

## Agenda Item 6

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<b>Date</b>	

<b>Ward (s) affected</b>	All	<b>Key Decision</b>	Yes
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<b>Subject</b>	Joint Waste Collection Contract: Inter Authority Agreement (IAA), and Joint Committee
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### RECOMMENDATIONS

1. That the Council enters into the inter Authority Agreement for the procurement of a Joint Waste Collection contract.
2. That the Council joins the Joint Committee for the Procurement of the Joint Waste Collection contract, and
3. A revenue sum of £24,200 be included in the budget setting process for 2014/15 and that the financial implications for 2015/16 and 2016/17 are noted.

### EXECUTIVE SUMMARY

Mole Valley is one of five Councils that have been working together to investigate the benefits of a joint procurement of a contract to deliver waste collection services. This has been developed as part of the Surrey Waste Partnership. The Partnership continues to have a range of successes demonstrating that local authorities working together in this way can achieve much more, and deliver better outcomes and value for residents.

A joint contract could offer considerable financial savings and service benefits to each authority. These authorities have worked together to prepare a formal Inter Authority Agreement (IAA) that sets out the general financial and legal obligations for a shared procurement process including the delegation of procurement matters to a Joint Committee.

This report seeks Executive endorsement for the Council to enter into the IAA and to join a new Joint Committee to oversee the procurement process. A Council would not be bound to accept the outcome of the procurement process. A decision on any future contract would be made only once the outcome of the joint procurement exercise was known.

## **CORPORATE PRIORITIES**

Such a joint procurement approach would help support key Council Priorities:

### **Value for Money**

This initiative is expected to identify significant savings in contract costs.

### **Environment**

The exercise will enable best practice to be shared and it will encourage innovation from potential bidders. Having consistency of collection methods, and recycling messages, is expected to move recycling rates higher across the participating authorities. By working in partnership in this way we anticipate we will be able to enable and encourage bidders to provide additional added value services such as for recycling nappies and similar products building upon our highly successful local trial earlier this year.

### **Access to Services**

By working with key partners we will be able to strike a better deal with contractors and hence enhance services for our customers.

## **The Executive has the authority to determine the Recommendations**

### **1.0 INTRODUCTION**

#### **Background**

- 1.1 Mole Valley is one of five authorities that have been investigating the opportunities, risks, and benefits from the procurement of a joint contract to deliver waste collection services. The other authorities are: Elmbridge, Surrey Heath, Woking and Rushmoor Council in Hampshire (neighbouring Surrey Heath).
- 1.2 These authorities, with the exception of Rushmoor, already provide almost identical waste collection services, which are currently delivered by private waste management companies. A project has been developed and progressed that would allow for the five (or more) authorities to jointly procure a single contract for waste collection services. The new contract would commence in each area at the end of the Council's current contract. Because of the differing end dates in each area the joint contract would be phased-in over a few years - between 2017 and 2019. However, the opportunity to transfer current contracts to the new joint contract would be explored to minimize delay and to ensure saving and benefits were maximized at the earliest opportunity.
- 1.3 The procurement of a joint contract would be expected to offer significant financial and service benefits to each authority. These are summarized at Appendix A. An investigation of the likely extent of these savings has been undertaken, together with an estimate of the shared procurement costs. The shared savings which have been estimated by the project team, independent agencies and a consultant are estimated at approximately between £1 to £2 million per annum with an estimated £0.3 to £0.5 million shared one-off procurement and project management costs.
- 1.4 The full extent of the savings compared to current costs would only be known at the conclusion of a joint procurement process in 2015. In the event if the savings were generally unsatisfactory, the project timings would allow for the project to be abandoned and for each authority to procure its own contract to start at the end of its current

contract. In this eventuality the shared procurement expenditure could not be recovered.

- 1.5 Earlier this year the interested authorities each agreed a Memorandum Of Understanding, MOU, to enable the joint development of an Inter Authority Agreement setting out key matters such as the delegated authorities and decision making arrangements, key service features, and the financial implications.

### **Inter Authority Agreement**

- 1.6 Officer and Member representatives from each authority have met to consider and draft an Inter Authority Agreement (IAA) for the consideration of each Council. Council representatives at these meetings have been Cllr Osborne-Patterson and Steve Ruddy, Head of Environmental and Regulatory Services. The Portfolio Holder, Cllr Friend, has been briefed by Cllr Osborne-Patterson and Mr Ruddy throughout the process, and the Councils legal team have contributed to the development of the IAA and other documents. The proposed IAA, as shown at Appendix B, details the commonly agreed key service aspects, and the processes and funding necessary to procure a joint contract. These are summarized below:
- 1.7 Lead Authority: Elmbridge would act as the Lead Authority with responsibilities for administering the project budget account, and engaging consultants etc. on-behalf of the project. It would also support and administer a Joint Committee, as outlined below. The cost of undertaking these responsibilities is shared by all authorities.
- 1.8 Joint Waste Committee: A Joint Committee is the proposed decision making body on matters relating to the procurement of a joint contract. The key procurement matters to be delegated by each authority to the Joint Committee and project team are set out in the IAA. Having overseen the procurement process, the Committee would recommend the appointment and terms of a joint contractor and how service costs should be apportioned for the consideration by each authority. The Committee would not be authorized to agree significant matters such as the service specification or the award of the contractor, although the Committee would be expected to make recommendations on such matters. Therefore, in addition to entering in to the IAA each authority is also asked to agree to the establishment of the Committee in accordance with the constitution attached at Appendix C.
- 1.9 Costs: The IAA includes a financial commitment from each authority to the 3-year project costs. A contribution for the first year of £24,200 would be required from the Council with requests for subsequent years being made via the Joint Committee. Based on a total project cost of £460,000 over three years, the Council's total contribution over that 3 year period is estimated at approx. £44,000. It should be remembered that an independent procurement exercise in itself would be expensive and this approach means that an independent exercise is not then required.
- 1.10 Withdrawal: An authority is able withdraw from the procurement project at any time under the IAA, although any contributions and expenditure incurred could not be recovered or refunded. However, a withdrawal would firstly, increase the cost of the project for the remaining authorities and secondly, depending on the timing of the withdrawal, it could cause the procurement to be abandoned for legal reasons.
- 1.11 Services: The IAA includes a description of the essential service elements to be procured, which is based on the current services i.e. a weekly food waste collection with an alternate weekly refuse and recycling collection services from wheeled bins. The IAA also includes an option for each authority to include its street cleaning services.

The IAA affords the Joint Committee a high level of scope for innovation for determining how the services might be delivered which is considered essential for the efficient, effective and value for money service model. For example, to enable two 'vehicle shifts per day' in suitable areas, collections could take place over a longer period over the day, including Saturdays. However, whilst the service specification would be developed by the Joint Committee, its final approval prior to procurement would remain a matter for each authority to agree under the scheme of delegations set out in the IAA.

- 1.12 Service Costs Apportionment: The principles under which the costs and income of the various services might be apportioned between the authorities are set out in the IAA. In the event the IAA is agreed, these principles could only be changed with the mutual agreement of the authorities, as this matter is not delegated to the Joint Committee. However, in acknowledging that an authority is not bound to accept the outcome of the procurement process, there is also provision for any or all of these principles to be reviewed by the Joint Committee with the outcome of the review recommend for consideration and agreement by each authority.
- 1.13 Surrey Waste Partnership: This is one of several positive examples of joint working as part of Surrey Waste Partnership. Previous examples include demonstrating the strong demand and future potential for Absorbent Hygiene Products (including nappies) recycling; ensuring transparency in what happens to recycled materials; and sharing best practice across Surrey helping local authorities to drive up recycling rates and dramatically reduce residual waste.

## **2.0 OPTIONS**

2.1 The Options available to the Executive are:

To agree the recommendations set out above, or

To reject the recommendations set out above and to procure a waste collections service independently before the current contract ends.

2.2 It should be noted that if the Executive accept the recommendations the Council is not bound by the outcome of the procurement process and could still choose at that time to undertake an independent procurement process. However the costs incurred in the joint procurement exercise could not be recouped.

