

Royal Borough of Kingston upon Thames

and

London Borough of Sutton

and

London Borough of Merton

and

London Borough of Croydon

Inter Authority Joint Working Agreement
For the Procurement of the South London Waste Collection and Environmental
Services Projects (Phase C)

THIS AGREEMENT is made this day of
2015

BETWEEN

- (1) **London Borough of Croydon** of Bernard Weatherill House, Mint Walk, Croydon, CR0 1EA (“Croydon”)
- (2) **Royal Borough of Kingston upon Thames** of High Street, Kingston upon Thames, KT1 1EU (“Kingston”)
- (3) **London Borough of Merton** of Civic Centre, London Road, Morden, SM4 5DX (“Merton”)
- (4) **London Borough of Sutton** of Civic Offices, St. Nicholas Way, Sutton, SM1 1EA (“Sutton”)

Together referred to as the “**Authorities**”

WHEREAS :

- (A) The South London Waste Partnership (the “Partnership”) was formed between the London Boroughs of Croydon, Merton and Sutton and the Royal Borough of Kingston upon Thames in pursuance of arrangements made under sections 101 (5) and 101 (5B) and 102 Local Government Act 1972, section 20 Local Government Act 2000 as amended by Local Authorities (Arrangements for the Discharge of Functions) (England) (Amendment) Regulations 2001, the Local Authorities (Goods and Services) Act 1970, and all other relevant enabling powers at the time.
- (B) The Partnership was initially formed to provide improved waste transport, transfer and disposal services and meet the Landfill Allowance Trading Scheme (LATS) targets of the Authorities
- (C) The Authorities who form the Partnership have decided to use the skills and Council officers’ experience gained from previous procurements and the relationships established within the Partnership to jointly procure:
 - (i) Waste Collection, Recyclate Material Sales, Street Cleaning, Commercial Waste, Winter Maintenance, Fleet Management and Maintenance, (“Lot 1”).
 - (ii) Parks, Grounds Maintenance and related services for Sutton and Merton, though Croydon and Kingston may elect to join the contract at a later date (“Lot 2”).

- (D) The Authorities have agreed that this Project and the joint procurement of Lot 1 and Lot 2 is in the best interests of all Authorities in terms of economy, efficiency and effectiveness.
- (E) This Project will be known as The South London Waste Collection and Environmental Services (Phase C) Project and is not a procurement exercise that fell initially within the Partnerships' agreed objectives and purpose under the Inter Authority Agreement dated the 26th August 2008 ("First Agreement") or the Inter Authority Agreement dated 23 February 2011 ("Second Agreement"), which will be referred to within this Agreement as the Initial Agreements).
- (F) The Procurement is being carried out in pursuance of sections 101 (5) and 101 (5B) and 102 Local Government Act 1972, section 20 Local Government Act 2000 as amended by Local Authorities (Arrangements for the Discharge of Functions) (England) (Amendment) Regulations 2001, the Local Authorities (Goods and Services) Act 1970, Section 1 to 8 Localism Act 2011 and all other relevant enabling powers.
- (G) Croydon has agreed to be the Lead Authority for the purpose of procuring and entering into the proposed Project's Contract(s) on behalf of the Authorities subject to each of the Authorities entering into this Agreement.
- (H) By entering into this Agreement, the other Authorities (which in this clause shall mean Kingston, Merton and Sutton) confirm that they have agreed to delegate to Croydon the function of entering into the proposed Project Contract(s) as the Lead Authority and thereafter continuing to act in any associated matter requiring legal personality in respect thereof.
- (I) A contract notice issued in the Official Journal of the European Union on the 27 January 2015 under reference no. **2015/s 022-036099** defines the nature and extent of the Project's contracts and a copy of this notice is attached as Appendix 'A' (the "Projects Contract(s)")
- (J) A second Inter Authority Agreement under Phase C will be entered into by the Lead Authority and the other Authorities after the procurement covered by this Agreement has been completed with regards entering the Contracts and the managing of the contracts to secure the most effective, economic and efficient discharge of the services under Lot 1 and Lot 2.
- (K) For the sake of clarity it is confirmed that the Initial Agreements and their provisions shall continue in full force and effect unchanged by this Agreement.

