

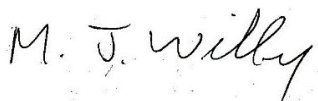
# Norfolk County Council

## Record of Individual Cabinet Member Decision

### Delegation of Civil Parking Enforcement Powers to Norwich City Council

<b>Responsible Cabinet Member: Councillor Wilby (Cabinet Member for Highways, Infrastructure and Transport)</b>	
<b>Background and Purpose:</b> The County Council has decided to terminate the Norwich City Highways Agency Agreement. Tied to this is Norwich City Councils power to undertake Civil Parking Enforcement (CPE). With the termination of the Agency Agreement, the delegated function of enforcement is also terminated. The County Council must therefore redelegate this function to enable enforcement to continue.	
<ol style="list-style-type: none"><li>1. To agree to delegate the function of Civil Parking Enforcement as defined in the report ("CPE") to Norwich City Council on the basis set out in the draft agreement at Appendix A, with an initial duration of 2 years, with option to extend to a maximum of 5 years. To delegate the final approval to the Executive Director of Community and Environmental Services.</li><li>2. To agree that during that initial 2-year period, officers carry out an efficiency appraisal, comparing CPE operations in the City with the wider Norfolk Parking Partnership.</li><li>3. To agree that CPE in Norwich will report to the Norfolk Parking Partnership Joint Committee.</li></ol>	
Is it a key decision?	No
Is it subject to call in? If Yes – Deadline for Call in	No
<b>Impact of the Decision:</b> There will be a continuity of provision to the residents of Norfolk.	
<b>Evidence and reason for the decision:</b> As set out in the attached report	
<b>Alternative options considered and rejected:</b> As set out in the attached report	
<b>Financial, Resource or other implications considered:</b> As set out in the attached report	



<b>Record of any conflict of interest:</b> None	
<b>Background Documents:</b> <ul style="list-style-type: none"> <li>• None</li> </ul>	
<b>Date of Decision:</b>	<b>30 March 2020</b>
<b>Publication date of decision:</b>	<b>8 April 2020</b>
<b>Signed by Cabinet member:</b>  I confirm that I have made the decision set out above, for the reasons also set out  <div style="text-align: center;">  </div> <b>Signed:</b>  <b>Print name: Cllr Martin Wilby</b>  <b>Date: 8 April 2020</b>	
<b>Accompanying Documents:</b> <ul style="list-style-type: none"> <li>• Individual Cabinet Member Decision report</li> </ul>	

Once you have completed your internal department clearance process and obtained agreement of the Cabinet Member, send your completed decision notice together with the report and green form to [committees@norfolk.gov.uk](mailto:committees@norfolk.gov.uk)



# Individual Cabinet Member Decision Report

<b>Decision making report title:</b>	<b>Delegation of Civil Parking Enforcement Powers to Norwich City Council</b>
<b>Date:</b>	<b>30 March 2020</b>
<b>Responsible Cabinet Member:</b>	<b>Cllr Wilby (Cabinet Member for Highways, Infrastructure and Transport)</b>
<b>Responsible Director:</b>	<b>Tom McCabe (Executive Director, Community and Environmental Services)</b>
<b>Is this a key decision?</b>	<b>No</b>

## Executive Summary

Norfolk County Council decided in 2019 to terminate the existing Norwich City Highways Agency Agreement. This results in the transfer of several highways functions that are currently the responsibility of Norwich City Council back to Norfolk County Council. One of these is civil parking enforcement, including the enforcement of bus lanes and gates ("Civil Parking Enforcement" or "CPE"). Upon termination of the Agency Agreement, the CPE delegation will also terminate. Therefore, a new delegated functions agreement will be needed to ensure continuity of service and allow this relationship to continue.

CPE in the rest of Norfolk is delegated to District and Borough Councils who form the Norfolk Parking Partnership (NPP). The short-term goal is to establish a CPE delegated functions agreement on a similar basis to the one existing with the other NPP members. The long-term the ambition is to fully incorporate Norwich into the NPP.

## Recommendations:

- 1. To agree to delegate the function of Civil Parking Enforcement as defined in the report ("CPE") to Norwich City Council on the basis set out in the draft agreement at Appendix A, with an initial duration of 2 years, with option to extend to a maximum of 5 years. To delegate the final approval to the Executive Director of Community and Environmental Services.**
- 2. To agree that during that initial 2-year period, officers carry out an efficiency appraisal, comparing CPE operations in the City with the wider Norfolk Parking Partnership.**
- 3. To agree that CPE in Norwich will report to the Norfolk Parking Partnership Joint Committee.**

## 1. Background and Purpose

- 1.1.** Norfolk County Council decided in 2019 to terminate the existing Highways Agency Agreement with Norwich City Council. This agreement gave the City Council certain powers and responsibilities relating to highways activities,



including parking and bus lane and gate enforcement (defined above as Civil Parking Enforcement or CPE).

- 1.2. On termination of the City Agency Agreement functions reverted to Norfolk County Council.
- 1.3. Therefore, Norfolk County Council needs to make an appropriate agreement to continue the provision of CPE in Norwich.

