



31 January 2023

## Request

Pursuant to the Freedom of Information (Jersey) Law 2011, please will you send to me the following:

- a) A copy of the Refuse Collection Contract for all refuse collections provided for the Parish of Grouville that was in effect as at 31/12/21.
- b) A copy of the Refuse Collection Contract for all refuse collections provided for the Parish of Grouville as at 31/12/22 that had commenced earlier in 2022. It is understood this 2022 contract may or may not yet be signed, but is now operating.
- c) A copy of the tender document to invite commercial companies to provide a refuse collection service for Grouville from 2022.
- d) Minutes and supporting documentation relating to the tender process and the selection of the new contractor for refuse collection.
- e) The Parish of Grouville's Procurement policy.
- f) Any advice provided to the Parish in respect of the award of the contract. The existence of any advice should be disclosed.

Any redaction should be only in so far as it is covered by legal privilege. If the requested documentation does not exist please can this be advised?

## Response

- a) The Contract in effect at 31/12/21 was issued in response to an FOI request in 2018 and the information is therefore absolutely exempt (Article 23 exemption applied, details below).
- b) The Contract as at 31/12/22 is attached (Appendix A – personal data redacted, Article 25(2) exemption applied, details below).
- c) The invitation to tender was published in the Jersey Gazette on 11/1/2021 as follows:

### Parish of Grouville Parish Assembly



<b>Published by</b>	Parish of Grouville
<b>Type</b>	Parish Notice
<b>Date Published</b>	11 January 2021

Applications are invited from contractors wishing to tender for the collection, removal and disposal of household refuse, glass, and recyclables from all properties, domestic and commercial, situated in the Parish of Grouville.

Tenders are required no later than 4<sup>th</sup> February 2022. The Contract is expected to commence on 1<sup>st</sup> May 2022.

Copies of the proposed contractual agreement and further details can be obtained on request from the Parish Secretary by email: [julie.wildbore-hands@grouville.je](mailto:julie.wildbore-hands@grouville.je)

The Connétable and Procureurs du Bien Public do not bind themselves to accept the lowest or any tender.

J.E. Le Maistre  
Connétable

Those responding received an email, as below (personal data redacted – Article 25(2) exemption applied, details below), with the proposed contractual agreement and further details (see Appendix B).

Parish of Grouville Invitation to Tender Refuse Collection and Recycling



Dear [REDACTED]

The Connétable has invited you to tender for the Parish Refuse and Recycling collection.

The documents are attached and they will also be sent in the post to you.

I look forward to hearing from you should you wish to tender by midday Friday 4<sup>th</sup> February 2022.

Thank you.

With kindest regards,

Julie Wildbore-Hands  
Parish Secretary  
Grouville Parish Hall  
T:01534-852225 | E: [Julie.wildbore-hands@grouville.je](mailto:Julie.wildbore-hands@grouville.je)

*Our emails have changed - with immediate effect please use [Julie.wildbore-hands@grouville.je](mailto:Julie.wildbore-hands@grouville.je) to contact me. Emails to [j.wildborehands@pog.je](mailto:j.wildborehands@pog.je) will be forwarded for a limited period.*

d) Minutes and supporting documentation are as follows –

**Minutes of a Meeting of the Roads Committee held on 10 September 2021**

6)	<p><b><u>Refuse contract and kerbside recycling</u></b></p> <p>The Connétable presented all members of the meeting MBM Services refuse and kerbside recycling proposal.</p> <p>The collector proposed to keep the base rate for refuse collection the same at £147,174.57 per annum (pre-GST) with 2% PA increase commencing May 2022. This is on the proviso that they will collect 2 wheelie bins from commercial premises once a week, as outlined below.</p> <p><u>Domestic collections</u></p> <ul style="list-style-type: none"> <li>• Collect all domestic refuse on a weekly basis and dispose at EFW site</li> <li>• Collect one round of domestic glass per month</li> </ul> <p><u>Commercial collections</u></p> <ul style="list-style-type: none"> <li>• Collect a maximum of 2 wheelie bins from businesses once a week. All other collections will be charged for. (Proposal £25.00 per extra collection)</li> <li>• Collect one round of glass per month. All other collections will be charged for.</li> </ul> <p>The contractor believes it is unfair for domestic properties to pay for extra collections from commercial businesses.</p>	
	<p>The refuse collector proposed £44,802.00 per annum for kerbside recycling. A cost of £1.50 per month per household or £18.00 per annum for once-a-week collection. Therefore, the overall cost to the Parish will be £147,174.57 plus £44,802.00 = £191,976.57 per annum.</p> <p>The Connétable also asked the refuse collector to quote for the costs of a separate collection from commercial premises.</p> <p>It is noted that the contractor collects twice weekly from 18 commercial premises. It costs MBM Services £28,040.00 per annum. (the sum was disputed given the calculation of 18 businesses x £25.00 = £450.00 per week x 52 weeks per year = £23,400.00). They collect 62-euro bins and 42 wheelie bins per week from commercial businesses.</p> <p>Should the Commercial premises pay separately MBM Services will charge on a user basis only. The proposal is £10.00 per Euro bin and £5.00 per wheelie bin.</p>	

All members of the meeting being present decided that it was best to go to tender.

The secretary should approach the following companies:

- MBM Services
- Gembusters
- Pallots
- PCM (Parish of St Brelade contractors)
- Parish of St Saviour

The secretary advised that the Procureurs should be approached as they will be in control of the legal side of the tender process. WSP made it clear that if the Parishioners voted for recycling in the Parish, then the recycling depot at Holme Grown will go. The Connétable advised that he will call a Parish Assembly and will base the cost of recycling on the figures quoted by MBM Services.

## Minutes of a Meeting of the Procureurs du Bien Public held on 3 December 2021

11)	<b>Very Urgent: Tenders</b> and <b>Recycling/Refuse</b>	
	The Connétable and Procureurs are happy with the tender and instructed the secretary to send it out.	

## Jersey Evening Post Parish Notice 15 January 2022

**PARISH NOTICE**

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**Paroisse de  
Grouville**

PARISH ASSEMBLY

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Applications are invited from contractors wishing to tender for the collection, removal and disposal of household refuse, glass, and recyclables from all properties, domestic and commercial, situated in the Parish of Grouville.

Tenders are required no later than 4th February 2022. The Contract is expected to commence on 1st May 2022.

Copies of the proposed contractual agreement and further details can be obtained on request from the Parish Secretary by email: [julie.wildbore-hands@grouville.je](mailto:julie.wildbore-hands@grouville.je)

The Connétable and Procureurs du Bien Public do not bind themselves to accept the lowest or any tender.

**J.E. Le Maistre**  
Connétable

12 January 2021

## Minutes of a Meeting of the Roads Committee held at 3.30 p.m. on 4 February 2022

- Refuse and Recycling Tenders

(DC joined the meeting) Of the 4 contractors approached and in response to the open tender advertisement in both the Jersey Evening Post, the Government online Gazette and the Parish website only one tender was received. 2 contractors advised they would not tender for the contract.

The meeting discussed the contract and the tender and reviewed the costings. 2 models were requested. The meeting favoured model 2 collecting general waste weekly, Glass, paper/card and metal/tin/plastic monthly. It was estimated at the Parish Assembly that the rates will need to be increased to 7/10% However, using this model the rate will likely be increased by 5%.

It was agreed that MBM Services be awarded the contract subject to the Connétable meeting with the director to discuss finer detail.

