

CABINET - 10 JULY 2003

HIGHWAYS AGENCY: MANAGEMENT OF TRAFFIC REGULATION

1. INTRODUCTION

- 1.1 Cabinet approved the acceptance of the offer from Hampshire County Council for the District Council to undertake the traffic regulation function at their August 2002 meeting, subject to approval of the formal agency agreement. This report is seeking approval to the agency agreement.

2. THE AGENCY AGREEMENT

- 2.1 Negotiations have taken place between the officers of the two authorities and a final Agreement is appended to this report that your officers are happy to recommend to you for approval. It clearly defines the sections of the relevant Acts that are being delegated and the protocol within which the Agency will be operated.

3. SCHEME AND DELEGATIONS

- 3.1 In order for the operation of the Agency to be managed effectively and efficiently amended delegations of powers to officers are required. The following delegation is proposed:

"To delegate the functions referred to in the Agency Agreement (subject to the general qualifications and procedures contained therein) to the following officers of NFDC:

Director of Resources
Head of Technical Services
Head of Legal and Democratic Services
Solicitors
Principal Engineer
Democratic Services Manager

Subject on all occasions to the relevant Ward* Member of NFDC not objecting to the proposal."

(*For the purpose above, the "relevant Ward Member" shall be those Member(s), in the opinion of any of the above officers, whose ward is likely to be affected by the proposal.)

4. **FINANCIAL IMPLICATIONS**

4.1 There are no changes in the financial implications as report to Cabinet and Council and previously approved.

4.2 The income to support this service will be £101,951, this will pay for the salaries and employment overheads of the staff employed and make a contribution towards the fixed overheads of the Council. Cabinet may recall that by taking on this work the costs arising as a consequence of the termination of the network management (highways maintenance) agency arrangements with HCC were reduced.

5. **ENVIRONMENTAL AND CRIME & DISORDER IMPLICATIONS**

5.1 There are none arising directly from this report.

6. **PORTFOLIO HOLDER'S COMMENTS**

6.1 I support the recommendations.

7. **RECOMMENDATIONS**

It is recommended that:

7.1 The Agency Agreement appended be approved and entered into at the earliest date.

7.2 The Delegations to Officers set out in para 3.1 be approved.

Further Information:

John Rainbow

Head of Technical Services

Tel: 023 8028 5901

E-mail: john.rainbow@nfdc.gov.uk

DRAFT 21.05.03

DATED

2003

HAMPSHIRE COUNTY COUNCIL

- and -

[] COUNCIL

AGENCY AGREEMENT
HIGHWAY TRAFFIC MANAGEMENT

J A Pattison
Head of Corporate & Legal Services
Hampshire County Council
The Castle
Winchester
Hampshire SO23 8UJ

THIS AGREEMENT is made the _____ day of _____ 200[]
BETWEEN HAMPSHIRE COUNTY COUNCIL (hereinafter called “the County
Council”) of the one part and [_____] COUNCIL (hereinafter called “the
[_____] Council”) of the other part.

WHEREAS

- (1) The County Council and the [_____] Council are local authorities constituted by the Local Government Act 1972
- (2) For the purposes of the Highways Act 1980 the County Council is the local authority for highways (other than trunk roads) situate in the County of Hampshire
- (3) By virtue of Section 19 of the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 a local authority’s executive may arrange for the discharge of any of the local authority’s executive functions by (inter alia) another local authority or its executive and by virtue of Section 1 of the Local Authorities (Goods and Services) Act 1970 a local authority and any other public body may enter into an agreement for the provision of certain services
- (4) The Parties hereto agree that all previous highway agency agreements are terminated EXCEPT [_____]

NOW THIS AGREEMENT WITNESSETH as follows:-

1.1 In this Agreement:

“The 1970 Act” shall mean the Local Authorities Goods and Services Act 1970

“The 1972 Act” shall mean the Local Government Act 1972

“the 1980 Act” shall mean the Highways Act, 1980

“The 1984 Act” shall mean the Road Traffic Regulation Act

“The 2000 Act” shall mean the Local Government Act 2000

“The 2000 Regulations” shall mean the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000

