

Bath and North East Somerset Council

And

Bristol City Council

And

North East Somerset Council

And

South Gloucestershire Council

And

The Local Enterprise Partnership

Joint Working Agreement

For the Creation of a

Local Transport Body

THIS AGREEMENT is made the

day of

2013

BETWEEN

BATH AND NORTH EAST SOMERSET COUNCIL (B&NES) of The Guildhall, High St, Bath, BA1 5AW

AND

BRISTOL CITY COUNCIL (Bristol) of City Hall, College Green, Bristol, BS1 5TR

AND

NORTH SOMERSET COUNCIL (NS) of of the Town Hall Walliscote Grove Road, Weston-super-Mare BS23 1UJ

AND

SOUTH GLOUCESTERSHIRE COUNCIL (SGC) of Council Offices, Badminton Road, Nibley, South Gloucestershire

AND

THE LOCAL ENTERPRISE PARTNERSHIP (LEP) of Wilder House, Wilder Street, Bristol BS2 8PH

WHEREAS

- 1 This Agreement is supplemental to an agreement (The 2009 Agreement) made between B&NES, Bristol, SGC and NS dated 25 March 2009 relating to joint working for the development of local transport improvements within the area of the West of England Partnership ("WoE") including the establishment of the West of England Joint Transport Executive Committee ("JTEC").
- 2 The LEP is the Local Enterprise Partnership for the West of England and is committed to encouraging sustainable economic growth and the creation of substantial numbers of new private sector jobs,
- 3 The Parties have agreed to work together to establish a Local Transport Body to meet the Department for Transport ("DfT") objectives for the devolution of responsibility for developing a priority programme of major transport schemes, and overseeing their delivery at the local level and taking advantage of other DfT funding which will become available for the WoE
- 4 The Parties intend that such arrangements for the Local Transport Body shall be an effective mechanism for joint decision making and will build on existing working arrangements operating within the West of England.

IT IS HEREBY agreed as follows –

1 Interpretation

- 1.1 In this Agreement unless the context otherwise requires the following expressions have the following meanings –

“The Agreement” means this Agreement comprising the terms and conditions together with the Schedules hereto.

“The Accountable Body” means the body taking on the responsibilities set out in clause 7.

“The Commencement Date” means the date on which this Agreement is executed by the parties.

“The Constitution” means the constitution of the Board of Local Transport Body as set out in Schedule A to this Agreement.

“The Local Transport Body” or **“LTB”** means the Local Transport Body established by the parties in accordance with the Constitution.

“The LTB Board” or **“Board”** means the representatives of the parties appointed to the LTB.

“The Parties” means B&NES, Bristol, SGC and NS and the LEP

“Priority Programme” means the programme of schemes developed by the LTB in accordance with this Agreement and with schemes ranked in accordance with their strategic fit and deliverability.

Programme Assurance Board means the board established by the local authority parties to oversee the major schemes programme for the West of England

“West of England” means the combined areas of the four local authority parties.

- 1.2 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- 1.3 Words importing the singular include the plural, words importing any gender include every gender, the words importing persons include bodies corporate and unincorporated; and (in each case) vice versa.
- 1.4 Reference to Clauses and Schedules are references to clauses and schedules of this Agreement and any reference to a sub provision is unless otherwise stated a reference to a sub provision of the provision in which the reference appears.
- 1.5 The Clause and paragraph headings and titles appearing in this Agreement are for reference only and shall not affect its construction or interpretation.

2 Term

This Agreement shall come into effect on the Commencement Date and shall continue in force until such time as the DfT devolved funding arrangements cease or the parties otherwise agree, unless terminated earlier in accordance with its terms.

