

AGENDA SUPPLEMENT

Executive

To: Councillors Aspden (Chair), Ayre, Craghill, D'Agorne, Mason, Runciman, Smalley, Waller and Widdowson

Date: Thursday, 18 August 2022

Time: 5.30 pm

Venue: The George Hudson Board Room - 1st Floor West Offices (F045)

The Agenda for the above meeting was published on **10 August 2022**. The attached additional document is now available for the following agenda item:

- 5. Emergency Planning Shared Service Collaboration Agreement Between City of York Council and North Yorkshire County Council** (Pages 1 - 36)
Correct version of Annex B to the above report.

This agenda supplement was published on **17 August 2022**.

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DATED 22 December **2021**

(1) **NORTH YORKSHIRE COUNTY COUNCIL**

(2) **THE CITY OF YORK COUNCIL**

COLLABORATION AGREEMENT

**Relating to: Provision of shared Resilience and Emergencies / Emergency Planning
service**

to the City of York Council

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SCHEDULE 1 SERVICES

SCHEDULE 2 PRINCIPLES OF COLLABORATION

SCHEDULE 3 COSTS AND SHARING

THIS Agreement is dated

22 December 2021

~~2020~~

PARTIES

- (1) **NORTH YORKSHIRE COUNTY COUNCIL** of County Hall, Racecourse Lane, Northallerton, North Yorkshire, DL7 8AD ("**NYCC**");
- (2) **THE CITY OF YORK COUNCIL** of West Offices, Station Rise, York, YO1 6GA ("**CYC**").

BACKGROUND

- (A) Each Party is a Contracting Authority for the purposes of the Public Contracts Regulations 2015 (the "**Regulations**").
- (B) This Agreement describes how the Parties will collaborate in accordance (as applicable) with the Local Authorities (Goods and Services) Act 1970, s1 of the Localism Act 2011, s93 of the Local Government Act 2003 and s101 and s111 of the Local Government Act 1972;
- (C) The Parties aim to benefit from the economies of scale that will be generated through this collaboration which will contribute to the promotion and improvement of the respective areas;
- (D) This Agreement, amongst other things, sets out and is predicated on the Principles of Collaboration as contemplated by regulation 12(7) of the Regulations which the Parties have agreed should apply to the arrangements in this Agreement;
- (E) The rationale for entering into this Agreement is for the Parties to be able to work collaboratively in the public and common interest and in accordance with the Principles of Collaboration in order to utilise the operational expertise and experience of employees of both Parties in the delivery of joint health and safety related services; and
- (F) The arrangements contemplated by this Agreement are predicated on the fact that the public procurement rules as set out in the Regulations and the Directive are not designed to interfere with the freedom of public authorities to perform the public service tasks conferred on them by using their own resources which includes the possibility of cooperation with other public authorities.

1. **Definitions and Interpretation**

In this Agreement the following terms shall have the following meanings:

ADR	has the meaning given to it in clause 12.5;
Audit Act	means the Local Audit and Accountability Act 2014;
Authorised Representatives	means the persons referred to in clause 3.1;
Agreement	means this agreement together with the Schedules attached to it;
Client Group	has the meaning given in paragraph 2 of Schedule 1 to this Agreement;
Change	means an alteration to the Services and/or a variation to the terms of this Agreement;
City of York Emergency Planning Manager	A position that remains under the employment of City of York.
Commencement Date	means 17 th August 2021;
Contracting Authority	has the meaning given to it in Part 1 of the Regulations;
Controlling Mind	means the CYC Duty Chief Officer;
Costs	means the costs to be paid by each Party to the other in respect of the arrangements set out in this Agreement (in accordance with s93 Local Government Act 2003) as set out in Schedule 3 to this Agreement;

CYC Duty Chief Officer	The Chief Officer on duty according to the rota from time to time;
Data Protection Legislation	means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department from time to time in relation to the same;
Dispute	has the meaning given to it in clause 12.1;
EIR	means the Environmental Information Regulations 2014;
Equipment	any equipment, including tools or facilities, provided by either Party and/or either of their third party subcontractors used directly or indirectly in the provision of the Services;
Event Of Default	<p>means any act or omission on the part of any Party or its Staff in respect of:</p> <p>(a) any breach of its obligations under this Agreement; and</p> <p>(b) any representation, statement or tortious act or omission, including negligence, arising under or in connection with this Agreement;</p>
FOIA	means the Freedom of Information Act 2000;

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Intellectual Property	means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, Know-How, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached to such rights;
Know-How	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating in any way to the Relevant Authority Services and the Relevant Authority procurement, management and monitoring of the System but excluding know how already in the other Party's possession before this Agreement;
Law	means: (a) any Act of Parliament; (b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978; and (c) any exercise of the Royal Prerogative, in each case in force in the United Kingdom;
NYLRF	means the North Yorkshire Local Resilience Forum;
Parties	means the parties to this Agreement and the term "Party" shall be construed accordingly;
Principles of Collaboration	means the principles set out in Schedule 2 to this Agreement;

