

**DRAFT MEMORANDUM OF UNDERSTANDING**

**Draft to be finalised by 9 November**

**Draft Memorandum of Understanding - Subject to Contract**

**Business Rates Pooling Agreement**

- (A) All Local Authorities are currently obligated to pay a percentage of their Business Rate collection to Central Government.
- (B) In the future the Members have agreed to join together the Business Rates collect and establish a Business Rate Retention Scheme in accordance with the Local Government Finance [Bill July 2012] ("the Pool").
- (C) The rationale of the Pool is to deliver sustained economic growth by retaining resources that would otherwise have been lost to central government and to continually re-invest in Staffordshire and Stoke-on Trent.

**1. Membership**

1.1 The Members of the Pool are-

Staffordshire County Council  
Stoke-on-Trent City Council  
Staffordshire Fire and Rescue Service  
South Staffordshire District Council  
Stafford Borough Council  
Newcastle-under-Lyme Borough Council  
Staffordshire Moorlands District Council  
("Members")

- 1.2 The Pool Board will review its membership annually and will consider requests for new members to join or existing members to leave provided applications to join or leave are made at least 2 months prior to the Department for Communities and Local Government ("DCLG") deadline for pre designation of a Pool each year.

**2. Duration**

- 2.1 The Pool is a voluntary arrangement and Members will be able to review their continuing membership up to [2 months] prior to the annual nomination of the forthcoming year's Pool in accordance with DCLG's timetable.
- 2.2 Once the Pool has been finally designated by DCLG, the period of membership will be for a minimum of the forthcoming financial year.
- 2.3 Should a Member withdraw from the Pool during the settlement consultation period the Pool will be dissolved in accordance with DCLG rules.

### **3. Governance**

- 3.1 A Pool Board consisting of a representative from each of the Members will be responsible for the Governance arrangements of the Pool.
- 3.2 The Pool Board will be made up of one nominee from each of the Members, being the Leader/Chief Executive or a representative with sufficient delegated authority to be able to take decisions at Pool Board meetings on behalf of that Member.
- 3.3 Each member will have one vote in relation to decisions to be taken by the Pool Board.
- 3.4 A schedule of meetings will be agreed annually in advance of each financial year and a quorum for meetings will be 50% of the Membership of the Pool Board.
- 3.5 The Board will be hosted in each turn by each Member and chaired by the host Member.
- 3.6 If there is an equal number of votes for/against a decision, the Chair will provide a casting vote.
- 3.7 The Pool Board will receive appropriate Legal and Financial support as required as from the Lead Authority.
- 3.8 The Members shall at its first meeting agree terms of reference for the Pool Board, subject to the clauses as contained in Section 4 of these Heads of Terms.

### **4. Pooled Fund**

- 4.1 The Pool will be based upon a “No Loss “or shared proceeds of net levy payments savings.
- 4.2 “No loss” is determined to be that a Member will be no worse off by being a Member of the Pool than they would have been if they had not been a Member of the Pool. Each Member will retain the income they would have received if they were not a member of the Pool.
- 4.3 50% of rates collected is payable to Central Government (Central Share) and the remaining balance of the business rates will then be paid into the Pool on a net basis.
- 4.4 Save in respect of levy savings as defined at clause 4.6 of this agreement, the Pool will redistribute the balance to ensure that each member retains the allocation that it would have individually received had they not been a Member of the Pool as determined by the annual Local Government Finance Settlement. The Pool will effectively be responsible for the distribution of tariffs/top ups.
- 4.5 Billing authority Members will retain their own collection funds and will retain their existing responsibility for bearing any shortfall in collected business rates.

#### **Levy Savings**

- 4.6 The remaining balance of the Pool which consists of the levy payments that would have been paid to the Government were it not for the Pool “Levy savings” will be dealt with in the following way:
  - 4.6.1 40% of the Levy Saving for each Member as determined by DCLG is retained by that Member to maintain an incentive to participate in the Pool “ Local Incentive Fund” (see section 5 below);
  - 4.6.2 40% of the Levy Saving will be pooled directly for use in delivering key projects which will regenerate the local economy constituting the “Central Investment Fund” (see Section 6 below) ;

- 4.6.3 20% of the Levy Saving will be pooled into a “Contingency fund” to enable the Pool to offer a protection mechanism to authorities who would have otherwise received a safety net payment from central government (see Section 7 below).
- 4.6 The distribution proportions as set out in clause 4.6 above will remain in place for the duration of the Pool subject to an annual review required as a result of the Contingency arrangements as outlined in Section 7 of this agreement .
- 4.7 If no Levy Savings are made in a particular financial year then no payments will be made to the Members in accordance with Clauses 4.6.1 and 4.6.3 above.

### **5. Local Incentive Fund**

- 5.1 Decisions on the use of the Local Incentive Fund will be made by the Council in whose area the Levy Saving has been generated.