## **3.0 CORPORATE IMPLICATIONS**

### **Monitoring Officer Commentary**

As set out in the recommended constitution for the proposed Joint Waste Services Committee, the Council has the power to appoint, and discharge its functions jointly with other local authorities by, a joint committee under s.101 LGA 1972 and s.102 LGA 1972 and regulation 11 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012.

As well as committing the Council to making financial contributions, in accordance with the terms of the recommended IAA, the Council may be asked to contribute in kind by making its officers available from time to time to support delivery of the Project.

In addition to the IAA reserving to the Council's Executive the decisions on the contract specification, any award of contract and service cost apportionment and service management, any variance in excess of 5% to the forecast Project Budget will also have to be approved by the Council's Executive with variance reporting being undertaken monthly.

If after entering into the IAA, the Council subsequently decides to withdraw from the Project, it will be obliged to indemnify the remaining Councils against any increase in costs incurred by those Councils as a result of its withdrawal or any costs incurred by those Councils in contesting any claim resulting from the Council's withdrawal. The indemnities are capped and shall not exceed the sum of its total contribution to the Procurement Costs and any unpaid contribution to the Project Budget. Based on the Project Budget in Schedule 3, the indemnity would therefore not exceed £44,000, although it should be noted that the indemnity, should it be called upon, would be calculated on the basis of the then current Project Budget and the actual Procurement Costs incurred as at the effective date of the withdrawal.

The objective of the indemnities is to give some measure of protection to the Project, by enabling it to remain financially viable for the remaining Councils to participate in the joint procurement.

The Specification set out in Schedule 1 of the IAA is on the basis that dry recyclables will continue to be commingled. Under the revised Waste Framework Directive (2008/98/EC) and the Waste (England and Wales) Regulations 2011, from 1 January 2015, waste collection authorities (such as the Council) are required to collect waste paper, metal, plastic and glass separately where separate collection is **both necessary** to facilitate or improve recovery **and technically environmentally and economically practicable**. However, where similar high-quality of recycling can be achieved by commingled collection followed by subsequent separation, separate collection will not need to be introduced. This will need to be tracked by the Committee and the Project Team on behalf of the Council in relation to the Specification and the Contract Terms of any jointly procured contract.

**S151 Officer commentary** – All financial implications have been taken into account.

**Risk Implications** – None

**Equalities Implications** – None

**Employment Issues** – If a new joint procurement contract is agreed and implemented then from 2018 there are likely to be new client function / contract monitoring arrangements required from the participating local authorities. The details of the implications remain to be determined but it is anticipated that local monitoring arrangements will need to be retained.

**Sustainability Issues** – will be a consideration in the procurement process and it is anticipated that there will be benefits from economies of scale and opportunities to reduce emissions and also increase recycling.

**Consultation** - Extensive consultation and discussions amongst Surrey Waste Partnership participating local authorities.

**Communications** – None, though as plans develop this will become more significant if a joint contract is agreed and delivered.

## **BACKGROUND PAPERS**

**Annex A – Summary: Procurement and Service benefits**

**Annex B – Inter Authority Agreement**

**Annex C – Joint Waste Collection Services Committee Constitution**



## **Appendix A – Summary: Procurement & Service Benefits**

### **Market Leverage / Economies of Scale:**

The joint procurement and operation of the major service contracts associated with waste collection have the potential to increase market interest and attract lower priced bids as well as to provide the opportunity for authorities to share procurement costs and build shared capacity and capability in procurement (as well as reducing the overall number of procurement exercises required). Groups of WCAs working together are likely to be able to achieve greater market interest and better prices when collaborating to jointly sell materials.

### **Operational Efficiencies and Improved Productivity:**

Partnership working provides a direct opportunity for the optimisation of collection and treatment / disposal operations and infrastructure, innovation and new technologies across administrative boundaries. WCA boundaries create irregularly shaped collection areas, which are generally difficult to serve in an efficient way with balanced waste collection rounds. Larger operational areas, where boundaries do not arbitrarily impose upon the design of rounds to the same extent, can be served more efficiently and with more balanced and potentially fewer rounds.

Additionally, there are efficiencies that can follow from good resource utilisation that are only achievable in a larger collection area. Evidence suggests that limited potential most likely exists across some authority areas to make current rounds more efficient, but that it is difficult to capitalise on these opportunities because significant savings are only realised when a whole round can be designed out. This is rarely possible in a single WCA, because small efficiency gains made on each round do not usually add up to one whole, now redundant round. Where a much larger pool of rounds exists, it is much easier to add up the small savings made on each round to create whole redundant rounds.

### **Vehicles:**

Vehicle purchase and maintenance costs represent an important proportion of overall collection system costs. A more joined-up approach to vehicles has the potential to deliver significant financial savings.

### **Back Office:**

Integrating the back office is a relatively straight-forward mechanism to realise savings from partnership working. By bringing together certain contract management and administration functions, it is possible to design-out duplication of function and to build a larger, more senior client team, with more specialist expertise.

### **Service Improvements:**

A larger contract will generally attract more investment in service innovation and improvement for a contractor, which leads to greater efficiency and quality of service provisions. A joint waste services contract allows for the sharing of knowledge and expertise which similarly improve service quality and performance.

### **Experience Elsewhere:**

This approach has been used elsewhere (e.g in Sussex) and significant savings have been achieved for participating authorities.



# **INTER AUTHORITY AGREEMENT**

## **Procurement Joint Waste Collection Services Contract**

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

DATED

2013

# CONTENTS

1. Definitions and Interpretation
2. Term
3. Key Principles
4. Project Officers
5. Decision-making and Authority
6. Project Budget and Costs
7. Principles of Service Costs Apportionment
8. Withdrawal during the Procurement Process
9. Mutual Liabilities
10. Termination
11. Consequences of Termination
12. Intellectual Property
13. Confidentiality and Announcements
14. Freedom of Information
15. Notices
16. Dispute Resolution Procedure
17. Law and Jurisdiction
18. General

Schedule 1 (Waste Services)

Schedule 2 (Project Milestones & Decisions)

Schedule 3 (Project Budget & Costs)

Schedule 4 (Principles of Apportionment)

**THIS AGREEMENT** is made on                      day of                      2013

**PARTIES:**

- (1) ELMBRIDGE BOROUGH COUNCIL whose principal office is situated at Esher, Surrey ("Elmbridge");
- (2) MOLE VALLEY DISTRICT COUNCIL whose principal office is situated at Dorking, Surrey ("Mole Valley");
- (3) RUSHMOOR BOROUGH COUNCIL whose principal office is situated in Farnborough, Hampshire ("Rushmoor");
- (4) SURREY COUNTY COUNCIL whose principal office is situated at Kingston-upon-Thames, London ("Surrey")
- (5) SURREY HEATH BOROUGH COUNCIL whose principal office is situated at Camberley, Surrey ("Surrey Heath"); and
- (6) WOKING BOROUGH COUNCIL whose principal office is situated at Woking, Surrey ("Woking");

**BACKGROUND:**

- (A) This Agreement sets out the terms and objectives of the joint working arrangements by the Councils for the procurement of the Contract for waste collection, recycling, street cleansing and associated services (the "Waste Services"). The Waste Services are outlined in [Schedule 1](#).
- (B) The Councils wish to enter into this Agreement pursuant to the powers conferred on them by sections 45 and 55 of the Environmental Protection Act 1990, section 9EB of the Local Government Act 2000 and regulation 7 of the Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations 2012.
- (C) The Councils have agreed to establish a Joint Waste Collection Services (Procurement) Committee (the "Committee") as the joint decision making body for the procurement and other processes detailed in the Agreement. The constitution of the Committee shall be agreed by each of the Councils.
- (D) Surrey County Council is party to this Agreement in its capacity as the Waste Disposal Authority (as defined in the Environmental Protection Act 1990) for the county of Surrey with primary obligations for strategic waste processing and disposal in relation to the wastes collected and recycled or otherwise processed under such a Contract in accordance with 'A Plan for Waste Management' (as defined in clause 1.1) and published by Surrey Waste Partnership.

