

Haringey Council

Agenda item:

[No.]

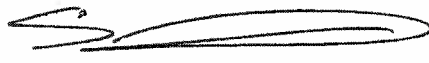
Cabinet

On July 19<sup>th</sup> 2011

Report Title: **Adoption of the Inter Authority Agreement In Relation To North London Waste Authority Procurement Of Waste Disposal/Treatment Services**

Report of Director of Place & Sustainability

Signed:

  
(AO Single Frontline)

11<sup>th</sup> July 2011

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Wards(s) affected: All

Report for: **Key Decision**

**1. Purpose of the report (That is, the decision required)**

- 1.1. This report sets out the basis for and implications of a legally binding Inter Authority Agreement (IAA) between the North London Waste Authority (NLWA) and its seven Constituent Borough Councils. A decision is required from Cabinet on the Council entering into the IAA in principle.
- 1.2. The IAA document will govern the interface between the signatory authorities with regards waste management over the life of the NLWA's proposed future waste management contracts. These are the subject of a current procurement process and are expected to last around 30 years.
- 1.3. The IAA document reflects the 12 IAA 'Key Principles', agreed by Haringey's Cabinet in December 2010 (contained in Appendix A).
- 1.4. A decision on this is brought to Cabinet as the IAA involves significant long term financial and strategic implications for the borough.

## **2. Introduction by the Leader**

- 2.1. The waste disposal and treatment costs Haringey pays through the North London Waste Authority will increase in the coming years as taxes on landfill continue to rise and we procure necessary replacement facilities, which will support us in achieving our challenging recycling targets and more sustainable management of waste in line with our carbon reduction ambitions.
- 2.2. To meet these challenges and ensure the services we procure in future offer the best value for money it will be necessary to make commitments with our partner Boroughs in North London and the NLWA, in the form of a binding Inter Authority Agreement. These will be important commitments related to the way we collect waste for recycling, the future management of our Household Waste & Recycling Centres and the way NLWA will charge Boroughs in future.
- 2.3. This paper considers the implications of the Agreement and recommends the Council enters into the IAA, subject to delegated authority to agree the final legal document. We have already signed up to a set of 'Key Principles' in 2010 that form the basis of this IAA, and previous to that a Statement of Principles in 2008 which set out the initial approach to the IAA. In now entering into the IAA we will be acting in accordance with these decisions.

## **3. State link(s) with Council Plan Priorities and actions and /or other Strategies:**

- 3.1. The Inter Authority Agreement and objectives of the NLWA procurement link to a number of the Council's strategic priorities.
- 3.2. **A Cleaner, Greener Haringey**
- 3.3. The aim of the NLWA procurement is to develop new facilities that will ensure our waste is managed in a more sustainable way and improve the environmental footprint of North London. This will be achieved by a solution that supports higher recycling rates (the procurement strategy assumes a 50% target by 2020), reduces the amount of waste going to landfill, and increases the utilisation of waste as a resource for energy generation, displacing fossil fuel use. These objectives will reduce emissions of carbon and other greenhouse gases and thereby contribute to climate change mitigation.
- 3.4. The project as a whole therefore has a major role in delivering against the priority of 'A Cleaner, Greener Haringey', as well as the Sustainable Community Strategy 2007-2016 objective of An Environmentally Sustainable Future and the aims of the Greenest Borough Strategy to manage resources as efficiently as possible and reduce environmental pollution.

### **3.5. Delivering High Quality, Efficient Services**

3.6. The total value of the NLWA contract, to be levied upon the Constituent Boroughs, will be in the region of £3-4 billion over the duration of the c.30 year contract period.

3.7. Haringey's share of NLWA's treatment and disposal costs over the contract period has been estimated at £563 million. Confirmation that this share is within the Council's affordability envelope was agreed by Cabinet in October 2008 and subsequently revised and approved in January 2010 (Appendix B).

3.8. Given the scale of costs, the efficient delivery of the procurement and establishment of value for money waste treatment/disposal services will be essential in contributing to the priority of 'Delivering High Quality, Efficient Services'. The IAA will play a key role in achieving these objectives, by providing a level of certainty to prospective contractors, on which basis value for money can be developed.

3.9. Indications from the procurement to date are that the response from the market is positive and that the financial outcome of the solution will be cheaper than reflected in the affordability envelope signed off by Borough Cabinets, even taking into account the loss of PFI credits (see Section 16 - Background for further details).

### **3.10. A Thriving Haringey**

3.11. The construction and operation of new facilities in North London would generate employment and regeneration opportunities that will contribute to the priority of 'A Thriving Haringey'.

## **4. Recommendations**

4.1. The Cabinet is recommended to:

(a) Agree in principle that the Council should enter into the Inter Authority Agreement in accordance with the terms set out in Section 5 of the Report; and

(b) Note that the Director of Place & Sustainability shall be nominated in the IAA as the Council's Representative for the purposes of the IAA and shall discharge that either personally or by nominated deputy as appropriate.

4.2. The Leader of the Council to:

(a) Agree amendments and detailed terms to the final form of the IAA in consultation with the Directors of Corporate Resources and Place & Sustainability as appropriate; and

(b) Execute the IAA accordingly.

4.3. The Leader of the Council in consultation with the Director of Place & Sustainability to:

(a) Negotiate the detailed terms for the potential transfer of the Council's two Household Waste & Recycling Centres (HWRCs) to the NLWA from 1st April 2012, which is proposed to be on the following basis:

- i. For Park View Road, to grant a lease to the NLWA from 1st April 2012 that is excluded from the protection of the Landlord and Tenant Act 1954 and on a peppercorn basis; and
- ii. For Cranford Way, to pursue the sale of the site to NLWA in order for NLWA to design, build and operate a HWRC, for the reasons set out in section 5.33; and

(b) Thereafter give effect to the transfer, subject to the agreement of terms.

4.4. The Leader of the Council in consultation with the Director of Place & Sustainability to:

(a) Complete Schedule 1 Part A and Schedule 2 Part A of the IAA providing details of the waste collection system and tonnage forecasts for the duration of the contract period, to reflect increases in recycling rates and changes to waste levels; and

(b) Complete Schedule 1 and Schedule 2 Part B information, if necessary, in Spring 2012, relating to final waste collection systems and waste tonnage forecasts.

## **5. Reason for recommendation(s)**

5.1. The rationale for the recommendations in this section is divided into the following parts:

- Rationale for the IAA – the overarching justification for entering into the IAA;
- Key Commitments – detailing the key risks associated with the most significant elements of the IAA, set against the benefits to the approach proposed and with reference to relevant mitigation strategies.

## **Rationale for the IAA**

5.2. NLWA consider that an IAA signed by all eight authorities is essential at this stage of the NLWA procurement to maximise the prospects of achieving the most beneficial solution in terms of both value for money and environmental outcomes, and minimise the risk of additional costs, which would ultimately fall to the Constituent Boroughs.

5.3. Specifically, the IAA is purposed to:

- Provide certainty to bidders during the procurement process through the commitment of Constituent Boroughs to collection systems and waste streams over the length of the contract which will shape the type and size of facilities built. This certainty will serve to maintain bidder confidence in the procurement, reducing the level of risk that could be priced into bids and minimising the risk of delay to and/or additional costs of the procurement;
- Ensure that bidder designs are based on the best possible and consistent information as the procurement progresses;
- Ensure that, for NLWA as a single purpose authority that relies exclusively upon the levying of its Constituent Boroughs to finance it, there are the means to apportion the costs, risks, guarantees, benefits and deductions associated with the NLWA contract to the Constituent Boroughs in a fair way;
- Incentivise activity on the part of the Constituent Boroughs that benefits the wider partnership in achieving its strategic aims and reducing overall costs, including increasing recycling rates and pooling recyclable materials to maximise income, and reducing the potential for an individual party to, by its actions, incur costs or risks for others; and
- 'De-risk' the process for Constituent Boroughs by allowing final commitments to future waste collection systems and forward projections of waste to be made further through the procurement process, upon receipt of information based on bidders' proposals from as advanced a stage of the procurement as practically possible.

5.4. In signing the IAA the Council would be acting in accordance with its decision to commit to 'Key Principles' (Cabinet, December 2010 – Appendix A), and an earlier Statement of Principles (Cabinet, October 2008 – attached as Appendix C), which were designed to underpin a future IAA.

5.5. The linkages between the IAA document and the 'Key Principles' are detailed in Appendix D, which also provides a summary of the scope of the IAA, and the terms, definitions and clauses of the IAA document and the associated schedules that set out relevant processes and information.

### **Key Commitments & Risks of Adopting the IAA**

5.6. The IAA document provides a formal legally enforceable framework that covers the entire scope of the interface between the NLWA and its Constituent Boroughs, as it relates to the NLWA's proposed contracts.

5.7. Whilst the IAA is expected to benefit the Council in the long term it is important that in considering the recommendations Members understand the implications of the key elements of the IAA and the potential risks associated with these.

5.8. The following areas of commitment are deemed to be most significant in terms of possible risk and are subject to more detailed comment in the remainder of this section:

- How the costs of NLWA's services will be apportioned between the Boroughs after commencement of services under the NLWA's new contracts, proposed to be by means of a 'Menu Pricing' mechanism. (Section 5.9);
- How designated Household Waste & Recycling Centres (HWRCs) may be transferred to NLWA, some of the terms of transfer and how future decisions around the development of the HWRC network would be made (Section 5.20);
- The Constituent Boroughs' responsibilities with regards NLWA and other Constituent Boroughs in relation to the provision of information on the waste streams they expect to deliver to the NLWA, in what form and quantities they expect these wastes to be delivered and contributing to the wider 50% recycling target (Section 5.39); and
- How guarantees on the tonnages of materials delivered by the Constituent Boroughs will work and how the costs associated with overall shortfalls against minimum tonnage guarantees will be apportioned (Section 5.56).

#### **5.9. Change to Menu Pricing as the System for Levying NLWA Costs**

5.10. The NLWA is a Statutory Joint Waste Disposal Authority. As such the default arrangements in terms of how its costs are levied from its Constituent Boroughs are set out in law. However, the default arrangements do not reflect the complexity of the NLWA's future contracts and there is now an imperative to change the levying system within the current procurement process.

5.11. By signing the IAA Boroughs commit to adopt a 'Menu Pricing' approach to the levying of costs from the date when the NLWA contractor's first new facility is operational (2016 based on the current project plan).

5.12. Under Menu Pricing Boroughs will pay the direct cost per tonne for the specific

treatment or disposal route used (eg. recycling processing, composting or residual waste treatment).

#### Merits and Risks

- 5.13. The move to Menu Pricing will change the relative apportionment of costs between Boroughs. The key risk for any Borough is that their share of the total costs could increase, although whilst the procurement is still underway any estimates of the effect of a Menu Pricing system are subject to change.
- 5.14. However, on the basis that the costs of processing recycling and organic waste are expected to be significantly cheaper than the cost of managing residual waste under the new contract, Menu Pricing will create a strong financial incentive for all boroughs to improve their recycling performance and maximise diversion from residual waste in order to minimise their costs.
- 5.15. Boroughs with higher recycling rates will therefore be most likely to experience the most positive impact upon transition. In this regard Haringey's new waste services contract includes contractual recycling rate targets reflecting a significant increase by 2015.
- 5.16. Analysis provided by NLWA, based on the submission of Outline Solution bids and internal NLWA assessments, estimates that in 2016/17, when new facilities have begun operating, Menu Pricing will cost Haringey between £11.3m and £14.5m in 2016/17, including the cost of the Household Waste & Recycling Centres (HWRC). A range is shown to reflect the ongoing procurement process, but NLWA consider the lower rather than the higher range number to be the best estimate. These are nominal figures, taking account of annual cost increases with inflation.
- 5.17. This can be compared to Haringey's Medium Term Financial Strategy (2012/13 to 2014/15), based on the current default levying system. This has identified a budget pressure of £4.75 million over the next 3 years. Based on a current levy cost of £6.8 million the additional budgeted position for 2014/15 has been calculated at £11.55 million. If inflation at 2.5% is applied to cover the two year period to 2016/17, to compare against the menu pricing estimate above, the required budget would increase to £12.1 million. This excludes the cost of HWRC operation which is not currently on the levy but is included in the Menu Pricing levy estimate above, adding around £0.5 million and bringing the estimated default levy cost total to £12.6m in 2016/17. On this basis, the low range of the Menu Pricing levy estimate (£11.3m) would be in the order of £1.3 million within the affordability envelope as set by the Medium Term Financial Strategy.
- 5.18. Furthermore, we would expect the cost under Menu Pricing to be less than projected due to a range of factors, principally that NLWA's analysis assumed a much lower recycling rate for Haringey than the targets that have since been set in our contract with Veolia.

5.19. The IAA also requires the signatory parties to work in good faith to develop such a charging mechanism in the interim period to 2016, which this report endorses. Not only would this be fairer than the current system, but it will also incentivise higher recycling rates in preparation for full service commencement which will ensure that facilities are optimally sized for the contract going forward and thereby minimise overall costs.

#### 5.20. Future Management of Household Waste and Recycling Centres

5.21. The Council currently operates two Household Waste and Recycling Centres (HWRCs) through our contractor, Veolia, located at Park View Road, N17 and Hornsey High Street, N8. The Hornsey site is due to be vacated in the near future and a replacement site has been purchased by the Council at Cranford Way, N8, which will require capital investment to develop. There are more long term ambitions to re-locate the Park View Road site.

