with two to follow in Spring 2009. Currently one In-Vessel Composter has been awarded planning at Ufton site (Biffa) and a second biowaste treatment plant is in procurement.</p> <p>WCC has ~53% recycling rate for HWRCs and improving.</p>	<p>green waste collection by Sept 08</p> <ul style="list-style-type: none"> <li>• Addition of glass to kerbside collection Sept 08</li> <li>• 140l wheeled bins for refuse and no side waste policy Sept 09</li> <li>• Full kerbside sort dry recyclable policy introduced at Sept 09</li> <li>• Investigation and trials of full recycling at multi-occupancy dwellings</li> </ul> <p>Bickenhill Public Waste Disposal &amp; Recycling site has a target of 50% recycling by 2008, rising over a four year period. Financial incentives for over-performance, penalties for under-performance</p> <p><u>LAA Targets:</u> 26.7% recycling rate 2009/10 6.7% recycling rate of non biodegradable municipal waste 2009/10</p> <p><u>Project Transform:</u> 50% Recycling &amp; Composting target by 2020. Modelling shows currently committed systems should deliver ~45% by 2011.</p>	<p><u>Draft MWMS target:</u> 32% recycling rate by 2009/10, 40% by 2012/13 &amp; 50% by 2019/20. This has been modelled as achievable (2008).</p> <p><u>Draft MWMS target:</u> 40% recycling &amp; composting at HWRC by 2010, 60% by 2013, 70% by 2020.</p> <p><u>Draft MWMS target:</u> 40% recycling and composting of trade waste by 2015, 50% by 2020</p> <p><u>Draft MWMS commitment:</u> implement a full commingled dry recycling collection system across the City. A review to consider implementing a separate food waste collection system in 2013. Modelling shows 50% recycling would be met with food waste collection</p> <p><u>Project Transform:</u> 50% Recycling &amp; Composting target by 2020</p> <p><u>Actions to deliver recycling performance improvement:</u> HWRC contractor provided with targets to deliver in improvement of the recycling performance, new kerbside recycling collection system due to be implemented and subsequently rolled out to Trade waste customers.</p>	<p><u>Waste Prevention Target for residual h.h. waste:</u> 2010: 29% reduction from 2000 levels 2015: 35% reduction from 2000 levels 2020: 45% reduction from 2000 levels</p> <p><u>Policy:</u> Increasing the (environmental and financial) value obtained from recycle material collected by local authorities (including a focus on food waste collection)</p>

Table 3	Warwickshire County Council	Solihull Metropolitan Borough Council	Coventry City Council	National Drivers: Relevant WS 2007 targets / themes for municipal waste
		Waste Minimisation, Recycling & Recovery Plan (2003): modelled 50% recycling rate by 2013		

Table 4	Warwickshire County Council	Solihull Metropolitan Borough Council	Coventry City Council	National Drivers: Relevant WS 2007 targets / themes for municipal waste
<b>Energy Recovery</b>	<p><u>JMWMS Objective:</u> To contribute to the generation of energy from a non fossil source</p> <p><u>JMWMS Objective:</u> To make use of existing waste treatment infrastructure in Warwickshire</p> <p><u>Actions to deliver energy recovery performance:</u> Some residual waste currently goes to Coventry &amp; Solihull EfW facility. Project Transform procurement, some residual waste from North Warwickshire will go to Staffordshire facility when operational</p>	<p><u>MWMS Objective:</u> None relevant</p> <p><u>Actions to deliver landfill diversion performance:</u> Continued use of the EfW facility. In 06/07 the recovery performance was 57%.</p> <p><u>Strategic Plan:</u> To continue Council commitment to Energy from Waste</p>	<p><u>Draft MWMS Objective:</u> To treat and recover optimum value from residual municipal waste</p> <p><u>Draft MWMS Objective:</u> Manage wastes arising in Coventry in a sustainable manner to reduce both its quantity and impact on climate change, and to maximise the benefits of saving energy and materials</p> <p><u>Actions to deliver energy recovery performance:</u> Continued use of the EfW plant. Preference for both materials and energy recovery from any replacement facility. Preference for CHP where practicable for any energy recovery from replacement for current waste recovery facility.</p>	<p><u>Government WS2007 Key objective:</u> get the most environmental benefit from [that] investment, through increased recycling of resources and recovery of energy from residual waste using a mix of technologies</p> <p><u>Recovery Target for MSW:</u> 2010: 53% 2015: 67% 2020: 75%</p> <p><u>Policy:</u> Using PFI, Enhanced Capital Allowances and, where appropriate, the proposed banding system for Renewable Obligation Certificates to encourage a variety of technologies of energy recovery (including anaerobic digestion)</p>

Table 5	Warwickshire County Council	Solihull Metropolitan Borough Council	Coventry City Council	National Drivers: Relevant WS 2007 targets / themes for municipal waste
<p><b>Landfill Diversion</b></p>	<p><u>JMWMS Objective:</u> <i>To limit the amount of waste disposed of to landfill and to ensure that we meet our landfill diversion targets</i></p> <p><u>JMWMS Objective:</u> <i>To make use of existing waste treatment infrastructure in Warwickshire</i></p> <p><u>Actions to deliver landfill diversion performance:</u> <i>Improving recycling performance as noted previously &amp; Project Transform procurement, some residual waste from North Warwickshire will go to Staffordshire facility when operational</i></p>	<p><u>MWMS Objective:</u> <i>None relevant</i></p> <p><u>LAA Target:</u> <i>reduce the amount of municipal waste to landfill from 19.9% to 17% by 2009/10</i></p> <p><u>Actions to deliver landfill diversion performance:</u> <i>Improving recycling performance as noted previously, combined with the EfW plant / replacement facility. In 06/07 the recovery performance was 57%. Less than 18% landfilled in 07/08. Long term aim to get below 10% of MSW to landfill by 2020</i></p>	<p><u>Draft MWMS Objective:</u> <i>Seek to consolidate and improve the high performance of landfill diversion, to ensure that the current status of Coventry as one of the leading authorities in the UK, for landfilling only a small proportion of our wastes, is maintained</i></p> <p><u>Draft MWMS Objective:</u> <i>To treat and recover optimum value from residual municipal waste</i></p> <p><u>LAA target:</u> <i>Reduction of residual household waste per household to 800 kg / year in 2008/9, 770 kg / year in 09/10 &amp; 735 kg/ year in 10/11</i></p> <p><u>Actions to deliver landfill diversion performance:</u> <i>Improving recycling performance as noted previously, combined with the EfW plant / replacement facility. ~6% of household waste landfilled in 06/07</i></p>	<p><u>Government WS2007 Key objective:</u> <i>meet and exceed the Landfill Directive diversion targets for biodegradable municipal waste in 2010, 2013 &amp; 2020</i></p> <p><u>Waste Prevention Target for residual hh. waste</u>  2010: 29% reduction from 2000 levels  2015: 35% reduction from 2000 levels  2020: 45% reduction from 2000 levels</p> <p><u>Recovery Target for MSW:</u>  2010: 53%  2015: 67%  2020: 75%</p> <p><u>Recycling &amp; Composting Target for h.h. waste:</u>  2010: 40%  2015: 45%  2020: 50%</p> <p><u>Policy:</u> <i>Using PFI, Enhanced Capital Allowances and, where appropriate, the proposed banding system for Renewable Obligation Certificates to encourage a variety of technologies of energy recovery (including anaerobic digestion)</i></p>

## Appendix C of Agenda No

### Cabinet 16 - October 2008

#### Outline Business Case for PFI Credits for Project Transform

Summary of key points in Joint Working Agreement – with implications for WCC highlighted  
and Copy of Joint Working Agreement

- Partnering relationship
- Procure using PFI credits
- Project Transform – limited to this project.
- Up to second JWA which will supersede this one
- Open and Trusting, commitment and drive, sharing skills and creativity – the **character of the relationship**.
- **WCC will ensure that all members and officers act in the best interests of the Project.**
- WCC will act diligently and in good faith in all dealing with Coventry CC.
- Participate (in the character of the relationship) in the Project Board and Steering Group within the terms of reference and applicable procurement milestones.
- WCC not to procure alternative without coming out of JWA first.
- Costs sharing and accounting record preparation and maintenance – WCC to keep full records of costs and resources used on Project Transform.
- Timeframe – WCC to be bound until coming out of the JWA, signing the project agreement, entering into the second JWA or CCC and SMBC both coming out. **The commitments remain in effect for this timescale.**
- WCC to keep Confidential Information however obtained confidential and should use at least the same degree of caution we use to keep our own confidential information so.
- **WCC shall not make any announcement or public statements without getting prior written consent from the other parties to Project Transform.**
- WCC will pursue a positive approach to dealing with all disputes arising.
- WCC shall comply with its Data Protection duties fully.
- WCC will collaborate fully with CCC and/or SMBC to ensure that obligations under the Freedom of Information Act and Environmental Information Regulations are properly discharged

