

# **APPENDIX 1**

## **ESSEX WASTE MANAGEMENT PARTNERSHIP**

### **DRAFT CONSTITUTION FOR THE THAMES GATEWAY WASTE MANAGEMENT JOINT COMMITTEE**

**EIGHTH DRAFT 07 APRIL 2005**

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**CONTENTS**

<b>Paragraph</b>	<b>Subject matter</b>	<b>Page</b>
1.	INTRODUCTION.....	4
2.	INTERPRETATION.....	8
3.	AIMS AND OBJECTIVES OF THE COMMITEE.....	9
4.	FUNCTIONS TO BE EXCERCISED BY THE COMMITTEE ON BEHALF OF THE PARTNER AUTHORITIES.....	10
5.	MEMBERSHIP OF THE COMMITTEE.....	12
6.	ROLE OF A COMMITTEE MEMBER.....	13
7.	MEETINGS OF THE COMMITTEE.....	13
8.	SUPPORT TO THE COMMITTEE.....	15
9.	BUSINESS PLAN.....	16
10.	CONTRIBUTIONS TO THE COSTS INCURRED BY THE COMMITTEE.....	17
11.	DELEGATION TO SUB-COMMITTEES AND OFFICERS.....	18
12.	AMENDMENTS TO THE CONSTITUTION BY THE COMMITTEE.....	18
13.	DEVELOPING THE ROLE OF THE COMMITTEE IN THE ESSEX WASTE MANAGEMENT PARTNERSHIP.....	18
14.	SCRUTINY ARRANGEMENTS.....	19
15.	CONDUCT AND EXPENSES OF MEMBERS.....	20
16.	LIABILITY OF COMMITTEE MEMBERS.....	21
17.	INTERFACE WITH THE OTHER JOINT COMMITTEES AND THE WASTE MANAGEMENT ADVISORY BOARD.....	21
18.	ANNUAL WASTE CONFERENCE.....	21
19.	DISPUTE RESOLUTION.....	22
20.	CESSATION OF MEMBERSHIP.....	22
21.	CONFIDENTIALITY, DATA PROTECTION AND FREEDOM OF INFORMATION	23
	SCHEDULE 1 Map of Thames Gateway Area Group.....	25
	SCHEDULE 2 First Business Plan.....	26

**DATED**

2005

**PARTIES:**

- (1) ESSEX COUNTY COUNCIL of PO Box 11, County Hall, Chelmsford, Essex CM1 1LX (subsequently referred to as the “**County Council**”, which expression shall include its successors in title and assigns to the extent permitted under this Agreement); and
- (2) SOUTHEND-ON-SEA BOROUGH COUNCIL of Civic Centre, Victoria Avenue, Southend-on-Sea, Essex SS2 6ER (subsequently referred to as “**Southend**”, which expression shall include its successors in title and assigns to the extent permitted under this Agreement); and
- (3) BASILDON DISTRICT COUNCIL of The Basildon Centre, St Martin’s Square, Basildon, Essex SS14 1DL (subsequently referred to as “**Basildon**”, which expression shall include its successors in title and assigns to the extent permitted under this Agreement); and
- (4) CASTLE POINT BOROUGH COUNCIL of Kiln Road, Thundersley, Benfleet, Essex SS7 1TF (subsequently referred to as “**Castle Point**”, which expression shall include its successors in title and assigns to the extent permitted under this Agreement); and
- (5) ROCHFORD DISTRICT COUNCIL of Council Offices, Rochford, Essex SS4 1BW (subsequently referred to as “**Rochford**”, which expression shall include its successors in title and assigns to the extent permitted under this Agreement),

and together referred to as “the Partner Authorities”.

**RECITALS**

- (A) The Partner Authorities wish to work together to improve the quality and efficiency of their respective waste collection, recycling, waste disposal and/or allied, associated and related environmental services and to meet or exceed relevant targets set under legislation by procuring an integrated waste management solution under best value principles.
- (B) The Partner Authorities are waste collection authorities and/or waste disposal authorities with responsibilities and powers in relation to waste under the Environmental Protection Act 1990 and in particular under Sections 45, 51, 75 and 89.
- (C) The Partner Authorities wish to establish a clear and accountable framework for them to work together to promote the economic, environmental and social well-being of their respective areas and in order that they are able to respond in a more effective and co-ordinated way in relation to the development and implementation of an integrated strategy for waste management including the procurement of an integrated waste management solution in the Thames Gateway area.
- (D) The Partner Authorities have decided to form a joint committee as the appropriate framework under Sections 101 and 102 of the Local Government Act 1972 and the Local Authorities

(Arrangement for the Discharge of Functions) (England) Regulations 2000 (as amended) made under Section 20 of the Local Government Act 2000, and any other enabling legislation.

(E) The Partner Authorities have agreed:

- to form a joint committee with effect from [the date of this Agreement];
- to approve the first business plan of the joint committee; and
- for the functions set out in this agreement to be delegated to the joint committee and be discharged by the joint committee on behalf of their authority.

(F) This Agreement, and any future amendments to it, have been (or will be in the case of future amendments) put before a meeting of either the executive or a meeting of the full council of each of the Partner Authorities and has been (or will be) adopted by each such Partner Authority committing that authority to membership of the joint committee and to the terms and conditions of this agreement.

(G) This Agreement is without prejudice to each Partner Authority's powers and responsibilities as waste collection authorities and/or waste disposal authorities for their respective areas.

