

2006

Agreement and Constitution of Taith



**AGREEMENT AND CONSTITUTION
OF
TAITH**

DATED 31st March 2004

(Amended 20th July 2006)

THIS AGREEMENT is made the thirty-first day of March 2004 **BETWEEN**
ISLE OF ANGLESEY COUNTY COUNCIL
CONWY COUNTY BOROUGH COUNCIL
DENBIGHSHIRE COUNTY COUNCIL
FLINTSHIRE COUNTY COUNCIL
GWYNEDD COUNCIL

and **WREXHAM COUNTY BOROUGH COUNCIL**

(collectively referred to as “the parties”) and is made pursuant to Section 101(5) of the Local Government Act 1972 as amended.

1. **DEFINITIONS**

Area means the Local Government Area of each Authority as defined in Part 1 of Schedule IV to the Local Government Act 1972 (as amended) but excluding the Meirionnydd area of Gwynedd Council.

Authority means any one of the individual parties to this Agreement

Board means the joint Committee of the parties established pursuant to Section 101(5) of the Local Government Act 1972 as amended and comprising of two elected Councillors from each Authority as appointed by each Authority.

Business Plan means the annual Business Plan approved by the Board to discharge the functions established by this Agreement for the following twelve month period.

Local means any area within the Area being less than the whole of it

Management Authority means the Authority appointed from time to time to carry out the administrative, secretarial, financial and accountancy functions of Taith as set out in this Agreement

Management Group means the group of Officers of each Authority established by this Agreement.

Region has the same meaning as Area

Taith means the name given to the joint committee, its functions and the work undertaken by its authority as established by this Agreement

2. PURPOSES OF THIS AGREEMENT

The parties wish to establish the Board as a joint Committee under the Local Government Act 1972 as amended and hereby enter into this Agreement in order to:

- 2.1 fulfil the aims as set out in clause 3.1 below within the Region,
- 2.2 promote Taith as a recognisable identity within the Region,
- 2.3 adopt the constitution of Taith as set out in this Agreement and delegate to Taith the power to act on behalf of the parties for the matters and in the manner set out in this Agreement,

3. AIMS & OBJECTIVES

- 3.1 The aims of Taith are the development and adoption of a transport strategy and subsidiary strategies for the Region embodying the following principles and such other principles as may from time to time be agreed by the Board:
 - 3.1.1 to extend the multi modal infrastructure of the Region,
 - 3.1.2 to support sustainable improvements to the level of commercial and economic activity in the Region,
 - 3.1.3 to enhance the safety and quality of transport services and infrastructure within the Region,
 - 3.1.4 to support a transport system meeting the needs of all the Region's residents,
 - 3.1.5 to promote improvement to transport links and policy integration with other areas outside the Region.
- 3.2 To achieve the above aims, Taith will undertake to complete the following objectives:
 - 3.2.1 the development, review and implementation from time to time of a Regional Transportation Strategy or strategies setting the framework for Regional and Local transport investments to be made,
 - 3.2.2 the development, review and implementation of subsidiary strategies to address specific transport issues,
 - 3.2.3 the maximisation of benefits obtainable from all financial and grant aided sources for Regional and Local transport projects and initiatives,
 - 3.2.4 to support each Authority in the delivery of projects and initiatives contributing to the aims as set out in clause 3.1 above,
 - 3.2.5 to respond to the Welsh Assembly Government's transport initiatives for the benefit of the Region,
 - 3.2.6 to represent the Region in the lobbying and the making of representations on all transport issues within and beyond the Region which affect or relate to the aims as set out in clause 3.1 above.

4 BOARD AND MANAGEMENT GROUP

4.1 Each individual authority shall appoint two of their elected Councillors to the Board to serve preferably for a period of four years.

Each authority shall have the right to nominate a substitute in place of either or both of their appointed Councillors who may carry out their functions at any one or more meetings of the Board.

