

NORTH SOMERSET COUNCIL DECISION

DECISION OF: COUNCILLOR JAMES TONKIN. THE EXECUTIVE MEMBER FOR PLANNING, BUILDING CONTROL, HIGHWAYS AND TRANSPORT

WITH ADVICE FROM: DIRECTOR OF DEVELOPMENT AND ENVIRONMENT, S151 OFFICER AND HEAD OF LEGAL AND DEMOCRATIC SERVICES



DECISION NO: 20/21 DE 66

SUBJECT: WINTERSTOKE ROAD BRIDGE: APPROVAL TO ENTER INTO MEMORANDUM OF UNDERSTANDING BETWEEN NORTH SOMERSET COUNCIL AND THE MINISTRY OF DEFENCE

KEY DECISION: NO

REASON: The value of this decision is less than £500,000 and entering into the MOU does not have a significant effect on those living and working in two or more local wards.

BACKGROUND:

Winterstoke Road bridge which is integral to the road network in Weston-super-Mare is in poor condition and has been weight restricted to 7.5tonnes. This has meant diverting HGVs along other roads to access the industrial area. The bridge, which carries the highway, is owned by the Ministry of Defence (MOD) and maintained and repaired by Network Rail at the cost of the MOD. The MOD have recognised the liability the bridge presents to them and the proposal is for the Council to procure the construction of a new bridge with the MOD funding the reconstruction and the Council making a financial contribution of £450,000 to fund the cost of improved cycle and footway provision over the new bridge, alongside the highway. The MOD, following the construction of a new bridge to an adoptable standard, wish the council to adopt the new bridge as part of the highway, and for the bridge and the highway to be maintained at the public expense.

The Council as highway authority is better placed than the MOD to manage the reconstruction of the bridge and its long-term management in the interest of highway users. Upon completion of the new bridge it is proposed the bridge would be adopted and become part of the general highway asset, which includes the road network and numerous structures that the council as the highway authority maintains. A commuted sum payable by the MOD would cover 120 years ongoing inspection and maintenance.

At present, the MoD have secured and paid the council £10.8M to commence this process.

The Council's legal team and project team have been working closely with the MOD and their legal advisors in the drafting of the Memorandum of Understanding (MoU) to provide a collaborative framework for decision making and assurance in protecting both the Council and the MOD.

In line with COU104 dated 12 November 2019 this decision is delegated to the Executive Member for Planning and Transport with advice from the Director of Development and Environment and S151 and Head of Legal Services

DECISION:

To approve the entering into of the Memorandum of Understanding (MoU) as attached at Appendix One.

REASONS:

The MoU provides a formal framework in which the parties (the Council and the MOD) will collaborate with each other on the project. The MoU sets out key areas around objectives, principles of collaboration, governance and respective roles and responsibilities. It establishes the relationship between the parties and provides a framework for funding and decision making, protecting both the Council and MOD. Without the MOU in place the Council would not be able to draw down any of the funding provided by the MOD for the bridge replacement work.

OPTIONS CONSIDERED:

The MoU has been developed collaboratively between the Council and the MOD and establishes the position that the cost of the bridge replacement and the commuted sum payment will be met by the MOD in full. In addition, the bridge will not become a highway asset until the replacement bridge is fully adopted and forms part of the public highway. Without the MoU the Council will be unable to draw down the £10.8m funding and an opportunity to progress the bridge replacement would be lost for a considerable time as there is no other funding opportunity currently available. The MOD would be left to consider its approach to the ongoing bridge risk which will take time to develop and may include further restrictions and/or closure of the highway over the Winterstoke Road Bridge.

FINANCIAL IMPLICATIONS:

There are no costs associated with the decision to enter the MoU other than the officer time spent on administering the agreement should the eventuality arise.

The MoU provides the framework to enable the Council to commence formal design and development to replace Winterstoke Road Bridge. It commits the MOD to fund the bridge replacement work and commuted sum in full. The Council will commit £450k over three years to cover locally enhanced footway and cycleway provision to link with the new bridge replacement work. Providing additional detail to COU104 dated 12 November 2019;

Costs (Estimate 2019/2020)

Internal and External Fees and Licences	£1,215,000
Utility Provision	£1,375,000
Preliminary Design	£184,000
Detail Design	£440,000
Construction	£5,550,000
Construction Support Cost	£275,000
Risk	£3,325,000
Inflation	£813,000

Commuted Sum	£2,500,000
Total	£15,677,000

Funding

The MOD through the MoU will fully fund the bridge replacement (save for the cost of upgrading the footway and cycleway over the new bridge) and pay a commuted sum to the Council to allow the Council to maintain the new bridge in a good and proper state of repair. The maintenance cost of the footway / cycleway improvements will be sufficiently low such that it can be absorbed within the wider existing Highways Authority maintenance regimes. The cost estimates provided above will be refined following the appointment of an early contractor involvement design and build contractor. Following the receipt of the total cost price for the bridge replacement works and before committing to carrying out the replacement works, the Council and the MOD will each seek approval from their respective committee or board to proceed.

MOD - £15,227,000

with £10.8M already held by the Council and the remaining £4.4M to be paid upon confirmation of costs and commuted sums.

NSC - £450,000

JLTP funding over 3 years with £50k in 2020/2021; £200k in 2021/2022 and £200k in 2022/2023.

LEGAL POWERS AND IMPLICATIONS

Under the 1958 deeds the MOD is obliged to fund the maintenance and repair of the bridge. At present there is a permanent weight restriction of 7.5 tonnes on the bridge to address the immediate concerns with the structures condition.

Once replaced to an adoptable standard the bridge will form part of the public highway and will be maintained by the Council through a commuted sum payment from the MOD.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

The design, delivery and development of the new bridge will align with the principles of the PAS 2080:2016 specification, to aid carbon management.

For Winterstoke Road Bridge, specific focus will be on capital carbon which is directly associated with the creation, refurbishment and end of life treatment of an asset. However, promotion and facilitation of wider improved pedestrian and cycle links will also assist in providing improvements and opportunities.

The outcomes that can be secured from all parties involved including designers, constructors, suppliers etc working collaboratively towards a common goal of carbon reduction;

- Reduced carbon, reduced cost of infrastructure
- Promotion of innovation delivering wider society and community benefits
- Contribute to tackling climate change
- More sustainable solutions providing a blueprint for future projects

- Identification of carbon offsetting to mitigate capital carbon created.

The project team will also be working with the suppliers on ensuring efficient supply chains, maximising the use of both sustainable materials and renewables including primary sourcing of power.

