



Derby Homes Service Level Agreements

RECOMMENDATIONS

- 1.1 To authorise signing the overarching service level agreement with Derby Homes for the provision of services to Derby Homes Limited, 'the Company'.
- 1.2 To authorise service directors or their nominees to agree individual service agreements with the Company within the framework set by the overarching agreement, with the Director of Finance or his nominee countersigning the agreement in respect of the price agreed.

REASON FOR RECOMMENDATIONS

- 2.1 To formalise the provision of support services by the Council to the Company and to agree to the overarching service level agreement between the parties
- 2.2 To allow individual services to agree detailed service agreements directly with the Company individually rather than as one single contract.

SUPPORTING INFORMATION

- 3.1 Since the incorporation of Derby Homes, the Council has continued to provide many of the support services required by the Company. Such arrangements have continued on an actual cost basis pending the formal agreement of the Council and Company to a formal contract.
- 3.2 The overarching service level agreement attached at Appendix 2 to this report is intended to set a framework for individual service level agreements between the Council and the Company for the provision of each service to be supplied. This allows both parties to be able to consider all services individually without affecting an overall contract.
- 3.3 It is suggested that the authorisation of individual service contracts between the Council and the Company be delegated to service directors or their nominees to allow the process to be treated as routine. The prices that will be set for services are by agreement between the parties, but will be normally be in line with the cost to the Council of providing those services to the Company. It is suggested that the Director of Finance, or his nominee, also needs to countersign the individual agreements to make sure that the fees agreed are consistent with the levels of income budgeted for by that service.

- 3.4 The Company will have the right to terminate services in future on giving twelve months' notice, no earlier than April 2005. The Company can also instigate complaints procedures leading to an earlier termination should the service not be able to remedy the particular complaint satisfactorily. The details of this process are set out in the agreement.
- 3.5 The individual service agreements attached to the overarching agreement will start to be signed shortly after Derby Homes' Board also formally approve the overarching agreement. It is expected that this will be at their meeting on 29 April 2004. The services covered by this agreement are set out in the Appendix to the attached agreement.
- 3.6 Should Derby Homes decide in future to terminate or reduce the amount of service that it requires from an individual service provided by the Council, that service would find itself with a budget deficit created by the consequent loss of income. This would have to be met by the departments concerned, and could not be addressed by reallocating higher management service costs across other services. The departments affected would be:
- the department directly providing the support service
 - other departments in so far as their costs were recharged to the department providing the support service as overheads before being passed on to Derby Homes.

OTHER OPTIONS CONSIDERED

4. The Council and Company could conceivably continue to supply services without a formal agreement, but this could result in problems in the future if each party is unclear about their rights and obligations relating to each service. The process of setting out the detail of service provided has helped to clarify each party's role in the provision of each service.

For more information contact: Officer: David Enticott Tel 255318 e-mail david.enticott@derby.gov.uk

Background papers:

List of appendices:

Appendix 1 – Implications

Appendix 2 - Overarching Service Level Agreement for the provision of services between Derby City Council and Derby Homes Limited.

IMPLICATIONS

Financial

1. Set out throughout the report.

Legal

2. The overarching agreement sets out the general principles relating to the provision of services between the parties. This will help to clarify the process in the future should Derby Homes wish to change suppliers or the level of service being provided.

Personnel

3. None directly arising from the agreement, but could arise in future should Derby Homes decide to change supplier of any service.

Corporate objectives and priorities for change

- 4.1 The service level agreements will promote the Council's objective of achieving **integrated, cost effective services** and the priority for change relating to **increasing value for money from council services**. The continued use of Council support services retains existing economies of scale in the provision of those services, while the potential for the Company to change from this arrangement in future generates pressure on those services to maintain efficient services to the Company.
- 4.2 The promotion of a customer-focused culture is also helped by consideration of the Company as a customer through the provision of services under a formal contract.

