

## **Appendix 3 - Report on the proposed new Management Agreement and Member Agreement between Bury Metropolitan Borough Council and Six Town Housing**

The new form of Management Agreement will be shorter, more output-based than the current Management Agreement. This reflects not only the need to up-date the provisions but also the fact that the relationship between Bury Council (the **Council**) and Six Town Housing (**Six Town**) is a mature one and is to be based on partnership principles. This section of the report summarises the main provisions of the draft Management Agreement. All capitalised terms have the same meaning as defined in the Management Agreement, unless otherwise stated.

### **1 Clause 2 - Partnership**

1.1 The Council and Six Town (the **Parties**) agree to adhere to the principles set out in the Partnership Protocol. This is set out at Schedule 5 and is in three parts; Part 1 contains the Partnership Pledge and Part 2 contains the Partnership Principles and Part 3 contains the Relationship Principles.

1.2 The Partnership Pledge is the same as the Partnership Pledge in the current Management Agreement. The Parties agree to work together based on shared values of openness, respect, honesty, trust, negotiation and accountability. A number of key principles for the relationship are specified, including contracting on arm's length terms, establishing clear lines of delegation, operating on a 'no surprises basis', promoting a positive attitude, working together to solve problems, valuing each other, celebrating success jointly, mutual support and sharing information.

1.3 The Partnership Principles are distilled from the partnership arrangements agreed between the Council and Six Town during the development stage of the new working relationship. They include:

1.3.1 acting in accordance with the obligations and responsibilities set out in the Management Agreement;

1.3.2 promoting good governance behaviours;

1.3.3 the Council promising to commit sufficient resources to ensure appropriate oversight and effective governance of Six Town;

1.3.4 Six Town promising to produce accurate and timely performance monitoring information; and

1.3.5 the delivery of high quality and efficient HRA services, alongside seeking areas of commercial growth.

1.4 The Relationship Principles set out the vision and ground rules of the future relationship between the Council and Six Town. It sets out historic issues that have been brought to the fore by a review undertaken by Savills, and how Altair will work with Council and Six Town to embed best practice solutions to the issues identified by Savills.

### **2 Clause 3 – Six Town Services**

2.1 Six Town will provide the Services as set out in the Specification. The Specification is being finalised but this will comprise the current housing management functions and the

new service areas that are being transferred to Six Town. The Key Performance Indicators / targets which Six Town Housing is required to achieve will be included in the Specification, following agreement under clause 3.2 within 3 months of the date of the Management Agreement being entered into.

- 2.2 Provision has also been made at clause 3.4 for both the Council and Six Town to agree over the course of the first year appropriate operational requirements in relation to the new service areas which are to be transferred. If these cannot be agreed, the dispute resolution provisions at clause 40 are applicable.

### 3 **Clause 4 - Future Six Town Services**

The Council and Six Town will maintain a list of possible future services to be provided by Six Town. The addition of such Services to those provided by Six Town will be discussed on a regular basis and if agreed will be incorporated in the Specification.

### 4 **Clause 5 – Review of Services**

The Services will be reviewed to ensure that they are aligned with and help to deliver Council strategies. KPI/targets will also be reviewed as part of this process. They need to be realistic, i.e. to reflect service standards achieved by ALMOs in comparable circumstances elsewhere and the resources made available to Six Town by the Council.

### 5 **Clause 6 – Variation to Services**

- 5.1 The Services can be varied by the Council on the giving of at least six months' notice, expiring on 31 March each year. The Services can also be varied outside of this time period if the Council, acting reasonably, believes that this is required by the prevailing circumstances. The Council is also able to vary the Services (giving Six Town as much notice as possible) in the event that the Right to Manage is exercised or formal steps are taken against Six Town by the Regulator of Social Housing.

- 5.2 The Right to Manage is a right exercisable under the Housing (Right to Manage) Regulations 2008. Under this right, council tenants can collectively group together to exercise the right to manage their own homes through a tenant management organisation (TMO). Six Town will be familiar with the Springs TMO which has operated in the Bury area since 1996.

- 5.3 The discussions about varying the Services should be commenced no later than 1 July each year. If a variation is not agreed it will be determined in accordance with the dispute resolution procedure (see paragraph 38 below). The nature and extent of the variation to the Services must result in a commensurate variation in the Fee (see paragraph 11 below).

