

**DATED: 30 OCTOBER 2013**

**THURROCK BOROUGH COUNCIL**

**and**

**BASILDON BOROUGH COUNCIL**

**and**

**LONDON BOROUGH OF HAVERING**

**and**

**LONDON BOROUGH OF BARKING AND DAGENHAM**

**MEMORANDUM OF UNDERSTANDING**

**Legal Services  
Civic Offices  
New Road  
Grays  
Essex RM17 6SL  
Ref:**

# East London/South Essex Business Rate Pool

## Memorandum of Understanding

This Memorandum of Understanding is made between

Thurrock Borough Council

Basildon Borough Council

London Borough of Havering

London Borough of Barking and Dagenham

(Together referred to as the 'Pool Members').

### 1. Purpose

- 1.1. It is the express intention of the Pool Members to promote economic growth and improve the well-being of the communities we serve. By working together we can retain a greater proportion of any business rate growth within the areas of the Pool Members, providing an opportunity to promote further economic growth as well as building financial resilience.
- 1.2. It is the purpose of this Memorandum of Understanding to act as a Statement of Intent that will support the realisation of these benefits.

### 2. Glossary of Key Terms

- 2.1. There are a number of technical terms used throughout this document. The meanings of these terms are as follows:

Levy	The excess business rates generated locally compared to the need to spend that have to be paid over to central government. It is calculated using a nationally set formula.
Pool	The East London / South Essex Business Rate Pool, a voluntary arrangement amongst the Pool Members to pool the business rates generated locally to ensure at least some of any Levy is retained locally.
Net Retained Levy	The amount of Levy retained locally.
Safety Net	The additional funding received by a Pool Member or the Pool from central government, if, in the government's opinion, a decline in business rates in any year would leave the authority or the Pool with insufficient resources. It is calculated using a national formula

Economic Growth Fund	A fund that will hold an element of the Net Retained Levy to be used by the Pool
Lead Authority	The Pool Member who will act as the lead in managing the Pool's resources and being the key contact between central government and the Pool

### **3. Key Principles**

3.1. The Pool Members agree that they will operate the Pool in accordance with the following principles:

- **Increase in Resources**  
The Pool Members recognise that the fundamental objective of the Pool is to generate increased resources for the area covered by the Pool Members, and for individual Pool Members
- **Risk Management**  
The Pool Members agree to protect and mitigate as far as possible the risks associated with the level of business rate income. Income streams to the Pool Members may be more volatile, whether as the result of a one-off event (for example a successful large appeal) or something structural within an area (for example the closure of a major plant). The pooling arrangements should provide additional resources to mitigate the impact of such volatility
- **Fairness**  
The Pool Members agree to share the costs, risks and benefits of local business rate retention as set out in paragraph 11. Pool Members should be no worse off in any year than if they were outside the Pool.
- **Transparency, Openness and Honesty**  
Pool Members will be open and trusting in their dealings with each other, make information and analysis available to each other, discuss and develop ideas openly and contribute fully to all aspects of making the Pool successful. This includes sharing data and intelligence outside of the formal reporting mechanisms on any substantive issues relating to business rate retention within their area.
- **Reasonableness of Decision-Making**  
Pool Members agree that all decisions made in relation to this Memorandum of Understanding shall be made by them acting reasonably and in good faith.

### **4. Status of this Memorandum**

4.1. This Memorandum of Understanding is produced as a Statement of Intent by the Pool Members

## **5. Term of Memorandum**

- 5.1. This Memorandum of Understanding shall continue in place for a period of at least six years from 1 April 2014 – 31<sup>st</sup> March 2020 unless terminated in accordance with these terms.
- 5.2. Any Pool Member can leave the Pool from 1 April of the following financial year providing:
  - Written notice is given to other Pool Members and DCLG no later than 31 August in the preceding year or such other date as may be required by DCLG guidance, to allow the remaining Pool Members sufficient time to make a new Pool application should they wish the Pool to continue. Sufficient time is taken to be reasonable time, not being less than two months, for the remaining Pool Members to develop and agree a Memorandum of Understanding before the deadline specified by DCLG in guidance / regulations each year.
  - All liabilities to and from the Pool are honoured.

## **6. Decision-Making**

- 6.1. The Section 151 Officers shall be responsible for overseeing the operation of the Pool and making recommendations to their respective authorities about the way forward.
- 6.2. The Lead Authority shall ensure that reports are sent to the Section 151 Officers of each Pool Member at least quarterly updating them on the performance of the Pool and advising them of any issues. These reports should be available within six weeks of the quarter end.
- 6.3. For the avoidance of doubt, any substantive decision e.g. commitment of resources, changes in governance or major operational changes shall be referred to each Pool Members' decision-making regime.