5.22. The cost of transporting and disposing of the residual waste from HWRCs is currently borne by the NLWA and levied to all boroughs based on their number of Council Tax band D properties. This is the default statutory position. All other costs associated with the operation of each Constituent Borough's HWRC(s) are currently paid for directly by the relevant Borough.

5.23. NLWA's Waste Services Contract is intended to incorporate the management of HWRCs, on the assumption that such an approach will reduce unit costs for this service across the sub-region whilst delivering a standardised service and improving recycling rates. The previously signed Statement of Principles and subsequent IAA Key Principles reflect the Council's in-principle support for NLWA operation of HWRCs.

5.24. A further key driver for transfer is that the Government has announced the repeal of the legislation (The Refuse Disposal (Amenity) Act 1978) that provides the powers for the Constituent Boroughs to operate such sites from 1st April 2012, leaving Waste Disposal Authorities, such as NLWA, with the sole duty to ensure the provision of such services. Any Boroughs that wish to continue operating their sites from 1st April 2012 could do so under their Wellbeing Powers although this does not provide a firm statutory footing for doing so.

5.25. Boroughs that wish to transfer their HWRCs to the NLWA will list the sites in Schedule 5 of the IAA. The IAA sets out some of the terms of transfer but provides for detailed terms to be negotiated between the Borough in question and NLWA.

5.26. This report stipulates that the Leader, in consultation with the Director of Place & Sustainability, will negotiate the detailed terms of transfer for HWRCs upon further discussion with NLWA, and prior to execution of the IAA.

#### Merits and Risks



5.27. The key benefits for the Council of transfer and a network management approach to HWRCs through NLWA are:

- Integrating necessary capital works to HWRCs within the wider construction programme of the Waste Services Contract, including the development of Cranford Way on a design, build, finance and operate basis. The responsibility for project management and gaining planning permission for Cranford Way would reside with NLWA;
- Economies of scale in the marketing of HWRC materials for recycling, and joined up communication activities to promote the network of sites in support of achieving higher recycling rates;
- Integrating the operation of the sites with the main waste transport and processing activities of the Waste Services contractor, enabling economies of scale and reducing risks which would otherwise exist between a separate HWRC operator and the Waste Services contractor.

5.28. The key risk related to HWRCs relates to the costs that would be apportioned to the Council from NLWA's management of HWRCs. This is the case regardless of whether Haringey transfers its HWRCs as the Council would be subject to the levying of costs by NLWA for any and all sites that are transferred from other Boroughs.

5.29. Under the IAA, HWRC costs, including any development costs, will be apportioned on the basis of a 'Visitor Survey' system from 2016, under which the costs for each site would be distributed based on the number of visits from residents from each of the boroughs to that site.

5.30. Based on indicative visitor survey results, c.7-8% of the usage of Barnet's Summers Lane HWRC together with a smaller proportion of Islington and Camden's sites is by Haringey residents, whilst the Council's existing two HWRCs are nearly exclusively used by Haringey residents. If future surveys that will be used to define the cost apportionment under the Visitor Survey system produce similar results this would result in the Council having to bear additional costs, estimated at £130k per annum (compared to a 'Business as Usual' scenario which would be the case in the absence of the IAA). In turn the equivalent percentage of recycling tonnage from each site would also be attributed to the Council, contributing to our recycling targets.

5.31. In order to minimise the cost impact of the introduction of a Visitor Survey system the Council will actively promote the full range of Council services available, such as the free bulky waste collection service for recyclable and reusable items, and will work with NLWA to ensure the effective marketing of Haringey's HWRCs to encourage Haringey residents to use sites in the borough.

5.32. Meanwhile, the arrangements during the period to 2016 are to be determined by

negotiation between Boroughs, with the statutory default (Council Tax Band D properties) applying if no alternative system is agreed, which would be beneficial to the Council. This would allow an approximate saving of c.£100K per annum against a 'Business as Usual' scenario in each year up to 2016 as a result of being able to share operational costs for both sites and development costs for Cranford Way with other boroughs through the Council Tax system.

- 5.33. Furthermore, under transfer to NLWA the Council will seek to agree terms that reflect Haringey's past investment in the HWRC at Hornsey/Cranford Way. The basis for this is that Hornsey was developed at the Council's expense and adds to the network of HWRC sites in north London that are understood to otherwise have been inherited by the Constituent Boroughs from the GLC at no cost. The addition of Hornsey/Cranford Way to the network assists NLWA in meeting its agreed policy that will apply if sites are transferred to NLWA (i.e. for 95% of residents to live within two miles of a HWRC).
- 5.34. To this end the Council is making a case to NLWA and the Constituent Boroughs for NLWA to purchase the Cranford Way site (either one or both lots) which would provide a capital receipt to the Council. Based on the IAA in its current form, it is our understanding that the costs of land purchases for HWRCs would be apportioned entirely through the Council Tax system.
- 5.35. It should be noted that this proposal is subject to further discussion with NLWA and the Constituent Boroughs as part of the negotiation of the detailed terms of transfer, and would require approval at a formal NLWA meeting.
- 5.36. Allowing for a period of development following contract award by NLWA in 2013, Cranford Way would be unlikely to open until 2014. Depending on when the Hornsey site has to be vacated by the Council there could be a gap in the provision of a site.
- 5.37. Upon transfer of sites, decisions to incur costs to establish any new site or develop or close an existing site reside with NLWA. However, the IAA contains a commitment for NLWA to consult with and take into account the views of the host Borough that would be affected by any such proposals.
- 5.38. Transfer of Park View Road is proposed to be on the basis of a lease at a peppercorn rent, as stipulated by the IAA. It should be noted that the leasing terms to be agreed will have to make provision for a break clause in favour of the Council as landlord, in order that there is the flexibility to require NLWA to relocate from this site to a replacement site (at this stage expected to be Marsh Lane) to allow for the Council's regeneration plans in the Greater Ashley Road area.
- 5.39. Waste Collection Systems & Tonnage Forecasts / Guarantees
- 5.40. The IAA requires certainty about Borough waste collection systems and the quantities of waste of different types Boroughs forecast to deliver over the

contract period. This information will shape the type and size of facilities the contractor will provide and the Boroughs' commitments in this regard will enable bidders to price their proposals to ensure management of waste streams in the most cost-effective way.

5.41. The Council's commitments on collection systems will be made through completion of Schedule 1 of the IAA. Of particular importance is the degree to which recyclable and compostable waste to be delivered to the NLWA's contractor are commingled/mixed or separated, which will in turn define the specific waste streams for which tonnage forecasts are required.

5.42. Commitments on quantities of waste will be made through the provision of tonnage forecasts, set out in Schedule 2 of the IAA. Tonnage figures will be based upon a number of datasets, including current waste tonnage levels, housing type and growth, recycling participation levels and waste composition, and will take account of projected increases in recycling rates and waste reduction activities.

#### Risks and Mitigation Approach

5.43. The key risks of the commitments made under Schedules 1 and 2 of the IAA are that the Council would have limited flexibility to review its collection system over the contract period and could face financial liabilities if overall tonnage forecasts for the Boroughs combined prove to be inaccurate.

5.44. These risks are explored further below, but in general, in the context of a 30 year contract there is a strong possibility that there will be influences and drivers, which may be out of the control of local authorities, which would prompt Boroughs to review their collection systems and impact upon waste forecasts. Notwithstanding this, the commitments made in the IAA will apply for the term of the agreement unless changed through the change mechanism, under which a request for change cannot be guaranteed to be accepted, and which carries potential financial implications for the Borough wishing to make the change.

5.45. However, in order to de-risk decisions for the Constituent Boroughs in relation to Schedule 1 (Borough Collection Systems) and Schedule 2 (Forecast Tonnages) the IAA expressly allows the initial information signed off upon execution of the IAA (referred to as Schedule 1 Part A and Schedule 2 Part A) to be superseded by virtue of the boroughs completing Schedules 1 Part B and 2 Part B, which are identical templates to their Part A counterparts.

5.46. The completion of the Part B Schedules is required to take place no more than three calendar months after NLWA provide notice to do so (likely to be in Spring 2012), which will coincide with the provision of anticipated gate fee (pricing) information from the NLWA. If a Borough does not complete the Part B Schedules, the Part A Schedules signed off at the point of signing up to the IAA will instead apply for the term of the IAA agreement (unless changed through the change mechanism).

5.47. This process was devised to ensure:

- Boroughs have an ongoing ability to amend their decisions through to the latest point practically possible in the NLWA's procurement process, based on information drawn from as advanced a stage of the procurement, and therefore as close to the eventual contract costs, as possible;
- Information is provided for the NLWA to progress the procurement through the forthcoming Detailed Solutions stage; and
- Boroughs have to provide fully binding Schedules of information only after the NLWA has been able to explore key issues with bidders on their behalf through competitive dialogue and refine the prices that the Boroughs might expect through the future charging mechanism going forward.

5.48. There will be a continuous process of communication, dialogue and review during competitive dialogue and up to the issuing of the formal notice for Part B Schedules, through the proposed Partnership Board consisting of Borough and NLWA officers, as set out in Clause 13 of the IAA, so that each party can consult the other parties on any potential changes at the earliest possible opportunity.

5.49. The 3 month notice period is designed to allow boroughs to consider in detail the bid information provided and enable a further Cabinet decision to be made if required, although this report stipulates that the Leader will complete Part B Schedules.

#### Collection Systems

5.50. In relation to collection systems, committing to Schedule 1 carries the risk that the Council will have limited flexibility to change its collection system over the contract period, for example in response to technological innovations or changes to the cost/value of collecting certain waste streams that may favour a particular system, and could be constrained in future procurement exercises. It must be borne in mind, however, that the important aspect of this decision relates to the resultant composition of the waste stream rather than the actual collection system per se.

5.51. The Schedule 1 Part A information proposed to be signed off at the time the IAA is adopted, is based upon Haringey's waste collection systems proposed to be in place in 2016, which are listed below:

- Fortnightly residual waste collection;
- Weekly commingled recycling collection and;
- Weekly mixed organic waste collection (i.e. food and green waste mixed together on the collection vehicle, although residents present their food and garden waste separately as this is best practice to encourage participation).

5.52. The process by which Boroughs may provide final commitments through completion of a Part B Schedules enables the Council to consider, through emerging pricing information and proposed facility phasing, whether there is a business case for making changes to our collection systems, the timing of any such changes and the resultant effect on tonnage forecasts for specific waste streams.

5.53. The main risk in this regard is around the collection of food and green waste, which as set out, is currently mixed together upon collection allowing for the most cost-effective collection system. However, Menu Pricing could drive changes in collection systems if there is a sufficient differential between the treatment costs for mixed food and green waste, which requires treatment by In-Vessel Composting, compared to separate treatment, which enables green waste to be composted on its own at a relatively low cost and food waste to be treated by Anaerobic Digestion which creates renewable energy that will attract an income to offset the gate fee for the facility (unlike In-Vessel Composting, which is not an energy generating process).

5.54. However, the cost of treating separate food waste is currently subject to a degree of uncertainty, linked to emerging Government energy and carbon policy, which, while it appears will seek to incentivise renewable energy generation from waste facilities such as Anaerobic Digestion, through emerging schemes such as the Renewable Heat Incentive and the existing Renewables Obligation Certificates, remains subject to clarification in the coming year. It is not yet clear to what extent such policies may influence the menu prices and whether it will create a sufficient differential to offset/exceed the additional cost of collecting food and green waste separately, which is likely to necessitate additional vehicles. The carbon impact of the different collection/treatment systems will also be a consideration, with the benefits of the creation of a renewable fuel from Anaerobic Digestion having to be balanced against any additional vehicle movements.

5.55. A shift in indicative treatment costs could thus change the overall cost effectiveness of the collection/treatment system and the Council will therefore need to assess the information provided by NLWA in advance of final commitments to Part B Schedules.

#### Tonnage Forecasts & Guarantees

5.56. In terms of tonnage forecasts, NLWA's contractor will require NLWA to guarantee a substantial proportion of the total tonnage of waste that is expected to be delivered over the contract period in the form of a Guaranteed Minimum Tonnage (GMT), which will be a percentage of the sum of the Constituent Boroughs' tonnage forecasts in Schedule 2. The GMT ensures that the contractor can pay back the investment providers (likely to be banks) that will finance the development of new facilities. If NLWA is not able to deliver the minimum guaranteed tonnage it will be charged as if the shortfall in tonnage was in fact delivered (this 'take or pay' arrangement is not uncommon for such contracts).

Such guarantees will apply as a minimum to the three main waste streams (recyclates, organic waste and residual waste).

