

**DATED**

**20**

**FUNDING AGREEMENT**

**between**

**PORTSMOUTH CITY COUNCIL**

**and**

**SOUTHAMPTON CITY COUNCIL**

**and**

**HAMPSHIRE COUNTY COUNCIL**

**FOR THE PROVISION OF THE CORONER SERVICES**

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THIS DEED is dated

2020

## PARTIES

- (1) **PORTSMOUTH CITY COUNCIL** of Civic Offices, Guildhall Square, Portsmouth, PO1 2EP (“PCC”); and
- (2) **SOUTHAMPTON CITY COUNCIL** of One Guildhall Square, Civic Centre Road, Southampton SO14 7LY (“SCC”); and
- (3) **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ (“HCC”)

## BACKGROUND

- (A) Under the powers conferred by the Coroners and Justice Act 2009 (“the **Act**”), an Order, which is attached at Schedule 3, has been made by the Lord Chancellor to merge the coroner areas of Central Hampshire, North East Hampshire, Portsmouth and the South East, and Southampton and the New Forest to form one new coroner area (“the **Merger**”).
- (B) For the purposes of the Act and the Merger, the parties have agreed that HCC shall be the ‘relevant authority’ (or lead authority) for the new coroner area and the Explanatory Memorandum associated with the Order made clear the parties’ intentions to continue to fund the Coroner Services in the new coroner area following the Merger. As a result, PCC and SCC have agreed to make financial contributions (“the **Funding**”) to HCC to pay toward the cost of the Coroner Services in the new coroner area.
- (C) This Agreement sets out the terms and conditions on which the Funding is to be paid to HCC by PCC and SCC, and to ensure that the Funding is used for the purpose of the Coroner Services.

## AGREED TERMS

### 1. DEFINITIONS

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement, save where the context requires otherwise:

**Agreement:** this agreement incorporating these clauses and the schedules, and any modifications made in accordance with these clauses.

**Commencement Date:** 1 April 2020.

**Coroner Services:** the Coroner Services described in Schedule 1 (as varied from time to time).

**Data Protection Legislation:** means

- (i) the General Data Protection Regulation (Regulation (EU) 2016/679) (“**GDPR**”), the Law Enforcement Directive (Directive (EU) 2016/680) (“**LED**”) and any applicable national implementing Laws as amended from time to time;
- (ii) the Data Protection Act 2018 (“**DPA 2018**”) to the extent that it relates to processing of personal data and privacy;
- (iii) all applicable Law about the processing of personal data and privacy.

**EIRs:** has the meaning set out in clause 6.1.

**FOIA:** has the meaning set out in clause 6.1.

**Funding:** the financial contributions to be paid to HCC in accordance with this Agreement as set out in Schedule 2.

**Funding Period:** the period over which the Funding is to be paid, starting on the Commencement Date and continuing for the duration of the provision of the Coroner Services.

**Personal Data:** take the meaning given in the GDPR.

**Prohibited Act:** means:

- (a) offering, giving or agreeing to give to any servant of PCC or SCC any gift or consideration of any kind as an inducement or reward for: (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with PCC or SCC; or (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with PCC or SCC;
- (b) entering into this Agreement or any other contract with PCC or SCC where a commission has been paid or has been agreed to be paid by HCC or on its behalf, or to its knowledge;
- (c) committing any offence: (i) under the Bribery Act 2010; (ii) under legislation creating offences in respect of fraudulent acts; or (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with PCC or SCC; or

(d) defrauding or attempting to defraud or conspiring to defraud PCC or SCC.

1.2 References to singular shall be deemed to include the plural and vice versa and references in either gender shall be deemed to include the other and the neuter.

1.3 References to any provision of a statute or regulation shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.4 Headings are inserted for convenience only and shall not affect the interpretation or construction of these terms.

## **2. PURPOSE OF FUNDING**

2.1 HCC shall use the Funding only for the delivery of the Coroner Services and in accordance with the terms and conditions set out in this Agreement. The Funding shall not be used for any other purpose.

## **3. PAYMENT OF FUNDING**

3.1 HCC shall submit quarterly invoices based upon Schedule 2 – Funding Schedule to PCC and SCC for the provision of the Coroner Services and PCC and SCC shall pay the relevant invoices in full for the provision of the Coroner Services to HCC by BACS in arrears within thirty days of receipt of a valid invoice.