IT IS HEREBY AGREED AS FOLLOWS :-

1 **Interpretation**

1.1 In this Agreement unless the context otherwise requires the following expressions have the following meanings-

“ Agreement” means this Agreement comprising the terms and conditions together with the Schedules and Appendices attached hereto

“Authority Lead Officers” means those officers of the Authorities involved in the Project in accordance with Clause 8

“The Commencement Date” means the date on which this Agreement is executed by the Authorities

Committees means the committees of Sutton and/or Kingston as defined by Sections 101 and 102 of the Local Government Act 1972.

“The Contracts” means the contracts which are procured under this Agreement under Lots 1 and 2

“The Contractor” means the contractor(s) appointed by the Authorities to under Lot 1 and 2

“Council Premises” means any property owned or leased or otherwise in the possession of a relevant Authority consisting of offices, buildings and land, which are used by the Contractor, whether exclusively or together with the relevant Authority or others, for the performance of the Services, and for the avoidance of doubt includes the transfer stations.

“Executives” mean the executives of Merton and/or Croydon as defined in Part II of the Local Government Act 2000

“The Lead Authority” means the London Borough of Croydon

“Loss” includes any loss and liability, save any costs associated with loss of opportunity or loss of projected savings, directly suffered by the Authorities together or any one Authority with any damage, expense, liability or costs reasonably incurred in contesting any claim to liability and quantifying such loss and liability

“

“The Officers” means the Authorities’ staff tasked with working on the Project

“Partnership” means the South London Waste Partnership which is formed between the London Boroughs of Croydon, Merton and Sutton, and the Royal Borough of Kingston Upon Thames.

“Procurement” means the procurement of the Contracts, and “the Procurement Phase” means that phase of the Project which relates to the procurement of the Contracts

“Project” for the purposes of this Agreement means the shared object of the Authorities to secure the procurement of Contractors to fulfill the Contracts under Lot 1 and Lot 2.

“The Procurement Cost Allocation Scheme” mean the principles and arrangements set out in Schedule A for determining the allocation of costs arising in the Procurement of the Contracts under Lots 1 and 2

“Service Phase” means the phase of the project related to the management of the contracts.

“Working Day” means any day on which the Authority’s offices are normally open for business

1.2 Reference to any statute or statutory provisions includes a reference to that statute or statutory provisions as from time to time amended extended or re-enacted.

1.3 Words importing the singular include the plural words importing any gender include every gender, the words importing persons include bodies corporate and unincorporated: and (in each case) vice versa.

1.4 Reference to Clauses and Schedules are references to clauses and schedules of this Agreement and any reference to a sub provision is unless otherwise stated a reference to a sub provision of the provision in which the reference appears.

1.5 The Clause and paragraph headings and titles appearing in this Agreement are for reference only and shall not affect its construction or interpretation.

2 TERM

2.1 This agreement shall come into effect from [XXXX] and shall continue in force in respect of the Authorities unless terminated by unanimous agreement of the Authorities who shall in reaching such agreement also agree the timescale for termination. On the second Inter

Authority Agreement referred to above in (J) this Agreement will terminate and any clauses of this Agreement that will remain in existence after the termination will be identified in the second Inter Authority Agreement.

