

TAUNTON DEANE BOROUGH COUNCIL

EXECUTIVE COMMITTEE February 26TH 2007

THE SOMERSET WASTE BOARD DRAFT HEADS OF TERMS FOR THE CONSTITUTION AND INTER AUTHORITY AGREEMENT

Report of Strategic Director - Joy Wishlade

This is the responsibility of Executive Councillor D Bradley

1. INTRODUCTION

The Somerset Waste Partnership (SWP), (which consists of the five District Councils, acting as the waste collection authorities and the County Council, as the waste disposal authority) is working towards the creation of a Somerset Waste Board (SWB) which will manage all waste collection and disposal services on behalf of the six authorities. A new single integrated waste collection contract for the whole of Somerset is currently under procurement.

The Executive/Cabinet meetings of each of the Partner Authorities have agreed that in the short term the legal form of the Somerset Waste Board should be a Joint Committee with an Administering Authority and that it then applies to create a Joint Waste Authority using the powers included as an amendment during the 2nd Reading debate, of the Local Government and Public Involvement in Health Bill, or existing powers under the Local Government Act 1999.

This report seeks approval of the basic constitutional structure of the SWB. This is shown at Appendix A to this report.

Draft Heads of Terms are also attached at Appendix B to provide Members with an initial overview of how the SWB will be established and operate. Once finalised, these will be used to prepare the necessary constitution and inter-authority agreement that will formalise the role of the Somerset Waste Board and the responsibilities of each of the Partner Authorities.

2. BACKGROUND

In preparing the draft Heads of Terms that are included in Appendix B to this report, consideration has been given to those constitutional principles for the operation of the Somerset Waste Board that were agreed by each of the Partner Authorities Executive/Cabinet in 2005 and emerging good practice from other authorities across the country that have set up similar Joint Committees.

The constitutional principles that have previously been agreed can be summarised as follows:

- The duration of the SWB will be indefinite and provision will be made for the withdrawal of individual partners, or the winding up of the partnership;
- The partnership will discharge both waste collection and waste disposal functions;
- The SWB will be funded by an agreed budget pooling mechanism;
- Two Members are to be nominated from each constituent authority;
- Each Member will have one vote;
- The chairperson will not have a casting vote;
- Unanimity will be required to change the constitution whilst other matters will be decided by a simple majority vote;
- The SWB will be empowered to make all decisions relating to the provision of waste services in Somerset, but the ratification of the SWB's decisions will be required where there is "a significant impact on budgetary contributions" or on "service design";
- Members of the SWB will act in the interests of the partnership as a whole and not just in the interests of their own authorities.

3. DRAFT HEADS OF TERMS, CONSTITUTION AND INTER AUTHORITY AGREEMENT

The constitution and inter authority agreement will provide a clear and accountable framework within which the Somerset Waste Board, the Administering Authority and Single Client Group (as defined in the draft Heads of Terms in Appendix B) can work together in order that they are able to respond in an effective and co-ordinated way in relation to the development and implementation of an integrated waste management strategy in Somerset.

The Somerset Waste Board will be a legally constituted body and the constitution and inter authority agreement will be legally binding documents. It is therefore important that elected Members understand the importance of these documents, starting with agreement as to the constitutional structure of the SWB. This is detailed in the diagrams at Appendix A attached to this report.

The draft Heads of Terms at Appendix B attached to this report provide Members with an overview of the constitution of the SWB and the roles and responsibilities of the Single Client Group, the Administering Authority and the Partner Authorities. As can be seen they cover a huge range of issues. It should be stressed that these details are by no means complete and further work is required to finalise them. However, they have been included to illustrate the type of issues that will need to be covered in the detailed drafting of the final documents. In respect of the more complex issues such as the Budgetary Arrangements, Scrutiny Arrangements, Inter Authority Agreement (particularly in relation to obligations arising from the principle contracts and the manner in which the Partner Authorities will reach decisions etc.) further detailed Schedules will be attached to the constitution.

The draft Heads of Terms have been considered both by the Legal Sub Group representing all Partner Authorities, and the SWP's external legal advisers, Nabarro Nathanson. They have also been approved by the Directors' Implementation Group.

