

Dated this 1st day of July 2003

EASTERN REGION WASTE MANAGEMENT GROUP

TERMS OF AGREEMENT

re: Proposal to establish a Joint Committee

Arc 21

C Quigley
Director of Legal Services
City Hall
BELFAST
BT1 5GS

THIS AGREEMENT made this 1st day of July 2003
BETWEEN :-

1. **ANTRIM BOROUGH COUNCIL of The Steeple, Antrim, Co. Antrim, BT41 1BJ**
2. **ARDS BOROUGH COUNCIL of 2 Church Street, Newtownards, Co. Down, BT23 4AP**
3. **BALLYMENA BOROUGH COUNCIL of Ardeevin, 80 Galgorm Road, Ballymena, Co. Antrim, BT42 1AB**
4. **BELFAST CITY COUNCIL of City Hall, Belfast, BT1 5GS**
5. **CARRICKFERGUS BOROUGH COUNCIL of Town Hall, Carrickfergus, Co. Antrim, BT38 7BL**
6. **CASTLEREAGH BOROUGH COUNCIL of Bradford Court, Upper Galwally, Castlereagh, BT8 6RB**
7. **DOWN DISTRICT COUNCIL of 24 Strangford Road, Downpatrick, Co Down, BT30 6SR**
8. **LARNE BOROUGH COUNCIL of Smiley Building, Victoria Road, Larne, Co. Antrim, BT40 1RU**
9. **LISBURN CITY COUNCIL of The Island, Lisburn, Co. Antrim, BT27 4RL**
10. **NEWTOWNABBEY BOROUGH COUNCIL of Mossley Mill, Newtownabbey, Co. Antrim, BT36 5QA**
11. **NORTH DOWN BOROUGH COUNCIL of Town Hall, The Castle, Bangor, Co. Down, BT20 4BT**

1. **DEFINITIONS**

In this Agreement, the expressions:-

- 1.1 'the 1972 Act' means the Local Government Act (NI) 1972.
- 1.2 'the 1997 Order' means the Waste & Contaminated Land (NI) Order 1997.
- 1.3 'the Ancillary Functions' and 'the Core Functions' shall be construed in accordance with the provisions of the Principle of Functional Responsibilities, as set out in the Statement of Principles.

- 1.4 'the Department' means the Department of the Environment for Northern Ireland.
- 1.5 'ERWMG' means the Eastern Region Waste Management Group (described in Clause 2.3).
- 1.6 'the Joint Committee' means the Joint Committee agreed to be established by the Participant Councils pursuant to Clause 3 of these Terms of Agreement.
- 1.7 'the Participant Councils' mean those above-named district councils expressed to be parties to these Terms of Agreement.
- 1.8 'the Statement of Principles' means those principles as set out in the Annex to these Terms of Agreement.
- 1.9 'the Waste Management Plan' means the Sub-regional Waste Management Plan which has been jointly adopted in this year 2003 by the Participant Councils as further described in Clause 2.4.

2. BACKGROUND

- 2.1 Article 23 of the 1997 Order establishes a requirement for each district council in Northern Ireland to prepare a waste management plan, taking into account (inter alia) the Waste Strategy prepared by the Department pursuant to Article 19 of the 1997 Order, and including information as to (inter alia) what arrangements that council expects to make with other district councils.
- 2.2 The Department published its Northern Ireland Waste Management Strategy in May 2000, one of the objectives of which was stated therein as being to put in place a framework for preparation of joint waste management plans to develop an integrated network of regional waste management facilities which would be cost effective to the public.
- 2.3 In furtherance of the sub-regional approach promoted by the Department in its strategy, the Participant Councils agreed to form the Eastern Region Waste Management Group for the purpose of developing a joint waste management plan.
- 2.4 ERWMG have now jointly adopted, having consulted with the Department in accordance with the provisions of Article 23 of the 1997 Order, the Waste Management Plan which sets out the proposals of the Participant Councils as to how they would collectively deal with their waste arising over the period of the next 20 years.
- 2.5 The Participant Councils have agreed that, for the purpose of establishing an appropriate legal vehicle tasked with implementing those major procurement arrangements which will arise from the Waste Management Plan, they shall

form a Joint Committee pursuant to the provisions of section 19 of the Local Government Act (NI) 1972.

- 2.6** As a preliminary step towards the formation of the Joint Committee, the Participant Councils have separately and effectively adopted the Statement of Principles as those fundamental principles which underpin the role and purpose of the Joint Committee, and which establish the parameters within which the Joint Committee shall function and operate.