3. General principles

- 3.1 This Agreement has been entered into by the Authorities to establish and effect provisions for performance of the Procurement Phase of the Project and to clarify the Authorities' responsibilities in respect thereof of each other.
- 3.2 The Authorities will work together in partnership and in an open, co-operative and collaborative manner for the duration of this Agreement. The Authorities will work together in order to endeavour to procure the successful implementation of the Project and each will respond in a timely manner to all relevant requests from the other Authorities.
- 3.3. Each of the Authorities hereby represents to the other that it has obtained all necessary consent sufficient to ensure the delegation of functions provided for by this Agreement for the purposes of the Project.
- 3.4 The Authorities shall use all reasonable endeavours to procure that their respective officers who are involved in the project shall at all times act in the best interests of the Project. The Authorities expressly acknowledge that they in carrying out activities under this Agreement or otherwise in connection with the Project shall use all reasonable endeavours to act in the long term best interests of the Project to secure the most effective, economical and efficient outcome for all of the Authorities, and the Authorities hereby authorise their officers to act in such a way.
- 3.5 The Authorities shall also use all reasonable endeavours to make available resources within their respective organisations to enable the procurement project to progress. The Parties will agree which resources are necessary as and when the need arises.
- 3.6 The Authorities commit to share data and knowledge relevant to the Project where appropriate and in accordance with the Data Protection Act 1998.
- 3.7 The Authorities shall review the terms of this Agreement where necessary. Any changes to the terms shall only be made by unanimous agreement between the Authorities and shall be recorded in writing and signed by all the Authorities. Changes shall take effect upon signing and continue in force until any further agreement.
- 3.8 The authorities agree for the avoidance of all doubt that the rights and liabilities in the Contracts are unless the context otherwise dictates

jointly shared and where any apportionment is required this shall be done in accordance with the principles that have been adopted under this Agreement.

4 STATUS OF THE AGREEMENT

- 4.1 The Authorities agree that the Agreement shall take the form of a legally binding relationship and mutual commitments between them created by the Agreement shall from the date hereof be construed accordingly.

5. PROJECT OBJECTIVES

The objectives of the Project are as follows:

- To target at least 10% savings on the costs of service provision through lower service costs and recycle revenues;
- To deliver residents a high performing service, achieving high levels of customer satisfaction;
- To provide improved environmental and carbon outcomes in the way we deliver environmental services;
- The date of commencement of the contracts for both lots to be no later than 1st April 2017.

6. GOVERNANCE

- 6.1 The Authorities' Executive or Committee will make those decisions with regards this Project which have been delegated to them in their respective Constitutions
- 6.2 The Strategic Steering Group is made up of the Directors / Executive Directors with responsibility for Environment within each Authority. The meetings are chaired by one of the Chief Executives on a rotating basis based on the model adopted by the South Waste London Partnership with regards the Initial Agreements. For the purposes of this Clause 6, the Strategic Steering Group's role is to ensure that senior officers in the Authorities oversee the deselection process and the specification as it develops at each stage of the competitive dialogue procedure up to an including the invitation to submit a final tender.
- 6.3 The Authorities' Executive or Committee have each respectively delegated authority to the Chair of Management Group in consultation with the Management Group, Strategic Steering Group, the SWLP Legal Lead and members of the Joint Waste Committee to deselect bidders and agree the specification at each stage of the competitive dialogue procedure up to an including the invitation to submit a final tender.

- 6.4 The Chair of the Management Group in consulting under Clause 6.2 with the Strategic Steering Group will be bound by the decision and recommendation of the Strategic Steering Group.

7. AUTHORITY LEAD OFFICERS

- 7.1 Each Authority shall from time to time appoint one of its officers to be the Authority Lead Officer.
- 7.2 Each Authority Lead Officer shall be responsible for liaising with the Chair of the Management Group and for ensuring that his/her Authority provides the support necessary to secure the effective achievement of the Project. In this context, “support” shall include the involvement and time of capable officers, the provision of information and the prompt consideration of matters referred to his/her Authority for determination.

8. OFFICER LIABILITY AND INDEMNITIES

- 8.1 When working on the Project, officers shall be deemed to be working on behalf of both their employing Authority, and made available and working on behalf of the other Authorities under Section 113 of the Local Government Act 1972.
- 8.2 In consequence of Clause 9.1 above, officers shall be treated as falling within the statutory immunity provided by section 265 of the Public Health Act 1875, as amended, in respect of their actions or omissions in respect of the Project.
- 8.3 Losses to each Authority
- 8.3.1 No Authority shall have any liability to the other Authorities unless specifically provided for under this Agreement in respect of any Loss which that Authority may suffer as a consequence of any action or omission by any Officer, whilst working on the Project.

9 INSURANCE

- 9.1 Each Authority shall obtain and maintain throughout the term of this Agreement insurance sufficient to cover all of their obligations under this Agreement . Each Authority shall indemnify the others against loss sustained as a result of a breach of this clause.

