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Mike Jackson
Director of Environment, Transport and Development
Norfolk County Council
County Hall
Martineau Lane
Norwich NR1 2SG

Your ref:
Our ref:
Date: 20 May 2013

Dear Mr Jackson,

Norfolk County Council: Residual Waste Treatment Contract (the "Contract")

I am writing further to your letter to Willows Power and Recycling Limited dated 31 January 2013 in respect of the Revised Project Plan (the "RPP Letter"), a copy of which was received by Defra by email on 1 February 2013.

In an earlier email from Joel Hull dated 28 January 2013, we were asked to provide any observations on the draft RPP letter, for instance with regard to any of your Authority's obligations to Defra under the terms of the Waste Infrastructure Credit Award letter to your Authority dated 7 February 2012 (the "WI Credit Letter").

This letter responds to that email.

As you are aware, the WI Credit Letter is subject to the terms and conditions which are set out in its Annex. Specifically, a failure to comply with these terms and conditions will release Defra from its obligations under the WI Credit Letter, and allows Defra to review the WI Credits in accordance with these terms and conditions.

1. Condition 4 - Material Delay to the Project

You will be aware that Condition 4 of the WI Credit Letter provides as follows:-

"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".

In the light of the RPP letter (which by reference to discussions under paragraph 3.2.1 of Schedule 26 (Planning) of the Contract, suggests that your Authority and its Contractor have now agreed that it will not be possible to obtain a Satisfactory Planning Permission by the Planning Permission Longstop Date), Defra considers that the circumstances envisaged in Condition 4 have arisen; specifically, that a material delay may be caused to your Authority's project as a result of issues concerning planning permission.

As you will be aware, where this is the case, Defra may request a Variation Business Case from your Authority.

I would be grateful therefore if you could confirm whether you consider that your Authority's project may be subject to material delay as a result of issues of planning permission.

2. Condition 7 – Satisfactory Planning Consent

I also wish to draw your attention to Condition 7 of the WI Credit Letter, which provides "*Satisfactory Planning Consent must be obtained for the project before the Planning Permission Longstop Date in the Contract*".

As noted above, the RPP Letter followed discussions with your Authority's Contractor pursuant to paragraph 3.2.1 of Schedule 26 (Planning). This would suggest that your Authority accepts it will not be able to comply with Condition 7. However, I would be grateful if you could confirm this to be the case.

Defra will take your reply to this letter into account when considering the range of possible actions available to it.

If, as we anticipate, your response confirms the matters outlined above in terms of (1) material delay to the project and (2) non-compliance with Condition 7, please can you let me have your Authority's views on the points detailed in the Annex to this letter? This should include an update on the progress your Authority has made to date in agreeing a Revised Project Plan.

We require your written response by Wednesday 5 June. We will carefully consider its contents as part of Defra's decision making processes.

Yours sincerely



Nigel Atkinson
WIDP Programme Director
Defra

CONTACT DETAILS
REDACTED

Cc: Joel Hull – Project Director Residual Waste Services
– WIDP Project Transactor
NAHS – Head of WIDP Commercial Team and Contracts
REDACTED. Programme Manager and Head of WIDP Scrutiny Team

Annex

1. What progress has your Authority made to date to agree a Revised Project Plan with its Contractor?
2. What steps has your Authority taken to mitigate the planning risks?
3. If the Project does miss the Planning Permission Longstop Date:-
 - would that necessitate a contract variation and if so, in what respect?
 - what impact would there be on meeting the other Key Dates in the Contract and the timetable for the Project as a whole?
4. What impact would a decision by Defra under the terms of the WI Credit Letter (other than one which makes no change to the level of grant) have on the Project, for example in terms of:-
 - continuation of the Project
 - termination risk
 - financial cost
 - project finance

In responding to this point 4, please have regard to the final paragraph of the Annex to the WI Credit Letter.

5. Please outline the impact of the 2013 Norfolk County Council elections on the Project, providing in particular your assessment of the possible implications for your Authority's future support of the Project in the light of the motion that was passed in Full Council on Monday 13 May.
6. Please provide an analysis of the alternative courses of action available to your Authority from a residual waste management perspective if it were to resolve to terminate the Project.
7. Are there any other matters that you would like Defra to take into account when considering the range of possible actions available to it under the WI Credit Letter?