

West Kent Waste Partners Group (WKWPG)

Memorandum of Understanding (MoU)



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Memorandum of Understanding (MoU)

for the West Kent Joint Waste Partnership (WKJWP)

Document Version Control

In signing this MoU Partners confirm that they have read and contributed to the draft iterations leading to this final document.

| Document Name: | Distributed by: | Date |
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| WKWPG - DRAFT MoU - v1 | Paldeep Bhatti | 03-Jan-17 |
| WKWPG - DRAFT MoU - v2 | Dave Thomas | 03-Mar-17 |
| WKWPG - DRAFT MoU - v3 | David Beaver | 22-Mar-17 |
| WKWPG - DRAFT MoU - v4 | David Beaver | 05-Apr-17 |
| WKWPG - DRAFT MoU - v5 | David Beaver | 24-Apr-17 |
| WKWPG - DRAFT MoU - v6 | David Beaver | 02-May-17 |
| WKWPG - Final MoU - v1 | Sandra Eates on behalf of David Beaver | 10-May-17 |

1. Purpose of this Memorandum of Understanding

The purpose of this MoU is:-

- a. To set out in simple, non-legalistic, terms the way that the Partners (see definition) to the MoU will work together towards the objectives of procuring a waste management contract for the collection of recyclable and residual waste materials, processing of recyclable materials, and the provision of street cleansing services and associated arrangements.
- b. To establish overarching principles for taking joint working forward to deliver the agreed work streams.

2. Objectives of Joint Working

The objectives of Joint working are:-

- a. To reduce overall operating costs and/or increase service performance for each of the three collection authorities and one disposal authority party to this MoU.
- b. To ensure that in achieving 2a above that no authority is worse-off as a consequence of joint working.

3. Definitions & Interpretation

| Term | Definition |
|---------------------------|--|
| Alternative View | Each Council's developed view which enables either cost comparison against existing service, or for an individual Council to award a separate contract. |
| Containerisation Funding | Capital Funding required by the WKD's to fund changes in containerisation necessary to introduce the NOM. |
| DBC | Dartford Borough Council |
| Performance Payment | This funding will replace recycling credit funding and any other pre-existing KCC funding streams and be termed as a West Kent District Award. The amount will be the equivalent to the value of recycling credits paid in the last full year prior to the relevant council entering into the WKJWP Service Contract plus all other pre-existing KCC funding streams. The amount payable will be based upon actual recycling performance, therefore offering a continual incentive to the WKDs. The Performance Payment will be defined by a schedule of cost or payment components. Performance |
| Households | Household numbers are as defined for Waste Dataflow. |
| KCC | Kent County Council |
| Host Authority | DBC for at least the first phase of the procurement process, and then to be subject to further discussion and agreement. |
| Inter Authority Agreement | A legally binding agreement between WCAs and WDA which details performance based payment mechanisms in recognition of enhanced cost efficiency. This may be one joint document or individuals aligned to each WCA. |
| Kerbside Collections | Either mixed waste or individual or mixed recyclables presented in wheeled bins or other containers by residents for collection by a contractor |
| Lead Officer | The officer responsible for the delivery of waste management services in each Council. |
| Members | The Councillors from each authority with an interest in the project. |
| MoU | Memorandum of Understanding |
| NOM | Nominal Optimal Model – refers to the use of split bodied vehicles for kerbside collection of dry recycle, weekly food waste and alternate weekly collection of residual waste. This is further referenced in Appendix 4 which details an operating model developed by Waste Consulting Limited. |
| Partners | DBC, TMBC, TWBC & KCC |
| Partnership | The Partners working together in an evolving relationship which will be reflected in a Partnership Agreement. |
| Procurement Group | Sub Group of Steering Group with specific responsibility for progressing the procurement of the West Kent Joint Waste Contract. Reports back to Steering Group. |


