

DATED _____

**Engrossment :09/11/16
AC55/639257.07001/273**

(1) VEOLIA ENVIRONMENTAL SERVICES (UK) PLC

(2) NOTTINGHAMSHIRE COUNTY COUNCIL

GUARANTEE

**in respect of a contract for the provision of
Waste Management Services — Contract A**



Pinsent Masons

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THIS AGREEMENT is made on

2016

BETWEEN:-

- (1) **VEOLIA ENVIRONMENTAL SERVICES (UK) PLC** company number 02215767 of Veolia House, 210 Pentonville Road, London N1 9JY (previously known as Veolia Environmental Services Plc) (the "**Guarantor**"); and
- (2) **NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall, Loughborough Road, West Bridgford, Nottinghamshire NG2 7QP (the "**Council**").

BACKGROUND:-

- (A) Under the terms of a contract entered into on 26 June 2006 (the "**Contract**") and made between the Council and Veolia ES Nottinghamshire Limited (the "**Contractor**"), the Council and the Contractor contracted to provide an integrated waste management service. On the same date the Council and the Guarantor entered into a parent company guarantee guaranteeing performance by the Contractor of each and every one of its obligations under the Contract (the "**2006 Guarantee**").
- (B) On 26 June 2006 the Council also entered into a contract with Nottinghamshire Environmental Services Limited ("**Contract B**").
- (C) On 24 February 2015 the Council and the Contractor entered into a deed of variation (the "**2015 Deed of Variation**") to modify the terms of the Contract to bring into effect a Revised Project Plan ("**RPP**") pursuant to the terms of clause 17 of the Contract. On the same date and to give effect to the RPP, the Council also entered into an agreement and declaration with Nottinghamshire Environmental Services Limited which confirmed that Contract B was null and void.
- (D) On 24 February 2015 the Council and the Guarantor entered into a parent company guarantee pursuant to which the Guarantor confirmed its agreement to the terms of the agreement and declaration in respect of Contract B and to the 2015 Deed of Variation and guaranteed to the Council the performance by the Contractor of each and every one of its obligations under the Contract as modified by the 2015 Deed of Variation (the "**2015 Guarantee**").
- (E) As part of the RPP, the Council and the Contractor also agreed a protocol set out in schedule 32A of the Contract (the "**Mansfield and Ashfield Protocol**") for agreeing how to manage waste arising in Mansfield and Ashfield District Councils beyond 31 March 2017. Pursuant to the Mansfield and Ashfield Protocol, the Council and the Contractor have agreed a Veolia Mansfield and Ashfield Proposal. On the date hereof, the Council and the Contractor have entered into a deed of variation to modify the terms of the Contract to implement the Veolia Mansfield and Ashfield Proposal ("**Mansfield and Ashfield Deed of Variation**") in accordance with the provisions of schedule 32A of the Contract as set out in the Mansfield and Ashfield Deed of Variation and associated documentation described therein.
- (F) Under the terms of this Guarantee, the Guarantor confirms its agreement to the terms of the Mansfield and Ashfield Deed of Variation and guarantees to the Council the performance by the Contractor of each and every one of its obligations under the Contract as modified by the Mansfield and Ashfield Deed of Variation.

OPERATIVE PROVISIONS:-

1. DEFINITIONS

- 1.1 In this Deed the following expression has the following meaning unless inconsistent with the context:-

"Guaranteed Obligations" has the meaning given in Clause 3.1

"Indexed" has the meaning given to it in the Contract.

2. **INTERPRETATION**

- 2.1 References to any statute or statutory provisions will, unless the context otherwise requires, be construed as including references to any earlier statute or the corresponding provisions of any earlier statute, whether repealed or not, directly or indirectly amended, consolidated, extended or replaced by such statute or provisions, or re-enacted in such statute or provisions, and to any subsequent statute or the corresponding provisions of any subsequent statute directly or indirectly amending, consolidating, extending, replacing or re-enacting the same, and will include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision which are in force prior to the date of this Guarantee.
- 2.2 References to persons will be construed so as to include bodies corporate, unincorporated associations and partnerships.
- 2.3 Unless stated otherwise, references to clauses are to clauses of this Guarantee.
- 2.4 The headings to the Clauses of this Guarantee will not affect its construction.
- 2.5 Unless stated otherwise, references to the Contract are to the Contract as modified by the 2015 Deed of Variation and the Mansfield and Ashfield Deed of Variation.

