

MEMORANDUM OF UNDERSTANDING (“MoU”)

This Memorandum of Understanding is made on (insert date)

Between

1. THE GROWTH, PLANNING AND HOUSING DEPARTMENT OF WESTMINSTER CITY COUNCIL “WCC Housing”)

and

2. THE CITY HIGHWAYS DEPARTMENT OF WESTMINSTER CITY COUNCIL “WCC Parking”)

Whereas

It is proposed that under the powers vested by the Traffic Management Act 2004 (TMA 2004) in Westminster City Council (WCC), its Parking Services (WCC Parking) grant permission for enforcement services on Council owned housing estate land.

This service provision will only be operational within the boundaries specified under the related Traffic Management Orders with a comprehensive permit issuance process and system in place and appropriate and maintained road signage, posts, fixings and street markings in all locations to support effective enforcement.

Through the signing of this Memorandum of Understanding (MoU), all parties agree the service detailed below will be provided in a manner that will always endeavour to minimise any potential negative impact on either party.

1. PURPOSE

- 1.1 The purpose of this MoU is to set out, in summary, the intentions of WCC Housing and WCC Parking with respect to their relationship and the principal terms and conditions on which they agree that the service will proceed.
- 1.2 This MoU is not intended to create legally binding relations between the parties, but to form the basis for the conduct, in good faith, of WCC Parking, and WCC Housing on the proposed service.

- 1.3 This MoU is not exhaustive of the matters that need to be dealt with in relation to the service.

2. DEFINITIONS AND INTERPRETATION

- 2.1 Reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 2.2 Headings included in this MoU are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 2.3 In the event of any conflict or inconsistency between any provision of the Clauses and any provisions of the Schedules, the Clauses shall prevail.
- 2.4 "WCC Parking" shall refer to the departments responsible for maintaining lines and signs for Westminster City Council, for managing the creation and amendment of Traffic Orders for Westminster City Council and for managing the on-street parking enforcement contract.
- 2.5 "WCC Housing" shall refer to the department responsible for the strategic management of housing land for Westminster City Council.
- 2.6 "CEO" means 'Civil Enforcement Officer' as defined by the Road Traffic Regulation Act 1984 (RTRA 1984).

3. SUMMARY OF RESPONSIBILITIES

- 3.1 WCC Housing are responsible for ensuring that the condition of all estate parking area surfaces is capable of supporting road markings in accordance with the cyclical maintenance programme.
- 3.2 WCC Housing are responsible for ensuring a comprehensive and efficient permit processing system.
- 3.3 WCC Housing are responsible for the day to day operational management of the allocated parking enforcement resources.
- 3.4 WCC Parking are responsible for the ongoing maintenance of the road markings and signage on all on-street and off-street estate parking areas through their cyclical programme for road markings, and for signage, on a reactive basis only.
- 3.5 WCC Parking are responsible for providing an effective on-street and off-street enforcement service under the provisions set out in the TMA 2004 and in accordance with appropriate Council policy.
- 3.6 WCC Parking are responsible for contract management of the enforcement service, the road markings and signage contract and the Traffic Order drafting and creation contract.
- 3.7 WCC Parking are responsible for ensuring that all relevant Traffic Orders are created and maintained to support and assist in effective enforcement.

4. SERVICES

- 4.1 WCC Housing will provide all supporting services as set out in Schedule 1
- 4.2 WCC Parking will provide the service and all supporting services as set out in Schedule 2

5. SUB-CONTRACT

- 5.1 The parties may appoint sub-contractors to discharge the responsibilities and / or services allocated to them under this MoU.

6. PERFORMANCE MONITORING AND KPIS

- 6.1 WCC Parking will provide WCC Housing with outputs of the monitoring via access to the reporting portal.
- 5.2 Where monitoring indicates an issue with the performance of the Services as delivered by a sub-contractor, WCC Parking will use the contract management processes as detailed in the contract with the sub-contractor, including any penalties or other measures at its disposal.
- 5.3 WCC Parking will ensure that WCC Housing are made aware of any issues that may be detrimental to the service WCC Housing provide.
- 5.4 WCC Housing will monitor the day to day performance of any sub-contractor and highlight to WCC Parking areas of concern in a timely fashion.
- 5.5 WCC Housing and WCC Parking through its CEOs will monitor the condition/state of all streets, road markings, signage, and any other street furniture that may negatively impact WCC Parking.
- 5.6 WCC Housing will ensure WCC Parking is made aware of any issue that may be detrimental to the services that WCC Parking provide.
- 5.7 Where any dispute arises as to the performance of Services on the part of either party, which cannot be resolved by mutual agreement, this shall be referred to the escalation routes as set out at section 11.1.
- 5.8 The following list of reports is an example of expected information required to support the monitoring of this service. This is not an exhaustive list but an indication of information required.

