

Date: 27th July 2022

# **INTER-AUTHORITY AGREEMENT**

BETWEEN

**STRATFORD-ON-AVON DISTRICT COUNCIL**

AND

**WARWICK DISTRICT COUNCIL**

RELATING TO

THE MANAGEMENT AND ADMINISTRATION OF  
THE JOINT WASTE COLLECTION CONTRACT

Legal Services

Stratford-on-Avon District Council

Ref No: 021368

**This Agreement** is made on 27<sup>th</sup> July 2022

Between

- 1 Stratford-on-Avon District Council of Elizabeth House, Church Street, Stratford-upon-Avon CV37 6HX (Stratford); and
- 2 Warwick District Council of Riverside House, Milverton Hill, Leamington Spa CV32 5HZ (Warwick)

Together “the Councils”.

## **Background**

- A On 1<sup>st</sup> February 2022, the Councils entered into a joint contract with Biffa Waste Services Ltd for the collection of waste (“the Contract”).
- B Responsibility for the management and administration of the Contract is to be shared between the Councils in the manner set out in this agreement.
- C The Councils now enter into this agreement with the intention that it be legally binding, subject to the understanding that the obligations and duties set out are part of a collaborative and mutually beneficial relationship where formal action in the event of a dispute should be a last resort.

## **1 Definitions and interpretation**

1.1 In this agreement, the following definitions shall apply:

<b>Term</b>	<b>Meaning</b>
Commencement Date	The date appearing at the beginning of this agreement or 1 August 2022, whichever first occurs
Confidential Information	All confidential information (however recorded or preserved) disclosed by a Council in connection with this agreement, including but not limited to: <ol style="list-style-type: none"><li>a. any information that would be regarded as confidential or commercially sensitive;</li><li>b. any information developed by the Councils in the course of carrying out this agreement; or</li><li>c. personal data within the meaning of the Data Protection Legislation</li></ol>
Data Protection Legislation	All applicable data protection and privacy legislation in force from time to time in the UK including (subject to all UK legislation following its exit from the European Union) the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended
Month (and Monthly)	A calendar month
Quarter (and Quarterly)	The periods in any Year of – Q1 April – June Q2 July – September Q3 October – December Q4 January – March

	and “Quarterly” shall be construed accordingly
Week (and Weekly)	A consecutive period of seven days from Monday to Sunday
Year	1 April to 31 March

1.2 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.3 References to clauses and schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.6 Any obligation on a Council not to do something includes an obligation not to allow that thing to be done.

1.7 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2 Commencement and Duration**

2.1 This agreement begins on the Commencement Date and will continue until terminated in accordance with clause 11.

## **3 Aims and objectives**

3.1 The Councils recognise the importance of good contract management and the necessity to work together in delivering the best value outcomes from the Contract. This agreement forms the basis of how the Councils will work together to secure those outcomes for the mutual benefit of both.

## **4 Discharge of functions, authority and relationship**

4.1 Each Council is authorised to arrange and discharge the activities duly assigned to them in this agreement, but neither Council delegates decision-making to the other beyond that which is reasonably necessary for the purpose of those activities.

4.2 Each Council will ensure that appropriate and timely decisions are taken where necessary to authorise decisions taken (or to be taken) to give effect to and manage the Contract.

4.3 The Councils acknowledge that this collaborative yet binding agreement is not entered into on a commercial basis with a view to profit and agree to work together in good faith, mutual trust and cooperation.

## **5 Finance**

5.1 Schedule 1 sets out in more detail the financial arrangements between the Councils, including invoices, recharges, asset ownership, income and expenditure.

## **6 Contract management and administration activities**

- 6.1 Schedule 2 sets out responsibilities for the management and administrative activities under the Contract.
- 6.2 On the understanding that there is to be a review in late 2022 or early 2023, Stratford's management responsibilities set out in Schedule 2 will continue until 31<sup>st</sup> March 2023, unless subsequently extended by agreement.

## **7 Governance, monitoring and reporting**

- 7.1 The Contract already provides for a "Contract Partnership Board" to meet Quarterly with Biffa. Additionally, the Councils will also meet as a joint internal waste board at least Quarterly as a forum to monitor and review the operation of the Contract and this agreement, unless and until both Councils agree that the forum is no longer required.
- 7.2 The Councils will cooperate in the preparation and submission of monitoring reports and briefings (where required) to their respective elected members and, where invited to do so on reasonable notice, send a representative to meetings held by either Council.

