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AGENCY AGREEMENT

DATED

2nd October

2000

THE KENT COUNTY COUNCIL (1)

- and -

ASHFORD BOROUGH COUNCIL (2)

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## AGENCY AGREEMENT

relating to the enforcement of  
parking control in the Permitted Parking Area and  
Special Parking Area of the  
Borough of Ashford

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Legal and Secretariat  
Kent County Council  
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Maidstone  
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THIS AGREEMENT is made the *2nd* day of *October* Two Thousand  
BETWEEN THE KENT COUNTY COUNCIL of County Hall Maldstone Kent  
ME14 1XQ ("the County Council") (1) and ASHFORD BOROUGH COUNCIL of  
Civic Centre Tannery Lane Ashford Kent TN23 1PL ("the Borough Council") (2)

**1. DEFINITIONS & INTERPRETATION**

1.1 In this Agreement the following expressions (arranged in alphabetical order and in certain instances incorporating in their definitions expressions defined elsewhere in this clause) shall have the meanings set out below:

"the 1972 Act"

means the Local Government Act 1972

"the 1984 Act"

means the Road Traffic Regulation Act 1984

"the 1991 Act"

means the Road Traffic Act 1991

"the Adjudication Service"

means the organisation approved by the Secretary of State and charged with amongst other things the responsibility of dealing with disputes between local authorities (including the Borough Council) within the County of Kent (and other local authorities) and appellants

"the Agreed Sum"

means for the first twelve months from the date of this Agreement the sum of seventy five thousand pounds (£75,000) and for each subsequent period of twelve months commencing on each respective Review Date the amount which bears the same proportion to seventy five thousand pounds (£75,000) as the Index Figure for the month preceding the relevant Review Date bears to the Index Figure for the date of this Agreement and for the avoidance of doubt the relevant Review Date for the second 12 month period of this Agreement shall be 24 months from the date of this Agreement and the third

12 month period shall be 36 months from the date of this Agreement  
etcetera

**"the Arbitrator"**

means an arbitrator appointed to resolve disputes between the parties pursuant to Clause 3.5 hereof such arbitrator being appointed by agreement between the parties or (in default of agreement within 14 days) appointed by the President or other senior officer of the Law Society following a written request to make such appointment from either party (a copy of such request being sent to the other party at the same time)

**"Controlled Parking Scheme"**

means specific parking management schemes controlled by means of Traffic Regulation Orders relating to individual geographical areas wholly contained within the Permitted Parking Area and/or the Special Parking Area such as by way of example but not limitation parking schemes for residents or parking meter zones

**"Designation Order"**

means The Road Traffic (Permitted Parking Area and Special Parking Area) (County of Kent) (Borough of Ashford) Order 2000

**"Director"**

means the officer of the County Council holding the appointment of Director of Strategic Planning or (if no officer holds that appointment) the officer of the County Council having responsibility for the administration of this Agreement

**"Financial Year"**

means each period of 12 months beginning on 1 April in one year and ending on 31 March in the next year or such other period of 12 months in substitution as may be designated by the County Council and in relation to broken periods at the beginning and at the end of this Agreement means

such period of less than 12 months as run from (i) the date hereof to the first 31 March thereafter and (ii) the last 1 April to the date on which this Agreement is terminated

**"Functions"**

means the functions and services described in Clause 3.2 and 3.3 to be carried out within the Permitted Parking Area and the Special Parking Area

**"Fund"**

means the fund established on behalf of the County Council under Clause 7.2

**"the Guidance"**

means the Department of Transport Local Authority Circular 1/95 entitled "Guidance on Decriminalised Parking Enforcement outside London" and any other government publication issued in addition to or in substitution thereof

**"Index Figure"**

means the All-Items index figure for the Index of Retail Prices or if the index figure ceases to be published in the same form such other index figure as the parties may agree or in default of agreement as may be nominated by the Arbitrator

**"Loading Area Orders"**

means orders made by the Borough Council prior to the date of this Agreement pursuant to the provisions of the 1984 Act

**"Parking Adjudicator"**

has the meaning ascribed to it in the 1991 Act

**"Parking Attendant"**

has the meaning ascribed to it in the 1991 Act

**"Parking Permits"**

means permits issued by the Borough Council incorporating exemptions as to time controls and/or payment obligations in Controlled Parking Schemes

**"Penalty Charge Notice"**

has the meaning ascribed to it in the 1991 Act

**"Permitted Parking Area"**

has the meaning ascribed to it in the 1991 Act as modified by the Designation Order

**"Review Date"**

means the date of each respective anniversary of the date of this Agreement

**"Secretary of State"**

means the Secretary of State for the Environment Transport and the Regions or such other person charged with general responsibility under the 1984 Act and 1991 Act in relation to England

