

**The West of England Growth Incentive City Region Deal  
Agreement for the Operation and Administration  
of the Economic Development Fund**

**THIS AGREEMENT** is made the                                 day of                                 2015

**BETWEEN**

**BATH AND NORTH EAST SOMERSET COUNCIL (B&NES)** of

**AND**

**BRISTOL CITY COUNCIL (Bristol)** of

**AND**

**NORTH SOMERSET COUNCIL (NS)** of

**AND**

**SOUTH GLOUCESTERSHIRE COUNCIL (SGC)** of

**BACKGROUND**

- A. The 4UAs are signatories to a Business Rates Pooling Principles Agreement of even date, the principles and definitions of which are adopted in this Agreement.
- B. The Economic Development Fund was created to receive contributions received from the Business Rates Pool to apply towards the delivery of an investment programme to maximize economic returns in the West of England.
- C. This Agreement governs the operation and performance of the Economic Development Fund.

**IT IS HEREBY** agreed as follows –

**1 Definitions and Interpretation**

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

**“Agreement”** means this Agreement comprising the terms and conditions together with its Schedules.

**“AB”** means the Accountable Body taking on the responsibilities set out in clause 6.

**“BRPPA”** means the Business Rates Pooling Principles Agreement.

**“Business Case”** means an Outline Business Case taken to the Strategic Leaders Board or a Full Business Case taken to the Investment Board for approval.

**“Commencement Date”** means the 1 April 2014.

**“EA”** means the five Enterprise Areas at (1) J21 North Somerset; (2) Avonmouth & Severnside; (3) Bath City Riverside; (4) Filton; and (5) Emerson’s Green.

**“EDF”** means the Economic Development Fund created from a contribution from the Business Rates Pool, which is intended to deliver an investment programme designed to maximize economic returns in the West of England.

**“EDF Commitment”** means an Eligible Scheme having obtained Full Approval and the Management Charge.

~~**“EDF Shortfall”** has the meaning as set out in clause 11.5~~

**“Eligible Scheme”** means a Scheme which has reached the status of Programme Entry Approval as defined in clause 9.1(b).

**“EZ”** means the Enterprise Zone at Temple Quarter Bristol.

**“Full Approval”** means an Eligible Scheme which has received approval under clause 9.1(d).

**“Growth Incentive Area”** or **“GIA”** means the fiscal area of the EAs and the EZs together.

**“LEP”** means the West of England Local Enterprise Partnership. Local Enterprise Partnerships are partnerships between local authorities and businesses. They decide what the priorities should be for investment in roads, buildings and facilities in the area.

**“LEP Board”** means the West of England Local Enterprise Partnership Board. The Board comprises the LEP Chairman and representatives from Local Authorities, Higher Education and local businesses. It sets the strategic direction for the operation of the EDF.

**“Management Charge”** means the charge payable from the EDF to the Accountable Body as more particularly described at clause 7.

**“Parties”** means all of the Parties to this Agreement.

**“PE”** means Programme Entry as defined in clauses 9.1(b) and 9.2.

**“Period”** means either for the remaining period of this agreement ending on 31<sup>st</sup> March 2039 or any shorter period as agreed by the WEIB when granting a Scheme Full Approval.

**“PWLB”** means the Public Works Loans Board or its successor body.

**“Scheme”** means an infrastructure or flagship project or revenue scheme proposed by a Sponsor UA for consideration of financial support by the EDF.

**“Sponsor UA”** means the UA proposing a Scheme for consideration by the EDF.

**“SSCBS”** means the Standard Supported Cost of Borrowing Sum which will be paid by the AB to a Sponsor UA, fixed for the Period at the PWLB Project or Certainty rate prevailing for either a Fixed Equal Instalment of Principal (EIP) or Annuity type loan once practical completion of the Scheme is achieved.

**“The Board”** means the Business Rates Pool Board whose functions are set out in Schedule A of the BRPPA.

**“UA”** means Unitary Authority. 4UAs should be construed accordingly.

**“West of England”** or **“WoE”** means the combined areas of the 4UAs.

**“WEIB”** means the West of England Investment Board. The Board comprises the LEP Chief Executive, the four local authority Chief Executives and four Business Members selected from LEP Sector Group Chairs/Representatives by the LEP Business Nominations Committee. The Bath & North East Somerset Council s.151 officer will attend in an advisory capacity.

