

DATED THE DAY OF 2007

SURREY COUNTY COUNCIL

-and-

WAVERLEY BOROUGH COUNCIL

AGENCY AGREEMENT

RELATING TO

THE DECRIMINALISED ENFORCEMENT OF PARKING



ANN CHARLTON
HEAD OF LEGAL SERVICES
COUNTY HALL
KINGSTON UPON THAMES
KT1 2DN

REF: LPE/31404/PAG

THIS AGREEMENT is made the _____ day of _____
Two Thousand and Seven BETWEEN SURREY COUNTY COUNCIL of County Hall
Kingston upon Thames KT1 2DN (hereinafter called “the County Council”) of the
one part and WAVERLEY BOROUGH COUNCIL of Council Offices The Burys
Godalming Surrey GU7 1HR (hereinafter called “the Borough Council”) of the other
part

DEFINITIONS:-

- 1.1 “the 1972 Act” - the Local Government Act 1972
- “the 1984 Act” - the Road Traffic Regulation Act 1984
- “the 1991 Act” - the Road Traffic Act 1991
- “the 2000 Act” - the Local Government Act 2000
- “the 2000 Regulations” - The Local Authorities (Arrangements for the Discharge of Functions) Regulations 2000
- “the Tupe Regulations” means The Transfer of Undertakings (Protection of Employment) Regulations 1981 and 2006
- “the Adjudication Service” - means the National Parking Adjudication Service or such other organisation as is approved by the Secretary of State and charged with amongst other things the responsibility of dealing with disputes between local authorities (including the Waverley Borough Council) within the County of Surrey (and other local authorities) and appellants
- “the Adjudication Service Levy” – means the amounts levied by the Adjudication Service and payable in accordance with clause 9.10 of this agreement
- “the Agency Area” - the area administered by the Borough Council under the provisions of the 1972 Act
- “the Commencement Date” - means the date the Designation Order comes into operation
- “the County Nominated officer (CNO)” - the officer nominated by the County Council’s Head of Transportation as being responsible for the management of all aspects of this Agency Agreement on behalf of the County Council

“Designation Order” - means the Road Traffic (Permitted Parking Area and Special Parking Area) (County of Surrey) (Borough of Waverley) Order 2007

“the Borough Nominated Officer” - the Officer nominated by the Borough Council as being responsible for all aspects of this Agency Agreement on behalf of the Borough Council

“the Executive” - the Executive of the County Council

“Financial Year” - means each period of 12 months beginning on 1 April in one year and ending on 31 March in the next year or such other period of 12 months in substitution as may be designated by the County Council and in relation to broken periods at the beginning and at the end of this agreement means such periods of less than 12 months as run from (i) the date hereof to the first 31st March thereafter and (ii) the last 1st April to the date on which this agreement is terminated

“the Functions” - the functions described in clauses 3.2 and 3.3 hereto

“Head of Transportation” - means the Head of Transportation for the time being of the County Council or such officer as the County Council may designate as replacing him.

“The Local Committee” – means the Waverley Local Committee of the County Council

“Financial Model” - means the Financial Model of Implementation named ‘Waverley 1’ or such later version or versions as are agreed between the parties

“On-Street Parking Account” - means the Account established under Clause 9.2 hereof

“Parking Adjudicator” has the same meaning as in the 1991 Act

“Parking Attendant” has the same meaning as in the 1991 Act

“Penalty Charge Notice” has the same meaning as in the 1991 Act

“Penalty Charge” has the same meaning as in the 1991 Act

“Permitted Parking Area” has the meaning ascribed to it in the 1991 Act and is the area to which the Designation Order applies

“The Policy” – means the Parking Enforcement Policy referred to in clause 3.7

“Secretary of State” - means the Secretary of State for Transport or such other person charged with general responsibility under the 1984

and 1991 Acts in relation to England

“Special Parking Area” - has the meaning ascribed to it in the 1991 Act and is the area to which the Designation Order applies

“Traffic Enforcement Centre “ means the Traffic Enforcement Centre, 4th Floor, St Katharine’s House, 21-27 St Katharine’s Street, Northampton, NN1 2LH

