

SURREY HEATH BOROUGH COUNCIL

Surrey Heath House
Knoll Road
Camberley
Surrey
GU15 3HD

Tuesday, 1 November 2016

To: The Members of the Surrey Heath Borough Council

Dear Councillor,

You are hereby summoned to attend an Extraordinary meeting of Surrey Heath Borough Council to be held in the Council Chamber, Surrey Heath House on Wednesday, 9 November 2016 at 7.00 pm. The business which it is proposed to transact at the meeting is set out below.

Please note that this meeting will be recorded.

Yours sincerely

Karen Whelan

Chief Executive

1. Apologies for Absence

To report apologies for absence.

2. Minutes (Pages 3 - 8)

To approve as a correct record, the minutes of the meeting of the Council held on 5 October 2016.

3. Declarations of Interest

Members are invited to declare any Disclosable Pecuniary Interests and non-pecuniary interests they may have with respect to matters which are to be considered at this meeting.

4. Joint Waste Contract (Pages 9 - 98)

5. Revision to Prudential Indicators (Report to follow)

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**MINUTES OF A MEETING OF SURREY
HEATH BOROUGH COUNCIL held at
Surrey Heath House, Camberley on
5 October 2016**

+ Cllr John Winterton (Mayor)
+ Cllr Valerie White (Deputy Mayor)

+ Cllr Dan Adams	+ Cllr Oliver Lewis
+ Cllr David Allen	+ Cllr Jonathan Lytle
+ Cllr Rodney Bates	+ Cllr Katia Malcaus Cooper
+ Cllr Richard Brooks	+ Cllr Bruce Mansell
+ Cllr Nick Chambers	- Cllr David Mansfield
+ Cllr Bill Chapman	+ Cllr Alan McClafferty
+ Cllr Mrs Vivienne Chapman	+ Cllr Charlotte Morley
+ Cllr Ian Cullen	+ Cllr Max Nelson
+ Cllr Paul Deach	+ Cllr Adrian Page
+ Cllr Colin Dougan	+ Cllr Robin Perry
- Cllr Craig Fennell	+ Cllr Chris Pitt
+ Cllr Surinder Gandhum	- Cllr Joanne Potter
+ Cllr Moira Gibson	+ Cllr Nic Price
+ Cllr Edward Hawkins	- Cllr Wynne Price
+ Cllr Josephine Hawkins	+ Cllr Darryl Ratiram
+ Cllr Ruth Hutchinson	+ Cllr Ian Sams
+ Cllr Paul Ilnicki	+ Cllr Conrad Sturt
+ Cllr Rebecca Jennings-Evans	+ Cllr Pat Tedder
+ Cllr David Lewis	+ Cllr Victoria Wheeler

+ Present

- Apologies for absence presented

31/C Apologies for Absence

Apologies for absence were submitted on behalf of Councillors Craig Fennell, David Mansfield, Joanne Potter and Wynne Price.

32/C Minutes

It was moved by the Mayor, seconded by the Deputy Mayor, and

RESOLVED that the open and exempt minutes of the extraordinary meeting of the Council held on 24 August 2016 be approved as a correct record.

33/C Mayor's Announcements

The Mayor announced that since the beginning of September he had been very busy with a number of events, including a civic visit to the Council's twin town Bietigheim-Bissingen where he had received a very warm welcome.

Other events attended included Civic Days at Elmbridge and Mole Valley Councils, 100th birthday parties, a welcome to the new bishop at Guildford Cathedral, the Linkable Award evening and the Business Breakfast.

34/C Leader's Announcements

The Leader reported in relation to devolution and progress with the Three Southern Counties Bid (3SC). 3SC had formed a Leaders Board and she had been appointed as one of the vice chairmen. The Leader informed the Council that, whilst the Surrey Leaders had major concerns in relation to the financing of any combined authority, they had agreed that Surrey would remain part of the bid for the time being.

The Leader also advised in relation to the progress of the proposed Surrey Joint Waste Partnership contract.

35/C Review of Political Proportionality

As a result of a change in the division of members into political groups, the Council was asked to review the proportional political allocation of places on committees and to adopt a revised scheme of proportionality.

The Leader informed the Council of her nominations to committees following the change in her political group.

It was moved by the Mayor and seconded by the Deputy Mayor, that the scheme of proportionality as set out in the agenda be adopted.

RESOLVED, that

- (i) the scheme of proportionality as set out at Annex A of the agenda report be adopted for 2016/17; and**
- (ii) the revised membership of the following committees be as set out below:**

Planning Applications Committee (16 members and 6 substitute members)

Committee Members:

Cllr Richard Brooks, Cllr Nick Chambers, Cllr Mrs Vivienne Chapman, Cllr Colin Dougan, Cllr Surinder Gandhum, Cllr Edward Hawkins, Cllr Jonathon Lytle, Cllr Katia Malcaus Cooper, Cllr David Mansfield, Cllr Adrian Page, Cllr Robin Perry, Cllr Ian Sams, Cllr Conrad Sturt, Cllr Pat Tedder, Cllr Victoria Wheeler, Cllr Valerie White.

Substitutes:

Cllr Dan Adams, Cllr Rodney Bates, Cllr Ruth Hutchinson, Cllr Rebecca Jennings-Evans, Cllr Paul Ilnicki, Cllr Max Nelson.

Licensing Committee (15 members)

Committee Members:

Cllr David Allen, Nick Chambers, Cllr Bill Chapman, Cllr Mrs Vivienne Chapman, Cllr Surinder Gandhum, Cllr Ruth Hutchinson, Cllr Paul Ilnicki, Cllr David Lewis, Cllr Oliver Lewis, Cllr Bruce Mansell, Cllr Joanne Potter, Cllr Nic Price, Cllr Ian Sams, Cllr Pat Tedder, Cllr Valerie White.

36/C Electoral Review - Warding Pattern Submission

In July 2016, the Local Government Boundary Commission for England (LGBCE) had announced that it was minded to support a reduction in Members from 40 to 34. This reduction had been recommended by the Council in its submission on Council size.

The Boundary Commission had now launched its public consultation on warding patterns. It was advised that the statutory criteria for the review comprised 3 elements:

1. **Electoral Equality.** The number of electors represented by a councillor should be consistent, which would equate to approximately 2,100 electors per councillor. There would, however, be a tolerance of a 10% variance above or below this figure.
2. **Local Communities.** Pattern of wards should, as far as possible, reflect the interests and identities of local communities.
3. **Promoting effective and convenient local government.**

Electoral equality was the primary consideration, although natural communities could be considered a mitigating factor when considering whether to tolerate any variation above or below the accepted 10% variance.

The Governance Working Group, which had been tasked with developing the Council's submission on the warding pattern, had met on 31 August, 12 September and 27 September 2016. Groups of ward members had also held informal meetings to discuss proposals in conjoined wards.

The Council was informed that the Governance Working Group had considered 2 proposals for the Heatherside and Parkside wards and had not reached a conclusion on which option to put forward. In addition, it had not made any specific recommendations in relation to Chobham ward, although it supported the option of retaining 2 councillors if justification could be provided for being outside the tolerated variance.

It was moved by Councillor Moira Gibson and seconded by Councillor Richard Brooks that

- (i) the Chief Executive, after consultation with the Leader, be authorised to finalise the Council's submission on the proposed warding pattern of the Borough to the Local Government Boundary Commission for England, based on the proposals described in Annex A to the agenda report; and
- (ii) in respect of Heatherside and Parkside Wards, either Option 1 or Option 2 be included in the Council's submission.

The Council discussed the motion. It was noted by some Members that the proposals contained within the draft submission would result in an increase in wards with a variance above 10% and that, as not all areas met the requirements of electoral equality, the LGBCE would be unlikely to accept the current proposals as its final scheme.

It was proposed by Councillor Rodney Bates and seconded by Councillor Victoria Wheeler that a further item be added to the motion stating that, in recognition that not all wards in the Proposed Warding Pattern achieved the requirements of electoral equality, the LGBCE be asked to look at 35 councillors as well as 34 councillors. The amendment was put to the vote and carried.

Members considered the 2 options for Heatherside and Parkside wards and, having discussed the details of both proposals, it was suggested that both options should be submitted to the LGBCE for consideration. With the consent of the mover and seconder of the substantive motion, it was agreed to amend the motion accordingly. The motion, as amended, was put to the vote and carried.

RESOLVED that

- (i) the Chief Executive, after consultation with the Leader, be authorised to finalise the Council's submission on the proposed warding pattern of the Borough to the Local Government Boundary Commission for England, based on the proposals described in Annex A;**
- (ii) in respect of Heatherside and Parkside Wards, both Option 1 and Option 2 be included in the Council's submission; and**
- (iii) in recognition that not all wards in the Proposed Warding Pattern achieve the requirements of electoral equality, the Local Government Boundary Commission for England be asked to look at a council size of 35 councillors as well as 34 councillors.**

37/C Executive, Committees and Other Bodies

- (a) Executive – 2 August 2016 and 6 September 2016

It was moved by Councillor Moira Gibson, seconded by Councillor Richard Brooks, and

RESOLVED that the minutes of the meetings of the Executive held on 2 August 2016 and 6 September 2016 be received and the recommendation therein be adopted as set out below:

- (a) **compliance with the Prudential Indicators for 2015/16 be noted; and**
- (b) **the Investment Limits for “Any Group of Pooled Funds under the same Management” in the 2016/17 Treasury Strategy be changed from £3m to £5m**

- (b) Planning Applications Committee – 25 August 2016 and 22 September 2016

It was moved by Councillor Edward Hawkins, seconded by Councillor Valerie White, and

RESOLVED that the minutes of the meetings of the Planning Applications Committee held on 25 August 2016 and 22 September 2016 be received.

- (c) Audit and Standards Committee – 25 July 2016 and 19 September 2016

It was moved by Councillor Rebecca Jennings-Evans, seconded by Councillor Conrad Sturt and

RESOLVED that the minutes of the meetings of the Audit and Standards Committee held on 25 July 2016 and 19 September 2016 be received.

- (d) External Partnerships Select Committee – 20 September 2016

It was moved by Councillor Paul Deach, seconded by Councillor Dan Adams and

RESOLVED that the minutes of the meeting of the External Partnerships Select Committee held on 20 September 2016 be received.

- (e) Performance and Finance Scrutiny Committee - 28 September 2016

It was moved by Councillor Alan McClafferty, seconded by Councillor Jonathon Lytle, and

RESOLVED that the minutes of the meeting of the Performance and Finance Scrutiny Committee held on 28 September 2016 be received.

38/C Portfolio Holder's Question Time

Councillor Charlotte Morley, the Regulatory Portfolio Holder, responded to questions relating to her portfolio. In particular she agreed to investigate the issues relating to social landlords and affordable housing units on smaller sites.

39/C Exclusion of Press and Public

In accordance with Section 100(A)(4) of the Local Government Act 1972, the press and public were excluded from the meeting for the following item of business on the ground that it involved the likely disclosure of exempt information as defined in the paragraphs of Part 3 of Schedule 12A of the Act as set out below:

<u>Minute</u>	<u>Paragraph</u>
32/C (part)	3
40/C	3

40/C Review of Exempt Items

The Council reviewed the minutes which had been considered at the meeting following the exclusion of members of the press and public, as they involved the likely disclosure of exempt information.

RESOLVED that Minute 28/C and the Agenda Report and related information remain exempt.

Mayor

Joint Waste Contract

Portfolio:	Leader/ Community (non-executive function)
Ward(s) Affected:	All

Purpose: To consider the recommendations the Executive will be asked to make in respect of the agreement of a Joint Waste Contract. These recommendations relate to additions to the capital programme for 2017/18 and 2018/19, amendments to the Council's Constitution, and the appointment of the Council's representative to the Joint Waste Collection Services Committee.

1. Background

- 1.1. The Executive, at its meeting on 9 November 2016, will be asked to consider awarding a Joint Waste Contract.
- 1.2. The report to the Executive, which is attached at Annex A, provides detailed information on the Joint Waste Contract proposals.

2. Capital Finance Implications

- 2.1. In the process of developing the contract, it became clear that, if the Joint Waste Authority was to purchase the vehicles required to deliver the services, this would enable a further saving on the contract costs charged by the Contractor. Accordingly, the participating authorities agreed that the Contractor would procure and buy the vehicles, taking full responsibility for their specification and fitness for purpose, and then the Authority would buy the vehicles from the Contractor, funding the capital expenditure either from reserves or from Prudential Borrowing. The authority or authorities who made available the capital for the benefit of all the Partner Authorities would receive a mark-up of 2.5% over their borrowing rate and the funding costs would be apportioned in accordance with the Partnership Share.
- 2.2. Accordingly, bidders were required to submit a schedule of the vehicles that they proposed to use and their estimated useful life that would be purchased by them and in turn purchased by the Authorities, and this forms part of the evaluation of the notional contract cost.
- 2.3. In addition, bidders were asked to set out which vehicles would be used in which authority area and this has formed the basis of the investment required from each Partner Authority. Vehicles will be owned by individual authorities but leased back to the contractor. The contractor has guaranteed the life of each vehicle and would be required to cover the remaining term of the lease should a vehicle require replacement before its book life is complete. Should the contract be terminated, any residual value would pass back to the individual authority together with any unamortised debt.

3. S151 Officer Comments

- 3.1. The decision around the financing of vehicles was purely based on the result of discussions with contractors who made it clear that not only was their cost of capital higher but also they would recharge additional costs on to the cost of vehicles. Hence it makes commercial sense for Councils to fund the vehicles themselves.

4. Governance Issues

- 4.1. The Second Inter Authority Agreement, which the Executive will be asked to adopt at its meeting on 9 November 2016, sets out how liabilities, rights, duties, undertakings and responsibilities arising from or out of the Joint Contract will be shared and managed between the authorities and also provides the terms governing the Partner Authorities' joint working arrangements throughout the term (including any extension) of the Joint Contract.
- 4.2. The Second IAA outlines the governance arrangements to oversee the Joint Contract and how decisions in relation to the Joint Contract and the services delivered by the contractor will be made by elected Members and officers. It also establishes new Terms of Reference for the Joint Waste Collection Services Committee (JWCSC) to oversee the implementation and evolution of the contract over its lifetime.
- 4.3. The revised governance arrangements include retaining some decisions for Executive or Council, as well as delegating some decisions formerly exercised by the Executive to the JWCSC. Any consequential amendments to the Scheme of Delegation of Functions to Officers will also need to be considered.
- 4.4. The Council is therefore asked to authorise the Executive Head of Corporate to make all consequential changes to the Constitution. It is also asked to appoint the Community Portfolio Holder as the Council's representative on the JWCSC.

5. Proposal

- 5.1. It is proposed that the Council agrees that funding of £3.2m to be included in the capital programme for 2017/18 and 2018/19 to provide capital funding for vehicle purchase, to be funded by borrowing.
- 5.2. It is also proposed that the Executive Head of Corporate be authorised to make any required changes to the Constitution arising from the Executive's decision to agree a Joint Waste Contract and a second Inter Authority Agreement.
- 5.3. The Council is also asked to appoint a member to the Joint Waste Collection Services Committee.

6. Resource Implications

- 6.1. The Council is asked to include £3.2m in the capital programme in 2017/18 and 2018/19 in order to fund the vehicle purchase. This will be funded by borrowing.
- 6.2. Further details on the Joint Waste Contract's resource implications can be found in the exempt papers included in the report to the Executive.

7. Recommendation

7.1. The Council is advised to RESOLVE

- (i) to note the decisions of the Executive made on 9 November 2016 relating to the award of the Joint Waste Collection and Street Cleansing Contract, the entering into of the Inter Authority Agreement and the lease of part of Doman Road;
- (ii) that funding of £3.2m to be included in the capital programme for 2017/18 and 2018/19 to provide capital funding for vehicle purchase funded by borrowing;
- (iii) that the Executive Head of Corporate be authorised to update the Constitution with any required changes in light of agreeing the Second Inter Authority Agreement; and
- (iv) that the Community Portfolio Holder (and an appropriate named deputy) be appointed as the Council's representative on the Joint Waste Collection Services Committee.

Annexes: Report to Executive - Joint Waste Contract - Award of Contract -
Second Inter Authority Agreement

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Tim Pashen - Executive Head of Community

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Report to the Executive – 9 November 2016
Joint Waste Contract - Award of Contract and second Inter Authority Agreement

Summary

The report seeks approval to award a joint collection contract to bidder A who submitted the Most Economically Advantageous Tender and to enter into the successor of the Inter Authority Agreement Elmbridge Borough Council, Mole Valley District Council and Woking Borough Council.

Portfolio - Community

Date Portfolio Holder signed off report 26 October 2016

Wards Affected All

Recommendation

The Executive is advised to resolve that:

- (i) Bidder A be awarded the Joint Waste Collection and Street Cleansing Contract (Joint Contract) with service delivery in Surrey Heath commencing on 5th February 2018 up to and including 5 June 2027, with the option for the participating authorities and the contractor to agree to extend the Joint Contract by one or more successive consecutive periods until 2 June 2041;
- (ii) The Council enters into the Joint Contract with each of the partner authorities and Bidder A;
- (iii) The Council enters into the successor Inter Authority Agreement (Second IAA) with each of the other partner authorities, Elmbridge Borough Council, Mole Valley Borough Council and Woking Borough Council and Surrey County Council (in its capacity as the waste disposal authority (WDA)), which will regulate the relationship between the participating authorities (as necessitated by entry into the Joint Contract), establishes the shared contract management office (CMO) and the required governance arrangements, including the revised terms of reference for the Joint Waste Collection Services Committee (JWCSC Committee);
- (iv) The Council grants a lease of part of Doman Road Depot to Bidder A commencing on 5th February 2018 and co-terminus with Surrey Heath's participation in the Joint Contract and the Second IAA at a peppercorn rent;
- (v) responsibility for finalising the detail of the Second IAA and other related issues be delegated to the Executive Head for Community Services in consultation with the Portfolio Holder for Community Services; and
- (vi) responsibility to implement any actions necessary to implement the recommendations of this report, including any changes to the Council's constitution, be delegated to the Executive Head of Community Services.

The Executive is advised to RECOMMEND to Council that

- (i) funding of £3.2m to be included in the capital programme for 2017/18 and 2018/19 to provide capital funding for vehicle purchase funded by borrowing;
- (ii) the Executive Head of Corporate be authorised to update the Constitution with any required changes in light of agreeing the Second IAA; and
- (iii) the Community Portfolio Holder (and an appropriate named deputy) be appointed as the Council's representative on the Joint Waste Collection Services Committee.

1. Key Issues

- 1.1 At the meeting of the Executive on 3rd December 2013 it was resolved that the Council agrees to jointly procure a new waste collection and street cleansing contract with a number of other local authorities. The Joint Waste Collection Contract (Joint Contract) has now been procured to provide a range of waste collection, recycling, street cleaning and associated services for the four partner authorities, Elmbridge Borough Council, Mole Valley District Council, Surrey Heath Borough Council and Woking Borough Council (Partner Authorities).
- 1.2 The Partner Authorities currently operate successful and cost-effective recycling services, all of which are operated under individual contracts. The Partner Authorities are already within the top five authorities with the highest recycling rates in Surrey. The aim is to put a contract in place that will build on existing success by encouraging further innovation and yield significant savings and service benefits for local tax payers.
- 1.3 The Partner Authorities and Surrey County Council (as the Waste Disposal Authority (WDA)) signed an Inter-Authority Agreement (First IAA) during 2013/14 to regulate the terms and nature of the procurement and each of the Partner Authorities designated Member representatives to a Joint Waste Collection Services Committee (JWCSC) and officer representatives to a Project Team as well as authorising an initial budget of £460,000 over three years to fund the project.
- 1.4 The Partner Authorities have been working together to procure the joint contract supported by a Project Manager and specialist technical and legal advisers, both internal and external.
- 1.5 The proposed start dates for delivery of services in each area under the Joint Contract are:
 - Elmbridge (June 2017);
 - Woking (September 2017);
 - Surrey Heath (February 2018);
 - Mole Valley (waste collection August 2018, street cleansing April 2019).
- 1.6 Whilst the Joint Contract has been designed to provide each of the Partner Authorities with the same specification, the specification makes some allowance for local choice and flexibility. For instance, the services within the contract have been packaged in such a way to enable each of the partner authorities to buy some but not all of the potential services included within the specification to suit its own requirements and circumstances. Furthermore, the specification for the street cleaning services enables each authority to tailor the quality of the street cleaning in its area to reflect its needs and constraints.
- 1.7 The services consist of:
 - Municipal waste and recycling collection service, including mixed dry recycling, food waste, garden waste, electrical items, textiles and commercial waste;
 - Bulky waste collection service;
 - Clinical waste collection service;
 - Street-cleaning service;

- Service Users' Contact Management, including the administration of the garden waste service.

1.8 The table below indicates which services each authority is procuring by way of this Joint Contract.

Table 1

	Municipal waste and recycling collection	Street-cleaning	Bulky waste collection	Clinical waste	Service Users' Contact Management
Elmbridge Borough Council	✓	✓	✓	✓	
Mole Valley District Council	✓	✓	✓	✓	
Surrey Heath Borough Council	✓	✓	✓	✓	✓
Woking Borough Council	✓		✓	✓	✓

The Pre-procurement Phase

1.9 The First IAA delegated approval of a Procurement Strategy and the Contract Tender Evaluation Model to the JWCS.

1.10 Procurement Strategy: The JWCS made the decision to procure the contract using the Competitive Dialogue procedure. This is a four stage approach which included:

- The Pre-Qualification Stage;
- Invitation to Participate in Dialogue;
- Invitation to Submit Detailed Solutions;
- Invitation to Submit Final Tenders.

1.11 The benefit of competitive dialogue is that it allows potential contractors to provide their expertise and innovative ideas which contribute to the final service package/specification as well as an opportunity for the Authorities to test and to explore differing commercial and financial terms with a view to obtaining best value. This is considered to be a particularly effective approach where there are a number of alternative ways of delivering the service and it promotes the adoption of best practice.

1.12 **Contract Tender Evaluation Model:** In line with the long term partnership style of the contract and the need to secure a quality service, the JWCS decided to design the Evaluation Model to ensure that there is an equal balance between cost and quality. This signalled to the market that the authorities intended to procure a high quality service driven by high customer expectations equally balanced with the need to ensure value for money. Therefore, during evaluation 50% of the marks were given for quality and 50% for price. A detailed Contract Tender Evaluation Model was approved by the JWCS in December 2014.

