

REPORT FROM: NEIGHBOURHOOD SERVICES MANAGER

TO: EXECUTIVE

DATE: 22 OCTOBER 2015

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**PROPOSED JOINT WORKING WITH CRAVEN DISTRICT COUNCIL FOR
CIVIL ENGINEERING SUPPORT**

PURPOSE OF REPORT

To ask the Executive to approve the proposed arrangements for joint working between Pendle's Neighbourhood Services and Craven District Council in respect of civil engineering support until September 2018.

RECOMMENDATION

That the Executive authorises the Neighbourhood Services Manager to enter into a collaborative arrangement on behalf of Pendle Borough Council for the provision of civil engineering services to Craven District Council.

REASON FOR RECOMMENDATION

To allow both councils to derive mutual benefits from the proposed arrangement in terms of efficiency gains.

BACKGROUND

1. Pendle's Neighbourhood Services section has been providing civil engineering support to Craven District Council for the previous two years on an ad hoc basis.
2. Craven District Council requires regular civil engineering support for the next three years in pursuit of the development and delivery of capital projects. The specific services required by Craven are to produce design drawings with estimated costs and overseeing the delivery of work through to completion. In particular, the civil engineering support team would undertake the following tasks:
 - Technical Appraisals – interpretation of topographic surveys, preparation of draft and final design drawings and preparation of budget cost estimates;

- Tender Stage – preparation of detailed drawings, specifications and bills of quantities, preparation and submission of planning applications (where required), preparation of contract documents, procurement of tender documents, checking and reporting on tenders with recommendations;
 - Contract Supervision – to act as Clerk of Works, including quality control and supervision of works on site, advising on variations to the contract, preparing periodic progress reports and “signing off” of completed work.
3. Craven District Council has approved a budget of up to £30,000 per year for three years to buy in civil engineering support.
 4. On 15 September 2015, Craven District Council’s Policy Committee delegated authority to their Director of Services to enter into a collaborative arrangement with Pendle Borough Council for the provision of civil engineering services.
 5. Craven District Council has drafted an Agreement and this has been amended by the Democratic and Legal Manager – see Appendix 1.

IMPLICATIONS

Policy: None arising directly from the report.

Financial: Income received will contribute to the Neighbourhood Services income generation target.

Legal: The draft Agreement submitted by Craven has been amended and is attached in its amended form as Appendix 1 to this Report.

Risk Management: Pendle’s professional indemnity and public liability insurance should continue to cater for this and other less formal joint working arrangements.

Health and Safety: None arising directly from the report.

Sustainability: None arising directly from the report.

Community Safety: None arising directly from the report.

Equality and Diversity: None arising directly from the report.

APPENDICES

Appendix 1 – Proposed Joint Services Agreement.

LIST OF BACKGROUND PAPERS

None.

THIS AGREEMENT is made the day of 2015 **BETWEEN:**

- (1) **CRAVEN DISTRICT COUNCIL** of 1 Belle Vue Square, Broughton Road, Skipton BD23 1FJ (“Craven”)
- (2) **THE BOROUGH COUNCIL OF PENDLE** of Market Street, Nelson, BB9 7LG (“Pendle”)

BACKGROUND

- (A) Between October 2013 and March 2015, Pendle has provided Craven with certain engineering services.
- (B) Both Councils have derived mutual benefits from this arrangement in terms of efficiency gains and service improvements. The arrangement has also maintained the capacity, resilience and critical mass of those services charged with developing and delivering engineering and regeneration projects.
- (C) The Councils now wish to continue with this arrangement and enter into a formal agreement for three years from 1 October 2015. This is for reasons of service continuity and so that both Councils continue to derive mutual benefits from the arrangement which is in the public interest.
- (D) The Councils have agreed to enter into this Agreement in reliance on powers contained in Sections 101,111 and 112 of the Local Government Act ,1972.

1. GENERAL

- 1.1 In accordance with the agreement referred to above Pendle has agreed to provide the Services referred to in this Agreement for Craven. 1.2 In providing the Services to Craven Pendle will act:-
 - (a) promptly and in a professional and courteous manner;
 - (b) in accordance with the terms of this Agreement and with reasonable skill and care; and
 - (c) in accordance with all applicable UK and European laws and regulations, including any relevant professional standards and codes of practice.

