

APPENDIX

Dated _____ 2014

(1) Blaenau Gwent County
Borough Council

(2) Caerphilly County
Borough Council

(3) Monmouthshire County
Council

(4) Torfaen County Borough
Council

**MEMORANDUM OF
UNDERSTANDING**

MEMORANDUM OF UNDERSTANDING
As to partnering arrangements for the joint procurement
Of a Food Waste treatment services contract

1. Definitions and Interpretation	3
2. Project Objectives and Collaboration	4
3. Project Team and its Functions	4
4. Project Board and its Functions	5
5. Key Decisions	5
6. Obligations and Responsibilities	5
7. Good Faith	6
8. Financial Contributions	6
9. Duration of the Memorandum	6
10. Communications	6
11. Third Parties Rights	6
12. No Partnership or Agency	7
13. Legal Effect	7
14. Withdrawal/Termination	7
15. Dispute Resolution	8
16. Confidentiality and Freedom of Information	9
17. Amendments	9
18. Law and Jurisdiction	9
SCHEDULE 1 – PROJECT OBJECTIVES	12
SCHEDULE 2 – PARTNERING PRINCIPLES	13
SCHEDULE 3 – PROJECT TEAM	14
SCHEDULE 4 – PROJECT BOARD	16
SCHEDULE 5 – KEY DECISIONS	18

Parties

- (1) **BLAENAU GWENT COUNTY BOROUGH COUNCIL** whose principal offices are situated at of Municipal Offices, Civic Centre, Ebbw Vale, NP23 6SX (“BGCBC”)
- (2) **CAERPHILLY COUNTY BOROUGH COUNCIL** whose principal offices are situated at Penallta House, Tredomen Park, Ystrad Mynach, Hengoed, CF82 7PG (“CCBC”)
- (3) **MONMOUTHSHIRE COUNTY COUNCIL** whose principal offices are situated at County Hall, Rhadyr, Usk, Monmouthshire NP15 1GA (“MCC”)
- (4) **TORFAEN COUNTY BOROUGH COUNCIL** whose principal offices are situated at Civic Centre, Pontypool NP4 6YB (“TCBC”)

each a **party** and together the **parties**.

Background

- A. BGCBC, CCBC, MCC and TCBC wish to enter into a joint working arrangement to facilitate the procurement of a food waste treatment facility to treat food waste collected in their regions and possibly in other neighbouring authorities (the **Project**).
- B. The parties have agreed to enter into this memorandum of understanding (the **Memorandum**) to confirm the scope and operation, and their respective contributions towards the delivery of the Project and their intention to progress the Project in accordance with the arrangements set out herein.
- C. BGCBC, CCBC, MCC and TCBC enter into the Memorandum in pursuance of their respective powers conferred by Section 111 Local Government Act 1972, the Local Authorities (Goods and Services) Act 1970 and Section 2 of the Local Government Act 2000 and all other enabling powers now vested in them.

Agreed terms

1. Definitions and Interpretation

1.1 In the Memorandum the defined terms set out below shall have the following meanings:

- “Approved Costs” : means costs which are properly and reasonably incurred in respect of the Project and which have been approved by the Parties as evidenced by being identified in the Procurement Budget;
- “Commencement Date” : the date hereof;
- “IAA” or “Inter-Authority Agreement” : a formally binding agreement to be entered into between the parties regulating their rights and obligations to each other in connection with the Food Waste Services Contract, such agreement to be entered into at the same time as the Food Waste Services Contract;
- “Dispute” : difference or dispute arising under the Memorandum;
- “Partnering Principles” : the principles set out in Schedule 2 (Partnering Principles);
- “Project” : as defined in Recital A above;
- “Project Board” : a board comprising representatives from the parties in the form prescribed in Schedule 4 (Project Board) to facilitate the

development of the Project;

- “Project Documentation” : the OJEU notice, pre-qualification questionnaire, invitation to tender, evaluation criteria and all other tender documentation associated with or required to procure the Project;
- “Project Objectives” : objectives and aims set out in Schedule 1 (Project Objectives);
- “Project Team” : a team comprising of representatives from each of the parties in the form prescribed in Schedule 3 (Project Team) to manage the development of the Project;
- “Respective Inputs” : the support, assistance, funding, actions or other input required to be given from time to time by any of the parties to implement and/or deliver the Project as determined by the Project Team and/or Project Board from time to time;
- “Food Waste Services Contract” : the contract to be entered into with a third party service provider for the provision of food waste treatment services.