### 6 **Clause 7 – Stock maintenance and Improvement**

- 6.1 Six Town will assist the Council in delivering the Stock Maintenance and Improvement Programme by administering or letting third party contracts and carrying out Works itself through its DLO. The Programme will be reviewed by the Parties as part of the Business Planning process and, as with the other Services, the Stock Maintenance and Improvement Programme will take account of any variation in the Works element of the Fee.

6.2 The first Stock Maintenance and Improvement Programme shall be the programme that has been agreed by the Parties as at the date the Management Agreement is entered into. It will be reviewed on a yearly basis and through the Business Plan approval process set out in clause 16.

## 7 **Clause 8 - Maintenance Works Contracts**

7.1 Six Town will carry out Works Contracts through its DLO, and/or will let and/or administer, Works Contracts as the Parties deems necessary to deliver the Maintenance element of the Stock Maintenance and Improvement Programme following the expiry / termination of the current arrangement.

7.2 In the procurement of any Maintenance Works Contracts Six Town must comply with all applicable European Union and other regulations and take reasonable steps to adhere to best procurement practice and achieve value for money. The Council agrees that the cost of complying with this clause is an additional cost for Six Town which will be reflected in the Fee.

## 8 **Clause 9 – Improvement Works Contracts**

Six Town will carry out through its DLO / administer / let the Works Contracts to deliver the Improvement element of the Stock Maintenance and Improvement Programme.

## 9 **Clause 10 – Provision of Information**

9.1 Six Town must provide the Council with any information the Council reasonably require to demonstrate Six Town's delivery of the Services. This should include the performance against the KPIs, formal complaints made by tenants, leaseholders and other residents directly affected by the Services.

9.2 The Parties are to agree the format of the reports to be provided to the Council, and the Parties will discuss the process by which these reports will be reviewed by the Council. The process will involve direct discussion between Six Town and the Parent Board and will assess Six Town's compliance with the Partnership Protocol and alignment with the Council's growth agenda. It may also include 'deep dive' reviews on issues of relevance and importance to the Council and Six Town.

## 10 **Clause 11 – Additional Matters Requiring Council Consultation and / or Approval**

Six Town agrees with the Council that the matters set out in Schedule 7 (see paragraph 47 below) shall require consultation with and / or the approval of the Council.

## 11 **Clause 12 – Fee**

11.1 From 1 June 2019 to 31 March 2020 the Current Services Fee and the New Services Fee will be paid by the Council to Six Town. The Current Services Fee is £10,882,166 which is the agreed fee for current Services for the 19/20 Financial Year (£13,058,600) pro-rated for a 10 month period. The New Service Fee is yet to be agreed, but it will be agreed by the Council and Six Town prior to the date that the Management Agreement becomes effective (see paragraph 11.3).

11.2 The New Services Fee is the additional amount which will be paid to Six Town in consideration for them performing the additional services which are transferring to Six

Town for the first time under this Management Agreement from 1 June. This amount will be calculated on the following basis: an amount which represents the employee costs for the transferring employees plus an amount which represents additional costs to Six Town for performing the additional services, less an amount which represents in-year efficiency savings to be realised by Six Town.

- 11.3 The intention is that the Management Agreement will be signed by the Council and Six Town as soon as it has been approved by Cabinet. Trowers & Hamlins will then hold the executed documents on behalf of the parties, and once the parties have agreed the New Services Fee and that the Management Agreement can be completed, Trowers & Hamlins will insert the fee and date the document, at which point it will come into effect.
- 11.4 The Fee Principles in Schedule 3 will be used to agree the Fee (the total of the Management and Other Services Fee, Maintenance Services Fee, Improvement Services Fee and / or Works Fees) for the period from 1 April 2020 onwards.
- 11.5 The Fee can be varied in accordance with the procedure set out in clause 12.4. Discussions to vary the fee should commence no later than 1 July each year and the discussions should be based on the Schedule 3 Fee Principles. Any variation in the Fee should be commensurate with a corresponding variation in the Services provided. If a variation to the Fee cannot be agreed or is disputed, the dispute resolution clause (clause 40) applies. The Fee should be paid monthly in advance, and it is CPI index linked on an annual basis.

## 12 **Clause 13 – Surpluses and reserves**

- 12.1 Six Town is able to use available surpluses and reserves as agreed with the Council in the Business Plan. Surpluses / reserves will only be deemed to be available if this is consistent with generally accepted accounting practices or with confirmation from Six Town's auditors.
- 12.2 Six Town is to be incentivised to outperform the Business Plan. How Six Town will be incentivised will be discussed as part of the Business Plan approval process set out in clause 16. Six Town must keep the Council informed about how they use surpluses and reserves.