## Information included in the Grouville Gazette Summer 2022

### Refuse

At the time of writing the refuse and recycling collection is out to tender. Therefore, a flyer will be inserted with this issue of the Gazette. You can also view the Parish website for more details [grouville.je](http://grouville.je)

- e) There is no documented Procurement Policy; the Parish will invite tenders for contracts before reaching a decision.
- f) Legal advice is exempt under Article 32 of the Freedom of Information (Jersey) Law 2011 – details below.

### Exemptions applied:

#### **Article 23 - Information accessible to applicant by other means**

*Information is absolutely exempt information if it is reasonably available to the applicant, otherwise than under this Law, whether or not free of charge. A scheduled public authority that refuses an application for information on this ground must make reasonable efforts to inform the applicant where the applicant may obtain the information.*

#### **Justification for exemption**

**FOI request/response** - this was published on 7/12/2018 'Grouville Refuse Contract' and is available [Freedom of Information Responses | Comité des Connétables \(comite.je\)](http://Freedom of Information Responses | Comité des Connétables (comite.je))

#### **Article 25(2) - Personal Information - Personal data, applicant not subject but supply contravenes data protection principles**

*Information is absolutely exempt information if – (a) it constitutes personal data of which the applicant is not the data subject as defined in the Data Protection (Jersey) Law 2018; and (b) its supply to a member of the public would contravene any of the data protection principles, as defined in that Law.*

#### **FOI exemption applied: Article 32 Legal professional privilege**

*Information is qualified exempt information if it is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.*

*QE32 is a qualified exemption and therefore whether the disclosure of the advice would be in the interest of the public must be considered. Confidentiality is of paramount importance in a lawyer client relationship. In this instance, the public interest does not outweigh the legal privilege and the exemption is maintained.*



## Appendix A - contract as at 31/12/22 (personal data redacted, Article 25(2) exemption applied)



Refuse & Glass Collection Agreement  
 Between  
 The Parish of Grouville  
 (the Parish)  
 And  
 Vautier Municipal Limited  
 (the Contractor)  
 1<sup>st</sup> July 2022

This Agreement is dated 1 July 2022

#### PARTIES

1. **The Parish of Grouville** (a corporation and legal entity with perpetual succession) of Parish Hall, La Rue a Don, Grouville, JE3 9GA (the **Parish**)
2. **Vautier Municipal Limited**, a company incorporated under the laws of Jersey with registered company number 142132 and a registered office at La Ville Machon, Trinity, Jersey, JE3 5BY (the **Contractor**).

#### BACKGROUND

- (A) On 7 January 2022, the Parish invited prospective suppliers to submit proposals for the provision of the Services.
- (B) On the basis of the Contractor's response to the tender process, the Parish selected the Contractor to provide the Services and the Supplier is willing and able to provide such services in accordance with the terms of this agreement.
- (C) Accordingly, the parties have agreed to entered into a contract for the provision of the Services on the terms and conditions of this agreement.

#### AGREED TERMS

##### 1 Definitions and Interpretations

- 1.1 In the agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

"**Affected Party**" has the meaning in clause 15.

"**Authorised Representative**" the persons respectively designated as such by the Parish and Contractor, the first such persons being set out in clause 8.1.

"**Catastrophic Failure**" any action by the Contractor, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Parish's Authorised Representative has or may cause significant harm to the reputation of the Parish.

"**Charges**" means the means the fee of £18,350.99 (eighteen thousand three hundred and fifty pounds sterling and ninety nine pence) payable pursuant to clause 7 (plus goods and services tax at the prevailing rate (as detailed at article 8(1) of the Goods and Services (Jersey) Law 2007 as adjusted and varied under clause 7.

"**Commencement Date**" means 1 July 2022 or such other date as the parties agree in writing as to when the Services are to commence.

"**Commercially Sensitive Information**" information of a commercially sensitive nature relating to the Contractor, its business or which the Contractor has indicated to the Parish in writing, that if disclosed by the

Parish, would cause the Contractor significant commercial disadvantage or material financial loss.

**"Confidential Information"** means all confidential information (however recorded or preserved) disclosed by a party or its authorised representatives to the other party and that party's authorised representatives in connection with this agreement, including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- (b) any information developed by the parties in the course of carrying out this agreement;
- (c) Personal Data (as defined in the Data Protection Law);
- (d) any Commercially Sensitive Information.

**"Consistent Failure"** means:

- (a) the Parish serving 2 Remediation Notices in a rolling 12 month period; or
- (b) the Contractor repeatedly breaching any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

**"Data Protection Law"** means the Data Protection (Jersey) Law 2018 and any other legislation and or regulatory requirements in force in Jersey which applies to a party relating to using personal data (including but not limited to the privacy of electronic communications).

**"Extended Term"** has the meaning given in clause 2.

**"FOIL"** means the Freedom of Information (Jersey) Law 2011 together with any guidance or codes of practice issued by the Office of the Information Commissioner in Jersey in relation to such legislation.

**"Force Majeure Event"** means any circumstances not within a party's reasonable control, including without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;

- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any recommendation published by the Government of Jersey or other government authority whether on [www.gov.je](http://www.gov.je) or otherwise published elsewhere which advises against all travel or all but essential travel to or in Jersey;
- (f) a declaration that a state of emergency exists in Jersey;
- (g) any imposition of a curfew in Jersey;
- (h) any prohibition or limitation is placed on public gatherings in Jersey which would otherwise affect the Services; and
- (i) any other similar or analogous event, fact, matter, event, circumstance or condition which has occurred and or which might, in the reasonable opinion of the Affected Party, reasonably be expected to have a detrimental effect on the Services.

**"Information"** has the meaning given under Article 1 of the FOIL.

**"Initial Term"** has the meaning given in clause 2.

**"Insolvency Event"** where:

- (a) the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts as they fall due;
- (b) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme of solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor other than for the sole purpose of a scheme of a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- (d) an application is made to a court or an order is made for the appointment of a liquidator, or a notice of intention to appoint a liquidator is given or a liquidator is appointed over the Contractor;

- (e) an application is made to declare the property of the Contractor en désastre
- (f) a secured party who has the benefit of a security interest whether under the Security Interests (Jersey) Law 1983 or the Security Interests (Jersey) Law 2012 takes steps to enforce that security interest;
- (g) a creditor who has the benefit of a judicial or conventional hypothec against the assets of the Contractor takes steps to enforce that hypothec;
- (h) any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (g) (Inclusive); or
- (i) the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

“KPI” means the key performance indicators for the Services as specified in Schedule 1.

“Municipal Waste” means household waste and commercial and trade refuse as set out in Waste Management (Jersey) Law 2005.

“Remediation Notice” a written notice given by the Parish to the Contractor pursuant to clause 13 to initiate the Remediation Plan Process.

“Remediation Plan” the plan agreed in accordance with clause 13 for the resolution of a Contractor’s default in complying with its obligations under this agreement.

“Remediation Plan Process” the process for resolving certain of the Supplier’s defaults as set out in clause 13.

“Request for Information” a request for information or an apparent request under the FOIL.

“Services” means the collection, removal and disposal of Municipal Waste and glass and such other materials as may be agreed between the parties in writing that are left in receptacles from all properties in the Parish to an appropriate and agreed processing depot.

“Termination Notice” means any notice to terminate this agreement which is given by either party in accordance with clause 14 or clause 15.

“Termination Payment Default” means if any undisputed Charges have been overdue for payment for a period of 60 days or more.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for domestic business in Jersey.

- 1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.
- 1.3 Any words following the terms “including” or “include”, or other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4 A reference to “writing” or “written” includes email.
- 1.5 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.6 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to other genders.
- 1.9 A reference to “this agreement” or “the agreement” or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.