DATED _____ **2004**

DERBY HOMES LIMITED

and

DERBY CITY COUNCIL

OVERARCHING AGREEMENT

For the provision of Support Services

M A Foote
Director of Corporate Services
Derby City Council
The Council House
Corporation Street
Derby
DE1 2FS

THIS AGREEMENT is made the _____ day of _____ 2004
B E T W E E N DERBY HOMES LIMITED (Company number [_____]) of Floor
2 South Point Cardinal Square 10 Nottingham Road Derby DE1 3QT (“the
Company”) and **DERBY CITY COUNCIL** of The Council House, Corporation Street,
Derby DE1 2FS (“the Council”)

BACKGROUND

- (1) The Company is a company limited by guarantee and is wholly owned by the Council.
- (2) By an Agreement dated 10 April 2002 the Council delegated the management of its council house properties to the Company.
- (3) The Company wishes to continue to receive support services from the Council and the Council wishes to provide them.
- (4) The Company and the Council have agreed that these support services will be provided on the basis set out in this overarching Agreement and the various Service Appendices.

1. DEFINITIONS

1.1. In this Agreement, these words have the following meanings:

“Contract Year”	means 1 April to 31 March during the period of the agreement.
“Commercially Sensitive Information”	means information of a commercially sensitive nature relating to the business or activities of the relevant Party which is not (other than by means of a breach by the

	other Party of its obligations under Clause 14.1) in the public domain
"Company Manager"	means the relevant company manager named in Schedule 1 or any substitute the Company may from time to time nominate in writing to the Council
"Council Service Manager"	means the relevant council manager named in Schedule 1 or any substitute the Council may from time to time nominate in writing to the Company
"Dispute Meeting"	means a dispute meeting as referred to in Clause 13
"First Contract Year "	means 1 April 2003 - 31 March 2004
"Second Contract Year "	means 1 April 2004 - 31 March 2005
"indemnify"	means indemnify and keep indemnified against all costs claims demands expenses and proceedings in relation to the matter in question
"Individual Service"	means each of the Services to be provided to the Company by the Council.
"Normal Office Hours"	means 8.30 am to 5.00 pm Monday to Thursday and 8.30 am to 4.30 pm on Fridays, except on Bank Holidays and up to ten other days each calendar year notified in advance to the Company.

“Management Agreement” means the Agreement between the Council and the Company dated 10 April 2002 under which the Council has delegated management of its council house properties to the Company.

“Parties” means the parties to this Agreement

“Personal Data” means personal data as defined in the Data Protection Act 1998 and which is provided by the Company to the Council in connection with the Services;

“Relevant Service Director” means the Director of the Council Department for the relevant Individual Service or his/her nominee for the time being;

“Services” the support services set out in Schedule 1 as described in some greater detail in the Service Appendices

"Service Appendices" means the attached detailed descriptions of the Individual Services which the Council will provide to the Company.

1.2. References to the singular include the plural and vice versa.

1.3. References to Clauses are to those of this Agreement unless specified otherwise.

1.4. The headings to this Agreement do not affect its interpretation.

2. INTERACTION WITH SERVICE APPENDICES

The terms of this overarching Agreement will apply to the provision of each Individual Service unless the relevant Service Appendix expressly says otherwise.

3. PERIOD OF AGREEMENT

The Agreement will, subject to Clauses 4 and 16, continue unless and until one of the Parties gives the other at least 12 months notice in writing that it wishes to bring the entire Agreement to an end provided that no such notice will take effect before 31 March 2005.

4. TERMINATION OF INDIVIDUAL SERVICES

4.1. At any time either of the Parties may subject to the provisions in the relevant Service Appendix terminate any of the Individual Services by giving the other twelve months notice in writing provided that no such notice can take effect before 31 March 2005.

5. SERVICES TO BE PROVIDED

5.1. During the period of the Agreement (but subject to an Individual Service coming to an end under Clause 4) the Council agrees to provide the Company with the Services provided that the Agreement will only take effect for each Individual Service from the date on which the relevant Service Appendix has been signed by both the Chief Executive of the Company and the Relevant Service Director or their respective nominees.

5.2. The Council will deliver the Services in a proper and efficient manner using all reasonable skill, care, diligence and speed.

- 5.3. The Council will comply with all relevant legislation in delivering the Services.
- 5.4. The Council will use all reasonable endeavours to make sure the Services are provided cost effectively.
- 5.5. The Council will employ such staff as may be necessary to make sure the Services are provided in accordance with the Agreement and will maintain appropriate systems to ensure they are adequately trained and supervised.

6. **HOURS OF AVAILABILITY**

The Council agrees to provide the Services during Normal Office Hours.

7. **CHARGING**

7.1. The Council will make the annual charge specified in the Service Appendices for each of the Individual Services for the First and Second Contract Year.