“Traffic Signs” – has the meaning ascribed to it in section 64(1) of the 1984 Act

- 1.2 Where the context so admits the expressions “the County Council” and “the Borough Council” shall include their respective successors in title
- 1.3 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
- 1.4 Reference in this Agreement to any statute or order shall include any statutory extension modification or re-enactment thereof and any order regulation or byelaw made thereunder
- 1.5 Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine feminine and neuter genders

WHEREAS:-

- 2 The County Council and the Borough Council are local authorities as defined by Section 270(1) of the 1972 Act
- 2.1 For the purposes of the 1984 Act the County Council is the Traffic Authority for all roads in the County of Surrey (other than motorways and all purpose trunk roads)
- 2.2 The Functions the subject of this Agreement are functions of the Executive by virtue of the 2000 Act
- 2.3 By virtue of Section 19 of the 2000 Act and the 2000 Regulations 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 and in accordance with these provisions the Executive has authorised the discharge by the Borough Council of certain Functions of the County Council relating to roads in the Borough Council's administrative area as set out in clauses 3.2 and 3.3 of this Agreement upon the terms described herein

- 2.4 By virtue of the Designation Order the Secretary of State has on application by the County Council designated the whole of the Borough Council's area as a Special Parking Area and as a Permitted Parking Area in accordance with Section 43 and Schedule 3 to the 1991 Act

AGENCY

- 3.1 In exercise of the powers in that behalf contained in Section 19 of the 2000 Act and the 2000 Regulations and subject to the terms and conditions hereinafter appearing the County Council hereby agrees and arranges that the Borough Council shall discharge the Functions on behalf of the County Council within the Borough Council's administrative area
- 3.2 The Functions are:-
- (a) the exercise of all duties and powers of the County Council pursuant or incidental to the provisions of (i) Section 66, Sections 69-73 and Schedules 3 and 6 of the 1991 Act as applied and amended by the Designation Order (ii) Sections 63A, 101 and 102 of the 1984 Act as amended by the Designation Order PROVIDED THAT the Functions shall not include any duties or powers of the County Council pursuant to section 74 of the 1991 Act as amended by the Designation Order nor the

functions of the Street Authority under the New Roads and Street Works Act 1991; and

(b) the exercise of all duties and powers of the County Council to maintain all Traffic Signs that have been put in place by the County Council and that are in place for purposes related to the functions specified within Clause 3.2(a) and Clause 3.3 of this Agreement and contained in the agreed budget agreed in accordance with Clause 9.5(i) but provided that the Borough Council shall not be obliged to exercise the duties and powers to maintain all Traffic Signs until such signs have been put in good order by the County Council to the joint satisfaction of both parties

(c) For the avoidance of doubt any functions powers duties or services of the Borough Council that relate to off-street parking in the borough of Waverley shall not be regarded as Functions for the purpose of this Agreement and upon termination or expiry of this Agreement the Borough Council shall continue to be entitled to exercise such powers and duties or carry out such functions and services and responsibility for enforcement of off-street parking legislation and subordinate legislation within the borough of Waverley and entitlement to all income related thereto shall (except as otherwise provided by legislation) remain in perpetuity with the Borough Council

For the avoidance of doubt any functions or services of the Borough Council that relate to off-street parking are not Functions within this Agreement

3.3 Without prejudice to the generality of 3.2 above it is declared that the Functions include :-

- (a) the issuing and collection of Penalty Charges in both the Permitted Parking Area and Special Parking Area also to include the administration of residents' parking schemes and the collection of charges for permits
- (b) dealing with the representations correspondence and appeals arising from issuing Penalty Charge Notices
- (c) taking steps to recover payments due including instructing registered or certificated bailiffs
- (d) subject to the condition set out in clause 3.4 the exercise of the powers for immobilisation and the removal, recovery, storage and disposal of vehicles and collection of charges in connection with the above activities
- (e) The registration of debts at the Traffic Enforcement Centre including making any statutory declarations

3.4 The Borough Council shall not commence to exercise powers under the 1991 Act for the immobilisation removal recovery storage and disposal of vehicles and collection of charges in connection therewith in respect of the Functions until the County Council has given consent for the use of those powers in accordance with the Policy

