

Report to:	The Cabinet		
Date of meeting:	4 th November 2019		
Report of:	Director of Corporate Resources	Report number:	CEX124
Contact officer:	Laura Swann – Acting Head of Service	Telephone number	337909
Not confidential			
This report does not contain information which warrants its consideration in the absence of the press or members of the public.			
Title:	Revised Levy Allocation Methodology Agreement for Waste Disposal.		
Purpose:	To seek approval on the new Levy Allocation Methodology Agreement.		
Recommendations:	<p>The Cabinet recommends to the Council to:</p> <p>i) approve the waste Levy Allocation Methodology Agreement (LAMA), as the new agreement between the Greater Manchester Combined Authority and district members, and,</p> <p>ii) authorise the Borough Solicitor to complete the necessary legal formalities.</p>		
Decision:			
Background documents:	Report to the Cabinet dated the 6 th November 2017 and entitled Waste Inter Authority Agreement .		
Signed:			
	Leader/Executive Cabinet Member	Monitoring Officer	
Date:			

Consultation with other officers		
Finance	Yes	Sue Johnson
Legal	Yes	Michelle Harris
HR	No	N/A
Equality Impact Assessment required?	No	Tammy Tatman
(a) Pre-consultation reports Is there a need to consult on the proposals?		No
(b) Post consultation reports Please confirm that the consultation response has been taken into consideration in making the recommendations.		NA
		1. Start Well

Vision outcomes Please identify the appropriate Vision outcome(s) that this report relates or contributes to by putting a cross in the relevant box.	2.Live Well	
	3.Age Well	
	4.Prosporous	
	5. Clean and Green	X
	6.Strong and Distinctive	

1.0 INTRODUCTION & BACKGROUND

- 1.1 The Greater Manchester Combined Authority (GMCA) is a Waste Disposal Authority ("WDA") and has a statutory duty to dispose of waste.
- 1.2 The district authorities within Greater Manchester are Waste Collection Authorities ("WCA") and have a statutory duty to collect waste and deliver it to the WDA.
- 1.3 The Joint Waste Disposal Authorities (Levies) (England) Regulations 2006 established a WDA power to issue levies on WCAs to meet all liabilities falling to be discharged by the WDAs.
- 1.4 The Greater Manchester WCAs agreed to support the GMCA as WDA in the discharge of its liabilities and on the 6th February 2017, the WCAs and WDA entered in to a Levy Allocation Management Agreement ("LAMA").
- 1.5 In June 2019 the GMCA entered into new operating contracts with SUEZ for the disposal of residual waste and the treatment of recyclates. There is a requirement to update the LAMA to take in to account the new operating contracts and this report seeks authority for those amendments.
- 1.6 The LAMA which appears at Appendix A, sets out the unanimously agreed method for allocating the waste and recycling budget between the constituent districts.

2.0 METHODOLOGY

- 2.1 The LAMA allocates the fixed and variable costs of waste processing and disposal by waste stream, based on the tonnages each authority delivers. Costs of operating the Household Waste Recycling Centres are split based on 50% Council Tax base and 50% Car ownership.
- 2.2 Following the award of the new contracts to Suez, the LAMA needs to be revised to reflect the new payment mechanism arrangements.
- 2.3 The key changes and reasoning are listed in the Table 1 below:

Table 1

Change	Reason
Introduction of new waste stream for street sweepings	The costs for this can be separately identified within the payment mechanism.
Allocation of costs on the basis of an Apportionment Model which comprises: Fixed element (related to costs which do not vary). These will be allocated to Districts based on adjusted 2017/18 actual tonnages (as before) and will be reviewed and reset for 2022/23 or other	The allocation of costs split between fixed and variable costs is the same as the original LAMA. However, under the new contracts the actual total variable costs are much lower. The proposal for residual waste is to adopt a 'last in, first out' principle whereby the variable cost is broadly equated not to the average cost of residual processing but to