Regulations	means the Public Contracts Regulations 2015;
Requesting Party	means the Party receiving an access request under the FOIA, EIR and/or the Audit Act;
Shared Head of Resilience and Emergencies NYCC and CYC	means the joint Head of Resilience and Emergencies NYCC and CYC;
Shared Resilience and Emergencies Team	means the City of York Emergency Planning Manager and the whole NYCC Resilience and emergencies team which provide the Services to NYCC and CYC;
Services	means the range of services which shall be provided (all or in part) by NYCC Resilience and Emergencies Team to CYC under this Agreement and which are more specifically set out Schedule 1 to this Agreement but for the sake of clarification excludes any Traded Services carried out by NYCC;
Staff	means partners, directors, employees, agents and subcontractors of either Party in connection with the Agreement;
Term	means the period from the Commencement Date to expiry of this Agreement in accordance with clause 10;
Traded Services	any Resilience and Emergencies advice and guidance provided by NYCC to third party organisations other than CYC;
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or any other regulations enacted for the purpose of implementing

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	the EC Acquired Rights Directive (Council Directive 2001/23/EC) into English law;
Working Day(s)	means any day between Monday to Thursday 0900 to 1700, Friday, 0900 to 1630, excluding public holidays; and
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

1.2 References to:

- (a) any Act, Order, Regulation, Statutory Instrument shall be construed as a reference to the Act, Order, Regulation or Statutory Instrument as amended, replaced, consolidated or re-enacted;
- (b) one gender include any other gender;
- (c) persons include corporations;
- (d) singular includes the plural;
- (e) clauses are to clauses to this Agreement; and
- (f) paragraphs are paragraphs of the Schedules to this Agreement.

1.3 The Schedules to this Agreement, together with the documents referred to in them, form part of this Agreement.

1.4 In the event of any conflict or inconsistency between this Agreement and any conditions detailed in the Schedules the following order of precedence shall apply:

- (a) this Agreement; and
- (b) the Schedules.

1.5 Headings are included for ease of reference only and shall not affect the construction of this Agreement

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- 1.6 References to a public body or organisation shall be deemed to include a reference to any successor to such public body or any organisation or entity which has taken over either or both the functions and responsibilities of such public body or organisation or entity. References to the other person shall include their successors and assignees.
- 1.7 Subject to the provisions of this Agreement, each Party shall be responsible as against the other for the acts and omissions of its Related Parties as if they were the acts and omissions of that Party.
- 1.8 Each Party has had the opportunity to take legal advice in relation to this Agreement and no term or condition shall be construed *contra proferentem*.
- 1.9 Words preceding "include", "includes" or "including" shall be construed without limitation by the words which follow those words.

2. Commencement and Duration

This Agreement shall commence on the Commencement Date and continue unless and until terminated:

- (a) as provided by the terms of this Agreement; or
- (b) by either Party giving to the other not less than six (6) months' written notice by no later than 30th September 2022; or
- (c) by either Party giving to the other not less than twelve (12) months' prior written notice at any time after 31st March 2023 in accordance with clause 10.

3. Representatives

- 3.1 Each Party shall appoint a representative who shall (subject to full compliance with this Agreement and all applicable current constitution requirements relating to both Parties) have full authority to act on the applicable Party's behalf for the purposes of this Agreement ("**Authorised Representative**"). In the event there is a change to a Party's Authorised Representative, such Party shall inform all Parties of the identity of its new Authorised Representative no later than ten (10) Working Days after it made such change.

- 3.2 To the extent that any notice, information, instruction, or other communication given by or made to a Party's Authorised Representative complies with all applicable constitution requirements, all Parties shall be entitled to treat any act of an Authorised Representative in connection with this Agreement as being expressly authorised by the relevant Party.

4. NYCC Obligations

- 4.1 NYCC shall through the Shared Resilience and Emergencies Team provide the Services:

- (a) with all reasonable skill and care;
- (b) in accordance with all applicable Laws;
- (c) in accordance with the Principles of Collaboration; and
- (d) in accordance with the remaining Schedules and the terms and conditions of this Agreement.

- 4.2 The NYCC Resilience and Emergencies Duty Officer will follow the agreed protocols detailed within:

- (a) the City of York Duty Officer Procedures;
- (b) the City of York Major Incident Handbook; and
- (c) the City of York Flood Plans.

Any deviation from these protocols shall be discussed and agreed with the CYC Duty Chief Officer. CYC shall make a copy of these protocols available to NYCC upon request.

5. CYC Obligations

- 5.1 CYC shall comply with its obligations under this Agreement: -

- (a) in accordance with all Laws;
- (b) with reasonable skill and care;

- (c) in accordance with the Principles of Collaboration
- (d) in accordance with this Agreement.

6. Mutual Obligations

6.1 Principles of Collaboration

The Parties agree that, to the extent which it is reasonably practicable, this Agreement shall operate on a collaborative basis and to this end each Party agrees to use all reasonable endeavours to adhere to the Principles of Collaboration.

6.2 Payment

- (a) Each Party shall pay the Costs in accordance with Schedule 3 of this Agreement.
- (b) Each Party shall be liable to pay such Value Added Tax as may be properly chargeable in respect of the delivery of the Relevant Authority Services to a Party
- (c) Invoices for the Costs shall be as described in Schedule 3 of this Agreement and CYC shall pay all undisputed elements of an invoice within thirty (30) days of receipt.

6.3 Assets and Accommodation

- (a) Any Equipment belonging to either Party on the Commencement Date or at any time during the Term shall remain vested in the owning Party. Each Party shall be responsible for the safety and security of such Equipment whilst such Equipment is on its premises and may not add to, modify or in any way interfere with such Equipment nor allow anyone else (other than someone authorised in writing by the other Party) to do so.
- (b) The Parties shall not be liable to each other, or any third party subcontractor of either of them (as applicable), for any loss of or damage to any Equipment which is due to fair wear and tear and/or is caused by the other Party or any person acting on its or their behalf (as applicable) or any person acting on its or their behalf (as applicable).