3.2 Subject to clause 3.3, on each anniversary of the Commencement Date, either party may request, by notifying the other party in writing, the Funding to be increased or reduced by a percentage equal to the increase or reduction (if any) in the relevant index (using the most recently available edition) immediately preceding such funding review or, in the case of the first review, since the Commencement Date.

3.3 The party requesting the change in the Funding shall provide supporting evidence of such increase or reduction and in the case of an increase in the Funding, the party shall prove to the satisfaction of the authorised officer that such increase is necessary to cover additional costs which it has to meet because of increases in the cost of complying with the Agreement.

3.4 Any agreed increase or reduction in the Funding under clause 3.2 must be set out in writing and signed on behalf of all the parties. Any resulting change in the Funding shall apply to the provision of the

Coroner Services 60 days following completion of such review until the next anniversary.

#### **4. USE OF FUNDING**

4.1 The Funding shall be used by HCC for the delivery of the Coroner Services set out in Schedule 1.

#### **5. WARRANTIES**

5.1 HCC warrants, undertakes and agrees that:

- (a) it has all necessary resources, approvals, powers and expertise to deliver the Coroner Services (assuming due receipt of the Funding);
- (b) it has not committed, nor shall it commit, any Prohibited Act;
- (c) it shall at all times comply with all the requirements of any Act of Parliament, statutory instrument or order or any other regulation having the force of law or bye-law, all regulatory requirements, applicable codes of practice and other similar codes or recommendations from time to time in force, which are or may become applicable to it, the Funding or the Coroner Services;
- (d) it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Coroner Services;
- (e) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (f) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction; and
- (g) it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Funding.

#### **6. FREEDOM OF INFORMATION**

6.1 The parties acknowledge that they are subject to the requirements of the Freedom of Information Act 2000 ("**FOIA**") and the Environmental Information Regulations 2004 ("**EIRs**").

6.2 Each party shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the other to enable compliance with obligations under the FOIA and EIRs;
  - (b) transfer to the other party all relevant requests for information relating to this Agreement that it receives as soon as practicable and in any event within two (2) working days of receipt;
  - (c) provide the other party with a copy of all information belonging to that party as requested in the request for information which is in its possession or control in the form that the other party requires within five (5) working days (or such other period as the other party may reasonably specify) of the request for such information; and
  - (d) not respond directly to a request for information unless authorised in writing to do so by the other party.
- 6.3 Each Party acknowledge that the other may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the other. Each party shall take reasonable steps to notify the other of a request for information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) each party shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 6.4 HCC in line with the Government's on-going drive to open up activities of the public sector to greater scrutiny has prepared its transparency agenda and the parties hereby agrees that nothing in the Agreement shall prevent either party or parties from publishing any payments made by PCC and/or SCC to HCC under the terms of the Agreement.

## **7. DATA PROTECTION**

- 7.1 It is not anticipated that there will be any Personal Data processed under this Agreement.
- 7.2 If any Personal Data is processed, the parties shall comply at all times with provisions equivalent to the Data Protection Legislation and shall agree any necessary amendments or variations to this clause in accordance with the provisions set out in this Agreement.

7.3 Each party agree that it shall not perform its obligations under this Agreement in such a way as to cause the other party to breach any of its applicable obligations under the Data Protection Legislation.

## **8. CONFIDENTIAL INFORMATION**

8.1 The parties shall keep confidential any information obtained under the Agreement and no receiving party shall divulge the same to any third party without the consent in writing of the disclosing party (or parties).

8.2 Clause 8.1 shall not apply to: any information in the public domain otherwise than by breach of this clause; information in the possession of the receiving party thereof before divulgence as aforesaid, information obtained from a third party who is free to divulge the same and information which the receiving party thereof is required to disclose pursuant to a statutory, legal or parliamentary obligation, including any requirements for disclosure under the FOIA and EIRs.

## **9. ANTI-DISCRIMINATION**

9.1 HCC shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.

9.2 HCC shall take all reasonable steps to secure the observance of clause 9.1 by all servants, employees or agents of HCC and all suppliers and sub-contractors engaged on the Coroner Services.