- (1) THE COUNCIL OF THE CITY OF COVENTRY
- (2) THE METROPOLITAN BOROUGH OF SOLIHULL
- (3) WARWICKSHIRE COUNTY COUNCIL

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**JOINT WORKING AGREEMENT**  
in relation to the joint procurement of a new waste treatment  
facility pursuant to Project Transform

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**BETWEEN**

- (1) **THE COUNCIL OF THE CITY OF COVENTRY** of Council House, Earl Street, Coventry, CV1 5RR ("**Coventry Council**")
- (2) **THE METROPOLITAN BOROUGH OF SOLIHULL** of PO Box 18, Council House, Solihull, West Midlands, B91 9QT ("**Solihull Council**")
- (3) **WARWICKSHIRE COUNTY COUNCIL** of Shire Hall, Warwick, CV34 4SA ("**Warwickshire Council**")

(together referred to as "**the Councils**" and individually as a "**Council**")

**BACKGROUND**

- (A) The Councils have agreed to work together in a partnering relationship to jointly procure a new residual waste treatment facility ("**the Facility**") through the Government's Private Finance Initiative to replace the existing energy from waste plant in Coventry in furtherance of the objectives of the Memorandum of Understanding and the project known as Project Transform ("**the Project**").
- (B) The Councils have agreed to enter into this Agreement to formalise their respective roles and responsibilities in relation to the joint working arrangements for the procurement of the Project and the agreement between the Councils that Coventry Council shall act as Lead Authority in carrying out the Procurement Milestones.
- (C) The Councils wish to enter into this Agreement and implement the Project pursuant to the powers conferred on them by Sections 51 and 55 of The Environmental Protection Act 1990, Section 19 of the Local Government Act 2000 and Regulation 7 Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000.
- (D) The Councils acknowledge that this Agreement shall regulate the procurement of the Project up to the end of the Procurement Milestones on the Procurement End Date and following the successful award of the Project Agreement, the Councils have agreed to enter into an agreement which will set out the respective rights and obligations of each Council in relation to the implementation and operational phases of the Project. Such agreement ("**the Second Joint Working Agreement**") is intended to reflect the terms of the Project Agreement and as such cannot be completed until the Councils have agreed the terms of the Project Agreement.
- (E) The Councils agree to act reasonably and in good faith to negotiate the terms of the Second Joint Working Agreement.

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement and the Recitals, unless, the context otherwise requires the following terms shall have the meaning given to them below:-

<b>"Accounting Period"</b>	means those periods set out in Schedule 8 (Accounting Periods) as may be amended from time to time in accordance with the terms of this Agreement
<b>"Bidder"</b>	means any person who, following the issue of the OJEU Notice, expresses or has expressed an interest in being awarded the Project Agreement through the Procurement Milestones
<b>"Bid Process"</b>	means the process of procuring and appointing a contractor to carry out the Project on behalf of the Councils



<b>"Break Point"</b>	means each of the following:- <ul style="list-style-type: none"> <li>(a) the date of the meeting of the Project Board held to provisionally agree the long list of Bidders to go through to ISOS stage as set out at milestone 24 in Schedule 1 (Procurement Milestones);</li> <li>(b) the date of the meeting of the Project Board held to review and agree the evaluation and/or the selection of Bidders to go forward to a further stage of the Competitive Dialogue Procedure as such stages may be agreed from time to time in accordance with the relevant Procurement Milestone before the date of the meeting in Break Point (c) below;</li> <li>(c) the date of the meeting of the Project Board held to recommend closing the Competitive Dialogue Procedure and calling for final tenders as set out at milestone 40 in Schedule 1 (Procurement Exercise);</li> </ul>
<b>"Break Point Report"</b>	means a report prepared by the Lead Authority acting reasonably setting out the financial and resource commitments required of each Council at a Break Point including the items set out in Schedule 9 (Break Point Report)
<b>"Business Day"</b>	means any day other than a Saturday or Sunday or a public or bank holiday in England
<b>"CEDR"</b>	means the Centre for Dispute Resolution
<b>"CIWM"</b>	means the Chartered Institute of Waste Management
<b>"Commencement Date"</b>	means the date hereof
<b>"Competitive Dialogue Procedure"</b>	has the meaning given to it in the EU Procurement Regime
<b>"Confidential Information"</b>	all know-how and other information whether commercial, financial, technical or otherwise relating to the business, affairs or methods of all or any Council, 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
<b>"Decision Period"</b>	means the period of 20 Business Days from the date of the relevant Break Point Report or such other time as is unanimously agreed by all the Councils
<b>"DEFRA"</b>	means the Department for Environment, Food and Rural Affairs of any replacement body
<b>"DPA"</b>	means the Data Protection Act 1998

<b>"EU Procurement Regime"</b>	means the Public Contracts Regulations 2006
<b>"Intellectual Property"</b>	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
<b>"IP Material"</b>	the Intellectual Property in the Material
<b>"ISOS"</b>	means the Invitation to Submit Outline Solution stage of the Procurement Milestones
<b>"LAT"</b>	means the landfill Allowance Trading Scheme
<b>"Lead Authority"</b>	means the Council appointed under clause 3 whose duties are set out in clause 4
<b>"Local Authority"</b>	a principal council (as defined in Section 270 of the Local Government Act 1972) or any body of government in England established as a successor of a principal councils
<b>"Material"</b>	all data, text, graphics, images and other materials or documents created, used or supplied by a Council in connection with this Agreement unless before the first use or supply, the Council notifies the other Councils that the data, text supplied is not to be covered by this definition
<b>"Memorandum of Understanding"</b>	the memorandum of understanding dated 14 January 2008 and appended at Appendix A to this Agreement
<b>"Model Procedure"</b>	means the Centre for Dispute Resolution Model Mediation Procedure
<b>"OJEU Notice"</b>	has the meaning given to it in the EU Procurement Regime
<b>"Outline Business Case"</b>	means the outline business case dated on or about the date of this Agreement prepared by the Councils for submission to DEFRA for PFI support in relation to the Project
<b>"Personal Data"</b>	means the personal data as defined in the DPA
<b>"PFI"</b>	means the Government's Private Finance Initiative or any similar or replacement initiative
<b>"Procurement End Date"</b>	means the date that the Project Agreement (and any associated documentation) is executed by the Lead Authority pursuant to the Procurement Milestones
<b>"Procurement Milestones"</b>	means the procurement stages as set out in Schedule 1 (Procurement Milestones) to be carried out in order to procure the Project as such Procurement Milestones may be amended from time to time by the Councils in accordance with the terms of this Agreement

<b>"Project Agreement"</b>	means the PFI contract to be entered into by the Lead Authority (acting on behalf of the Councils) and the successful Bidder in accordance with the Procurement Milestones in connection with the Project
<b>"Project Board Meeting"</b>	means a meeting of the Project Board duly convened in accordance with Clause 7
<b>"Project Director"</b>	means [ • ] or such replacement person(s) appointed from time to time by the Project Board to represent the interests of all the Councils in respect of their operational requirements for the Project and who shall be called the Project Director and who shall be a member of the Project Board
<b>"Site"</b>	means the land edged in red on the plan attached at Appendix B to this Agreement and located on London Road, Coventry
<b>"WCA"</b>	means the waste collection authorities listed below:- <ul style="list-style-type: none"> <li>(a) Rugby Borough Council of PO Box 123, Town Hall, Rugby, CV21 2ZP;</li> <li>(b) Warwick District Council of PO Box 2178, Riverside House, Milverton Hill, Leamington Spa, CV32 5QH;</li> <li>(c) Nuneaton and Bedworth Borough Council of Town Hall, Coton Road, Nuneaton, CV11 5AA;</li> <li>(d) North Warwickshire Borough Council of PO Box 6, The Council House, South Street, Atherstone, CV9 1BG; and</li> <li>(e) Stratford on Avon District Council, Elizabeth House, Church Street, Stratford Upon Avon, CV37 6HX.</li> </ul>

## 1.2 Interpretation

In this Agreement, except where the context otherwise requires:-

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 a reference to any clause, sub-clause, paragraph, Schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or annex of and to this Agreement;
- 1.2.3 any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.2.4 any reference to legislation shall be construed as a reference to any legislation as amended, replaced, consolidated or re-enacted;
- 1.2.5 a reference to a public organisation (to include, for the avoidance of doubt, any Council) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both functions and responsibilities of such public organisation;
- 1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;

- 1.2.7 the schedule, clause, sub-clause and (where provided) paragraph headings and captions in the body of this Agreement do not form part of this Agreement and shall not be taken into account in its construction or interpretation;
- 1.2.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words; and
- 1.2.9 any reference to the title of an officer or any of the Councils shall include any person holding such office from time to time by the same or any title substituted thereafter or such other officer of the relevant Council as that Council may from time to time appoint to carry out the duties of the officer referred to.