6.4 Access

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- (a) Each Party shall provide such access to the other, or any third party subcontractor of either of them (as applicable), to its premises or facilities as shall be required for the delivery of the Services.
- (b) Where a Party is responsible for any preparatory work in respect of the delivery of the Services, including the provision of items required by the other Party each Party shall ensure that all such activities are completed and items made available in sufficient time to allow the other Party to fulfil and complete their obligations in accordance with the Services.

6.5 Operational matters

Each Party acknowledges and agrees that, provided the applicable Party's Authorised Representative gives as much notice as possible to the other Party's Authorised Representative (and, whenever practicable, agrees the timescales with the Party's Authorised Representative) that Party may:

- 6.5.1 suspend the provision of the Services for operational reasons or due to an emergency; or
- 6.5.2 give the Party instructions concerning the Services which it reasonably believes are necessary for health and safety reasons or the quality of the Services provided to the applicable Party or any other person.

6.6 Review Meetings

- (a) The Authorised Representatives from each Party shall attend regular review meetings to:
 - (i) review and discuss the operation of this Agreement;
 - (ii) share any lessons learned; and
 - (iii) consider any other matters reasonably required by any Party.
- (b) If any Party reasonably considers that a circumstance constitutes an emergency or otherwise requires immediate resolution, that Party may by notice to the other Party require that a review meeting be held as soon as practicable and in any event within ten (10) Working Days following such notice.

6.7 **Best Value and Continuous Improvement**

Each Party which is subject to the best value duty imposed on local authorities by s3 of the Local Government Act 1999 shall each be responsible for ensuring compliance with such duty.

6.8 **Health and Safety**

- (a) Each Party shall comply with the requirements of the Law and in particular the Health and Safety at Work Act 1974 and the Management of Health and Safety Regulations 1999 insofar as they apply to the provision of the Services.
- (b) Each Party shall have in place a health and safety policy which complies with all statutory requirements.

6.9 **Data Protection**

- (a) Each Party shall comply with and shall observe all of their respective obligations under the Data Protection Legislation which arise in connection with this Agreement.
- (b) This clause 6.9 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation. Each Party shall bear its own costs in relation to compliance with this clause 6.9 and the Data Protection Legislation.
- (c) Each Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation.
- (d) Both Parties shall comply with the requirements for data sharing detailed in the NYLRF Information Sharing Protocol and any other applicable emergency multi-agency arrangements that are in place from time to time to which the Parties are signatories.
- (e) Each Party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred due to the other Party's breach of clauses 6.9(a) to 6.9(d) (inclusive).

- (f) The liability of the indemnifying party under clause 6.9(e) shall be subject to the limits set out in clause 9.
- (g) The provisions of clause 6.9 shall apply during the Term and indefinitely after the expiry or termination of this Agreement.

6.10 Compliance with Law

- (a) Each Party shall comply with all applicable Law and all other relevant regulations, codes of practice, guidance and other requirements of any relevant government or governmental agency relating to the Services including (but without limitation) the Human Rights Act 1998.
- (b) Without prejudice to clauses 6.7 to 6.9 (inclusive), where new Law is enacted during the Term which has the effect of changing the manner in which the Services (or any part of them) is to be provided, the Parties shall ensure that:
 - (i) each Authorised Representative is informed of the nature and effect of such Law and the changes necessitated by it to the Services; and
 - (ii) the Services are provided in accordance with such changes in Law.

6.11 Freedom of Information etc.

- (a) Each Party acknowledges that the other Parties are subject to the requirements of the FOIA, the EIR and the Audit Act. Each Party shall assist and cooperate with each other (at its own expense) to enable all Parties to comply with any applicable information disclosure requirements.
- (b) Nothing contained in this Agreement or any documents or negotiations relating to this Agreement shall prevent the Requesting Party from disclosing any information which (in the Requesting Party's reasonable opinion or in accordance with any recommendation, notice or decision of a competent authority) it is required to disclose under the FOIA, EIR or Audit Act (as applicable).
- (c) Each Party shall maintain an adequate records management system which will enable it to access the information within the time limits prescribed by the FOIA, EIR and/or the Audit Act (as applicable).

- (d) Each Party shall indemnify the Requesting Party against all claims, demands, actions, costs, proceedings and liabilities that the Requesting Party directly incurs due to the other Party's breach of clauses 6.11(b) and 6.11(c) (inclusive).

6.12 Confidentiality

- (a) Subject to clause 6.12(b), each Party shall keep confidential all information obtained from the other Parties or through its delivery or receipt of the Services.
- (b) Clause 6.12(a) shall not apply to any information which:
 - (i) is or becomes public knowledge (otherwise than by a breach of clause 6.12(a));
 - (ii) was in the possession of the Party concerned without restriction as to its disclosure before receiving it from any other Party;
 - (iii) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; and/or
 - (iv) is disclosed in accordance with clauses 6.12(b)(i) to 6.12(b)(iii) (inclusive).
- (c) Each Party shall ensure that all its Staff engaged in the delivery or receipt of the Services or otherwise with access to information relating to this Agreement and/or the Services shall comply with clauses 6.12(a) and 6.12(b).
- (d) Nothing in clauses 6.12(a) to 6.12(c) (inclusive) shall prevent the Parties from disclosing information under or in accordance with any legal requirement, or in accordance with any lawful requirements made by any regulatory body or inspectorate established by Law.

7. Intellectual Property

- 7.1 For the avoidance of doubt, all Intellectual Property relating to or used in connection with this Agreement and/or the Services shall continue to vest in each of the Parties as it did prior to the Commencement Date.