10 KEY SITES

- 10.1 Each Authority has agreed the depots (“the Depots”) that it will make available within its own Council area which it owns (on a freehold basis) or over which it has a long lease (which for the purposes of this

Clause 10 shall mean a period of 21 years or over) and which are suitable for the purposes of carrying out the Services under the contracts entered into under the Project.

- 10.2 As at the Commencement Date of this Agreement the Depots shall be those identified in the table in Schedule B.

11 LEAD AUTHORITY ROLE AND INDEMNITIES

- 11.1 The other Authorities (which in this clause shall mean Merton, Sutton and Kingston) have agreed to delegate to the London Borough of Croydon (“Croydon”) the authority to enter into the procurement of contracts under Lot 1 and Lot 2 as Lead Authority and continuing to act as the Lead Authority in any associated matter requiring legal personality.
- 11.2 The other Authorities have authorised Croydon to warrant that Croydon has the authority to enter into the Contracts under this Project for itself and for and on behalf of the Authorities.
- 11.3 The other Authorities agree that in relation to this Agreement:
- 11.3.1 In the event that an Authority withdraws from a procurement which falls under this Agreement, the withdrawing Authority will indemnify the other Authorities of the costs of the procurement incurred from the publication of the OJEU notice to the date of the procurement exercise being abandoned but for the avoidance of doubt shall not include any costs associated with loss of opportunity or loss of projected savings.
- 11.3.2 If the withdrawal of an Authority does not result in the procurement failing, the withdrawing authority will be liable for one-quarter of the total procurement costs.
- 11.3.3 If the actions of the withdrawing Authority results in a bidder(s) becoming entitled to compensation or where legal proceedings are issued by bidder(s), the withdrawing Authority will be liable to meet the bidder’s costs to the extent and degree that the withdrawing Authority is the cause of the compensation claim or costs resulting from the issue of legal proceedings.
- 11.3.4 Where an Authority withdraws from the procurement, and the other Authorities agree to continue but subsequently, at the discretion of the remaining parties, no award of contract is made, the Authority who had withdrawn would not be liable for

the full procurement costs and will be solely liable for one-quarter of the total procurement costs.

- 11.3.4 Save with regards 11.3.2 and 11.3.3, if any proceedings or claims are instituted against any of the Authorities arising out of the procurement entered into under this Project then then the costs of defending the proceedings or claims and the payment of any damages or settlement arising out of the proceedings or claims shall be shared equally between the Authorities provided that the claim is not solely attributable to the actions or omissions of the Authority against whom the claim has been made and that the Authority against whom the proceedings or claims have been instituted consults and notifies the other Authorities in the defending the proceedings or claims.
- 11.3.5 Any such action will be taken by Croydon alone for and on behalf of the other Authorities unless otherwise agreed between the Authorities acting unanimously;
- 11.4 The other Authorities indemnify Croydon against any Loss they may suffer as a result of conducting the procurement in accordance with this Agreement, but only to the extent that the Loss was occasioned by an act or omission by the indemnifying Authority in respect of the Project. The indemnity shall only cover any Loss sustained by Croydon arising out of any other Authority's actions or omissions in respect of the Project.
- 11.5 Croydon shall indemnify the other Authorities against any Loss occasioned as a result of Croydon's actions or omissions as Lead Authority in respect of this Project.
- 11.6 Where Loss is occasioned as a result of conducting the procurement in accordance with this Agreement, but the Loss is not attributable by an act or omission of any of the Authorities party to this Agreement, the Loss will be shared equally amongst the Parties.
- 11.6 Any Authority seeking indemnity from another Authority under this Agreement shall:
- 11.6.1 promptly notify the indemnifying Authority of known circumstances giving rise to such claim;
- 11.6.2 not admit, compromise or settle any claim without the consent of the indemnifying Authority except where such consent would be unreasonable in the circumstances of the case;

11.6.3 take reasonable steps to mitigate any claim for which an indemnity may be sought.

11.7 The other Authorities agree to cooperate with Croydon as required to enable them to fulfil their role as Lead Authority.

