

# Agenda Item 4

**Brighton & Hove City Council**

**East Sussex County Council**

**Meeting:** ESCC and B&HCC Integrated Waste Management Services Contract Committee

**Date:** 30 January 2004

**Report of:** Head of Law, Brighton & Hove City Council

**Subject:** Constitution Agreement and Joint Working Agreement

**Wards affected:** All

## **1. Purpose of the report**

- 1.1 To outline the contents of the Joint Working Agreement.
- 1.2 To explain the structure and functions of this Joint Committee.

## **2. Recommendations**

- 2.1 To appoint the Project Director of the joint Integrated Waste Management Services Contract, to be responsible to the Joint Committee.

## **3. Information/Background**

- 3.1 On 12 March 2003 both the Policy & Resources Committee of B&HCC, and the Cabinet of ESCC, authorised the relevant Senior Officers to enter into the following agreements:
  - (i) The Principal Contract, with Onyx Aurora.
  - (ii) The Joint Working Agreement (JWA), between both Councils.
  - (iii) The Constitution Agreement (CA), between both Councils.
- 3.2 On 31 March 2003 the Principal Contract, and the JWA and CA between both Councils were executed.
- 3.3 The contractor Onyx Aurora is not a party to either the JWA or the CA.

## **4. The Joint Working Agreement**

- 4.1 The primary purpose of this agreement is to ensure the equitable apportionment between the Councils of payments to the contractor under the Principal Contract. The Contractor will request payment from

the Lead Authority (ESCC) with the JWA setting out the way in which payments will be made and reconciled between the Councils.

4.2 An outline of the JWA is attached at Appendix 1.

### **4.3 The Constitution Agreement**

4.4 The effect of entering into this Agreement is the creation of this Joint Committee. The Committee consists of six Councillors, with equal representation from each council. The Committee will ordinarily meet twice yearly. The Standing Orders of ESCC apply to Committee proceedings, save for the application of each Council's Scrutiny and Overview procedures.

4.5 It is necessary for the Joint Committee to elect a Chair, and to appoint a Project Director responsible to the Joint Committee. The Project Director for the procurement, the Director of Transport & Environment, ESCC, has remained as Project Director for the implementation of the contract and it is therefore recommended that he is formally appointed as the Project Director responsible to this Committee in accordance with the terms of the CA.

4.6 The functions of the Joint Committee are to:

- be responsible for the operational and management issues arising from the Principal Contract;
- be responsible for the administration of any contract management arrangements as set out in the Joint Working Agreement;
- ensure the effective implementation of the Joint Working Agreement and the Principal Contract;
- administer the budgets set by the respective Councils for the operation of the Joint Working Agreement and the Principal Contract;
- exercise such powers as the respective Councils may from time to time delegate to it.

4.7 The CA also sets out the matters the Joint Committee are not responsible for, namely:

- the determination of the budgets of the respective Councils regarding waste management;
- change to the waste policies and targets of the respective Councils;
- the selection and development of sites for waste disposal and any connected acquisition and planning procedures;

- implementing any change of policy or procedure regarding kerbside source separation.

4.8 The CA is attached in full at Appendix 2.

4.9 The Principal Contract Management arrangements referred to at paragraph 7.1 of the CA are attached in full at Appendix 3.

#### **4.10 Financial Implications**

4.11 Costs arising from the creation of the Joint Committee will be shared equally between both Councils.

#### **5. Legal Implications**

5.1 Both the CA and the JWA are binding agreements between the Councils. Both contain procedures for resolving disputes. Both are designed to remain in force for the duration of the Principal Contract, though both can be amended, by agreement, to better suit any future prevailing circumstances.

#### **6. Corporate/Citywide Implications**

6.1 None directly arising.

#### **7. Risk Assessment**

7.1 The proper performance of the Principal Contract requires an effective CA and JWA.

#### **8. Sustainability Implications**

8.1 None directly arising.

#### **9. Equalities Implications**

9.1 None directly arising.

#### **10. Background Papers**

10.1 None.

#### **Report of:**

Abraham Ghebre-Ghiorghis  
Head of Law  
Brighton & Hove City Council

#### **Contact Officers:**

Jonathan Vernon Hunt  
Senior Lawyer  
Brighton & Hove City Council  
Telephone: 01273 291523