7.2 Each Party grants each other Party a non-exclusive, non-transferrable (except in the case of statutory or voluntary re-organisation) royalty free, right and licence to use its Intellectual Property so far as it is needed for the purposes of this Agreement.

8. Insurance

8.1 NYCC and CYC shall have in place and maintain public liability insurance against its liabilities under this Agreement for death, injury and/or third party damage for the sum of £5 million for any one occurrence.

8.2 NYCC and CYC shall have in place and maintain employer's liability insurance against its liabilities under this Agreement for death, injury and/or third party damage for the sum of £10 million for any one occurrence.

8.3 NYCC shall have in place and maintain professional indemnity insurance for the sum of £5 million pounds for each and every claim, or series of claims in the aggregate during the period of insurance.

8.4 NYCC shall supply to CYC (on written request) documentary evidence of the insurances in place to establish that Party's compliance with clauses ~~08.1~~ to 8.3 (inclusive).

9. Limitation of Liability

9.1 Subject to this clause 9, each party will indemnify the other against claims brought as a result of a breach of any of their respective liabilities.

9.2 This clause 9 sets out each Party's entire liability (including any liability for the acts and omissions of their respective Staff) to the other Party in respect of an Event of Default.

9.3 NYCC shall be liable for all actions, claims, proceedings and demands arising out of personal injury (including death) or damage to or loss of property which arises out of its negligent act or default in carrying out the Services. CYC shall be liable for all actions, claims, proceedings and demands arising out of personal injury (including death) or damage to or loss of property which arises out of any of the circumstances described in clause 9.8 below, or otherwise its own negligent act or default.

9.4 Except to the extent permitted by Law, each Party's liability to the other (other than any liability to pay the Costs for the Services under this Agreement) shall be limited to £1,000,000 (one million Pounds Sterling).

9.5 Subject to the provisions of clause 9.3, 9.8 and 9.9, no Party is liable to any other Party or to any third party, whether in contract, tort, under statute or otherwise (including in each case negligence) or otherwise for any of the following types of loss or damage arising under or in relation to this Agreement:

- (a) any loss of profits, business contracts, anticipated savings, goodwill or revenue; and/or
- (b) any indirect or consequential loss or damage whatsoever,

including where a Party was advised in advance of the possibility of such loss or damage arising.

9.6 Each Party acknowledges and agrees that the provisions of this clause 9 are reasonable and are reflected in the amount of the Costs, and each Party hereby accepts such risk and shall insure such risk accordingly if it considers (at its absolute discretion) that insurance is necessary.

9.7 Each Party shall at all times take all reasonable steps to minimise and mitigate any losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Agreement.

9.8 For the sake of clarity CYC is responsible for

- (a) any liabilities or claims which are the cause of its acts or omissions as a result of it either not following the advice and guidance provided by the Shared Resilience and Emergencies Team, or not properly implementing that advice and guidance, **PROVIDED THAT** the advice and guidance is not shown to be negligent, and
- (b) any breach of its statutory functions as long as a breach is not caused by negligent advice or guidance provided by the Shared Resilience and Emergencies Team in the course of the Agreement.

10. Termination

10.1 Either Party may terminate this Agreement in accordance with clauses 2(b) and 2(c).

10.2 Either Party may terminate this Agreement with immediate effect without written notice if the other Party:

- (a) commits a material breach of this Agreement which is capable of remedy and the Party fails to remedy the breach within a reasonable time of a written notice to do so, such period not to exceed 30 Working Days; or
- (b) commits a material breach of this Agreement which cannot be remedied; or
- (c) it is apparent that the Services are not achieving their objectives and/or are disadvantageous to one or both Parties. Either Party wishing to rely upon this clause 10.2(c) shall provide written notice of such request to the other Party (such notice to be no less than 6 month's), including reasons supporting such proposition.
 - (i) In circumstances where the other Party acknowledges such reasons and agrees to such termination under this clause 10.2(c), the Parties shall cooperate with each other in good faith and shall do all acts and things reasonably required to facilitate a reasonably expeditious and smooth termination process.
 - (ii) In circumstances where the other Party acknowledges such reasons and does not agree to the requested termination under this clause 10.2(c) any remaining Dispute shall be determined in accordance with clause 12.

11. **Consequences of Termination**

11.1 In the event this Agreement is terminated the following provisions of this clause 11 shall apply and each Party shall cooperate fully with each other to ensure an orderly end to the relevant arrangements in respect of the delivery of the Services.

11.2 In addition to any other rights or remedies which the Parties may have against each other each Party shall pay to the other Party any Costs due and payable to that Party for any Services already delivered in addition to such costs incurred or committed for disbursements by the Party or a third party subcontractor of either of them (as applicable) prior to the date of the termination.

11.3 In the event this Agreement expires, each Party shall cooperate fully with each other to ensure an orderly end to the relevant arrangements in respect of the delivery of the Services.

12. Dispute Resolution

12.1 Any dispute or difference which arises between any of the Parties as to the construction of this Agreement, as to their respective rights, duties and obligations or as to any other matter arising out of or connected with the Agreement ("**Dispute**") shall be determined in accordance with the provisions of this clause 12.

12.2 Each Authorised Representative which is representing a Party in a Dispute shall consult in good faith in an attempt to come to an agreement in relation to the Dispute.

12.3 If the Authorised Representatives are unable to reach an agreement following the consultation referred to in clause 12.2 then the matter shall be referred to the Director of Place (CYC) and Assistant Director of Policy, Partnerships and Communities (NYCC) who shall use all reasonable endeavours to resolve such Dispute.