- 5.57. It is important to note that the GMT will only be breached where there is a net shortfall across the waste delivered by all of the Constituent Boroughs in a particular waste stream, and if no substitute waste is identified to fill any shortfall. If one Borough, for example, delivers significantly less of a particular waste stream than it has projected but that shortfall is made up by another Borough(s) delivering more, there are no implications in terms of GMT.
- 5.58. The IAA states that any additional costs incurred by NLWA as a result of a net shortfall of waste against a GMT would be passed to the Constituent Boroughs 'in the same proportion as the proportionate variation in tonnage from the [Borough] Tonnage Forecasts' with the costs recovered in line with the IAA Charging Mechanism.
- 5.59. The level of the GMT as a % of the total waste forecast is subject to dialogue between NLWA and bidders. At the Outline Solutions stage of the procurement, NLWA set out a position on GMT of 70% of forecast waste flows, i.e. where the sum of the waste delivered to the contractor falls below 70% of the tonnage forecast in any given year without that waste being replaced by waste sourced from elsewhere, then the GMT will have been breached with regards that waste stream.
- 5.60. If a higher % GMT is agreed it could result in lower financing costs which would be expected to translate to lower contract costs, but this would need to be balanced against a loss of flexibility for NLWA (and ultimately the Boroughs) and greater risk of incurring costs due to a shortfall against the GMT.
- 5.61. Given the potential implications of the GMT, it is vital that the data entered into Schedule 2 Part B is based on the best available information. However even the best information does not allow accurate predictions of waste patterns over the time period involved. The principle potential issues in relation to the GMT for individual Boroughs are that:
- A range of potential factors may make waste collection systems set out in the part B Schedules uneconomical or impractical over time (such as waste composition or technological change);
  - The assumptions underpinning projections of waste could prove to be incorrect, e.g. relating to the recycling rate that is attainable (e.g. because of public or Government opposition to measures to increase recycling), waste composition change, the number and type of both households and businesses, and the amount and type of waste produced by each household/business;
- 5.62. It should be noted that commercial waste presents particular issues as it is subject to market forces outside the control of Boroughs. The competitiveness of

the service provided by the Council through our waste contractor will depend on the outcomes and cost of the NLWA contract, and will influence the quantity of commercial waste collected against the forecast tonnage.

5.63. A key mitigation against the risk of a shortfall against the GMT is by means of attracting 'Substitute Waste' in its place ('third party waste' or 'top up waste'). The contractor is required to make 'reasonable endeavours' to attract third party waste in the event of a shortfall. 'Top up' waste is alternative waste identified by NLWA itself, most likely from other local authorities.

5.64. The Council will be kept updated on the position on the GMT level in the course of NLWA's dialogue with bidders, in terms of the balance between reducing the expected cost of its solution and retaining flexibility.

## **6. Other options considered**

6.1. The Council could opt to enter into the IAA at a later stage or not at all. However, for the reasons outlined in section 5, and considering both the benefits and risks that committing to the IAA presents, it is deemed essential that an IAA signed by all eight authorities is put in place as soon as possible to support the procurement in obtaining the best value solution and reducing risks.

6.2. The transfer of HWRCs to NLWA is optional but upon consideration of a range of factors, including the forthcoming change to legislation referred to in Section 5, it is anticipated that transfer will be in the best interests of the Council, subject to the agreement of acceptable terms prior to the execution of the IAA.

## **7. Summary**

7.1. The IAA will govern the relationship between the waste treatment/disposal system of NLWA and the Boroughs' collection systems, and be reflected in NLWA's future contractual arrangements.

7.2. New contractual arrangements are being procured because the existing 20 year waste disposal contract with LondonWaste Ltd (LWL) ends in 2014 and key existing facilities, especially the Energy from Waste plant at Edmonton, are coming to the end of their operational life. Further key drivers behind the new contract are rapidly increasing taxes on landfill disposal and national and agreed local policy frameworks requiring a more sustainable waste solution, including much higher recycling rates (in line with a 50% by 2020 recycling target).

7.3. It is anticipated that all boroughs will sign the IAA in time for it to be available to support the subsequent stages of NLWA's procurement process, with the Detailed Solutions stage due to start from July 2011. The IAA needs to be in place in order to provide certainty to bidders, on which value for money solutions can be brought

forward, and minimise risks. Potential implications and risks of the IAA are set out in Section 5.

7.4. The IAA document reflects the 12 Principles agreed by Haringey's Cabinet on 21 December 2010, which are provided for information in Appendix A.

7.5. Members are recommended to approve the principle of the Council entering into the IAA. As specified in Section 3, the Leader will agree amendments to the final terms of the IAA, negotiate the terms for the potential transfer of HWRCs, complete Part A and Part B Schedules (the latter in spring 2012), providing details of waste collection systems and tonnage forecasts, and finally execute the document on behalf of the Council.

## **8. Chief Financial Officer Comments**

8.1. The Inter Authority Agreement will be a major determinant in the cost of waste disposal for the Council for 30 years or more.

8.2. Agreement of an IAA will help to mitigate future increases in costs as NLWA are likely to receive a better 'price' from the procurement if they can provide bidders with more certainty about future waste levels and composition. In simple terms it makes it easier for bidders to decide what facilities to build and of what size. However, obviously Boroughs can only estimate tonnages over a 30 year period, particularly with trade waste where they are subject to competition in the collection service, leaving the risk that they will be subject to additional costs passed on by NLWA as detailed in section 5.56.

8.3. Under the Inter Authority Agreement the calculation of the levy will switch to a Menu Pricing arrangement where the charge for disposal will relate more closely to the cost of disposal, thus leading to a wide variation between the disposal cost of general refuse and recyclates.

8.4. The current annual levy paid to NLWA is £6.8m and this is expected to increase significantly in coming years due to the impact of Landfill Tax, which continues to increase at a rate of £8 per tonne per annum, and also the costs related to the ongoing replacement of disposal facilities. The forecast for 2012-13 is currently an increase to £7.7m, although this figure will change as tonnage estimates are refined during the year.

8.5. The figures provided in 5.16 represent estimates of how the levy might change as a result of the procurement process and the move to menu pricing. However, it should be noted that these figures are purely estimates and will change depending on the outcome of the procurement process, changes in waste tonnages and legislative changes along with a myriad of other factors. Nonetheless the forecast increases in the levy are allowed for in the Medium Term Financial Strategy.



8.6. However, it is clear that those Boroughs with a higher recycling rate are more likely to be beneficiaries under a Menu Pricing system and thus it becomes a financial imperative for the Council to substantially increase its recycling rate; a 1% change in recycling rate is likely to change costs by over £100,000 per annum. Measures to significantly increase recycling rates are being pursued as part of new Waste Services contract and the Council will need to be careful that the desire to achieve savings towards its wider targets from this contract does not compromise the ability to increase recycling rates. It is Officers view that the projections for recycling rates used by NLWA are lower than what is likely to be achieved within Haringey. Therefore the potential levy figures in 5.16 are likely to be overstated.

8.7. It will also be important for officers to ensure that waste collection systems and costs are continuously reviewed in light of proposed 'gate fees' that emerge from the procurement process.

8.8. The transfer of HWRCs will also have a cost impact, as outlined in Section 5, from the point at which a Visitor Survey levying system is in place. The Council will need to agree transfer terms with NLWA bearing in mind the pending switch to visitor survey data and the significant investment it has made in HWRC sites but also allowing flexibility as existing sites are part of wider regeneration plans.

## **9. Head of Legal Services Comments**

9.1. The Head of Legal Services notes the contents of the report.

9.2. The NLWA is the statutory body established pursuant to the Waste Regulation and Disposal (Authorities) Order 1985 and has responsibility for its seven Constituent Boroughs which includes the London Borough of Haringey.

9.3. The current waste disposal contract between NLWA and LondonWaste Ltd is due to terminate in December 2014 at which point a new contract will need to be put in place between NLWA and a waste disposal contractor. The procurement of the new contract has been under way for some time following a competitive dialogue process in accordance with the Public Contract Regulations 2006. Bidders will shortly be invited to submit detailed solutions.

9.4. Legal representatives from each of the constituent authorities have been kept up to date on the progress of the procurement, and have been negotiating the terms of the IAA with NLWA.

9.5. The report seeks Cabinet approval to enter into the IAA. The Council has power to enter into the IAA under the 'well-being powers' set out in section 2 of the Local Government Act 2000.

- 9.6. The Council has the power to dispose of the land (ie transfer the freehold and grant leases for terms of more than 7 years) but must obtain the consent of the Secretary of State if the leases are being granted for less than best consideration. The Secretary of State has issued a general consent which allows the council to dispose at an under value provided it is for the socio, economic and environmental well being of its area and the value of the leases does not exceed £2m. Otherwise specific consent would be required. Leases granted for terms of less than 7 years are not considered to be a disposal for the purposes of the legislation but the Council must comply with its own policy with regards the granting of leases of this nature.
- 9.7. A lease granted outside the protection of Part II of the Landlord and Tenant Act 1954 means the tenant does not have the right to renew the lease at the end of the term. The Head of legal Services endorses this as it would give the Council the opportunity to decide how it wants to deal with the properties at the end of the term.
- 9.8. This is a key decision and the Directorate has confirmed that this has been included in the Forward Plan as required under Contract Standing Order 4.03.
- 9.9. Subject to paragraph 9.7 above the Head of Legal Services sees no legal reasons preventing members from approving the recommendations set out in paragraph 4 of the Report.

**10. Head of Procurement Comments –[ Required for Procurement Committee]**

10.1. Not applicable.

**11. Equalities & Community Cohesion Comments**

- 11.1. An Equalities Impact Assessment was carried out on the North London Joint Waste Strategy (the joint strategy for the Constituent Boroughs and the NLWA) in 2008. The strategy sets out how the partners will manage waste from households and businesses in the area until 2020, and underpins the NLWA's Outline Business Case for the procurement of new waste treatment/disposal services. The assessment identified that the objectives of the strategy would have mostly positive impacts upon the equality target groups and that no negative impacts were identified which would lead to a Stage 2 assessment being required.
- 11.2. In terms of the IAA specifically, the agreement is purposed to create a legally enforceable framework to govern the relationship between the Constituent Boroughs' waste collection activities and the NLWA's future waste treatment/disposal arrangements. In terms of Borough collection activities, an

Equalities Impact Assessment (EIA) and public consultation were undertaken as part of the procurement of the Council's new waste services contract, which started in April 2011 and includes waste collection services and the operation of the Household Waste & Recycling Centres (HWRCs). The new contract addresses equalities and cohesion considerations through the provision of new and enhanced services, including assisted collections for residents, access to high quality HWRC services, and effective communication with a wide range of communities. Furthermore, the contract has to be in adherence to the Council's policies on Equalities and is required to perform equalities monitoring, which is undertaken as part of monthly Liaison meetings with the contractor.

- 11.3. In terms of the consideration of the implications of NLWA's future contractual arrangements, this is the responsibility of NLWA as a statutory local authority, bound by the same equalities legislation and Public Duties as the Council, including in the commissioning and contracting out of services. As part of their procurement NLWA's evaluation framework involves bidders' proposals being tested for compliance against NLWA's Equalities Policy Statement, which has been drawn up in line with all relevant legislation, having due regard to the need to eliminate unlawful discrimination and harassment in the provision of its services and to promote equality of opportunity in relation to all equalities streams.
- 11.4. The Council will ensure that any further assessment of potential equality and community cohesion impacts that may result from any service changes arising from the Inter Authority Agreement is undertaken, if required, for example at the point at which final commitments to Part B schedules are made. However, it is not anticipated this will be the case. Should the Council's HWRCs be transferred to NLWA, the Council would expect service provision to be of an equal standard if not better than under the current arrangements and this will be part of the agreement to terms, whilst the collection service residents receive is unlikely to change.

## **12. Consultation**

- 12.1. In terms of internal consultation, this report has been written in consultation with the Leader and Cabinet Member for Environment, and the Director of Place & Sustainability and Director of Corporate Resources.
- 12.2. In the course of the development of the IAA and NLWA procurement process over the past two years, meetings have been held with key stakeholders including The Leader and Lead Members for Environment and Finance & Sustainability, Chief Executive, Director of Director of Place & Sustainability and Director of Corporate Resources.
- 12.3. The IAA 'Key Principles' were produced in consultation with Members and technical, finance and legal officers from each Constituent Borough in

September 2010 prior to being approved by Cabinet in December 2010.

12.4. The two Haringey members who sit on the NLWA (including the Lead Member for Environment) and the Leader have been kept apprised of developments in the IAA process through regular briefing sessions. The most recent meeting was held on 24<sup>th</sup> June, attended by the Leader, Cabinet Member for Environment and the second Haringey NLWA member.

12.5. In terms of external consultation, the North London Joint Waste Strategy, underpinning NLWA's Outline Business Case, was subject to public and statutory agency consultation in 2008 and amended as a result.

### **13. Service Financial Comments**

13.1. See Chief Financial Officer Comments.

### **14. Use of appendices /Tables and photographs**

- 14.1. Appendix A – IAA Key Principles
- 14.2. Appendix B – Affordability Letter, January 2010
- 14.3. Appendix C – Statement of Principles, October 2008
- 14.4. Appendix D - Summary of the IAA document & Linkages to the Key Principles
- 14.5. Appendix E - Memorandum of Understanding, June 2008

### **15. Local Government (Access to Information) Act 1985**

- 15.1. Appendices listed under section 14.
- 15.2. Cabinet Report, December 21<sup>st</sup> 2010: Inter Authority Agreement In Relation To North London Waste Authority Procurement Of Waste Disposal/ Treatment Services (Key Principles)
- 15.3. North London Waste Authority Inter Authority Agreement (available on request)
- 15.4. NLWA Outline Business Case, 2010  
[www.nlwa.gov.uk/procurement/key\\_procurement\\_documents](http://www.nlwa.gov.uk/procurement/key_procurement_documents)
- 15.5. North London Joint Waste Strategy, 2009  
[www.nlwa.gov.uk/aboutus/our\\_strategy](http://www.nlwa.gov.uk/aboutus/our_strategy)

### **16. Background information – NLWA Procurement**

16.1 The North London Waste Authority (NLWA) is the statutory waste disposal authority (WDA) for seven north London boroughs<sup>1</sup> which it has the power to direct on disposal of municipal waste.

<sup>1</sup> The seven local authorities in the North London Waste Authority are the London Boroughs of Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest.