CONSULTATION

There have been regular briefings of the Executive and CLT on the issues around Winterstoke Road bridge and progress with MOD funding. Engagement with both the MOD and Network Rail continue.

The introduction of the 7.5t weight limit required widespread engagement with colleagues in North Somerset waste and transport teams and more widely in the business and local communities including letter drops and on-site signing.

It is proposed that a bespoke communication strategy will be developed and implemented to ensure there is a co-ordinated pro-active communication plan where the whole community can have visibility, understanding and provide feedback on both the nature of the works and programme. Regular updates will also be provided

RISK MANAGEMENT

A risk workshop and risk register has been undertaken and fully developed with internal colleagues, Network Rail and the MOD. The Project Delivery Manual includes for a formal process on risk management and governance protocols. This will be further developed and managed with both the Council's appointment of an Agent (Faithful & Gould) and the early contractor involvement D&B contractor.

Current top project risks

Risk	Mitigation	Rating
Further bridge failure during scheme development.	The 7.5t weight limit has reduced this risk and provided time for the scheme to be developed and implemented, delay may result in further restrictions needed.	Amber
Coordination and consent of Network Rail.	Early engagement commenced; entering into a BAPA agreement essential to ensure NR attend and focus on management meetings and tender processes.	Amber
Timing of Network Rail blockades and possessions.	Blockades and possessions do not align with the project programme creating delay. Early engagement to identify mitigation measures.	Amber
COVID-19 delays.	Assess impacts of the COVID-19 cost and programme impacts with the supply chain, continue to engage with market to understand the current appetite for risk and works.	Amber
Lack of pedestrian access across railway during construction.	Current draft design solution includes for a temporary access bridge across the railway. If this proves unworkable then a	Amber

	footpath diversion or a shuttle bus may be required.	
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EQUALITY IMPLICATIONS

Have you undertaken an Equality Impact Assessment? ~~Yes~~ / No

A full EQIA will be undertaken as part of the project design and development phase. The scheme proposed enhanced pedestrian and cycle facilities and linkages across and adjacent to the new bridge.

CORPORATE IMPLICATIONS

The current weight restriction on the bridge means that this route cannot be used as an emergency diversion route for the M5. The route is also considered to be a key piece of infrastructure for residential, commercial access and development in the surrounding locality therefore it is critical for this highway link to remain operational for network resilience.

APPENDICES

Memorandum of Understanding

BACKGROUND PAPERS

- COU104 dated 12 November 2019
- PAS 2080:2016 Carbon Management in Infrastructure
- 19/20 DE84
- 19/20 DE266
- 19/20 DE257
- 19/20 DE258

SIGNATORIES:

DECISION MAKER:



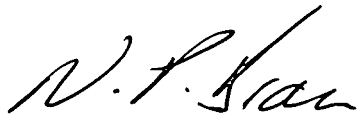
Signed: Executive Member for Planning, Building Control, Highways and Transport

Date: 20 July 2020


WITH ADVICE FROM:

Signed:  Director of Development and Environment

Date: 16 July 2020

Signed:  Head of Legal and Democratic Services

Date: 17 July 2020

Signed:  S151 Officer

Date: 17 July 2020

WINTERSTOKE ROAD BRIDGE MEMORANDUM OF UNDERSTANDING

NORTH SOMERSET DISTRICT COUNCIL (1)

and

THE SECRETARY OF STATE FOR DEFENCE (2)

CONTENTS

Clause	Heading	Page
1	BACKGROUND	1
2	INTERPRETATION	1
3	CONDITION PRECEDENTS.....	4
4	PLANNING	4
5	LANDOWNERS.....	5
6	BRIDGE WORKS	5
7	NETWORK RAIL	6
8	EASEMENT	7
9	PRINCIPLES OF COLLABORATION	7
10	GOVERNANCE.....	7
11	ROLES AND RESPONSIBILITIES.....	8
12	ESCALATION AND DISPUTE RESOLUTION.....	10
13	INTELLECTUAL PROPERTY	11
14	TERM AND TERMINATION.....	11
15	SERVICE OF NOTICES.....	11
16	VARIATION	12
17	CHARGES AND LIABILITIES	12
18	STATUS	12
19	PROCUREMENT	12
20	CLAIMS, FOIA AND EIR	13
21	STATE AID.....	13
22	VAT.....	13

23	GOVERNING LAW AND JURISDICTION.....	14
24	CONFIDENTIALITY	14
25	THIRD PARTY RIGHTS.....	14
	APPENDIX 1 Project Scope.....	16
	APPENDIX 2 Contributions	19
	APPENDIX 3 Contact Points.....	20
	ANNEX 1 Project Delivery Manual.....	21

PARTIES

The parties (**each a Party and together the Parties**) to this **Agreement** are:

- (1) **NORTH SOMERSET COUNCIL** of Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ (**NSC**); and
- (2) **THE SECRETARY OF STATE FOR DEFENCE** c/o Property Legal Team, Ministry of Defence, Defence Infrastructure Organisation, Mailpoint 2216, Poplar 2, Abbey Wood, Bristol BS34 8JH (**MoD**).

1 BACKGROUND

- 1.1 The Parties have agreed to work together on the project to rebuild the Bridge, such works to be carried out by NSC as more particularly set out in the Project Scope in Appendix 1 and the Project Delivery Manual attached as Annex 1 to this Agreement.
- 1.2 MoD is obliged to fund the maintenance and repair of the Bridge pursuant to the 1958 Deeds.
- 1.3 MoD and NSC have agreed that NSC will procure the rebuilding of the Bridge to adoptable standards subject to the satisfaction (or waiver) of the Condition Precedent in accordance with this Agreement.
- 1.4 The intention of the Parties is that MoD will fund the reconstruction of a New Bridge as detailed in the Project Scope and that NSC will contribute £450,000 towards the Project (primarily for a new cycle path over the New Bridge) over the first 3 years after this Agreement becomes unconditional.
- 1.5 The Parties wish to record the basis on which they will collaborate with each other on the Project. This Agreement sets out the:
 - (a) Key Objectives of the Project;
 - (b) principles of collaboration;
 - (c) governance structures the Parties will put in place; and
 - (d) respective roles and responsibilities the Parties will have during the Project.
- 1.6 NSC enters into this Agreement in its capacity as Local Authority under the power set out in section 1 of the Localism Act 2011.

2 INTERPRETATION

1958 Deeds means two deeds dated 18 December 1958 relating to the Bridge, the first being entered into between the British Transport Commission (1) and The Minister of Supply (2) and the second being entered into between The British Transport Commission (1) The Minister of Supply (2) and The Council of Somerset (3).