## **2. Proposals**

- 2.1. The Norwich City area was designated as a Permit and Special Parking Area via Statutory Instrument in 2002. The City Council have been undertaking enforcement activity since that time.
- 2.2. The City Council are experienced in CPE operations and the County Council have developed a strong positive working relationship with them during that time.
- 2.3. It is therefore proposed to continue this relationship by redelegating the function of CPE to Norwich City Council. This will be done on the basis set out in the draft agreement in Appendix A, initially for a period of 2 years, but with an option to extend this up to a maximum of 5 years.
- 2.4. During this initial 2-year period officers will examine the current Norwich CPE operation and the wider Norfolk Parking Partnership operation to appraise similarities and differences with a view to recommending efficiencies and aligning practice. The long-term aspiration would be for Norwich to join the NPP as a full member and extending the scope of that agreement to cover the Norwich area too. Therefore, requiring only 1 delegated function agreement to cover the whole county.
- 2.5. CPE in Norwich has been reporting to the Norwich Highways Agency Committee (NHAC). With the termination of the Agency Agreement, this Committee has ceased. It is therefore proposed that CPE in Norwich reports to the Norfolk Parking Partnership Joint Committee.

## **3. Impact of the Proposal**

- 3.1. There will be little or no impact on the level of service provided as CPE operations will continue smoothly with the general public not seeing any change.
- 3.2. A new delegated functions agreement offers the County Council the opportunity to have greater scrutiny and influence over the CPE service provided.

## **4. Evidence and Reasons for Decision**

- 4.1. A new delegated functions agreement is required to ensure continuity of service. The City Council are already performing this function and there is no need for change currently.



## **5. Alternative Options**

- 5.1. There are no alternative options at the current time.

## **6. Financial Implications**

- 6.1. After annual reconciliation by the County Council, should an overall surplus be identified in any Financial Year, it will be split in the following manner: the total income for the Norwich CPE area shall have deducted from it the reasonable costs relating to on street civil parking enforcement in that area, to produce a net income figure. Where there is a positive net income the surplus will be spent by the County Council on transport related expenditure in that Administrative Area only.
- 6.2. The County Council would be exposed to financial risk by not redelegating the function in that it would be required to find an alternative. There may also be a loss of any surplus generated by the service area.

## **7. Resource Implications**

- 7.1. **Staff:**

N/A

- 7.2. **Property:**

N/A

- 7.3. **IT:**

N/A

## **8. Other Implications**

- 8.1. **Legal Implications**

nplaw have been engaged to provide advice and assist in drafting the new delegated functions agreement. They provide continuous advice and challenge where required.

Not implementing a new delegated functions agreement will result in a period of no enforcement of parking restrictions. This could result in highway network management issues and erosion of public respect for parking restrictions elsewhere in Norfolk.

- 8.2. **Human Rights implications**

None

- 8.3. **Equality Impact Assessment (EqIA) (this must be included)**

Parking is universally available to all no matter their characteristics but needs to be policed for it to be fair and equitable to all.

Part of the duties of Civil Enforcement Officers (CEOs) is to undertake checks and enforcement of Blue Badge legislation. Should enforcement be stopped



then this important area will not be covered increasing risk of abuse of the system and potentially denial of service for legitimate users if spaces are used inappropriately.

**8.4. Health and Safety implications**

None

**8.5. Sustainability implications** CPE forms an important part of highway network management by assisting in the safe and efficient movement of traffic. Inappropriate parking can contribute to congestion and therefore an increase in CO2 emissions. Efficient management of on-street parking can help to contribute to a reduction in CO2 emissions.

**8.6. Any other implications**

None

**9. Risk Implications/Assessment**

9.1. Without re delegating the function, the County Council is exposed to the risk of having to undertake the function itself or allow unrestricted parking.

9.2. The redelegation presents an opportunity for the County Council to assess the current CPE arrangement in the city with those of the county to look for opportunities and efficiencies.

**10. Select Committee comments**

10.1. N/A

**11. Recommendations**

- 11.1.
1. To agree to delegate the function of Civil Parking Enforcement as defined in the report ("CPE") to Norwich City Council on the basis set out in the draft agreement at Appendix A, with an initial duration of 2 years, with option to extend to a maximum of 5 years. To delegate the final approval to the Executive Director of Community and Environmental Services.
  2. To agree that during that initial 2-year period, officers carry out an efficiency appraisal, comparing CPE operations in the City with the wider Norfolk Parking Partnership.
  3. To agree that CPE in Norwich will report to the Norfolk Parking Partnership Joint Committee.

**12. Background Papers**

12.1. **Appendix A – Proposed Agreement for the Joint Provision of On-street Civil Parking and Enforcement Services**

**Officer Contact**

If you have any questions about matters contained in this paper, please get in touch with:

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**Tel No.:** 01603 222412



**Email address: [Timothy.young@norfolk.gov.uk](mailto:Timothy.young@norfolk.gov.uk)**



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Dated

2020

**THE NORFOLK COUNTY COUNCIL**

and

**NORWICH CITY COUNCIL**

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**AGREEMENT**

Made under section 19 of the Local Government Act 2000 and section 101(5) of the Local Government Act 1972

**FOR THE**

**JOINT PROVISION OF ON STREET CIVIL PARKING ENFORCEMENT SERVICES**

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nplaw  
Norfolk County Council  
County Hall  
Martineau Lane  
Norwich  
NR1 2DH



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**BETWEEN**

**THE NORFOLK COUNTY COUNCIL** of County Hall, Martineau Lane, Norwich, NR1 2DH (“County Council”) and

**NORWICH CITY COUNCIL** of City Hall, St Peter’s Street, Norwich NR2 1NH, (“City Council”)

(collectively referred to in this Agreement as “the Councils”).