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| Project Purpose | The production and tendering of a joint waste collection contract for refuse, recycling and street cleansing |
| Project View | The joint view of the Project benefits used to contrast against Alternative View (see definition above). |
| Reporting Structure | Joint working arrangements explained in Appendix I |
| TMBC | Tonbridge & Malling Borough Council |
| TWBC | Tunbridge Wells Borough Council |
| WKDs | West Kent Districts (DBC, TMBC & TWBC) |
| WKJAG | West Kent Joint Arbitration Group |
| WKJWP | West Kent Joint Waste Partnership |
| WKWPG | West Kent Waste Partners Group (DBC, TMBC, TWBC & KCC) – formed from Lead Officers from Partners with responsibility for progressing the West Kent Joint Waste Project. |
| WCA | Waste Collection Authority |
| WDA | Waste Disposal Authority |

4. Status of MoU & the Partnership

- a. This MoU is an operational not contractual document, however it is acknowledged by the Partners that the following areas will need to be agreed and entered into as legally binding documents as soon as practicable hereafter. The areas to be embodied in the legally binding agreement are outlined at **Appendix II** to this MoU.
- b. The Partners have (by signing this MoU) agreed to use all reasonable endeavours to achieve the objectives of the overarching principles of this MoU.
- c. The Partnership is not a legal entity. Accordingly, it cannot employ staff or enter into contracts in its own right. In those respects it will have to act through an agent – normally one of the Partners acting as a Host Authority. DBC will lead for the purposes of procurement.
- d. The Partners will from time to time consider and if appropriate grant delegated powers within the group to their lead and other officers to facilitate the working of the Partnership.
- e. The Partners will refer relevant matters where agreement cannot be found initially to the WKJAC.

5. Key Overarching Principles

- a. The Partners recognise that the co-ordination of action in procuring waste collection, recycle processing and street cleansing arrangements will be more effective than individual action by a single authority.
- b. The Partners recognise the guiding principles of the Best Practicable Environmental Option (BPEO) and the European Community (EC) hierarchy of waste management:-

| | |
|---------------------------------|--|
| Waste Reduction | <div style="text-align: center;"> <p>Most Desirable</p>  <p>Least Desirable</p> </div> |
| Reuse | |
| Recycling & Composting | |
| Energy Recovery with Heat/Power | |
| Landfill with Energy | |
| Landfill | |

- c. The Partners will work together to deliver the objectives of the Joint Municipal Waste Management Strategy for Kent.
- d. The Partners commit themselves to the most economically advantageous and closest co-ordination possible of waste collection and disposal arrangements in West Kent, within the law and that is reasonably practicable and supported by acceptable business case.
- e. TEEP will be fully considered when formulating any proposed collection methodology. This is further defined in **Appendix IV**, the operating model developed by Waste Consulting Limited which is approved by the WKWPG.
- f. The WKDs will participate in an optimum, most economically advantageous procurement solution to deliver the NOM. Procurement solutions to commence in 2019 for DBC, TMBC and TWBC. Also tendering options for existing/current service level to assess against the NOM to be established through an Open Tender, with pre-procurement contractor engagement process.
- g. KCC will participate in this process and include the procurement of all the necessary arrangements, post collection, to provide capacity, for the handling, and processing of waste. KCC, in undertaking this obligation, will however have to take into account whether current infrastructure is capable to deliver the NOM such as North Farm and Pepperhill Transfer Stations. In addition its key suppliers such as Viridor MRF and Allington Energy from Waste contract. Any additional costs will be included within the schedule of cost or payment components in accordance with the principles defined Benefits Disaggregation Principles detailed in **Appendix III**.
- h. The Partners will adopt the optimum most economically advantageous options as a result of the procurement process to include unified contract management arrangements and cross boundary collection efficiencies.
- i. The Partners will consider and define, post-implementation contract management options prior to the tendering exercise in order to provide potential tenderers with an indication of likely on-going administration requirements.

- j. Each Authority will take contract responsibility for its own decision making to deliver The Project.

