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

Your ref:

Our ref:

Date: 18 January 2012

Dear Mike,

Norfolk County Council Waste Infrastructure Project: Evaluation of Final Business Case (FBC) and Promissory Note

1. Thank you for the final version of the Final Business Case for this project, which was received by Defra (the Secretary of State for Environment, Food and Rural Affairs) on 5th July together with a number of supporting documents and subsequent correspondence. The Final Business Case was approved by Defra on **18 January 2012**.
2. If the transaction is entered into on the terms set out below Defra will, subject to the provisions of this Promissory Note, issue your Authority with a Waste Infrastructure Credit¹ Letter for an amount of **£91m**. The Waste Infrastructure Credit Letter will be subject to the Terms and Conditions referred to at paragraph 7 iv).
3. This Promissory Note is subject to the following conditions:
 - i) your Authority must not exercise any option relating to the reversion of the facility without Defra's prior written approval;
 - ii) your Authority must enter into the Contract in line with the approved Final Business case, unless changes are made in accordance with paragraph 3iii) below;
 - iii) without Defra's written approval, your Authority may not, between Final Business Case approval and contract signature, agree to or make:
 - a. any change to:

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.



- i. any term of the Draft Contract, which changes the information provided in the Final Business Case, or
 - ii. the nature of the scheme as set out in the approved Final Business Case; or
 - b. any other departure from the approved Final Business Case
4. Defra reserves the right to review any changes and, as a result of that review, to withdraw, or not to issue (as appropriate), the Waste Infrastructure Credit Letter, or to reassess the level of Waste Infrastructure Credits for the project. Approval to the changes would be given by way of a further Promissory Note or a further Waste Infrastructure Credit Letter, if such a letter has already been issued.
5. **A failure to gain Defra's prior approval to any changes as are described above will release Defra from its obligations under this Promissory Note.**
6. A Waste Infrastructure Credit letter will, in any event, not be issued until receipt from your Authority of a letter confirming the date the Contract was signed, together with an updated Project Data Template (Appendix B of the Final Business Case Template).
7. The Waste Infrastructure Credit Letter will include:
- i. confirmation of the allocation of Waste Infrastructure Credits to your project;
 - ii. details of how and when the Waste Infrastructure grant can be claimed (as set out in the relevant Local Government Grant Determination for the financial year in which grant is first claimed);
 - iii. details of how the Waste Infrastructure grant will be calculated on the basis of the approved level of Waste Infrastructure credits (including the interest rate and scaling factor); and
 - iv. the terms and conditions of the Waste Infrastructure grant to which that Waste Infrastructure Credit Letter will be subject.
8. Template Terms and Conditions for the Waste Infrastructure Credit Letter are attached in the Annex to this Promissory Note. **Defra reserves the right to update or amend these conditions at any time prior to issue of the Waste Infrastructure Credit Letter.**
9. In addition to the terms above, the Authority will be required to sign a revised "Post Close" Memorandum of Understanding (MoU) with Defra before the Waste Infrastructure Credit Letter is issued. This MoU explains the Transactor support that will be available to your project. Your Project Transactor can provide further details.

Yours sincerely

Neil Thornton
Director Climate, Waste and Atmosphere
Department for Environment, Food and Rural Affairs

REDACTED CONTACT DETAILS

Cc: John Burns – Programme Director
Joel Hull – Project Director
Alan Sadler – WIDP Project Transactor
REDACTED - Head of WIDP Commercial Team and Contracts
REDACTED – Programme Manager and Head of WIDP Project Scrutiny
REDACTED – WIDP Programme Coordinator

Annex

Template Waste Infrastructure Credit Letter Terms and Conditions

Separately attached.

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