## **AGREED TERMS:**

### **1. DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement, the following expressions shall have the following meanings:

“A Plan for Waste Management”	the Joint Municipal Waste Management Strategy as revised in 2010;
"Bidder"	any organisation who responds to the OJEU Notice relating to the Contract;
“Business Day”	a day (other than a Saturday or a Sunday) on which banks are open for domestic business in London;
“Centre for Effective Dispute Resolution”	an independent specialist mediation and alternative dispute resolution service provider;
"CIWM"	the Chartered Institute of Waste Management;
“Code of Practice”	the “Code of Practice on Litter and Refuse” as issued by the Secretary of State under section 89(7) of the Environmental Protection Act 1990
“Committee”	the Joint Waste Collection Services Committee constituted and established by the Councils for the purpose of procuring the Contract in accordance with this Agreement;
“Committee Decision”	has the meaning defined in clause 5.1 b)
"Confidential Information"	all know-how and other information whether commercial, financial, technical or otherwise relating to the business, affairs or methods of the Councils, 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;

"Contract"	the contract for the provision of the Waste Services between either (a) the Councils and the Contractor or (b) the Lead Authority (on behalf of the Councils) and the Contractor;
"Contractor"	the Bidder selected to provide the Waste Services;
"Council Decision"	has the meaning defined in clause 5.1c);
"Councils"	each of the Councils of Elmbridge Borough, Mole Valley District, Rushmoor Borough, Surrey County, Surrey Heath Borough and Woking Borough, including any successor authorities and any body to which all or part of the functions of these Councils may lawfully be transferred;
"Effective Date"	the date of this Agreement;
"EU Procurement Regime"	the Public Contracts Regulations 2006, as may be amended or supplemented from time to time, whether by any new European Directives or by UK legislation;
"Intellectual Property"	any and all patents, trade marks, trade names, copyright, moral rights, rights in design, rights in databases, know-how and all or other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to them and the right to apply for registration of them;
"Lead Authority"	Elmbridge Borough Council;
"Lead Officer"	the lead waste officer for each of the Councils;
"Material"	all data, text, graphics, images and other materials and/or documents created, used or supplied by a Council in connection with the Agreement;
"OJEU Notice"	the notice placed in the Official Journal of the European Union advertising the procurement of the Contract;

"Procurement Costs"	the aggregate of the costs and expenses reasonably incurred by each of the Councils in respect of the Project;
"Project"	the procurement by the Councils of the Contract in accordance with the EU Procurement Regime;
"Project Budget"	the budget agreed by the Councils to discharge their functions in respect of this Agreement as set out in <a href="#">Schedule 3</a> ;
"Project Manager"	such person as may be appointed in accordance with clause 4.1 from time to time with the agreement of the Councils and who is responsible for the management of the Project in accordance with this Agreement;
"Project Milestones"	those actions identified as key Project milestones as set out in <a href="#">Schedule 2</a> (Project Milestones and Decisions) and detailed in the Project Plan as may be amended from time to time by the Councils in accordance with the terms of this Agreement;
"Project Officers"	such other specialist officers made available to the Project Team from or on behalf of the relevant Councils;
"Project Plan"	the outline plan set out in <a href="#">Schedule 2</a> as may be amended from time to time;
"Project Sponsor"	the Lead Officer from the Lead Authority or such other person as may be appointed with the agreement of the Councils from time to time;
"Project Team"	the project team as set out at clause 4.2;
"Project Team Decision"	has the meaning defined in clause 5.1 a)
"Services	the service delivery commencement Date" date specified in the Contract;
"Surrey County Council"	the Waste Disposal Authority for Surrey;
"Waste Services"	waste collection, recycling and street cleansing services to be provided under the Contract as outlined in <a href="#">Schedule 1</a> .

- 1.2. Clause and Schedule headings are purely for ease of reference and do not form part of or affect the interpretation of the Agreement.
- 1.3. Where the context so admits or requires, words denoting the singular include the plural and vice versa and words denoting any gender include all genders.
- 1.4. References to clauses and Schedules are, unless otherwise provided, reference to the clauses and schedules to this Agreement.
- 1.5. Any phrase introduced by the words "including", "includes", "in particular" or similar shall be construed without limitation by the related general words.
- 1.6. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7. In the event of any inconsistency and/or ambiguity between the clauses of this Agreement and the Schedules, the former shall prevail to the extent of the inconsistency and/or ambiguity. The Councils shall work together in order to resolve the inconsistency and/or ambiguity.
- 1.8. Unless a right or remedy is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party's other rights or remedies.

## **2. TERM**

- 2.1. This Agreement shall commence on the Effective Date and shall remain in force until it terminates in accordance with clause 10.

## **3. KEY PRINCIPLES**

- 3.1. Each Council intends this Agreement to be legally binding and mutual commitments between each of the Councils created by this Agreement shall be construed accordingly.
- 3.2. Each Council shall work together with every other Council to carry out the Project Milestones in accordance with the terms of this Agreement.
- 3.3. Each Council hereby acknowledges to each of the other Councils that it has obtained all necessary authorities to authorise the delegation of the Project functions contemplated by this Agreement.
- 3.4. Each Council shall use all reasonable endeavours to ensure that its respective members and officers who are involved in the Project shall at all times act in the best interests of the Project. Each Council expressly acknowledges that its relevant Committee members and Lead Officers involved in carrying out activities under this Agreement or otherwise in connection with the Project may be required to act primarily with their duty to the Project rather than to the specific advantage of their own Council, and each Council authorises them to act in such a manner.
- 3.5. In working together, each of the Councils agrees that it will conduct its relationship with the other Councils in accordance with the following principles:

### 3.5.1. **Mutual Trust and Cooperation**

- a) Each Council shall at all times cooperate fully and be open and trusting in its dealings with each other Council to achieve the most practical and economically advantageous methods of working together for the successful delivery of the Project in accordance with the Project Milestones.
- b) While respecting the mutual need for commercial confidentiality, each Council undertakes to be transparent in its dealings with each other Council and, without prejudice to the foregoing, each Council undertakes to respect matters of confidentiality and political sensitivity.

### 3.5.2. **Effective Relationships**

- a) Each Council acknowledges and agrees that it is engaged in a long-term relationship with each of the other Councils for their mutual benefit through the delivery of the Project. Each Council shall use all reasonable endeavours to develop and maintain an effective joint process to ensure that the Project is carried out appropriately and in accordance with the principles set out in this Agreement.
- b) Each Council undertakes to develop and maintain clear roles and responsibilities within its organisation, and to develop relationships at the appropriate levels with each other Council, providing direct and easy access for the others' members and officers.

### 3.5.3. **Reasonableness of Decision-Making**

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

### 3.5.4. **Contractual Liability**

Save as expressly provided in this Agreement or otherwise agreed in writing, no Council shall:

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

## **4. PROJECT OFFICERS**

- 4.1. The Project Manager shall be appointed and employed by the Lead Authority, who shall make the Project Manager available full-time to deliver the Project.
- 4.2. The Committee shall be supported in its functions by a Project Team, the key members of which are set out at below:
  - a) the Project Sponsor;

- b) the Project Manager;
  - c) a secretary;
  - d) a financial adviser;
  - e) a legal adviser;
  - f) a procurement adviser;
  - g) a technical adviser; and
  - h) each of the Lead Officers.
- 4.3. Save for the Project Sponsor, the Project Manager and the Lead Officers, the other Project members above shall be appointed by the Committee.
- 4.4. Each of the Councils shall make available such of its officers as may be necessary for the purposes of the Project.
- 4.5. The Project Manager and the Project Team shall act under the direction of the Committee.