Bank Account means a Barclays Bank plc account held in the name of NSC with account number 03843343 (known as the NSDC Winterstoke Bridge Account), in which the monies paid by MoD to NSC as referred to in paragraph 1 of Appendix 1 are being held pursuant to the terms of a letter dated 25 March 2019 (as amended on 2020).

Bridge means Winterstoke Road Bridge, which traverses the Bristol to Taunton railway line, shown for identification on Plan 1.

Condition Precedent means the occurrence of the Satisfaction Date

Contact Point means the persons listed in Appendix 3

Covid-19 Epidemic means any epidemic of Covid-19 having an adverse impact on the construction industry in England and Wales including but not limited to any recommendation or mandatory measure introduced by the UK Government intended to prevent or delay the spread of Covid-19; any disruption or interruption to any supply chain; unavailability of workforce.

EIRs means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations

FOIA means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

Information has the meaning given to it under section 84 of the FOIA.

Key Objectives means the key outputs of the Project set out in Appendix 1

Landowner Agreements means all licences, contracts, approvals and/or agreements with Landowners and authorised third parties procured by NSC necessary to:

- (a) carry out site investigations or surveys of a non-intrusive nature; and
- (b) facilitate the Project Provided That where any additional land is required to facilitate the Works, NSC shall follow the procedure in clause 5.

Landowners means Network Rail Infrastructure Limited and any relevant proximate land owners affected by the Works and/or land owners having a legal or equitable interest in the land on which the New Bridge is built.

Network Rail means Network Rail Infrastructure Limited

Network Rail Documentation means a Basic Asset Protection Agreement, an Overbridge Agreement and the Network Rail Operational Procedure and any other agreements required by Network Rail in connection with the Project.

Network Rail Operational Procedure means procedures and approvals of Network Rail relating to the Bristol to Taunton railway line, including the operation of trains, to enable the carry out of the Works and the safe and efficient operation of the rail network.

New Bridge means a new bridge to be constructed by the Works in replacement for the Bridge.

Plan 1 means the plan produced by North Somerset Council dated 20 May 2020 attached to this Agreement and marked "Plan 1"

Project means the replacement of the Bridge in accordance with the Project Scope set out in Appendix 1

Project Board means a the Winterstoke Road Bridge Project Board with the terms of reference and decision-making powers as set out in the Project Delivery Manual

Project Delivery Manual means the Winterstoke Road Bridge Replacement – Project Delivery Manual (fourth version dated 28 April 2020) which is annexed to this Agreement and marked "Annex 1" as amended by the Parties in writing from time to time.

Project Delivery Team means those persons specified in the Project Delivery Manual or such other persons as may be agreed between the Parties in writing from time to time.

Project Scope means the scope set out in Appendix 1 and includes the Key Objectives, the project structure and the project phases

Request for Information means a request for information or apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Satisfaction Date means the later of the following dates:

- (a) three months after the date on which it is established under this Agreement that a Satisfactory Planning Permission has been granted;
- (b) the date on which it is established that all Landowner Agreements are in place and any necessary Landowner approvals have been obtained or contracts entered into for the same;
- (d) the date on which the Network Rail Documentation has completed and the Network Rail Operational Procedure is agreed; and
- (e) the date on which the Parties in accordance with this agreement respectively agree and have in place all necessary approvals for the carrying out of the Works at the contract price.

Satisfactory Planning Permission means a planning permission and any necessary planning agreement for the New Bridge which are acceptable to MOD and NSC (as local highway authority) both acting reasonably and without delay) and to Network Rail which the Parties and Network Rail agree are free from any unacceptable conditions (unless such unacceptable conditions are waived by the Parties and Network Rail in accordance with this Agreement).

Target Date shall have the meaning given to that term in clause 6.2.

Total Works Costs means the costs of carrying out the Project, together with:

- a) all associated and consequential costs including (without limitation) works to protect and divert existing utilities and services;
- b) all costs payable to Network Rail under the Network Rail Documentation and/or such other documents to deliver the Project required by Network Rail;
- c) railway possession costs, land acquisition costs including licence fees and costs associated with securing easements and other interests in land, including site compounds;
- d) legal, surveyor and other professional fees (and including for the avoidance of doubt MoD consultancy fees in connection with the agreement and monitoring the Works, including legal, quantity and monitoring surveyors, and other associated specialists as specified by MoD and the reasonable costs and expenses incurred by NSC in the delivery of the Project);
- e) planning fees;
- f) the cost of relevant procurement processes incurred by NSC and where relevant MoD in connection with the Project; and
- g) costs associated with the termination of the obligations on the MoD (including without limitation NSC's costs) pursuant to the 1958 Deeds.

which are in each case necessary and incurred in good faith in pursuance of the Project and Provided That it is agreed between the Parties that if any Network Rail blockade is missed then any additional cost of liability which ensues shall be the liability of the Principal Contractor and shall not form part of the Total Works Costs.

Unconditional Date means the earlier of:

- (a) the Satisfaction Date; and

- (b) the date on which the last remaining Condition Precedent is waived in accordance with clause 3.3

VAT means value added tax chargeable under the VAT Act and any similar replacement and any similar additional tax.

VAT Act means Value Added Tax Act 1994.

Works means the construction of a New Bridge and associated works involved in carrying out the Project as more particularly defined in the Project Scope.

Working Day means is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

3 CONDITION PRECEDENTS

- 3.1 Subject to clause 3.2, this Agreement comes into force on the date hereof.
- 3.2 Clauses 6 and 17 are conditional on the satisfaction (or waiver in accordance with clause 3.3) of the Condition Precedents and shall come into force on the Unconditional Date.
- 3.3 NSC and MoD may only waive or vary the Condition Precedents by agreement in writing (and it is agreed between the Parties that reference to writing in this clause 3.3 does not include fax or email).

4 PLANNING

- 4.1 Following agreement with Network Rail on the design of the Works and the appointment of a design and build contractor, if planning permission is required for the New Bridge then NSC shall use its reasonable endeavours to procure a planning permission satisfactory to itself (as the statutory highway authority), the MoD and Network Rail as reasonably practicable.
- 4.2 NSC shall liaise with the Landowners as appropriate in relation to the satisfaction of clause 4.1 above.
- 4.3 NSC shall consult with MoD and Network Rail in relation to the planning application process as is reasonable in the circumstances.
- 4.4 NSC shall not submit any such planning application in connection with this clause 4 without the approval of MoD (such approval not to be unreasonably withheld or delayed).
- 4.5 NSC shall keep the MoD informed of the progress of any planning application and keep the MOD informed as to the progress of the planning application and inform the MOD of the receipt of any planning decision resulting from the planning application within 5 Working Days of the issue of the same.
- 4.6 If a planning permission is obtained subject to any condition, NSC and MoD shall act reasonably in endeavouring to agree whether or not the condition(s) imposed are acceptable, providing each other with reasons supporting their respective views.
- 4.7 If a planning agreement is required, the NSC shall (in consultation with MoD (who shall act reasonably and promptly)) use all reasonable (but only commercially prudent)

endeavours to negotiate and agree the terms of any such agreement free from any unacceptable conditions as quickly as reasonably possible.