**“WEJSC”** means the West of England Joint Scrutiny Committee. Three council members have been nominated by each of the four UAs to meet jointly as the West of England Joint Scrutiny Committee. It will conduct the overview and scrutiny function on their behalf of the operation of this Agreement.

**“WESLB”** means the West of England Strategic Leaders Board. The Board comprises the Leaders of Bath & North East Somerset, North Somerset and South Gloucestershire District Councils and the Mayor of Bristol City Council.

## **2 Term**

- 2.1 This Agreement shall come into effect on the 1<sup>st</sup> April 2014 and shall continue in force for a term of 25 years unless terminated earlier in accordance with its terms.

## **3 General Principles**

- 3.1 The 4UAs will retain their own decision making powers and co-operate in good faith for the duration of this Agreement to endeavour to procure the successful implementation of the EDF objectives.
- 3.2 The 4UAs agree to mitigate as far as possible the risks associated with this Agreement.
- 3.3 The WEJSC, established by the 4UAs to scrutinise WoE initiatives, will scrutinise the operation of this Agreement.
- 3.4 The AB is not left with any unanticipated costs or liabilities. Any such costs or liabilities will fall to individual UAs as set out in this Agreement or shall be divided equally between the 4UAs.
- 3.5 In the allocation of funding from the EDF priority will be given to those schemes that maximise economic returns within the EZ and the five designated EAs (the GIA) meaning those that achieve one or more of the following: enable business rate growth; increase Gross Value Added; enable the creation of new jobs; and, increase productivity.
- 3.6 The EDF will support a programme which comprises schemes across the GIA broadly recognising each UAs contribution to the EDF (from the Business Rates Pool) and an equality of status between both the EZ and EAs and each of the EAs individually. The programme of Schemes as set out in Annex B will be kept under review by the WESLB.
- 3.7 New Schemes will be considered for inclusion within the EDF programme if headroom is available, for example, if total finance costs are lower than currently forecast or where Eligible Schemes are surrendered in accordance with 10.3. In this case new schemes will be assessed using the above criteria and following the processes set out in Clause 9.
- 3.8 Whilst seeking to incentivise the delivery of Schemes the EDF will be used to support a programme that takes account of differing delivery timescales and complexity of individual Schemes.

#### **4 Status of this Agreement**

- 4.1 The 4UAs agree that this shall be a binding contractual relationship and mutual commitments between them created by this Agreement shall from the date hereof be construed accordingly.

#### **5 Governance and decision making:**

- 5.1 Bath and North East Somerset Council agrees to act as the Accountable Body for the EDF.
- 5.2 The LEP Board, through its Strategic Economic Plan, sets the strategic direction for the operation of the EDF.
- 5.3 The LEP will review Scheme Business Cases and make formal recommendations to the WESLB on these Schemes. Once a Scheme has received Programme Entry approval by the WESLB a Full Business Case will need to be approved by the WEIB before Full Approval of EDF support is granted and a Grant Offer Letter can be issued and accepted.

#### **6 Accountable Body**

- 6.1 The 4UAs agree to Bath & North East Somerset Council being the Accountable Body (AB) with the responsibilities set out in this Clause 6 and further agree to delegate all necessary powers to the AB to operate the EDF on behalf of the Parties.
- 6.2 The Accountable Body shall
- a) administer the EDF on behalf of the 4UAs, ensuring its decisions, activities and processes comply with financial, legal, audit and other regulatory requirements.
  - b) ensure (through its s.151 Officer) that the governance and decision making processes of the EDF are lawfully implemented.
  - c) secure the completion of any legal agreements and accounting and audit arrangements required to support the EDF.
  - d) provide relevant monitoring and reporting of commitments and balances available as required in 13, or necessary in pursuit of 6.2a.

- 6.3 The AB shall use reasonable endeavours to ensure that the 4UAs adhere to the provisions of this Agreement; and all decisions are made in accordance with its terms.
- 6.4 Subject to paragraph 7 below, the AB will be responsible for its costs in performing its obligations as AB, including but not limited to;
- Direct staffing costs (financial and administration), including any lifecycle and post-termination payments.
  - 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.
  - Any other costs or expenses identified and agreed by the WESLB.