- 1.13 The following elements of the project were also agreed by the JWCCS and Project Team under the terms of the First IAA.
- 1.14 Contract style: The Joint Contract aims to work in a co-operative, partnership style with the contractor as is necessary for a contract of this breadth and potential duration and with flexibility to allow the contract to evolve over time but still complying with the constraints of the procurement legislation.
- 1.15 The agreed approach was to specify what services are to be delivered and the standards to be achieved rather than instructing the contractor how to deliver the services. The bidders had the opportunity through the dialogue process to share their ideas and experiences from other contracts and from within their industry to help the Project Team shape the final detailed Specification and commercial and financial terms of the Joint Contract. The bidders were also encouraged to use their expertise to develop best practice solutions to providing high quality cost effective services and state these in method statements, which, once agreed, will form part of the Joint Contract. Where necessary, the method statements were tested during dialogue with each bidder to ensure they reflected and met the needs of the specification.
- 1.16 Contract Term: The initial term of the Joint Contract is 10 years expiring on 3 June 2027 with 'staggered' service commencement dates over a circa two year period to dovetail with the expiry date of each of the Partner Authorities' existing waste and street cleaning contracts. The length of term is common in waste and street cleaning contracts and reflects the significant investment in vehicles, which tend to have a lifetime of approximately 10 years. After the initial term, the Joint Contract may be extended with flexible extensions of up to a further 14 years, giving a total maximum 24 year term.
- 1.17 Additional Partners: The Joint Contract has been procured so as to enable all other Surrey waste collection authorities to have the opportunity to join during the life of the contract should they so wish. The arrangement does however ensure that the four Partner Authorities as the first cohort of authorities joining the JWCC will not be adversely affected by those joining at a later stage. The Second IAA includes the principles on which the joining partner will sign up to the Joint Contract and enter the IAA.
- 1.18 Contract Conditions: The Joint Contract comprises the contract conditions, the specification and the successful contractor's pricing schedule and method statements.
- 1.19 The contract conditions set out amongst other matters, the performance monitoring, payment mechanisms, and contract governance arrangements between the Partner Authorities on the one hand and the contractor on the other.
- 1.20 As it is a Joint Contract, the Partner Authorities are jointly and severally liable to the Service Provider. Before resolving to procure a joint contract, alternative approaches were considered. These included:
- a. A Lead Authority contracting with the contractor and then enabling other Surrey waste collection authorities (WCAs) to buy services via the Lead Authority; or
 - b. each Authority entering into a direct contract between it and the contractor; or

- c. a framework agreement with the contractor, with each individual Authority having its own direct contract with the contractor; or
 - d. a joint contract for the four partner authorities with a framework agreement established alongside to enable other Surrey waste collection authorities to benefit from the procurement.
- 1.21 These differing approaches were rejected as the benefit of a joint contract is that it enables cross-boundary working which results in a more efficient use of resources and capital assets and reduced contract overheads through enabling a more streamlined contract management structure on the part of the contractor. This was made possible through having a consistent approach to the service specification as a result of the alignment of the four Partner Authorities' policies. This would have also been possible through a lead authority structure; however the authorities buying services through the lead authority would not have had the benefit of a direct relationship with the contractor which was considered to be important given the value and importance of the services being delivered to each Authority's residents. Framework agreements do not sufficiently permit the length of contract that the Partner Authorities wished to award, particularly in light of the potential capital commitments required to deliver the services.
- 1.22 In entering into the Joint Contract, all four Authorities will be bound to remain a party to the Joint Contract for the duration of the Initial Term. Whilst the Joint Contract itself does give the four Partner Authorities the right to terminate for convenience or in the event of breach of contract by the Contractor, an individual Authority will not have the right to unilaterally exit the Joint Contract until expiry of the Initial Term and the Price Schedule has been calculated and bid back on this basis. As part of the decision making process as to whether or not to agree to an extension of the Joint Contract post June 2027, each individual Authority could elect to exit the Joint Contract at that point, and to make its own arrangements for a replacement service provider at that point. Exiting the Joint Contract would necessitate the Authority being released from the Second IAA. Once an Authority has elected to continue with the Joint Contract during any extension period, again the Authority would not have an opportunity to exit until the expiry of that extension period.

The Service Specification

- 1.23 The draft Service Specification provided to the bidders as part of the procurement process was approved by each individual authority by their Executive/ Cabinet prior to issuing the OJEU Notice, Pre-Qualification Questionnaire and other procurement documents. In Surrey Heath the specification was approved on 17th March 2015.
- 1.24 The draft Service Specification was based on the service requirements described in Schedule 1 of the First IAA, signed by all authorities in 2013/2014. Over the years, the core waste and recycling collection services in all the authorities have become increasingly aligned around an alternate weekly collection regime, with co-mingled recycling and weekly food waste collections. This method has proven successful in delivering value for money, convenience for residents and high recycling rates. Therefore, the draft specification for the Joint Contract did not significantly differ (albeit that Clinical Waste and Bulky Waste services have been added in to the scope of the Joint Contract) from what is currently operational in each of the four Partner Authorities.

- 1.25 In order to maximise the opportunities for economies of scale, the services under the new contract will be further aligned, wherever possible, to a uniform service specification and service offer to the resident. This will make cross-boundary working more efficient and cost effective. It will also facilitate communication of the services across the area making it easier for residents to understand and use the services on offer.
- 1.26 The Service Specification also reflects the aims and objectives contained in Surrey's Revised Joint Municipal Waste Management Strategy (2015-2020). The Service Specification has been developed taking into account customer consultation including a customer focus group held on 23 September 2014. This informed the Project Team during the Competitive Dialogue stages of procurement, and informed the final Service Specification. It also provides a benchmark of customer satisfaction against which the Joint Contract, if approved, can be measured.

Price Schedule and Financial Model

- 1.27 Given the need to enable other WCAs to benefit from the joint procurement and to participate in the Joint Contract as well as the need to allow for a degree of flexibility as to which of the full range of possible Services are to be purchased by each of the Partner Authorities (current and future), the Joint Contract has been constructed on the basis of a set of unit prices on a granular service by service basis (Price Schedule). The unit prices in the Price Schedule are uniform across all four authorities. The populated Price Schedule will be incorporated into the Contract. The total cost of the Services to be delivered under the Joint Contract each year will be calculated by multiplying the relevant unit prices by the predicted volume of activity for the applicable activity (households or street distances for example) and this will form the basis of the Core Charges payable to the contractor each year. The Price Schedule also provides a menu of prices for ad-hoc or instructed services. In addition to the Core Charges, the Contractor will receive an Annual Management Payment which will cover those costs which are not volume sensitive. This has been profiled so as not to disadvantage the first authorities mobilising the Joint Contract, as otherwise those authorities would bear the bulk of the upfront costs incurred by the contractor, such as IT, HR, Property and Project Management costs.

Contract Price Indexation

- 1.28 As the Pricing Schedule is based on units per individual activity undertaken, if an activity increases, say due to the building of new houses, then the overall costs will increase. This is in line with current arrangements under existing contracts. In addition, the Joint Contract provides for unit prices to rise in line with an inflationary index comprising of a basket of indicators appropriate to the nature of the operations in the contract, namely wages, fuel and other operational costs.

Partnership Share

- 1.29 The Second IAA is designed to allocate a proportion of the Core Charges, total rental value of all Partner Authorities' depots used by the contractor and the Annual Contract Management Payment (net of any performance deductions) to each of the Partner Authorities in accordance with their Partnership Share of the contract. The Partnership Share is based on the value of the core contract for each authority as a percentage of total value of

the contract for all four Councils. The Partnership Share is approximately as follows:

Table 2

Partner Authority	Partnership Share
Elmbridge Borough Council	32%
Mole Valley District Council	18%
Surrey Heath Borough Council	26%
Woking Borough Council	24%

- 1.30 Given the scale, potential value and duration of the Joint Contract, the Joint Contract will operate on an open book basis, underpinned by a Financial Model which will enable the Partner Authorities to have financial oversight and transparency in relation to the Joint Contract Charges and to take informed decisions as to the options for either efficiency savings or service improvements. The Financial Model incorporated into the Joint Contract has been certified as to its validity to the Authorities by independent auditors on behalf of the contractor and then validated against the Price Schedule and the contractor's approach to resourcing (people and assets) the Joint Contract to ensure robustness and traceability.

Allocating of Costs

- 1.31 Beyond the unit costs listed in the Price Schedule, there are a number of other costs that will be divided between the four authorities as follows:

Table 3

Category	Treatment
Annual Contract Management Payment	Divided: On the basis of Partnership Share
Garden Waste and Contact Centre Management Fee	Equally between the two authorities using and buying these services
Vehicles including finance charge	On the basis of proportion of usage by each authority in terms of complete months
Depot costs	On the basis of Partnership Share
Contract Management Office (CMO) costs	Equally between the four authorities

The Partnership Guarantee

- 1.32 The original IAA guaranteed that every Council who signed the IAA and entered into the Joint Contract would benefit from a saving of either 5% of the current contract costs or £100,000, whichever was the greater (Partnership Guarantee). This was to encourage each authority to sign up and commit to the procurement project so as to maximise the potential economies of scale and increase the size of the collective savings of all authorities joining the Joint Contract. The IAA provided that where a guarantee is payable it will be shared in proportion to the savings made by the other individual authorities.
- 1.33 The guarantee is payable for the first 10 years of the contract only and is indexed in line with the contract indexation.

Contract Governance

- 1.34 In order to enable the Contractor to cost the Joint Contract on the basis of a streamlined contract management structure on its part, it was necessary for the Partner Authorities to commit to having one Authorised Officer or representative to act on their combined behalf to deal with the day to day operation and management of the Joint Contract. This is supplemented by the Contract Partnering Board which will comprise at least two members of senior management from the Contractor and at least two members across the Partner Authorities and at least one representative of Surrey County Council as the waste disposal authority (WDA) to deal with the more strategic management matters arising under the Joint Contract. This will be underpinned by the data provided by the Contractor's ICT solution. The Second IAA establishes the necessary authorisations and delegations of the Authorised Officer and the Contract Partnering Board on behalf of the Partner Authorities.

The Procurement Process

- 1.35 There were four main stages of the procurement process outlined below

Stage one: Pre-Qualification: In May 2015, a contract notice was issued in the Official Journal of the European Union (OJEU) inviting expressions of interest in the contract opportunities from waste collection operators across the EU. These operators were issued a Pre-Qualification Questionnaire (PQQ). The purpose of the PQQ was to ascertain their ability to deliver contracts of this nature and shortlist those suppliers that would be invited to tender. The financial standing and the technical and professional ability and capacity of the bidders to provide the required services were evaluated based on their responses to the PQQ.

Stage two: Invitation to Participate in Dialogue (ITPD): Following evaluation of the PQQ returns, in July 2015, five companies were invited to participate in dialogue. One bidder chose to withdraw at this stage leaving four bidders who entered into structured dialogue sessions with the project team.

Stage three: Invitation to Submit Detailed Solutions (ISDS): After dialogue, the four bidders were invited to submit detailed solutions in response to draft specification and method statement templates provided by the authorities. Detailed solutions, including unit costs, were submitted by all four bidders and were evaluated against a strict framework of financial and quality criteria. Following evaluation by an evaluation team made up of representatives from each authority as well as specialists in legal, finance, ICT and Health and Safety, the three bidders with the highest combined scores were taken through to the next stage.

Stage four: Invitation to Submit Final Tenders (ISFT): In May 2016, invitations to submit final tenders were issued to the remaining three bidders together with a suite of revised documents including: specifications; method statement templates; evaluation framework; and pricing schedule. These revised documents had been informed by the initial dialogue stages to ensure they reflected best practice in the industry and the requirements of the authorities. Further dialogue sessions with each of the bidders sought to clarify queries that arose during the ISDS stage and further inform the development of the bidders' method statements. The final tenders were again evaluated against criteria relating to financial value and quality of service (based on the 50:50 evaluation model) by representatives from each authority supported by specialists. The results of the evaluation were presented to the JWCS on 21st August 2016.

2. Key Features of the Contract

- 2.1 The following sections outline the key features of the contract, which were developed during the dialogue stages of the procurement process.

Performance Management

- 2.2 Given the high profile nature of these services and that they are valued highly by our residents, the reliable performance of the contractor is of great importance to residents and the authorities. Therefore, the Joint Contract includes a comprehensive performance management framework to make it financially advantageous to the contractor to maintain high levels of performance and allows the authorities to instruct the contractor to improve and penalise them when they do not perform to the required standard.
- 2.3 The contractor will be required to perform against a set of key performance indicators (KPIs) as set out in the contract. The contractor will be required to monitor their own performance and provide regular Performance Reports to the Authorised Officer. The Authorised Officer can also carry out spot checks on the performance levels either in addition to the contractor's checks or to satisfy themselves that the contractor's checks are accurate.
- 2.4 The full list of KPIs, with associated targets and financial penalties, is included in Schedule 3 of the Joint Contract. The KPIs relate to the following failures:

Missed Collection

- Missed Assisted Collection
 - Missed Collection not Rectified
 - Repeat Missed Collection
 - Repeat Missed Assisted Collection
 - Reported Spillage
 - Reported Waste Separation Failure
 - Failure to Carry out Collection as specified (Assisted Collection)
 - Failure to Carry out Collection as specified (Non-Assisted Collection)
 - Missed Bulky Collection
 - Street Cleaning Performance Failure Not Rectified
 - Fly tipping, Flyposting or Graffiti Non Removal
 - Customer Contact Services Response Times Not Met
 - Garden Waste Cancellation (Missed Collections)
- 2.5 Where a KPI is not met, deductions will be applied to the monthly invoice. In extreme circumstances, the Joint Contract can be terminated if the level of missed bins or the standard of street cleaning reaches an intolerable level, as defined in the contract.
- 2.6 The street cleaning element of the Joint Contract is based on a performance regime. This is a departure from the street cleaning contract in Surrey Heath which is based on a frequency regime. The benefit to a performance regime is that the contractor is required to maintain an area to the standard specified in the contract regardless of how often the area needs cleaned. If the area falls below that standard, they are required to return the area to the required standard within a specified time period. The performance regime focuses the contractor on the outcomes sought by the authority rather than by the frequency outlined in a contract. We have trialled a performance regime in Surrey Heath over the past 18-months with no deterioration in standards.

- 2.7 Under this regime, the burden of managing the service to meet the desired outcomes is substantially shifted from the client to the contractor, who in turn is given substantially more flexibility as to how they achieve this end result.
- 2.8 To ensure the contractor is delivering levels of cleanliness required by the Joint Contract, the Partner Authorities will carry out quarterly Litter and Detritus Surveys (LADs). These surveys will assess a small proportion of roads against a set standard of cleanliness. Financial penalties will be incurred by the contractor where the percentage of surveyed roads falling below the standard reaches an unacceptable level, as defined by the contract.
- 2.9 During the roll-out period of the Joint Contract in each authority, the KPIs will be adjusted to enable the contractor to overcome any unexpected issues relating to mobilisation and settling into the Joint Contract without being unduly financially penalised. Under this arrangement the KPI targets will be relaxed for the first three months of the Joint Contract in each authority but the right to issue rectification notices and issue penalties will remain with the Partner Authorities to ensure the contract performs to a specified level.

Communicating and engaging with residents

- 2.10 The success of the Joint Contract relies not only on the collection of waste and recycling but also on effective communication with residents. The contractor is required to work with the Partner Authorities to ensure reliable information is provided to residents to keep them informed of the services they can expect and when they can expect them. Part of this requirement is for the contractor to provide and maintain an information technology (IT) system that is capable of providing the necessary data and information to manage performance, measure trends in waste and recycling rates and keep residents informed.
- 2.11 Residents will be able to access information and report problems with their collections through an on-line portal, including a 'report-it' function and by telephone. The contractor is also required to work with the authorities to inform residents of any expected disruptions or changes to services.

Service Users' Contact Management

- 2.12 In the case of Surrey Heath and Woking Borough Councils, the contractor is required to provide a contact management service for service users. This will involve responding to customers who contact the contractor through the on-line 'report-it' functions and by telephone. The services will also include the administration of the garden waste collection service. The service specification and performance framework ensures this is carried out to the standards expected by the relevant Partner Authorities.
- 2.13 In Elmbridge Borough Council and Mole Valley District Council, the contractor will not interact directly with service users. Any reports made on-line or by telephone will be handled directly by the authorities and the administration of the garden waste collection service will also remain with the authorities.
- 2.14 These individual choices in contact management approach reflect the preference of each Partner Authority and the procurement approach was set up to allow this flexibility.

Innovation and on-going efficiencies

- 2.15 Given the waste industry is constantly evolving in order to reduce costs and improve environmental standards, it is important that the Joint Contract is flexible enough to keep pace with these changes. Therefore, although the current services reflect best practice and are orientated around reducing waste, increasing recycling and delivering value for money, the Joint Contract requires the contractor to continually seek for ways to reduce costs and innovate.
- 2.16 The competitive dialogue approach chosen for this procurement exercise lends itself to designing services which reflect best practice and deliver value for money. All bidders were requested to submit initiatives which would deliver significant impact on performance, customer experience or cost reductions above and beyond the specified service. It is at the Partner Authorities' discretion whether they choose to implement these initiatives during the lifetime of the Joint Contract but they set a firm foundation for future innovation. The bidders were also required to explain how they would keep services under review throughout the term of the Joint Contract for the purpose of identifying potential savings and efficiencies. A change mechanism forms part of the Joint Contract to approve and formalise any changes during the term of the contract. In addition, there is provision for an independent benchmarking of part or whole of the services provided by the Joint Contract to assess whether it represents value for money.
- 2.17 One specific innovation desired by the Partner Authorities is a collection service for nappies and absorbent hygiene products. Therefore, all bidders were requested to submit a method statement and price for carrying out this service. Under the Joint Contract, the Partner Authorities have the right to require this service to be delivered in accordance with the bidder's pre-priced solution on no less than three months' notice.
- 2.18 The Partner Authorities also explored the possibility of providing a commercial waste collection service through the Joint Contract. The expectation is that this service will be popular with local businesses and has the potential to bring further financial benefits to the Partner Authorities during the life of the contract. During Stage 2 and 3 of the procurement process, the bidders all proposed different ways of structuring the financial mechanisms of this service and different ways to share the income and client book in the future. Therefore, it became clear that it was not going to be possible to evaluate in a consistent way the financial impact of any commercial waste collection service. Rather than miss the opportunity to develop such a service in a competitive environment, the bidders were requested as part of their final bid to outline how they would provide this service. This enabled the evaluation team to evaluate and score the quality elements of each proposal. This approach will now enable the Partner Authorities to work with the preferred bidder to optimise and refine their offer for this service with confidence that the quality elements have been evaluated and approved. Any commercial model will be developed by the IAA CPB and the JWCS before being recommended to each individual authority (Tier 1) to agree.
- 2.19 In addition, the Joint Contract requires the contractor to allocate one third of all profits beyond a defined threshold to a ring-fenced Innovation Fund. The Fund can be used by the contractor, only with the Partner Authorities' permission, either to invest to reduce the overall and on-going costs of the Joint Contract for the Partner Authorities' benefit or to improve the service in the interests of residents.

Existing Planning Constraints and Environmental Permitting

- 2.20 The bidders were required to submit two solutions for operating the waste collection service based on two options outlined in the tender documents. By obtaining two pre-priced solutions in a competitive environment, this effectively establishes a cap on the prices set out in the Pricing Schedule.
- 2.21 Option A assumed the services were carried out in accordance with the current planning restrictions and current environmental permitting. Planning conditions particularly relate to Elmbridge where conditions require the contractor to use an access road to the depot which goes under a low bridge. The environmental permits at the Doman Road depot in Surrey Heath particularly restrict the contractor from tipping food waste onto the ground within a bay and require the contractor to tip the food waste into a container. The restrictions at both of these depots require the contractor to consider the type of vehicle they use, which may be different if these restrictions did not apply.
- 2.22 Option B is based on a hypothetical scenario where the planning constraints have been removed and enable access by way of a different road without a low bridge to the Elmbridge depot, and allow food waste to be tipped on the ground at Surrey Heath.
- 2.23 The expectation of the Project Team was that Option B would be less expensive for the contractors to deliver than Option A. The evaluated bids have confirmed that position with all bidders offering a reduced cost for Option B compared to Option A. Therefore, Elmbridge and Surrey Heath have been asked to consider amending the planning conditions and permitting issues respectively.

3. Final Tender Evaluation

- 3.1 Tenders were evaluated in accordance with the process set out in the Invitation to Tender and the published evaluation methodology, and using the price: quality criteria agreed by the JWCSC in December 2014 which was 50% Price and 50% Quality. The results of this evaluation in terms of points awarded are shown in the table below.

Table 4 – Tender Evaluation Results

	Bidder A	Bidder B	Bidder C	Total Points available
Normalised Quality	500	433	437	500
Final Evaluation Price	417	450	438	450
Legal and Risk	10	15	10	25
Robustness of the Bidder Financial Model	25	25	5	25
Total	952	923	889	1000
Ranking	1 st	2 nd	3 rd	-

- 3.2 On the basis of the tender evaluation, Bidder A submitted the Most Economically Advantageous Tender.

Property Implications

- 3.3 In order to deliver the Services, the successful contractor will require depots from which to operate. Each of the Partner Authorities has offered its existing

depot for the benefit of the contractor. The depots will be leased by the individual Authority to the contractor at a nominal rent of £1, as otherwise the Contractor, if required to pay the market rent, re-charges this to the contract costs plus a mark-up. To ensure the individual landlord Authority obtains best consideration for its depot, the market rent for that depot will be recharged by the individual landlord Authority to the Joint Contract service budget, with the market rent being independently valued on the basis of the terms of the lease offered to the contractor.

- 3.4 The bidders were required to indicate in their bids which of the four depots provided by the Partner Authority they would utilise in order to deliver their operational solution. Partner Authorities will contribute to the collective rental value of the depots based on the Partnership Share of each Partner Authority.

Capital Finance Implications

- 3.5 During dialogue, it became clear that if the Authorities were to purchase the vehicles required to deliver the Services; this would enable a further saving on the contract costs charged by the Contractor. Accordingly, the Authorities agreed that the Contractor would procure and buy the vehicles, taking full responsibility for their specification and fitness for purpose, and then the Authorities would buy the vehicles from the Contractor, funding the capital expenditure either from reserves or from Prudential Borrowing. The authority or authorities who made available the capital for the benefit of all the Partner Authorities would receive a mark-up of 2.5% over their borrowing rate and the funding costs would be apportioned in accordance with the Partnership Share.
- 3.6 Accordingly, bidders were required to submit a schedule of the vehicles that they proposed to use and their estimated useful life that would be purchased by them and in turn purchased by the Authorities, and this forms part of the evaluation of the notional contract cost.
- 3.7 In addition, bidders were asked to set out which vehicles would be used in which authority area and this has formed the basis of the investment required from each Partner Authority. Vehicles will be owned by individual authorities but leased back to the contractor. The contractor has guaranteed the life of each vehicle and would be required to cover the remaining term of the lease should a vehicle require replacement before its book life is complete. Should the contract be terminated, any residual value would pass back to the individual authority together with any unamortised debt.

