

**PFI PARTNERING AGREEMENT  
(Report by Development and Community Manager)**

**1. INTRODUCTION**

- 1.1 This report presents the draft Partnering Agreement for the Private Finance Initiative (PFI) for the future waste disposal arrangements in the county. The Council will be asked to sign the agreement in due course once the preferred bidder has been identified through the PFI procurement process.

**2. BACKGROUND**

- 2.1 Cabinet will be aware from previous reports that Cambridgeshire County Council need to invest in alternative waste treatment facilities if they are to avoid significant financial penalties for depositing too much waste in landfill from 2010.
- 2.2 PFI credits of £35M have been secured from DEFRA which has allowed the County Council to initiate the procurement process for waste treatment facilities.
- 2.3 In order to reduce contractual risk and associated costs the County Council, in close consultation with each of the waste collection authorities, have developed the Partnering Agreement to detail the types and manner of delivery of waste to be processed by the treatment facilities. The District Council, for example, currently collects three waste streams (dry recyclable, garden waste and residual waste) and achieves a high level of recycling. In sizing the future treatment facilities the operator will want some certainty that this will continue and that reasonable endeavours will be taken to maintain existing levels of performance, notwithstanding growth in the number of properties served
- 2.4 The Partnering Agreement builds on the Statement of Understanding previously signed by the councils. A team of legal officers from each of the councils has been involved in the drafting of the agreement and in negotiating changes. There is now express provision for councils to withdraw from the agreement, although the precise requirements have yet to be agreed by the County Council. The agreement does not now contain specific agreements on tonnages as this was felt to be too restrictive. Rather

it states that the Waste Collection Authorities will use their 'reasonable endeavours' to maintain the high levels of recycling and low levels of landfill.

### **3. PARTNERING AGREEMENT**

- 3.1 The Draft Partnering Agreement is attached at annex A.
- 3.2 There are still some minor points of clarification in the agreement to be negotiated, but in principle the officers are happy with the agreement.

### **4. RECOMMENDATION**

- 4.1 Cabinet are recommended to -
  - a) Approve the draft partnering agreement in principle, but authorise the Head of Legal and Estates, after consultation with the Executive Councillor for Environment and Transport, to agree outstanding drafting issues.
  - b) Authorise the Director of Operational Services to sign the final partnering agreement at the appropriate time.

Background papers:

The Strategy for Dealing with Municipal Solid waste 2002-2022 in Cambridgeshire and Peterborough – November 2002

Letter from DEFRA dated 9 December 2004 – Managing Waste Sustainably: DEFRA Announces Help for Councils

Outline Business Case: Integrated Waste Management Project Cambridgeshire and Peterborough Waste Partnership – December 2004

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**Partnering Agreement**

**THIS PARTNERING AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_  
2006

**BETWEEN**

- (1) Cambridge City Council;**
- (2) East Cambridgeshire District Council;**
- (3) Fenland District Council;**
- (4) Huntingdonshire District Council; and**
- (5) South Cambridgeshire District Council (together called the Districts); and**
- (6) Cambridgeshire County Council (the "County")**

such Councils together referred to in this Partnering Agreement as "the Partners".

**WHEREAS**

- A. The National Waste Strategy 2000 issued by the Secretary of State pursuant to the Environmental Protection Act 1990 (the EPA) requires Local Authorities to achieve certain targets for recycling which are now enshrined in Best Value Performance Indicators (BVPIs). The 1999 Landfill Directive (99/31/EC) requires all Local Authorities to divert prescribed amounts of biodegradable municipal waste from landfill and this is enforced by the Waste Emissions and Trading Act 2003 (together the BVPIs and diversion requirements shall be known as the Statutory Targets);
- B. Further and future recycling opportunities present sound and sustainable environmental solutions to waste management;
- C. The County is a Waste Disposal Authority and the Districts are Waste Collection Authorities for the purposes of Section 30 of the EPA;
- D. The Districts have introduced and rolled out their own recycling initiatives with a view to achieving and exceeding the BVPIs but require flexibility in the future to introduce changed and new initiatives;
- E. Pursuant to its statutory obligations as Waste Disposal Authority to make arrangements for the disposal of waste and meet statutory targets and following a competitive tendering exercise and supported by the Government's Private Finance Initiative, the County has procured a contract (the PFI Contract) pursuant to which [ ] (the PFI Contractor) will design build finance and operate facilities for the reception, transport, processing, treatment and disposal of waste;

- F. The PFI Contract binds the PFI Contractor to achieving targets for the diversion and recycling of certain categories of waste with a view to assisting the County and Districts meet and exceed their Statutory Targets;
- G. The Parties wish to work together in the spirit of partnership towards ensuring that there is an effective and economical interface between the PFI Contract and the activities and objectives of the Districts.