## 5. DECISION-MAKING AND AUTHORITY

- 5.1. The Councils have identified and categorised a number of key decisions and other actions to be taken and carried out during the Project. as set out in Schedule 2 (Project Milestones and Decisions) and defined below:
- a) **“Project Team Decision”**: a matter reserved to the Project Team to determine on behalf of the Councils;
  - b) **“Committee Decision”**: a matter reserved to the Committee to determine out on behalf of the Councils, and
  - c) **“Council Decision”**: a matter which shall be reserved to each of the Councils for an executive decision under the Local Government Act 2000. A matter requiring a Council Decision shall not be dealt with by the Committee until a Council Decision has been taken by each Council.
- 5.2. The following persons shall be authorised to enter into any contracts to give effect to Committee Decisions or in exercise of their delegated powers in respect of the Project:
- a) the Project Manager in respect of those contracts which, according to the standing orders for contracts of the Lead Authority, are not required to be signed and/or executed by the Head of Legal Services; and
  - b) the legal adviser acting on the instruction of the Project Sponsor.
- 5.3. The only persons authorised to communicate with any prospective or actual Bidder in respect of the Contract shall be:
- a) the Project Manager, the legal adviser, the financial adviser, the technical adviser, and the procurement adviser; and

- b) those officers or consultants specifically authorised by the Project Manager for the purpose of negotiating with any prospective or actual Bidder in respect of the Project.
- 5.4. Save to the extent where a contract or communication is solely in respect of a matter which relates to a particular Council or Councils, where any person enters into a contract or communicates with any prospective or actual Bidder on behalf of the Project, he/she shall make it clear in any such contract or communication that it is on behalf of the Councils.

## 6. PROJECT BUDGET AND COSTS

- 6.1. With the exception of Surrey, the Procurement Costs shall be borne equally by each of the Councils.
- 6.2. Each Council shall pay the amount(s) shown against its name in accordance with the forecast set out in the Project Budget. Each Council's annual contribution is payable to the Lead Authority annually in advance, with the contribution for the financial year 2014/15 being payable in full on or before 30 April 2014. For each of the financial years 2015/16 and 2016/17, the Committee shall recommend the amounts to be payable by each Council, and subject to clause 6.3, each Council agrees to pay to the Lead Authority its contribution for those financial years.
- 6.3. The Lead Authority shall provide to the Lead Officer for each Council and the Committee a statement on a monthly and on a quarterly basis showing the expenditure and costs incurred to date together with a variance analysis and commentary between the forecast Project Budget and actual Procurement Costs incurred to date. Any underspend can be carried-forward to subsequent years: this matter will be determined by the Committee. The Committee shall review quarterly the forecast Project Budget and the actual Procurement Costs. Should a variance in excess of 5% be identified, the approval of such a variance shall be a Council Decision. On termination of the Agreement, the Lead Authority shall produce a final statement, to include any balance to be paid by, or returned to, each Council.
- 6.4. The Lead Authority shall keep and maintain until six years after the termination of this Agreement, or as long a period as may be agreed between the Councils, full and accurate records of all expenditure made, and all payments received, by the Lead Authority in connection with this Agreement and/or the Project.
- 6.5. The Lead Authority shall on request afford a Council or its representatives such access to those records as may be required in connection with this Agreement.
- 6.6. If a Council (the "**Initiating Council**") (a) carries out any work or incurs any cost or expenses, or (b) requests the Project Team (or any member of it) to carry out any work relating to the Project, or (c) requests the Project Team (or any member of it) to incur any cost or expense that, in the reasonable opinion of the Project Manager, is not an efficient use of time and/or resources, the matter shall be referred to the Committee for a decision as to whether such work, cost or expense is part of the Project Budget and/or the Procurement Costs or whether such work, cost or expense should borne by the Initiating Council.

- 6.7. Any dispute as to the allocation of Procurement Costs shall be resolved in accordance with clause 16 (Dispute Resolution Procedure).

## **7. PRINCIPLES OF SERVICE COSTS APPORTIONMENT**

- 7.1. For the purpose of the effective delivery of the Project, the Councils agree the principles detailed in Schedule 4 for the apportionment of the Waste Service costs and income under any Contract.
- 7.2. The Committee shall review the principles of Waste Service costs apportionment as part of its evaluation and recommendation for the Contract award. Any decision to implement the recommendations of the review shall remain a Council Decision.
- 7.3. Without prejudice to clause 7.2, a Council may request a review of the principles of apportionment at any time during this Agreement although the decision to implement the outcome of such a review shall remain a Council Decision.
- 7.4. A principle of this clause 7 and any review is to ensure that each Council benefits from a reduction of at least £100,000 or 5% in annual service costs, whichever amount is greater, compared to a base date of March 2016.

## **8. WITHDRAWAL DURING THE PROCUREMENT PROCESS**

- 8.1. Each Council acknowledges that its withdrawal from this Agreement will result in the remaining Councils incurring additional costs. These additional costs include, but are not limited to, the costs of undertaking a changed or re-procurement of the Contract, the opportunity costs resulting from any consequential delay in the Services Commencement Date and the increased costs arising from re-apportioning the Waste Service costs over a reduced number of Councils and/or service users.
- 8.2. Subject to clause 8.3, if a Council (save for Surrey) gives written notice of its withdrawal from the Agreement to each other Council and to the Committee Chairman and Committee Secretary, it shall:
- a) indemnify each of the remaining Councils against any additional costs they may incur arising from, or in connection with, its withdrawal;
  - b) indemnify each of the remaining Councils against any damage or damages, expenses, liability or costs reasonably incurred by those Councils in contesting any claim resulting from or attributable to its withdrawal;
  - c) not recover any contributions previously made by it which have been expended as at the date of its withdrawal.
- 8.3. The indemnities given under clause 8.2 shall not exceed the aggregate of (a) the withdrawing Council's total contribution to the Procurement Costs and (b) and any future and/or unpaid contribution to the Project Budget, in both cases as determined at the date of its withdrawal.
- 8.4. Where any Council withdraws from this Agreement:
- a) its obligations in relation to the delivery and governance of the Project shall cease forthwith;

- b) any financial liabilities which have arisen or may arise out of the performance of this Agreement as at the date of its withdrawal shall remain in force;
- c) its liability under this clause 8 to indemnify the remaining Councils shall remain in full force; and
- d) clause 16 (Dispute Resolution Procedure) shall remain in force in respect of any of the matters arising from the performance of or withdrawal of any Council under this Agreement.

## **9. MUTUAL LIABILITIES**

- 9.1. Each member of the Committee shall be deemed to be working on behalf of its own Council even where the particular matter under consideration relates to another Council.
- 9.2. The Project Team shall, when working on the Project, be deemed to be made available and working on behalf of all the Councils, under the powers granted to each Council under section 113 of the Local Government Act 1972.
- 9.3. No Council shall be liable, as a result of any action or omission by any of its members or officers while working on the Project, to any other Council (an "Innocent Council") in respect of any loss which an Innocent Council may suffer.

## **10. TERMINATION**

- 10.1. This Agreement shall terminate on the earliest of:
  - a) the date on which the Contract is awarded to the Contractor;
  - b) the date on which each Council agrees in writing to its termination; or
  - c) the date on which only one Council remains a party to this Agreement in accordance with clause 8.

## **11. CONSEQUENCES OF TERMINATION**

- 11.1. On termination of this Agreement in accordance with Clause 10, any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect, including but not limited to clause 6 (Project Budget and Costs), clause 7 (Principles of Service Costs Apportionment), clause 12 (Intellectual Property), clause 13 (Confidentiality and Announcements), clause 14 (Freedom of Information) and clause 16 (Dispute Resolution).
- 11.2. Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Councils that have accrued up to the date of termination.

## **12. INTELLECTUAL PROPERTY**

- 12.1. Each Council will retain all Intellectual Property in its Material.

- 12.2. Each Council will grant each of the other Councils an irrevocable non-exclusive, perpetual, non-transferable and royalty-free licence to use, modify, amend and develop its Material for the purposes of the Project.
- 12.3. Without prejudice to clause 12.1, if more than one Council has a legal or beneficial right or interest in any aspect of the Material for any reason (including that no one Council can demonstrate that it independently supplied or created the relevant Material without the help of one or more of the other Councils), each of the Councils which contributed to that Material shall grant to the other Councils to this Agreement an irrevocable non-exclusive, perpetual, non-transferable and royalty-free licence to use and exploit such Material for the purposes of the Project.
- 12.4. Each Council warrants that it has the necessary rights to grant the licences set out in clauses 12.2 and 12.3. Each Council shall indemnify the other Councils against any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its intellectual property rights by use of that Council's intellectual property for the purpose of the Project.

