

DATED

2009

WORCESTERSHIRE COUNTY COUNCIL

and

BROMSGROVE DISTRICT COUNCIL

**AGENCY AGREEMENT FOR ON STREET ENFORCEMENT OF PARKING IN
THE BROMSGROVE DISTRICT**

THIS AGREEMENT is made the _____ day of _____ 2009

BETWEEN:

- (1) **WORCESTERSHIRE COUNTY COUNCIL** of County Hall Worcester WR5 2NP (“the County Council”); and
- (2) **BROMSGROVE DISTRICT COUNCIL** of The Council House, Burcot Lane, Bromsgrove B60 1AA (“the District Council”)

WHEREAS:

- (1) The County Council and the District Council are local authorities constituted by the Local Government Act 1972.
- (2) For the purpose of the Road Traffic Regulation Act 1984 the County Council is the traffic authority for all roads (other than motorways and trunk roads) situated in the County of Worcestershire.
- (3) By virtue of Section 19 of the Local Government Act 2000 (“the Act”) and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (“the Regulations”) as amended and subject as therein provided an executive of a local authority may arrange for the discharge of any of its functions by (inter alia) another local authority.
- (4) The County Council intends to apply to the Secretary of State for the making of an order designating the whole of the District Council’s area as a Civil Enforcement Area and as a Special Enforcement Area in accordance with Schedule 6 (??) of the Traffic Management Act 2004 (“the Designation Order”).
- (5) The District Council has off-street car parks which falls within its control.

NOW THIS AGREEMENT WITNESSETH as follows:

1. District Council to act as Agent Authority

- 1.1 In the exercise of the powers in that behalf contained in the Act and the Regulations the County Council HEREBY AGREES with the District Council and hereby so arranges that the District Council shall with effect from the date of coming into force of the Designation Order, discharge on behalf of the County Council such functions and provide such services within the area of this Agreement as are specified in clauses 1.2 and 1.3 of this Agreement.
- 1.2 The functions and services to which this Agreement relates (“the Functions”) are:-

- a. the exercise of any power given to the County Council pursuant to the Designation Order.
- b. the administration of resident's parking schemes made by order of the County Council including the collection of charges for permits, and the administration of on-street paid-for parking schemes made by order of the County Council.

1.3 Without prejudice to the generality of 1.2 above it is declared that the functions include issuing penalty charge notices and the subsequent steps necessary to recover payments due and the operation of an adjudication service and the powers for immobilisation and removal, recovery, storage and disposal of vehicles and collection of charges in connection therein PROVIDED that the District Council shall not commence to exercise powers for the immobilisation or removal under the Designation Order of vehicles until the County Council has given its consent thereto.

2. Extent of Agreement

2.1 This Agreement extends to the entire area designated by the Secretary of State as a Civil Enforcement Area and as a Special Enforcement Area in the Designation Order.

2.2 It is agreed that the agreement shall apply to the off-street car parks which are within the control of the District Council and described in Schedule One herein ("the Car-Parks")

3. Duration and Variation of Agreement

3.1 This Agreement shall operate from the date referred to in clause 1.1 hereof and shall continue unless and until determined by either party giving to the other two years notice in writing to expire on the Thirty first day of March in any succeeding year.

3.1a In the event of termination of the Agreement the District Council will continue to pursue debt relating to penalty charge notices issued by the District Council prior to the termination date for a period of 12 months thereafter.

3.2 Notwithstanding the provisions for determination contained in Clause 3.1 hereof the terms of this Agreement may be varied at any time by agreement between the parties hereto such variation being signified by the County Council's Chief Executive and by the District Council's Chief Executive or other proper officers of the respective Councils and endorsed on or attached to this Agreement.

1.1 Traffic Penalty Tribunal Adjudication Service

The County Council and the District Council will each enter into agreements to join the Traffic Penalty Tribunal_Adjudication Service in order to provide the adjudication facility required by the Traffic

Management Act (2004) and it is hereby agreed between the parties that the County Council will reimburse any costs incurred by the Borough Council in so doing save in respect of allowances properly claimed by members for the time being of the Borough Council.

4. Exercise of Agency

4.1 In exercising the Functions, the District Council shall have regard to such policies and standards for on-street parking enforcement as may from time to time be laid down by the County Council and notified in writing to the District Council and shall have regard to the need to avoid the Reserve (as hereinafter defined) incurring a deficit other than those associated with the introduction of the scheme.

4.1a In exercising any functions under this agreement the District Council and the County Council shall comply with the Service Level Agreement which is set out in Schedule Two to this agreement. The District Council in conjunction with the County Council, will determine the scale of the enforcement resource to be applied to the scheme.

4.2 The District Council shall indemnify the County Council against any claim made against the County Council or loss incurred by the County Council arising from any act or omission in the carrying out by the District Council of the Functions. Provided that this indemnity shall not apply where such claim is wholly or mainly attributable to an act or omission by the County Council in which instance the County Council shall indemnify the District Council against any claim made against the District Council or loss incurred by the District Council.

4.3 The District and County Councils agree to review or vary the monetary amount of penalty charge notices subject where necessary to the approval of the Secretary of State but shall have regard to the provisions of clause 5.8 below.

4.4 The District and County Councils shall agree to determine the level of charges for residents parking permits and for on-street paid-for parking, and in so doing will have regard to the provisions of clause 5.8 below and also to other relevant considerations.

4.5 The District and County Councils shall agree to review the level of on-street parking charges as part of the annual budget process as set out in Clause 5.7 below, and in so doing will have regard to the provisions of Clause 5.8 below.