- Number of PCNs issued by location;
 - Percentage of PCNs paid compared with other WCC locations;
 - Number of Appeals that have been won / lost. This will include a comparison between WCC Housing and other WCC locations;
 - Number of PCNs cancelled prior to Appeal stage by locations. This will include a comparative between WCC Housing and other WCC locations;
- 5.9 WCC Parking will ensure that any sub-contracted Services are delivered in line with the KPIs as set out in their contracts, except, where a variation has been specified in accordance with Schedule 6.
- 5.10 KPIs will be agreed between both parties prior to the commencement of the service.
- 6. INCOME/FEES**
- 6.1 WCC Housing will fund all capital work required to implement Traffic Orders including (but not limited to) project management, the drafting and creation of Traffic Orders, the installation of road markings and signage and both statutory and informal consultation.
- 6.2 Income from the sale of WCC Housing parking permits in off-street areas will go directly into the Housing Revenue Account (HRA).
- 6.3 Income from the sale of WCC Housing parking permits in on-street areas and all fines paid in respect of PCNs will go into the Council's Parking Revenue Account (PPRA) (once it has been accounted for).
- 6.4 Income from the sale of on-street WCC Housing parking permits may only be used for the following six purposes as stipulated under the RTRA 1984:
- (a) Contributions to other local authorities persons towards the cost of them providing / maintaining off street parking;
 - (b) Public passenger transport services;
 - (c) Highway / road improvements;
 - (d) Environmental improvements;
 - (e) Facilitating the implementation of measures contained within WCC's Local Implementation Plan where such strategy stipulates this to be such a purpose;
 - (f) Provision/maintenance of parking.
- 6.5 The cost of the Services, including enforcement, contract management, appeals, road markings, signage and the creation or amendment of Traffic Orders is set out in Schedule 4.
- 6.6 This will be funded by the following income sources, in the following order:

- i Income from the sale of WCC Housing parking permits in on-street areas
- ii Income from PCNs
- iii Income generated from the issuance of on-street suspensions will support the funding of the on-street and back office related services.
- iv Only where the costs of the Service are not covered by either i, ii or iii above, income from the sale of WCC Housing parking permits in off-street areas

6.7 Where a surplus beyond the cost of the service is generated by either i, ii or iii above, WCC Housing may request funding for any of the prescribed activities set out at 7.3 from the PPRA.

6.8 Where the cost of the service is not met by the income streams listed above in the order in which they are set out, WCC Parking may request funding from the HRA.

6.9 PCN issuance costs will be based on the enforcement costs provided in the enforcement contract, and all other associated PCN processing costs including payment processing, dealing and responding to correspondence, managing the Appeals process, registering at court, and enforcing warrants where necessary through the environment and traffic adjudicators.

7. SERVICE COMPLAINT PROCEDURE

7.1 The PCN appeal process will be through the current legal process as detailed in the TMA 2004.

7.2 Complaints against CEO behaviour will be directed through the contractor and will be considered in accordance with the Complaints Procedure in place at the time the complaint is made.

7.3 Complaints about the PCN process and issuance of PCNs will adhere to the statutory appeal process that falls outside of any corporate complaints process.

7.4 Complaints regarding the issuance of permits will be directed to WCC Housing or its contractor and considered in accordance with the Council's Complaints Procedure

8. ESCALATION PROCESS

8.1 In instances where concerns / issues have not been addressed through the relevant teams from either WCC Housing or WCC Parking, or have not been dealt with in a timely fashion then these concerns will be escalated for senior management involvement, at Director Level or above.

8.2 It is assumed that a period of at least one month will have been provided by either party from point of raising the concern / issue to point of it being escalated.