## **7 Management Charge**

- 7.1 The Management Charge shall comprise the costs of the AB discharging its responsibilities as set out in clause 6.2. These will be charged at the actual costs incurred by the AB and shall be agreed and kept under review (and amended from time to time) by the WESLB.
- 7.2 The Management Charge for the first year of this Agreement shall be £75,000. The Management Charge will be reviewed annually having regard to the actual costs properly and reasonably incurred by the AB. The AB shall use reasonable endeavours to keep the Management Charge to a minimum.
- 7.3 The AB shall reimburse any relevant costs properly and reasonably incurred by another UA on behalf of the 4UAs and as agreed by The Board in advance of them being incurred.
- 7.4 The Management Charge will be deducted from the EDF before any Scheme payments are made. If there are not sufficient funds in the EDF to pay the Management Charge, any unrecovered costs in relation to the Management Charge in each year owed to the AB will be divided equally between the 4UAs and, once approved by The Board, paid out of the Business Rates Pool Contingency. If there are insufficient Contingency funds available, the Management Charge will be set off against future year's funds.

## **8 Assistance to the AB**

- 8.1 The UAs shall provide all reasonable and practical assistance to the AB in order that it can fulfil its responsibilities under this Agreement including;
- a) Providing accurate, timely information to the AB to enable all EDF returns and forecasts to be completed and SSBCS payments to be released, including actual and forecast Scheme expenditure, estimated and actual notification of date of Scheme's Practical Completion, etc.
  - b) Informing the AB, as soon as practicable, of any intelligence that may impact on the resources of the EDF either in the current year or in future years.
  - c) Providing such other information as the WESLB agrees is reasonable and necessary to monitor and forecast the EDF's resources within the timescales agreed.

## **9 Process for securing EDF support**

- 9.1 Subject to paragraph 9.2 below, all Schemes that are referred to the EDF for consideration by the WEIB must comply with the following requirements;
- a) **Scheme Programme Entry Submission**  
By a Sponsor UA's Chief Executive (or equivalent) of an outline business case to the AB (in the form of doc.1 at **Annex A**).
  - b) **Scheme Programme Entry Approval**  
From the WESLB and formal notification from the AB to the Sponsor UA of Programme Entry Approval in the appropriate written form.
  - c) **Submission for Full Scheme Approval**  
By a Sponsor UA's Chief Executive (or equivalent) of a full business case to the AB (in the form of doc.2 at **Annex A**).
  - d) **Full Scheme Approval**  
From the WEIB, following approval of the full business case, with a report to WESLB for information, and formal notification from the AB to the Sponsor UA of Full Approval in the appropriate written form.
  - e) **Formalisation**

Execution of legal agreement between AB and Sponsor UA through the issue and acceptance of a Grant Offer letter setting out the terms and conditions of EDF support.

- 9.2 The schemes at **Annex B** are deemed to have achieved PE Approval. The WESLB will keep the programme under review.
- 9.3 Cost increases in Scheme costs of up to 20 per cent, up to a ceiling of £2 million, can be approved by the WEIB (with a report to WESLB for information), where sufficient surplus funds exist within the overall EDF programme, either at Full Scheme Approval Stage or following Full Scheme Approval, upon submission of a request by a Sponsor UA's Chief Executive (or equivalent). Approvals for cost increases above these thresholds will need to be agreed by the WESLB.

## 10. Timing of Applications

- 10.1 PE Submissions may only be submitted to the AB in accordance with the timescales for WESLB meetings.
- 10.2 Full Approval Submissions can be made at any time after PE Approval has been given in any financial year that the EDF is in operation, but in all events within;
- 2 years of PE approval or
  - Where the Scheme is identified (in **Annex B** – or any updated version) for implementation more than two years from PE approval, 12 months prior to the indicated Practical Completion date

After such time Schemes will be deemed to have been surrendered and follow the process in 10.3.

- 10.3 Sponsor UAs must surrender (either in full or in part) any of their Eligible Schemes should they determine that it will not progress. Such a surrender should be accompanied with any plans to:
- 1) Seek WEIB approval to supplement other Schemes within their agreed Programme Entry allocations and phasing or
  - 2) Submit an alternative Scheme Programme Entry submission.

Alternative Schemes must be submitted for PE and Full Approvals according to the process set out in Clause 9.1(a) to (e) above. If a supplemented Eligible Scheme's costs are increased within the limits specified in Clause 9.3 above, approval can be given, under that clause's terms, by WEIB.