## **8 Insurance, liability and indemnity**

- 8.1 Each Council will ensure that adequate insurance cover is maintained in respect of their respective liabilities under the Contract and this agreement, including where necessary professional indemnity insurance.
- 8.2 Each Council shall indemnify the other:
  - 8.2.1 against injury and death to any persons or for loss or damage to property which may arise out of default or negligence of their respective employees, agents or contractors; and
  - 8.2.2 against all claims, demands, proceedings, damages, direct costs, charges and expenses whatsoever arising out of such default or negligence.

## **9 Conflicts and disputes**

- 9.1 Where a conflict of interest arises in the management of the Contract, if this cannot be resolved by the Authorised Officer (Stratford's Head of Environmental and Operational Services) this will be resolved by the Deputy Chief Executives of the Councils in the first instance and then by their respective Chief Executives.
- 9.2 The Councils agree that an escalation of the dispute should be a last resort. In the absence of agreement between the Chief Executives within 28 days, a dispute between the Councils may be referred to the most suitable form of alternative dispute resolution (ADR) depending on the substance of the dispute. This may be:
  - 9.2.1 Mediation – general disputes and commercial matters suitable for a negotiated outcome with the assistance of a qualified mediator;

- 9.2.2 Expert determination – technical issues requiring the input of a technical expert; or
  - 9.2.3 Another form of ADR the Councils agree is suitable for resolving the dispute.
- 9.3 The Councils will settle the basis and process for the instruction for ADR between them, but the presumptions are:
- 9.3.1 Mediator or expert to be agreed between the Councils;
  - 9.3.2 Costs to be shared equally; and
  - 9.3.3 Joint instruction wherever possible.

## **10 Information and data**

- 10.1 Each Council will provide to the other such information within its control which is reasonably necessary for the other Council to understand and perform its obligations under the Contract or this agreement and report to elected members, but subject to compliance with the provisions of this clause 10.

### Confidential Information

- 10.2 Save as permitted by clause 10.3 and for the duration of this agreement and for a period of six Years after termination, neither Council will disclose to any person any Confidential Information it holds about the other Council or a third party without that Council or party's consent in writing.
- 10.3 Each Council may disclose the other Council's Confidential Information:
- 10.3.1 to its employees, officers, elected members, representatives or advisers who need to know such information for the purposes of exercising rights or performing obligations under this agreement; and
  - 10.3.2 as may be required by law, a court or tribunal of competent jurisdiction or by a regulatory body.

### Data Protection and Freedom of Information

- 10.4 Each Council will comply with the Data Protection Legislation and indemnify the other Council against all liabilities arising from the loss, destruction or processing of personal data.
- 10.5 Each Council will provide such assistance and information reasonably required by the other Council in processing and replying to requests for disclosure of information under the Data Protection Legislation, the Freedom of Information Act 2000 (FOI) or the Environmental Information Regulations 2004 (EIR). Each Council will be responsible for responding to its own FOI and EIR requests.

## **11 Termination and Exit**

- 11.1 The Contract has been let as a joint contract to be managed in accordance with arrangements agreed between the Councils. This agreement is an essential part of those arrangements and it is not envisaged that either Council should terminate this agreement unilaterally on notice or otherwise and accordingly no such right is given. However, the Councils may between them agree alternative arrangements and this may lead to the termination by mutual agreement on a date determined between them.
- 11.2 This agreement will terminate automatically on the occurrence of the following events:
- 11.2.1 the Contract ending, whether by termination under clause 11.1 or expiry of term; or
  - 11.2.2 either Council ceasing to exist because of statutory re-organisation.
- 11.3 Both Councils shall cooperate to minimise any costs or losses arising from the termination of this agreement pursuant to this clause 11.
- 11.4 The termination of this agreement will not affect or prejudice the rights and remedies of either Council arising under this agreement or otherwise and each Council will perform all outstanding liabilities notwithstanding that the other Council may have exercised one or more of the rights or remedies against it.
- 11.5 Stratford will issue a final invoice to Warwick for all outstanding costs and charges no later than six months following termination, unless the Councils agree otherwise and provided that nothing in this clause 11.5 shall prohibit Stratford from issuing further invoices for costs and charges incurred prior to termination but yet to be invoiced, tendered or disclosed to Stratford within that six-month period.

## **12 Variation**

- 12.1 The terms of this agreement may only be varied by written agreement of the Councils.

## **13 General**

- 13.1 Neither Council will be liable to the other for delay or failure to perform of an obligation under this agreement, where such delay or failure arises from a cause or event outside its control which was not reasonably foreseeable. The Councils will work together in good faith to resolve and/or mitigate the consequences of the delay or failure in a timely manner.
- 13.2 Any notices given under this agreement must be in writing and delivered sent by first class post to the receiving Council at the addresses appearing above.
- 13.3 Neither Council will assign or sub-contract its rights or obligations under this agreement without the consent of the other.