16.2 NLWA's current Main Waste Contract with London Waste Limited (LWL) expires in December 2014. NLWA is currently procuring two replacement contracts ('the Contracts') expected to last for c.30 years. The Waste Services Contract is intended to incorporate:

- 1 The management of Household Waste Recycling Centres (HWRCs);
- 2 The reception and transfer of waste collected by the Constituent Boroughs;
- 3 The processing and marketing of materials separately collected for recycling;
- 4 The composting or anaerobic digestion of separately collected organic waste (food waste and garden waste);
- 5 The treatment and disposal of residual waste and the production of a Solid Recovered Fuel (SRF).

16.3 Elements 1 and 3 are 'detachable' from the contract during the procurement process if, based upon an assessment of bids received, NLWA feels that they do not offer sufficient value for money and would therefore procure those services separately.

16.4 The second contract – the Fuel Use Contract – is for the separate incineration of the SRF as a renewable energy source that will replace the use of fossil fuels.

16.5 In October 2008 NLWA submitted an Outline Business Case (OBC) to Government for PFI credits to underpin the procurement, as the minimum cost option for council taxpayers. In the months leading up to this, in line with government expectations, each Constituent Borough:

- o Signed a letter accepting and acknowledging their share of the NLWA's future waste management costs (an affordability envelope, agreed by Cabinet in October 2008), subsequently revised and approved in January 2010 (Appendix B).
- o Signed a Memorandum of Understanding (not legally binding) (Appendix E) that, at a high level, reflects many of the principles enshrined in the IAA (signed by the Leader after delegation by Cabinet, June 2008); and
- o Approved a Statement of Principles (also non-binding) (Appendix C) that contained more specific principles to be included in a future IAA (agreed by Cabinet in October 2008).

16.6 Following the award of £258.4m of PFI credits by Central Government the NLWA began the procurement process in April 2010. However, the PFI credits were then withdrawn in the Government Spending review in October 2010. Notwithstanding this the NLWA has continued to progress the procurement process.

- 16.7 The NLWA has since repeated the Invitation to Submit Outline Solutions (ISOS) stage which was used to improve the financial outcome of bidders' proposals to reflect the loss of PFI credits. The response from the market was positive and the indications are that the solution procured will be cheaper than reflected in the affordability envelope signed by Haringey's Cabinet in October 2008, even taking into account the loss of PFI credits.
- 16.8 The NLWA also recently conducted an appraisal of options to determine how to respond to the loss of PFI Credits. This was considered by NLWA at the same time as the outcome of the outline solutions stage of the procurement, and Members confirmed the selection of bidders for the next stage.
- 16.9 The next stage in the NLWA's procurement process is to proceed to the Invitation to Submit Detailed Solutions (ISDS). NLWA plan to issue the ISDS documents in late June 2011 to those bidders selected to proceed to this stage.
- 16.10 It is key that at this stage in the procurement that bidders are provided with an element of certainty on each Constituent Borough position on a number of matters including future waste collection systems and the tonnages of each waste stream it expects to deliver to the NLWA between now and the end of the contract. The IAA is intended to provide this certainty and will enable bidders to structure their bids accordingly. Members are referred further to Section 5 in this regard.
- 16.11 The other key dates in the NLWA procurement process in relation to the IAA are as listed in table 1 below:

Table 1: Current key dates in the NLWA procurement process

<b>Procurement Stage</b>	<b>Date</b>
Issuing of Invitation to Submit Detailed Solutions (ISDS)	30/06/11
Submission of Detailed Solutions	12/10/11
Issuing of Invitation to Submit Revised Solutions (ISRS)	20/12/11
Submission of Final Tenders	20/07/12
Appointment of Preferred Bidder	15/10/12
Financial Close	22/03/13
Contract start – construction and commissioning period	15/10/14
Operational Commencement – new facilities (Waste Services and Fuel Use Contracts)	14/10/16

## **APPENDIX A: IAA Key Principles**

1. Boroughs identify their preferred collection system subject to a final review of projected gate fees.
2. Residual waste is confirmed as in the contract and it is an NLWA decision to award the contract.
3. An eight authority commitment to work towards our recycling targets which includes the consideration of kitchen waste collection (a separate strategy to be developed).
4. Household Waste & Recycling Centres (HWRCs) to be transferred to the NLWA subject to agreement to 'transfer value' and overall service specification. NLWA to develop proposals for a capital investment programme covering the refurbishment of HWRCs and possible new sites. This programme to be shared with Boroughs for comment in advance of presentation to NLWA for decision.
5. That Boroughs agree to consider menu pricing upon consideration of the costs as set out in Principle 6.
6. At a given date in the procurement, NLWA will provide Boroughs with treatment costs reflecting bid positions, to allow costs to be assessed and a position taken on both recycling and menu pricing.
7. There is an individual Borough 'opt-out' covering i) recycling (whether source-segregated or co-mingled) and ii) the treatment of separately collected organic wastes.
8. Based on bid proposals (and previous decision on transfer to NLWA) the decision to include HWRCs in the contract to be made by NLWA.
9. Boroughs support the NLWA's position with bidders in relation to the 70% Guaranteed Minimum Tonnage (GMT) on the basis that Boroughs will not be penalised unless NLWA receives a contractual default. This position on GMT will only be changed on the basis of improved value for money prior to the 'Call for Final Tenders'.
10. Any change mechanisms necessary to up-date the IAA for 'Financial Close' are included in the Inter Authority Agreement.
11. NLWA will set-up a dialogue opportunity for Borough Officers to meet collectively with bidders prior to the 'Call for Final Tenders'.
12. Recycling performance will be reported at Borough and NLWA levels. Boroughs report all recycling activity within their boundaries with the support of NLWA.





Gerald Almeroth  
Director of Finance  
London Borough of Haringey  
5<sup>th</sup> Floor River Park House  
225 High Rd  
Wood Green  
London N22 8HQ

5<sup>th</sup> January 2010

Dear Gerald

### **Acknowledgement of Affordability Implications of Waste Management Proposals**

As you are aware the North London Waste Authority has resubmitted its Outline Business Case to Defra. As part of the OBC resubmission the Authority in conjunction with its technical and financial advisers has reviewed and refreshed the technical costs and financial analysis underpinning the OBC. I am writing to you to:

- ▶ Summarise the revised financial metrics for the project and highlight the estimated affordability implications for the London Borough of Haringey
- ▶ Seek reaffirmation that the revised affordability position is within the affordability envelope agreed by Borough Cabinet / Executive in October 2008, as reflected in the letters of support at that time and supplied as part of the October 2008 OBC submission – a copy of your Authority's previous letter is attached as background.

In October 2008 the Council was informed that the total project cost of the Reference Project was estimated at £7.323 billion, potentially rising to £7.725 billion after taking account of the sensitivities included in the OBC. Based on current Levy distribution this implied a range of costs from £1.022 billion to £1.076 billion for the London Borough of Haringey.

As at December 2009 the total project cost of the Reference Project is estimated at £7.109 billion, potentially rising to £7.443 billion taking account of the sensitivities included within the OBC. Based on the current Levy distribution this means a range of costs from £1.003 billion to £1.055 billion for the London Borough of Haringey on the basis of the Authority receiving an award of £317 million in PFI Credits.

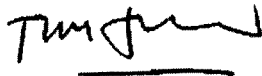
In the event that the Authority secures PFI Credits of £258.4 million (that amount requested in May 2009), based on the current Levy distribution this means a range of costs from £1.018 billion to £1.069 billion for the London Borough of Haringey.

The projected costs of the Reference Project are less than the "business as usual" (do minimal) option by £0.201 billion.

I would be grateful if you could sign below and return a copy to me to confirm for the benefit of the OBC resubmission that the costs quantified above (for both the £317million and £258.4 million PFI Credits) are within the affordability envelope agreed by your Authority in October 2008.

The Authority fully appreciates that the above costs are estimates and that they may change. However, should the estimates prove incorrect a further opportunity will be given to the Council to reconsider the affordability of the scheme prior to the parties becoming contractually committed.

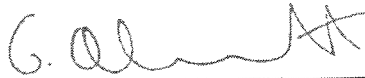
Yours sincerely,



Tim Judson

Director of Procurement

Signed



Authority

LONDON BOROUGH OF WARRINGER

Date

11 JANUARY 2010

---

North London Waste Authority, Lee Valley Technopark, Unit 360, Ashley Road, Tottenham, London, N17 9LN

Tel: 020 8489 5730 Fax: 020 8365 0254 Email: [post@nlwa.gov.uk](mailto:post@nlwa.gov.uk) Web: [www.nlwa.gov.uk](http://www.nlwa.gov.uk)

**Appendix AA**  
**MOU and IAA Draft Statement of Principles**

# MOU and IAA Draft Statement of Principles

DRAFT

Statement of Principles 2: Principles relating to Inter-Authority Agreement including Household Waste Recycling; sale of recyclates; collection systems and pooled targets

The Authorities intend to enter into a Statement of Principles as follows:

STATEMENT OF PRINCIPLES made the [            ] day of [            ] 2008

BETWEEN

North London Waste Authority of Town Hall, Judd Street, London WC1H 9JE ("NLWA")

London Borough of Barnet of Town Hall, North London Business Park, Oakleigh Road South, London N11 1NP ("Barnet")

London Borough of Camden of Town Hall, Judd Street, Camden, London WC1H 9JE ("Camden")

London Borough of Enfield of Civic Centre, Silver Street, Enfield, London EN1 3XA ("Enfield")

London Borough of Hackney of Town Hall, Mare Street, Hackney, London E8 1EA ("Hackney")

London Borough of Haringey of Civic Centre, High Road, Wood Green, London N22 8LE ("Haringey")

London Borough of Islington of Town Hall, Upper Street, Islington, London N1 2UD ("Islington"); and

London Borough of Waltham Forest of Town Hall, Forest Road, Walthamstow, London E17 4JF ("Waltham Forest")

(together the "Authorities"); each of Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest are waste collection authorities for their respective areas (together "WCAs", and each a "WCA")

## BACKGROUND

This statement of principles is made pursuant to clause 5.5 of the Memorandum of Agreement between the parties

The Authorities agree that the following are the overarching principles which the Inter-Authority Agreement (IAA) will adhere to:

That the IAA will establish arrangements which are fair and equitable for all parties to the agreement

That all detail on the operation of the IAA will be transparent with open book accounting and verifiable audit trails by all parties

That the agreement will seek to ensure the achievement of best value for all boroughs by maximising the containment of waste disposal costs by the NLWA over the life of the agreement and thereby containing the cost of the levy to the WCAs

That the IAA will seek to incentivise the Authorities towards the achievement of the desired outcomes and required targets

That any part of the IAA which relates to rewards and defaults for individual WCAs will operate fairly and equitably and no WCA will profit from another by the operation of the IAA. Benefit from the agreement will be derived by all boroughs from the maximisation of the containment of levy costs

That efficient and effective waste collection by the WCAs is a recognised factor in the achievement of containment of waste disposal costs and is part of the achievement of overall best value.

That the menu pricing mechanism specified in the IAA will operate fairly and equitably in the overall interests of the Authorities

That except for separate arrangements related to household waste recycling centres, the basis of charges to WCAs through the levy will be linked to and based upon the amount and type of waste delivered to NLWA

That LATS Trading Allowances either bought or sold will be part of the levy calculations for the WCAs and will be used fairly and equitably for the benefit of all parties to the IAA

That the Authorities agree to the Household Waste Recycling Centres becoming the responsibility of NLWA post 2014; and that arrangements which are fair, equitable and transparent will be established for the transfer of facilities to NLWA, to be operated thereafter to the benefit of all the Authorities. If appropriate the process will recognise, including financially, the level of WCA internal investment in individual sites on transfer

That NLWA will be the responsible body for the sale of all collected recyclates on behalf of the Authorities and that all recyclates collected by the WCAs will be delivered to NLWA.

That NLWA will operate a transitional compensation arrangement if any Authority is disadvantaged by the payments for recyclates against its existing agreements at the time of changeover

That the WCAs undertake to review formally their collection arrangements against models provided by NLWA (Entec UK), taking into account local environmental considerations, in order to move towards more like systems by 2014 or in subsequent years. Each WCA will decide individually on best fit to its circumstances whilst taking the achievement of like systems into full account

That the Authorities agree to the pooling of recycling targets for achievement of 45% by 2015 and 50% by 2020 as agreed in the North London Joint Waste Strategy

That the pooling of targets will be operated in a fair and equitable way which will both reward and penalise Authorities in financial terms and ensure all Authorities work to secure the maximum level of recycling achievement prior to pooling. The pooling will be managed by NLWA as a transparent internal trading process, including financial adjustments where appropriate

That NLWA will ensure that all end users of recyclates and solid recovered fuel will be selected on criteria including proximity and will be within the United Kingdom

That all Authorities will seek to ensure all existing or new short term contracts related to recyclates will expire prior to 2014

That the WCAs will work in partnership with NLWA to submit bids for monies from the £74m currently available from the London Waste and Recycling Fund and any other appropriate identified grant regimes

That the Authorities will continue to work together on waste minimisation and the reduction of waste per person figures including public education exercises to encourage waste reduction and recycling

Signed by

[each Authority – by Leader]

## **Appendix D: Linkages with Agreed IAA Key Principles & Summary of IAA Document**

### **1. Linkages with IAA Key Principles**

#### **Principle 1 - Boroughs Identify their Preferred Collection System Subject to a Final Review of Projected Gate Fees**

At the point of signing the IAA each Constituent Borough is required to complete Schedule 1 Part A and Schedule 2 Part A which set out their preferred collection system and tonnage projections. The NLWA will provide expected gate fees when it feels that the information is sufficient to allow the Boroughs to make a decision with regards future waste collection systems. If Boroughs wish to update the information in the two Part A Schedules above they are required to do so within three calendar months of receiving this information by completing Schedule 1 Part B and Schedule 2 Part B which will supersede the Part A schedules. The principle clauses of the IAA relating to this are Clause 8 and Clause 10.

