| | | |
|---|---|---|
| **Report to** | Cabinet | **Item** |
| | 10 June 2020 | 10 |
| **Report of** | Director of place | |
| **Subject** | Civil parking enforcement agreement | |

**KEY DECISION**

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**Purpose**

To ask cabinet to enter into an agreement with Norfolk County Council to carry out civil parking enforcement

**Recommendation**

To enter into an agreement with Norfolk County Council for the provision of on street civil parking enforcement services

**Corporate and service priorities**

The report helps to meet the corporate priority great neighbourhoods, housing and environment

**Financial implications**

Civil parking enforcement costs £2.2M per annum to enforce. The income generated from enforcement in 18/19 was £2.5M. Any surplus generated over the operation costs is paid to Norfolk County Council, as highway authority

**Ward/s**: All Wards

**Cabinet member**: Councillor Stonard - Sustainable and inclusive growth

**Contact officers**

Joanne Deverick Parking and markets service manager 01603 212461

**Background documents**

None

# Report

## Background

1. Since on street parking enforcement in Norwich was decriminalised in 2002, the city council has carried out enforcement on behalf Norfolk County Council. This was initially done under a service level agreement and was later included with the highways agency agreement.

2. The county council terminated the highways agency agreement on 31 March 2020, following a decision made by their Environment, Transport and Development committee on 18 January 2019. However, they asked that the city council to continue to carry out CPE, alongside enforcement of delegated moving traffic offences (which currently extends only to bus lanes); this is subject to a separate agreement. A short-term temporary agreement is currently in place to allow parking enforcement in the City pending consideration of this report.

3. In 18/19 on street enforcement generated £2,497,367 of income and incurred costs of £2,177,948, resulting in a surplus of £280,779 that was paid to Norfolk County Council

4. Norwich was one of the first places in the UK to adopt CPE in 2002; CPE came to the rest of Norfolk many years later. At that time, the county council set up the NPP to oversee a commonality of approach among the district councils outside of the city and the ability for the districts to share back office systems and enforcement regimes. As the city council had its' own well established practices and systems it was decided that they would not formally be included in the NPP, but instead would work closely with it.

## Proposed arrangements

5. During the discussions around the agency termination, the county council indicated that they wished to enter into an agreement with the city council to enforce CPE in the city, ahead of a countywide review of the Norfolk Parking Partnership (NPP). It is the desire of the county council that Norwich becomes an integral part of the parking partnership moving forward. As such, the agreement proposed is an interim one expected to last two years. It is intended that the new NPP agreement will then replace this interim agreement.

6. A copy of interim agreement is attached as appendix 1. In summary, it proposes the following;

    a. A 2 year agreement with the option to extend by up to a further 3 years
    b. All aspects of on street parking enforcement and adjudication is delegated to the city
    c. The county council will be responsible for setting all fees and charges for on street pay and display parking and permits, but these fees and charges will be recommended by the city council

d. The city council shall produce a business plan for the forthcoming year by the end of Q3 and should actively identify service improvements and efficiencies
e. Both sides are required to give 18 months' notice to terminate the contract
f. The county council undertakes to cover all reasonable costs that the city council incurs in carrying out CPE
g. Any surplus generated by CPE will fund transport projects in the Norwich administrative area.
h. The city will be responsible for identifying and consulting on any changes required to parking restrictions within the city. The county council will be responsible for implementing the changes.
i. All amendments to the traffic regulation orders (TROs) that support CPE will follow the county council's procedures.

7. This is broadly in line with the previous arrangements under the highways agency agreement. The main differences are

    a. The city council were responsible for covering that deficit if CPE made a loss in any financial year
    b. Any surplus could be spent anywhere in the Norwich Area Transportation Strategy area
    c. Norwich highways agency committee agreed all amendments to fees, charges and TROs.

8. Given the current Covid 19 pandemic, the removal of the responsibility for covering any deficit is particularly welcome. Discussions continue with Norfolk county council on how this will be recovered moving forward, and every effort is being made to minimise that cost to the CPE account.