**WHEREAS**

- (1) The Councils are local authorities within the meaning of the 1972 Act and the 2000 Act.
- (2) The Councils had previously agreed to delegate the decriminalised enforcement of parking in Norwich by way of an agreement dated 15 April 2009 to the City Council. This was pursuant to The Road Traffic (Permitted Parking Area and Special Parking Area) (County of Norfolk) (City of Norwich) Order 2002 being made to designate the City Council’s area as a civil enforcement area.
- (3) The 2009 Agreement referred to in paragraph (2) above was superseded by a later agreement between the parties for the delegation of wider highways functions to the City Council, known as the Highways Agency Agreement, dated 19 September 2014. It is the parties’ understanding therefore that the 2009 agreement was terminated at that time.
- (4) The parties, by separate arrangements, have agreed to the termination of the Highways Agency Agreement from 31 March 2020. They therefore now wish to re-establish a framework for the provision of civil parking enforcement services in Norwich from 1 April 2020 until such time as the parties are ready to incorporate the



services into the Norfolk Parking Partnership (an agreement between the County Councils and the districts in Norfolk dated 9 January 2012 (as amended) which established the joint committee).

- (5) By virtue of Section 19 of the 2000 Act and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 the executive of a local authority may arrange for functions which are the responsibility of the executive of the local authority to be discharged by another local authority or the executive of another local authority.
- (6) Further to paragraph 4 above, the County Council has agreed to delegate to the City Council pursuant to Section 19 of the 2000 Act its on street civil parking enforcement and related functions and the City Council have agreed to accept such delegation.
- (7) The Councils have agreed to discharge their civil parking enforcement and related functions under this Agreement.
- (8) It is the intention of the Councils that the costs associated with the delegation under this Agreement will be met by the income produced by on street civil parking enforcement. Furthermore the County Council is responsible for the reasonable costs of Norwich City Council in undertaking their obligations under this Agreement.

## **IT IS HEREBY AGREED AS FOLLOWS: -**

### **1. Definitions and Interpretation**

#### **1.1. Defined Terms**

"the 1972 Act" means the Local Government Act 1972.

"the 1984 Act" means the Road Traffic Regulation Act 1984.

"the 1991 Act" means the Road Traffic Act 1991.



"the 2000 Act" means the Local Government Act 2000.

"the 2004 Act" means the Traffic Management Act 2004.

"the 2007 Regulations" means Statutory Instrument 2007 No. 3483 The Civil Enforcement of Parking Contravention (England) General Regulations 2007.

"Adjudication Service" means the adjudication service established pursuant to Section 81 of the 2004 Act and Regulation 16 of the 2007 Regulations.

"Adjudicator" has the meaning ascribed to it in the 2004 Act.

"Administrative Area" means the area of the City Council for which they have responsibility within Norfolk.

"Authorised Officer" means the representative of the County Council, identified to the City Council which may be replaced from time to time.

"Business Plan" means the financial plan for providing the Functions attached at schedule 1, as amended from time to time.

"Civil Enforcement Area" has the meaning ascribed to it in the 2004 Act.

"Civil Enforcement Officer" has the meaning ascribed to it in the 2004 Act.

"Commencement Date" means the 1 April 2020.

"Commercially Sensitive Information" means any information in respect of which the Councils agree that disclosure would or would be likely to prejudice the commercial interests of any person.

"Data Protection Legislation" means any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation and (for so long as and to the extent that the law of the European Union



has legal effect in the UK) the General Data Protection Regulation and any other directly applicable European Union regulation relating to privacy.

"Designated Area(s)" means the Administrative Area of the City Council.

"Designation Order" means the Statutory Instrument to be made by the Secretary of State under Schedules 8 of the 2004 Act designating the Administrative Area as a Civil Enforcement Area and a Special Enforcement Area with effect from the Commencement Date.

"Forward Programme" means the list of new schemes that the County Council proposes to undertake with the resources it has.

"Financial Year" means the period 1 April to 31 March.

"Functions" means the functions described in clauses 3.2 and 3.3.

"Intellectual Property Rights" means rights in patents, trade marks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright (including rights in software), database rights, know-how, trade secrets, confidential business information, trade or business names and any similar or analogous rights to any of the above, whether arising or granted under the Laws of England or of any other jurisdiction.

"Officer Working Group" means those officers appointed from time to time by the Councils to manage the day to day operation and enforcement of the Functions.

"On Street Parking Account" means the account established under clause 10 and schedule 2 and pursuant to the provisions of section 55 of the 1984 Act.

"Operational Guidance" means the Traffic Management Act 2004 Parking Policy and Enforcement Operational Guidance to Local Authorities published by the Department for Transport and any guidance from time to time replacing the same.



"Penalty Charge Notices" means notices issued in relation to Penalty Charges pursuant to the 2004 Act.

"Penalty Charge" has the meaning ascribed to it in the 2004 Act.

"Reasonable Running Costs" means such reasonable expenditure as the Councils may incur, working together, in respect of performing the Functions in a cost efficient manner and with a fair and reasonable allocation of costs in respect of the Functions including the expenses of all relevant and proper overheads, professional services including training, premises, supplies and insurances and the cost of providing, maintaining and replacing equipment used for carrying out the Functions. Reasonable Running Costs shall not include costs attributable to the Councils' off-street parking account including but not limited to its operation or administration and shall take into account that that service is already operational and building on it provides efficiencies and savings for on street enforcement.

"Secretary of State" means the Secretary of State for Transport or such other person charged with general responsibility under the 1984 Act the 1991 Act and the 2004 Act in relation to England.

"Special Enforcement Area" has the meaning ascribed to it in Part 6 of the 2004 Act.

"TUPE" means The Transfer of Undertakings (Protection of Employment) Regulations 2006.

