

DATED

2017

SOUTH HAMS DISTRICT COUNCIL

-AND-

WEST DEVON BOROUGH COUNCIL

**MEMORANDUM OF UNDERSTANDING IN
RELATION TO PROCUREMENT OF WASTE
COLLECTION, RECYCLING AND CLEANSING
SERVICES**

(THE PROJECT)

Prepared by

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West Devon Borough Council **and** South Hams District Council

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BETWEEN:

- (1) **SOUTH HAMS DISTRICT COUNCIL** of Follaton House, Plymouth Road, Totnes, Devon TQ9 5NE (**South Hams**).
- (2) **WEST DEVON BOROUGH COUNCIL** of Kilworthy Park, Drake Road, Tavistock, PL19 0BZ (**West Devon**).

Together the “**Councils**” and each a “**Council**”.

1. BACKGROUND

- 1.1 South Hams and West Devon have agreed to work together on the proposed procurement of Waste Collection, Recycling and Cleansing Services (**Project**).
- 1.2 The Project’s brief is to give effect to the Council’s recommendation namely that Waste Collection, Recycling and Cleansing Services are tested using the competitive dialogue procurement route to achieve a partnership solution.
- 1.3 The Councils are party to a Collaboration Agreement which set out the basis for sharing resources generally but also make it clear that the Councils will continue operating different governance arrangements.
- 1.4 The Councils wish to record the basis on which they will collaborate with each other on the Project. This MoU sets out:
 - (a) the key objectives of the Project;
 - (b) the principles of collaboration;
 - (c) the governance structures the Councils will put in place; and
 - (d) the respective roles and responsibilities the Councils will have during the Project.

2. **KEY OBJECTIVES FOR THE PROJECT**

2.1 The Councils shall undertake the Project to achieve the key objectives (**Key Objectives**) in accordance with the Joint Working Protocol as set out Annex E to this MoU. The Key Objectives are:

- i) Test the market with a view to securing value for money outcome for the Councils.
- ii) Seek to secure a partnership arrangement for the delivery of the services across the two Councils.
- iii) Seek to find better ways of delivering the services in scope without necessarily compromising quality.

2.2 The Services in scope of the Project across both Councils are:

- i) Waste Collection
- ii) Recycling
- iii) Street Cleaning
- iv) Toilet Cleansing

2.3 The Councils acknowledge the current position with regard to the Project.

3. **PRINCIPLES OF COLLABORATION**

The Councils agree to adopt the following principles when carrying out the Project (**Principles**):

- (a) collaborate and co-operate. Establish and adhere to the governance structure set out in this MoU to ensure that activities are delivered and actions taken as required;
- (b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this MoU;
- (c) be open. Communicate openly about major concerns, issues or opportunities relating to the Project;
- (d) learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;

- (e) adopt a positive outlook. Behave in a positive, proactive manner;
- (f) adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation. In particular the Councils agree to comply with the requirements of the Information Sharing Protocol attached to this MoU in A;
- (g) act in a timely manner. Recognise the time-critical nature of the Project and respond accordingly to requests for support;
- (h) manage stakeholders effectively;
- (i) deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this MoU; and
- (j) act in good faith to support achievement of the Key Objectives and compliance with these Principles.

4. PROJECT GOVERNANCE

4.1 Overview

The governance structure defined below provides a structure for the development and delivery the Project.

4.2 Guiding principles

The following guiding principles are agreed. The Project's governance will:

- (a) provide strategic oversight and direction;
- (b) be based on clearly defined roles and responsibilities at organisation, group and, where necessary, individual level;
- (c) align decision-making authority with the criticality of the decisions required;
- (d) be aligned with Project scope and each Project stage (and may therefore require changes over time);
- (e) leverage existing organisational, group and user interfaces;
- (f) provide coherent, timely and efficient decision-making; and
- (g) correspond with the key features of the Project governance arrangements set out in this MoU.

4.3 Project Board

- (a) The Project Board shall provide overall strategic oversight and direction to the Project.

- (b) The Project Board will consist of a maximum of six Elected Members as may be nominated by the Councils from time to time, and Officers. The initial membership of this board shall be as follows:

Elected Members

1. Cllr R Sampson (West Devon BC),
2. Cllr L Samuel (West Devon BC)
3. Cllr N Jory (West Devon BC),
4. Cllr K J Baldry (South Hams DC),
5. Cllr R Gilbert (South Hams DC),
6. Cllr S A E Wright (South Hams DC)

Officers

7. Jane Savage (Commissioning Manager)
8. Steve Jordan (Executive Director Strategy & Commissioning),
9. Lisa Buckle (Finance)
10. Helen Dobby (Group Manager – Commercial Services)
11. Andrew Ogalo (Legal)
12. Justin Dudley (Project Manager)

- (c) The Project Board shall be managed in accordance with the terms of reference set out in Annex B to this MoU.
- (d) The Executive Director may nominate another officer to attend board meetings in his absence.