11.8 Nothing in this Clause shall require any Authority to indemnify any other Authority for Loss occasioned by the claiming Authority as a result of that claiming Authority's negligent acts or omissions.

12 INTELLECTUAL PROPERTY

12.1 All intellectual property in any material created by or on behalf of the Project during the Procurement Phase shall be owned jointly by the Authorities and shall be available equally to each Authority.

12.2 Each Authority warrants that any intellectual property created by its officers for the purposes of this Project will not infringe any third party's intellectual property rights.

12.3 Each Authority shall indemnify the other Authorities against any Loss arising out of any dispute or proceedings brought by a third party alleging infringement of its intellectual property rights by use of the first Authority's intellectual property for the purpose of the Project.

12.4 Each Authority hereby authorises the other Authorities to use its logo on documents and signage relating to this Project for such period as this Agreement remains in force and subject always to any Communications protocols or strategies agreed between the Authorities.

13 PROJECT COSTS/BENEFIT PRINCIPLE, COST ALLOCATION AND PAYMENTS

13.1 Save for 13.2, each Authority shall share 25% of the costs reasonably incurred in respect of the Procurement Phase of the Project under this Agreement.

13.2 Croydon will be invoiced by the external legal advisors for costs incurred by them and Croydon will recover from the Authorities their share of the bill through the mechanism in clause 13.3.

13.3 Merton, Kingston and Sutton ("the other Authorities") shall pay to Croydon their share of the Procurement Costs on receipt of invoices to be paid 30 days thereafter.

- 13.4 Where additional resources, which have been agreed between the Parties, are provided by an Authority, which is not the Lead Authority, for the purposes of carrying out the procurement under this Agreement, the Authority will invoice the other Authorities to be paid 28 days after receipt of the invoice. As in 13.1 each Authority will be responsible for 25% of the cost of providing the additional resources described in this clause 13.4.

14 REMEDIATION

- 14.1 At any time the Chief Executive of any Authority (“the First Authority”) may serve on the Chief Executive of the other Authority (“the Second Authority”) a “Default Notice”, alleging that that Authority has failed to comply with its obligations under this Agreement, setting out any suggested remedial action and any damage which the first Authority has or is likely to suffer as a result of the alleged failure. Any such Default Notice shall be copied to all other Authorities at the time of service.
- 14.2 An Authority in receipt of a Default Notice shall have 14 days within which to serve on the Chief Executive of the First Authority who served the Default Notice a “Counternotice”, setting out in respect of every matter contained in the Default Notice proposals for the remediation of the alleged failure and making good any loss which the First Authority may have suffered or may suffer as a result of the failure or the reasons why that alleged failure is disputed. Any such Counternotice shall be copied to all other Authorities at the time of service.
- 14.3 Within 14 days of receipt of a Counternotice, the Chief Executive of the First Authority shall send to the Chief Executive of the Second Authority a “Notice of Acceptance” of any proposals contained in the Counternotice in so far as those proposals are accepted by the First Authority, and may send a “Notice of Dispute” in so far as no proposal satisfactory to the First Authority is contained in the Counternotice, setting out in respect of each proposal which is not accepted by the First Authority why it is considered to be unacceptable.
- 14.4 Where any proposal in a Remediation Notice is accepted in a Notice of Acceptance, the Second Authority shall implement that proposal.
- 14.5 Where any matter is contained in a Dispute Notice, it shall fall to be dealt with under the Disputes Procedure set out in Clause 20.

15 Withdrawal and Consequences

15.1 Each Authority acknowledges that, if it withdraws after the signing of The Contracts, that withdrawal is likely to cause additional cost to the other Authorities including, but not limited to, any claims which the Contractor may have against the Authorities as a result of the failure on the part of the Authorities to comply with The Contracts, the cost to the other Authorities of procuring a new contract with a third party or of negotiating a new or renegotiated Contract with the Contractor, the loss to the other Authorities of the use of the Contractor's facilities during this process, with the result that the other Authorities may incur additional costs, any additional cost incurred as a result of there being fewer Authorities who are parties to The Contracts. . In the event that an Authority withdraws after the signing of The Contracts, the withdrawing Authority will indemnify the other Authorities with regards costs, including abortive procurement costs, incurred as a result of the withdrawal but for the avoidance of doubt shall not include any costs associated with loss of opportunity or loss of projected savings.