- 1.2. The appendices and schedules to this Agreement referred to in and attached to this Agreement form part of and shall be deemed to be incorporated in this Agreement.
- 1.3. The headings in this Agreement shall not affect its interpretation.
- 1.4. Reference in this Agreement to any clause sub-clause paragraph or schedule without further designation shall be a reference to the clause sub-clause paragraph or schedule of this Agreement so numbered.



- 1.5. Reference to any Act of Parliament or Statutory Instrument is a reference to that Act or Statutory Instrument as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6. Words in the singular shall include the plural and vice versa.
- 1.7. Where the words include(s), including or in particular are used in these terms and conditions, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.8. References to days, months or years means calendar days, months or years unless stated to the contrary.

## **2. Term and Purpose**

- 2.1 This Agreement shall come into force on the Commencement Date and unless terminated early in accordance with this Agreement shall continue for a period of 2 years.
- 2.2 The City Council shall during the term of this Agreement, carry out the Functions, together with any additional functions agreed in writing by the Councils.

## **3. Delegated Functions**

- 3.1 In exercise of the powers contained in Section 19 of the 2000 Act and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 the City Council agrees that it shall discharge on behalf of the County Council its Functions within the Designated Area under the Designation Order as specified in this Agreement and subject to any limitations imposed. A more detailed statement of these Functions to be discharged by the Councils is specified in clauses 3.2 and 3.3 of this Agreement.
- 3.2 The Functions and services to which this Agreement relates are:



- (a) the exercise of any power given to the County Council pursuant to the Designation Order for enforcement and back office functions subject to the provisions of this Agreement, including targets and policies set.
- (b) the collection of charges for on-street parking, the administration of on-street parking schemes, and the collection of charges for on street parking permits.

3.3 Without prejudice to the generality of clause 3.2 above it is declared that the delegated Functions in respect of the 2004 Act include (except as otherwise stated):

- (a) enforcement of Section 73 in respect of parking, bus lane and moving traffic contraventions.
- (b) notification of Penalty Charges in accordance with Section 78 and enforcement of Penalty Charges pursuant to Section 82.
- (c) in respect of Special Enforcement Areas enforcement of Section 85 in respect of prohibition of double parking etc.
- (d) so far as is lawfully practicable in respect of Special Enforcement Areas enforcement of Section 86 in respect of prohibition of parking at dropped footways etc.
- (e) enforcement provisions in respect of Blue Badge inspections and contraventions pursuant to Section 94 and Disabled Persons' Parking Badges Act 2013.
- (f) immobilisation and or removal of vehicles pursuant to and in accordance with Section 79.
- (g) disposal of vehicles pursuant to and in accordance with Section 101 of the 1984 Act.



- (h) dealing with representations relating to Penalty Charge Notices and fulfilling all duties in relation to the appeals procedure referred to in and pursuant to Section 80.
- (i) dealing with the representations arising from its Functions hereunder
- (j) taking reasonable steps to recover payments due.
- (k) enforcement of Section 73, the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005 and the Civil Enforcement Of Parking Contraventions (England) General (Amendment No. 2) Regulations 2015.
- (l) enforcement of Section 149 of the Highways Act 1980 in the removal of obstructions from the highway (specifically cones);
- (m) enforcement of school keep clear markings, including enforcement by camera in accordance with Civil Enforcement Of Parking Contraventions (England) General Amendment No. 2) Regulations 2015.

3.4 The Councils will enter into arrangements and maintain a contract for the provision of the Adjudication Service, in order to provide the adjudication facility required by the 2004 Act and will operate and administer an appeals procedure to the Adjudicators appointed by the Adjudication Service.

3.5 The Functions to be provided by the Councils include but are not limited to, the employment of staff and the procurement and supply of any items or equipment required for the provision of the Functions and shall be provided by the Councils in compliance with all relevant legislation, regulations, codes of practice, guidance and other requirements of any relevant government or governmental agency.

3.6 The Councils in fulfilling their obligations under this Agreement shall at all times have due and proper regard to:

- (a) the network management duty of the local traffic authority in relation to the Civil Enforcement Area as more fully defined in section 16 of the 2004 Act;



- (b) the Operational Guidance;
- (c) all applicable regulations issued pursuant to the 2004 Act; and
- (d) their obligations to provide a cost efficient service with a fair and reasonable allocation of costs.

- 3.7 To avoid doubt the City Council may not further delegate the Functions and shall cease to carry out the Functions upon termination of this Agreement.
- 3.8 Nothing in this Agreement prevents the County Council itself from exercising or administering any of the Functions where the City Council or its officers (as the case may be) are in default in exercising or administering the Function and the County Council has (except in the case of an emergency) given reasonable written notice to the City Council invoking this clause.
- 3.9 The City Council may in any particular case request the County Council to exercise any of the Functions in which case the County Council may in its discretion exercise the Function.
- 3.10 The County Council shall retain the right to approve the level of on-street parking charges including residents' and other parking permits in the Designated Area and in doing so will have regard to the provisions of clause 10.1 below and also to other relevant considerations. In particular the County Council will notify the City Council as far in advance as is reasonably practicable of any proposed changes and will consider any representations from the City Council received in writing within 20 working days of the City Council being so notified.

#### **4. Extent Of Agreement**

- 4.1 This Agreement covers the Administrative Area designated in the Designation Order and in respect of relevant Functions the Special Enforcement Area which for the avoidance of doubt shall be within or co-located with the Civil Enforcement Area.