4.4 Project Team

- (a) The Project Team will provide strategic management at Project and workstream level. It will provide assurance to the Project Board that the Key Objectives are being met and that the Project is performing within the boundaries set by the Project Board.

- (b) The Project Team consists of representatives from each of the Councils. The Project Team shall have responsibility for the creation and execution of the project plan and deliverables, and therefore it will draw technical, commercial, legal and communications resources as appropriate into the Project Team. The Core Project Team members are:
- Lisa Buckle (Finance)
 - Sophie Hosking (Executive Director Service Delivery and Commercial Development),
 - Andrew Ogalo (Lead Solicitor)
 - Len Attrill (WYG Consultant)
 - Helen Dobby (Group Manager – Commercial Services)
 - Jane Savage (Commissioning Manager)
 - L4 (tbc)
 - Lucy Ford (Procurement)
 - Cathy Aubertin (Operational Manager – Environmental)
 - Justin Dudley (Project Manager)
 - Andy Wilson (HR Lead)

The Project Team shall meet monthly or at such frequency as determined by the Project Manager.

4.5 **Reporting**

Project reporting shall be undertaken at three levels as shown below. Reports will be presented to Hub Committee and Executive as appropriate, with Key Decisions taken to Executive, Hub Committee and meetings of Council.

- (a) **Project Team:** Minutes and actions will be recorded for each Project Board meeting. Any additional reporting requirement shall be at the discretion of the Project Board.

Project Board: Reporting shall be monthly, based on the minutes from the Project Team highlighting: Progress this period; issues being managed; issues requiring help (that is, escalations to the Project Board) and progress planned next period and/or aligned with the frequency of the Project Board meetings.

- (b) **Organisational:** the Project Team members shall be responsible for drafting reports into their respective sponsoring organisation as required for review by the Project Board before being issued.

5. **ROLES AND RESPONSIBILITIES**

- 5.1 The Councils agree to deliver the Project in accordance with the Joint Working Protocol.
- 5.2 The Councils agree that West Devon Borough Council shall be the Lead Council in accordance with Clause 11 of the Collaboration Agreement.
- 5.3 The Councils agree in principle and always, subject to value for money, to enter into a joint contract with a successful contractor for Lot 3 services as detailed in the Specification and Descriptive Document.

6. **ESCALATION**

- 6.1 If either Council has any issues, concerns or complaints about the Project, or any matter in this MoU, that Council shall notify the other Council and the Councils shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the Project Board, which shall decide on the appropriate course of action to take.
- 6.2 If either Council receives any formal inquiry, complaint, claim or threat of action from a third Council (including, but not limited to, claims made by a supplier or requests for information made under the Freedom of Information Act 2000) in relation to the Project, the matter shall be promptly referred to the Project Board (or its nominated representatives). No action shall be taken in response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect the Project, without the prior approval of the Project Board (or its nominated representatives).

7. **INTELLECTUAL PROPERTY**

- 7.1 The Councils intend that notwithstanding any secondment any intellectual property rights created in the course of the Project shall vest in the Council whose employee created them (or in the case of any intellectual property rights created jointly by employees of both Councils in the Council that is Lead Council noted in clause 5 above for the part of the project that the intellectual property right relates to).

7.2 Where any intellectual property right vests in either Council in accordance with the intention set out in clause 7.1 above, that Council shall grant an irrevocable licence to the other Council to use that intellectual property for the purposes of the Project.

8. TERM AND TERMINATION

8.1 This MoU shall commence on the date of approval by both Councils at their Full Council meetings, and shall expire on completion of the Project.

9. VARIATION

This MoU, including the Annexes, may only be varied by written agreement of the Project Board in consultation with the Leaders.

10. CHARGES AND LIABILITIES

10.1 The Councils agree to share the costs and expenses arising in respect of the Project between them in accordance with the terms of the Collaboration Agreement dated the 11th March 2015.

11. STATUS

11.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the Councils from this MoU. The Councils enter into the MoU intending to honour all their obligations.

11.2 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the Councils, constitute either Council as the agent of the other Council, nor authorise either of the Councils to make or enter into any commitments for or on behalf of the other Council.

