

Somerset Waste Partnership reference: 2015-71  
Enquiries regarding Indemnities, liability and insurance  
Date of response: 18.08.2015

Dear XXX

I am writing regarding your recent request for information from Somerset Waste Partnership, which has been dealt with under the provisions of the Freedom of Information Act 2000. Somerset Waste Partnership is a partnership of Mendip, Sedgemoor, South Somerset and West Somerset District Councils, Taunton Deane Borough Council and Somerset County Council. This response covers all those partner authorities.

In response to your questions: -

The specific and exact terms under the agreement between the Somerset Waste Partnership and the rubbish or recycling sub-contractor Kier Services for their liabilities and your remedies against Kier Services when damaging third party and or public property whilst employed by the Somerset Waste Partnership.

Answer: -

*PART 8 INDEMNITIES, LIABILITY AND INSURANCE*

*33. CONTRACTOR INDEMNITY*

*The Contractor indemnifies and keeps indemnified the Administering Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever arising out of, in respect of or in connection with the provision of the Services or this Contract (including, but not limited to breaches of the Workforce Codes) during the Contract Period other*

*than where the same is caused by or arises from the negligence, breach of this Contract, breach of statutory duty, breach of Legislation or other wrongful act or omission of the Administering Authority.*

*33.1 Conduct of claims*

*This clause 33.2.1 shall apply to the conduct, of either party where an indemnity is sought under this Contract from the other party, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. The party having, or claiming to have, the benefit of the indemnity is referred to as the "Beneficiary" and the party giving the indemnity is referred to as the "Indemnifier". Accordingly:*

*33.1.1 if the Beneficiary receives any notice, demand, letter or other document concerning any*

*claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Contract, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable having regard to any timescale imposed by a notice, demand, letter or any other form of document received by the Beneficiary;*

*33.1.2 subject to clauses 33.1.4, 33.1.5 and 33.1.6 below, on the giving of a notice by the Beneficiary pursuant to clause 33.1.1 above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of at least half of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with an indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action (over and above those which the Beneficiary would otherwise have borne if the Indemnifier had no entitlement to conduct the relevant claim) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all*

reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;

33.1.3 with respect to any claim conducted by the Indemnifier pursuant to clause 33.1.2 above:

(a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;

(b) the Indemnifier shall not bring the name of the Beneficiary into disrepute; and

(c) the Indemnifier shall not pay or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

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33.1.4 the Beneficiary shall be free to pay or settle any claim on such terms as it thinks fit and

without prejudice to its rights and remedies under this Contract if:

(a) the Indemnifier is not entitled to take conduct of the claim in accordance with clause 33.1.2 above; or

(b) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 20 Business Days of the notice from the Beneficiary under clause 33.1.2 above or notifies the Beneficiary that it does not intend to take conduct of the claim; or

(c) the Indemnifier fails to comply in any material respect with the provisions of clause 33.1.3 above;

33.1.5 the Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining

or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which clause 33.1.2 above applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this clause 33.1.5 then the Indemnifier shall be released from any liability under its indemnity under clause 33.1 (as the case may be) and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to clause 33.1.2 in respect of such claim;

33.1.6 if the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the

Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

(a) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Beneficiary in recovering the same;

(b) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity; and

33.1.7 either party taking any of the steps contemplated by clauses 33.1.2 to 33.1.5 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Contract.

#### 34. LIMITATION OF LIABILITY

34.1 Notwithstanding any other provision of this Contract, neither party limits or excludes its liability for:

34.1.1 fraud or fraudulent misrepresentation;

34.1.2 death or personal injury caused by that party's negligence; or

34.1.3 breach of statutory duty.

34.2 Subject to clause 34.1 above, the liability of the Contractor to the Administering Authority

howsoever arising in connection with the provision of the Services or this Contract shall in no

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event exceed twenty five million pounds (£25,000,000) (indexed) in respect of any one or connected series of events.

34.3 Except where expressly provided otherwise in this Contract, neither party shall be liable to

the other party in connection with the provision of the Services or this Contract for any indirect or consequential loss including any loss of profit, revenue, savings, use, contract, goodwill or business howsoever caused.

## 35. INSURANCE

### 35.1 General

35.1.1 The Contractor shall take out and maintain in force or procure the taking out and maintenance of:

(a) public liability insurance in the sum of twenty million pounds (£20,000,000) (indexed);

(b) employers liability insurance in the sum of twenty million pounds (£20,000,000) (indexed);

(c) property damage insurance in the sum of nine and a half million pounds (£9,500,000) (indexed);

(d) business continuity insurance in the sum of five million pounds (£5,000,000) (indexed);

(e) environmental impairment insurance in the sum of one million pounds (£1,000,000) (indexed); and

(f) any other insurances as may be required by law.

35.1.2 No party to this Contract shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

35.1.3 With the exception of any insurances required by law, the insurances referred to in clause 35.1.1(a) to (c) shall:

(a) subject to clause 35.1.4, name the Administering Authority as co-insured with any other party maintaining the insurance;

(b) provide for no-vitiating protection in respect of any claim made by the Administering Authority as co-insured;

(c) contain a clause waiving the insurers' subrogation rights against the Administering Authority, its employees and agents in accordance;

(d) provide for 20 Business Days prior written notice of their cancellation, non-renewal or amendment to be given to the Administering Authority; and

(e) in respect of any asset and building insurance provide for payment of any proceeds, received by the Contractor to be applied in accordance with clause 35.2).

35.1.4 Wherever possible, the insurances referred to in clause 35.1.1 shall name the Administering Authority as a co-insured for its separate interest.