12.4 If the Parties are unable to reach an agreement following the consultation referred to in clause 12.3, the Parties shall submit the Dispute to a neutral adviser appointed by agreement between them to assist them in resolving the Dispute. Any Party may give written notice to the other(s) describing the nature of the Dispute, requiring it to be submitted to such a neutral adviser and proposing the name of a suitable person to be appointed. If no such person is appointed by agreement within ten (10) Working Days after such notice is given or, if no such notice is given within twenty (20) days after the dispute has arisen, any Party may request the Centre for Dispute Resolution to appoint a neutral adviser acceptable to the Parties.

12.5 The Parties shall, with the assistance of the neutral adviser appointed in accordance with clause 12.4, seek to resolve the Dispute by using an alternative dispute resolution ("**ADR**") procedure agreed between the Parties or, in default of such agreement established by a mutual adviser.

12.6 If the Parties accept any recommendations made by the neutral adviser or otherwise reach agreement as to the resolution of the Dispute, such agreement shall be recorded in writing and signed by the Parties and, if applicable, the neutral adviser and it shall be binding upon each Party.

12.7 If:

- (a) the Dispute has not been resolved to the satisfaction of the Parties within forty (40) Working Days after the appointment of the neutral adviser; or
- (b) a Party fails or refuses to agree or participate in the ADR procedure; or
- (c) in any event the dispute is not resolved within sixty (60) Working Days after it has arisen,

then the dispute shall be resolved under clause 12.8 (below).

12.8 Any Dispute which is to be resolved under this clause 12.8 shall be resolved by the decision of an expert whose decision shall, save as to manifest error, be final and binding on the Parties. The expert shall be appointed by agreement between the Parties or, if within ten (10) Working Days after the Dispute fails to be resolved as otherwise provided by this clause 12, the Parties have been unable to agree on the appointment of an expert, any Party may apply to the President for the time being of the Chartered Institute of Arbitrators to appoint an expert.

12.9 In the event that any costs and fees incurred by the Parties are not met in accordance with an agreement reached through the ADR procedure or in accordance with a decision reached by the expert under clause 12.8 (above) each Party shall be responsible for its own costs.

13. **Civil Contingencies and Emergencies**

13.1 Without prejudice to the obligations of CYC under this Agreement if a Civil Emergency arises during the course of this Agreement the Party suffering the Civil Emergency may instruct the other Party to use its best endeavours to procure that such additional or alternative services or acts and things are undertaken by the other Party to assist the Party suffering the Civil Emergency to respond to it.

13.2 The reasonable and proper costs incurred by the assisting Party in relation to any such additional or alternative service or acts and things provided to the Party suffering the Civil Emergency shall be met by the Party requiring the assistance pursuant to this clause.

13.3 For the purposes of this clause 13, "**Civil Emergency**" means a major incident, natural disaster or the presentation of a major risk any of which has the potential to cause death, injury or serious disruption to the everyday life of CYC and/or NYCC customers and residents or others or the potential to cause serious damage to property, and the

prevention or mitigation of which may require a special mobilisation and coordination of CYC and/or NYCC resources and/or the resources of the police, ambulance or fire services and/or other local, regional or central government bodies, departments or agencies with an interest in the welfare of the public and the prevention of such harm and/or damage which for the avoidance of doubt shall include without limitation any incident giving rise to or that may give rise to any Bellwin claim.

14. **Force Majeure**

- 14.1 Except to the extent any emergency procedures are required as part of the Coroner Services and/or Relevant Authority Services (including without limitation any Bellwin claim), if either Party is unable to perform any obligation under the Agreement because of a matter beyond its reasonable control due to a Force Majeure Event, it will have no liability to the other Party for that failure to perform save that the Relevant Authority shall be entitled if the Force Majeure Event is also a civil emergency to instruct CYC in accordance with clause 13.
- 14.2 Notwithstanding the relief granted to the Parties in clause 14.1, the Parties shall nevertheless use all reasonable endeavours in any situation where they have invoked this clause 14 to perform their relevant obligations as soon as possible and to overcome and mitigate the effect of the Force Majeure Event on the delivery or receipt of the Coroner Services and/or Relevant Authority Services.
- 14.3 The Parties shall not be entitled to relief under this clause 14 in any circumstances where they used or substantially contributed to any failure in the performance of their obligations by any default on their part.
- 14.4 In order to obtain relief under this clause 14 the Party claiming that a Force Majeure Event has occurred shall send to the other Party written notice but in any event within 5 Working Days of the first occurrence of the Force Majeure Event with full particulars thereof including the date of its first occurrence, the cause or event giving rise to it and its estimated duration. The Party claiming the Force Majeure Event must notify the other Party immediately of the cessation of the Force Majeure Event.
- 14.5 If the Force Majeure event is also a Civil Emergency or the Party acting reasonably deems it as such, that Party shall be entitled to instruct the other Party in accordance with clause 13.