### 1.3 **Schedules**

The Schedules to this Agreement form part of this Agreement.

## 2. **PRINCIPLES AND KEY OBJECTIVES**

- 2.1 The Councils intend this Agreement to be legally binding.
- 2.2 The Councils agree to work together to carry out the Procurement Milestones in accordance with the terms of this Agreement.
- 2.3 Without prejudice to the terms of this Agreement, the Councils agree that they will conduct their relationship in accordance with the following principles:-

### 2.3.1 **Openness and Trust**

In relation to this Agreement the Councils will be open and trusting in their dealings with each other, make information and analysis available to each other, discuss and develop ideas openly and contribute fully to all aspects of making the joint working successful. Whilst respecting the mutual need for commercial confidentiality, the Councils will willingly embrace a commitment to transparency in their dealings and in particular a need to comply with statutory access to information requirements including the Environmental Information Regulations 2004 (SI 3391) and the Freedom of Information Act 2000 and supporting codes of practice. The Councils will be aware of the need for and respect matters of commercial confidentiality and potential sensitivity;

### 2.3.2 **Commitment and Drive**

The Councils will be fully committed to working jointly, will seek to fully motivate employees and will address the challenges of the Project with drive, enthusiasm and a determination to succeed;

### 2.3.3 **Skills and Creativity**

The Councils recognise that each brings complimentary skills and knowledge which they will apply creatively to achieving the Councils' objectives, continuity, resolution of difficulties and the development of the joint working relationship and the personnel working within it. It is recognised that this will involve the appreciation and adoption of common values;

### 2.3.4 **Effective Relationships**

The roles and responsibilities of each Council will be clear with relationships developed at the appropriate levels within each organisation with direct and easy access to each other's representatives;

### 2.3.5 **Developing and Adaptive**

The Councils recognise that they are engaged in what could be a long term business relationship which needs to develop and adapt and will use reasonable

endeavours to develop and maintain an effective joint process to ensure that the relationship develops appropriately and in line with these principles and objectives;

#### **2.3.6 Reputation and Standing**

The Councils agree that, in relation to this Agreement and the Project generally, they shall pay the utmost regard to the standing and reputation of one another and shall not do or fail to do anything which may bring the standing or reputation of any other Council into disrepute or attract adverse publicity to any other Council;

#### **2.3.7 Reasonableness of Decision Making**

The Councils agree that all decisions made in relation to this Agreement and the Project generally shall be made by them acting reasonably and in good faith;

#### **2.3.8 Necessary Consents**

Each Council hereby represents to the other Councils that it has obtained all necessary consents sufficient to ensure the delegation of functions and responsibilities provided for by this Agreement; and

#### **2.3.9 Members and Officers**

The Council shall use all reasonable endeavours to procure that their respective members and officers who are involved in the Project shall at all time act in the best interests of the Project.

### **3. COVENTRY COUNCIL AS THE LEAD AUTHORITY**

3.1 The Councils (acting severally) have agreed, with effect from the Commencement Date, Coventry Council will be the Lead Authority for the carrying out of the Procurement Milestones which shall be carried out for and on behalf of the Councils and Coventry Council agrees to act in that capacity subject to and in accordance with the terms and conditions of this Agreement.

3.2 If the Lead Authority defaults pursuant to Clause 12 or withdraws pursuant to Clause 13, then the replacement Lead Authority will be appointed by the Project Board and the withdrawing defaulting Lead Authority will not have the right to vote in regard to any such appointment.

### **4. DUTIES OF COVENTRY COUNCIL AS THE LEAD AUTHORITY**

4.1 For the duration of this Agreement, Coventry Council shall act diligently and in good faith in all its dealings with the other Councils and it shall use its reasonable endeavours to carry out the Procurement Milestones in accordance with the EU Procurement Regime and any other applicable legislation.

4.2 Coventry Council shall enter into a lease together with any associated wayleave agreement or other agreements with the successful Bidder in relation to the Site on terms to be negotiated during the Procurement Milestones which are reasonably acceptable to Coventry Council by no later than the date of the Project Agreement.

4.3 For the duration of this Agreement, Coventry Council as the Lead Authority shall act as the primary interface with DEFRA and Partnerships UK on behalf of the other Councils.

### **5. DUTIES OF THE OTHER COUNCILS**

5.1 For the duration of this Agreement, the other Councils shall act diligently and in good faith in all their dealings with Coventry Council and shall use their reasonable endeavours to assist Coventry Council to carry out the Procurement Milestones in accordance with the EU Procurement Regime and any other applicable legislation.

5.2 Warwickshire Council shall use all reasonable endeavours to negotiate and to agree an inter-Authority agreement prior to the date of the Project Agreement in form reasonably acceptable to the other Councils to ensure that waste is collected and delivered by the WCA to the Facility in a manner consistent with Warwickshire Council's obligations under this Agreement and the terms of the Second Joint Working Agreement.

## 6. DECISION MAKING

6.1 In terms of the need for decisions and other actions to be taken and carried out during the Procurement Milestones, the Councils have identified the following three categories together with the means by which they will be taken:-

6.1.1 **"Project Director Matter"** - being a matter which the Project Director shall have the authority to make a decision upon and have the authority to carry out on behalf of the Councils;

6.1.2 **"Project Board Matter"** – being a matter in which it is expected that any or all of the board officers of each Council appointed pursuant to Clause 7.3 will be able to make a decision upon and have the power to bind the Council it represents in doing so;

6.1.3 **"Matter Reserved To The Councils"** – being a matter which will have to be referred to each Council for and, for the avoidance of doubt, that matter requiring a decision would not be dealt with by the representatives of the Councils appointed pursuant to Clause 7.3 or the Project Director until the unanimous decision shall have been agreed by all of the Councils,

and in each case, such matters are identified in 0 (Procurement Milestones).

## 7. PROJECT BOARD

7.1 The Councils shall form the project board ("**Project Board**"), which shall, for the avoidance of doubt, supersede and replace the project board formed pursuant to the Memorandum of Understanding for the purpose of overseeing and co-ordinating the Procurement Milestones and to carry out the functions set out in Schedule 2 (Project Board Terms of Reference).

7.2 The Project Board shall not have power to approve any Matter Reserved To The Councils pursuant of Clause 6.1.3.

7.3 Each Council shall appoint three representatives to the Project Board. The Chairperson of the Project Board shall be such representative as appointed by the Project Board from time to time.

7.4 Each Council shall be entitled from time to time to appoint a deputy for each of its representatives but such deputy (in each case) shall only be entitled to attend meetings of the Project Board in the absence of his or her corresponding principal.

7.5 Each Council shall be entitled to invite appropriate third parties to observe Project Board Meetings and such third parties shall be entitled to take part in such Project Board Meetings at the discretion of the Chairperson of the Project Board. Such observers shall not have a vote.

7.6 Each Council may, at their discretion, replace their representatives (and their respective deputies) appointed to the Project Board, provided that:-

7.6.1 at all times, they have representatives appointed to the Project Board in accordance with the roles identified in 0 (Project Board Terms of Reference); and

7.6.2 any such replacement shall have no lesser status or authority than that set out in 0 (Project Board Terms of Reference) unless otherwise agreed by the Councils.

