



## Belfast City Council

<b>Report to:</b>	Shadow Strategic Policy and Resources Committee
<b>Subject:</b>	Agency Agreement for enforcement and management of off-street parking
<b>Date:</b>	20 <sup>th</sup> March 2015
<b>Reporting Officer:</b>	Chris McCarthy, Interim Strategic Director of Health and Environmental Services, Ext 3260
<b>Contact Officer:</b>	Siobhan Toland, Head of Environmental Health, Ext 3281 Damian Connolly, Environmental Health Manager, Ext 3361

<b>1</b>	<b>Relevant Background Information</b>
1.1	Members will be aware that as of 1 <sup>st</sup> April 2015 the Council will be responsible for the ownership of all Department for Regional Development (DRD) off-street car parks, their management and enforcement (excluding Park & Ride and Park & Share car parks).
1.2	The DRD are currently drafting the Assets Transfer Scheme. It is anticipated that responsibility for 30 car parks will transfer to the Council including ownership of 24. The remaining 6 will be leased by the Council.
1.3	Members, at the Transition Committee meeting held on 18 <sup>th</sup> August 2014, gave authority to officers to progress the development of a Service Level Agreement between the Council and the Department for Regional Development to continue to provide the current systems for parking regulation within off-street car parks between 1st April 2015 and October 2016. An extract of that minute is attached at Appendix 1.

<b>2</b>	<b>Key Issues</b>
2.1	The Asset Transfer Scheme is currently in a draft format and is being scrutinised by the relevant council officers. Amendments will be requested to the Scheme in order to ensure it fully satisfies the Council's requirements. The final Transfer Scheme will be reported to Committee when received from the DRD.
2.2	The proposed Agency Agreement is attached as Appendix 2. The document has been scrutinised by officers of the Council's Legal Services Section and Health and Environmental Services and they are satisfied with its contents.
2.3	The Agency Agreement applies to the 17 charged car parks transferring to BCC from DRD and takes effect on the 1 <sup>st</sup> April 2015 and remains in force until 31 <sup>st</sup> October 2015. The contract value is estimated at approximately £280k over the 18 month term of the agreement.
2.4	The Agency Agreement (which will be supported by a detailed Technical Specification) allows enforcement of off street car parks within the Council boundary to be provided for by the DRD.

	These documents allow the Council to satisfy itself that the service provided will assist the Council is fulfilling its statutory obligations.
2.5	Aspects of the service to be provided by the DRD on behalf of the Council include: <ul style="list-style-type: none"> <li>▪ Off-Street Enforcement</li> <li>▪ Cash Collection</li> <li>▪ Pay &amp; Display (“P&amp;D”) Machine Maintenance</li> <li>▪ Car Park Cleaning, plant and general maintenance</li> <li>▪ Penalty Charge Notice (“PCN”) Processing</li> </ul>
2.6	Effective enforcement through the issuing of PCN’s is essential to optimise car park usage so benefiting City Centre accessibility and the local economy. It is important to note that there are no targets or incentives for Traffic Attendants to issue PCNs. All appeals regarding PCNs are dealt with through an independent appeals process and neither Council officers nor elected members will be involved in decisions regarding the issuing or appeal of individual PCN’s
2.7	Clamping of vehicles and vehicle removal will be used as a means of debt recovery where an individual has 3 outstanding unpaid PCN’s owed to the Council.

<b>3</b>	<b>Resource Implications</b>
3.1	<b><u>Financial</u></b> It is anticipated that off street car parking will generate a surplus, however, this has been offset against other transferring budgets, with no overall net gain to the Council.
3.2	<b><u>Human Resources</u></b> DRD have proposed that no staff will transfer to Councils with the transfer of off-street car parking. If the Council decided to change the enforcement arrangements after October 2016 TUPE may apply to DRD and NSL staff employed in off-street enforcement at that time.
3.3	<b><u>Asset and Other Implications</u></b> It is anticipated that 30 car parks, including “Pay and display” machines, signage and street lighting within car parks will transfer to the Council.

<b>4</b>	<b>Equality and Good Relations Considerations</b>
4.1	No equality or good relations implications.

<b>5</b>	<b>Call In</b>
5.1	The recommendation to approve the Agency Agreement will <b>not be subject to call in</b> – as per Standing Order 47 (2)c below: <p style="margin-left: 40px;">(2) The following decisions shall not be subject to call-in—</p> <p style="margin-left: 80px;">(c) a decision where an unreasonable delay could be prejudicial to the council’s or the public’s interests;</p>

<b>6</b>	<b>Recommendations</b>
6.1	Members are requested to approve the Agency Agreement and that the Council enters into the same with the DRD.