3.5 This Agreement

- (a) does not confer upon the Borough Council without the prior written consent of the County Council the power or right to (i) implement new pay and display schemes for on-street parking bays or (ii) make Traffic Regulation Orders, but it shall not remove such powers as have already been conferred by agreement on the Borough Council; and

(b) does not prevent the County Council following consultation with the Borough Council at its own expense from amongst other things installing and carrying out any related work in respect of signs plates and road markings within the Permitted Parking Area and the Special Parking Area

3.6 The County Council and Borough Council will join the Adjudication Service, in order to provide the adjudication facility required by the 1991 Act and the Borough Council will operate and administer an appeals procedure to the Parking Adjudicators appointed by the Adjudication Service

3.7 The Borough Council will devise an operational parking enforcement policy in accordance with the schedule to this agreement and will obtain the prior approval of the Head of Transportation to any amendment to this policy (such approval not to be unreasonably withheld or delayed) In seeking the approval of the County Council in accordance with part 1 of the schedule to this agreement the Borough Council shall provide the information specified in part 2 of the schedule and where the parties cannot reach agreement the dispute shall be dealt with in accordance with clause 12 to this agreement.

4. EXTENT OF AGREEMENT

4.1 This Agreement extends to the area edged green on the attached plan being the area designated by the Secretary of State as a Special Parking Area and as a Permitted Parking Area in the Designation Order and excludes any roads shown with a blue line

5 DURATION TERMINATION VARIATION AND REVIEW OF AGREEMENT

5.1 This agreement shall commence on the Commencement Date and shall continue in force until either :-

- (i) the date of expiry of a five year period starting on the Commencement Date or
- (ii) the date on which this agreement is determined by one year's notice in writing given by either party to expire on the thirty-first day of March in any year

whichever date occurs first

5.2 Notwithstanding the terms of clause 5.1 either party may terminate this Agreement without prejudice to any rights of action in respect of any antecedent breach by giving the other six months notice in writing expiring on the last day of any month if the other party continues to be in breach of this Agreement six months after the service of notice specifying the breach and requiring it to be remedied PROVIDED that if the recipient of the notice disputes that it is in breach and elects to submit the dispute to resolution under clause 12 to this agreement then there shall be deemed to be no breach unless and until the finding of a breach by the person appointed under clause 12

5.3 Written notice under clauses 5.1 or 5.2 or any other provision of this Agreement shall be by recorded delivery post and in the event of notice by the Borough Council shall be sent to the County Nominated Officer at County Hall Penrhyn Road Kingston upon Thames Surrey or such other address as is notified to the Borough Council from time to time and in the event of notice to the Borough Council shall be sent to the Borough Nominated Officer at Council Offices The Burys Godalming Surrey or such other address as is notified to the County Council from time to time and in each case shall be deemed to be served or given on the day it is received

- 5.4 Provided this Agreement has not been previously terminated the parties hereto shall on 31st March 2009 being the end of the second full Financial Year of the five year period referred to in clause 5.1(i) above, commence a review of this agreement with particular reference to the costs income and effectiveness of the arrangements during the preceding period of the agreement and with the intention of agreeing an extension thereof by the end of the fourth year of the five year period
- 5.5 Notwithstanding the provisions for termination contained in clauses 5.1 and 5.2 and except as otherwise provided in clause 5.4 above the terms of this Agreement may be varied at any time by agreement between the parties and such agreed amendments shall be endorsed on or attached to this Agreement and no variation or amendment shall be actionable until the endorsement has been finalised

6. EXERCISE OF AGENCY

- 6.1 In exercising the Functions the Borough Council hereby agrees with the County Council so far as practicable to discharge the Functions in accordance with the Policy and to have regard to and comply with all statutory and legislative requirements associated with the Functions
- 6.2 The County Council may only alter the full and/or discounted monetary amount of on-street Penalty Charges with the agreement of the Borough Council and subject where necessary to the approval of the Secretary of State
- 6.3 The County Council shall retain the right to approve the level of on-street parking charges including residents' and other parking permits in the area

indicated on the attached plan and in doing so will have regard to the provisions of clause 9.1 below and also to other relevant considerations