12. MOBILISATION AND CONTRACT MANAGEMENT

Following award of the Contract, the Project Team shall be reconstituted and shall be responsible for mobilisation process and post award contract management. The Project Team shall make a determination and recommend to the Project Board on how the Contract shall be managed and who the contract managers shall be.

13. GOVERNING LAW AND JURISDICTION

This MoU shall be governed by and construed in accordance with English law and, without affecting the escalation procedure set out in clause 6, each Council agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS WHEREOF THE COUNCILS HAVE EXECUTED THIS MEMORANDUM
AS A DEED ON THE DAY AND YEAR FIRST ABOVE WRITTEN

**THE COMMON SEAL OF
SOUTH HAMS DISTRICT COUNCIL**

Was hereunto affixed
In the presence of

Authorised Officer	NAMES IN CAPITAL
	SIGNATURE

**THE COMMON SEAL OF
WEST DEVON BOROUGH COUNCIL**

Was hereunto affixed
In the presence of

Authorised Officer	NAMES IN CAPITAL
	SIGNATURE

Annex A. Information Sharing Protocol

Please refer to the Collaboration Agreement dated the 11th March 2015

Annex B. Project Board terms of reference

Scope of authority

- To approve Procurement Documents
- To recommend to the respective Councils Contract Award Decisions
- To recommend to the Councils Procurement Procedure
- To sign off Specification
- To sign off Selection and Award Criteria
- To brief respective Councils on all aspects of the Project.
- To refer to respective Councils for authority to award contracts.
- To review the draft Project Initiation Document;
- To oversee consultation with stakeholders and other potential partners;
- To oversee the formulation and implementation of the communications strategy;
- To develop and explore delivery options;
- To monitor the Project Plan and work with officers to manage and mitigate risks;
- To report to the Hub Committee and to Executive with a proposed way forward;
- To monitor the agreed delivery process until the new arrangements begin.

Decision-making:

- Only Elected Members of the board have a vote.
- Officers have no voting rights.
- Each Elected Member shall have equal voting right.
- There shall be one Elected Member one vote
- Voting shall be by a show of hands
- Decisions shall be by a simple majority

- Equal voting rights.
- Elected Members shall elect one of them to be chair of the Board. The Chair shall have a casting vote in the event of a tie.

Meetings:

- Members shall meet at least once a month or at such frequency as determined by Elected Members.
- There shall be at least two Elected Members from each Council for there to be a quorum.
- Meetings shall take place such a place and time as determined by Elected Members.
- Notice of meetings shall take whatever form as agreed by Elected Members.
- Keep and maintain minutes of all decisions and recommendations.

Membership of the Board

Project Board shall comprise of those named in clause 4.3 as may be amended from time to time by the Councils.

Annex C

Collaboration Agreement dated the 11th March 2015.

ANNEX D – Project Team’s terms of reference

Leadership

The Project Team shall be led by a Project Manager.

The Project Manager shall be appointed by the Project Board.

The person initially appointed as the Project Manager is Justin Dudley.

Role of the Project Manager shall be:

- Provide leadership and direction to the Project Team
- Manage the Project

Membership of the Project Team

The Project Team shall comprise of those individuals named in clause 4.4 as may be amended from time to time:

Role of the Project Team

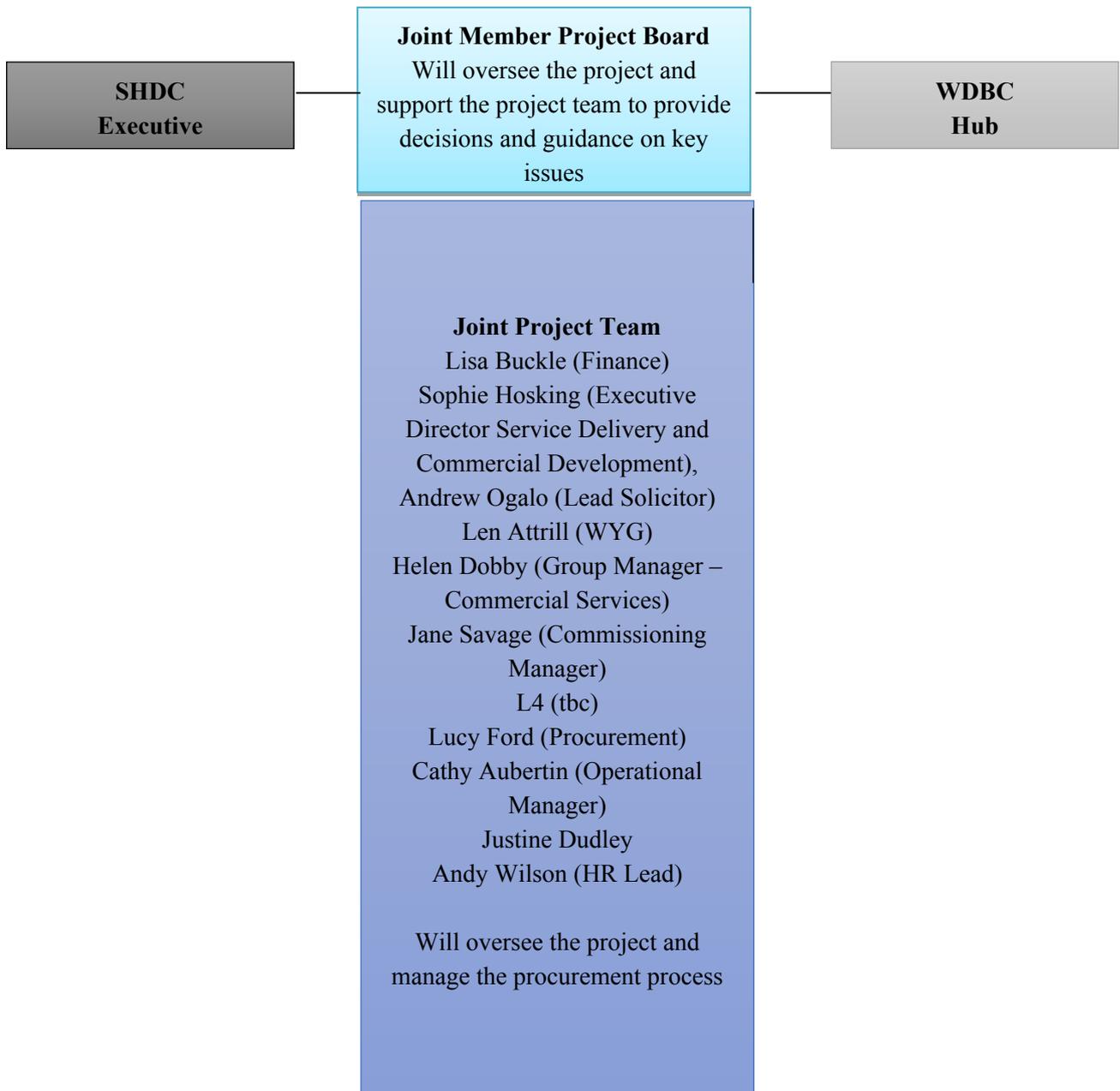
- Produce Procurement Documents and update the Board regularly on project progress.
- Formulate the procurement structure and undertake all necessary work required in order to achieve objectives of the project as detailed in the Descriptive Document.
- Ensure that the procurement exercise is undertaken in accordance with the Law and the Council’s Contract Procedure Rules.
- Conduct the procurement exercise including, dialogues etc.
- Undertake selection of bidders.
- Undertake evaluation of bids.
- Recommend to the Project Board a decision to award.
- Ensure that the procurement timetable is adhered to.
- Advise the Project Board of any risks to the Councils arising out of the procurement exercise.
- Evaluate and review all risks associated with the procurement and advise the Project Board immediately.
- Ensure that adequate Contract Management measures are put in place immediately after the decision to award has been made.
- Advise the Project Board on the Contract Management measures and make recommendations on resourcing etc.
- Keep minutes of all meetings including, dialogue meetings.
- Keep and maintain a Risks Register including, level and mitigation.

ANNEX E - Joint Working Protocol

Set out below is the joint working protocol for the management and operation of the joint procurement for Waste Collection, Recycling and Cleansing Services at WDBC and SHDC.

Governance and Project Management

It is proposed that the following structure will be set up for the project management and governance of the joint procurement.



The Joint Project Team (JPT) will have responsibility for managing the procurement process, developing the evaluation criteria, inputting specifications within the contract and agreeing the protocols of working together.

Key Principles

It is proposed that the following key principles are agreed between the two Councils which will enable both Councils to get the maximum benefit out of any procurement process and possible joint future contract for Lot 3. The intention is to work on the basis that in relation to Lot 3, a joint contract will be the preferred route.