In the Memorandum:

- 1.2 any references to a specific statute include any statutory extension or modification, amendment or re-enactment of such statute and any regulations or orders made under such statute or statutes;
- 1.3 references to any clause, sub-clause, schedule or paragraph without further designation shall be construed as a reference to the clause, sub-clause, schedule or paragraph to the Memorandum so numbered;
- 1.4 the clause, paragraph and schedule headings do not form part of the Memorandum and shall not be taken into account in its construction or interpretation.

2. Project Objectives and Collaboration

- 2.1 Each of the parties hereby confirms and agrees to implement the Project in accordance with:
- the Project Objectives; and
 - the Partnering Principles.
- 2.2 The parties acknowledge the importance of establishing sustainable waste management solutions in partnership, wherever practicable, between themselves and with other regional Authorities and of supporting the Welsh Government’s initiatives for joint working in this area.
- 2.3 The parties shall participate in regional initiatives, which contribute, to sharing best procurement practice and know how so that as far as possible the parties preferred solution delivers synergy with other regional waste management activity.
- 2.4 The parties shall endeavour to enter into appropriate agreements (including memorandums of understanding) where practicable with other regional authorities to give effect to their commitments in clauses 2.2 and 2.3 above.

3. Project Team and its Functions

- 3.1 The parties shall set up and participate in a Project Team.

3.2 The Project Team shall work together to manage the delivery of the Project in accordance with the Memorandum and shall have the responsibilities and operate in accordance with Schedule 3 (Project Team).

3.3 The Project Team shall have the right at all times to require any party to deliver up information and documentation relevant to the Respective Input of that party for the purpose of monitoring the progress of the Project and the delivery of the Project Objectives.

4. **Project Board and its Functions**

4.1 The parties shall set up and participate in a Project Board to be operational no later than 1 month from the Commencement Date.

4.2 The Project Board shall work together to oversee delivery of the Project in accordance with the Memorandum and shall have the responsibilities and operate in accordance with Schedule 4 (Project Board).

4.3 The parties agree that BGCBC shall lead the Project Board as the host authority.

4.4 The Project Board shall have the right at all times to require any party to deliver up information and documentation relevant to the Respective Input of that party for the purpose of monitoring the progress of the Project and the delivery of the Project Objectives.

5. **Key Decisions**

The key decisions set out in Schedule 5 (Key Decisions) shall be implemented upon each party approving action following a report to each party from the Project Board in accordance with that party's respective standing orders and other constitutional documentation.

6. **Obligations and Responsibilities**

6.1 Each of the parties agree that they shall:

- comply with the terms of this memorandum;
- use their reasonable endeavours to provide their Respective Inputs;
- undertake steps in an efficient and timely manner to progress development of the IAA;
- make such financial or equivalent provision as may be provided under the terms of the Memorandum;
- co-operate with and give reasonable assistance to each other and the Project Board to ensure that the Project is developed in accordance with the Project Objectives and that the Respective Inputs into the Project are properly co-ordinated and delivered efficiently and economically with the intention of achieving the Project Targets;
- deliver such information to the Project Manager, Project Team and/or Project Board as it shall reasonably require in order to fulfil their respective obligations under the Memorandum including any audit or inspection carried out in respect of the Project; and
- keep records of actions taken and such other information relevant to their Respective Inputs and shall make such records available to the Project Manager, Project Team and/or Project Board and in any event as soon as reasonably practicable following a request from the Project Board to do so.

7. Good Faith

The parties will use all reasonable endeavours to comply with the terms and spirit of the Memorandum. The parties will at all times in relation to the performance of the Memorandum act reasonably and in good faith.

8. Financial Contributions

8.1 The parties acknowledge that there will be a level of financial contributions (including professional fees) and work involved in complying with the spirit of the Memorandum and achieving the Project Objectives.

8.2 All costs incurred by the Parties prior to October 2014 are to be funded by the Parties on the basis of any existing settlement between the Parties and the Parties agree that no obligations is created by this Memorandum in respect of funding requirements arising prior to that date.