- 13.4 A person who is not a Council to this agreement shall not be entitled to enforce it or any part of it under the Contracts (Rights of Third Parties) Act 1999.
- 13.5 This agreement shall be governed by the law of England.

AS WITNESSED by the following duly authorised signatories on the date first above written

Signed on behalf of **Stratford-on-Avon District Council**:

DocuSigned by:  
*David Buckland*  
D8FE3FD5AEFD43D.....

David Buckland, Chief Executive, Stratford-on-Avon District Council

Signed on behalf of **Warwick District Council**

DocuSigned by:  
*Chris Elliott*  
2CD776B972914B4.....

Chris Elliott, Chief Executive, Warwick District Council

## **Schedule 1**

### **Financial Arrangements**

#### **1 Vehicles**

- 1.1 Warwick will finance the purchase of frontline vehicles from Biffa and invoice 50% of that cost (capital and interest) to Stratford on a Quarterly basis.
- 1.2 Notwithstanding paragraph 1.1 and the accounting/asset records of Warwick, Stratford will be the beneficial owner of 50% of the frontline vehicles financed by Warwick at a value calculated having applied the capital principal sums repaid.
- 1.3 At the end of the Contract or where, for whatever reason, Warwick and Stratford cease to operate, Warwick agree that Stratford will be entitled to its 50% share of the frontline vehicles then in use and operational, subject to Stratford paying Warwick the balance of any sums remaining due pursuant to paragraphs 1.1 and 1.2.

#### **2 Waste collection – core services**

- 2.1 Stratford will be responsible for receiving and paying invoices from Biffa in respect of the core waste collection services set out in the Contract (Core Services) on behalf of both Councils.
- 2.2 Subject to paragraph 2.3, Stratford will recharge Warwick 50% of the Monthly invoice for the Core Services and Warwick will pay the sum due prior to Stratford's payment to Biffa.
- 2.3 The Councils agree that the percentage share in paragraph 2.1 will be reviewed at least annually.
- 2.4 The cost of change arising from the non-core work will not form part of the 50% share of either Council and will instead be charged as a separate item according to the origin of the change and/or the Council receiving the benefit of it. For example, this will include:
  - (a) Variable work including supplementary deeds and exceeding of Contract thresholds, notices of change, variation orders, waste collections for events and changes to collection frequencies or in respect of communal properties that have occurred since the original signing of the Contract and that is specific to a single Council.
  - (b) New properties to be recharged accordingly per district;
  - (c) Bin delivery and additional bin maintenance where they exceed the quantities allowed for within the Contract. These will be recharged to the Council which requires such additional deliveries and maintenance.

#### **3 Waste collection – non-core services**

- 3.1 For bulky waste collections, the recharge by Stratford to Warwick will be based on the number of collections multiplied by the unit rate set out in the Contract.
- 3.2 The Contract has an annual base quantity of 4,106 collections of bulky waste: if that base quantity is not reached, Biffa is entitled to a payment for the shortfall, which will be split in accordance with the percentage share set out in paragraph 2.2. Should the

annual base quantity be exceeded, the charges will apply in accordance with paragraph 2.4 above i.e. to the relevant Council.

- 3.3 The liability for the gate fees at the Materials Recycling Facility (MRF) will be determined by the number of vehicle deliveries to the MRF, load tonnage, contamination and their district origin. Where the routes of the vehicles cross boundaries between Stratford and Warwick, the Councils will agree an apportionment according to the geography of the round and the number of households visited. It is anticipated that Sherbourne Recycling Limited will send a single invoice to Stratford. Warwick will then be invoiced according to the percentage of actual tonnage of recycling per district.
- 3.4 Waste collections for events will be paid for by Stratford and then charged at cost to the Council in whose district the event takes place.

#### **4 Bins, containers and caddies**

- 4.1 All bins, containers and caddies required for the commencement of the Contract will be purchased by Warwick.
- 4.2 Warwick will invoice Stratford for the bins, containers and caddies required for Stratford properties for the commencement of the Contract according to the numbers used in each district.
- 4.3 Stratford will process all orders for replacement, additional and new bins and take payment for them. Stratford will account to Warwick Quarterly for the income received for those ordered by Warwick properties and repay this to Warwick Quarterly. Stratford will purchase all bins required for this process and charge Warwick for the equivalent number of bins purchased for Warwick use.