**"Special Parking Area"**

has the meaning ascribed to it in the 1991 Act as modified by the Designation Order

**"Traffic Regulation Order"**

means any order made by the County Council or by the Borough Council (in the event of a delegation by the County Council in a separate written agreement after the date hereof with the Borough Council of the power to make and seal such Order) under the 1984 Act and any other legislation which is capable of being enforced by a Penalty Charge Notice and includes any such orders made after the date of this Agreement as well as any such order that is in force at the date of this Agreement

1.2 Where the context so admits the expressions "the County Council" and "the Borough Council" shall include their respective successors in title

1.3 Reference in this Agreement to any clause sub-clause paragraph or schedule without further designation shall be a reference to the clause sub-clause paragraph or schedule of this Agreement so numbered

1.4 Reference to any statute or order shall include any statutory extension modification or re-enactment thereof and any order regulation or byelaw made thereunder

1.5 Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine feminine and neuter genders

1.6 The headings in this Agreement and the front cover are for convenience only and shall not be deemed to be part of this Agreement or be taken into consideration in the interpretation or construction of this Agreement

## **2. RECITALS**

2.1 The County Council and the Borough Council are local authorities as constituted by the 1972 Act

2.2 For the purposes of the 1984 Act the County Council is the traffic authority for all roads (other than motorways and trunk roads) situated in the County of Kent

2.3 By virtue of Section 101 of the 1972 Act and subject as provided in the 1972 Act a local authority may arrange for the discharge of any of its functions by another local authority

2.4 By Article 4 of the Designation Order the Secretary of State has on application by the County Council and in accordance with Schedule 3 of the 1991 Act designated the area referred to in Article 3 as a Special Parking Area and as a Permitted Parking Area

## **3. AGENCY**

3.1 In exercise of their powers contained in Section 101 of the 1972 Act the County Council agree with the Borough Council that the Borough Council shall discharge the Functions on behalf of the County Council for the duration of this Agreement

3.2 The Functions to which this Agreement relate are:

3.2.1 the exercise of all duties and powers given to the County Council pursuant to the Designation Order

3.2.2 the administration of all Controlled Parking Schemes within the area coinciding with the Special Parking Area and Permitted Parking Area and made by order of the County Council both before the date of and during this Agreement (or in the event of a delegation by the County Council in a separate written agreement after the date hereof with the Borough Council of the power to make and seal Traffic Regulation Orders) by order of the Borough Council made during this Agreement including (in both events and without limitation) the collection of charges for Parking Permits

3.2.3 all areas the subject of Loading Area Orders

PROVIDED that nothing in this Agreement shall relate to the Borough Council's off-street parking function

3.3 Without prejudice to the generality of clause 3.2 it is declared that the Functions include:

3.3.1 the issuing of Penalty Charge Notices taking all reasonable subsequent steps necessary to recover payments due dealing with representations against Penalty Charge Notices (and any other charges) and operating and administering an appeals procedure to the Parking Adjudicators appointed by the Adjudication Service

3.3.2 the installation in accordance with the reasonable instructions of the Director of all signs plates and road markings made pursuant to the Traffic Regulation Orders and the maintenance in a good state of repair and the alteration (in accordance with the reasonable instructions of the Director) of the position of all signs plates and road markings which exist prior to the date of this Agreement and

which come into existence during this Agreement and which are related to those Traffic Regulation Orders other than those dealing with moving traffic offences and

3.3.3 subject to the condition set out in clause 6.3 the exercise of the powers for the immobilisation and the removal recovery storage and disposal of vehicles and collection of charges in connection therewith

3.4 For the avoidance of doubt this Agreement does not confer upon the Borough Council the power or right to make Traffic Regulation Orders and does not prevent the County Council at its own expense from amongst other things installing and carrying out any related work in respect of signs plates and roadmarkings within the Permitted Parking Area and the Special Parking Area

3.5.1 Any dispute between the parties to this Agreement which are unresolved within 14 days may be referred to the Arbitrator for a decision

3.5.2 The Arbitrator shall take account of all representations made by the parties and shall make such decision as s/he considers just and equitable having regard to the circumstances then existing and the costs of such arbitration shall follow the event or in the event of neither party succeeding shall be apportioned between the parties by the Arbitrator in such proportions as s/he thinks fit

3.5.3 The decision of the Arbitrator shall be final and binding on all the parties to this Agreement

#### 4. **EXTENT OF AGREEMENT**

4.1 This Agreement extends to the entire area designated by the Secretary of State as a Special Parking Area and as a Permitted Parking Area in the Designation Order



**5. DURATION AND VARIATION OF AGREEMENT**

5.1 This Agreement shall operate from the date of this Agreement and shall continue unless and until determined by either party giving to the other two years notice in writing to expire not earlier than the fifth anniversary of this Agreement Except in the case of fundamental breach of the principles of this Agreement or repeated breaches of a term of this Agreement by either party and which have not been remedied within a reasonable time to the reasonable satisfaction of the party able to enforce such breach in which event that party shall be entitled to terminate this Agreement immediately

