

HALTON & MRWA INTER-AUTHORITY AGREEMENT
WDA/16/19

Recommendation

That:

1. Members approve the completion of an Inter-Authority Agreement between MRWA and Halton BC in relation to the provision of services under the Waste Management & Recycling Contract with Veolia;
2. Members delegate authority to the Chief Executive in consultation with the Authority Chairperson to finalise the detail of the Inter-Authority Agreement with Halton and for it to be signed by the Chief Executive on behalf of the Authority.

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Report of the Chief Executive

1. Purpose of the Report

- 1.1 This purpose of this report is to inform Members of the status of the proposed Inter-Authority Agreement (IAA) between Halton BC and MRWA in relation to the provision of services to Halton under the Waste Management & Recycling Contract (WMRC) with Veolia.
- 1.2 The report also seeks Members' approval for the Inter-Authority Agreement to be finalised and signed on behalf of the Authority by the Chief Executive in consultation with the Authority Chairperson.

2. Background

- 2.1 Merseyside Recycling & Waste Authority (MRWA) is the statutory waste disposal authority (WDA) for the area of Merseyside. Halton Borough Council (Halton) as a Unitary Authority is the statutory WDA for their own area.
- 2.2 At a meeting of their Executive Board in July 2007, Halton delegated certain of its functions as a WDA to MRWA.
- 2.3 MRWA, at a meeting of the Authority in February 2008, approved the signing of a formal Inter-Authority Agreement between Halton and MRWA.
- 2.4 An initial draft IAA was produced during the procurement stages of the WMRC, but was not finally signed by either party. The WMRC subsequently commenced and Halton have received (and paid for) services under the contract since that time, despite the lack of a formal IAA being in place.
- 2.5 During the procurement stages of the more recent Resource Recovery Contract (RRC) with Merseyside Energy Recovery Ltd. (MERL), an IAA was produced to formalise the agreement between MRWA and Halton in relation to both the procurement and long-term operation of the RRC. This

IAA was signed by both parties and has been in place since November 2013.

- 2.6 In April 2018, Halton BC Executive Board agreed to certain changes to be implemented to the services provided at their two HWRCs through the WMRC. (Note: these changes are the subject of a separate Authority report). The WMRC is a contract between MRWA and Veolia; Halton BC is not a party to the WMRC, but receive services through it managed by MRWA. The changes proposed by Halton will require a formal variation to the WMRC between MRWA and Veolia.
- 2.7 The situation has placed a renewed focus on the need for a formal contract arrangement – an Inter-Authority Agreement – to be made between MRWA and Halton, to define the nature, extent and costs of services provided to Halton under the WMRC, and this paper describes the current status of the review of that Agreement.

3. Agreement Overview

- 3.1 The general principles of the proposed IAA are that it formalises a close working relationship between MRWA and Halton, clarifying and confirming agreed working practices and formally documenting the key roles, obligations and responsibilities of each party. It is intended to provide certainty to each party around the provision of a statutory service (by MRWA on behalf of Halton) and the compliance with the contractual obligations placed upon MRWA under the terms of the WMRC. Ultimately, it is a demonstration of a commitment to a set of working principles on behalf of both parties for the remainder of the term of the WMRC and provides a robust governance framework and agreed financial management arrangements.
- 3.2 The provisions of the draft IAA between MRWA and Halton relating to the delivery of services under the WMRC has been based upon those previously agreed in relation to the IAA for the RRC with MERL.
- 3.3 A summary of the key provisions set out in the IAA is as follows:

Term (Clause 2)

The WMRC has a defined timescale of operation (with the contractual expiry date currently being 31st May 2029, with an option to extend). As the IAA covers the services provided under the WMRC, this clause defines the timescale the IAA will remain in place between MRWA and Halton and arrangements for either extending or terminating the Agreement.

Principles & Key Objectives (Clause 3)

This clause sets out the basic principles of the Agreement, being to work in a spirit of co-operation to meet MRWA's obligations under the WMRC, to ensure successful performance of the WMRC and to demonstrate openness and trust in dealings with each other.

Delegation of Functions (Clause 5)

Halton have delegated certain of their functions as a statutory WDA to MRWA, and have the power to revoke those functions should they so choose; this would clearly have impacts on MRWA and the WMRC should this situation arise. This clause 5 defines the terms under which the delegated functions will be delivered and protections to be provided in the case of potential revocation of the delegations by Halton, including adequate notice periods.

Duties of the Authorities (Clause 6)

This clause outlines the primary duties of each Authority under the Agreement in relation to such matters as duty to make payments, to provide relevant data, to give access to meetings and documentation and other related matters.

