

Management Fee Provisions

3. For the period from 1 July 2010 to 30 June 2021:

A. General

The contractor intends to be operating the site at a profit from 1 July 2010 onwards. Both parties acknowledge that this intention is dependant on a number of factors such as landfill fees, fuel costs, labour costs, gate fees etc.

Where a profit is made from the DRRC site (being the total income received by the Contractor from the DRRC site less the total expenses incurred by the Contractor from the DRRC site), the Contractor will pay to the Council an amount representing a percentage of that profit as calculated and agreed between the parties in accordance with this paragraph.

Where a profit is not made, the Council will pay the Contractor a reasonable management fee based on an open book analysis of the site operations as calculated and agreed between the parties in accordance with this paragraph (**'management fee'**)

This paragraph also deals with the situation where no agreement can be reached as to the percentage of profit or management fee payable.

B. Process

The following process applies in relation to determination of the percentage of profit or management fee (as the case may be):

- (a) in February 2010 and thereafter each February:
 - (i) the Contractor must provide to the Council information relevant to the operation of the Centre and the Contract (including accounts for the previous financial year and operational and management budgets containing the expected expenditure, income and profit for the relevant year) and any other information requested in writing by the Council; and
 - (ii) the Contractor and the Council will meet to negotiate the amount payable, whether by the Contractor to Council as a percentage of the profit for that following year or by the Council to the Contractor as a management fee for that following year.
- (b) the party liable to make the payment under sub-paragraph (a)(ii) above must then make that payment on a quarterly basis in arrears representing the agreed percentage of profit or management fee for the services performed by the Contractor during that quarter unless otherwise agreed.
- (c) within two (2) weeks after the end of the quarter, the Contractor must provide to the Council financial information in an agreed format which shows the basis of the payment to be made (whether by the Contractor or Council) for that quarter.

- (d) if the Council and the Contractor are unable to agree on a percentage of profit payable to the Council under this paragraph, either party may invoke the dispute resolution process set out in clause 12 of Part 2 - General Conditions.
- (e) if the Council and the Contractor are unable to agree on a management fee payable to the Contractor under this paragraph, the Council may terminate the Contract in accordance with clause 7.7 of Part 2 - General Conditions. The parties acknowledge and agree that the dispute resolution process set out in clause 12 of Part 2 – General Conditions does not apply in relation to the exercise of the Council's right of termination under this paragraph.

The parties will review the finances of the Centre each year at the annual Review Meeting (Clause 8.23.6, Part 3 - Specification), or more often if required, to work to agree on a satisfactory mechanism for determining profit and loss from site operations and relevant management fee inclusions by July 2009.

Note: The Council also has the right to audit the Contractor's books of account and records, the operation of the Centre and the Contractor's obligations under this Contract under clause 9.22 of Part 3 – Specification, which is expressly incorporated into this Contract under clause 6 of C.2.2 – General Conditions of Annexure 3 to this Contract.