

Dated _____ 2017

OLDHAM BOROUGH COUNCIL (1)

- and -

SALFORD CITY COUNCIL (2)

COLLABORATION AGREEMENT

PLANNING

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THIS DEED is dated

2017

PARTIES:

- (1) **OLDHAM BOROUGH COUNCIL** of Civic Centre, West Street, Oldham, OL1 1UG ("OCC")
- (2) **SALFORD CITY COUNCIL** of Civic Centre, Chorley Road, Swinton, M27 5AW ("SCC")

BACKGROUND:

- (A) OBC's executive director has determined to delegate some of its operative planning functions to SCC, and SCC has determined to exercise those planning functions on behalf of OBC, on the terms set out in this Agreement.
- (B) It is the intention of the parties that regulation 12(7) of the Public Contracts Regulations 2015 should apply to this Agreement (being a contract which establishes or implements co-operation between contracting authorities) so that this Agreement falls outside the scope of Part 2 of those Public Contracts Regulations 2015.

AGREED TERMS:

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

"Commencement Date"	xxxxxxxxxxxxxxxx 2017;
"Dispute Resolution Procedure"	the procedure set out in clause9;
"Environmental Information Regulations"	the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
"Exit Plan"	the plan set out in Schedule 3;
"FOIA"	the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such

	legislation;
"Force Majeure"	any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster;
"Management Reports"	the reports to be prepared and presented by the SCC Service Leads in accordance with clause 6.4 and Schedule 2;
"Municipal Year"	the period from 1 April to 31 March in each calendar year;
"Necessary Consents"	all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services;
"Quarter"	each three month period during a Municipal Year ending on 30 June, 30 September, 31 December and 31 March;
"Responsible Officer"	for OBC the XXXXXXXXXX (or such alternative representative as may be appointed by OBC from time to time) and for SCC the XXXXXXXXXXXX(or such alternative representative as may be appointed by SCC from time to time);
"Service Leads"	the operational lead appointed for the Services by the parties from time to time and with delegated authority to exercise the responsibilities set out in clauses 6.1 to 6.5;
"Services"	the planning services to be delegated by OBC and delivered by SCC pursuant to this Agreement which are more particularly

	described in Schedule 1;
"Term"	the period of [] years from the Commencement Date, subject to the provisions for earlier termination;
"Terms of Reference"	the terms of reference of the Responsible Officers as set out in Schedule 2;
"Working Day"	Monday to Friday, excluding any public holidays in England.

- 1.2 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.
- 1.3 Where there is any conflict or inconsistency between the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- 1.3.1 the clauses of the Agreement;
 - 1.3.2 Schedule 1 to this Agreement;
 - 1.3.3 the remaining schedules to this Agreement.

2. TERM

This Agreement shall take effect on the Commencement Date and shall continue for the Term unless terminated in accordance with clause 155.

3. DELEGATION AND PERFORMANCE OF THE SERVICES

3.1 Pursuant to [section 9EA] of the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 and in accordance with the provisions of this Agreement and subject to the governance arrangements set out herein:

- 3.1.1 the executive director of OBC hereby authorises SCC to discharge some of the functions of the executive of OBC in relation to planning ; and
- 3.1.2 SCC hereby agrees to discharge some of the function of the executive of OBC in relation to planning,

PROVIDED THAT such delegation shall not fetter the ability of the executive of OBC to exercise its planning functions concurrently. To discharge some of the functions of the executive director of OBC in relation to planning , SCC shall provide the Services as set out in Schedule 1 with effect from the Commencement Date.

- 3.2 SCC shall ensure that sufficient resources are allocated to ensure that the Services are provided:
- 3.2.1 with reasonable skill and care; and

3.2.2 in accordance with all applicable legislation.

3.3 SCC shall ensure that all Necessary Consents are in place to provide the Services.

3.4 Subject to clauses 3.3 above and 8 (Variation), the parties may agree to vary the content of the Services from time to time.

4. COST SHARING

4.1 During the Term, OBC shall make payment to SCC in relation to the costs of the discharge of OBC's planning functions / Services as set out in Schedule 1.