### **13. CONFIDENTIALITY AND ANNOUNCEMENTS**

- 13.1. Subject to clause 13.2, each Council shall at all times following its termination, keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) any confidential information about the business of and/or belonging to any other Council which has come to its attention as a result of or in connection with this Agreement.
- 13.2. The obligations set out in this clause 13 shall not relate to:
  - a) any matter which the recipient Council can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of clause 13.1;
  - b) 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 Council making the disclosure or the rules of any 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 or organisations subject to the governmental or regulatory authority concerned;
  - c) any disclosure of information which is already lawfully in the possession of the recipient Council, prior to its disclosure by the disclosing Council;
  - d) any disclosure of information by any Council to any other department, office or agency of the government or their respective advisers or to any person engaged in providing services to the Council for any purpose related to or ancillary to the Project or the Contract; or
  - e) any provision of information to the Councils' own professional advisers or insurance advisers.
- 13.3. Where disclosure is permitted under clause 13.2, the recipient of the information disclosed shall be subject to a similar obligation of confidentiality as that contained in this clause 13 and the disclosing Council shall make this known to the recipient of that information.
- 13.4. No Council 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 Contract without the other Councils' written consent (excluding any disclosure required by legal or regulatory requirements).

#### **14. FREEDOM OF INFORMATION**

- 14.1. Each Council acknowledges that each other of the Councils is subject to the provisions of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and each Council shall use all reasonable endeavours to assist and co-operate with any other Council (at its own expense) to enable that other Council to comply with its information disclosure policy and/or obligations.

#### **15. NOTICES**

- 15.1. 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, or by e-mail to the Lead Officer of the relevant Council.
- 15.2. Any notice or communication shall be treated as having been received:
- a) If delivered by hand or by commercial courier, at the time of delivery;
  - b) if sent by pre-paid first-class post, two Business Days from the date of posting;
  - c) if sent by e-mail, on the day of transmission if sent before 4.00 pm on any Business Day and otherwise at 9.00 am on the next Business Day, subject to confirmation of transmission.

#### **16. DISPUTE RESOLUTION PROCEDURE**

- 16.1. Any dispute arising under or in connection with this Agreement shall be resolved in accordance with this clause 16.
- 16.2. In the event of a dispute formally notified to the Chairman of the Committee, the Chairman will cause to occur that the Committee shall meet extraordinarily within ten Business Days of it being notified by a Council of the occurrence of such dispute and it shall attempt to resolve the dispute in good faith.
- 16.3. If the Committee fails to resolve a dispute within five Business Days of meeting pursuant to clause 16.2, or fails to meet in accordance with the timescales set out in clause 16.2, then the matter shall be referred for resolution to a meeting of leaders and chief executives of all Councils which are a party to this Agreement.
- 16.4. If, having been so referred, the dispute is not resolved within a further ten Business Days, the disputing Councils shall agree to refer the dispute to one of the following:
- a) the CIWM; or
  - b) the Centre for Effective Dispute Resolution ("CEDR");

- c) a mutually agreed mediator; or
- d) the exclusive jurisdiction of the English courts.

In the event that the disputing Councils fail to agree which body the dispute is to be referred to, it shall be referred CIWM.

- 16.5. Each Council shall on request promptly provide to any Council which is party to a dispute all such assistance, documents and information as may be required for the purpose of determining the dispute and it shall use all reasonable endeavours to procure the prompt determination of any such dispute.
- 16.6. Each of the CIWM and of CEDR shall 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 Councils who are party to the dispute.
- 16.7. The costs of resolving any dispute under this Agreement shall be borne equally by the Councils which are party to the dispute in question save as may be otherwise directed by the CIWM, CEDR, the appointed mediator or the English courts (as the case may be).

## **17. LAW AND JURISDICTION**

- 17.1. This Agreement shall be governed by English law and each Council irrevocably submits to the exclusive jurisdiction of the English courts.

## **18. GENERAL**

### **18.1. Entire Agreement**

- a) This Agreement, together with the schedules and all other documents attached or referred to in this Agreement constitutes the entire agreement between the Councils and supersedes and extinguishes any prior agreement, arrangement and understanding between the Councils regarding its subject matter.
- b) No representation, promise or undertaking shall be taken to have been made or implied from anything said or written in negotiations between the Councils prior to the Effective Date, except as expressly stated in this Agreement. Each Council acknowledges and agrees that it has not relied upon any information given or representation made by or on behalf of the other in entering into this Agreement.
- c) No Council shall have any remedy in respect of any untrue statement made by any other Council upon which that Council relied in entering into this Agreement and that Council's only remedies shall be for breach of contract.
- d) Nothing in this clause 18.1 shall operate to limit or exclude any liability of any Council for, or remedy against any other Council in respect of, any fraudulent misrepresentation.

### **18.2. Third Party Rights**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement shall have any right to enforce any provision of it.

### **18.3. Waiver**

The failure or delay of any Council 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 Council's right to enforce or exercise it at a later stage.

### **18.4. Severability**

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.

### **18.5. Independent Parties**

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

### **18.7 No Assignment**

No Council shall assign, novate, sub-contract, transfer dispose of or otherwise deal with any of its rights or obligations under this Agreement.

### **18.8 Variations**

No variation of this Agreement shall take effect unless it is in writing and signed by a duly authorised representative on behalf of each of the Councils.

### **18.9 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.

In witness whereof each of the Councils has set its common seal the day and year first before written:

The common seal of )  
**Elmbridge Borough Council** )  
was hereunto affixed in the )  
presence of: )  
Authorised Signatory

The common seal of )  
**Surrey Heath Borough Council** )  
was hereunto affixed in the )  
presence of: )  
Authorised Signatory

The common seal of )  
**Woking Borough Council** )  
was hereunto affixed in the )  
presence of: )  
Authorised Signatory

The common seal of )  
**Mole Valley District Council** )  
was hereunto affixed in the )  
presence of: )  
Authorised Signatory

The common seal of )  
**Rushmoor Borough Council** )  
was hereunto affixed in the )  
presence of: )  
Authorised Signatory

The common seal of )  
**Surrey County Council** )  
was hereunto affixed in the )  
presence of: )  
Authorised Signatory

## Schedule 1: Waste Services

**Alternate Weekly Refuse & Recycling Collection Service combined with Weekly Food Waste Collection Service:** The service will consist of an alternate collection from a wheeled bin(s) of refuse at least once every fourteen days, and a collection from a wheeled bin(s) of commingled dry recyclables at least once every fourteen days; combined with a collection of food waste from an outside food bin at least every seven days. Collections will be from the boundary of the curtilage adjacent to the access and will take place on the same day each week. This service shall be supplied to properties unless it is not practicable to do so.

**Communal Properties, e.g. blocks of flats:** The service will consist of a collection at least once every fourteen days of refuse and of commingled dry recyclables from bulk containers. A separate food waste collection service shall be supplied to communal properties unless it is not practicable to do so. A more frequent collection of refuse and/or commingled dry recyclables shall be made, for example at least every seven days, where requested by a Council.

**Assisted Collection Dispensation Service:** The normal presentation point for waste will be at the curtilage of the property. Where the residents are unable to present waste at this point, the waste will be collected from within the boundary of the property.

**Fortnightly Garden Waste Service:** The service will consist of a collection from a wheeled bin(s) of household garden waste at least once every fourteen days. This service shall be a chargeable service: and each Council shall set and collect the charge annually. Where a wheeled bin is not practicable, the service shall allow for the collection from an appropriate sack(s).

**Special Collection Service:** This service shall be a chargeable service for the collection of bulky waste such as furniture and white goods. Collection shall be made by appointment within 7 calendar days of booking. Collections shall normally be made from the boundary of the curtilage adjacent to the access; or by request, collections may be made from inside the property. The Council shall set and collect the charge in its area.

**Clinical Waste Collection Service:** This collection service to households shall be by the request of a Council.

**Recycling Bring Centre Banks:** This service may be requested by a Council; although some may have all or part of this service delivered by third party organisations.

**Other Recycling Services:** The services will include provision for the collection from the curtilage of other materials for recycling or composting including for textiles, WEEE (including batteries) and absorbent hygiene products.

**Street Cleaning Services:** The service includes provision for the cleansing of public streets and places and the emptying of litter bins, in accordance with the Code of Practice.

**Commercial Waste Collection & Recycling Services:** There is a desire to develop commercial waste collection service (including collections of recyclables) throughout the Contract area to enable each Council to satisfy the requirements of the Environmental Protection Act 1990, section 45.