**Permanent Agreement**

9. With the interim agreement in place, efforts will then be concentrated on reaching an agreement for Norwich to become fully-fledged members of the NPP. This will allow for greater operational flexibility across the whole county and potentially means that there is the opportunity to share enforcement staff and back offices systems with other districts. It also presents the opportunity to share emerging new technologies such as cashless parking options.

10. If, following negotiations, the city council is not satisfied that the new NPP offers terms that are acceptable, then would be time to serve notice to relinquish responsibility for CPE enforcement.

**Implications of Norwich not being the enforcement authority for the city.**

11. Should the council decide that it no longer wishes to carry out on street parking enforcement, there will be TUPE implications across a number of areas of the council. 85% of the workload of the parking operations team is about enforcing CPE. Enforcement in off street pay and display surface car parks and housing car parks accounts for the rest. There could also be impacts on other council

departments most noticeably customer contact team who deal with permit issuing and the initial challenges to penalty charge notices, and the HR and finance teams.

12. Without on street enforcement, it would make the operational management of the city council's own off street parking operation more challenging. There are economies of scale in being able to patrol both on and off street at the same time. With more staff, it is easier to offer a 7-day service that includes enforcement into the evenings. A much smaller team of enforcement staff will have less resilience around staff absences and out of hours cover

## Conclusion

13. The proposal is that the city council agree to enter into an agreement with Norfolk county council for the provision of on street civil parking enforcement services, for a period until 31 March 2022 (with an option to extend by up to 3 years), or until a revised Norfolk Parking Partnership agreement is in place, whichever is soonest.

# Integrated impact assessment

NORWICH City Council

The IIA should assess **the impact of the recommendation** being made by the report
Detailed guidance to help with the completion of the assessment can be found here. Delete this row after completion

| Report author to complete | |
|---|---|
| **Committee:** | Cabinet |
| **Committee date:** | 10 June 2020 |
| **Director / Head of service** | Graham Nelson, director of place |
| **Report subject:** | Civil parking enforcement agreement |
| **Date assessed:** | 18 May 2020 |

| | Impact | | | |
|---|---|---|---|---|
| **Economic (please add an 'x' as appropriate)** | **Neutral** | **Positive** | **Negative** | **Comments** |
| **Finance (value for money)** | ☒ | ☐ | ☐ | Norfolk county council will cover all reasonable costs incurred by the city council when administering the civil parking enforcement (CPE) scheme |
| **Other departments and services e.g. office facilities, customer contact** | ☐ | ☒ | ☐ | Several council departments assist in the operation of CPE, including customer contact, IT, finance and HR. The existence of the agreement helps support resilience in those teams |
| **ICT services** | ☒ | ☐ | ☐ | |
| **Economic development** | ☐ | ☒ | ☐ | Having a robust CPE regime contributes to the economy of the city and supports it's transport planning objectives. |
| **Financial inclusion** | ☒ | ☐ | ☐ | CPE is run on a not for profit basis and fees and charges are kept as low as possible, but sufficient to cover the running costs of the scheme |
| | | | | |
| **Social (please add an 'x' as appropriate)** | **Neutral** | **Positive** | **Negative** | **Comments** |
| **Safeguarding children and adults** | ☒ | ☐ | ☐ | No impact |
| **S17 crime and disorder act 1998** | ☒ | ☐ | ☐ | No impact |
| **Human Rights Act 1998** | ☒ | ☐ | ☐ | No impact |

| | Impact | | | |
|---|---|---|---|---|
| **Health and well being** | ☐ | ☒ | ☐ | Having a robust CPE regime supports the transport planning priorities which see walking and cycling promoted in favour of the private car |
| | | | | |
| **Equality and diversity (please add an 'x' as appropriate)** | **Neutral** | **Positive** | **Negative** | **Comments** |
| **Relations between groups (cohesion)** | ☒ | ☐ | ☐ | No impact |
| **Eliminating discrimination & harassment** | ☒ | ☐ | ☐ | No impact |
| **Advancing equality of opportunity** | ☒ | ☐ | ☐ | No impact |
| | | | | |
| **Environmental (please add an 'x' as appropriate)** | **Neutral** | **Positive** | **Negative** | **Comments** |
| **Transportation** | ☐ | ☒ | ☐ | Having a robust CPE regime supports the transport planning priorities which see walking and cycling promoted in favour of the private car. The limit of the number of permits that can be issued to each household, helps cap the number of vehicles parked in a dense urban area and encourages the use of car clubs |
| **Natural and built environment** | ☒ | ☐ | ☐ | No impact |
| **Waste minimisation & resource use** | ☒ | ☐ | ☐ | |

