

**Contract A**

**Schedule 32A (Mansfield and Ashfield Protocol)**

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### **1. GENERAL**

1.1 The following definitions shall in addition to the definitions in Schedule 1 (Definitions) be used for the interpretation of this Schedule 32A (Mansfield and Ashfield Protocol).

1.1.1 Exclusivity Trigger Date means the date upon which the Authority provides written notice as referred to in paragraphs 5.2.1 (Authority Options) and 6.1 (Removal of Exclusivity) of this Schedule 32A (Mansfield and Ashfield Protocol).

1.1.2 Existing Mansfield and Ashfield Residual Waste Solution means the continuation of the provisions of the Contract in respect of the Services for Handling the Mansfield and Ashfield Residual Waste (including applying the relief and/or compensation granted under Clause 104 (Relief Events) and/or Clause 105 (Change in Law) in respect of the relevant Ferrybridge Relief Event or Ferrybridge Change in Law)).

1.1.3 Overall Price means the comparative net present values of the prices of each of the Existing Mansfield and Ashfield Residual Waste Solution and the selected Mansfield and Ashfield Tender over the period from the proposed Mansfield and Ashfield Removal Date until the Expiry Date and in each case assuming tonnages of Residual Waste based on the Mansfield and Ashfield Residual Waste in the 12 month period prior to the Market Test Trigger Event and each discounted at the same discount rate which will be set at a level to be agreed between the Parties acting reasonably.

1.1.4 Mansfield and Ashfield Administrative Area means the administrative areas of Mansfield District Council and Ashfield District Council.

1.1.5 Mansfield and Ashfield Longstop Date means the date which is 18 Months after the Market Test Trigger Date or such later date as the Authority's Representative and Contractor's Representative (acting reasonably) shall agree.

1.1.6 Mansfield and Ashfield Market Testing means the market testing process in respect of the Mansfield and Ashfield Residual Waste Market Tested Services referred to in paragraph 4 (Mansfield and Ashfield Market Testing).

1.1.7 Mansfield and Ashfield Residual Waste Market Tested Services means the treatment and/or disposal of Mansfield and Ashfield Residual Waste which has been Handled at the Welshcroft Close Transfer Station for the period from the Mansfield and Ashfield Removal Date until the Expiry Date as such services are specified in the Mansfield and Ashfield Residual Waste Offtake Contract PROVIDED THAT and for the avoidance of doubt:

(a) the Mansfield and Ashfield Residual Waste Market Tested Services shall not include the Handling of Waste at the Welshcroft Close Transfer Station which shall remain within the scope of the Contract but shall include haulage costs from the Welshcroft Close Transfer Station;

(b) for the purposes of this definition only, Handling or Handled at Welshcroft Close Transfer Station means the provision of those Services at Welshcroft Close Transfer Station as required immediately before the Market Test Trigger Date;

(c) if the Authority in connection with exercising its right under paragraph 5.2.1 below to accept a Mansfield and Ashfield Tender acting reasonably wishes to vary the Services to be provided at Welshcroft Close Transfer Station from the Mansfield and Ashfield Removal Date then it may do so by means of an Authority Change to which the provisions of Clause 107 (Authority and Contractor Changes) shall apply.

- 1.1.8 Mansfield and Ashfield Residual Waste means (subject to the proviso to this paragraph 1.1.8) Residual Waste otherwise be Handled under the Mansfield and Ashfield Residual Waste Offtake Contract. Provided that in the event that the Ferrybridge Relief Event giving rise to the Market Test Trigger is the Ferrybridge Relief Event described in limb (a) of that definition, the Mansfield and Ashfield Waste for the purposes of this Schedule 32A (Mansfield and Ashfield Protocol) shall be the equal to the tonnage of Mansfield and Ashfield Residual Waste by which the Annual Tonnage is reduced pursuant to Clause 25.6.2 of the Mansfield and Ashfield Residual Waste Contract.
- 1.1.9 Mansfield and Ashfield Removal Date means date upon which the Mansfield and Ashfield Residual Waste Market Tested Services are removed from the Contract pursuant to paragraph 6.1 (Removal of Exclusivity) which shall be a date not less than 3 months following the Exclusivity Trigger Date.
- 1.1.10 Mansfield and Ashfield Tender(s) means any compliant tender(s) received in the responses to the Mansfield and Ashfield Market Testing.
- 1.1.11 Market Test Trigger Event means either: (a) written notice given by the Contractor to the Authority under Clause 105.1 (Change in Law) on the basis that a Ferrybridge Change in Law has occurred which notification identifies any increased Estimated Change in Costs arising from the Ferrybridge Change in Law; or (b) written notice given by the Contractor to the Authority under Clause 104.2 (Relief Events) on the basis that a Ferrybridge Relief Event has occurred.