## 11 Principles of Payment Terms for the EDF



- 11.1 All payments from the EDF will only be made following confirmation of Full Approval by the WEIB under 9.1(d), the issue and acceptance of a Grant Offer Letter under Clause 9.1(e) and subject to there being sufficient funds in the EDF to make them.
- 11.2 The AB accepts no responsibility for ensuring the availability of funding, nor does it accept any liability for any shortfall in funds available to be distributed by the EDF.
- 11.3 As soon as it becomes apparent that there are insufficient funds in the EDF to meet Eligible Schemes the AB will notify the relevant Sponsor UAs, the WESLB and the WEIB of the forecast deficit.
- 11.4 If at any time there is sufficient certainty that either,
- the EDF is not likely to reach £500m by 2039 and/or
  - EDF Commitments exceed projected funds available over the 25 year period,

And the AB has notified the parties accordingly, then any Eligible Schemes that have not received Full Scheme Approval at that time shall ~~only~~ be referred for such approval ~~after~~ until the WESLB has reviewed the position generally, and the status of such Schemes, so as to try to achieve a cumulative breakeven position on the EDF ~~through as early as is possible. In achieving an overall breakeven position on the EDF, revising projected total funds available to the EDF and paid to each UA will be the existing programme of schemes (in whole or in part) scaled back proportionately on the basis of the current UA allocations as those that areas set out in Annex B (or any updated version) in accordance with the principles set out in clauses 3.5 and 3.6.~~

- 11.5 Where there are insufficient funds available to meet all EDF Commitments due to be paid in a Financial Year ( an “EDF Shortfall”), all sums due to the Sponsor UAs in that Financial Year will be decreased following the steps set out in and using the formula specified at **Annex C**.
- 11.6 Where sufficient funds are available to meet all EDF Commitments the AB will issue a payment instruction to SGC, acting as the Accountable Body for the Business Rates Pool, to release payment to the Sponsor UA. SGC shall make this payment in good faith on the basis of this instruction, but shall hold no liability in relation to payments due (past, current or future) from the EDF.
- 11.7 Where the EDF is required by a Sponsor UA as notional prudential borrowing support, the AB will issue a payment instruction to release payment to the Sponsor UA of a Standard Supported Cost of Borrowing Sum (SSCBS).
- 11.8 The SSCBS interest rate will be fixed for the period of the payment at the PWLB Project or Certainty rate prevailing for either a Fixed Equal Instalment of Principal (EIP) or Annuity type of loan of the same period (as is specified in the Grant Offer Letter) and published by the PWLB (or its successor body) at

9.30am on the first working day prior to the date that the AB issues the Grant Offer Letter under Clause 9.1(e).

- 11.9 All SSCBS payments from the EDF will be made to coincide with the next repayment date as required by the PWLB, the notional lender to the Sponsor UAs undertaking EDF Schemes. The regular SSCBS payments shall be paid at half-yearly intervals on 30th September and 31st March for the remaining period of the term of this Agreement, or for any shorter period, as agreed by the WEIB, and set out in the Grant Offer Letter issued by the AB.
- 11.10 The initial payment shall be made in agreement with the arrangements set out in the "Calculation of interest on initial broken period" per Appendix C of UK Debt Management Office, PWLB, Circular 157, which sets out how the first repayment should be calculated prior to the regular half yearly payments on 31st March and 30th September in subsequent years. This will allow the SSCBS payments to match the notional PWLB liability as closely as possible and make best use of funds available.
- 11.11 Subject to Clause 11.12 below, the initial payment shall only be payable after practical completion of the Scheme is achieved (e.g. by adoption or intention to adopt, issue of necessary safety certificate or building regulations sign off) as defined in the Grant Offer Letter and will be calculated according to the actual expenditure incurred on the Scheme or the amount receiving Full Approval and set out in the Grant Offer Letter, whichever is the lower. Sponsor UAs will be able to apply the process relating to surrendered Schemes as described in clause 10.3 to Scheme underspends.
- 11.12 Staged payments for particularly large Schemes, or those with distinct standalone elements, can be made where triggers for SSCBS payments other than practical completion of the Scheme as a whole are approved as part of the application for Full Approval, and set out in the Grant Offer Letter.
- 11.13 In such cases, each tranche of SSCBS payment to a Sponsor UA would be capped to the actual expenditure on that tranche up to the amount that has received Full Approval, with payments being made from the EDF on the six monthly repayments dates of 30<sup>th</sup> September and 31<sup>st</sup> March and in line with the initial payment in line with the 'broken period' calculation as set out in 11.10.
- 11.14 Where staged payments are agreed, the position in relation to abortive schemes (being schemes which have received Full Approval but where non-delivery of key Scheme outcomes leads the WEIB to withdraw or amend the funding offer) will be that all payments in relation to that Scheme from the EDF will be repaid to the AB in their entirety.
- 11.15 Treasury management and prudential borrowing decisions resulting from the need to fund Eligible Scheme expenditure are entirely at the discretion of the Sponsor UA. Any difference between the financing costs incurred and the amounts funded by the EDF through the SSCBS are at the risk or reward of

