

RECORD OF EXECUTIVE DECISION TAKEN BY AN EXECUTIVE MEMBER OR OFFICER

This form can be used for any decision but **MUST** be used to record:

- any decision taken by the Elected Mayor or an individual Councillor
- a key decision taken by a Council Officer

In these circumstances the form must be completed and passed to the Head of Members' Services no later than NOON on the second working day after the day on which the decision is taken. No action may be taken to implement the decision(s) recorded on this form until 7 days have passed and the Head of Members' Services has confirmed the decision has not been called in.

1. Description of decision

The Portfolio Holder

- (a) Agrees to enter into an agreement under section 16 of the Local Government and Public Involvement in Health Act 2007 under which the contract with Amey LG for highway works will be transferred from BBC to CBC.
- (b) Approves the proposed Deed of Novation in Appendix A which will give effect to the transfer.
- (c) Delegates to Executive Director of Environment & Sustainable Communities in consultation with the Portfolio Holder, authority to make minor amendments to the documents referred to in recommendation (a) and (b) above
- (d) Endorses that, if either BBC and CBC are unable to proceed with Deed of Novation in Appendix A, then BBC continue to manage the contract and BBC enters into a separate agreement with CBC for the remaining duration of the contract until March 2013

2. Date of decision

20 July 2010

3. Reasons for decision

To allow the transfer of employer responsibilities under the Term Contract for Highway Services with Amey LG from BBC to CBC and ensure that BBC continues to have access to the contract in order to ensure timely and adequate delivery of its highway responsibilities

4. Alternatives considered and rejected

To continue with the existing arrangement but this would not deliver the efficiency savings required as part of the 2010-11 budget

5. How decision is to be funded

The decision will enable planned efficiency savings to be achieved.

6. Conflicts of interest

Name of all Executive members who were consulted AND declared a conflict of interest.	Nature of interest	Did Standards Committee give a dispensation for that conflict of interest? (if yes give details and date of dispensation)

The Mayor has been consulted on this decision

Signed

Date

Name of Decision Taker ... The Deputy Mayor and Environment & Transport Portfolio Holder

This is a public document. A copy of it must be given to the Head of Members' Services as soon as it is completed.

Date decision published: 22.7.10

Date decision can be implemented if not called in: 20.7.10

Bedford Borough Council – DEPUTY MAYOR AND ENVIRONMENT AND TRANSPORT PORTFOLIO HOLDER

Date: 19 July 2010

Report by Executive Director Environment & Sustainable Communities

Subject: Novation of the Amey contract to Central Bedfordshire Council

1. Executive Summary

- 1.1. This report proposes that approval is given to the attached deed of novation and Section 16 agreement which will have the effect of transferring the Bedfordshire Highways Term Contract for Highways Services from Bedford Borough Council (BBC) [as caretaker] to Central Bedfordshire Council (CBC).

2. Recommendation

- 2.1. That the Portfolio Holder considers, and if satisfied,
- (a) Agrees to enter into an agreement under section 16 of the Local Government and Public Involvement in Health Act 2007 under which the contract with Amey LG for highway works will be transferred from BBC to CBC.
 - (b) Approves the proposed Deed of Novation in Appendix A which will give effect to the transfer.
 - (c) Delegates to Executive Director of Environment & Sustainable Communities in consultation with the Portfolio Holder, authority to make minor amendments to the documents referred to in recommendation (a) and (b) above.
 - (d) Endorses that, if either BBC and CBC are unable to proceed with Deed of Novation in Appendix A, then BBC continue to manage the contract and BBC enters into a separate agreement with CBC for the remaining duration of the contract until March 2013.

3. Reason for Recommendation

- 3.1. To allow the transfer of employer responsibilities under the Term Contract for Highway Services with Amey LG from BBC to CBC and ensure that BBC continues to have access to the contract in order to ensure timely and adequate delivery of its highway responsibilities .