## **IT IS AGREED AS FOLLOWS:**

### **1. INTRODUCTION**

#### **1.1 Definitions**

In this Agreement, unless the context otherwise requires:

##### **“Aims and Objectives”**

means the agreed aims and objectives of the Committee as set out in paragraph 3 of this Agreement;

##### **“Alternative Arrangements”**

shall have the meaning set out in the Local Authorities (Alternative Arrangements) (England) Regulations 2001;

##### **“Annual Waste Conference”**

means the conference referred to in paragraph 18 of this Agreement;

##### **“Annual General Meeting”**

means the first meeting of the Committee convened after the 1 January each year in accordance with paragraph 7 of this Agreement;

**“Business Plan”**

means the business plan approved by the Committee and each of the Partner Authorities from time to time in accordance with this Agreement which expression shall include the First Business Plan;

**“Chairman”**

means the chairman of the Committee appointed by the Committee at each Annual General Meeting in accordance with paragraph 7 of this Agreement;

**“Clerk to the Committee”**

means the person so nominated by the County Council pursuant to paragraph 8 of this Agreement;

**“Code of Conduct”**

means for the purpose of each Partner Authority the relevant code of conduct for members adopted by that authority in accordance with the 2000 Act;

**“Commencement Date”**

means [the date of this Agreement];

**“Committee”**

means the Joint Committee constituted by this Agreement and the full title of this Joint Committee shall be the Thames Gateway Waste Management Joint Committee;

**“Committee Member”**

means a member of the Committee appointed in accordance with this Agreement;

**“County of Essex and Southend”**

means the entire County of Essex and the borough of Southend as outlined in black on the map annexed at **Schedule 1** (Map of Thames Gateway Area Group) to this Agreement;

**“Delegated Functions”**

means the functions delegated by each of the Partner Authorities to the Committee as set out in paragraph 4 of this Agreement and as further detailed in the First Business Plan and each subsequent Business Plan;

**“Division Member”**

means in relation to an elected member of the County Council only, an elected member who is elected from an electoral division wholly or partly within the Thames Gateway Area Group;

**“Draft Business Plan”**

means a draft business plan prepared by the Committee in accordance with paragraph 9 of this Agreement;

**“Essex Waste Management Partnership”**

means the joint working and partnering arrangements between the local authorities in the County of Essex and Southend and the private sector to secure the provision of waste management solutions across the County of Essex and Southend;

**“Executive”**

means the executive of a Partner Authority as prescribed by Section 11 of the 2000 Act;

**“Executive Arrangements”**

shall have the meaning set out in Section 10 of the 2000 Act;

**“Executive Decision”**

means a decision which the Committee has the authority to reach on behalf of each of the Partner Authorities in accordance with this Agreement;

**“Final Proposal”**

means the final proposal and offer from the Preferred Private Sector Partner(s) for the provision of waste management services, assets, facilities and solutions in the Thames Gateway Area Group;

**“First Business Plan”**

means the first Business Plan approved by each of the Partner Authorities and annexed at **Schedule 2** (First Business Plan);

**“Joint Committee”**

means a joint committee of two or more local authorities as prescribed by Sections 101 and 102 of the 1972 Act;

**“Monitoring Officer”**

shall mean the officer appointed by each Partner Authority in accordance with Section 5 of the Local Government and Housing Act 1989;

**“Partner Authority Member”**

means a Committee Member appointed by a Partner Authority in accordance with this Agreement;

**“Preferred Private Sector Partner(s)”**

means the Private Sector Partner(s) selected by the Committee in accordance with the Business Plan to negotiate the Final Proposal;

**“Private Sector Partner(s)”**

means the organisations responding to the Procurement Exercise;

**“Procurement Exercise”**

means the procurement process undertaken by the Committee on behalf of each of the Partner Authorities in accordance with the Business Plan and the terms of this Agreement;

**“Scrutiny Arrangements”**

means the arrangements made by each Partner Authority for the scrutiny of its decisions in accordance with Section 21 of the 2000 Act (in the case of Partner Authorities acting under Executive Arrangements) or regulation 6 of the Local Authorities (Alternative Arrangements) (England) Regulations 2001 (in the case of Partner Authorities acting under Alternative Arrangements);

**“Scrutiny Committee”**

means the committee of each Partner Authority responsible for the Scrutiny Arrangements in accordance with Section 21 of the 2000 Act (in the case of Partner Authorities acting under Executive Arrangements) or regulation 6 of the Local Authorities (Alternative Arrangements) (England) Regulations 2001 (in the case of Partner Authorities acting under Alternative Arrangements);

**“Stakeholder”**

means any body or organisation with a vested interest in the outcome of the Procurement Exercise, including, as examples, community groups, environmental groups and the Preferred Private Sector Partner(s) appointed following the Procurement Exercise;

**“Stakeholder Member(s)”**

means a Committee Member appointed by a Stakeholder in accordance with paragraph 6.2 of this Agreement;

**“Standards Board”**

means the Standards Board for England and Wales established by Section 57 of the 2000 Act;

**“Sub-Committee”**

means a sub-committee of the Committee established in accordance with paragraph 5 of this Agreement;

**“Substitute Member”**

means subject to the provisions of this Agreement a substitute for a Committee Member appointed by each Partner Authority and Stakeholder to act in the absence of the Partner Authority Member or the Stakeholder Member, as the case may be;

**“Thames Gateway Area Group”**

means the area including the local authorities of Southend, Basildon, Castle Point and Rochford as outlined in red on the map of the County of Essex and Southend annexed at **Schedule 1** (Map of Thames Gateway Area Group) to this Agreement;

**“Vice-Chairman”**

means the vice-chairman of the Committee appointed by the Committee at each Annual General Meeting in accordance with paragraph 8 of this Agreement;

**“Voting Member”**

means a Committee Member who is able to vote (that is each Partner Authority Member or in his or her absence the Partner Authority Member’s Substitute Member);

**“Waste Management Advisory Board”**

means the non-incorporated body set up by all of the councils in the County of Essex and Southend comprising all of the members of the Committee and all of the members of the Joint Committees in the two other area groups;

**“Waste Management Strategies”**

means the waste management strategy being developed by the County Council in conjunction with all the councils within the County of Essex and the waste management strategy being developed by Southend and **“Waste Management Strategy”** shall mean any one of the strategies;

**“Working Day”**

means a day on which the London clearing banks are open for business and shall for the purposes of this Agreement mean a complete day and not include the date upon which any notification is made or received under this Agreement;

**“1972 Act”**

means the Local Government Act 1972 (as amended);

**“2000 Act”**

means the Local Government Act 2000 (as amended).

