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defra

Department for Environment
Food and Rural Affairs

Mike Jackson (Project SRO)
Norfolk County Council
County Hall
Martineau Lane
Norwich NR1 2SG

Your ref:

Our ref:

Date: 7th February 2012

Dear Mike,

Norfolk County Council: Waste Infrastructure Credit Letter¹

1. I am writing in response to your letter of confirming that on 7th February 2012 your Authority entered into the Contract with Willows Power and Recycling Limited in relation to your Waste Infrastructure Project in respect of which the Secretary of State for Environment, Food and Rural Affairs (Defra) issued your Authority with a Promissory Note for Waste Infrastructure Credits on 18th January 2012.
2. Defra, by this Waste Infrastructure Credit Letter, now confirms the allocation of Waste Infrastructure Credits for this Waste Infrastructure Project to your Authority for an amount of £91million. This Waste Infrastructure Credit letter is subject to:
 - i. any project specific conditions as appropriate,
 - ii. your Authority having complied with and continuing to comply with the terms of your Promissory Note,
 - iii. your Authority's agreement to and compliance with the terms and conditions set out in the Annex to this Waste Infrastructure Credit Letter, and
 - iv. your Authority having signed the Post Close Memorandum of Understanding (MoU) in respect of Transactor Support.
3. Your Authority is required to send a copy of the signed Contract in electronic form to: OperationalTaskforce@hmtreasury.gsi.gov.uk. This will be used for compliance monitoring purposes. You are also required to provide an electronic copy of all project documentation (including financing) directly to the WIDP team in Defra. Please send this on CD (or any other appropriate medium) marked for the attention of The Scrutiny Team, to the address above. **If you have not already done so, you should also publish your FBC on your website within one month of close of contract, although you may remove any information which falls within the commercial information exceptions to the Environmental Information Regulations 2004 or the Freedom of Information Act 2000.**
4. Your project will become eligible for grant payments when the Authority starts to pay the Commissioning Payment² to the Contractor in accordance with the terms of the Contract

¹ The former PFI credits are now referred to as Waste Infrastructure Credits. Likewise the former PFI Grant is now referred to as Waste Infrastructure Grant.

² Under Schedule 1 of the Contract, the Commissioning Payment means the amount calculated in accordance with paragraph 13 of Schedule 4 (Payment Mechanism). Under clause 45 of the Contract, the Commissioning Payment will be paid to the Contractor during the period between the Readiness Date (being the date the date on which the Readiness Test Certificate is issued in respect of the Facility or, in the event of referral for determination under the Dispute Resolution Procedure, the date upon which it is determined that the Facility passed the Readiness Tests) to the Services Commencement Date.

contained in the approved Final Business Case (including any amendments subsequently approved by Defra). The Waste Infrastructure Grant will be paid once a valid claim form has been received, as set out in the relevant grant determination³ for the financial year in which Waste Infrastructure Grant is first eligible to be paid. It is the Authority's responsibility to ensure that it has funds available to cover that part of the payments to the Contractor which will not be met by central Government. The interest rate which will be applied in calculating Waste Infrastructure Grant for your Authority's Project will be 5.5%. The Waste Infrastructure Grant is not intended to match or correlate directly to the payments that arise under the Contract between your Authority and its Contractor and will not therefore be affected should the costs of the project increase.

5. Defra intends to issue updated guidance on the administrative arrangements for Waste Infrastructure grants in due course. Existing or future central government guidance (including the CLG Local Government PFI project support Guide (or as it may be amended) is guidance only and may be updated from time to time. Your Authority and Defra is bound by the terms of its Promissory Note and this Waste Infrastructure Credit letter. In the case of any discrepancy or overlap between the terms of this Waste Infrastructure Credit Letter, your Authority's Promissory Note and any central government Guidance, they shall have priority in the order in which they appear in this sentence. For further information on Waste Infrastructure grants including grant claim forms, please contact the WIDP at Defra at: WIDP.ProgrammeOffice@defra.gsi.gov.uk
6. **A failure to comply with the terms and conditions of this Waste Infrastructure Credit Letter or the Promissory Note, or a termination of the Contract, will release Defra from its obligations under this Waste Infrastructure Credit Letter.** In those circumstances, Defra reserves the right to review Waste Infrastructure Credits in accordance with the terms and conditions annexed to this letter.