5. LIMITS ON POWERS OF THE RESPONSIBLE OFFICERS

5.1 The governance of the Services will:

5.1.1 provide strategic oversight and direction for the development of Services to deliver high quality, efficient and effective services across both OBC and SCC and where possible deliver maximum economies of scale and efficiencies for the parties;

5.1.2 be based on clearly defined roles and responsibilities at each organisation, group and, where necessary, individual level; and

5.1.3 provide coherent, timely and efficient decision-making.

5.2 The parties shall delegate to their respective Responsible Officer power to act on their behalf in the management and oversight of the Services provided always that the Responsible Officers:

5.2.1 act in accordance with the Terms of Reference as detailed in Schedule 2;

5.2.2 do not agree any changes to the arrangements as set out in this Agreement except in accordance with the Terms of Reference as detailed in Schedule 2.

5.3 The parties hereby agree that the Terms of Reference set out in Schedule 2 may only be changed with the written agreement of both parties.

5.4 The Responsible Officers shall:

5.4.1 provide overall strategic oversight and direction to the performance and development of the Services under this Agreement;

5.4.2 oversee the day to day business operations of the Services and report back to the parties. All resolutions of the Responsible Officers are subject to the provisions set out in the Terms of Reference;

5.4.3 be managed in accordance with the Terms of Reference; and

5.4.4 be entitled to make any decisions in accordance with his or her respective delegated authority in accordance with the relevant

party's Standing Orders and Standing Financial Instructions and such decisions shall be binding on the relevant party.

- 5.5 The parties further acknowledge that where the relevant Responsible Officer (or alternative representative) does not have delegated authority as set out in the respective party's Standing Orders and Standing Financial Instructions he or she shall refer to and make recommendations in accordance with the relevant party's constitution or Standing Orders for approval (or otherwise) of the relevant decision and no decision of the Responsible Officer shall be binding on the relevant party unless it is so approved in accordance with the relevant party's constitution or Standing Order.
- 5.6 Each party shall retain and comply with all of its own policies and procedures in the performance of the Services, including but not limited to audits.

6. MANAGEMENT OF THE SERVICES

- 6.1 The parties shall each appoint a Service Lead to manage the day to day business operations of the Services who will report to the Responsible Officers in relation to overall delivery of the Services.
- 6.2 In the event that a party is not complying with its obligations under this Agreement, the other party may refer the matter to the Responsible Officers who will appraise the situation and if necessary instruct the party allegedly in breach to take remedial action.
- 6.3 The Service Leads will provide strategic management at service level. They will provide assurance to the Responsible Officers that the key objectives for the Services are being met and that the Services are performing within the boundaries set by the parties.
- 6.4 The Service Leads shall provide the Management Reports on the Services to the Responsible Officers in the form and at the intervals set out in Schedule 2.
- 6.5 The Responsible Officers and the Service Leads shall meet in accordance with the details set out in Schedule 2 and the Service Leads shall, at each meeting, present their previously circulated Management Reports and Financial Reports.

7. INSURANCE, LIABILITY AND INDEMNITY

- 7.1 Nothing in this Agreement shall operate to limit a party's liability for:
- 7.1.1 death or personal injury caused by its or its contractor's negligence;
 - 7.1.2 fraud committed by or on behalf of it; or
 - 7.1.3 any other liability which cannot be legally excluded.
- 7.2 OBC shall take out and maintain with reputable insurers, relevant insurance cover to be kept in place until the planning function is transferred to SCC.

7.3 SCC shall take out and maintain with reputable insurers, all relevant insurance cover from the time of delivery of the planning function at the relevant SCC facility onwards.

7.4 Notwithstanding clause 7.3, SCC shall fully and effectively indemnify, and keep indemnified, OBC in relation to any claims, including third party claims, brought against OBC and which arise from SCC's performance (or non-performance) of OBC's planning function as delegated under this Agreement. Further, SCC undertakes that it shall not bring any claim (whether by way of seeking contribution or otherwise), nor shall SCC cause any claim to be brought on its behalf, against OBC arising out of any claim brought against SCC which claim arises from SCC's performance (or non-performance) of OBC's planning functions.