**2. INTERPRETATION**

2.1 In this Agreement except where the context otherwise requires:-

2.1.1 the masculine includes the feminine and vice-versa;

2.1.2 the singular includes the plural and vice-versa;



- 2.1.3 a reference in this Agreement to any clause, sub-clause, paragraph, Schedule or Annex is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, Schedule or annex of this Agreement;
- 2.1.4 any reference to this Agreement or to any other document shall include any permitted variation, amendment, or supplement to such document;
- 2.1.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 2.1.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees; and
- 2.1.7 headings are for convenience of reference only.
- 2.2 The words in this Agreement shall bear their natural meaning. Each of the Partner Authorities have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
- 2.3 In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

### **3. AIMS AND OBJECTIVES OF THE COMMITEE**

- 3.1 Each of the Partner Authorities wish to establish a clear and accountable framework for them to work together to promote the economic, environmental and social well-being of their respective areas and in order that they are able to respond in a more effective and co-ordinated way in relation to the development and implementation of the Waste Management Strategies.
- 3.2 Each of the Partner Authorities recognise in particular the need to address central government and European targets for recycling and recovery of waste and the promotion of sustainable development including the use of waste as a resource.
- 3.3 Each of the Partner Authorities, in recognition of the need for delivering best value, promoting financial efficiency and effectiveness, and securing continuous improvement in the provision of waste management services, wish to:
  - 3.3.1 collaborate on the development and implementation of each Waste Management Strategy in the Thames Gateway Area Group and across the entire County of Essex and Southend;
  - 3.3.2 monitor the effectiveness of each Waste Management Strategy;
  - 3.3.3 procure services, facilities, assets and solutions in accordance with each Waste Management Strategy and to meet the current and future central government and European targets for recycling and recovery of waste;

- 3.3.4 work together in a spirit of mutual trust, support and respect, and to ensure that when difficulties or differences of opinion arise they are addressed quickly, honestly and openly;
  - 3.3.5 share in a fair and equitable manner the costs and work included in achieving these Aims and Objectives;
  - 3.3.6 endeavour to fully engage all stakeholders and to maximise the contributions which each Partner Authority may be able to make; and
  - 3.3.7 provide a forum and mechanisms for ensuring that there is a coherent programme and organisational structure for waste management and for joint working.
- 3.4 Each of the Partner Authorities has agreed to establish and maintain the Committee with the membership, powers, duties and responsibilities set out in this Agreement.

#### **4. FUNCTIONS TO BE EXERCISED BY THE COMMITTEE ON BEHALF OF THE PARTNER AUTHORITIES**

- 4.1 The functions of the Committee are:-
- 4.1.1 To undertake on behalf of each Partner Authority the Procurement Exercise and to obtain a Final Proposal from the Preferred Private Sector Partner(s) for the provision of waste management services, assets, facilities and solutions in the Thames Gateway Area Group;
  - 4.1.2 To advise each Partner Authority on the status of the Procurement Exercise and to make recommendations to each Partner Authority as to the merits of the Final Proposal received from the Preferred Private Sector Partner(s);
  - 4.1.3 To enter into negotiations with the Preferred Private Sector Partners with a view to obtaining a Final Proposal for recommendation to each Partner Authority;
  - 4.1.4 To implement the First Business Plan of the Committee;
  - 4.1.5 To develop an annual Business Plan for approval by each Partner Authority and adoption by the Committee;
  - 4.1.6 To make recommendations to each Partner Authority to provide resources as required to secure the delivery of the Business Plan and to support the Aims and Objectives;
  - 4.1.7 To prepare and submit as required all reports, business cases and supplementary information as may be required by central government and or any agency or organisation on behalf of central government in relation to the delivery of the Business Plan and/or to obtain additional funding to support the Aims and Objectives;
  - 4.1.8 To enter into dialogue with central government and or any agency or organisation on behalf of central government to secure the delivery of the Business Plan and/or to obtain additional funding to support the Aims and Objectives;
  - 4.1.9 To commission research and public opinion surveys into matters relevant to the Aims and Objectives and the Business Plan;