Milestones

- 3.8 If the Executive agrees the recommendations in the report, the table below summarises some of the key dates leading up to the commencement of the contract:

Table 5 - Milestones

[after date after latest call-In period expired]]	Issue Alcatel letters debriefing suppliers and enter OJEU ten day
[Expiry of Standstill Period]	Contract award (assuming no challenge received)
	Optimise and clarify with the Preferred Bidder
Target December 2016	Formal contract executed by all four Partner Authorities and the Contractor

December 2016	Commence PR jointly with the Contractor around new contract award
December 2016	Contract mobilisation begins in Elmbridge Borough Council
3 June 2017	Contract operational in Elmbridge Borough Council
March 2017	Contract mobilisation begins in Woking Borough Council
11 September 2017	Contract operational in Woking Borough Council
August 2017	Contract mobilisation begins in Surrey Heath Borough Council
5 February 2018	Contract operational in Surrey Heath Borough Council
February 2018	Contract mobilisation begins in Mole Valley District Council
6 August 2018	Contract operational in Mole Valley District Council (waste and recycling)
1 April 2019	Contract operational in Mole Valley District Council (street cleaning)

Mobilisation

- 3.9 To ensure a smooth transition from existing contractors to the new contractor, the mobilisation period of the contract is crucial. An element of the quality evaluation considered each bidder's proposals on how they would mobilise the contract. Mobilisation typically takes six months and will include: purchase and receipt of the necessary vehicles and equipment; transfer of staff from the existing contractor to the new contractor; recruitment of any additional staff; route design; communication to residents; training of crews; transfer of data, designing and implementing customer service processes among other things. A successful mobilisation will require the contractor and the Partner Authorities to work effectively together and will require a great deal of time and commitment from both parties. The existing contractor will also be required to co-operate in the provision of data and information relating to existing services. A significant piece of work will be the design and implementation of the necessary IT processes to enable customers to log complaints by telephone and on-line and for those records to be retained and shared with the necessary parties in order to ensure quick resolutions to problems and accurate reporting of performance.
- 3.10 In reviewing the mobilisation of the Contract, each Partner Authority will need to take into account any costs in transitioning its existing service and client arrangements into the new CMO. In particular, there is likely to be an associated cost in ensuring that each Partner Authorities' ICT systems are compatible with the Contractor's and CMO's requirements as well as potentially other Human Resource issues.

4. The Second Inter Authority Agreement (Second IAA)

- 4.1 In order to ensure the contract is administered appropriately a revised IAA (Second IAA) is required. The Second IAA sets out how liabilities, rights, duties, undertakings and responsibilities arising from or out of the Joint Contract will be shared and managed between the authorities and also provides the terms governing the Partner Authorities' joint working arrangements throughout the term (including any extension) of the Joint Contract.
- 4.2 The Second IAA also outlines how decisions in relation to the Joint Contract and the services delivered by the contractor will be made by elected Members and officers. It establishes new Terms of Reference for the JWCS to oversee the implementation and evolution of the contract over its lifetime. The IAA also establishes a Contract Partnering Board (CPB) and outlines the role of the Authorising Officer and the Contract Management Office (CMO). This

Contract Partnering Board is different to the Contract Partnering Board established in the Joint Contract itself. It does not have the same membership or functions as the Contract Partnering Board under the Joint Contract. The IAA CPB is made up of a representative of each of the Partner Authorities who is party to the Joint Contract, whereas the Joint Contract CPB membership is as outlined above under Contract Governance and includes representatives from the senior management of the contractor.

- 4.3 The IAA aims to set a culture of mutual co-operation and honest partnership working among the four waste collection authorities. This co-operative culture will be the foundation for delivering higher performing, better value waste services for the Surrey tax payer and protect the individual interests of each individual authority.
- 4.4 The Second IAA reflects the Principles of Apportionment of the Charges as outlined in the First IAA supplemented by the concept of a Partnership Share which deals with those costs which cannot be apportioned in accordance with the Principles of Apportionment, such as the Annual Management Payment.

Decision Making and JWCC Management

- 4.5 The governance framework for the Joint Contract are outlined in Paragraph 22.1 of the Revised IAA and presented in diagram 1 below. The framework consists of three tiers of decision-making with certain decisions reserved for specific tiers. This aims to balance the need for practical decision-making enabling the contract to operate effectively and efficiently with sufficient governance to ensure elected Members are involved in making strategic decisions about the future direction of the contract and waste management in their authorities.

Tier 1: Individual Authorities

- 4.6 Tier 1 decisions are reserved for the Cabinets, Executives, Councils or Lead Officers of individual Partner Authorities as determined by their individual constitutions. All matters that are not delegated to the JWCCSC or CPB or to officers under the Schemes of Delegation are reserved for individual Partner Authorities. This would include, but not be limited to, setting the Annual Budget for the Joint Contract and associated functions and setting fees and charges related to waste management.

Tier 2: The Joint Waste Collection Services Committee (JWCCSC)

- 4.7 The Terms of Reference of the JWCCSC as approved by individual authorities in 2013/14 related to the procurement phases of the Joint Contract. The role of the JWCCSC under those Terms of Reference comes to an end when the Joint Contract is awarded. Therefore, revised Terms of Reference are required for the JWCCSC to manage the implementation and evolution of the contract over its lifetime. The membership of the JWCCSC will remain the same with one elected Member from each of the four waste collection authorities making up the JWCCSC.
- 4.8 The Second IAA provides for the JWCCSC to oversee the management of the contract including scrutinising the performance of the contractor and the expenditure of the Annual Budget. The JWCCSC will fulfil this role by receiving reports from and instructing the IAA CPB.

Tier 3: The IAA Contract Partnering Board (CPB)

- 4.9 The IAA CPB will consist of lead officers from the four waste collection authorities, typically officers at Head of Service or Executive Head/Director-level. The IAA CPB will be responsible for holding the contractor to account, making operational variations depending on need and demand within the agreed Annual Budget and recommending any further variations to the JWCSC. The IAA CPB will receive updates and reports from the Authorising Officer relating to the performance of the contractor and continual improvement of the contract as well as the performance and development of the CMO.

Authorised Officer and the Contract Management Office (CMO)

- 4.10 In order to achieve economies of scale and ensure the contractor provides equitable services to each authority, it is necessary to appoint a single Authorised Officer to oversee the delivery of the contract. This individual will be the lead officer within the CMO. The Authorised Officer will be responsible for managing the relationship with the contractor, including performance management, and representing the views and requirements of the Partner Authorities. This ensures there is a single line of communication between the contractor to the Authorised Officer, rather than having four lines of communication from contractor to each individual authority, which could lead to confusion, additional overhead costs for both the contractor and the authorities and operational difficulties leading to potential service failures.
- 4.11 The Authorised Officer will be supported by a team who will manage and administer the contract and related functions including data management, communications and projects to improve recycling performance. In effect, where a Partner Authority is purchasing a service or discharging a function through the Joint Contract, the CMO will provide the interface between the contractor and that Partner Authority for that service. Activities such as exercising of a Partner Authority's enforcement powers under the Environmental Protection Act 1990 are however retained by the Partner Authority. Given that the Authorities have joint and several liability under the Joint Contract, and there will be the need to interrogate and verify the financial data and charges from the Contractor to operate the financial provisions of the Second IAA, the CMO will need to have access to finance resource.
- 4.12 The CMO comprising of, at the minimum, an Authorised Officer will be contractually required under the terms of the Joint Contract, and therefore will need to be a named individual in place from the date on which the Joint Contract is concluded with the Contractor, even if the CMO is not otherwise established at the date of contract signature.

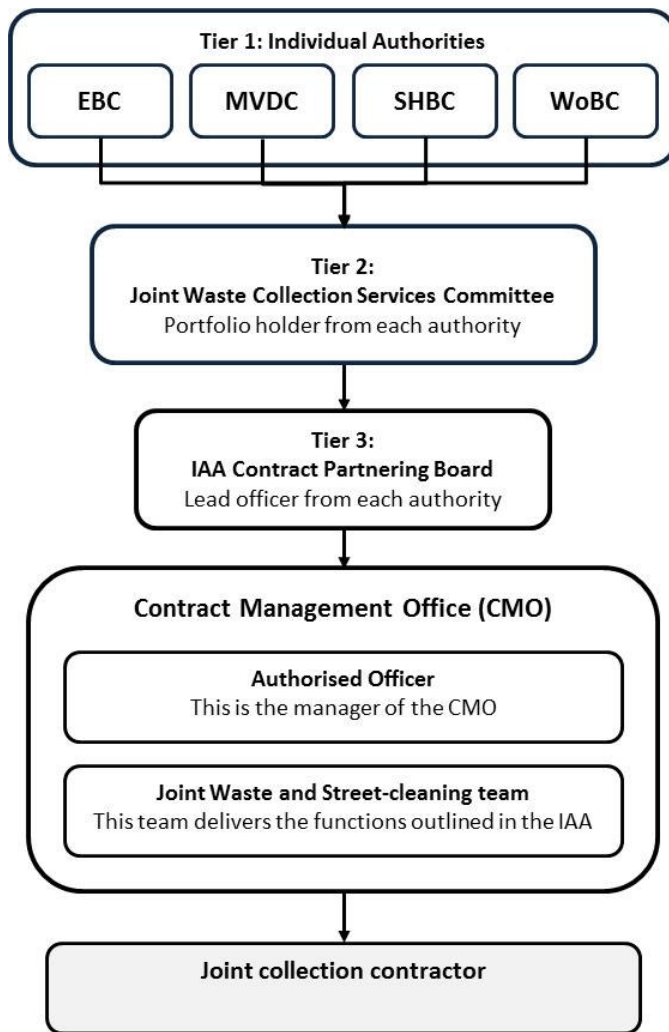


Diagram 1: IAA Governance and Management Framework

Service Level Agreements (SLA)

- 4.13 To manage the relationship between the CMO and individual authorities, SLAs will be agreed for each of the Partner Authorities. The SLA will outline what will be provided by the CMO to each authority and what the CMO can expect in return. The content of the SLAs will be agreed by the IAA CPB.

Budget setting

- 4.14 The required Annual Budget for the forthcoming year will be calculated for each individual Partner Authority based on: the Price Schedule for the forthcoming year; the required services from the contractor for each Partner Authority; the Annual Management Payment; and, the costs of running the CMO, funding the vehicles and the cost of the depot rent foregone where a depot has been provided at a nominal rent by a Partner Authority (the latter four being allocated by Partnership Share.) These projections will be presented to the IAA CPB and JWCS to agree before recommending them to individual authorities' Councils to approve through their annual budget setting process. If approved, the CMO will then manage the contract and the CMO within the agreed annual budget. If not approved, the Partner Authorities will have to agree an alternative budget with the CMO which may

require an adjustment in services purchased from the contractor or received from the CMO.

Administering Authority

- 4.15 In order to manage and administer the contract, an administering authority is required unless the CMO function is provided by a registered company wholly owned and operated by all four authorities (a Teckal company). The IAA appoints Surrey Heath Borough Council as the Administering Authority. As Administering Authority, we will provide the infrastructure, such as payroll, insurance, ICT and other corporate support services for the Authorised Officer together with any other officers staffing the CMO, which will report to the IAA CPB and the JWCSC. The Second IAA provides for the possibility of the authorities incorporating the CMO as a limited company thus removing the need for an Administering Authority, but it does not compel it.

A Limited Company

- 4.16 Establishing the CMO as a limited company is not necessary for the purposes of undertaking the functions allocated to the CMO. There is no requirement in law to establish a limited company to host the CMO and the CMO could be hosted by an administering authority for the duration of the Joint Contract, as the functions it is performing are not commercial in nature.

- 4.17 The Project Team felt that forming a separate legal entity, wholly owned by the four Partner Authorities, had a number of advantages:
- a distinct entity which supported the partnership nature and working of the Joint Contract;
 - it could enable the company to recruit on private as opposed to local authority terms and conditions;
 - it supports a future direction of travel enabling the Authorities to explore commercial opportunities in partnership with the appointed contractor, such as providing environmental services to the private sector leveraging the contractor's resources and expertise, and the authorities' presence and assets, which is accommodated through allowing the limited company to set up a trading subsidiary for this purpose, and for profits to be extracted from the subsidiary into the parent company which could then be used to cross-subsidise the core Joint Contract costs;
 - it enables jointly owned assets such as the Vehicles and jointly incurred liabilities such as the Funding for those Vehicles to be assumed by a separate legal entity, which achieves a clean separation, supported by contractually binding recharge arrangements to each of the Partner Authorities;
 - it could simplify the branding of jointly owned assets and communications.

- 4.18 However, whilst the Project Team wishes to keep the option of incorporating the CMO as a limited company open, the intention is to retain the Administering Authority model for the duration of the mobilisation period.

- 4.19 It should be noted that setting up of a separate legal entity would incur costs on a one-off basis, plus there would be on-going costs to comply with the statutory reporting and accounting obligations under the Companies Act 2006. It would also require registration with HMRC for VAT and would be liable for corporation tax, should the legal entity make any profits. If any commercial

activity is to be undertaken by way of the Joint Contract however, this must be through a company.

5. Resource Implications

- 5.1 The resource implications are covered in Part 2 of the report due to their commercially sensitive nature.

6. Options

Option 1: Award the contract to Bidder A – Recommended

- 6.1 The Council proceeds with the procurement process, appoint Bidder A, having submitted the Most Economically Advantageous Tender, to provide the Joint Contract. Once all four authorities have decided to award the contract and any call-in period has expired, the Project Team will issue the Alcatel letters (notifying the bidders of the outcome of the procurement) and this will trigger the start of the mandatory ten day standstill period.
- 6.2 Subject to there being no challenge, the four authorities will conclude the Joint Contract with Bidder A, for the Initial Term, with options to extend by one or more periods of up to a total maximum term of 24 years, with the agreement of all parties and the contractor.
- 6.3 At the same time, the four authorities will enter into the Second IAA which is required to give effect to the joint nature of the Joint Contract.
- 6.4 On entry into the Joint Contract and the Second IAA, the four authorities will be in a position to begin mobilisation of the Joint Contract according to the timetable set out in Table 5 and in accordance with the phased mobilisation process, will enter into the contract exit process in relation to their current individual contracts.

Option 2: Abandon the process and re-run the procurement process

- 6.5 The Council could rerun the procurement process in conjunction with the other three authorities. There is no reason to believe that re-running the process will produce a more favourable outcome. Given the costs incurred and effort involved in a supplier participating in a public procurement, it is likely to prejudice the Council's ability to successfully re-run both this procurement and others in the future. It is possible that suppliers would choose not to participate in any future procurement given the risk that it may not result in an award once more. There would also be a risk that tenderers could pursue the Council involved in the first procurement exercise for wasted costs.
- 6.6 The timescales involved in re-running the procurement exercise would mean that the contract could not be awarded before the current contract in Elmbridge Borough Council expires. It is likely therefore that they would not participate in procuring a revised joint contract and would seek alternative ways to procure a contract alone, which would likely be quicker. This would leave the three remaining authorities to consider whether they would re-run the procurement exercise as a smaller joint contract covering just three authorities. It would be expected that re-procuring with fewer authorities would result in a contract price that was not so economically advantageous to Surrey Heath Borough Council.

- 6.7 In the event that any one of the other Partner Authorities decided not to award the Joint Contract, the remaining Partner Authorities would need to go back a stage in the procurement process and re-run Invitation to Submit a Final Tender (ISFT). In principle, there is still sufficient time before the first Service Commencement Date (being Elmbridge in June 2017) for a rerun of the ISFT stage to be undertaken without prejudicing a successful mobilisation.
- 6.8 Surrey Heath could decide to procure a contract unilaterally without the involvement of any other authority. There would be time before the end of the contract in Surrey Heath to complete this exercise, but it is highly likely that the contract price would be significantly less favourable.

Adopting the IAA

- 6.9 **Option 1: Adopt the Second IAA - Recommended**
Entry into the Second IAA is required in order to ensure the contract can be awarded to the bidder as it gives the Authorised Officer under the Joint Contract the authority to act on behalf of all four Partner Authorities as well as appropriately re-allocating the liabilities and obligations under the Joint Contract to the individual responsible Authority. In addition it secures the future delivery of waste and recycling collection and street cleaning services in Surrey Heath, with the associated benefits in quality and price. The IAA establishes clear governance arrangements between the authorities to ensure each authority's interests are respected and considered within the partnership arrangement.

- 6.10 **Option 2: Request the partner authority to consider some amendments to the Second IAA**

Any changes to the Second IAA would have to be agreed by each of the partner authorities. Renegotiating the Second IAA at this stage, which is after the JWCS has recommended it to the authorities, is highly likely to result in a delay in awarding the contract. If any of the proposed amendments are not consistent with the Joint Contract, this would then necessitate further amendment to the Joint Contract, which may not be permissible under the procurement legislation or which would have pricing implications for the Joint Contract, which would need to be agreed with the Contractor (as well as permissible under the procurement legislation) This is likely to be a particularly concern for those authorities who are mobilising the contract in 2017 as mobilisation cannot begin in the absence of an appropriately jointly authorised Authorised Officer. If negotiations are protracted, some authorities may feel it necessary to withdraw from the contract thus losing the benefits to residents of working together.

- 6.11 **Option 3: Decline to adopt the Second IAA**
Given the parties to the Joint Contract are jointly and severally liable to the Service Provider it is necessary to have an IAA in place to govern the relationship between the partner authorities. Without an agreed IAA, it is not possible to award the Joint Contract.

7. Proposals

- 7.1 That Bidder A who submitted the Most Economically Advantageous Tender be awarded the Joint Waste Collection Contract (Joint Contract).
- 7.2 The Council enters into the Joint Contract with each of the partner authorities and Bidder A.

7.3 The Council enters into the successor Inter Authority Agreement (Second IAA) with each of the other partner authorities, Elmbridge Borough Council, Mole Valley District and Woking Borough Council and Surrey County Council (in its capacity as the waste disposal authority (WDA)), which will regulate the relationship between the participating authorities (as necessitated by entry into the Joint Contract), establishes the shared contract management office (CMO) and the required governance arrangements, including the revised terms of reference for the Joint Waste Collection Services Committee (JWCSC Committee).

8. Supporting Information

8.1 None

9. Corporate Objectives And Key Priorities

9.1 The Council's five year strategy is set out under 4 themes:

- Place – continued focus on our vision to make Surrey Heath an even better place to live. Clean, green and safe. Where people enjoy and contribute to a high quality of life and a sustainable future.
- Prosperity – to sustain and promote our local economy so people can work and do business across Surrey Heath, promoting an open for business approach that attracts investment and complements our place.
- Performance – to deliver effective and efficient services better and faster
- People – to build and encourage communities where people can live happily and healthily in an environment that the Community is proud to be part of.

9.2 One of our priorities under the Place theme is to Manage our waste efficiently cost effectively and sustainably. The Joint Waste Contract will help achieve this priority.

10. Legal Issues

10.1 Many of the key features of the Joint Contract have been identified above. It was drafted to be flexible to cater for up to eleven authorities receiving services in their areas, and to take account of the need to change the way in which the services are delivered over the potential 24 year maximum term as a result of legislative and technological change as well as the changing needs of the Authorities and their residents. In addition to the change control mechanism, the Joint Contract provides for periodic benchmarking and requires the Service Provider to proactively and regularly identify opportunities to secure continuous improvement.

10.2 The successful bidder will provide the Authorities with a parent company guarantee to guarantee its performance of the contract. In addition, the successful bidder will be required to have suitable levels of insurance to protect it in the event of claims, not least for claims for damage to property by collection vehicles. Caps on the successful bidder's liability were agreed to avoid risk pricing, and the principal cap in respect of negligence or breach of contract by the bidder which are uninsured losses is set at £20,000,000 in each Contract Year.

10.3 In addition to the usual termination rights, the right to terminate at any time for the Authorities' convenience has been included in the Joint Contract.

Exercising this right will require the Authorities to pay the Service Provider breakage costs, however these have to a large extent been pre-determined as at the contract commencement date.

- 10.4 The payment mechanism under the Joint Contract was dialogued at some length with the bidders, and an indexation basket was agreed so as to mirror as closely as possible the key components and their proportions of the bidder's cost base. Use of RPI or CPI was explored but discounted ultimately – whilst it would have given more predictability over the costs of the Joint Contract, this predictability would have resulted in risk-pricing by the bidders.
- 10.5 As the Joint Contract is based on a list of prices for various services, rather than a contract sum, a cap on the service provider profit margin was included in the payment mechanism, which seeks to provide some protection for the Authorities against the Service Provider over-recovering as a result of greater than anticipated increases in volume/activity under the Joint Contract.
- 10.6 All the bidders confirmed that they would seek admittance to the Surrey LGPS. As the four authorities have had outsourced contracts for some time, this is more relevant to those new authorities who might wish to join the Joint Contract; however should there be a TUPE transfer of any current council employees, their continued participation in the LGPS is protected. The Admission Agreement will need to be agreed with Surrey County Council as the LGPS administering authority. In order to avoid bidders risk pricing to take account of the unpredictability of the employer's contribution rate, a pass-through arrangement was offered to each of the bidders, should they wish to offer the LGPS, which fixes the employer's contribution rate. This is a feature which will need to be properly understood and assessed by those Authorities wishing to join the Joint Contract who have predominantly in-house services.
- 10.7 The other feature of the Joint Contract which was required to take account of the elapse of time between the pricing of the Joint Contract and the final transfer of staff from the incumbent contractors to the successful bidder was a mechanism to allow for a final reconciliation between the workforce data underpinning the bid pricing and the final workforce data.

