

**FLINTSHIRE COUNTY COUNCIL**

**REPORT TO:** **CABINET**

**DATE:** **TUESDAY, 18 MARCH 2014**

**REPORT BY:** **CHIEF EXECUTIVE, DIRECTOR OF ENVIRONMENT,  
HEAD OF LEGAL AND DEMOCRATIC SERVICES,  
HEAD OF FINANCE**

**SUBJECT:** **NORTH WALES RESIDUAL WASTE TREATMENT  
PROJECT - 2ND INTER AUTHORITY AGREEMENT**

**1.00 PURPOSE OF REPORT**

1.01 To adopt the 2<sup>nd</sup> Inter-Authority Agreement.

**2.00 BACKGROUND**

2.01 The NWRWTP is currently governed by an Inter-Authority Agreement, signed by all partner authorities, which takes the partnership through to the stages of financial close and contract award. Once these stages are reached a second Inter-Authority Agreement (IAA2) will be required to take the partnership through the subsequent stages:

- seeking planning and environmental consents;
- construction;
- managing the contract for the operation of the facility over the life of the contract; and
- concluding the contract on expiry.

2.02 During late 2013 and January 2014 discussions have been held with the officer groups advising and supporting the project (legal, financial and technical) on the content of the 2<sup>nd</sup> Inter Authority Agreement. At the Joint Committee on 29th January 2014, agreement was reached on the remaining key areas. The key principles that have been agreed at the Joint Committee are set out in the table at 3.2 below.

2.03 A summary of the IAA2 principles produced by the project's legal advisors, Pinsent Masons, is highlighted within the draft second Inter Authority Agreement Appendix 1 (separate document) and as set out in a Report at Appendix 2 (separate document). It is intended that these reflect the key terms of the Project Agreement that Flintshire as Lead Authority will be entering into with the Preferred Bidder on Contract Award.

### **3.00 CONSIDERATIONS**

3.01 Appendix 1 is still a working draft of the IAA2, which makes provision for:

- the principles and key objectives of the agreement
- the duties of the Lead Council ( Flintshire) and Partners
- decision making processes
- site issues
- termination events and consequences
- roles of the Project Board and Joint Committee
- the commitments and liabilities of each partner constituent council and their contributions.

It now contains all of the agreed principles recommended by the Joint Committee with a view to the detail behind those principles to now be finalised. A completed document will then be sent to all five Authorities before Contract Award and the Lead Authority Chief Executive will take into account the observations of all constituent Authorities.

The constitutional and governance arrangements of the second IAA are intended to reflect those of the first IAA:- namely that the Project Board and Joint Committee decisions are to be by majority vote and the matters reserved to the individual Councils are to be unanimous decision; the quorum for the Project Board would be a senior officer from each participating Council in person (or if in an emergency by telephone) and for the Joint Committee, the quorum would be attendance by one member (voting or non-voting member) from each participating Council.

3.02 The table below summarises the key areas of cost sharing principles and other significant issues within the IAA2 which were put to the Joint Committee on the 29<sup>th</sup> January 2014 for recommendations. Points 14 and 15 of that table were additional recommendations made by the Joint Committee for incorporation into the IAA2.

Liabilities of the Councils are set out at paragraph 6 of Pinsent Mason's Report at appendix 2. On termination liability essentially follows the cost sharing agreed principle, that if any liabilities/termination payments are incurred whilst the facility is operational then those costs are to be borne by the Councils pro rata per the tonnage delivered. If however, the facility has not yet been built then those costs are to be borne equally. If the Councils were not equally at fault for termination and one Council bears more responsibility for that event then that Council shall bear a greater proportion for any payment due. For any other defaults, then the responsible Council will pay this or if there is more than one, will share this accordingly. Any Council withdrawing or being terminated will have to pay in accordance with the Liability Report set out at Schedule 7 of the IAA2. This reflects the Liability Report appended to the 1<sup>st</sup> Inter-Authority Agreement.