4. Implications

Legal

- 4.1. Bedfordshire County Council (BCC) and Amey LG entered into a Term Contract for Highway Services ('the Amey Contract') on 1 October 2005. The term of the contract is 5.5 years and as at 1 April 2009, two extensions had been agreed, and a decision on the third was pending meaning the contract end date would be March 2012 or 2013.
- 4.2. By article 5 of the Bedfordshire (Structural Changes) Order 2008 ('the Order') on 1 April 2009 the County of Bedfordshire was abolished as a local government area and BCC was wound up and dissolved. By articles 3 and 4 of the Order BBC and CBC which together comprise the whole of what is to be the former BCC area became unitary authorities with effect from 1 April 2009.

- 4.3. With effect from 1 April 2009, the Term Contract for Highway Services transferred to BBC as nominated caretaker for the unitary authorities (namely BBC and CBC). By operation of law therefore, BBC now stands as the contracting authority in the place of BCC, in respect of the Amey Contract.
- 4.4. Subject to approval, it is intended BBC and CBC will agree to enter into an agreement pursuant to section 16 of the Local Government and Public Involvement in Health Act 2007. This agreement is annexed at Appendix B. It is then intended that the Amey Contract be novated to CBC in its entirety. The proposed deed of novation is annexed at Appendix A.
- 4.5. The overall effect of the Section 16 Agreement is an agreement to transfer the Amey Contract together with the benefits and obligations entirely to CBC. Amey LG will obviously have to agree to the transfer of the benefits and obligations under the Amey Contract to CBC by way of the deed of novation.
- 4.6. There is the question whether the novation amounts to a fresh contract award which necessitates a fresh procurement exercise. Counsel's advice has been obtained on this point and his advice is that it does not.

Policy

- 4.7. The Highways Act 1980 placed a duty on highway authorities to manage and maintain their highways so that roads and footways are kept open and remove obstructions which may affect the safety of the travelling public.
- 4.8. In order to deliver on these obligations the former BCC entered into a managing agent contract (MAC) with Amey LG. This form of contract is predicated on the contractor managing the assets for the client to deliver pre-determined client objectives within an approved budget. This means that a significant element of 'client' responsibility passes to the contractor to enable it to 'manage' the highways services to meet these client objectives (the service is effectively outsourced within an agreed framework). In reality this means a significant proportion of decisions are taken by the contractor without the need for recourse to the client.
- 4.9. This means of delivering the highway services did not accord with the Borough's former method of delivering a highway service under its former Highways Agency agreement. A strong, lean (but not thin) client played an important role in ensuring the service met both policy objectives but also political objectives while the provision of the service through the in-house delivery team enabled a flexible, reactive and value for money service to be provided.
- 4.10. The move away from a MAC based contract to a more client led service will help the service deliver efficiency savings approved by the Executive at its meeting on 20 January 2010. The move to in house service delivery reduces the amount of lump sum payments made to Amey, and it should be recognised that TUPE of staff will occur as part of these changes.
- 4.11. The section 16 agreement and novation of the contract will also help to support the objective 8a of the Corporate Plan which aims to improve operational efficiency and effectiveness.

Resources

- 4.12. Although the section 16 agreement and concurrent novation to Amey LG of the MAC contract will deliver revenue savings of £182,000 per annum to the council, these were taken into account by Executive at its 20 January 2010 meeting and approved as part of the budget by Full Council at its meeting on 3 February 2010.

- 4.13. A further consideration is that the existing MAC contract report includes a minimum threshold of spend. Failure to meet the minimum threshold of spend will result in an increase in contract rates for the client. The value of the minimum spend (in aggregate for both BBC and CBC) is currently £21million. Based on a 62/38 split (derived from respective road lengths) this equates to this council being committed to an annual minimum spend of just under £8million. As part of the novation negotiations Amey LG has agreed to remove this clause from the contract in return for an extension of the contract to its maximum period to 31 March 2016 along with protection for both councils from any financial liability for future changes to the scope of works made by this council.
- 4.14. A key factor for the council is to ensure that value for money will still be achieved if the contract is novated and the work undertaken by the in-house delivery provider is increased. A comparison has been made of the cost of works undertaken by the in-house provider against tendered rates by Amey. The outcome of this comparison was a close similarity between the works cost for each of the service providers the council currently uses. The council will have the right to engage Amey directly for highways services through the contract and this will provide the flexibility of being able to use both Amey and DSD which will provide greater surety of service delivery and opportunities to seek best value.