## 2 Commencement and Term

- 2.1 This Agreement shall be deemed to have commenced on the Commencement Date and shall continue unless terminated earlier under clause 12 on the 5<sup>th</sup> (fifth) anniversary of the Commencement Date (the Initial Term) when it shall terminate automatically without notice, unless no later than 2 (two) calendar months before the end of the Initial Term (or any Extended Term agreed under this clause), the parties agree in writing that the term of this agreement shall be extended for such additional period or periods as agreed between the parties from time to time (the Extended Term). Unless it is further extended under this clause, or terminated earlier in accordance with clause 12, this agreement shall terminate automatically without notice at the end of the Extended Term.

## 3 Due Diligence and Contractor’s Warranty

- 3.1 The Supplier acknowledges and confirms that:
  - (a) the Parish has delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant for the performance of its obligations under this agreement
  - (b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Parish pursuant to clause 3.1(a);

- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Parish before the Commencement Date) of all relevant details relation to the performance of its obligations under this agreement; and
- (d) it has entered into this agreement in reliance on its own due diligence.
- 3.2 No representations, warranties or conditions are given or assumed by the Parish in respect of any information which is provided to the Contractor by the Parish and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 3.3 The Supplier:
- (a) warrants and represents that all information and statements made by the Supplier as part of the procurement process remains true and accurate and not misleading, save as may have been specifically disclosed in writing to the Parish prior to the execution of this agreement; and
- (b) shall promptly notify the Parish in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Parish during such due diligence which materially and adversely affects its ability to perform the Services.
- 3.4 The Supplier shall not be entitled to recover any additional costs or charges from the Parish arising as a result of, nor be relieved from any of its obligations under this agreement on the ground of, any matters or inaccuracies notified to the Parish but the Contractor in accordance with clause 3.3(b), save where such additional costs or adverse effect on performance have been caused by the Contractor having been provided with fundamentally misleading information by or on behalf of the Parish and the Contractor could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Contractor may recover such reasonable additional costs from the Parish or shall be relieved from the performance of certain obligations as shall be agreed between the parties.
- 4 Supply of Services**
- 4.1 The Contractor shall supply and shall have been deemed to supply the Services from the Commencement Date.
- 4.2 The Services shall be supplied as detailed in Schedule 2. The parties agree that the days specified in Schedule 2 to carry out the Services may be varied and or increased during the Initial Term or any Extended Term with the written agreement of both parties (such written agreed to be appended to this agreement). The Contractor shall notify householders and commercial

- businesses of the dates on which the Services are to be provided by an advertisement in the "Jersey Gazette" or other suitable media.
- 4.3 In supplying the Services, the Supplier shall:
- (a) Perform the Services with the highest level of care, skill, diligence and best practice in the Contractor's industry, profession or trade;
- (b) Co-operate with the Parish in all matters relating to the Services, and comply with all reasonable instructions of the Parish;
- (c) Only use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled;
- (d) Ensure that it obtains and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations under this agreement;
- (e) Save for any items to be provided by the Parish, or the parishioners (as detailed at Schedule 2), provide all equipment, tools, vehicles and other items required to provide the Services;
- (f) At all times ensure, either solely or through its agents and or employees that it will comply with all laws, regulations and directions of the Government of Jersey or any committee or department thereof or any other relevant authorities for the time being in force and being regarding the collection, removal and disposal of Municipal Waste and glass; and
- (g) Use only those vehicles, equipment and methods in carrying out the Services as approved by the appropriate authorities of Jersey and shall keep and maintain such vehicles and equipment in good and safe condition, insured and fit for purpose.
- 4.4 The Contractor undertakes that in the event of any failure on its part to carry out the Services in accordance with this clause 3, then it shall:
- (a) without delay take all reasonable steps to inform the Parish of its failure or inability to carry out the Services, to enable the Parish to notify the parishioners, through the "Jersey Gazette" or other suitable media, at the reasonable expense of the Contractor, that alternative arrangements for recycling collections have been or shall be made; and
- (b) use all reasonable endeavours to undertake the Services on a date that is close to the original date that the Services were to be provided or such further date as agreed between the parties in writing,
- the whole being without prejudice to the right of the Parish to initiate the Remediation Plan Process.
- 4.5 If the Contractor cannot supply the Services under clause 4.2 (unless the reason for that non-compliance is due to a Force Majeure Event (in which case the provisions of clause 15 shall apply)) then the Charges shall be



reduced to such sum as is proportionate to reflect the Services actually provided.

4.6 Nothing in this agreement shall oblige the Contractor to collect and dispose of:

- (a) garden waste and building waste;
- (b) wire
- (c) generally inflammable or combustible waste
- (d) hot ash or cinders
- (e) waste oils
- (f) liquid swill
- (g) whole carpets
- (h) mattresses; and
- (i) generally such other waste materials as may from time to time be specified by the States of Jersey as not acceptable for disposal at its plants, sites or premises

#### 5 Processing, Treatment and Disposal of Municipal Waste glass

5.1 All Municipal Waste and glass shall be transported on the day of collection directly to the relevant processing, treatment or disposal facilities operated by the States of Jersey or its' nominated service partners.

5.2 To the extent that any glass collected from any commercial or domestic premises within the Parish are determined to be contaminated by the Department for Infrastructure, the Contractor shall be entitled to recover from the Parish (upon presentation of such supporting information as the Parish shall reasonably require) pursuant to clause 7.3 one-hundred per cent (100%) of any such disposal charges imposed upon the Contractor by the States of Jersey to dispose of that contaminated glass. Notwithstanding the provisions of this clause, the Parish reserve the right to renegotiate this percentile in the case of charges increasing to a level deemed unreasonable.

#### 6 Data Protection

6.1 Each party undertakes to comply with the Data Protection Law in respect of any Personal Data (as defined in the Data Protection Law) provided to the other party under this agreement.

6.2 Each party may use the Personal Data provided by the other:

- (a) To enable the party to fulfil its obligations under this agreement; and
- (b) To disclose it to a third party where the party must do so by law, the enactment of a statutory instrument, the order of a court in Jersey, the fulfilment of reporting obligations to either any agency or ministry of the Government of Jersey, the fulfilment of its reporting obligations to

a local government organisation or where it must do so by any person statutorily authorised to obtain Personal Data.

#### 7 Charges

7.1 In consideration for the provision of the Services, the Parish shall pay to the Contractor, the Charges. The Contractor shall submit invoices for the Charges to the Parish monthly in arrears on or after the last Working Day of each month.

7.2 The Charges shall be revised annually on 1 May for the duration of this contract. Any revision to the Charges shall be agreed in writing. Any adjustment to the Charges may consider the number of properties added to the Land and Property Index (LPI) for the Parish and any agreed expansion of the Services. In addition to any increase in charges appertaining to the LPI and any expansion in services, there will be an annual increase of the RPI, as at the last quarter before the review, or 3%, whichever is higher.

7.3 To the extent any additional charges are introduced by the Department for Infrastructure (or any other body appointed by the Government of Jersey to administer the disposal of Municipal Waste or glass) for the disposal of Municipal Waste or glass, such additional charges will be the responsibility of the Parish if such charges are at rates commercially acceptable to the Parish. Should such charges not be commercially acceptable to the Parish, such additional costs shall be borne between the parties in such proportions as they shall agree in writing between them. Should the parties fail to agree the Parish shall be entitled to issue a Termination Notice.

#### 8 Review and monitoring

8.1 Each party shall nominate an Authorised Representative who will have authority to act on its behalf and contractually bind it in respect of all matters relating to the performance of this agreement. The first Authorised Representatives are:

- (a) For the Parish: The Connétable, or nominated person(s).
- (b) For the Contractor: Mr Matthew John Vautier

The Authorised Representatives will co-ordinate and manage the provision of the Services and work with each other to address any problems that arise in connection with the Services.