#### **5 Miscellaneous income and expenditure**

- 5.1 Stratford will be responsible for collecting all other miscellaneous income, including additional bin capacity permits and bulky waste collections and then accounting to Warwick for the income received from or in respect of Warwick properties. For the avoidance of doubt, the income received by Stratford will be recharged at the same amount to Warwick. This section sets out some of those income streams and where other income streams come on board during the Contract, the Councils will agree between them how they are to be administered.
- 5.2 Recycling credits will be allocated to each Council according to household location, with calculation for cross boundary rounds based on calculated methodology and for contamination based on actual weighbridge tonnage.
- 5.3 Garden waste income is currently distributed to Warwick on a Fortnightly basis. This enables reconciliation to establish any concerns or issues. However, it is envisaged that this distribution will move to a Monthly cycle in the third or fourth quarter of the Year 2022-23.
- 5.4 Bulky Waste income from collections carried out in Warwick will be distributed to Warwick Monthly.
- 5.5 Each Council will order their own permit stationary direct from PermiServ and pay their respective invoices accordingly.

- 5.6 Marketing, communications, printing and design – the cost will be split 50:50 between the Councils unless it is specific to a single Council.

## **6 Contract administration**

- 6.1 The following costs will be incurred by Stratford prior to the commencement of the Contract and will be shared by Warwick on a 50:50 split, subject to Stratford providing Warwick with such information as it reasonably requires prior to payment:

- (a) costs arising from enabling payments to be processed at Stratford;
- (b) costs arising from staffing the required contact centre to answer calls and take payments;
- (c) costs associated with enabling communication systems between Stratford and Biffa;
- (d) the development of ICT processes to support the Contract; and
- (e) costs arising from staff time mobilising the Contract,

save for those costs incurred solely to meet the needs or requirements of Warwick in order to mobilise the Contract which will be recharged fully to Warwick.

- 6.2 Where Warwick considers that it should be reimbursed for certain costs it has incurred prior to the commencement of the Contract, it shall identify those costs to Stratford and the Councils will agree whether the apportionment in paragraph 6.1 should similarly apply. However, and for the avoidance of doubt, each Council will bear the procurement and legal costs incurred prior to commencement of the Contract.

- 6.3 The costs arising from the daily monitoring and management of the Contract after the commencement of the Contract on 1 August 2022 will be shared by Warwick on a 50:50 split, subject to Stratford providing Warwick with such information as it reasonably requires prior to payment.

- 6.4 The costs identified in paragraphs 6.1, 6.2 and 6.3 above and all such or similar future costs will be charged on a cost recovery basis only and may include ICT and staff time in the administration and management of the Contract. The cost recovery of staff costs will include basic pay, national insurance, pension contributions and an element for overheads.

- 6.5 The costs will be subject to annual indexation in accordance with the Consumer Price Index (CPI) and will take into account the additional properties occupied in each district above the Contract thresholds.

## **7 Records and reconciliation**

- 7.1 Stratford will maintain complete records of all financial transactions and make these available to Warwick for inspection on request.

- 7.2 Warwick will reconcile financial matters on at least a Quarterly basis and report any concerns or issues within one month of that reconciliation.

- 7.3 Within one month of the end of each Year of the Contract, Stratford will carry out a financial reconciliation exercise and report the findings promptly to Warwick. The Councils will endeavour to agree the findings within one month of the report and complete the reconciliation, including any payments due from one to the other, within

a further one month. All financial reconciliations will therefore be completed each Year by no later than 30<sup>th</sup> June.

## Schedule 2

### Contract Management Responsibilities

- 1 In this Schedule, “SDC” means Stratford and “WDC” means Warwick.
- 2 The following table shows the allocation of responsibilities between the two Councils. Where there is any perceived conflict between this Schedule 2 and the finance provisions of Schedule 1, Schedule 1 will prevail.