- 4.1.10 To influence, advise and lobby central government and other agencies (whether locally, nationally and internationally) where this is felt to be consistent with the Aims and Objectives and the Business Plan;
- 4.1.11 To assist in the preparation and delivery of each Waste Management Strategy in the Thames Gateway Area Group and across the entire County of Essex and Southend;
- 4.1.12 In relation to their interpretation as part of the Procurement Exercise, to assist each Partner Authority in meeting its statutory responsibilities for waste and allied, associated and related environmental services, including the key elements of legislation for the time being in force including but not limited to:-
- (a) The European Community Strategy for Waste Management 1989 (as reviewed in 1996);
  - (b) EU Directive 75/ 442/ EEC as amended by Directive 91/ 156/ EEC and adapted by Directive 96/ 350/ EEC on Waste (The Framework Directives on Waste);
  - (c) Environmental Protection Act 1990;
  - (d) Refuse Disposal (Amenity) Act 1978 (insofar as this relates to abandoned vehicles, public safety and amenity);
  - (e) The Environmental Protection (Waste Recycling Payments) Regulations 1992 (as amended 1994);
  - (f) Waste Minimisation Act 1998;
  - (g) National Waste Strategy 2000;
  - (h) EU Landfill Directive (Council Directive 1993/ 31/ EC);
  - (i) EU IPPC Directive (Council Directive 96/ 61/ EC);
  - (j) The Landfill Tax Regulations and the Finance Act 1996;
  - (k) The Controlled Waste Regulations 1992;
  - (l) The Environmental Protection (Duty of Care) Regulations 1991;
  - (m) The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991;
  - (n) Environment Act 1995;
  - (o) Waste Emissions Trading Act 2003;
  - (p) Household Waste and Recycling Act 2003;
  - (q) EU Waste Electronic and Electrical Equipment Directive; and
  - (r) Local Government Act 1999 (best value duty).
- 4.1.13 In relation to the Procurement Exercise, to work with (and support as required) statutory agencies, non governmental organisations, small and medium size enterprises, business, scientific, commercial and voluntary/ not for profit organisations and other bodies who are pursuing similar objectives to the Aims and Objectives;
- 4.1.14 To assist each Partner Authority with the promotion of waste minimisation and arrangements with community groups to facilitate recycling and the re-use of resources;

- 4.1.15 To make recommendations to each Partner Authority as to the role of the Committee following the completion of the Procurement Exercise and in particular to develop proposals on how each Partner Authority can discharge its functions in the field of waste management and allied, associated and related environmental services to promote and/ or improve economic, social and environmental well-being in the County of Essex and Southend and contribute to the achievement of sustainable development, including in particular:-
- (a) waste minimisation generally;
  - (b) the reduction of waste going to landfill on a year by year basis;
  - (c) the development of alternative methods of disposal;
  - (d) an increase in the proportion of waste being recycled or reused on a year by year basis; and
  - (e) to meet relevant targets under the Landfill Allowances Trading Scheme.

## **5. MEMBERSHIP OF THE COMMITTEE**

- 5.1 Each Partner Authority shall appoint one elected member as its Partner Authority Member, and one Substitute Member (to act in its Partner Authority Member's absence) as its Substitute Member, to the Committee.
- 5.2 The Committee may invite Stakeholders to become members of the Committee as Stakeholder Members (without any voting rights) if it considers this to be beneficial to meeting the Aims and Objectives and the Business Plan.
- 5.3 The term of office of each Committee Member and Substitute Member shall be determined by the Partner Authority or Stakeholder (as the case may be) appointing them, provided that for the duration of their appointment they remain an elected member or duly nominated representative of their appointing authority/organisation and have been appointed by that authority/organisation to be or remain a Committee Member or Substitute Member, as the case may be.
- 5.4 Each Partner Authority and Stakeholder shall notify the Clerk of the Committee of the name and contact details of its Committee Member and Substitute Member.
- 5.5 A Partner Authority or Stakeholder may change its appointed Committee Member (or Substitute Member) at any time provided that written notice of any such change is given to the Clerk to the Committee, taking effect upon receipt. Such written notice may be given by electronic mail.
- 5.6 Except in relation to the County Council (in relation to which paragraph 5.8 shall apply), each Partner Authority operating under Executive Arrangements shall ensure that its appointed Committee Member and its Substitute Member are members of its Executive.
- 5.7 Each Partner Authority not operating under Executive Arrangements shall ensure that its appointed Committee Member and its Substitute Member are approved by a meeting of the

full council of their authority and comply with the Local Government and Housing Act 1989 in relation to the overall political balance of their authority.

- 5.8 The County Council shall ensure that its appointed Committee Member and its Substitute Member are either members of its Executive or Division Members from within the Thames Gateway Area Group.
- 5.9 Each Partner Authority and Stakeholder shall, as far as possible, ensure that the persons appointed as Committee Members and Substitute Members have the skills and qualities required to fulfil the role of a Committee Member.
- 5.10 Each Partner Authority and Stakeholder shall send appropriate officer(s) to meetings of the Committee (or any Sub-Committee) to support its Committee Member.
- 5.11 Each Partner Authority (through either its Partner Authority Member or Substitute Member) shall have one vote at meetings of the Committee (or any Sub-Committee).
- 5.12 All voting shall be by a show of hands, unless the provisions of paragraph 5.13 below apply.
- 5.13 Recorded votes shall be taken if requested by any Voting Member, and any such Voting Member shall have the right to have the way he voted (or abstained) recorded in the minutes.

## **6. ROLE OF A COMMITTEE MEMBER**

- 6.1 The responsibilities of a Committee Member are as follows, so far as such are consistent with the interests of his or her own Partner Authority in relation to Partner Authority Members:-
  - 6.1.1 To be committed to, and act as a champion for the achievement, of the Aims and Objectives and the Business Plan;
  - 6.1.2 To be a good ambassador for the Committee;
  - 6.1.3 To attend Committee meetings regularly, vote on items of business (if entitled to vote) and make a positive contribution to the achievement of the Aims and Objectives and the delivery of the Business Plan;
  - 6.1.4 To remain acquainted with emerging technologies and processes in the area of waste management; and
  - 6.1.5 To act as an advocate for the Committee in seeking any necessary approval of its Partner Authority to the Business Plan and any changes to this Agreement including changes to the role of the Committee following the completion of the Procurement Exercise.