7.7 The Project Board shall meet as and when required in accordance with the timetable for the Project and, in any event, at appropriate times and on reasonable notice (to be issued

through the Project Director) to carry out the Project Board Matters referred to in 0 (Procurement Milestones) and in carrying out such activities.

- 7.8 The quorum necessary for a Project Board meeting shall be a board officer representative or appropriate deputy appointed pursuant to Clause 7.4 above or appropriate proxy (who shall be a board officer) from each Council.
- 7.9 At meetings of the Project Board each board officer or appropriate deputy appointed pursuant to Clause 7.4 above or appropriate proxy (who shall be a board officer) from each Council shall have one vote. The Chairperson shall not have a second or casting vote. Decisions at meetings of the Project Board will be taken by a majority vote. The Project Director shall not have a vote.
- 7.10 The aims and purposes and terms of reference of the Project Board are set out in Schedule 2 (Project Board Terms of Reference).
- 7.11 Each Council shall provide all information reasonably required upon request by the Project Board and shall comply with any decisions of the Project Board to request such information.
- 7.12 Each Council shall consult with the other Councils to ensure the diligent progress of the day to day matters relating to the Procurement Milestones.

## **8. STEERING GROUP**

- 8.1 The Councils shall form a steering group ("**Steering Group**") working under the direction of the Project Director for the purposes of providing overall officer co-ordination and specialist support as required across the Project and any other related matters outside the scope of this Agreement.
- 8.2 The Steering Group shall not have power to approve a Project Director Matter, a Project Board Matter or a Matter Reserved To The Councils.
- 8.3 The Councils shall appoint such representatives and any other person(s) to the Steering Group as may be agreed by the Project Board from time to time.
- 8.4 The Councils may, at their discretion, replace their representatives appointed to the Steering Group, provided that such placement shall be on the same basis as the original appointee and provided further that no elected member of the Steering Group shall be removed or replaced by any Council without that Council giving prior written notice as soon as reasonably practicable and in any event within 10 (ten) Business Days of its intention to remove or replace that elected member of the Project Team.
- 8.5 The details of the ways of working, clerking and other operational matters of the Steering Group are set out in Schedule 6 (Steering Group Terms of Reference).

## **9. COMMITMENT OF THE COUNCILS AND CONTRIBUTIONS**

- 9.1 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 Project outside the terms of this Agreement unless and until it shall have withdrawn from the Project in accordance with Clause 13.
- 9.2 The costs associated with providing internal resources in relation to the Procurement Milestones shall, subject to Clause 9.7, be borne by the Council providing that internal resource. However, any additional costs and external costs required shall be shared in proportion to the tonnage volume of each Council's residual waste stream to be allocated to the Project (as more particularly described in the Outline Business Case).
- 9.3 Each Council shall be required to prepare accounts including details of any expenditure incurred pursuant to Schedule 7 (Heads of Expenditure) ("**the Accounts**") in respect of each Accounting Period and for such further and/or other accounting periods as the Project

Board shall determine and which shall be incorporated into Schedule 8 (Accounting Periods).

9.4 Each Council shall:-

9.4.1 in the Accounts make true and complete entries of all relevant payments made by it during the previous Accounting Period;

9.4.2 within 10 Business Days of the end of each Accounting Period, Solihull Council and Warwickshire Council shall provide to Coventry Council unaudited Accounts for such Accounting Period together with certification that such Accounts comply with this Clause 9;

9.4.3 nominate an individual to be responsible for ensuring that Council's own compliance with this Clause 9 and the name, address and telephone number of each individual nominated pursuant to this Clause 9.4.3 shall be notified to the other Councils in accordance with Clause 18; and

9.4.4 Coventry Council shall within 10 Business Days of receipt of the Accounts submitted by Solihull Council and Warwickshire Council in accordance with Clause 9.4.2 prepare a reconciliation statement identifying the payments made by each Council and the balance due from or owing to each. Coventry Council shall within twenty (20) Business Days of the preparation of the reconciliation statement send out a copy of the reconciliation statement together with either a balancing invoice or credit payments to each Council. A Council receiving an invoice for payment shall pay it in full within twenty (20) Business Days. Any error in a balancing invoice must be notified to Coventry Council within 5 Business Days of such balancing invoice being sent out. An amended balancing invoice will be issued by Coventry Council and the Council receiving such an invoice shall pay it in full within twenty (20) Business Days.

9.5 If an individual nominated by a Council pursuant to Clause 9.4.3 changes, that Council shall notify the other Councils forthwith of the replacement nominees.

9.6 The Councils hereby agree that if one of the Councils carries out any work or incurs any cost or expenses or requests the Steering Group (or any other elected member of the Steering Group) to carry out any work 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, at the discretion of the Project Manager, be referred to the Project Board 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).

9.7 The Councils hereby agree that if one of the Councils believes it is likely to incur disproportionate internal resource costs pursuant to Clause 9.2 that matter shall, at the discretion of the Project Director, be referred to the Project Board for a decision as to whether such costs will be disproportionate and whether any contributions should be made to this cost by the other Councils.

9.8 Where the actual costs associated with the Project are likely to exceed the approved annual budget of the Lead Authority held on behalf of the Councils by 5% (five percent) this will be a Matter Reserved to the Councils.

## **10. INTELLECTUAL PROPERTY**

10.1 Each Council will retain all Intellectual Property in its Material.

10.2 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 IP Material for the Procurement Milestones and any other purpose resulting from the Procurement Milestones whether or not the party granting the licence remains a party to this Agreement or the Procurement Milestones.



- 10.3 Without prejudice to Clause 10.1, if more than one Council owns or has a legal or beneficial right or interest in any aspect of the IP Material for any reason (including without limitation that no one Council can demonstrate that it independently supplied or created the relevant IP Material without the help of one or more of the other Councils), each of the Councils who contributed to the relevant IP 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 IP 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.
- 10.4 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.
- 10.5 Each Council warrants that it has or will have the necessary rights to grant the licences set out in Clause 10.2 and 10.3 in respect of the IP Material to be licensed.
- 10.6 Each Council agrees to execute such further documents and take such actions or do such things as may be reasonably requested by any other Councils (and at the expense of the Council(s) making the request) to give full effect to the terms of this Agreement.

## **11. LIABILITY OF THE COUNCILS**

- 11.1 Coventry Council shall indemnify and keep indemnified each of the other Councils to this Agreement against any losses, claims, expenses, actions, demands, costs and liability suffered by that Council to the extent arising from any breach by Coventry Council of its obligations under this Agreement or any negligent act or omission in relation to such obligations.
- 11.2 No claim shall be made against Coventry Council to recover any loss or damage which may be incurred by reason of or arising out of the carrying out by Coventry Council of its obligations under this Agreement unless such loss or damage arises from any breach by Coventry Council of such obligations or any negligent act or omission in relation to such obligations.
- 11.3 Each of the other Councils (acting severally) shall indemnify and keep indemnified Coventry Council against all losses, claims, expenses, actions, demands, costs and liabilities which Coventry Council may incur by reason of or arising out of the carrying out by Coventry Council of its obligations under this Agreement for that Council or arising from any breach by a Council of its obligations under this Agreement or any negligent act or omission by a Council in relation to such obligations unless and to the extent that the same result from any breach by Coventry Council of any such obligations or any negligent act or omission by Coventry Council in relation to such obligations.
- 11.4 The Councils agree and acknowledge that the amount to be paid to Coventry Council by any of the other Councils in Clause 11.3 shall be borne by each of the Councils to the extent of its responsibility, however in the event that the responsibility is a shared one between the Councils (so that it is not reasonably practicable to ascertain the exact responsibility between the Councils) then the amount to be paid shall be divided amongst the Councils in proportion to the tonnage volume of each Council's residual waste stream to be allocated to the Project (as more particularly described in the Outline Business Case) with adjustment to take into account Coventry Council's percentage of total contribution will have to be reallocated amongst the other Councils for this purpose in proportion to the percentage of total contributions of those other Councils set. In the event of a claim in which it is not reasonably practicable to determine the extent of responsibility as between the Councils and Coventry Council then the amount would be divided amongst the Councils in proportion to the tonnage volume of each Council's residual waste stream to be allocated to the Project (as more particularly described in the Outline Business Case).
- 11.5 A Council who receives a claim for losses, expenses, actions, demands, costs and liabilities shall notify and provide details of such claim as soon as is reasonably practicable the other Councils.