Richard Partridge  
Assistant Director  
East Sussex County Council  
Telephone: 01273 481689

## **Outline of the Joint Working Agreement**

### **Principles**

1. The Joint Working Agreement is the instrument by which the two Councils' respective rights and obligations flowing from the Principal Contract, as between themselves, are regulated.
2. The Councils entered the Joint Working Agreement on the basis of co-operation, commitment, openness and mutual support. The operation of the apportionment mechanisms within the Joint Working Agreement is to be construed accordingly.
3. The primary and major function of the Joint Working Agreement is to apportion each Council's share of the Unitary Payment. The Unitary Payment is the sum payable by the Councils to the contractor for the services provided under the contract. Each Council's share of the Unitary Payment is largely calculated on the basis of the tonnes of contract waste actually delivered to the contractor. Thus respective shares of the Unitary Payment based on forecasts of tonnes delivered shall then be reconciled with the respective tonnes actually delivered. The sharing mechanism is structured so as to treat the geographical contract area as an integrated whole so that neither Council can be advantaged or disadvantaged by reasons of proximity to one particular waste management facility or one particular technology.

Based on these principles, the key part of the Joint Working Agreement is set out in the clause on payment. This sets out how each element of the Unitary Payment is to be shared between the Councils. The elements are:

- Baseline Payment
- Payment Bands
- Recovery Supplement
- Recycling Supplement
- Landfill Tax Liability
- Beneficial Use Supplement
- Reconciliation Payments
- Lump Sum Refinancing Gains
- Change to the Works or Services payments/reimbursements
- Change in Law payments/reimbursements
- Unavailability Deductions
- Performance Deductions
- Excess Profit payments
- Household Waste Recycling Site payments

- Land acquisition costs above agreed acquisition amounts
- Excess Contract Waste payments
- Reduced Contract Waste payments
- Compensation payments for WCA diversion of, or failure to collect, recyclable materials.

The Joint Working Agreement also contains equitable cost sharing mechanisms for those costs falling outside the Unitary Payment. Such costs include:

- Planning Appeal costs (where these exceed the fixed sum to be borne by the contractor)
- Contract management costs
- Insurance costs met by the Councils
- Insurance costs where Environmental Impairment Liability Insurance is obtained.
- Other key areas in the Joint Working Agreement are the mechanisms for covering the following issues:
  - PFI Credits received
  - Property acquisition at the commencement of the Contract
  - Property ownership at the expiry or earlier termination of the contract
  - Adoption of the Contract Standing Orders of the Lead Authority
  - Obligations of the Councils in relation to the Joint Committee
  - Review and renewal of the Joint Working Agreement
  - Dispute Resolution Procedure
  - Information and Confidentiality
  - Public relations and publicity
  - Additional general project costs

**DATED**

**2003**

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1. EAST SUSSEX COUNTY COUNCIL
2. BRIGHTON AND HOVE CITY COUNCIL

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**CONSTITUTION  
AGREEMENT**

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For the constitution of the East Sussex County Council and Brighton & Hove City Council Integrated Waste Management Services Contract Committee, pursuant to Section 102 of the Local Government Act 1972.

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**THIS AGREEMENT is made on the 31<sup>st</sup> day of March 2003**

**1. PARTIES**

The parties to this Agreement (known collectively as "the Councils") are (1) EAST SUSSEX COUNTY COUNCIL of Pelham House St. Andrews Lane Lewes BN7 1UN (the County Council) (2) BRIGHTON AND HOVE CITY COUNCIL of King's House, Grand Avenue, Hove BN3 2SR (the City Council)

**2. RECITALS**

- 2.1 The Councils have powers and responsibilities under the Environmental Protection Act 1990 as waste disposal authorities and have decided to make joint arrangements for the carrying out of those powers and responsibilities.
- 2.2 On the 31<sup>st</sup> day of March 2003 the Councils entered into a joint Integrated Waste Management Services Contract ("the Principal Contract") with South Downs Waste Services Ltd for the provision of a joint integrated waste management service.
- 2.3 On the 31<sup>st</sup> day of March 2003 the Councils mutually entered into a Joint Working Agreement ("the Joint Working Agreement") to regulate their mutual and reciprocal obligations arising from the Principal Contract.
- 2.4 The Councils wish to work together to secure the proper implementation and operation of the Principal Contract and the Joint Working Agreement, by the establishment of a joint committee for that purpose.