Risk

- 4.15. The main risks associated with this contract are as follows:

- how a third party claim against the Council, or a contractual dispute, would be dealt with based on the existing letter of agreement;
- the contractual requirement for a minimum annual expenditure through the highways contract, and
- the financial liability for both councils for potential changes to the scope of works provided to Bedford BC.

- 4.16. Proposals to mitigate the above risks have been put forward in the main body of this report.

- 4.17. A further risk to the council is that if the contract is not novated then the planned efficiency savings for 2010/11 arising from this will not be achieved.

Environment

- 4.18. The effective maintenance of our highway network is a key part of supporting the council's corporate priority area of Housing and transport, specifically objectives 7C – improve our roads and pavement and objective 7D – reduce traffic congestion. The section 16 agreement and contract novation will enable the council to ensure all highway works have regard to these objectives.

- 4.19. The change in approach will enable client officers to have a more focussed regard to Priority Area 2 - Environment and Climate Change of our Corporate Plan.

Equalities

- 4.20. There are no implications arising from this report regarding any of the protected characteristics under the Equalities Act 2000, namely age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex or sexual orientation connected with making a section 16 agreement with CBC and novating the contract with Amey.

5. Detail

Additional Background

- 5.1. In 2005 the former Bedfordshire County Council entered into an agreement with Amey LG for the provision of highway services using a Managing Agent Contract (MAC). This meant that BCC were responsible for setting budgets and policy while Amey had responsibility for everything related to service delivery (including staffing, scheme development, scheme implementation etc).
- 5.2. Under this MAC arrangement BCC retained a small number of staff (referred to as a thin client) to monitor Amey's performance. The contract was let for a minimum period of 5½ years, with five possible one-year extensions based on the achievement of agreed performance levels. Two of these extensions had been agreed, and a decision on the third was pending at the date of structural change to local government in Bedfordshire.
- 5.3. Under the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 (The Regulations), CBC and BBC were required to use their best endeavours to reach agreement before 1 April 2009 as to the transfer of the rights and liabilities of the former County Council under the Contract. As no agreement was reached by 1 April 2009 BBC assumed the role of "caretaker" for the contract in accordance with decision of the Secretary of State that BBC be appointed caretaker for all contracts spanning both unitary areas (unless the parties agreed differently). Thus BBC thus holds the contract in trust until such time as other arrangements can be agreed between both authorities.
- 5.4. In accordance with the Borough's desire to have more of an involvement in important aspects of managing this important service and CBC's desire to manage the Amey contract for its own area officers of both councils have been working together to agree a section 16 agreement and with Amey to produce a deed of novation based on a Central Bedfordshire led contract.

Contractual Arrangements since April 2009

- 5.5. As it was not possible to reach an agreement with CBC as to the transfer of the Amey Contract as at 1 April 2009, an interim arrangement was agreed between BBC and CBC. This arrangement was communicated to Amey by way of a letter dated 31 March 2009 a letter was sent to Amey LG which informed Amey that CBC officers would manage highways services in Central Bedfordshire directly and gave an undertaking that CBC would pay Amey LG directly, on the terms set out in the original contract with the former County Council. However, as the council is the "caretaker" to the contract the ability of CBC officer to develop the contract (i.e. in terms of managing costs, quality, programmes and innovation) is limited and relies on officer commitment from both authorities to deal with issues amicably.