14.6 For the purposes of this clause 14, "**Force Majeure Event**," means any event or sequence of events beyond a Party's reasonable control and that could not have been reasonably anticipated or avoided and which prevents it from, or delays it in, performing its obligations under this Agreement including, but not limited to:

- (a) an act of God, fire, flood, drought, earthquake, windstorm or other natural disaster;
- (b) an act of any sovereign including war (or threat of, or preparation for war), armed conflict (or threat of, or preparation for, armed conflict), invasion, act of foreign enemies, hostilities (whether war be declared or not), rebellion, revolution, insurrection, military or usurped power or confiscation;
- (c) acts of terrorism, civil war, civil commotion or riot (or the threat of, or preparation for, acts of terrorism, civil war, civil commotion or riot);
- (d) civil emergency (whether an emergency be declared or not);
- (e) fire or explosion (other than, in each case, one caused by breach of contract by, or with the assistance of, the party seeking to rely on it as a force majeure event or by a member of the same group as such party),
- (f) adverse weather conditions;
- (g) nationalisation, requisition, destruction or damage to property by or under the order of any government or public or local authority;
- (h) embargo, blockade, imposition of sanctions or breaking off of diplomatic relations or similar actions;
- (i) radioactive, nuclear, chemical or biological contamination or sonic boom, pressure waves caused by aircraft travelling at sonic or supersonic speeds;
- (j) law, or governmental order, rule, regulation or direction, judgment, order or decree;
- (k) epidemic or pandemic (excluding Coronavirus Disease 2019);
- (l) labour dispute including, but not limited to, strikes, industrial action, lockouts or boycott of a third party workforce only

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- (m) interruption or failure of utility service including to electric power, gas, water, internet or telephone service;
- (n) loss at sea;
- (o) collapse of building structures;
- (p) malicious or negligent damage or other act (other than, in each case, by the party seeking to rely on it as a force majeure event or by a member of the same group as such party);
- (q) any action taken by a government or public authority (other than the Parties to this Agreement);
- (r) accidental damage or other act.

15. Changes

- 15.1 Without prejudice to the other relevant provisions of this Agreement, any Party may at any time during the Term request a Change to the terms of this Agreement including a change to the Services.
- 15.2 No deletion from, addition to, or variation of this Agreement or the Schedules shall be valid unless agreed in writing and signed by authorised signatories on behalf of each of the Parties.

16. Publicity

Each Party agrees not to use any other Party's name or the existence of this Agreement in any publicity materials or advertising without the prior written consent of the other Parties, such consent not to be unreasonably withheld or delayed.

17. Non-Solicitation and Employment

- 17.1 Except in respect of any transfer of employees between the parties pursuant to the TUPE, neither party shall, without the prior written consent of the other party, at any time from the date of this agreement to the expiry of 6 months after the termination of this Agreement, solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee of the other party in the provision of any of the Services.

18. Assignment and Sub Contracting

Neither Party shall assign or transfer this Agreement or any of the obligations or rights under this Agreement in whole or in part (save to any legal entity with which a Party merges or which is a successor body to the Party and for the avoidance of doubt this includes by reason of statutory or voluntary reorganisation of CYC) without the prior written consent of the other Party.

19. Rights of Third Parties

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

20. Notices

20.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the relevant Party (at the address given at the front of this Agreement) and for the attention of the Authorised Representative, or as otherwise specified by the relevant Party by notice in writing to the other Party.

20.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the appropriate address and for the appropriate contact referred to in clause 20.148.4 or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

20.3 This clause 20 shall not apply to the service of any in any proceedings or other documents in any legal action.

20.4 A notice required to be given under or in connection with this Agreement shall not be validly served if sent by e-mail.

21. Waiver

21.1 The rights and remedies of the Parties in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by any Party nor by any failure of, or delay by a Party in ascertaining or exercising any such rights or remedies.

21.2 Any waiver of any breach of this Agreement shall be in writing and signed by all relevant Parties.

21.3 The waiver by any Party of any breach of this Agreement shall not prevent the subsequent enforcement of any subsequent breach of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

22. No Agency

Nothing in this Agreement is intended to, or shall be deemed to, establish any Party as the agent of the other or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

23. Further Assurance

23.1 Each Party shall at its own cost and expense do or procure to be done all such further acts and things and execute or procure the execution of all such documents as may from time to time be necessary for the purpose of giving effect to the provisions of and the benefits and rights granted pursuant to this Agreement.

23.2 No activities undertaken by either NYCC or CYC outside the scope of this Agreement will impact on the liabilities contained herein of the other party and any indemnities herein will not relate or extend to such activities.

24. Severance

24.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force without affecting the remaining provisions of this Agreement.

24.2 If any provision of this Agreement is held to any extent invalid or unenforceable the Parties agree to immediately commence negotiations in good faith in order to remedy such invalidity or unenforceability and substitute a valid and enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

25. Entire Agreement

This Agreement (including the Schedules and any documents referred to therein) represents the entire agreement between the Parties and supersedes all other

undertakings, statements and agreements relating to the subject matter of this Agreement.

26. Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed shall be an original and all the counterparts together shall constitute one and the same instrument.

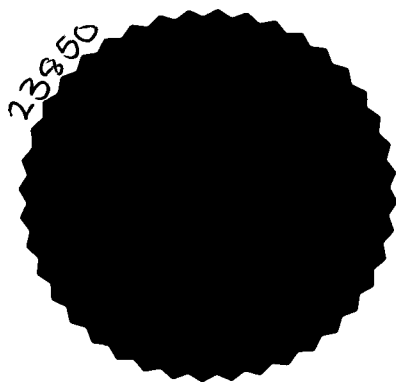
27. Governing Law and Jurisdiction

This Agreement shall be governed by English Law and all Parties agree to submit to the exclusive jurisdiction of the English Courts.