<b>7</b>	<b>Decision Tracking</b>
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The Council will enter into the Agency Agreement with DRD.	
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<b>8</b>	<b>Key to Abbreviations</b>
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DRD – Department for Regional Development BCC – Belfast City Council	
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<b>9</b>	<b>Documents Attached</b>
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Appendix 1 – Extract from Transition Committee minutes of 18 <sup>th</sup> August 2014 Appendix 2 – Proposed Agency Agreement between Belfast City Council and DRD	
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## **Appendix 1 – Extract from Transition Committee minutes of 18<sup>th</sup> August 2014**

*Transition Committee*

*Monday, 18th August, 2014 4.30 pm*

*Transfer of Functions - Future Delivery of Off-Street Car Parking*

It is considered that there would be insufficient time for Councils to establish new contractual arrangements for this service before 1st April 2015. Therefore through the Regional Roads Sub Group the DRD has agreed in principle to provide services to councils for the enforcement and servicing of car parks until the existing contracts break at the end of October 2016. The level of service and cost would be agreed in a service level agreement between individual Councils and DRD.

Members are asked to approve:

1. That Officers progress the development of a Service Level Agreement between the Council and the DRD to continue to provide the current systems for parking regulation within off-street car parks between 1st April 2015 and October 2016; and

The Committee adopted the recommendations.

# **Agency Agreement**

**between**

**Belfast City Council**

**and**

**DRD**

**for**

**Parking enforcement in Council  
owned off-street car parks**

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## **SCHEDULE**

Technical Specification for the provision of Off Street Parking Enforcement

**THIS AGREEMENT** is made on the                      day of                      2015

This Agreement is made between Belfast City Council and the Department for Regional Development (“DRD”) of Clarence Court, 10-18 Adelaide Street, Belfast, BT2 8GB under Section 104 of the Local Government Act (Northern Ireland) 1972.

## **SECTION 1: INTRODUCTION**

The Northern Ireland Executive has agreed, as part of the process of Local Government Reform (“LGR”), to transfer certain functions in relation to off-street car parking to the 11 district councils being created as part of the LGR process. Historically, DRD was the single public road authority for Northern Ireland and carried out a range of statutory functions in respect of off street car parking under the Road Traffic Regulation (Northern Ireland) Order 1997 (“the 1997 Order”) and the Traffic Management (Northern Ireland) Order 2005 (“the 2005 Order”). Certain functions carried out by DRD under the 1997 Order and the 2005 Order in relation to off-street car parking are intended to transfer to [insert name of Council] under the Off-Street Parking (Functions of District Councils) Act 20[ ] (hereinafter referred to as “the Act”).

DRD has agreed that for the period specified in Section 3 hereto DRD shall provide certain services on behalf of the Council in relation to the civil enforcement and management of off-street car parking (hereinafter referred to as “the Service” and more particularly described in the Schedule hereto) for the purpose of assisting the Council in carrying out its functions under the Act and shall use its best endeavours to ensure compliance with same.

DRD has entered into sub-contracts with NSL and SPUR for the provision of certain car-parking services on behalf of DRD. For the avoidance of doubt, the Council is not a party to these sub-contracts and the Council’s contractual relationship with DRD shall be as set out in this Agreement.

## **SECTION 2: SCOPE**

### **2.1 Scope**

This Agreement (“the Agreement” which shall include the Technical Specification in the Schedule) shall apply to the car parks, equipment and associated car park signage (“the Assets”) described in the Technical Specification for the provision of Off Street Parking Enforcement.

### **2.2 Free car parks**

This Agreement applies to the charged car parks listed in the Technical Specification. If the Council wish to begin enforcement in free car parks, they may be added to the Schedule by agreement with DRD in accordance with Section 3 of this Agreement.

If the Council wish to carry out enforcement in free car parks the terms of such enforcement and charging will be agreed in accordance with Section 3 with DRD prior to the commencement of any such enforcement.

## **SECTION 3: DURATION OF THE AGREEMENT**

This Agreement takes effect from the 1<sup>st</sup> April 2015 and remains in force until 31st October 2016 (“the Term”).

This Agreement may be amended at any time with the consent of both parties, with such amendments to be evidenced in writing. Agreed amendments shall be incorporated into this Agreement.

## **SECTION 4: ROLES AND RESPONSIBILITIES**

**4.1 (a)** DRD and the Council shall carry out their obligations as set out in this Agreement.

(b) DRD shall carry out the Service with all reasonable skill, care and diligence and in accordance with all applicable law and legislation.