|    | Issue   | Agreement at Project Board  |
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| 1. | 1. A general overarching agreement on cost sharing. | <p>a) Where any costs apply to a period when the facility is operational that they are split pro rata based on the tonnage delivered (i.e. actual not forecast) subject to paragraph 14 of this table below, and</p> <p>b) In any other situation the costs are to be divided equally between the councils</p> <p>See 3 below for after the site has been operational and is being wound down.</p>  |
| 2. | What happens to the site on early termination?      | <p>The cost sharing principle above is to be applied to any early termination payments and liabilities.</p> <p>In relation to the facility site:</p> <p>a) If the facility had been built and still had the potential to be used, then it should be made available to the Partnership for the duration of the term of the proposed Project Agreement. The rationale for this is that on early termination, the Partnership as a whole will have invested in the capital and operating expenditure incurred up to the termination date. If Flintshire alone were to have the benefit of a “working facility”, then this would be inequitable and there would have to be some payment by them to offset any valuation of the facility which would probably be punitive to meet.</p> <p>b) If the facility had not been built i.e. because of planning failure, then there would be no obligation to tie the site to the project.</p> <p>c) If the facility was built but not operational or had a negative value (i.e. on a re-tender for a Contractor default situation) then all Councils should contribute / share any liability such as decommissioning costs or alternatively share any additional costs of making the facility operational for the term of the Project Agreement.</p> |

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| 3. | Decommissioning costs.                         | <p>These are to be divided equally at expiry. However, if Flintshire were to opt to continue using the facility solely it would take on the decommissioning liability in full. A share of these costs is to be included in the liability report for any Council withdrawing or being terminated early.</p> <p>For reference current estimates provided by AMEC are that decommissioning could cost in the region of £1.1 million (with a 10% contingency to be built in) and could take up to 6 to 12 months to deal with the Planning and EIA requirements and a potential further 12 to 18 months for the actual decommissioning itself (subject to any complications that could arise).</p> |
| 4. | Contract Management Costs                      | These are to be divided equally up to operation of the Facility and thereafter pro rata based on the tonnage delivered as per the general cost sharing principle.  |
| 5. | The Community Benefit Fund                     | This is to be paid into by all 5 Councils pro rata based on the tonnage delivered  |
| 6. | Loss of WG funding                             | Any loss of funding for which the Contractor is not responsible will be shared and paid by the Councils pro rata based on the tonnage delivered  |
| 7. | New build Waste Transfer station (if required) | This is to be divided equally as a capital expenditure. The parcel of land provided is to revert to the donating authority if owned by them, or if funded by the partnership then the councils would jointly decide what happens to that facility at the end of the contract term and how its proceeds/assets are to be distributed.   |
| 8. | Decision making                                | All decisions to be made by the Project Board and Joint Committee are to be by majority vote with any matters that are reserved to Individual Councils to be made unanimously by all Councils (save for when one Council has defaulted in which case the four non-defaulting Councils only, would have to make any decision unanimously ie to terminate the defaulting Council).   |

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| 9.  | Extension of the Project Agreement   | This is to be a matter that all five councils are required to agree on (without allowing for any Council to withdraw at this stage) and if the decision cannot be unanimous then any Council(s) who do wish to continue to use the facility can agree to do so outside of the Project Agreement. Those councils could decide to agree a new procurement amongst themselves.   |
| 10. | Cost Sharing during operation (waste treatment, haulage / transport and "excess payments") | <p>a) Each authority is bound by its own Guaranteed Minimum Tonnage and the price bands as charged by the contractor.</p> <p>b) Payments to the contractor for the treatment and transport of waste will be based on the actual tonnages delivered subject to not exceeding the forecast tonnages.</p> <p>c) Where tonnage delivered by an authority exceeds the forecast tonnages, the authority delivering such excess tonnage shall be solely responsible for the costs associated with the treatment and transport of such tonnage.</p> <p>d) Where the tonnages are below the guaranteed minimum tonnage the guaranteed minimum tonnage as applicable to each authority will be deemed to be the tonnage delivered by the relevant authority.</p> <p>e) In the event where the tonnages delivered are below the guaranteed minimum tonnage, the authority not meeting its requirements will pay on the basis of the guaranteed minimum tonnage and this will result in an 'excess payment' to be managed as per paragraph 12.a) below.</p> |