11.6 No Council shall be indemnified in accordance with this Clause 11 unless it has given notice in accordance with Clause 11.5 to the other Council against whom it will be enforcing its right to an indemnity under this Agreement.

## 12. COMMENCEMENT, DURATION AND TERMINATION

12.1 This Agreement shall continue in full force and effect from the Commencement Date until the earlier of the following dates:-

12.1.1 all the Councils agree in writing to its termination; or

12.1.2 there is only one remaining Council who has not withdrawn from this Agreement in accordance with Clause 13; or

12.1.3 date of execution of the Project Agreement.

12.2 Without prejudice to any other rights or remedies, this Agreement may be terminated in relation to any Council ("**Defaulter**") by the other Councils ("**Non-Defaulting Councils**") acting unanimously in giving written notice to the Defaulter effective on receipt where the Defaulter breaches any of the provisions of this Agreement and in the case of a breach capable of remedy fails to remedy the same within 5 Business Days (or such other period as agreed by the Council) of being notified of each breach in writing by the Non-Defaulting Councils and being required to remedy the same.

## 13. WITHDRAWAL

13.1 Any Council (including Coventry Council) may at any Break Point during the Procurement Milestones, withdraw from this Agreement in accordance with this Clause 13.

13.2 Coventry Council shall, 5 Business Days prior to the scheduled date of the Project Board preceding the date of each Break Point, provide to all the Councils a Break Point Report which shall be discussed by the Project Board at that Project Board Meeting.

13.3 Within the Decision Period each Council shall indicate either:-

13.3.1 that it withdraws from the Project and this Agreement; or

13.3.2 that it wishes to continue with the Project and this Agreement.

13.4 Where a Council does not indicate its intentions as required by Clause 13.3 then it shall at the expiry of the Decision Period be taken to have indicated that they wish to continue with the Project and this Agreement.

13.5 Where a Council indicates that it wishes to withdraw from the Project in accordance with the terms of this Agreement, then:-

13.5.1 the Council who shall have indicated its wish to withdraw shall pay all amounts due to be paid by it in accordance with the Break Point Report and comply with its obligations to contribute to the Project up to the date of its withdrawal in accordance with Clause 9 including making any payments of any expenditure referred to in Schedule 7 (Heads of Expenditure) as at that date; and

13.5.2 the Council who shall have indicated its wish to withdraw shall be responsible for a proportion of any Bidders claimed abortive costs (which have been substantiated by the Project Board) which may include Bidders costs of commissioning alternative provision for the Project which may be payable as a result of such withdrawal. Such proportion will be decided by the Project Board;

13.5.3 if in the event of such a withdrawal the Project is delayed in terms of the Procurement Milestones then the Council who shall have indicated its wish to withdraw may be responsible for a proportion of the costs of delay to the other Councils or any costs or fines which may directly result in relation to any LATS liability or otherwise. Such proportion will be decided by the Project Board.

- 13.6 Unless agreed otherwise by the remaining Councils, the Council who shall have indicated its wish to withdraw from the Project shall not remove its appointees to the Steering Group for a period of not less than three (3) months commencing on the date of such Council's withdrawal, provided that the costs associated with those appointees to the Steering Group shall be divided amongst the Councils in proportion to the tonnage volume of each Council's residual waste stream to be allocated to the Project (as more particularly described in the Outline Business Case).

#### **14. CONCLUSION OF THE SECOND JOINT WORKING AGREEMENT**

- 14.1 The Councils will enter into the Second Joint Working Agreement on or before the date of the Project Agreement.

- 14.2 The Councils shall individually and jointly use all reasonable endeavours to negotiate and to agree the Second Joint Working Agreement in conjunction with the negotiation and agreement of the Project Agreement.

- 14.3 The reference to "all reasonable endeavours" in Clause 14.2 shall include a requirement on all Councils to:-

14.3.1 (without prejudice to Clause 2.3) at all times act in good faith;

14.3.2 ensure that sufficient time is set aside to conduct the negotiations on the terms of the Second Joint Working Agreement either through correspondence or by holding meetings or a combination of both to ensure that the terms of the Second Joint Working Agreement are agreed in accordance with the timetable envisaged in Clause 14.1;

- 14.4 If a dispute or difference arises between the Councils in relation to a provision of the Second Joint Working Agreement and such dispute or difference cannot be settled by the Councils within ten (10) Business Days of it first arising, any Council may refer such dispute or difference for determination in accordance with Clause 26.

#### **15. CONSEQUENCES OF TERMINATION**

- 15.1 If the Agreement is terminated in accordance with Clause 12.1, save for the obligations set out in Clause 9, Clause 11 and Clause 16, the Councils shall be released from their respective obligations described in this Agreement.

- 15.2 Where a Council withdraws from the Project and this Agreement in accordance with Clause 13 or is a Defaulter and this Agreement is terminated in respect of that Council in accordance with Clause 12.2 any property acquired and/or secured and/or owned and provided by such withdrawing Council or Defaulter for the purposes of the Project will remain in the ownership of the withdrawing Council or Defaulter and the withdrawing Council or Defaulter will reimburse the remaining Councils their respective contributions (if any) together with any reasonable costs incurred as a result of the withdrawal or default.

- 15.3 The Councils acknowledge and agree that:-

15.3.1 the Project has been modelled on the basis of participation by the Councils and that there are considerable economic benefits to be achieved as a result of such joint working; and

15.3.2 accordingly, save for the circumstances described in Clause 12.1 or Clause 13, in the event that this Agreement is terminated in relation to any Council pursuant to Clause 12.2 or that any Council fails to conclude the Second Joint Working Agreement pursuant to the provisions of Clause 14 such Defaulter shall, subject to Clause 15.4, be liable to the Non-Defaulting Council or Councils for their reasonable and properly incurred costs in the Project relating to any delay and arising from the withdrawal (including but not necessarily limited to the costs of legal, financial and technical advice) and any costs, claims and damages payable by the Non-Defaulting Council or Councils arising from claims from Bidders in

respect of any costs relating to any delay and arising from any withdrawal as determined by the Project Board.

- 15.4 Notwithstanding the provisions of Clause 15.3 the Councils shall not agree or enter into discussions with a view to agreeing with any Bidder (including any Bidder appointed as preferred or reserved bidder for the Project) that any of them is or will become liable to that Bidder at the time in question or in the future for any abortive or similar costs or damages of that Bidder or its advisers.

## **16. CONFIDENTIALITY AND ANNOUNCEMENTS**

- 16.1 Each Council ("**Covenanter**") shall, both during the currency of this Agreement and at all times following its termination or expiry, 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 or Bidder which has come to its attention as a result of or in connection with this Agreement, (including the Bid Process), in particular (but without prejudice to the generality of the foregoing) Confidential Information relating to the Second Joint Working Agreement and/or the Project Agreement and/or the Bid Process.

- 16.2 The obligation set out in Clause 16.1 shall not relate to information which:-

16.2.1 comes into the public domain or is subsequently disclosed to the public (other than through default on the part of the Covenanter or any other person to whom the Covenanter is permitted to disclose such information under this Agreement); or

16.2.2 is required to be disclosed by law; or

16.2.3 was already in the possession of the Covenanter (without restrictions as to its use) on the date of receipt; or

16.2.4 is required or recommended by the rules of any governmental or regulatory authority including any guidance from time to time as to openness and disclosure of information by public bodies; or

16.2.5 is necessary to be disclosed to provide relevant information to any insurer or insurance broker in connection with obtaining any insurance required by this Agreement.

- 16.3 Where disclosure is permitted under Clause 16.2.3 or 16.2.4, the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this Clause 16 and the disclosing Council shall make this known to the recipient of the information.

- 16.4 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 Second Joint Working Agreement and/or the Project Agreement without the prior written consent of the other Councils.

## **17. CONTRACTS (THIRD PARTY RIGHTS)**

- 17.1 The Councils as parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## **18. NOTICES**

- 18.1 Any notice or demand in connection with this Agreement shall be in writing and may be delivered by hand, prepaid first class post, special delivery post, facsimile or email, addressed to the recipient at the address or facsimile number as the case may be set out in 0 (Addresses of the Councils) or such other recipient address or facsimile number as may be notified in writing from time to time by any of the parties to this Agreement to all the other Councils to this Agreement.