- 6.4 If the Borough Council wishes to make any change in the management of its off-street car parks, including any adjustment by notice or otherwise to the level of parking charges in any off-street car park the Borough 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

7. INDEMNIFICATION AND INSURANCE

- 7.1 The Borough Council shall indemnify and keep indemnified the County Council against all actions claims demands proceedings damages losses costs charges and expenses whatsoever in respect of or in any way arising out of the provision of the Functions or any part of them or other work carried out pursuant to this Agreement including injury to or death of any person and loss of or damage to any property including also property belonging to the County Council except to the extent that such actions claims demands proceedings damages losses costs charges or expenses arise out of the Borough Council's correct and proper adherence to the Policy or any act or omission of the County Council or its servants or agents or pursuant to clause 10 or 11 of this Agreement
- 7.2 Notwithstanding and independently of the Borough Council's obligations in this Agreement the Borough Council shall maintain at its own expense public liability insurance throughout the period of this Agreement The cover per incident under such policy at the date of this agreement shall be at least ten million pounds (£10,000,000) which sum shall be amended as often as the

sum applicable to the Borough Council's general policy for public liability insurance is amended AND the said cover per incident shall be equal to the amount of cover in the Borough Council's general policy for such insurance but in any event shall not be less than ten million pounds (£10,000,000)

7.3 The Borough Council shall in its own name and with the prior written consent of the County Council institute (which for these purposes shall include appealing against a decision of any Court tribunal or other judicial body) and defend all such claims or legal proceedings as may be necessary arising out of or in connection with the discharge and carrying out of any of the Functions by the Borough Council PROVIDED ALWAYS that EXCEPT in relation to claims or proceedings in respect of which insurances provide full indemnity and cover the Borough Council shall comply with any directions given by the County Council in relation to the prosecution defence compromise or settlement of any proceedings taken or defended in accordance with this clause to which the Borough Council is a party in the High Court of Justice the Court of Appeal or the House of Lords but the Borough Council shall not be obliged to take any step or any action that may compromise any claim under any insurance held by it.

7.4 the Borough Council shall use all reasonable endeavours to undertake the Functions in such a way as to minimise third party claims for compensation damages or otherwise or any legal liability arising in connection with or incidental to the carrying out of the Functions through the negligence default or neglect of the Borough Council

7.5 in the event of failure by either Council reasonably to comply with the requirements of this Agreement Financial Model and parking plans which

results in the other Council incurring additional expenditure then the Council at fault shall indemnify and reimburse the other Council for the reasonable expenditure so incurred Any dispute or difference arising between the parties in relation to this clause shall be dealt with in accordance with clause 12 of this Agreement

8. REVIEW OF OPERATIONAL ARRANGEMENTS

- 8.1 Notwithstanding the review provisions in clause 5.4 above the County Council through its CNO will annually formally review with the Borough Council through the Borough Nominated Officer the operation of the Functions AND any agreed changes will be recorded as provided for in clause 5.5
- 8.2 Regulation 10 of the 2000 Regulations shall apply in relation to discharge of the Functions by a committee sub-committee or officer of the Borough Council
- 8.3 The Borough Council will take reasonable steps to avoid any conflict between its own requirements and those of the County Council as traffic authority in relation to the subject matter of this Agreement In the event of any such conflict arising either in this regard or otherwise the matter will be referred to arbitration through the provisions of clause 12

9. FINANCIAL

- 9.1 the parties declare their intention to use all reasonable endeavours to ensure that the Functions shall as far as possible be run efficiently and economically and aim to make the Functions self financing
- 9.2 The Borough Council shall establish and hold an account called the Waverley On-Street Parking Account (defined in clause 1.1 as the “On-Street Parking Account”) and shall debit to the On-Street Parking Account

the costs of administering and carrying out the Functions including the expenses of all relevant and proper overheads professional services premises supplies insurances and meeting the costs of maintenance of Traffic Signs under clause 3.2(b) and other costs properly incurred