Change	Reason
<p>such year as unanimously agreed between the parties.</p> <p>Variable costs – which reflects marginal processing cost (except for residual waste)</p>	<p>the cost of the processing that would be used last. This is going to be the same as the price for Trade Waste.</p> <p>This price is felt to support the overriding savings and environmental aspirations of the GMCA and Districts.</p> <p>This may expose the GMCA to the risk of paying a levy adjustment to Districts for reduced tonnages that will not be matched by reduced costs. If such a risk materialises then future changes to the LAMA may be needed.</p> <p>The LAMA Variable Cost may include sums for recovery of any shortfall between levied variable costs and actual variable cost for the prior year.</p> <p>The reset year allows for any changes to deliveries of waste from 2017/18 to be allocated and allowing a different year gives flexibility for any implications from the Defra Waste Strategy.</p>
<p>Split variable rate for paper/card and commingled</p>	<p>The new contracts identify the variable cost of these waste streams separately.</p>
<p>Levy Adjustment:</p> <p>Fix the rate for variations in tonnages at the start of the year and not amend the variable rate to actual cost at the end of the year.</p>	<p>This will allow Districts to monitor their budgets effectively and give greater certainty to cost.</p> <p>GMCA should be able to better manage the risk of changes to costs, e.g. from recycle income, at a central level.</p> <p>As above, this may expose the GMCA to the risk of reimbursing a District for reduced tonnages that will not be matched by reduced costs.</p>
<p>Household Waste Recycling Centres:</p>	<p>A survey of users was conducted as part of the Waste Composition Analysis but was not considered to be any more</p>

Change	Reason
Maintain at 50% Council Tax Base and 50% Car Ownership (2011 National Statistics census)	representative than the current methodology.
Council Tax Base Use the prior year CTB	Only small sum allocated by CTB. 50% of HWRC costs = c.£15m This will enable the Waste levy to be set before end of January and stop last minute minor changes.
Non-Key Services	This element will be removed as there is no specific charge within the current payment mechanisms.

3.0 **PROPOSALS**

- 3.1 For the revised LAMA to be adopted it is necessary for agreement to be reached with each District of the revised LAMA by the 31 December 2019. This will allow the 2020/21 levy to be set using the new LAMA basis. Details of the consultation process with districts and the approval process for Bolton are shown in Table 2 below:

Table 2

September/October 2019	District Waste Chief Officers/Treasurer Consultation
November/December 2019	Cabinet – 4 November 2019 Full Council – 27 November 2019
January 2020	GMCA agree revised LAMA
February 2020	GMCA approve budget and levy for 2020/21 and Medium Term Financial Plan to 2023/24.

- 3.2 Failure to agree a local replacement for allocation of the levy to Districts will result in the original LAMA mechanism being applied.

4.0 **IMPACTS AND IMPLICATIONS**

Financial

- 4.1 Adopting the new LAMA will have a very small impact on the waste disposal costs for Bolton Council. In 2020/21 it will reduce the cost for Bolton by 0.1%. The Director of Corporate Resources has no concerns about the revised methodology having a negative impact on Bolton Council.

Legal

- 4.2 There are no further legal issues for consideration.

HR

- 4.3 NONE

Other

- 4.4 NONE

5.0 EQUALITY IMPACT ASSESSMENT (EIA)

- 5.1 Under the Equality Act 2010, the Council must have due regard to:

- Eliminating unlawful discrimination, harassment and victimisation and any other conduct prohibited by the Act;
- Advancing equality of opportunity between people who share a protected characteristic and people who do not share it;
- Fostering good relations between people who share a protected characteristic and people who do not share it.

- 5.2. It is important to consider how the proposals contained within this report may positively or negatively affect this work. After initial equality screening, it has been determined that the services outlined in this report related to on-going operational practices, due to a change in the waste disposal agreement at a Greater Manchester level. It is not anticipated therefore, that the proposals within this report will have a differential impact on any of Bolton's diversity groups, including staff. A full EIA screening form is therefore not required.

6.0 CONSULTATION

- 6.1 The GMCA has consulted on the revised LAMA with Senior Officers in Bolton's Waste Services and the Director of Corporate Resources.
- 6.2 Agreement has been reached that this is the best way forward and has no negative impact on Bolton Council.

7.0 VISION 2030

- 7.1 As part of the Vision 2030 Strategy, the Council and its partners have pledged to create a cleaner & greener Bolton, thus striving to protect and improve our environment for generations to come, so that more people enjoy it, value it and care for it. This report

details the new Greater Manchester levy regarding waste disposal, which will enable Bolton to further reduce adverse impacts on the environment through reducing, reusing and recycling waste, resulting in improved air and water quality. Improved waste management will also help in the reduction of greenhouse gas emissions.

8.0 RECOMMENDATIONS

8.1 The Cabinet recommends to the Council to:

- i) approve the waste Levy Allocation Methodology Agreement (LAMA), as the new agreement between the Greater Manchester Combined Authority and district members, and,
- ii) authorise the Borough Solicitor to complete the necessary legal formalities.

