

Minute of Agreement

among

Angus Council, a local authority constituted in terms of section 2 of the Local Government etc (Scotland) Act 1994 and having its principal offices at Angus House, Orchardbank Business Park, Forfar, DD8 1AX;

Dundee City Council, a local authority constituted in terms of section 2 of the Local Government etc (Scotland) Act 1994 and having its principal offices at City Chambers, City Square, Dundee, DD1 3BY;

Perth and Kinross Council, a local authority constituted in terms of section 2 of the Local Government etc (Scotland) Act 1994 and having its principal offices at 2 High Street, Perth, PH1 5PH;

each a “**Council**” and together “**the Constituent Councils**”.

WHEREAS the Constituent Councils entered into a Minute of Agreement dated 29th November and 5th and 8th December 1995 to establish Tayside Contracts, which Minute of Agreement was amended by a Minute of Variation of Agreement among the Constituent Councils dated 23rd April and 9th and 14th June, 2004, and now wish to update the Minute of Agreement it is HEREBY AGREED that the said Minute of Agreement and Minute of Variation of Agreement establishing a Joint Committee under section 57(1) of the Local Government (Scotland) Act 1973 (“the 1973 Act”) are superseded and replaced with the terms of this agreement.

ONE

Commencement

This updated Agreement shall commence and have effect from the date of the last signing hereof.

TWO

Constitution

There is hereby re-constituted in terms of Section 57(1) of the Local Government (Scotland) Act 1973 a Joint Committee to be known as "the Tayside Contracts Joint Committee" and hereinafter referred to as "the Joint Committee" for the administration of the functions of the Constituent Councils delegated to the Joint Committee in terms of this Agreement all as set out in the Schedule of Agreed Activities maintained by the Joint Committee.

THREE

Members

The Joint Committee shall consist of eighteen members appointed having regard, so far as possible, to the principle of political balance by the Constituent Councils from among their own respective members. The number of members to be appointed by the Constituent Councils shall be: - six by Angus Council; six by Dundee City Council; and six by Perth and Kinross Council.

FOUR

Convener and Vice-Conveners to the Joint Committee

1 Immediately after each ordinary election of councillors to the Constituent Councils, each Constituent Council shall determine from within its Joint Committee members representing its Council, a person to be appointed by the Joint Committee as its Convener, Vice Convener or Vice-

Convener Elect. After such ordinary elections, the Joint Committee shall appoint from those three members nominated by the Constituent Councils, a Convener, Vice Convener and Vice Convener Elect, such appointments being made by the procedures specified in Section 43 of and Schedule 7 to the 1973 Act. The Convenership of the Joint Committee shall then be rotated on a yearly basis at the first meeting of the Joint Committee after 1st April in each year in which there are no ordinary elections of Councillors to the Constituent Councils with the Vice Convener being elected to Convener, the Vice Convener Elect to Vice Convener and the Convener reverting to Vice Convener Elect.

2 If the Convener, Vice Convener or Vice Convener Elect ceases for any reason during his or her period of office to be a member of the Joint Committee, the resulting vacancy in that office may be filled by his or her Constituent Council nominating either an existing member of the Joint Committee (or the member appointed by it in terms of Clause SEVEN below to replace the person who has ceased to be a member) to fill that office for the remainder of its current term.

3 The Convener, when present, shall preside at all meetings of the Joint Committee. In the absence of the Convener the Vice Convener shall preside, and in the

absence of both, the Vice Convener Elect shall preside.

In the absence of all three, such other member shall preside as the members present appoint.

FIVE

Clerk to the Joint Committee

A Clerk to the Joint Committee who shall be the Head of Democratic and Legal Services, Dundee City Council (or such nominee as the Joint Committee shall approve) shall be appointed by the Joint Committee and the Clerk shall be the Monitoring Officer as defined in the Local Government and Housing Act 1989. The Clerk shall also be legal adviser and provide legal services to the Joint Committee. The Clerk shall (to the extent not already done so) draw up and keep under review Standing Orders, Financial Regulations and a Scheme of Delegation for approval by the Governance and Strategy Group (as after defined) and the Joint Committee.

SIX

Period of Office

The members appointed by the Constituent Councils to the Joint Committee shall, subject to the provisions of Clause SEVEN hereof, hold office, during the pleasure of the Council by which they were appointed, until the next ordinary election of Councillors for the Constituent Councils. Immediately after such election, each Constituent Council shall again appoint its number of members to the Joint Committee.

SEVEN

Vacancies in Membership

A member ceasing to be a member of the Constituent Council which appointed him/her shall cease to be a member of the Joint Committee as at the same date. In that event or at any other time the Constituent Council by which a member was appointed may appoint a member, to take his/her place for the remaining part of his/her period of office.