## **7. MEETINGS OF THE COMMITTEE**

- 7.1 The Committee shall normally meet at least six times a year. At each Annual General Meeting the Committee shall determine and approve the schedule for all meetings to take place over the following year.

- 7.2 The Chairman may call other meetings as necessary in addition to those set out in the schedule of meetings approved at the relevant Annual General Meeting provided each Partner Authority approves the date and time of any such additional meetings. The Chairman may cancel / rearrange a meeting if there is insufficient business to justify this being held or if other circumstances make it appropriate for this to be held at a different date/time, provided each Partner Authority agrees to the cancellation of any meeting and approves the date and time of any rearranged meeting.
- 7.3 The first meeting of the Committee on or after [1 January] in any year shall be the Annual General Meeting at which the Chairman, Vice-Chairman and any Sub-Committees of the Committee shall be appointed, but nothing in this paragraph prevents the Committee establishing a Sub-Committee at any other time.
- 7.4 The Committee shall appoint the posts of Chairman and Vice-Chairman of the Committee each year at the Annual General Meeting.
- 7.5 The Committee Member appointed to the office of Chairman or Vice-Chairman shall always be a Voting Member of the Committee.
- 7.6 The quorum for a valid meeting of the Committee shall be equal to the number of Voting Members on the Committee at the time of the relevant meeting less one.
- 7.7 A printed copy of the summons, the agenda for each meeting, any relevant reports and the minutes of the previous meeting shall be despatched by the Clerk of the Committee, at least five (5) Working Days before such meeting to each Committee Member and Substitute Member.
- 7.8 At the same time, such papers will also be despatched to:
- 7.8.1 the chairman of each of the Partner Authority's Scrutiny Committee with responsibility for scrutiny in respect of waste management matters and to the chief executive or such other senior officer of a Partner Authority as may be nominated in writing by a Partner Authority to the Clerk of the Committee; or
- 7.8.2 such other addressees as a Partner Authority may nominate in writing from time to time to the Clerk of the Committee.
- 7.9 The summons shall contain notice of all business, except urgent business, which is required to be brought before the Committee either in the ordinary course of business, or which is brought by the Chairman, the Vice Chairman or the Clerk of the Committee.
- 7.10 In the case of a matter requiring urgent attention the Chairman at his absolute discretion may agree to a meeting of the Committee being convened with less than ten (10) Working Days notice (but not less than five (5) Working Days).
- 7.11 Meetings of the Committee will be open to the public and press except during consideration of items containing confidential or exempt information within the meaning of the 1972 Act.

- 7.12 Minutes of the Committee shall (subject to the provisions of paragraph 7.11 above) be available to the public and press as though they were minutes of a meeting of a Partner Authority.
- 7.13 The Chairman or a Partner Authority may invite any person to attend a meeting of the Committee for the purpose of making a presentation, or participating in discussion, on any item relevant to the Committee's functions where that person is able to provide a professional or commercial viewpoint, which the Chairman or the Partner Authority considers would be of assistance to the Committee.

## **8. SUPPORT TO THE COMMITTEE**

- 8.1 The Clerk to the Committee shall be a senior officer of the County Council as nominated from time to time by the County Council in writing to the Chairman.
- 8.2 The responsibilities of the Clerk to the Committee shall be as follows:-
- 8.2.1 to make all necessary arrangements for the convening of meetings of the Committee and any Sub-Committees;
- 8.2.2 to provide, or, where necessary, procure the provision of, all necessary advice on the technical, legal and financial implications of matters under consideration by the Committee or relevant to the Committee's functions;
- 8.2.3 to bring to the attention of the Committee matters which are relevant to the Committee's functions and which merit consideration by the Committee;
- 8.2.4 to arrange for the taking and maintenance of minutes of meetings of the Committee and any Sub-Committees, and ensure that the business of the Committee at its meetings is conducted in accordance with legal requirements;
- 8.2.5 to be responsible for communications between the Committee and other agencies, including the media; and
- 8.2.6 to manage and co-ordinate the day-to-day affairs of the Committee and its administrative support.
- 8.3 The business address for all communications relating to the administration of the Committee's affairs shall be:

County Hall  
PO Box 11  
Chelmsford  
Essex CM1 1LX

[Marked to the attention of the Clerk to the Thames Gateway Area Waste Management Joint Committee]

## **9. BUSINESS PLAN**

- 9.1 The Committee shall implement the First Business Plan and shall only make decisions in accordance with the First Business Plan (or any subsequent Business Plan prepared and approved in accordance with this paragraph 9).
- 9.2 The Committee may consider and propose a draft amendment to the First Business Plan, where necessary to accommodate unforeseen circumstances, which have arisen which would assist the Committee in achieving the Aims and Objectives. Any proposed amendment that is approved by the Committee shall then be submitted to each Partner Authority for approval.
- 9.3 Upon receipt of any proposed amendment in accordance with paragraph 9.2, each Partner Authority shall advise the Clerk of the Committee within fifteen (15) Working Days of receipt of the proposed amendment whether it approves or rejects the proposed amendment.
- 9.4 Where a Partner Authority fails to advise the Clerk of the Committee within this period then it shall be deemed that such Partner Authority approves the proposed amendment.
- 9.5 Where one or more Partner Authorities reject a proposed amendment, then the First Business Plan shall not be amended.
- 9.6 Where all of the Partner Authorities approve the proposed amendment, then the amendment(s) shall be incorporated into the First Business Plan.
- 9.7 Each year the Committee shall be responsible for the preparation of a Draft Business Plan for approval at its Annual General Meeting.
- 9.8 The Draft Business Plan shall set out the strategy for the achievement of the Aims and Objectives over the next full twelve-month period commencing on the 1<sup>st</sup> March in the relevant year. It will specify the activities to be undertaken, and arrangements to be entered into, in support of that strategy, together with a full assessment of the financial, resource, service, legal and contractual implications.
- 9.9 The Committee shall provide each Partner Authority with a copy of the Draft Business Plan by no later than 1 November in any year.
- 9.10 The Draft Business Plan shall be considered by each of the Partner Authorities and each Partner Authority shall provide its comments, if any, on the Draft Business Plan to the Clerk of the Committee within thirty five (35) Working Days of receiving the Draft Business Plan.
- 9.11 Following receipt of any comments provided by the Partner Authorities, the Committee shall revise the Draft Business Plan and circulate it to each of the Partner Authorities for their final approval at least forty (40) Working Days prior to the date of the Committee's Annual General Meeting.
- 9.12 Each Partner Authority shall advise the Clerk of the Committee whether it approves or rejects the revised Draft Business Plan at least ten (10) Working Days prior to the date of the Committee's Annual General Meeting.