IT IS HEREBY AGREED AS FOLLOWS

**3. CONSTITUTION OF THE EAST SUSSEX COUNTY COUNCIL AND BRIGHTON & HOVE CITY COUNCIL INTEGRATED WASTE MANAGEMENT SERVICES CONTRACT COMMITTEE**

- 3.1 On the 31<sup>st</sup> day of March 2003 there shall be constituted under section 102 of the Local Government Act 1972 a joint committee, to be called

the East Sussex County Council and Brighton & Hove City Council Integrated Waste Management Services Contract Committee ("the Committee") for the purpose of discharging the functions assigned to it as set out in this Agreement.

- 3.2 The Committee shall consist of 6 members who shall be appointed as follows:

3 by the County Council;

3 by the City Council;

being in the case of East Sussex County Council the Leader, the Lead Member (Finance) and the Lead Member (Environment) and in the case of Brighton & Hove City Council the Leader, a further member selected by the Leader and the member nominated by the Opposition Group.

- 3.3 A member appointed to the Committee shall hold office for four years provided that if the member should cease to be a member of the Council by which he or she was appointed or cease to hold the relevant office in the Council by which he or she was appointed then membership of the Committee shall cease and a fresh appointment shall be made by the Council concerned.

- 3.4 In so far as they apply to Brighton and Hove City Council, the provisions of paragraphs 3.2 and 3.3 above shall take effect subject to the requirements of sections 15 and 16 of the Local Government and Housing Act 1989 and the Local Government (Committees and Political Groups) Regulations 1990.

#### 4. **APPOINTMENT OF CHAIR AND VICE-CHAIR**

- 4.1 The Committee shall at their annual meeting in each year appoint a chair, and the chair shall unless he or she resigns his or her office or ceases to be a member of the Committee continue in office until a successor is appointed.

- 4.2 The Committee may at their annual meeting in each year appoint one of their number to be vice-chair and the vice-chair shall unless he

or she resigns his or her office or ceases to be member of the Committee continue in office until a successor is appointed.

## **5. MEETINGS OF THE COMMITTEE**

5.1 The first meeting of the Committee shall be the annual meeting for the year then current and thereafter the first meeting held after the 1<sup>st</sup> day of May in any year shall be the annual meeting.

5.2 The Committee shall meet two times a year, except that a meeting may be convened at any time at the request of the chair or at least two members of the Committee.

5.3 The standing orders of East Sussex County Council shall apply to the meetings of the Committee. In the event of those standing orders conflicting with the provisions of this Agreement this Agreement shall prevail.

5.4 It is expressly agreed that in the event of an equality of votes the chair shall not exercise a second or casting vote. In the event of an equality of votes the matter shall be referred to either or both Councils for advice or determination.

## **6. ESTABLISHMENT OF WORKING PARTIES**

6.1 The Committee may appoint such working parties consisting of either members or officers, as it considers necessary to advise it in the discharge of the functions of the Committee.

6.2 The Committee may arrange for work in connection with the discharge of the functions of the Committee to be undertaken directly or on an agency or contract basis by either of the Councils.

## **7. FUNCTION OF THE COMMITTEE**

7.1 The function of the Committee is to administer the operation of the waste management arrangements of the Councils in accordance with the Joint Working Agreement entered into by the Councils and dated the            day of            2003 and in accordance with

the Principal Contract entered into by the Councils and dated the  
day of 2003.

- 7.2 Within the policy and budget frameworks set by each Council the Committee will:
  - 7.2.1 be responsible for the operational and management issues to ensure the effective implementation and operation of the Joint Working Agreement and the Principal Contract;
  - 7.2.2 be responsible for the administration of the budgets set by each Council;
  - 7.2.3 be responsible for the administration of any contract management arrangements as set out in the Joint Working Agreement; and
  - 7.2.4 exercise such powers as each Council may from time to time delegate to the Committee.
- 7.3 The Joint Committee will not be responsible for and may not make decisions in respect of:
  - 7.3.1 the determination of the budget of either Council regarding waste management;
  - 7.3.2 any change to the waste management policies and waste management targets of either Council;
  - 7.3.3 the selection and development of sites for waste management and any associated acquisition and planning procedures; and
  - 7.3.4 any change of policy or procedure regarding the source separation of waste.
- 7.4 The Committee shall not be empowered to acquire land or any interest in land.
- 7.5 The Committee may at any time refer any matter to either or both Councils for advice or determination.