## 13 **Clause 14 – Additional income-generation**

- 13.1 Six Town can pursue and exploit opportunities for income generation with third parties, providing that:
- 13.1.1 they are consistent with Six Town's objects;
  - 13.1.2 they can be legally pursued by a wholly owned subsidiary;
  - 13.1.3 Six Town's ability to perform its obligations under the Management Agreement is not adversely affected;
  - 13.1.4 any such activity would not result in the opportunities / income generation being equal to or greater than 15% of Six Town's annual turnover (securing Six Town's 'Teckal status'); and

13.1.5 any such arrangements are approved by Six Town's board and recorded at the next meeting between Six Town and the Council.

**14 Clauses 15 and 16 - Continuous Improvement and Improvement of Service Delivery and year-on-year cost efficiencies**

14.1 The Parties commit to the principle of continuous improvement and to delivering improvement in the delivery of the Services and the Stock maintenance and Improvement Programme. Improvement of the delivery of Services will be brought about through the monitoring of KPIs. Six Town will endeavour to achieve year-on-year efficiencies by delivering the Services for less than the Fee.

**15 Clause 17 – Business Plan, Services and Stock maintenance and Improvement Programme**

15.1 Each year the Parties will agree priorities for improvements in the delivery of the Services and the Stock Maintenance and Improvement Programme which should be reflected in the Business Plan.

15.2 Six Town shall send the current Business Plan to the Council when available (and at least once per calendar year) and invite the Council to provide comments on the proposed Business Plan.

15.3 The Council will respond to Six Town on the proposed Business Plan as soon as reasonably practicable (but within three months). Six Town then should consider and, if appropriate, adopt an updated and revised Business Plan. The adoption / variation / amendment of the Business Plan requires the consent of the Council.

15.4 If a proposed Business Plan has not been approved and adopted by Six Town as stipulated in accordance with the process set out in clause 16, then the relevant current Business Plan continues in operation until a new / amended one is agreed. If a Business Plan cannot be agreed, this would be subject to the dispute resolution process set out at clause 40.

**16 Clause 18- Assisting the Council's new build programme**

Six Town agrees to work with and support the Council to maximise opportunities for carrying out new development within the HRA by contributing to design meetings, providing relevant information about the neighbourhoods where new developments are planned and assisting in consultation and community cohesion requirements relevant to new developments. The Council agrees to keep Six Town informed of any proposed new development within the HRA so that Six Town is able to prepare to support the Council accordingly.

**17 Clause 19 – Working with Vulnerable People**

17.1 The transfer of the new services to Six Town for the first time under the Management Agreement will mean that Six Town will be working with vulnerable people in the housing assessment process, homelessness assessments and signposting and support provision. This is in addition to the work that Six Town already does with vulnerable people in connection with its housing management functions and in particular in its tenancy

sustainment activities. Six Town agrees to provide a person-centred and holistic approach in its dealings with vulnerable people.

17.2 It is acknowledged that the eviction of vulnerable tenants is to be used as a last resort.

18 **Clause 20 - TMOs**

18.1 In the event that any tenants propose to form a Tenant Management Organisation under the Right to Manage, the Council shall be legally responsible for dealing with all aspects of such a proposal, and Six Town agree to provide such assistance as the Council may require. If the Right to Manage is exercised, the Council may instruct Six Town to make arrangements to transfer responsibility for the Services in relation to the Right to Manage Dwellings to a TMO.

18.2 If such a transfer goes ahead then a variation in Fee shall be considered / enacted.

19 **Clause 21 – The governance of Six Town**

The Parties acknowledge that the Member Agreement sets out the parent / subsidiary relationship to which Six Town is subject and that the governance arrangements will be kept under review so that Six Town is best able to deliver the Services under the Management Agreement.

20 **Clause 22 – Changes in Six Town's role and activities**

The Parties acknowledge that Six Town's activities will be subject to change including changes resulting from regulatory or statutory requirements, tenant and/or leaseholder expectations, Council policy objectives and different approaches required when working with vulnerable people in connection with the new service areas transferring to Six Town. Any such changes will be the given effect by the variation procedures described above and set out in clauses 5 and 6 (with any variation to the Fee in accordance with clause 12).