- 9.13 Where a Partner Authority fails to advise the Clerk of the Committee of its approval or otherwise within the period referred to in paragraph 9.12 then it shall be deemed that such Partner Authority approves the revised Draft Business Plan.
- 9.14 Where one or more Partner Authorities do not approve the revised Draft Business Plan then it shall not be adopted by the Committee and as far as possible the Committee shall continue to act under the previous Business Plan.
- 9.15 Where the revised Draft Business Plan is not approved by one or more Partner Authorities the Committee and that Partner Authority(ies) shall use their best endeavours to agree a revised Draft Business Plan and seek approval for the revised Draft Business Plan.
- 9.16 At its Annual General Meeting, the Committee shall, subject to the Draft Business Plan being approved by all of the Partner Authorities, approve the Draft Business Plan. Once approved the Draft Business Plan shall become the Business Plan for the Committee.
- 9.17 At any other time the Committee may consider and propose a draft amendment to the Business Plan, where necessary to accommodate unforeseen circumstances, which have arisen which would assist the Committee in achieving the Aims and Objectives. Any proposed amendment that is agreed by the Committee shall then be submitted to each of the Partner Authorities for approval.
- 9.18 Upon receipt of any proposed amendment in accordance with paragraph 9.17, each Partner Authority shall advise the Clerk of the Committee within fifteen (15) Working Days of receipt of the proposed amendment whether it approves or rejects the proposed amendment.
- 9.19 Where a Partner Authority fails to advise the Clerk of the Committee within this period then it shall be deemed that such Partner Authority approves the proposed amendment.
- 9.20 Where one or more Partner Authorities reject a proposed amendment, then the Business Plan shall not be amended.
- 9.21 Each Partner Authority shall ensure that any key decisions that the Committee expects to make, as set out in a Business Plan, are reflected in its forward plan.

## **10. CONTRIBUTIONS TO THE COSTS INCURRED BY THE COMMITTEE**

- 10.1 The Partner Authorities shall jointly fund all costs incurred by the Committee in accordance with the Business Plan.
- 10.2 The costs referred to in paragraph 10.1 above shall be incurred by the County Council on behalf of the Committee and each of the other Partner Authorities shall re-imburse the County Council for its share of these costs on the County Council providing reasonable evidence to each other Partner Authority that such costs have in fact been reasonably incurred by it.

## **11. DELEGATION TO SUB-COMMITTEES AND OFFICERS**

- 11.1 The Committee may arrange for any of its functions to be discharged by a Sub-Committee or by an officer(s) of one or more of the Partner Authorities.
- 11.2 The Committee may appoint working groups of Committee Members and/or officers to consider specific matters and report back to the Committee or any Sub-Committee with recommendations.

## **12. AMENDMENTS TO THE CONSTITUTION BY THE COMMITTEE**

- 12.1 The terms of this Agreement shall be kept under periodic review by the Committee and by each of the Partner Authorities.
- 12.2 Any amendments to this Agreement to be proposed by the Committee to the Partner Authorities (including but not limited to the addition of a new Partner Authority to the Committee) shall be subject to all votes cast at a meeting of the Committee being cast in favour of the proposed amendment(s).
- 12.3 The amendment(s), once approved by the Committee, shall be subject to the approval of all of the Partner Authorities. Each Partner Authority shall use its best endeavours to approve (or otherwise) such amendments as soon as reasonably possible.

## **13. DEVELOPING THE ROLE OF THE COMMITTEE IN THE ESSEX WASTE MANAGEMENT PARTNERSHIP**

- 13.1 The Committee may from time to time make recommendations to the Partner Authorities as to the role of the Committee following the completion of the Procurement Exercise and in particular to develop its role with regard to:
  - 13.1.1 the management of any contracts with the Preferred Private Sector Partner(s);
  - 13.1.2 the development of partnering arrangements with the Preferred Private Sector Partner(s) and stakeholder groups;
  - 13.1.3 waste minimisation generally;
  - 13.1.4 the reduction of waste going to landfill on a year by year basis;
  - 13.1.5 the development of alternative methods of disposal; and
  - 13.1.6 an increase in the proportion of waste being recycled or reused on a year by year basis.
- 13.2 Any recommendations made by the Committee to the Partner Authorities shall specify any amendments required to this Agreement and to the Business Plan, together with a full assessment of the financial, resource, service, legal and contractual implications of the proposed changes to the role of the Committee.
- 13.3 Each of the Partner Authorities shall consider the recommendations of the Committee and each may at its absolute discretion approve or reject the recommendations of the Committee.