8.3 Costs shall be shared equally.

8.4 The Party incurring Approved Costs shall invoice the other Parties for the appropriate share of the Approved Costs (in accordance with clause 8.3) and shall provide the Parties being invoiced with:

- a description of the Approved Costs being invoiced;
- a breakdown of the total costs incurred; and
- a calculation of the apportionment of such costs in accordance with Clause 8.3 above.

8.5 The Parties being invoiced shall pay their respective share of the Approved Costs within ninety days of the date of such invoice. Any disputes in relation to an invoice shall first be referred to the Project Manager for resolution. Failing resolution by the Project Manager the dispute shall be dealt with in accordance with clause 15 (Dispute/Resolution)

8.6 Each party shall be liable for all its other costs incurred in respect of achieving the Project Objectives unless otherwise agreed.

9. Duration of the Memorandum

The Memorandum shall commence on the Commencement Date and remain in force and bind the parties until terminated in accordance with clause 14 (Withdrawal/Termination) or upon entering into the IAA, whichever is the sooner.

10. Communications

Any communication required to be in writing under the terms of the Memorandum shall be sent to each party at the addresses indicated herein. Each party shall use reasonable endeavours to communicate in accordance with the Partnering Principles.

11. Third Parties Rights

To the extent that any provision of the Memorandum is capable of being legally enforced, the parties to the Memorandum confirm and agree that they do not intend any provision of it to be enforceable by any other person pursuant to the Contract (Rights of Third Parties) Act 1999.

12. No Partnership or Agency

- 12.1 Except where expressly indicated, no provision of the Memorandum shall be construed as a delegation by any of the parties of any of their respective functions or authority to the Project Team and/or Project Board or to any other party.
- 12.2 Except where expressly indicated, no party shall be or be deemed to be an agent of any other and no party shall have any right or authority to act on behalf of the other nor to bind the other by contract or otherwise or hold itself out as having authority or power to bind any other in any way by virtue of the Memorandum.
- 12.3 Each party is independent from the other and nothing contained in the Memorandum shall be construed as implying that there is any relationship between the parties of partnership or of principal/agent or of employer/employee.
- 12.4 Nothing contained or implied in the Memorandum shall prejudice or affect the rights, powers, duties and obligations of each of the parties in the exercise of their respective functions as may be amended, supplemented or increased from time to time.

13. Legal Effect

Save for clause 7 (Good Faith), clause 8 (Financial Contributions), clause 14 (Withdrawal/Termination), clause 15 (Dispute Resolution), clause 16 (Confidentiality and Freedom of Information); clause 17 (Amendments) and clause 18 (Law and Jurisdiction) the Memorandum is not intended to nor shall it create any legally binding or enforceable obligations on any of the parties.

14. Withdrawal/Termination

- 14.1 If any party (including the host authority) determines to withdraw from this Memorandum for any reason then clauses 14.2 to 14.7 shall apply.
- 14.2 If any party wishes to withdraw from the Project, it shall provide written notice to all the other parties as soon as reasonably practicable ("Withdrawal Notice"). The host authority (or such other party as nominated by the Project Board in the event that the host authority issues the Withdrawal Notice) shall within ten (10) days of receipt of the Withdrawal Notice provide to all the parties a Liability Report which shall be discussed by the Project Board at its next meeting or a specially convened meeting if the next meeting falls more than two (2) weeks after the issue of the Liability Report.
- 14.3 Within the Decision Period each party shall indicate either:-
 - 14.3.1 that it withdraws from the Project and this Memorandum; or
 - 14.3.2 that it wishes to continue with the Project and this Memorandum.
- 14.4 Where a party does not indicate its intentions as required by Clause 13.5 then it shall at the expiry of the Decision Period be taken to have indicated that they wish to continue with the Project and this Memorandum.
- 14.5 Where a party indicated that it wishes to withdraw from the Project in accordance with Clause 14.3.1 then:-
 - 14.5.1 the party who shall have indicated its wish to withdraw shall pay all amounts due to be paid by it in accordance with the Liability Report (or in the event that there are two withdrawing parties each party shall pay a fifty percent share of the amount due in accordance with the Liability Report) within twenty (20) Business Days of the date of its notification under Clause 14.3.1 and comply with its obligation to contribute to the Project up to the date of its withdrawal; and

14.5.2 if in the event of such a withdrawal the Project is delayed in terms of the Project Milestones then any party who shall have indicated its wish to withdraw shall be responsible for any increased costs associated with such delay (as agreed with the remaining parties and substantiated by the Project Board) or in the event that there are two (2) withdrawing parties each party shall be responsible for a fifty percent share of any increased costs associated with such delay.