21 **Clause 23 – Services provided by the Council**

The Council agrees to provide the services set out in Schedule 2 to the Council for the fees set out therein. Six Town agrees to consult with and give at least twelve months prior notice to the Council if it decides not to renew or extend any service level agreement or service contract with the Council.

22 **Clause 24 - Council's financial support for Six Town**

The Council will provide the evidence / support required to enable Six Town's auditors to confirm to Six Town's board that Six Town is and will continue to be able to meet its debts as they fall due. The Council agrees that whether through the Fee or otherwise, it will ensure that Six Town is able to discharge its liabilities for the pension costs attributable to Six Town's past, present and future employees.

23 **Clause 25 – The HRA ring-fence**

The parties acknowledge that HRA income and expenditure is subject to the requirements of the statutory HRA ring-fence and they will use all reasonable endeavours to maximise the benefits of the HRA for the Council's tenants.

24 **Clause 26 – Council responsibilities and entitlements**

This clause acknowledges that the Council remains statutorily responsible for the HRA, will set rents and other charges for its tenants and leaseholders (including service charges) will determine the Fee, may vary the Services and can review KPIs.

25 **Clause 27 – Section 151 duty**

This clause acknowledges that the Council's Finance Director has statutory duties under Section 151 of the Local Government Act 1972 and that nothing in the Management Agreement should be construed as preventing the Section 151 officer from doing what is required in order for them to discharge those duties.

26 **Clause 28 – Management of the HRA**

The Council will undertake the day-to-day management of the HRA and Six Town will provide all advice and assistance reasonably required by the Council to enable it to manage the HRA and on how to make best use of the resources within the HRA.

27 **Clause 29 – Section 105 Consultation and tenant and leaseholder involvement**

Six Town agrees to assist the Council in the discharge of the consultation obligations under Section 105 of the 1985 Act. This is the Council's duty to consult with secure tenants who are likely to be substantially affected by a matter of housing management.

28 **Clause 30 – Representing the Council**

Six Town will work with the Council's Representative, other agencies, bodies and organisations. This will include in partnerships, foras and projects. It includes the Gateway Protection Programme, the Afghan Resettlement Programme and Greater Manchester Combined Authority groups / committees.

29 **Clause 31 – Regulatory Standards**

29.1 Six Town agrees to work with and support the Council to ensure that the Council is able to comply with the Regulator's regulatory requirements if the Regulator's remit is extended with regard to local authorities.

29.2 The Council and Six Town agree to work together in good faith to develop KPIs that seek to measure (in a way that is commensurate with the size of Six Town as a small Registered Provider) the compliance by Six Town with the Governance and Financial Viability Standard applicable to Registered Providers.

30 **Clause 32 – Term**

The Management Agreement begins on the Commencement Date (1 June 2019) and shall expire on 31 May 2029 unless it is terminated earlier under clause 35.

31 **Clause 33 - TUPE**

31.1 This provision sets out the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006, and how this applies to those employees transferring from the Council to Six Town. It includes a Council indemnity under which the Council

promises to indemnify Six Town in full from and against all costs, claims, liabilities, expenses or demands (including legal costs) suffered by Six Town in relation to the Council's or any of its subcontractors' acts or omissions in relation to the Transferring Employees prior to the Commencement Date, any claim by an employee or former employee of the Council who is not a Transferring Employee, any representations made by the Council in relation to employment by Six Town (save for any representation made in relation to information given by Six Town).

31.2 There is also a Six Town indemnity where Six Town agree to indemnify the Council and keep the Council indemnified in full from and against all costs, claims, liabilities, expenses or demands (including all legal costs) whether direct, indirect or consequential awarded against or incurred or paid by the Council as a result of or in connection with any claims arising from any act, fault or omission of Six Town in connection with the Transferring Employees or any representative thereof on or after the Commencement Date or any step or measure that Six Town envisages in relation to employees affected by Management Agreement (save for claims arising as a result of the Council's failure to inform those employees of the measures envisaged by Six Town).

31.3 Clause 33.5 sets out procedure for dealing with the expiry or early termination of the Management Agreement with regard to TUPE.

## 32 **Clause 34 - Use of Assets**

32.1 This clause provides that Six Town will maintain any vehicles, equipment and other assets (set out at Schedule 4) which might be necessary for the provision of the Services. Six Town are responsible for the maintenance and, where necessary, replacement of all such Assets. Any hire contracts entered into by Six Town must be capable of assignment to the Council, or an organisation nominated by the Council.