8.2 Each party shall use all reasonable endeavours to ensure that the same person acts as its Authorised Representative throughout the Initial Term (and any Extended Term), but may, following reasonable notice to the other party, replace that person from time to time where reasonably necessary in the interests of its business.

8.3 The Authorised Representatives shall meet at not less than once in any 12 months to monitor and review the performance of this Agreement. In advance of such meeting:

- (a) The Contractor shall provide the Parish with an annual written report detailing its performance against each of the KPIs and identifying any

issues regarding the performance of the agreement for discussion at the meeting; and

(b) The Parish shall notify the Contractor of any concerns it has regarding the performance of the agreement for discussion at the meeting.

8.4 At the meeting referred to at clause 8.3 the parties shall agree a plan to address any problems identified in the performance of the agreement. In the event that any problem being unresolved, or a failure to agree on the plan, the provisions of clause 13 shall apply.

8.5 The Parish may increase the extent to which it monitors the performance of the Services if the Contractor fails to fulfil its other obligations under this agreement. The Parish shall give the Contractor prior notification of its intention to increase the level of monitoring. The Contractor shall bear its own costs in complying with such enhanced monitoring as is conducted by the Parish pursuant to this clause 8.5.

#### 9 Insurance

The Contractor undertakes that it will at its own cost put into effect and maintain such reasonable policy or policies of insurance as may be reasonably required to cover appropriately and adequately all reasonable liabilities and risks of the Contractor (whether public or third party liability, employers liability, or otherwise) regarding any act or default of the Contractor or those for whom it has vicarious liability and/or for which it may be or become liable to indemnify the Parish whether under this agreement or otherwise.

#### 10 Indemnity

The Contractor shall indemnify the Parish against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Parish relating to any claim made against the Parish by a third party relating to the provision of the Services if such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement (unless such failure or delay in performance results from a Force Majeure Event) by the Contractor, its employees agents or subcontractors.

#### 11 Assignment and Subcontracting

The Contractor shall not assign or sub-contract or otherwise delegate any of its duties, obligations, undertakings or rights under this agreement without the consent in writing of the Parish. If the Parish consents to any sub-contracting by the Contractor, the Contractor shall remain responsible for all acts and omissions of its sub-contractors as if they were its own.

#### 12 Dispute resolution

12.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (a "Dispute") then the parties shall follow the procedure set out in this clause:

(a) Either party shall give the other written notice of the Dispute, setting out its nature and full particulars (a "Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

(b) If the Authorised Representatives are for any reason unable to resolve the Dispute within 30 Working Days of service of the Dispute Notice the Dispute shall be referred to the Connétable of the Parish and the Managing Director of the Contractor who shall attempt in good faith to resolve it;

(c) If the Connétable of the Parish and the Managing Director of the Contractor are for any reason unable to resolve the Dispute within 30 Working Days of it being referred to them, the parties will attempt to settle it by mediation. Unless otherwise agreed between the parties within 10 Working Days of referral of the Dispute Notice, the mediator will be nominated by the Chief Executive of the Jersey Law Society. To initiate the mediation, a party must serve notice in writing (an **ADR Notice**) to the other party in the Dispute, referring such dispute to mediation.

12.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.

12.3 If for any reason the Dispute is not resolved within 90 Working Days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of Jersey in accordance with clause 25.

#### 13 Remediation Plan Process

13.1 Subject to clause 13.2, if the Contractor is in default in complying with any of its obligations under this agreement and the default is capable of remedy, the Parish may not terminate this agreement without first operating the Remediation Plan Process. If the Contractor commits such a default, the Parish shall give a Remediation Notice to the Contractor which shall specify the default in outline and the actions the Contractor needs to take to remedy the default.

13.2 The Parish shall be under no obligation to initiate the Remediation Plan Process if it issues a notice to terminate in the circumstances set out in clauses 14.1(a), 14.1(d), 14.1(e), 14.1(f), 14.1(g) and 14.1(h).

13.3 Within 5 Working Days of receipt of a Remediation Notice, the Contractor shall:

(a) Submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are subject to the Remediation Notice; or

- (b) Inform the Parish that it does not intend to submit a Remediation Plan, in which event the Parish shall be entitled to serve a Termination Notice.
- 13.4 The Parish shall either approve the draft Remediation Plan within 5 Working Days of its receipt, or it shall inform the Contractor why it cannot accept the draft Remediation Plan. In such circumstances the Contractor shall address all such concerns in a revised Remediation Plan, which it shall submit to the Parish within 3 Working Days of its receipt of the Parish's comments. If no such notice is given, the Contractor's draft Remediation Plan shall be deemed to be agreed.
- 13.5 Once agreed, the Contractor shall immediately start work on the actions set out in the Remediation Plan.
- 13.6 If, despite the measures taken in clause 13.4, a Remediation Plan cannot be agreed within 15 Working Days then the Parish may elect to end the Remediation Plan Process and serve a Termination Notice.
- 13.7 If a Remediation Plan is agreed between the parties but the Contractor fails to implement or successfully complete the Remediation Plan by the required completion date, the Parish may:
- (a) Terminate this agreement by serving a Termination Notice
  - (b) Give the Contractor a further opportunity to resume full implementation of the Remediation Plan; or
  - (c) Refer the matter for resolution under clause 12.
- 13.8 If, despite the measures taken under clause 13.7, the Contractor fails to implement the Remediation Plan in accordance with its terms, the Parish may elect to end the Remediation Plan Process and refer the matter for resolution pursuant to clause 12 or serve a Termination Notice.
- 13.9 The Parish shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same default by the Contractor as had previously been addressed in a Remediation Plan within a period of 12 months following the conclusion of such previous Remediation Plan. In such event, the Parish may serve a Termination Notice.
- 14 Termination**
- 14.1 Affecting no other right or remedy available to it, and subject to clause 13, the Parish may terminate this agreement with immediate effect or on the expiry of the period specified in the Termination Notice by giving written notice to the Contractor if one or more of the following circumstances occurs or exists:
- (a) The Contractor is in material breach of this agreement, which is irremediable;
  - (b) The parties fail to agree the Remediation Plan in accordance with the Remediation Plan Process;

- (c) The Contractor fails to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process;
  - (d) The circumstances referred to in clauses 7.3 or 13.9 occur;
  - (e) A Consistent Failure has occurred;
  - (f) A Catastrophic Failure has occurred;
  - (g) If there is an Insolvency Event
  - (h) If there is a change of control of the Contractor (within the meaning of article 123H of the Income Tax (Jersey) Law 1961 to which the Parish reasonably objects, provided that the Parish serves its Termination Notice within 1 month of the date on which the Contractor informs the Parish (by written notice) of the change of control or on which the Parish otherwise becomes aware of the change of control.
- 14.2 Either party may, during the continuance of a Force Majeure Event, terminate this agreement if the circumstances in clause 16.4 arise.
- 14.3 The Supplier may terminate this agreement in the event that the Parish commits a Termination Payment Default by giving 30 days' written notice to the Parish. In the event that the Parish remedies the Termination Payment Default in the 30 day notice period, the Contractor's notice to terminate this agreement shall have been deemed to have been withdrawn.
- 15 Termination on notice**
- Without affecting any other right or remedy available to it, both the Parish and the Contractor may individually terminate this agreement at any time by giving one years' written notice to the other party.
- 16 Force majeure**
- 16.1 Provided it has complied with its obligations under clause 16.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (an Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay to perform such obligations. The time for performance of such obligations shall be extended.
- 16.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 16.3 The Affected Party shall:
- (a) As soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this agreement; and

(b) Use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations under this agreement.