2. SPECIAL PROJECT PLANS

- 2.1 Craven and Pendle will work together to agree Annual Plans for Craven (“Craven’s Special Projects Plans”) in writing. Subject to 2.2 below Craven’s Special Projects Plans will detail:-
 - (a) which projects, function and/or activities of Craven require engineering support and their extent;
 - (b) the estimated number of days required for each project, function and/or activity;

- (c) the relevant officers at Craven to contact in relation to the provision and performance of the engineering service(s).
- (d) any deadline or required format (if any) for each piece of work and report; and
- (e) any additional engineering work.

2.2 Craven's Special Projects Plan will make provision of 51 days per annum of engineering services. In addition, the Plan will include provision for Craven's Strategic Manager – Planning and Regeneration to allocate at his/her discretion additional days for new engineering work arising during the year. That Special Projects Plan will be submitted to Craven's leadership team for approval.

3. **VARIATIONS TO SPECIAL PROJECTS PLANS**

3.1 During the provision of engineering services if Pendle is of the reasonable view that the estimated number of days for a particular piece of work set out in Craven's Special Projects Plan(s) is inadequate (for reasons beyond Pendle's control) to enable it to properly undertake and complete that piece of work, Pendle will notify the Strategic Manager – Planning and Regeneration at Craven in writing that:

- (a) it believes that the estimated number of days is inadequate;
- (b) the reason for its belief; and
- (c) the number of additional days required to properly undertake and complete that piece of work.

Pendle will use its reasonable endeavours to notify Craven's Strategic Manager – Planning and Regeneration as soon as it becomes apparent that the number of days provided for a particular piece of work is, in its view, inadequate.

3.2 The Strategic Manager – Planning and Regeneration will then notify Pendle within 21 days whether it wishes Pendle to work those additional days (which Craven will contribute towards the costs of sums in accordance with the rates set out in Clause 6.5 below), or whether it wishes Pendle to work for only those number of days provided for in Craven's Special Projects Plan(s) and simply not to complete the particular piece of work in question or another piece of work included in the approved Special Projects Plan.

3.3 During the provision of engineering services if the Strategic Manager –

3.4 If Pendle agrees to provide the additional days then Craven will contribute towards the costs of sums in accordance with the rates set out in Clause 5.5 below^{3.5}

Pendle and Craven can jointly agree in writing to variations in Craven's Special Projects Plan. Where there are variations to Craven's Special Projects Plan and such variations are likely to significantly impact on the delivery of engineering services under either or both Special Projects Plans, the variations and their impact will be reported to Craven's leadership team and Policy Committee.

3.6 For the avoidance of doubt, Pendle will not provide additional days over and above those provided for in Craven's approved Special Projects Plan– either on individual pieces of work or overall, unless and until:-

- the number of additional days has been agreed in writing between the two authorities.
- the impact on the Special Projects Plan has been agreed in writing – including the curtailment, postponement or cancellation of other pieces of work or an increase in the number of days.
- where appropriate, the additional contribution to be paid by Craven.

4. **ENGINEERING SERVICES**

4.1 Pendle hereby agrees as follows;-

- (a) to provide to Craven 51 days per annum (a day being 7 hours 24 minutes to exclude any time spent travelling between Craven and Pendle) of engineering services (“the Services”), such services to be performed in accordance with the Special Projects Plan(s) drawn up and agreed as set out in clause 3.
- (b) to provide to Craven with additional days, at the discretion of Craven's Strategic Manager – Planning and Regeneration (a day being defined as in clause 4.1(a) above).
- (c) to use its reasonable endeavours to ensure that sufficient staff resources, in terms of number, qualifications and skills, are maintained at an appropriate level to ensure the effective delivery of the Services. However, this does not require Pendle to take any measures that would mean that Pendle exceeds its authorised budget for the provision of engineering services.
- (d) to use its reasonable endeavours to undertake and complete individual pieces of work and submit drawings and/or reports to meet agreed timescales and deadlines and to notify Craven as soon as it becomes apparent that such timescales and deadlines can no longer be met.
- (e) to formally notify Craven if the post(s) of Principal Engineer and Engineering Technician is deleted from the establishment and which new post(s) is to assume the equivalent role following a restructure.
- (f) subject to available resources and the prior agreement of Craven's Strategic Manager – Planning and Regeneration, to specify, procure, recommend and manage the services of contractors for the purpose of performing the shared services or any part of it. Pendle will be responsible for the acts and omissions of contractors as though they were their own.
- (g) to procure the services of contractors in accordance with Craven's Contract Procedure Rules (updated October 2014) and any subsequent amends or updates.