3. **GUARANTEE**

- 3.1 In consideration of the Council entering into the Contract and the Mansfield and Ashfield Deed of Variation with the Contractor and in consideration of the payment of one pound (£1) by the Council to the Guarantor, receipt of which the Guarantor acknowledges, subject to Clause 3.2, the Guarantor as principal obligor and not merely as surety guarantees unconditionally and irrevocably to the Council the due and punctual observance and performance by the Contractor of its obligations under the Contract as may be modified, amended or supplemented ("**Guaranteed Obligations**") and promises to pay the Council from time to time on demand all sums from time to time due and payable (but unpaid) by the Contractor under or pursuant to the Contract or on account of any breach thereof; together with all reasonable costs and expenses which the Council may incur in enforcing this Guarantee as if the Guarantor instead of the Contractor was expressed to be the Contractor under the Contract.
- 3.2 The following provisions shall apply in respect of the Guarantor's obligations and liabilities hereunder:-
- 3.2.1 The Guarantor shall have no greater obligation or liability under this Guarantee in relation to all or any of the Guaranteed Obligations than that of the Contractor arising out of the same matter pursuant to the terms of the Contract and any addendum or variation thereto.
- 3.2.2 In any action by the Council under this Guarantee the Guarantor shall have available to it all defences, counterclaims and set-offs as may have been available to the Contractor under the terms of the Contract.
- 3.2.3 The same periods of limitation which apply between the Contractor and the Council under the Contract shall apply to any claim under this Guarantee.
- 3.2.4 The Guarantor's aggregate liability under or in connection with this Guarantee arising in respect of Clauses 1.3 (Retendering Procedure) and

1.4 (No Retendering Procedure) of Schedule 44 (Compensation on Termination) of the Contract shall not exceed £1,000,000 (one million pounds) (Indexed).

3.3 The Council shall not be obliged to exhaust all remedies against the Contractor before enforcing the terms of this Guarantee.

3.4 This Guarantee shall replace the 2015 Guarantee which shall upon execution of this Guarantee be of no further effect save only in respect of any rights or claims that may have accrued under the 2015 Guarantee before and up to the execution of this Guarantee which shall remain enforceable by the Council under the 2015 Guarantee and to avoid any duplicate remedies there shall be no entitlement to claim under this Guarantee in respect of such prior rights and claims.

4. **PRESERVATION OF RIGHTS**

4.1 The obligations of the Guarantor herein contained shall be in addition to and independent of every other security which the Council may now or hereafter hold in relation to the Guaranteed Obligations or any of them.

4.2 Neither the obligations of the Guarantor herein contained nor the rights, powers and remedies conferred in respect of the Guarantor upon the Council by law shall be discharged, impaired or otherwise affected by:-

4.2.1 the winding-up, dissolution, administration or reorganisation of the Contractor or any change in its status, function, control or ownership;

4.2.2 any change in the constitution of the Guarantor or the Council;

4.2.3 any of the Guaranteed Obligations or any of the obligations of the Contractor under any other security relating to the Guaranteed Obligations being or becoming illegal, invalid, unenforceable or ineffective in any respects (but subject always to Clause 3.2);

4.2.4 time, conduct, concession, compromise, forbearance or other indulgence being granted or agreed to be granted to the Contractor in respect of the Guaranteed Obligations or any of them or under any such other security in which circumstances the obligations of the Guarantee shall be varied by the extent of the time or other indulgence;

4.2.5 any amendment to, or any variation, waiver or release of, any of the Guaranteed Obligations or any such other security and the Contract may be modified, amended or supplemented in any manner whatsoever without the consent of the Guarantor;

4.2.6 any delay or failure to exercise any right under this Guarantee; and

4.2.7 any other matter or circumstance whereby but for this provision the Guarantor would or might be discharged from liability.

4.3 Any settlement or discharge given by the Council to the Guarantor in respect of the Guarantor's obligations hereunder or any other agreement reached between the Council and the Guarantor in relation thereto shall be, and be deemed always to have been, void if any act on the faith of which the Council gave the Guarantor that settlement or discharge or entered into that agreement is subsequently avoided by or in pursuant of any provisions of law.

5. REPRESENTATIONS AND WARRANTIES

5.1 The Guarantor represents and warrants that:-

- 5.1.1 it is duly incorporated and has the power to enter into and perform the Guarantee and has taken all necessary corporate action to authorise the execution, delivery and performance of this Guarantee;
- 5.1.2 the execution, delivery and performance of this Guarantee will not contravene any law or regulation to which the Guarantor is subject or any provision of the Guarantor's memorandum and articles of association and all governmental or other consents requisite for such execution, delivery and performance are in full force and effect;
- 5.1.3 the execution, delivery and performance of this Guarantee will not cause the Guarantor to be in breach or default under any agreement binding on it or any of its assets and no material litigation or administrative proceeding before, by or of any court or governmental authority is pending or (so far as the Guarantor knows) threatened against it or any of its assets.

6. PAYMENTS

All payments to be made by the Guarantor to the Council hereunder shall be made without set-off or counterclaim and without any deduction or withholding whatsoever. If the Guarantor is obliged by law to make any deduction or withholding from any such payment, the amount due from the Guarantor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Council shall receive a net amount equal to the amount which the Council would have received had no deduction or withholding been required to be made.