6. West Kent Waste Partners Group

- a. The Partners are Dartford Borough Council, Kent County Council, Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council. For the avoidance of doubt, whilst geographically within West Kent, both Gravesham Borough Council and Sevenoaks District Council are not Partners to this joint working.
- b. The Partners shall be supported by the WKWPG consisting of a minimum of one Lead Officer responsible for waste from each of the Partners.
- c. For the avoidance of doubt membership of the Steering Group should remain as constant as possible but may vary at the discretion of each Partner as appropriate to the topic or issue being considered and may include additional members as appropriate to the topic or issues being considered.
- d. Officers of each Partner shall be required to and be responsible for reporting decisions to their own Council and implementing Partner decisions (once adopted by all Partners) and the WKWPG shall monitor the implementation of those decisions. Each Partner will be aware and considerate of how the timing of their reporting may affect the other Partners.
- e. The WKWPG may agree to the setting up of other Officer sub/working groups to discuss and take forward any particular issues with emphasise on joint working. Such working groups will be accountable to the Partners through the Steering Group.
- f. The Steering Group shall, by applying pooled resources, employ (through the Host Authority) a Project Manager and/or use of Consultants, to advance the aims of the objectives of the Partnership. The work programme for the Project Manager and/or use of Consultants will be determined by the Partnership and monitored by the WKWPG.
- g. The WKD's will agree that a Lead Officer will be form part of the IAA that will take responsibility for the high level leadership of the waste management services of behalf of each Council.

7. Scrutiny Arrangements

- a. Partners will be encouraged to conduct scrutiny through their individual scrutiny arrangements.

8. Specific Principles

- a. The WKDs will take all reasonable steps to achieve delivery of collection arrangements by a single contractor from 2019. This is envisaged to be achieved by a single contract arrangement building on the principles and lessons learnt from the East Kent and Mid Kent Projects.

Annex 2

- b. All reasonable steps will be used to include as part of the contracted services, processing capacity to achieve a more unified collection and processing contractual arrangement across the WKDs. The preferred option for WKDs is via one single contractor.
- c. KCC will take reasonable considerations for these commitments; to make Performance payments to the WKDs which will be based upon actual performance in accordance with the NOM. This agreement will be entered into as part of the agreement of the WKDs to collect according to the NOM, and to see a single contractor outcome. Performance Payments to the WKDs will be made in accordance with the introduction of the delivery of performance achieved through the delivery of NOM.
- d. Individual Council's developed view may also include for an Alternate View of Kerbside Collections for tender. Consideration will be given by individual WKDs for the purposes of benchmarking or the basis of a separate contract award for the Project.
- e. KCC will also agree to make Performance Payments required to deliver the NOM that reward actual levels performance defined within each business case which will enable WKDs to benefit from sustainable and improved levels of performance, these will be defined in the relevant IAA.
- f. Anticipated disposal savings will be determined through open book accounting and using base performance data of 2017/18, by contrasting disposal costs delivered through the implementation of the project, including the costs of any changes needed to infrastructure, against base case disposal costs which represent the forecast disposal costs that KCC would have incurred if the Project had not been implemented. This base case will form part of the legal agreement to which all parties will commit, payments to WCAs which reward enhanced performance will be dealt with through the development of an IAA.
- g. Anticipate collection savings will be determined through open book accounting and through the competitive dialogue process as tenderers define the benefits to be delivered:-
 - i. Through joint working with WKDs;
 - ii. Through joint working across the Partners; and
 - iii. Through co-location of depot, transfer and processing facilities.
- h. The principles of benefit disaggregation are detailed at **Appendix III** to this MoU, these will be finalised through detailed IAAs.
- i. This will provide the WKDs and KCC with a clear financial incentive to agree and deliver the efficiencies and improvements which will lead to these future savings. These mechanisms are to be enshrined within the Partnership Agreement referred to above and will be defined with the IAA.
- j. Disaggregation benefit to be assessed annually and not subject to adjustments from previous years.