16.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations under this agreement for more than 4 (four) weeks the party not affected by the Force Majeure Event may but does not have to terminate this agreement by giving 2 (two) weeks written notice to the Affected Party.

#### 17 Consequences of termination of expiry

17.1 On the expiry or termination of this agreement, the Contractor shall, if so requested by the Parish provide all reasonable assistance required by the Parish to facilitate the smooth transition of the Services to the Parish or to any replacement supplier appointed by the Parish.

17.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the termination or expiry of this agreement.

#### 18 Confidentiality

18.1 Each party undertakes that it shall not disclose to any person any Confidential Information about the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 18.2 and 19.

18.2 Each party may disclose the other party's Confidential Information:

(a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information to carry out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 18.2; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

18.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under this agreement.

#### 19 Freedom of Information

19.1 The Contractor acknowledges that the Parish is subject to the requirements of the FOIL. The Contractor shall:

(a) Provide all necessary assistance and co-operation as reasonably requested by the Parish to enable the Parish to comply with its obligations under the FOIL;

(b) Transfer to the Parish all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

(c) Provide the Parish with a copy of all Information belonging to the Parish requested in the Request for Information which is in its possession or control in the form that the Parish requires within 5 Working Days (or such other period as the Parish may reasonably specify) of the Parish's request for such Information; and

(d) Not respond directly to a Request for Information unless authorised in writing to do so by the Parish.

19.2 The Contractor acknowledges that the Parish may be required under the FOIL to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Parish shall take reasonable steps to notify the Contractor of a Request for Information (in accordance with any code of practice issued by the Information Commissioner under article 44 of the FOIL) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Parish shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and or any other information is exempt from disclosure in accordance with the FOIL.

#### 20 Entire Agreement

This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

#### 21 Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### 22 Waiver

22.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

22.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

#### 23 Severance

If any provision or part provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum

extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision shall be deemed deleted. Any modification to or deletion of a provision or part provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

**24 Notices**

- 24.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by post at its registered office (if a company) or its principal place of business (in any other case).
- 24.2 Any notice shall be deemed to have been received:
  - (a) If delivered by hand, at the time the notice is left at addresses stated in this agreement;
  - (b) If sent by post at 0900 on the 3rd (third) Working Day after posting; or
  - (c) If sent by email at the time of transmission, or, if this time falls outside of business hours in the place of receipt, when business hours resume. In this clause, business hours means 0900 to 1700 Monday to Friday on a Working Day.
- 24.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**25 Governing Law and Jurisdiction**

- 25.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the laws of Jersey.
- 25.2 Each party irrevocably agrees that the courts of Jersey shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

**Schedule 1.**

**1 Monitoring Schedule**

**1.1 Communications and Liaison**

The Parish's Authorised Representative will be the representative responsible for the monitoring and management of the Services and the agreement.

**1.2 Contract communications framework**

Liaison	Contact	Frequency
Formal review	Parish's Authorised Representative	Annually
Routine liaison	Customers	Day to day
	Parish's Authorised Representative (or nominated person)	Ad-hoc / upon request

**1.3 Key Performance Indicators (KPI's)**

Key Performance Indicator	Performance Measure
The service delivery standards in the agreement are being met or exceeded	Inspections / Audits Complaints Photo evidence
Service delivery times, where stated in the agreement or agreed outside of the agreement, are being met or exceeded	Inspections / Audits Complaints
Health, safety and environmental standards are regularly monitored, reviewed and maintained in accordance with all legal and regulatory requirements.	Accident Reports Number of reportable accidents
No failure to meet the response times set by the Parish out in the agreement or agreed outside of the agreement to issues raised by the Parish	Inspections Audits Complaints
No failure to be able to contact a senior member of the Contractor's staff during the normal working day	Parish feedback Complaints
The Contractor is working effectively with the Parish to maintain costs at an acceptable level	Open Book Variations Policy
Invoicing is timely, accurate and in accordance with Parish requirements	Parish's Authorised Representative inspection
Customers are satisfied with the service	Inspections / Audits Customer Complaints Customer Survey

KPI compliance will be measured using a balanced scorecard approach and RAG indicators.

Failure to meet KPI's may result in the termination of the contract.

**Schedule 2**

**Municipal Waste and Glass Collections**

**Frequency:** Weekly on a Monday, Tuesday or Wednesday..

**Notes:**

There is no limit on the number of dustbins each residential premises in the Parish is entitled to leave for collection but each parishioner is responsible for supplying their own receptacle(s).

There is no limit on the number of dustbins each commercial premises in the Parish is entitled to leave for collection, but a maximum of 2 collections per week, including glass collections, are included within the terms of this Agreement. Collection in excess of 2 collections per week will be subject to an excess charge.

Any and all excess charges referred to above will be considered a private agreement between the Contractor and customers and will be invoiced and collected solely by the Contractor.

Each commercial occupier is responsible for supplying their own receptacle(s).

This agreement has been entered into on the date stated at the beginning of it

**SIGNED on behalf of THE PARISH OF GROUVILLE**

By: -



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**MARK ANTHONY LABEY – Connétable**



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**BERNARD FRANCIS REBOURS – Procureur du Bien Public**



**ALBERT JOHN LAMY - Procureur du Bien Public**

**SIGNED for on behalf of THE CONTRACTOR**

By:



**MATTHEW JOHN VAUTIER**

Appendix B - proposed contractual agreement and further details issued to those responding to invitation to tender

**PARISH OF GROUVILLE**

TELEPHONE: 01534-852225



EMAIL: parishhall@grouville.je

WEBSITE:

grouville.je

**PARISH HALL GROUVILLE JERSEY JE3 9GA**

7<sup>th</sup> January 2022

Dear ,

You are invited to tender for the refuse collection for the Parish of Grouville (POG). The tenders must be in by 4<sup>th</sup> February 2022.

The POG are seeking a contractor to carry out the collection of refuse and recycling for the Parish. The States of Jersey and the Parish of Grouville have declared a climate emergency.

Included in your tender you should outline what measures you have taken and will be taking to reduce your business' carbon footprint.

Details are as follows:

- The contract will commence on 01/05/2022 and will run for 5 years.
- The POG is seeking tenders for the collection of waste currently from 2489 households.
- There are also 22 premises that are commercial.

General Household Waste

- The chosen contractor will collect general household waste from households and commercial premises on a weekly basis. *The collection from commercial premises shall be up to one euro bin per week.*

Glass Collection

- The chosen contractor will collect glass monthly from all premises. *The collection from commercial premises shall be up to one euro bin per collection.*

Plastic Recyclables

- The contractor will collect plastic recyclable waste from premises one week in every four or once per month Please see tables below. For commercial premises this will be a maximum of one euro bin per collection. The items that can be recycled shall be those determined by the Government

Department of Infrastructure, Housing & Environment and may change during the contract.

Metal Recyclables

- The contractor will collect tins and metal recyclable waste from premises one week in every four or once a month, please see table below. *For commercial premises this will be a maximum of one euro bin per collection.* The items that can be recycled shall be those determined by the Government Department of Infrastructure, Housing & Environment and may change during the contract.

Paper & Cardboard Recyclables

- The contractor will collect recyclable paper and card on either a once a month or every two weeks, please see table below. The tables below will give an opportunity to quote for both options. *For commercial premises this will be a maximum of one euro bin per collection.* The items that may be recycled are those determined by the Government Department of Infrastructure, Housing and Environment and may change during the contract.