4.6 The District Council shall continue to be responsible for the maintenance of the Car Parks and any equipment and signs provided within the Car Parks together with the collection of charges relating to use of the Car Parks

5. Financial

5.1 The parties declare their intention that the administration of the Functions should as far as possible be self-financing.

- 5.1a The parties declare their intention that the enforcement relating to the off-street parking should be self financing but for the avoidance of doubt it is hereby agreed between the parties that the District Council shall not be called upon to contribute (in whole or in part) to any deficit or loss incurred or suffered by the County Council in performance of its duties under the terms of this agreement while the said agreement either remains in force or upon its termination in accordance with clause 2.1 herein
- 5.2 The District Council shall establish and hold a reserve called the Bromsgrove District On-Street Parking Reserve (“the Reserve”) and shall finance from the Reserve the costs of setting up, administering and carrying out the functions including the expenses of all proper overheads, professional services, premises, supplies, insurances and other ongoing costs. These costs are to be identified as part of the annual budget process as set out in Clause 5.7 below. There shall be credited to the Reserve the income from on-street penalty charge notices, income from any on-street charges for parking and also the income from resident’s parking permits and also the miscellaneous income arising from activities included within this Agreement.
- 5.2a The County Council, as Highway Authority, will review the traffic regulations orders within the District Council at their cost, and shall prepare them for civil enforcement to a standard which meets the DfT requirements in Guidance. The District Council will prepare the off-street Orders for civil enforcement, the cost of this being charged to The .Reserve.
- 5.3 For the purposes of this Agreement, the setting-up costs referred to in paragraph 5.2 above shall include all costs associated with the establishment of the civil parking enforcement scheme, including those relating to the off-street service incurred consequential to the introduction of the scheme.
- 5.4 Sums in the Reserve shall earn interest at the 1 year Libor rate less one quarter per cent.
- 5.5 There shall be discharged out of the Reserve the reimbursement to the District Council of any start-up costs and operating deficits contributed by the District Council (revenue or capital) including the loss of interest at the 1 year Libor rate plus quarter per cent on the amount of any deficit incurred in previous years; any surplus in the Reserve after meeting such costs and providing a reasonable reserve of 10% of the annual operating costs may be used for such parking, highways and transportation purposes, as may be permissible under Section 55 of the Road Traffic Regulation Act 1984, that are agreed by the District and County Councils, such agreement not to be unreasonably withheld. Any deficit in the Reserve (subject to 5.7 below) will be reimbursed to the District Council by the County Council on an annual basis, following the annual budgeting and reporting process.

- 5.6 The accounts relating to the Reserve shall be prepared annually (or more frequently as the parties may agree) by the District Council and made available for inspection by the County Council.
- 5.7 The District Council not later than 1st December each year shall prepare a budget for the functions for the ensuing financial year (commencing 1st April) together with a revised budget for the current financial year and submit it to the County Council for approval, and the District Council in carrying out the functions will as far as practicable conform to the budget as approved. Any deficit in excess of the agreed budget will be met by the District Council and any deficit up to the agreed budget will be funded by the County Council as defined in 5.5 above.
- 5.8 Having regard to 5.1 above, the County Council and District Council agree that when considering any budget or other approval hereunder or taking any steps affecting the functions, they will have proper regard to the need to avoid the Reserve incurring a deficit.

6. Appointment of Staff and Contractors

- 6.1 The District Council may carry out the Functions by means of directly employed civil enforcement officers and other staff or by contractors or by a combination thereof as the District Council considers most advantageous, but shall consult with the County Council on the principles involved in these arrangements.

7. Effect on Termination

- 7.1 It is hereby agreed that if either party terminates this Agreement pursuant to clause 3.1 (otherwise than on account of material default by other party) the party terminating the Agreement shall indemnify the other party against any expenses (including redundancy or similar costs) directly attributable to such termination.

8. Third Party Rights

- 8.1 The Parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

9. Interpretation

- 9.1 Reference in this Agreement to any statutory provision shall be deemed to include reference to any similar or corresponding provision in any subsequent enactment replacing or modifying the said provision so long as the provision as so replaced or modified is capable of forming the subject of agency arrangements.
- 9.2 The following expressions shall bear the meanings indicated below:- “civil enforcement officer”, “penalty charge notice”, “Special Enforcement Area” and “Civil Enforcement Area” have the meanings ascribed thereto in the Traffic Management Act 2004.

10 Alternative Dispute Resolution and Arbitration

- 10.1 If any dispute arises out of this agreement the parties will firstly attempt to settle it by negotiation.
- 10.2 A party may not commence any alternative dispute resolution court proceedings or arbitration until either 21 days after it has made a written offer to the other party to negotiate a settlement to the dispute
- 10.3 If any dispute arises out of this agreement which has not been settled in accordance with clause 5.2 the parties will attempt to settle it by mediation in accordance with the Centre of Dispute Resolution (CEDR) Model Mediation Procedure (“the Model Procedure”)
- 10.4 If the parties have not settled the dispute by mediation within 42 days from when the mediation was instituted/the date of the ADR notice the dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration which Rules are deemed to be incorporated by reference to this clause

IN WITNESS whereof the County Council and the District Council have caused their respective Common Seals to be hereunto affixed the day and year first before written.

THE COMMON SEAL of)
WORCESTERSHIRE COUNTY COUNCIL)
 was hereunto affixed)
 in the presence of:-)

THE COMMON SEAL of)
BROMSGROVE DISTRICT COUNCIL)
 was hereunto affixed)
 in the presence of:-)

Schedule One – The Car Parks

Schedule 2 – Service Level Agreement