- 4.2 Nothing in this Agreement shall affect the administration, enforcement of and the use of any funding surplus from off-street parking in the area administered by the Councils. However should they wish to make any change in the management of these, including any adjustment by notice or otherwise to the level of parking charges in any off-street car park the City Council will advise the County Council in writing of its proposals in advance and before implementing such proposals shall consider any response received in writing within 20 working days of the County Council being notified.
- 4.2A The County Council's Off Street are included as areas for enforcement. Nothing in this agreement shall affect the administration of or the use of any funding surplus from the management of these off-street parking places by the County Council or their appointed agents.
- 4.3 The County Council's Head of Paid Service and Executive Director of Community and Environmental Services (or such other officer as the County Council may specify) is the Traffic Manager for the Designated Area for the purposes of section 16 of the Traffic Management Act 2004.
- 4.4 The County Council may exercise any Function where it considers it necessary to do so in order to meet its statutory duty under section 16 of the Traffic Management Act 2004 but must give the City Council as much notice as is reasonably practicable before doing so.

## **5. Data Provision**

- 5.1 The City Council shall submit to the County Council such information as may be required by it from time to time as well as a properly completed statistical return (in the format attached at schedule 4) of the parking and bus lane enforcement including breakdown of income by source in the Designated Area within 3 months of the end of the Financial Year to which it refers and in the case of termination of the Agreement all figures relevant to that part period.



- 5.2 The County Council shall have access to its on-street data relating to PCNs and permits in any and all back-office systems in its capacity as data controller.

## **6. Staff**

- 6.1 During the period of this Agreement the staff holding posts designated by the City Council and the County Council shall continue to be employed by their respective Councils.
- 6.2 The City Council shall ensure that all Civil Enforcement Officers, management and administrative officers have the skills, training, authority and resources to enable the it to fulfil their obligations pursuant to this Agreement.

## **7. Accommodation and Equipment**

- 7.1 Civil parking enforcement services and the staff carrying out the Functions shall be based at the Councils' offices.
- 7.2 The City Council shall provide suitable office accommodation sufficient for the provision of the Functions of the staff as required.
- 7.3 Unless otherwise described in this Agreement all property and assets shall remain in the ownership of the Council which, at the date of this Agreement, owns the said property and assets but shall be available for use by the Councils throughout the term of this Agreement.
- 7.4 Details of all equipment, furniture, systems and licences which each of the Councils will provide for use in their provision of the Functions are to be provided annually, details of which shall be held by the County Council.
- 7.5 Further to clause 7.3, throughout the term of this Agreement a record shall be kept of any additional equipment or furniture subsequently acquired by each of the Councils for use by the Councils and at the termination of this Agreement the Councils shall act in accordance with clause 13.

## **8. Support Services**



- 8.1 For the avoidance of doubt the City Council will provide their own support services in relation to their direct operation of the Functions.
- 8.2 The provision of the IT support service for the core services and back office software and hardware shall be determined by the County Council and the City Council jointly.

## **9. Financial Provisions**

- 9.1 The parties declare their intention to use their best endeavours to ensure that the administration of the Functions pursuant to this Agreement shall as far as possible be run efficiently and economically and aim to be self-financing and in accordance with the annually agreed budget set out as per schedule 1.
- 9.2 The financial arrangements arising from the provision of the Functions under this Agreement shall be provided in accordance with the provisions of schedule 2 and such service level agreements as shall be agreed by the Councils from time to time.
- 9.3 The City Council will provide the County Council with a Business Plan for the forthcoming financial year by the end of quarter 3 of the prior financial year to allow the County Council to set an appropriate budget. The format and content of the Business Plan will be agreed between the City Council and County Council and will contain details of intended resources to deliver the Functions, including staff titles, FTEs, worked/patrolled hours and costs for each. Income projections for pay and display, residents permits and PCNs will also be detailed. Any significant cost or income variations to the previous year will be accounted for and explained prior to agreement of the Business Plan.
- 9.4 The County Council will consider the representations of the City Council before finalising the budget and Business Plan.
- 9.5 The City Council will use best endeavours to carry out their obligations under this Agreement so as to achieve conformity with the budget and Business Plan.



- 9.6 Subject to clause 9.5 the County Council will be under a duty to meet any reasonable costs incurred by the City Council in the event of a reduction in the budget and/or changes to the Business Plan, subject to their obligation to mitigate their loss.

## **10. Maintenance Funding**

- 10.1 To facilitate the provision by the Councils in the Designated Area of the Functions;

11.1.1 the City Council shall notify the Authorised Officer of the requirement to repair, replace or amend traffic signs or road markings;

11.1.2 the County Council shall endeavour to repair, replace or amend the traffic sign or road marking referred to in the notice referred to in clause 11.1.1 in line with its policy and duty within the Transport Asset Management Plan (TAMP).

## **11. Termination**

- 11.1 Either of the Councils may bring their authority's participation in this Agreement to an end before the determination of the Agreement by giving [12] months written notice to the other Council of such termination. The Councils shall give due consideration to:

11.1.1 any loss of funding which may arise from such withdrawal to include any non-payment, clawback or repayment of such funding;

11.1.2 any other loss, liability, damage, claim or expense which would be incurred by the Councils upon which notice has been served by reason of such withdrawal from the Agreement.

- 11.2 It shall be the duty of both the Councils to try to minimise any losses arising from the determination of this Agreement. Amongst other issues the Councils shall use their best endeavours to offer redeployment to any staff then employed in the provision of the Functions, by taking a transfer of any of the staff to provide the



Functions or to be redeployed more generally and/or by helping to seek alternative employment for them.

- 11.3 The County Council shall be entitled to revoke the delegation to the City Council on giving reasonable notice should they reasonably consider that the City Council has committed a sufficiently serious or persistent breach, non performance, omission or failure in relation to the Functions or this Agreement that has not or cannot (whether in the short term or its consideration of the long term prospects) be satisfactorily remedied within an appropriate timescale.

