

The Contractual Parameters draft 10.2

1. There are **no alterations** to the Waste Contract, its structure or financial basis (including models) resulting from the incorporation of the Variation, save for those
 - (a) necessary to give effect to the Variation; and
 - (b) bringing the Waste Contract into compliance with current and foreseeable legislation; and
 - (c) the net effect of which is to deliver a commercial benefit to the Councils
2. Legal opinion from Leading Counsel has been obtained confirming that the execution of the Variation by the Councils, in particular in relation to the "balloon" payment, should not be construed as **ultra vires** the power of the Councils.
3. There is no realistic prospect of a material delay to or cessation of the execution of the Variation as a result of a challenge to how the facility is being procured or operated and the European Commission, having been apprised of all of the facts (eg through the issue of a voluntary ex ante transparency notice) relating to how the Counties intend to effect the Variation, has not indicated that it has an intention to challenge UK government on **procurement** grounds.
4. The period of the Waste Contract is not extended unless such **extension** produces an economic benefit to the Councils and is in any event for no longer a period than that envisaged by the original EU procurement process.
5. Both DEFRA and the Audit Commission have indicated that they have **no objection** to the Variation (in its final form) being executed by the Councils.
6. Herefordshire Council and this Council have entered into an agreement to extend the **Joint Working Agreement** insofar as it relates to this facility for a period a commensurate with the intended life of the facility.