Following agreement by elected Members the drafting of the documents in detail by both the external legal advisers and the Legal Sub Group will commence, and once completed will be submitted to a subsequent meeting of each Partner Authorities' Executive / Cabinet meeting. This is clearly a particularly important and complex task and needs to be substantially completed in advance of the commencement of negotiations with any nominated preferred bidder that are scheduled to begin in April.

4. FINANCIAL IMPLICATIONS

There are no financial implications as a direct result of this report. The costs of the necessary external legal advice have already been included in the agreed project budget.

5. LEGAL IMPLICATIONS

The legal powers to constitute a Joint Committee to be known as the Somerset Waste Board are in Sections 101 and 102 of the Local Government Act 1972, and the Local Authorities (Arrangement for the Discharge of Functions)(England)(Amendment) Regulations 2001 made under Section 20 of the Local Government Act 2000.

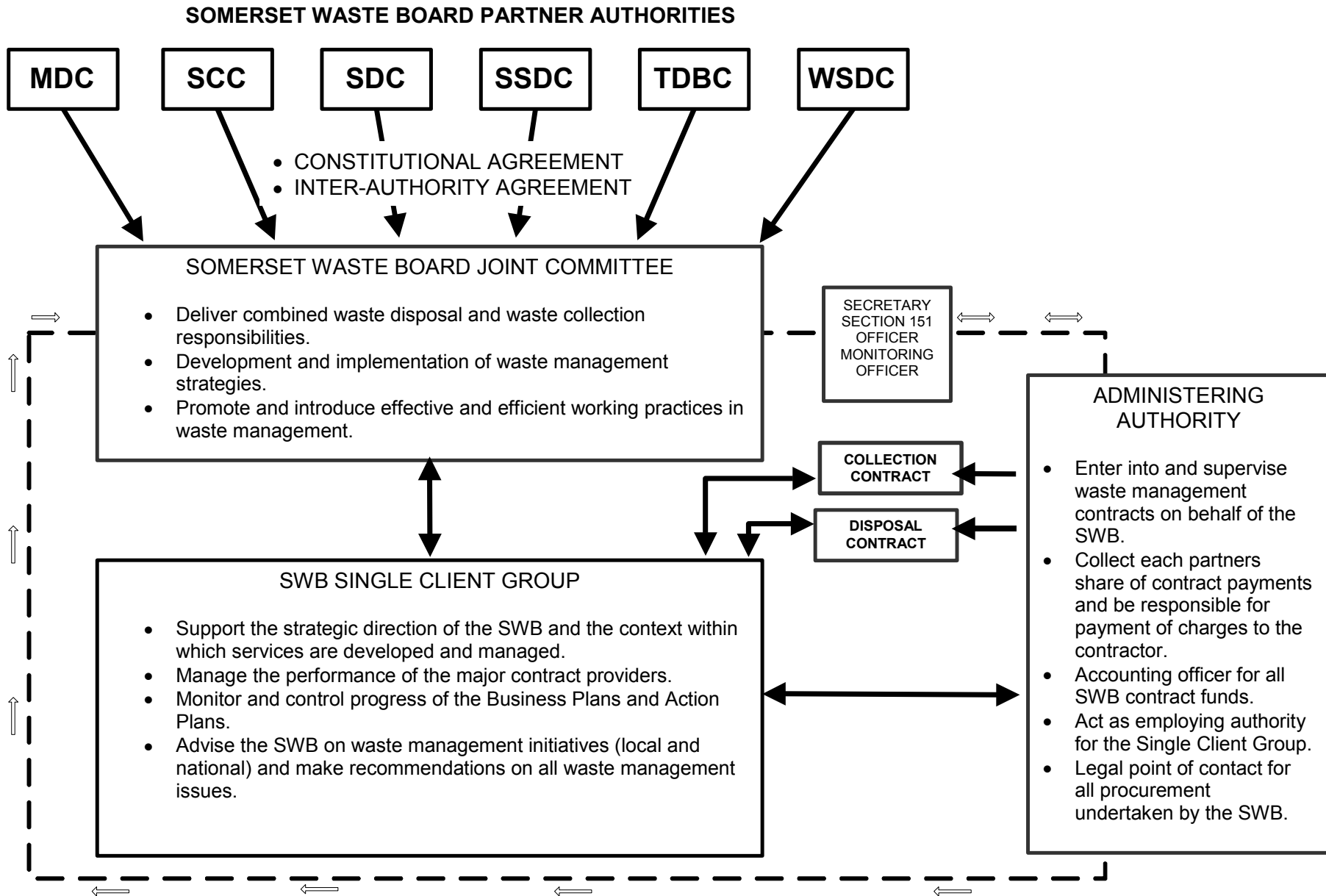
As has been previously mentioned in this report each of the Partner Authorities legal advisers (The Legal Sub Group) will be working in conjunction with the project's external legal advisers Nabarro Nathanson in preparing the detailed constitution and associated inter authority agreement.