- 18.2 The notice or demand shall be deemed to have been duly served:-
- 18.2.1 if delivered by hand, when left at the proper address for service;
  - 18.2.2 if given or made by prepaid first class post or special delivery post, 48 hours after being posted (excluding days other than Business Days);
  - 18.2.3 if given or made by facsimile, at the time of transmission;
  - 18.2.4 if given or made by email, at the time of transmission,
- provided that, where in the case of delivery by hand or transmission by facsimile or email such delivery or transmission occurs either after 4.00pm on a Business Day or on a day other than a Business Day service shall be deemed to occur at 9.00am on the next following Business Day.

- 18.3 For the avoidance of doubt, where proceedings to which the Civil Procedure Rules apply have been issued, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

## **19. GOVERNING LAW**

- 19.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to Clause 26, the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

## **20. ASSIGNMENTS**

- 20.1 The rights and obligations of the Councils under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any legislation or any scheme pursuant to any legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Agreement and having the legal capacity, power and authority to become a party to and to perform the obligations of the relevant Council under this Agreement being:
- 20.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or
  - 20.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the relevant Council under this Agreement.

## **21. WAIVER**

- 21.1 No failure or delay by any Council to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or some other right, power or remedy unless a waiver is given in writing by that Council.
- 21.2 Each Council shall pay their own costs incurred in connection with the preparation, execution, completion and implementation of this Agreement.

## **22. ENTIRE AGREEMENT**

- 22.1 This Agreement contains all the terms which the parties have agreed in relation to the subject of this Agreement and supersedes any prior written or oral agreements, representations or understandings between the Councils relating to such subject matter. No Council has been induced to enter into this Agreement or any of these documents by statement or promise which they do not contain, save that this Clause shall not exclude any liability which one Council would otherwise have to the other in respect of any statements made fraudulently by that Council.

## **23. NOT USED**

## **24. COUNTERPARTS**

- 24.1 This Agreement may be executed in any number of counterparts each of which so executed shall be an original but together shall constitute one and the same instrument.

## **25. RELATIONSHIP OF COUNCILS**

- 25.1 Each Council is an independent body and nothing contained in this Agreement shall be construed to imply that there is any relationship between the Councils of partnership or (except as expressly provided in this Agreement) of principle/agent or of employer/employee. No Council shall have the right to act on behalf of another nor to bind the other by contract or otherwise except to the extent expressly permitted by the terms of this Agreement. In particular for the avoidance of doubt, none of the provisions relating to the principles of working in partnership shall be taken to establish any partnership as defined by The Partnership Act 1890.

## **26. DISPUTE RESOLUTION**

- 26.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this Clause 26. The Councils undertake and agree to pursue a positive approach towards dispute resolution which seeks (in the context of this partnership) to identify a solution which avoids legal proceedings and maintains a strong working relationship between the Councils.

- 26.2 In the event of any dispute or difference between the Councils relating to this Agreement (whether this may be a matter of contractual interpretation or otherwise) then save in relation to disputes or disagreements relating to a Matter Reserved To The Councils, the matter shall be dealt with as follows by referral in the first instance to the Project Board who shall meet within 10 Business Days of notification of the occurrence of such dispute and attempt to resolve the disputed matter in good faith.

- 26.3 In relation to a dispute or disagreement relating to a Matter Reserved To The Councils, or if the Project Board fails to resolve a dispute or disagreement within 5 Business Days of meeting pursuant to Clause 26.2, or fails to meet in accordance with the timescales set out in Clause 26.2, then the Councils in dispute or the Project Board (as the case may be) may refer the matter for resolution to:-

26.3.1 the Chief Executive(a) or Council Leader(s) (as appropriate) of the Councils; or

26.3.2 a mediation facilitated by the President of the CIWM or his nominated representative or such other party as the Councils may agree (or the CIWM may direct) for resolution by them; or

26.3.3 the exclusive jurisdiction of the Courts of England otherwise.

- 26.4 Any dispute and/or disagreement to be determined by the Chief Executive(s) or Council Leaders (as appropriate), CIWM or the Courts of England or such other body as agreed by the Councils (as the case may be) under this Agreement shall be promptly referred for determination to them.

- 26.5 The Councils shall on request promptly supply to the Chief Executive(s) or Council Leaders or CIWM (as the case may be) all such assistance, documents and information as may be required for the purpose of determination and the Councils shall use all reasonable endeavours to procure the prompt determination of such reference.
- 26.6 If the CIWM is appointed to determine in dispute pursuant to Clause 26.4, then the CIWM shall be deemed to act as an expert and not as an arbitrator and his determination shall (in the absence of manifest error) be conclusive and binding upon the Councils.
- 26.7 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 Chief Executive(s) or Council Leaders (as appropriate), CIWM or the Courts of England (as the case may be).

## **27. DATA PROTECTION**

- 27.1 In relation to all Personal Data, each Council shall at all times comply with the DPA, (as a data controller if necessary) which includes (but is not limited to) maintaining a valid and up to date registration or notification under the DPA covering the data processing activities to be performed in connection with the Procurement Milestones.
- 27.2 Each Council:
- 27.2.1 shall process Personal Data belonging to any other Council only on the instructions of that Council (subject to compliance with applicable law);
  - 27.2.2 shall only undertake processing of Personal Data reasonably required in connection with the Procurement Milestones and shall not transfer any Personal Data to any country or territory outside the European Economic Area; and
  - 27.2.3 shall use all reasonable endeavours to procure that all relevant sub-contractors and Bidders comply with this Clause 27.2. For the avoidance of doubt a relevant sub-contractor or Bidder is one which processes Personal Data belonging to the one or any of the Councils.
- 27.3 The Councils shall not disclose Personal Data to any third parties other than:
- 27.3.1 to employees and sub-contractors and Bidders to whom such disclosure is reasonably necessary in order for the Councils to carry out the Procurement Milestones; or
  - 27.3.2 to the extent required under a court order or to comply with any applicable laws including (but not limited to) any statute, bye law, European Directive or regulation.

provided that any disclosure to sub-contractors or Bidders under Clause 27.3.1 shall be made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 27 and that the Councils shall give notice in writing to all other Councils of any disclosure of Personal Data belonging to them which they or a sub-contractor or Bidders are required to make under Clause 27.3.2 immediately they are aware of such a requirement.

- 27.3.3 The Councils shall bring into effect and maintain and shall use all reasonable endeavours to ensure that all relevant sub-contractors and Bidders have in effect and maintain all reasonable technical and organisational measures necessary to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to taking reasonable steps to ensure the reliability and probity of any employee or agent of a relevant sub contractor or Bidders having access to the Personal Data.
- 27.3.4 Any Council may, at reasonable intervals, request a written description of the technical and organisational methods employed by any other Council and the relevant sub-contractors referred to in Clause 29.3.1. Within 5 Business Days of such a request, the Council requested to do so shall supply written particulars of

all such measures as it is maintaining detailed to a reasonable level such that the requesting Council can determine whether or not, in connection with the Personal Data, it is compliant with the DPA. All Councils shall use all reasonable endeavours to ensure that the sub-contractors and Bidders also comply with such request from any other Council.

27.4 All Councils shall ensure that any Personal Data they obtain and provide to any other Council has been lawfully obtained and complies with the DPA and that the use thereof in accordance with this Agreement shall not breach any of the provisions of the DPA.

27.5 If:-

27.5.1 under the DPA any Council is required to provide information to a data subject (as defined in the DPA) in relation to Personal Data when such data is in the possession or under control of any other Council; and

27.5.2 the required Council informs the controlling Council in writing that this is the case, then the controlling Council shall guarantee reasonable and prompt co-operation to the required Council in meeting its obligations under the DPA including making copies of the relevant Personal Data to the extent the same are in its possession.

27.6 Each Council shall provide the other as soon as reasonably practicable, with such information in relation to Personal Data and their processing as the other Council may reasonably request in writing and the party asked to provide the relevant data may reasonably be able to provide in order for the other Council to:-

27.6.1 comply with its obligations under this Clause and the DPA; and

27.6.2 assess whether the processing of the relevant Personal Data in connection with this Agreement is breaching or may breach the DPA in a manner which is material and not effectively sanctioned by any guidance statement issued by the Information Commissioner.

27.7 The Councils shall each take reasonable precautions (having regard to the nature of their respective obligations under this Agreement) to preserve the integrity of any Personal Data.