## **12. Effect of Termination**

- 12.1 The Councils agree that if any party terminates this Agreement that the income in the City Council's On Street Parking Account shall be sent immediately to the County Council.
- 12.2 Where the City Council gives notice to terminate its role in providing the Functions and those services are distributed to any other party by the County Council the City Council shall indemnify and keep indemnified and hold harmless the County Council and any replacement provider of the Functions against any and all claims, liabilities, demands, expenses and costs (including legal costs on a solicitor and own client basis) arising from or in connection with (a) the employment or termination of employment of any employee or former employee of the City Council or of any contractor engaged by the City Council to perform any of the services required under this Agreement including but not limited to any claim that the employment of any such employee or any liability relating to such employee or such employee's termination of employment has or should have or is claimed to have transferred to the any replacement provider of the Functions pursuant to TUPE and (b) any failure by the City Council (or any contractor engaged by the City Council to perform any of the services required under this Agreement) to comply with its obligations pursuant to Regulation 13 of TUPE.
- 12.3 Further to clause 12.2, where TUPE is deemed to apply to any replacement provider of the Functions, the City Council shall provide to the County Council and any replacement provider of the Functions a list of those employees engaged in the



providing the Functions and detailing the numbers and composition of staff as well as the Workforce Information (as defined in clause 12.4) requested within 14 days. In addition, the City Council shall use its best endeavours to obtain or assist any replacement provider of the Functions in obtaining the written consent of the employees concerned to the disclosure of the Workforce Information to any replacement provider of the Functions.

12.4 The Workforce Information mentioned in clause 12.3 shall be given immediately after notice has been served and is in respect of each employee wholly or mainly engaged upon the work required under this Agreement and it shall include:

- 12.4.1 number of hours of work per week on the Functions and the number of hours per week worked for the City Council for each of the employees;
- 12.4.2 job title, age, length of continuous services including the employment start date, current remuneration, benefits, and notice periods of the employees;
- 12.4.3 terms and conditions of employment of the employees, including but not limited to wages, holiday pay, bonuses and overtime rates, annual leave entitlement and pension scheme details and including any particulars that the City Council is obliged to give under section 1 of the Employment Rights Act 1996;
- 12.4.4 any current disciplinary or grievance proceedings ongoing in respect of the employees and any such proceedings in the preceding two years;
- 12.4.5 any claims, current or which the City Council has reasonable grounds to believe will be brought by the employees or their representatives or which have been brought in the preceding two years;
- 12.4.6 all benefit schemes or arrangements (whether contractual or not) applicable in respect of the employees;
- 12.4.7 information on any collective agreements which will have effect in relation to



the employees after the subsequent transfer date pursuant to the TUPE Regulations.

(together “the Workforce Information”)

- 12.5 If during the period between supplying such Workforce Information and the relevant transfer there is any material change in the information supplied or new information is discovered, the City Council shall, as soon as reasonably practicable disclose to the County Council and any replacement provider of the Functions the updated information and at least fourteen (14) days prior to the termination date shall prepare and provide to the County Council and any replacement provider of the Functions a final version of such information which shall be complete and accurate in all material respects. The City Council warrants that it shall consult with affected employees in accordance with the provisions of TUPE and shall co-operate with the re-tendering or reallocation of the Function by allowing the County Council and any replacement provider of the Functions to communicate with and meet the affected employees and/or their representatives and shall co-operate using all reasonable endeavours in seeking to ensure the orderly transfer of the employees to any replacement provider of the Functions.
- 12.6 If the City Council ceases to perform the Functions any equipment used solely for that purpose and funded by the County Council or pursuant to the term of this Agreement will be transferred free of charge to the County Council. If there is any equipment funded by the County Council or pursuant to the terms of this Agreement which is used partly for the performance of the Functions and partly for other purposes, the City Council and the County Council shall agree the manner in which it is to be dealt with.

### **13. Indemnity and Insurance**

- 13.1 Each Council shall indemnify the other against all claims, actions, proceedings and damages arising from its wrongful and negligent acts relating to this Agreement. For the avoidance of doubt:



13.1.1 this indemnity will not apply if the City Council is following procedures and/or policies approved by the County Council.

13.1.2 In determining whether the indemnity applies the reasonableness or otherwise of a Council's actions will be taken into account.

13.2 Each of the Councils agree that they shall compensate the other for the cost of making good any such damage and all consequential loss.

13.3 Without limiting their responsibilities under this Agreement adequate insurance shall be effected and maintained with a reputable insurer by the City Councils in respect of any liability arising from their provision of the Functions during the term of this Agreement and for a period of fifteen years after it ends or its earlier termination provided that the City Council shall arrange and maintain at its own expense Third Party (Public Liability) Insurance and Employers Liability Insurance in relation to the provision of the Functions undertaken under this Agreement. The minimum amount of liability per insurance policy shall be five million pounds (£5m) per incident and the interest of the County Council in relation to this Agreement shall be noted on the policy where appropriate.

#### **14. Claims for Negligence etc.**

14.1 Liability for all claims against each of the Councils in respect of the Functions, which arise out of any acts or omissions of its staff prior to the date of this Agreement shall remain the responsibility of that Council.

14.2 Any claim against the City Council arising in connection with the provision of the Functions within their Designated Area shall be dealt with by the City Council.

14.3 Details of all claims or potential claims received by any of the Councils shall be notified to the other Councils within two working days of receipt of notification of such claims or potential claims.



14.4 Each of the Councils shall afford all reasonable assistance to each of the other Councils and their insurers in defending any claim.