Negotiations with Bedford BC and Amey LG

- 5.6. Since April 2009 both councils have worked with Amey to reach an agreed position to enable a section 16 agreement and novation document to be prepared which is acceptable to all parties. While these have been open and transparent it is clear two key points needed to be resolved in order to reach a mutually agreeable position. These are:
 - (a) the contractual requirement for a minimum annual expenditure through the contract; and
 - (b) the question of financial liability for potential future changes to the scope of works provided to Bedford BC.

Risk - Annual Expenditure

- 5.7. Clause 59a of the highways contract stipulates that, should expenditure fall below a minimum value, Amey would be entitled to an uplift in rates to reduce the impact on the fixed overhead costs they have resourced-up to in the expectation of a certain value of work.
- 5.8. The minimum expenditure figure is currently just over £21million per annum (for the whole of Bedfordshire) and the uplift would be 2% on all expenditure in the year (i.e. a maximum of £420,000). The difficulty faced by both BBC and CBC is that if the expenditure by the other Council fell short of its share of the joint £21million, **both** Councils would be liable for a share of the additional payment. Clearly, neither council would wish to underwrite the other in this respect.
- 5.9. A range of possible solutions has been explored between the Councils in terms of isolating the risk to each, but without success. However, discussions with Amey have proved to be more fruitful, and the company has offered to delete this clause from the contract. This would be in exchange for a positive decision on the year's extension that was outstanding at the time of Local Government Reorganisation (LGR), and on the extension available for performance in 2009/10. (Note that due to the "caretaker" arrangements, formal contractual targets were not set for 09/10). However, a suite of targets were set for individual authority areas). By agreeing to this proposal and removing clause 59a, both councils would not be required to meet any future minimum funding level, thereby removing a significant area of risk.

Risk - Future Liability

- 5.10. Another potential area of risk which impacted on negotiations relates to the MAC's lump sum costs (i.e. overhead costs on the contract including winter maintenance, the watchman role etc). It is intended that an element of the lump sums costs will be delivered in-house by BBC staff and these changes to the lump sums will form part of the s16 agreement. Throughout the discussions, the position has been that neither council should be disadvantaged by this approach. Of particular importance to CBC was that if BBC were to remove work from the contract, any residual costs associated with that action should not be borne by CBC. e.g. if BBC removed the requirement for Amey to maintain the road condition database, the database would still need to be maintained and the full cost should not fall to CBC.
- 5.11. At the request of both Councils, Amey LG has agreed to take all future liability for such changes to the scope of the contract onto itself, in exchange for award of the third and final outstanding contact extension. This extension would take the contract end date to 31 March 2016. This removes another area of financial risk from the operation of the contract.

Form of Agreement

- 5.12. The deed of novation is a tri-party document between BBC, CBC and Amey LG. It removes clause 59a of the contract relating to value of works committed under the contract, while including the section 16 agreement between CBC and BBC. The relevant documents are attached in Appendix A and B of this report. The agreement defines the relationship between CBC, as owner of the contract, Amey LG and BBC. This is important as BBC wish to continue using parts of the contract going forward, including functions such as winter maintenance and gulley cleansing.

Conclusions and next steps

- 5.13. The draft deed of novation and section 16 agreement now need to be formally agreed by all parties. Both BBC and CBC officers have indicated that these proposals are acceptable, as has Amey LG's senior management. The proposals offer benefit to all three parties. If the Portfolio Holder endorses the attached agreement then, subject to the approvals by Amey LG and CBC, officers will work to implement the novation as soon as possible.
- 5.14. Should the agreement not be endorsed, BBC would need to enter into an alternative section 16 agreement with CBC, confirming the current interim arrangements for the remainder of the contract.

6. Summary of Consultations and Outcome

- 6.1. The following Council Units or Officers and/or other organisations have been consulted in preparing this report:

Management Group

- 6.2. No adverse comments have been received.

7. Ward Councillor Views

- 7.1. Not relevant to this report.