## **28. FREEDOM OF INFORMATION AND ENVIRONMENT INFORMATION**

28.1 Each Council acknowledges that the other Councils are subject to the requirements 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 the other Councils (at their own expense) to enable the other Councils to comply with these information disclosure obligations.

28.2 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:

28.2.1 transfer the request for information to the other Councils as soon as practicable after receipt and in any event within 2 (two) Business Days of receiving a request for information;

28.2.2 provide the other Councils with a copy of all information in its possession or power in the form that the Councils reasonably require within 10 (ten) Business Days (or such longer period as the Councils may specify) of the Council requesting that information; and

28.2.3 provide all necessary assistance as reasonably requested by the other Councils to enable the Council to respond to a request for information within the time for compliance set out in the FoIA or the EIR.



- 28.3 Where a Council receives a request for information under the FoIA or the EIR which relates to this Agreement or the Project, it shall inform the other Councils of the request for information as soon as practicable after receipt and in any event at least 2 (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 Councils in relation to the decision whether or not to disclose the information requested.
- 28.4 The Councils shall be responsible for determining in their absolute discretion whether any information requested under the FoIA or the EIR:
- 28.4.1 is exempt from disclosure under the FoIA or the EIR;
  - 28.4.2 is to be disclosed in response to a request for information.
- 28.5 Each Council acknowledges that the other Councils may be obliged under the FoIA or the EIR to disclose information:
- 28.5.1 without consulting with the other Councils where it has not been practicable to achieve such consultation; or
  - 28.5.2 following consultation with the other Councils and having taken their views into account.

## **29. MITIGATION**

Each Council shall at all time take all reasonable steps to minimise and mitigate any loss for which the relevant Council is entitled to bring a claim against the other Council(s) pursuant to this Agreement.

## **30. STATUTORY RESPONSIBILITIES**

- 30.1 Notwithstanding anything apparently to the contrary in this Agreement, in carrying out their statutory duties, the discretion of any Council shall not be fettered or otherwise affected by the terms of this Agreement.

**AS WITNESSED** the duly authorised representatives of the Councils have signed this Agreement as a deed on the date written at the beginning of this Agreement.

## PROCUREMENT MILESTONES

MILESTONE	PROJECT DIRECTOR MATTER	PROJECT BOARD MATTER	MATTER RESERVED TO AUTHORITIES
1. Procurement of external advisers to the Project	Yes		
2. Approval and confirmation of external advisers to the Project		Yes	
3. Approve the Draft Outline Business Case to be submitted to DEFRA			Yes
4. Recommendation as to Site Appraisal		Yes	
5. Approval of Site Appraisal			Yes
6. Decision to acquire an Option and/or Site.			Yes
7. Recommendation to procure remediation works on a Site	Yes		
8. Agreement as to recommendation to procure remediation works on a Site.		Yes	
9. Decision to procure remediation works on a Site			Yes
10. Drafting Prior Indicative Notice	Yes		
11. Agreeing Prior Indicative Notice		Yes	
12. Issuing Prior Indicative Notice	Yes		
13. Preparation of Pre Qualification Questionnaire ("PQQ")	Yes		
14. Agreeing final version of PQQ		Yes	
15. Drafting OJEU Notice	Yes		
16. Agreeing OJEU Notice		Yes	
17. Issuing OJEU Notice	Yes		
18. Preparation of Evaluation Criteria for all stages of the procurement process.	Yes		
19. Review Evaluation Criteria for all stages of the procurement process		Yes	
20. Agreeing Evaluation Criteria for all stages of the procurement process.			
21. Issuing the PQQ and organising any open days prior to return of PQQ's and expression of interest.	Yes		
22. Arrange any interviews/bidder presentations.	Yes		

<b>MILESTONE</b>	<b>PROJECT DIRECTOR MATTER</b>	<b>PROJECT BOARD MATTER</b>	<b>MATTER RESERVED TO AUTHORITIES</b>
23. Evaluation and long listing of bidders to go through to ISOS stage	Yes		
24. Provisional agreement to long list of bidders to go through to ISOS stage		Yes	
25. Final agreement to long list of bidders to go through to ISOS stage			Yes
26. Drafting letters informing bidders that they are successful in reaching the ISOS/ISDS/ISRS stages	Yes		
27. Reviewing letters informing bidders that they are successful in reaching the ISOS/ISDS/ISRS stages		Yes	
28. Issuing letters informing bidders that they are successful in reaching the ISOS/ISDS/ISRS stages	Yes		
29. Drafting ISOS, ISDS, and ISRS and all accompanying documentation.	Yes		
30. Reviewing ISOS, ISDS, and ISRS, and all accompanying documentation.		Yes	
31. Agreeing ISOS, ISDS, and ISRS, and all accompanying documentation.			Yes
32. Issue of ISOS, ISDS, and ISRS, and all accompanying documentation.	Yes		
33. Organising clarification and dialogue meetings	Yes		
34. Evaluation and Provisional selection of Bidders to go to each stage of Competitive Dialogue	Yes		
35. Review of evaluation and selection of Bidders to go to each stage of Competitive Dialogue Procedure.		Yes	
36. Final approval of evaluation and selection Bidders to go to each stage of Competitive Dialogue Procedure.			Yes
37. Recommend closing Competitive Dialogue Procedure and Call for Final Tenders (CFT)		Yes	

<b>MILESTONE</b>	<b>PROJECT DIRECTOR MATTER</b>	<b>PROJECT BOARD MATTER</b>	<b>MATTER RESERVED TO AUTHORITIES</b>
38. Decision to close Competitive Dialogue Procedure and CFT			Yes
39. Drafting letter and CFT	Yes		
40. Reviewing letter and CFT		Yes	
41. Issuing letter for CFT	Yes		
42. Evaluation of final tenders and recommendation of Preferred Bidder (by applying the award criteria and identifying the Most Economically Advantageous Tender)	Yes		
43. Agreement of Preferred Bidder		Yes	
44. Selection of Preferred Bidder			Yes
45. Drafting Preferred Bidder letter	Yes		
46. Reviewing Preferred Bidder letter		Yes	
47. Issuing Preferred Bidder letter	Yes		
48. Financial Close			Yes
49. Dispatch of Alcatel Letters	Yes		
50. Agreement and execution of Project Agreement and Second Joint Working Agreement			Yes
51. Collation of information and provision of information in respect of Project Agreement award procedures required under the Public Contracts Regulations (SI 2006/5)	Yes		
52. Approval of additional expenditure for the Project in excess of 5% of the approved annual budget of the Lead Authority held on behalf of the Councils			Yes
53. Approval of changes/additions to the Procurement Milestones	Yes		
54. Entry into the lease by Coventry Council for the purposes of Clause 4.2 of this Agreement.			Yes
55. Entry into the Second Joint Working Agreement for the purposes of Clause 13.2 of this Agreement			Yes

## PROJECT BOARD TERMS OF REFERENCE

### Project Board Terms of Reference

#### Aims/Purpose

1. To oversee the progress and implementation of the Project and to give the Project strategic direction.
2. The Board will be the key body to oversee the Project and to represent the interests of the Councils and its stakeholders. The Project Board will also be responsible for monitoring project progress and managing the political dimensions of the Project.
3. It is recommended that the Project Board will carry out the following functions:
  - Act as a representative for each of the Corporate Management Teams of the Councils to ensure consistency with individual objectives and visions
  - Monitor Project performance, management and working arrangements
  - Ensure that sufficient resources are committed to the Project
  - Arbitrate on any conflicts within the programme or negotiate a solution to any problems between the programme and external bodies
  - Communicate and provide progress on strategic issues within the Project
  - Agree final version of PQQ, OJEU, ISOS, ISDS and ISRS
  - Agree Evaluation Criteria for all stages of the Procurement Milestones
  - Recommend the selection of the long list, short-list of ISOS, ISDS and ISRS Bidders and selection of Bidders to go through to the Final Stage to Cabinet/ Elected Mayor
  - Recommend the ISOS, ISDS and ISRS (including all contractual documentation) to Cabinet/ Elected Mayor
  - Select and recommend the Preferred Bidder and Final Business Case to Cabinet/Elected Mayor.