14.5 Each of the Councils shall afford reasonable assistance to the other in dealing with any complaint arising from work undertaken by or conduct of staff employed pursuant to the provisions of this Agreement and the Councils shall settle any dispute in accordance with their employing Councils' relevant procedures.

## **15. Arbitration**

15.1 Subject to the provisions of section 103 of the Local Government Act 1972 any question, dispute or difference in relation to any matter in connection with this Agreement which may occur between the Councils shall be referred to a single arbitrator to be appointed by agreement between the Councils in dispute or in default of such agreement to be appointed by such Minister as shall for the time being be responsible for local government and the decision of such arbitrator shall be final and binding and the Arbitration Act 1996 shall apply to such a reference.

## **16. Confidential Information**

16.1 The Councils shall keep confidential any Commercially Sensitive Information relating to this Agreement or the Intellectual Property Rights of the Councils and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any Commercially Sensitive Information relating to the Agreement or Intellectual Property Rights of the Councils.

16.2 Clause 16 shall not apply to:

16.2.1 any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under this Agreement;

16.2.2 any matter which a Council can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;



- 16.2.3 any disclosure to enable a determination to be made under clause 16;
- 16.2.4 any disclosure which is required by any law (including any order of a court of competent jurisdiction), any Parliamentary obligation or governmental or regulatory authority having the force of law;
- 16.2.5 any disclosure of information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing Council;
- 16.2.6 any disclosure by a Council to a department, office or agency of the Government;
- 16.2.7 any disclosure for the purpose of the examination and certification of a Council's accounts.
- 16.3 Where disclosure is permitted under this clause 18, the recipient of the information shall be placed under the same obligation of confidentiality as that contained in this Agreement by the disclosing Council.
- 16.4 The Councils shall at all times comply with the Data Protection Legislation, including maintaining a valid and up to date registration or notification. For the avoidance of doubt the County Council is data controller and the City Council Data Processor for on-street data the purposes of any processing arising from their respective obligations under this Agreement. As such the Councils shall ensure that, where they collect personal data, that they have the necessary privacy notices and consents in place to ensure that it can be passed between them as may be required from time to time
- 16.5 The parties recognise that the Councils are public authorities as defined by the Freedom of Information Act ("FOIA") and therefore recognise that information relating to this Agreement may be the subject of an information request pursuant to it (and where appropriate the Environmental Information Regulations) and to be responded to by them in accordance with that legislation. The Council's shall assist



and cooperate with each other free of charge to enable the relevant Council to comply with these information disclosure requirements.

16.6 The Council's acknowledge that they may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the FOIA, be obliged to disclose information:

16.6.1 without consulting with the other Councils, or

16.6.2 following consultation with each other and having taken their views into account.

## **17. Miscellaneous Provisions**

17.1 The County Council will properly consider any publicly supported requests from the City Council to introduce additional parking measures within the Designated Area. Its response to any such requests shall be made in writing.

17.2 The Councils will comply with all legal requirements under the Health and Safety at Work etc Act 1974 and any regulation or order made under it and any statutory amendment to it and any legal requirements of the European Union and international agreements applicable to the Functions. The Councils shall notify to the other without delay of any accident or injury occurring whilst the relevant Council is carrying out the Functions.

17.3 The Councils shall comply with their obligations pursuant to the Civil Contingencies Act 2004 and shall use reasonable endeavours to put in place, maintain and comply with a business continuity programme setting out the relevant Council's proposed methodology to enable it to continue to perform the Agreement in the event of any matter beyond its reasonable control or any failure to fulfil its obligations under the Agreement.

17.4 Any notice to be served under this Agreement shall be in writing and delivered by hand or sent by pre-paid first-class post or recorded delivery post or by email for the attention of the Head of Paid Service to the Council's at its address as set out at the



start of this Agreement and shall be deemed to have been received at the time when it would have been delivered in the normal course of post.

- 17.5 The terms of this Agreement may be varied at any time by agreement in writing between the Councils. Any such variation shall be agreed between the relevant Council's Head of Paid Service and endorsed on or attached to this Agreement.
- 17.6 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Council in writing in accordance with the provisions of clause 17.4.
- 17.7 The failure of any party to insist upon strict performance of any provision of this Agreement or the failure of either Council to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.
- 17.8 A waiver by either of the Councils of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision.
- 17.9 Nothing in this Agreement shall give directly or indirectly to any third party any enforceable benefit or right of action against the Councils and such third parties shall not be entitled to enforce any term of this Agreement. This is the case notwithstanding the provisions of the Contracts (Right of Third Parties) Act 1999.
- 17.10 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court or competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.
- 17.11 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Councils shall immediately commence negotiations in good faith to remedy the invalidity.
- 17.12 Each of the Councils is an independent local authority and nothing contained in this Agreement shall be construed to imply that there is any relationship between the



parties of partnership or principal/agent or of employer/employee. No Council shall have any right or authority to act on behalf of another Council nor to bind another Council by contract or otherwise except to the extent expressly permitted by the terms of this Agreement.

17.13 This Agreement and all documents referred to in this Agreement set forth the entire agreement between the Councils with respect to the subject matter covered by them and supersede and replace all prior communications, representations (other than fraudulent representations), warranties, stipulations, undertakings and agreements whether oral or written between the Councils. Each Council acknowledges that it does not enter into this Agreement in reliance on any warranty, representation or undertaking other than those contained in this Agreement and that its only remedies are for breach of this Agreement, provided that this shall not exclude any liability which any of the Councils would otherwise have to the other in respect of any statements made fraudulently by or on behalf of it prior to the date of this Agreement.