“County Interest Roads” shall mean those roads within the [] coloured red on the plan attached hereto

“Director of Environment” “Chief Executive” “County Treasurer” and ‘Director of Recreation and Heritage’ shall mean the Officers of the County Council for the time being holding the respective posts so designated or any duly authorised member of their respective Departments

“[] Engineer” shall mean the [] Council’s [] or such other officer or officers as the [] Council may from time to time nominate for the purposes of any of the provisions of this Agreement

[“Financial Code of Practice” shall mean the document produced by the County Council under paragraph 1 of the First Schedule]

“Highway” shall include all footpaths, bridleways, cycle tracks and byways open to all traffic and all roads including footways except trunk roads and motorway “Traffic Management” shall mean the carrying out of the functions for the control or regulation of the use of the highway by traffic including pedestrians which are listed in the Second Schedule hereto and ‘Traffic Management Work’ shall be construed accordingly

“Traffic Regulation Order” shall mean any order made under the 1984 Act or any other enabling power for the purposes of traffic management

“Relevant County Member” shall have the meaning defined in Clause 2.2 (b) hereof

“Significant Traffic Management Measure” shall have the meaning defined in Clause 2.2 (c) hereof

Any reference to any document, standard, criteria or allocation to be produced, prescribed or provided by the County Council shall apply from the time such document, standard, criteria or allocation have been notified in writing to the [] Council and to the latest version of such document so notified

- 1.2 In the exercise of powers in that behalf contained in Section 19 of the 2000 Act and the 2000 Regulations and Section 1 of the 1970 Act the County Council hereby agrees with the [] Council and hereby so arranges that the [] Council shall discharge on behalf of the County Council such functions and provide such services as are specified in this Agreement
- 1.3 This Agreement shall apply to all highways within the area of the [] Council
- 1.4 (a) Without prejudice to the generality of the foregoing the [] Council is hereby empowered to exercise those powers of the highway authority listed in Schedule 2 hereof to the extent that such exercise is necessary as aforesaid but subject to such limitations and restrictions as are contained in this Agreement or as may be specified thereunder in consequence thereof by or on behalf of the County Council
- (b) The authority given in this clause shall include power to take or defend any legal proceeding on behalf of the County Council and to enter into any agreements which may be necessary in order to discharge the authority given by the terms of this Agreement but subject to any limitations contained in this Agreement
- 1.5 (a) In exercising any functions under this Agreement the [] Council shall conform to such policies specifications and procedures as may from time to time be reasonably laid down by the County Council (or by the Director of Environment, the Chief Executive the County Treasurer, Director of Recreation and Heritage or any other duly authorised officer of the County Council) and to standards not less than those which may be so laid down and shall comply with any reasonable directions which may be given by the County Council either generally or in any particular case
- (b) Where common forms or documents have been prescribed by the County Council the [] Council shall use such forms and

documents unless otherwise agreed by the County Council in any particular case

- 1.6 Where any materials or goods are required by the [] Council for the performance of any function or provision of any services under this Agreement the [] Council shall unless otherwise agreed by the County Council or unless the [] Council can demonstrate a cost saving by the use of other arrangements obtain such goods or material through or under arrangements made by the County Council with contractors or suppliers in all cases where such arrangements exist
- 1.7 The performance of any function or provision of any services under this Agreement by the [] Council shall be carried out within the financial allocations made available by the County Council and subject to any cost limits or other criteria as may be specified by the County Council and the County Council shall make payments to the [] Council in respect of the discharge of functions or provision of services under this Agreement on the basis and at the times set out in the First Schedule hereto. The [] Council shall submit to the County Council such estimates, statements and other financial information as may be required by the County Treasurer or Director of Environment and within such period as may be specified
- 1.8 The County Council shall not be liable to make any payment in respect of the cost of any work carried out by the [] Council in pursuance of this Agreement in any case where the County Council is not reasonably satisfied by a report of the Director of Environment or such other person as he or she may appoint for that purpose that such work has been or is being properly executed. A copy of any report under this clause recommending the withholding of any payment shall be made available to the [] Council who shall have a reasonable opportunity of commenting thereon
- 1.9 Should the [] Council decline to carry out any works or to take any action in relation to any of the functions which are the subject of this Agreement following a request in writing by the County Council or fail to do

so within such reasonable period as may be specified in such request the County Council may itself carry out such works or take such action without prejudice to the rights and obligations of the parties under this Agreement