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35.1.5 The Contractor shall provide to the Administering Authority:

(a) copies on request of all insurance policies referred to in clause 35.1.1 (together with any other information reasonably requested by the Administering Authority relating to such insurance policies) and the Administering Authority shall be entitled to inspect them during ordinary business hours; and

(b) evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this clause 35 (Insurance).

35.1.6 Renewal certificates in relation to the insurances referred to in clause 35.1.1 shall be obtained as and when necessary and copies (certified in a manner acceptable to the Administering Authority) shall be forwarded to the Administering Authority as soon as possible but in any event on or before the renewal date.

35.1.7 If the Contractor is in breach of clause 35.1.1, the Administering Authority may pay any premiums required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand, or deduct such amounts from the Services Payment.

35.1.8 The Contractor shall give the Administering Authority notification within 10 Business Days after any notification of a claim which it considers (acting reasonably) will result in a claim in excess of twenty five thousand pounds (£25,000) (indexed) on any of the insurance policies referred to in this clause accompanied by full details of the incident giving rise to the claim.

35.1.9 Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and obligations under this Contract.

35.1.10 The insurance premiums in respect of the insurances referred to in clause 35.1.1 shall be the responsibility of the Contractor.

35.1.11 The insurances referred to in this clause shall be effected with insurers approved by the Administering Authority, such approval not to be unreasonably withheld or delayed.

## 35.2 Reinstatement

35.2.1 All insurance proceeds received under any policy shall be applied to repair, reinstate and replace each part or parts of the Assets or any Depot in respect of which the proceeds were received.

35.2.2 All insurance proceeds paid under any physical damage policy in respect of a single event (or a series of related events) in an amount in excess of two hundred and fifty thousand pounds (£250,000) (indexed) shall be paid into a joint insurance account to be established by the parties as soon as possible following the relevant event.

35.2.3 Where a claim is made or proceeds of insurance are received or are receivable under any policy in respect of a single event (or a series of related events) (the "Relevant Incident") in an amount in excess of two hundred and fifty thousand pounds (£250,000) (indexed):

(a) the Contractor shall deliver as soon as practicable and in any event within 20 Business Days after the making of the claim a plan prepared by the Contractor for the carrying out of the works necessary (the "Reinstatement Works") to repair, reinstate or replace (the "Reinstatement Plan") the Assets or Depots which are S3956/00002/51066502 v.13 4 3

the subject of the relevant claim or claims in accordance with this clause 35.2.3. The Reinstatement Plan shall set out:

(i) if not the Contractor, the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Administering Authority; and

(ii) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Assets or Depots will become fully operational), the final terms of which shall be subject to the prior written approval of the Administering Authority, which approval shall not be unreasonably delayed; and

(b) provided that the Administering Authority is satisfied that the Reinstatement Plan will enable the Contractor to comply with clause 35.2.4 below within a reasonable timescale:

(i) the Reinstatement Plan will be adopted;

(ii) the Contractor shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan approved by the Administering Authority;

*(iii) prior to the earlier to occur of the Termination Date or the Expiry Date, any amounts standing to the credit of the joint insurance account (the "Relevant Proceeds") (together with any interest accrued) may be withdrawn by the Contractor from the joint insurance account as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in clause 35.2.3(b)(ii) above, and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of funding the Reinstatement Works and the parties shall operate the signatory requirements of the joint insurance account in order to give effect to such payments. Following the earlier to occur of the Termination Date and the Expiry Date, the Administering Authority may withdraw amounts standing to the credit of the joint insurance account for the purposes of funding any Reinstatement Works;*

*(iv) the Administering Authority agrees and undertakes that, subject to compliance by the Contractor with its obligations under this clause 35.2, and provided that the Contractor procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in clause 35.2.3(b)(ii), it shall not exercise any right which it might otherwise have to terminate this Contract by virtue of the event which gave rise to the claim for the Relevant Proceeds;*

*(v) the Authority undertakes to use reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan; and*

*(vi) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Administering Authority and in accordance with clause 35.2.4 below the Administering Authority shall permit withdrawal by the Contractor of any Relevant Proceeds then held in the joint insurance account that have not been paid under clause 35.2.3(b)(iii) above, in respect of the Relevant Incident, together with any interest accrued;*

*(vii) subject to the provisions of clause 33 (Contractor Indemnity), the Contractor shall be solely responsible for the payment of any deficiency.*

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*35.2.4 Where insurance proceeds are to be used, in accordance with this Contract, to repair, reinstate or replace any Asset or Depot, the Contractor shall carry out the work to the satisfaction of the Administering Authority so that on completion of any work, the provisions of this Contract are complied with.*

If you feel your request has not been answered in sufficient detail or if you wish to clarify the information given please contact me and I will be happy to address the issues you raise.

If you are not satisfied with the way in which your request has been dealt with, or the information you have received, you can ask for an internal review of our decision.

Please send your request to:

Peter Grogan  
Corporate Information Governance Manager  
Information Governance Team  
Resources Directorate  
County Hall  
Taunton  
TA1 4DY or email [PTGrogan@Somerset.gov.uk](mailto:PTGrogan@Somerset.gov.uk)

An internal review will then be carried out and we will write to you with the results of our investigation. If you are not content with the outcome of our review, you may then apply directly to the Information Commissioner's Office ([www.ico.gov.uk](http://www.ico.gov.uk)) for an appeal: The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF      Tel: 0303 – 123 1113

Please quote the reference numbers at the top of this e-mail in any future correspondence with Somerset Waste Partnership.

Yours sincerely