The Parish of Grouville are looking at the following collection models and invite you to price per model:

Model 1

Recyclable	Frequency	Contractor Price
General Waste	Weekly	
Glass	Once per month	
Paper/Card	Every 2 weeks	
Metal/Tins	Every 4 weeks	
Plastic	Every 4 weeks	
	<b>Annual fee</b>	
	<b>Proposed Annual % Increase</b>	

Model 2

Recyclable	Frequency	Contractor Price
General Waste	Weekly	
Glass	Once per month	
Paper/Card	Once per month	
Metal/Tins	Once per month	
Plastic	Once per month	
	<b>Annual fee</b>	
	<b>Proposed Annual % Increase</b>	

Additional Collections from Commercial Premises

Any waste collection of more than one euro bin from commercial premises is the responsibility of those businesses. They may wish to employ the Parish contractor to

collect the additional waste, but it will be an agreement between the contractor and the respective business. Any such agreement is outside this contract.

#### Tenderers Responsibilities

Tenderers shall bear all their own costs and expenses incurred in the preparation and submission of the tender.

Tenderers must ensure that they are fully familiar with the nature and extent of the obligations of the Agreement and be aware that the Agreement will be strictly supervised, and the standard of the performance enforced.

The Tenderer will be deemed to have read, examined, and accepted the Agreement and the terms and conditions contained therein to the submission of the Tender. It is the responsibility of the Tenderer to obtain for itself at its own expense all information necessary for the preparation of its tender.

Tenderers are cautioned to check the accuracy of their Tender prior to submission. A Tender containing any clerical errors may, at the sole discretion of The Authority, be referred to the Tenderer for correction. Tenderers shall familiarise themselves with all laws, regulations, byelaws, site conditions and all other factors that may affect the Tender.

Tenders received after the date for receipt of Tenders set out in the Invitation to Tender Letter, or not strictly in accordance with these Instructions may, at the sole discretion of the Authority, be disregarded.

Tenderers shall treat the Invitation to Tender Documents as confidential and restrict their circulation and distribution to a 'need to know' basis. Tenderers shall not disclose their Tender in whole or in part to any third party prior to either the award of a contract by The Authority, or receipt of notification that the Tender has not been accepted (in accordance with the non-disclosure agreement submitted)

The POG reserves the right: to discuss confidentially, any aspects of your Tender with you prior to any award of Contract.

The POG does not bind itself to accept any tender.

#### Questions or Queries

Queries involving the contract or tender process should be addressed to Julie Wildbore-Hands by email: [julie.wildbore-hands@grouville.je](mailto:julie.wildbore-hands@grouville.je)

Acknowledgement of receipt of the invitation and the intention or otherwise as to whether a tender will be submitted can be sent to the above address.

**Confidentiality and Privacy:** As a public authority, the POG and all departments are subject to the provisions of the Freedom of Information (Jersey) Law 2011 and the Data Protection (Jersey) Law 2018. Under these Laws, we may be required to disclose information we hold, including the contents of this document and any response to it, unless the information is protected from disclosure by an exemption under the Law or any other enactment, including the aforementioned Laws. We process and hold your information in accordance with the Data Protection (Jersey) Law 2018 so that we can provide public services and meet our statutory obligations. Please see our privacy notice for more information. We may not be able to provide you with a service unless we have sufficient information and your permission to use that information. We endeavour to keep your information accurate and up-to-date and not to keep it for longer than is necessary. You can ask us to stop processing, correct or amend your information at any time. You can also request that the processing of your personal data is restricted, withdraw your consent to the processing of your information or ask for a copy of the information we hold about you.

We have enclosed a copy of the proposed agreement which should be taken into consideration when completing the Tender document.

I look forward to receiving your bid by 12 noon on **Friday 4<sup>th</sup> February 2022**.

Thank you.

Yours sincerely,

JE Le Maistre  
Connétable

By Email and Post





Paroisse de Grouville

## Refuse & Recycling Collection Agreement

1<sup>st</sup> May 2022

### 1 Definitions and Interpretations

1.1 In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

**"Agreement"** means this agreement between the Parish and the Contractor consisting of these clauses and any attached Schedules and any other documents (or parts thereof) specified by the Parish.

**"Contract Manager"** means the person for the time being appointed by the Parish as being authorised to administer the Agreement on behalf of the Parish or such person as may be nominated by the Contract Manager to act on its behalf.

**"Contractor's Representative"** means the individual authorised to act on behalf of the Contractor for the purposes of the Agreement.

**"Default"** means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

**"FOIL"** means the Freedom of Information (Jersey) Law 2011 and any subordinate legislation made under this Law from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

**"General Change in Law"** means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.

**“Municipal Waste”** means household waste and commercial and trade refuse as set out in Waste Management (Jersey) Law 2005.

**“Information”** has the meaning given under Article 1 of the Freedom of Information (Jersey) Law 2011.

**“Law”** means any applicable enactment, sub-ordinate legislation within the meaning of Article 10 of the Interpretation (Jersey) Law 1954 passed by the States and confirmed by Her Majesty in Council and any provision of any regulations, Order, rules, scheme or other instrument passed or made in Jersey under the authority or any Order in Council or under any such Law as aforesaid, bye-laws, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply or the equivalent enactment in England where the context otherwise requires.

**“Party”** means a party to the Agreement and “Parties” shall be construed accordingly.

**“Price”** means the price exclusive of any applicable Tax, payable to the Contractor by the Parish under the Agreement, as set out in the Agreement, for the full and proper performance by the Contractor of its obligations under the Agreement.

**“Recyclable Materials”** means any recycled materials collected by the Contractor in the performance of this Contract “Services” means the services to be specified

in the Agreement.

**“Specific Change in Law”** means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Parish, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services.

**“Tax”** means Value Added Tax (VAT) / Goods and Services Tax (GST) to the extent that either is applicable.

**“Term”** means the period of duration of the Agreement in accordance with clause 5.

**“Working Day”** means a day (other than a Saturday or Sunday) on which banks are open for domestic business in Jersey.

## 2 The Agreement

2.1 **AGREEMENT** made and entered into **BY AND BETWEEN** Connétable ..... and ..... and ....., Procureurs du Bien Public, on behalf of the Parish of Grouville in the Island of Jersey (hereinafter called “the Parish”), of the first part; **AND ENTER COMPANY NAME AND ADDRESS** aforesaid (hereinafter called “the Contractor”), of the second part.

2.2 **WHEREAS** the Parish requires to appoint persons responsible for the collection and transport to nominated treatment or disposal points of municipal waste and recycled materials from all properties situated within the said Parish and WHEREAS the Contractor desires to be appointed by the Parish to carry out such collection and transport: -

**NOW IT IS HEREBY AGREED AS FOLLOWS: -**

### **3 The Services**

3.1 **THE CONTRACTOR** shall at his own expense and liability arrange for and carry out the collection of Municipal Waste and recyclables as determined by the Government Department of Infrastructure, Housing and Environment from time to time including household polythene and, without prejudice to the foregoing, but subject to Clause 3.3 hereof, generally all non-injurious waste products, excluding garden waste and building waste, deposited for collection in suitable portable and secure receptacles, or mechanically hoist able container hoppers, by householders, hoteliers, boarding housekeepers, business, religious and municipal establishments generally all properties within the said Parish.

3.2 **THE CONTRACTOR** shall arrange and carry out the said collection of Municipal Waste at least once in every week during the period of this Agreement, and recyclables on a schedule to be agreed between the Parish and contractor, such collection days to be fixed between the Parish and the

Contractor and shall be notified to householders and commercial businesses and those persons mentioned in Clause 3.1 hereof by an advertisement in the "Jersey Gazette" or other suitable media.