Yours sincerely

John Burns
Programme Director
WIDP

Contact Details
REDACTED

Cc: Joel Hull – Project Director Residual Waste Services
Alan Sadler – WIDP Project Transactor
Official names – Head of WIDP Commercial Team and Contracts
– Programme Manager and Head of WIDP Scrutiny Team
REDACTED – WIDP Programme Coordinator

Annex
Waste Infrastructure Credit Letter Terms and Conditions

³ Grant Determinations are issued under s.31 of the Local Government Act 2003

Annex

Waste Infrastructure Credit¹ Letter Terms and Conditions



Defra's Waste Infrastructure Credit Letter is subject to the following general conditions and any non-compliance by the Authority with these conditions shall release Defra from its obligations under that Letter:

1. the Authority's Contractor continues to have a contractual obligation to the Authority to use the project facilities to divert biodegradable municipal waste from landfill;
2. the Authority has signed the Contract between the Authority and their Contractor ("the Contract") in compliance with the terms of the Promissory Note received from Defra
3. the Authority must not, without Defra's prior written approval, agree to or make any material changes to the terms of the Contract or any other changes which represent a departure from the approved Final Business Case. Any plans for any such changes must be reported to Defra and approved by Defra before the changes are agreed with the Contractor or implemented. The Authority must, if so required by Defra, submit a Variation Business Case to Defra and must not proceed with such changes until Defra's approval to those changes has been given. Approval to such changes would be given by way of a further Waste Infrastructure Credit Letter.
4. the Authority must notify Defra of any material delay which may be caused to the project, whether such delay is a consequence of issues of planning permission, procurement or any other issue within or without the Authority's control, including Authority or Contractor Default under the Contract. In cases of material delay, the Authority must, if so required by Defra, submit a Variation Business Case to Defra.
5. the Authority must not exercise any option relating to the reversion of the facility without Defra's prior written approval;
6. the Authority must provide to Defra all information that Defra requests in relation to the project and, furthermore, must act proactively and in good faith in providing Defra with information relevant to Defra's involvement with the project and the Authority;
7. Satisfactory Planning Consent must be obtained for the project before the Planning Permission Longstop Date in the Contract;
8. Where the Authority starts to pay the Commissioning Payment it must, if so required by Defra, submit a Variation Business Case to Defra if:
 - it continues to pay the Commissioning Payment after the Acceptance Longstop Date, or
 - it starts to pay the Unitary Charge before both Readiness Test Certificate, and the Acceptance Test Certificate have been issued.

Defra has a right to review progress of the project at 3 yearly intervals (commencing at the date of issue of this Waste Infrastructure Credit Letter) to ensure that the project remains in line with the approved Final Business Case and the Waste Infrastructure Credit Letter and may, as a result of that review, demand a Further Business Case to support continued entitlement to Waste Infrastructure credits.

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If (i) any of these conditions is breached, (ii) the Contract is terminated, or (iii) following consideration of a Variation or Further Business Case, Defra considers it appropriate; Defra is released from its obligations under this Waste Infrastructure Credit Letter but may, at its own discretion, reconsider the allocation of Waste Infrastructure Credits to the project. Such reconsideration will be based on the Defra Criteria against which the provisional allocation of Credits was made and any other circumstances existing at the time of the reconsideration. Defra may, as a result of that reconsideration, take any of the following actions:

- where appropriate, withdraw the Waste Infrastructure Credit Letter;
- reassess the level of grant based on the extent to which the anticipated capital investment is delivered;
- permanently cease paying the grant;
- suspend grant payments until the issue is rectified;
- impose additional conditions on the payment of the grant;
- seek repayment of grant already paid;
- confirm the level of credits with no alterations.

Document Ends