### **6. Central Investment Fund**

- 6.1 The Central Investment Fund will be used to invest in projects to generate economic growth in Staffordshire and Stoke on Trent.
- 6.2 An Investment strategy will be determined and approved by the Pool Board taking into account the Stoke-on-Trent and Staffordshire Local Economic Partnership priorities.
- 6.3 In deciding on which projects to support, the Pool Board will be mindful that the Pool agreement is annual and it should not commit to funding that is not actually available within the Central Investment Fund.
- 6.4 As a general rule the Central Investment Fund will provide ‘one off’ funding for projects.
- 6.5 As a general rule it is expected that the revenue cost of projects supported through the Central Investment Fund will be met by the sponsors of the project and not supported through the Central Investment Fund.
- 6.6 The unused balance of the Central Investment Fund will be invested and earn interest in accordance with the return achieved by the Lead authority.

### **7. Contingency Fund**

- 7.1 If a Members business rate income drops by more than the Government determined safety net trigger, then a Party will be entitled to receive a Safety Net Payment from the Contingency Fund.
- 7.2 The Pool Board will agree and approve the amount of a Safety Net Payment. However, the payment will match any safety net payments that would otherwise be made if they were outside the Pool.
- 7.3 If in a Financial Year there are insufficient sums in the Contingency Fund then Staffordshire County Council and Stoke-on-Trent City Council will transfer an amount equal to the shortfall to enable the Contingency Fund to make the Safety Net Payments. This payment will be split on a pro rata basis, based on respective population sizes in the two areas.

- 7.4 Staffordshire County Council and Stoke-on-Trent City Council will be reimbursed for any such payments made from the contingency in the following financial year.
- 7.5 Safety net payments will be made as a first call on sums in the contingency fund, before reimbursements are made.
- 7.6 The Contingency Fund will be reviewed on an annual basis by the Pool board. Where the existing Contingency fund is, or is anticipated to be, insufficient, the distribution of the Levy Savings will be amended to increase the proportion allocated to the Contingency Fund and to reduce the allocation to the Local Incentive Fund and/or the Central Investment Fund accordingly as determined by the Pool Board.
- 7.7 If Staffordshire County Council and Stoke City Council are required to make Payments to the Contingency Fund in two (plus) consecutive Financial Years then they may notify the Members that a Variation to or Termination of the Pool is needed.

### **8. The Lead Authority/Accountable Body**

- 8.1 The Pool Board will nominate Staffordshire County Council as Lead Authority.
- 8.2 The Lead Authority is responsible for all accounting and administration of the Pool, including the Contingency Fund and the Central Investment Fund.
- 8.3 The Lead Authority is responsible for all auditing and accounting requirements as set out in legislation.
- 8.4 Each Member is be required to provide all relevant information to the Lead Authority as required to carry out its responsibilities. [to be determined by DCLG].
- 8.5 Each Member will transfer the relevant funds to the Lead Authority enabling the Lead Authority to carry out its responsibilities under this agreement.
- 8.6 The Members agree that the Pool will operate on a cash flow neutral basis. Payments should be actioned in accordance with the dates as determined by DCLG (as reasonably practical) on a net basis.
- 8.7 In addition Members will be required to provide medium term forecasts and monitoring information as determined by the Pool Board.
- 8.8 The Lead Authority will be accountable for producing as a minimum an annual report to the Pool Board or other such reports as required by the Pool Board.
- 8.9 The Lead Authority will be subject to no additional burdens other than those required to meet the normal requirements associated with the administration of the Pool and shall meet those within its own resources.

### **9. Termination**

- 9.1 A Pool will remain in place for each financial year that it has been designated by DCLG. Once designated, Members are not able to withdraw from the Pool for that financial year.
- 9.2 Prior to designation, the Pool is on a voluntary basis and all members will be able to choose to be a Member of the Pool for the forthcoming year's designation. In considering their continued

Membership, Members will need to have due regard to the Pool's aims and objectives and the impact on remaining Members.

- 9.3 Members must give a minimum of 2 months notice of intention to withdraw from the Pool prior to the provisional designation of the Pool in accordance with DCLG's timetable.
- 9.4 If a Member or Members leave the Pool without the required notice set out in 9.3 such that it is not possible for other Members to form an alternative pool for the forthcoming year then the exiting Member or Members, in addition to sums due under clause 9.6 below (contingency payments) shall pay 50% of the lost benefit to the Pool to be shared as determined by the Pool Board where the lost benefit is the net levy savings that would have been available to the Pool in the forthcoming year had the Member or Members not exited.
- 9.5 Clause 9.4 of this agreement shall not apply to the first year of the Pool or if the Pool Board unanimously agrees that it shall not apply.
- 9.6 Should a Member leave the Pool having provided the required notice then the only liability shall be in respect of sums due under clause 9.6 if any.
- 9.6.1 In the event that the Pool is terminated the Pool Board must unanimously agree how any balances on the Central Investment Fund or the Contingency Fund are shared amongst the Members. For the avoidance of doubt this will include both positive and negative balances which will be netted off each other. The purpose is to ensure a net nil balance on each of the Contingency Fund and the Central Investment Fund.
- 9.7 In the absence of a unanimous agreement the decision will be subject to a dispute resolution procedure to be included in the final agreement.

### **10. Other Terms**

- 10.1 The Pool Agreement will also include other terms standard in Staffordshire County Council documents of this type e.g. Freedom of Information Act provisions, anti-discrimination provisions, Data Protection Act provisions etc.
- 10.2 Each Member will be responsible for its own legal fees in the connection with the drafting, negotiation and completion of the Pool agreement.