- 9.3 There shall be credited to the On-Street Parking Account all income received in discharging the Functions including without limitation income from Penalty Charge Notices, income from charges for parking on-street, and also from residents' and other parking permits and clamping and removals if undertaken
- 9.4 (i) For the avoidance of doubt it is hereby declared that the Borough Council holds the On-Street Parking Account and all monies therein on behalf of the County Council
- (ii) The County Council may from time to time specify in writing to the Borough Council such part or parts of the income and expenditure credited or debited to the On-Street Parking Account that need to be distinguished separately in that Account from other income or expenditure credited or debited to that Account
- 9.5 (i) The Borough Council not later than 28th February each year shall prepare and as far as possible agree with the County Council a budget for the discharge of the Functions for the ensuing Financial Year (commencing 1st April thereafter)
- (ii) In the event that the parties hereto are unable to agree the budget in clause 9.5(i) by 28th February in any given year the Borough Council shall account to the County Council on a three monthly basis for all income arising from, and expenditure in connection with, the exercise

of the Functions since the date on which the last account was submitted to the County Council and the dispute shall be referred for resolution in accordance with clause 12, PROVIDED THAT the provisions of this clause shall apply in the period until the dispute is resolved

- (iii) In discharging the Functions the Borough Council shall conform as far as practicable to the budgets described in (i) above;

9.6 In the event that following preparation and submission to the County Council of an annual statement of account in accordance with clause 9.8 there is

- (i) a surplus of income over expenditure such surplus in the current Financial Year may be used by the County Council in its sole discretion to reduce or eliminate deficits in other Boroughs in Surrey or for other purposes
- (ii) an excess of expenditure over income the County Council shall reimburse the On-Street Parking Account by the total amount of the excess

9.7 All transfers or contributions of funds between the County and Borough Council arising from the provisions of clauses 9.5 and 9.6 shall take place no later than four months after the end of the Financial Year

9.8 A statement of income and expenditure subject to audit relating to the On – Street Parking Account shall be prepared annually by the Borough Council as soon as practicable after the end of the preceding Financial Year and be submitted to the County Council no later than 30th June to include a full statement of transactions. Following the submission of the statement of income

and expenditure to the County Council the Borough Council will have their accounts audited and provide the Head of Transportation with a certified copy of these audited accounts. The records will be made available for inspection by the Head of Transportation and/or the internal and external auditors of the County Council. Access to the relevant records offices people and IT systems will be made available at reasonable times. Such accounts shall be drawn up in accordance with the policies and practices of the main accountancy bodies.

9.9 The parties hereto agree that the primary aim of the Agreement is to operate an effective on-street parking enforcement service but having regard to clause 9.6 above the parties hereto agree that when

(i) considering the Borough Council's budget for the discharge of the Functions
or

(ii) any approval is to be given under this Agreement or

(iii) taking any steps affecting the Functions

they will have proper regard to the objective of making the Functions self financing as soon as practicable as set out in paragraph 4.1 of the Department of Transport Circular 1/95 "Guidance on Decriminalised Parking Enforcement Outside London"

9.10 The Borough Council shall pay the Adjudication Service Levy as set by the Adjudication Service or imposed by statute direct to that organisation AND the levy relating to Penalty Charge Notices issued on-street will be paid from the On-Street Parking Account and the levy relating to Penalty Charge Notices issued off-street will be paid from the off-street account maintained by the Borough Council, and be liable for all costs due to the Adjudication Service (including joining fees)

10. APPOINTMENT OF STAFF AND CONTRACTORS

10.1 The Borough Council may carry out the Functions pursuant to the terms of this Agreement by means of directly employed Parking Attendants or by a contractor or by a combination of both of the above, as the Borough Council considers most advantageous, but shall consult with the County Council on the principles involved in these arrangements

10.2 Where the Borough Council uses a contractor the awarding of any contract should be subjected to the Borough's own tendering and financial regulations

11. EFFECT OF TERMINATION

11.1(i) The parties to this Agreement agree that if either party terminates this Agreement pursuant to Clause 5.1 the party terminating the Agreement shall indemnify the other party against any expenses (other than redundancy or similar costs dealt with in clause 11.4) directly attributable to the termination. In the event of such termination or on expiry of this Agreement the On-Street Parking Account shall accrue to the County Council subject to clause 11.2 below AND the Borough Council shall prepare a final account within three months of the date this agreement terminates with the final financial settlement of any outstanding matters finalised within the month thereafter.