3 General Principles

- 3.1 This Agreement has been entered into by the parties to establish a Local Transport Body to act through a Board comprising representatives of each of the parties.
- 3.2 The Parties will work together in good faith and in an open, co-operative and collaborative manner for the duration of this Agreement. The parties' members and officers will work together in the spirit of mutual trust in order to endeavour to procure the successful implementation of the LTB objectives and will respond in a timely manner to all relevant requests from other parties.
- 3.3 The Parties will work together to ensure that the funding received from the Department for Transport is devoted to the local transport improvement schemes to address the present and anticipated local transport needs of the West of England, agreed through an evidence based prioritisation process, and that such funds are directed at specified major transport schemes and only used by any of the Authorities for specified schemes
- 3.4 It is proposed that meetings of the LTB Board would be aligned with the quarterly programme of meetings of JTEC. LTB Board meetings would be held in public providing an open forum for debate and decision making and would comply with the principles set out in Annex A (Right of members of Constituent Bodies) and Annex B (Public Participation) of the 2009 Agreement.
- 3.5 The existing Joint Scrutiny Committee, established by the local authority parties for scrutinising West of England initiatives will apply to the LTB.
- 3.6 All LTB Board papers, technical reports which support decision making and scheme business cases will be made publicly available, including through publication on the LEP website.
- 3.7 The LTB Board will be able to draw on the existing well-established joint arrangements for the provision of administrative support and professional advice to JTEC. This will include maintaining the official record of proceedings and a schedule of decisions.
- 3.8 Clear policies on conflict of interest and hospitality will be adopted by the Board.
- 3.9 The parties and the Board shall comply with the The Code of Recommended Parctice for Local Authorities on Data Transparency.
- 3.10 Costs associated with the LTB, (including all administrative and secretarial support) and any costs properly and reasonably incurred by any member of the LTB on behalf of the LTB (having been approved beforehand by the LTB), shall be shared equally between the parties.

4 Status of this Agreement

- 4.1 The Parties agree that this Agreement shall take the form of a legally binding contractual relationship and mutual commitments between them created by this Agreement shall from the date hereof be construed accordingly.

5 The Local Transport Body - Representation

- 5.1 The Parties agree to act as a Local Transport Body and to constitute the Board of the Local Transport Body to discharge its functions on the terms set out in the Constitution.
- 5.2 In appointing representatives to the Board of the Local Transport Body, each local authority will unless there are over-riding reasons to the contrary, appoint as its primary representative the member of the Executive of that Authority who has portfolio responsibility for local transport functions within that Authority or, as the case may be, Chair of the relevant Committee. The LEP shall appoint, so far as possible, business representatives who are not elected representatives of a local authority.
- 5.3 Insofar as any representative requires authority from his/her appointing body to attend and take part in the meetings of the LTB Board and in any making decisions required of the LTB Board (falling within the provisions of clause 5 hereof), the relevant appointing body hereby confirms that it has delegated all such powers to its representative or otherwise authorised such action.
- 5.4 The Parties agree to keep the membership of the LTB under review and to consider from time to time the addition of other bodies or organisations which may contribute to the achievement of the aims and objectives of the LTB. Any changes to the membership or constitution shall only be by the written agreement of all the parties.

6 Functions of the Local Transport Body

- 6.1 The functions of the Local Transport Body (to be discharged by its Board) shall include the following:
- Identify and approve a prioritised list of investments within the available devolved major schemes budget.
 - Scrutiny of individual scheme business cases to ensure they provide evidence of achieving “high value for money”.
 - Make decisions on individual scheme approval.
 - Release of funding for approved schemes.
 - Approve the assurance framework
 - Monitor progress of approved scheme delivery and spend including reviewing the programme risks and its risk mitigation measures.
 - Make such returns and provide such information as required by the DfT.
 - Secure the co-operation of the Parties.
 - Active management of the DfT grant to respond to changed circumstances.
 - Take on additional transport related functions agreed by the Parties.
 - Administer additional transport funds from third parties.

7 Accountable Body

- 7.1 The Parties shall agree, from time to time, to one of their number being the Accountable Body with the responsibilities set out in this Agreement.