Report Contact Officer:	Executive Director Environment & Sustainable Communities
Background Papers:	None
Previous Relevant Minutes:	None
File Reference:	CE/GEN/202a
Appendices:	Two

DATED _____ 2010

Bedford Borough Council (1)

Central Bedfordshire Council (2)

Amey LG (3)

**Deed of Novation
and Variation**

to a term contract for highway services entered into by
Bedfordshire County Council and Amey LG on 30 April 2005

W H E R E A S

(A) Bedfordshire County Council (BCC) and Amey LG entered into the Term Contract for Highway Services on 30 April 2005 which provides for the Services in respect of the Highway Network to be provided until or at least to 31 March 2013 (“the Contract”).

(B) By article 5 of the Bedfordshire (Structural Changes) Order 2008 (“the Order”) the County of Bedfordshire was abolished as a local government area and BCC was wound up and dissolved on 1st April 2009.

(C) By articles 3 and 4 of the Order BBC and CBC which together comprised the whole of what was the former BCC area became unitary authorities with effect from 1st April 2009.

(D) By virtue of the Order, BBC and CBC both succeeded to the County Council’s functions as highway authority respectively in respect of the Borough of Bedford and District of Central Bedfordshire under the Contract.

(E) Regulation 13 (3) of The Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 (“the Regulations”) provides that as successor councils, BBC and CBC should use their best endeavours to reach agreement by 31 December 2008 as to the transfer of residual matters and this includes the transfer of the rights and liabilities of BCC under the Contract.

(F) BBC and CBC were unable to reach an agreement by 3 December 2008 concerning the transfer of rights and liabilities under the Contract. In the absence of such agreement the Secretary of State nominated BBC as the caretaker council on trust for itself and CBC pursuant to Regulation 13 (4) of the Regulations.

(G) By operation of law therefore, BBC now stands as the contracting authority in the place of BCC, in respect of the Contract.

(H) BBC has now agreed to transfer the benefits and obligations under the Contract to CBC. Amey LG agrees to allow BBC to transfer the benefits and obligations under the Contract to CBC.

(I) BBC wishes to continue to receive the Services in accordance with the arrangements set out in this Deed.

(K) Accordingly all parties to this Deed have agreed that the Contract will be novated from BBC to CBC in accordance with the terms set out below.

NOW IT IS AGREED AS FOLLOWS

With effect from 1st August 2010, the Contract is hereby novated from BBC to CBC. Without derogating from the generality of the foregoing, the following provisions of this Deed shall have effect:

1. The Parties to this Deed have agreed that the Contract is varied to the extent that it shall be extended to 31 March 2016 from the date of Novation and that Amey LG shall provide the Services in respect of the Network until this date. Unless stated otherwise herein, this variation shall be without prejudice to any other provision within the Contract.

2. CBC agrees to perform the Contract in place of BBC and to be bound by it in the same way as if it had been an original party to it.

3. Amey LG hereby releases and discharges BBC from all duties, liability, claims and demands whatsoever in respect of the Contract and accepts the liability of CBC in place of BBC as from the date of this Deed and agrees and undertakes to BBC and

CBC to be bound by and perform the Contract in everyway as if CBC had been originally named in the Contract in place of BBC.

4. Amey LG hereby releases BBC of any continuing or further obligations under the Contract. Following such release, and subject to the arrangements set out in this Deed, BBC shall have no further obligation to Amey LG in relation to the Contract.

5. CBC warrants to BBC and Amey LG that it will hereafter duly perform its obligations under the Contract.

6 .BBC agrees to indemnify CBC against any claims that Amey LG may submit to CBC after the novation of the Contract in respect of the provision of Services to BBC prior to the novation. For the avoidance of doubt, this indemnity is confined to provision of the Services to BBC for the benefit of Bedford Borough.

7 . Notwithstanding the above, CBC and Amey LG agree to provide BBC with access to the Services under the Contract following the Novation.