32.2 Six Town is responsible for any licensing, payments, fees, taxes and insurance that might be required in connection with the Assets. Six Town must make sure that the Assets bear any devices, insignia or words that the Council direct.

## 33 **Clause 35 - Termination**

The Council is entitled to terminate the Management Agreement if Six Town fails to comply with it or, in the Council's reasonable opinion, there is a serious and substantiated risk that it will shortly fail to comply. This is subject to Six Town's entitlement to a reasonable opportunity to remedy an actual or anticipated failure and a failure to comply with KPIs/targets will be deemed to be capable of remedy. If the Council becomes entitled to terminate it can do so in respect of the whole or part of the Agreement and can either provide the Services itself or procure that a third party does so. In compliance with the requirements of the regulator) the Agreement includes termination provisions to enable the Right to Manage to be exercised and for the regulator to direct the transfer of management functions.

## 34 **Clause 36 – Freedom of Information**

This clause acknowledges that both the Council and Six Town are subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

Both parties agree to co-operate with the other in meeting their respective obligations under this legislation.

35 **Clause 37 – Whistleblowing**

This clause provides that Six Town must ensure that it has a Whistleblowing procedure which specifies a senior manager responsible for ensuring the independence and probity of the whistleblowing process. Six Town confirms that the Council is authorised as a person to whom its staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998.

36 **Clause 38 – Access to Information**

On the provision of appropriate notice and in accordance with the Data Protection Laws, Six Town agree to give the Council and persons authorised by the Council access to any information reasonably required by the Council.

37 **Clause 39 - Insurances etc.**

Six Town must maintain insurance policies with reputable insurers or underwriters which indemnify Six Town's liability to the Council and any employee of the Council, the employees of Six Town and any other person in the sum of at least £10,000,000. The Council must insure itself against all usual risks associated with its housing stock and acknowledges that Six Town has no liability for that. Six Town must also maintain business continuity policies and procedures.

38 **Clause 40 – Dispute Resolution**

The Management Agreement contains a dispute resolution procedure designed to facilitate agreement between the parties or allow an external expert to resolve matters; but before the expert intervenes the Council has the opportunity to make a decision which is final and binding. There is also a fast track dispute resolution process whereby the Parties can proceed straight from a meeting of the Representatives of the Parties to determination by an Expert.

39 **Clause 41 – Data Protection Law**

The Parties agree to comply with the requirements of the Data Protection Law. This includes the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679. The provisions of clause 41 remain applicable following the expiry or termination of the Management Agreement.

40 **Clause 42 – Regulator**

The Management Agreement is subject to the regulator's right to direct the variation or termination of it.

**Clauses 43 to 56 – Various**

40.1 These clauses provide as follows:

40.1.1 Six Town will comply with housing and related legislation as set out in the Specification, and will also comply with all Other Legislation.

- 40.1.2 Payments due by any Party to another Party are subject to VAT (where VAT is applicable).
- 40.1.3 Interest is due on any (non-disputed) payments which are overdue under the Management Agreement. The interest rate to be applied the number which is two percent above the base rate of the Bank of England on the date which the sum first became payable.
- 40.1.4 Nothing in the Management Agreement creates a partnership between the Parties or makes Six Town an agent of the Council.
- 40.1.5 Any rights or powers of the Council under the Management Agreement which shall or may be exercised after the termination or expiry of the Management Agreement (and are expressed as such) survive and remain in full force and effect notwithstanding termination or expiry. Any obligations of Six Town provided for in the Management Agreement which remain to be discharged after the termination or expiry of the Management Agreement remain in full force and effect notwithstanding termination or expiry.
- 40.1.6 If any provision of the Management Agreement is declared invalid or unenforceable then the other provisions of the Management Agreement remain in full force and effect.
- 40.1.7 No Party can assign the Management Agreement or any of their rights under it to any other Party.
- 40.1.8 Notices under the Management Agreement must be served personally on the other party or sent by prepaid first class post to the addresses given at the head of Management Agreement. They can also be served by email to the central email addresses given on the parties' websites and they are deemed to have been received on the second working day after the day of posting or on successful transmission.
- 40.1.9 The application of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- 40.1.10 No right or remedy for either Party under the Management Agreement is exclusive of any other right or remedy and each right or remedy is cumulative and enforceable concurrently and is without prejudice to pre-existing obligations.
- 40.1.11 The Management Agreement can only be varied as set out in the Management Agreement and it must be in writing, executed and delivered as a deed.
- 40.1.12 The Parties agree to keep the subject matter of the Management Agreement confidential subject only to statutory duties and usual contractual obligations. The Council acknowledges that despite Six Town's status as the Council's subsidiary, Six Town may have commercial interests which are confidential to Six Town.