## **14. SCRUTINY ARRANGEMENTS**

- 14.1 The decisions made or actions taken by (and, for the avoidance of doubt, not mere recommendations of) the Committee shall be subject to the Scrutiny Arrangements of each Partner Authority.
- 14.2 Decisions or actions of the Committee shall be notified to all those to whom agenda papers etc are despatched in accordance with paragraph 7.8 above within seven (7) Working Days of the decision being reached or the action being taken, as the case may be.
- 14.3 The Committee Members and their officer advisers shall fully co-operate with the relevant Scrutiny Committee of any of the Partner Authorities.
- 14.4 Any decision or action of the Committee called in for scrutiny before it is implemented shall not be implemented until the Scrutiny Arrangements of the Partner Authority whose membership has called in the decision or action has been completed.
- 14.5 A call in of such a decision or action can only be made if the decision or action concerned directly affects the Partner Authority whose membership wishes to call in the decision or action.
- 14.6 A Committee Member must if he is involved in the consideration of a call in of a matter at a meeting of a Scrutiny Committee or a sub-committee of such a committee regard himself as having a personal and a prejudicial interest if that consideration relates to a decision made, or action taken, by the Committee or any Sub Committee of the Committee.
- 14.7 Paragraph 14.6 above shall not apply if that Committee Member attends that meeting for the purpose of answering questions or otherwise giving evidence relating to that decision or action.
- 14.8 A Scrutiny Committee must notify the Committee if it includes in its work programme any aspect of policy development or review relating to the work or functions of the Committee.
- 14.9 Once it has formed recommendations on proposals for development, a Scrutiny Committee shall prepare a formal report and submit it for consideration by the Committee.
- 14.10 The Committee shall consider the report of a Scrutiny Committee within fifteen (15) Working Days of it being submitted to the Clerk of the Committee and shall issue a formal response to such a report.
- 14.11 Where any Partner Authority Member or officer is required to attend a Scrutiny Committee, the Chairman of that Committee will inform the Monitoring Officer of its own authority.
- 14.12 That Monitoring Officer shall inform the Partner Authority Member or officer in writing giving at least ten (10) Working Days notice of the meeting at which he is required to attend, such notice to state the nature of the item on which he is required to attend to give account and whether any papers are required to be produced for the Scrutiny Committee.
- 14.13 Where the account to be given to the Scrutiny Committee will require the production of a report, then the Partner Authority Member or officer concerned will be given sufficient notice to allow for preparation of that documentation.

- 14.14 Where, in exceptional circumstances, the Partner Authority Member or officer is unable to attend on the required date, then the Scrutiny Committee shall in consultation with the Partner Authority Member or officer arrange an alternative date for attendance which shall be as soon as practicable in relation to the original date specified.
- 14.15 If, having considered the decision or action, a Scrutiny Committee is concerned about it, then it may refer it back to the Committee for reconsideration, setting out in writing the nature of its concerns. If referred back to the Committee for reconsideration the Committee will have a further seven (7) Working Days to consider whether to amend the original decision or revise the original action taken before reaching a final decision or taking final action.
- 14.16 If following an objection to a decision or action, a Scrutiny Committee does not meet in the period prescribed by the Partner Authority's Scrutiny Arrangements, or does meet but does not refer the matter back to the Committee, the decision or action shall take effect on the date of the scrutiny meeting, or the expiry of the period in which it should have met whichever is the earlier.
- 14.17 The call-in procedure set out above shall not apply where the decision or action being taken by the Committee is urgent.
- 14.18 A decision or action will be deemed to be urgent if any delay likely to be caused by the call-in process would prejudice the Committee's, the public's or a third party's interests.
- 14.19 The record of the decision or action and notice by which it is made, shall state whether, in the opinion of the Committee, the decision or action is an urgent one and, therefore, not subject to call-in in accordance with the procedures set out in this paragraph 14.
- 14.20 The chairman of the Scrutiny Committee or Monitoring Officer of the Partner Authority whose member representative is the Chairman of the Committee must agree both that the decision or action proposed is reasonable in all circumstances and to it being treated as a matter of urgency.
- 14.21 The operation of the provisions relating to call-in and urgency shall be monitored annually by the Clerk of the Committee, and a report submitted to the Committee with proposals for review if necessary.

## **15. CONDUCT AND EXPENSES OF MEMBERS**

- 15.1 All Committee Members shall observe at all times the provisions of the Code of Conduct adopted by their Authority.
- 15.2 Where a Voting Member becomes aware of any potential conflict of interest which may arise between the interests of that Voting Member and/or the Partner Authority whom he represents in relation to the functions of the Committee that Voting Member shall immediately notify the Clerk of the Committee, giving full details of the nature of the conflict and shall not be entitled to vote on any decision taken by the Committee on that issue.

- 15.3 Each Partner Authority and Stakeholder shall be responsible for meeting any expenses to which any Committee Member (or its Substitute Member) or officer appointed by them, as its representative, is entitled as a result of their attendance at duly authorised meetings.

## **16. LIABILITY OF COMMITTEE MEMBERS**

- 16.1 Committee Members appointed by the Partner Authorities shall have the same responsibilities and liabilities as those which apply when sitting on other committees and bodies as appointed representative on behalf of their authority.
- 16.2 Where any contractual arrangements are authorised by the Committee, any liabilities arising under those arrangements will rest with the relevant Partner Authority(ies).
- 16.3 Indemnification for any liabilities which do arise is a matter between the Committee Member and their appointing authority/body.

