

Changes to the South West Devon Waste Partnership Joint Working Agreement - Briefing Report

1. Background

- 1.1. The South West Devon Waste Partnership (SWDWP) is a collaboration between Plymouth City Council, Devon County Council and Torbay Council to provide a long term solution to deal with the waste from the southwest Devon area that cannot be recycled, reused or composted.
- 1.2. The three Authorities entered into a Joint Working Agreement ("the JWA") on 28th April 2008 and established the South West Devon Waste Partnership Joint Committee ("the Joint Committee") to facilitate the joint procurement of, and the subsequent operation and management of, facilities for the treatment and disposal of residual waste in pursuance of the waste disposal functions of the three authorities.
- 1.3. The SWDWP looked at all the options to manage our waste, before undertaking a procurement which resulted in an 'Energy from Waste (EfW)' facility at Devonport, based next to North Yard. MIV Environment Ltd was awarded the contract to build and operate the 245,000 tonne facility. Planning permission was granted in 2011 with construction commencing in 2012 and completing in 2015 following a successful commissioning period. The facility began accepting waste from the Partnership in April 2015 and reached full Service Commencement in September 2015.
- 1.4. The Authorities wish to make amendments to the JWA which are necessary due to the fact that the Contract has now been let and the Authorities are now at the Services Phase (as defined in the JWA) with the Procurement Phase (as defined in the JWA) having been successfully concluded. The amendments will allow the JWA to effectively regulate the Authorities in the Services Phase, monitoring delivery and performance of the Contract.

2. Proposed Amendments to the Joint Working Agreement

- 2.1. The following amendments to the JWA are proposed and which, following approval, are to be enacted as a Deed of Variation by each partner authority:
- 2.2. Clause 5.5 of the JWA requires the Joint Committee to appoint a Secretary, Project Director and a Project Manager to undertake the duties set out in Schedules C, E and E(i) of the JWA respectively. With effect from the date hereof the role of Secretary will be undertaken by the SWDWP Project Co-ordinator at Plymouth City Council, the role of Project Director will be undertaken by the SWDWP Contract Manager at Plymouth City Council and the role of Project Manager will be undertaken by the SWDWP Assistant Contract Manager at Plymouth City Council.
- 2.3. To reflect the fact that meetings of the Joint Committee are now likely to be held less frequently in the Services Phase clause 3.4.3 of Schedule C to the JWA is amended to read "The member fails to attend all meetings of the Joint Committee within a period of 24 months or 3 consecutive meetings of the Joint Committee (whichever is the shorter period) and the Joint Committee has written to the appointing authority requiring the appointment of a replacement member."

Continuance of JWA

- 2.4. The parties expressly agree and declare that except for these changes the JWA shall continue in full force and effect in all other respects.

Appendix I – Proposed Deed of Variation

THIS **DEED OF VARIATION** is made the day of 2017 BETWEEN:

PLYMOUTH CITY COUNCIL of Ballard House, West Hoe Road, Plymouth PL1 3BJ

AND

DEVON COUNTY COUNCIL of County Hall, Topsham Road, Exeter, Devon EX2 4QD

AND

TORBAY COUNCIL of Town Hall, Castle Circus, Torquay TQ1 3DS (“the Authorities”)

WHEREAS

1. The Authorities being Waste Disposal Authorities under Section 30(2) of the Environmental Protection Act 1990 and under a duty to dispose of controlled waste within their respective areas under Section 51 of the Environmental Protection Act 1990 entered into a Joint Working Agreement (“the JWA”) on 28th April 2008 to seek a long term solution to their duties for the disposal of residual controlled waste by procuring a contractor who will construct, provide and operate facilities for the treatment and disposal of such residual waste for the Authorities and by managing the resultant contract on behalf of the Authorities.
2. The Authorities established the South West Devon Waste Partnership Joint Committee (“the Joint Committee”) under Section 101(5) of the Local Government Act 1972, as applied by Section 20 of the Local Government Act 2000 and Regulation 11 of the Local Authorities (Arrangements for the Discharge of Functions) Regulations 2000 to facilitate the joint procurement of, and the subsequent operation and management of, facilities for the treatment and disposal of residual waste in pursuance of the waste disposal functions of the three authorities arising under Section 51 of the Environmental Protection Act 1990 (as required by clause 5 of the JWA).
3. On 25th March 2011 the Authorities entered into a contract (“the Contract”) with MVV Environmental Devonport Ltd for residual waste treatment.
4. In accordance with clause 11.1 of the JWA the Authorities have resolved to make the following amendments to the JWA which are necessary due to the fact that the Contract has now been let and the Authorities are now at the Services Phase (as defined in the JWA) the Procurement Phase (as defined in the JWA) having been successfully concluded. The amendments will allow the JWA to effectively regulate the Authorities in the Services Phase, monitoring delivery and performance of the Contract.

5. The first amendment to the JWA was made on 30th June 2014 in accordance with Clause 2.1 of Schedule B to the JWA dealing with the Service Cost Allocation Scheme.

6. The amendments set out below have now been agreed by the Authorities.

NOW THIS DEED WITNESSES as follows:

1. Clause 5.5 of the JWA

1.1 Clause 5.5 of the JWA requires the Joint Committee to appoint a Secretary, Project Director and a Project Manager to undertake the duties set out in Schedules C, E and E(i) of the JWA respectively. With effect from the date hereof the role of Secretary will be undertaken by the SWDWP Project Co-ordinator at Plymouth City Council, the role of Project Director will be undertaken by the SWDWP Contract Manager at Plymouth City Council and the role of Project Manager will be undertaken by the SWDWP Assistant Contract Manager at Plymouth City Council.

2. Frequency of Meetings

2.1 To reflect the fact that meetings of the Joint Committee are now likely to be held less frequently in the Services Phase clause 3.4.3 of Schedule C to the JWA is amended to read "The member fails to attend all meetings of the Joint Committee within a period of 24 months or 3 consecutive meetings of the Joint Committee (whichever is the shorter period) and the Joint Committee has written to the appointing authority requiring the appointment of a replacement member."

3. Continuance of JWA

3.1 The parties expressly agree and declare that except for this present Deed of Variation the JWA shall continue in full force and effect in all other respects.

IN WITNESS whereof the Authorities have executed this their Deed the day and year first before written.

The COMMON SEAL of

PLYMOUTH CITY COUNCIL

was affixed hereto in the presence of:

Authorised Signatory

The COMMON SEAL of

DEVON COUNTY COUNCIL

was affixed hereto in the presence of:

Authorised Signatory

The COMMON SEAL of

TORBAY COUNCIL

was affixed hereto in the presence of:

Proper Officer and Authorised Signatory.

Dated

2017

PLYMOUTH CITY COUNCIL

and

DEVON COUNTY COUNCIL

and

TORBAY COUNCIL

DEED OF VARIATION

relating to a Joint Working Agreement
dated 28th April 2008

Dave Shepperd
Head of Legal Services

Plymouth City Council

ref: ART/1201