| | Impact | | | |
|---|---|---|---|---|
| **Pollution** | ☐ | ☒ | ☐ | Having a robust CPE regime supports the transport planning priorities that see walking and cycling promoted in favour of the private car. The limit of the number of permits that can be issued to each household, helps cap the number of vehicles parked in a dense urban area and encourages the use of car clubs |
| **Sustainable procurement** | ☒ | ☐ | ☐ | |
| **Energy and climate change** | ☐ | ☒ | ☐ | Having a robust CPE regime supports the transport planning priorities that see walking and cycling promoted in favour of the private car. The limit of the number of permits that can be issued to each household, helps cap the number of vehicles parked in a dense urban area and encourages the use of car clubs |
| | | | | |
| **(Please add an 'x' as appropriate)** | **Neutral** | **Positive** | **Negative** | **Comments** |
| **Risk management** | ☐ | ☒ | ☐ | With the change to the financial arrangements for the agreement, whereby the city council is not responsible for any loss incurred as a result of reasonable running costs for the scheme, the financial risk to the city is reduced. |

| Recommendations from impact assessment |
| --- |
| **Positive** |
| With the city council managing the CPE in the city, there is an opportunity to help influence transportation policy within the city by, for example, limiting the number of permits issued to a household, to encourage more walking and cycling. It also helps to reduce carbon emissions and pollution.<br><br>The removal of the financial risk, when compared to previous agreements, is welcome |
| **Negative** |
| None |
| **Neutral** |
| None |
| **Issues** |
| None |

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



NorwichCPE/36652

**FOR THE**

**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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**THIS AGREEMENT** is made the 2020

**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 the date specified in this Agreement 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 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 planning for providing the Functions in accordance with clause 9 and attached at schedule 1 or otherwise 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 [ ] 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.

“County Council’s Off Street” means any parking or traffic management related order at the Norwich Bus Station, the Airport Park and Ride Site, the Queens Road Pay and Display and any other location notified to the City Council by the County Council from time to time.

“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.

“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.

"Parking Account" means the account established under clause 9 and schedule 2 and pursuant to the provisions of section 55 of the 1984 Act.

"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 as described in schedule 2. Reasonable Running Costs shall not include costs attributable to the County Councils' Off Street parking enforcement including but not limited to its operation or administration in consideration 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.

"TAMP" means the Transport Asset Management Plan held by the County Council.

"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. The Council's may agree to roll the Agreement on beyond this initial term, a year at a time for up to an additional three years.

2.2 The Councils agree and acknowledge that it is the intention that the Functions be incorporated within the remit of the Norfolk Parking Partnership and overseen by the Norfolk Parking Partnership Joint Committee prior to the end of the term set out int clause 2.1. The Councils shall therefore work together to ensure the smooth transition and integration of the services, whether under this Agreement or any other, and to comply with such reasonable requests of the County Council as it considers necessary to allow that to happen.

2.3 Further to clause 2.2, the Councils shall work together in reviewing the operation of the Functions and this Agreement in such timescales as either or both may reasonably specify in advance of the end of each of the initial term, and thereafter, the annual extensions described in clause 2.1 to ensure that their agreement can be given.

2.4 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, budget agreed and policies set.

(b) the exercise of any power given to the County Council for enforcement of and back office functions in relation to County Council's Off Street subject to the provisions of this Agreement, including targets, budget agreed and policies set.

(c) the collection of charges for parking, the administration of parking schemes, and the collection of charges for parking permits pursuant to (a) and (b) above.

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 expiry or 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 and County Council's Off 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 9.1 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.

3.11 The County Council shall retain sufficient governance over the arrangements set out in this Agreement as may be required from time to time and the City Council shall assist and cooperate with that. The County Council reserves the right to share information or arrangements with the Norfolk Parking Partnership Joint Committee for oversight.