4.2 A Chairperson shall be appointed by the Board every two years with the Chairperson being a Councillor from each authority in turn (so that each Authority shall provide one chairperson every twelve years).

4.3 A Vice Chairperson shall be appointed by the Board every two years with the vice chairperson being a Councillor from each authority in turn (so that each Authority shall provide one vice-chairperson every twelve years). The Chair and Vice Chair could not be Councillors from the same authority.

4.4 Each Authority on the Board shall have one vote and decisions of the Board will be made by majority of votes. The Authority providing the Chairperson for the time being shall have a casting vote in the case of votes being tied.

4.5 The Board shall be responsible for the adoption of the Business Plan.

4.6 A quorum for meetings of the Board shall consist of at least one elected Councillor (or their nominated substitute) from no less than five of the parties. Meetings of the Board shall be conducted in accordance with the standing orders for proceedings at meetings of the Management Authority. Where the provisions of those standing orders may conflict with the provisions of this Agreement, the provisions of this Agreement shall prevail.

4.7 The Board shall meet at least once a year or at such times as it may determine.

4.8 The Board shall have delegated authority from their parties to make decisions, enter into contracts and incur expenditure in pursuance of the aims of this Agreement as set out in clause 3.1 above.

4.9 The Board shall appoint a Management Group which shall consist of an equal number of officers from each Authority. The Management Group shall:

4.9.1 report to and support the Board,

4.9.2 be responsible for liaising between each Authority and

4.9.3 implement the Business Plan.

- 4.10 The Director of Transportation (or the person holding the equivalent post) of the Management Authority will act as the lead officer of the Management Group.
- 4.11 An officer serving on the Management Group may nominate a substitute to attend meetings of the Management Group in his or her place. Any member of the Management Group (or their nominee) may attend meetings of the Board but no such officer shall have a vote at meetings of the Board.
- 4.12 The quorum for meetings of the Management Group shall consist of at least one officer from at least five of the parties and such meetings shall be conducted in accordance with such procedures as the Management Group may from time to time agree by unanimity.
- 4.13 The Management Group shall meet at least four times a year and more frequently at the request of any officer of the Management Group on the giving to each Authority of seven days notice in writing.
- 4.14 The meetings of the Management Group will be held at the offices of the Management Authority unless otherwise unanimously agreed by the Management Group.
- 4.15 The Management Group shall not have power to amend or vary this Agreement or to bind any Authority on any matter without the approval of the Board.
- 4.16 The Management Group may establish an Operational Team (or Teams) consisting of at least one officer from each Authority (as chosen by the Management Group). Each Operational Team shall undertake such functions relating to this Agreement as may be determined by the Management Group and such functions may include the day-to-day business and management of Taith and the carrying out of the instructions given to that Team by the Management Group. Each Operational Team shall report to the Management Group who will resolve any disagreement amongst the officers of any Operational Team.

5. MANAGEMENT AUTHORITY

- 5.1 The Board shall appoint one Authority to act as Management Authority for a period of at least four years subject to the provisions for terminating this Agreement as set out in clause 7.1 below.
- 5.2 The appointment of the Management Authority may be terminated by all the other parties giving to the Management Authority three months' notice in writing.
- 5.3 Terminating the appointment of the Management Authority within four year period may only be made on the grounds of the Management Authority's incompetence, inability to act, negligence or wilful misconduct.
- 5.4 The Management Authority shall be responsible for the preparation and distribution of Agendas for meetings of the Board and Management Group, the taking of full minutes at such meetings and the preparation and subsequent distribution of those minutes at future meetings of the Board and Management Group respectively. The Management Authority shall, in addition to the foregoing, provide all secretarial and administrative services necessary to fulfil the functions of Taith.
- 5.5 The Section 151 Officer of the Management Authority shall make provision of all financial and accountancy services to Taith in accordance with the financial regulations and standing orders of the Management Authority for the time being.
- 5.6 The cost to the Management Authority of providing administrative, secretarial, financial and accountancy services to Taith shall be borne by each Authority in accordance with the provisions of Schedule 1 to this Agreement.
- 5.7 The Management Authority shall report on a regular basis to the Board on the financial status of Taith and lay before the Board once every year an account of Income and Expenditure for the previous year and a Balance Sheet for that year duly certified by the Section 151 Officer.
- 5.8 The Section 151 Officer shall be responsible for:
 - 5.8.1 receiving and managing all grant monies from the Welsh Assembly Government (and any other grant-awarding body),
 - 5.8.2 paying all proper accounts due under any contracts or agreements entered into by Taith pursuant to this Agreement and
 - 5.8.3 paying all proper invoices rendered to the Management Authority by another Authority in respect of work done by that other Authority in pursuance of this Agreement which work has been authorised by the Board. Payment of such invoices shall be in accordance with the provisions of Schedule 2 to this Agreement.