8. VARIATION

Any variations to the Services or to this Agreement must be agreed by the parties in writing before any such variation can be implemented.

9. DISPUTE RESOLUTION

9.1 Any dispute in relation to the Services shall be referred to the Responsible Officers for resolution in the first instance.

9.2 The Responsible Officers shall use their best endeavours to resolve any disputes arising out of this Agreement. If any dispute cannot be resolved by the Responsible Officers, then either party may, by notice in writing to the other, refer the dispute to the appropriate level of following escalation process:

Firstly, to the OBC Director of Economy and Skills and SCC Director of [] ; and

Secondly, to the OBC Chief Executive and SCC Chief Executive.

PROVIDED THAT if a dispute remains unresolved after that, the parties would agree to terminate this Agreement and the provisions of clause 166 shall apply.

10. SUB-CONTRACTING AND ASSIGNMENT

Neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other party.

11. FREEDOM OF INFORMATION

The parties acknowledge that they are subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with each other to enable each other to comply with these information disclosure requirements. In particular requests for information about matters covered by this Agreement shall be shared, where practicable within 5 (five) Working Days of receipt and draft replies shared at least 5 (five) Working Days prior to the deadline for responding to the request.

12. DATA PROTECTION

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- 12.1 The parties shall (and shall procure that any personnel involved in the provisions of this Agreement shall) comply with any notification requirements under the DPA and the parties shall duly observe all their obligations under the DPA, which arise in connection with this Agreement.
 - 12.2 The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.
 - 12.3 The parties shall negotiate in good faith to agree a data sharing protocol between them in relation to the Services where applicable and necessary.

13. CONFIDENTIALITY

- 13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information: (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement; (ii) as may be required by law, court order or any governmental or regulatory authority. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13.3.
- 13.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this Agreement.

14. AUDIT

- 14.1 During the Term a party may conduct (or be subject to an audit) to verify the economy, efficiency and effectiveness with which the parties have used their resources and the accuracy and completeness of the Management Reports.
- 14.2 Except where an audit is imposed on the parties by a Minister or regulatory body, no party may conduct an audit under this clause 144 more than once in any calendar year.
- 14.3 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by a party in which case that party shall reimburse the other party's reasonable costs incurred in the course of the audit.

15. TERMINATION

- 15.1 The parties may agree to terminate this Agreement in full at any time by mutual agreement.
- 15.2 Either party may terminate this Agreement immediately on service of written notice to the other if:
 - 15.2.1 the collaborative arrangements intended to be effected by this Agreement are challenged on the grounds that they constitute a breach of EU procurement law and legal proceedings are issued;

15.2.2 the other party is in material breach of its obligations pursuant to this Agreement which cannot be resolved in accordance with the dispute resolution process set out in Clause 9.

16. CONSEQUENCES OF TERMINATION

- 16.1 On the expiry of the Term or if this Agreement is terminated for any reason the provisions of the Exit Plan shall come into effect and the parties shall co-operate fully with each other to ensure an orderly migration of the Services back to the respective parties or a replacement Services provider.
- 16.2 On termination of this Agreement and on satisfactory completion of the Exit Plan, the parties shall procure that all data and other material belonging to the other party (and all media of any nature containing information and data belonging to the party and/ or relating to the Services), shall be delivered to the respective party forthwith and the Chief Executive for OBC and the Chief Executive for SCC shall certify full compliance with this clause.
- 16.3 The provisions of clause 7 (Insurance, Liability and Indemnity), clause 11 (Freedom of Information), clause 12 (Data Protection), 13 (Confidentiality) and this clause 16 (Consequences of Termination) shall survive termination or expiry of this Agreement.

17. FORCE MAJEURE

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from an event of Force Majeure. In such circumstances the parties shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for thirty five (35) Working Days, either party may terminate this Agreement by giving immediate written notice to the other party and in which circumstances the provisions of clause 16 (Consequences of Termination) shall apply.