8.3 In instances where either party believes that concerns are not being sufficiently addressed through the Escalation process the Dispute Resolution process as detailed in section 9 may be invoked.

9. DISPUTE RESOLUTION

- 9.1 If any dispute arises under, out of or in connection with this Agreement, the parties will attempt to settle it by mediation through appropriate senior management involvement. To initiate the mediation, a party must give notice in writing to the other party to the dispute requesting mediation. The mediation will start not later than 14 days after the date of the notice, unless otherwise agreed in writing between the parties.
- 9.2 No party may commence any actions that have a detrimental impact on the other party in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation or the mediation has failed to result in a settlement acceptable to both parties (in their absolute discretion) within thirty (30) days or another mutually agreed time of its commencement, provided that the right to commence such actions is not prejudiced by a delay.
- 9.3 Performance of the Services under the Agreement shall continue during any dispute resolution process referred to in this Clause 9. Should there be a critical failure with the WCC Housing permit issuance process such that the compliance of the enforcement process with the traffic orders or any other legal requirement is compromised, WCC Parking reserve the right to immediately suspend the enforcement service until the issue has been rectified.

10. PROCESS IMPROVEMENT

- 10.1 Regular meetings will involve WCC representatives and sub-contractor representatives where appropriate.
- 10.2 Monthly review meetings precede with the following basic agenda items:
- Customer complaints review
 - Permit Issuance review
 - Street furniture and road maintenance review
 - Visits review
 - Appeals review
 - PCN cancellations review
 - Issues and opportunities

11. AMENDMENTS AND CHANGES TO MOU

- 11.1 This Agreement may be modified or amended only by written agreement between the parties.

12. CONFIDENTIALITY

- 12.1 "Confidential Information" means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party (the

“Disclosing Party”) to the other party (the “Receiving Party”) in connection with the Parking Services, whether before or after the date of this MoU including, without limitation, information relating to the Disclosing Party’s products, services, operations, processes, plans or intentions, market opportunities and business affairs.

12.2 During the term of this MoU and after termination or expiration of this MoU for any reason, the Receiving Party:

- (a) will not use Confidential Information for a purpose other than the performance of its obligations under this MoU;
- (b) will not disclose confidential information to a person except with the prior written consent of the Disclosing Party and shall make every effort to prevent the use or disclosure of Confidential Information.

12.3 During the term of this MoU, the Receiving Party may disclose Confidential Information to any of its supervisory bodies, directors, other officers, employees and sub-contractors (a “Recipient”) to the extent that disclosure is reasonably necessary for the purposes of this MoU.

12.4 The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party’s obligations of confidentiality under this MoU as if the Recipient was a party to this MoU.

12.5 Each party may disclose Confidential Information if and to the extent that:

- (a) this is required by the law of any relevant jurisdiction or pursuant to an order of a court of competent jurisdiction;
- (b) the information has come into the public domain through no fault of that party;
- (c) the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, as aforesaid:

PROVIDED THAT any such information disclosed pursuant to paragraphs (a) and (c) shall be disclosed only after giving notice to the other party.

12.6 The parties shall keep the existence of their discussions on the services confidential and neither of the parties shall be entitled to make any statement or disclosure concerning the matters referred to in this MoU without the prior written consent of the other party.

12.7 The obligations of all parties as to confidentiality shall continue in force notwithstanding the termination or expiration of this MoU.

13. EXPENSES

13.1 The parties shall each be solely responsible for their respective expenses incurred in connection with this MoU.

AGREEMENT

Please signify your agreement with the above terms by signing below where indicated and returning the MoU by [] 2019.

