

MINUTE OF AGREEMENT

between

ABERDEENSHIRE COUNCIL, a Local Authority constituted under the Local Government etc. (Scotland) Act 1994 and having its principal office at Woodhill House, Westburn Road, Aberdeen and its statutory successors

and

ABERDEEN CITY COUNCIL, a Local Authority constituted under the Local Government etc. (Scotland) Act 1994 and having its principal office at the Town House, Broad Street, Aberdeen, AB10 1AQ and its statutory successors

Each a "Party" and together "the Parties"

WHEREAS

1. Aberdeen City Council wish to source and secure a Developer Contributions Service from Aberdeenshire Council; and

2. Aberdeenshire Council wish to provide said Developer Contributions Service to Aberdeen City Council;

THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:-

1. DEFINITIONS – the following terms shall have the following meaning within this Agreement:-

1.1 "Developer Contributions Service" means the overall service package to be provided by Aberdeenshire Council's Developer Obligations Team and will include the following;

- a) The assessment of development proposals and, in particular, their effects on existing community infrastructure.
- b) The carrying out of negotiations with developers in respect of appropriate Planning Obligation packages intended to mitigate the impact of development proposals on such infrastructure and thus allow development to proceed.
- c) The quantification of any affordable housing provision or contributions which may additionally be due by developers in terms of Aberdeen City Council's Policy and National Guidance.

1.2 "Schedule" means the Schedule annexed and executed as relative hereto.

2. DURATION

2.1 This Agreement shall take effect on 1 January 2012, notwithstanding the date or dates of signing hereof, and shall terminate on 31 December 2015.

2.2 The Parties may agree, in writing, to extend this Agreement beyond the above-mentioned termination date.

3. SERVICE TO BE PROVIDED

Aberdeenshire Council shall provide Aberdeen City Council with a Developer Contributions Service, as detailed in sub-clause 1.1 hereof, for the duration of this Agreement.

4. PAYMENT AND APPOINTMENT

4.1 Aberdeen City Council shall pay Aberdeenshire Council the Salary and the Employer Costs as defined in the Schedule (together referred to herein as “the Funding”). The Funding represents the cost of Aberdeenshire Council engaging a Developer Contributions Officer, Senior Planner equivalent grade. The Funding is deemed to include the cost of any administrative assistance to support the work of the Developer Contributions Service.

4.2 Aberdeenshire Council shall issue detailed invoices to Aberdeen City Council in respect of the Funding on a quarterly basis. Payment in respect of each correctly prepared and adequately supported invoice shall be due within thirty days of receipt of same by Aberdeen City Council. Such invoices shall contain a detailed breakdown of all costs and such other detail as may reasonably be required by Aberdeen City Council from time to time.

4.3 Aberdeenshire Council shall notify Aberdeen City Council, in writing, of any changes to the Funding in accordance with Aberdeenshire Council’s annual pay award, no later than one month after that pay award is implemented.

5 MONITORING AND REVIEW

5.1 Aberdeenshire Council will produce annually for Aberdeen City Council (as soon as reasonably practicable after 1 January in respect of the preceding calendar year) a written report highlighting the number of planning applications and pre-application submissions on which the Developer Obligations Team have been consulted by Aberdeen City Council together with a breakdown of Infrastructure Contributions secured by the Developer Obligations Team, including contributions towards recreation, community facilities, core paths, public realm, education, and affordable housing and affordable units committed to be built on site.

5.2 Aberdeenshire Council, in consultation with Aberdeen City Council, shall formally review the operation of the Developer Contributions Service on an annual basis. As soon as reasonably practicable after 1 January in respect of the preceding calendar year, Aberdeenshire Council shall produce a comprehensive written report of said review and issue a copy of same to Aberdeen City Council. The Parties shall thereafter, promptly and in good faith, negotiate on any variations or amendments to this Agreement, or changes to the operation of the Developer Contributions Service, which either Party considers necessary or desirable. Said report may be combined with the report required under sub-clause 5.1 above.

6. COMPETENCE

6.1 Aberdeenshire Council will ensure that the Developer Contributions Service is performed in a competent and professional manner to the complete satisfaction of Aberdeen City Council. If, in the opinion of Aberdeen City Council acting reasonably, the performance of the Developer Contributions Service is unsatisfactory, or does not meet the terms of this Agreement, then Aberdeen City Council may, where it deems it appropriate, instruct Aberdeenshire Council to repeat the performance of any part of the Developer Contributions Service at no extra cost to Aberdeen City Council. Aberdeenshire Council will ensure that Aberdeen City Council is involved in any review of the Developer Contributions Service.

6.2 For the avoidance of doubt, any negotiation or discussion with a developer undertaken by any member of Aberdeenshire Council's Developer Obligations Team in relation to planning matters (other than Developer Contributions) for which Aberdeen City Council is the Planning Authority must be subject to prior consultation with, and approval of, the relevant Aberdeen City Council Planning Officer.