40.1.13 In the event of any ambiguity or discrepancy between the provisions of the Management Agreement, the Articles, and the Member Agreement, the terms of the Management Agreement will prevail.

40.1.14 The Management Agreement is governed and construed according to English Law.

41 **Schedule 1 – Specification / Six Town's Services**

41.1 This includes various services / functions / activities which will be undertaken by Six Town on behalf of the Council. The Specification sets out whether this is a service / function newly delegated to the Council, how it is funded, what the governance arrangement is and whether there is any third party fee income. Some of the new services to be provided under this Management Agreement include:

- 41.1.1 Allocations policy and procedure;
- 41.1.2 Allocation of Council housing;
- 41.1.3 Clearance of Council Homes;
- 41.1.4 Closure orders;
- 41.1.5 Community development strategy;
- 41.1.6 Complaints policy and complaints handling;
- 41.1.7 Demolition orders;
- 41.1.8 Specified adaptations;
- 41.1.9 Empty homes interventions;
- 41.1.10 Home improvement services;
- 41.1.11 Homelessness Greater Manchester strategic representation;
- 41.1.12 Housing advice, assessment, prevention and solutions;
- 41.1.13 HMO specified activities;
- 41.1.14 Letting agent regulation;
- 41.1.15 Licencing and enforcement specified activities;
- 41.1.16 Neighbourhood plans;
- 41.1.17 Prohibition orders;
- 41.1.18 Refugee resettlement programme;
- 41.1.19 Regulation of private rental sector;
- 41.1.20 Renovation grant awards and administration;

- 41.1.21 Stock condition surveys;
- 41.1.22 Temporary accommodation; and
- 41.1.23 Unfit properties enforcement.

42 **Schedule 2 - Services provided by the Council**

These include legal services, ICT, internal audit, payroll, HR support, contract cleaning, strategic procurement services, stores, vehicle hire, transport and grounds maintenance.

43 **Schedule 3 - Fee Principles**

This sets out the principles on which fee discussions will be based. They include taking into account the competing pressures on the HRA business plan, any increase or reduction in the Services provided, any adjustment in the performance standards which the Services are delivered at and Six Town's ability to identify and deliver efficiencies.

44 **Schedule 4 – the Council's Assets**

This sets out a list of the Council's assets which are to be used by Six Town as set out in clause 34.

45 **Schedule 5 – The Partnership Protocol**

The main provisions of this are set out paragraph 1 above.

46 **Schedule 6 – Transferring Employees**

This is a list of those employees transferring under TUPE legislation.

47 **Schedule 7 – Additional Matters Requiring Council Constitution and / or Approval**

47.1 This sets out a range of matters on which Six Town is required to consult and / or seek the approval of the Council:

47.2 Six Town agrees with the Council that:

- 47.2.1 It shall consult with the Council on the development and management of the risk register for the delegated Services.
- 47.2.2 It shall consult with the Council on any significant changes to the provision of the Services or policies and procedures to ensure compliance with Equality Act 2010 duties and any statutory or implied duty to consult with affected groups. Six Town shall seek approval (where appropriate) from the Council to any such changes to the provision of the Services or policies and procedures.
- 47.2.3 It shall comply with the Council's constitution on financial and relevant governance matters to ensure proper administration of the Council's financial affairs under Section 151 of the Local Government Act 1972.

- 47.2.4 All contracts which Six Town enters into shall comply with the contract procedure rules set out in the Council's constitution and all terms and conditions will be drafted in accordance with the Council's Social Value Policy.
- 47.2.5 The Six Town board shall attend and provide information to support the Council's scrutiny committees where relevant to the Services and provide briefings for the Cabinet Member/s with relevant portfolios.
- 47.2.6 Six Town shall provide such information and assistance as may be required for the Council to respond to any corporate complaints, proceedings, requests for disclosure by third parties such as the police, FOIA requests and any other statutory duties.

