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DATED

2016

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

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## **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**

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**SHARPE PRITCHARD**

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**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;

<b>Asset</b>	an item of plant, equipment or land provided by an Authority in accordance with clause 29.4.3;
<b>Asset Contribution</b>	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;
<b>Authorities</b>	<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>
<b>Authorised Officer</b>	the person (and any deputy) nominated by the Authorities to act in that capacity under the Joint Contract;
<b>Chair</b>	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);
<b>CMO or Contract Management Office</b>	the contract management office (including the Authorised Officer), established in accordance with clause 25;
<b>CMO Budget</b>	is defined in clause 25.5;
<b>Commencement Date</b>	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;
<b>Committee or Joint Waste Collection Services Committee</b>	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;
<b>Confidential Information</b>	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;
<b>Constitution</b>	the constitution of the Committee set out in Schedule 1;
<b>EIR</b>	the Environmental Information Regulations 2004 together with the code of practice issued by DEFRA as amended/ reissued from time to time;
<b>Elmbridge Commencement Date</b>	3 June 2017 or as otherwise agreed under the Joint Contract;
<b>Financial Year</b>	the period from 1 April in any year to 31 March in the following year;
<b>FOIA</b>	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;
<b>Intellectual Property</b>	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;
<b>Laws</b>	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;
<b>Lead Officer</b>	the relevant director or head of service responsible for waste, recycling and street cleaning in each Authority;
<b>LGA</b>	Local Government Association;
<b>Losses</b>	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"> <li>a) losses arising from the failure of an Authority to</li> </ul>

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 ;

<b>Material</b>	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);
<b>Material Instruction</b>	a material instruction in accordance with clause 34;
<b>New Authority</b>	a local authority which has entered the Joint Contract pursuant to a joining agreement as provided in clause 5 of the Joint Contract;
<b>Partnership Share</b>	the apportionment of the Annual Budget and other costs and liabilities between the Authorities as calculated in Schedule 3;
<b>Services</b>	the Services as defined in the Joint Contract;
<b>Tier 1</b>	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.

<b>Asset/Depot</b>
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.

(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 31<sup>st</sup> 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 5<sup>th</sup> 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.**

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## 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

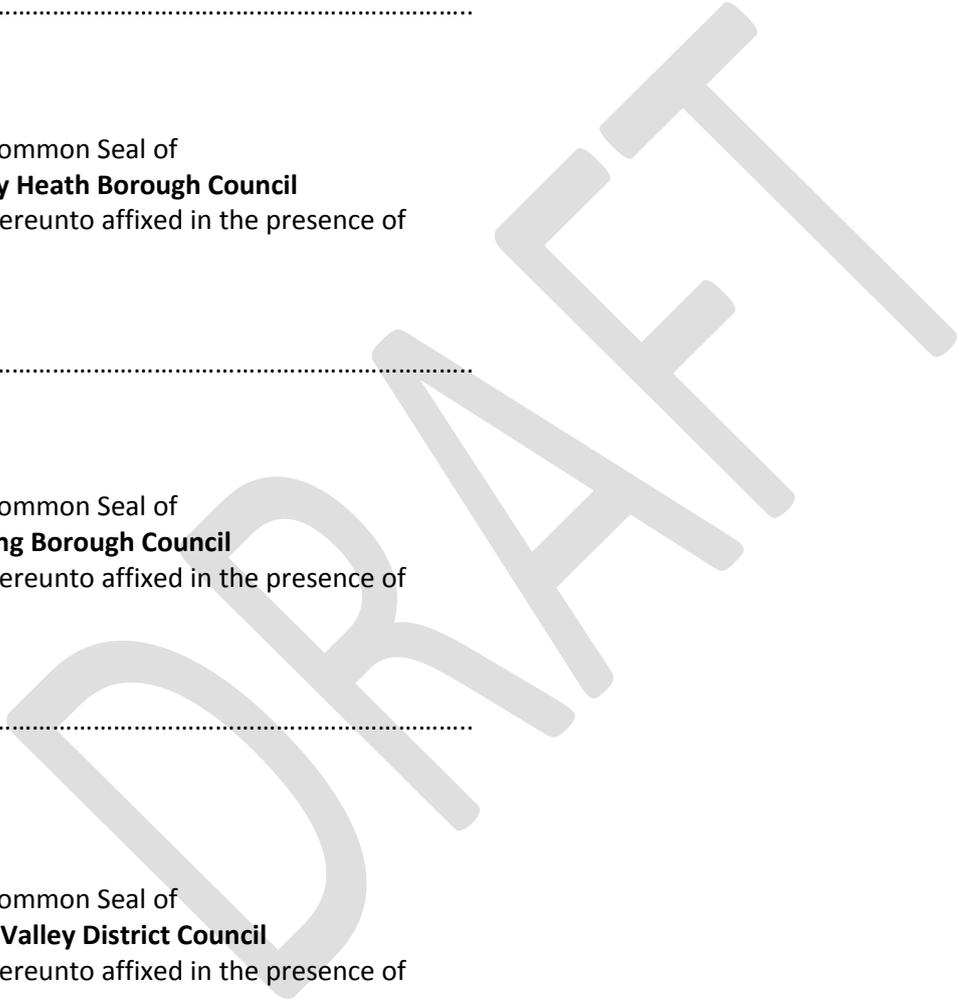
.....

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

.....

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## **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

.....

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## **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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