## **10. HUMAN RIGHTS**

10.1 HCC shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement.

## **11. INDEMNITY, LIABILITY AND INSURANCE**

11.1 PCC and SCC accept no liability for any consequences, whether direct or indirect, that may come about from HCC running the Coroner Services or the use of the Funding. HCC shall indemnify and hold harmless PCC and SCC, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of HCC in relation to the provision of the Coroner Services, the non-fulfilment of



obligations of HCC under this Agreement or its obligations to third parties.

- 11.2 PCC shall, in respect of relevant employees who transferred in accordance with the Cabinet Office Statement of Practice to HCC on 1 January 2020 (“Relevant Employee”), indemnify and continue to indemnify HCC against all claims, demands, actions, costs, expenses, losses, damages and all other liabilities incurred in connection with or as a result of any claim or demand by any Relevant Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of PCC in respect of any Relevant Employee prior to 1 January 2020.
- 11.3 Subject to clause 11.1 and 11.2, PCC’s liability under this Agreement is limited to the payment of the Funding.
- 11.4 Subject to clause 11.1, SCC’s liability under this Agreement is limited to the payment of the Funding.
- 11.5 HCC shall effect and maintain adequate arrangements of insurance in respect of all risks which may be incurred by HCC, arising out of the HCC’s performance of the Agreement, including death or personal injury.

## **12. DURATION AND TERMINATION**

- 12.1 Except where otherwise specified, the terms of this Agreement shall apply from and including the Commencement Date and shall continue thereafter until the time this Agreement is terminated in writing in accordance with clause 12.2 below.
- 12.2 Subject to clause 12.3, where the effect of any change in legislation is that any of the parties cease to exist as an entity or continue to exist subject to a significant change in role or responsibilities relating to the Agreement, the relevant party or parties shall cease to have any rights or responsibilities under this Agreement on the date such legislation takes effect. Where such circumstances apply, the parties shall cooperate in considering the implications of the change and shall make

such decisions, for the future resourcing of the Coroner Services, as they consider appropriate.

- 12.3 Clause 12.2 shall not apply where the change in legislation referred to makes provision for existing legal obligations in relation to the Coroner Services to be transferred to a successor body and if required the parties agree that they shall novate the Agreement to reflect the responsibilities and benefits transferred to the successor body.

### **13. VARIATION**

- 13.1 Unless otherwise stated in this Agreement, no variation or amendment of this Agreement shall be effective unless it is agreed in writing and signed by the authorised representative of the parties.

### **14. ACKNOWLEDGMENT AND PUBLICITY**

- 14.1 PCC and/or SCC shall inform the senior coroner of the Coroner Services prior to publication of any material referring to the Coroner Services.
- 14.2 PCC and SCC agree to participate in and co-operate with promotional activities relating to the Coroner Services that may be instigated and/or organised by HCC and/or the senior coroner.

### **15. DISPUTE RESOLUTION**

- 15.1 The parties will use their best efforts to negotiate in good faith and settle any complaint or dispute that may arise out of or relating to the Agreement.
- 15.2 In the event of any complaint or dispute arising between the parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the Assistant Director of the disputing parties.
- 15.3 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Assistant Director of the disputing parties, any disputing party may refer the matter to the relevant Director of the disputing parties with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the disputing parties.
- 15.4 In the absence of agreement under clause 15.3, the disputing parties may seek to resolve the matter through mediation under the CEDR

Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by the disputing parties). Unless otherwise agreed, the disputing parties shall bear the costs and expenses of the mediation equally.

## **16. NOTICES**

- 16.1 All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

## **17. WAIVER AND SEVERABILITY**

- 17.1 No failure or delay by each party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.
- 17.2 If any of the clauses become or are declared by a court of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall in no way impair or affect any other clauses all of which shall remain in full force and effect.

## **18. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

## **19. ENTIRE AGREEMENT**

- 19.1 The Agreement represents the entire understanding between the parties in relation to the subject matter of the Agreement and, save as may be expressly referenced or referred to herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

**20. NO AGENCY OR PARTNERSHIP**

20.1 Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the parties nor constitute either party the agent of the other.