- 1.10 The [] Council shall indemnify the County Council in respect of all actions claim challenges demands expense proceedings arising out of or in connection with or incidental to this Agreement against the County Council or the [] Council acting as Agent of the County Council

PROVIDING THAT this indemnity shall not apply where such failure act or omission is wholly or mainly attributable to a failure act or omission by the County Council

- 1.11 Any formal document issued by the [] Council in connection with the discharge of any functions under this Agreement or to which the [] Council is a party (other than an assurance of a right interest or estate in land) shall state that such functions are exercised by the [] Council as agents on behalf of the County Council pursuant to these arrangements but no such document shall be invalid by reason only that this requirement is not complied with and no person acting in pursuance of any such document shall be concerned to see that such requirement is observed

- 1.12 Without prejudice to its liability under (1.10) hereof to indemnify the County Council the [] Council shall be insured against public liability and employers liability risks for the sum of at least £10,000,000 in respect of any one claim and shall be insured in the sum of £5,000,000 Professional Indemnity insurance

TERMINATION

- 1.13 This Agreement shall operate from [] and shall continue unless and until determined by either party giving the other two years' notice in writing to expire on the first day of April in any succeeding year

- 1.14 Notwithstanding the provisions for determination contained in Clause 1.13 hereof the terms of this Agreement may be varied or determined at any time by agreement between the parties hereto
- 1.15 Reference in this Agreement to any statutory provision shall be deemed to include reference to the same as amended or 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
- 1.16 For the avoidance of doubt, the Parties hereto believe that in the event of the termination of this Agreement or of the transfer of Traffic Management Work between the County Council and the [] Councils not involving such termination, the transactions thereafter constitute a “transfer of undertaking” for the purpose of the Transfer of Undertaking (Protection of Employment) Regulations 1981 (TUPE) and unless and until it is declared by any judicial or other competent authority that the TUPE regulations do not apply, each party shall act on the basis that they do
- 1.17 If it is declared by any judicial or other competent authority that the TUPE Regulations do not apply, then in the event of the termination of this Agreement the County Council shall if reasonably practicable forthwith offer employment to each of the staff on the same terms and conditions as would have applied had the TUPE Regulations been applicable or if such an offer is not reasonably practicable shall make an offer of employment on terms and conditions which taken as a whole are not materially less advantageous than those existing with the [] Council [job title] and shall in either case keep such offer open for not less than 6 weeks
- 1.18 The County Council undertakes to indemnify and hold harmless the [] Council from and against all losses, costs, awards, liabilities and expenses incurred by the [] Council in connection with or as a result of any claim or demand by any of the transferring staff in respect of redundancy, unfair dismissal and/or wrongful dismissal or otherwise arising from any act,

fault or omission of the County Council in relation to the transfer of any transferring staff and occurring on or after the date of any such transfer ('the Transfer Date' except where such transferring staff are formerly subject to the [] Council's disciplinary procedures prior to the Transfer Date

2. Traffic Management

2.1 Subject to paragraphs 2.2 to 2.7 below the [] Council shall be responsible for Traffic Management on all highways within the [] Council which are the subject of this Agreement

2.2 (a) (i) When the [] Council is considering making any Traffic Regulation Order or proposes to implement any other Significant Traffic Management Measure which does not require a Traffic Regulation Order the Relevant County Member shall be consulted at such time as will enable his/her views to be taken into account and in any event before any proposed Traffic Regulation Order is advertised in accordance with the relevant statutory procedure and reasonable notice shall be taken of any representations made by the Relevant County Member in respect thereof.