- 4.8 Within 5 Working Days of the final form of any planning agreement being agreed, NSC shall send a copy of it to the MoD.
- 4.9 NSC and MoD shall act reasonably in endeavouring to agree whether or not the obligation(s) imposed in any such planning agreement are acceptable, providing each other with reasons supporting their respective views.

5 LANDOWNERS

- 5.1 NSC shall use reasonable endeavours to procure appropriate licences and approvals from the Landowners to facilitate the Works.
- 5.2 NSC shall use reasonable endeavours to obtain licences from the Landowners and authorised third parties to carry out site investigations or surveys of a non-intrusive nature as are reasonably required.
- 5.3 NSC and MoD will enter into such Network Rail Documentation and such other agreements as may be reasonably required by Network Rail. The Parties will separately agree the terms of their obligations pursuant to any such Network Rail Documentation. In agreeing terms the Parties will act in a reasonable manner with the aim of ensuring the successful delivery of the Project.
- 5.4 NSC is to consult with the MoD before acquiring any additional land in connection with the Works.
- 5.5 NSC shall use reasonable endeavours to secure sufficient rights to use any additional land (either temporarily or by permanent acquisition) to be able to facilitate the Works. The costs of such acquisition are to be borne by the monies in the Bank Account.

BRIDGE WORKS AND EASEMENT

6 BRIDGE WORKS

- 6.1 Following the receipt of the design, the works programme and the total cost price for the Works from a design and build contractor, each Party will in a timely manner seek the approval for the Works from their respective committee or board. If the decision making body of each Party approves the Works at the contract price and following satisfaction of the Condition Precedent NSC shall issue a written notice to the contractor in accordance with the requirements set out in the design and build contract to proceed with the Works.
- 6.2 NSC shall procure that the Works are undertaken to an adoptable standard in accordance with the project timetable and in accordance with the approved design and specification for the Project and shall use all reasonable (but only commercially prudent) endeavours to do so in any event within three (3) years from the date of this Agreement, provided that the Parties acknowledge and agree that Network Rail has significant control over the timeline for issue of the stage 2 notice.
- 6.3 The Target Date will be extended as a result of:
- (a) the impact of the Covid-19 Epidemic on the building contractor or its supply chain, to such date as is reasonable in all the circumstances; and
 - (b) a delay in the carrying out of the Works due to an act or cause that is beyond NSC's or the build contractor's reasonable control to such date as is fair and reasonable having regard to the delay in question

Provided That NSC shall (or as appropriate shall procure that the build contractor shall) use all reasonable (but only commercially prudent) endeavours to mitigate the impact of any such delays in any event.

- 6.4 MoD shall be consulted in relation to the specification for the Works and the appointment of the building contractor to undertake the Works. The Project Board shall approve the evaluation criteria upon which the contractor will be appointed (but for the avoidance of doubt NSC shall procure that the building contractor agrees to take on the liability for (and procures appropriate insurance against) any additional costs which arise from any Network Rail blockade being missed).
- 6.5 NSC shall procure that the building contractor carries out the Works in a good and workmanlike manner, in accordance with generally acceptable construction practices and without using deleterious materials etc.
- 6.6 NSC shall procure that the building contractor obtains all consents needed for the carrying out of the Project from Network Rail. MoD will assist with this requirement as needs be.
- 6.7 The railway possession costs associated with rail disruption during the period of the Works will be taken from the Bank Account and NSC will (using reasonable endeavours) seek to mitigate this expense with the appropriate involvement of third parties who may also benefit from the railway possession period Provided That it is agreed between the Parties that if any Network Rail blockade is missed then any additional cost of liability which ensues shall be the liability of the Principal Contractor and shall not form part of the Total Works Costs.
- 6.8 MoD and NSC shall jointly appoint an NEC project manager to oversee the Works. £130,000 (plus VAT if applicable) of the monies held in the Bank Account are to be allocated towards MoD consultancy fees in connection with the agreement and monitoring the Works, including legal, quantity and monitoring surveyors, and other associated specialists as specified by MoD (and NSC shall on receipt of a valid VAT invoice or non VAT invoice (as applicable) make payment of such monies from the Bank Account to MoD within 28 days of MoD's written request for payment in accordance with clause 17.2 of this Agreement.
- 6.9 The reasonable costs and expenses incurred by NSC in connection with this Agreement, including those incurred in the delivery of the Project (including procurement costs and costs incurred in connection with negotiating and completing all agreements, including the Network Rail Documentation and monitoring the Works/Project including managing the build contract, project management fees, planning fees, professional fees (including legal costs) and costs associated with the project shall be payable from the Bank Account.

7 NETWORK RAIL

- 7.1 NSC (and where reasonably required MoD) will enter into any documentation reasonably required by Network Rail to facilitate the Works relating to asset protection for Network Rail, including without limitation the Network Rail Documentation. The fees associated with approaching the relevant Network Rail sponsor, subsequently agreeing documentation with Network Rail and the costs arising from Network Rail's requirements will be paid for out of the Bank Account.
- 7.2 The Parties will co-operate with and work with Network Rail in their negotiations of the relevant documentation with Network Rail.

7.3 NSC will ultimately procure the appropriate form of dedication to be entered into by NSC, the Landowners and the MoD as the case may be following completion of the Works.

8 EASEMENT

8.1 The obligation on the MoD in 1958 Deeds will come to an end upon the later of:

- (a) practical completion of the Works; or
- (b) dedication of the New Bridge structure to the public or to Network Rail; and the release of the commuted sum referred to in paragraph 1.5 of Appendix 2 or the payment of the commuted sum referred to in paragraph 1.6 of Appendix 2.

8.2 NSC will offer such assistance to MoD as may be required to extinguish the 1958 Deeds, including liaising with Network Rail to facilitate appropriate legal documentation to achieve this. All costs associated with extinguishing the 1958 Deeds (including for the avoidance of doubt NSC costs) will be paid from the Bank Account.