6. RECOMMENDATION

That the Executive approve the proposed constitutional structure of the Somerset Waste Board as detailed in Appendix A and the Heads of Terms as highlighted in Appendix B to this report in order that these can then used to prepare the detailed Constitution and associated Inter Authority Agreement for the Somerset Waste Board.

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SWB CONSTITUTIONAL STRUCTURE



APPENDIX B:

DRAFT HEADS OF TERMS FOR THE CONSTITUTION AND INTER AUTHORITY AGREEMENT – SOMERSET WASTE BOARD

RECITALS

To set out the partner authorities' ("**Partner Authorities**") powers to form the joint committee and to enter into the inter-authority agreement and the background to why the authorities are forming SWB to include:

- A 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.
- B The Partner Authorities have decided to form a joint committee (referred to as "**SWB**") 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.
- C The Partner Authorities shall enter an inter-authority agreement to formalise their responsibilities and those of SWB.
- D Each of the Partner Authorities wishes to establish a clear and accountable framework for them to work together in delivering their waste disposal and waste collection responsibilities and to promote the economic, environmental and social well-being of their respective areas 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 and to introduce and promote working arrangements that will be in the best interests of the Council Tax payers of all the Partner Authorities.

1. AIMS AND OBJECTIVES OF THE SWB

- 1.1 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.
- 1.2 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:
 - 1.2.1 Create a joint authority body in relation to waste management;

- 1.2.2 Develop and deliver long term strategies in respect of the collection and disposal of waste;
- 1.2.3 Consider managing waste from outside Somerset if commensurate benefits accrue;
- 1.2.4 Be recognised as the leading provider of sustainable waste management services in England and Wales;
- 1.2.5 Procure services, facilities, assets and solutions to meet the current and future central government and European targets for recycling and recovery and disposal of waste;
- 1.2.6 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;
- 1.2.7 Share in a fair and equitable manner the costs and work included in achieving these Aims and Objectives;
- 1.2.8 Endeavour to fully engage all stakeholders and to maximise the contributions which each Partner Authority may be able to make; and
- 1.2.9 Provide a forum and mechanisms for ensuring that there is a coherent programme and organisational structure for waste management and for joint working.

2. FUNCTIONS TO BE EXERCISED BY SWB ON BEHALF OF THE PARTNER AUTHORITIES

- 2.1 The functions of the SWB are:
 - 2.1.1 To discharge on behalf of the Partner Authorities their respective statutory responsibilities for waste collection and disposal (a full list of all functions to be included as a Schedule to the constitution);
 - 2.1.2 To let and manage the principal contracts for the delivery of an integrated waste management service across Somerset;
 - 2.1.3 To prepare and implement a rolling Business Plan (and associated Annual Action Plans);
 - 2.1.4 To prepare and review an annual Business plan;
 - 2.1.5 To influence and advise and lobby central government;
 - 2.1.6 To commission research, and associated public opinion surveys etc.

3. COMMENCEMENT AND DURATION

The SWB would be established once approved by all of the Partner Authorities on a date to be agreed between the Partner Authorities and would continue indefinitely unless dissolved by the Partner Authorities in accordance with the constitution and inter-authority agreement.

4. COMPOSITION OF SWB

- 4.1 Each Partner Authority shall nominate two elected Members (the “**Nominated Members**”) to sit as its representatives on the SWB.
- 4.2 Each Partner Authority shall ensure that [both of] its Nominated Members and any substitute Nominated Member who attends in place of a Nominated Member are members of its Executive.
- 4.3 Each Nominated Member shall have one vote at meetings of the SWB (or any sub-committee).
- 4.4 The SWB chair shall not have a casting vote.