Procurement Challenge

- 10.8 In any procurement, there is a risk that an unsuccessful bidder could bring a challenge against the Council's decision to award the contract. Any challenge under the Public Contract Regulations 2015 or by way of judicial review must be brought within 30 days of the date on which the unsuccessful bidder knew or ought to have known of any breach of the Regulations or the date of the decision (in the case of judicial review). Whilst conducting the procurement in line with the Regulations and with the ISFT should minimise the risk of a challenge being successful, it cannot rule out the risk of a challenge being initiated.
- 10.9 If there is a challenge to the decision to appoint the bidder and legal proceedings are issued and served on the Council, this has the effect of automatically suspending the tender process including the execution of the contract unless the Council is successful in applying to the High Court for a lifting of the automatic suspension. Once the contract has been formally executed by the Council and the successful bidder, the remedy available to an unsuccessful bidder is to apply for a declaration of ineffectiveness or to claim damages. As the Council published an OJEU notice, provided it

observes the standstill period, the grounds for an application for a declaration of ineffectiveness would not be made out by a disappointed bidder and its recourse would be to claim damages for the loss of opportunity.

Creation of a Legal Entity

- 10.10 Should the CMO be incorporated, this will necessitate further legal work by the Authorities to both establish the company but there will be ongoing statutory reporting and accounting obligations.

11. Governance Issues

- 11.1 The Revised IAA outlined the governance arrangements to oversee the Joint Contract. This involves retaining some decisions for Executive or Council as outlined in the Council's constitution as well as delegating some decisions formerly exercised by the Executive to the Joint Waste Collection Services Committee (JWCSC) which has in turn the consequential effect of amending the Officer's scheme of delegation so that the authority of the Authorised Officer under the Joint Contract is now derived from the JWCSC via a Contract Partnering Board and exercised on behalf of all four Partner Authorities. To implement these changes, the Council will be asked to agree changes to the Constitution.
- 11.2 The award of the Joint Contract is dependent on each of the Partner Authorities agreeing to award the contract to the bidder who submitted the Most Economically Advantageous Tender and agreeing the Revised IAA. These decisions are being made at the individual Cabinet and Councils of the Partner Authorities during October and November. It is possible that during this process one or more authorities request some further minor changes to the Revised IAA, which may require changes to Surrey Heath's constitution beyond those outlined in the report to Council. In order to ensure these changes do not delay the award of the contract and the commencement of mobilisation in Elmbridge Borough Council, the Council are requested to delegate responsibility to the Chief Executive and Leader of the Council to make any further minor changes to the constitution should they be required.

12. Sustainability

- 12.1 The Partner Authorities are among the highest performing authorities for recycling in Surrey. By working together, the Partner Authorities expect to further their efforts to increase recycling and reduce waste to landfill. By working across boundaries, the service provider is expected to make better use of their assets and reduce the distances travelled by the waste collection and street cleaning vehicles, with associated improvements to air quality and greenhouse gas emissions.

13. Risk Management

- 13.1 If the Joint Contract is not approved by any one of the Partner Authorities, it will be necessary to ask the bidders to re-work their submissions based on the remaining Partner Authorities and resubmit them at Stage 4 (Invitation to Submit Final Tenders) of the procurement process. The timescales involved would mean that the contract could not be awarded before the current contract in Elmbridge Borough Council expires. This would leave the three remaining authorities to consider whether they would re-run the procurement exercise as a smaller joint contract covering just three authorities. It would be expected that re-procuring with fewer authorities would result in a contract

price that was less economically advantageous to the remaining authorities. There is also the possibility that the bidders would not be willing to invest more time in developing a revised bid and choose to withdraw from the process.

- 13.2 The contract includes a performance framework to monitor and penalise the contractor should they fail to deliver the specified service. The ultimate sanction is to terminate the contract on the grounds of non-performance. This decision would have to be agreed by all the Partner Authorities and would terminate the entire Joint Contract; a single authority cannot opt to terminate the contract in their area alone.

14. Equalities Impact

- 14.1 An Equalities Impact Assessment (EQiA) has been carried out on the existing waste collection and street cleaning services to ensure they have been designed and implemented to fit with the principles and requirements of the Equalities Act 2010. The service specification for the Joint Contract is based on the existing services and therefore follows the same quality principles. It includes assisted collections for those with limited physical abilities and clinical waste collections for those with medical needs. A further EQiA will be carried out during the mobilisation of the Joint Contract to ensure the service does not disadvantage those groups identified within the Equalities Act 2010.

15. Consultation

- 15.1 The Service Specification has been developed taking into account customer consultation including a customer focus group held on 23 September 2014. A resident survey was also conducted in Mole Valley throughout February 2015. The results of this survey informed the Project Team during the Competitive Dialogue stages of procurement, and informed the final Service Specification.
- 15.2 The JWCS have overseen the procurement of the contract and been consulted throughout the process. The Executive and council have been involved at appropriate stages of the procurement process including approving the service specification (17th March 2015).

16. PR And Marketing

- 16.1 The outcome of the procurement exercise will be publicised through the next edition of the project newsletter, which have previously been provided to Members and key stakeholders. This publication will be after all Partner Authorities have made a decision and any stand-still and call-in periods have elapsed.
- 16.2 Future communications relating to the provision of the service will be developed and implemented as part of a joint communications plan.

17. Reputational Issues

- 17.1 Given the importance to residents of the services provided by the Joint Contract, it is essential to avoid any disruptions to the service during change over. The timescales for procuring and implementing the Joint Contract aim to ensure a smooth handover from the existing service provider to the new one. A mobilisation plan will also be developed by the Partner Authorities and the preferred bidder to ensure a smooth transition. A new service provider is always likely to make changes to collection rounds and therefore changes to

collection days are inevitable. However, to minimise disruption to residents, the new service provider is permitted to make only one day change. Any further day changes need to be approved by the JWCC. To assist residents, a communications plan to inform residents of any changes to their service will be developed and implemented.

- 17.2 The Joint Contract includes a comprehensive performance management framework to make it financially advantageous to the contractor to maintain high levels of performance and allows the authorities to instruct the contractor to improve and penalise them when they do not perform to the required standard. A set of Key Performance Indicators, as well as a mechanism to apply financial penalties for failures, will be used to monitor and manage the contract.

18. Employment Issues

- 18.1 The creation of the CMO will affect existing teams and individuals in each of the Partner Authorities to different degrees and in different ways. The impact of these changes is being scoped and evaluated by the HR team in each of the authorities and co-ordinated by an HR lead within the project team. Once the proposed structure and model of the CMO has been finalised, it will be subject to formal consultation with those members of staff likely to be affected.

19. S151 Officer Comments

- 19.1 This contract is one of the largest single contracts for service that the Council has entered in to in recent years. A fully comprehensive procurement process has been followed through competitive dialogue and as can be seen from the information in Part B the new contract give is expected to generate an annual saving of 13% against current contract costs. Given the varied start dates and the fact that savings will be based on the 2016/17 outturn the figures quoted are only notional however they are still expected to be substantial.
- 19.2 The decision around the financing of vehicles was purely based on the result of discussions with contractors who made it clear that not only was their cost of capital higher but also they would recharge additional costs on to the cost of vehicles. Hence it makes commercial sense for Councils to fund the vehicles themselves.
- 19.3 The opportunity for other Council's to join the contract should realise additional savings due to greater economies of scale in areas such as contract management and monitoring. Further efficiencies should be realised from closer working with the county and this contract should be able to provide a blueprint for joint working in other areas in the future.

20. Officer Comments

- 20.1 This has been a highly complex procurement exercise which has been conducted over a period of three years. This time has enabled the project team to have robust discussions with bidders through competitive dialogue. It has been emphasised to bidders throughout the process that the partnership is looking for a contractor which can provide a high quality service with good customer care at a reduced cost. The bids have been thoroughly evaluated at each stage of the process. The result is that the JWCC is able to recommend to each of the partner authorities a preferred bidder who demonstrated the

highest quality during the evaluation process at a 13% reduction in costs across the partnership.

20.2 The exercise has been one of the most successful partnerships which the Council has taken part in. It has the potential to expand to other authorities to bring more efficiencies and savings in the way the waste is handled and managed within the County.

Annexes	Annex A - Second IAA Annex B - Quality Criteria
Background Papers	None
Author/Contact Details	Tim Pashen – Executive Head of Community tim.pashen@surreyheath.co.uk
Head Of Service	Tim Pashen – Executive Head of Community

Consultations, Implications and Issues Addressed

Resources	Required	Consulted
Revenue	✓	
Capital		
Human Resources		
Asset Management		
IT		
Other Issues	Required	Consulted
Corporate Objectives & Key Priorities	✓	
Policy Framework		
Legal		
Governance		
Sustainability		
Risk Management		
Equalities Impact Assessment		
Community Safety		
Human Rights		
Consultation		
P R & Marketing		

Review Date:

Version: TP/1

DATED

2016

- (1) ELMBRIDGE BOROUGH COUNCIL**
- (2) MOLE VALLEY DISTRICT COUNCIL**
- (3) SURREY HEATH BOROUGH COUNCIL**
- (4) WOKING BOROUGH COUNCIL**
- (5) SURREY COUNTY COUNCIL**

INTER AUTHORITY AGREEMENT

RELATING TO:

**THE DISCHARGE OF WASTE COLLECTION FUNCTIONS BY A JOINT COMMITTEE
AND A JOINT CONTRACT FOR WASTE COLLECTION AND
STREET CLEANING SERVICES**



SHARPE PRITCHARD

TABLE OF CONTENTS

1.	DEFINITIONS	1
2.	PRECEDENCE OF DOCUMENTS	5
3.	DISCHARGE OF FUNCTIONS	5
4.	COMMENCEMENT, DURATION AND TERMINATION	6
5.	ADMISSION OF NEW AUTHORITIES	7
6.	PRINCIPLES AND OBJECTIVES	7
7.	CONFIDENTIALITY AND ANNOUNCEMENTS	9
8.	FREEDOM OF INFORMATION	10
9.	DATA PROTECTION ACT	11
10.	INDEPENDENT PARTIES	11
11.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	11
12.	ENTIRE AGREEMENT	11
13.	FORCE MAJEURE	11
14.	SEVERANCE	12
15.	WAIVER	12
16.	VARIATIONS	12
17.	CONSEQUENCES OF TERMINATION	12
18.	DISPUTE RESOLUTION	13
19.	LAW AND JURISDICTION	14
20.	NOTICES	14
21.	GENERAL	15
22.	COUNTERPARTS	15
23.	DECISION MAKING AND JOINT CONTRACT MANAGEMENT	16
24.	QUORUM AND VOTING ARRANGEMENTS	19
25.	CONTRACT MANAGEMENT OFFICE	20
26.	MATTERS OUTSIDE THIS AGREEMENT	22
27.	CONTRACT MANAGEMENT OFFICE SERVICE AGREEMENT	22
28.	ANNUAL BUDGET	23
29.	CONTRIBUTIONS TO THE ANNUAL BUDGET AND PRINCIPLES OF CMO SERVICE COSTS	
	APPORTIONMENT	24
30.	INCOME	26
31.	FUNDING OF CAPITAL EXPENDITURE (VEHICLES)	26
32.	PAYMENTS	26
33.	JOINT MANAGEMENT	28
34.	MATERIAL INSTRUCTIONS	28
35.	LIABILITY AND INDEMNITY	29
36.	INTELLECTUAL PROPERTY	29
	SCHEDULES	32

BETWEEN

1. **ELMBRIDGE BOROUGH COUNCIL** whose principal office is situated at Civic Centre, High Street, Esher, Surrey KT10 9SD (“Elmbridge”)
2. **MOLE VALLEY DISTRICT COUNCIL** whose principal office is situated at Pippbrook, Dorking, Surrey, RH4 1SJ (“Mole Valley”)
3. **SURREY HEATH BOROUGH COUNCIL** whose principal office is situated at Surrey Heath House, Knoll Road, Camberley, Surrey GU15 (“Surrey Heath”); and
4. **WOKING BOROUGH COUNCIL** whose principal office is situated at Civic Offices, Gloucester Square, Woking, Surrey, GU21 6YL (“Woking”)
5. **SURREY COUNTY COUNCIL** whose principal office is situated at County Hall, Penrhyn Road, Kingston upon Thames, Surrey KT1 2DW (“Surrey”)

BACKGROUND

- A. The Authorities have jointly entered into the Joint Contract for Waste Collection and Street Cleaning Services dated [] (the “Joint Contract”) with [] (the “Service Provider”).
- B. The Authorities are jointly and severally liable to the Service Provider under the Joint Contract.
- C. Surrey is party to this Agreement only for the purposes of liaison and consultation as provided in clauses 6.2 and 6.3.
- D. This Agreement sets out how liabilities, rights, duties, undertakings and responsibilities arising from or out of the Joint Contract will be shared and managed between the Authorities and also provides the terms governing the Authorities’ joint working arrangements throughout the term (including any extension) of the Joint Contract.
- E. The Authorities enter into this Agreement pursuant to the powers conferred on them by Section 45 and 55 of The Environmental Protection Act 1990, Section 9EB of the Local Government Act 2000, and Regulations 9 and 11 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012.

IT IS AGREED as follows:

PART ONE

PRINCIPLES AND GOVERNANCE

1. DEFINITIONS

- 1.1. In this Agreement defined terms shall have the meanings given below and where not given below shall have the meanings set out in the Joint Contract

Administering Authority Surrey Heath;

Annual Budget the budget that is agreed at Tier 1 in accordance with clause 28 and is in respect of the forecast running costs of the CMO, Asset Contributions, and forecast payments to the Service Provider under the Joint Contract;

Asset	an item of plant, equipment or land provided by an Authority in accordance with clause 29.4.3;
Asset Contribution	the value of that Asset, as determined by a valuation of the Asset, the approach, methodology and basis for which has been agreed by the Authorities;
Authorities	<p>1) each of Elmbridge, Mole Valley, Surrey Heath and Woking;</p> <p>2) any New Authority; and</p> <p>any successor authorities and any body to which all or part of the functions of the Authorities in 1) or 2) above may lawfully be transferred;</p>
Authorised Officer	the person (and any deputy) nominated by the Authorities to act in that capacity under the Joint Contract;
Chair	the chair of (as the context permits) the Committee or the Contract Partnering Board from time to time as appointed in accordance with Schedule 1 (The Constitution of the Committee and the Constitution and Operation of the Contract Partnering Board);
CMO or Contract Management Office	the contract management office (including the Authorised Officer), established in accordance with clause 25;
CMO Budget	is defined in clause 25.5;
Commencement Date	the date of the Joint Contract or in relation to a New Authority, the date that New Authority enters a Joining Agreement and becomes a party to the Joint Contract;
Committee or Joint Waste Collection Services Committee	the Joint Waste Collection Services Committee constituted and established by the Authorities in accordance with clause 3.1 for the delivery of the Joint Contract as provided in clause 23.3 and Schedule 1;
Confidential Information	all know-how and other information whether commercial, financial, technical or otherwise relating to the business, affairs or methods of any Authority or the Service Provider, which is contained in or discernible in any form whatsoever (including without limitation software, data, drawings, films, documents and computer-readable media) whether or not marked or designated as confidential or proprietary or which is disclosed orally or by demonstration and which is described at the time of disclosure as confidential or is

	clearly so from its content or the context of disclosure;
Constitution	the constitution of the Committee set out in Schedule 1;
EIR	the Environmental Information Regulations 2004 together with the code of practice issued by DEFRA as amended/ reissued from time to time;
Elmbridge Commencement Date	3 June 2017 or as otherwise agreed under the Joint Contract;
Financial Year	the period from 1 April in any year to 31 March in the following year;
FOIA	the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;
Intellectual Property	any and all patents, trade-marks, trade names, copyright, moral rights, rights in design, rights in databases, know-how and all or other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to them and the right to apply for registration of them;
Laws	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body;
Lead Officer	the relevant director or head of service responsible for waste, recycling and street cleaning in each Authority;
LGA	Local Government Association;
Losses	any loss and liability directly suffered by the Authorities together or (as the context permits) by any one Authority together with any damage, expense, liability or costs reasonably incurred in contesting any claim to liability and quantifying such loss and liability. Such losses shall include (without limitation and non-exhaustively): <ul style="list-style-type: none"> a) losses arising from the failure of an Authority to

provide an Asset; and

- b) any additional or increased payment payable to the Service Provider on a one off or continuing basis arising from the breach of this Agreement or the Joint Contract by an Authority ;

Material all data, text, graphics, images and other materials or documents created, used or supplied by an Authority in connection with this Agreement (unless before the first use or supply, the Authority notifies the others that the data, text, graphics, images and other materials or documents supplied by it is not to be covered by this definition);

Material Instruction a material instruction in accordance with clause 34;

New Authority a local authority which has entered the Joint Contract pursuant to a joining agreement as provided in clause 5 of the Joint Contract;

Partnership Share the apportionment of the Annual Budget and other costs and liabilities between the Authorities as calculated in Schedule 3;

Services the Services as defined in the Joint Contract;

Tier 1 the decision making process applicable to each individual Authority in accordance with its own constitution. A Tier 1 decision is reached by each Authority independently of any other Authority.

1.2. Interpretation

In this Agreement, except where the context otherwise requires:

- 1.2.1. each gender includes all genders;
- 1.2.2. the singular includes the plural and vice versa;
- 1.2.3. a reference to any clause, sub-clause, paragraph, Schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or annex of and to this Agreement;
- 1.2.4. any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.2.5. any reference to legislation (including subsidiary legislation), determinations and directions shall be construed as a reference to any legislation, determinations, directions and statutory guidance as amended, replaced, consolidated or re-enacted;
- 1.2.6. a reference to a public organisation (other than an Authority) shall be deemed to include a reference to any successor to such public organisation or any

- organisation or entity which has taken over either or both the functions and responsibilities of such public organisation;
- 1.2.7. a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.8. any reference to a requirement for “consent” or “approval” shall be taken to be the prior written consent or approval of the relevant body or person;
- 1.2.9. the schedule, clause, sub-clause and (where provided) paragraph headings and captions in the body of this Agreement do not form part of this Agreement and shall not be taken into account in its construction or interpretation;
- 1.2.10. the Schedules hereto all form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement; and
- 1.2.11. words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words.
- 1.3. The principles set out in clause 6.2 and 6.8 shall be borne in mind and applied so far as appropriate in the interpretation of this Agreement and in the resolution of any dispute under this Agreement.

2. PRECEDENCE OF DOCUMENTS

This Agreement and its Schedules shall be read and taken together. In the event of any inconsistency or conflict between these terms and conditions in this Agreement and the contents of any of the Schedules these terms and conditions shall prevail.

PART ONE: DISCHARGE OF FUNCTIONS, DURATION AND KEY PRINCIPLES

3. DISCHARGE OF FUNCTIONS

- 3.1. By this Agreement and in accordance with decisions made by each Authority in accordance with their constitutions, the Authorities pursuant to their powers under section 9EB of the Local Government Act 2000 and Regulations 9 and 11 of the Local Authorities (Arrangements for the Discharge of Functions (England) Regulations 2012 :
 - 3.1.1. establish a joint committee (the **Committee**); and
 - 3.1.2. discharge to that Committee on the terms of reference set out in this Agreement such of the waste management, waste collection, street cleansing and ancillary services functions as are described in Schedule 6.
- 3.2. Each Authority intends and accepts this Agreement to be legally binding, and mutual commitments between them created by the Agreement shall be construed accordingly.
- 3.3. Each Authority may on written notice to the other Authorities withdraw from the Committee or a majority of the Authorities may at any time agree (by formal resolutions by each of them) that the Committee should be dissolved, and that Authority or in the case of dissolution of the Committee, each of the Authorities, shall instead reserve one or more or all of the waste management, waste collection, street cleansing and ancillary services functions formerly discharged by the Committee on its behalf.
- 3.4. In the event of a withdrawal by an Authority from the Committee, or the dissolution of the Committee, the Tier 2 decision-making, powers and limits of authority set out in the table at clause 23.1 (Decision Making and Joint Contract Management) shall become Tier 1 decisions

with effect from the date of that withdrawal, references to 'Committee' elsewhere shall be deleted and replaced by references to the appropriate decision-making body for that or each Authority. In consequence of withdrawal from the Committee, that or each Authority may vary the authority it has delegated to its Lead Officer but the Lead Officer of that Authority shall take all such steps so as to ensure that such withdrawal and variation does not materially and detrimentally affect the proper functioning of the Contract Partnering Board, the Contract Management Office and the role of the Authorised Officer pursuant to the Joint Contract and is without prejudice to the other provisions of this Agreement which shall continue in full force and effect.

4. COMMENCEMENT, DURATION AND TERMINATION

4.1. This Agreement shall continue in full force and effect from the Commencement Date until the earliest of the following dates:

4.1.1. the date of expiry or earlier termination of the whole of the Joint Contract;

4.1.2. the Authorities unanimously agree in writing in the form set out in Schedule 4 (a **Release Agreement**) that an Authority is to be released from this Agreement (such Authority being the **Released Authority**). In such circumstances

- i. this Agreement shall terminate in respect of the Released Authority from the date agreed and set out in the Release Agreement (the **Release Date**);
- ii. this Agreement shall continue in full force and effect in respect of the Authorities other than the Released Authority;
- iii. from the Release Date, the Released Authority shall have no further duties, liabilities, rights, remedies or obligations relating to this Agreement except as expressly set out in the Release Agreement; and

4.1.3. in respect of an innocent Authority where one or more other Authority commits a fundamental breach of the Joint Contract which is not rectified within ninety (90) days of notification in writing by the innocent Authority to:

- i. the Authority or Authorities in breach; and
- ii. the Chairman of the Committee

and such fundamental breach renders the Joint Contract inoperable as a joint contract.

4.2. A Release Agreement shall only be agreed and entered where the Joint Contract is also to be terminated or has terminated. In relation to the Released Authority, the Release Agreement shall provide for the following:

- i. that it shall take effect from the later of:
 - a. the date that the Joint Contract terminates in relation to the Released Authority; and
 - b. the date when the Released Authority has discharged all the obligations and liabilities of this Agreement (save in so far as those obligations and liabilities are terms of the Release Agreement itself);
- ii. that it shall be contractually binding;

- iii. a detailed and exhaustive financial reconciliation (or a mechanism to calculate the same) such that the Released Authority and the remaining Authorities discharge all their liabilities to each other including those arising as a result of the termination of the Joint Contract for the Released Authority;
 - iv. for the transfer of equipment and assets owned or in the control of the Released Authority to the remaining Authorities where the same are required to deliver the on-going Services or for the purposes of the CMO; and
 - v. for the on-going use of any land or depot or Assets provided by the Released Authority and which is still required by the remaining Authorities for the purposes of the Joint Contract, the CMO or alternative provision;
 - vi. together with any other matter.
- 4.2.2. The Released Authority shall be liable for and shall indemnify the remaining Authorities for the Losses suffered by the remaining Authorities as a result of termination of this Agreement and of the Joint Contract unless and to the extent that clause 4.1.3 above applies.
- 4.3. A decision to extend the Joint Contract shall be a Tier 1 decision (as provided in clause 23.5.9).