(c) DRD shall perform the Service and its obligations under this Agreement at all times in a professional manner and shall not undertake any activity, or act in such a way as to bring the image of the Council into disrepute and it shall ensure that its employees, agents and contractors act at all times in a professional manner when delivering the Service and shall not undertake any activity, or act in such a way as to bring the image of the Council into disrepute.

## **SECTION 5: INFORMATION**

### **5.1 Record management and data protection**

#### **5.1(a) Access to Personal Data**

In relation to this Agreement, the processing of any personal data by DRD and the Council during this interim arrangement will rest with each other respectively.

DRD and the Council will therefore assume the role of joint Data Controllers for the personal and sensitive personal data they process. Each has full responsibility to meet their data protection obligations regarding the personal data they gather, use and retain during the interim arrangement and ensure the eight principles are applied.

DRD and the Council will exercise control over the purposes and the manner in which the personal data is processed. DRD and the Council shall:-

- apply a level of interpretation to the personal data they process;
- take responsibility to exercise professional judgement on that data;
- undertake significant decision-making tasks in relation to personal data processed; and
- apply its own technical expertise and professional judgement on how best to store the personal data in a safe and accessible way

DRD and the Council shall deal with requests submitted to them for access to Personal Data, received under the Data Protection Act, 1998.

Requests for data shall be processed within the Freedom of Information Act/Environmental Information Regulations timescale of 20 working days and are subject to FOI/EIR regulations. Any other requests will have a 15 working day target for response. Data Subject Access request timeline is 40 working days.

#### **5.1(b) Access to General and Environmental Information**

If any request is submitted to either organisation for access to General Information received under the Freedom of Information Act 2000 ("FOIA") or Environmental Information received under the Environmental Information Regulations 2004 ("EIR"), relating to this overall function, the following procedure should apply:



The Council shall process all requests for access to information relevant to it. The requests may be submitted directly to the Council or to DRD. If the request is submitted to DRD it must immediately forward the request to the Council for processing. The Council has the responsibility to review and respond under the FOIA, EIR or treat as business as usual. DRD must provide assistance in locating and making available any information (if held) relevant to the request within 10 working days.

Information relating to procedures or service standards in relation to this interim arrangement will be held by the Council.

## **5.2 Correspondence**

The PCN and processing correspondence shall include reference to TransportNI corporate identity and the following words "Working in partnership Local Councils".

## **5.3 Exchange of Information**

The Council shall be facilitated with access to any statistical and other information gathered and retained by DRD in relation to this Agreement and the Service being provided during the Term of this Agreement. Both parties shall comply with their respective obligations under the Data Protection Act 1998.

## **5.4 Information provided in confidence**

The parties acknowledge that the cancellation guidelines and the costings set out in the Technical Specification shall be treated as commercial in confidence and should not form any part of information to be made available in the public domain. Nothing in this section shall relieve the parties of their obligations in relation to the FOIA and the EIR.

## **5.5 Exit Management**

DRD shall develop exit management plans with the NSL and IT provider, Spur Information Solutions Ltd. to transfer all data which is relevant to the Agreement and the Service to the Council upon termination of this Agreement.

DRD and the Council shall agree an exit management plan within 6 months of the commencement of the Agreement. The exit management plan will be reviewed thereafter by the parties as necessary by agreement. DRD shall use best endeavours to assist the Council with the provision of necessary information in relation to exit management and the delivery of the Service. Where not already in the public domain, DRD will provide the Council with relevant procedures in relation to the delivery of the Service.

As part of the exit management plan DRD will provide the Council with detailed knowledge of the operation and management of the Service in order to allow the Council to continue to comply with its obligations under the Act.

## **5.6 Procurement planning**

Within 6 months of the commencement of this Agreement, the Council shall notify DRD of its decision as to whether or not it intends to enter into a joint procurement exercise with DRD for provision of the Service following the Term of the Agreement.

## **5.7 Dealing with complaints**

Complaints relating to NSL staff and the service provided by them will be directed to NSL who will be responsible for investigating and responding to the complaint. NSL will forward a copy of the response to DRD who will forward a copy to Council

DRD shall be responsible for investigating and responding to any complaints relating to DRD and shall forward a copy of any response to such complaints to the Council.

All other complaints which fall outside the scope of this Agreement will be directed to the Council who will be responsible for investigating and responding to the complaint. Such complaints may include complaints regarding the condition of a car park, tariffs etc

Statistics on the number and nature of complaints reported to NSL and DRD as well as the outcome of complaints, will be reported to the Council by DRD on a monthly basis and discussed at the 6 monthly review meetings

## **SECTION 6: REVIEW**

DRD shall monitor the performance of the Service and provide monthly performance reports to the Council as per the template set out in the Schedule. DRD agree to maintain effective records demonstrating compliance.