3.3 **THE CONTRACTOR** shall arrange and carry out the said collection of Municipal Waste at least once in every week during the period of this Agreement and recyclables to the agreed schedule that has been agreed with the parish, such collection days to be fixed between the Parish and the Contractor and shall be notified to householders and commercial businesses and those persons mentioned in Clause 2.1 hereof by an advertisement in the "Jersey Gazette" or other suitable media.

3.4 **THAT** from the provisions of Clauses 3.1 and 3.2 hereof shall be excluded the collection by the Contractor of wire, metal and generally inflammable or combustible waste, hot ash or cinders, waste oils, liquid swill, whole carpets, mattresses and cardboard boxes and cartons which remain rigidly assembled and generally such other waste materials as may from time to time be specified by the Department for Infrastructure as not acceptable for disposal at its plants, sites or premises.

3.5 THE CONTRACTOR hereby undertakes to arrange and carry out the collection of glass and china products from the premises described in The Services at least once in every month during the period of this Agreement, the collection day shall be arranged and notified as in Clause 3.2 thereof. Such glass and waste products shall be kept aside and disposed of separately from all other refuse.

**4 Processing, Treatment and Disposal of Municipal Waste and Recyclable Materials**

4.1 All Municipal Waste shall be transported on the day of Collection directly to the processing, treatment or disposal facilities operated by the Department for Infrastructure or its' nominated service partners.

4.2 No other arrangements for the processing, disposal, or treatment of any Municipal Waste (or other materials collected as part of this Agreement) can be used by the Contractor without the express approval in writing of the Department for Infrastructure. All recyclable materials must be taken to Government approved and designated sites.

**5 Term of Agreement**

5.1 THIS AGREEMENT shall be for an initial Term of five years with a further two year extension available at the discretion of the Parish subject to satisfactory performance by the Contractor and the maintenance of an acceptable price for the provision of the Services. The initial Term shall commence on the

..... and shall, unless terminated under in accordance with this Agreement, continue until .....

**6 Payment**

6.1 THAT in consideration of the Contractor carrying out in a proper manner the undertakings set out herein, the Parish shall pay to the Contractor the sum of £ENTER AMOUNT (including GST/ Plus GST) payable by means of twelve equal monthly payments of £ENTER AMOUNT each, (including GST/Plus GST) the said monthly payments to be made as they fall due on the last Working Day of each month during the Term of this Agreement, subject to the adjustments as follows;

(a) It being further understood and agreed that from (and including) year 2 onwards the said annual payment shall be increased on each anniversary of the date of commencement of this agreement by an amount as agreed by both parties...

(b) The said annual payment is subject to revision on the first day of May for the remainder of the Term of this Agreement by the same proportion as the number of properties added to the Land and Property Index (LPI) for the Parish of Grouville.

(c) Where developments are constructed or converted into accommodation and do not appear on the Land and Property Index, such number of units

will be included in the Land and Property Index total when adjusting the annual payment figure.

- (d) In the event that the States of Jersey imposes additional taxes, charges or duties on the Contractor, then the Contractor shall have a right to claim from the Parish, upon presentation of supporting evidence, all or a reasonable proportion of those additional taxes, charges or duties as shall be negotiated between the parties.

#### 6.1 LEGAL REQUIREMENT

- 6.2 **THE CONTRACTOR** hereby undertakes that he will at all times ensure, either alone or through his agents and/or employees, that he will comply with all Laws, Regulations and Directions of the States of Jersey, or any Committee thereof, or any of the relevant Parish for the time being in force and being with regard to the collection, removal and disposal of the waste products herein before described, and that he will, moreover, use only those vehicles in carrying out the provisions of this Agreement as shall be approved of by the appropriate authorities of Jersey in this regard.

Furthermore, the Contractor will put into effect, and be liable for Employers and Public Liability Insurance, compulsory requirements of the States of Jersey Social Security Committee Earnings Related Contributory Benefits Scheme, the provision of health and safety policy and details of the person responsible for implementing the policy and the provisions of the "Motor Traffic (Third Party Insurance) (Jersey) Law, 1948".

The whole without prejudice to the generality of the present clause.

#### 7 Freedom of Information

- 7.1 **THE CONTRACTOR** acknowledges that the Parish is subject to the requirements of the FOIL and shall assist and cooperate with the Parish (at the Contractor's expense) to enable the Parish to comply with information disclosure requirements (if necessary).

- 7.2 **THE CONTRACTOR** shall and shall procure that its sub-contractors shall:

- (a) transfer the Request for Information to the Parish as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
- (b) provide the Parish with a copy of all Information in its possession or power in the form that the Parish requires within five Working Days (or such other period as the Parish may specify) of the Parish requesting that Information;  
and
- (c) provide all necessary assistance as reasonably requested by the Parish to enable the Parish to respond to a Request for Information within the time for compliance set out in Article 13 of the FOIL or any subordinate legislation made under the Law.

7.3 The Parish shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

(a) is exempt from disclosure in accordance with the provisions of the FOIL;

(b) is to be disclosed in response to a Request for Information; and

in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Parish.

7.4 **THE CONTRACTOR** acknowledges that the Parish may, acting in accordance with the FOIL be obliged under FOIL to disclose Information:

(a) without consulting with the Contractor, or

(b) following consultation with the Contractor and having taken its views into account.

7.5 **THE CONTRACTOR** shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure for the Term of this Agreement or as otherwise agreed and shall permit the Parish to inspect such records (including but not limited to audit records of disposed information) as requested from time to time.

7.6 **THE CONTRACTOR** acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Parish may nevertheless be obliged to disclose Confidential Information in accordance with clause 8.4.

## 8 Remedies in the Event of Inadequate Performance

8.1 Where a complaint is received or a problem identified indicated regarding the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Agreement, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, he may uphold the complaint, or take further action in accordance with the provisions of clause 11 of the Agreement.

8.2 In the event that the Parish is of the reasonable opinion that there has been a material breach of the Agreement by the Contractor, or the Contractor's performance of its obligations under the Agreement has failed to meet the requirement set out in this Agreement, then the Parish may, without prejudice to its rights under clause 11 of the Agreement, do any of the following:

(a) make such deduction from the Price to be paid to the Contractor as the Parish shall reasonably determine to reflect sums paid or sums which

would otherwise be payable in respect of such of the Services as the Contractor shall have failed to provide or performed inadequately;

(b) without terminating the Agreement, itself provide or procure the provision of part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Parish that the Contractor will be able to perform such part of the Services in accordance with the Agreement;

(c) without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or

(d) terminate, in accordance with clause 11, the whole of the Agreement.

8.3 The Parish may charge to the Contractor any cost reasonably incurred by the Parish and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Parish or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Contractor for such part of the relevant Services.

8.4 **IF THE CONTRACTOR** fails to perform any of the Services to the reasonable satisfaction of the Parish and such failure is capable of remedy, then the Parish shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Parish may direct.

8.5 In the event that:

(a) the Contractor fails to comply with clause 9.4 above and the failure, is materially adverse to the commercial interests of the Parish or prevent the Parish from discharging a statutory duty; or

(b) the Contractor persistently fails to comply with clause 9.4 above,

The Parish reserves the right to terminate the Agreement by notice in writing with immediate effect.

8.6 The remedies of the Parish under this clause may be exercised successively in respect of any one or more failures by the Contractor.

