

DATED

2018

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

VARIATION AGREEMENT

Relating to an Inter Authority Agreement

THIS VARIATION AGREEMENT is made on

2018

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 3HD ("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 On 25th May 2017 Elmbridge, Mole Valley, Surrey Heath and Woking entered into Joint Contract for Waste Collection and Street Cleansing Services (the "Joint Contract") with Amey LG Limited (the Service Provider). On that date these parties entered into an Inter Authority Agreement in relation to the governance of the Joint Contract and joint working arrangements (the IAA)
- B On 5th June 2017 Surrey became a party to the IAA
- C The parties have agreed to vary the IAA in the way set out in this variation agreement.

THIS VARIATION AGREEMENT WITNESSES as follows:

1. DEFINITIONS

In this Variation Agreement , except to the extent that the context requires otherwise, words and phrases defined in the IAA shall have the same meaning as they have in the IAA.

2. THIRD PARTY RIGHTS

A person who is not a party to this Variation Agreement shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

3. VARIATION

The parties agree to vary the Agreement as described in this Variation Agreement.

4. AMENDMENT

General

The expression "Contract Partnering Board" shall be deleted wherever it appears and the expression "Waste Partnering Board" shall be substituted

Definitions

The following definitions shall be added:

"CMO Employees" employees seconded or transferred by one of the Parties and working in the CMO

"Improvement Functions" improvement work across the County aimed at increasing recycling performance, reducing waste and driving efficiency, including behaviour change initiatives, communications campaigns and policy development "Secondment Agreement" an agreement under which an employee of one of the Parties is seconded to the Administering Authority (or CMO Ltd) to work in the CMO

"Surrey Waste Partnership" means Surrey and the eleven district and borough councils within Surrey working together to achieve the best outcomes for the management of waste within Surrey

"Surrey WDA Partnership Functions" the Improvement Functions and the Waste Payment Functions;

"Waste Payment Functions" the management and administration of waste payment mechanisms between Surrey and all the waste collection authorities in Surrey:

In the definition of "Lead Officer" the words "head of service" shall be deleted and the words "deputy director" shall be inserted.

In the definition of "Redundancy Payment" the words "at the Commencement Date" shall be deleted and the words "on the date on which they became CMO Employees" shall be inserted.

Discharge of Functions

In clauses 3.1, 3.2 and 3.3 the words "Authority" or "Authorities" shall be deleted and the words "Party" or "Parties" shall be inserted

At the end of clause 3.3 the following shall be added: "and Surrey shall instead discharge one or more or all of the Surrey WDA Partnership Functions formerly discharged by the Committee on its behalf"

Admission of new authorities

In clause 5.1 in line 5 the word "Authorities" shall be deleted and the word "Parties" shall be inserted

Principles and objectives

Clause 6.1 shall be deleted and the following shall be inserted as 6.1: "Surrey is a party to this agreement to facilitate the Surrey WDA Partnership Functions as set out in Schedule 6 Part 2 being exercised jointly by the Parties and for the CMO to support the delivery of the Surrey WDA Partnership Functions. Surrey will not have any role in the management of the Joint Contract and is not a party to the Joint Contract."

In clause 6.2 in lines 1 and 3 the words "Authorities and Surrey" shall be deleted and the words "Parties" shall be inserted

In clause 6.3 in line 1 the words "Authorities and Surrey" shall be deleted and the words "Parties" shall be inserted

In clause 6.7.1 the word "Authority" shall be deleted and the word "Party" shall be substituted

In clause 6.7.1 after the words "Joint Contract" the words "and the delivery of the Surrey WDA Partnership Functions" shall be inserted

The following shall be added as 6.7.1(c): "The Parties agree that the principle of transparency means that each of the Parties shall provide any information which may reasonably requested by the other Parties or any of them in a form that is readily usable and in a full and timely manner."