15.2 Each Authority agrees that in the event that it gives notice of withdrawal (such notice to be in writing to each Authority) to the other Authorities, during the procurement phase then 11.3 will apply or in the Service Phase then 15.1 will apply.

15.3 Where any Authority withdraws from this Agreement –

- The obligations of that Authority in respect of the furtherance of the Project shall cease on such withdrawal;
- The Agreement shall continue in force as respect any financial liabilities which have arisen or may arise out of the performance of this Agreement; The Agreement shall remain in force in respect of any liability of any Authority to indemnify the other Authorities under this Clause of the Agreement; and
- The Disputes Procedure set out in Clause 20 of this Agreement shall remain in force in respect of any of the matters arising from the performance of or withdrawal of either Authority under this Agreement.

16 Variation

16.1 The Authorities may vary the terms of this Agreement subject to Clause 3.6 including admitting additional Councils to participate in the Project, the terms of such admission to be agreed by the Authorities.

- 16.2 Where an additional Council is admitted to participating in the Project it shall enter into a Deed of Variation in a form agreed by its Executive or Committee and from the date of its admittance to the Project all provisions of this Agreement shall apply to the admitted Council and the definition of "Authorities" shall include it.

17 CONFIDENTIAL INFORMATION

- 17.1 Subject to Clause 18 and 19, the Authorities shall at all times use their reasonable endeavours to keep confidential (and to procure that their respective employees agents consultants and sub-contractors shall keep confidential) all Confidential Information concerning the Project or the business and affairs of the other Authorities which may now or at any time hereafter be in its possession and shall not disclose it except with the consent of the other Authorities, such consent not to be unreasonably withheld.
- 17.2 For the purposes of this Agreement "Confidential Information" means any information imparted to any Authority or their employees agents consultants or sub-contractors ("the Receiving Party") which was imparted to the Receiving Party on the basis that it is to be kept confidential or would be by its nature normally be regarded as being confidential or to the knowledge of the Receiving Party which was obtained by the other Authorities on the basis that it was kept confidential or is of commercial value in relation to the Project but shall not include any information which is for the time being in the public domain otherwise than by reason of its wrongful disclosure by the Receiving Party.
- 17.3 This Clause 17 shall continue without limit of time and shall survive the termination of this Agreement.
- 17.4 This Clause 17 shall not prevent the disclosure of any Confidential Information relating to the Project which is reasonably disclosed for the furtherance of the Project or the promotion of the Project provided that the Authority or person disclosing the information takes all steps that are commercially practicable to preserve the confidentiality of the information and shall not prevent the disclosure of any Confidential Information where required by law.

18 COMPLIANCE WITH LAWS

- 18.1 The Authorities shall at all times comply with all laws including but not limited to the Data Protection Act 1998 and will, where appropriate maintain a valid and up to date registration or notification under such Laws.

- 18.2 Each Authority shall indemnify and keep indemnified the other Authorities against all losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by the other Authorities in respect of any breach of this Clause by the Authority and/or any act or omission of any sub-contractor.
- 18.3 Each Authority shall grant to the other Authorities the right of reasonable access to all records of Personal Data relevant to the Project, as defined and as permitted in the Data Protection Act 1998, and shall provide reasonable assistance at all times during the currency of this Agreement to ensure the quality and security of data collected.

