

DATED THE

DAY OF

2020

SURREY COUNTY COUNCIL

-and-

EPSOM AND EWELL BOROUGH COUNCIL

Agreement for the Management of Epsom Market Place

Under Section 9EA of the Local Government Act 2000
relating to the discharge of highway functions

S

DIRECTOR OF LAW AND
GOVERNANCE
COUNTY HALL
KINGSTON UPON THAMES
KT1 2DN

REF: Legal/NS/70886

New Roads and Street Works Act 1991 Specification for the reinstatement of openings in Highways	means the specification means the specification of that name
Borough Nominated Officer (BNO)	means the officer nominated by the Borough Council as being responsible for the management of all aspects of this Agreement
County Nominated officer (CNO)	means the officer nominated by the County Council's Head of Highways as being responsible for the management of all aspects of this Agreement
Local Committee	means the local committee or any successor body of the County Council in the Epsom and Ewell area
The Local Committee Town Centre Task Group	means a task group of that name approved by the Local Committee for Epsom & Ewell, consisting of an equal number of Borough/County Members from that Committee, which will oversee the operation of this Agreement and may make recommendations to that Committee
2012 Regulations	means The Local Authorities (Arrangements for the Discharge of Functions) Regulations 2012
Plan	means the plan attached at Schedule 3 to this Agreement

WHEREAS:-

- (1) The County Council and the Borough Council are local authorities as defined by Section 270(1) of the 1972 Act
- (2) By virtue of Section 1(2) of the 1980 Act the County Council is the highway authority for all the highways in the County of Surrey whether or not maintainable at the public expense that are not highways for which the Secretary of State for Transport is the highway authority

- (3) Certain powers and duties are conferred upon and vested in the Cabinet Executive by the 2000 Act
- (4) The Borough Council wishes to exercise the Agency Functions within Epsom Market Place
- (5) Pursuant to Section 9EA of the 2000 Act and the Regulations the Cabinet Executive has arranged for the discharge by the Borough Council of certain functions of the County Council relating to highways as set out in the Schedule 1 to this Agreement upon the terms described herein
- (6) The County Council and the Borough Council have entered into this Agreement in the spirit of partnership with the object of providing effective economic and efficient service

NOW THIS DEED WITNESSETH as follows:-

Agency Functions

1. In exercise of the powers in that behalf contained in Section 9EA of the 2000 Act and the 2012 Regulations and subject to the terms and conditions hereinafter appearing the County Council hereby authorises the Borough Council to carry out the Agency Functions on its behalf
2. The Agency Functions may be amended from time to time by written agreement between the Parties acting by the County Nominated Officer and Borough Nominated Officer such amendments being either additions to or deletions from the Agency Functions set out in Schedule 1 hereto
3. The Borough Council hereby agrees with the County Council to discharge the Agency Functions in accordance with the policies standards specifications relevant legislation and codes of practice as adopted by the County Council at any time throughout the term of this agreement and to the satisfaction of the County Council in any event at all times

- 4 The Borough Council agrees that in exercising the Agency Functions it will provide a minimum service level equal to that adopted by the County Council at that time or, at the discretion of the Borough Council, to an enhanced standard
5. The Borough Council will exercise the Agency Functions with reasonable care and skill and so as to ensure value for money
- 6 Notwithstanding Clause 1 hereof nothing herein contained shall prevent the County Council from exercising the Agency Functions provided that the County Council will not exercise any of those functions except in the case of emergency or for some other good and sufficient reason and then only after consultation with the Borough Council unless the urgency of the situation in the reasonably held opinion of the County Council acting by the County Nominated Officer does not permit such consultation
- 7 Notwithstanding Clause 1 hereof the Borough Council may in any particular case request the County Council to exercise any of the Agency Functions in which case the County Council may in its discretion exercise the function to the extent of the request
8. In the event of a dispute concerning matters arising from Clause 1 the Parties will instigate the Disputes Procedure set out at Schedule 2
9. For the avoidance of doubt nothing in this Agreement shall replace or amend, or be deemed to replace or amend, any function relating to the administration of on-street parking enforcement that is undertaken by the Borough Council under an agreement or agreements preceding this Agreement

Indemnity

10. The Borough Council shall indemnify and keep indemnified the County Council against all actions claims demands proceedings damages losses costs charges and expenses whatsoever in respect of or in any way arising out of the provision of the Agency Functions or any part of them or other work carried out pursuant to this Agreement including injury to or death of any person and loss of or damage to any property (including also property belonging to the County Council) except and to the extent that it may arise out of the act default or negligence of the County Council or its officers