Appendix A – The Proposed Waste Levy Allocation Management Agreement (“LAMA”)

DATED

2019

- (1) Greater Manchester Combined Authority
- (2) Bolton Borough Council
- (3) Bury Metropolitan Borough Council
- (4) The Council of the City of Manchester
- (5) Oldham Metropolitan Borough Council
- (6) Rochdale Metropolitan Borough Council
- (7) Salford City Council
- (8) Stockport Metropolitan Borough Council
- (9) Tameside Metropolitan Borough Council
- (10) Trafford Borough Council

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Schedules

1.	Levy Allocation to WCA Mechanism	Error! Bookmark not defined.
2.	Change Control Procedures	Error! Bookmark not defined.

THIS LEVY ALLOCATION METHODOLOGY AGREEMENT (LAMA) is made on the

2019

BETWEEN

- (1) Greater Manchester Combined Authority of 1st Floor, Churchgate House, 56 Oxford Street, Manchester, M1 6EU ("the GMCA");
- (2) Bolton Borough Council of Town Hall, Victoria Square, Bolton, BL1 1RU;
- (3) Bury Metropolitan Borough Council of Town Hall, Knowsley Street, Bury, BL9 0SW;
- (4) The Council of the City of Manchester, PO Box 532, of Town Hall, Albert Square, Manchester, M60 2LA;
- (5) Oldham Borough Council of Civic Centre, West Street, Oldham, OL1 1UG;
- (6) Rochdale Metropolitan Borough Council of Rochdale OL16 1LQ Number One Riverside, Smith Street, Rochdale, OL16 1XU
- (7) Salford City Council of Civic Centre, Chorley Road, Swinton, Salford, M27 5DA;
- (8) Stockport Metropolitan Borough Council of Town Hall, Edward Street, Stockport, SK1 3XE
- (9) Tameside Metropolitan Borough Council of Tameside One, PO Box 317, Ashton-under-Lyne, OL6 0GS
- (10) Trafford Borough Council of Trafford Town Hall, Talbot Road, Stretford, Manchester, M32 0TH;

EACH (other than the GMCA) being a Waste Collection Authority and which are (other than the GMCA) collectively referred to as "the WCAs".

RECITALS

- (A) The GMCA is a Waste Disposal Authority (WDA) and has a statutory duty to dispose of waste.
- (B) The WCAs have a statutory duty to collect waste and deliver it to the GMCA.
- (C) The LAMA is designed to support delivery of the GMCA's Waste Management Strategy, and to promote recycling and diversion from landfill in a way that maximises financial and environmental benefits. Policy on waste management is currently being reviewed at a national level, and as such whilst the LAMA is intended to reflect an expected increase in the levels of recycling performance and diversion from landfill that will be required, it will need to be reviewed over its term to ensure it reflects final policy decisions.
- (D) The Joint Waste Disposal Authorities (Levies) (England) Regulations 2006 established the GMCA's power to issue levies on its constituent councils (the WCAs) to meet all liabilities falling to be discharged by the GMCA.
- (E) The GMCA has entered into Operating Contracts for the disposal of residual waste and treatment of recyclates, pulpables and green waste (amongst other things). The WCAs have agreed, subject to the terms of this LAMA, to support the GMCA in fulfilling its responsibilities under these arrangements, which includes a commitment to deliver recyclable material to the Operating Contracts.
- (F) For the first 6 years of the LAMA the GMCA is managing contracts which cover: -
- Lot 1 – known as the “Waste and Resource Management Services” (WRMS).
 - Lot 2 – known as the “Household Waste Recycling Centre Management Services” (HWRCMS); and the
 - Residual Value Contract (RVC).

1. **DEFINITIONS**

- 1.1 In this Agreement, unless the context otherwise requires terms with an initial capital shall have the meanings set out below.

“Administrative Area”	The administrative area(s) of the Parties at the date of this Agreement
“Agreement”	This agreement and the Schedules hereto
“Best Value”	The obligation continuously to improve both the quality and cost of the collection of Residual Waste and Recycling pursuant to the provision of the Local Government Act 1999
“Best Value Duty”	The duty of continuous improvement in relation to, inter alia, the collection of Residual Waste and Recycling imposed on WCAs by Section 3 (1) of the Local Government Act 1999
“Bulky Waste”	WCA collected waste that by its nature will not fit in the usual residual waste receptacles (such as large items of furniture etc.), often referred to as Bulky Waste
“Change”	Any change agreed in accordance with clauses 6 (WCA Best Value) or 7 (Change) and Error! Reference source not found. Schedule 2 (Change Control Procedures)
“Change in Law”	<p>The coming into effect, after the date of this Agreement, of:-</p> <ul style="list-style-type: none">(a) Legislation, other than any Legislation which on the date of this Agreement has been published<ul style="list-style-type: none">(i) in a draft Bill as part of a Government Departmental Consultation Paper;(ii) in a Bill;(iii) in a draft statutory instrument;(iv) as a proposal in the official Journal of the European Union;(b) any Guidance; or(c) any applicable judgement of a relevant court of law which establishes or changes a binding precedent
“Commencement Date”	1 st April 2020
“Commingled Waste”	Dry recycling that is usually collected as mixed materials by WCAs; initially comprising cans, plastic bottles, and glass
“Delivery Points”	The delivery points for waste to be deposited by type to be agreed by the WCAs on an annual basis or such other delivery points as the Parties shall agree.