5. ADMISSION OF NEW AUTHORITIES

- 5.1. The Authorities may admit a New Authority to this Agreement, the terms of such admission to be agreed by the Authorities, in compliance with the provisions of the Joint Contract governing the extension of the Joint Contract to other authorities. A New Authority shall be admitted to this Agreement only where it is lawful to do so in accordance with procurement law, there is a positive benefit to the Authorities and the costs of the procurement, set up and mobilisation of the Joint Contract is recognised by way of a joining fee or other benefit.
- 5.2. Where a New Authority is admitted to this Agreement, it shall enter a Deed of Admission in a form set out in Schedule 5 and from the date of its admittance to the Joint Contract all provisions of this Agreement shall apply to the admitted New Authority and the definition of "Authorities" shall include it.

6. PRINCIPLES AND OBJECTIVES

SURREY COUNTY COUNCIL (AS WASTE DISPOSAL AUTHORITY)

- 6.1. Save as provided in clause 6.3, Surrey shall be a party to this Agreement solely as an interested party and observer. Without prejudice to the rights and liabilities between Surrey and the Authorities which exist or come into existence pursuant to legislation or other agreements or arrangements, Surrey shall have no liability or obligation to the Authorities nor they to Surrey created by this Agreement and nor shall this Agreement affect, interpret or augment any rights or liabilities which arise pursuant to legislation or other agreements or arrangements.
- 6.2. The Authorities and Surrey shall work together in good faith to manage waste functions within the administrative borders of Surrey in the most efficient, effective, economical and sustainable manner. The Authorities and Surrey shall have regard to this Agreement in the context of the Surrey Waste Partnership and vice versa.

- 6.3. Where Surrey issues a notice or direction to one of the Authorities in its capacity as Waste Disposal Authority, it shall copy the Authorities' Authorised Officer on the same date that it notifies or directs the relevant Authority.

SURREY WASTE PARTNERSHIP

- 6.4. The Authorities and Surrey recognise their wider involvement in the Surrey Waste Partnership and shall be cognisant of matters discussed and agreed in that forum in their dealings with each other pursuant to this Agreement and with the Service Provider under the Joint Contract.

THE AUTHORITIES WORKING TOGETHER

- 6.5. Each Authority agrees to work together with every other Authority to fulfil its obligations and responsibilities relating to the Joint Contract in accordance with the terms of this Agreement.
- 6.6. Each Authority hereby acknowledges to each of the other Authorities that it has obtained all necessary authorities to authorise the delegation of functions provided for by this Agreement in relation to the Joint Contract.
- 6.7. Each Authority shall use all reasonable endeavours to ensure that its respective members and officers who are involved in managing the Joint Contract shall at all times act in the best interests of the running of the Joint Contract. Each Authority expressly acknowledges that its relevant Committee members and lead officers involved in carrying out activities under this Agreement or otherwise in connection with the Joint Contract may be required to act primarily with their duty to the running of the Joint Contract rather than to the specific advantage of their own Authority, and each Authority authorises them to act in such a manner.
- 6.8. In working together, each of the Authorities agrees that it will conduct its relationship with the other Authorities in accordance with the following principles:

6.8.1. Mutual trust and cooperation

- (a) Each Authority shall at all times cooperate fully and be open and trusting in its dealings with each other Authority to achieve the most practical and economically advantageous methods of working together for the successful management of the Joint Contract in accordance with the terms of this Agreement.
- (b) While respecting the mutual need for commercial confidentiality, each Authority undertakes to be transparent in its dealings with each other Authority and, without prejudice to the foregoing, each Authority undertakes to respect matters of confidentiality and potential sensitivity.

6.8.2. Effective relationships

- (a) Each Authority acknowledges and agrees that it is engaged in a long-term relationship with each of the other Authorities for their mutual benefit through the delivery of the Joint Contract. Each Authority shall use all reasonable endeavours to develop and maintain an effective joint process to ensure that the Joint Contract is carried out appropriately and in accordance with the principles set out in this Agreement.

- (b) Each Authority undertakes to develop and maintain clear roles and responsibilities within its organisation, and to develop relationships at the appropriate levels within each other Authority, providing direct and easy access for the others' members and officers.

6.8.3. Reasonableness of Decision Making

Each Authority agrees that it shall act reasonably and in good faith in making all decisions in relation to this Agreement and the Joint Contract.

6.8.4. Contractual Liability

Save as expressly provided in this Agreement, the Joint Contract or otherwise agreed in writing, no Authority shall:

- (a) incur any liabilities on behalf of another Authority;
- (b) make any representations or give any warranty on behalf of another Authority;
- (c) enter into any variation or obligation on behalf of another Authority; or
- (d) commit to any expenditure as a result of which another Authority shall be required to reimburse it.

6.9. Each Authority undertakes not to commission and or undertake any procurement and/or project that seeks or would procure the delivery of all or any part of the Services outside the terms of the Joint Contract:

6.9.1. without the agreement of the other Authorities (not to be unreasonably withheld or delayed) where such procurement or project may affect the Joint Contract or the Authorities' rights or liabilities under it; otherwise

6.9.2. without consulting and informing the other Authorities before commencing the procurement and before award.

7. CONFIDENTIALITY AND ANNOUNCEMENTS

7.1. Subject to clause 7.2, each Authority shall, both during the term of this Agreement and at all times following its termination or expiry, keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) any Confidential Information which has come to its attention as a result of or in connection with this Agreement.

7.2. The obligations set out in this clause 7 shall not relate to:

7.2.1. any matter which the recipient Authority can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this clause 7;

7.2.2. any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Authority making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental regulatory authority concerned;

7.2.3. any disclosure of information which is already lawfully in the possession of the recipient Authority, prior to its disclosure by the disclosing Authority;

- 7.2.4. any disclosure of information by any Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Joint Contract; or
- 7.2.5. any provision of information to the Authorities' own professional advisers or insurance advisers.
- 7.3. Where disclosure is permitted under clause 7.2, the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this clause 7 and the disclosing Authority shall make this known to the recipient of the information.
- 7.4. Except where clause 7.5 applies, no Authority shall make any public statement or issue any press release or publish any other public document relating, connected with or arising out of this Agreement and/or the Joint Contract without the other Authorities' written consent (excluding any disclosure required by legal or regulatory requirements).
- 7.5. Where a situation arises which requires a response in a timeframe which renders the obtaining of written agreement impracticable, the obligation in clause 6.4 to obtain written agreement shall be one of reasonable endeavours.

8. FREEDOM OF INFORMATION

- 8.1. Each Authority acknowledges that each of the Authorities are subject to the provisions of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and each Authority shall use all reasonable endeavours to assist and co-operate with any other Authority (at its own expense) to enable that other Authority to comply with the information disclosure obligations set out in this clause 8.
- 8.2. Where an Authority receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of any of the other Authorities in relation to the Joint Contract, it shall (and shall procure that its consultants, service providers and/or sub-consultants and/or sub-service- providers shall):
 - 8.2.1. transfer the request for information to the other Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information;
 - 8.2.2. provide the other Authority with a copy of all information in its possession or power in the form that the Authority requires within ten (10) Working Days (or such longer period as the Authority may specify) of the Authority requesting that information; and
 - 8.2.3. provide all necessary assistance as reasonably requested by the other Authority to enable the Authority to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 8.3. Where an Authority receives a request for information under the FOIA or the EIR which relates to the Agreement or the Joint Contract, it shall inform the other Authorities of the request for information as soon as practicable after receipt and in any event at least two (2) Working Days before disclosure and shall use all reasonable endeavours to consult with the other Authorities prior to disclosure and shall consider all representations made by the other Authorities in relation to the decision whether or not to disclose the information requested.

- 8.4. Each Authority shall be responsible for determining in its absolute discretion whether any information requested from it under the FOIA or the EIR:
- 8.4.1. is exempt from disclosure under the FOIA or the EIR;
 - 8.4.2. is to be disclosed in response to a request for information.
- 8.5. Each Authority acknowledges that the other Authorities may be obliged under the FOIA or the EIR to disclose information:
- 8.5.1. without consulting the other Authorities where it has not been practicable to achieve such consultation; or
 - 8.5.2. following consultation with the other Authorities and having taken their views into account.

9. DATA PROTECTION ACT

The Authorities commit to share data and knowledge relevant to the Joint Contract where appropriate and in accordance with their duties under the Data Protection Act 1998.

10. INDEPENDENT PARTIES

The relationship of the Authorities is that of independent parties dealing at arm's length. Save as expressly stated in this Agreement, nothing in this Agreement shall constitute any Authority as the agent, employee or representative of any other Authority, or empower any Authority to act for, bind or otherwise create or assume any obligation on behalf of any other Authority, and no Authority shall hold itself out as having authority to do the same.

11. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Nothing in this Agreement shall confer on any third party any benefit or the right to enforce any term of this Agreement.

12. ENTIRE AGREEMENT

- 12.1. This Agreement, together with the schedules and all other documents attached or referred to in it, constitutes the entire agreement and understanding between the Authorities and supersedes and extinguishes any prior agreement, arrangement, and understanding between the Authorities regarding its subject matter.
- 12.2. No representation, promise or undertaking shall be taken to have been made or implied from anything said or written in negotiations between the Authorities prior to the Commencement Date, except as expressly stated in this Agreement.
- 12.3. Each Authority acknowledges and agrees that it has not relied upon any information given or representation made by or on behalf of another Authority in entering into this Agreement.
- 12.4. No Authority shall have any remedy in respect of any untrue statement made by any other Authority upon which that Authority relied in entering into this Agreement and that Authority's only remedies shall be for breach of contract.
- 12.5. Nothing in this clause 12 shall operate to limit or exclude any liability of any Authority for, or any remedy against any other Authority in respect of, any fraudulent misrepresentation.

13. FORCE MAJEURE

- 13.1. No force majeure or acts of prevention shall prevent the operation of this Agreement but the Authorities shall operate and share the risks relating to the force majeure provisions in the Joint Contract in accordance with its terms and shall share any liabilities arising in accordance with the provisions of this Agreement.

14. SEVERANCE

If any term of this Agreement is or becomes illegal, invalid 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, such term shall, insofar as it is severable from the remaining terms, be deemed deleted from this Agreement. Any modification or deletion shall in no way affect the legality, validity or enforceability of the remaining terms.

15. WAIVER

The failure or delay of any Authority to enforce or exercise at any time any term, right or remedy pursuant to this Agreement does not constitute, and shall not be construed as a waiver of such term, right or remedy, and shall not prevent or restrict that Authority's right to enforce or exercise it at a later stage.

16. VARIATIONS

No variation of this Agreement shall take effect unless it is in writing and signed by the duly authorised representatives of each of the Authorities (as a deed where required by law).

17. CONSEQUENCES OF TERMINATION

- 17.1. If the Agreement is terminated in respect of one or more Authorities and whether pursuant to its terms or in common law, the Authorities shall be released from their respective obligations described in this Agreement save for the following provisions

- 17.1.1. clause 6.8.4 (Contractual Liability)
- 17.1.2. Clause 7 (Confidentiality and Announcements);
- 17.1.3. clause 8 (Freedom of Information);
- 17.1.4. clause 11(Contracts (Rights of Third Parties) Act 1999
- 17.1.5. clause 12(Entire Agreement)
- 17.1.6. clause 14 (Severance)
- 17.1.7. clause 15 (Waiver)
- 17.1.8. clause 17 (Consequences of Termination)
- 17.1.9. clause 18 (Dispute Resolution)
- 17.1.10. clause 19 (Law and Jurisdiction)
- 17.1.11. clause 21.3(Mitigation)
- 17.1.12. clause 21.4(Interest)
- 17.1.13. clause 35 (Liability and Indemnity)

- 17.2. Upon termination of the whole of this Agreement:

- 17.2.1. the Assets shall be returned to the owning Authority (and vacated by any other);

- 17.2.2. the Authorities shall (acting reasonably) negotiate and seek to agree and execute a legally binding agreement dealing with the allocation amongst the Authorities of the property returned or vacated by the Service Provider (other than the Assets) and of assets, rights, staff and liabilities held or employed by the Administering Authority or CMO Ltd (should a company be incorporated pursuant to clause 25.8) including without limitation the following:
- i. the Administering Authority or CMO Ltd shall prepare and maintain a list of the assets owned by it on behalf of the Authorities (the **Joint Assets**);
 - ii. the Authorities shall meet and (acting reasonably) apportion the ownership of assets equally amongst the Authorities and the Administering Authority or CMO Ltd shall transfer the Joint Assets to the relevant Authorities;
 - iii. where assets cannot equally be apportioned to the Authorities, one Authority shall agree to accept the Joint Assets and provide compensation to the remaining Authorities on an agreed basis.
- 17.2.3. After all matters relating to the termination of the Joint Contract have been resolved and settled, the parties shall wind up CMO Ltd in accordance with company law unless it is agreed that CMO Ltd will continue to provide services or unless CMO Ltd is providing services other than in respect of the Joint Contract or either the CMO Ltd or any subsidiary is trading or providing services on a commercial basis.

18. DISPUTE RESOLUTION

- 18.1. Any disputes arising under or in connection with this Agreement shall be resolved in accordance with this clause 18.
- 18.2. Any dispute arising in respect of this Agreement which relates to or would be affected by the resolution or otherwise of a dispute under the Joint Contract shall in the first instance be resolved between the Authorities and the Service Provider.
- 18.3. Settlements or resolutions reached with the Service Provider under clause 18.2 shall, if relevant, be subject to the same tiers of Governance as set out in Part Two (Governance and Management). By way of example but not limitation, a resolution resulting in a variation or payment must be first agreed at the same level of governance as any other variation or additional payment.
- 18.4. The Authorities' Authorised Officer shall act and represent all the Authorities in any dispute with the Service Provider unless a dispute may result in termination or a liability of the Authorities which exceeds the Annual Budget, in which case the Authorities' Authorised Officer shall refer the matter to the Contract Partnering Board. Upon such referral the Contract Partnering Board shall agree the identity of a dispute team to represent them (which include the Authorities' Authorised Officer or otherwise and may include legal, financial or technical experts).
- 18.5. Disputes under or in connection with this Agreement shall be discussed by the Contract Partnering Board. If the dispute remains unresolved it shall be referred to the Committee in accordance with the provisions below. If the matter in dispute requires Committee level approval (or above) in any event, the parties may refer the matter directly to the Committee.

- 18.6. In the event of a dispute formally notified to the Chairman, the Chairman will cause to occur that the Committee shall meet extraordinarily within ten (10) Working Days of it being notified by an Authority of the occurrence of such dispute or an alternative mutually agreed timescale and attempt to resolve the disputed matter in good faith.
- 18.7. If the Committee fails to resolve a dispute within five (5) Working Days of meeting pursuant to clause 18.6, or fails to meet in accordance with the timescale set out in clause 18.6, then the matter shall be referred for resolution to a meeting of the Leaders and the Chief Executives of all the Authorities.
- 18.8. If, having been so referred, the dispute is not resolved within a further ten (10) Working Days, the disputing Authorities shall agree to refer the dispute to one of the following:
- 18.8.1. the LGA;
 - 18.8.2. the Centre for Effective Dispute Resolution (“CEDR”);
 - 18.8.3. a mutually agreed mediator; or
 - 18.8.4. the exclusive jurisdiction of the English Courts.
- In the event that the disputing Authorities fail to agree which body the dispute is to be referred to, it shall be referred to the LGA.
- 18.9. Each Authority shall on request promptly provide to any Authority which is a party to a dispute all such assistance, documents and information as may be required for the purpose of determining the dispute and the Authority in dispute shall use all reasonable endeavours to procure the prompt determination of any such dispute.
- 18.10. The LGA and CEDR shall each be deemed to act as an expert and not as an arbitrator and a determination by either of them shall (in the absence of manifest error) be conclusive and binding upon the Authorities who are party to the dispute.
- 18.11. The costs of the resolution of any dispute between the Authorities under this Agreement shall be borne equally by the Authorities to the dispute in question save as may be otherwise directed by the LGA, CEDR, mediator or the English Courts (as the case may be).
- 18.12. Any dispute which remains unresolved following mediation may be referred by any Authority for resolution to the jurisdiction of the English Courts.

19. LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English Law and each Authority irrevocably submits to the exclusive jurisdiction of the English courts.

20. NOTICES

- 20.1. Except as expressly stated to the contrary, all notices and other communications to be given under this Agreement shall be in writing and shall be deemed to have been properly given if delivered by hand or by courier, or sent by prepaid first class post or registered post, to the principal office of the relevant Authority, or by e-mail to the Lead Officer of the relevant Authority.
- 20.2. Any notice or communication shall be treated as having been received:
- 20.2.1. If delivered by hand or by commercial courier, at the time of delivery;
 - 20.2.2. If sent by prepaid first class post, two Working Days from the date of posting;

- 20.2.3. If sent by e-mail, on the day of transmission if sent before 4.00pm on any Working Day, and otherwise at 9.00am on the next Working Day, subject to confirmation of transmission.
- 20.3. Each Authority shall notify the others in writing within five (5) Working Days of any change in its address for service.

21. GENERAL

- 21.1. Nothing contained or implied herein shall prejudice or affect the Authorities' rights and powers, duties and obligations in the exercise of their functions as local authorities and/or in any other capacity and all rights, powers, discretions, duties and obligations of the Authorities under all Laws may at all times be fully and effectually exercised as if the Authorities were not a party to this Agreement and as if the Agreement had not been made.
- 21.2. No Authority shall assign, novate, sub-contract, transfer, dispose of or otherwise deal with any of its rights or obligations under this Agreement.
- 21.3. Each Authority shall at all times take all reasonable steps to minimise and mitigate any Losses for which the relevant Authority is entitled to bring a claim against another Authority pursuant to this Agreement.
- 21.4. Save where otherwise provided, the Authorities will pay interest on any amount payable under this Agreement not paid on the due date from that date to the date of payment at a rate equal to 4% above the base lending rate from time to time of Bank of England.

22. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all of which together shall constitute the one Agreement.

PART TWO

GOVERNANCE AND MANAGEMENT

23. DECISION MAKING AND JOINT CONTRACT MANAGEMENT

23.1. Governance of this Agreement and the Joint Contract is summarised in the scheme of delegations below

Tier of Governance	Membership/constitution	Decision making, powers and limits of authority
<p>Tier 1</p> <p>Full Council, Committee, Cabinet, Portfolio Holder or Lead Officer as applicable to each individual Authority</p>	<p>As applicable in accordance with the constitution of each Authority. Each Authority shall determine individually the extent to which any matter reserved to Tier 1 shall be delegated from Members to a Lead Officer of that Authority (or from that Lead Officer to any other Officer or person)</p>	<p>All decisions and powers not expressly delegated. Without limitation the matters set out in clause 23.5 are expressly reserved to Tier 1.</p>
<p>Tier 2</p> <p>Joint Waste Collection Services Committee</p>	<p>Membership: One elected Member from each Authority</p> <p>Constitution and operation as per Schedule 1 (The Constitution of the Committee)</p>	<p>Expenditure of any of the sums included in the Annual Budget as set out in clause 28.2.</p> <p>Approving variations which would (or could) have an impact on Services' provision from a public perspective.</p> <p>Oversight and scrutiny of the CMO and Contract Partnering Board.</p> <p>Receiving and scrutinising twice yearly reports.</p>
<p>Tier 3</p> <p>Lead Officers from each Authority forming the Contract Partnering Board</p>	<p>Part One: Lead Officer from each Authority in a voting capacity and a representative from Surrey in an observer capacity only</p> <p>Part Two: As Part One plus non-voting senior representatives from the Service Provider</p> <p>Constitution and operation as per Schedule 1(The Constitution of the Contract Partnering Board)</p>	<p>Part One:</p> <p>Consideration of any matter referred to the Contract Partnering Board by the Authorities' Authorised Officer or the Service Provider.</p> <p>Approving variations to the Services where the same are within the Annual Budget, consistent with each Authority's policies and have</p>

		<p>no material impact from a public perspective).</p> <p>Agreeing any formal legal action against the Service Provider including any referrals to an expert under the Fast Track Dispute Resolution Procedure.</p> <p>Making recommendations to the Committee in respect of variations which are outside the parameters above.</p> <p>Part Two:</p> <p>Any dispute under the Joint Contract escalated not resolved by the Authorised Representatives.</p> <p>Preparation of monitoring and reporting Service Provider performance under the Joint Contract and Services' proposals for the next Contract Year to the Committee.</p>
<p>Authorities' Authorised Officer</p>	<p>Director of the CMO as provided in clause 25.2 below</p>	<p>Day to day liaison between the Service Provider and Authorities in respect of all matters except those expressly reserved to a higher tier as above.</p> <p>Performance monitoring and issuing of Remediation Notices or other performance-related notices in accordance with the Joint Contract.</p> <p>The Authorities' Authorised Officer shall establish and administer an operations forum in order to liaise with the Service Provider Representative, other representatives from the Authorities and specialist officers or advisers</p>

		(Operations Forum). The Operations Forum shall not be a tier of governance nor have decision making powers in its own right.
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- 23.2. Day to day liaison in relation to the Joint Contract shall be between the Service Provider's Representative and the Authorities' Authorised Officer.
- 23.3. The Committee shall be established to facilitate the Authorities working together to improve the quality and effectiveness of the discharge of their waste, collection, management and disposal functions under the relevant provisions of the Environmental Protection Act 1990 as Principal Litter Authorities and to manage the Joint Contract. This working together shall also include working in partnership with Surrey as the Waste Disposal Authority to maximise integration opportunities.
- 23.4. The Committee shall have the following powers delegated to it from the Authorities in accordance with clause 23.1 above:
- 23.4.1. services changes and variations other than those which have a direct impact on stated policy;
 - 23.4.2. expenditure from Annual Budget;
 - 23.4.3. establishment of Contract Management Office; and
 - 23.4.4. such further powers as may from time to time be delegated to it by the executives of the Authorities.
- 23.5. The following functions (the "Reserved Matters") are matters reserved to Tier 1:
- 23.5.1. all non-executive functions of any of the Authorities;
 - 23.5.2. approval to the Authority's proportion of and contribution to the Annual Budget, including any capital expenditure;
 - 23.5.3. authorisation of the use of borrowed money from the Public Works Loan Board (Prudential Borrowing) to fund capital expenditure under the Joint Contract;
 - 23.5.4. any decision which would result in expenditure beyond the Annual Budget;
 - 23.5.5. any decision in respect of which a scrutiny committee of any of the appointing Authorities has notified the secretary to the Committee in writing of the Authority's formal objection to the proposed decision in accordance with clause 9.1 of Schedule 1 (The Constitution of the Committee);
 - 23.5.6. approval or amendment of any joint working agreement between the Authorities in respect of the Authorities' waste collection functions;
 - 23.5.7. major Services changes which have a financial impact beyond the Joint Contract;
 - 23.5.8. fees and charges, for example for garden waste bins collection or bulky waste collection or commercial waste collections where this is in discharge of the Authorities' duties under the Environmental Protection Act 1990 or otherwise;

- 23.5.9. Joint Contract extension or termination;
- 23.5.10. property disposals/acquisitions; and
- 23.5.11. New Authorities proposing to join the Joint Contract and this Agreement.