4.2 Craven will:-

- (a) co-operate with Pendle and each of its representatives as Pendle reasonably requires in order to perform the Services;
- (b) provide Pendle and each of its representatives performing the Services with access to all necessary information that is required for the performance of the Services, whether stored electronically or on paper;
- (c) provide Pendle and each of its representatives with the right in the performance of the Services, access to property owned or held by Craven;
- (d) instruct all Craven staff to respond promptly and fully to any requests for information or provide such explanations or execute such recommendations as are required by Pendle to enable them to satisfactorily perform the Services;
- (e) provide Pendle's Principal Engineer (or equivalent) and his or her representatives with direct access on request to Craven's Service Managers or Deputies; and
- (f) provide free of charge to all Pendle staff carrying out the Services at Craven's offices with reasonable and secure office accommodation with access to telephones, computers (including access to the IT network) and two free parking passes for designated car parks.

5. **COSTS OF THE SERVICES**

- 5.1 Pendle will prepare and approve the annual budget for the shared services and will use its own employees to provide the Services.
- 5.2 Pendle will not assign an individual or group of individual employees to perform the Services for Craven.
- 5.3 Pendle will apply its human resources policies, employee terms and conditions and payroll to those employees engaged in providing the Services.
- 5.4 Those employees engaged in providing the Services will be managed by Pendle's Principal Engineer (or equivalent).
- 5.5 In consideration of the provision of the Services by Pendle to Craven, Craven agrees to pay Pendle the following contribution towards the cost of the shared service:
 - (a) £296 (excluding VAT) for each of the 51 days for the first year (being 1 October 2015 until 31 September 2016) which totals £15,096 for the first year. Craven will pay VAT on this sum if applicable; and
 - (b) £296 (excluding VAT) for each of the 51 days for all subsequent years subject to an uplift on this sum due to any increase in employee costs (for example, a change to an employee's paygrade); and

- (c) £296 (excluding VAT) for each of the additional days, available to be utilised at the discretion of Craven's Strategic Head – Planning and Regeneration for the first year (being 1 October 2015 until 31 September 2016).
- (d) £296 (excluding VAT) for each of the additional days utilised in each subsequent year, subject to an uplift calculated as set out in clause 6.5(b) above.

5.6 Craven's contribution covers photocopying, postage and other office running expenses when officers providing the services are located at Craven's offices.

5.7 Pendle will invoice Craven quarterly for the number of days worked during the preceding three-months up to a maximum of 51 days provision for the year. Invoices will therefore be dated 1 January, 1 April, 1 July, 1 October.

5.8 Pendle will invoice Craven in arrears for any additional days worked if Craven's Strategic Manager – Planning and Regeneration has authorised, in writing, the use of any of the additional days available at his/her discretion.

5.9 In consideration of the provision of services by a contractor, Craven shall pay the contractor direct, upon receipt of a recommendation, in writing, of payment by Pendle.

5.10 Craven shall normally pay any correctly submitted invoice by Pendle within 30 days of the date of the invoice.

6. **REPORTING TO CRAVEN**

6.1 In connection with the provision of the Services:

- (a) Pendle's Neighbourhood Services Manager (or equivalent) will attend meetings of Craven's corporate leadership team or other relevant Committee as necessary.
- (b) Any report from Pendle to Craven's corporate leadership team shall be provided in draft to Craven's Strategic Manager – Planning and Regeneration at least 5 days before it is issued to the team.
- (c) Pendle will submit annual reports in September to Craven's corporate leadership team which will cover Pendle's performance against Craven's annual Special Projects Plan(s), progress compared with key milestones, outputs and recommendations from the work carried out that year.
- (d) Pendle will attend such meetings of the relevant Craven Committee as are necessary.
- (e) Pendle shall meet the Chair of the relevant Craven Committee upon request by either party.

