

Review of Joint Working Agreement **for consideration by SWDWP Joint Committee – 5th September 2016**

Introduction

Following discussions at the Joint Committee site visit on 28th January 2016, the Project Executive were tasked to review the constitution of the Joint Committee and governance arrangements for the services phase of the Project. This included considering whether a formal Joint Committee is still required in its current or revised format e.g. reconsidering frequency of meetings, content of meetings, governance and delegated powers.

Background

The SWDWP's waste PFI project governance flows from a carefully crafted, legally binding Joint Working Agreement (“JWA”). That document was designed to facilitate strong partnership working between the Councils during both the procurement and services phases of the project. The document needed to be “visionary” as it was the first document produced by the partnership at project inception. It “looked forward” to the services phase as well as dealing with the procurement phase. The Councils envisaged that once the contract was in place the JWA would be reviewed to ensure that it still represented best practice and met the Councils’ needs. Indeed the document has already been amended once post MVV contract award to incorporate the exact finance allocation (the FAM) agreed between the Councils to replace the original generic financial principles.

Responsibility for decision making is clearly set out in the JWA. There are existing and wide ranging delegations in place delegating decision making power to the Joint Committee from each Council. The Joint Committee in turn have made delegations to the Chief Executive of Plymouth City Council (Chair of the Project Executive) or as further delegated (currently to Anthony Payne Director for Place at Plymouth City Council). All of the decisions that were originally envisaged would be taken by the Joint Committee have now been taken i.e. agreement of all evaluation criteria relating to the Project and selection of the Preferred Bidder. However, the Joint Committee also makes decisions in respect of any matter which the Lead Officer of any authority has notified the Chair to the Project Executive in writing of their authority’s formal objection to a proposed decision. In other words the Joint Committee continues to be a forum where contentious/difficult issues can be decided. So the Joint Committee is likely to have further decisions to make and can receive any relevant SWDWP information for their acknowledgment and understanding.

The purpose of the three authorities in establishing the Joint Committee was 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.” It was always envisaged therefore that the Joint Committee would have a role post contract award and into the management/services phase.

In addition to a continued decision making role, the Joint Committee is the project’s political interface. It is vital for the Project Executive to be able to make decisions which reflect political will. The Joint Committee is the vehicle to express that will in a structured manner. The Joint Committee has regularly received project progress reports upon which its views have been sought. That has effectively contributed to strong decision making by the Project Executive.

If the conclusions of this report are implemented, there will be three legal documents governing future matters i.e. the JWA and two deeds of variation. To assist project management going forward it is recommended that SWDWP officers develop a short “User’s Guide” setting out clearly the roles and responsibilities and governance arrangements.

Summary and Recommendations

As instructed, SWDWP officers have now reviewed current governance arrangements and advise as follows with a view to seeking the endorsement of the Joint Committee:

1. The JWA and the Joint Committee have served the partners well. There is no reason to change the current arrangements substantively as they are robust.
2. The level of future business for the Joint Committee is difficult to determine. It will need to respond to events. This is catered for in the existing JWA clause 6.1 “Meetings of the Joint Committee shall be held at such times dates and places as may be notified to the members of the Joint Committee by the Secretary to the Joint Committee.” No change is required and meetings can be moved to an annual basis if determined.
3. Agenda items will be as proposed by the Project Executive (as now). It is suggested that the Joint Committee receive at least an annual performance and progress report from the Project Director or Contract Manager (see 4 below).
4. 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. It is recommended that the role of Secretary will be undertaken by the SWDWP “Project Co-ordinator” in collaboration with Democratic Support officers at Plymouth City Council, the role of Project Director will be undertaken by the SWDWP “Contract Manager” and the role of Project Manager will be undertaken by the SWDWP “Assistant Contract Manager”.
5. 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 should be amended to read “The member fails to attend all meetings of the Joint Committee within a period of 24 months.” At present a member is removed from the Joint Committee if failing to attend all meetings in a 6 month period.
6. SWDWP officers should develop a short “User’s Guide” setting out clearly the roles and responsibilities and governance arrangements for guidance and clarity.

Recommendation:

It is recommended that the Joint Committee considers the findings of this report and that this report and the attached Deed of Variation be endorsed by the Committee for the Deed to be finalised and subsequently approved as an executive decision by each Council.

By: Alwyn Thomas (SWDWP Legal), and
Mark Turner (SWDWP Project Director and Contract Manager)

THIS DEED OF VARIATION is made the day of 2016 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 25 years.
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 18 months.”

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.

attestation clauses here