8. The mechanism by which CBC shall provide BBC with access to the Contract shall be as follows:

8.1 The scope of the services that shall be provided is limited to those in the Contract, but will exclude some areas included within the Contract. Areas to be excluded will be identified solely by BBC. BBC will be mindful of the effects of service delivery within both CBC and BBC when considering such exclusions and will provide CBC and Amey LG with prior notice of any intended changes via the Joint Highways Contract Officers Group. A revised schedule of lump sum items (including items to be removed from the Contract) is included in Appendix B. It is anticipated that BBC will remove items such as (but not limited to) Highways Inspections, NRSWA duties and

management of Highways Structures from the scope of the Contract within 4 months of the date of this Deed.

8.2 In order to facilitate the delivery of the Services BBC are authorised to communicate directly with representatives of Amey LG for the purpose of directly managing the services provided within Bedford Borough.

8.3 BBC and Amey LG will meet as necessary to discuss service delivery issues and client specific service issues and improvement areas.

8.4 Reporting: Amey LG will provide BBC directly with all necessary reports, as specified in the Contract or as otherwise agreed by the Governance and Network Boards.

9. Charging and Commercials

9.1 Amey LG will provide BBC with monthly statements of the work carried out in Bedford Borough for agreement or amendment in accordance with the terms and conditions of the Contract.

9.2 The total cost of the service will be the aggregate of time charges, scale fees and schedule of rates items relating to the works and services provided by Amey LG, within the geographical area of Bedford Borough, through the Contract. In addition to the above BBC shall pay Amey LG the relevant monthly lump sum amounts as set out in Appendix A

9.3 Where BBC wishes to further vary the Services to be provided to the BBC by Amey LG under this Deed then the cost of the variation is to be agreed between BBC and Amey LG based on the build up of costs for services provided under the Contract. Any such changes must be agreed and signed off by BBC and Amey LG.

9.4 BBC and Amey LG agree that any decision by BBC to vary the scope of the services provided to BBC by Amey LG in accordance with clause 7.1 of this Deed will not result in any additional costs being incurred by CBC.

9.5 Performance Indicators: BBC will provide a reduced set of PPIs to Amey LG to be measured for service delivery in the Bedford Borough Area.

10. All the parties agree that all references to BCC in the Contract shall be taken to read as references to CBC.

11. BBC and CBC shall upon the execution of this Deed enter into an agreement pursuant to section 16 of the Local Government and Public Involvement in Health Act 2007 ('Section 16 Agreement'). This agreement is annexed to this Deed at Appendix A. The Section 16 Agreement sets out the services to be provided to BBC and how changes to the service provision would be managed. For the avoidance of doubt and notwithstanding the novation, BBC also has the right to instruct Amey LG to carry out highway works within the Borough of Bedford and this is provided for in the Section 16 Agreement.

12. All the parties agree that the Contract shall be varied by the deletion of Clause 59a and without prejudice to the foregoing. In all other respects the Contract remains valid and in force subject to this variation.

13 This Deed shall be governed and construed in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English courts.

IN WITNESS whereof the parties have executed and delivered this Deed the day and year first before written

EXECUTED AS A DEED by [BBC]

]

By affixing its seal in the presence of: -]

.....

Authorised signatory

.....

Authorised signatory

EXECUTED AS A DEED by [CBC]]

By affixing its seal in the presence of: -]

.....

Authorised signatory

.....

Authorised signatory

THE CORPORATE SEAL of [AMEY LG]]

Hereunto affixed is authenticated by]

.....

Director/Secretary

.....

Director/Secretary

APPENDIX A

Section 16 Agreement

Section 16 Agreement

This AGREEMENT is made this day of 2010

B E T W E E N **Bedford Borough Council** (BBC) of Town Hall, St Paul's Square, Bedford, MK40 1SJ of the first part and **Central Bedfordshire Council** (CBC) of Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire, SG17 5TQ of the second part.