24. QUORUM AND VOTING ARRANGEMENTS

- 24.1. No Authority shall be bound by a Tier 1 decision of any other Authority. A Tier 1 decision which is not agreed by all the Authorities (either at all or so inconsistently such that it is not practically capable of implementation) shall not be implemented unless those Authorities who wish to implement it do so by implementing a Material Instruction in accordance with clause 34.

Specific Decisions having their own regime

- 24.2. If the Annual Budget is not agreed by March in any Financial Year then the matter shall be referred to the Dispute Resolution procedure. In the meantime, the Authorities recognise that the CMO and the Joint Contract will continue to require funding and accordingly until they agree a new budget the Annual Budget previously agreed shall remain extant save that indexation shall be applied together with any such changes or variations as have been agreed and are not in dispute. For the avoidance of doubt, that part of the Annual Budget which relates to the Service Provider Budget shall be indexed in accordance with the mechanism set out in the Joint Contract, and the remainder shall be indexed in accordance with CPI (or an equivalent measure of inflation agreed by the parties).

Committee and Contract Partnering Board

- 24.3. A meeting of the Committee and Contract Partnering Board shall not be quorate unless all four Authorities are represented. If an Authority fails to attend two consecutive Committees or Contract Partnering Boards that are properly notified, the next meeting shall be considered quorate for the purposes of majority voting even if that Authority fails to attend.
- 24.4. The Chair of the Committee and Contract Partnering Board shall be:

Period	Committee	Contract Partnering Board

- 24.5. Any decision made by the Committee shall be
 - 24.5.1. by simple majority, the Chairman having the casting vote;
 - 24.5.2. cease to be a decision for the Committee and shall be treated as a Tier 1 decision where the decision would be detrimental to any Authority or put an Authority to cost
- 24.6. Any decision made by the Contract Partnering Board shall be:

- 24.6.1. unanimous where the decision would be detrimental to any Authority or put an Authority to cost; otherwise
- 24.6.2. by simple majority, [the Chairman having the casting vote].
- 24.7. The concept of “detrimental” for the purposes of clause 24.5.2 and 24.6.1 shall be interpreted by its normal English meaning except that
 - 24.7.1. a matter (or series of matters in any one financial year) that would put an Authority to cost or expense shall be considered detrimental unless it is less than [£25,000] per year in relation to revenue expenditure or £100,000 in relation to capital expenditure;
 - 24.7.2. a matter which is contrary to the written policy of an Authority shall be considered detrimental unless that Authority agrees otherwise;
 - 24.7.3. a matter which is solely administrative and non-customer facing shall not be considered detrimental unless one of the other limbs above apply;
 - 24.7.4. a matter which may result in shifting of rounds or organisational changes but is not a reduction in service that would be noticed by customers shall not be considered detrimental unless one of the other limbs above apply
- 24.8. Where clause 24.6.1 applies, the Authorities who were in favour of a decision may deploy the provisions of clause 34 if the criteria therein are met.

25. CONTRACT MANAGEMENT OFFICE

- 25.1. The Authorities shall establish (in equal shares) fund and operate a shared contract management office (a **CMO**) which shall have delegated to it by the Committee and shall carry out the functions and activities set out in Schedule 6 (Delegated Functions) in accordance with Schedule 2 (Service Level Agreement) together with such other activities as are agreed between the Authorities (at which ever tier of governance is relevant to the activity in question). By way of an example, such functions and activities include but are not limited to:
 - 25.1.1. paying the Service Provider in accordance with the Joint Contract and calculating and applying the provisions of Schedule 3 (Partnership Share);
 - 25.1.2. data collection, including collection of data to enable the Authorities to comply with reporting requirements to Surrey and DEFRA;
 - 25.1.3. communications with the Service Provider and with residents;
 - 25.1.4. day to day management of the Joint Contract;
 - 25.1.5. monitoring performance across the administrative areas of the Authorities;
- 25.2. The Authorities’ Authorised Officer shall be the Director of the CMO. The CMO shall also engage the following posts on full time or full time equivalent basis:
 - 25.2.1. financial officer;
 - 25.2.2. deputy Authorities’ Authorised Officer to monitor and ensure compliance with contract standards;
 - 25.2.3. secretariat or admin support;

- 25.2.4. other staff employed or seconded from the Authorities as agreed by the Committee.
- 25.3. The CMO shall be established and hosted in the first instance by the Administering Authority no later than [6] months prior to the Elmbridge Commencement Date.
- 25.4. Without prejudice to clause 25.2.4, the Authorities intend to place at the disposal of the Authorised Officer and/or any other officer responsible for mobilising the Joint Contract for each of the Authorities, those officers employed by each of them and who are deployed on waste and/or street cleaning roles for the purpose of mobilising and/or managing the Joint Contract.
- 25.5. The Annual Budget shall include a CMO Budget being the costs of operating and running the CMO. The CMO Budget shall include all costs and overheads required to operate the CMO (whether operated by the Administering Authority or as CMO Ltd) and shall include, without limitation):
- 25.5.1. staff costs including pensions, including admittance to the LGPS;
 - 25.5.2. HR services;
 - 25.5.3. financial services including payroll and payment processing;
 - 25.5.4. property costs and utilities;
 - 25.5.5. ICT and ICT services;
 - 25.5.6. insurance;
 - 25.5.7. consumables and office furniture;
 - 25.5.8. banking services.
- 25.6. The Authorities acknowledge and agree that the intention of the CMO is to provide a shared service which is cheaper than the cost of managing waste collection and street cleansing services by each Authority individually and accordingly the CMO Budget set and the resources of the CMO shall be managed as far as is practicable to achieve that objective.
- 25.7. The CMO may enter into arrangements for HR, financial, ICT, insurance and any other professional services or supplies with any Authorities or, subject to compliance with procurement law, from any third party.
- 25.8. The Authorities may incorporate the CMO into a limited company established for that purpose (CMO Ltd) in accordance with the principles set out below.
- 25.8.1. CMO Ltd shall be either a company limited by guarantee or a company limited by shares owned equally by the Authorities who shall be the sole members or shareholders (as the case may be);
 - 25.8.2. The constitution and any other documentation necessary or desirable to effect the incorporation of CMO Ltd shall be prepared and agreed by the Committee and approved at Tier 1 ;
 - 25.8.3. The Board of Directors of CMO Ltd (CMO Board) shall be members of the Contract Partnering Board;
 - 25.8.4. CMO Ltd shall be a company which has the features described in Regulation 12(4) of the Public Contracts Regulations 2015 (a “Teckal” company) in that the Regulations shall not apply to the provision of the CMO services.

- 25.8.5. The constitution of CMO Ltd shall facilitate (but not compel) the incorporation of an outward facing subsidiary established to trade commercially and make profit.
- 25.9. If the Authorities do not incorporate the CMO into a limited company pursuant to clause 25.8 and the Administering Authority wishes to resign from the position of Administering Authority, it may do so providing it gives at least one year's written notice to the Chief Executives of the other Authorities. Upon receipt of such notice, the other Authorities shall as soon as possible agree that one of them shall replace the resigning Administering Authority with effect from the expiry of such notice. The resigning Administering Authority shall take all such steps and be party to all such agreements as the other Authorities require in order to transfer the hosting of the CMO, the provision of the CMO Services and the CMO Budget from it to the incoming Administering Authority.

26. MATTERS OUTSIDE THIS AGREEMENT

- 26.1. For the avoidance of doubt, the following will be dealt with by the Authorities individually and not through the CMO or this Agreement except that the Authorities shall liaise with, consult and inform the CMO in respect thereof and the CMO shall provide reasonable assistance, data and information:
- 26.1.1. enforcement against the public in law or by-law (e.g. littering);
 - 26.1.2. Asset and depot management as landlord or owner;
 - 26.1.3. capital improvement;
 - 26.1.4. setting public charges (e.g. for green waste);
 - 26.1.5. management of civil emergencies other than where the Service Provider's assistance is required (which shall be, where practicable depending on the urgency, arranged through the CMO).
- 26.2. The Committee may at any time extend or reduce the functions or activities of the CMO or transfer any of the activities set out in clause 26.1 which are dealt with by the Authorities individually.

27. CONTRACT MANAGEMENT OFFICE SERVICE AGREEMENT

- 27.1. The Administering Authority in the first instance and, in the event of its incorporation the CMO Ltd, shall deploy the resources and provide administrative and contract management services (the CMO Services) in accordance with the Service Level Agreement, the proposed form of which is set out in Schedule 2.
- 27.2. The Administering Authority, or in the event of its incorporation the CMO Ltd, shall carry out the CMO Services:
- 27.2.1. impartially as between the Authorities;
 - 27.2.2. using all due skill care and diligence;
 - 27.2.3. in a professional and timely manner;
 - 27.2.4. economically and efficiently;
 - 27.2.5. so as to achieve the objectives of this Agreement;
 - 27.2.6. in accordance with law, financial regulations and good practice.

27.3. In the event of the incorporation of the CMO, the provisions of this clause and Schedule 2 shall be entered into as a contract between the CMO Ltd and the Authorities and CMO Ltd shall not be incorporated unless such contract is entered so as to be effective as soon as CMO Ltd becomes active.

28. ANNUAL BUDGET

28.1. In each year the Contract Partnering Board shall prepare and submit a draft Annual Budget for approval first by the Committee and upon approval by the Committee, for submission for a Tier 1 decision from each Authority.

28.2. The Annual Budget shall be divided into three sections:

28.2.1. The **CMO Budget** which shall incorporate costs of operating this Agreement including governance and the overheads provided in clause 25.5;

28.2.2. The **Service Provider Budget** which shall incorporate

- i. forecast payments to the Service Provider;
- ii. any proposed capital expenditure;
- iii. costs of any agreed variations;
- iv. the costs of provision of the Assets;
- v. other costs of the Joint Contract including the provision and cost of vehicles, assets and depots other than the Assets;

28.2.3. The Savings Budget which is a payment of [] per year by the other Authorities to Woking for the Initial Term (such payment being in recognition of the savings made by the Authorities other than Woking in entering into the Joint Contract.

28.3. The Annual Budget shall also set out the apportionment between the Authorities and state each Authority's contribution.

28.4. The Annual Budget shall be prepared and approved in accordance with the following deadlines:

28.4.1. no later than September in each Financial Year the CMO shall prepare a budget and submit it to the Contract Partnering Board for discussion and, if necessary, revision and amendment;

28.4.2. no later than November in each Financial Year the Committee will approve the draft Annual Budget;

28.4.3. no later than January in each Financial Year each Authority will submit a report to its Tier 1 to obtain approval for the draft Annual Budget.

28.5. If the Authorities or the Committee are unable to approve the draft Annual Budget for a Financial Year before November in any year, the provisions of clause 24.2 (Quorum and Voting Arrangements) shall apply.

28.6. The Authorities shall each pay their contribution of the Annual Budget to the Administering Authority (or, if incorporated the CMO Ltd) in accordance with clause 29.

28.7. The Authorities shall comply with the requirements of this clause and provide such reasonable assistance as is necessary to each other, to the Committee and to the CMO to assist in preparing the Annual Budget.

29. CONTRIBUTIONS TO THE ANNUAL BUDGET AND PRINCIPLES OF CMO SERVICE COSTS APPORTIONMENT

29.1. The Authorities shall contribute to the Annual Budget in accordance with the principles set out in this clause.

29.2. Costs and liabilities accruing under this Agreement and in the Joint Contract fall into four categories and shall be apportioned as follows:

29.3. CMO Budget

29.3.1. The CMO Budget shall be shared and apportioned between the Authorities in equal shares in each year.

29.4. Service Provider Budget

29.4.1. Measured Costs

i. All costs payable to the Service Provider or liabilities of the Service Provider which can be measured and attributable to a specific Authority shall be the liability of that Authority. Where a Service provided by the Service Provider under the Joint Contract is provided under the Joint Contract to a subset of the Authorities, those costs or liabilities shall, unless otherwise agreed, be borne equally by those Authorities accessing that Service.

29.4.2. Partnership Share

i. All matters which do not fall into the Measured Costs, Asset Contribution or Indemnity provisions shall be borne by the Authorities in accordance with their Partnership Share, calculated in accordance with Schedule 3.

29.4.3. Asset Contribution

i. The following assets and depots shall be contributed by the respective Authorities and have a rental value assigned to them based on the terms of the lease granted for that depot by the relevant Authority to the Service Provider. That value shall be determined by an independent valuer, approved by the Authorities, and the methodology and approach to undertaking the valuation shall be agreed by the Authorities. The total of all such values shall be borne by the Authorities in accordance with their Partnership Share and shall be included in the Annual Budget and payable in accordance with clause 32.

Asset/Depot
Mill Road Depot, Mill Road, Esher, Surrey (Elmbridge)
Station Road Depot, Station Road, Dorking, Surrey (Mole Valley)
15a Monument Way Depot, Monument Way East, Woking, Surrey (Woking)
14 Doman Road, Camberley, Surrey (Surrey Heath)

ii. In providing such an Asset, the providing Authority shall, and warrants and represents for the benefit of the other Authorities the same, that the Asset is provided in a statutorily compliant condition. Any costs incurred by the

providing Authority to satisfy this obligation are the liability of the providing of the Authority.

- iii. Should the providing Authority wish to, or be requested to, make further capital investments or other improvements to its Asset, the proposed improvement or capital investment must be evidenced by a clear business case demonstrating the benefits for the Authorities under the Joint Contract and approved by the Contract Partnering Board. If approved, the providing Authority shall fund the costs of such improvements, but shall have the right to charge the financing costs to the Authorities at 2.5% over its cost of funding (as at the date the funding is first drawn down) and shall be recharged to the Authorities using the Partnership Share for the term of the lifetime of the improvement
- iv. Should the providing Authority wish to withdraw an Asset in accordance with the provisions of the Joint Contract, it shall reprovide an alternative Asset (which may be in partnership with another Authority), unless otherwise agreed by the Contract Partnering Board.

29.5. Savings Budget

29.5.1. The Savings Budget shall be apportioned between the Authorities and shall be calculated in accordance with the financial model agreed by the Authorities. In summary, the financial model shall determine in respect of each Authority:

- i. the figure which is the higher of £100K and 5% of that Authority's current contract costs as at the end of the financial year 2016/2017 (Minimum Savings);
- ii. the actual savings forecast for that Authority under the Joint Contract (Actual Savings);
- iii. the difference between the Minimum Savings and the Actual Savings
- iv. in respect of an Authority which has not achieved the Minimum Savings (the Guarantee Authority), the Guarantee Authority shall receive an amount equal to the Minimum Saving (the Savings Budget) from each of those Authorities whose Actual Savings exceeds the Minimum Savings.
- v. The contribution from each such Authority to the Guarantee Authority to the Savings Budget shall be calculated:

$\frac{\text{Authority Actual Savings} \times \text{Savings Budget}}{\text{Sum all Actual Savings}}$ = that Authority's contribution.

Sum all Actual Savings

(excluding Guarantee Authority)

29.6. Other costs or expenses

29.6.1. Where the sharing arrangements for any cost, liability or benefit is not expressly provided in this clause, it shall be borne or, as the case may be shared, in accordance with the Partnership Share.

30. INCOME

- 30.1. Income generated under the Joint Contract shall be shared in accordance with the Partnership Share unless otherwise agreed in advance by the Authorities.

31. FUNDING OF CAPITAL EXPENDITURE (VEHICLES)

- 31.1. The Authorities have agreed under the Joint Contract to purchase the Vehicles required for the delivery of the Services from the Service Provider. Any one or more or all the Authorities may offer to provide the capital in whole or in part required to fund such expenditure and in consideration for providing such capital, shall receive the rate of 2.5% over the Bank of England base rate on the amount of capital made available to the Authorities.
- 31.2. In the absence of one or more Authorities offering to provide the capital required to purchase the Vehicles from the Service Provider under the Joint Contract, each Authority shall fund that proportion of the capital as set out in the annexed spreadsheet.
- 31.3. The capital costs of the Vehicles together with the financing costs shall be recharged to the Authorities on the basis of proportion of usage by each authority in terms of complete months. A worked example of this is set out in the annexed spreadsheet.

32. PAYMENTS

- 32.1. Each Authority shall contribute its share as follows:
- 32.1.1. no later than 1 April in each year the CMO shall submit and invoice to each Authority its share of the CMO Services for that financial year in accordance with the Annual Budget.
- 32.1.2. in respect of the Service Provider Budget, the CMO shall review each invoice received from the Service Provider and the accompanying breakdown of the charges by Authority in accordance with the Joint Contract. The CMO shall verify the Service Provider's breakdown and in turn calculate the total apportionment relevant to each Authority. The CMO shall send its apportionment calculations to the Service Provider and the Contract Partnering Board and shall require the Service Provider to submit each of its invoices addressed to the Authorities. If the Contract Partnering Board disputes the apportionment, the matter shall be agreed through Governance or the Dispute Resolution Procedure and the outcome shall (if applicable) be effected by an adjustment to a future invoice so that the flow of payments to the Service Provider is not disrupted.
- 32.1.3. each Authority shall contribute its share of the Annual Budget in twelve equal monthly instalments, save that in April (the first calendar month of the financial year) two months' instalments shall be paid and in March (the last calendar month of the financial year) no instalment shall be paid.
- 32.2. The CMO shall hold the Annual Budget in separate accounts which are identifiable as relating solely to the operation of the Joint Contract and this Agreement. The CMO Budget shall be paid to the CMO which shall expend, draw and manage it to provide the CMO Services as it sees fit. The rest of the Annual Budget which shall be held in an account by the CMO on behalf of the Authorities and payments from that account shall be made only to the Service Provider in accordance with the Joint Contract and this Agreement.

- 32.3. No later than the 31st March of each financial year, the CMO shall conduct a full audit and reconciliation of all elements of the Annual Budget and shall calculate (in accordance with the principles set out in clause 29) whether:
- 32.3.1. any positive balances of the Annual Budget should be returned to an Authority;
 - 32.3.2. whether any Authority owes more than it has so far contributed; and
- shall redistribute funds or invoice for additional funds accordingly. The Authorities shall pay any sums invoiced within 30 days or shall refer the matter to the Dispute Resolution Procedure.
- 32.4. Following resolution of the dispute in question any amount agreed or determined to have been payable shall be paid forthwith to the CMO together with interest and the reasonable costs and compensation incurred by the CMO calculated in accordance with clause 32.5.
- 32.5. In the event of any Authority failing to make a payment under this clause on the relevant due date, it shall pay to the CMO and to the other Authorities the reasonable costs and compensation for any Losses incurred by them in respect of the outstanding instalments such amount to be calculated on a daily basis (commencing from the first Working Day after the relevant due date) for each day a Authority is late in making such payment plus interest in accordance with clause 21.4.

PART THREE

MANAGEMENT OF JOINT WASTE CONTRACT

33. JOINT MANAGEMENT

- 33.1. The Authorities shall manage and operate the Joint Contract jointly through the CMO. The Authorities' Authorised Officer will be the key contact in the CMO for the Service Provider. Except where essential in a civil emergency, the Authorities shall communicate with the Service Provider through the CMO only.
- 33.2. Where any matter is agreed or a decision reached in accordance with the governance procedures in clause 23 and the voting arrangements in clause 24, such decision shall be implemented by the Authorised Officer and the payment provisions of clause 32 shall apply.

34. MATERIAL INSTRUCTIONS

- 34.1. Any Authority (or group of Authorities numbering fewer than all the Authorities) may require an instruction to be given to the Service Provider, a dispute settlement reached or a variation made to the Joint Contract whereby a payment or saving is due, the Services are augmented, changed, omitted, reduced or additional services added (a **Material Instruction**).
- 34.2. Any Material Instruction shall be proposed by an Authority (**Proposing Authority**) through the Contract Partnering Board which shall refer it down to the Authorities' Authorised Officer who may consult the Operations Forum or refer it to the Committee if appropriate. Provided that
- 34.2.1. the Material Instruction is not unlawful (in procurement law terms or otherwise); and
 - 34.2.2. the costs or savings are capable of being identified and attributed to the Proposing Authority only; and
 - 34.2.3. the Material Instruction will have no detrimental impact on the other Authorities; or
 - 34.2.4. if the Material Instruction does have a detrimental impact the other Authorities are returned to a no worse position by the Proposing Authority; and
 - 34.2.5. if the subject or consequence is a matter reserved for a Tier 1 decision, the Proposing Authority shall provide evidence of the Tier 1 decision; and
 - 34.2.6. the Proposing Authority has taken into consideration the views of the other Authorities;

the Proposing Authority shall be entitled give the Material Instruction to the Service Provider without prevention or interference by the other Authorities who shall not be entitled to veto the same. In such circumstance the Proposing Authority shall confirm to the CMO that it wishes the Material Instruction to be made and the CMO shall put the Material Instruction into effect.

- 34.3. Where a Material Instruction is implemented and the provisions of clause 34.2.4 apply:
- 34.3.1. the Proposing Authority shall be entitled to seek from the other Authorities a statement setting out the detriment and what the proposed return to a no worse

position would involve (in costs and activities) and the other Authorities shall provide the same promptly and exhaustively; and

- 34.3.2. the Proposing Authority shall be responsible for any cost or payments to the Service Provider attributable to the Material Instruction and shall return the other Authorities to the no worse position (which, where clause 34.3.1 applies shall be limited to the detriment, costs and activities identified in the other Authorities' response to a request made under clause 34.3.1).

35. LIABILITY AND INDEMNITY

- 35.1. Where an Authority (the **Innocent Authority**) has a liability to the Service Provider which is enforced or is capable of enforcement by the Service Provider but which liability arose due to the breach of the Joint Contract or this Agreement or the negligence of another Authority (the **Defaulting Authority**), the Defaulting Authority shall take all or whichever of the following actions which are applicable in the circumstances to ensure that the Innocent Authority is fully protected and indemnified:

- 35.1.1. promptly discharge its liability to the Service Provider in full; and
- 35.1.2. where applicable, defend the Service Provider's claim directly, jointly with the Innocent Authority or joined as a third party; and
- 35.1.3. promptly and fully indemnify the Innocent Authority against all Losses incurred a result of the Defaulting Authority's breach or negligence.