- 5.9 Each Authority will allow access to any records, documents and accounts created by them in pursuance of this Agreement to the Auditors of the Management Authority within a reasonable time following a written request from such Auditors.
- 5.10. The Management Authority undertakes:
- 5.10.1 To ensure that the contents and specification of bids for funding to the Welsh Assembly Government (or any other funding agency) prepared by the Management Group and approved by the Board are in accordance with the terms agreed by the Board under the procedures set out in this Agreement.
 - 5.10.2 To circulate to all other parties details of all bids for funding and details of the grants awarded or refused arising from such bids.
 - 5.10.3 To abide by the standing orders of any Authority whom the Board has agreed shall procure a contract on behalf of Taith
- 5.11 Management Authority shall appoint the staff as detailed in Schedule 3 to this Agreement in accordance with their policies and procedures for appointments of staff and the costs of appointing and employing such staff shall be borne by each Authority in accordance with the provisions of that Schedule. Appointments to any vacancy amongst such staff shall be made in accordance with recruitment and selection procedures of the said Management Authority in consultation with officers of the Management Group. All appointments, whether initial or subsequent ones, shall only be made by the Management Authority after consultation with the Management Group. The Board must approve the staff structure for Taith.
- 5.12 The parties agree to indemnify the Management Authority for the time being in respect of all costs incurred by it in the discharge of its functions as the Management Authority under this Agreement other than any costs, liabilities or damages arising from the negligence or wilful misconduct of or on behalf of the Management Authority for the time being when discharging such functions.
- 5.13 All the costs properly payable to the Management Authority for the time being in accordance with clause 5.12 above shall be borne by the parties in the proportions as set out in Schedule 1 to this Agreement and shall be paid to the Management Authority in accordance with the provisions of that Schedule.

- 5.14 The Management Authority shall annually prepare and submit a Business Plan to the Board for approval at its first meeting on or after 1st April in each year. Each such Business Plan for the forthcoming year shall be circulated to each Authority before 30th September in the preceding year. The Business Plan shall include the following:
- 5.14.1 The annual budget for Taith which shall include all sums proposed to be recharged to the parties by the Managing Authority in the discharge of its functions as such under this Agreement and as calculated in accordance with Schedule 1 to this Agreement.
 - 5.14.2 The audited account of Income and Expenditure and the Balance Sheet as mentioned in clause 5.7 above including the auditor's comments.
 - 5.14.3 The details of any duly authorised borrowing undertaken in the previous financial year
 - 5.14.4 The details of all contracts entered into in the previous financial year and all those proposed to be entered into for the forthcoming financial year in pursuance of this Agreement.
 - 5.14.5 The details of any sums outstanding to or from each Authority from the previous financial year.
 - 5.14.6 The details of strategies and action programme during the Plan period.
 - 5.14.7 Any such other matter as any Authority may request and approved by the Board, be included.