Confidentiality and announcements

In clause 7.5 the number "6.4" shall be deleted and "7.4" shall be inserted

Consequences of termination

The following shall be inserted as clause 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 clauses 17.2.2 and 17.2.3 shall be renumbered accordingly

The following shall be added as clause 17.3: "If a Party withdraws from this Agreement then clause 17.2.3 shall be followed so far as applicable save that the Administering Authority or CMO shall be entitled to retain such of the Joint Assets as may be necessary for it to carry out its obligations. To the extent that any staff do not transfer to the withdrawing Party pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 the withdrawing Party shall indemnify the other Parties against any costs which they may incur as a result of any restructuring or reorganisation which takes place following such withdrawal including any Redundancy Payment"

Decision making and joint contract management

The following shall be inserted as clause 23.5.7: "approval or amendment of any joint working agreement between the Parties in respect of the integration of the Authorities' waste collection functions and Surrey's waste disposal functions;" and clauses 23.5.7 to 23.5.12 shall be renumbered accordingly

Quorum and voting arrangements

Clause 24.3 shall be deleted and the following shall be substituted: "A meeting of the Committee and Waste Partnering Board shall not be quorate unless all five Parties are represented, save that a meeting of the Committee shall be quorate for Part One matters if all four Authorities are represented and a meeting of the Waste Partnering Board shall be quorate for Part One and Part Two matters if all Authorities are represented. If a Party fails to attend two consecutive Committees or Waste Partnering Boards that are properly notified, the next meeting shall be considered quorate for the purposes of majority voting even if that Party fails to attend."

Contract management office

The following shall be added to clause 25.4: "and Surrey County Council intends to place at the disposal of the Authorised Officer, those officers employed by it on the Surrey WDA Partnership Functions"

The following shall be added as 25.5.6: "the Improvement Functions" and clauses 25.5.6 to 25.5.8 shall be renumbered accordingly

In clause 25.6 after the word "individually" the following shall be added: "and in relation to the Parties to achieve efficiencies and increase the integration of waste collection and waste disposal authority partnership services"

In clause 25.7 the word "Authorities" shall be deleted and the word "Parties" shall be substituted

Staffing

In clause 26.1 the word "Authorities" shall be deleted and the word "Parties" shall be substituted

In clause 26.6 the words "and Surrey" shall be included after "Mole Valley" and the words "and (c) seconded by Surrey" shall be added after "Surrey Heath".

Redundancy costs

At the end of clause 27.5 the following shall be added: "provided that any costs associated with any redundancy (including any Redundancy Payment) taking place as a result of the withdrawal of a Party in accordance with clause 3.3 of this agreement shall be borne by the withdrawing Party".

Contract management office service agreement

In clause 29.1 the word "proposed" shall be deleted

Contributions to the annual budget and principles of CMO service costs apportionment

In clause 31.3.1 words "and 31.3.3" shall be added after "31.3.2".

In clause 31.3.2 the words "with effect from the date of its establishment" shall be deleted. The word "Authority" shall be deleted and the word "Party" shall be substituted.

The following shall be added as clause 31.3.3: "The Waste Payment Functions shall be payable by Surrey"

The following shall be added a clause 31.3.4: "The funding of the Surrey Waste Partnership shall not form part of the CMO Budget and shall continue to be funded separately by the members of the Surrey Waste Partnership"

Payments

In clause 34.1 in line 1 and in clauses 34.1.1 and 34.1.3 the word "Authority" shall be deleted and the word "Party" shall be substituted

In clauses 34.3 and 34.5 the words "Authority" or "Authorities" shall be deleted and the words "Party" or "Parties" shall be inserted

Schedules

At the beginning of Schedule 1 the following shall be added: "In this Schedule, the term 'Authority' refers to any Surrey waste collection authority and the Surrey waste disposal authority which has entered into Inter Authority Agreement dated 5 June 2017 (as may be amended from time to time)."

Schedule 1 paragraph 2.3.7 shall be deleted

At the end of paragraph 3.3 of Schedule 1 the following shall be added: "save that any member representing an Authority who is not a party to the Joint Contract shall not be entitled to vote on Joint Contract decisions."

At the end of paragraph 1.4 of Schedule 2 the following shall be added: "and shall in addition to carrying out his functions as Authorised Officer ensure the delivery of the functions of the CMO."

Schedule 2 shall be deleted and the attached Schedule 2 with its annex shall be substituted

Schedule 6 shall be renamed as Schedule 6 part 1 and the following shall be added as Schedule 6 part 2:

"To take all actions and make all decisions which are not Reserved Matters pursuant to clause 23.5 in respect of the Surrey WDA Partnership Functions."

Signed on behalf of Elmbridge Borough Council

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Authorised officer

Signed on behalf of Mole Valley District Council

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Authorised officer

Signed on behalf of Surrey Heath District Council

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Authorised officer

Signed on behalf of Woking Borough Council

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Authorised officer

Signed on behalf of Surrey County Council

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Authorised officer