9. Confidentiality & Publicity

- a. The Partners will be guided by a presumption of openness and transparency in all matters relating to the Project except to the extent that any information is or relates to:-
 - i. Confidential data in the ownership of a third party or
 - ii. Information which either is or may be treated as exempt within the meaning of Schedule 12A to the Local Government Act (as amended).
- b. If a Partner (the “Receiving Partner”) receives a request under the Freedom of Information Act 2000 (“FOIA”) it shall be for the Receiving Party to decide if such information should, as a matter of law, be disclosed and having acted reasonably and decided that it is legally obliged to disclose, it shall be entitled to so disclose.
- c. The Receiving Partner shall use its reasonable endeavours to consult with those Partners that may be affected by such disclosure prior to deciding whether to disclose information pursuant to the FOIA but it shall not be obliged to so consult where to do so would put it in breach of this Act.
- d. No Partner shall make any press announcements or publicise the Partnership arrangements in any way, except with written consent of the other Partners, such consent not to be unreasonably withheld or delayed.
- e. A Partner will refer all enquiries and communications from the press and other media to the other Partners’ Lead Officers and all parties’ Lead Officers shall work together in order to sign-off any press announcements, publicity or responses to media enquiries. All information provided to the media and publicity concerning the activities under this MOU and those of either party in connection with this MOU must be approved in writing by each party in advance.
- f. A Partner will not be responsible for costs relating to publicity, awareness, marketing campaigns or other such media unless that party has agreed in writing to such an expense prior to such marketing being undertaken.
- g. Each Partner will be aware and considerate of how the timing of their reporting and publicity may affect the other Partners.

10. Dispute Resolution

In the event of a dispute under this MoU which cannot be resolved by the Partners, the matter concerned will be referred to the WKJAG. If any Partners disagree with the decision of WKJAG, the matter will then be referred to an independent adjudicator chosen by the Partners for arbitration and whose decision will be binding on all Partners

11. Duration

The arrangement set out in this MoU will remain in operation until the Partnership is disbanded or the Partnership Inter Authority Agreement (IAA) is entered into whichever is sooner. Arrangements may, however, be varied by written agreement of all of the Partners.