(ii) The parties hereto agree that if either party terminates this Agreement pursuant to Clause 5.2 the party whose breach gave rise to the termination shall indemnify the other party against any expenses (other than redundancy or similar costs dealt with in clause 11.4) directly attributable to the termination

11.2 In the event that the On-Street Parking Account is, on notice of termination whether pursuant to Clause 5.1 or 5.2 or on expiry, in deficit the County Council shall take responsibility for such deficits except in situations where the deficits have arisen from failures on the part of the Borough Council in relation to their financial management of the Functions and in which case the Borough Council shall be responsible for such deficits but only where a final determination under clause 12 has considered the final account referred to in clause 11.1 and found the Borough Council to be responsible

11.3 (i) On termination of this Agreement under clauses 5.1 or 5.2 but not in the case of expiry under clause 5.1 the County Council shall assume responsibility for the processing of all Penalty Charge Notices and appeals issued or made prior to such the termination of the agreement and shall take over on prepayment of the proper costs involved all equipment used by the Borough Council solely in performing the Functions of this agreement AND the Borough Council shall provide the County Council with all information and data held by it, so far as it is reasonably practicable

(ii) In the event of expiry of the five year term of this agreement pursuant to clause 5.1(i) the Borough Council shall assume responsibility for the processing of all Penalty Charge Notices issued or made prior to such expiry and for the purposes of complying with this sub-clause the Functions shall continue to be exercised by the Borough Council until the final determination of the appeal or other final disposal of the matter

11.4 In the event that (a) the Agreement expires or the Agreement is terminated or the Borough Council otherwise ceases to carry out any of the Functions on behalf of the County Council for any reason whatsoever and any of the Functions

are subsequently transferred to or performed by the County Council, (b) such transfer is a 'Relevant Transfer' for the purposes of the Tupe Regulations, (~~the Regulations~~) and (c) unless agreed otherwise by the employees concerned, those employed by the Borough Council or its Parking Services Contractor in connection with the Functions under the Agreement shall have their contracts of employment governed by the Tupe Regulations and except where the aforesaid expiry or termination of the Agreement or ceasing to carry out any of the Functions is due to the Borough Council terminating the Agreement in accordance with clause 5.1 or being in breach in accordance with clause 5.2 the County Council shall keep the Borough Council fully indemnified against:

1. all and any costs, claims, liabilities, expenses (including reasonable legal expenses), emoluments and outgoings in respect of any employee of the Borough Council or its Parking Services Contractor whose employment is transferred as a result of the Borough Council ceasing to carry out any of the Functions; including (without limitation) all wages, bonuses, commission, PAYE, national insurance contributions and pension costs.
2. all and any costs, claims, liabilities and expenses (including reasonable legal expenses) arising due to or in connection with the termination or purported termination of the employment of any employee of the Borough Council or its Parking Services Contractor (as a result of the Borough Council ceasing to carry out any of the Function(s)) on or after the date that the carrying out of any of the Functions by the Borough Council ceases

3. and against all other costs, damages, fines, judgements, expenses and liabilities whatsoever incurred in relation to any such claim(s);

Provision of Information

The Borough Council undertakes to provide to either the County Council or any person or body nominated by the County Council, full information and documents relating to all employees who were engaged by the Borough Council at, or within the preceding 3 month period, of the date of termination or expiry or ceasing of the carrying out the Functions and to use its reasonable endeavours to procure that its Parking Services Contractor provides full information and documents in respect of its employees who may be affected by any transfer of the Functions

12. ARBITRATION

- 12.1 Without prejudice to the other rights of the parties where any question dispute or difference (“the Dispute”) arises between the parties and cannot be resolved by negotiation within three months of either party declaring that such question dispute or difference has arisen the parties shall seek to resolve the Dispute by using such appropriate procedure or method as may be agreed between them but in the event that they cannot agree on a procedure or method within one month after the end of the aforesaid period of three months then the Dispute shall be referred to the determination of an arbitrator nominated by the Chartered Institute of Arbitrators under the Arbitration Act 1996 (“**the appointed expert**”) PROVIDED THAT in the absence of a

direction by the appointed expert in accordance with clause 12.2.4 as to how the costs of the reference to the appointed expert should be borne as between the relevant parties the parties to such dispute shall bear their own costs and shall share equally the costs and charges of the appointed expert