8.7 **THE CONTRACTOR** hereby further undertakes that in the event that there is any failure on his part to carry out the Services on the appointed dates and hours in conformity with The Agreement, then he shall take all reasonable steps to inform the Parish of his failure or inability to carry out such refuse collections, and this to enable the Parish to make arrangements to notify the parishioners, through the "Jersey Gazette" or other suitable media, that alternative arrangements for refuse collections have been or shall be made and this without prejudice to the right of the Parish to terminate the present Agreement as a consequence of such failure.

#### 9 Termination on change of control and insolvency

9.1 **THE CONTRACTOR** hereby acknowledges and accepts that the Parish enters into this Agreement on condition that the beneficial owner and manager and supervisor of the Contractor continues to be **ENTER NAME** for the duration of the Term of this agreement. The Contractor will advise the Parish immediately in writing if the aforesaid **ENTER NAME** ceases to be the beneficial owner of the Contractor or the manager of the contractor or the supervisor of the contractor for whatever reason and in that event the Parish may terminate this Agreement by notice in writing to the Contractor giving not less than three months' notice.

9.2 **IN THE EVENT** that the Contractor shall at any time during the Term of this Agreement fail, neglect or refuse to perform or observe any of the covenants, conditions and stipulations on his part herein contained, or if the Contractor shall become "bankrupt" within the provisions and as described in the Interpretation (Jersey) Law, 1954, or any amendment thereof, then the Parish may terminate this Agreement immediately by serving upon the Contractor a notice to that effect, without prejudice to the right of the Parish to claim damages for breach of contract and costs.

#### 10 Termination on Default

10.1 The Parish may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor or the Contractor's Representative with immediate effect if the Contractor commits a Default and if:

- (a) **THE CONTRACTOR** has not remedied the Default to the satisfaction of the Parish within 25 Working Days, or such other period as may be specified by the Parish, after issue of a written notice specifying the Default and requesting it to be remedied: or
- (b) the Default is not, in the opinion of the Parish, capable of remedy; or
- (c) the Default is a material breach of the Agreement.



10.2 **THE CONTRACTOR** may terminate the Agreement if the Parish is in material breach of its obligations to pay undisputed charges by giving the Parish 60 Working Days' notice specifying the breach and requiring its remedy. The Contractor's right of termination under this clause 11.2 shall not apply to non-payment of the charges or Price where such non-payment is due to the Parish exercising its rights under clauses 15 and 9.2(a).

## 11 Break

11.1 The Parish shall have the right to terminate the Agreee

11.2 ment, or to terminate the provision of any part of the Agreement at any time by giving one Months' written notice to the Contractor.

## 12 Consequences of Termination

12.1 Where the Parish terminates the Agreement under clause 12, or terminates the provision of any part of the Agreement under that clause, and then makes other arrangements for the provision of Services, the Parish shall be entitled to recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Parish throughout the remainder of the Initial Term or any Extension. The Parish shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under clause 12, no further payments shall be payable by the Parish to the Contractor until the Parish has established the final cost of making those other arrangements.

12.2 Where the Parish terminates the Agreement under clause 12, the Parish shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under 12.

12.3 The Parish shall not be liable under Clause 13.2 to pay any sum which:

- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Contractor under the Agreement, exceeds the total sum that would have been payable to the Contractor if the Agreement had not been terminated prior to the expiry of the Initial Term.

### 13 Change of Law

13.1 The Contractor shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Agreement nor be entitled to an increase in the Price and/or any charges payable by the Contractor as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law
- (c) on the Goods is known at the Commencement Date.

13.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 14.1) or during any extension agreed, the Contractor shall notify the Authority of the likely effects of that change, including:

- (a) whether any change is required to the Services, the Price, or the Agreement; and
- (b) whether any relief from compliance with the Contractor's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

13.3 As soon as practicable after any notification in accordance with clause 14.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:

- (a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its subcontractors.
- (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred.
- (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
- (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.

### 14 Recovery of Sums Due

14.1 Wherever under the Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Agreement), the

Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Authority.

14.2 Any overpayment by the Authority to the Contractor, whether of the Price or of tax, shall be a sum of money recoverable by the Authority from the Contractor.

14.3 The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

**15 Notices**

15.1 ALL NOTICES shall be deemed duly served on the Contractor by delivering them to the Registered Office of the Contractor.

IN WITNESS WHEREOF the parties hereto have signed the present Agreement on the ..... day of May 2010 the presence of the undersigned witnesses.

SIGNED on behalf of THE PARISH OF GROUVILLE

By: -

.....

..... – Connétable

.....

..... – Procureur du Bien Public

.....

..... - Procureur du Bien Public

SIGNED on behalf of THE CONTRACTOR

By:

.....

ENTER NAME

In the presence of: -

## Schedule 1.

### 16 Monitoring Schedule

#### 16.1 Communications and Liaison

The Contract Manager will be the representative responsible for the monitoring and management of the Services and the Agreement.

#### 16.2 Contract communications framework

Liaison	Contact	Frequency
Formal review	Contract Manager	Annually
Routine liaison	Customers	Day to day
	Contract Manager (or nominated person)	Ad-hoc / upon request

#### 16.3 Key Performance Indicators (KPI's)

Key Performance Indicator	Performance Measure
The service delivery standards in the Agreement are being met or exceeded	Inspections / Audits Complaints Photo evidence
Service delivery times, where stated in the Agreement or agreed outside of the Agreement, are being met or exceeded	Inspections / Audits Complaints
Health, safety and environmental standards are regularly monitored, reviewed and maintained in accordance with all legal and regulatory requirements.	Accident Reports Number of reportable accidents
No failure to meet the response times set by the Parish out in the Agreement or agreed outside of the Agreement to issues raised by the Parish	Inspections Audits Complaints
No failure to be able to contact a senior member of the Contractor's staff during the normal working day	Parish feedback Complaints
The Contractor is working effectively with the Parish to maintain costs at an acceptable level	Open Book Variations Policy
Invoicing is timely, accurate and in accordance with Parish requirements	Contract Manager inspection
Customers are satisfied with the service	Inspections / Audits Customer Complaints Customer Survey

KPI compliance will be measured using a balanced scorecard approach and RAG indicators.

Failure to meet KPI's may result in the termination of the contract.

#### 16.4 Contract Monitoring

The performance of the Agreement will be scrutinised by the Contract Manager to ensure that all aspects are carried out to the standard required.

The Contractor's attention is drawn to the fact that the Parish or his agent will regularly conduct inspections. Should it be found that the services have not been carried out satisfactorily the Contractor shall return to site and complete all services as scheduled within the inspectors report at no additional cost to the Parish. Payment will be withheld until the Parish is satisfied that the services are complete to the required standard.

As part of contract management, the Contractor may be required to attend monthly meetings for the first six months of the contract term and providing that the Contractor meets the required standard during this time, the meetings may then take place quarterly thereafter. The Parish reserves the right to increase or decrease the frequency of the meetings as they see fit in order to monitor performance of the Contractor.

Customer satisfaction surveys may be used to gauge the level of performance of the Contractor.

**16.5 Managing Poor Performance**

If in the opinion of the Parish or any of his agents the Contractor (or his own sub-contractors) fails to perform satisfactorily or comply with the Agreement, then the Contractor will be advised in writing by email. The Contractor will then have the time stated in the correspondence to present evidence at no additional cost to the Parish that the work has been rectified to an acceptable standard to the Parish. Should this evidence still not satisfy the Parish's requirements, the Parish reserves the right to terminate the contract in accordance with the Agreement. During these periods, the Contractor shall continue to complete the contracted works. No claim will be entered into for loss of profit for failure of performance by the Contractor.

The Parish also reserves the right to terminate the contract for non or poor performance by the Contractor based on regular review of the key performance indicators set out within this document.