#### Terms

4. At the start of the Project, to agree:
  - The project plan
  - Decision-making process prior to making recommendations to Cabinet/Elected Mayor
5. During the planning and development stages, to:
  - Review Project status against the project plan
  - Monitor the management of project budget, risks and quality
  - Promote and support the project among relevant stakeholders and where appropriate obtain their consent.
  - Seek to resolve disputes where these cannot be resolved satisfactorily through other means
  - Ensure that the proposals are affordable and deliver maximum value for money for the public sector.
6. At the start of the procurement, to agree:
  - Measures against which the benefits realisation should be measured
  - Arrangements for quality assurance and risk management
  - Arrangements for communications
  - Arrangements for procurement launch
7. As the procurement progresses, to:
  - Review the Project status against the project plan
  - Monitor the management of procurement budget, risks and quality

- Agree progression through key stages (eg OJEU, PQQ shortlist, ISOS, ISDS, ISRS, preferred bidder) and obtain all associated 'sign-offs'.
- Agree draft procurement documents (output specification, project agreement)
- Agree the process for evaluating bids and the detailed evaluation criteria and scoring
- Report to the Cabinet/Elected Mayor on the progress of the procurement
- Act as the ambassadors for the procurement and the project it facilitates

8. At the end of the procurement, to:

- Ensure that the expected products have been delivered satisfactorily
- Ensure that the pre contract risk review is completed
- Agree the FBC and recommend it to Cabinet/Elected Mayor
- Recommend award of contract to Cabinet/ Elected Mayor and obtain all final 'sign-offs'.

**NOT USED**

**ADDRESSES OF THE COUNCILS**

<b>RECIPIENT'S NAME</b>	<b>ADDRESS</b>	<b>FAX NO.</b>	<b>EMAIL</b>
Coventry Council: Chris West (Finance & Legal Services Director)	1ST Floor, Christchurch House, Greyfriars Lane, Coventry, CV1 2QL	024 76 83 3770	Chris.west@c oventry.gov.uk
Solihull Council: Jim Harte	Council House, PO Box 18, Solihull, B19 9QT		jharte@solihul l.gov.uk
Warwickshire Council: [•]	[•]	[•]	[•]





**STEERING GROUP**

## Steering Group Terms of Reference

### Steering Group Terms of Reference

#### Aims/Purpose

1. To oversee detailed work and implementation of the Project and ensuring that the strategic direction set by the Project Board is followed.
2. The Steering group will be the central operational group for the Project bringing together the Officers responsible for the Project and the strategic leads for the Project.
3. The Steering Group will require reports from the Councils and ensure that there is a coherent strategic overview of the progress that assists the Project Director in reviewing the project plan.
4. The Steering Group will make decisions on the following functions, recommending the decision to the Project Board:
  - the Outline Business Cases;
  - the selection of the short-list of Bidders;
  - the ISOS, ISDS and ISRS (including all contractual documentation);
  - the selection of the Preferred Bidder following the Call for Final Tenders;
  - the Final Business Case;

#### Terms

5. At the start of the Project, to develop:
  - The project plan
  - Decision-making process for the Project prior to making recommendations to Cabinet for each Council
6. During the planning and development stages, to:
  - Meet at least monthly to monitor work of the Project Board
  - Receive reports from all project teams
  - Set direction to the Lead Authority and the Council ensuring clear outcomes are specified with specific timescales
  - Monitor the project budget, risks and quality
  - Institute and ensure working with other partners both in and outside the Council to ensure delivery of the Project
  - Ensure effective communication with all stakeholders.
  - Produce proposals that are affordable and deliver maximum value for money for the public sector
  - Develop the Outline Business Case (OBC) and recommend it to Cabinet for each Council
7. At the start of the procurement, to develop:
  - Objectives and scope of the procurement strategy
  - The Procurement Plan
  - The Procurement strategy
  - The Contract strategy
  - Measures against which the benefits realisation should be measured
  - Arrangements for quality assurance and risk management
  - Arrangements for procurement launch
8. As the procurement progresses, to:
  - Adapt, review and evaluate the project plan as procurement progresses.
  - Monitor the management of procurement budget, risks and quality

- Develop a clear progression through key stages (e.g. OJEU, shortlist, ISOS, ISDS, ISRS, CFT, preferred bidder) and obtain all associated 'sign-offs'.
- Develop draft procurement documents (output specification, project agreement)
- Develop the process for evaluating bids and the detailed evaluation criteria and scoring
- Report to the Project Board on the progress of the procurement

9. At the end of the procurement, to:

- Ensure expected products have been delivered satisfactorily
- Review the pre contract risk
- Develop the FBC and recommend it to the Project Board
- Select final contractor and recommend award of contract to Project Board and obtain all final 'sign-offs'.

## SCHEDULE 1

### HEADS OF EXPENDITURE

The following is a non-exhaustive list of the heads of expenditure that may be expected to be incurred by the Councils in the procurement phase of the Project:-

#### Internal expenditure (staff costs and associated overheads)

Project management / technical & admin support  
Financial advisors  
Legal advisors  
Other professional services (including asset management, architects, QS, surveyors, procurement, and planning)  
Communications

#### External expenditure (staff costs and associated overheads)

Project management / technical & admin support  
Financial advisors  
Technical advisors  
Insurance advisors  
Legal advisors  
Other professional services (including asset management, architects, QS, surveyors, procurement, site investigation, remediation and planning)  
Waste analysis  
ICT  
Communications

Associated overheads may include such expenses as travel expenses, room hire, printing, accommodation, and ICT costs.

Agreement to the incurring of costs and the appropriateness of sharing such costs between the Councils will be in accordance with clause 9 of this Agreement.

**SCHEDULE 2**  
**ACCOUNTING PERIODS**

<b>Start of Accounting Period</b>	<b>End of Accounting Period</b>
1 April	30 June
1 July	30 September
1 October	31 December
1 January	31 March

### SCHEDULE 3

#### BREAK POINT REPORT

The Break Point Report shall include (but shall not be limited to) irrecoverable expenditure incurred and committed, resulting from the withdrawal of one or more Councils, in relation to the following:

	<b><u>Amount</u> (all figures in round pounds)</b>
Procurement Costs	
Costs associated with from delays and having to revisit procurement such as :-  Landfill cost  LATS fines	
PFI Credits – costs incurred if PFI credits are reduced disproportionately to capital expenditure	
Diseconomies of scale - any disproportionate costs incurred as a result of facilities being downsized to accommodate lower tonnage throughput	
Land costs – costs associated with identifying and procuring land	
Staff costs (and associated overheads) in progressing the scheme:-  a) Consultancy / Advisors fees  b) Internal Project Management and monitoring  c) Internal Professional advice	
Other costs such as those outlined at Schedule 7 (Heads of Expenditure)	

Certified Correct \_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Date)

**APPENDIX A**  
**MEMORANDUM OF UNDERSTANDING**



**APPENDIX B**

**SITE PLAN**

The Common Seal of **THE COUNCIL OF** )  
**THE CITY OF COVENTRY** was )  
hereunto affixed in the presence of:- )

The Common Seal of **THE METROPOLITAN** )  
**BOROUGH OF SOLIHULL** was )  
hereunto affixed in the presence of:- )

The Common Seal of **WARWICKSHIRE** )  
**COUNTY COUNCIL** was )  
hereunto affixed in the presence of:- )

## Appendix D

### Finance & Affordability PFI / Residual Project

#### Results of the Affordability Analysis

<b>£ millions</b>	<b>Total Nominal Costs</b>	<b>NPV as at April 2008</b>
<b>Coventry City Council</b>		
Residual Project	391	120
"Do Minimum"	758	206
Budgets	239	74
<b>Solihull Metropolitan Borough Council</b>		
Residual Project	210	64
"Do Minimum"	251	70
Budgets	102	32
<b>Warwickshire County Council</b>		
Residual Project	455	142
"Do Minimum"	590	185
Budgets	376	117
<b>Total</b>		
<b>Residual Project</b>	<b>1,055</b>	<b>326</b>
<b>"Do Minimum"</b>	<b>1,599</b>	<b>461</b>
<b>Budgets</b>	<b>718</b>	<b>224</b>

**Results of Affordability Analysis - Variance against budgets**

<b>£ millions Surplus / (Deficit)</b>	<b>Total Nominal</b>	
	<b>Residual Project</b>	<b>Do Minimum</b>
<b>Coventry City Council</b>	(152)	(519)
<b>Solihull District Council</b>	(108)	(149)
<b>Warwickshire County Council</b>	(78)	(213)
<b>Total</b>	<b>(338)</b>	<b>(881)</b>