EIGHT

Quorum

A quorum of the Joint Committee shall be ten members of whom at least one member must be drawn from each of the Constituent Councils. Should the Joint Committee appoint a Sub-Committee, such Sub-Committee shall consist of an equal number of members from each of the Constituent Councils and the membership of the Sub-Committee and its quorum shall be determined by the Joint Committee.

NINE

Standing Orders

The Joint Committee shall adopt its own Standing Orders. In the event of any inconsistency between Standing Orders and the provisions of this Agreement, the provisions of the Agreement shall prevail. Copies of the Standing Orders shall be made available on the Tayside Contracts website.

Meetings

The Joint Committee shall hold an ordinary meeting on four occasions in each year commencing 1st April and may meet on such other occasions as may be necessary when a special meeting may be called in terms of Standing Orders. The venue for ordinary meetings shall be on a rotational basis with a suitable venue in each of the Constituent Council's areas being agreed by the Joint Committee.

Other than as provided for at Clause EIGHT hereof, at all meetings of the Joint Committee or duly appointed Sub-Committees, a three-quarters majority of those members present and voting shall be required in all voting procedures.

Copies of notices, agendas and minutes of all meetings of the Joint Committee shall be transmitted to the Constituent Councils for their information as soon as practicable.

At any meeting of the Joint Committee a member may be replaced by a substitute from the same Constituent Council to replace that member at that meeting and having the same powers and duties in every respect at that meeting as that member. Such substitution shall be intimated at the beginning of the meeting.

Powers and Duties of Joint Committee

The Joint Committee shall have the power to undertake any function which any of the Constituent Councils might lawfully undertake, provided always that:- .

- (1) Subject always to the remaining provisions of clause 11, it shall be open to both the Joint Committee and each or any Council commissioning the work to submit proposals for the execution of that work and the Joint Committee shall then determine whether that work shall be undertaken. Where the Joint Committee cannot perform any work within its own resources, it shall comply with all applicable legislation in the selection and appointment of any subcontractors.
- (2) Nothing herein shall prevent the Joint Committee lawfully undertaking any work on behalf of a third party provided that such work shall not either:
 - (a) prejudice the status of Tayside Contracts in terms of EU public procurement law as an in house body to which the Constituent Councils can award work directly without competition; or
 - (b) contravene any rules relating to the provision of state aid as set out in the Treaty on the Functioning of the European Union.

- (3) The Managing Director of Tayside Contracts shall be responsible to the Joint Committee for the undertaking of the above works and shall exercise that responsibility according to the instructions of the Joint Committee.
- (4) A group consisting of (i) the 3 chief executives of the Constituent Councils and (ii) the Managing Director of Tayside Contracts shall be established to consider both the performance and development of Tayside Contracts as a shared service provider and to consider any of the functions of the Joint Committee (the “Governance and Strategy Group”). Each Chief Executive may delegate attendance or participation in the Governance and Strategy Group to such other officer within the Council as they think fit, subject to notification to each of the other Councils. The Governance and Strategy Group shall meet at regular intervals and not less than 4 within each Financial Year (as set out in clause 16 below). Save where provided for elsewhere in this Agreement, the business of the Governance and Strategy Group shall be conducted on the basis of majority voting. For the purposes of any vote, officers of the Constituent Council’s and Tayside Contracts shall have one vote each, notwithstanding the attendance of other officers at any meeting of the Governance and Strategy Group.

(5) Should the Managing Director of Tayside Contracts propose that the Joint Committee undertakes work of a type which is materially different in nature and/or scale from the types of work set out in the Schedule of Agreed Activities, or would expose the Constituent Councils and/or the Joint Committee to additional risks (hereafter referred to as "New Work"), he shall first require the approval of the Governance and Strategy Group. In the event that the Governance and Strategy Group agree unanimously to proceed with any New Work, the Chief Executives of the three constituent authorities shall present a report to their authority seeking approval of the proposal and if so approved, shall confirm to the Managing Director who shall then report the proposed New Work to the Joint Committee for their final approval. In the event that:

- (a) the Governance and Strategy Group do not agree unanimously or any individual Council does not agree to the undertaking of any proposed New Work; or
- (b) the Joint Committee do not agree to the proposed New Work;

Then the Joint Committee shall not undertake the New Work.

(6) The Joint Committee may appoint from its members such Sub-Committees as it may from time to time consider

necessary or desirable for the exercise of its functions and may, subject to such limitations as it may impose, delegate or refer to such Sub-Committees, any of the functions delegated to the Joint Committee under this agreement. The Joint Committee shall appoint the Convener of any Sub-Committee appointed under this paragraph.