- 35.2. The breaches of contract for which the Defaulting Authority shall indemnify the Innocent Authority shall include (but shall not be limited to):

- 35.2.1. failure to pay any sum owed to the Service Provider where the invoice was properly rendered and due;
- 35.2.2. failure to contribute in a timely way to the CMO, the CMO Budget or the Annual Budget ;
- 35.2.3. agreeing a variation with the Service Provider or a waiver of any right without the agreement of the Innocent Authority;
- 35.2.4. terminating (or purporting to terminate) the Joint Contract in whole or in part without the agreement of the Innocent Authority;
- 35.2.5. creating or allowing a situation to arise which gives a right to the Service Provider to terminate the Joint Contract.

- 35.3. Liability and Indemnity

- 35.3.1. Breaches of this Agreement or liabilities accruing pursuant to this clause shall be the liability and responsibility of the relevant breaching Authority.

36. INTELLECTUAL PROPERTY

- 36.1. Each Authority will retain all Intellectual Property in its Material.
- 36.2. Each Authority will grant each of the other Authorities an irrevocable, non-exclusive, perpetual, non-transferable and royalty free licence to use, modify, amend and develop its Material for the delivery of the Joint Contract.

- 36.3. Without prejudice to clause 36.1, if more than one Authority has a legal or beneficial right or interest in any aspect of the Material for any reason (including that no one Authority can demonstrate that it independently supplied or created the relevant Material without the help of one or more of the other Authorities), each of the Authorities which contributed to that Material shall grant to all the other Authorities to this Agreement an irrevocable, non-exclusive, perpetual, non-transferable and royalty free licence to use and exploit such Material for the delivery of the Joint Contract.
- 36.4. Each Authority warrants that it has the necessary rights to grant the licences set out in clauses 36.2 and 36.3.
- 36.5. Each Authority shall indemnify the other Authorities against any Losses arising out of any dispute or proceedings brought by a third party alleging infringement of its intellectual property rights by use of that Authority's intellectual property for the delivery of the Joint Contract.

IN WITNESS WHEREOF each of the Authorities has set its common seal the day and year first above written.

The Common Seal of
Elmbridge Borough Council
was hereunto affixed in the presence of

.....

The Common Seal of
Surrey Heath Borough Council
was hereunto affixed in the presence of

.....

The Common Seal of
Woking Borough Council
was hereunto affixed in the presence of

.....

The Common Seal of
Mole Valley District Council
was hereunto affixed in the presence of

.....

The Common Seal of
Surrey County Council
was hereunto affixed in the presence of

.....

DRAFT

SCHEDULES

DRAFT

SCHEDULE 1

THE CONSTITUTION OF THE COMMITTEE AND THE CONSTITUTION AND OPERATION OF THE CONTRACT PARTNERING BOARD

THE COMMITTEE

This Constitution has been approved by the Authorities as the constitution of the Joint Waste Collection Services Committee.

1. FUNCTIONS AND ACTIVITIES TO BE UNDERTAKEN BY THE COMMITTEE ON BEHALF OF THE AUTHORITIES

- 1.1 The Committee shall not make any decisions the effect of which would be to put any Authority in breach of any contract (including the Joint Contract).
- 1.2 The Committee shall carry out the functions and activities set out in clause 23 of the Agreement.

2. AIMS AND OBJECTIVES OF THE COMMITTEE

- 2.1 The Authorities acknowledge that the Joint Contract has been entered into in furtherance of the aims and objectives set out in this paragraph 2.

Aims

- 2.2 The aims are:

- 2.2.1 Delivery of higher performing, better value waste services for Surrey tax payers by collaborative working and joint decisions;
- 2.2.2 Arrangements structured in such a way as to ensure that the interests of each individual Authority (and the taxpayers that each represents) are protected;
- 2.2.3 Standardisation of policies to encourage reducing, recycling, reusing waste;
- 2.2.4 Honest communication and mutual partnership between Authorities;
- 2.2.5 Scrutinising existing arrangements regularly to identify opportunities for service improvement and cost savings;
- 2.2.6 Deliver the principles set out in the Surrey Waste Partnership strategy;
- 2.2.7 Innovative approaches to improve waste management.

Objectives

- 2.3 The objectives align with the Surrey Waste Partnership Joint Municipal Waste Management Strategy Revision 2 (2015):
 - 2.3.1 Ensure Surrey tax payers are getting a consistent and value for money waste service;
 - 2.3.2 Amount of waste produced to continue to be reduced, recycled or reused;
 - 2.3.3 To increase materials reused, recycled or composted;
 - 2.3.4 To protect and enhance the environment for future generations;
 - 2.3.5 To reduce waste sent to landfill;
 - 2.3.6 Continual improvement of waste management;

2.3.7 Honest communication and mutual partnership between the Authorities.

3. MEMBERSHIP AND APPOINTMENT OF THE JOINT WASTE COLLECTION SERVICES COMMITTEE

- 3.1 Each Authority shall nominate one of its elected members to be its representative on the Committee.
- 3.2 The Committee shall have a delegated power to permit additional membership of the Committee in a co-opted role without voting rights.
- 3.3 Each member of the Committee shall have one vote at meetings of the Committee.
- 3.4 Each member of the Committee shall be appointed for the term of office, or the balance of the term of office, of the Executive of the appointing Authority.
- 3.5 The appointment of elected members to the Committee to fill any vacancy for such elected member shall be made by the Executive or relevant committee of each Authority:
- 3.5.1 as soon as practicable following the adoption of the constitution of the Committee by the Executive or relevant committee or full council of that Authority;
 - 3.5.2 as soon as practicable after the appointment of the Executive or relevant committee of that Authority in accordance with that Authority's constitution; and
 - 3.5.3 as soon as practicable after a vacancy arises in respect of a seat on the Committee to which the executive or relevant committee of that Authority has the power to make an appointment.
- 3.6 A member of the Committee shall cease to be a member of the Committee and a vacancy shall automatically arise, where:
- 3.6.1 the member resigns from the Committee by giving notice in writing to the Secretary to the Committee;
 - 3.6.2 the member ceases to be, or is suspended under Part III of the Local Government Act 2000 from acting as, an elected member of the appointing Authority or a member of the Executive or relevant committee of the appointing Authority;
 - 3.6.3 the member of the Committee is removed from membership of the Committee by notification in writing from the Leader of the appointing Authority to the Secretary of the Committee.
- 3.7 All appointments to membership of the Committee shall be made by notification in writing from the Leader or the Chief Executive of the appointing Authority to the Secretary of the Committee.
- 3.8 Upon being made aware of any member ceasing to be a member of the Committee, the Secretary of the Committee shall write to that member confirming that he/she has ceased to be a member of the Committee and notifying the appointing Authority and the other members of the Committee accordingly.
- 3.9 Each Authority will appoint a substitute member of the Committee on the same terms as the Authority's appointed member of the Committee. The substitute member may attend any meeting of the Committee with all the powers of the Authority's appointed member in the event that an appointed member is unable to attend a particular meeting.

4. CHAIR AND VICE-CHAIR OF THE COMMITTEE

- 4.1 At the first meeting of the Committee after the annual meetings of each Authority in any year, the Committee shall elect a Chair of the Committee and a Vice Chair of the Committee for the following three years from among the members of the Committee, save that any co-opted members shall not be entitled to election as Chair or Vice-Chair of the Committee.
- 4.2 By convention, if the Chair of the Committee in any period is a member of one of the Authorities, the Chair of the Committee for the next period of 3 years would normally be a Member of another of the Authorities.
- 4.3 The Chair and the Vice Chair of the Committee shall each hold office until:
- 4.3.1 a new Chair or Vice-Chair of the Committee is elected in accordance with clause 4.1 above,
 - 4.3.2 he/she ceases to be a member of the Committee, or
 - 4.3.3 he/she resigns from the office of Chair or Vice-Chair by notification in writing to the Secretary of the Committee.
- 4.4 Where a casual vacancy arises in the office of Chair or Vice Chair of the Committee, the Committee shall at its next meeting elect a Chair or Vice Chair, as the case may be, for the balance of the term of office of the previous Chair or Vice Chair.
- 4.5 Where, at any meeting or part of a meeting of the Committee, both the Chair and the Vice-Chair of the Committee are either absent or unable to act as Chair or Vice Chair, the Committee shall elect one of the members of the Committee present at the meeting to preside for the balance of that meeting or part of the meeting, as appropriate.

5. SECRETARY TO THE COMMITTEE

- 5.1 The Committee shall be supported by the Chief Executive or nominated officer of the Administering Authority in his/her capacity as Secretary to the Committee.
- 5.2 The functions of the Secretary of the Committee shall be:
- 5.2.1 to maintain an online record of membership of the Committee;
 - 5.2.2 to notify the chief executive and Lead Officer of each appointing Authority of any anticipated decisions to be taken by the Committee over the year (whether or not key decisions) and updated on a monthly basis, to enable such decisions to be included in the forward plans of each appointing Authority as required by the Local Authorities (Executive Arrangements)(Meetings and Access to Information) (England) Regulations 2012 and in accordance with their respective constitutions;
 - 5.2.3 to carry out such notification to and consultation with members of the appointing Authorities as may be necessary to enable the Committee to take urgent decisions which have not been included in the Forward Plans of the Authorities;
 - 5.2.4 to notify the chief executives of the Authorities of the dates, times and venues of meetings and to publish the dates times and venues;
 - 5.2.5 to summon meetings of the Committee in accordance with clause 6 below;
 - 5.2.6 to prepare and send out the agenda for meetings of the Committee in consultation with the Chair and the Vice Chair of the Committee and the Lead Officers;
 - 5.2.7 to keep a record of the proceedings of the Committee;

5.2.8 to take such administrative action as may be necessary to give effect to decisions of the Committee;

5.2.9 to undertake such other functions as may be determined by the Committee.

6. CONVENING OF MEETINGS OF THE COMMITTEE

6.1 Meetings of the Committee shall be held at such times, dates and places as may be notified to the members by the Secretary to the Committee, being such time, place and location as:

6.1.1 the Committee shall from time to time resolve;

6.1.2 the Chair of the Committee, or if he/she is unable to act, the Vice-Chair of the Committee, shall notify to the Secretary of the Committee; or

6.1.3 the Secretary to the Committee, in consultation where practicable with the Chair and Vice Chair of the Committee, shall determine in response to receipt of a request in writing addressed to the Secretary of the Committee:

- from and signed by two members of the Committee, or
- from the chief executive of an Authority, or
- from the Leader of an Authority,

which request sets out an item of business within the functions of the Committee that needs to be considered prior to the next scheduled meeting of the Committee.

6.2 The Secretary to the Committee shall formulate the agenda for any meeting of the Committee after consulting, where practicable:

6.2.1 the Lead Officers;

6.2.2 the Chair and the Vice-Chair of the Committee;

6.2.3 and shall incorporate in the agenda any items of business and any reports submitted by

- any two members of the Committee in accordance with clause 6.1.3 above
- the Leader of any of the Authorities
- the chief executive of any of the Authorities (or their nominated officers)
- Lead Officers
- the chief finance officer/section 151 officer to any of the Authorities
- the monitoring officer to any of the Authorities
- such other officers as the Committee may determine for this purpose.

7. PROCEDURE AT MEETINGS OF THE COMMITTEE

7.1 The Committee shall conduct its business in accordance with the executive decision-making procedure rules of the Administering Authority, and as set out below.

7.2 The quorum for a meeting of the Committee shall be four members. If an Authority fails to attend two consecutive meetings that are properly notified, the next meeting shall be considered quorate for the purposes of majority voting even if that Authority fails to attend.

7.3 The Chair of the Committee, or in his/her absence the Vice Chair of the Committee, or in his/her absence the member of the Committee elected for this purpose, shall preside at meetings of the Committee.

- 7.4 Whilst the Committee shall seek, wherever possible, to work on a principle of consensus, decisions of the Committee shall, subject to clause 7.5 below, be determined by a majority of the members of the Committee present and voting except where a decision would be detrimental (as defined in clause 24.7 of the Agreement) to any Authority or put an Authority to cost in which case the decision shall be determined by a unanimous vote. In the event of an equality of votes in a simple majority vote, the person presiding shall have a second or casting vote.
- 7.5 Where the Committee is unable to support any motion on a matter, or any voting member of the Committee is unable to support any motion on a matter, the decision will be held in abeyance until the next meeting of the Committee where a decision shall be taken in relation to that matter. In such circumstances, the Secretary to the Committee will notify the matter to the leaders of the Authorities.
- 7.6 Any decision of the Committee is subject to the scrutiny arrangements as set out in clause 9 below.
- 7.7 If there is a conflict between the governance arrangements contained in this Constitution and the executive decision-making procedure rules of the Administering Authority, the governance arrangements contained in this Constitution shall have precedence.

8. ATTENDANCE AT MEETINGS OF THE COMMITTEE

- 8.1 Notwithstanding that, in accordance with the provisions of the Local Government Act 1972, a meeting or part of a meeting of the Committee may not be open to the press and public, the members and officers specified in clause 8.2 below of each Authority shall be entitled, in person or by another officer nominated by that officer, to attend any or all parts, of such meetings, unless the particular member or officer has a conflict of interest, which under any applicable code of conduct, prohibits attendance at the meeting whilst the matter is under consideration.
- 8.2 The following are the elected members and officers who shall have a right of attendance in accordance with clause 8.1 above:
- 8.2.1 all elected members of the constituent Authorities
 - 8.2.2 the chief executive of any of the constituent Authorities or nominated officers
 - 8.2.3 the Lead Officers of the constituent Authorities
 - 8.2.4 the chief finance officer/section 151 officer to any of the constituent Authorities
 - 8.2.5 the monitoring officer to any of the constituent Authorities
 - 8.2.6 any person appointed by the Committee to manage particular projects
 - 8.2.7 any other officer of the Authorities at the request of any member of the Committee.

9. CALL-IN BY SCRUTINY COMMITTEES

- 9.1 The delegation of powers from each Authority to the Committee is subject to the limitation that all decisions taken by the Committee in accordance with delegations from each Authority shall only take effect five clear Working Days after publication of the decisions following a relevant meeting of the Committee and shall be ineffective if a relevant Scrutiny Committee of one or more of the Authorities has given notice in writing of call-in to the Chief Executives of the other Authorities and to the Secretary to the Committee within such period of five clear Working Days.

- 9.2 The Authority seeking call-in needs to identify which part or parts of the decision are called-in and to give the reasons for call-in and shall have support of the relevant number of its members as set out in the constitution of that Authority.
- 9.3 If a decision of the Committee is called-in, it shall not be implemented save where the decision on the call-in is to support or take no further action, in which case the decision shall take effect at the conclusion of that call-in meeting, or where the meeting of the Authority's overview and scrutiny committee does not take place within ten clear Working Days of the valid submission of a notice triggering a call-in under clause 9.2 above, the decision shall take effect on the date of the expiry of the ten Working Day period.
- 9.4 Such matters shall within a further ten clear Working Days be referred and considered by a meeting of the relevant scrutiny committee(s). The relevant scrutiny committee(s) may make such recommendations to the next meeting of the Committee on the matter as they think fit.
- 9.5 Where an Authority or Authorities have made such objection in respect of a matter, the Committee shall then reconsider the matter within a further ten clear Working Days and come to a decision. That second decision shall take effect immediately and no Authority then can call-in that second decision.

10. STANDING ORDERS FOR CONTRACTS, FINANCIAL REGULATIONS AND OFFICER EMPLOYMENT PROCEDURE RULES

- 10.1 The Committee shall operate under the standing orders for executive decision making of the Administering Authority.

THE CONSTITUTION AND OPERATION OF THE CONTRACT PARTNERING BOARD

1. FUNCTIONS AND ACTIVITIES TO BE UNDERTAKEN BY THE CONTRACT PARTNERING BOARD

- 1.1 The Contract Partnering Board shall not make any decisions the effect of which would be to put any Authority in breach of any contract (including the Joint Contract).
- 1.2 The Contract Partnering Board shall carry out the functions and activities set out in clause 23 of the Agreement.

2. AIMS AND OBJECTIVES OF THE CONTRACT PARTNERING BOARD

- 2.1 The Authorities acknowledge that the Joint Contract has been entered into in furtherance of the aims and objectives set out in this paragraph 2.

Aims

- 2.2 The aims are:
- 2.2.1 Delivery of higher performing, better value waste services for Surrey tax payers by collaborative working and joint decisions;
 - 2.2.2 Arrangements structured in such a way as to ensure that the interests of each individual Authority (and the taxpayers that each represents) are protected;
 - 2.2.3 Standardisation of policies to encourage reducing, recycling, reusing waste;
 - 2.2.4 Honest communication and mutual partnership between Authorities;
 - 2.2.5 Scrutinising existing arrangements regularly to identify opportunities for service improvement and cost savings;
 - 2.2.6 Deliver the principles set out in the Surrey Waste Partnership strategy;

2.2.7 Innovative approaches to improve waste management.

Objectives

2.3 The objectives align with the Surrey Waste Partnership Joint Municipal Waste Management Strategy Revision 2 (2015):

2.3.1 Ensure Surrey tax payers are getting a consistent and value for money waste service;

2.3.2 Amount of waste produced to continue to be reduced, recycled or reused;

2.3.3 To increase materials reused, recycled or composted;

2.3.4 To protect and enhance the environment for future generations;

2.3.5 To reduce waste sent to landfill;

2.3.6 Continual improvement of waste management;

2.3.7 Honest communication and mutual partnership between the Authorities.

3. MEMBERSHIP AND APPOINTMENT OF THE CONTRACT PARTNERING BOARD

3.1 Each Authority shall nominate its lead officer with responsibility for the services delivered in its administrative area under the Joint Contract to be its representative on the Contract Partnering Board.

3.2 The Contract Partnering Board shall have a delegated power to permit additional membership of the Contract Partnering Board in a co-opted role without voting rights.

3.3 Each member of the Contract Partnering Board shall have one vote at meetings of the Contract Partnering Board.

3.4 The lead officer shall appoint a deputy to act as a substitute member to the Contract Partnering Board and such deputy may attend any meeting of the Contract Partnering Board with all the powers of the Authority's lead officer in the event that the lead officer unable to attend a particular meeting.

4. CHAIR AND VICE-CHAIR OF THE CONTRACT PARTNERING BOARD

4.1 At the first meeting of the Contract Partnering Board after the date of this Agreement, the Contract Partnering Board shall elect a Chair and a Vice Chair of the Committee for the following year from among the members of the Contract Partnering Board, save that any co-opted members shall not be entitled to election as Chair or Vice-Chair.

4.2 By convention, if the Chair of the Contract Partnering Board in any period is a member of one of the Authorities, the Chair of the Contract Partnering Board for the next period of 1 year would normally be a Member of another of the Authorities.

4.3 The Chair and the Vice Chair of the Contract Partnering Board shall each hold office until:

4.3.1 a new Chair or Vice-Chair of the Contract Partnering Board is elected in accordance with clause 4.1 above,

4.3.2 he/she ceases to be a member of the Contract Partnering Board, or

4.3.3 he/she resigns from the office of Chair or Vice-Chair by notification in writing to the other members of the Contract Partnering Board.

4.4 Where a casual vacancy arises in the office of Chair or Vice Chair of the Contract Partnering Board, the Contract Partnering Board shall at its next meeting elect a Chair or Vice Chair, as the case may be, for the balance of the term of office of the previous Chair or Vice Chair.

4.5 Where, at any meeting or part of a meeting of the Contract Partnering Board, both the Chair and the Vice-Chair of the Contract Partnering Board are either absent or unable to act as Chair or Vice Chair, the Contract Partnering Board shall elect one of the members of the Contract Partnering Board present at the meeting to preside for the balance of that meeting or part of the meeting, as appropriate.

5. MEETINGS OF THE CONTRACT PARTNERING BOARD

5.1 Meetings of the Contract Partnering Board shall be held at such times, dates and places as may be notified to the members by the Chair of the Committee.

5.2 The quorum for a meeting of the Contract Partnering Board shall be four members. If an Authority fails to attend two consecutive meetings that are properly notified, the next meeting shall be considered quorate for the purposes of majority voting even if that Authority fails to attend.

5.3 The Chair of the Contract Partnering Board, or in his/her absence the Vice Chair of the Contract Partnering Board, or in his/her absence the member of the Contract Partnering Board elected for this purpose, shall preside at meetings of the Contract Partnering Board.

5.4 Whilst the Contract Partnering Board shall seek, wherever possible, to work on a principle of consensus, decisions of the Contract Partnering Board shall, subject to clause 5.5 below, be determined by a majority of the members of the Contract Partnering Board present and voting except where a decision would be detrimental (as defined in clause 24.7 of the Agreement) to any Authority or put an Authority to cost in which case the decision shall be determined by a unanimous vote. In the event of an equality of votes in a simple majority vote, the person presiding shall have a second or casting vote.

5.5 Where the Contract Partnering Board is unable to support any motion on a matter, or any voting member of the Contract Partnering Board is unable to support any motion on a matter, the decision will be held in abeyance until the next meeting of the Contract Partnering Board where a decision shall be taken in relation to that matter. In such circumstances, the Chair will notify the matter to the chief executives of the Authorities.

5.6 Any decision of the Contract Partnering Board is subject to the officer key decision recording and publication requirements as required by law and for the purposes of this Agreement, a key decision is a decision involving income, expenditure or savings of £100,000 or more or affecting two or more wards in any one Administrative Area.

5.7 If there is a conflict between the governance arrangements contained in this Constitution and the officer decision-making procedure rules of the Administering Authority, the governance arrangements contained in this Constitution shall have precedence.

SCHEDULE 2

CONTRACT MANAGEMENT OFFICE

SERVICE LEVEL AGREEMENT

This service level agreement sets out the Authorities' requirements for the functions and activities of the CMO. The CMO shall deploy the resources necessary to provide administrative and Joint Contract management services ('CMO Services'). The Authorities shall manage and operate the Joint Contract jointly through the CMO.