7.6 Nothing in this Agreement shall prevent either Council from exercising any of the powers described or referred to in this Clause 7.

## **8. COMMITTEE ADMINISTRATION**

8.1 As soon as is reasonably practical the Committee shall appoint the following:

A Project Director;

A Treasurer to the Committee;

A Legal Adviser to the Committee;

A Clerk to the Committee.

8.2 The Project Director shall be the principal adviser and executive officer of the Committee and shall be directly responsible to the Committee.

8.3 The Committee may provide the Project Director with such staff, accommodation and other resources as the Committee may consider necessary but only as is consistent with the terms of the Joint Working Agreement entered into by the Councils.

8.4 In the event of any difficulty arising with regard to the performance of the Project Director's duties, either he or she or the Committee shall be able to call on the assistance of the Chief Executive of either or both of the Councils.

## **9. TERMINATION OF THIS AGREEMENT**

9.1 This Agreement shall have effect for the duration of the Joint Working Agreement entered into by the Councils.

9.2 The Councils agree to review the terms of this Agreement at each annual meeting, and subject to the agreement of the Councils any provisions of this Agreement may be amended accordingly.

9.3 Notwithstanding the above the provisions of this Agreement may be amended at any time subject to the agreement of the Councils.

THE COMMON SEAL of EAST SUSSEX )

COUNTY COUNCIL )

was hereunto affixed in the  
presence of:

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THE COMMON SEAL of BRIGHTON )

& HOVE CITY COUNCIL was )

hereunto affixed in the presence  
of:

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## **Principal Contract Management Arrangements**

1. A Joint Waste Board (“JWB”) shall be established to manage the implementation and operation of the waste disposal services provided under the Principal Contract
- 1.1 The JWB will consist of officers from both Councils as follows:
  - 1.1.1 ESCC:

The Director of Transport and Environment.

The Assistant Director responsible for the JIWMSC and either an appropriate Finance Officer or an appropriate Legal Officer.
  - 1.1.2 B&HCC:

The Director of Environment

The Assistant Director responsible for waste disposal services and either an appropriate Finance Officer or an appropriate Legal Officer
- 1.2 The Director of Transport and Environment ESCC shall be the Project Director and Lead Chief Officer.
- 1.3 The Assistant Director ESCC shall be the Project Manager.
- 1.4 The JWB will meet not less than four times a year, and will report directly to the Joint Committee.
- 1.5 The JWB may appoint additional officers to the JWB as may be considered appropriate by the JWB from time to time.
2. The Assistant Director ESCC (Project Manager) shall;
  - 2.1 be responsible for the services provided under the JIWMSC and shall have line management responsibility for the JIWMSC Implementation Team and the JIWMSC Operations Team;

- 2.2 work closely and cooperatively with waste disposal services officers of B&HCC and in particular the Assistant Director B&HCC so as to ensure the interests of both Parties are properly and fairly considered in the operation and administration of the JIWMSC.
- 2.3 Both Parties will supervise the daily operation of the HWR Sites in their respective administrative areas and fully facilitate the integration of such daily operation into the wider operation of the Principal Contract through the JIWMSC Operations Team, as described in paragraph 4 below.
3. A JIWMSC Implementation Team shall be established to manage the implementation of the JIWMSC. The JIWMSC Implementation Team will report to the Assistant Director ESCC (Project Manager).
  - 3.1 The JIWMSC Implementation Team shall work closely with the Assistant Director B&HCC (CityClean) and the Head of Contracts and Performance B&HCC to ensure that collection arrangements for B&HCC are fully integrated into and are consistent with the disposal services under the JIWMSC.
4. A JIWMSC Operations Team shall be established to manage the operation of the JIWMSC. The JIWMSC Operations Team will report to the Assistant Director ESCC (Project Manager).
  - 4.1 The JIWMSC Operations Team shall work closely with the Assistant Director B&HCC (CityClean) and the Head of Contracts and Performance B&HCC to ensure that collection arrangements for B&HCC are fully integrated into and are consistent with the disposal services under the JIWMSC.
5. The Principal Contract Management Arrangements are set out in diagrammatic form in Appendix 1 attached hereto.