- 7.2 The Accountable Body will hold and administer funds on behalf of the LTB, ensure decisions of the LTB comply with financial, legal and other regulations and requirements, be responsible for funding claims, making payments and for regular independent audit of the assurance framework and providing monitoring updates to the DfT and the Local Transport Body (as required) and ensuring that funds are only directed at approved major transport schemes, and the following;
- a) ensuring (through its S151 Officer) that funds are used appropriately
 - b) ensuring the assurance framework is adhered to
 - c) maintaining the official record of the LTB's proceedings and holding LTB documents
 - d) being responsible for LTB decisions (including dealing with challenges)
- 7.3 The Accountable Body will be responsible for ensuring adherence to the agreed LTB assurance framework, and that all decisions are made within the adopted governance and decision making process and that the relevant accounts are subject to regular audit independent of the Authority promoting the Scheme..
- 7.4 Any DfT grant conditions will need to be complied with and the Accountable Body will have responsibilities to ensure these are monitored and adhered to. This may include specific audit and reporting requirements with appropriate resourcing implications.
- 7.5 All funding held by the Accountable Body will be invested for treasury management purposes in accordance with the Accountable Body's Treasury Strategy. No liability will be held by the Accountable Body for capital loss resulting from temporary investment counterparty failure.
- 7.6 The Accountable Body will require resources to undertake its duties. This will include but not be limited to: -
- Direct staffing costs (financial and administration)
 - Specialist advice particularly financial and legal
 - Allocation of overheads e.g. systems, IT, telecoms, HR etc.
 - Transaction charges e.g. bank fees, payment fees etc.
 - Statutory costs as appropriate e.g. audit fees, taxes
 - Ensuring compliance with governance and decision making arrangements
- 7.7 The Accountable Body's cost reasonably incurred in discharging its duties will be shared equally between the parties unless otherwise agreed. The Accountable Body shall prepare an annual budget/statement and present this to the LTB in October of each year for approval
- 7.8 The Accountable Body shall enter into such further agreement(s) as may be required with any authority promoting a scheme approved for implementation by the LTB, in order to secure direct commitments from that authority with regard to securing the monitoring, reporting and auditing obligations needed to meet the objectives of this agreement and the requirements of any DfT grant conditions.

8 Scheme Prioritisation

- 8.1 The parties shall develop a Priority Programme of Schemes meeting the LTB objectives and the LTB shall approve this programme at its first meeting, and thereafter review the Priority Programme at least annually. The Priority Programme shall be published on the LEP website.
- 8.2 The LTB shall at its first meeting adopt
- a process of developing a long list of transport infrastructure,
 - criteria for the initial screening of schemes (deliverability, affordability and a £2m minimum cost threshold),
 - a methodology for the short listing and
 - criteria and weightings to be applied to shortlisting,
- and shall publish these on the LEP Website and shall thereafter keep these under review.
- 8.3 The LTB shall ensure that business representatives are involved in the preparation of the Priority Programme through the Infrastructure and Place Group established under the LEP arrangements]
- 8.4 The parties shall work together to ensure that prior to the first meeting of the LTP Board (before July 2013) the provisionally identified Priority Programme will result in strong business cases.
- 8.5 The parties acknowledge that where shortlisted schemes relate to the strategic road or rail network they must identify a process of engagement with the Highways Agency and Network Rail.
- 8.6 The LTB expect schemes, which come forward for approval to represent 'high' value for money as determined using the DfT Transport and Business Case Guidance on published on the DfT website.
- 8.7 Scheme approval must be supported by a full assessment of the scheme carried out independently of the Authority/Authorities promoting the scheme.
- 8.8 The LTB does not intend to prescribe a maximum or minimum threshold for any local contribution to be made to any scheme although they will expect the promoting authority to explore additional funding that could bring added value.
- 8.9 Responsibility for implementation of any approved scheme shall rest with the authority or authorities in whose area the scheme is based. Such authority or authorities shall provide all reasonable assistance to the Accountable Body to enable it to meet its obligations under this agreement. In addition such authority or authorities shall ensure that it/they has in place arrangements to enable it/they to meet the objectives and requirements set out in this Agreement, in particular in connection with independent audit, and effective monitoring and project management and shall regularly report thereon to the Board.