7. VISITORS

All employees, agents or sub-contractors utilised by Aberdeenshire Council in the performance of the Developer Contributions Service shall carry such identification as Aberdeen City Council may require at all times when on Aberdeen City Council premises and make such identification available for inspection on request by any officer of Aberdeen City Council. Access to Aberdeen City Council's premises may be refused or withdrawn if such identification is not displayed.

8. RESOURCES

8.1 Aberdeen City Council will provide Aberdeenshire Council (and any member of its Developer Obligations Team) with access to such databases and other internally-held records, figures and forecasts as are necessary to enable the performance of the Developer Contributions Service.

8.2 Aberdeenshire Council shall ensure that any member of its Developer Obligations Team adheres to Aberdeen City Council's policies and procedures with respect to ICT Security, Data Protection and Freedom of Information.

8.3 Aberdeenshire Council recognises that under this Agreement any member of its Developer Obligations Team may receive confidential or proprietary information of Aberdeen City Council. Aberdeenshire Council agrees that no member of its Developer Obligations Team will divulge such information to any person, without Aberdeen City Council's prior written consent. Aberdeenshire Council shall ensure that all members of its Developer Obligations Team are aware of and comply with the provisions of this Clause 8. The obligations in this sub-clause 8.3 will survive the termination of this Agreement.

9. FREEDOM OF INFORMATION

9.1 Aberdeenshire Council shall assist Aberdeen City Council, free of charge, in meeting any reasonable requests for information in relation to this Agreement, or the services to be provided hereunder, which are made to Aberdeen City Council in connection with the Freedom of Information (Scotland) Act 2002 (FOISA) or any statutory modification or re-enactment thereof or any related guidelines or codes of practice. Aberdeen City Council may, from time to time, serve on Aberdeenshire Council an information notice requiring Aberdeenshire Council within such time and in such form as specified in the information notice to furnish to Aberdeen City Council such information as Aberdeen City Council may reasonably require relating to such requests for information. Aberdeenshire Council acknowledges that, in responding to such requests for information, Aberdeen City Council shall be entitled to provide information relating to this Agreement or the services to be provided hereunder. It is recognised that Aberdeenshire Council is itself subject to FOISA and, accordingly, this clause applies to Aberdeen City Council in the same way as it applies to Aberdeenshire Council.

9.2 Without prejudice to the foregoing generality, should a request made under the FOISA and relating to an Aberdeen City planning application be received by the Developer Obligations Team, the Developer Obligations Team shall forward the request forthwith to Aberdeen City Council's Point of Contact specified in sub-clause 10.1 below. If Aberdeen City Council receive a request under FOISA for information held by the Developer Obligations Team, the Developer Obligations Team

shall provide said information to Aberdeen City Council within the deadline specified by Aberdeen City Council's Planning Service or Freedom of Information Team.

10. POINTS OF CONTACT AND DISPUTE RESOLUTION

10.1 For Aberdeen City Council, the initial point of contact in connection with this Agreement shall be: Dr Margaret Bochel, Head of Planning and Sustainable Development, Aberdeen City Council, Communities, Housing and Infrastructure, Business Hub 4, Marischal College, Broad Street, Aberdeen, AB10 1AB (Telephone 01224 523113, e-mail mbochel@aberdeencity.gov.uk).

10.2 For Aberdeenshire Council, the initial point of contact shall be: Patricia Jericevich, Legal Service Manager (Commercial), Aberdeenshire Council, c/o Banchory Area Office, The Square, Banchory, AB31 5RW (Telephone 01330 825518).

10.3 Any disputes concerning the provision of the Developer Contributions Service or the variation or extension of this Agreement should be referred for resolution to the Director of Corporate Services of Aberdeenshire Council and the Director of Communities, Housing and Infrastructure of Aberdeen City Council.

10.4 Day-to-day disputes relating to operational matters should be referred to the points of contact detailed in sub-clause 10.1, with the expectation that matters be resolved to the Parties' mutual satisfaction within seven (7) working days. If such a resolution proves not possible, the matter should be referred to the Parties' officers referred to in sub-clause 10.3 above.

11. CONFLICT OF INTEREST

Aberdeenshire Council shall notify Aberdeen City Council immediately on becoming aware of any possible conflict of interest arising, or which may arise, between the interests of Aberdeen City Council and those of Aberdeenshire Council. Aberdeenshire Council shall take all reasonable steps to remove or avoid the cause of any such conflict of interest, all to the satisfaction of Aberdeen City Council. This Clause shall continue in full force and effect, and shall be enforceable by Aberdeen City Council, for a period of twelve months after the expiry of this Agreement for whatever reason.

12. TERMINATION

12.1 Aberdeen City Council may terminate this Agreement forthwith upon giving notice in writing to Aberdeenshire Council –

(i) If, at two consecutive assessments, Aberdeen City Council determines the performance of Aberdeenshire Council to be unsatisfactory; or

(ii) If Aberdeenshire Council, in the opinion of Aberdeen City Council, is in material breach of the terms of this Agreement and, in the event of a breach capable of being remedied, has failed to remedy the breach within thirty days of receipt of notice thereof from Aberdeen City Council.