“Exceptional Circumstances”

A decision to be made by the GMCA Treasurer to exercise his/her discretion in circumstances that are outside the direct decision making control of the WCAs under which Recycling Minimum Performance Level is triggered.

The following issues are agreed as constituting the initial list of exceptional circumstances: -

1. Waste Reduction – If waste is taken out of the system, (for example pushed up the waste hierarchy and therefore doesn't need collecting), an adjustment in the calculation of what triggers the 1% will need to be made. In considering the actions that have led to the waste reduction, investment in waste reduction initiatives will be recognised as a mitigating factor.
2. Carve out for national changes e.g. UK Waste and Resources Strategy and any change impact for which a baseline recalculation for all is needed
3. The impact of unplanned disruption to service

In these Exceptional Circumstances the GMCA Treasurer, after full consultation with the Chair of the Waste Chief Officers Group (SOG), shall apply a tonnage adjustment rate that is at the LAM Variable costs, rather than also applying the fixed cost rate

“Expiry Date”

Subject to any earlier termination of this Agreement the expiry date shall be 31st March 2029, and “Expiry” shall be construed accordingly

“Facility”

Each and any facility for the reception of Waste from WCAs including the Delivery Points provided and/or operated or to be provided under the Operating Contracts with all supporting infrastructure and equipment

“GMCA”

Greater Manchester Combined Authority

“HWRC”

Household Waste Recycling Centre

“LAM fixed costs”

The LAM model costs which are not expected to vary by volumes of tonnages processed, and are by definition mostly fixed by their nature eg NNDR, pensions, lifecycle costs, RVC contract costs, fixed cost elements of the Operating Contracts.

“LAM variable costs”

The LAM model costs which are broadly expected to vary by volumes of tonnages processed.

“Legislation”

Any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of

	Section 2 of the European Communities Act 1972, in each case in the United Kingdom
“Levy”	The charge to the WCAs in accordance with Schedule 1
“Levy Allocation Model (LAM)”	A financial model that is used to allocate cost between fixed, variable and GMCA own costs as set out Schedule 1
“Levy Requirement”	The annual budget requirement, less any contributions for reserves, that the GMCA needs to raise from WCAs by the Levy to produce a balanced budget.
“Operating Contracts”	Two operating contracts let 1 st June 2019 comprising: - <ul style="list-style-type: none"> • Lot 1 – known as the “Waste and Resource Management Services” (WRMS). • Lot 2 – known as the “Household Waste Recycling Centre management services” (HWRCMS).
“Parties”	The GMCA and the WCAs, and “Party” shall mean any of them
“Partnering Ethos”	The aspirational aims set out at clause 3.2
“Performance Deductions”	As defined in the Operating Contracts
“Performance Standards”	The criteria set out in the Operating Contracts as agreed or amended from time-to-time
“Planned Maintenance”	Planned maintenance by Operating Contractors at any of the Delivery Points
“Recyclable Materials”	Any materials collected separately or otherwise separated from Residual Waste for the purposes of Recycling (and including materials collected and delivered commingled), including the materials listed below: <ul style="list-style-type: none"> (a) paper and cardboard; (b) plastics; (c) ferrous and non-ferrous metals; (d) glass; (e) organic kitchen and garden waste; and (f) street sweepings (if delivered and treated separately) or such other materials as shall be agreed in writing between the Parties from time-to-time
“Recycle”	The delivery of Recyclable Materials for reprocessing (as evidenced by a defined audit trail) but excluding energy recovery or beneficial use for inclusion in a reprocessing process, and the terms “Recycling” and “Recycled” shall be interpreted accordingly
“Recyclate Performance Adjustment”	The adjustment that is carried out if performance falls below the Recyclate Minimum Performance level.