EXECUTED as a DEED

by the affixing of the **COMMON SEAL** of

NORTH YORKSHIRE COUNTY COUNCIL



in the presence of:

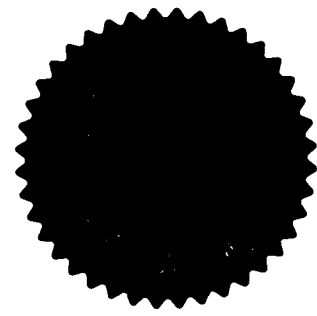
Catharina Collett

Authorised Signatory

EXECUTED as a DEED

by the affixing of the **COMMON SEAL** of

THE CITY OF YORK COUNCIL



in the presence of:

Gerard Allen

Authorised Signatory

Print Name: GERARD ALLEN

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Schedule 1 - Services

RESILIENCE AND EMERGENCIES TEAM (RET) WORK PLAN 2021/2022

1. Specific objectives and tasks for August 2021 - September 2022

The objectives listed below will be completed throughout the course of the year with regular updates to the Emergency Planning Manager and a quarterly report to the Client Group and Corporate Management Team. This new approach reflects the flexibility that is needed in Resilience and Emergencies.

NYCC Resilience and Emergencies Team will provide the emergency out of hours duty phone service and coordinate the initial response to an incident alongside CYC Officers

- To undertake a review of the Emergency Handbook to ensure that recommendations from the BCP audit and the changes in service provision are included. Specific focus on Major Incident Plan and Recovery Plan incorporating the shared service incident response, recovery and out of hour's service provision.
 - To undertake a live set up of the York Incident Control room and RET TCC
 - To create a "town and city community templates" for York using the York Evacuation plan as a basis.
 - To provide loggist training as required
 - To provide officer and members training
- To co-ordinate the annual review of CYC service unit Business Impact Analysis and Incident Management Plans in line with the CYC Business Continuity Plan policy.
 - To update the BCP policy
 - To assist Directorates with BC planning
 - To address recommendations made in the 2021 BC Audit report
 - To undertake BC exercises and apply learning
- To undertake an inventory check of all CYC Emergency Planning equipment
- To review the City of York Flood Plan addressing changes to a shared service response and out of hours notifications
- To maintain the River Ouse Safety Advisory Group (ROSAG) plan and exercise as necessary
- To support City of York Council with its responsibilities with Operation Bridge events.
- To support the Emergency Planning Manager with other standing duties such as Counter Terrorism, Safety Advisory Groups, Mass Fatalities, Excess Death Public Health pandemic response, training matrix and Community plans.

Standing Items

- Community Resilience Scheme to Parishes/Communities within York.
- To ensure appropriate passage of information from NYLRF
- Raise awareness of updates to the CCA and any other statutory duties.
- Reissue of Emergency Handbook with updates.
- To continue the development of the multi-agency CYC Integrated Emergency Management Group.

2. General support provided by NYCC RET

- NYCC RET support the work required by CYC under the CCA and related CCA Guidance.
- NYCC RET will work alongside the CYC Emergency Planning Manager to co-ordinate the writing of agreed Emergency Plans.
 - In order for this to succeed access to CYC officers will be required. This can include appropriate CYC officers assisting with writing sections of emergency plans
- NYCC RET will work alongside the CYC Emergency Planning Manager to provide local authority representatives on NYLRF groups.
 - Where specific CYC or technical knowledge is required CYC officers will still be expected to attend.
- NYCC RET will work alongside the CYC Emergency Planning Manager to co-ordinate and produce training and exercise programs for CYC officers.
 - CYC officers will be required to attend relevant programmes.
- NYCC RET to provide, through its Resilience and Emergencies Duty Officer, a 24/7 out of hours means of alerting stakeholders in the event of an emergency.
 - CYC officers will still be required to respond to a the procedures detailed within NYLRF Response to critical and major incident (RMCI)
 - CYC will ensure that Bronze, Silver and Gold officers are available 365 24/7.

3. Emergency plans and planning

Local Resilience Forum

As part of the Local Resilience Forum (LRF) and regional multi-agency planning process NYCC RET will work alongside the CYC Emergency Planning Manager to ensure CYC meets its requirements as set out below:

- *Prepare, publish and maintain multi-agency plans as requested by the North Yorkshire Local Resilience Forum (NYLRF).*
- *Provide Local Authority representation, as part of the NYLRF multi-agency planning process, on the following groups;*
 - *Strategic Group (Chaired by NYCC)*
 - *Co-ordination Group (chaired by North Yorkshire Police)*
 - *Training and Development*
 - *Risk assessment group*
 - *Security and significant events*
 - *Environmental issues*
 - *Resilient communities*
 - *Communications*
 - *Health and social care group*
 - *Category 2 group*
 - *NYLRF Communications Group*
 - *Health Groups*

County Council Resilience and Emergencies

NYCC RET:

- *Assist in the preparation of internal Business Continuity Management (BCM) arrangements in the event of an incident.*
- *Provide advice and assistance to City of York Council to prepare, validate, test and maintain emergency plans.*
- *Where appropriate, provide guidance on the development of area specific plans such as;*
 - *York Flood Plan*
 - *Business Continuity plans*
 - *Evacuation and Shelter plan*
- *Provide advice and assistance on Local Authority lead roles during the recovery phase of an incident.*
- *Advise and assist with the setting up and maintenance of alternative emergency communications systems,*
- *Address the needs of vulnerable people affected by the emergency as identified by CYC social care staff.*
- *Facilitate mutual aid arrangements by which LAs may seek/provide support in the event of a major incident.*
- *Facilitate liaison and the co-ordination of emergency arrangements with the Category 1 & 2 organisations.*
- *Review the need to maintain the following emergency plans for which NYCC and CYC are responsible;*
 - *Reception Centre planning*
 - *Feeding plan*
 - *Radiation Emergency Preparedness and Public Information Regulations plan*
 - *Control of Major Accident Hazards plan*
 - *Pipeline Safety Plan*
 - *Adult and Community Services Emergency Plan*
 - *School Incident Response Plan*
 - *Service Continuity Plans – all directorates*
 - *Emergency Management Information System (EMIS)*
 - *Fuel plans*
 - *Specific Large Crowds Events planning*
 - *Exotic Animal Diseases plan including provision for;*
 - *Foot and Mouth Disease*
 - *Avian Influenza*
 - *Newcastle Disease*
 - *Classical Swine Fever*
 - *Rabies*
 - *West Nile Virus*
 - *Blue Tongue*
 - *Diseases of Poultry plan*
 - *Anthrax outbreak plan*

City of York Council Resilience and Emergencies

As part of the ongoing commitment to Resilience and Emergencies City of York Council takes ownership of the following documents, reviewed and maintained by CYC Emergency Planning manager supported by NYCC RET:

- *Emergency Handbook including:*
 - *Major Incident planning procedures,*
 - *Emergency Control Centre Plan,*
 - *Access to emergency resources and mutual aid arrangements,*
 - *Emergency media and communications plan,*
 - *Emergency radio and communications plan,*
 - *Financial expenditure procedures during an emergency,*
 - *Recovery plan,*
 - *Appendices,*
- *Business Continuity Plan*
- *Multi-agency Flood Plan*
- *York Evacuation and Shelter Plan*
- *ROSAG plan*
- *Pandemic Plan*
- *Elected members plan*

4. Training and exercisingNYCC RET:

- *Participate in a variety of exercises involving Category 1 and/or 2 responders.*
- *Work alongside the CYC Emergency Planning Manager to prepare, administer and organise exercises for the validation of a variety of LRF, County and City of York emergency plans, in accordance with the CCA and other regulation/legislation relating to Resilience and Emergencies.*
- *Identify with CYC training needs associated with Resilience and Emergencies.*
- *Work alongside the CYC Emergency Planning Manager to plan, arrange and conduct training in Resilience and Emergencies and emergency response systems for CYC employees at all levels and, where appropriate, employees of contractors.*
- *Where requested, may direct and umpire, on behalf of CYC, exercises specific to LA arrangements.*
- *Conduct evaluation and debriefing sessions for relevant emergency exercises*
- *Produce recommendations for future planning.*

City of York Council:

- *Participate in a variety of exercises involving Category 1 and/or 2 responders.*
- *Arrange for the provision of exercises designed to build upon organisational resilience.*
- *Ensure appropriate training is provided to all staff who may be involved with the response, management and recovery from an incident.*

Schedule 2 - Principles of Collaboration

The Parties shall adopt the following principles:

1. Collaborate and co-operate: Establish and adhere to the governance structure set out in this Agreement to ensure that activities are delivered and actions taken as required;
2. Be accountable: Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this Agreement;
3. Be open: Communicate openly about major concerns, issues or opportunities relating to the Services and this Agreement;
4. Learn, develop and seek to achieve full potential: Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
5. Adopt a positive outlook: behave in a positive, proactive manner;
6. Adhere to statutory requirements and best practice: Comply with applicable laws and standards including the Directive, the Regulations, the Data Protection Legislation and legislation in relation to freedom of information;
7. Act in a timely manner;
8. Manage stakeholders effectively;
9. Deploy appropriate resources: Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this Agreement; and
10. Act in good faith to support compliance with these Principles of Collaboration.

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2. Provision and oversight of the Service

- 2.1 The Shared Resilience and Emergencies Team and all those staff delivery services as part of this Agreement will be employed (or commissioned in the case of agency staff) by NYCC who will act as host for the Services and ensure delivery of this Agreement on a day to day basis.
- 2.2 The performance of the Services will be overseen and monitored by a Client Group consisting of an Assistant Director from both NYCC and CYC, supported by a finance representative from both CYC and NYCC and the Shared Resilience and Emergencies Team. This Client Group will meet quarterly to discuss progress
- 2.3 The role of the Client Group will be to monitor this Agreement and the Services to be delivered in accordance with this Agreement and to ensure service delivery, quality and performance are maintained and delivered.
- 2.4 The Parties shall prepare an annual performance report for review by the Client Group.

Schedule 3 – Costs and Sharing

1. Costs

1.1 CYC shall pay their annual contribution in relation to this Agreement of £66,275 (“the **Contribution**”) for the Services, to NYCC on the Commencement Date and then on the 1st May each year thereafter for the duration of the Term. The Contribution will increase annually linked to the NJC staffing and other inflation costs. The Contribution does not include funding for the NYLRF Secretariat. As the 21-22 agreement will run between August 17th and March 31st CYC shall pay £44,998.42 (this includes a full year payment of the Major Incident Response Team of which no monies have been transferred and 63% of a year for duty and work plan but it does not include funding for the NYLRF Secretariat)

1.2 NYCC shall raise an invoice against a CYC purchase order for payments due under this Agreement in a format to be agreed. The ongoing and total cost of the Services will be monitored and agreed by the Client Group for the duration of the Term.

1.3 In the event that any:

(A) additional contributions are required from either Party during the Term over and above the operational budget for the Services (as referred to in paragraphs 1.1 and 1.2 above); and/or

(B) additional Staff are required during the Term,

this shall be discussed and agreed by the Client Group in advance.

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