1. DEFINITIONS

In this Agreement:-

The Act	Means the Local Government and Public Involvement in Health Act 2007
The Contract	Means the Managing Agent Contractor (MAC) contract awarded to Amey LG by Bedfordshire County Council on 30th April 2005 and including any amendments to the contract agreed between Amey LG and Bedfordshire County Council prior to 1st April 2009. This is also referred to as the 'Contract' in this Agreement.
Conditions of Contract	Means the Conditions of Contract for the Term Contract for Highway Services
The Order	Means the Bedfordshire (Structural Changes) Order 2008.
Service Information	Means the Service Information and Annexes contained within the Term Contract for Highway Services
The Services	Means those services summarised in Appendix 1 of this Agreement and described more specifically in the Service Information and any amendments to the Service Information which have been agreed between Bedfordshire County Council and Amey LG and implemented prior to 1st April 2009
The Transfer	Means the transfer of the Contract to CBC as provided for in this Agreement.

2. W H E R E A S

(A) This Agreement is made by virtue of the powers provided under section 16 of the Local Government and Public Involvement in Health Act 2007 ('section 16 Agreement').

(B) The Term Contract for Highway Services with the service provider (Amey LG) was entered into by Bedfordshire County Council (BCC) on 30th April 2005. The parties hereby agree transfer the Term Contract for Highway Services as hereinafter set out.

(C) By article 5 of the Bedfordshire (Structural Changes) Order 2008 ('the Order') on 1st April 2009 the County of Bedfordshire was abolished as a local government area and BCC was wound up and dissolved.

(D) By articles 3 and 4 of the Order BBC and CBC (hereinafter referred to as the 'Parties') which together comprise the whole of what was the former BCC area became unitary authorities with effect from 1st April 2009 and now have responsibility for areas that formerly comprised the county of Bedfordshire.

(E) With effect from 1st April 2009, the Term Contract for Highway Services transferred to BBC as nominated caretaker for the unitary authorities (namely BBC and CBC).

(F) Section 16 of the Local Government and Public Involvement in Health Act 2007 allows any public bodies to make from time to time to make arrangements with respect to:

- i. any property, income, rights, liabilities and expenses of the Parties to this Agreement;
- ii. any financial relations between the Parties to this Agreement.

(G) The Parties agree that, for the avoidance of doubt, their power to make the arrangements in respect of the Term Contract for Highway Services is derived from Section 16 of the Local Government and Public Involvement in Health Act 2007.

(H) The Term Contract for Highways Services shall be transferred from Bedford Borough Council as nominated caretaker to Central Bedfordshire Council on 1 August 2010. CBC thereafter shall become the replacement Authority in the Term Contract for Highway Services under its existing terms and conditions.

(I) In the event of a dispute or disagreement arising from this Agreement, the Parties shall first attempt to resolve the disputed matter amongst themselves. In default of agreement about any disputed matter, the matter is to be referred to arbitration as provided for in the arbitration provisions in Section 16 (3) and Section 16 (4) of the Local Government and Public Involvement in Health Act 2007.

NOW IT IS AGREED AS FOLLOWS

1. The Parties agree that the Term Contract for Highway Services shall be transferred together with the benefits and obligations, in accordance with the provisions set out in this Agreement. It is agreed that no further formalities are required to effect such a transfer of the Term Contract for Highway Services between the Parties.
2. Upon the transfer being effected CBC has agreed to facilitate shared services to BBC, as the contracting authority under the Term Contract for Highway Services and as set out herein.

3. It is agreed between the Parties that BBC will need to utilise the services provided by Amey LG under the Term Contract for Highway Services and CBC agrees that upon the Transfer and notwithstanding the transfer, it will make available to BBC the Services at all times without hindrance during the term of this Agreement. It is essential that BBC is able to use the Services provided by Amey under the Term Contract for Highway Services in order for it to discharge its duties as the Highway Authority for Bedford. Furthermore, CBC agrees with BBC that upon the Transfer, CBC shall give equal priority under the Term Contract for Highway Services to all work requests made by BBC. CBC shall at all times consider all such work requests to be of equal standing to its own.