Key Area	Principle Agreed
Contract Length	The contract will be based on the same contract length of up to 8 with the option to extend for a further period of 8years.
OJEU Advert	To be placed in mid-October 2017 and will be a joint advert – the procuring authority shall be the Lead Council. Both Councils will be named in the contract notice.
Contract Lots	The approach will be to have one lot, based on a joint contract, but with a separate split to understand the implications of separate lots.
SQ Evaluation	<p>The evaluation of the SQ will be based on agreed selection criteria across both Councils, with the intention to shortlist up to 5 bidders for the ISOS stage.</p> <p>Both Councils will seek agree the same shortlist, as it is based on evaluation of the company rather than their submission, with the joint management team undertaking the evaluation together.</p>
Contract Development and Form	<p>There will be one contract which sets out the standard terms for a contract which will be the same across both Councils but the commercial terms and schedules may be different between both Councils.</p> <p>In particular it is anticipated that the specifications will be different.</p>
Legal Advice	Provision of legal advice will be provided by in-house legal advisers for the development of the draft contract and procurement process generally. External advice may be sought as and when is necessary on the advice or recommendation of the Lead Solicitor for the Project.
Dialogue Sessions	<p>It is expected that the dialogue sessions will be scheduled at the same time for both Councils and managed such that there may be three parts to any dialogue session</p> <ul style="list-style-type: none"> - Joint issues which apply across both Councils (e.g. contract, submission, evaluation, etc) - Specific WDBC Issues - Specific SHDC issues
ISOS Evaluation	<p>It is the intention that the evaluation criteria will be the same for both Councils – however it is recognised that because solutions and evaluation may need to be specific, then this may not be possible.</p> <p>Keeping the evaluation criteria the same will enable the benefits of joint procurement to be realised. This would also mean that both</p>

Key Area	Principle Agreed
	<p>Councils should seek to shortlist the same bidders (up to 3) for final tender.</p> <p>Each project team member will evaluate their specific submission, with the Joint Project Team providing a moderating role.</p>
ISDS Evaluation	As for ISOS. Bidders are assessed against the same evaluation criteria.
ISFT Evaluation	As for ISDS. Bidders are assessed against the same evaluation criteria.

Meetings and Timescale

It is proposed that project team meetings are held monthly and on the same day to allow the programming in of sessions which enable effective discussion, with each individual Council if required.

Project Plan and timescale to be developed.

ANNEX F– Defined Terms

Annex:	means annexes to this MoU;
Contract Award:	has the meaning given in Regulation 67 of PCR 2015;
Councils:	means West Devon Borough Council and South Hams District Council;
Constitution:	means constitution of the Lead Council;
Council:	means either of the Councils;
Contract Management:	means management of the contract arising out the Project;
Contract Procedure Rules:	has the meaning given in the Constitution;
Descriptive Document:	is a Procurement Document within the meaning of regulation 2 PCR 2015;
Collaboration Agreement:	has the meaning given in Annex C;
EU:	European Union;
Elected Members:	means members of either Council
Full Council:	means a meeting of the full council of either Council;
ISOS:	Invitation to Submit Outline Solution;
ISDS:	Invitation to Submit Detailed Solution;
ISFT:	Invitation to Submit Final Tender;
Joint Working Protocol:	has the meaning given in Annex E;
Key Decisions:	has the meaning given in the Constitution of South Hams District Council and those decisions which

	can only be taken by Full Council and those decisions which have not been expressly delegated to the Project Board by reference to the terms of reference in Annex B;
Law:	means any applicable law in England and Wales;
PCR 2015:	Public Contracts Regulations 2015;
Project Initiation Document (PID):	is an internal document prepared by the Project Team for the purposes of facilitating the procurement process;
Procurement Documents:	has the meaning given in Regulation 2 of PCR 2015;
Project Plan:	has the meaning given in the Procurement Documents;
Procurement Procedure:	means the procedure adopted by the Councils for the procurement in accordance with section 3 Part 2 of the PCR 2015;
Recycling:	has the meaning given in the Procurement Documents;
Risk Register:	means a register/log of all risks arising out of or associated with the Project including, delays, compliance and management of information/data;
SQ:	Selection Questionnaire;
Specification:	is a Procurement Document within the meaning of regulation 2 of the PCR 2015;
Services:	has the meaning given in the Procurement Documents but for the avoidance of doubt, shall include, Waste Collection, Recycling, Street Cleaning and Toilet Cleansing;
Selection Criteria:	has the meaning given in PCR 2015;

Street Cleansing:	has the meaning given in the Procurement Documents;
Toilet Cleansing:	has the meaning given in the Procurement Documents;
Waste Collection:	has the meaning given in the Procurement Documents.