7. **CONFIDENTIALITY**

7.1 Both Pendle and Craven undertakes to keep confidential and shall not disclose Confidential Information (which shall mean) to any third party, without the owner's prior written consent provided that:-

7.1.1 neither shall not be prevented from using any general knowledge, experience or skills which are in its possession prior to the commencement of the Agreement or was independently developed or acquired otherwise than from the performance of the Agreement;

7.1.2 the provisions of this Clause shall not apply to any Confidential Information which:-

(a) is in or enters the public domain other than by breach of the Agreement; or

(b) is obtained from a third party who is lawfully authorised to disclose such information; or

(c) is authorised for release by the prior written consent of Craven.

7.2 Nothing in this Clause shall prevent Pendle or Craven from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law, including but not limited to the Freedom of Information Act 2000.

8. **DATA PROTECTION**

8.1 Both parties shall comply with the Data Protection Act 1998 (the "1998 Act") and any other applicable data protection legislation.

8.2 Both parties agree to use all reasonable efforts to assist each other to comply with the 1998 Act.

9. **INSURANCE**

The Councils will ensure that they have adequate public liability, employer's liability and professional indemnity insurance cover in respect of claims that may be made in connection with the provision of the Services by Pendle to Craven.

10. **INTELLECTUAL PROPERTY**

Any Intellectual Property Rights created during the provision of the Services by Pendle to Craven shall vest jointly and equally in each Council.

11. **TERM**

11.1 This Agreement shall commence on 1 October 2015 and shall, subject to Clause 11.2 continue in full force and effect until 31 September 2018 unless terminated by either party giving no less than 3 calendar months' notice in writing. However, this

is subject to a minimum term with the earliest date for termination under this clause being 31 March 2016.

- 11.2 Either party may terminate this Agreement forthwith by notice in writing if the other party is in breach of this Agreement and fails to remedy the breach (if capable of remedy) within 30 days of written notice of the breach being given by the party not in breach, the Resolution of Disputes procedures set out in clause 12 having been followed.

12. RESOLUTION OF DISPUTES

- 12.1 Any dispute between the parties in connection with this Agreement shall be resolved as set out in this Clause 12.
- 12.2 The matter shall be referred to Pendle's Neighbourhood Services Manager and Craven's Strategic Manager – Planning and Regeneration to discuss the matter and to aim to reach a consensual resolution of the dispute.
- 12.3 If the Neighbourhood Services Manager and the Strategic Manager – Planning and Regeneration are unable to resolve the matter, within 14 days, it shall be referred to Pendle's Strategic Director and Craven's Chief Executive for resolution.

13. NOTICES

- 13.1 Any Notice under or referred to in these Terms and Conditions shall be in writing and shall be delivered personally or sent by pre-paid registered or recorded delivery post or electronic media other than facsimile, to the party intended to receive the notice or communication at its address below or such other address as that party may specify by notice in writing to the party giving the notice.
- 13.2 Each Party's address for service is:-

13.2.1 for Pendle:

FAO Peter Atkinson, Neighbourhood Services Manager
Pendle Borough Council
Market Street
Nelson BB9 7LG
mail: peter.atkinson@pendle.gov.uk

13.2.2 for Craven:

FAO David Smurthwaite
Strategic Manager – Planning and Regeneration
Craven District Council,
1 Belle Vue Square
Broughton Road
Skipton, BD23 1FJ
Email: dsмурthwaite@cravendc.gov.uk

14. GOVERNING LAW AND JURISDICTION

14.1 This Agreement shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England.

Signed by:..... Date :

Name & Title

For and on behalf of THE BOROUGH COUNCIL OF PENDLE

Signed by:..... Date :

Name & Title

For and on behalf of CRAVEN DISTRICT COUNCIL