20.2 No party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.

**21. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

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

## **Schedule 1 - Coroner Services**

The provision of the Coroner Services involves support to the Senior Coroner of the coroner area in the furtherance of his/her duties and to provide the necessary administrative support to carry out the following (which may be varied from time to time):

- To investigate the circumstances of the deaths of all persons whose bodies are lying within the administrative area of HCC, PCC, and SCC and in some cases lying out of the county and/or country, where there is reason to believe that the death was violent, unnatural, of unknown cause or necessitates further attention by the coroner.
- To investigate whether a post mortem examination is necessary for the purpose of the investigation and, if so, to give directions to the appropriate medical practitioner.
- To hold an Inquest, with or without jury, where it is required to do so in accordance with the Act.
- To notify the Registrar of Deaths of the findings of the inquest or that the death reported does not require an Inquest to be held.
- To pay all relevant fees and allowances to witnesses and jurors.
- To make annual returns to the Ministry of Justice.
- All administrative support including computer support, archives storage and any other backup service required.
- any other associated support as required.

## **Schedule 2 - Funding Schedule**

The funding model principles are as set out below:

### 1. Combined Weighting:

50 % place of death acknowledging the fact that according to the associated legislation responsibility is established on the principle of 'where the body lies'. Place of death calculations will be calculated quarterly.

50% population is a recognised model used by various other Local Authority's. A pre agreed method for establishing population figures will be settled upon using ONS mid year population estimates updated biennially.

### 2. Out of County Deaths:

HCC, PCC and SCC agree to split any out of county or country deaths equally between the three authorities.

### 3. Management Recharge

A supplementary levy of 7% be applied each quarter to the PCC and SCC budget to recognise the additional burden assumed by HCC in respect of the management of the overall jurisdiction.

Example of the funding model:

The examples below, for illustrative purposes only, show how the funding model will work:

<b>ANNUAL BUDGET (FICTIONAL)</b>		<b>3,200,000.00</b>						
<b>PLACE OF DEATH (*Theoretical* - fictional figures used for demonstration purposes only)</b>								
	Place of Death	% Place of Death	Annual Budget Breakdown (Fictional)		Total	1/2 of Total		
HCC + 1/3 Out of County	4290	58.5%	1,872,851.30		3,200,000.00	1,600,000.00		
PCC + 1/3 Out of County	1540	21.0%	672,305.59					
SCC + 1/3 Out of County	1500	20.5%	654,843.11					
Grand Total	7330	100%	3,200,000.00					
<b>POPULATION MODEL (ONS mid-year population estimates published 2018)</b>								
	Population	% Population	Annual Budget Breakdown (Fictional)					
HCC	1,376,316	74.6%	2,388,083.58					
PCC	215,133	11.7%	373,283.16					
SCC	252,796	13.7%	438,633.26					
TOTALS	1,844,245	100%	3,200,000.00					
<b>1/2 Place of Death and 1/2 Population Model (+7% overhead costs)*</b>								
	PoD (including a 1/3 Out of County)	Population	Annual Budget Breakdown (Fictional)	Plus 7% Overhead Costs				
HCC	936,425.65	1,194,041.79	2,130,467.44	2,055,600.16				
PCC	336,152.80	186,641.58	522,794.38	559,389.98				
SCC	327,421.56	219,316.63	546,738.19	585,009.86				
TOTALS	1,600,000.00	1,600,000.00	3,200,000.00	3,200,000.00				
			Percentage	7%				
<b>*THEORETICAL ONLY - The above figures are based on cost modelling, not actuals, and therefore the level of any savings cannot be guaranteed</b>								

### Schedule 3 - The Order



Order 2020.pdf



EXPLANATORY  
MEMORANDUM.pdf

CONFIDENTIAL



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CONFIDENTIAL

Executed as a Deed )  
for and on behalf of )  
**PORTSMOUTH CITY COUNCIL** )

.....  
Authorised Signature  
.....

\*Authorised Signature /Attesting Witness

*\*delete as appropriate*

Executed as a Deed )  
for and on behalf of )  
**SOUTHAMPTON CITY COUNCIL** )

.....  
Authorised Signature  
.....

\*Authorised Signatory/Attesting Witness

*\*delete as appropriate*

Executed as a Deed by affixing the )  
**THE COMMON SEAL of** )  
**HAMPSHIRE COUNTY COUNCIL** )  
in the presence of: )

.....  
Authorised Signatory