Public Liability Insurance

11. The Borough shall maintain public liability insurance throughout the period of this Agreement in respect of its obligations hereunder. The cover per incident under such policy at the date of this Agreement shall be at least ten million pounds (£10,000,000) which sum shall be increased when the sum applicable to the Borough Council's general policy for public liability insurance is increased. The Borough Council shall if so required by the County Council procure that the County Council's interest is noted on the policy of insurance effected hereunder

Legal action or other proceedings

12. The Borough Council shall in its own name institute (which for these purposes shall include appealing against a decision of any Court tribunal or other judicial body) and defend all such claims or legal proceedings as may be necessary arising out of or in connection with the discharge and carrying out of any of the Agency Functions by the Borough Council **PROVIDED ALWAYS** that, **EXCEPT** in relation to claims or proceedings in respect of which insurances provide full indemnity and cover, the Borough Council shall comply with any directions given by the County Council in relation to the prosecution defence compromise or settlement of any proceedings taken or

defended in accordance with this clause to which the Borough Council is a joint party in the High Court of Justice, the Court of Appeal or the Supreme Court (or any successor body exercising the like appellate functions) with the County Council

Termination of Agreement

13. The arrangements in this Agreement shall operate on and from the date of this Agreement and shall continue in force until the earlier date of either
- (i) the expiry of a period of ten years commencing on the date of this Agreement or
 - (ii) the date on which this Agreement is determined by not less than 12 months' notice in writing given by either party to the other to expire on the thirty-first day of March in any year.

Notice to Terminate

14. Notwithstanding the terms of clause 13 either party may terminate this Agreement without prejudice to any rights of action in respect of any antecedent breach by giving the other party six months' notice or, in the event that the period remaining for the operation of this Agreement is less than six months then notice to the termination date set out in clause 13(ii) in writing expiring on the last day of any month or the termination date as appropriate if the other party continues to be in breach of this Agreement one month after the service of notice specifying the breach and requiring it to be remedied. In the event of any conflict arising in this regard the matter will be referred through the Disputes Procedures as set out in the Second Schedule.
15. In the event of a dispute concerning matters at Clause 14, the Parties will instigate the Disputes Procedure set out at Schedule 2.

Service of Notices & requests for consents

16. Any notice required under the terms of this Agreement must be in writing
17. Any notice under this Agreement shall be sent by recorded delivery post to the Parties as follows:
 - (i) to the County Council : Head of Legal and Democratic Services
at County Hall Penrhyn Road Kingston upon Thames Surrey
KT1 2DN
 - (ii) to the Borough Council: Chief Executive, Epsom & Ewell
Borough Council, Town Hall, The Parade, Epsom, KT18 5BY
18. Where any consent or permission is required from the County Council under this Agreement then any request for such consent or permission shall be addressed to the County Nominated Officer and such consent or permission shall not be unreasonably withheld or delayed

Performance Review of Agency Functions

19. The County Council through its Nominated Officer will annually formally review with the Borough Council through its Nominated Officer the operation of the Agency Functions
20. The Borough Nominated Officer shall upon request from either party present an annual report to the Local Committee for Epsom and Ewell updating the Committee on the performance of the agency agreement
21. The Borough Council and the County Council agree to send officer representation to the Local Committee Town Centre Task Group to provide guidance and information to that group as required

22. Regulation 8 of the 2012 Regulations shall apply in relation to discharge of the Agency Functions by a committee or sub-committee
- 23 The Borough Council will take reasonable steps to avoid any conflict with the County Council as highway authority in relation to the subject matter of this Agreement In the event of any such conflict arising either in this regard or otherwise the matter will be referred through the Disputes Procedures as set out in Schedule 2 hereto
24. The County Nominated Officer shall notify the Borough Council in writing of any changes to relevant County polices to enable the minimum service level to be assessed. In the event of any disagreement the matter shall be considered through the Disputes Procedures as set out in Schedule 2 hereto
25. The Local Committee for Epsom and Ewell may at their sole discretion contribute to the cost of carrying out the Agency Functions agreement
- 26 The Borough Council will contribute to the cost of carrying out the Agency Functions such sum as is required to ensure that the minimum level of service referred to in clause 3 is maintained