9 PRINCIPLES OF COLLABORATION

9.1 The Parties shall undertake the Project to achieve the Key Objectives set out in the Project Scope.

9.2 The Parties agree to adopt the following principles when carrying out the Project:

- (a) Establish and adhere to the governance structure set out in this Agreement to ensure that activities are delivered and actions taken as required;
- (b) Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this Agreement;
- (c) Communicate timeously and openly about concerns, issues or opportunities relating to the Project;
- (d) Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (e) Act in a timely manner and respond to requests for support, information or input as soon as practicable;
- (f) Ensure sufficient and appropriately qualified staff are available and authorised to fulfil the responsibilities set out in this Agreement; Manage stakeholders effectively;
- (g) Deploy appropriate resources to the Project and in particular to ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this Agreement; and
- (h) Act in good faith to support achievement of the Key Objectives and compliance with these principles.

9.3 The Parties agree to comply with their obligations in the Appendices to this Agreement and in particular, to make the contributions and payments on the terms detailed in Appendix 2 to this Agreement and in accordance with clause 17 of this Agreement.

10 GOVERNANCE

10.1 Project Board

- (a) The Project Board will provide strategic management at project level and will steer, direct, co-ordinate and oversee the delivery of the Project including if and how the Key Objectives are being met.

- (b) The Project Board shall be constituted in accordance with the Project Delivery Manual.

10.2 Operation of the Board

- (a) The Project Board shall be established by the Parties as soon as possible following the signature of this Agreement and will operate in accordance with the Project Delivery Manual, as amended by the Parties in writing from time to time.
- (b) Notwithstanding anything to the contrary in the relevant terms of reference set out in the Appendix 1, each Party shall have the right to appoint a member to represent it on the Project Board and to remove such member and any such appointment or removal of a member shall be by notice by email to each of the other members of the Project Board and shall take effect as at the date of the notice.
- (c) Each Party shall be responsible for the selection and/or removal of its own member and such decisions shall remain a matter of internal governance relating to that Party.
- (d) The Parties shall use all reasonable endeavours:
 - (i) to ensure that their respective member(s) attend each meeting of the Project Board; and
 - (ii) to procure that a quorum (in accordance with the provisions of this Agreement) is present throughout each such meeting.
- (e) The Parties will use reasonable endeavours to ensure that the Project Board complies with the relevant terms of reference set out in Appendix 1.

10.3 Reporting

- (a) The Project Delivery Team shall be responsible for drafting reports for the Parties. These reports shall be approved by the Project Board and where required copied to the Parties' respective decision-making bodies for approval before being issued.
- (b) The Project Delivery Team shall report to the Project Board quarterly or more frequently if required, and representatives of the Project Delivery Team shall, if invited to do so, attend Project Board meetings to speak to their reports.
- (c) Representatives of the Project Board shall, if invited to do so, attend Council and MoD meetings to speak to their reports.

10.4 Representations

The MoD may make representations to the Project Board and be involved with deciding upon the evaluation criteria and the evaluation process for the design and build contractor (conducted in accordance with The Public Contract Regulations 2015 and NSC's contract standing orders), which evaluation criteria is to be formulated to deliver the project satisfactory to Network Rail. The MOD will also be entitled to make representations in relation to significant expenditure from the Bank Account, but acknowledges that ultimate decision on expenditure rests with NSC

11 ROLES AND RESPONSIBILITIES

- 11.1 The Parties set out in the following table act as "lead party" for each listed activity or document that is required with principal responsibility for undertaking or procuring the particular task:

Activity	Lead Party
Project management (including project cost management)	NSC
Commissioning Plan (including project and procurement)	NSC
Risk Register	NSC
Project Master Schedule	NSC
Health and Safety Plan	NSC (Principal Contractor)
CEMP	NSC (Principal Contractor)
Quality Control Plan	NSC (Employers Agent)
Commercial Management Plan	NSC (Employers Agent)
Performance Management Plan	NSC (Employers Agent)
PAS 2080:2016 Protocol	NSC (Employers Agent)
Budget Plan	NSC (Employers Agent)
Risk Log	NSC (Employers Agent)
QRA	NSC (Employers Agent)
Environmental Benefits Plan	NSC (Project Team)
Social Value Benefits Plan	NSC (Project Team)
Communication Strategy	NSC (Project Team)
Exception Reports	NSC (Project Team)
Highlight Reports	NSC (Project Team)
Project Progress Report	NSC (Project Team)

- 11.2 Within 1 month of the date of this Agreement the Lead Party shall develop a delivery plan for the activities for which they are responsible, which delivery plan shall identify the following:
- (a) For project management (including project cost management), the Project Delivery Manual shall be finalised and deal with:
 - (i) the key milestones for the delivery the Key Objectives;
 - (ii) the record keeping, report and auditing processes for the Project;

- (iii) the processes for requesting and making of payment of financial contributions including details of the account(s) to which payment of the financial contributions are to be paid;
 - (iv) when and how repayments of any unused financial contributions will be calculated and paid; and
 - (v) what employees (other than employees identified in their Agreement if any) will be required to work on the Project and their charge out rate to the Project.
- (b) For contract and procurement, the Commissioning Plan shall be drawn up and shall deal with;
- (i) the key milestones for the delivery the Key Objectives;
 - (ii) the process for selection and appointment of an external consultant to prepare the necessary reports (to be addressed to both Parties) required by the Project; which process for selection and appointment shall be undertaken in accordance with all applicable public procurement regulations;
 - (iii) what employees (other than employees identified in their Agreement if any) will be required to work on the Project and their charge out rate to the Project (and where practical to do so, NSC will procure separate contracts for the various constituent parts of the project to reflect the necessary staggered timing of the satisfaction of the various elements of the Satisfaction Date leading to satisfaction of the Condition Precedent).

11.3 Each delivery plan must be approved by the Project Board prior to being implemented and once approved shall be annexed to this Agreement.

11.4 Notwithstanding any approval of the delivery plans or documents referred to above, in expending monies from the Bank Account, NSC shall provide quarterly reports (and provide reasonable supporting evidence of expenditure if reasonably requested) to the MoD on an open book basis. NSC will not be required to provide the MoD with regular reports on day-to-day spend, including spend from the Bank Account which NSC is contractually required to pay where such spends have been approved by the Project Board/in a delivery plan approved by the Project Board.

11.5 Following approval of a delivery plan by the Project Board any binding commitments entered into in accordance with that plan (and in particular the award of any contract) shall bind all Parties, including any obligation to make any payment EXCEPT any commitments entered into after the service of a termination notice under clause 14.1 of this Agreement.