5. DEADLOCK PROCEDURE

- 5.1 In the event of an equality of votes the Chair of the meeting shall not, at the first meeting of the Committee where an issue is before the committee for determination, have a second or casting vote if a “Deferral Vote” is cast
- 5.2 Each of the voting members shall, at the meeting of the committee where an issue is before the Committee for the first time, be able to cast a “Deferral Vote” at the time of voting on a particular issue.
- 5.3 The effect of a “Deferral Vote” being cast is that the determination of the issue will automatically be deferred for a period of seven days (or such longer period as maybe determined by the Committee) such period being the “Deferral Period”
- 5.4 During a “Deferral Period” all members of the Committee can discuss the issue informally with each other and they can consult with other members of their own Council.
- 5.5 At the end of the “Deferral Period”, a further meeting of the Committee will be held as an adjourned meeting of the meeting at which the “Deferral Vote” was cast.
- 5.6 The issue will be discussed again and any written views of any of the partner authorities will be given due consideration.
- 5.7 On this second occasion, if there is an equality of votes, the Chair shall have a second or casting vote to ensure that a decision can be made.

6. ROLE OF SWB MEMBERS

6.1 The responsibilities of a Nominated Member shall be as follows:-

- 6.1.1 To act in the interests of the SWB as a whole as well as the interests of their own Councils;
- 6.1.2 To be committed to, and act as a champion for the achievement, of the Aims and Objectives;
- 6.1.3 To be a good ambassador for the SWB;
- 6.1.4 To attend SWB meetings regularly, vote on items of business and make a positive contribution to the achievement of the Aims and Objectives;
- 6.1.5 To remain acquainted with emerging technologies and processes in the area of waste management; and
- 6.1.6 To act as an advocate for the SWB in seeking any necessary approval from their authority to the draft Business Plan and the Annual Action Plan.

7. CONDUCT AND EXPENSES OF MEMBERS

All Nominated Members shall observe at all times the provisions of the Code of Conduct adopted by their respective nominating Partner Authority.

8. LIABILITY OF SWB MEMBERS

Nominated Members shall have the same responsibilities and liabilities as those that apply when sitting on other committees and bodies as appointed representative on behalf of their nominating Partner Authority.

9. MEETINGS OF THE SWB

9.1 The SWB shall normally meet at least four times a year.

9.2 The SWB shall hold an AGM to:

- 9.2.1 Approve and adopt the business plan (the “**Business Plan**”);
- 9.2.2 Appoint a chair and vice chair (by simple majority vote if a deadlock a process will be included to agree an alternative candidate as chair);
- 9.2.3 Approve the meeting schedule for forthcoming year;

9.3 The quorum for a valid meeting of the SWB shall be six Nominated Members which must consist of at least one Nominated Member from each Partner Authority.

- 9.4 Meetings of the SWB will be open to the public and press except during consideration of items containing confidential or exempt information within the meaning of the Local Government Act 1972.
- 9.5 Minutes of the SWB shall (subject to the provisions of paragraph 9.4 above) be available to the public and press as though they were minutes of a meeting of a Partner Authority.

10. BUSINESS PLAN

- 10.1 The Board shall consider and agree a five-year (the coming year plus four further years) Rolling Business Plan together with an Annual Action Plan. Both Capital and Revenue Expenditure shall be included. The Plan shall be based on SMART (Specific, Measurable, Achievable, Realistic and Timed) targets with the responsibilities of each Partner Council being clearly identified
- 10.2 The first draft of the Rolling Business Plan shall be prepared by 31st July each year at the latest and shall set out in the draft Annual Action Plan for the following full twelve month period commencing on 1st April next. The Business Plan should be finalised by no later than 30 November each year.
- 10.3 The Business Plan shall include the budget for each year of the Plan and shall identify the costs and income in the level of detail approved by the Board and the annual contributions of each Partner Council as derived from the methodologies described below. The Business Plan shall be prepared on the basis of the current level of service plus any known service growth and legal or service developments.
- 10.4 The SWP shall identify efficiency savings across the whole SWP budget at the same levels as that required of the Partner Councils.
- 10.5 Any capital expenditure relating to the committee shall be included in the Administering Authority's prudential guidelines.

11. CONTRIBUTIONS TO THE COSTS INCURRED BY THE SWB

- 11.1 Each Partner's financial contribution, calculated as shown above, shall be paid to the Administering Authority on the dates agreed by the Councils for payment of precepts. These dates shall be confirmed to the Board annually.