3. ESTABLISHMENT OF JOINT COMMITTEE

- 3.1** The Participant Councils, acting pursuant to the powers conferred on them by section 19 of the 1972 Act, hereby collectively agree as follows: -

- 3.1.1** that they shall establish a Joint Committee for the purpose of implementing the policies set out in the Waste Management Plan;
- 3.1.2** that an application shall as soon as practicable be made to the Department to have the Joint Committee constituted a body corporate with perpetual succession by the name of 'Arc 21' with power to employ staff, enter into financing arrangements, including the borrowing of money, hold property and funds, and enter into contracts;
- 3.1.3** that the functions of the Joint Committee shall be fixed by reference to these Terms of Agreement (including the Statement of Principles);
- 3.1.4** that the Order to be made by the Department under section 19 of the 1972 Act shall make such further incidental and consequential provision as shall be reasonably necessary to implement the requirements of these Terms of Agreement, including provision that section 19 of the Interpretation Act (NI) 1954 shall apply to the Joint Committee.

4. DELEGATED POWERS

- 4.1** The Participant Councils hereby agree that the Joint Committee shall have delegated powers and responsibilities as more particularly described and delimited in the Statement of Principles.
- 4.2** In relation to the acquisition of assets or the incurring of liabilities, a threshold of £250,000 shall apply and over which the unanimous agreement of the Joint Committee and approval of all of the Participant Councils shall be required (as referred to in the 'Principle of Limit of Delegation')

5. ESTABLISHMENT AND OPERATING COSTS

- 5.1** In accordance with the Principle of Equitable Shared Funding, the costs of establishing and operating the Joint Committee (including contract administration and management costs) shall be borne by the Participant Councils by reference to their respective populations, the percentage calculations of which are set out in the Schedule to these Terms of Agreement, but which shall be reviewed by the Joint Committee every three years, and adjusted as appropriate.

5.2 The Joint Committee may (subject to the Principle of Consensus) award contracts for the provision of waste disposal and/or treatment facilities by external contractors on the basis that the costs of constructing the facilities will be amortised over the relevant contract periods or on the basis of such other commercial arrangements as might be appropriate. In determining the specifications of such contracts, the Joint Committee shall endeavour to ensure that:-

- contracts are appropriately bundled to achieve best value for money for the ERWVG as a whole;
- contracts shall provide for a suitable number of treatment facilities and waste transfer stations which shall, when taken with other contracts, reflect an equitable geographical distribution of such facilities and stations, having regard at all times to the overall objective of achieving due economies of scale;
- the pricing specification of each contract shall, where circumstances permit, provide for a standard waste tonnage acceptance charge at transfer stations, subject to an economic appraisal being commissioned by the Joint Committee to ensure that, when taken with the pricing structure of other contracts awarded by the Joint Committee, there is no material element of cross-subsidisation of costs within the Participant Councils.

5.3 In relation to those waste disposal and/or treatment facilities (including, where appropriate, waste transfer stations) which are procured by the Joint Committee at a capital cost ('the procured facilities'), the costs incurred shall be re-charged to the Participant Councils on the same basis as set out in Clause 5.1. The Joint Committee shall hold the procured facilities in trust for the Participant Councils on a basis commensurate in percentage terms with the costs so re-charged. Tonnage charges shall, unless otherwise agreed, be assessed by reference to the Joint Committee's costs of operating the procured facilities. In establishing the charges for acceptance of waste at such facilities, the Joint Committee shall consider, where appropriate, the aggregate cost of operating groups of procured facilities of similar treatment types for the purpose of establishing a common rate, but ensuring that no material element of cross subsidisation of tonnage charges arises within the Participant Councils.

6. COMPOSITION AND PROCEDURE OF JOINT COMMITTEE

6.1 In accordance with the Principle of Equal Committee Representation, each of the Participant Councils shall have equal representation, agreed at 2 Members each.

6.2 The provisions of sections 19 – 22 and 142 and Schedules 2 and 7 of the 1972 Act shall apply to the Joint Committee.

6.3 The quorum of the Joint Committee shall be ten, provided that at least six of the Participant Councils are represented.

6.4 The proceedings of the Joint Committee shall be regulated by Standing Orders to be agreed and adopted by the Participant Councils.

7. DISPUTE RESOLUTION

In the event of any disagreement between the Participant Councils in relation to any matter arising pursuant to these Terms of Agreement, but entirely without prejudice to the provisions set out in the Statement of Principles (and in particular the Principle of Consensus), the Joint Committee may request the Department or such other body as it might agree to act as a conciliator in accordance with such procedure as shall be agreed by the parties, and to the intent that the parties shall endeavour to resolve their differences in the spirit of achieving the objectives of the Waste Management Plan.

8. EFFECTIVE DATE

These Terms of Agreement shall be deemed to come into effect on the day and year first herein written, being a date following the affixing hereto of all of the signatures of the respective Chief Executives of all of the Participant Councils as hereinafter provided for.

IN WITNESS whereof this Agreement is signed by the respective Chief Executives of each of the Participant Councils and each subscribing his signature hereto in manner hereinafter appearing.