DRD shall meet with a body representing all Councils within the first 4 weeks of the commencement of the Agreement and every 3 months thereafter to monitor and review the implementation, performance and quality of the Service. This will allow discussion of any issues that have arisen and action to be agreed where necessary.

The agenda for the review meetings between Council and DRD may include:

- Enforcement management of this Agreement
- PCNs issued
- Debt recovered
- Outstanding debt
- Complaints
- Correspondence
- Representations/appeals/challenges
- Innovation

Both parties shall also deal with issues arising outside of these meetings as soon as possible.

DRD on request shall attend meetings with council officers and elected member forums, as appropriate. Additional information may be provided by DRD as requested, where possible, and on a cost recovery basis.

## **SECTION 7: CHARGES**

### **7.1 Income to be paid by DRD**

DRD shall pay the following to the Council during the Term:

- A. All income in respect of off-street Penalty Charge Notices; and
- B. All income from off street parking.

Payment shall be made in accordance with the provisions of the Technical Specification.

### **7.2 Charges to be paid by the Council**

The Council shall pay the charges calculated in accordance with the Technical Specification to DRD within 28 working days of receiving an invoice supported by the monthly financial reports in accordance with the Technical Specification, subject to the approval of the invoice by the Council.

## **SECTION 8: DISPUTE RESOLUTION**

Should a dispute arise between the Council and DRD concerning any aspect of the Services rendered by DRD under this Agreement, the Council representative and DRD representative shall use reasonable endeavours to resolve the dispute within 30 working days. If the dispute remains unresolved, the Council Head of Service shall then attempt to resolve the dispute with his counterpart in DRD within 30 working days. If the dispute remains unresolved then the resolution will lie with the Chief Executive of the Council and their counterpart in DRD who shall use reasonable endeavours to resolve the dispute within 30 working days. These timescales may be extended by agreement by both parties. If the dispute remains unresolved the matter should be brought to an independent arbitrator for resolution. An independent arbitrator shall be agreed by both parties within 3 months of the commencement of this Agreement.

## **SECTION 9 TERMINATION**

9.1 If either Party has committed a breach of this Agreement which materially or adversely affects the performance of the Service and which is capable of remedy, the other Party may serve a written notice on the Party specifying:

9.1(a) the type of breach that has occurred giving reasonable details; and

9.1(b) that this Agreement will terminate on the day falling forty five (45) calendar days after receipt of the notice, unless the Party in breach puts forward an acceptable rectification programme (to be agreed between the parties) or rectifies the breach to the satisfaction of the other party acting reasonably within twenty five (25) calendar days of receipt of the notice.

and, if the Party in breach fails to rectify the breach within the time period specified in the rectification programme or to provide an acceptable rectification programme, the Agreement will terminate with immediate effect and without notice.

## **SECTION 10: INDEMNITIES**

Each of the parties agree to indemnify and keep indemnified the other party from and against all losses, actions, proceedings, claims, demands, expenses or liabilities whatsoever suffered by the other party as a result directly or indirectly of any unlawful act or any act, omission or negligence of the other or any breach by the other of its obligations under this Agreement (and this shall include any act, omission, negligence, or breach of this Agreement by their sub-contractors, agents, appointees and such others engaged by them).

DRD shall ensure that its sub-contractor shall hold and maintain public liability insurance for an amount not less than £10million for the Term of the Agreement.

## **SECTION 11: THIRD PARTY RIGHTS**

None of the provisions of this Agreement are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this Agreement.

## **SECTION 12: LAW**

This Agreement shall be governed by and interpreted in accordance with the law in

Northern Ireland and subject to the jurisdiction of the Courts in Northern Ireland.

**SECTION 13: SIGNATORIES**

This Agreement is made on the [ ] day of [ ] 2015 between Belfast City Council and the Department for Regional Development.

**IN WITNESS WHEREOF** the Council has hereunto affixed its corporate seal the day and year herein written

**PRESENT** when the Corporate Seal of **BELFAST CITY COUNCIL** was affixed hereto:-

)  
)  
)  
)  
)  
\_\_\_\_\_  
Lord Mayor )  
)  
)  
)  
\_\_\_\_\_  
Chief Executive )

**PRESENT** when the Official Seal of the **Department for Regional Development** was affixed hereto:-

)  
)  
Senior Officer.

Date:

**SCHEDULE**

Technical Specification for the provision of Off Street Parking Enforcement