#### **Principle 2 - Residual Waste is Confirmed as in the Contract and it is an NLWA Decision to Award the Contract**

This is a legal requirement in line with the provisions of the Environmental Protection Act 1990. It is reflected specifically in clause 5.1 of the IAA.

#### **Principle 3 - An Eight Authority Commitment to Work Towards our Recycling Targets which Includes the Consideration of Kitchen Waste Collection (A Separate Strategy to be Developed)**

There is a commitment for all Boroughs to work towards the 50% combined reuse, recycling and composting target reflected in the North London Joint Municipal Waste Management Strategy (JMWMS) in Clause 9 of the IAA. The Boroughs are required to collectively contribute 40% to the target through their collection systems with the remaining 10% contribution from the NLWA's services including HWRCs.

The NLWA will adopt an approach to competitive dialogue with regards food waste when it has a clearer indication of future Borough strategy.

#### **Principle 4 - HWRCs To Be Transferred To The NLWA Subject To Agreement To 'Transfer Value' And Overall Service Specification. NLWA To Develop Proposals For A Capital Investment Programme Covering The Refurbishment Of HWRCs And Possible New Sites. This Programme To Be Shared With Boroughs For Comment In Advance Of Presentation To NLWA For Decision.**

Clause 11 of the IAA indicates Boroughs are to transfer designated HWRCs to the NLWA subject to negotiation with regards the terms of transfer. The sites designated for transfer and intentions with regards their development are to be set out in Schedule 5.

Schedule 4 sets out the charging mechanism for waste delivered by Boroughs to the NLWA and the HWRC services going forward. The Schedule reflects that upon service commencement all HWRC costs will be apportioned based upon a periodic survey of users (i.e. based upon the percentage of visitors from each Constituent Borough with any users from outside of the NLWA disregarded for the purposes of cost apportionment). In the transitional period prior to service commencement the system for the levying of HWRC costs is subject to negotiation with the default being statutory default Council Tax levy.

Boroughs will be consulted in respect of proposed works at an HWRC site or a new site with an emphasis on the views of the Borough in which the site is based.

Principle 5 - That Boroughs Agree To Consider Menu Pricing Upon Consideration Of The Costs As Set Out In Principle 6.

Clause 16 and Schedule 4 set out the requirements with regards the charging mechanism. It commits Boroughs upon signing the IAA to move to a menu pricing system as set out in Schedule 4 upon full service commencement, allowing for transitional menu pricing if agreed. The decision is binding upon signing the IAA as a reflection of the fact that any change to the NLWA levy requires unanimous agreement and the required benefits to the boroughs in terms of reduced costs arising from increased recycling need to be underpinned by the move to a menu pricing system. Once a non-statutory basis of allocating the levy is agreed, then this will need to provide for the recovery of the totality of the NLWA costs. The Schedule therefore also incorporates provision for payment of the NLWA's overheads and contract management costs, as well as allocating any deductions or additional costs which arise pursuant to the waste services and fuel use contracts.

Borough officers have been provided on a confidential basis with indicative menu prices based upon bids received at ISOS. These are confidential, because they could enable the identification of commercially sensitive bidder information. They are to be updated based on bid information prior to Call For Final Tenders to allow Constituent Boroughs to complete Schedules 1 and 2 Part B with knowledge of the likely contract prices at Financial Close.

Clause 16 requires Boroughs to consider menu pricing prior to 2016. A paper from the NLWA setting out the implications of menu prices during the interim period (based on current costs) is expected to be produced in July 2011. If such a system can be unanimously agreed the revised system would be applied in line with Clause 16.

Principle 6 - At A Given Date In The Procurement, NLWA Will Provide Boroughs With Treatment Costs Reflecting Bid Positions, To Allow Costs To Be Assessed And A Position Taken On Both Recycling And Menu Pricing

As set out above pricing information will be provided prior to CFT and there are no further decision points on menu pricing post full service commencement beyond the commitment to move to the system set out in Schedule 4 upon signing the IAA at service commencement.

Principle 7 - There Is An Individual Borough 'Opt-Out' Covering i) Recycling (Whether Source-Segregated Or Co-Mingled) And ii) The Treatment Of Separately Collected Organic Wastes.

Individual Constituent Boroughs have the ability to 'opt out' of including their recyclates and/or organic waste by not including them in Schedules 1 and 2 Part B based on bidders proposals and a value for money assessment following receipt of pricing information from NLWA obtained from bidders during the ISDS period. The OJEU notice preserves the right to reduce the scope of the contract in this regard.

Principle 8 - Based On Bid Proposals (And Previous Decision On Transfer To NLWA) The Decision To Include HWRCs In The Contract To Be Made By NLWA



The development and operation of the HWRC network is also detachable from the NLWA's Contracts. This decision depends on the quality of the solutions offered in the procurement.

This decision will be taken by the NLWA alone prior to Call For Final Tenders based on a value for money case as set out in Clause 11 of the IAA. The NLWA is however committed to consulting the Constituent Borough officers on this decision.

Principle 9 - Boroughs Support The NLWA's Position With Bidders In Relation To The 70% Guaranteed Minimum Tonnage (GMT) On The Basis That Boroughs Will Not Be Penalised Unless NLWA Receives A Contractual Default. This Position On GMT Will Only Be Changed On The Basis Of Improved Value For Money Prior To The 'Call For Final Tenders'.

The sum of the tonnage projections provided by each Borough in Schedule 2 Part B will be used as the basis for setting Guaranteed Minimum Tonnages (GMT) and any maximum tonnages at set out in Clause 10 of the IAA.

In signing the IAA the Constituent Boroughs support NLWA's position in seeking a GMT of 70% and acknowledge that there is ongoing dialogue with bidders which may include this issue.

Principle 10 - Any Change Mechanisms Necessary To Up-Date The IAA For 'Financial Close' Are Included In The Agreement

As set out above the IAA makes provision for Boroughs to update the waste collection systems they are to use over the contract period, the tonnages they expect to deliver and whether they wish to include recyclates and/or organic waste in the NLWA's contract by reflecting these changes in Schedules 1 and 2 Part B to supersede the information in Schedules 1 and 2 Part A. Provisions for updating the Charging Mechanism in Schedule 4 are included in clause 16 of the IAA.

The IAA also contains a change procedure for proposed changes prior to financial close in Schedule 7 of the IAA.

Principle 11 - NLWA Will Set-Up A Dialogue Opportunity For Borough Officers To Meet Collectively With Bidders Prior To The 'Call For Final Tenders'.

Clause 13 makes provision for a direct meeting between Borough officers and bidders before Call For Final Tenders to discuss issues relating to the collection/disposal interface. The NLWA are required to take into account the views of the Boroughs expressed at the meeting.

Principle 12 - Recycling Performance Will Be Reported At Borough And NLWA Levels. Boroughs Report All Recycling Activity Within Their Boundaries With The Support Of NLWA

This principle relates to previous proposals that Boroughs report a single overarching North London-wide recycling rate both to residents and to central government with regards National Indicators and statutory targets going forward. The current position is that Boroughs would continue to report their Borough level recycling rates as the principle measure of performance and informally report the NLWA rate if they wished.

Clause 9 of the IAA requires that information relating to recycling rates is made available by all Signatory Parties in a timely manner.

## **2. Summary of the IAA Document**

Each Borough will sign a different counterpart IAA agreement after completing their Borough specific information with regards Schedule 1-2 Part A and Schedule 9. The document will be completed once each of the eight Authorities has executed a counterpart agreement. After completion, each of the eight Authorities will be provided with a copy of the fully completed document.

The overarching rationale for the IAA and details of the most significant commitments for the Council, including key benefits and risks, are presented in Section 5 of the main report. This section provides a summary of the scope of the IAA in terms of the range of principles, mechanisms and commitments for the Council in entering into the IAA.

### **Scope of the IAA**

The IAA document provides a formal legally enforceable framework that covers the entire scope of the interface between the NLWA and its Constituent Boroughs that relate to the NLWA's proposed contracts, notably:

- General principles of partnership;
- The ongoing means, points and mechanisms of interaction between the Signatory Parties;
- NLWA's responsibilities to the Constituent Boroughs in terms of its contribution to the wider 50% recycling target and how it manages its interface with the Constituent Boroughs;
- The Constituent Boroughs' responsibilities with regards NLWA and other Constituent Boroughs in relation to the provision of information on the waste streams they expect to deliver to the NLWA, in what form and quantities they expect these wastes to be delivered and contributing to the wider 50% recycling target;
- How any proposed changes will be managed and how their costs will be apportioned;
- How disputes under the IAA will be managed;
- How the costs of NLWA's services will be apportioned between the Boroughs after commencement of services under the NLWA's new contracts including how any deductions in the amounts payable and penalties are paid from or to Boroughs;
- How guarantees on the tonnages of materials delivered by the Constituent Boroughs will work and how the costs associated with non performance will be apportioned;
- How designated HWRCs will be transferred to NLWA, some of the terms of transfer and how future decisions around the development of the HWRC network will be made;
- How external communications will be conducted and how confidentiality will be managed; and
- The position with regards a raft of legal and procedural issues such as the ownership of waste.

## **Summary of IAA Clauses and Schedules**

In this section, references to “the Authority” are to the NLWA following the terminology of the IAA drafting.

### 3.2.1 Clause 1 - Interpretation

The terms and conditions of the IAA may be varied from the date of financial close in the Authority’s procurement process to ensure that the IAA is consistent with the Authority’s contracts. The Authority will notify the constituent Boroughs of these changes after financial close.

### 3.2.2 Clause 2 - Partnering Ethos

This sets out a number of principles of partnership working:

- Acting reasonably and cooperatively with other parties;
- Providing information relevant to waste collection and disposal services including early warning of any potential or actual failure to meet obligations under the document
- Provide early warning to the Authority of any proposed changes that may generally effect the Agreement and/or the Authority’s contracts;
- Using reasonable endeavours to mitigate any losses arising from such a failure and reduce the impact on the other parties;
- Using reasonable endeavours working in cooperation with the Waste Services Contractor to educate the public and commercial sector to encourage waste to be managed in accordance with the waste hierarchy; and
- Without prejudice to express rights, remedies and obligations of the Boroughs under the IAA not knowingly doing anything under their reasonable control to put the Authority in material breach of either of its contracts.

### 3.2.3 Clause 3 – Commencement and Duration

The agreement takes force from the commencement date which is the date on which the agreement is dated having been executed by all parties. This date will change each time an amending agreement is executed. It will expire when:

- The Waste Services Contract expires;
- If the Waste Services Contract is terminated unless the Authority has procured another contractor that delivers a similar service;
- If the Fuel Use Contract is terminated unless the Authority has procured another contractor that delivers a similar service or unless the Signatory Parties agree that the IAA should continue in full force; or
- The relevant provisions of the underpinning legislation<sup>1</sup> are amended or repealed such that the IAA is rendered unlawful or inoperable.

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<sup>1</sup> The Waste and Emissions Trading Act or the Environmental Protection Act

### 3.2.4 Clause 4 – Representatives

Each Signatory Party is required to identify a representative and provide their details in Schedule 9. The representatives will exercise the functions of their signatory party in relation to operations. Subject to written notice to all other parties the representative or senior officer may authorise another person to perform this role or the signatory party may replace its representative.

Unless when all other parties are previously notified otherwise before an act by a party's Representative in connection to the agreement the other parties shall be entitled to treat that act as authorised.

### 3.2.5 Clause 5 – Waste Disposal Contracts

This clause confirms that the Boroughs acknowledge that:

- Contract waste (i.e. waste within the scope of the Authority's contracts) collected in the Authority Administrative areas will be managed through the contracts;
- It is the Authority's decision to award these contracts;
- The Authority will enter into the contracts in order to discharge its statutory duties; and
- The Authority is relying on the boroughs to discharge their duties under the IAA so it can perform its obligations under its contracts; and
- Each Borough will pay its proportion of the Authority's costs under its contracts.

### 3.2.6 Clause 6 – Principle Obligations of the Authority

The Authority commits to providing information to enable the Boroughs to meet their obligations under the agreement in completing Schedules 1 and 2 Part B when formally requested to do so. The Authority also commits to the following:

- Use best endeavours to ensure that it procures the proper performance from its contractors;
- Apportioning the costs incurred under the contracts as set out in clause 16 (financial contribution) and Schedule 4;
- To use reasonable endeavours to pursue any appropriate remedies or payment deductions available to it if its contractors fail to meet their performance standards and cause loss to one or more Boroughs. Where a performance deduction is recovered from its contractor(s) the Authority will deduct this from future payments from the affected Borough(s) to the Authority (apportioned pro-rata in line with the proportional loss where more than one Borough is affected as set out in Schedule 4). Where a remedy is not pursued the Authority will provide an explanation to the Partnership Board;
- Provide an annual reconciliation to Boroughs showing them amounts due and paid with any performance deductions recovered from the Authority's contractors on behalf of the Borough (as above) applied as reasonably as practicable;
- Notify the Boroughs to any changes under its contracts that might be of relevance or affect its obligations or rights under this agreement;

- Use reasonable endeavours to ensure that its contractors achieve their relevant performance standards, ensure that each Borough is made aware of the standards and consulted on service delivery plans where relevant;
- Not knowingly propose a change to or accept notice of a change from either of its contractors that would materially affect a Borough without prior consultation with that Borough (or Boroughs). Where requested by the relevant Borough(s) the Authority shall withdraw the proposal or make any reasonably requested changes to it (provided they do not, in turn, affect any other Boroughs who has not consented to the change);
- Where appropriate exercise its rights under its contract with respect to performance failures and inform the Boroughs of the reasons where it decides it is not reasonable to exercise these rights;
- Use reasonable endeavours to ensure that its main waste contractor acts reasonably and cooperatively with the boroughs and their contractors; and
- Use reasonable endeavours to ensure that the terms of the waste services contract facilitate and do not conflict with the methods and operations of waste collection set out in this agreement (as set out by each Borough in Schedule 2).