1. Generally

- 1.1 The intention of the CMO is to provide a shared service which is cheaper than the cost of managing waste collection and street cleansing services by each Authority individually and accordingly the CMO Budget set and the resources of the CMO shall be managed as far as practicable to achieve that objective.
- 1.2 In this service level agreement defined terms shall have the meanings set out in the Joint Contract or in the Agreement.
- 1.3 The CMO shall carry out the CMO Services:
 - 1.3.1 impartially as between the Authorities;
 - 1.3.2 using all due skill care and diligence;
 - 1.3.3 in a professional and timely manner;
 - 1.3.4 economically and efficiently;
 - 1.3.5 so as to achieve the objectives of the Agreement;
 - 1.3.6 in accordance with law, financial regulations and good practice.
- 1.4 The Authorised Officer shall be the director of the CMO.

2. Service Delivery Management

- 2.1 The CMO shall:
 - 2.1.1 deploy the resources necessary to provide the CMO Services;
 - 2.1.2 engage a financial officer, a deputy Authorised Officer to monitor and ensure compliance with contract standards and secretariat or administrative support; and
 - 2.1.3 employ or use staff seconded from the Authorities as agreed by the Committee.
- 2.2 The CMO shall be operated and run using the CMO Budget, which shall include for all costs and overheads required to operate the CMO and shall include, without limitation:
 - 2.2.1 staff costs including pensions (including admittance to the LGPS);
 - 2.2.2 HR services;
 - 2.2.3 financial services including payroll and payment processing;

- 2.2.4 property costs and utilities;
 - 2.2.5 ICT and ICT services;
 - 2.2.6 Insurance;
 - 2.2.7 legal services;
 - 2.2.8 consumables and office furniture; and
 - 2.2.9 banking services.
- 2.3 The CMO may enter into arrangements for HR, financial, ICT, insurance, legal and any other professional services or supplies with any of the Authorities or, subject to compliance with procurement law, from any third party.
- 2.4 The Authorities shall liaise with, consult and inform the CMO in respect of the following and the CMO shall provide reasonable assistance, data and information to the Authorities:
- 2.4.1 enforcement against the public in law or by-law (e.g. littering);
 - 2.4.2 asset and depot management as landlord or owner;
 - 2.4.3 capital improvement;
 - 2.4.4 setting public charges (e.g. for green waste);
 - 2.4.5 management of civil emergencies other than where the Service Provider's assistance is required (which shall be, where practicable depending on the urgency, arranged through the CMO).
- 2.5 The CMO shall:
- 2.5.1 assess and manage the performance of the Service Provider to ensure value for money;
 - 2.5.2 manage risk by identifying and controlling risk;
 - 2.5.3 manage service continuity and have a business continuity plan in place;
 - 2.5.4 ensure that its staff understand the Services fully and know the Joint Contract and the Agreement inside out to understand the implications of problems or opportunities over the life of the Joint Contract; to reduce misunderstanding between the Authorities and the Service Provider; and to avoid problems, issues and mistakes before they happen;
 - 2.5.5 understand and ensure that escalation routes are used properly to encourage an approach that seeks to resolve problems early and without escalating up the governance chain;
 - 2.5.6 be flexible to meet changing circumstances;
 - 2.5.7 aim for continuous improvement in performance; and
 - 2.5.8 carry out such activities as shall be agreed from time to time by the Authorities.
- 2.6 Upon termination of the whole of the Agreement the CMO shall:
- 2.6.1 prepare and maintain a list of assets owned by it on behalf of the Authorities (the 'Joint Assets');

- 2.6.2 on apportionment of the ownership of assets equally amongst the Authorities the CMO shall transfer the Joint Assets to the relevant Authorities;
- 2.6.3 where assets cannot be equally apportioned to the Authorities the CMO shall transfer the Joint Assets to one Authority as directed by the Authorities.

3. CMO Budget

- 3.1 No later than September in each Financial Year the CMO shall prepare a budget and submit it to the Contract Partnering Board for discussion and, if necessary, revision and amendment.
- 3.2 The CMO shall ensure that the CMO Budget shall incorporate costs of operating the Agreement including governance and the overheads provided in paragraph 2.2.
- 3.3 The Authorities shall provide such reasonable assistance as is necessary to the CMO to assist in preparing the CMO Budget.

4. Payments

- 4.1 No later than 1 April in each year the CMO shall submit and invoice to each Authority its share of the CMO Services for that Financial Year in accordance with the Annual Budget.
- 4.2 In respect of the Service Provider Budget, the CMO shall review each invoice received from the Service Provider and the accompanying breakdown of the charges by Authority in accordance with the Joint Contract. The CMO shall verify the Service Provider's breakdown and in turn calculate the total apportionment relevant to each Authority. The CMO shall send its apportionment calculations to the Service Provider and the Contract Partnering Board and shall require the Service Provider to submit its invoices addressed to the Authorities. If the Contract Partnering Board disputes the apportionment, the matter shall be agreed through Governance or the Dispute Resolution Procedure and the outcome shall (if applicable) be effected by an adjustment to a future invoice so that the flow of payments to the Service Provider is not disrupted.
- 4.3 Each Authority shall contribute its share of the Annual Budget in twelve equal monthly instalments, save that in April (the first calendar month of the Financial Year) two months' instalments shall be paid and in March (the last calendar month of the Financial Year) no instalment shall be paid.
- 4.4 The CMO shall hold the Annual Budget in separate accounts which are identifiable as relating solely to the operation of the Joint Contract and the Agreement.
- 4.5 The CMO Budget shall be paid to the CMO and the CMO shall expend, draw and manage it to provide the CMO Services as it sees fit. The rest of the Annual Budget shall be held in an account by the CMO on behalf of the Authorities and payments from that account shall be made only to the Service Provider in accordance with the Joint Contract and the Agreement.

4.6 No later than 31 March of each Financial Year the CMO shall conduct a full audit and reconciliation of all elements of the Annual Budget and shall calculate (in accordance with the principles set out in clause 29 of the Agreement) whether:

4.6.1 any positive balances of the Annual Budget should be returned to an Authority; or

4.6.2 whether any Authority owes more than it has so far contributed

and shall redistribute funds or invoice for additional funds accordingly. The Authorities shall pay any sums invoiced within 30 days or shall refer the matter to the Dispute Resolution Procedure set out in the Agreement.

4.7 Following resolution of any dispute in accordance with paragraph 4.6 any amount agreed or determined to have been payable shall be paid forthwith to the CMO together with interest and the reasonable costs and compensation incurred by the CMO calculated in accordance with paragraph 4.8.

4.8 In the event of any Authority failing to make a payment under this paragraph 4 on the relevant due date, such Authority shall pay to the CMO and to the other Authorities the reasonable costs and compensation for any Losses incurred by them in respect of the outstanding instalments such amount to be calculated on a daily basis (commencing from the first Working Day after the relevant due date) for each day an Authority is late in making such payment plus interest in accordance with clause 21.4 of the Agreement.

5. Extension or reduction of the functions or activities of the CMO

5.1 The Committee may at any time extend or reduce the functions or activities of the CMO or transfer any of the activities set out in paragraph 2.4 above which are dealt with by the Authorities individually.

6. Relationship Management

6.1 Subject to matters expressly reserved to a higher tier as set out in clause 23.1 of the Agreement, the Authorised Officer shall be the key contact in the CMO for the Service Provider. Except where essential in a civil emergency, the Authorities shall communicate with the Service Provider through the CMO only.

6.2 Where any matter is agreed or a decision reached in accordance with the governance procedures in clause 23 of the Agreement and the voting arrangements in clause 24 of the Agreement, such decision shall be implemented by the Authorised Officer and the payment provisions of clause 32 of the Agreement shall apply.

6.3 The CMO shall:

6.3.1 ensure that staff at all levels facilitate a good relationship with the Service Provider;

6.3.2 establish information flows and communication levels;

- 6.3.3 encourage the right attitudes and behaviours, based on trust rather than adversarial models; and
- 6.3.4 actively manage the Authorities/Service Provider relationship.

7. Joint Contract Administration

7.1 The CMO shall:

- 7.1.1 pay the Service Provider in accordance with the Joint Contract and calculate and apply the provisions of Schedule 3 (Partnership Share);
- 7.1.2 collect data, including collection of data to enable the Authorities to comply with reporting requirements to Surrey and DEFRA;
- 7.1.3 communicate with the Service Provider and with residents;
- 7.1.4 deal with the day to day management of the Joint Contract;
- 7.1.5 monitor performance of the Joint Contract across the administrative areas of the Authorities;
- 7.1.6 have clear contract administration procedures so the Authorities and the Service Provider understand who does what, when and how;
- 7.1.7 exercise the powers of the Authorised Officer under the Joint Contract; and
- 7.1.8 check the costs of the Services are no higher than expected.

- 7.2 If a Material Instruction is referred to the Authorised Officer by the Contract Partnering Board, the Authorised Officer may consult the Operations Forum or refer it to the Committee if appropriate in accordance with paragraph 34.2 of the Agreement. If the Proposing Authority confirms to the CMO that it wishes the Material Instruction to be made, the CMO shall put the Material Instruction into effect.

SCHEDULE 3

CALCULATION OF PARTNERSHIP SHARE

Contract Management Costs

These costs comprise of the central contract management costs of which each authority benefits to a more or less equal degree. This would include the wages of the contract administrator and support staff.

An annual budget will be presented to the authorities in advance and the costs will be divided equally 4 ways.

Annual Sums within the contract and depot costs

This will vary depending on the period under review:

- 1) For the period from April 17 to May 17 – no costs should be incurred and therefore there is no recharge
- 2) For the period from June 17 to August 17 – all the costs will be charged to Elmbridge
- 3) For the period from Sept 17 to Jan 18 costs will be divided between Elmbridge and Woking as follows:

Elmbridge Share:
$$\frac{(\text{Elmbridge 2016/17 annual activity} \times \text{contractor unit price})}{((\text{Elmbridge 16/17 activity} + \text{Woking 16/17 activity}) \times \text{contractor unit price})}$$

Woking Share:
$$\frac{(\text{Woking 2016/17 annual activity} \times \text{contractor unit price})}{((\text{Elmbridge 16/17 activity} + \text{Woking 16/17 activity}) \times \text{contractor unit price})}$$

- 4) For the period from Feb 18 to Mar 18 costs will be divided between Elmbridge, Woking and Surrey Heath as follows:

Elmbridge Share:
$$\frac{(\text{Elmbridge 2016/17 annual activity} \times \text{contractor unit price})}{((\text{Elmbridge 16/17 activity} + \text{Woking 16/17 activity} + \text{Surrey Heath 16/17 activity}) \times \text{contractor unit price})}$$

Woking Share:
$$\frac{(\text{Woking 2016/17 annual activity} \times \text{contractor unit price})}{((\text{Elmbridge 16/17 activity} + \text{Woking 16/17 activity} + \text{Surrey Heath 16/17 activity}) \times \text{contractor unit price})}$$

Surrey Heath Share:
$$\frac{(\text{Surrey Heath 2016/17 annual activity} \times \text{contractor unit price})}{((\text{Elmbridge 16/17 activity} + \text{Woking 16/17 activity} + \text{Surrey Heath 16/17 activity}) \times \text{contractor unit price})}$$

- 5) For the period from Apr 18 to Jul 18 costs will be divided between Elmbridge, Woking and Surrey Heath as follows:

Elmbridge Share:
$$\frac{(\text{Elmbridge 2017/18 annual activity} \times \text{contractor unit price})}{((\text{Elmbridge 17/18 activity} + \text{Woking 17/18 activity} + \text{Surrey Heath 17/18 activity}) \times \text{contractor unit price})}$$

Woking Share:
$$\frac{(\text{Woking 2017/18 annual activity} \times \text{contractor unit price})}{((\text{Elmbridge 17/18 activity} + \text{Woking 17/18 activity} + \text{Surrey Heath 17/18 activity}) \times \text{contractor unit price})}$$

Surrey Heath Share:
$$\frac{(\text{Surrey Heath 2017/18 annual activity} \times \text{contractor unit price})}{((\text{Elmbridge 17/18 activity} + \text{Woking 17/18 activity} + \text{Surrey Heath 17/18 activity}) \times \text{contractor unit price})}$$

- 6) For the period from Aug 18 and March 19 costs will be divided between Elmbridge, Woking, Surrey Heath and Mole Valley as follows:

Elmbridge Share:
$$\frac{(\text{Elmbridge 2017/18 annual activity} \times \text{contractor unit price})}{((\text{Elmbridge 17/18 activity} + \text{Woking 17/18 activity} + \text{Surrey Heath 17/18 activity} + \text{Mole Valley 17/18 activity}) \times \text{contractor unit price})}$$

Woking Share:
$$\frac{(\text{Woking 2017/18 annual activity} \times \text{contractor unit price})}{((\text{Elmbridge 17/18 activity} + \text{Woking 17/18 activity} + \text{Surrey Heath 17/18 activity} + \text{Mole valley 17/18 activity}) \times \text{contractor unit price})}$$

Surrey Heath Share:
$$\frac{(\text{Surrey Heath 2017/18 annual activity} \times \text{contractor unit price})}{((\text{Elmbridge 17/18 activity} + \text{Woking 17/18 activity} + \text{Surrey Heath 17/18 activity} + \text{mole valley 17/18 activity}) \times \text{contractor unit price})}$$

Mole Valley Share:
$$\frac{(\text{Mole Valley 2017/18 annual activity} \times \text{contractor unit price})}{((\text{Elmbridge 17/18 activity} + \text{Woking 17/18 activity} + \text{Surrey Heath 17/18 activity} + \text{mole valley 17/18 activity}) \times \text{contractor unit price})}$$

- 7) For the financial year 2019/20 and beyond the costs will be divided between the 4 Councils as follows:

Elmbridge Share:
$$\frac{(\text{Elmbridge contact payment less rate items for the previous year})}{(\text{Total contract payment excluding rate items for the previous year})}$$

Woking Share:
$$\frac{(\text{Woking contact payment less rate items for the previous year})}{(\text{Total contract payment excluding rate items for the previous year})}$$

Surrey Heath Share: (Surrey Heath contact payment less rate items for the previous year)/ (Total contract payment excluding rate items for the previous year)

Mole Valley Share: (Mole Valley contact payment less rate items for the previous year)/ (Total contract payment excluding rate items for the previous year)

For the avoidance of doubt contract payment includes ALL services covered by the contact including the management fee but excluding any defaults

The Partnership Share shall be recalculated at on the 5th anniversary of this Agreement, and five yearly thereafter, subject to there being no significant change in Services or a New Authority joining this Agreement in the interim period.

DRAFT

SCHEDULE 4

RELEASE AGREEMENT

THIS RELEASE AGREEMENT is made this day of 20[]

BETWEEN

1. **ELMBRIDGE BOROUGH COUNCIL** whose principal office is situated at Civic Centre, High Street, Esher, Surrey KT10 9SD (“Elmbridge”)
2. **MOLE VALLEY DISTRICT COUNCIL** whose principal office is situated at Pippbrook, Dorking, Surrey, RH4 1SJ (“Mole Valley”)
3. **SURREY HEATH BOROUGH COUNCIL** whose principal office is situated at Surrey Heath House, Knoll Road, Camberley, Surrey GU15 (“Surrey Heath”)
4. **WOKING BOROUGH COUNCIL** whose principal office is situated at Civic Offices, Gloucester Square, Woking, Surrey, GU21 6YL (“Woking”)
(together the “Authorities”)
5. **SURREY COUNTY COUNCIL** whose principal office is situated at County Hall, Penrhyn Road, Kingston upon Thames, Surrey KT1 2DW (“Surrey”)

and

- (2) **[name]** whose principal office is situated at [address] (the “Released Authority”).

WHEREAS

- A. On [] 2016 the Authorities, Surrey and the Released Authority jointly entered into an inter authority agreement relating to the discharge of waste collection functions by a joint committee and a joint contract for waste collection and street cleansing services (‘Inter Authority Agreement’).
- B. The Inter Authority Agreement includes a provision for the Authorities to unanimously agree that an Authority can be released from the Inter Authority Agreement as a result of the termination of the Joint Contract for that Authority.
- C. The Released Authority wishes to be released from the Inter Authority Agreement in accordance with the terms set out below and on that basis the Authorities have unanimously agreed to release the Released Authority from the Inter Authority Agreement.

IT IS AGREED:

1. GENERAL

- 1.1. This Release Agreement is supplemental to the Inter Authority Agreement. Any terms which are not separately defined within this Release Agreement shall be construed in accordance with the definitions set out in the Inter Authority Agreement.
- 1.2. Except where otherwise stated, references to clauses and schedules are to clauses of and schedules to this Release Agreement.

2. RELEASE OF THE RELEASED AUTHORITY

2.1. The Inter Authority Agreement shall terminate in respect of the Released Authority from the later of:

2.1.1. the date that the Joint Contract terminates in relation to the Released Authority; and

2.1.2. the date when the Released Authority has discharged all the obligations and liabilities of the Inter Authority Agreement

(the "Release Date").

2.2. From the Release Date, the parties hereby release and discharge the other from all claims or demands under or in connection with the Inter Authority Agreement whether arising before or on the Release Date.

2.3. The release and waiver at clause 2.2 shall not apply to:

2.3.1. the Authorities' and the Released Authority's past and future obligations and liabilities arising under the surviving provisions of the Inter Authority Agreement, as set out in clause 17.1 (Consequences of Termination); or

2.3.2. the provisions set out in clauses 3, 4 and 5 below.

2.4. This Release Agreement shall not affect or prejudice any claim or demand that either party may have against the other under or in connection with the Inter Authority Agreement arising before the Release Date.

2.5. The Inter Authority Agreement shall continue in full force and effect in respect of the Authorities other than the Released Authority.

3. LIABILITY AND INDEMNITY

3.1. The Authorities [have carried out a detailed and exhaustive financial reconciliation as set out in Schedule 1 (Financial Reconciliation)/ shall carry out a detailed and exhaustive financial reconciliation in accordance with the mechanism set out in Schedule 1 (Financial Reconciliation Mechanism)] such that the Released Authority and the remaining Authorities discharge all their liabilities to each other including those arising as a result of the termination of the Joint Contract for the Released Authority.

3.2. The Released Authority shall be liable for and shall indemnify the remaining Authorities for the Losses suffered by the remaining Authorities as a result of its termination of the Inter Authority Agreement and of the Joint Contract.

4. TRANSFER OF ASSETS

4.1. The Released Authority shall on the Release Date:

4.1.1. transfer all equipment and assets owned or in the control of the Released Authority to the remaining Authorities where the same are required to deliver the on-going Services or for the purposes of the CMO; and

- 4.1.2. provide for the on-going use of any land or depot or Assets provided by the Released Authority and which is still required by the remaining Authorities for the purposes of the Joint Contract, the CMO or alternative provision.

5. [ANY OTHER MATTERS]

6. CONFIDENTIALITY

- 6.1. Each party undertakes that it shall not at any time disclose to any person the terms of the Inter Authority Agreement, the circumstances giving rise to this Release Agreement and the terms of this Release Agreement ('Confidential Information') except as permitted by the Inter Authority Agreement or as permitted by clause 6.2.
- 6.2. Each party may disclose the Confidential Information:
 - 6.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Inter Authority Agreement or this Release Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the Confidential Information comply with this clause 6; and
 - 6.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 6.3. No party shall use any confidential information for any purpose other than to perform its obligations under the Inter Authority Agreement or this Release Agreement.

7. THIRD PARTY RIGHTS

- 7.1. This Release Agreement shall not create any warranty enforceable by any person nor shall any term purport to confer a benefit on any person not a party to this Release Agreement. A person who is not a party to this Release Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Release Agreement.

8. LAW AND JURISDICTION

- 8.1. This Release Agreement shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the English courts.

9. COUNTERPARTS

- 9.1. This Release Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all of which together shall constitute the one Release Agreement.

SCHEDULE 1 (FINANCIAL RECONCILIATION [MECHANISM])

IN WITNESS whereof the parties have executed this Release Agreement the day and year first above written

The Common Seal of
Elmbridge Borough Council
was hereunto affixed in the presence of

.....

The Common Seal of
Surrey Heath Borough Council
was hereunto affixed in the presence of

.....

The Common Seal of
Woking Borough Council
was hereunto affixed in the presence of

.....

The Common Seal of
Mole Valley District Council
was hereunto affixed in the presence of

.....

The Common Seal of
Surrey County Council
was hereunto affixed in the presence of

.....

The Common Seal of
[New Authority]
was hereunto affixed in the presence of

.....

DRAFT

2. ADMISSION AS A NEW AUTHORITY

- 2.1. By entering into this Admission Agreement the New Authority confirms (and in any event shall be deemed) to have satisfied itself as to the legality for and entitlement of the New Authority to be admitted to the Inter Authority Agreement.
- 2.2. The Authorities have decided to admit the New Authority to the Inter Authority Agreement on the basis that there is a positive benefit to the Authorities and the costs of the procurement, set up and mobilisation of the Joint Contract is recognised by way of [a joining fee] [or other benefit]].
- 2.3. In consideration of [a joining fee of [] pounds (£[]) [or other benefit]] (receipt of which the Authorities acknowledge) with effect from [] the Authorities admit the New Authority to the Inter Authority Agreement.
- 2.4. The New Authority agrees with the Authorities that it shall discharge the duties and obligations imposed upon it as an Authority under the Inter Authority Agreement.

3. LIABILITY

- 3.1. The Authorities shall not be liable to the New Authority for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses, or other claims for consequential compensation whatsoever which arise out of or in connection with this Deed of Admission other than as set out in the Inter Authority Agreement.

4. THIRD PARTY RIGHTS

- 4.1. This Deed of Admission shall not create any warranty enforceable by any person nor shall any term purport to confer a benefit on any person not a party to this Deed of Admission. A person who is not a party to this Deed of Admission shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Deed of Admission.

5. LAW AND JURISDICTION

- 5.1. This Deed of Admission shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the English courts.

6. COUNTERPARTS

- 6.1. This Deed of Admission may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all of which together shall constitute the one Deed of Admission.

IN WITNESS whereof the parties have executed this Deed of Admission the day and year first above written

The Common Seal of
Elmbridge Borough Council

was hereunto affixed in the presence of

.....

The Common Seal of
Surrey Heath Borough Council
was hereunto affixed in the presence of

.....

The Common Seal of
Woking Borough Council
was hereunto affixed in the presence of

.....

The Common Seal of
Mole Valley District Council
was hereunto affixed in the presence of

.....

The Common Seal of
Surrey County Council
was hereunto affixed in the presence of

.....

The Common Seal of
[New Authority]
was hereunto affixed in the presence of

.....

DRAFT

SCHEDULE 6

DELEGATED FUNCTIONS

To take all actions and make all decisions which are not Reserved Matters pursuant to clause 23.5 of this Agreement in respect of waste collection and recycling, and with the exception of Woking, streets and highways, fly tipping, graffiti and litter.

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