General

- 27 This Agreement shall be subject to English Law and in all respects (including formation) and shall be construed and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England
- 28 The parties hereto agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement
- 29 This Agreement is executed as a Deed

SCHEDULE 1 The Agency Functions

1. Responsibility for maintenance, inspection, management, enforcement, repair or replacement for those matters listed below within the area edged red on the Plan:
 - a. Highway Act 1980 Licences including “A” boards, tables, and chairs, skips, scaffolding and collection of fees
 - b. All public art, including but not limited to
 - i. the Emily Davidson Statue;
 - ii. Evocation of Speed statue; and
 - iii. the Cattle Trough
 - c. Drinking water fountains, including supply and discharge of water
 - d. All electrical “power” bollards on the highway including supply and payment of any energy costs
 - e. Signs and any fingerposts
 - f. General street furniture, including benches, and litter bins
 - g. Tree maintenance following the two year maintenance period after planting of the final tree
 - h. Winter maintenance (precautionary pavement salting, footways only)
 - i. Electrical uplights
 - j. Christmas tree pit
 - k. Road barriers to the Market Place
 - l. Cycle stands

- m. Any Insurance claims related to the provision of the services in the above list with the exception of (h) where claims will be processed by the County Council pursuant to the Statement of Understanding on Winter Maintenance between Epsom and Ewell Borough Council and Surrey County Council.
2. For the avoidance of doubt the following functions are excluded from the Agency Functions agreement and these functions will continue to be carried out by the County Council to its agreed standards subject to negotiation should the Borough Council wish to fund to a higher standard:
- a. Street lighting (unless by individual site approval/agreement acting by the Nominated Officers)
 - b. Highway inspections
 - c. Patching, repairs
 - d. Reconstruction or resurfacing of roads
 - e. Reconstruction or resurfacing of footways
 - f. Street works coordination
 - g. Gully cleaning and drainage repairs
 - h. Pedestrian Refuges and guard rails
 - i. Fences
 - j. Road markings
 - k. Illuminated street furniture / signs

- l. Accident and emergencies on the highway

- m. Winter maintenance precautionary road salting

- n. Traffic signal maintenance

- o. Tree planting and maintenance for the first two years from planting of the final tree
- p. Highway Structures as covered by the Department of Transport Management of Highway Structures A Code of Practice Latest edition.
- q. Preparation and making of temporary traffic orders (section 14(1) 1984 Act) and notices (section 14(2) 1984 Act) and promotion of permanent traffic regulation orders (section 1 1984 Act) (through the Local Committee)
- r. Advice from the County Council's Transportation Development Control Service

- s. Managing highway insurance risks and processing save those occurring as a result of claims or as a consequence of functions delegated to the Borough through this agency agreement

SCHEDULE 2 AGENCY DISPUTES PROCEDURE

1. The Borough Council in giving notice to the County Council that it declines to act in accordance with the requirements of the County Council may request a meeting (“the Members’ Meeting”) between respective members of the Borough Council and the County Council either on site or at such other venue as may be agreed by the parties on the Borough Council’s request or determined by the County Council in default of agreement

- 2 The Members’ Meeting shall be held in accordance with the Borough Council’s request unless the County notifies the Borough Council that it intends to consider the Borough Council’s representations without the Members’ Meeting

- 3 Following either the Members’ Meeting (or the giving of notice under paragraph 2 above) the appropriate Committee or Sub-Committee of the County shall consider the representations made by the Borough Council and shall decide whether to withdraw the County’s requirement and/or to give notice to the Borough Council specifying the action which the County requires to be taken to secure compliance with its requirement or such other action as it considers appropriate in the circumstances and the time limits within which any such action is to be taken. The decision taken by the County Council’s Committee or Sub-Committee will be final and binding on these procedures

- 4 The Borough Council shall upon receipt of the Notice mentioned in paragraph 3 above comply with the Notice and if at the end of the time specified for compliance therewith the Borough Council has not so complied then the County may take the action itself

- 5 The County Council’s power under this Agreement to act in emergency situations is preserved as set out at Schedule 1 clause 2 I.

SCHEDULE 3 Plan



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

Head of Legal Services/Authorised Signatory

THE COMMON SEAL of)
EPSOM AND EWELL BOROUGH COUNCIL)
was hereunto affixed in the)
presence of:-)

Mayor

Authorised Officer