5.2 Notwithstanding the provisions for determination contained in clause 5.1 the terms of this Agreement may be varied at any time by agreement between the parties such variation being evidenced in writing and signed by the County Secretary (or such other office holder authorised in that behalf) of the County Council and the Legal Services Manager of the Borough Council respectively or other proper officers of the respective Councils and endorsed on or attached to this Agreement

**6. EXERCISE OF AGENCY**

6.1 In exercising the Functions

6.1.1 the Borough Council shall have regard to and comply with all statutory and legislative requirements associated with the Functions and have regard to the objectives set out in the Guidance and any relevant County Council policies and

6.1.2 both parties shall have regard to the need to avoid the Fund incurring a deficit at the end of any Financial Year

6.2 The Borough Council shall indemnify the County Council against all actions costs claims demands charges and expenses whatsoever arising or which may arise out of or be incidental to any wrongful or negligent act or omission by the Borough Council (including without limitation their agents contractors

workmen and employees) in the carrying out by the Borough Council of the Functions exercisable by virtue of this Agreement

6.3 The Borough Council will not exercise the powers for the immobilisation removal recovery storage and disposal of vehicles and collection of charges in connection therewith in respect of the Functions without the prior written consent of the County Council such consent not to be unreasonably withheld or delayed PROVIDED that the Borough Council shall not be obliged to exercise these powers

6.4 The Borough Council will co-operate with the County Council and other local authorities in the operation of the Adjudication Service

## 7. FINANCE

7.1 The parties hereby declare their intention that the discharge of the Functions should be self-financing and the Borough Council :

7.1.1 acknowledges that the County Council will not contribute to the cost of the Functions (which without prejudice to the generality includes the cost of carrying out the Functions) other than those contributions described in clause 7.2.2

7.1.2 agrees to be responsible for all financial deficits incurred directly or indirectly by the Borough Council in setting up administration and discharge of the Functions

7.2 The Borough Council shall establish and hold the Fund and shall:

7.2.1 debit to the Fund the costs incurred by the Borough Council of administering and discharging the Functions including all overheads professional services premises supplies insurances and other costs properly incurred

7.2.2 credit to the Fund all income received in discharging the Functions including without limitation income from Penalty Charge Notices and also all income from Controlled Parking Schemes

7.3 There shall be discharged out of the Fund the reimbursement to the Borough Council of any start-up costs incurred by the Borough Council during the financial years 1 April 1999 to 31 March 2000 and 1 April 2000 to 31 March 2001

7.4.1 Any surpluses in the Fund after providing such reasonable reserve as may be decided by the Borough Council may be spent in the administrative area of the Borough Council in accordance with the relevant legislation

7.4.2 Surpluses up to a total of the Agreed Sum in any Financial Year may be spent by the Borough Council at its discretion

7.4.3 If the surplus in any Financial Year exceeds the Agreed Sum then any balance above the Agreed Sum may only be spent by the Borough Council after obtaining the approval of the Director

7.5.1 Within four weeks of the end of the quarter (that is to say the periods ending 31 March 30 June 30 September and 31 December or such other dates as may be agreed between the parties) the Borough Council will supply the Director with written details of all costs incurred and income received by the Borough Council (that is the income and costs described in clause 7.2) for the quarter just ended

7.5.2 The accounts relating to the costs incurred and income received by the Borough Council (and referred to in clause 7.2) shall be prepared annually (or more frequently as the parties may agree) by the Borough Council and not later than 3 months following 31 March in each year and within one month following completion of those accounts a copy duly certified by the Borough Council's external auditors shall be submitted to the County Council for information

7.6 The Borough Council shall prepare not later than 31 December in each year a budget for the Functions for the ensuing Financial Year together with a revised budget for the then current Financial Year and submit it to the County Council for information

7.7 Having regard to clause 7.2 the parties agree that when considering any budget or when any approval is to be given under this Agreement or taking any steps affecting the Functions they will have proper regard to the need to avoid the Fund incurring a deficit at the end of any Financial Year and if such a deficit does occur the Borough Council shall be responsible for such deficit

**8. APPOINTMENT OF STAFF AND CONTRACTORS**

8.1 The Borough Council may carry out the Functions by means of directly employed Parking Attendants and other staff or by contractors or by a combination of such persons as the Borough Council consider most advantageous

8.2 The Borough Council shall include the Functions in its five year Best Value review programme (whether as a separate service or part of a wider review) and shall undertake a Best Value review at least once in every five years during the currency of this Agreement and for the avoidance of doubt the costs of any such review shall be deemed to be part of the cost of administering and discharging the Functions for the purposes of clause 7.2.1 and the Borough Council hereby agrees that in the event of the Functions being part of a wider review that only that part of the costs of the wider review relating to the Functions will be deemed to be part of the costs of administering and discharging the Functions for the purposes of clause 7.2.1