12.2 The appointed expert shall:

12.2.1 afford to each of the parties to the dispute an opportunity to make representations to him in writing and if he so directs submissions upon one another's representations;

12.2.2 be entitled to stipulate the periods of time for the making of such representations as is reasonable in the circumstances;

12.2.3 be bound to have regard to such representations together with the terms hereof;

12.2.4 have the power of making directions as to the responsibility for the costs of his award (including both the costs of the relevant parties and the costs and charges of the appointed expert) to be met by any party behaving unreasonably;

12.2.5 in the making of his award not be liable save to the extent in law as provided in relation to the decisions of an expert;

12.2.6 make awards which are final and conclusive as between the parties to such dispute (except that such awards shall not remove the parties' rights of appeal on matters of law); and be replaced by a fresh appointee in the event of his becoming at any time unable or unwilling for any reason to proceed to discharge his function such fresh appointee to be appointed in the manner prescribed in sub-clause 12.1 of this clause 12

13. GENERAL

- 13.1 Notwithstanding Clause 3.1 hereof and as provided in Sections 19(4) and (5) of the 2000 Act nothing herein contained shall prevent the County Council from exercising the Functions provided that the County Council will not exercise any of the Functions except for some good and sufficient reason and then only after agreement with the Borough Council as to both the necessity for the action on the part of the County Council and as to the time when it will be exercised such agreement also to include when the Function will be handed back Provided that such agreement shall not be necessary where the urgency of the situation in the reasonably held opinion of the County Council acting by the County Nominated Officer does not permit of such consultation, or the situation is deemed to need urgent action
- 13.2 Notwithstanding Clause 3.1 hereof the Borough 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 or Functions to the extent of the request and to the exclusion of the Borough Council
- 13.3 Where any approval consent or permission is required from the County Council under this Agreement then any request for such consent or permission shall be addressed to the CNO and such consent or permission shall not be unreasonably withheld or delayed
- 13.4 This Agreement shall be subject to English Law in all respects (including formation) and shall be construed and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales

- 13.5 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement
- 13.6 The Borough Council shall in the performance of this Agreement comply with the provisions of the Human Rights Act 1998 in all respects and shall indemnify or keep indemnified the County Council against all actions costs claims demands proceedings damages losses costs charges and expenses whatsoever in respect of any breach by the Borough Council of this clause
- 13.7 The Borough Council shall not have the right to assign or transfer the benefit of this Agreement or any part of this Agreement without the consent of the County Council which shall not be unreasonably withheld
- 13.8 The County Council will pay the costs and expenses of the Borough Council incurred in connection with the preparation negotiation and completion of this Agreement
- 13.9 This Agreement is executed as a Deed

THE SCHEDULE

PART 1

1. The Borough Council must devise an operational parking enforcement policy which documents beats/areas and an enforcement regime for each beat, in accordance with the patrol hours available and staffing level available as set out in the Model. Details of such policy, beats and enforcement regimes shall be submitted for approval to the County Council (such approval not to be unreasonably withheld or delayed).

2. If requested in writing by the County Nominated Officer, the Borough Council shall provide evidence that the enforcement regimes are being achieved as is requested
3. The Borough Council shall collect data to enable it to compare its actual income, costs and other assumptions with those shown in the Model and shall examine any significant variations to determine whether action could be taken to reduce that variation and report this to the County Council.

PART 2

- patrol hours on-street
- The number of Penalty Charge Notices paid in total paid at each rate
- The number of Penalty Charge Notices cancelled (waived with a reason) write offs/spoilt i.e. issued incorrectly.

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

Head of Legal Services

THE COMMON SEAL of WAVERLEY)
 BOROUGH COUNCIL was)
 hereunto affixed in the presence of:-)

Chief Executive