12 ESCALATION AND DISPUTE RESOLUTION

12.1 If either Party has any issues, concerns or complaints about the Project, or any matter in this Agreement, that Party shall advise the other Party in writing (including by email but not by fax) addressed to the contact points set out in Appendix 3 and the Parties shall then seek to resolve the issue by a process of consultation between the members of the Project Delivery Team. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the Project Board, which shall decide on the appropriate course of action to take.

12.2 Where following escalation to the Project Board in accordance with clause 12.1 a dispute cannot be resolved then the Project Board may refer the dispute to alternative dispute resolution. The Project Board shall agree the form and remit of the alternative dispute resolution to be used and may, in particular, use the discretion under this clause to appoint a mediator, arbiter or expert to determine the dispute, whichever is agreed to be most appropriate to the subject matter.

13 INTELLECTUAL PROPERTY

- 13.1 The Parties intend that any intellectual property rights created in the course of the Project shall vest in the Party whose employee created them (or in the case of any intellectual property rights created joint by employees of multiple Parties then jointly in those Parties.
- 13.2 Where any intellectual property right vests in a Party in accordance with the intention set out in clause 13.1 above, that Party shall grant a non-exclusive, assignable and irrevocable licence to the other Party to use that intellectual property for the purposes of the Project and for any purpose associated with the Bridge, to NSC in perpetuity and to the MOD until such time as the obligation on the MOD in the 1958 Deeds ends in accordance with clause 8.

14 TERM AND TERMINATION

- 14.1 Prior to:
- (a) the satisfaction of the Condition Precedent; or
 - (b) NSC entering into a contract for the design of the works; or if later
 - (c) NSC entering into a contractual obligation for the carrying out of the Works,
- if the Project Board agrees that it is no longer practical or possible to satisfy the Condition Precedent or if the Project Board otherwise decides to abandon the Project (in both cases any decision of the Project Board to be approved in accordance with each Party's constitution) or if the decision making body of either Party refuses to approve the entering into a contract for the construction of the works then either Party may terminate their participation in this Agreement by giving prior written notice to the other Party at any time. Any such termination of this Agreement shall be without prejudice to any remedy for an antecedent breach by either Party.
- 14.2 Where this Agreement is terminated in accordance with clause 14.1 above, the balance of monies held in the Bank Account will be returned to MoD and NSC in the proportions recommended by the Project Board (and approved by the Parties, acting reasonably and without delay) to reflect the respective contributions of the Parties and reflecting:
- (a) Agreed expenditure on the Project until the date of termination of this Agreement;
 - (b) All contractual (including financial) obligations of NSC made or entered into in connection with this Agreement and the Works which were approved by MoD on the Project until that time and including without limitation those costs which NSC and/or MoD are contractually obliged to pay but which have not yet fallen due and which cannot be cancelled, but not those obligations and costs which can be cancelled without penalty (provided that at no time shall termination of the relevant obligations/agreements cause or would likely cause NSC or MoD to be in breach of any contract or contractual obligation entered into by it in connection with the Works or otherwise arising from this Agreement).

15 SERVICE OF NOTICES

- 15.1 Where any notice or request is to be given in writing in accordance with this Agreement then it shall be sent to the Contact Point set out in Appendix 3.
- 15.2 The Parties may agree that where any notice or request is to be given in writing it may with prior agreement be given by email and if they so agree shall include email addresses within the Contact Point details.
- 15.3 Any notice or request shall be deemed to be received 2 Working Days after it was sent where it was sent by post or the next Working Day where it was sent by email. Where

more than one method is used the deemed date of receipt shall be the later of the applicable dates under this clause.

16 VARIATION

- 16.1 This Agreement, including Appendices 1 and 2, may only be varied by written agreement of the Parties following a unanimous decision of the Project Board to agree the proposed variations.
- 16.2 Any Party may update its Contact Point details as set out in Appendix 3 at any time by notifying the other Parties in writing of the new Contact Point details.

17 CHARGES AND LIABILITIES

- 17.1 The Parties agree to pay:
- (a) the sums towards the cost of the Project set out in Appendix 2 to this Agreement; and
 - (b) all other fees, costs, charges, expenses and disbursements recoverable in accordance with this Agreement

using the payment details set out in the appropriate delivery plan (to include the build contractor's delivery plans) or as otherwise confirmed in writing by the receiving party in its written request for such payment.

- 17.2 Financial contributions are to be paid within 28 days of the receipt of written request for payment from the relevant receiving Party. Request and payments by any Party shall be (where relevant) subject to the conditions in set out in Appendix 2.
- 17.3 Where any reimbursement of unused funds is due in accordance with this Agreement for project management including project cost management such reimbursement shall be paid by NSC to the MoD within 28 days of falling due in accordance with the provisions of the delivery plan.
- 17.4 Both Parties shall remain liable for any losses or liabilities incurred due to their own or their employee's actions and neither Party intends that the other Party shall be liable for any loss it suffers as a result of this Agreement.

18 STATUS

- 18.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party as the agent of the other Party, nor authorise either of the Parties to make or enter into any commitments for or on behalf of the other Party.
- 18.2 All Parties shall adhere to all applicable statutory requirements and best practice. Where any provision under this Agreement conflicts with a statutory requirement then that statutory requirement shall take precedence and any action taken by any Party to comply with that statutory requirement shall not constitute a breach of this Agreement.
- 18.3 Participation in the Project is undertaken to deliver the Key Objectives, and this Agreement relates only to the provision of the Project. Nothing in this Agreement shall oblige either Party acting in any capacity to make any decision, propose, procure or carry out any works, incur any cost (other than those set out in the Agreement), and in the case of NSC to grant any consent or otherwise exercise any of its statutory powers or functions.

19 PROCUREMENT

The Parties acknowledge that where NSC or MoD enters into any contracts on behalf of the Project, NSC's procurement rules and any relevant procurement regulations that apply NSC or MoD procurements shall apply.