7.2. In each Contract Year after the First Contract Year on or around 1 October, the Parties agree they will review jointly the basis for recharging for the following Contract Year with the objective of making sure the recharges are reasonable just and equitable.

7.3. Each Party will conduct the review described in Clauses 7.2 in good faith. If, however, agreement cannot be reached, the matter can be referred by either Party to arbitration under Clause 13.5.

8. **INVOICES/PAYMENT/VAT**

8.1. The Council will at three-monthly intervals, or at other intervals agreed between the Council's Director of Finance and Company Secretary for

the Company, submit invoices to the Company for each of the Individual Services in respect of the charges as from time to time applying pursuant to Clause 7.

- 8.2. Should the Company dispute any invoice, it will, within 21 days of receipt, request the Council to provide a sufficiently itemised breakdown of the disputed item and the Council will comply with the request within 14 days. Any dispute as to any invoice will be dealt with in accordance with Clause 13.
- 8.3. The Company will pay any undisputed invoice or the undisputed part of any invoice within 28 days of receipt.
- 8.4. The Company will pay any disputed invoice or any disputed part of an invoice within 28 days of the dispute being resolved or otherwise decided by arbitration pursuant to Clause 13.
- 8.5. All sums under the Agreement will, unless otherwise stated, be subject to VAT at the standard rate.

9. **MANAGEMENT INFORMATION AND PERFORMANCE MEASURES**

- 9.1. The Council will make sure that the relevant Council Service Manager will at least once a year in September provide the Company Manager with information in reasonable detail about delivery of the Individual Service, including details of:
 - 9.1.1. performance against any specified performance measures set out in the relevant Service Appendix;
 - 9.1.2. the steps which have or will be taken to remedy any under-performance;

9.1.3. any matters which may have a material impact on the delivery of that Individual Service during the next twelve months.

9.2. The Council will from time to time also provide such additional information about the Services as the Company may reasonably request, such request to be made to the relevant Council Service Manager.

10. **LIAISON AND REVIEW**

10.1. The Council will make sure that the relevant Council Service Manager will contact the equivalent Company Manager immediately if he/she is aware of or anticipates any serious problem in providing the relevant Individual Service.

10.2. The Parties will make sure that the Council Service Manager and the Company Manager for each Individual Services (together with other relevant staff) meet at least once every year in October to:

10.2.1. review the general performance of that Individual Service;

10.2.2. consider the management information supplied under Clause 9.1; and

10.2.3. discuss such action as may be reasonable and appropriate to take in light of such review and consideration.

10.3. The Council will make sure that the relevant Council Service Manager will, in addition to the meetings referred to in Clause 10.2, meet with his/her equivalent Company Manager as and when requested by that Company Manager subject to being given reasonable notice.

11. **VARIATION**

- 11.1. The relevant Company Manager or Council Service Manager, may at any time during the Agreement request a meeting with the other to discuss a proposed variation to the relevant Individual Service. The Council or the Company, as the case may be, will make all reasonable efforts to make sure such a request is met within fourteen days.
- 11.2. Any variation to the Service Appendices must be agreed in writing by the Chief Executive of the Company and the Relevant Council Service Director or their respective nominees and any such variation that has a financial implication must also be signed by the Council's Director of Finance and a Director of the Company or their respective nominees.
- 11.3. Any variation to the Agreement must be in writing and signed by the Council's Director of Corporate Services and Company's Chief Executive.

12. **COMPLAINTS**

- 12.1. In the event of the Company being dissatisfied with the quality of any work done by the Council under this agreement or the time it has taken to do it or the manner in which it has been done, it will make sure the relevant Company Manager first contacts the line manager of the Council officer dealing with the matter.
- 12.2. Should the matter not be resolved to the Company's satisfaction, or if the line manager's involvement is for some reason inappropriate, the Company can refer the matter to the Council's relevant Assistant Director. Such a referral must be in writing.