## **General Service Requirements:**

**Hours of Operation and Collection Times:** Collection services may be operated from Monday to Saturday as necessary to provide the services. The Project includes options for collection on Saturdays as part of routine collections and (whether in combination with this or separately) collecting over a longer working day (e.g. 06:00 to 21:00) to enable double-shifting of collection vehicles.

**Bank Holiday Working:** The collection services shall be provided on all bank and public holidays with the exception of Christmas Day, Boxing Day and New Year's Day. There will be revised collection arrangements for the Christmas and New Year Holiday period.

**Inappropriate Presentation:** Where household waste is presented inappropriately for collection (e.g. is not securely contained), then every effort to collect the Waste shall be made; but the Council and the householder shall be informed.

**Missed Collections:** If a collection is reported as being missed, then it shall be collected within six operational hours of the missed collection being reported.

**ICT Systems:** All transactions and activities shall be recorded and reported in real-time using appropriate in-cab technology.

**Innovation:** Innovative service methodology and delivery arrangements will be required.

## Schedule 2: Project Milestones & Decisions

Task	Project Milestone	Project Team Decision	Committee Decision	Council Decision
1.	<b>Employ Project Manager</b> Project Team to appoint	✓		
2.	<b>Employ Project Consultants</b> Project Team to appoint technical, legal and other advisors and consultants where necessary	✓		
3.	<b>Procurement Strategy</b> Committee to consider options and agree appropriate strategy		✓	
4.	<b>Tender Evaluation Model</b> Committee to consider and agree balance between quality and price, and quality standards		✓	
5.	<b>Agree Contract Specification</b> Project Team to recommend service specification in accordance with Schedule 1			✓
6.	<b>Agree Contract Conditions</b> Project Team to agree conditions of Contract (provided such conditions do not result in material additional costs arising, in which case agreement of contract conditions to be a Committee decision).	✓		
7.	<b>Publish Legal Notices</b> Project Team to agree form of OJEU and other notices.	✓		
8.	<b>Tender Evaluation</b> Project Team to evaluate tenders	✓		
9.	<b>Tender Evaluation</b> Project Team to recommend preferred tender(s)		✓	
10.	<b>Award of Contract</b> Committee to recommend to Councils			✓
11.	<b>Contract Management Arrangements</b> Committee to review / recommend principles of Service cost apportionment and service management arrangements to Councils.			✓

## Schedule 3: Project Budget & Costs

Inter-Authority Agreement - Schedule 3

### Project Budget

Task	Total	Year 1		Year 2		Year 3	
		2014-15		2015-16		2016-17	
	£s	£s	£s	£s	£s	£s	£s
<b>● EXPENDITURE</b>							
<b>Joint Committee</b>							
Committee Services,	<b>10,000</b>	<u>4,000</u>		<u>3,000</u>		<u>3,000</u>	
	<b>10,000</b>		4,000		3,000		3,000
<b>Project Team</b>							
Project Manager	<b>240,000</b>	80,000		80,000		80,000	
Project Sponsor	<b>30,000</b>	10,000		10,000		10,000	
Advisors other	<b>30,000</b>	<u>10,000</u>		<u>10,000</u>		<u>10,000</u>	
	<b>300,000</b>		100,000		100,000		100,000
<b>Service Scoping</b>							
Specification - Waste	<b>20,000</b>	20,000		0		0	
Specification - Street Cleansing	<b>20,000</b>	20,000		0		0	
Conditions of Contract	<b>20,000</b>	<u>20,000</u>		<u>0</u>		<u>0</u>	
	<b>60,000</b>		60,000		0		0
<b>Procurement</b>							
Strategy	<b>20,000</b>	20,000		0		0	
Evaluation	<b>20,000</b>	0		20,000		0	
Advisors other	<b>10,000</b>	<u>5,000</u>		<u>5,000</u>		<u>0</u>	
	<b>50,000</b>		25,000		25,000		0
<b>Other</b>							
Consultancy	<b>30,000</b>	12,000		9,000		9,000	
Contingency	<b>10,000</b>	<u>0</u>		<u>0</u>		<u>10,000</u>	
	<b>40,000</b>		12,000		9,000		19,000
<b>TOTAL</b>	<b>£ 460,000</b>	<b>£ 201,000</b>		<b>£ 137,000</b>		<b>£ 122,000</b>	
<b>● INCOME</b>							
<b>Council Contributions</b>							
Elmbridge	<b>44,000</b>	24,200		11,400		8,400	
Mole Valley	<b>44,000</b>	24,200		11,400		8,400	
Rushmoor	<b>44,000</b>	24,200		11,400		8,400	
Surrey Heath	<b>44,000</b>	24,200		11,400		8,400	
Woking	<b>44,000</b>	24,200		11,400		8,400	
Surrey CC	<b>0</b>	0		0		0	
Surrey Waste Partnership	<b>240,000</b>	<u>80,000</u>		<u>80,000</u>		<u>80,000</u>	
<b>TOTAL</b>	<b>£ 460,000</b>	<b>£ 201,000</b>		<b>£ 137,000</b>		<b>£ 122,000</b>	

## **Schedule 4: Principles of Apportionment**

For the purposes of the Project, the following principles shall apply to the apportionment of the Contractor's Contract cost at the commencement of the Contract.

### **1. Alternate Weekly Refuse & Recycling Collection with Weekly Food Waste Collection Service:**

- 1.1. Standard Households: The Contract cost shall be apportioned by the number of households in each area that may receive the Service that do not fall in to any of the other categories. Applied Principle – the cost to provide the standard service using a standard crew will be consistent in all areas. Any marginal cost differences between urban and rural areas are insignificant.
- 1.2. Assisted Collection Dispensations: The Contract cost shall be apportioned by the number of households in each area that are approved for an assisted collection. Applied Principle – the increased cost to collect from a location on the property shall be met by the Council that agreed the dispensation.
- 1.3. Communal Households: The Contract cost shall be apportioned by the number of households in each area with shared refuse or recycling bin(s) and a communal collection point that receive the service. Principle – the collection costs from communal households will be marginally lower (based on a fortnightly collection) than from standard household as a result of the operational efficiency of collecting from several households in a single operation.
- 1.4. Restricted Access Households: The Contract cost shall be apportioned by the number of households in each area that can only be accessed and practicably serviced by a smaller collection vehicle i.e. no more than 6.5 tonnes axel weight. Applied Principle - the collection costs for restricted access households will be marginally higher than from standard household as a result of the higher operational costs of deploying a smaller than standard collection vehicle and crew.

### **2. Non-Alternate Weekly Refuse & Recycling Collection Service combined with Weekly Food Waste Collection:**

- 2.1. Weekly Collection Dispensation: The Contract cost shall be apportioned by the number of households in each area that are approved for a weekly collection (refuse and or recycling). Applied Principle – the increased cost to collect more frequently than standard shall be met by the Council that agreed the dispensation.

### **3. Garden Waste Collection Service for the fortnightly collection of one, two or three or more bins:**

- 3.1. The Contract cost shall be apportioned by the number of households in each area that receive (subscribe to) the service option(s) agreed by the Council for its area. Available service options will include one, two, or three bins. Applied Principle – the cost to provide the service will be consistent across all areas.

#### **4. Rental Income (Depots):**

- 4.1. Councils may make available depots and similar operational facilities for use by the Contractor for the delivery of the services at a rent determined by the Council. Where the Contractor utilises the facility the rental income shall not be apportioned in accordance with the principles of apportionment set out above. The cost to the Contractor of using a Council or other depot facility shall be included in other service costs and apportioned on that basis. Applied Principle – Where a Council receives an income from an operational asset, the income shall be retained by the Council. The costs for utilising any facility for the delivery of the Services shall be included in the Contract costs for the service and apportioned accordingly.