4. In the spirit of partnering, the Parties will work to improve the service delivery through the Term Contract for Highway Services by developing an environment of co-operation and trust, using the following Partnership Principles:
 - Be accountable – to the joint responsibilities set out in this Agreement
 - Collaborate and co-operate – establish and adhere to the governance structure to ensure that service activities are delivered and actions taken on a joint basis
 - Be open – communicate openly about major concerns, issues or opportunities relating to the services provided
 - Learn, develop and achieve potential – share information, experience and skills to learn from each other and develop new ways of working. Work collaboratively to identify business improvements, eliminate inefficiencies and reduce the cost of service provision

- Adopt a positive outlook – demonstrate a positive, “can do” attitude, looking at ways to improve services
- Focus on excellent client and public service – by providing services through the Term Contract for Highway Services, which will govern how delivery will be targeted and managed

5 **Term of Agreement**

5.1 This Agreement shall be reviewed annually by a Joint Highways Contract Officers Group and may be revised and varied so long as this is formally endorsed by the Parties.

5.2 This Agreement will continue to operate up to the specified period of the Term Contract for Highway Services unless it is formally superseded by other arrangements as agreed between the Parties.

6. All Parties to this Agreement will seek to ensure that the Services provided continue to meet the needs of BBC and CBC. To assist this process:

6.1 At least four Joint Highways Contract Officers Group meetings will be convened each year to provide governance for this Agreement. The Group will be attended by senior officers of CBC and BBC. Amey LG may be invited to attend meetings as required.

6.2 CBC will act as secretariat for the Joint Highways Contract Officers Group. Full terms of reference are to be prepared and agreed by the group but will include:-

- Responsibility for ensuring that this Agreement remains fit for purpose and to ensure that the service provided continues to meet the needs of BBC & CBC.
- Review the continued effectiveness of the Agreement and share information on proposed programmes in the interests of ensuring effective policy and delivery.
- Exchange information on actual schemes and projects to allow effective monitoring of costs, outputs and performance.
- Share information on contract performance, procurement issues etc and make recommendations to the respective Councils.
- Review performance measures and targets and proposed amendments or innovations to the Term Contract for Highway Services.
- Minutes will be taken at all meetings and circulated to all members of the Highways Contract Officer Group.

7 Performance Review Meetings

BBC shall be invited to attend monthly performance review meetings between CBC and Amey LG.

8 Extension and Termination of the Term Contract for Highways Services.

8.1 CBC will take into account the satisfaction of BBC, and relevant performance Indicator outturns when extensions to the Term Contract for Highway Services are considered by the Network Board.

8.2 CBC will not seek early termination of the Term Contract for Highway Services without the prior written agreement of BBC.

9 Upon notice of termination, it will be the responsibility of CBC to convene an “Exit Meeting” at an appropriate time with representatives of both BBC and CBC to formulate an “Exit Plan” and agree arrangements for terminating the

contract. Reasonable notice will be deemed to mean providing sufficient time for the other party to put alternative arrangements in place for providing the Services.

10 Unless there is a fundamental breach in the Term Contract for Highway Services, termination of this Agreement shall be subject to 6 months written notice to be given after the end of the Term Contract for Highway services by either party.

11 Where applicable, TUPE will apply in line with current government legislation. In the event of cancellation or termination of the Term Contract for Highway Services, CBC shall at all times liaise with BBC in respect of TUPE issues arising from the Contract.

12 **Audit Rights**

CBC will provide BBC with access to the books and financial records pertaining to the Services in order to verify cost information.

13 **Constraints**

CBC shall not assign or sub-contract any of the responsibilities under this Agreement without prior written consent of BBC. Such consent would not be unreasonably withheld.

14 As both parties have similar management and overhead costs in relation to the management of this Agreement, CBC will not apply any additional charges or costs to the amounts payable to Amey LG through the Term Contract for Highways Services, when invoicing BBC for the Services provided.

15 It is agreed between the Parties that Clause 59a of the Term Contract for Highways Services, relating to additional payments that are due to Amey LG