14.6 On the withdrawal of a party in accordance with clause 14.1:

- The other parties shall be entitled to make use of, for whatever purpose and in whatever way is considered necessary, such advice, documentation, and knowledge as was provided to, or gained by, the parties whilst the Memorandum was in force; and
- each party shall be liable to the other to contribute equally to such committed costs or incurred costs prior to the giving of the notice of withdrawal.

14.7 Unless agreed otherwise by the remaining parties, the party who shall have indicated its wish to withdraw from the Project shall not remove its appointees to the Project Board for a period of three (3) months commencing on the date of such parties withdrawal, provided that the costs associated with those appointees to the Project Board shall be borne by the remaining parties to the Project and this Memorandum in equal shares.

14.8 Termination in accordance with this clause 14 shall be without prejudice to any accrued rights and obligations under the Memorandum as at the date of termination and shall be without prejudice to the rights specifically conferred in the Memorandum.

14A TERMINATION

Without prejudice to any other rights or remedies, this Agreement may be terminated in relation to any party ("**Defaulter**") by the other parties ("**Non-Defaulting Councils**") acting unanimously in giving written notice to the Defaulter effective on receipt where the Defaulter breaches any of the provisions of this Agreement and in the case of a breach capable of remedy fails to remedy the same within fifteen (15) Business Days (or such other period as agreed by the parties) of being notified of each breach in writing by the Non-Defaulting parties and being required to remedy the same.

15. Dispute Resolution

15.1 Any Dispute shall, in the first instance, be referred to the Project Board who shall use all reasonable skill, care and diligence to ensure they receive the views of all parties and consider all solutions proposed when attempting to resolve the Dispute.

15.2 Where the Project Board do not achieve within 7 days of being notified of the Dispute a solution acceptable to all parties involved, and provided no right of termination has been exercised, then the Dispute shall be referred to the respective Chief Executives of the parties who shall use all reasonable skill, care and diligence to ensure they receive the views of all parties and consider all solutions proposed when attempting to resolve the Dispute.

15.3 Where the Chief Executives of the parties do not achieve, within 28 days of being notified of the Dispute, a solution acceptable to all parties involved the Dispute shall be deemed to be incapable of resolution. In such a situation each party will consider whether it is able to continue to work with the other under the Memorandum. If, in its sole discretion, either party is unable to proceed to work with the other under the Memorandum it is entitled to terminate the Memorandum in accordance with clause 14 (Withdrawal/Termination).

16. Confidentiality and Freedom of Information

16.1 Each party undertakes that it shall not at any time during the term of the Memorandum, nor for a period of 5 years after its termination, disclose to any person any confidential information concerning the business or affairs of the other party, save that each party may disclose the other party's confidential information:

- to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Memorandum. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information complies with this clause 16; and
- as may be required by law (including pursuant to the Freedom of Information Act 2000 if no available exemption can be claimed, or pursuant to the Environmental Information Regulations 2004), court order or any governmental or regulatory authority.

16.2 No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Memorandum.

17. Amendments

17.1 The parties may amend the Memorandum in writing signed by authorised representatives of each of the parties.

18. Law and Jurisdiction

18.1 The Memorandum shall be governed by and construed in accordance with the laws of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof the parties have signed the Memorandum the day and year first before written

Signed on behalf of
BLAENAU GWENT COUNTY
BOROUGH COUNCIL

Name: Name:

Signature: Signature:

Date: Date:

Signed on behalf of
CAERPHILLY COUNTY
BOROUGH COUNCIL

Name: Name:

Signature: Signature:

Date: Date:

Signed on behalf of
TORFAEN COUNTY
BOROUGH COUNCIL

Name: Name:

Signature: Signature:

Date: Date:

Signed on behalf of
MONMOUTH COUNTY
COUNCIL

Name: Name:

Signature: Signature:

Date:

Date:

DRAFT

SCHEDULE 1 – PROJECT OBJECTIVES

The Project Objectives are:

1. To develop and implement a strategy for the procurement, award and management of a food waste treatment contract capable of assisting each party to achieve its recycling, composting, recovery and landfill diversion targets.
2. To carry out the Project in accordance with Procurement Timetable.
3. To carry out the Project in a way which maximises value for money and efficiency, is in the best interests of each of the parties and generates credible competitive bids capable of delivering the Project Objectives.
4. To seek to adopt arrangements, structures and procedures (including in respect of the procurement process and procurement decisions) which:
 - a) minimise the cost of waste disposal to each individual party;
 - b) shares risk and reward between the parties in an equitable and fair way having regard to the Respective Inputs of each party;
 - c) are transparent, accountable and are capable of being verified and justified;
 - d) recognise and respect limits on availability of resources and the legal, managerial, financial and political constraints affecting each party.
5. To seek to ensure that the Project and any subsequent contract that is entered into thereafter is synergistic with the needs of South East Wales as a region (as defined in the South East Wales Regional Plan) and each of the parties individual Waste Strategies.
6. To identify available assets in an open and transparent way and agree basis for committal of assets to the Project (including sites, plant and machinery).
7. To ensure that at all times each party has appropriate information and advice to make fully informed decisions.

SCHEDULE 2 – PARTNERING PRINCIPLES

1. Co-operation

The parties will co-operate with each other in a partnering relationship to achieve the Project Objectives with the intention of maximising the benefit received by and minimising any prejudice to each other in respect of the Project. This obligation shall not require any party to incur any expenditure or forego any benefit or entitlement on behalf of another.

2. Effectiveness

The parties will co-ordinate, manage, develop, initiate and complete their Respective Inputs with the intention of delivering the Project in the most efficient and effective way.

3. Responses

The parties will endeavour to respond, meet to discuss and where necessary reach agreement on any matter requiring response in a timely fashion and as soon as reasonably practicable so as not to unduly delay the Project.

4. Recognition

The parties recognise the legal, managerial, financial and political constraints affecting each party and shall have full regard to such constraints in the development of the Project and the delivery of the Project Objectives.

5. Equality, Fairness and Absence of Prejudice

The parties will at all times act fairly and equitably as between themselves in respect of the Project with the intention that neither should unduly benefit or be disadvantaged compared with the other and that the most appropriate approach applicable in the relevant circumstances should be adopted whenever possible.

SCHEDULE 3 – PROJECT TEAM

Members

1. The Project Team will comprise the following members from each party as the same may be replaced from time to time throughout the term of the Memorandum together with the Project Manager, Project Support Officer and Advisors:
 - 1.1 BGCBC Representatives:
 - Team Manager, Strategic Projects and Environmental Services;
 - Team Leader, Strategic Projects;
 - Project Support Officer; and
 - [additional representatives to be confirmed]
 - 1.2 CCBC Representatives:
 - Principal Waste Management Officer.
 - [additional representatives to be confirmed]
 - 1.3 TCBC Representatives:
 - Waste Strategy Manager
 - [additional representatives to be confirmed]
 - 1.4 MCC Representatives:
 - [representatives to be confirmed]

Responsibilities

2. The Project Team shall regularly consider and identify the following issues:
 - 2.1 The steps undertaken and progress made towards achievement of the Project Objectives;
 - 2.2 any action or decision to be taken by either of the parties to enable the Project Documentation;
 - 2.3 the programme of any proposed actions to be taken to rectify any failure to meet the Project Objectives;
 - 2.4 any Respective Inputs which the Project Team considers are required and which are to be agreed and/or allocated to (and accepted by) any party;
 - 2.5 any failure by any party to provide its Respective Inputs; and
 - 2.6 any dispute or differences that have arisen between the parties.

3. The Project Team shall report to the Project Board in respect of matters relating to the key decisions mentioned in Schedule 5 (Key Decisions) and regularly in respect of general progress.