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| 11. | Cost of managing waste prior to haulage and treatment (e.g. waste transfer stations) | <p>a) Where WG do not provide a grant for that element, each authority would be responsible for their own transfer station operating costs, with no recourse to other authorities;</p> <p>b) Where WG do provide a grant for that element, all partner authorities will pay in to the Partnership an agreed amount per tonne for the waste being managed within each authority area, and all partner authorities receive an equitable share of the payment back, with the addition of the Welsh Government Grant. The amount paid “in” to the partnership per tonne will be an amount agreed between the partner authorities (the starting point for the discussion would be the rate identified by the market testing / procurement exercise for the intended Conwy transfer station; this will ensure that the amount is based on a market rate).</p>   |
| 12. | Benefit Sharing  | <p>a) The application of the overall contract level tonnage limits on an authority level could result in an overall overpayment by the authorities in total compared to the payment to the contractor and such excess will be termed as 'excess payments' but is in actuality arises as a result of the benefits of being in a partnership. Such “Excess” payments should be placed in a reserve to be used to fund project expenses, or be shared on a periodic basis or at the end of the project utilising the percentages used to allocate the tonnage bandings. This will be administered by the Joint Committee at its discretion.</p> <p>b) The Excess Payments will be reviewed after the first year of the contract to take into account the likelihood of amounts that may regularly be accrued on an annual basis.</p> <p>c) Dealing with additional income and windfall gains: - the project has the potential to deliver increased 3rd party income over and above that guaranteed by the contractor. Examples include electricity and 3rd party waste income. There could also be circumstances where windfall payments also arise (for instance if there are electricity or heat generation subsidies not envisaged at this time that subsequently come to pass). Such income is to be split pro rata per tonne delivered.</p> |

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| 13. | Ability to "trade" tonnage allocations.          | The project will be operational for 25 years, and during this time it is likely that proportions of wastes arising will change between authorities during the project period. The IAA2 is to have a method included within it to ensure some flexibility to allow readjustment on the tonnage bands to more closely reflect any changes in the proportions of waste arisings between authorities. |
| 14. | Commitment to Guaranteed Minimum Tonnes/Payments | The Councils agree to make a commitment to make payments for not less than the Guaranteed Minimum tonnages of Contract Waste to the Contractor each year, whether they deliver their share of the Minimum Tonnage or not. Their share will be set out in an appendix to the 2 <sup>nd</sup> Inter Authority Agreement.  |
| 15. | Additional air quality Monitoring                | The Councils agree that there will be additional air quality monitoring undertaken for the period of 1 year from the date of service commencement at the discretion of the Joint Committee. Costs will be shared on a pro rata basis per actual tonnages delivered. Thereafter the said monitoring will be subject to review by the Joint Committee."   |

3.03 The Environment and Regeneration Overview and Scrutiny Committee has been pre-consulted on the draft Inter Authority Agreement and has recommended its adoption.

#### **4.00 RECOMMENDATIONS**

4.01 Members to note that Environment and Regeneration Overview and Scrutiny Committee has reviewed and scrutinised the draft Inter Authority Agreement and recommended its adoption.

4.02 To commit to the Partnership and the Project by adopting, along with the other 4 councils, the principles in the 2<sup>nd</sup> Inter-Authority Agreement which reflect the key terms of the Project Agreement to be entered into by the Lead Council with the Preferred Bidder on Contract Award.

4.03 To delegate authority to the Lead Chief Executive to:

- finalise the 2<sup>nd</sup> Inter-Authority Agreement for signing by the constituent authorities;
- circulate the finalised agreement to the Monitoring Officers of all 5 Authorities
- take into account the views of all constituent Authorities and to refer back to the Joint Committee for approval any material departures from the agreed principles.

- 4.04 To agree to the Council signing the 2<sup>nd</sup> Inter Authority Agreement once it has been finalised in accordance with the above procedure

#### **5.00 FINANCIAL IMPLICATIONS**

- 5.01 There are financial implications and risk for all five constituent authorities as a consequence of entering into an Agreement. These are summarised in this and accompanying reports.

#### **6.00 ANTI-POVERTY IMPACT**

- 6.01 None

#### **7.00 ENVIRONMENTAL IMPACT**

- 7.01 None.

#### **8.00 EQUALITIES IMPACT**

- 8.01 None.

#### **9.00 PERSONNEL IMPLICATIONS**

- 9.01 None.

#### **10.00 CONSULTATION REQUIRED**

- 10.01 None.

#### **11.00 CONSULTATION UNDERTAKEN**

- 11.01 A number of meetings have taken place of the Technical Officers' Group, Finance Officers' Group and the Legal Officers' Group to discuss the key issues raised in the draft IAA2, at the Project Board on 12 December 2013, and 16 January 2014 and the Joint Committee on 29 January 2014. The draft Agreement has been reviewed and scrutinised by the Environment and Regeneration Overview and Scrutiny Committee.

#### **12.00 APPENDICES**

- 12.01 Appendix 1 - Draft Second Inter-Authority Agreement  
12.02 Appendix 2 - Report on the Draft Second Inter-Authority Agreement

#### **LOCAL GOVERNMENT ACCESS TO INFORMATION ACT 1985**

#### **Background Documents:**



None.

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