17.14 The Councils will liaise with one another regarding publicity and day to day communications with the media in respect of the Functions.

17.15 This Agreement shall be governed by English law and subject to clause 16 the Councils submit to the exclusive jurisdiction of the courts of England.



IN WITNESS whereof the parties have executed this Agreement as a Deed on the date set out at the start of this Agreement

THE COMMON SEAL OF **THE NORFOLK COUNTY COUNCIL**     )  
was hereunto affixed but not delivered     )  
until the date hereof in     )  
the presence of:-     )

THE COMMON SEAL OF **NORWICH CITY**     )  
**COUNCIL** was hereunto affixed but not delivered     )  
until the date hereof in     )  
the presence of:-     )



## **Schedule 1**

### **Business Plan**

The City Council shall submit to the County Council a forward Business Plan for the forth coming financial year by the end of quarter three of the prior financial year to allow appropriate budget setting to be carried out by the County Council in quarter 4.

The business plan should contain but not be limited to;

- Number of CEOs employed in the forth coming financial year
- Number of back office staff employed in the forth coming financial year.
- Any recruitment requirements for the forth coming year
- Anticipated on-street patrolled hours per month
- Any special events that need overtime or additional resource
- Anticipated number of PCNs to process (based on prior years out turn information)
- Anticipated asset replacement requirement
- Anticipated vehicle mileage per month
- Software licence requirements and associated costs
- A full and detailed breakdown of all income and costs, including, but not limited to the above elements



## **Schedule 2**

### **Financial Regulations**

#### **1. Financial Records**

- 1.1 The County Council as finance support service provider (“the Finance Support Service Provider”) shall keep all accounts relating to the Business Plan.
- 1.2 The Finance Support Service Provider shall determine the financial and accounting systems to be adopted, and any subsequent changes must be agreed with them. The accounts shall be prepared in accordance with the latest accounting standards and statutory timetable.
- 1.3 Any appointed internal Auditor by the County Council shall have full access to all records of the City Council in relation to discharging their obligations under this Agreement.
- 1.4 Without prejudice to paragraphs 3.1 and 3.2 the Councils shall operate this Agreement on the basis of open book accounting.

#### **2. Arrangements with Councils**

- 2.1 The County Council shall pay the City Councils’ Reasonable Running Costs for carrying out the Functions specified in and in accordance with this Agreement.
- 2.2 Reasonable Running Costs relating to the expenses of all relevant and proper overheads and professional services shall be limited to:
  - Direct costs including employee costs, equipment, transport and training;
  - Ancillary costs including leasing costs (where equipment is leased rather than purchased); and
  - A reasonable and appropriate share of fixed costs and overheads including accommodation, rent, rates and utility costs where these have not already been charged as direct costs



For the avoidance of doubt the following cannot be considered as Reasonable Running Costs without prior written agreement of the County Council:

- Restructuring costs including but not limited to redundancy payments and costs, the sale or mothballing of facilities; and
- Recharge of costs from other parts of the City Council which do not directly pertain to the function.

- 2.2 The City Council shall use their reasonable endeavours to recover all income due in respect of the Functions and shall calculate and pay the County Council all such income received.
- 2.3 In accordance with the provisions of section 55 of the 1984 Act the City Council shall keep an account called the On Street Parking Account. There shall be credited to the On Street Parking Account the on-street income from Penalty Charges, income from charges for parking on-street and also from on street parking permits and revenues from enforcement functions discharged pursuant to this Agreement including but not limited to clamping and removals if undertaken.
- 2.4 The City Council shall within 19 days of the end of each calendar quarter send to the County Council both the gross income held in the On Street Parking Account and an invoice for any cost incurred for that quarter.
- 2.5 The County Council shall do an annual reconciliation of all income and expenditure received during each Financial Year.
- 2.6 After an annual reconciliation by the County Council, should an overall surplus be identified in any Financial Year, it will be split in the following manner: the total income for the Administrative Area shall have deducted from it the reasonable Costs relating to on street civil parking enforcement in that area, to produce a net income figure. Where there is a positive net income the surplus will be spent by the County Council on transport related expenditure in that Administrative Area only.



### **3. Reporting**

- 3.1 The records of the City Council in connection with the Functions shall be made available for inspection by the County Council's representative and internal and external auditors of the County Council upon request. Access to the relevant records, offices, people and IT systems will be made available at reasonable times. Accounts shall be drawn up in accordance with the policies and practices of the main accountancy bodies.
- 3.2 Where the City Council uses a contractor including in relation to but not limited to debt collection and information technology services should be subjected to the Councils' own tendering and financial regulations. Contractors shall be incentivised in their performance of the Functions in accordance with relevant provisions of the Operational Guidance. The use of contractors shall not relieve the City Council of their obligations under this Agreement and they shall be responsible for any acts or omissions of any contractor as if such acts or omissions were those of the City Council.



### Schedule 3

#### Monthly performance reporting

Norfolk and Norwich CPE - Monthly Performance Report			
Council		Month	Year
Description		Number	Comment
On-street hours patrolled			
Sickness Absence			
Observations logged no PCN issued			
Higher Level PCN Issued (this month)			
Lower Level PCN Issued (this month)			
PCNs Cancelled on 1st Review	Error		
	Signing Lining Issue		
	Other		
Rolling 12 month total			
	Higher Level PCN Paid		
	Lower Level PCN Paid		
PCN Appeals	Upheld		
	Rejected		
School Visits			
	PCNs Issued		
Blue Badge Observations			
	PCNs Issued		
Dispensations Issued			
Customer Contact	Request for enforcement		
	Permit Query		
	PCN		
	Other		