## **2. PURPOSE AND INTENTION**

- 2.1 The Parties have agreed that following a Market Test Trigger Event the Authority may at its own cost and risk conduct a Mansfield and Ashfield Market Testing and the process and outcomes of that market testing shall (unless otherwise agreed pursuant to paragraph 5 (Authority Options)) be outside the scope of this Contract.

## **3. NOT USED**

## **4. MANSFIELD AND ASHFIELD MARKET TESTING**

- 4.1 Upon the occurrence of a Market Test Trigger Event the Authority may at its own risk and cost but is not obliged to conduct a Mansfield and Ashfield Market Testing in such form as it shall determine:
- (a) provided that the Authority shall notify the Contractor in writing of its decision whether to conduct a Mansfield and Ashfield Market Testing within 60 days of the occurrence of the Market Test Triggers Event; and
- (b) the Mansfield and Ashfield Market Testing shall be completed as soon as reasonably practicable after that date and in any event before the Mansfield and Ashfield Longstop Date.
- 4.2 For the avoidance of doubt, save as provided in paragraph 5 (Authority Options) below, the process and outcomes of the Mansfield and Ashfield Market Testing shall not have any effect on the provisions of this Contract and in particular the fact that a Mansfield and Ashfield Market Testing has been opted for and is taking place shall not

in any way limit the obligations of the Contractor, the remedies available to the Authority (if any) under the Contract and/or entitlement of the Contractor (if any) to claim relief and/or any additional costs or loss of revenue pursuant to the terms of Clause 104 (Relief Event) and a Clause 105 (Change in Law) (in respect of the events giving rise to the Market Test Trigger Date).

4.3 The Contractor shall not be obliged to submit a Mansfield and Ashfield Tender but if it does so it takes part in the Mansfield and Ashfield Market Testing subject to its terms and at its own cost and risk.

4.4 The Authority shall not be obliged to accept the lowest or any tender received through the Mansfield and Ashfield Market Testing and shall have the right to abandon the Mansfield and Ashfield Market Testing.

## **5. AUTHORITY OPTIONS**

5.1 The Parties intend for the operation of this Schedule 32A to provide for the Authority a number of options in respect of the Mansfield and Ashfield Residual Waste Market Tested Services which may be exercised as provided for in this paragraph 5 (Authority Options) and paragraph 6 (Removal of Exclusivity).

5.2 Subject and without prejudice to the Authority's rights at paragraph 6.1:

5.2.1 Provided that the Authority has not previously made an election under either paragraph 5.2.2 below the Authority may at any time up to the Mansfield and Ashfield Longstop Date serve notice that it intends to exercise a right to accept a Mansfield and Ashfield Tender and to remove the Mansfield and Ashfield Residual Waste Market Tested Services from this Contract on the Mansfield and Ashfield Removal Date in accordance with the provisions of paragraph 6.1 (Removal of Exclusivity) provided that the Authority may only accept a Mansfield and Ashfield Tender and serve an Exclusivity Trigger Notice where the relevant Mansfield and Ashfield Tender has a lower Overall Price than the Existing Mansfield and Ashfield Residual Waste Solution.

5.2.2 Provided that the Exclusivity Trigger Date has not previously occurred, the Authority shall be entitled at any time up to the Mansfield and Ashfield Longstop Date, to notify the Contractor that it wishes to continue with the Existing Mansfield and Ashfield Residual Waste Solution.

5.3 In the event that the Authority shall not have exercised its option under either paragraphs 5.2.1 to 5.2.2 inclusive on or before the Mansfield and Ashfield Longstop Date then the provisions of 5.2.2 shall be deemed to apply.

## **6. REMOVAL OF EXCLUSIVITY**

6.1 The Authority's right to elect to remove the Mansfield and Ashfield Residual Waste Market Tested Services from this Contract shall apply in the circumstances set out in paragraph 5.2.1 above and such removal shall take place no later than the Mansfield and Ashfield Removal Date.

6.2 Without prejudice to any liabilities accrued in respect of the period up to the Mansfield and Ashfield Removal Date, neither Party shall have any liability to the other as a result of the removal of the Mansfield and Ashfield Residual Waste from the Contract in accordance with the terms of this paragraph 6 of this Schedule 32A.

6.3 The Parties acknowledge that the provisions of the Welshcroft Collateral Agreement shall apply in accordance with the terms thereof if the Authority makes an election pursuant to paragraph 6.1 above.

- 6.4 For the avoidance of doubt the exercise by the Authority of its right to serve notice under this paragraph 6 (Removal of Exclusivity) of this Schedule 32A (Mansfield and Ashfield Protocol) and to remove the Mansfield and Ashfield Residual Waste Market Tested Services shall not prejudice the continuity of the provisions of this Contract save as provided in this paragraph 6 (Removal of Exclusivity).