(this to be reviewed after contractor payments are known)

- 11.2 Partner Councils shall not withhold payments because of any dissatisfaction with SWP contractor performance. Late payments shall be subject to a penalty payment if it can be demonstrated that the Administering Authority has suffered a financial loss arising from the late payment. The penalty payment shall be equal to the financial loss so demonstrated.

11.3 The timing of Partner contributions will result in a cash flow surplus that would provide working capital for the SWP. The Administering Authority shall provide banking and cash flow services to the SWP and the above arrangement will result in a cash flow advantage. The financial effect of this shall be passed to the SWP at the end of each financial year by calculating the net cash inflow and paying interest on this amount at a rate agreed by the Section 151 officers annually.

11.4 The annual budget shall be drawn up as accurately as possible so that unexpected events during the year shall be minimised and partner contributions can be accurately determined during the annual budget setting process. All surpluses and deficits at the end of each year shall be carried forward to the following year and the Joint Committee shall determine their use.

12. DELEGATION ARRANGEMENTS

12.1 The SWB may arrange for any of its functions to be discharged by a sub-committee or by the managing director of the SWB or by officers of the Partner Authorities.

12.2 The SWB may appoint working groups of Nominated Members and/or officers to consider specific matters and report back to the SWB or any sub-committee with recommendations.

12.3 The SWB may delegate all appropriate functions to the Administering Authority and the Client Group to enable them to carry out their accountabilities and roles

13. AMENDMENTS TO THE CONSTITUTION AND INTER-AUTHORITY AGREEMENT

Any amendment(s) to the constitution of the SWB and/or the inter-authority agreement shall be subject to the unanimous approval of the Partner Authorities.

14. SCRUTINY ARRANGEMENTS

14.1 The decisions, actions and activities of the SWB shall be subject to the scrutiny arrangements of each Partner Authority and a detailed mechanism setting out how scrutiny of the SWB's actions will operate shall be included as a schedule to the constitution (the "**Scrutiny Arrangements**").

- 14.2 The Scrutiny Arrangements shall meet the need for proper and effective scrutiny whilst ensuring that the work of the SWB is not unduly delayed or constrained.

15. DISPUTE RESOLUTION

- 15.1 In the event of a dispute which cannot be resolved by the SWB, the matter(s) concerned shall, before any other remedy e.g. arbitration, legal proceedings etc is sought, be referred to a joint meeting of the SWB with the Somerset Leaders and Chief Executives' group.
- 15.2 For the purposes of clause 15.1 above, a "dispute" shall mean a situation where one or more of the Partner Authorities wishes to lodge a fundamental objection to a proposal by the SWB and would have been prepared to exercise a power of veto had this existed.

16. CESSATION OF MEMBERSHIP

- 16.1 Any of the Partner Authorities may withdraw from membership of the SWB by giving twelve months notice in writing to the clerk to the SWB, such notice to expire on 31st March in any year.
- 16.2 In the event of a Partner Authority withdrawing from membership of the SWB, then in respect of any contractual obligations or other financial commitments entered into on behalf of the SWB whilst that Partner Authority was a member of the SWB, the Partner Authority concerned shall:-
- 16.2.1 Continue to meet its share of the financial commitment or otherwise meet its part of the contractual obligations until the conclusion of the commitment or obligation as provided for in the contract or other documentation setting out the commitment or obligation
 - 16.2.2 Continue to be responsible for its part of any other liabilities relating to those contractual obligations or financial commitments
 - 16.2.3 Be entitled to receive its fair share of any assets held by or on behalf of the SWB as at the date of their withdrawal from membership but unless the remaining Partner Authorities at their sole discretion decide to "buy-out" and financially compensate the withdrawing Partner Authority in respect of the said assets, only when those assets are realised by the remaining members of the SWB
 - 16.2.4 Meet any employment related costs incurred on behalf of the SWB which result from that/those Partner Authority(ies) decision to withdraw from membership of the SWB

- 16.3 If more than one Partner Authority decides to withdraw from membership of the SWB then the SWB shall consider whether or not the SWB shall continue to operate on behalf of the remaining Partner Authorities and make appropriate recommendations to those Partner Authorities.