## 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 the City Council's own off-street parking in the area administered by the City Council. 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 Further to clause 3, the County Council's Off Street are included as areas for enforcement. However, any revenue generated shall be clearly identified by the City Council in the Parking Account and 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 3) in relation to the Functions 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 from time to time and on request to the City Council's data collected in relation to the provision of the Functions, including to penalty charge notices and permits in any and all back-office systems.

# 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. The City Council shall ensure that their posts are as stated and accounted for in the Business Plan.

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 them 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 City Councils' offices.

7.2 Further to clause 7.1, the City Council shall provide suitable office accommodation sufficient for the provision of the Functions for the staff as required.

7.3 Unless otherwise described in this Agreement all office based property and assets required to carry out the Functions and owned by the Councils at the Commencement Date shall continue to be owned by the Councils but shall be made available for use by the Councils throughout the term of this Agreement.

7.4 All equipment, furniture, systems and licences which the City Council provide, procure or use in their provision of the Functions shall be set out in schedule 4 which shall be updated annually, details of which shall be held by the County Council. This will provide an inventory for equipment, furniture, systems and licences which may be transferred free of charge as directed by the County Council to support or provide one or

more of the Functions in the Administrative Area following expiry or termination of this Agreement.

7.5 Further to clause 7.4, throughout the term of this Agreement a record shall be kept of any additional equipment or furniture subsequently acquired for use by the Councils and at the termination of this Agreement the Councils shall act in accordance with clauses 7.4 and 12.

## 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 Councils declare their intention to use their best endeavours to ensure that the administration and performance 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 Business Plan.

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 Each year the City Council will provide the County Council with a Business Plan in accordance with schedule 1 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 penalty charge notices 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 for the 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. Any under or over performing by the City Council against the annual forecast in the Business Plan shall be reported to the County Council and variations to the invoice shall be made accordingly.

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 the City Council's ongoing obligations to mitigate their loss as far as reasonably possible.

**10. Maintenance Funding**

10.1 To facilitate the provision of the Functions;

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

10.1.2 the County Council shall endeavor to repair, replace or amend the sign or road marking referred to in the notification referred to in clause 10.1.1 in line with its policy and duty as set out in the TAMP.

# 11. Termination

11.1 The term of this Agreement and the intentions going forward for the service are set out in clause 2. Should the parties not agree to extend the term beyond the 2 year initial term or any subsequent annual extensions, the County Council shall serve notice on the City Council confirming that the Agreement will expire at that point.

11.2 Further to clause 11.1, should either of the Councils wish to terminate the Agreement earlier than the expiry of the 2 year initial term described in clause 2.1 they each have the additional right to bring their authority's participation in this Agreement to an end before the determination of the Agreement by giving 18 months written notice to the other Council of such termination. For the avoidance of any doubt, this shall not affect the natural intended opportunity for breaks as are set out in clause 2, meaning that

no notice other than that described in clause 11.1 is required to terminate arrangements at those times. The Councils shall give due consideration to:

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

11.2.2 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.

11.3 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.

11.4 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 either party terminates this Agreement that the income in the City Council's Parking Account shall be sent immediately to the County Council.

12.2 Where the Agreement expires or terminates 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 Functions 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 Functions 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 Functions 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 In accordance with clause 7.4, if the City Council ceases to perform the Functions any equipment set out in schedule 4 (or as otherwise updated) 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 (or such other body as the County Council may direct). 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 Council 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 Subject to clause 3.11, 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 the Councils are each a data controller in relation to 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 Councils 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 Councils 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 Council, 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 pre planned and 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 to the relevant Council’s 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 Councils 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 15 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 the carried out by the County Council in quarter 4.

The business plan should contain but not be limited to;

- Number of Civil Enforcement Officers employed in the forthcoming financial year
- Number of back office staff employed in the forthcoming financial year.
- Any recruitment requirements for the forthcoming year
- Anticipated on-street patrolled hours per month
- Any special events that need overtime or additional resource
- Anticipated number of penalty charge notices 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 the City Council

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 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 Parking Account. There shall be credited to the 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 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.

**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 | | |

Schedule 4

Equipment