**AND**

In consideration of £1.00 given by the County to the Districts (receipt of which is hereby acknowledged) it is agreed as follows:-

**1. DEFINITIONS AND INTERPRETATION**

1.1.

Contract Waste	Municipal Waste collected by a District (including Trade Waste) which is not WCA Waste, and waste delivered to HWRCs
Delivery Point	A facility, site or transfer station licensed to receive waste for treatment, sorting, recycling, composting or disposal as necessary, and notified by the County to the District from time to time
Green and Kitchen Waste	Such waste collected by a District for recycling and composting by the PFI Contractor, and to include organic household garden and kitchen waste and cardboard. A category of Contract Waste
Joint Operations Protocol Agreement	An agreement between all Partners regarding a set of common operational principles and guidelines covering the day-to-day transactions between County and Districts, and their respective contractors where appropriate, dated April 2003 and modified by agreement of all Partners.

Legislation	<i>Legislation to be defined as including amendments and re-enactments as well as relevant EU law</i>
Municipal Waste	As defined in the Waste Emissions Trading Act 2003; household waste or waste similar to household waste in nature, including trade waste collected by WCAs.
PFI Contract	
PFI Contractor	
Recyclable Waste	Such waste collected by a District, or on behalf of the District by a contractor, through kerbside collection schemes and bring recycling centres, for recycling. May or may not be Contract Waste.
Relevant Information	<i>For the purposes of clause 3.2 below. [Note: Partnering Agreement and this clause 3.2 will need to make reference to Partners duties under the FOIA and EIR</i>
Residual Waste Stream	Such waste collected by a District that is not Green and Kitchen Waste or Recyclable Waste or any other waste collected separately for reuse, recycling or composting
Reasonable Endeavours	Such endeavours that a Partner can reasonably take to maintain and improve services and other commitments, taking account of, without limitation price, cost, public acceptance and political sensitivity.
Statutory Targets	<i>Recycling and composting targets for the purposes of BVPI 82 (a) and (b) and landfill diversion targets for the</i>

*purposes of the WET Act*

Tipping Away  
Payments

Payment made by County to District, when the County directs a District to take waste to a Disposal Point that is not the usual Disposal Point and is unreasonably far from the Districts area, as a result of the usual Disposal Point being unavailable for the reception of Contract Waste, as set out in EPA 1990, Section 52.

WCA Waste

Municipal Waste collected by a District which is withheld by the District for recycling through arrangements referred to in Clause 5.1 between the District and third party (to exclude Green and Kitchen Waste). WCA Waste to be as agreed and recorded and amended from time to time in accordance with the provisions of this Agreement

- 1.2. The provisions of this Partnering Agreement shall apply to all Partners save in relation to Annexes 1 to 5 which apply only to the Parties named in them.
- 1.3. The Districts shall not be jointly and severally liable. Each District shall only be responsible for their own actions and waste.

**2. TERM**

- 2.1. This Partnering Agreement will commence on [ ] and unless terminated sooner in accordance with clause 7 or 8 below, continue in full force and effect until the earlier of:
  - 2.1.1. [Expiry Date: being the expiry of the PFI Contract]
  - 2.1.2. [Termination of the PFI Contract before its expiry]
  - 2.1.3. The relevant provisions of the EPA being amended or repealed or other enactment made such that this arrangement is rendered ineffective, inappropriate or unlawful.

### **3. PARTNERING ETHOS**

- 3.1 The Partners acknowledge that the County is entering into the PFI Contract to enable it to meet its statutory obligations, assist the Districts in meeting theirs and in the overall interests of the public purse. To these ends, the Partners shall work together to achieve Statutory Targets, landfill permit levels and local targets agreed jointly in the Joint Municipal Waste Management Strategy or any future targets that have been jointly agreed, and as far as is reasonable or practicable, to reduce the detrimental impact on the Partners and council tax payers of any one of them failing to carry out its obligations under this Agreement.
- 3.2 Each Partner shall provide Relevant Information to each other in a full and timely manner.
- 3.3 The County shall provide each District with a copy of the PFI Contract, subject to commercially sensitive information being omitted to the extent required by the terms of the PFI Contract (unless and to the extent that the District provides a confidentiality undertaking in a form reasonably required by the PFI Contractor).
- 3.4 The County shall provide each District with copies of any material variations or amendments to the PFI Contract agreed between the County and the PFI Contractor from time to time.
- 3.5 The County shall consult with all Districts regarding any proposed material variations or amendments to the PFI Contract that may or will directly affect any one or more Districts or the services each provides, before agreeing any such variations or amendments with the PFI Contractor.
- 3.6 The Partners have produced a Joint Operational Protocol Agreement and agree to continue to abide by this protocol, or to amendments to the protocol as jointly agreed, for the duration of the contract.