20 CLAIMS, FOIA AND EIR

- 20.1 If any party receives any formal inquiry, complaint, claim or threat of action from a third party including, but not limited to, claims made by a supplier but excluding requests under FOIA or the EIRs in relation to the Project, the matter shall be promptly referred to the Project Board (or its nominated representatives). No action shall be taken in response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect the Project, without the prior approval of the Project Board (or its nominated representatives) unless such action is required to be taken by law or in accordance with a decision of an ombudsman or an order of any court of competent jurisdiction.
- 20.2 Where NSC and any other Party subject to FOIA and/or EIR receives a Request for Information made under the FOIA or the EIRs relating to the Project and/or this Agreement it shall promptly notify the other Parties. The NSC shall process the request in line with its policies and procedures for such request under a requirement to allow the Parties a reasonable opportunity to make representations on the request and in particular if they consider any exemption or exception applies which would justify the withholding of the requested information prior to responding to the request. The NSC shall be bound to have regard to any representations made to by the Parties under this clause but shall solely determine whether and what information is released in accordance with statutory provisions, best practice and their own policies. The NSC shall provide a copy of any response to the Parties.
- 20.3 Each Party shall:
- (a) Provide all necessary assistance and co-operation as reasonably requested by the other Party to enable them to comply with their respective obligations under the FOIA and the EIRs; and
 - (b) Provide the other Party with a copy of all information belonging to the other Party requested in the Request for Information which is in its possession or control in the form the other Party reasonably requires within 5 working days (or such other period as such Party may reasonably specify) of the Party's request for such information.

21 STATE AID

In the event that the use of grant monies in connection with this Agreement or the Project is deemed to be unlawful for state aid reasons then NSC shall repay the amount of any such unlawful state aid to MoD on demand. The MOD shall indemnify NSC against any claim made against NSC for breach of state aid provisions and the MOD shall indemnify NSC against all liabilities, costs and expenses, damages and losses incurred by NSC arising out of or in connection with any finding of unlawful state aid.

22 VAT

- 22.1 All sums payable by the MOD under or pursuant to this Agreement are exclusive of VAT that may be chargeable (it being acknowledged that the original amount contributed by MoD of £13m has been treated as a payment of £10.833m plus VAT). The MOD shall, on receipt of a valid VAT invoice, pay as an additional sum VAT in respect of any taxable supply made by the MOD under or pursuant to this agreement on the due date for making any payment or, if earlier, the date on which that supply is made for VAT purposes.
- 22.2 Each and every obligation on the MOD in connection with this Agreement to pay NSC or any person any sum by way of a refund or indemnity shall include an obligation on the MOD to pay an additional amount equal to the VAT incurred on that refund or indemnity to NSC or other person, except where NSC or other person obtains credit for such VAT under the Value Added Tax Act 1994. Any VAT credits received in relation to amounts paid by the MoD (including any refund of the monies in the Bank Account to the MoD) are to be paid to MoD upon receipt of the appropriate credit note by NSC

23 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law and, without affecting the escalation procedure and the ability to refer any matter to dispute resolution in accordance with clause set out in clause 12, each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

24 CONFIDENTIALITY

24.1 Subject to clause 20, this clause 24 is legally binding notwithstanding any termination of this Agreement.

24.2 The Parties must agree any material public announcements and/or communications before they are issued by any Party (or their external advisers) in order to facilitate the consistent promotion and messaging surrounding the Project.

24.3 Subject to clause 24.2 and 24.5, each Party acknowledges to the other Party that confidential information received from or referencing the other Party may constitute or include information that is commercially sensitive and whose disclosure to third-parties may be prejudicial to the interests of one or more of the Parties to this Agreement (the "**Confidential Information**") and therefore each Party undertakes to the other Party to identify where reasonably practicable all Confidential Information either orally or in writing.

24.4 The Parties agree to the publication of this Agreement in its entirety (including variations).

24.5 Neither Party will, for a period of six years from the date of this Agreement, disclose to any person any Confidential Information concerning the business, affairs, customers, clients, suppliers, projects, products, services or intellectual property of the other Party or Parties, except as permitted by clause 24.6 below.

24.6 Each Party may disclose the other Party's Confidential Information:

(a) to its employees, officers, representatives, members or advisors who need to know that information for the purposes of progressing the Project (the "**Permitted Recipients**"). Each Party shall procure that the Permitted Recipients to whom it discloses the other Party's Confidential Information comply with this clause 24.6(a); and

(b) so far as may be necessary to comply with the law, the order of any court of competent jurisdiction or any governmental or regulatory authority, including any Party's obligations pursuant to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

24.7 Neither Party shall use any other Party's Confidential Information for any purpose except the progression of the Project.

25 THIRD PARTY RIGHTS

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

THE COMMON SEAL of)
NORTH SOMERSET DISTRICT COUNCIL)
was affixed hereto in the)
presence of:-)

Director

Director/Secretary

THE COMMON SEAL of)
THE SECRETARY OF STATE FOR DEFENCE)
was affixed hereto in the)
presence of:-)

Director

Director/Secretary

Appendix 1 Project Scope

1 KEY OBJECTIVES

The Parties agree that the Key Objectives shall include (but not be limited to) the following:

1.1 Physical outcomes

- (a) The taking down and the removal of the existing bridge;
- (b) The construction and the installation of a New Bridge to include utility diversion works and ancillary operations required to deliver a New Bridge;
- (c) the completion of the Project and the Works; and
- (d) following completion of the Works, the maintenance of the New Bridge until adoption of the New Bridge by the Highways Authority.

1.2 Bank Account

- (a) To pay monies from the Bank Account in accordance with this Agreement; and
- (b) To release or, if necessary, top-up the monies held in the Bank Account in accordance with paragraph 1.4 or paragraph 1.5 of Appendix 2; and
- (c) Payment of a commuted sum in accordance with paragraph 1.6 of Appendix 2

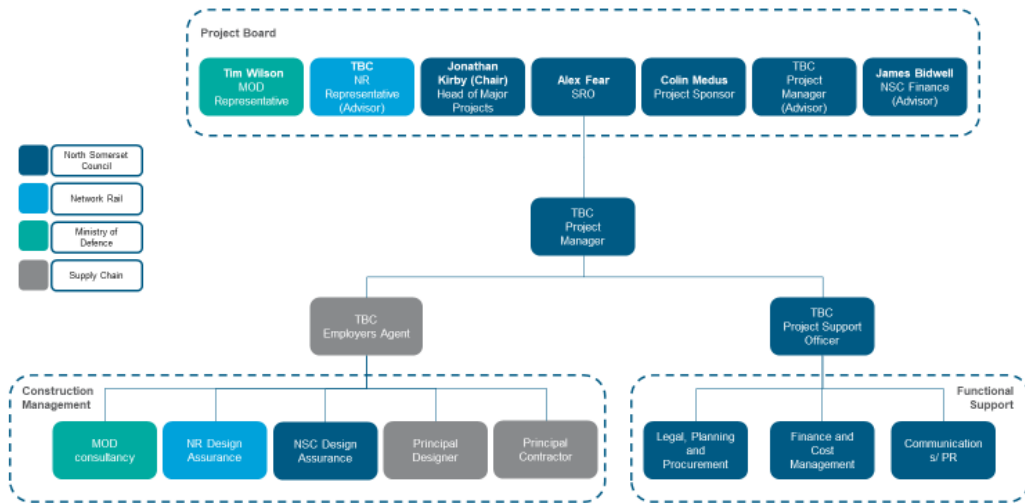
1.3 Collaboration outcomes

- (a) the design and development of the New Bridge
- (b) to deliver the Project; and
- (c) to procure the appropriate form of dedication of the New Bridge following completion of the Works.