The adjustment applied is calculated as: -

- a) expected total Recycling tonnes arisings as per 2017/18 actuals (total Recycling (calculated as $dc+dp+dg+ds$) less 1%)

minus

- b) actual total Recycling tonnes arisings in year

equals

- c) additional tonnes of waste to be charged

Total extra charge (additional sum) to be calculated by:-

- i. additional tonnes of waste (from c. above),

multiplied by

- ii. LAMA Fixed Costs per tonne for Residual Waste

“Recyclate Base Performance level (RBP)”

This is the actual level of recycling achieved in 2017/18 at an individual WCA level expressed as a percentage of total waste arisings less trade waste, as set out in the formula below: -

$$\text{WCA RBP} = \frac{dg+dc+dp+ds}{dw-dt}$$

where;

dg = WCA food and garden waste tonnes

dc = WCA commingled recycling tonnes

dp = WCA pulpables tonnes

ds = WCA street sweepings tonnes (delivered and treated separately)

dw = WCA total waste arisings tonnes

dt = WCA trade waste

“Recyclate Minimum Performance level”

This is the level by which recycling levels can reduce, below which the Recyclate Performance Adjustment is applied.

It is expressed as shown in the formula below:

$$\text{RBP} - 1\%$$

“Residual Waste”	All Waste delivered to the GMCA that is not Recyclable Material, or Trade Waste
“RVC”	The Residual Value Contract entered into by the GMCA and Thermal Power Station (Runcorn) Limited (TPSCo) for the end disposal in a combined heat and power plant by thermal means of the refuse derived fuel produced from residual waste.
“Service Delivery Plans”	The plans in the Operating Contracts which set out how the Residual Waste and Recycling services and certain of the standards to which the services must be performed in respect of the relevant Facilities
SOG	Waste Chief Officers Group composed of GMCA Waste and Resources team officers and WCA Waste Chief Officers, chaired by a WCA representative.
“Trade Waste”	Waste of similar composition to Residual Waste which is collected from commercial and office premises for or by the WCAs and is treated in accordance with Schedule 1, para. 6
“Unavailable/Un-availability”	That a Delivery Point is for a period of time or permanently unavailable for the reception of Residual Waste and Recycling, as further defined in the Operating Contracts
“Waste”	The types of waste described in WCA Forecast to be delivered by the WCAs to the GMCA pursuant to this Agreement and other provisions relating thereto
“WCA Forecast”	<p>The forecast, made by each WCA, of all Waste arising, for a five year forward period that takes account of expected increase in housing and population. WCA Forecasts shall be updated annually as follows:</p> <ul style="list-style-type: none">• Each WCA will prepare at least two forecasts annually, which will be subject to scrutiny by the GMCA. Those forecasts will be required each year in: -• Mid-September – to complement the initial budget forecast and inform the initial allocation of levy at WCA level; and• Early November – which will be used as the basis of setting the annual Levy at a WCA level <p>The GMCA Treasurer and Executive Director, Waste & Resources will notify final dates in August each year, after consulting with the SOG.</p>
“WCA Operations”	The methods of operation from time-to-time of each WCA in collecting and delivering its Waste to Delivery Points

“WDA”

The Greater Manchester Combined Authority in its statutory capacity as a Waste Disposal Authority.

2. COMMENCEMENT AND DURATION

This Agreement will commence on the Commencement Date and continue in full force and effect until the earlier of:-

- 2.1 the Expiry Date; or
- 2.2 earlier if all of the WCAs and the GMCA agree to amend or terminate this Agreement.

3. PARTNERING ETHOS

3.1 The Parties will work in good faith and in accordance with the Partnering Ethos.

3.2 Partnering Ethos shall mean that each party shall:-

- 3.2.1 act reasonably and co-operatively with the other Parties;
- 3.2.2 provide information to each other which they consider (acting reasonably) to be relevant relating to waste collection and waste disposal;
- 3.2.3 use reasonable endeavours to mitigate any losses arising from a Party's failure under this Agreement and to reduce the detrimental impact on the other Parties (or the council tax payers of any one of them) of any failure to carry out its obligations under this Agreement;
- 3.2.4 use reasonable endeavours working together and in co-operation with the Operating Contractors, to minimise waste, to educate the public and the commercial sector about recycling schemes and why their participation in these schemes is crucial, and to ensure that as much Waste as possible is (in order of priority) reduced, re-used, recycled or recovered; and
- 3.2.5 without prejudice to the express rights, remedies and obligations of the WCAs under this Agreement and Legislation the WCAs shall (using reasonable endeavours) not knowingly do anything under their reasonable control which would put the GMCA in material breach of the Operating Contracts.