Convening of Meetings

4. The Project Team shall hold regular meetings at such intervals and times as they shall find necessary or convenient. The Project Manager shall nominate the relevant chairperson for such meetings.
5. No less than 7 calendar days notice must be given to each member of a Project Team meeting, save in the case of an emergency where a meeting may be called at any time as may be reasonable in the circumstances.

Quorum of Meetings

6. Unless otherwise agreed in writing, to constitute a meeting of the Project Team each of the parties shall be represented by at least one team member.

Attendance by Others

7. Provided each of the parties agrees, a person invited by any party may attend any meeting of the Project Team to speak at that meeting or otherwise advise or provide information (as appropriate) in relation to the Project, but such person's attendance and participation shall be limited to that which is agreed by each of the parties in respect of the meeting to which that person has been invited to attend.

Minutes of Meetings

8. The minutes of every meeting of Project Team shall be:
 - 8.1 drawn up by the nominated support officer and distributed to nominated representatives of each of the parties; and
 - 8.2 retained for the term of the Memorandum.

SCHEDULE 4 – PROJECT BOARD

Members

1. The Project Board will comprise the following members from each party as the same may be replaced from time to time throughout the term of the Memorandum together with the Project Manager and Project Transactor from Local Partnerships:
 - 1.1 BGCBC Representatives:
 - Corporate Director, Environment and Regeneration; and
 - Head of Public Services.
 - 1.2 CCBC Representatives:
 - Head of Community and Leisure Services
 - 1.3 TCBC Representatives:
 - Chief Officer Neighbourhood Services; and
 - Head of Property, Streetscene and Waste
 - 1.4 MCC Representatives:
 - Head of Waste and Street Services.

Responsibilities

2. The Project Board shall be responsible for the following:
 - 2.1 Considering and, where possible, giving effect to the strategy proposed by the Project Manager and/or Project Team or strategy considered necessary by the Project Board for the procurement of the Food Waste Services Contract;
 - 2.2 Making or facilitating decision making in respect of all issues referred to the Project Board by the Project Manager and/or Project Team in respect of, inter alia, steps undertaken and progress made towards achievement of the Project Objectives; any action or decision to be taken by either of the parties to enable the Project Documentation; and agreeing and/or allocating Respective Inputs to any party proposed by the Project Manager and/or Project Team or deemed necessary by the Project Board;
 - 2.3 Liaising with relevant decision makers within the parties where the Project Board does not have the authority to make and give effect to a decision in respect of any of the matters referred to the Project Board throughout the term of the Memorandum;
 - 2.4 Considering and, where appropriate, resolving any dispute or difference that has arisen between the parties and referred to the Project Board.

3. The Project Board shall report to each party's Cabinet in respect of matters relating to the key decisions mentioned in Schedule 5 (Key Decisions) and regularly in respect of general progress.

Convening of Meetings

4. The Project Board shall hold regular meetings at such intervals and times as they and/or the Project Manager and/or Project Team shall find necessary or convenient, but in any event at least once a month. The Project Director shall nominate the chairperson for such meetings.
5. No less than 14 calendar days notice must be given to each member of a Project Board meeting, save in the case of an emergency where a meeting may be called at any time as may be reasonable in the circumstances.

Quorum of Meetings

6. Unless otherwise agreed in writing, to constitute a meeting of the Project Board each of the parties shall be represented by at least one board member.

Attendance by Others

7. Provided each of the parties agrees, a person invited by any party may attend any meeting of the Project Board to speak at that meeting or otherwise advise or provide information (as appropriate) in relation to the Project, but such person's attendance and participation shall be limited to that which is agreed by each of the parties in respect of the meeting to which that person has been invited to attend.

Minutes of Meetings

8. The minutes of every meeting of the Project Board shall be:
 - 8.1 Drawn up by the nominated support officer and distributed to nominated representatives of each of the parties; and
 - 8.2 Retained for the term of the Memorandum.

SCHEDULE 5 – KEY DECISIONS

The following are the key milestones and decisions, which must be implemented in accordance with the procedures, set out in clause 5:

- a) Appointment and/or removal of legal, technical and financial and other advisors to advise on the Project.
- b) Approval of the content of all Project Documentation;
- c) Approval of technology identified as suitable to meet the parties' requirements.
- d) Approval of site identified for location of procured technology.

DRAFT