### 3.2.7 Clause 7 – Principle Obligations of the WCAs (Boroughs)

The Boroughs commit (and, where relevant, commit their waste collection contractors) to:

- Deliver all waste within the scope of the Authority's contracts to the designated reception points with defined operating hours for each reception point in accordance with the waste acceptance protocol (in Schedule 6);
- Comply with the waste acceptance protocol;
- Not damage any reception points;
- Pay the Authority in accordance with clause 16 and Schedule 4;
- Otherwise allow the Authority to meet its obligations under its contracts; and
- Bear the costs (to be paid back through the mechanism set out in Schedule 4) of any relevant losses to the Authority or its contractors or any other Borough caused by an act, omission including one that prevents the Authority from receiving performance under its contracts.

### 3.2.8 Clause 8 – Collection Systems

Schedule 1 part A contains each Borough's waste collection system and Schedule 2 Part A contains long-term tonnage projections by waste stream upon signing the IAA. Prior to CFT the Authority will provide Constituent Boroughs with the information necessary (gate fees, facility phasing and recyclates prices) to complete Schedules 1 Part B and 2 Part B if they wish to make any changes to the information in the corresponding Part A Schedules. Not more than 3 calendar months after the provision of this information each Borough will be required to notify the Authority of any changes to the information in Schedule 1A or 2A. The Part B Schedules will then supersede their Part A counterparts. If a Borough does not supply any additional information for the Part B Schedules then the part A Schedules will apply. The Boroughs are required to collaborate with the Authority in the development of Schedules 1 and 2 both parts A and B.

Between the signing of the IAA and the date above the Boroughs and Authority will meet regularly to update each other on:

- Proposed changes to collection systems and timescales;
- Other discussions and potential issues relating to Schedules 1-3; and
- Relevant issues arising in dialogue between the Authority and bidders (subject to confidentiality).

The Boroughs may use the Change Procedure to vary Collection Systems after Financial Close.

### 3.2.9 Clause 9 – Recycling Obligations

The agreement states all Signatory Parties:

- Agree to the 50% recycling target for 2020 and that 40% will arise from Borough waste collection systems whilst 10% will come from the Authority's Waste Services Contract; and
- Will provide information relating to recycling and other targets to other parties in a timely manner;

### 3.2.10 Clause 10 – Forecast Tonnages

This states that:

- The boroughs acknowledge that each Borough's forecast tonnages provided in Schedule 2 Part B will be collectively used as a basis for the setting of the Minimum Tonnage Guarantee (GMT) in the Authority's Waste Services contract as agreed with the Contractor;
- The Boroughs support the Authority's position in seeking to agree a 70% GMT and acknowledge that this percentage may increase through dialogue on the basis of improved value for money;
- The liability to the Authority from any net variation in the actual tonnages below the GMT will be allocated to those Boroughs responsible in the same proportion as the proportionate variation in tonnage from the forecasts in Schedule 2B in accordance with the charging mechanism;
- For contract management purposes each Borough will provide an annual revised forecast tonnage;
- All projections should be prepared using reasonable skill, care, attention, facts and projections that each Borough believes to be accurate and reasonable. However, the Authority acknowledges that such forecasts may vary due to matters outside of the control of Boroughs.

### 3.2.11 Clause 11 – HWRCs

This Clause states that:

- Those HWRCs that Boroughs wish to transfer to the Authority are listed in Schedule 5 and, by virtue of their inclusion in that Schedule, Boroughs commit to transferring them no later than April 2012<sup>2</sup>;
- If terms of transfer cannot be agreed they will be determined in accordance with the Disputes Resolution Procedure;
- The transfer will be leasehold excluded from the protection of the Landlord and Tenant Act 1954;
- The Boroughs will cooperate by providing employment details of any current HWRC staff to the Authority and agree that the TUPE Regulations will apply to their transfer;
- Boroughs will be consulted on proposals to, conduct significant works, develop a new site or close an existing site, particularly the Borough in which the proposed site is situated; and
- The Authority is solely responsible for making the decision prior to CFT whether HWRCs are included in the Waste Service Contract based on a value for money evaluation. If the service is excluded the Boroughs will be consulted on alternative arrangements.

#### 3.2.12 Clause 12 – Obligations in Relation to Approvals

The signatory parties are committed to use reasonable endeavours to procure any approval necessary to facilitate the implementation of the IAA without prejudice to the determination of any planning applications.

#### 3.2.13 Clause 13 – Communications

This clause establishes that a liaison meeting will be arranged between Borough officers and bidders prior to CFT for the discussion of the collection/disposal interface. The authority is committed to take into account the views expressed.

A 'Partnership Board', chaired by an Authority representative, will also be formed between the Boroughs and Authority to consider operational strategies relating to the IAA including (but not limited to):

- The communication and debate of issues arising from the procurement process and the operational phase of the contracts;
- The improvement and development of the services provided by the Authority's contractors;
- Reporting of management information in relation to the Waste Services contract; and
- Any proposed or likely changes to Borough waste collection; and
- The Terms of Reference of the Partnership Board

Decisions will be made through consensus or majority vote.

#### 3.2.14 Clause 14 – Best Value Duty

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<sup>2</sup> The date for the repeal of the Refuse Disposal Amenity Act is April 1<sup>st</sup> 2012.

The Signatory Parties acknowledge each other's Best Value duties and commit to assisting each other to discharging them with regards waste collection and disposal.

#### 3.2.15 Clause 15 – Ownership of Waste and Duty of Care

This clause states that:

- All waste will be delivered by boroughs in accordance with Clause 7 and the Waste Acceptance Protocol (WAP) or as directed by the Authority;
- Upon receipt of waste from the Boroughs by itself or the Contractors the Authority will take full ownership over and responsibility for it;
- Until that time collected waste is the responsibility of the relevant Borough; and
- If a reception point is not available the Authority will promptly notify the Boroughs of this.

#### 3.2.15 Clause 16 – Financial Contribution

This requires the Boroughs to:

- Pay the levy in accordance with the default levy until the introduction of any transitional menu pricing system that might be agreed;
- Consider a transitional pricing arrangement based on menu pricing between 2012 and service commencement under the Authority's contracts (the commissioning of the first facility is scheduled to be 2016) and pay costs in accordance with the arrangement. If agreed it will be reflected in Schedule 4 Part D;
- Pay the Authority sums calculated in accordance with Schedule 4 (Parts A, B or C) after service commencement, which they acknowledge must be adequate to cover the costs of the Authority, including its contracts; and
- Work with the Authority to develop the charging mechanism set out in Schedule 4 Part A in line with the development of the procurement with a view to replacing it with Schedule 4 Part B before financial close in the procurement process.

Schedule 4 Part A or Part B will be replaced with Schedule 4 Part C if required to reflect any changes to definitions or terms in the Authority's contracts at financial close.

If any costs are not recovered or recoverable through the IAA the statutory default levy shall apply.

#### 3.2.17 Clause 17 – Set Off

This clause states that:

- The Boroughs are not entitled to retain or set off any payment owing from the Authority;
- The Authority can retain or set off an amount against a payment if it has become due or payable; and
- If such a payment or deduction is disputed the disputed element shall be dealt with through the Disputes Resolution Procedure.

#### 3.2.18 Clause 18 – Late Payments



Where a payment from a Borough to the Authority is not paid before the due date it will accrue interest at a prescribed rate from being overdue until payment. This does not apply to any sum recovered through the default levy where the Levy Regulations would instead apply.

### 3.2.19 Clause 19 – Changes and Amendments

The Boroughs can request changes to the IAA, the Authority's contracts or the services provided by the Authority's contractors through the Change Procedure in Schedule 7. Any resultant costs or savings will be the responsibility of the Borough that requested the change except where they have a wider impact in which case they will be shared fairly and equitably.

The parties will work together to develop the information on waste reception points in Schedule 3 Part A prior to financial close.

### 3.2.20 Clause 20 – Disputes Resolution Procedure

All disputes should be dealt with in accordance with the Disputes Resolution Procedure in Schedule 8.

### 3.2.21 Clause 21 – Indemnities

Each Borough will indemnify the Authority, its employees and its contractors against liability for the following where they arise out of or as a consequence of non-performance (or performance) by the relevant Borough or the presence at a facility of that Borough (or its contractor):

- Death or personal injury;
- Environmental pollution or impairment;
- Loss of or damage to property
- Breach of statutory duty; or
- Actions, claims, costs, charges and expenses (including legal expenses).

This indemnity does not extend to instances where negligence, wilful misconduct or a breach of this agreement by the Authority leads to injury, loss, damage, cost or expense (except where the breach was caused by one of the Boroughs).

### 3.2.22 Clause 22 – Exit Arrangements

Between 2 and 3 years from the Contract expiry date or as soon as possible in the event of termination the Signatory Parties will meet and discuss replacement arrangements.

### 3.2.23 Clause 23 – Confidentiality

Each party shall

- treat confidential information belonging to other signatories as such and safeguard it;
- not disclose any such information to any other party without prior written consent from the information owner except where necessary under the obligations of the IAA or permitted through the FoI Regulations or Environmental Information Regulations (EIR); and
- Not use any such information except for the purposes of this agreement.

The above does not apply when:

- The information becomes public (other than through breach of the above);
- It is received from a third party who lawfully acquired it, did not obtain it from the disclosing party (including indirectly) and is not obligated to restrict its disclosure;
- The same information was developed completely independently without disclosure of the confidential information in question;
- It is released in response to a legal obligation (including Fol), court order or notice/decision of a competent Authority; and
- It is provided to a professional advisor who themselves is bound to confidentiality to assist with meeting obligations under the IAA.

Confidential information should not be deemed generally available to the public if it is known to those people that have a specific commercial interest in it. A combination of two or more portions of confidential information are not deemed publicly available by virtue of the individual portions being available. Provided confidential information is not disclosed it can be used as a basis for techniques, ideas or know how by a Signatory Party.

All of the above extends beyond the expiry date or terminations of the Authority's Contracts.

#### 3.2.24 Clause 24 – Freedom of Information

All parties acknowledge each other's responsibilities under Fol and EIR and will assist and cooperate with each other in this regard.

#### 3.2.25 Clause 25 – Data Protection

It is not envisaged that the Data Protection Act (DPA) will apply but all parties will comply where it does. All parties shall indemnify each other against the implications (including legal costs) of breach of the DPA.

#### 3.2.26 Clause 26 – Public Relations and Publicity

The Boroughs shall use reasonable endeavours (and best endeavours with regards its contractors) to prevent communications to the media by themselves, their employees or agents about any matter concerning this agreement without prior consultation with the Authority.

The Authority shall use reasonable endeavours to ensure that the Boroughs are consulted before any communications to the media concerning this agreement or the Authority's contracts.

Any images of any facility or other property used by the Authority or its Contractors should not be taken without permission from the Authority. Approval may not be unreasonably withheld.

#### 3.2.27 Clause 27 – Waiver

Any delay or failure to exercise a right or remedy in connection with this agreement, or the partial exercising of such, does not constitute a waiver shall not prevent the application of that or any other right or remedy.

Such a waiver is only valid if given in writing by the party giving it and shall only apply in that specific context.

### 3.2.28 Clause 28 – No Agency

Neither the Boroughs nor their contractors shall be considered agents of the Authority except under circumstances expressly permitted by the IAA.

### 3.2.29 Clause 29 – No Partnership

The agreement does not operate or create a partnership and no party is permitted to represent the others in any way.

### 3.2.30 Clause 30 – Entire Agreement

Except where specifically expressed the IAA document constitutes the entire agreement between the parties.

In entering into this agreement the parties acknowledge that they have never relied upon any statement, representation, warranty or other provision made by any person (whether party to this agreement or not) except expressly referred to in this agreement and the only remedy available is any remedy under this agreement. This should not apply to any statement, representation, warranty made fraudulently or induced by fraud.

### 3.2.31 Clause 31 – Severability

If a court or administrative body finds a provision of the IAA to be unenforceable or invalid this will only apply to that provision and all other provisions shall remain valid and in force. The parties agree to attempt to replace the provision with a valid and enforceable one which achieves the same objectives.

### 3.2.32 Clause 32 – Counterparts

This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but which shall together constitute one agreement.

### 3.2.33 Clause 33 – Notices

All demands, notices and communications shall be in writing (either post or fax) or via e-mail. The clause states requirements with regards how notices should be provided and the timescales of effect relevant to the specific means by which the notice was served.

### 3.2.34 Clause 34 – Third Party Rights

Third parties do not have rights under the agreement.

### 3.2.35 Clause 35 – Governing Law

The law of England and Wales governs the agreement.

### 3.2.36 Schedule 1 (Part A and Part B) – WCA Collection Systems

This schedule contains a series of tables for each Borough to set out the collection system, waste receptacles and waste collection frequency for each kerbside collected waste stream from 4 different housing types and other waste streams.