12.2 Either Party may terminate this Agreement by giving at least sixty days' prior written notice to the other Party.

12.3 Aberdeenshire Council may terminate this Agreement forthwith upon giving notice in writing to Aberdeen City Council –

(i) If, subject to the provisions of Clause 4, Aberdeen City Council has failed to pay any sum due under the terms of this Agreement and any such sum remains unpaid for fourteen days from the date of service of a notice on Aberdeen City Council advising of such default and demanding payment of the sum due, and

(ii) If Aberdeen City Council, in the opinion of Aberdeenshire Council, is in material breach of the terms of this Agreement and, in the event of a breach capable of being remedied, has failed to remedy the breach within thirty days of receipt of notice thereof from Aberdeenshire Council.

12.4 Aberdeenshire Council will notify Aberdeen City Council in writing if, for any reason, it is unable to maintain the Developer Contributions Service as specified in this Agreement and will repay to Aberdeen City Council any monies which have already been paid under this Agreement and which

are proportionately attributable to a period during which the Developer Contributions Service will not now be provided.

12.5 Any termination of this Agreement (howsoever occasioned) shall not prejudice or affect any rights or liabilities which have arisen on or before the date of termination.

12.6 In the event that this Agreement is terminated, Aberdeenshire Council warrants that it shall transfer all information it holds (stored both electronically and manually) with respect to the provision of the Developer Contributions Service to Aberdeen City Council upon receipt of a written request to do so.

12.7 Termination of this Agreement shall have no effect on the liability of either Party to pay any sums due under this Agreement, where such liability arises prior to the date upon which termination takes place.

13. CORRUPT OR ILLEGAL PRACTICES

Aberdeen City Council shall be entitled to cancel this Agreement with immediate effect and to recover from Aberdeenshire Council the amount of any loss or damage resulting from such cancellation if: -

(a) Aberdeenshire Council shall have offered, or given or agreed to give, to any person any gift, consideration, inducement or award of any kind for doing or not doing any action in relation to this Agreement or any other agreement with Aberdeen City Council; or

(b) like acts shall have been done by any person employed by Aberdeenshire Council or acting on behalf of Aberdeenshire Council (whether with or without the knowledge of Aberdeenshire Council); or

(c) in relation to any agreement with Aberdeen City Council, Aberdeenshire Council or persons employed by Aberdeenshire Council or acting on behalf of Aberdeenshire Council shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 or have given any fee or reward, the receipt of which is an offence under any legislation pertaining to local authorities; or

(d) Aberdeenshire Council or its representative (whether with or without the knowledge of Aberdeenshire Council) shall have practised collusion in tendering for this Agreement or any other contract with Aberdeen City Council or shall have employed illegal practices either in obtaining or executing this Agreement or any other contract with Aberdeen City Council.

14. INSURANCE

Aberdeenshire Council shall maintain appropriate and adequate public liability insurance, employer's liability insurance and professional indemnity insurance to comply with all relevant legal requirements. It shall, whenever required, produce for inspection by any officer authorised by Aberdeen City Council for that purpose documentary evidence that all relevant insurances are properly maintained and the relative policy or policies and receipts in question.

15. ENTIRE AGREEMENT

This Agreement, including the Schedule, constitutes the entire agreement between the Parties. No variation of these terms will be valid unless confirmed in writing by authorised signatories of both Parties on or after the last date of signing of this Agreement.

16. LAW OF SCOTLAND

This Agreement shall be governed by, and interpreted and construed in accordance with, Scots Law. Aberdeen Sheriff Court shall have exclusive jurisdiction to settle any disputes (including claims for set-off and counterclaims) which may arise in connection with the validity, effect, interpretation or performance of the legal relationship established by this Agreement or otherwise arising in connection with this Agreement.

IN WITNESS WHEREOF these presents consisting of this and the 9 preceding pages, together with the Schedule annexed hereto, are executed by the Parties hereto as follows:-

They are signed for and on behalf of **Aberdeenshire Council** at by:

Signed _____
(Proper Officer)

Date _____
Name _____
Position _____

Signed _____
(Witness)

Date _____
Name _____
Address _____

They are signed for and on behalf of **Aberdeen City Council** at Aberdeen by:

Signed _____

Signed _____

(Proper Officer)

Date

Name

Position

(Witness)

Date

Name

Address

SCHEDULE

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING MINUTE OF AGREEMENT BETWEEN
ABERDEENSHIRE COUNCIL AND ABERDEEN CITY COUNCIL**

The Funding

"Salary" £36,203 (subject to revisal in terms of any Aberdeenshire Council annual pay award affecting the Salary Grade of Senior Practitioner).

"Employer Costs" means relative National Insurance and Superannuation Contributions.