6. OBLIGATION OF INDIVIDUAL AUTHORITY

- 6.1 Each Authority authorises Taith to act on its behalf in undertaking the role of Regional Consortium for the purpose of fulfilling the requirements of the Welsh Assembly Government relating to Regional Transport Strategies, transport and other grants and matters as may be set out from time to time which such matters shall include:
- 6.1.1 To hold grant monies awarded pursuant to applications made under this Agreement and awarded by the Welsh Assembly Government or any other funding agency and to use them for the purposes authorised by decisions of the Board.
 - 6.1.2 To make further application for and to receive, administer and make proper payments out of such grant monies as shall be required for the purposes of this Agreement throughout its duration and report such applications, rejections and awards to the Board
- 6.2 Each Authority undertakes to be responsible for:
- 6.2.1 The procurement in accordance with their respective standing orders of any contracts that they are authorised to enter into pursuant to a decision of the Board.
 - 6.2.2 Considering the draft Business Plan submitted to it and either approving, rejecting or requesting amendments to it within (four) weeks of its receipt. Any Business Plan or part of such a plan which is rejected by any majority of the parties may not be submitted for approval to the Board in respect of that part of it which is rejected.
 - 6.2.3 Implementing the Business Plan and every subsequent Business Plan within its geographical area and ensuring that the provision of all resources required to fulfil its obligations as detailed in the Business Plan and in accordance with this Agreement are available.
 - 6.2.4 Paying to the Management Authority their own share of the costs incurred by the Management Authority properly acting as such as calculated and in the manner set out in Schedule 1 to this Agreement.
 - 6.2.5 To fund the work undertaken by Taith in each financial year pro rata to the population of each Authority. 'Population' here shall mean the population of each of the parties (excluding the Meirionnydd area when calculating the population of Gwynedd Council) according to the Registrar General's mid-year estimates for the month of June two years prior to each such financial year.
 - 6.2.6 In respect of any work within its geographical area to make good any shortfall in funding between that allocated to the Authority by Taith and the actual cost of completing those works.

- 6.3 Any borrowing proposed to be made by Taith must be expressly approved by each Authority before being agreed to by the Board. Any borrowing so approved and agreed shall as to its principal sum and any interest thereon be treated as a liability of Taith and divided between the parties pro rata to the population of each of the parties (Gwynedd Council shall exclude the population of the Meirionnydd area). 'Population' here shall mean the population of each of the parties according to the Registrar General's mid-year estimates for the month of June two years prior to the financial year in which each such borrowing is incurred.
- 6.4 The ownership of and responsibilities for vehicles, equipment and tools and any other tangible assets to be held by Taith and the ownership and responsibilities of any highway, highway structure and street furniture constructed by monies secured and expended under the terms of this Agreement shall be in accordance with the provisions set out in Schedule 4 to this Agreement.
- 6.5 Where any Authority, other than the Management Authority incurs approved expenditure on behalf of Taith then that Authority shall notify the Management Authority of such expenditure. The Management Authority shall apportion the costs of such expenditure between the parties in accordance with Schedule 2 to this Agreement.

7. GENERAL PROVISIONS

7.1 Termination

7.1.1 Any of the parties may terminate this Agreement by giving to each of the other parties at least six months' notice in writing of its wish to do so. The withdrawal of one Authority will not require the termination of this Agreement.

7.1.2 On termination of this Agreement Taith shall be wound up in accordance with the provisions of Schedule 5 to this Agreement.

7.1.3 The Management Authority may terminate its appointment as such by giving to each of the other parties at least six months' notice in writing prior to the end of the financial year of its wish to do so.

7.2 This Agreement shall not be deemed to create an Agency or Partnership between each individual Authority under the Partnership Act 1890 but each Authority shall owe a duty of care and good faith to each other individual Authority in carrying out the obligations contained in this Agreement.

7.3 Nothing in this Agreement shall prohibit limit or hinder the actions of each Authority as a Local Highway Authority and the lawful application by them of any grant monies allocated to them.