**9. EFFECT OF TERMINATION**

9.1 It is agreed that in the event of this Agreement being determined whether by notice breach or otherwise the Borough Council shall

9.1.1 continue to carry out the Functions in accordance with this Agreement up until the date of its termination

9.1.2 on the date of its termination account to the County Council for all monies (if any) then remaining in the Fund and make good any deficit in the Fund and

9.1.3 pay to the County Council within 28 days of receipt of the same by the Borough Council after the date of actual termination any income received by the Borough Council in respect of the discharge of the Functions by the Borough Council prior to termination of the Agreement such payment to be made after deducting any sums paid to the County Council by the Borough Council in making good deficit in the Fund pursuant to clause 9.1.2

9.2 It is further agreed that if either party terminates this Agreement (otherwise than on account of a breach by the other party) the party terminating the Agreement shall indemnify the other party against any costs or expenses directly attributable to such termination including (in the case of termination by the Borough Council) the settling-up costs reasonably incurred by the County Council in taking over the Functions and (in the case of termination by the County Council) any staff redundancy costs incurred by the Borough Council PROVIDED that both parties shall use all reasonable endeavours to minimise such costs and to protect the employment position of staff affected by such termination

9.3 In the event of this Agreement being determined whether by notice breach or otherwise either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of this Agreement and the

determination of this Agreement shall not affect or prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under this Agreement notwithstanding that the other may have exercised one or more of the rights and remedies against it

**10. MISCELLANEOUS**

**10.1 Warranty**

Each of the parties warrants its power to enter into this Agreement and has obtained all necessary approvals to do so

**10.2 Severance**

If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or with the agreement of the parties it may be severed from this Agreement

**10.3 Whole Agreement**

Each party acknowledges that this Agreement contains the whole agreement between the parties and that neither party has relied upon any oral or written representation made to it by the other or their respective employees or agents and have made respectively their own independent investigations into all matters relevant to them

**10.4 Change of Address**

Each of the parties shall give notice to the other of the change or acquisition of any address or telephone facsimile or similar number relevant to this Agreement at the earliest possible opportunity

**10.5 Notices**

Any notice to be served on either of the parties by the other shall be sent by pre-paid recorded delivery or registered post to the County Council's County

Secretary or (as the case may be) the Legal Services Manager at the address of the relevant party shown at the head of this Agreement or by facsimile transmission and shall be deemed to have been received by the addressee within 48 hours of posting or 24 hours if sent by facsimile transmission to the correct facsimile number of the addressee (with correct answer back)

10.6 Assignment

The Borough Council shall not have the right to assign or transfer the benefit of this Agreement or any part of this Agreement

10.7 Waiver

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver by them of the right at any time subsequently to enforce all terms and conditions of this Agreement

10.8 Costs

Each of the parties will pay their own costs and expenses incurred in connection with the preparation negotiation and completion of this Agreement

10.9 County and Borough Councils' rights powers duties and obligations

Nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the County Council or the Borough Council in the exercise of their functions as local authorities and their rights powers duties and obligations under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the County Council and the Borough Council were not parties to this Agreement

10.10 Survival of terms

No term other than clauses 9.1 9.2 and 9.3 shall survive termination of this Agreement unless expressly provided or to give meaning to clause 9

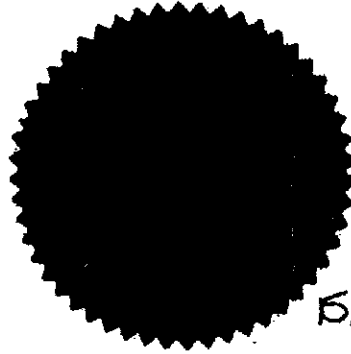
IN WITNESS of which the County Council and the Borough Council have caused their respective Common Seals to be hereunto affixed the day and year first before written

The COMMON SEAL of THE )  
KENT COUNTY COUNCIL was )  
hereunto affixed in the presence )  
of: )

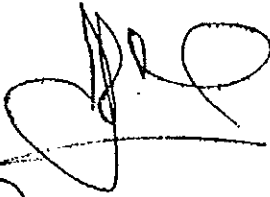


Authorised Signatory

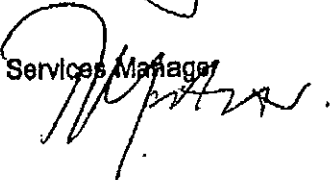
The COMMON SEAL of ASHFORD )  
BOROUGH COUNCIL was hereunto )  
affixed in the presence of: )



Mayor



Legal Services Manager



5,026