4. PRINCIPAL OBLIGATIONS OF THE GMCA

- 4.1 The GMCA will discharge its statutory duties and contractual obligations to the WCAs (to receive and dispose of Waste at the Delivery Points) through the Operating Contracts referred to in the Recitals.
- 4.2 The GMCA will apportion the costs incurred in relation to these obligations pursuant to Schedule 1 (Levy Allocation to WCAs Methodology).
- 4.3 Where an act or omission of the GMCA or any relevant Contractor of the GMCA, including a failure of the Operating Contractors to achieve any of the Performance Standards, causes any loss to one or more WCAs, the GMCA will use its best endeavours to pursue any appropriate remedies available to it including the recovery of Performance Deductions under the Operating Contracts referred to in the Recitals and pay such monies to the affected WCA. Where more than one WCA has suffered the same performance failure the payment of any compensation or the Performance Deduction shall be shared between the affected WCAs pro-rata based upon the amount of losses incurred by each WCA arising out of the performance failure. The payment shall be made to WCAs by the GMCA through the LAMA as part of the year end adjustment.
- 4.4 Any money compensation obtained or payable by the GMCA pursuant to clause 4.3 will be returned to the WCAs in appropriate proportions through the LAM.
- 4.5 Subject to clauses 4.7 the GMCA will use its reasonable endeavours to notify a WCA of any changes within the Operating Contracts set out in the Recitals which might be of relevance to it or affect its obligations flowing from that contract or this Agreement.
- 4.6 The GMCA shall use its reasonable endeavours to ensure that the Operating Contractors achieve the Performance Standards and shall ensure that each WCA is made aware of the Performance Standards and of the current Service Delivery Plans and, where relevant, is consulted about them.
- 4.7 The GMCA has agreed the basis for the contractual arrangements with the Operating Contractors and the WCAs and shall use its best endeavours to ensure that any material change to the Operating Contracts shall be agreed with the WCAs in advance and shall use its best endeavours to mitigate any impact on the WCAs.

5. PRINCIPAL OBLIGATIONS OF THE WCAs

- 5.1 Without prejudice to clauses 6 (WCA Best Value) and 7 (Change to the VC and the Replacement Operating Contracts), each WCA will deliver or cause to be delivered to the Delivery Points for that WCA all Waste as agreed in advance with GMCA.

- 5.2 If any act or omission of a WCA causes loss to the GMCA (including, without limitation, through entitling the Operating Contractors of the GMCA to increase its charges or seek any other remedy from the GMCA) or to any other WCA, then that WCA will bear the cost of the relevant losses, so that they do not fall equally, through the LAM, on those WCAs which were not at fault.
- 5.3 The WCAs will pay the GMCA for the waste disposal services it provides to the WCAs pursuant to the Levy Regulations as defined in Schedule 1 in accordance with the principles set out in Schedule 1 (Levy Allocation to WCAs Methodology).
- 5.4 Each WCA shall, in preparing the WCA Forecast for its Administrative Area, take account of the impact of population and housing growth on waste arisings and composition. The GMCA will act as a 'critical friend' to challenge the WCA Forecasts produced, and seek explanations that it deems appropriate. Comments by the GMCA will be given due consideration by the WCA and if no changes are proposed the WCA will be required to supply a written explanation of why changes have not been made to the WCA Forecast. The WCA Forecast shall be provided annually and will cover a 5-year rolling period, or other shorter period as the GMCA deems appropriate.
- 5.5 Nothing contained in this Agreement and no consent or approval given by any party to this Agreement shall prejudice, restrict, interfere with or otherwise affect, any of the statutory or other rights powers or obligations and duties for the time being vested in that party, or the performance by that party of any such obligations or duties, or the means by which that party shall, in its absolute discretion, exercise its respective rights or powers, or fulfil or discharge any such obligations or duties.

6. WCAs' BEST VALUE DUTY

- 6.1 The GMCA acknowledges that WCAs are subject to the Best Value Duty and it agrees to assist WCAs in discharging the Best Value Duty in relation to the continuous improvement in the delivery of their waste collection services.
- 6.2 The GMCA shall comply with requests for information, data or other assistance made by WCAs in pursuance of the Best Value Duty.

7. CHANGE TO THE OPERATING CONTRACTS

- 7.1 WCAs may request a change to the Operating Contracts in accordance with the provisions of Schedule 2 (Change Control Procedures).

8. EXIT AND ENTRY ARRANGEMENTS

8.1 Expiry and Termination

8.1.1 Not before 1st April 2025 the Parties shall meet to discuss and, all acting reasonably and in good faith, determine the arrangements for the disposal of waste after the expiry of the Replacement Operating Contracts.

8.2 New Entrant

8.2.1 If at any time during the term of this Agreement, any third party wishes to utilise any part of the Operating Contracts, the Parties will meet to discuss and, acting reasonably and in good faith, determine whether agreement should be given to that third party utilising the Operating Contracts and, if so, the terms of that agreement with the intention that the WCAs are in no worse position as a result of the third party's use, and that such third party is not put in any better position than the WCAs.