### **4. COUNTY OBLIGATIONS**

- 4.1. The County shall:
  - 4.1.1. Arrange for the Delivery Points to be available for the reception of Contract Waste during the hours set out in Annex 6;
  - 4.1.2. Continue to pay Recycling Credits to the Districts, as at present based on tonnage recycled, or any replacement to Recycling Credits as and when agreed locally by the Partners or as established in legislation;
  - 4.1.3. Pay affected Districts promptly any Tipping Away Payments as calculated by the formula and criteria in Annex 7;

- 4.1.4. Ensure that Green and Kitchen Waste collected by the Districts and delivered to a Delivery Point is recycled in accordance with the relevant BVPI;
- 4.1.5. Carry out any negotiations with the PFI Contractor relating to a proposal by any District to vary its current recycling scheme as set out in clause 5.1.1 or vary its other services so that they are no longer consistent with the Joint Operations Protocol Agreement.

## **5. WCA OBLIGATIONS**

5.1 The Districts shall use their Reasonable Endeavours to:

- 5.1.1 At least maintain their current recycling and other waste collection schemes, as set out in Annexes 1 to 5, for the duration of this Agreement;
- 5.1.2 At least maintain their current level of awareness raising and support of other initiatives that aim to encourage greater levels of reuse, recycling and waste reduction, for the duration of this Agreement;
- 5.1.3 Expand their existing kerbside collections to all new properties built within their area during the period of this Agreement, where this is practical;
- 5.1.4 Develop their existing recycling schemes to increase tonnages recycled where practical;
- 5.1.5 Help improve participation rates in and yield rates from existing kerbside and bring bank collection schemes by helping to fund and run a range of public awareness campaigns, competitions and incentive schemes;
- 5.1.6 Introduce trade waste recycling collections in all commercial waste contracts where practical and commercially viable;
- 5.1.7 Inform the County as soon as reasonably practicable where the District anticipates changing the arrangements set out in the relevant Annex

5.2 The Districts shall deliver all Contract Waste to the Delivery Point(s) nominated to that District (this clause being a Direction pursuant to Section 48 of the EPA as amended by the WET Act) and in so doing shall:

- 5.2.1 Comply with the PFI Contractor's reasonable and proper site rules and regulations (including access routes).
- 5.2.2 Deliver Contract Waste during the hours relevant to the Delivery Point.



## **6. POWER OF DIRECTION**

6.1 The Districts acknowledge that should the County, in its best estimate, be at risk of being unable to meet its landfill allowance level, as established in the Waste Emissions Trading Act, or of breaching its obligations to the PFI Contractor or any other statutory obligation, the County may use its Powers of Direction, as set out in the Environmental Protection Act 1990 and Waste Emissions Trading Act 2003, to direct the relevant District to dispose of Municipal Waste and to maintain, improve or expand their recycling schemes so that the County is not in breach of its landfill allowance level or other obligations.

6.2 In issuing a Direction the County shall comply with guidance issued by DEFRA in 2004, *Guidance for Waste Authorities in Two-Tier Areas on the use of the Power of Direction in England* or any subsequent guidance from DEFRA or the Secretary of State.

## **7. REVIEW**

Reviews Generally:

7.1 Any Partner shall be entitled to call for a review of the Partnering Agreement or its Annexes in the event of:

7.1.1. The County implementing a WET Act direction; and/or

7.1.2. Any District wanting to substantially change their recycling and Residual Waste collections from the position set out in their respective Annexes.

Periodic Reviews

7.2. Notwithstanding the Review procedure described above, after the first 2 years from the signing of this Agreement and every 5 years thereafter, the Partners shall meet within the context of the CCA Waste Forum or the Joint Waste Officers Group as appropriate or otherwise as they decide is appropriate at the time to discuss the success, strengths, weaknesses and issues of this Partnering Agreement (the Periodic Review). The Periodic Review dates shall be on or about the 2<sup>nd</sup> and then each 5<sup>th</sup> anniversary of the first review of this Partnering Agreement

7.3. Where possible Periodic Reviews shall be programmed to suit each Council's political cycle and shall be brought forward or postponed a reasonable time to allow for elections and any new Members to be in situ.

7.4. At least two months prior to each Periodic Review each Party shall submit to the other a written review setting out any issues that that Party wishes to discuss at the Periodic Review, the reasons and (where appropriate) suggested solutions. The

written review should be in sufficient detail for the other party to take internal soundings and discuss the contents so that it is able to attend the Periodic Review fully conversant with the issues.