- 12.3. The Council will make sure that on having an issue referred to him/her by the Company under 12.3, the Council's Assistant Director investigates the matter and sends a written response to the Company within 14 days.
- 12.4. The written response under Clause 12.3 is to set out:
 - 12.4.1. if in the Council's reasonable opinion the complaint is justified in whole or in part;
 - 12.4.2. an apology, if considered appropriate;
 - 12.4.3. proposals to remedy the matter, if appropriate;
 - 12.4.4. any actions to be taken in order to prevent a repetition.
- 12.5. Should the Company remain dissatisfied following receipt of the Assistant Director's report, it can refer the matter to the relevant Council Service Director. The Council will make sure such Council Service Director will review the matter and report his/her conclusions to the Company and, if requested, meet with senior representatives of the Company within 14 days.
- 12.6. Should the complaint still remain unresolved then the matter may be referred to an arbitrator in accordance with Clause 13.5

13. **DISPUTE RESOLUTION**

- 13.1. If any dispute as to the provision of an Individual Service (other than a complaint under Clause 12) cannot be resolved by the Company Manager and the Council Service Manager, then either Party may in writing ask for it to be the subject of a Dispute Meeting.
- 13.2. A Dispute Meeting must be held within 14 days of either Party giving the other written notice of this requirement for such a meeting.
- 13.3. A Dispute Meeting will be attended by a Senior Officer of the Company and of the Council. The Council Officer will be at least an Assistant Director. The Council's Director of Policy or his/her nominee will also attend.
- 13.4. Where the Parties fail to resolve a dispute at a Dispute Meeting, either Party can by written notice ask for it to be considered by the Chief Executive of the Company and the Chief Executive of the Council or their nominees. Such a meeting must take place within 14 days from service of such notice.
- 13.5. Where the two Chief Executives or their nominees fail to resolve a dispute under Clause 13.4 (or the circumstances referred to in Clause 12.6 apply) then, either Party can by notice refer the matter to an arbitrator agreed by both upon a written request from either so to do, or in default, appointed by the President of the Institute of Arbitrators upon application of either.
- 13.6. The decision of the arbitrator will be final and binding on the Parties other than in the case of manifest error.

13.7. The costs of the arbitrator will be borne by the Parties as he/she may so determine, or, in the absence of any such determination then equally by the Parties.

14. **CONFIDENTIALITY**

14.1. Each of the Parties agrees to keep secret and confidential any Commercially Sensitive Information relating to the other.

14.2. Nothing in Clause 14.1 is to prevent a Party making any disclosure required by law or a court of competent jurisdiction.

15. **COPYRIGHT**

15.1. The copyright in all documents, drawings, illustrations and computer programs owned by the Council and provided by it to the Company under this Agreement will remain its sole property.

15.2. The Council grants the Company a royalty free non-exclusive licence to use and reproduce the material referred to in Clause 15.1.

15.3. The Council will indemnify the Company against all claims and proceedings for infringement of copyright and other protected rights in respect of any material provided to it by the Council.

16. **TERMINATION FOR DEFAULT**

16.1. Subject to Clause 16.2, the Company will be entitled to terminate any Individual Service provided by the Council by giving one month's written notice if the Council has persistently failed to provide a substantial part of that Individual Service either to the required standard or in a timely fashion, or there has been a material failure on the Council's part to comply with its other obligations in this Agreement in respect of that Individual Service

- 16.2. Prior to serving a termination notice under Clause 16.1, the Company must give the Council at least two months written notice of its intention to do so and a reasonable opportunity to remedy the matter.
- 16.3. Termination pursuant to Clause 16.1 will be without prejudice to any other right or remedy the Company may have.
- 16.4. The Council will have the right to have any notice served by the Company under Clause 16.1 referred to an arbitrator in accordance with Clause 13.5 and such a notice shall be of no effect unless and until it is upheld by the arbitrator.

17. DATA PROTECTION

- 17.1. The Council will comply with the Data Protection Act 1998 (as a data controller if necessary). It will maintain a valid and up to date registration under the Data Protection Act 1998 for data processing in connection with the Services.
- 17.2. The Council will only undertake processing of Personal Data reasonably required in connection with the Services.
- 17.3. The Council will not disclose Personal Data to any third parties other than:
 - 17.3.1. to its employees and third parties to whom such disclosure is reasonably necessary in order for the Services to be provided; or
 - 17.3.2. to the extent required under a court order.
- 17.4. The Council will bring into effect and maintain suitable technical and organisational measures to prevent:-
 - 17.4.1. unauthorised or unlawful processing of Personal Data; and

17.4.2. accidental loss or destruction or damage of Personal Data.