9. NO WORSE/NO BETTER

9.1 Any reference in clause 8 to leaving the WCAs in a "no worse position" shall be construed by reference to the WCAs:-

9.1.1 rights, duties and liabilities under or arising pursuant to performance of this Agreement; and

9.1.2 their ability to perform their obligations and exercise their rights under this Agreement, so as to ensure that:

9.1.3 each WCA is left in a position which is no worse in relation to its financial position under this Agreement and its operating methods for the collection and delivery of Waste had the third party not utilised the Operating Contracts; and

9.1.4 the ability of the WCAs to comply with this Agreement is not adversely affected as a consequence of that utilisation.

9.2 Any reference in clause 8 to putting the third party in "any better position than the WCAs" shall be construed by reference to the WCAs' rights and financial position under this Agreement.

10. FREEDOM OF INFORMATION

10.1 Each Party acknowledges that each of the other Parties is subject to the requirements of the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the General Data Protection Regulation Data Protection Act 2018 and shall assist and co-operate with the other Parties to comply with these information disclosure requirements.

11. PRIVITY

11.1 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

12. NO AGENCY

12.1 None of the parties shall hold itself out as being the servant or agent of any other Party, otherwise than in circumstances expressly permitted by this Agreement.

12.2 None of the parties shall hold itself out as being authorised to enter into any contract on behalf of any other Party or in any other way to bind any other Party to the performance, variation, release or discharge of any obligation.

12.3 No WCA shall in any circumstances hold itself out as having the power to make, vary, discharge or waive any bye-law or any regulation of any kind relating to the disposal of Waste.

13. NO PARTNERSHIP

13.1 Nothing in this Agreement is intended to, or shall operate to create, a partnership as defined by the Partnership Act 1890 or joint venture of any kind between the Parties or any of them, or to authorise any Party to act as agent for any other, and no Party shall have the GMCA to act in the name or on behalf of or otherwise to bind any other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

14. ENTIRE AGREEMENT

14.1 Except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

14.2 Each of the Parties acknowledges that:-

14.2.1 it does not enter into this Agreement on the basis of and does not rely, and has never relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made and agreed to by any person (whether a party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and

14.2.2 this clause 14 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement, which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

15. LAW OF THE CONTRACT AND JURISDICTION

15.1 This Agreement shall be governed by the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1
LEVY ALLOCATION METHODOLOGY

1. Payment by the WCAs to the GMCA for the waste disposal services received, and apportionment of the Levy under the Joint Waste Disposal Authorities (Levies) (England) Regulations 2006 (“the Levy Regulations”) will be established in accordance with the principles set out in this Schedule 1. Therefore, the levy allocation mechanism set out in this Schedule represents an agreed basis for apportioning the Levy under Regulation 4 (1) (a) of the Levy Regulations.
2. Under the Operating Contracts the GMCA waste costs comprise:
 - a) A Fixed Cost element;
 - b) A Variable Cost element. The variable element is directly linked to the expected tonnages processed via the Facilities, as set out in the WCA Forecast; and
 - c) The GMCA’s own direct costs.

Collectively these costs will be used to determine annual budget requirements, which after application of any reserves, generates a Levy Requirement.

3. The following table sets out the key design characteristics, and reasons for their inclusion used in apportioning the Levy.

	Key design characteristics	Reasons for their inclusion
	A. <u>WCA Collected Waste</u>	
	<ol style="list-style-type: none">1. Retain a waste stream approach, based upon:-<ol style="list-style-type: none">i. Commingledii. Pulpables;iii. Organics (Food and Garden);iv. Trade Waste:v. Residual Waste; andvi. Street Sweepings (if delivered and treated separately)	Reflects current WCA collection working practices and ensures costs/environmental benefits from improvements are retained.