the Sponsor UA. No contribution will be due from the EDF for loan fees, premature repayment costs or late payment charges.

- 11.16 Where delays to practical (or stage) completion occur and result in the loan period, as set out in the Grant Offer Letter, extending beyond 31<sup>st</sup> March 2039, the SSCBS will be recalculated using a shorter period ending by 31<sup>st</sup> March 2039, but using the same interest rate as agreed for the original SSCBS and stated in the Grant Offer Letter.
- 11.17 When EDF is used as cash/revenue support, payments from the EDF will be made annually, on the basis of eligible expenditure incurred and defrayed by the Sponsor UA, as agreed and for the period set out, in the Scheme's Grant Offer letter.

## **12 Liabilities, Immunity and Indemnities**

- 12.1 In performing their obligations under this Agreement, officers of the 4UAs shall be deemed to have appropriate authority and to be working on behalf of their own Authority even where the particular matter under consideration relates to or also relates to another UA.
- 12.2 In consequence of the above, and save for any unlawful act, that involvement 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 regarding the functions, objectives and operation of the Agreement.
- 12.3 Each UA shall indemnify the other UAs in respect of any damages, costs, claims, expenses, interest or other liability that reasonably arises as a direct result of:
- a) any breach of this Agreement; or
  - b) any decision taken by that UA without prior approval of the WESLB or WEIB that causes an increase in the costs of administering the EDF.

## **13 Monitoring**

- 13.1 The 4UAs external and internal auditors will have rights to request access to data, documents and personnel in relation to the operation of the EDF. Such access will be provided by the AB acting reasonably as assisted by the other UAs as needs require.
- 13.2 The AB will provide to the LEP Board, WESLB and WEIB:
- a) a summary of EDF balances committed and available on a quarterly basis or as otherwise requested by the WESLB.

- b) Summaries of the estimated maximum EDF fund available, for the current financial year and a summary of the forecast EDF funds available for future financial years.
- c) a summary of the actual and forecast EDF payments committed to Sponsor UAs based on both Programme Entry and Full Scheme Approvals, for current and future financial years.

## **14 Dispute Resolution**

- 14.1 Where there is any dispute between two or more of the UAs relating to any aspect of this Agreement, it shall be referred to a meeting of the UA's respective Chief Executives for resolution.
- 14.2 If the dispute cannot be resolved within 30 days of it being referred to a meeting of the relevant Chief Executives, it shall be escalated to the next meeting or a special meeting, where required, of the WESLB.

## **15 Withdrawal from and Dissolution of the Pool**

- 15.1 Clauses 13 to 17 of the BRPPA deal with the treatment of any balances and sums due to, or from, the EDF in the event of any UA electing to leave the Pool or on a decision to dissolve the Pool.

## **16 Termination of this agreement**

- 16.1 Subject to clause 12 this Agreement will expire on 31<sup>st</sup> March 2039 or on the revocation of the Non-Domestic Rating (Designated Areas) Regulations 2014 (or on the expiry of any variation or extension thereto which render the Agreement ineffective) whichever is the earlier.
- 16.2 This Agreement shall continue beyond 31<sup>st</sup> March 2039 for the purpose only of securing final settlement of any payments due from the EDF in respect of Eligible Schemes and for the processing of those Schemes that have been given Full Approval by the WEIB.

## **17 Variation of this Agreement**

- 17.1 Any variation to this Agreement shall only be valid if it is in writing and subject to unanimous agreement of the 4 UAs.

**18 Assignment**

18.1 Save as may be imposed as part of any re-organisation of local government, no UA may assign, sub-contract or transfer its rights or its obligations under this Agreement.

**IN WITNESS** hereof the 4UAs 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 )

Authorised Signatory