18. GENERAL

- 18.1 The failure or delay by either party to enforce any one or more of the provisions of this Agreement shall not operate as a waiver of them, or of the right at any time subsequently to enforce all provisions of this Agreement. Any waiver of any breach of this Agreement must be provided in writing.
- 18.2 If any of the provisions of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.
- 18.3 Nothing in this Agreement shall be construed as constituting a partnership between the parties nor as constituting either party as the agent of the other for any purpose whatsoever except insofar as specified by the terms of this Agreement.
- 18.4 No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.
- 18.5 This Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

18.6 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

19. NOTICES

Notices shall be in writing, and shall be sent to the other party marked for the attention of the OBC Responsible Officer and the SCC Responsible Officer at the address set out for each such party in this Agreement. Notices may be hand delivered or sent by first-class mail. Correctly addressed notices sent by first-class mail to the Responsible Officer shall be deemed to have been delivered 48 (forty-eight) hours after posting.

20. GOVERNING LAW AND JURISDICTION

20.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England.

20.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The **COMMON SEAL** of
OLDHAM BOROUGH COUNCIL

was hereto affixed in the presence of:

.....

Authorised Officer

The **COMMON SEAL** of **SALFORD CITY COUNCIL** Was hereto affixed in the presence of:

.....

Authorised Officer

SCHEDULE 1

Description of Services and Costs

The scope of our service per application is as follows:

- Application collection and handover discussion/briefing as necessary.
- Review planning application and supporting documents.
- Site visit, taking photographs and working up assessment
- Review and application of national and local planning policy and any other relevant documents.
- Assessment of consultee and third party representations.
- Negotiations as part of the planning application process to secure amendments and added value.
- Production of a report with recommendations and conditions/ reasons.
- Quality control by a UV senior officer/ manager.
- Final despatch to the council - upload to the back office file system or equivalent.
- Overall account management (performance/ budget etc.) in collaboration with the Council.

We would (through an inception meeting) organise the day to day logistics confirming role and responsibilities to ensure efficient and effective delivery.

The above services will be delivered on the basis of a fixed price of £155 per returned application (i.e. written report with recommendation). The fixed fees are exclusive of VAT, car parking charges, mileage (or fuel/car hire). Mileage is charged at 50 pence per mile.

We will be able to provide the householder support from 16th October 2017

An On-Site Based Planning Application Service

We understand may require a planning officer to be present in the Oldham Council office to work alongside the Councils planning team on the more politically sensitive cases. This is envisaged to require 2 to 3 days support on site.

We propose that a Senior Planning Officer available to assist with this element of the service and charged at a cost of: £345 per day (£46 per hour based on a 7.5 hour day).

The fees listed above are exclusive of VAT and other costs including mileage (at cost – 50p per mile) parking (at cost) and car hire (if required-usual daily charge is circa £24/£28) and fuel at cost.

We will be able to provide the on-site support from the end of October 2017.

Other Services As Required By the Council

Policy Planning Services

We comprise a mix of very experienced local government officers alongside colleagues in the team who have gained experience in a range of local government and private sector environments. We can draw together the required level of technical capability with the political and commercial awareness that can hit the ground running to deliver specific projects. Moreover, we can draw upon a wealth of other disciplines and experience from other Capita teams. We can deliver the full range of planning policy documents and provide consultancy advice on specific schemes, including:

- Project management of, and providing content for of Local Plans;
- Critical Friend review of emerging Local Plans and associated documentation;
- Preparation of background technical evidence including Housing and Economic Land Availability studies; Infrastructure Delivery Plans; Five Year Housing Land Supply; Sustainability Appraisal and Strategic Environmental Assessment; Green Belt Review/Assessment; and
- Representing Local Authority clients during the Examination stage of their Local Plans.

	Day Rate	Hourly Rate (based on a minimum of 7.5 hours per day).
Planning Manager	£562.50	£75
Principal Planner	£412.00	£55
Senior Planner	£337.00	£45

The fees listed above are exclusive of VAT and other costs including mileage (at cost – 50p per mile) parking (at cost) and car hire (if required-usual daily charge is circa £24/£28) and fuel at cost.