<div>2. Allocate costs on the basis of a Levy Apportionment Model (LAM) which comprises:- i. LAM Fixed Costs element. These will be allocated to WCAs based on adjusted¹ 2017/18 actual tonnages, and will be reviewed and reset for the 2022/23 financial year or other such year as may be agreed unanimously between the parties. ii. LAM Variable Costs Allocated to WCAs based on forecast tonnages for the year 3. For WCAs whose recycling falls below the Recycling Minimum Performance Level (RBP -1%) they will be required to make an additional levy contribution calculated by: i. expected total Recycling tonnes arisings as per 2017/18 actuals (total Recycling calculated as dc+dp+dg+ds) ii. less 1% iii. minus actual total Recycling tonnes arisings in year iv. equals additional tonnes of waste to be charged v. cost allocation additional sum is additional tonnes of waste multiplied by LAM Fixed Costs per tonne for Residual Waste 4. Common assumptions to be used in tonnage estimates, as per schedule 1.</div>	<div>Ensures that one WCA can't adversely impact others by reducing its recycling performance. <</div>
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¹ An adjustment may be made to Salford City and Trafford Council figures (only) to reflect the part year impact of reduced waste capacity roll out and potential impact of charging for Garden Waste (respectively). The basis for the adjustments will be documented and shared with all WCAs and be used as a possible precedent for future changes (e.g. the adoption by another WCA of green waste charging)

	B. <u>Household Waste Recycling Centres</u>	
	<p>Cost allocation to be based upon:</p> <ul style="list-style-type: none"> i. 50% Council Tax Base (Band D equivalent) from prior year ii. 50% Car Ownership (2011 Office of National Statistics census) 	<p>Cost allocation factors to be reviewed and amended, as needed, for future years LAM.</p>
	C: <u>GMCA Own costs</u>– including direct costs (such as salaries/running costs and legacy financing costs)	
	<p>Equal share to each WCA</p>	<p>Costs don't vary much by activity, and are thus linked to an 11.1% each WCA allocation basis.</p>

4. As soon as practical after the year end an adjustment will be determined by the GMCA to vary WCA Levy allocations to reflect variations actual tonnages delivered (compared to WCA Forecasts).
5. As part of the annual budget and levy process the GMCA will determine and publish the LAM Variable Cost rates which will be made available to the WCA Treasurers. Given the commercial sensitivity of that information it will not be published in an open format, but will be part of the closed budget and levy report, which will be provided on or before the Statutory latest Levy fixing date of 15th February prior to the commencement of each financial year. The LAM Variable Cost may include sums for recovery of any shortfall between levied variable costs and actual variable cost for the prior year.
6. For the WCA declarations for Trade Waste (offices, shops, traders etc.) the GMCA will set an annual rate per tonne in accordance with the 2013/14 rate inflated in accordance with the RPIx. An adjustment to the Trade Waste element of the Levy will be carried out as part of the financial year end reconciliation process and any difference between actual WCA tonnages and WCA Forecasts will be made at the pre-agreed per tonne rate.

7. A review of the basis for Trade Waste will be carried out in each year of the term of the LAMA. WCAs accept that if growth in residual waste exceeds the capacity in the facilities, alternative delivery points may need to be found for trade waste including outside the Operating Contracts.

Schedule 2

Change Control Procedures

- A. Change to the Operating Contracts and WCA Operations from the operations set out in the agreed Service Delivery Plan will be governed by the procedures set out in this Schedule 2

1. Principles

- 1.1 Where a WCA sees a need for a change to the services provided under the Operating Contracts affecting a WCA then a WCA may at any time request a change in accordance with the procedure set out in paragraph 2 below.
- 1.2 The GMCA shall not unreasonably withhold its agreement to any change.
- 1.3 The obligations of the Parties shall not be affected until a Change Control Note has been signed by the relevant WCA and sent to the GMCA.

2. Procedure

- 2.1 The WCA and the GMCA shall discuss changes proposed by the WCA and such discussion shall result in:
 - 2.1.1 a decision not to proceed further; or
 - 2.1.2 a written request for a change by the WCA.
- 2.2 Each Change Control Note shall contain details of the change including, where applicable:
 - 2.2.1 the title of the change;
 - 2.2.2 the originator and the date of the request or recommendation for the change;
 - 2.2.3 the reason for the change;
 - 2.2.4 full details of the change including any specifications;

- 2.2.5 a timetable for implementation, together with any proposals for acceptance of the change;
 - 2.2.6 the impact, if any, of the change on other aspects of the Operating Contracts;
 - 2.2.7 the date of expiry of validity of the Change Control Note; and
 - 2.2.8 provision for signature by the WCA/GMCA if the change is agreed.
- 2.3 For each Change Control Note submitted to the GMCA, the GMCA shall, within twenty working days from receipt of the Change Control Note, evaluate the Change Control Note and notify the relevant WCA whether the GMCA (acting reasonably) agrees to the change.
- 2.4 A Change Control Note signed by both Parties shall constitute a variation to this Agreement.

B. Amendment to the Agreement

No amendment to or modification of this Agreement (other than an amendment under paragraph A of this Schedule) shall be valid or binding on any Party unless it is made in writing, refers expressly to this Agreement and is unanimously agreed by all of the Parties.