19 FREEDOM OF INFORMATION

- 19.1 Each Authority acknowledges that the other Authorities are subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and each Authority shall where reasonable assist and co-operate with the other Authorities (at their own expense) to enable the other Authorities to comply with these information disclosure obligations.
- 19.2 Where an Authority receives a request for information under either the Freedom of information Act 2000 or the Environmental Information Regulations 2004 in relation to information which it is holding on behalf of any of the other Authorities in relation to the Project, it shall:
- 19.2.1 transfer the request for information to the relevant other Authority as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
 - 19.2.2 provide the relevant other Authority with a copy of all information in its possession or power in the form that the Authority requires within ten Working Days (or such longer period as the Authority may specify) of the Authority requesting that information; and
 - 19.2.3 provide all necessary assistance as reasonably requested by the other Authority to enable that Authority to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

20 DISPUTE RESOLUTION

- 20.1 In the event of a dispute which cannot be resolved by the Authorities, the issue shall, before any other remedy is sought (including arbitration or legal proceedings) be referred to a meeting of the four Chief Executives and the Leaders of the Authorities.
- 20.2 For the purposes of clause 20.1 above a “dispute” shall mean a situation where one or more of the Authorities has a fundamental

objection to a matter arising out of in particular the Procurement Phase and/or the Project generally and would seek to exercise a veto on the matter.

- 20.3 An Authority wishing to invoke the dispute process must notify the Lead Officers of the other Authorities and if such notice is given, the other Authorities shall not be entitled to take a decision on that matter for 21 days (or such other time as agreed between the Authorities) to enable the meeting referred to in clause 20.1 during which the Authority which has invoked the dispute process must prepare a summary and analysis in writing of their council's reasons for their fundamental concern with the matter they have raised.
- 20.4 An urgent meeting of the four Chief Executives and Leaders of the Authorities shall be convened within the 21 day period (or such time has been agreed between the Authorities) to discuss the issue and to seek to resolve it. The meeting when considering the issues will seek to achieve the objectives of the Project as set out in this Agreement.
- 20.5 Upon service of a Notice of Dispute the Authorities will attempt to settle the issue in dispute ("Dispute") by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Authorities. To initiate a mediation, any Authority may give notice in writing (a "Mediation Notice") to the others requesting mediation of the Dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Authorities, asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. If there is any point in respect of the conduct of the mediation upon which the Authorities are unable to agree within ten (10) Working Days from the date of the Mediation Notice, CEDR will, at the request of any Authority, decide that point for the Authorities, having consulted with them. The Authorities will co-operate with any person appointed as mediator providing him/her with such information and other assistance as he shall require and will pay his costs as he shall determine or, in the absence of such determination, such costs will be shared equally.
- 20.6 No Authority may commence any court proceedings in relation to any Dispute until they have attempted to settle it by mediation under Clauses 20.1 to 20.5 and/or such mediation has terminated. The Authorities will take no further steps in the court proceedings until any such mediation commenced under Clauses 20.1 to 20.5 has terminated. Nothing in this Clause 20 shall prevent an Authority from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

- 20.7 If the Dispute has not been resolved by the mediation procedure detailed in Clauses 20.1 to 20.5 within one (1) month of the initiation of such procedure, the Dispute shall be referred to the courts for resolution.

21 SEVERANCE

- 21.1 If any condition, provision or Clause of this Agreement shall become or shall be declared by any Court of competent jurisdiction to be void, invalid, illegal or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

22. ENTIRE AGREEMENT

- 22.1 This Agreement constitutes the entire agreement and understanding of the Authorities and supersedes any previous agreement between the Authorities relating to the subject matter of this Agreement.

23 WAIVER

- 23.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.
- 23.2 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent an Authority from subsequently requiring compliance with the waived obligation.

24 GENERAL

- 24.1 Nothing contained or implied herein shall prejudice or affect the Authorities' rights and powers duties and obligations in the exercise of their functions as Local Authorities and/or in any other capacity and all rights powers discretions duties and obligations of the Authorities under all Laws may at all times be fully and effectually exercised as if the Authorities were not party to this Agreement and as if this Agreement had not been made.
- 24.2 The Authorities shall only represent themselves as being an agent partner or employee of any other Authority to the extent specified by this Agreement and shall not hold themselves out as such nor as having any power or Authority to incur any obligation of any nature express or implied on behalf of any other Authority except to the extent specified in this Agreement.

- 24.3 This Agreement shall be governed by and construed in accordance with English Law and shall be subject to the jurisdiction of the Courts of England.
- 24.4 This Agreement is personal to the Authorities and no Authority shall assign transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this Agreement.
- 24.5 No person other than the Authorities shall be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 24.6 Any notice required or permitted to be given by an Authority to the other Authority under this Agreement shall be in writing and addressed to the Chief Executive of the other Authority at its principal office.