## **7. Dispute Resolution**

- 7.1. The Pool Members shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Memorandum of Understanding. If this cannot be resolved by the Section 151 Officers it will be referred to a meeting of all Pool Members' Heads of Paid Service for resolution.

## **8. Resourcing**

- 8.1. Each Pool Member will provide the appropriate resources and will act with integrity and consistency to support the intentions set out in this Memorandum of Understanding.
- 8.2. The Lead Authority may incur additional expenditure in order to administer the Pool. Any reasonable costs agreed by Pool Members shall be the first call on the pool resources.

## 9. Lead Authority

9.1. Thurrock Borough Council will act as the Lead Authority for the Pool.

9.2. The responsibilities of the Lead Authority are:

- To receive payments from other Pool Members and make payments on behalf of the Pool to central government on time,
- To receive payments on behalf of the Pool from central government and make payments to other Pool Members. These will include Safety Net 'payments on account' to any Pool Members that qualify,
- To maintain a cash account on behalf of the Pool and pay interest on any credit balances calculated on a daily basis at the same rate of interest as the Lead Authority applies to its own internal balances,
- To allocate funding in accordance with the provisions of section 11 of this Memorandum of Understanding and to make payments accordingly,
- To liaise with and complete all formal Pool returns to central government on behalf of Pool Members,
- To keep Pool Members informed of all communications with central government,
- To manage the resources of the Pool in accordance with this Memorandum of Understanding,
- To seek performance data from each Pool Member, to prepare quarterly monitoring reports and to consolidate intelligence on future resource levels on behalf of the Pool,
- To prepare an annual report of the Pool's activity following final allocation of funds for the year,
- To co-ordinate an annual review and refresh of the Pool's governance arrangements and the methodology for the allocation of resources,
- To consult on and administer the schedule of payments between Pool Members in respect of all financial transactions that form part of the Pool's resources, and
- To lead on the timely provision of the information required by Pool Members in preparing their annual Statement of Accounts in relation to the activities and resources of the Pool.

9.3. To assist the Lead Authority in fulfilling this role, the responsibilities of individual Pool Members are:

- To remain responsible for completion of their own NNDR1 and other statutory returns in respect of their responsibilities as billing authorities
- To make payments to the Lead Authority on time,
- To provide accurate, timely information to the Lead Authority to enable all formal Pool returns to central government to be completed and to enable quarterly reports to be made by the Lead Authority to Pool Members,
- To inform the Lead Authority, as soon as is practicable, of any intelligence that may significantly impact the resources of the Pool either in the current year or in future years,
- To provide such information as the Section 151 Officers agree is reasonable and necessary to monitor/forecast the Pool's resources within the timescales

- agreed,
- To provide such information as the Section 151 Officers agree is reasonable and necessary on the use of the Pool's resources for inclusion in the Pool's annual report, and
  - To provide accurate and timely information on the end of year financial performance of the business rates element of the collection fund to enable the Lead Authority to calculate the end of year accounting entries needed.

## **10. Cash Management**

- 10.1. The governing principle for the cash management of the Pool is that no individual Pool Member, including the Lead Authority, should incur a treasury management gain or loss as a result of the transfer of funds between Pool Members.
- 10.2. The Lead Authority will pay interest annually on the balance of the Economic Growth Fund and any other retained resource at the same rate of interest as the Lead Authority applies to its own internal balances.
- 10.3. Interest will be calculated on an annual basis on the day-to-day balance and allocated to Pool Members based upon a method agreed by the Section 151 Officers.
- 10.4. Where the Pool is required to make a payment to the Secretary of State, each authority in the Pool is jointly and severally liable to make that payment.
- 10.5. Where a Pool Member fails to make payment on time and, in default, the payment is made good by other Pool Members, the defaulting Pool Member shall compensate the other Pool Members for interest and any other reasonable expenses incurred. Any late payment may be subject to a late payment interest charge at base rate plus 4%.

## **11. Allocation of Pool Resources**

### **11.1. Principles and basis of allocation in respect of any financial year**

The allocation of resources will be based on the following principles with allocations taking place in the order presented below:

1. The Lead Authority shall be reimbursed for any reasonable costs incurred in running the Pool
2. The intention is that no authority will receive from business rates retention a lower level of funding than they would have received without the Pool. This includes the treatment of growth in Enterprise Zones, new renewable energy schemes, any discretionary rate relief granted by the authority using localism powers and entitlement to safety net payments, if any. It also affirms each authority's freedom to determine its own accounting policies, regardless of the effects different options might have on Pool resources.
3. Payments will be made to compensate any authority that suffers a loss as a result of pooling (e.g. entitlement to a Safety Net payment from the

Government due to exceeding the authority's Safety Net threshold)