47.3 Six Town agrees with the Council that information and assistance shall be provided so to:

- 47.3.1 Enable timely and accurate completion of the Council's budget, monitoring and final accounts processes as set out in this Management Agreement;
- 47.3.2 Enable accurate accounting and monitoring of taxation;
- 47.3.3 Ensure compliance with the statutory duty to provide value for money;
- 47.3.4 Enable the Council, Cabinet and audit committee to have assurance over the proper administration of the financial affairs of the Council in relation to the funding of the Services and to fulfil statutory responsibilities;
- 47.3.5 Ensure the Council can carry out effective and timely collection of any charges.

### **Main Terms of the Member Agreement**

The Member Agreement is intended to encapsulate the parent/subsidiary relationship between the Council and Six Town Housing.

#### **1 Clause 2 – Business**

1.1 The parties agree to adhere to the principles set out in the Schedule 5 Partnership Protocol (the same as is set out above for the Management Agreement). The Business of Six Town is described as being:

- 1.1.1 to carry out all housing management activity in relation to the Council's housing stock (other than where alternative arrangements have been made relating to a Tenant Management Organisation pursuant to the Right to Manage);
- 1.1.2 to perform the other functions and activities as set out in the Management Agreement;
- 1.1.3 to carry out such other activities from time to time as are permitted and/or contemplated within the Business Plan including its activities relevant to its status as a registered provider of social housing,

together with any activities reasonably incidental to the above.

1.2 The Business Plan approval / review process is the same as set out in clause 16 of the Management Agreement, which is explained above at paragraph 15.

1.3 Six Town agrees not to acquire any property either within or outside the Council's administrative area or carry out any business that is not in the Business Plan without the Council's consent.

## 2 **Clause 3 – Conduct of Six Town's Affairs**

2.1 This clause sets out certain governance arrangements of Six Town. The Directors must meet no less four times each year at not more than three monthly intervals.

2.2 All matters of management of Six Town are vested in the Directors, except for those matters which require consent of the Council. These matters are set out in Schedule 1. The Directors can appoint and/or remove a chief executive officer for Six Town (with consent of the Council).

2.3 Directors will determine the manner in which the Business is carried out in accordance with the Business Plan, the Member Consent matters, alignment with the Council's own procedures and strategic objectives and the contents of the Member Agreement.

2.4 The chair of the Six Town board (or another Director) can discuss the affairs, finances and accounts of Six Town with designated officers and executives of the Council.

2.5 Six Town agrees to maintain effective and appropriate control systems in relation to the financial, accounts and record keeping functions of Six Town. Six Town also agrees to report to the Parent board within ten business days of each Quarter with such information as may reasonably be required to demonstrate Six Town's delivery of the Services. This will include details of performance against KPIs and formal complaints. The parties will agree the format of these reports, and the review process will be notified by the Council to Six Town.

## 3 **Clause 4 – Group Policies**

This clause will have greater application once the envisaged Group Structure has been set up. The purpose of this clause is to enable the Council to propose, where relevant, a degree of consistency amongst subsidiary companies of which the Council is parent. The Council has the power to adopt policies and standards (after consultation with the Group Members) which relate to all Group Members. These will ensure compliance with statutory and regulatory requirements which are applicable to the Group or any Group Member. They may also cover financial and business probity and efficiency, good governance practice, risk assessment and each Group member carrying on its business in accordance with its own corporate plan. Matters of operational policy will not be the subject matter of Group Policies. Agreed Local Variations will be permitted to the Group Policies where there are reasonable grounds for this.

## 4 **Clause 5 – Covenants**

4.1 Six Town covenants to the Council that it will adhere to the terms set out in Schedule 2. These covenants are as follows:

- 4.1.1 Only to acquire land or assets or carry out additional service from those set out in the Management Agreement if any such acquisition and/or service provision is in accordance with the Business Plan and the Council has given consent.
- 4.1.2 It will conduct its Business in a manner commensurate with the Council's strategic objectives.
- 4.1.3 To comply with the Financial Regulations, Contractual Standing Orders, Board Member Expenses Policy and an Executive Performance Appraisal Framework.

## 5 **Clause 6 - Subsidiaries acceding to this Agreement**

This clause links with the form of Deed of Accession set out at Schedule 3. It is a mechanism by which new Group Members accede to the Member Agreement as if it had always been a party to it, agreeing to keep all of its terms.