9 Financial Arrangements

- 9.1 The parties recognise the importance of bringing forward schemes, which provide “high” value for money. Individual schemes business cases will comply with the DfT business case guidance in particular WebTAG.
- 9.2 The parties will in principle pursue this approach but where appropriate will seek proportionality reflecting the scale and nature of the individual scheme. The appraisal and modelling work will be scrutinised on behalf of the LTB by parties independent from the scheme promoting authority.
- 9.3 It is proposed that the following general approval regime for schemes is adopted:
- Agreement on initial Priority Programme (July 2013) and selection of initial preferred scheme
 - Outline business case (OBC) for the selected scheme(s) -sufficient to support statutory processes
 - Final business case (FBC) approval to secure release of funds for the selected scheme(s).
 - In the event that the initial scheme does not progress through the OBC or FBC process the LTB shall select the next scheme from the Priority Programme and proceed to take that to OBC and FBC stages.
 - Further schemes shall be selected from the Priority Programme as funds become available.
 - The Priority Programme shall be reviewed and updated annually
 - Business Cases will be subject to approval and quality assurance by the existing Programme Assurance Board established by the Authorities before being submitted to the Board.
 - Value for money statements will be presented to the Board at each approval stage (OBC and FBC). Statements shall be signed off by the relevant S151 officer of the Authority promoting the Scheme
 - OBC and FBC shall be published on the LEP Website(westofenglandlep.co.uk) prior to submission to the Board for approval and any comments received as a result shall be reported to the Board at the meeting considering the OBC or FBC (as the case may be).
- 9.4 The LTB will establish mechanisms for monitoring and evaluating the impacts of the schemes, which are implemented. The results of these will be independently reviewed (namely by someone other than the authority promoting the scheme) and reported to the LTB and published.
- 9.5 Before any funding can be drawn down from the Accountable Body the Final Business Case must have been agreed by the Local Transport Body.
- 9.6 The parties shall ensure that a robust system of project and risk management for the individual schemes is in place, (and forms part of the FBC) and this will enable spend profiles to be effectively monitored and managed. Appropriate and proportionate mechanisms will be established for independent assurance including the identification of named responsible officers or external parties.
- 9.7 The parties shall ensure that robust systems are in place for effective and continuous programme management, including management of risk. These shall include arrangements for dealing with urgent matters arising between LTB board meetings. The chair of the LTB shall be contacted by the chair of the Programme Assurance Board in the event of the need for urgent action. The parties confirm the LTB Chair’s authority to act in such cases reporting to the next LTB board.

10 Liabilities, Immunity and Indemnities

- 10.1 When working as a member of the Local Transport Body, the local authority members shall be deemed to be working on behalf of their own Authority even where the particular matter under consideration relates to or also relates to another Authority.
- 10.2 In consequence of the above, both local authority members and officers shall be treated as falling within the statutory immunity provided by Section 265 of the Public Health Act 1875, as amended, in respect of their actions or omissions in respect of the functions and objectives of the LTB.
- 10.3 The parties acknowledge that the LEP representatives on the LTB shall have no personal liability for any decisions of the LTB or the Board.
- 10.4 For a period of six months or such earlier time as arrangements are in place for the protection of the LEP representatives from personal liability equivalent to those in clause 10.1 and 10.2, the local authorities shall indemnify the LEP representatives in respect of any personal liability they may incur as a consequence of any decisions made by the Board.

11 Incorporation of Provisions from the 2009 Agreement

- 11.1 The following provisions of the 2009 Agreement shall apply to this Agreement with such change as may be necessary (including making reference to the LEP where appropriate) to give full effect thereto.

Clause 12	Intellectual Property
Clause 15	Remediation and Dispute Resolution
Clause 16	Withdrawal and Indemnity for Consequences of Withdrawal
Clause 17	Confidential Information
Clause 18	Compliance with Laws
Clause 19	Freedom of Information Act 2000 and Environmental Information Regulations 2004
Clause 23	General

12 Counterparts.

This Deed may be executed in any number of counterparts all of which shall together be one and the same instrument.

13 Compliance Assurance

The parties shall put in place arrangements for independent audit of the operation of the provisions of this agreement and the arrangements made thereunder. This audit shall be carried out by a qualified auditor independent of any of the parties. The first such audit to be carried out before December 2014, and thereafter annually.

IN WITNESS hereof the parties hereto have executed this Agreement as a Deed the day and year first written

The Common Seal of **Bath and North East**)
Somerset Council was affixed hereto in the)
presence of the undersigned authorised signatory)

Authorised Signatory

The Common Seal of **Bristol City Council**)
was affixed hereto in the presence of the)
undersigned authorised signatory)

Authorised Signatory

The Common Seal of **North Somerset Council**)
was affixed hereto in the presence of the)
undersigned authorised signatory)

Authorised Signatory

The Common Seal of **South Gloucestershire**)
Council was affixed hereto in the presence of)
the undersigned authorised signatory)

Signed as a Deed by the **Local Enterprise**)
Partnership)

Director

Director/Secretary