### 3.2.37 Schedule 2 (Part A and Part B) – Forecast Tonnages

This Schedule sets out the tonnages that each Borough expects to deliver by waste stream.

### 3.2.38 Schedule 3 (Part A and Part B) – Reception Points

This sets out the reception points that Boroughs will deliver waste to.

### 3.2.39 Schedule 4 – Charging Mechanism

Schedule 4A sets out the system under which payments from the Boroughs to the Authority will be calculated after service commencement including any deductions and additional payments.

### 3.2.40 Schedule 5 – HWRCs

This Schedule links to clause 11 in the main body of text (HWRCs) and sets out the HWRCs that Boroughs have previously agreed to transfer to the Authority and the currently agreed development proposals for each of these sites.

### 3.2.41 Schedule 6 – Waste Acceptance Protocol

The waste acceptance protocol is a flow diagram that will form part of the contract between the Authority and its Waste Services Contractor. This sets out the process by which waste is accepted and the course of actions required if a load of waste is believed to not meet the waste acceptance criteria. The series of actions include inspections and the treatment or disposal of the waste at differential cost to the Borough delivering it where it is agreed by the Authority and its contractor to not meet the specification. This schedule will be completed after financial close.

### 3.2.42 Schedule 7 – Change Procedure

The change procedure relates to Clause 19 of the IAA and further sets out the scope of changes that can be made alongside different processes by which changes can be requested, considered and implemented depending upon whether they are requested before or after financial close in the Authority's procurement process and the party requesting the change (either Authority or Constituent Borough).

No party may propose or implement a change:

- That requires changes to the services under the Authority's contracts that infringes legislation and guidance or is inconsistent with Good Industry Practice;
- Which would cause any consent to be revoked (or for a new consent to be required to implement the change that cannot be obtained);
- That would materially affect the Authority's contractors ability to deliver their services except where a corresponding change notice reflecting the change has been issued under the relevant Authority contract;
- Which would affect the health and safety of any person;
- Which would require the Authority's Contractors to implement the change in an unreasonable time;
- Which would materially and adversely affect the Authority's procurement processes;
- Which would materially and adversely affect another party to this agreement except where they have consented;

- Where the authority doesn't have the legal capacity to require the change to be implemented; and
- Where it would constitute a breach under one or both of the Authority's contracts or lead to default.

If any of the Signatory Parties wishes to propose a change essential to achieve the aims of the IAA prior to financial close in the Authority's procurement process it may serve notice to the other parties including such details as the proposed change and the known impact on the procurement process in addition to a first draft of an Amending Agreement which is provided as an annex to the Schedule.

If a majority of the signatory parties agree the change then the relevant Borough and the Authority will enter into dialogue about it. If agreement has been reached the Authority will issue an amendment agreement which all Signatory Parties should execute as soon as reasonably possible. If agreement is not reached then the relevant Borough can refer the matter to the Disputes Resolution Procedure.

Changes may be requested to the IAA or the Authority's Contracts by a Borough or Boroughs after financial close in writing. The process is similar to that above unless the proposed change would require the Authority to request a change under one or both of its contracts in which case the Authority cannot unreasonably refuse to pursue such a change and the Boroughs must accept the outcome in line with the relevant change procedure in the relevant contract(s). The Authority will notify the Boroughs of the costs and other implications if a change is requested under one or more of its contracts. If the change would not require a change to the Authority's contracts then the parties will use all reasonable endeavours to agree the change.

If the change is agreed the Authority will issue an Amending Agreement as above. The proposed change can be withdrawn before the parties enter into the amending agreement but the relevant Boroughs will be liable for any costs if the Authority has already requested the change to its contractors.

The Authority can also request changes after financial close under a process similar to that above for Borough changes except where a change has already been agreed to by the Authority under its contracts in which case the change will be deemed agreed by the Boroughs with no recourse to the Disputes Resolution Procedure.

#### 3.2.43 Schedule 8 – Disputes Resolution Procedure

If a dispute arises in relation to any aspect of the IAA the parties will consult in good faith to attempt to come to an agreement. If agreement is not reached either party can issue a notice and refer the dispute to adjudication. The nominated adjudicator will be selected from a relevant panel of independent experts jointly appointed by the Signatory Parties (or independently appointed if they cannot agree). If either party then wishes to do so it can refer the dispute to independent arbitration which is final and binding.

The costs should be borne as specified by the adjudicator/arbitrator (or equally as a default in the case of adjudication) and submitted information will be treated as confidential.

Where any dispute raises issues under the Authority's Contracts or affects the Authority's rights or relationships and this results in arbitration or adjudication in relation to the Contracts then the Authority can require the Boroughs to provide submissions as reasonably required to that process. The Boroughs will not have access to any document relating to a dispute between the Authority

and its contractors except where it is relevant to a dispute under the IAA and used purely for that purpose.

#### 3.2.44 Schedule 9 – Representatives and Contact Details

This sets out the names and contact details with regards to the Representative that each Borough is required to appoint in line with Clause 4.



Dated

*30th July*

2008

- (1) North London Waste Authority
- (2) London Borough of Barnet
- (3) London Borough of Camden
- (4) London Borough of Enfield
- (5) London Borough of Hackney
- (6) London Borough of Haringey
- (7) London Borough of Islington
- (8) London Borough of Waltham Forest

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**Memorandum of Understanding in relation to a Waste Management Inter Authority Agreement**

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THIS MEMORANDUM OF UNDERSTANDING is made on the [ ] day of [ ] 2008

**IMPORTANT NOTE**

This MOU is subject to contract and is not intended to be legally binding nor does it represent a complete summary of the contractual or commercial aims of NLWA and the Authorities but instead expresses their desires and understandings.

**BETWEEN**

- (1) North London Waste Authority of Town Hall, Judd Street, London WC1H 9JE ("NLWA");
- (2) London Borough of Barnet of Town Hall, North London Business Park, Oakleigh Road South, London N11 1NP ("Barnet");
- (3) London Borough of Camden of Town Hall, Judd Street, Camden, London WC1H 9JE ("Camden");
- (4) London Borough of Enfield of Civic Centre, Silver Street, Enfield, London EN1 3XA ("Enfield");
- (5) London Borough of Hackney of Town Hall, Mare Street, Hackney, London E8 1EA ("Hackney");
- (6) London Borough of Haringey of Civic Centre, High Road, Wood Green, London N22 8LE ("Haringey");
- (7) London Borough of Islington of Town Hall, Upper Street, Islington, London N1 2UD ("Islington"); and
- (8) London Borough of Waltham Forest of Town Hall, Forest Road, Walthamstow, London E17 4JF ("Waltham Forest"),

(together the "Authorities" and each an "Authority")

**BACKGROUND**

- (A) NLWA is a joint waste disposal authority established pursuant to the Waste Regulation and Disposal (Authorities) Order 1985 ("the Order").
- (B) Each of Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest are waste collection authorities in their respective areas (together the "WCAs" and each a "WCA").
- (C) Pursuant to the Order, NLWA is obliged to discharge specified waste disposal functions in its area, that being the combined area of the WCAs ("WCAs' Area").
- (D) Under sections 48(1) and (2) of the Environmental Protection Act 1990 ("EPA Act"), it is the duty of each WCA to deliver for disposal all waste which is

collected by the WCA to such places as NLWA directs (with the exception of waste for which the WCA decides to arrange to recycle).

- (E) Under section 51 of the EPA Act, NLWA is responsible for disposing of all waste collected by the WCAs in the WCAs' Area.

## **OPERATIVE PROVISIONS**

### **1. THE MEMORANDUM OF UNDERSTANDING**

- 1.1 This Memorandum of Understanding ("MOU") is between the NLWA and the constituent waste collection authorities ("WCAs" and each a "WCA").
- 1.2 This MOU and the subsequent Inter Authority Agreement ("IAA"), the latter of which will be legally binding, are to be considered as the strategic link between the Authorities in the development and delivery of the Authorities' joint waste strategy (the "Authorities' Joint Waste Strategy").
- 1.3 The Authorities acknowledge that the Authorities' Joint Waste Strategy dated September 2004 is currently being revised, and as such all references to the Authorities' Joint Waste Strategy in this MOU are to be read as referring to the latest draft of that document or, once it has been completed, to the final Authorities' Joint Waste Strategy.
- 1.4 The purpose of this MOU is:
- 1.4.1 to define the aims, objectives, roles and respective responsibilities of the Authorities in delivering Best Value, legislative targets and the aims of joint working; and
  - 1.4.2 to manage the process of joint working and collaboration, in the procurement of the contractual arrangements to be entered into between NLWA and a contractor or contractors (the "Contractor(s)") to deliver the Authorities' Joint Waste Strategy (the "Contract(s)").
- 1.5 Nothing contained in this MOU will be deemed to constitute a relationship between the Authorities of partnership, joint venture, principal and agent or employer and employee. None of the Authorities has, nor may it represent that it has, any authority to act or make any commitments on the other Authority's behalf.

### **2. DURATION OF THIS MOU**

- 2.1 In order to deliver sustainable waste management on the scale required, long-term investment will be necessary. This investment must be matched by a firm commitment to abide by the terms of the IAA and to deliver the Authorities' Joint Waste Strategy.
- 2.2 This MOU shall take effect on the date hereof and shall terminate upon the date of any IAA between the Authorities, or earlier by agreement.

### **3. RELATIONSHIP TO THE CONTRACT(S)**

3.1 Each Authority acknowledges that:

3.1.1 NLWA will be entering into the Contract(s) for sustainable waste management services;

3.1.2 the WCAs' input, in terms of recyclable and organic waste collection and design of collection services is imperative to the success of the Contract(s); and

3.1.3 the collection services should not adversely affect the reception and handling arrangements implemented under the Contract(s).

3.2 This MOU shall not form a part of the Contract(s).

3.3 The Authorities intend to enter into the IAA prior to the commencement of any Contract(s), which will demonstrate a formal and binding commitment from the NLWA and WCAs to work in partnership with the Contractor(s) to deliver the common goals.

#### **4. DEVELOPMENT OF THE CONTRACT(S)**

4.1 The NLWA shall involve representatives of the WCAs in matters relating to the Contract(s)' technical specification, financial arrangements and subsequent management, in circumstances where there may be a material impact upon the functions and activities of a WCA, including any matters subject to this MOU.

4.2 The issue of contract management will be a standing item on the agenda for meetings of the Directors of Environment and Finance Officers of each WCA and NLWA meetings.

#### **5. CHANGES TO THIS MOU**

5.1 It is anticipated that this MOU will evolve over time, as the parties move towards the development of an IAA. It is intended that these changes will be agreed and documented in accordance with this clause 5.

5.2 Each Authority may propose changes to this MOU by raising the proposed amendments before meetings involving all Directors of Environment of the WCAs and authorised persons of NLWA.

5.3 The Authorities may only accept such changes to this MOU as shall serve to enhance the delivery of the goals and objectives of the Authorities' Joint Waste Strategy without prejudicing any of the relevant Authorities.

5.4 Proposed changes will be reviewed by and agreed between the Directors of Environment of the WCAs and authorised persons at NLWA each acting reasonably.

5.5 Once a proposed change to this MOU is agreed, it will be recorded in a statement of principle. This statement of principle shall then be signed and dated by the Authorities and inserted into Schedule 1 (Statements of Principles) of this MOU under an appropriate title and number.

## 6. **JOINT WORKING**

6.1 The Authorities shall explore the opportunities for joint working and shared service arrangements between the WCAs and/or the WCAs and NLWA following the principles of the partnership approach adopted in the Authorities' Joint Waste Strategy.

6.2 Whether or not formal joint arrangements or shared service arrangements are put in place between any of the Authorities, each Authority agrees to explore how the principles of joint working could be applied to the Contract(s), including (but not limited to):

6.2.1 optimising size and use of facilities;

6.2.2 combining resources;

6.2.3 sharing of skills and human resources; and

6.2.4 maximising value for money.

## 7. **DEVELOPMENT OF FACILITIES**

The delivery of the Authorities' Joint Waste Strategy will require significant investment in new facilities including a new residual waste treatment plant, composting sites, materials recovery facilities (MRFs) and bulking stations.

## 8. **SITING OF FACILITIES**

8.1 The Authorities shall jointly undertake an exercise to identify potential waste management sites within each WCA area in order to provide reception facilities that will optimise transport requirements for the WCAs.

8.2 In order to ensure that these facilities are commissioned in accordance with the required timetable for delivery of the targets in the Authorities' Joint Waste Strategy, each WCA will use its reasonable endeavours in its capacity as WCA (and not as Planning Authority) to facilitate the establishment, siting and construction of these facilities in accordance with such timetable.

**9. WASTE PREVENTION**

9.1 The Authorities will follow the waste hierarchy in the Authorities' Joint Waste Strategy ("Waste Hierarchy"), implementing policies to prevent or reduce the amount of municipal waste arising.

**10. COLLECTION OF RECYCLABLE & BIODEGRADABLE WASTES**

10.1 The WCAs shall move progressively towards the partnership model in the Authorities' Joint Waste Strategy and shall agree in the IAA forms, qualities and quantities of their collected recyclable and biodegradable wastes to be delivered to NLWA facilities.