IN WITNESS hereof the parties hereto have executed this Agreement as a Deed the day and year first written

The Common Seal of the Mayor and Burgesses of the
Royal Borough of Kingston upon Thames
was hereto affixed in the presence of

Mayor

Head of Legal Services

The Common Seal of the Mayor and Burgesses of the
London Borough of Croydon
was affixed hereto in the presence of

authorised signatory for and on behalf of Croydon

The Common Seal of the Mayor and Burgesses of the
London Borough of Merton
was affixed hereto in the presence of

authorised signatory for and on behalf of Merton

The Common Seal of the Mayor and Burgesses of the
London Borough of Sutton
was affixed hereto in the presence of

authorised signatory for and on behalf of Sutton

Schedule A

Procurement Cost Allocation

- 1 The Principle shall be that the costs of undertaking the Procurement Phase of the Project shall be shared equally between the Authorities.
- 2 For this purpose the costs of undertaking the Procurement Phase” (“Procurement Costs”) shall comprise: external legal advice, financial advice (including insurance advice), project and procurement advice and technical advice which has been commissioned and approved by the Authorities.
- 3 For this purpose, the Procurement Costs shall not include:
Costs incurred by an Authority which are specific to its own services.
- 4 Each Authority shall be responsible for securing that any Procurement Costs incurred by that Authority are notified to the Strategic Partnership Manager.
- 5 The Strategic Partnership Manager shall be responsible for –

- 5.1 Receiving all notifications of claimed Procurement Costs and confirming that such Costs have been properly incurred for the purpose of this Schedule
- 5.2 Maintaining a record of all such accepted claims for Procurement Costs and calculating any payment required from one Authority to the other to achieve the principle set out in Paragraph 1 above
- 5.3 Providing each Authority with a monthly statement of Procurement Cost expenditure for the Procurement Phase of the Project by the Authorities, including a statement of the payment (“Equalisation Payment”) required to be made by either Authority to achieve the Principle set out in Paragraph 1 above.
- 6 Within 30 days of receipt of a statement from the Chair of the Management Group to the Strategic Steering Group, each Authority shall make any Equalisation Payment to the other Authority as set out in that statement.

Schedule B

SITES AND PREMISES INCLUDING DEPOTS AVAILABLE TO THE PROJECT

A. **Croydon**

- i. Stubbs Mead Depot, West Croydon CR0 3RL;

B. **Kingston**

- i. Villiers Road Depot, Chapel Mill Road (off Villiers Road), Kingston upon Thames KT1 3GZ;

C. **Merton**

- i. Garth Road, 63-69 Amenity Way, off Garth Road, Morden SM4 4X;
- ii. Hillcross Depot, Between 183-185 Hillcross Avenue, Morden, SM4 4AZ
- iii. Abbey Recreation Ground – Nursery Road, SW19 3BP

- iv. Cannizaro Park, Camp Road, Wimbledon, SW19
- v. Cannon's House/Recreation Ground – Madeira Road, Mitcham, CR4
- vi. Haydon's Road Rec, Haydons Road, Wimbledon, SW19 1ES
- vii. John Innes Park – Mostyn Road, Morden, SW20 9AE
- viii. Joseph Hood Recreation – Martin Way, Morden, SW20 9BX

D. Sutton

- i. Therapia Lane, Beddington, Surrey, CRO 4TN
- ii. Cheam Park, Tudor Close, Surrey, SM3 8QS
- iii. Wrythe Lane Depot, 232-234, Wrythe Lane, Carshalton, Surrey, SM5 1TX
- iv. Manor Park, Throwley Way, Sutton, SM1 4AF
- v. The Grove Park, High St, Carshalton, SM5 3AL
- vi. Beddington Park, Church Road, Beddington, SM6 7NN
- vii. Rosehill Park, Rosehill, SM1 3EX
- viii. Oaks Park, Croydon Lane, Surrey, SM7 3BA

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