4. Any remaining additional resource, the Net Retained Levy, will be shared across the Pool. The allocation will be in accordance with the formula agreed by the Pool Members set out in Section 11.2 below. An Economic Growth Fund will be established to finance collaborative working to improve economic growth across the Pool area. The Economic Growth Fund will be operated on the basis set out in Section 11.3 below.
5. Where, after point 3 above, there is no remaining additional resource or the Pool makes overall losses (either because it has moved into or beyond its Safety Net threshold or the payment of compensation as above exceeds the levy gains made by the other Pool Members), then each Pool Member will share the net losses equally, including the cost of the Lead Authority's expenses, so that the Pool is brought back into balance for the year.
6. All calculations for the purposes of 11.1 and 11.2 will be based on the outturn figures entered on the authority's audited NNDR3. However and only for the purpose of calculating any Safety Net payments on account (as referred to in paragraph 9.2), provisional figures will be used based on estimates of outturn produced for the Government's NNDR1 form prior to the commencement of the year and, to put the Lead Authority into sufficient funds to make such payments, contributions will be paid on account by the other Pool Members based on their own estimates of outturn and in proportion to their estimated shares of Net Retained Levy as set out in 11.2 below.

## **11.2 Allocation of the Net Retained Levy in respect of any financial year**

The allocation of the Net Retained Levy will be calculated as follows:

- A maximum of 10% of the Net Retained Levy, capped to a maximum of £250,000 per annum and an unallocated pot not exceeding £500,000 at any time, will be retained for the Economic Growth Fund to support collaborative projects agreed by the Pool Members.
- The remaining Net Retained Levy will be distributed to the Pool Members based on:
  - o The tariff authorities (Thurrock Borough Council and Basildon Borough Council) receiving 60% of the additional funding apportioned between the authorities based on the Levy saving each has generated.

For this purpose, 'Levy saving' means the growth, if any, in the authority's local share\* over its NDR baseline\* multiplied by the percentage difference between its levy rate\* and the levy rate\* for the Pool (\*term defined by the Government).

Where instead a tariff authority's local share falls below its NDR

baseline, the levy saving generated is the amount of its negative growth multiplied by the levy rate for the Pool. If however the authority is entitled to a Safety Net payment from the Pool under 11.1.3 above, it will have generated no Levy saving for the year and its distribution of Net Retained Levy will be nil.

- The top-up authorities (London Borough of Barking and Dagenham and London Borough of Havering) receiving the remaining 40% split as to 53% LBB and 47% to LBH..
- Subject to budgetary constraints, the Pool Members intend to allocate a significant proportion of the Net Retained Levy for projects that support further economic growth as outlined in the Business Rates Retention Pooling Application, but will be under no obligation to do so.
- When a Pool Member leaves or the Pool is dissolved each Pool Member will refund to the Pool or receive from the Pool their share of the balance calculated in proportion to the cumulative shares of gains received from the Pool over the period of years since the Pool was created.

### **11.3 Allocation from the Economic Growth Fund**

- Allocations will be made from the Economic Growth Fund by the Lead Authority to projects and initiatives agreed by the Pool Members.
- The initiatives will be agreed through the development of an annual work programme (typically in January to support the start of the new financial year in April).
- Every effort will be made to achieve unanimous decisions in respect of the allocations. In the event of a disagreement, the matter will be referred to the Heads of Paid Service for resolution.
- When a Pool Member leaves or the Pool is dissolved each Pool Member will refund to the Pool or receive from the Pool their share of the balance in the Economic Growth Fund, calculated in proportion to the cumulative shares of gains received from the Pool over the period of years since the Fund balance was created.

## **12. Review Arrangements**

- 12.1. A review and refresh of the Pool's governance arrangements and the methodology for the allocation of resources will be undertaken on an annual basis. It will be co-ordinated by the Lead Authority on behalf of the Section 151 Officers.



### 13 Signatories on behalf of the Pool Members

Signed by S151 Officer for and on behalf of Thurrock Borough Council

Signature:



Name:

SEAN CLARK

Position:

HEAD OF CORPORATE FINANCE

Date:

30 October 2013

Signed by S151 Officer for and on behalf of Basildon Borough Council

Signature:



Name:

Kieran Carrigan

Position:

Commissioning Director - Resourcing

Date:

30th October 2013

Signed by S151 Officer for and on behalf of London Borough of Havering

Signature:



Name:

MIKE STRINGER

Position:

HEAD OF FINANCE & PROCUREMENT

Date:

30/10/13

Signed by S151 Officer for and on behalf of London Borough of Barking and Dagenham

Signature:



Name:

JONATHAN BURT

Position:

CHIEF FINANCE OFFICER

Date:

31 October 2013