**11. SALE OF RECYCLATE**

11.1 The outputs (other than process rejects) of recycling and composting facilities shall be termed "Recyclates".

11.2 In order to manage the bulk input of Recyclates into the market place, if it is agreed in the IAA, NLWA will assume responsibility for the marketing of all Recyclates under the terms of the IAA and shall use reasonable endeavours to obtain best value. This will give economies of scale for reprocessors and may attract reprocessing industries to the WCAs' Area, in accordance with the proximity principle. The WCAs will benefit through long term, stable prices and reduced risk.

**12. RESIDUAL WASTES**

12.1 If agreed in the IAA, NLWA will be responsible for the reception and treatment of all residual wastes and the fulfilment of biodegradable municipal waste ("BMW") diversion targets.

12.2 The WCAs recognise their significant role in relation to the achievement of these BMW diversion targets through the separate collection of biodegradable wastes and waste prevention work.

**13. FINANCIAL ALLOCATION**

13.1 The Authorities shall work together to establish the respective payment obligations for the IAA and the Contract(s) and site and property acquisitions and to build procedures for the management and monitoring of costs, Landfill Allowance Trading Scheme ("LATS") costs and revenues and specific contractual liabilities.

13.2 In particular the Authorities shall apply the following principles to the establishment of the financial allocation mechanism:

- 13.2.1 fairness;
  - 13.2.2 consistency with the Waste Hierarchy;
  - 13.2.3 recognition of collection interface risk; and
  - 13.2.4 practicality and deliverability (including, but not limited to, a consideration of Authority governance and probity issues).
- 13.3 If agreed in the IAA, LATS penalties will be apportioned on the basis of the performance of WCAs and the NLWA in reducing the biodegradable content of municipal solid waste landfilled.

**14. COMMUNICATION**

- 14.1 It is imperative that the Authorities communicate effectively, particularly when determining the viability of any new initiatives and working practices that may have an impact upon both the council tax payer and the development and implementation of the Authorities' Joint Waste Strategy.
- 14.2 In order to ensure effective communication between NLWA, the WCAs and the Contractor(s) pursuant to the Contract(s), any matters that materially affect the Authorities' Joint Waste Strategy, the IAA or the Contract(s) shall be referred to the Directors of Environment and Directors of Finance of each WCA.
- 14.3 With effect from the date hereof, each Authority shall have regard to the terms of this MOU and abide by the principles enshrined within it. Each Authority shall develop and implement systems compliant with the aims and objectives of the Authorities' Joint Waste Strategy.

**15. COUNTERPARTS**

This Agreement may be signed in any number of counterparts, each of which so signed will be an original, but together will constitute one and the same instrument.

**SIGNATURES**

This Memorandum of Understanding is agreed by the Leader for and on behalf of each Authority:

North London Waste Authority

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London Borough of Barnet

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London Borough of Camden

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London Borough of Enfield

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London Borough of Hackney

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London Borough of Haringey

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*George F Meehan*

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London Borough of Islington

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London Borough of Waltham Forest

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## **SCHEDULE 1**

### **STATEMENTS OF PRINCIPLE**

#### **STATEMENT OF PRINCIPLE 1: Intention to enter into Deed of Confidentiality**

The Authorities intend to enter into a Deed of Confidentiality which incorporates the following clauses:

**"1. CONFIDENTIALITY**

- 1.1 Each Authority shall keep confidential any and all information that it may acquire in relation to the other Authorities during the course of discussions or sharing of documents while drafting and negotiating the MOU and the IAA, and wherever the WCAs are consulting on drafting and negotiating the Contract(s).
- 1.2 For the purposes of this clause, 'Confidential Information' means all information in respect of the business of an Authority including, without prejudice to the generality of the foregoing, any ideas, business methods, finance, prices, business, financial, marketing, development or manpower plans, computer systems and software, services, and all information in respect of the Authorities' waste management arrangements.
- 1.3 No Authority shall use any other Authority's Confidential Information for any purpose other than to perform its obligations under the MOU and the IAA. Each Authority shall ensure that its officers and employees comply with the provisions of this clause 1. In the event of a breach of this clause 1, the Authority in breach shall immediately disclose this to the Authorities whose Confidential Information has been disclosed.
- 1.4 The obligations on an Authority set out in this clause will not apply to any Confidential Information which:
  - 1.4.1 an Authority can demonstrate is in the public domain (other than as a result of a breach of this clause 1);
  - 1.4.2 an Authority is required to disclose by order of a court of competent jurisdiction;
  - 1.4.3 an Authority is required to disclose following a request made under either the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or any related or subsequent legislation; or
  - 1.4.4 an Authority has disclosed to the professional advisers, lawyers, auditors and bankers under terms of confidentiality and those

professional advisers, lawyers, auditors and bankers are bound by a duty of confidence.

- 1.5 Where a request for information is made under either the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or any related or subsequent legislation, the Authority (of whom such request has been made) must consult with those other Authorities who have the benefit of the Confidential Information in question to determine whether it is obliged to disclose the Confidential Information, or whether there is a discretion or exemption applicable. Authorities being consulted must respond to the Authority no later than 10 days after receiving notification from the Authority of the request for information. Following receipt of such a response, and in any event within any applicable statutory time limits, the Authority shall determine whether it is obliged to disclose the Confidential Information.
- 1.6 If it is determined that Confidential Information is to be disclosed, the Authorities with the benefit of the Confidential Information may, as part of their consultation under clause 1.4, require that information is disclosed in a certain manner and at a certain time, provided that such requirement does not fetter any obligation the Authority has to comply with all laws.
- 1.7 If there is a breach of this clause 1, the aggrieved party shall have all remedies available at law.
- 1.8 Without prejudice to clause 1.7, each and every Authority accepts and acknowledges that since damages may not be an adequate remedy for breach of this clause, the other Authorities shall jointly and separately be entitled to apply for an injunction to prevent a breach or continued breach, or in the case of a breach of the obligation to give information about any disclosure, an order for specific performance.

## **2. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The Authorities do not intend that any of the terms of this Deed will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## **3. DISPUTE RESOLUTION**

- 3.1 If a major dispute or difference of any kind arises between any, some or all of the Authorities, the Authorities in dispute shall notify each other in writing as soon as is reasonably practicable that a formal dispute has occurred. In the event of such a dispute, each Authority in dispute shall appoint a designated representative to meet to attempt to resolve the dispute. The representatives shall meet as often as is necessary in order to gather and exchange all relevant information with respect to the matter in issue. In the event that the designated

representatives cannot reach agreement within 14 calendar days they shall escalate their disagreement to the senior levels of management within their respective organisations for resolution within a further 14 calendar days.

- 3.2 Subject to the requirements under clause 3.1 being exhausted, in the event of any dispute in relation to clauses 1 or 2 cannot be resolved amicably between the Authorities, then the matter may be referred to arbitration by any of the Authorities to the dispute.”

**SIGNATURES**

This STATEMENT OF PRINCIPLE 1: Intention to enter into Deed of Confidentiality is agreed by the following duly authorised officers for and on behalf of each Authority:

North London Waste Authority

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London Borough of Barnet

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London Borough of Camden

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London Borough of Enfield

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London Borough of Hackney

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London Borough of Haringey

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London Borough of Islington

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London Borough of Waltham Forest

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**DATE**

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Dated

2008

- (1) North London Waste Authority
- (2) London Borough of Barnet
- (3) London Borough of Camden
- (4) London Borough of Enfield
- (5) London Borough of Hackney
- (6) London Borough of Haringey
- (7) London Borough of Islington
- (8) London Borough of Waltham Forest

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## Deed of Confidentiality

In relation to the development of a waste management  
Memorandum of Understanding and Inter Authority Agreement

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THIS DEED is made on the [ ] day of [ ] 2008

**BETWEEN**

- (1) North London Waste Authority of Town Hall, Judd Street, London WC1H 9JE ("NLWA");
- (2) London Borough of Barnet of Town Hall, North London Business Park, Oakleigh Road South, London N11 1NP ("Barnet");
- (3) London Borough of Camden of Town Hall, Judd Street, Camden, London WC1H 9JE ("Camden");
- (4) London Borough of Enfield of Civic Centre, Silver Street, Enfield, London EN1 3XA ("Enfield");
- (5) London Borough of Hackney of Town Hall, Mare Street, Hackney, London E8 1EA ("Hackney");
- (6) London Borough of Haringey of Civic Centre, High Road, Wood Green, London N22 8LE ("Haringey");
- (7) London Borough of Islington of Town Hall, Upper Street, Islington, London N1 2UD ("Islington"); and
- (8) London Borough of Waltham Forest of Town Hall, Forest Road, Walthamstow, London E17 4JF ("Waltham Forest"),

(together the "Authorities" and each an "Authority")

**BACKGROUND**

- (A) NLWA is a joint waste disposal authority established pursuant to the Waste Regulation and Disposal (Authorities) Order 1985 ("the Order").
- (B) Each of Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest are waste collection authorities in their respective areas (together the "WCAs" and each a "WCA").
- (C) Pursuant to the Order, NLWA is obliged to discharge specified waste disposal functions in its area, that being the combined area of the WCAs ("WCAs' Area").
- (D) Under sections 48(1) and (2) of the Environmental Protection Act 1990 ("EPA Act"), it is the duty of each WCA to deliver for disposal all waste which is collected by the WCA to such places as NLWA directs (with the exception of waste for which the WCA decides to arrange to recycle).
- (E) Under section 51 of the EPA Act, NLWA is responsible for disposing of all waste collected by the WCAs in the WCAs' Area.

- (F) NLWA intends to procure a new waste management service for the disposal of all waste collected by the WCAs in the WCAs' Area.
- (G) In support of this procurement, the Authorities intend to enter into a non-binding Memorandum of Understanding ("MOU"). Over time the MOU will be developed by the Authorities and agreed changes signed and documented in statements of principle which are to be appended to Schedule 1 of the MOU. The final agreement between the Authorities will be reflected in a legally binding Inter Authority Agreement ("IAA").
- (H) Both the MOU and the IAA are to be considered as the strategic link between the Authorities in the development and delivery of the Authorities' joint waste strategy (the "Authorities' Joint Waste Strategy").



## **OPERATIVE PROVISIONS**

### **1. CONFIDENTIALITY**

- 1.1 Each Authority shall keep confidential any and all information that it may acquire in relation to the other Authorities during the course of discussions or sharing of documents while drafting and negotiating the MOU and the IAA, and wherever the WCAs are consulting on drafting and negotiating the Contract(s).
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- 1.3 No Authority shall use any other Authority's Confidential Information for any purpose other than to perform its obligations under the MOU and the IAA. Each Authority shall ensure that its officers and employees comply with the provisions of this clause 1. In the event of a breach of this clause 1, the Authority in breach shall immediately disclose this to the Authorities whose Confidential Information has been disclosed.
- 1.4 The obligations on an Authority set out in this clause will not apply to any Confidential Information which:
  - 1.4.1 an Authority can demonstrate is in the public domain (other than as a result of a breach of this clause 1);
  - 1.4.2 an Authority is required to disclose by order of a court of competent jurisdiction;
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  - 1.4.4 an Authority has disclosed to the professional advisers, lawyers, auditors and bankers under terms of confidentiality and those professional advisers, lawyers, auditors and bankers are bound by a duty of confidence.
- 1.5 Where a request for information is made under either the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or any related or subsequent legislation, the Authority (of whom such request has been made) must consult with those other Authorities who have the benefit of the

Confidential Information in question to determine whether it is obliged to disclose the Confidential Information, or whether there is a discretion or exemption applicable. Authorities being consulted must respond to the Authority no later than 10 days after receiving notification from the Authority of the request for information. Following receipt of such a response, and in any event within any applicable statutory time limits, the Authority shall determine whether it is obliged to disclose the Confidential Information.

1.6 If it is determined that Confidential Information is to be disclosed, the Authorities with the benefit of the Confidential Information may, as part of their consultation under clause 1.4, require that information is disclosed in a certain manner and at a certain time, provided that such requirement does not fetter any obligation the Authority has to comply with all laws.

1.7 If there is a breach of this clause 1, the aggrieved party shall have all remedies available at law.

1.8 Without prejudice to clause 1.7, each and every Authority accepts and acknowledges that since damages may not be an adequate remedy for breach of this clause, the other Authorities shall jointly and separately be entitled to apply for an injunction to prevent a breach or continued breach, or in the case of a breach of the obligation to give information about any disclosure, an order for specific performance.

## 2. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

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## 3. **DISPUTE RESOLUTION**

3.1 If a major dispute or difference of any kind arises between any, some or all of the Authorities, the Authorities in dispute shall notify each other in writing as soon as is reasonably practicable that a formal dispute has occurred. In the event of such a dispute, each Authority in dispute shall appoint a designated representative to meet to attempt to resolve the dispute. The representatives shall meet as often as is necessary in order to gather and exchange all relevant information with respect to the matter in issue. In the event that the designated representatives cannot reach agreement within 14 calendar days they shall escalate their disagreement to the senior levels of management within their respective organisations for resolution within a further 14 calendar days.

3.2 Subject to the requirements under clause 3.1 being exhausted, in the event of any dispute in relation to clauses 1 or 2 cannot be resolved amicably between

the Authorities, then the matter may be referred to arbitration by any of the Authorities to the dispute.

4. **COUNTERPARTS**

This Deed may be executed and delivered in any number of counterparts, each of which so executed will be an original, but together will constitute one and the same instrument.

**SIGNATURES**

This Deed is agreed by the following duly authorised officers for and on behalf of each Authority:

North London Waste Authority

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London Borough of Barnet

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London Borough of Camden

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London Borough of Enfield

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London Borough of Hackney

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London Borough of Haringey

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London Borough of Islington

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London Borough of Waltham Forest

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