

Appendix E – Memorandum Of Understanding

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

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

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CONTENTS

| Clause | | Page |
|------------------|---|-------------|
| 1 | THE MEMORANDUM OF UNDERSTANDING..... | 6 |
| 2 | DURATION OF THIS MOU..... | 6 |
| 4 | DEVELOPMENT OF THE CONTRACT(S) | 7 |
| 5 | CHANGES TO THIS MOU | 7 |
| 6 | JOINT WORKING..... | 8 |
| 7 | DEVELOPMENT OF FACILITIES..... | 8 |
| 8 | SITING OF FACILITIES | 8 |
| 9 | WASTE PREVENTION | 9 |
| 10 | COLLECTION OF RECYCLABLE & BIODEGRADABLE WASTES | 9 |
| 11 | SALE OF RECYCLATE | 9 |
| 12 | RESIDUAL WASTES | 9 |
| 13 | FINANCIAL ALLOCATION..... | 9 |
| 14 | COMMUNICATION | 10 |
| 15 | COUNTERPARTS | 10 |
| Schedules | | |
| 1 | STATEMENTS OF PRINCIPLE..... | 12 |

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

London Borough of Barnet

London Borough of Camden

London Borough of Enfield

London Borough of Hackney

London Borough of Haringey

London Borough of Islington

London Borough of Waltham Forest

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

London Borough of Barnet

London Borough of Camden

London Borough of Enfield

London Borough of Hackney

London Borough of Haringey

London Borough of Islington

London Borough of Waltham Forest

DATE