TWELVE

Employees

- (1) The Joint Committee shall appoint a Managing Director of Tayside Contracts who shall report to the Joint Committee and be responsible for carrying out the functions delegated to the Joint Committee, and also such senior staff as are considered necessary who shall be appointed within the terms of Standing Orders and paid such reasonable remuneration as the Joint Committee may determine.
- (2) The Managing Director of Tayside Contracts shall have delegated responsibility to carry out the relevant functions of the business of Tayside Contracts within the terms of its Scheme of Administration and shall have responsibility for such staff. All employees shall be employees of Tayside Contracts.

THIRTEEN

Property

All heritable property to be made available by the Constituent Councils to Tayside Contracts shall be contained in a heritable property list agreed from time to time by Tayside Contracts and the Constituent Councils.

As from the date of this Agreement, in the event of any of the Constituent Councils wishing to take over or develop a property on the heritable property list for some other function they shall provide a suitable alternative facility at a location acceptable to the Joint Committee with the new facility being operational prior to the Joint Committee vacating the property taken over or developed. The cost of provision of any new facility shall be agreed prior to the cessation of operations by the Joint Committee at the heritable property subject to redevelopment proposals by the Council in question.

Any development required by the Joint Committee at any of the properties on the heritable property list shall be funded by the Constituent Council in whose ownership the heritable property is vested, subject to that Council's agreement.

The Joint Committee shall be responsible for the management and maintenance of all the properties on the heritable property list and shall delegate to the Managing Director of Tayside Contracts the responsibility for this, their fitness for purpose and their compliance with all relevant statutory legislation.

Where the Joint Committee wish to acquire heritable property

this will require the consent of the Constituent Council in the area in which the heritable property is situated and appropriate arrangements shall be made with that Constituent Council to take title to the heritable property and which heritable property will be added to the heritable property list.

All moveable property used by Tayside Contracts shall vest jointly in the Constituent Councils.

Moveable property shall, for the purposes of this Agreement include all buildings, plant and machinery at Collace Quarry.

The Joint Committee shall have power to purchase moveable property which will belong to the Constituent Councils jointly and subject to the terms of this Agreement. A moveable property list including the value of the moveable property shall be maintained by the Joint Committee.

FOURTEEN Percentage Share

The Constituent Councils shall agree among themselves a percentage share attributable to each Council representing the value of the interest of that Council in the moveable assets and the business employed in carrying out the functions and hereby appointed to be managed by the Joint Committee ("the Agreed Percentage").

The Agreed Percentage share shall be calculated annually based on the previous year's turnover. The Joint Committee will agree the Agreed Percentage no later than August in each year.

FIFTEEN

Provision of Work

In the event that any Constituent Council advertise for the provision of any works, goods or services within the scope of this Agreement which are not to be directly awarded in accordance with the terms of this Agreement, then each of the Constituent Councils shall include Tayside Contracts on all tender lists so far as they can lawfully do so.

SIXTEEN

Financial Year

The Financial Year of the Joint Committee shall end on 31 March.

SEVENTEEN

Financial Administration

The Joint Committee shall secure the proper administration of its financial affairs and of the financial affairs of Tayside Contracts.

Without prejudice to the foregoing generality the day to day financial administration of Tayside Contracts shall be undertaken by an employed officer of Tayside Contracts and answerable to the Joint Committee directly through the Managing Director. The Joint Committee will obtain Banking services from one of the Constituent Councils. The Proper Officer to the Joint Committee who shall be the Executive Director of Corporate Services, Dundee City Council or nominee will be the Section 95 Officer as defined by the Local Government (Scotland) Act 1973.

Accounts and Audit

The Joint Committee shall secure the keeping of accounts of all financial transactions, such accounts to comprise current, capital and borrowing accounts and the preparation of an annual abstract of accounts and annual report in accordance with all applicable legislation. Further there may be kept Reserve Funds, a Capital Fund and a Repairs and Renewals Fund in accordance with the Local Government (Scotland) Act 1975 as necessary to assist the Joint Committee. Such accounts and funds shall be submitted to annual audit by an auditor appointed by the Accounts Commission for one of the Constituent Councils and the provisions of Part VII of the 1973 Act and all subsequent legislation relating to matters of finance and so far as relevant to the functions delegated to the Joint Committee, which are applicable to the Constituent Councils, shall, subject to any necessary modifications, apply to such accounts and audit as they apply to the accounts and audit of a local authority. The Clerk to the Joint Committee shall provide each of the Constituent Councils and the Scottish Ministers annually with a copy of the unaudited and audited accounts of the Joint Committee in accordance with the statutory dates for completion.

NINETEEN

Financial Estimates

The Joint Committee shall ensure the preparation of estimates of capital and revenue expenditure and a prediction of income from all available sources in each year upon and incidental to the functions delegated to it by this Agreement which shall be submitted to the Joint Committee for approval by 31st March for the next financial year.