7.5. Provisions relevant to General and Periodic Reviews:

7.5.1. The Partners shall attend and participate in Reviews or Periodic Reviews in good faith, fairly, reasonably and having regard to each others' budgets and resources. The test of reasonableness shall be applied having regard to the County's obligation to consult the PFI Contractor on any matter which might affect the PFI Contract

7.5.2. As a result of a Review or a Periodic Review the Partners may agree to vary this Partnering Agreement by way of a Deed of Variation or to terminate it in whole or in part. However, the Partners shall not vary this Partnering Agreement or terminate it without first consulting the CCA Waste Forum and/or the Joint Waste Officers Group as appropriate (to the extent that any Periodic Review was carried out outside that forum) and, if appropriate, the PFI Contractor.

7.5.3. The County shall not be bound to vary this Partnering Agreement or amend its direction under the EPA or WET Act if to do so would (or is likely to) put the County in breach of the PFI Contract.

**8. WITHDRAWAL BY DISTRICTS**

8.1 If any District wishes to withdraw from this Partnering .Agreement it may do so provided :

8.1.1 its proposal has first been discussed at the CCA Waste Forum and/or the Joint Waste Officers Group (as appropriate); and

8.1.2 if following such discussion the District still wishes to withdraw it has then given (3) months written notice to all the other Partners.

8.2 Following the expiration of any notice given in accordance with clause 8.1.2 the relationship between the County and the District shall be governed by the statutory provisions contained in the ("EPA or Wet Act").or ("Legislation"- assuming the wording in the definition section is intended to refer to those pieces of legislation and any amendments, re-enactments etc).

## Annex 1

### **Cambridge City Council**

Kerbside	3 stream kerbside collection system, using wheeled bins for Green and Kitchen Waste and Residual Waste, and boxes for dry recyclables (paper, glass, cans and textiles). Weekly collections of refuse and fortnightly collections of green waste and dry recyclables;
Bring Sites	xx bring bank sites, including paper, glass, cans, plastic bottles and textiles banks.
Trade Waste	Collected by DSO and disposed of through County's contract.
WCA Waste	Paper, glass, cans, plastic bottles and textiles collected via the kerbside and bring site collections.

## Annex 2

### **East Cambridgeshire District Council**

Kerbside	3 stream kerbside collection system, using paper sacks for Green and Kitchen Waste, plastic sacks for Residual Waste and boxes for dry recyclables (paper, glass and cans). Weekly collections of refuse and fortnightly collections of green waste and dry recyclables.
Bring Sites	55 bring bank sites, including paper, glass, cans, plastic bottles and (textile banks)
Trade Waste	Collected and disposed of by private contractor.
WCA Waste	Paper, glass, cans, plastic bottles and textiles collected via the kerbside and bring site collections.

## Annex 3

### **Fenland District Council**

Kerbside	3 stream kerbside collection system, using wheeled bins for Green and Kitchen Waste and Residual Waste, and boxes for dry recyclables (paper, plastic bottles, cans and textiles). Alternate weekly collections of Residual Waste and Green and Kitchen Waste and fortnightly collections of dry recyclables.
Bring Sites	Xx bring bank sites, including paper, glass, cans and (textile banks)
Trade Waste	Collected and disposed of by arms length contractor.

WCA Waste Paper, glass, cans, plastic bottles and textiles collected via the kerbside and bring site collections.

#### Annex 4

### **Huntingdonshire District Council**

Kerbside 3 stream kerbside collection system, using wheeled bins for garden waste and Residual Waste, and boxes and wheeled bins for dry recyclables (paper, card, plastic bottles, cans and textiles). Alternate weekly collections of Residual Waste and garden waste and fortnightly collections of dry recyclables.

Bring Sites 101 bring bank sites, including paper, glass, cans and (textile banks)

Trade Waste Collected by Council Operations Division and disposed of through County's contract.

WCA Waste Paper, glass, cans, plastic bottles and textiles collected via the kerbside and bring site collections.

#### Annex 5

### **South Cambridgeshire District Council**

Kerbside 3 stream kerbside collection system, using wheeled bins for Green and Kitchen Waste and Residual Waste, and boxes for dry recyclables (paper, glass, cans and textiles). Alternate weekly collections of Residual Waste and Green and Kitchen Waste and fortnightly collections of dry recyclables.

Bring Sites Xx bring bank sites, including paper, glass, cans, plastic bottles and (textile banks)

Trade Waste Collected by DSO and disposed of through County's contract.

WCA Waste Paper, glass, cans, plastic bottles and textiles collected via the kerbside and bring site collections.

#### Annex 6

Delivery Points and Opening Hours  
[to be completed with reference to the PFI Contract]

Annex 7

Tipping Away Payments Calculations  
[to be completed with reference to the PFI Contract]