We confirm our agreement with the terms set out in the above Memorandum of Understanding.

duly authorised on behalf of

GROWTH, PLANNING AND HOUSING DEPARTMENT OF WESTMINSTER CITY COUNCIL

Dated the [] day of [] 2019

duly authorised on behalf of

CITY HIGHWAYS DEPARTMENT OF WESTMINSTER CITY COUNCIL

Dated the [] day of [] 2019

SCHEDULE 1

WCC Housing Services

WCC Housing

- will provide a comprehensive and efficient permit processing service that is fully audited and monitored to ensure its effective delivery. A subcontractor may be used to fulfil this service.
- will ensure all permits produced on their behalf meet WCC security standards in operation at the time.
- will ensure that any request for additional services or any amendments to services or Traffic Orders are provided with sufficient notice to enable WCC Parking to take the necessary action.
- will provide thirteen weeks notice, in advance, which will be confirmed six weeks, in advance of weekly enforcement requirements to include CEO numbers requested, the number of enforcement hours, locations to be visited and the number of visits per location.
- will ensure that any income received in respect of permits for areas classified as 'on-street' is paid over to WCC Parking within one month of its receipt.
- will ensure any costs incurred for the creation or amendment of Traffic Orders, signage and/or the delivery of any activities relating to the parking enforcement service beyond the income recovered through on-street permit income and PCN charges are paid in accordance with WCC's standard payment terms.
- will ensure that the condition of all estate parking area surfaces is capable of supporting road markings in accordance with the cyclical maintenance programme.
- will respond to complaints regarding the issuing of permits in accordance with the Complaints Procedure in place at the time the complaint is made.

SCHEDULE 2

WCC Parking Services

WCC Parking

- will draft and process all Traffic Orders, including any amendments to existing orders, in accordance with the relevant powers set out under the Road Traffic Regulation Act 1984, the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996, other relevant legislation and WCC local procedures. A subcontractor may be used to provide this service.
- will conduct the necessary public consultation in accordance with the provisions of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996, other relevant legislation and WCC local procedures. A subcontractor may be used to provide this service.
- will provide an on-street and off-street enforcement service in line with the Traffic Orders.
- will provide a suspensions service to all on-street areas managed by WCC Housing that are within WCC boundaries as stipulated in the Traffic Orders. This will operate in accordance with current WCC Parking suspension services.
- will make any proposed amendments to any orders (Miscellaneous Parking Amendments) provided that the required information has been provided to WCC Parking.
- will provide advice and guidance to WCC Housing on lines and signs.
- will provide all enforcement services provided to WCC Housing, whether this be through sub-contractors or otherwise.
- will maintain all road markings and signage on all on-street and off-street estate parking areas through their cyclical programme for road markings, and for signage, on a reactive basis only.
- will manage the enforcement service contract, the road markings and signage contract and the Traffic Order drafting and creation contract in respect of the Services provided under this MoU in accordance with the provisions of those contracts.
- will ensure the provision of the following enforcement services:
 - i Patrols; on foot, by car and motorcycle;
 - ii Relocation services between 8.00am and 2.00pm, Monday to Saturday only, where this is physically possible and in accordance with the existing Relocations Contract on a first come first served basis.
 - iii The administration of all appeals and complaints relating to the PCN process in accordance with the statutory appeal process, including the recovery of any charges up to and including court action.

SCHEDULE 3

Performance Indicators/Monitoring of service

Within the existing enforcement service contract, WCC Housing and WCC Parking will agree the appropriate KPIs and monitoring measures to ensure that the quality of service is maintained and provided while minimising any potential negative impact on any party.

KPIs will be reviewed on a regular basis to ensure appropriateness and robustness.

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SCHEDULE 4**Enforcement**

| SERVICE/ROLE | RATE * |
|--|---------------|
| Marshalls - Monday to Saturday Days | £20.32 |
| <i>Driver - Monday to Saturday Days</i> | £21.05 |
| Marshalls - Monday to Saturday Night | £22.99 |
| <i>Driver - Monday to Saturday Night</i> | £23.72 |
| Marshalls - Sunday Days | £22.12 |
| <i>Driver - Sunday Days</i> | £22.85 |
| Marshalls - Sunday Nights | £26.45 |
| <i>Driver - Sunday Nights</i> | £27.18 |
| Marshalls - Bank Holidays | £34.09 |
| <i>Driver - Bank Holidays</i> | £35.20 |

**per hour per marshal - until April 2020*

| VEHICLE COSTS | TOT CHARGE* |
|----------------------|--------------------|
| | £624 |

**monthly charge for 1 vehicle - subject to change on estates expansion*

| BODYCAM COSTS | TOT CHARGE* |
|----------------------|--------------------|
| | TBC |

**For the purposes of the initial rollout of Churchill Gardens Estate, a new technology initiative will be trialled at zero cost to WCC; as we move into additional phases there will be a cost for this equipment and service*

| MANAGEMENT COSTS** | TOT CHARGE* |
|---------------------------|--------------------|
| Supervisor & Manager | £6,566 |