12. Partners Agreement

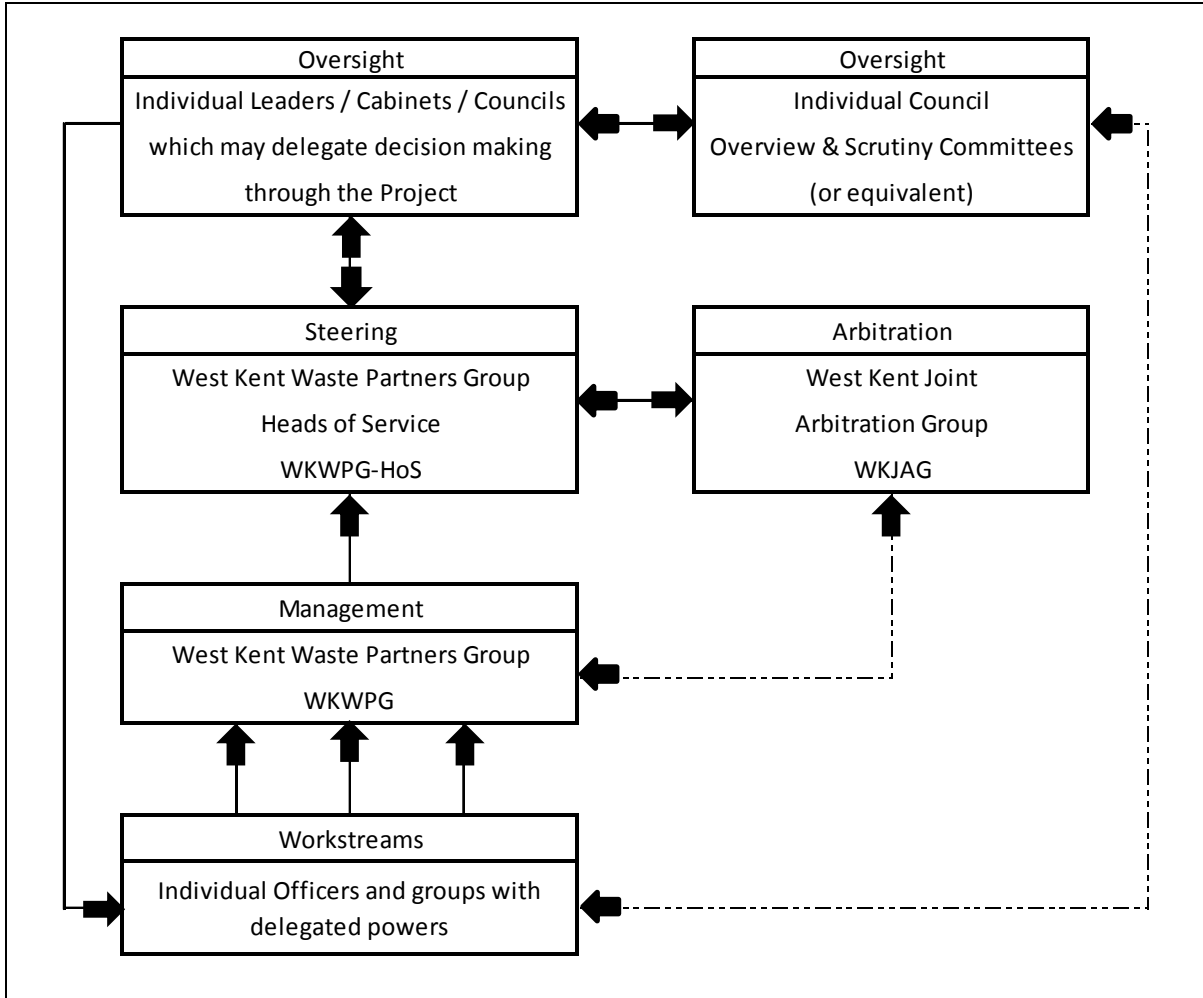
This MoU is agreed by the following:-

| PARTNER | SIGNED | DATED |
|------------------------|---------------|--------------|
| Dartford BC | | |
| Tonbridge & Malling BC | | |
| Tunbridge Wells BC | | |
| Kent County Council | | |

Appendices

- APPENDIX I Reporting Structure
- APPENDIX II Legal Commitments
- APPENDIX III Benefit Disaggregation Principles
- APPENDIX IV NOM Costings & Performance Model

**Reporting Structure for
West Kent Waste Partners Group (WKWPG)**



LEGAL COMMITMENTS

In order for the Project procurement to progress through to the Final Tender Specification stage (which will require a degree of certainty in terms of the waste collection and disposal methodology) it will be necessary for the Partners to make certain binding commitments between themselves as soon as possible:

- 1 WKDs will need to commit to the NOM collection methodology as refined and informed by the Competitive Dialogue Process in order to deliver materials in a single cost efficient manner;
- 2 WKDs will need to commit to deliver their specified recycling waste streams to the transfer points and facilities specified by KCC in accordance with agreed contractual conditions from 2019;
- 3 KCC will need to fund Performance Payments to the WKDs in accordance with actual performance delivered by the WKDs compliance with the NOM collecting methodology, these will not be based upon modelled data; these will be developed through an IAA.
- 4 KCC will need to identify the processing capacity and or facilities for the materials collected by the WKDs specifically whether this impacts upon the NOM collecting methodology in accordance with agreed contractual conditions; and
- 5 All parties agree to be bound by the disaggregation principles set out in **Appendix III** of the MoU, but these will be fully detailed and finalised within specific Inter Authority Agreements.

Benefit Disaggregation Principles

Partners agree to pool future avoided disposal savings and savings derived specifically from joint working across Waste Collection Authorities and Waste Collection/Disposal Authorities relating to the NOM in respect of their refuse and recycling services.

Benefits to be disaggregated will be detailed within the respective Inter Authority Agreements:

- Remaining Benefit to be disaggregated between KCC and the WKDs in accordance with the following:
 - 50% KCC
 - 50% WKDs
- The benefit derived to the WKDs to be disaggregated in proportion to the number of Households, or performance achieved within each district area (subject to the agreement of an equalisation mechanism) such that, over time, greater equity in KCC funding per household is commensurate across all WKD administrative areas. This will be defined with the IAA.

Nominal Optimal Model (NOM) Costings & Performance Model

The contents and analysis within this paper have been provided by Waste Consulting LLP – industry experts advising the WKWPG and engaged through Dartford Borough Council. Dennis Gardner has streamlined this final iteration to reflect joint agreed opinions expressed during the monthly WKWPG meeting held 28th April 2017.



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