

THIS AGREEMENT is made on the 13th day of January 2012 BETWEEN:

- (1) SHEPWAY DISTRICT COUNCIL of Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY.
- (2) DOVER DISTRICT COUNCIL of White Cliffs Business Park, Whitfield, Dover, Kent CT16 3PJ
- (3) THANET DISTRICT COUNCIL of Council Offices, Cecil Street, Margate Kent CT9 1XZ

RECITALS

- (1) The Councils agree to carry out a joint procurement exercise for the provision of pest control services (“The Services”).
- (2) The Councils have agreed that they will each enter into separate contracts for the provision of The Services with a contractor to be agreed between the parties.
- (3) This Agreement is a commitment to procure The Services. A legally binding contract to purchase will only be made when the councils enter into contracts with the Contractor.

IT IS AGREED AS FOLLOWS:

1. Interpretation

- 1.1 “The Agreement” means this document and any subsequent variations agreed between the Parties.
- 1.2 “Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998].
- 1.3 ‘Contract’ means the individual contract entered into by each of the three Councils and the Contractor.
- 1.4 “Council” means any of the individual councils

- 1.5 “Councils” means the collective parties to this Agreement.
- 1.6 ‘The Contractor’ means any successful tenderer agreed upon between the Councils following the Tender Process.
- 1.7 “Party” or “Parties” means a party or parties to this agreement.
- 1.8 “The Services” means the provision of pest control services
- 1.9 “The Tender Process” means the assessment of tenders under the Public Contract Regulations 2006.
- 1.10 Words importing one gender include all other genders and words importing the singular include the plural and vice versa
- 1.11 Any agreement by a Party not to do an act or thing shall be deemed to include an obligation not to commit or suffer such act or thing to be done by another person or body.

2. Commencement

- 2.1 This Agreement comes into force on the agreement date and terminates on the date that the last of the councils enters into the Contracts.

3. Covenants

- 3.1 Covenants made within this Agreement shall be made both severally and jointly by the Councils although each Council will be severally liable under the Contracts.
- 3.2 The Councils have agreed with each other that they will enter into a separate contract with the Contractor upon the appointment of the successful Contractor.

4. Termination

- 4.1 No Council may terminate its participation in this Agreement, except at the termination date of this Agreement under clause 2.1.

5. Confidentiality

- 5.1 Each Party shall at all times use its best endeavours to keep confidential (and to ensure that its employees and agents shall keep confidential) any confidential information which it may acquire about the other Parties. No Party

shall use or disclose such information except with the consent of the relevant Party or under a court order.

- 5.2 The obligations of each Party set out in clause 5.1 shall cease to apply to any information coming into the public domain otherwise than by breach by the other Parties. Nothing in this clause shall prevent any of the Parties from disclosing information required under the Freedom of Information Act 2000 or in legal proceedings arising out of this Agreement.

6. Disputes

- 6.1 All disputes arising out of this Agreement between the Councils shall be resolved between the Parties. In default of resolution, the Parties agree to jointly appoint an independent expert, to be nominated by the Law Society if the Parties cannot agree on the appointment. The independent expert's decision shall be binding on all Parties. The Parties agree to share equally the cost of such arbitration.

7. Nature of this Agreement

- 7.1 This Agreement relates only to the intended joint procurement exercise. It does not make any Council the agent of any other Council. It does not constitute a partnership agreement.

8. Indemnity and Insurance

- 8.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 8.2 Each Party shall indemnify the other Parties and keep indemnified the Parties fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property, which is caused directly or indirectly by any act or omission of the Party. This clause shall not apply to the extent that the Party is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the

negligence or default of its Staff or sub-contractors, or by any circumstances within its or their control.

9. Rights of Third Parties

9.1 The Councils do not intend that any of the terms of this agreement will be enforceable under the Contracts (Rights of Third Party) Act 1999 by any person not a party to it.

In witness of this Agreement the Councils have signed below on the above date, in the presence of:

Stephen Courts – Shepway District Council

Morgan Sproates – Thanet District Council

Paul Neagle – Dover District Council

Signed on behalf of SHEPWAY DISTRICT COUNCIL

in the presence of: Paul Neagle and Morgan Sproates

Signed on behalf of DOVER DISTRICT COUNCIL

in the presence of: Morgan Sproates and Stephen Courts

Signed on behalf of THANET DISTRICT COUNCIL

in the presence of: Stephen Courts and Morgan Sproates