TWENTY

Financial Arrangements

- (1) The financial affairs of the Joint Committee shall be set up so as to ensure a trading organisation is maintained as required in terms of the relevant legislation which shall meet internally all revenue expenditure through income generated from its trading activities in accordance with the functions delegated to it.
- (2) The financial records of the Joint Committee shall maintain Reserve Funds for each Constituent Council as allowed in terms of the Local Government (Scotland) Act 1975 for such funds. Any surplus or deficit from the annual trading activities of Tayside Contracts after agreed capital financed from current revenue (CFCR) shall be shared between the three Constituent Councils on the basis of the Agreed Percentage and shall be adjusted against each Constituent Council's appropriate Reserve Fund. Any deficit in excess of the balance on a reserve

fund shall be funded by the appropriate Constituent Council.

The use of any remaining surplus in the Reserve Funds after the legislative criteria are met, shall be available at the discretion of each of the Constituent Councils, being either disbursed or held in the appropriate Reserve Funds. The monthly balances on the Reserve Funds shall receive interest based on the average annual loans interest rate.

(3) The Joint Committee's annual Revenue Budget shall include a provision in respect of purchase of plant, vehicles and equipment and in respect of Collace Quarry buildings, plant, vehicles and equipment and shall require the approval of the Joint Committee and the Constituent Councils within the agreed budget timetable

(4) Any capital expenditure in respect of heritable property shall be funded by the particular Constituent Council which owns or will own the heritable property. Where it is considered that funding of moveable property (including plant, vehicles and equipment at Collace Quarry) should be by loan capital then the Joint Committee shall fund the purchase by Prudential Borrowing under Part 7 of the Local Government in Scotland Act 2003.

(5) For the avoidance of doubt, Tayside Contracts will be responsible for the payment of the Loan Charges

outstanding as at 31st March, 2017 in respect of all the depots (or part thereof) which they occupy.

TWENTY-ONE Amendment of Agreement

These presents may be amended but only by a further Minute of Agreement executed by the Constituent Councils in the same fashion as these presents.

TWENTY-TWO Revocation of Agreement

If any Constituent Council wishes to withdraw from this Agreement it may do so with effect from the end of any of the Joint Committee's financial years by giving to the Clerk to the Joint Committee not less than 9 months' notice in writing to that effect prior to the end of that financial year, and the following provisions shall apply as at the end of that financial year.

(1) The staff and employees whose work is wholly or predominantly attributable to the geographical area of that Constituent Council shall be transferred to the Constituent Council so withdrawing from its operation through the Joint Committee.

The Constituent Council so withdrawing shall also indemnify Tayside Contracts against any unavoidable employment or redundancy costs resulting from that transfer to its employment by those staff and employees and shall so indemnify Tayside Contracts by reimbursing any redundancy costs relating to that Constituent Council which Tayside Contracts are liable to meet.

The terms of such indemnification shall be subject to Tayside Contracts and the remaining Councils mitigating their losses in respect of any costs that may arise as a result of such termination. The entitlement of the Constituent Council so withdrawing (whether credit or debit) shall be paid to it or paid by it on an equitable basis in moveable property, or money, or both, to meet the full financial value of the percentage share attributable to that Council in terms of Clause FOURTEEN.

TWENTY-THREE Difference or Dispute

Any difference or dispute between the Joint Committee and any of the Constituent Councils or among the Constituent Councils concerning the interpretation, application, validity or any other matter arising out of this agreement shall be referred to the sheriff in accordance with the provisions of section 231 of the Local Government (Scotland) Act 1973.

TWENTY-FOUR Delegation

The Joint Committee may delegate to a Sub-Committee or Officer any function delegated by the Constituent Councils: IN

WITNESS WHEREOF

..... (Witness) (First Party)
..... (Name) (Name)
..... (Designation) (Designation)
..... (Address) (Date of signing)
..... (Place of Signing)
..... (Date of Signing)
..... (Place of Signing)

..... (Witness) (Second Party)
..... (Name) (Name)
..... (Designation) (Designation)
..... (Address) (Date of signing)
..... (Place of Signing)
..... (Date of Signing)
..... (Place of Signing)

..... (Witness) (Third Party)
..... (Name) (Name)
..... (Designation) (Designation)
..... (Address) (Date of signing)
..... (Place of Signing)
..... (Date of Signing)
..... (Place of Signing)

MINUTE OF AGREEMENT

among

**ANGUS COUNCIL,
DUNDEE CITY COUNCIL
and
PERTH AND KINROSS COUNCIL
("The Constituent Councils")**

2017

Subjects: Tayside Contracts Joint
Committee