Obligations of Halton to deliver waste (Clause 7)

MRWA has an obligation under the terms of the WMRC to deliver certain waste (termed 'Exclusive Contract Waste') to Veolia. This clause places a similar obligation on Halton and allows for indemnification and compensation in the event Halton breach the clause (and, for example, deliver Exclusive Contract Waste elsewhere).

Obligation of MWDA to accept Halton waste (Clause 8)

Just as Halton has an obligation to deliver certain waste, MRWA has an obligation to ensure that the WMRC can and will accept certain Contract Waste from Halton.

Sharing of liabilities (Clause 9)

The WMRC contains clauses which provide protections for Veolia under specific circumstances and for which MRWA would be liable should they be breached. They include 'Compensation Events' (under which Veolia would be entitled make a claim against MRWA) and 'Excusing Causes' (which are events that excuse Veolia of certain obligations under the

WMRC). This IAA clause defines how such liabilities are shared between the MRWA and Halton.

Duty of care & ownership of waste (Clause 10)

This clause defines the liabilities and responsibilities with regards to the ownership of Contract Waste at various stages in the handling process and for the management of the related consignment and transfer notes.

Payment (Clause 11 & Schedule 2)

MRWA pays Veolia in accordance with the detailed Payment Mechanism within the terms of the WMRC; this includes payment for services provided to Halton. Likewise, the overall administration of the contract and running of the Authority generally is at a cost incurred by MRWA. This clause and the associated Schedule 2 allows for recovery by MRWA from Halton of all relevant costs incurred in the provision of services under the WMRC, in an agreed, clearly defined manner.

Termination & expiry (Clauses 12 & 13)

This clause defines the nature of the arrangements and obligations on each party either in the event of a breach under the Agreement (which may result in termination of the Agreement) or upon expiry of the Agreement, and notably in relation to financial arrangements.

Confidentiality & Freedom of Information (Clause 14)

This clause acknowledges that the provisions within the Agreement are not to be treated as Confidential Information but that there are elements of documentation and information shared between the Authorities which may well be subject to confidentiality as defined under the WMRC. It also covers disclosure which may be required under statute (e.g. Freedom of Information requests), irrespective of contract clauses and the process for dealing with information requests.

Ombudsman & complaints (Clause 15)

Either party may be subject to complaints relating to the IAA or the WMRC, which may include complaints made to the Local Government Ombudsman, and this clause defines how such complaints will be handled between the parties.

Dispute Resolution (Clause 16)

This Dispute Resolution clause defines the processes to be followed in the event of dispute arising between MRWA and Halton and the parties to the IAA. The aim of the clause is to encourage the parties to resolve areas of disagreement arising under the IAA without resorting to legal proceedings through the Courts wherever possible. The clause defines an escalation process through the respective Authority representatives up to and including the involvement of respective Chief Executives. The clause also defines a process of mediation and dispute adjudication that may also be followed in the event the parties are unable to informally resolve disagreements. Only once this process has been exhausted would the parties then resort to referral of any dispute to the courts.

- 3.4 There are a number of other minor provisions within the Agreement such as statutory responsibilities, dealing with formal notices and making amendments to the IAA that have not been detailed here.
- 3.5 The draft IAA remains under discussion between MRWA and Halton, and a final draft is expected to be agreed shortly.

4. Risk Implications

- 4.1 The signing of a formal Agreement with Halton is intended to reduce any risks on MRWA that are inherent in providing services to Halton under the terms of our own contract with Veolia. Halton BC will consider any risks to Halton in their own review of the proposed IAA prior to final agreement.

5. HR Implications

- 5.1 There are no HR implications associated with this report.

6. Environmental Implications

- 6.1 There are no new environmental implications associated with this report.

7. Financial Implications

- 7.1 MRWA incurs the costs associated with services provided by Veolia to Halton under the terms of the WMRC. MRWA then charges Halton for the provision of those services to recover the costs. The production of an IAA (including a detailed payment schedule) is intended solely to formalise already existing financial arrangements and to ensure that MRWA is kept whole.

8. Legal Implications

- 8.1 Legal advice and support has been provided to MRWA in relation to the drafting of the IAA, and will continue to be sought until the IAA has been agreed and signed between the parties.

9. Conclusion

- 9.1 Members are asked to note the recommendation that a formal IAA covering the provision of services by MRWA to Halton under the terms of the WMRC be completed and signed between MRWA and Halton.
- 9.2 Members are asked to approve delegation of authority to the Chief Executive to finalise the detail of the Inter-Authority Agreement with Halton and for it to be signed by the Chief Executive on behalf of the Authority

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The background documents to this report are open to inspection in accordance with Section 100D of The Local Government Act 1972 - Nil.