**monthly charge*

***For the purposes of the initial rollout of Churchill Gardens Estate, the management costs will be absorbed by NSL as part of the current operation; however it is predicted that as we move into additional phases, there will be an additional Supervisor requirement of 1 x FTE and additional Management requirement of 0.25 FTE*

Road Markings and Signage

| | | | 0-9.99 | 10-29.99 | 30-99.99 | 100+ |
|--------|---|----|----------------|-----------------|-------------|-------|
| | Removal of signs | | | | | |
| 2.088 | Traffic sign, not exceeding 0.5 square metre, mounted at any height | no | 6.08 | 5.79 | 5.79 | 5.79 |
| 2.089 | Traffic sign, exceeding 0.5 square metre but not exceeding 1.0 square metre, mounted at any height | no | 9.54 | 9.09 | 9.09 | 9.09 |
| 2.09 | Traffic sign, exceeding 1.0 square metre but not exceeding 2.0 square metre, mounted at any height | no | 17.56 | 16.73 | 16.73 | 16.73 |
| | | | 1 | 2-20 | 20+ | |
| | Supply & Install Posts | | | | | |
| 12.085 | Tubular steel sign post 76mm diameter not exceeding 4.0 metre | no | 267.68 | 261.04 | 253.64 | |
| 12.087 | Tubular steel sign post 89mm diameter not exceeding 4.0 metre | no | 279.72 | 272.78 | 264.97 | |
| | | | 1 | 2-20 | 20+ | |
| | Supply Signs | | | | | |
| 12.007 | Permanent retroreflective traffic sign, non-Lit Sign Unit, sign face not exceeding 0.25 square metre, fix to posts (measured seperately) or lighting column | no | 36.55 | 35.48 | 33.4 | |
| 12.008 | Permanent retroreflective traffic sign, non-Lit Sign Unit, sign face exceeding 0.25 square metre but not exceeding 0.50 square metre, fix to posts (measured seperately) or lighting column | no | 56.98 | 54.83 | 48.68 | |
| 12.009 | Permanent retroreflective traffic sign, non-Lit Sign Unit, sign face exceeding 0.5 square metre but not exceeding 0.75 square metre, fix to posts (measured seperately) or lighting column | no | 77.4 | 74.18 | 70.95 | |
| | | | 1 | 2-20 | 20+ | |
| | Install Signs | | | | | |
| 12.039 | Remove from set aside area and re-erect wall mounted street nameplate any size, shape or material, mounted at any height | no | 28.6 | 26.8 | 23.8 | |
| 12.044 | Remove from store off site and re-erect traffic sign face, not exceeding 0.5 square metre in area | no | 15.63 | 15.72 | 14.32 | |
| 12.045 | Remove from store off site and re-erect traffic sign face, exceeding 0.5 square metre but not exceeding 1.0 square metre in area | no | 15.63 | 15.72 | 14.32 | |
| | | | 0-19.99 | 20-99.99 | 100+ | |
| | Removal of Road Markings | | | | | |
| 12.157 | Removal of any road marking measured in linear metres (other than raised rib lines) 100mm wide | m | 1.18 | 1.18 | 1.18 | |
| 12.195 | Removal of Letters and Numerals, to Diag. Nos 1028.3 or 1028.4, 350mm high | no | 1.28 | 1.28 | 1.28 | |
| | | | 0-19.99 | 20-99.99 | 100+ | |
| | Line Markings | | | | | |
| 12.378 | Parking Places (Intermittent Lines), to Diag. Nos 1028.3, 1028.4, 1032 or 1033, 50mm wide | m | 0.66 | 0.66 | 0.66 | |
| 12.388 | Waiting Restrictions (Continuous Lines), to Diag. Nos 1017 or 1018.1, 100mm wide | m | 0.38 | 0.38 | 0.38 | |

These figures are the original prices upon letting the highways contract and are subject to a yearly price adjustment index.

Contract Management

TBA

Appeals

TBA

Traffic Orders

TBA

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SCHEDULE 6
List of Variations

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