SCHEDULE

POPULATION JUNE 2001 (MID-YEAR ESTIMATES)

Council	Actual Population	% of Total
Antrim	48,761	5.28%
Ards	73,435	7.96%
Ballymena	58,801	6.37%
Belfast	277,170	30.02%
Carrickfergus	37,730	4.09%
Castlereagh	66,533	7.21%
Down	64,147	6.95%
Larne	30,811	3.34%
Lisburn	108,997	11.81%
Newtownabbey	80,144	8.68%
North Down	76,578	8.29%
Total	923,107	100%

Annex

STATEMENT OF PRINCIPLES

ARC 21

PROPOSAL FOR ESTABLISHMENT OF A JOINT COMMITTEE

EASTERN REGION WASTE MANAGEMENT GROUP

The Participant Councils are the eleven district councils of the ERWGM (ARC 21). Subject to their joint adoption of this Proposal Statement and Statement of Principles, the Participant Councils shall then enter into a formal Collaborative Agreement which will contain such further detail as shall be necessary to give legal efficacy thereto. The terms of the Collaborative Agreement shall also be subject to the prior approval of the Participant Councils.

PROPOSAL STATEMENT - CONTEXT OF ESTABLISHMENT

The Joint Committee shall be established by the Participant Councils as a body corporate under section 19 of the Local Government Act (NI) 1972 (pursuant to statutory order). It shall be set up solely in the context of the policies of the Eastern Region Waste Management Group as described in the ARC21 Waste Plan (including the Procurement Plan and the Implementation Plan). As a corporate body, the Joint Committee will have a distinct legal status with power to employ staff, enter into financing agreements, including the borrowing of money, hold property and funds, and enter into contracts.

THE FIVE PRINCIPLES

- Principle of Consensus
- Principle of Limit of Delegation
- Principle of Functional Responsibilities
- Principle of Equitable Shared Funding
- Principle of Equal Committee Representation

PRINCIPLE OF CONSENSUS

It shall be an overarching principle that all policy decisions and decisions with significant financial implications for the Joint Committee shall be taken on the basis of the consensus of all the Participant Councils, within the framework of the Waste Plan and this Proposal and Statement of Principles. Accordingly, any material change in the Waste Plan or any decisions in relation to the acquisition or use of significant assets, or the incurring of

significant liabilities will require the prior approval of the Participant Councils.

PRINCIPLE OF LIMIT OF DELEGATION

The Participant Councils shall delegate powers and functions to the Joint Committee to the extent necessary to enable it to carry out its Core Functions and Ancillary Functions. This delegation shall be with a view to achieving economies of scale and minimising of costs. No further functions are to be transferred to the Joint Committee except with the prior approval of the Participant Councils. The Collaboration Agreement shall specify thresholds in relation to the acquisition of assets or the incurring of liabilities over which the unanimous agreement of the Joint Committee or the referral back to the Participant Councils shall be required.

PRINCIPLE OF FUNCTIONAL RESPONSIBILITIES

The Joint Committee shall have Core Functions and Ancillary Functions. The Core Functions shall be the acceptance, treatment and disposal of waste in accordance with the Waste Plan. In relation to the Core Functions (as affecting both short and long-term contracts) the Joint Committee shall:-

- Develop specifications and award criteria for the contracts
- Obtain the approval of the Participant Councils to the specifications and award criteria
- Invite tenders for and award the contracts
- Operate the contracts
- Have the power to acquire, hold and use assets
- Recover the contract operating costs from the Participant Councils on an equitable basis.

The Ancillary Functions shall be matters such as waste minimisation schemes, education programmes and other initiatives as may be agreed from time to time with the individual Participant Councils and to be operated on the basis of annual programmes and/or service level agreements.

PRINCIPLE OF EQUITABLE SHARED FUNDING

- The costs of establishing and operating the Joint Committee shall be pre-estimated as far as possible by reference to a business plan, and/or operating plan, and shall be recovered on an equitable basis (by reference to respective populations) from the Participant Councils in accordance with the provisions of the Collaborative Agreement.

- **The Joint Committee's net costs of operating the Core Functions shall be recovered on an equitable basis from the Participant Councils in accordance with the provisions of the Collaborative Agreement, having regard to all relevant cost factors arising in relation to the acceptance, treatment and disposal of waste of each of the Participant Councils.**
- **The costs of operating the Ancillary Functions shall be in accordance with the relevant annual service level agreements.**

PRINCIPLE OF EQUAL COMMITTEE REPRESENTATION

The Joint Committee shall be constituted on the basis of equal representation, with ... member(s) to be nominated by each of the Participant Councils. The proceedings of the Joint Committee shall be regulated by Standing Orders to be set out in the Collaboration Agreement."