7. CONTINUING SECURITY

The obligations of the Guarantor herein contained shall constitute and be continuing obligations notwithstanding any settlement of account or other matter or thing whatsoever, and in particular but without limitation, shall not be considered satisfied by any intermediate payment or satisfaction of all or any of the obligations of the Contractor in relation to any of the Guaranteed Obligations, save to the extent of such payment or satisfaction, and, save as aforesaid, shall continue in full force and effect until final payment in full of all amounts owing by the Contractor thereunder and total satisfaction of all the Contractor's actual and contingent obligations thereunder.

8. PRIORITY OF THE COUNCIL

8.1 So long as any liability incurred by the Contractor to the Council under or in connection with the Contract and which forms part of the Guaranteed Obligations remains unsatisfied, the Guarantor shall not:-

- 8.1.1 seek to enforce payment by receipt of money, set-off, enforcement of security, proof of debt, subrogation or otherwise against the Contractor of the amounts paid by the Guarantor under this Guarantee;
- 8.1.2 in the event of insolvency, winding up, liquidation or dissolution of the Contractor prove in competition with the Council in respect of any money owing to the Guarantor by the Contractor.

8.2 If, notwithstanding the provisions of Clause 8.1 above, at a time when any liability incurred by the Contractor to the Council under or in connection with the Contract remains unsatisfied which form part of the Guaranteed Obligations, the Guarantor receives from the Contractor any monies or property in respect of amounts paid by the

Guarantor under this Guarantee or owing to the Guarantor by the Contractor, the Guarantor shall hold such monies or property on trust for the Council and shall pay or transfer the same to the Council immediately on request to the extent of the unsatisfied liability at that time.

9. EVIDENCE OF LIABILITY OF THE CONTRACTOR

Any money judgment of the court or decision of an adjudicator against the Contractor in favour of the Council under the Contract shall be conclusive evidence for the purposes of this Guarantee as to any liability of the Contractor to which such judgment or award or decision relates (unless or until the same is set aside by any competent court or tribunal) but on condition that if the Council commences any proceedings in court or adjudication against the Contractor under or in connection with the Contract, it shall so notify the Guarantor within 28 days (or in the case of adjudication within 3 working days) after their commencement.

10. NOTICES

10.1 Any demand, notice or other communication given in connection with or required by this Guarantee shall:-

- 10.1.1 be made in writing (entirely in the English language);
- 10.1.2 set out the reasons for any such demand or notice in relation to the relevant Guaranteed Obligations; and
- 10.1.3 be delivered to, or sent by pre-paid first class post to, the recipient at its registered office or its address stated in this Guarantee (or such other address as may be notified in writing from time to time):-
 - (a) and in the case of the Council a copy of the relevant demand, notice or other communication shall be sent by e-mail for the attention of the Chief Executive to chief.executivenottsc.gov.uk (or such other address as may be notified in writing from time to time);
 - (b) and in the case of the Guarantor, a demand, notice or other communication may be sent by facsimile transmission for the attention of the Group Legal Director to facsimile number 020 7812 5161 (or such other number as may be notified in writing from time to time).

10.2 Service

Any such demand, notice or communication shall be deemed to have been duly served:-

- 10.2.1 if delivered by hand, when left at the proper address for service; or
- 10.2.2 if given or made by pre-paid first class post, 2 Business Days after being posted; or
- 10.2.3 if sent by facsimile, on the day of transmission provided that a confirmatory copy is on the same day that the facsimile is transmitted, sent by pre-paid first class post in the manner provided for in this Clause 10.2,

provided in each case that if the time of such deemed service is either after 4.00pm on a Business Day or on a day other than a Business Day service shall be deemed to occur instead at 10.00am on the next following Business Day.

11. **GOVERNING LAW**

This Guarantee shall be governed by and construed in accordance with English law and the Guarantor hereby irrevocably submits to the jurisdiction of the English Courts.

12. **ASSIGNMENT**

12.1 The Council may without the consent of the Guarantor assign or charge the benefit of this Guarantee to any person to whom the Council lawfully assigns or charges the whole of the benefit of the Contract in accordance with Clause 133 (Assignment and Sub-Contracting) of the Contract.

12.2 This Agreement shall be binding on the Guarantor's successors in title.

IN WITNESS of which the parties have duly executed and delivered this document as a deed the day and year first herein before mentioned.

EXECUTED AND DELIVERED as a deed
by **VEOLIA ENVIRONMENTAL SERVICES
(UK) PLC**
acting by a director in the presence of a
witness

.....
Director

.....
Name

.....
Signature of witness

Name

Address

.....

Occupation

THE COMMON SEAL of
NOTTINGHAMSHIRE COUNTY COUNCIL
was hereunto affixed in the presence of:-)

)

)

.....
Authorised Signatory

.....
Name