17. ROLE OF THE ADMINISTERING AUTHORITY

- 17.1 The Partner Authorities shall agree the appointment of one Partner Authority to act as the Administering Authority of the SWB.
- 17.2 Where the Partner Authority appointed as Administering Authority wishes to retire from the position, it shall serve notice on the other Partner Authorities and a replacement shall be agreed between the Partner Authorities.
- 17.3 The Administering Authority shall:
- 17.3.1 Act on behalf of the SWB in the management and supervision of any contracts concerning waste management, primarily via the single client group;
 - 17.3.2 Assume responsibility for the payment of charges to the contractor(s) in accordance with the provisions of the principal contract(s);
 - 17.3.3 Collect each Partner Authority's share of the contract payments to third parties in order to ensure that payment of the contract payments to third parties may be made in accordance with the provisions of the principal contracts;
 - 17.3.4 Perform the role of accounting officer for all central funds held on account of the SWB and to make and provide all appropriate banking and accounting arrangements and services required for the due and proper receipt holding and application of such funds;
 - 17.3.5 Hold capital assets on behalf of the Partner Authorities;
 - 17.3.6 Subject to indemnities act as the employing authority for any staff engaged in the discharge of the SWB's functions (appointing, employing, or accepting the secondment of staff);
 - 17.3.7 Provide such additional administrative resources and office facilities that may reasonably be necessary to enable the new Single Client Group and the SWB to discharge their respective roles duties and functions;
 - 17.3.8 Carry out any functions delegated to it under the principal contracts;
 - 17.3.9 Be the legal point of contact with the suppliers for all procurements undertaken by the SWB;
 - 17.3.10 Ensure that where any information is received from or requested by the contractor, the dissemination, collation and provision of

information is effected within a timescale which is compatible with any time provisions detailed in the principal contract(s) and in any event as soon as is reasonably practicable; and

- 17.3.11 Refer any requests from the contractor(s) for a consent or approval to appropriate officers, the SWB or managing director as appropriate and then communicate any decision back to the contractor. Such communications would need to be within a timescale which is compatible with any time provisions detailed in the principal contract(s) and in any event as soon as reasonably practicable.
- 17.3.12 Provide senior officers who will act as Secretary, Monitoring Officer, and Treasurer (who would also be S151 Officer) to the Joint Committee and who will therefore act as the primary legal and financial advisors to the Committee.
- 17.3.13 Enter into contracts on behalf of the Joint Committee.
- 17.3.14 Instigate and defend legal proceedings as required.
- 17.3.15 Situations in which the appointment of the Administering Authority could be terminated include: 1. any substantial and persistent breach if the terms of any constitutional agreement by the Administering Authority, or 2. substantial or persistent failure on the part of the Administering Authority to redress performance of the duties of the Administering Authority which do not comply with the requirements or standards set by any Agreement ; or 3. Gross misconduct on the part of the Administering Authority which is contrary to proper Local Government practice or Local Government Law.

18. ROLE OF THE SINGLE CLIENT GROUP

- 18.1 The role of the Single Client Group shall be to:
 - 18.1.1 Monitor and manage the performance of the waste contracts including the performance of the major contract providers;
 - 18.1.2 Prepare reports and recommendations for consideration by the SWB, support the setting of the strategic direction for the SWB and the context within which services are developed and managed;
 - 18.1.3 Monitor and control the progress of the Business Plans and action plans to ensure they continue to fulfil business needs;
 - 18.1.4 Advise the SWB generally on waste management initiatives (both local and national) and the progress in delivering the various objectives of the SWB;

18.1.5 Prepare and make recommendations to SWB on waste management issues involving central government and other external agencies; and

18.1.6 Provide a full assessment of the short, medium and long term financial, resource, service, legal and contractual implications of the waste management service for the SWB, the Administering Authority and each Partner Authority.

19. DIRECTORS IMPLEMENTATION GROUP

Future functions will include:

19.1 To ensure legal and statutory functions of Partner Authorities are being discharged effectively;

19.2 To liaise with the managing director of the Single Client Group as to the implementation of strategic policy.

20. CONFIDENTIALITY, DATA PROTECTION AND FREEDOM OF INFORMATION

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 Environmental Information Regulations 2004 and shall in connection with their membership of the SWB comply with all requests of the SWB and/or any Partner Authority in connection with their obligation under the Information Acts.

ADDITIONAL SCHEDULES

BUDGETARY ARRANGEMENTS

SCRUTINY ARRANGEMENTS

MEETING PROCEDURE RULES

INTER AUTHORITY AGREEMENT

BUSINESS PLANS