SDC Responsibilities	WDC Responsibilities
<b><i>Contract Management</i></b>	
Acting as ‘Authorised Officer’ as defined in the Contract	Access to Biffa’s Whitespace system on a ‘read-only’ basis
All management/governance of the Contract	No direct liaison/communication with Biffa
All liaison/communication with Biffa	Attendance by the nominated WDC officer(s) at: <ul style="list-style-type: none"> <li>• Monthly or weekly meetings with SDC Environmental and Operational Services Manager</li> <li>• Monthly Contract Operations meetings</li> <li>• Quarterly Contract Partnership Board meetings</li> <li>• SDC/WDC joint waste board</li> </ul>
Administration of all meetings	<ul style="list-style-type: none"> <li>• Support/provision of information as required</li> <li>• Management of Jett and container orders and deliveries</li> <li>• Delivery of all new containers for WDC communal properties prior to 1<sup>st</sup> August 2022</li> <li>• Provision of accurate information relating to communal properties, sack collection properties, those requiring more frequent collections, assisted collections and additional bin capacity requirements</li> <li>• Engagement with students and landlords/managing agents</li> </ul>
Project management of the mobilisation of the Contract	Liaising with WDC Portfolio Holders, WDC Chief Executive, WDC Members and MPs with constituencies in the WDC area
All performance monitoring (with the exception of WDC policy complaints)	Monitoring health and safety issues in the WDC area as agreed with the Authorised Officer
Authorisation of all Variation Orders and Notices of Change	Responding to day-to-day queries from SDC in a timely manner
Liaising with SDC Portfolio Holders, SDC Chief Executive, SDC Members and MPs with constituencies in the SDC area	Investigation of specific issues relating to WDC service requests, including site visits, and report back to the Authorised officer in a timely manner
	Monitoring of WDC properties by Public Realm Officers

<b>Garden Waste</b>	
Administration of all matters relating to WDC garden waste subscriptions	Dealing with all policy complaints in relation to WDC garden waste charges
Dealing with all quarantined properties in the PermiServ portal	Provision of information needed to deal with all quarantined properties in the PermiServ portal, where applicable, at the request of SDC
Payment to PermiServ for SDC garden waste permits	Payment to PermiServ for WDC garden waste permits
Provision of temporary members of staff to deal with WDC garden waste administration and all 123+ queries at cost	Payment for staff employed by SDC and ICT associated costs accordingly
<b>Containers</b>	
Purchasing of all bins post 1 <sup>st</sup> August 2022 and recharging Warwick accordingly at cost	Payment for all bins distributed in Warwick
Distribution of replacement/additional/new bins via Biffa	Providing SDC with a weekly upload of any new builds/additional properties
	Providing SDC with all appropriate address data to deal with bin collections
<b>Customers</b>	
Dealing with first stage 123+ telephone calls and email queries	Dealing with escalated 123+ email queries
All administration relating to the garden waste service (as above)	Responding to all policy enquiries and complaints, including WDC Portfolio Holders, WDC Chief Executive, WDC Members and MPs with constituencies in the WDC area
All administration and payments relating to all operational (but not policy) service requests, including but not limited to: <ul style="list-style-type: none"> <li>• missed bins;</li> <li>• assisted collections;</li> <li>• additional bin capacity;</li> <li>• replacement/additional/new bins; and</li> <li>• bulky waste collections</li> </ul>	
<b>Communications</b>	
Leading the joint communications group established by SDC	Assisting with marketing and PR via joint communications group
Reviewing and updating the 123+ content for the SDC and WDC Cloud9 mobile apps, including 'push' notifications	Reviewing and updating the local information content for the WDC Cloud9 mobile app
<b>Performance</b>	
Completing statutory WasteDataFlow returns on behalf of SDC and the provision of relevant tonnage data to WDC for their WasteDataFlow returns	Completing statutory WasteDataFlow returns on behalf of WDC
Maintaining and updating list of additional bin capacity requirements, issue permits and payment of the SDC PermiServ invoice	Provision of list of additional bin capacity requirements (prior to 1 <sup>st</sup> August 2022) and payment of the WDC PermiServ invoice
Responding to all SDC planning related enquiries in relation to bin storage	Responding to all WDC planning related enquiries in relation to bin storage
Responding to all FOI and EIR requests on behalf of SDC	Responding to all FOI and EIR requests on behalf of WDC

<b>Finance</b>	
Annual reconciliation of all expenditure and income from 1 <sup>st</sup> August 2022	Raising of all purchase orders and the payment of invoices in relation to the purchase of frontline vehicles only
Raising of all purchase orders and the payment of invoices (with the exception of those relating to the purchase of frontline vehicles)	Reconciliation of all expenditure prior to 1 <sup>st</sup> August 2022
Maintaining and updating a register of all expenditure and income	Dealing with all matters relating to WDC recycling credits
Reconciliation of all expenditure prior to 1 <sup>st</sup> August 2022	Reconciliation of all WDC garden waste income
Taking of: <ul style="list-style-type: none"> <li>• Bulky waste income</li> <li>• Replacement/additional/new bin income</li> <li>• Any other miscellaneous income</li> </ul>	
Dealing with all matters relating to SDC recycling credits	
Allocation of all garden waste income to the relevant Council (not part of any income split)	