#### **5. Waste & Recycling Tonnage, Costs & Income:**

- 5.1. The weight of each material collected for recycling, recovery, reuse or disposal, shall be apportioned to participating Councils based on the application of the weight of the material collected per household by rounds operating exclusively in a Council's area, to the remaining households in its area.
- 5.2. Where it is agreed by the Committee for specific materials, the apportionment can be based on the number of households in each area, as a proportion of the total number of households that receive the service for the collection of the material.
- 5.3. The cost of dealing with a material and or any income from its subsequent sale shall be based on the weight of that material apportioned to the Council on the agreed basis in accordance with paragraph 5.1. Income shall include the associated recycling credit.
- 5.4. The percentage of waste sent for recycling and composting shall be calculated using the weights of the materials apportioned to the Council on the agreed basis in accordance with paragraph 5.1.

#### **6. General & Other Services:**

- 6.1. The Contract costs for other services not universally provided in all areas, together with the costs, income and benefits arising from innovative service delivery arrangements, shall be apportioned only to those Councils either receiving the other services, or engaging in innovative service delivery arrangements.
- 6.2. The Contract cost for all services shall allow for the forecast increase in the number and type of households in each Council area during the Contract period. Any such costs associated with growth in the Contract shall be minimised but where such costs apply they shall be apportioned by the number and type of additional households in each area.

## **Joint Waste Collection Services Committee Constitution**

This Constitution has been approved by Elmbridge Borough Council, Mole Valley District Council, Rushmoor Borough Council, Surrey County Council, Surrey Heath Borough Council and Woking Borough Council, as the Constitution of the Joint Waste Collection Services Committee.

### **1. Establishment of the Joint Waste Collection Services Committee**

- 1.1 The Joint Waste Collection Services Committee shall be the “Elmbridge Borough Council, Mole Valley District Council, Rushmoor Borough Council, Surrey County Council, Surrey Heath Borough Council and Woking Borough Council”.
- 1.2 The Joint Waste Collection Services Committee is established under Sections 101(5) and 102 of the Local Government Act 1972, and Regulation 11 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 by the Executives or relevant Committees of Elmbridge Borough Council, Mole Valley District Council, Rushmoor Borough Council, Surrey County Council, Surrey Heath Borough Council and Woking Borough Council.

### **2. Objectives of the Joint Waste Collection Services Committee**

- 2.1 The Councils have agreed to establish the Joint Waste Collection Services Committee to facilitate the Councils in working together to improve the quality and effectiveness of the discharge of their waste management functions under the relevant provisions of the Environmental Protection Act 1990, in particular the joint procurement of a contract to deliver associated waste services.
- 2.2 This working together shall include the three phases of pre-procurement; procurement; and options for contract management.
- 2.3 This working together shall also include working in partnership with Surrey County Council as the Waste Disposal Authority to maximise integration opportunities.

### **3. Powers Delegated to and matters reserved from the Joint Waste Collection Services Committee**

- 3.1 The Joint Waste Collection Services Committee and the Lead Officers reporting thereto shall have such powers delegated as are set-out in the Inter Authority Agreement and such further powers as may from time to time be delegated to the Joint Waste Collection Services Committee by the Leaders or Executives of the constituent Councils or of any of the constituent Councils.
- 3.2 In so far as any powers may from time to time be delegated to the Joint Waste Collection Services Committee, the following functions (the Reserved Matters) are matters reserved to each of the Councils making such delegation and shall not be within the powers of the Joint Waste Collection Services Committee:
  - 3.2.1 All non-executive functions of any of the Councils.

- 3.2.2 Any decision which is contrary to or not wholly in accordance with the budget approved by each Council for the Joint Waste Collection Services Committee.
- 3.2.3 Any decision in respect of which a Scrutiny Committee of any of the appointing Authorities has notified the Secretary to the Joint Waste Collection Services Committee in writing of the Council's formal objection to the proposed decision in accordance with clause 10.1 (below).
- 3.2.4 Approval or amendment of any joint working agreement between the Councils in respect of the discharge of the Councils' waste disposal functions.
- 3.2.5 Any decision by a Council to withdraw its Membership from the Joint Waste Collection Services Committee.
- 3.2.6 Approval of the final award of any Contract for the collection of waste.

#### **4. Membership and Appointment of the Joint Waste Collection Services Committee**

- 4.1 The Joint Waste Collection Services Committee shall comprise six Members, being the relevant Member nominated from each Council.
- 4.2 The Joint Waste Collection Services Committee shall also have a delegated power to permit additional membership of the Committee in a co-opted role without voting rights.
- 4.3 Each Member of the Joint Waste Collection Services Committee shall be appointed for the term of office, or the balance of the term of office, of the Executive of the appointing Council.
- 4.4 The appointment of Members of the Joint Waste Collection Services Committee to fill any vacancy for such Members shall be made by the Executives or relevant Committee of each Council:
  - 4.4.1 as soon as practicable following the adoption of this Constitution by the Executive or relevant Committee or full Council of that Council;
  - 4.4.2 as soon as practicable after the appointment of the Executive or relevant Committee of that Council in accordance with that Council's Constitution; and
  - 4.4.3 as soon as practicable after a vacancy arises in respect of a seat on the Joint Waste Collection Services Committee to which the Executive or relevant Committee of that Council has the power to make an appointment.
- 4.5 A Member of the Joint Waste Collection Services Committee shall cease to be a Member of the Joint Waste Collection Services Committee, and a vacancy shall automatically arise, where:
  - 4.5.1 the Member resigns from the Joint Waste Collection Services Committee by giving notice in writing to the Secretary to the Joint Waste Collection Services Committee;
  - 4.5.2 the Member ceases to be, or is suspended under Part III of the Local Government Act 2000 from acting as, a Member of the appointing Council, or a Member of the Executive or relevant Committee of the appointing Council;

- 4.5.3 the Member is removed from membership of the Joint Waste Collection Services Committee by notification in writing from the Leader of the appointing Council to the Secretary of the Joint Waste Collection Services Committee.
- 4.6 All appointments to membership of the Joint Waste Collection Services Committee shall be made by notification in writing from the Leader or the Chief Executive of the appointing Council to the Secretary of the Joint Waste Collection Services Committee.
- 4.7 Upon being made aware of any Member ceasing to be a Member of the Joint Waste Collection Services Committee, the Secretary of the Committee shall write to that Member confirming that he/she has ceased to be a Member of the Joint Waste Collection Services Committee, and notifying the appointing Council and the other Members of the Joint Waste Collection Services Committee accordingly.
- 4.8 Each Council will appoint a substitute Member of the Joint Waste Collection Services Committee on the same terms as the Council's appointed Member of the Joint Waste Collection Services Committee. The substitute Member may attend any meeting of the Joint Waste Collection Services Committee with all the powers of the Council's appointed Member in the event that an appointed Member is unable to attend a particular meeting.

## **5. Chairman and Vice-Chairman of the Joint Waste Collection Services Committee**

- 5.1 At the first meeting of the Joint Waste Collection Services Committee after the annual meetings of each Council in any year, the Joint Waste Collection Services Committee shall elect a Chairman of the Joint Waste Collection Services Committee and a Vice Chairman of the Joint Waste Collection Services Committee for the following year from among the Members of the Joint Waste Collection Services Committee, save that any co-opted Members shall not be entitled to election as Chairman or Vice-Chairman of the Joint Waste Collection Services Committee.
- 5.2 By convention, if the Chairman of the Joint Waste Collection Services Committee in any year is a Member of one of the Councils, the Chairman of the Joint Waste Collection Services Committee for the next year would normally be a Member of another of the Council.
- 5.3 The Chairman and the Vice Chairman of the Joint Waste Collection Services Committee shall each hold office until:
  - 5.3.1 a new Chairman or Vice-Chairman of the Joint Waste Collection Services Committee is elected in accordance with clause 5.1 above,
  - 5.3.2 he/she ceases to be a member of the Joint Waste Collection Services Committee, or
  - 5.3.3 he/she resigns from the office of Chairman or Vice-Chairman by notification in writing to the Secretary of the Joint Waste Collection Services Committee.
- 5.4 Where a casual vacancy arises in the office of Chairman or Vice Chairman of the Joint Waste Collection Services Committee, the Joint Waste Collection Services Committee shall at its next meeting elect a Chairman or Vice Chairman, as the case

may be, for the balance of the term of office of the previous Chairman or Vice Chairman.