## **17. INTERFACE WITH THE OTHER JOINT COMMITTEES AND THE WASTE MANAGEMENT ADVISORY BOARD**

- 17.1 The Committee is one of three Joint Committees established across the County of Essex and Southend in connection with the Essex Waste Management Partnership.
- 17.2 The Committee shall, where appropriate, work with and assist the work undertaken by the other Joint Committees, and except where prevented by legislation may make available to those Joint Committees, all information obtained from Private Sector Partners in connection with the Procurement Exercise.
- 17.3 The Committee shall assist the Waste Management Advisory Board in connection with its role in coordinating and implementing the Essex Waste Management Partnership.

## **18. ANNUAL WASTE CONFERENCE**

- 18.1 The Committee recognises that once a year the County Council and the Waste Management Advisory Board arrange an Annual Waste Conference to debate issues relating to waste management in the County of Essex and Southend.
- 18.2 The Committee shall assist the County Council and the Waste Management Advisory Board in the preparation and operation of the Annual Waste Conference. For the avoidance of doubt, such assistance shall not involve the Committee making any monetary contribution to the County Council and/or the Waste Management Advisory Board.
- 18.3 The Committee shall make presentations and representations to the Annual Waste Conference on the development and management of the Procurement Exercise in the Thames Gateway Area Group.

## **19. DISPUTE RESOLUTION**

- 19.1 Any dispute under this Agreement shall be referred in the first instance to the Waste Management Advisory Board who shall meet to consider the dispute and use all reasonable endeavours to resolve matters as soon as reasonably practicable.
- 19.2 If following referral of a dispute to the Waste Management Advisory Board in accordance with paragraph 19.1 the dispute remains unresolved, then the dispute shall be referred to the Chief Executives of all of the Partner Authorities in association with the Leaders of all of the Partner Authorities who shall meet to consider the dispute and use all reasonable endeavours to resolve matters as soon as reasonably practicable.

## **20. CESSATION OF MEMBERSHIP**

- 20.1 Unless otherwise agreed in writing by all of the Partner Authorities, the Committee and this Agreement shall only remain in existence and effect up until [three] months following completion of the Procurement Exercise. Following this time, the Committee shall automatically cease to exist and this Agreement shall automatically terminate.
- 20.2 Any Partner Authority may withdraw from membership of the Committee by giving at least three months notice in writing to the Clerk to the Committee.
- 20.3 In the event of a Partner Authority withdrawing from membership of the Committee as provided for in paragraph 20.2 above, then in respect of any contractual obligations or other financial commitments entered into or costs reasonably incurred on behalf of the Committee by the County Council:
- 20.3.1 prior to that Partner Authority giving notice to withdraw in accordance with paragraph 20.2; and
- 20.3.2 following that Partner Authority giving notice to withdraw in accordance with paragraph 20.2 where such costs, contractual obligations or other financial commitments have been approved by that Partner Authority,
- the Partner Authority concerned shall:-
- 20.3.3 continue to meet its share of the financial commitment and costs in accordance with paragraph 10 or otherwise meet its part of the contractual obligations as required until the conclusion of the commitment or obligation as provided for in the contract or other documentation setting out the commitment or obligation; and
- 20.3.4 continue to be responsible for its part of any other liabilities relating to those contractual obligations or financial commitments until the conclusion of the obligations or commitments, as the case may be.
- 20.4 If more than one Partner Authority decides to withdraw from membership of the Committee then the Committee shall consider whether or not the Committee shall continue to operate on behalf of the remaining Partner Authorities and make appropriate recommendations to those authorities.

## **21. CONFIDENTIALITY, DATA PROTECTION AND FREEDOM OF INFORMATION**

- 21.1 Each Partner Authority and Stakeholder shall use its best endeavours to keep confidential (and shall also use its best endeavours to require its Committee Member, staff, employees and agents to keep confidential) any personal, commercial, technical or other information which would properly be regarded as confidential or exempt information for the purposes of the 1972 Act which they may acquire by virtue of participation in the Procurement Exercise or in consequence of this Agreement.
- 21.2 No Partner Authority or Stakeholder shall disclose such information to third parties other than for the purposes of this Agreement save to the extent that this is permitted by paragraph 21.3 below.
- 21.3 The restrictions on disclosure of confidential/ exempt information set out above shall not apply to:-
- 21.3.1 information which at the time of disclosure is already in the public domain; or
  - 21.3.2 information which after disclosure becomes available to the general public through no fault of any of the Partner Authorities or Stakeholders; or
  - 21.3.3 information which a Partner Authority or Stakeholder is effectively under an obligation to disclose including (but not limited to):-
    - (a) compliance with an Order from a Court of competent jurisdiction;
    - (b) investigations by the Standards Board;
    - (c) as a result of a complaint to the Local Government Ombudsman; and/or
    - (d) enquiries by the District Auditor.
- 21.4 Each Partner Authority shall comply with the relevant provisions of the Data Protection Act 1998 and the Freedom of Information Act 2000 (together referred to as the “Information Acts”) and Stakeholder Members shall in connection with their membership of the Committee comply with all requests of the Committee and/or any Partner Authority in connection with their obligations under the Information Acts.

IN WITNESS whereof the Partner Authorities have caused their respective Common Seals to be affixed to this document as a Deed on the date first before written.

The Common Seal of  
Essex County Council  
was hereunto affixed in the  
presence of:-

The Common Seal of  
Southend-on-Sea Borough Council  
was hereunto affixed  
in the presence of:-

The Common Seal of  
Basildon District Council  
was hereunto affixed  
in the presence of:-

Castle Point Borough Council  
was hereunto affixed  
in the presence of:-

The Common Seal of  
Rochford District Council  
was hereunto affixed  
in the presence of:-



**SCHEDULE 1**

Map of Thames Gateway Area Group

## **SCHEDULE 2**

### **Business Plan**