7.4 Each Authority shall be responsible for any works undertaken pursuant to this Agreement on land which lies within that Authority's administrative boundaries.

7.5 Liabilities to Third Parties

7.5.1 Each Authority undertakes to indemnify the other parties to this Agreement against any costs claims demands damages or liabilities arising in favour of third parties as a result of any failure by such Authority to fully observe and perform its obligations contained in this Agreement insofar as such obligations are required to be performed and observed by that Authority.

7.5.2 Where any such costs claims demands damages or liabilities in favour of third parties arise other than through the said failure of any one or more Authority, then such costs claims demands damages and liabilities shall be treated by Taith as a cost of the Management Authority within the meaning of Schedule 1 to this Agreement and shall be recharged to each Authority in the proportions and in the manner provided for in that Schedule.

7.6 Any dispute or difference arising with any Authority as to the respective rights, duties and obligations or to any matter arising out of or in connection with the subject matter of this Agreement (including any dispute or difference with regard to the meaning or construction of this Agreement) save as otherwise provided for by this Agreement shall be referred by any

individual Authority and determined by an independent Solicitor or Barrister of at least 10 years standing and who is also a specialist in relation to such subject matter as is in dispute. Failure to agree on the appointment of such independent Solicitor or Barrister shall result in the appointment of the same by the President or Vice President or other duly authorised Officer of the Law Society on the application of either party. Any person so appointed under this clause shall act as an arbitrator in accordance with the Arbitration Acts 1950-1996 or any statutory modification from time to time in force.

- 7.7 The decision of any Arbitrator appointed hereunder shall be final and binding upon the parties to that dispute and the costs of such arbitration shall be in the absolute discretion of the Arbitrator.
- 7.8. Any notice to be served under this Agreement shall be sufficiently served if it is delivered or sent by Recorded Delivery Post or prepaid first-class post to the Director of Transportation (or the holder of the equivalent post) of each Authority at the address given for each Authority at the head of this Agreement (or such other addresses as subsequently notified by the Authority to the other parties to this Agreement in writing) and such notice shall be effective immediately.
- 7.9 The headings in this Agreement shall be not taken as part of the Agreement or in any way affect the interpretation or construction of the Agreement.
- 7.10 No modification alteration or waiver of any of the provisions of this Agreement shall be effective unless the same is approved by the Board whose decision must be unanimous and is in writing and signed by the duly authorised Representative of each Authority on the Board.
- 7.11 This Agreement represents the entire agreement between the parties and the full extent of the enterprise at the date hereof. Any subsequent variation or extension to the terms of this Agreement shall be fully and effectually incorporated into it and form part of it if set out in full in a Memorandum of Further Agreement sufficiently identifying and referring to this Agreement and signed by each Authority in accordance with clause 7.10 hereof.

IN WITNESS WHERE OF the parties hereto have caused their respective Common Seals to be hereunto affixed the day and year first before written.

SCHEDULE 1

Costs of the Management Authority

- (a) The costs incurred by the Management Authority for the time being properly acting in its capacity as such and in respect of administrative, secretarial, financial and accountancy services to Taith and all other costs incurred by it arising out of or in connection with the work undertaken by it for Taith shall be certified by the Section 151 Officer of that Management Authority for each financial year and divided between the parties pro rata to the population of each of the parties.
- (b) For the purposes of paragraph (a) above the population of each of the parties for the financial year in question will be the Registrar General's mid-year estimates for the month of June two years prior to that financial year. In calculating the population of Gwynedd Council the population of the Meirionnydd area shall be omitted.
- (c) Following certification of the costs as calculated above the said Officer shall notify each Authority of the sum due from them and payment of such sums shall be made in a manner and in accordance with a timetable as agreed by the parties or, in default of such agreement, as notified to each Authority by the said Director.