- 5.5 Where, at any meeting or part of a meeting of the Joint Waste Collection Services Committee, both the Chairman and the Vice-Chairman of the Joint Waste Collection Services Committee are either absent or unable to act as Chairman or Vice Chairman, the Joint Waste Collection Services Committee shall elect one of the Members of the Joint Waste Collection Services Committee present at the meeting to preside for the balance of that meeting or part of the meeting, as appropriate.

## **6. Secretary to the Joint Waste Collection Services Committee**

- 6.1 The Joint Waste Collection Services Committee shall be supported by the Chief Executive or nominated officer of the Lead Authority in his/her capacity as Secretary to the Joint Waste Collection Services Committee.

- 6.2 The functions of the Secretary of the Joint Waste Collection Services Committee shall be:

- 6.2.1. To maintain an online record of membership of the Joint Waste Collection Services Committee.
- 6.2.2. To notify the Chief Executive and Lead Officer of each appointing Council of any anticipated decisions to be taken by the Joint Waste Collection Services 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 Council as required by the Local Authorities (Executive Arrangements)(Meetings and Access to Information) (England) Regulations 2012 and in accordance with their respective constitutions.
- 6.2.3. To carry out such notification to and consultation with Members of the appointing Councils as may be necessary to enable the Joint Waste Collection Services Committee to take urgent decisions which have not been included in the Forward Plans of the Councils.
- 6.2.4. To notify the Chief Executives of the Councils of the dates, times and venues of meetings and to publish the dates times and venues.
- 6.2.5. To summon meetings of the Joint Waste Collection Services Committee in accordance with clause 7 below.
- 6.2.6. To prepare and send out the agenda for meetings of the Joint Waste Collection Services Committee in consultation with the Chairman and the Vice Chairman of the Committee and the Lead Officers.
- 6.2.7. To keep a record of the proceedings of the Joint Waste Collection Services Committee.
- 6.2.8. To take such administrative action as may be necessary to give effect to decisions of the Joint Waste Collection Services Committee.
- 6.2.9. To undertake such other functions as may be determined by the Joint Waste Collection Services Committee

## **7. Convening of Meetings of the Joint Waste Collection Services Committee**

7.1 Meetings of the Joint Waste Collection Services Committee shall be held at such times, dates and places as may be notified to the Members by the Secretary to the Joint Waste Collection Services Committee, being such time, place and location as :

7.1.1 the Joint Waste Collection Services Committee shall from time to time resolve;

7.1.2 the Chairman of the Joint Waste Collection Services Committee, or if he/she is unable to act, the Vice-Chairman of the Joint Waste Collection Services Committee, shall notify to the Secretary of the Joint Waste Collection Services Committee; or

7.1.3 the Secretary of the Joint Waste Collection Services Committee, in consultation where practicable with the Chairman and Vice Chairman of the Joint Waste Collection Services Committee, shall determine in response to receipt of a request in writing addressed to the Secretary of the Joint Waste Collection Services Committee:

- From and signed by two Members of the Joint Waste Collection Services Committee, or
- From the Chief Executive of a Council, or
- From the Leader of a Council,

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

7.2 The Secretary of the Joint Waste Collection Services Committee shall formulate the agenda for any meeting of the Joint Waste Collection Services Committee after consulting, where practicable:

7.2.1 the Project Manager, Lead Officers;

7.2.2 the Chairman and the Vice-Chairman of the Joint Waste Collection Services Committee;

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

- any two Members of the Joint Waste Collection Services Committee in accordance with clause 7.1.3 above
- the Leader of any of the Councils
- The Chief Executive of any of the Councils (or their nominated officers)
- Lead Officers
- the Chief Finance Officer/Section 151 Officer to any of the Councils
- the Monitoring Officer to any of the Councils
- such other officers as the Joint Waste Collection Services Committee may determine for this purpose.

## **8. Procedure at Meetings of the Joint Waste Collection Services Committee**

- 8.1 The Joint Waste Collection Services Committee shall conduct its business in accordance with the Executive Decision-Making Procedure Rules of the Lead Authority, and as set out below.
- 8.2 The quorum for a meeting of the Joint Waste Collection Services Committee shall be four Members.
- 8.3 The Chairman of the Joint Waste Collection Services Committee, or in his/her absence the Vice Chairman of the Joint Waste Collection Services Committee, or in his/her absence the Member of the Joint Waste Collection Services Committee elected for this purpose, shall preside at meetings of the Joint Waste Collection Services Committee.
- 8.4 Whilst the Joint Waste Collection Services Committee shall seek, wherever possible, to work on a principle of consensus, decisions of the Joint Waste Collection Services Committee shall, subject to clause 8.5 below, be determined by a majority of the Members of the Joint Waste Collection Services Committee present and voting. In the event of an equality of votes, the person presiding shall have a second or casting vote.
- 8.5 Where the Joint Waste Collection Services Committee are unable to support any motion on a matter, or any voting Member of the Joint Waste Collection Services 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 of the Joint Waste Collection Services Committee will notify the matter to the Leaders of the Councils.
- 8.6 Any decision of the Joint Waste Collection Services Committee is subject to the scrutiny arrangements as set out in clause 10 below.
- 8.7 If there is a conflict between the governance arrangements contained in this Constitution and the Executive Decision-Making Procedure Rules of the Lead Authority, the governance arrangements contained in this Constitution shall have precedence.

## **9. Attendance at Meetings of the Joint Waste Collection Services Committee**

- 9.1 Notwithstanding that, in accordance with the provisions of the Local Government Act 1972, a meeting or part of a meeting of the Joint Waste Collection Services Committee may not be open to the press and public, the Members and officers specified in Clause 9.2 below of each Council 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.
- 9.2 The following are the elected Members and Officers who shall have a right of attendance in accordance with clause 9.1 above:

- 9.2.1. all elected Members of the constituent Councils

- 9.2.2. the Chief Executive of any of the constituent Council or nominated Officers
- 9.2.3. the Lead Officers of the constituent Councils
- 9.2.4. the Chief Finance Officer/Section 151 officer to any of the constituent Councils
- 9.2.5. the Monitoring Officer to any of the constituent Councils
- 9.2.6. any person appointed by the Joint Waste Collection Services Committee to manage particular projects
- 9.2.7. any other officer of the Council at the request of any member of the Joint Waste Collection Services Committee.

## **10. Call-In by Scrutiny Committees**

- 10.1 The delegation of powers from each Council to the Joint Waste Collection Services Committee is subject to the limitation that all decisions taken by the Joint Waste Services Committee in accordance with delegations from each Council shall only take effect five clear working days after publication of the decisions following a relevant meeting of the Joint Waste Collection Services Committee and shall be ineffective if a relevant Scrutiny Committee of one or more of the Council has given notice in writing of Call-In to the Chief Executives of the other Councils and to the Secretary to the Joint Waste Collection Services Committee within such period of five clear working days.
- 10.2 The Council 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 Council.
- 10.3 If a decision of the Joint Waste Collection Services 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 Council'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 10.2 above, the decision shall take effect on the date of the expiry of the ten working day period.
- 10.4 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 Joint Waste Collection Services Committee on the matter as they think fit.
- 10.5 Where a Council or Councils have made such objection in respect of a matter, the Joint Waste Collection Services 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 Council then can Call-In that second decision.

## **11. Standing Orders for Contracts, Financial Regulations and Officer Employment Procedure Rules**

11.1 The Joint Waste Collection Services Committee shall operate under the Standing Orders for Executive Decision Making of the Lead Authority.

## **12. Amendment of this Constitution**

12.1 This Constitution can only be amended by agreement of all the Councils.

## **13. Definitions**

In this Constitution, the following words and phrases shall have the meanings set out below:

“Lead Authority” means Elmbridge Borough Council.

“Councils” means Elmbridge Borough Council, Mole Valley District Council, Rushmoor Borough Council, Surrey County Council, Surrey Heath Borough Council and Woking Borough Council.

“Policy and Budget Framework” means the plans and strategies approved by the Council of each of the Authorities for the purpose of Regulation 4 and Schedule 3 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as may be amended or replaced from time to time.

“Project Manager” means the responsible person for the project management of the delivery of the procurement of the Joint Waste Services Contract.

“Lead Officers” means the relevant Directors or Heads of Service responsible for waste, recycling and street cleaning.