A Planning Appeals Service

We are able to provide this service to free up the capacity of the more senior and more experienced members of the Councils team. Typically we will undertake the following tasks:

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- An inception meeting to run through the appeal approach, agree relevant supporting information that will be required to prepare for the appeal, and to visit the site
- Completion of a Statement of Common Ground including liaison with the Council and any relevant witnesses
- Preparation of the Council's Appeal Statement
- Attendance at pre-hearing meetings at the Councils offices
- Appearance of the planning witness at the hearing
- Review of the S106 and liaison with the Council's consultant legal advisors
- Project management of the appeal, including liaison with the appellants, the Council's internal legal team, and Council Officers

Should you wish to proceed with this service we would scope the programme of works with you to agree a fixed fee quote, however the table below provides an indication of likely day rates:-

	Day Rate	Hourly Rate (based on a minimum of 7.5 hours per day).
Planning Manager	£562.50	£75
Principal Planner	£412.00	£55
Senior Planner	£337.00	£45

The fees listed above are exclusive of VAT and other costs including mileage (at cost – 50p per mile) parking (at cost) and car hire (if required-usual daily charge is circa £24/£28) and fuel at cost.

Enforcement Service

We provide enforcement support to a range of clients and this can be offered on an on-site basis, remote service delivery or a blended service. These services would be provided on a time charge basis as follows:

	Day Rate	Hourly Rate (based on a minimum of 7.5 hours per day).
Senior Enforcement Officer	£337.00	£45
Graduate Enforcement Officer	£225.00	£30

The fees listed above are exclusive of VAT and other costs including mileage (at cost – 50p per mile) parking (at cost) and car hire (if required-usual daily charge is circa £24/£28) and fuel at cost.

SCHEDULE 2

Responsible Officers – Terms of Reference

1. Members

- 1.1 OBC: Stephen Irvine Head of Planning and Infrastructure
- 1.2 SCC: (including any nominated alternates).

2. Meetings

- 2.1 Quorum: both Responsible Officers or their nominated alternate.
- 2.2 Frequency: once every 3 (three) months and additionally as required.
- 2.3 Attendees: the Service Leads.
- 2.4 Agenda: Performance of the Services; Quarterly Financial Reconciliation Reports; any other business which the Responsible Officers may agree to discuss from time to time.

3. Reports

- 3.1 Type: monthly management and financial reports to be provided in relation to the Services by the Service Leads to the Responsible Officers in a format to be agreed by the Responsible Officers.
- 3.2 Contents: overall throughput year to date and expenditure forecast against the budget of the Services and performance by SCC year to date against the National Key Performance Indicators.
- 3.3 Frequency: monthly.
- 3.4 Circulation list: to be determined by the parties.

SCHEDULE 3

Exit Plan

Upon expiry, or in the event that this Agreement is terminated early, the parties agree to co-operate to ensure an orderly wind down of their joint activities as set out in this Agreement and the following provisions shall (unless agreed otherwise by the parties) have effect:

1. Communication of future plans for service delivery (including agreed press statements) shall be agreed between the parties;
2. OBC shall ensure or procure the continued discharge of its planning functions which have been delegated to SCC pursuant to this Agreement;
3. SCC shall ensure or procure the continued provision of the Services related to the discharge of its own planning functions;
4. OBC and SCC shall work together to ensure an orderly handover in relation to all aspects of the Services and the functions delegated in relation thereto and shall at all times act in such a manner as not to adversely affect the delivery of the Services;
5. Both parties agree that all such information as may be provided to the other may be passed on to any prospective or new service providers (in confidence) for the purposes of future provision of the Services and obtaining advice only.
6. Both parties shall transfer ownership, to the originating party, the records and information relating to the Services, including any relevant records that were transferred to the other at the Commencement Date.
7. Both parties shall agree a just and equitable approach to the final reconciliation of any budgetary underspend or overspend.