(ii) The Relevant County Member shall have a period of 21 days to make any representations in writing to the County Council
New Forest DC

(iii) If however the Relevant County Member objects to the proposal the [] Council shall refer the matter to the County Council to determine

(iv) Where after the Relevant County Member has been consulted the [] Council decides to advertise any Traffic Regulation Order or implement any other significant Traffic Management Measure which contains any significant variation from that which was the subject of the original consultation the

Relevant County Member shall be consulted again in like manner unless the variation is in accordance with the views the Relevant County Member has expressed on the initial consultation

(b) "Relevant County Member" means the member (or members) of the County Council for the electoral division (or divisions) to which the proposal relates or for any adjoining or adjacent division within the [] in respect of which in the opinion of the [] Engineer or the Director of Environment the proposal is likely to result in a significant change in the movement or character of traffic on any road

(c) For the purposes of clause 2.2 (a) above a Significant Traffic Management measure shall be any signing or physical alteration of the layout of a road which would have the effect of altering the existing movements of traffic or pedestrians or the ability of vehicles to obtain access to or park on any land (including any part of the highway) or any other measure on which in the opinion of the [] Engineer it would be reasonable to make such consultations referred to at Clause 2.2(a) above having regard to the intentions of such proposed provisions

2.3 The County Council shall in all cases be consulted on all proposed Traffic Regulation Orders or any other Significant Traffic Management Measures which

(a) relate to any County Interest Roads or

(b) while not directly relating to a County Interest Road are in the opinion of the [] Engineer likely to have a significant effect on the amount of movement or character of traffic using such County interest roads or any road outside of the area of the []

(c) will involve expenditure which cannot be met within the current budget allocation

2.4 Consultation with the Director of Environment under paragraph 2.3 above shall be carried out as agreed between the Director of Environment and the [] Engineer either generally or in the particular case and the [] Council shall in any event give to the Director of Environment not less than 14 days notice in writing before advertising any Traffic Regulation Order to which subclause 2.3 applies

2.5 The County Council may at any time direct that any proposal to which subclause 2.3 applies shall not be proceeded with and the District Council shall comply with such direction.

2.6 The County Council may after consultation with the [] Council promote Traffic Regulation Orders and any other Traffic Management Measures within the District as they consider necessary

2.7 The foregoing requirements as to consultation and notification are intended to govern procedures as between the parties hereto and the validity of any Traffic Regulation Order which has been made or in compliance with the relevant statutory provisions shall not be affected or held to be void by any failure or omission to comply with any such requirements other than a direction under subclause 2.5

3. Claims

3.1 (a) Claims and proceedings against the highway authority in respect of any functions exercised by the [] Council pursuant to this Agreement (other than claims under contracts undertaken by the [] Council) shall be handled by the County Council.

(b) Any such claims or other intimation of such proceedings received by the [] Council shall be referred by the [] Council to the County Council as soon as possible but in any event within 7 days of receipt of claim together with all supporting information

(c) The [] Council shall provide to the County Council any witnesses, information, evidence, documents or other material which are necessary to enable the County Council to conduct or settle any subsequent proceedings

4. Contract (Rights of Third Parties) Act 1999

4.1 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

5. Race Relations Act 1976

5.1 The [] Council must comply with the provisions of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000 and shall ensure that they perform their responsibilities under this Agreement with due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relationships between different racial groups

6. Data Protection Act 1998

6.1 (a) The [] Council shall at all time comply with the Data Protection Act 1998 including, where appropriate maintaining a valid and up to date registration or notification under the Data Protection Act 1998

(b) The [] Council shall not disclose Personal Data to any third parties other than:

- (i) to employees and sub-contractors to whom such disclosure is reasonably necessary in order to discharge the functions and provisions of services as specified in this agreement; or
 - (ii) to the extent required under a court order provided that disclosure under paragraph (i) is made with the approval of the County Council and subject to written terms no less stringent than the terms contained in this clause and that the [] Council shall give notice in writing to the County Council of any disclosure of Personal Data it or a sub-contractor may make under paragraph (ii) immediately it is aware of such a requirement
- (c) The [] Council shall indemnify and keep indemnified the County Council against all losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this clause by the [] Council and/or any act or omission of any sub-contractor
- (d) The [] Council is required to comply with the obligations set out in Principle Seven of the Data Protection Act 1998
- (e) In this clause “Personal Data” means personal data as defined in the Data Protection Act 1998 which is supplied to the [] Council by the County Council or obtained by the [] Council in the course of performing the services”

Where Principle 7 (relating to security of Data) is particularly relevant eg contracts which include market research or other forms of data collection, the Contract should include the following:

- (f) The [] Council shall grant to the County Council the right of reasonable access to all records of personal data and shall provide reasonable assistance at all times during the currency of this

Agreement to enable the County Council to ensure the quality and security of data collected

7. **Entire Agreement**

- 7.1 The parties agree that this Agreement forms the entire Agreement between the parties regarding the subject matter and that any future variation may only take the form of a supplemental deed by the parties or their successors in title
- 7.2 The parties warrant one to the other that this Agreement supersedes all earlier meetings, discussions, correspondence, arrangements, agreements of any kind and that there are no collateral or supplemental agreements at the time this Agreement is signed

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

THE COMMON SEAL of HAMPSHIRE)
COUNTY COUNCIL was hereunto)
Affixed in the presence of:-)

Chief Executive

THE COMMON SEAL OF []
[])
was hereunto affixed in the)
presence of:-)
[])

FIRST SCHEDULE

FINANCIAL ARRANGEMENTS

1. General

- 1.1 The general principles outlined in this schedule will be supplemented by a Financial Code of Practice which will be determined and may subsequently be reviewed and revised by the County Council after consultation with the [] Council.

2. Programmes, Budgets and Financial Control

- 2.1 The [] Council will provide on request estimates of revenue expenditure and income for the current and forthcoming years in the manner prescribed by

the County Council and in accordance with the timetable set by the County Council.

2.2 The County Council reserves the right to revise the approved programme and budget. In making any decision to revise the approved budget or programme the County Council will acknowledge commitments properly made by the [] Council to contractors and suppliers, in accordance with the terms and determined financial limits of the agency agreement prior to such a decision being taken.

2.3 Expenditure which is in excess of the finally approved financial budget will not be supported by the County Council unless approved by the Director of Environment.

3. Scheme Progress and Expenditure Returns

3.1 The [] Council will submit at such intervals as may be required by the County Council, information on the progress of named schemes within the programmes and make returns of actual expenditure and income on specified budget heads or on named schemes together with forecasts for the remainder of the year and subsequent years, together with such other information as the County Council may request relating to the approved programme and revenue budget.

3.2 The [] Council will submit a final year end return of expenditure and income by no later than 30 April following the year end. The County Council may request the [] Council to submit a provisional final expenditure return prior to that date.

4. Payment by the County Council for the Discharge of Functions and Provision of Services

4.1 The County Council will reimburse operational expenditure as defined in the Financial Code of Practice reasonably incurred in the discharge of functions,

the provision of services and the exercise of powers subject to that expenditure not exceeding the latest approved financial allocation and complying with any standards and cost criteria laid down by the County Council.

- 4.2 In respect of technical, professional and administrative support services and activities associated with traffic management and the exercise of powers, the County Council will determine, subject to annual review the numbers and grades of technical staff which it is willing to support. The annual budget will be determined by the County Council to reflect the cost of the approved staffing levels and an allowance for administrative support, [non-employee costs], office accommodation and central department services, less income generated from these activities. Payment by the County Council will not exceed the lower of the annual budget as determined or actual costs incurred.
- 4.3 Payment for technical, professional and administrative support services and activities associated with the provision of other services, as defined in clauses 3 or 4 of the agreement, and with the interim management arrangements for highway properties, where appropriate, will be the subject of specific arrangements to be agreed in each case.
- 4.4 The County Council may introduce alternative means of determining payments for the discharge of functions, the provision of services and the exercise of powers under this agreement after consultation with the [] Council.
- 4.5 Payments on account to the [] Council in respect of agency expenditure will be based upon the approved budget. Payments on account may be suspended pending the receipt of any monitoring returns which are outstanding on the due date for payment. Payment to the [] Council shall be in such a manner and at such times as shall be determined from time to time by the County Treasurer.