18. **WAIVER**

- 18.1. Failure or delay in exercising any rights, powers or privileges under this Agreement will not operate as a waiver of them.
- 18.2. The single or partial exercise of any right, power or privilege does not prevent any other exercise of it or the exercise of any other right, power or privilege.
- 18.3. Any waiver of a breach of this Agreement is not to be deemed a waiver of any subsequent breach or default.
- 18.4. The rights and remedies given by this Agreement are cumulative. They do not exclude any other rights or remedies given by the law.

19. MISCELLANEOUS PROVISIONS

- 19.1. If any term of this Agreement is illegal, void or unenforceable the remainder of this Agreement will continue in force as though that term had not been included in it.
- 19.2. Nothing in this Agreement is to constitute or be deemed a partnership.
- 19.3. Neither Party will hold itself out to third parties as an agent of the other without the prior consent of that other.
- 19.4. Nothing in this Agreement is to confer any benefit on a person who is not a Party or to give any such person any right to enforce it.
- 19.5. This Agreement is governed by English law. The Parties agree to submit to the exclusive jurisdiction of the English courts.
- 19.6. Nothing in this Agreement will impose on any Party any obligation or restriction which is inconsistent or incompatible with:-
- 19.6.1. its objects; or
 - 19.6.2. its statutory duties, powers and functions.
- 19.7. Each Party agrees to do all things within its power which are reasonably necessary or desirable to carry this Agreement into full force and effect.

20. NOTICES

- 20.1. Notices or other formal communications under this Agreement will be duly served if given by and sent to each Party's nominated representative in accordance with the procedures set out in the following table. The date and time of service and method of proof are as set out in such table:

Method of Service	Time of Service	Proof of Service
<ul style="list-style-type: none"> Personal delivery to the nominated recipient. 	Time of delivery	Proof of handing to the nominated representative
<ul style="list-style-type: none"> Personal delivery of a letter addressed to the nominated recipient at the address for service. 	Time of delivery if before 16.00 on a Working Day otherwise 10.00 on the next Working Day.	Proof of delivery.
<ul style="list-style-type: none"> First class letter addressed to the nominated recipient at the address for service. 	48 hours after posting if that is a Working Day otherwise 10.00 on the next Working Day.	Proof of posting unless returned through the Post Office undelivered service within 21 days of posting.
<ul style="list-style-type: none"> Facsimile addressed to the nominated recipient at the address for service. 	Time of transmission if before 16.00 on a Working Day otherwise 10.00 on the next Working Day.	Transmission report showing a successful transmission to the correct number plus proof of posting of a

Method of Service	Time of Service	Proof of Service
		hard copy.

20.2. Each Party's address for service is the principal address set out in this Agreement or such other address it specifies by written notice to the other.

20.3. The nominated representatives for the receipt of notices are the holders for the time being of the following posts:-

20.3.1. Chief Executive for the Company; or

20.3.2. The Relevant Service Director for the Council

or such other person that Party nominates by written notice to the other.

IN WITNESS of the above the duly authorised representatives of both Parties have signed this Agreement on the date set out above.

Schedule 1

Services to be provided to the Company by the Council and list of Council Service Managers and Company Managers.

Service	Council Service Manager	Company Manager
* Internal Audit	Head of Internal Audit	Audit Committee
* Financial Services	Head of External Payments	Director and Company Secretary
* Payroll	Head of Employee Payments	Director and Company Secretary
* Insurance & Car Loans	Head of Tax and Insurance	Director and Company Secretary
* Technical Services	Assistant Director Property Services	Director of Investment and Regeneration
* Grounds Maintenance	Grounds Maintenance Manager	Area Manager Tenancy Services
* Personnel	Corporate Personnel Adviser	Personnel Manager
* Procurement	Procurement Officer	Director and Company Secretary
* Telecommunications	Civic Services Manager	Rental Control Systems Co-ordinator
* Corporate Communications	Public Relations Manager	Director and Company Secretary
* Legal Services	Principal Solicitor	Director and Company Secretary
* Courier Services	Business Support Manager	Director and Company Secretary
* Bank Charges	Head of Tax and Insurance	Director and Company Secretary
* IT Services	IT Manager	Computer Systems Manager
* Equalities	Head of Equalities	Equalities Adviser
* Planning & Performance	Head of Strategic Planning and Performance	Director and Company Secretary
* Communal Cleaning	Senior Quantity Surveyor	Communications and Customer Involvement Manager

Signed by [] duly authorised)
for and on behalf of the Company)
in the presence of:)

Signed by [] duly authorised)
for and on behalf of the Council)
in the presence of:)