1.4 The Parties acknowledge and agree that the Key Objectives may be updated by the Project Board from time to time to reflect the gradual evolution and direction of the partnership between the Parties over its duration.

1.5 The Parties acknowledge that the current position with regard to the Project and the contributions already made (financial and otherwise) are as detailed in Appendix 2 of this Agreement.

2 PROJECT STRUCTURE



3 PROJECT PHASES

Task Name	Est. Duration	Est. Start	Est. Finish
Contractor procurement (Stage 1a)	20 weeks	July 2020	November 2020
Employers Agent (EA) and Cost Consultant Procurement (Stage 1b)	12 weeks	June 2020	September 2020
Preliminary Design (Stage 2)	52 weeks	November 2020	November 2021
Detail Design (Stage 3)	22 weeks	December 2021	May 2021
Construction Phase (Stage 4)	70 weeks	2022	2023

4 PROJECT BOARD TERMS OF REFERENCE

4.1 Membership

- (a) The Project Board consists of the following representatives from each of the Parties (or their nominated substitutes or replacements)
- (i) Head of Major Projects and the SRO and PM (as defined in the Project Delivery Manual) and other lead officers, North Somerset Council;
 - (ii) Lead officers from the MoD;
 - (iii) Lead officers from Network Rail

together with such co-opted members as the listed representatives agree should be invited to join the Project Board.

4.2 Role

- (a) The Project Board shall be responsible for:
- (i) Monitoring and overseeing the Project
 - (ii) Approval of delivery plans prepared under clause 11.2.
 - (iii) Monitoring and approval of significant spend from the Bank Account.

- (iv) Approval and review of “critical success factors” as set out in the Project Delivery Manual.
- (v) Strategic overview of the Project and works associated with it
- (vi) Reviewing and approving the risk management of the Project
- (vii) Resolving any issues escalated to the Project Board under clause 12.1 or where resolution cannot be agreed implementing the dispute resolution procedure under clause 12.2.
- (viii) Monitoring and regularly reviewing the budget for the Project.

4.3 Meetings

- (a) The Project Board shall meet monthly or more frequently if required prior to the commencement of the Project and then not less than once per quarter (or more frequently if required) until the Project is completed and funds dealt with in accordance with Appendix 2 of this Agreement or as otherwise required and agreed by the Parties. Additional meetings may be called and held as required to deal with any matter referred to the Project Board under the escalation procedure (clause 12).
- (b) Any person may be allowed to attend and speak at any meeting of the Project Board at the invitation of the Chair and the Project Board can draw on technical, commercial, legal and communications expertise resources as to assist it.

4.4 Chair

- (a) The Project Board members shall either:
 - (i) Agree and appoint a Chair for each meeting prior to the formal commencement of that Meeting.
 - (ii) Agree and appoint a Chair for a 12 month period
- (b) Where a Chair is appointed under 5.4(b) above that person may resign their position as Chair at any time and the Project Board shall appoint a new chair at the earliest opportunity.

4.5 Voting

- (a) Parties shall only be voting members of the Project Board if they are contributing financially to the Project.
- (b) Each eligible Party shall have one vote.
- (c) Co-opted Project Board members shall not have a vote.

4.6 Reporting

- (a) Minutes and actions will be recorded for each Project Board meeting (meeting quarterly or as agreed by the parties). Any additional reporting requirement shall be at the discretion of the Project Board.

Appendix 2 Contributions

1 Contributions

- 1.1 The MoD has paid £13m into the Bank Account towards the cost of the Project (receipt of which was acknowledged by NSC on 1 April 2019).
- 1.2 NSC has accounted for the sum of £2.167m (as output VAT) to HMRC on the amount referred to in paragraph 1.1 (1 April 2019) being the VAT tax point). As a result, the balance of funds held by NSC in the Bank Account is now £10.833m.
- 1.3 NSC will pay from its own funds £450,000 towards the Project over the first 3 years (primarily for a new cycle path over the New Bridge).
- 1.4 If the total cost of the Total Works Cost is greater than £11.283m (£10.833m plus £450,000) NSC will notify the MoD, who shall contribute further amounts required to complete the Total Works Cost and pay all sums due under the Total Works Cost to NSC within 28 days of NSC written request for payment.
- 1.5 If the MoD contribution to cost of the Total Works Costs is less than £10.833m then on the later of practical completion of the Works or dedication of the New Bridge to the public or to Network Rail the balance of funds in the Bank Account will be paid to NSC as a contribution towards the commuted sum for the ongoing maintenance of the New Bridge as below.
- 1.6 On or prior to NSC taking responsibility for the maintenance of the New Bridge, the MOD will pay to NSC a commuted sum to allow NSC to maintain the New Bridge in a good and proper state of repair and to protect the railway line beneath the New Bridge, such sum to be calculated in accordance with the relevant national formula required to be used for these calculations by NSC (which may be affected by the design of the New Bridge). The commuted sum will be reduced by any sum paid to NSC pursuant to paragraph 1.5 of this Appendix.
- 1.7 If the cost of the Total Works Costs and the said commuted sum referred to above is less than £11.283m, then the balance of funds in the Bank Account will be returned to MoD and NSC in the proportions agreed by the Project Board (and approved by the parties) to reflect the respective contributions of the parties and the contractual commitments of NSC under the relevant agreements entered into in association with this Agreement and the Project (on the same terms as set out in clause 14.2 of this Agreement).

Appendix 3 Contact Points

NORTH SOMERSET COUNCIL

Name: Alex Fear
Office address: Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ
Tel No: 01934 426458
E-mail Address: Alex.Fear@n-somerset.gov.uk

THE SECRETARY OF STATE FOR DEFENCE

Name: Tim Wilson
Office address: Defence Infrastructure Organisation, Building 9, Westdown Camp, Tilshead, Salisbury, SP3 4RS
Tel No: 07970 251719
E-mail Address: Tim.Wilson140@mod.gov.uk

Project Delivery Manual