5. **Audit**

- 5.1 The [] Council must make available for inspection to authorised County Council staff and to the external auditors of the County Council as and when required all documents and vouchers supporting claims for reimbursement and maintain and produce if necessary such other records as will enable costs and efficiency to be monitored and controlled.

SECOND SCHEDULE

Powers and Functions which may be exercised by the [] Council on behalf of the County Council

The exercise of the powers and functions contained in this Schedule is subject to the general qualifications and procedures contained in this Agreement and to the specific qualifications and procedures set out below.

PART I

(a) **Executive Functions**

Highways Act 1980

Section 115 of the 1980 Act – Provision for areas for Parking Heavy Goods vehicles	Only to be exercised by the [] Council where the County Council has previously given approval in writing and then subject to any reasonable requirements of the County Council
--	---

Road Traffic Regulation Act

Sections 1 2 3 and 4 of the 1984 Act – Traffic Regulation Orders	The full extent save for Prohibition of Driving Orders or any other Road Traffic Orders whereby any road
---	--

	will cease to be available as a vehicular highway in which case only to be exercised by the [] Council where the County Council has previously given approval in writing and subject to any reasonable requirements of the County Council
Sections 9 and 10 of the 1984 Act - Experimental Traffic Regulation Orders	The full extent save for Prohibition of Driving Orders or any other Road Traffic Orders whereby any road will cease to be available as a vehicular highway in which case only to be exercised by the [] Council where the County Council has previously given approval in writing and subject to any reasonable requirements of the County Council
Sections 14 and 15 of the 1984 Act - Temporary Road Traffic Regulation Orders	The full extent
Section 16A of the 1984 Act – Special Events Orders	The full extent
Section 19 of the 1984 Act – Public Service Vehicle Orders	Only to be exercised by the [] Council where the County Council has previously given approval in writing and then subject to any reasonable requirements of the County Council

Section 23 of the 1984 Act – Pedestrian Crossings	Only to be exercised by the [] Council where the County Council has previously given approval in writing and then subject to any reasonable requirements of the County Council
Sections 29 and 31 of the 1984 Act – Street Playgrounds	The full extent
Sections 32(1)(b) 36 and 37 of the 1984 Act – Parking Spaces on roads	The full extent
Section 45 of the 1984 Act – Designation of paying places on highway	Only to be exercised by the [] Council where the County Council has previously given approval in writing and then subject to any reasonable requirements of the County Council
Sections 46 46A 49 51 53 and 55 of the 1984 Act – Regulation of designated parking places	Only to be exercised by the [] Council where the County Council has previously given approval in writing and then subject to any reasonable requirements of the County Council
Section 61 of the 1984 Act – Loading areas	Only to be exercised by the [] Council where the County Council has previously given approval in writing and then subject to any reasonable requirements of the County Council

Sections 65 and 68 of the 1984 Act –
Placing of traffic signs

The full extent save where placed in consequence of any Traffic Regulation Order where the prior approval of the County Council is required in which case only to be exercised by the [] Council with the County Council's consent

Sections 82 83 84 and 85 of the 1984 Act -
Speed Limits and Traffic Signs

Only to be exercised by the [] Council where the County Council has previously given approval in writing and then subject to any reasonable requirements of the County Council

Section 92 of the 1984 Act - Bollards

Only to be exercised by the [] Council where the County Council has previously given approval in writing and then subject to any reasonable requirements of the County Council

(b) Non Executive Functions

The Cycle Track Act 1984

Sections 3 and 4 -

Conversion of footpath into a cycle track

Only to be exercised by the [] Council where the County Council has previously given approval in writing and then subject to any reasonable requirements of the County Council