SCHEDULE 2

Costs incurred by each Authority

Where an Authority other than the Management Authority for the time being, incurs expenditure previously authorised by the Board, such expenditure shall be notified to the Section 151 Officer of the said Management Authority in a manner as shall be agreed by the parties or, in default of such agreement, in a manner chosen by the said Officer and notified to each Authority in writing. Such expenditure, having been duly certified for each financial year and notified to each Authority by the said Officer, shall be divided between the parties pro rata to the population of each of the parties.

“Population” shall have the same meaning as given in paragraph (b) of Schedule 1 to this Agreement.

Having been duly notified of their share of the said expenditure, each Authority shall make payment of their allotted share to the said Management Authority in such a manner and in accordance with a timetable to be agreed by the parties or, in default of such agreement, by the said Officer.

SCHEDULE 3

Staff employed by Taith

In accordance with clause 5.11 of this Agreement, the Management Authority for the time being shall employ the staff and resources as determined by the Management Group and approved by the Board.

On termination of this Agreement the parties shall make reasonable endeavours to offer employment to any member of the said staff who would otherwise be redundant.

All costs of employing such staff including any costs of redundancy shall be treated as a cost of the said Management Authority within the meaning of Schedule 1 to this Agreement and dealt with accordingly.

SCHEDULE 4

Assets and Infrastructure

1. Any equipment, vehicle, tool or other tangible asset (asset) transferred by any Authority to Taith shall be transferred at the value it shall have on the open market at the date of such transfer. In default of any agreement as to that value between the Management Authority and the Authority transferring the asset, that value shall be determined by arbitration as provided for in this Agreement.
2. Any asset acquired by or on behalf of Taith shall be owned by each Authority jointly in shares pro rata to the population of each of the parties except that the population of Gwynedd Council shall exclude that of the Meirionnydd area. 'Population' shall mean the Registrar General's mid-year estimates for the month of June two years prior to the financial year in which such asset was acquired by Taith.
3. Any highway (as is defined in section 328 of the Highways Act 1980), highway structure or street furniture (infrastructure) constructed, adapted or improved pursuant to this Agreement shall be treated thereafter as the responsibility of the Authority within which such infrastructure is located except for highways for which the Welsh Assembly Government is the responsible Authority. The Authority bearing such responsibility shall be solely liable for the costs of future maintenance, improvement and repair of that infrastructure.

SCHEDULE 5

Provisions on Termination

Between the date of service of a notice to terminate this Agreement in accordance with clause 7.1 and the date when such notice takes effect, the Section 151 Officer of the Management Authority for the time being shall calculate all of the following matters for the period up to the date of such termination:

1. all sums due to the Management Authority in accordance with Schedule 1 to this Agreement,
2. any sum due to each Authority in accordance with Schedule 2 to this Agreement,
3. any sum due to the Management Authority in accordance with Schedule 3 to this Agreement,
4. any sum calculated as being a liability of Taith to a third party,
5. the share of each Authority in the assets of Taith as provided for in Schedule 4 to this Agreement,
6. the share of each Authority in respect of any outstanding borrowings (if any) made by or on behalf of Taith as provided for by clause 6.3 of this Agreement.

All such sums and shares as calculated above shall be notified in writing by the said Officer to each Authority within 3 months of the termination of this Agreement.

Any Authority so notified that they owe sums to Taith shall pay such sums to the Management Authority within 28 days of such notification.

Any Authority so notified that a sum is due to them from Taith shall be paid that sum in a manner as may be agreed between it and the Management Authority or, in default of such agreement, in a manner as decided by the said Officer.

If any sums or shares as detailed in the points numbered 1 to 6 in this Schedule shall arise or come to the notice of the said Officer after the date of termination of this Agreement, then each Authority shall, notwithstanding the termination of this Agreement, be bound to pay such sums or to receive such shares as may be notified to them by the said Officer as if such notification had been given before this Agreement had been terminated