## 6 **Clause 7 – Termination**

6.1 The Member Agreement can be terminated in the following circumstances:

- 6.1.1 the written agreement of the Parties;
- 6.1.2 when a resolution is passed by the Member or creditors of Six Town, or any order made by a court or other competent body or person instituting a process that shall lead to Six Town being wound up and its assets being distributed among the creditors, the Council or other contributors;
- 6.1.3 Six Town ceases to carry on its Business;
- 6.1.4 Six Town is convicted of a criminal offence;
- 6.1.5 the termination of the Management Agreement;
- 6.1.6 the Council giving not less than 90 days written notice to Six Town of the date on which all or part of the Member Agreement will terminate.

## 7 **Clauses 8 to 17 – Various**

7.1 These clauses provide as follows:

- 7.1.1 Nothing in the Member Agreement creates a partnership between the Parties or makes one Party an agent of the other.
- 7.1.2 The application of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- 7.1.3 The rights of each Party to the Member Agreement are not affected by completing, rescinding, failing to rescind, or failing / delaying exercising a right or remedy available to it. Waiver of a breach of a term of the Member Agreement, or a default under it, does not constitute a waiver or another breach or default of the Member Agreement.

- 7.1.4 Any rights or powers of the Council under the Management Agreement which shall or may be exercised after the termination or expiry of the Management Agreement (and are expressed as such) survive and remain in full force and effect notwithstanding termination or expiry. Any obligations of Six Town provided for in the Management Agreement which remain to be discharged after the termination or expiry of the Management Agreement remain in full force and effect notwithstanding termination or expiry.
- 7.1.5 The Member Agreement can only be varied as set out in the Member Agreement and any variation must be in writing, and signed on behalf of each Party.
- 7.1.6 If any provision of the Management Agreement is declared invalid or unenforceable then the other provisions of the Management Agreement remain in full force and effect. The Parties are to negotiate a replacement term in good faith which can be substituted for any provision found to be illegal or unenforceable.
- 7.1.7 In the event of any ambiguity or discrepancy between the provisions of the Management Agreement, the Articles, and the Member Agreement, the terms of the Management Agreement will prevail.
- 7.1.8 Consents, notices, approvals or agreements to be given by the Council must be given in writing. Where the Member Agreement provides that a matter is subject to the consent, approval or agreement of a Party, it shall be in the absolute discretion of the Party concerned as to whether (and if so, on what terms and conditions) the consent, approval or agreement is made.
- 7.1.9 Notices under the Member Agreement should be sent in writing (personally, by post or email) to the named persons and addresses set out in clause 15.
- 7.1.1 The Member Agreement is governed and construed according to English Law and the Parties submit to the exclusive jurisdiction of the English Courts.

## 8 **Schedule 1 – Member Consent Matters**

- 8.1 Please refer to the full list of Member Consent Matters, which are 25 in total. The following are some of the included matters:
  - 8.1.1 varying Six Town's Articles;
  - 8.1.2 permitting the registration of any person as a member of Six Town other than the Council;
  - 8.1.3 adopting or amending its Business Plan;
  - 8.1.4 appointing or removing a management director or chief executive;
  - 8.1.5 make any borrowing; or
  - 8.1.6 passing any resolution for its winding up or present any petition for its administration (unless it has become insolvent); or

- 8.1.7 engaging in any business other than as contemplated by the Business Plan or defray any monies other than in good faith for the purposes of or in connection with the carrying on of such business; or
- 8.1.8 forming any Subsidiary or acquire shares in any other company or participate in any partnership or joint venture (incorporated or not); or
- 8.1.9 amalgamating or merging with any other company or business undertaking; or
- 8.1.10 making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or grant any credit (other than in the normal course of trading) or give any guarantee (other than in the normal course of trading) or indemnity (other than in the normal course of trading); or
- 8.1.11 dismissing any Director; or
- 8.1.12 acquiring any land or assets not set out in the current Business Plan.

9 **Schedule 2 – Covenants**

These are set out above at paragraph 4.

10 **Schedule 3 - Deed of Accession**

This is discussed above at paragraph 5.

11 **Schedule 4 – Group Policies**

There are none at this stage.

12 **Schedule 5 - Partnership Protocol**

This is the same as set out at paragraph 1 above for the Management Agreement.

This report has been prepared for Bury Council only and is not to be shared with or relied upon by third parties without our prior written consent. We understand that this report will be shared with Six Town Housing.

**Trowers and Hamlins LLP**

**April 2019**