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Greater Bristol Bus Network

Appendix 4D

Draft Legal Agreements Between the Four Authorities



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1. Legal Arrangements Between the Four Authorities

1.1 There is a need for a legal agreement between the four authorities that sets out the roles, responsibilities and protocols to be used to ensure smooth delivery of the project. In light of this a draft legal agreement has been prepared to demonstrate the commitment of the authorities to entering into such an arrangement and to the scheme itself. It is also recognised that this agreement will need to be refined following the submission of this MSBC for Full Approval so that the authorities are in a position to sign the agreement when Full Approval is granted.

2. Draft Legal Agreement Between the Four Authorities

Draft Agreement -Greater Bristol Bus Network Scheme (the “Scheme”)

THIS AGREEMENT is made the day of 2007

BETWEEN:

Bath and North East Somerset Council of

Bristol City Council of

North Somerset Council of

South Gloucestershire District Council of

RECITALS

Bath and North East Somerset Council, Bristol City Council, North Somerset Council and South Gloucestershire Council (the” Parties”) have developed a scheme for the improvement of the Greater Bristol Bus Network (the “Scheme”) and intend to implement and deliver the Scheme in accordance with the Scheme Initiation Document dated [] (the “SID”). The SID takes the form of the Greater Bristol Bus Network Full Approval Major Scheme Business Case.

The Secretary of State for Transport (“DfT”) has approved the entry of the Scheme into the DfT’s Local Authorities Major Schemes Programme (“Programme Entry”) and has indicated that subject to the Scheme receiving full approval it will make a grant of no more than £42,343,000 towards the cost of the Scheme. It has been agreed that Bath and North East Somerset Council will act as the host authority (the “Host Authority”) for the purposes of



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administering the grant. The grant funding has been made available upon conditions set out by the DfT (the “Funding Requirements”).

This Agreement sets out the principles and terms agreed by the Parties to enable them to deliver the Scheme in accordance with the Funding Requirements. It may be executed by each Party signing a separate copy of the Agreement each of which, when countersigned and dated, shall be an original. All the counterpart Agreements together shall constitute one and the same Agreement and will therefore bind all the Parties.

1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:-

1.2 References to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted or as the application is modified by other provisions (whether before or after the making of this agreement) from time to time and shall include any provisions of which they are re-enactment (whether with or without modifications).

1.3 Headings are inserted for convenience only and shall not affect the construction of this agreement.

1.4 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

1.5 Reference to “Parties” are references to the parties to this agreement, and references to “persons” or “parties” shall include bodies corporate, unincorporated associations and partnerships.

1.6 Any covenant by a Party not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

1.7 References to “consent” or words to similar effect mean a consent given in advance in writing signed by or on behalf of the Party whose consent is to be given.

2. Definitions

- J Force Majeure
- Funding Requirements
- Host Authority – see Section 9
- Programme Board- see Section 7
- SID – see Greater Bristol Bus Network Full Approval Major Scheme Business Case
- SRO - see Section 10
- The Scheme – see Section 3
- Programme Handbook – the document outlining the project management arrangements attached as Appendix 2.

3. The Scheme

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- 3.1 Each Party confirms and undertakes that it will co-operate with the other Parties to deliver successfully the Scheme in accordance with the Funding Requirements, the SID and its specific work package scheme initiation document required to be produced under the SID, and that it will not act in a manner incompatible with such delivery.
- 3.2 Each Party is responsible for obtaining and complying with all permissions, consents and licences necessary to deliver its respective element of the Scheme as set out in the SID.
- 3.3 Each Party shall ensure that the Scheme is implemented:
 - 3.3.1 in accordance with this Agreement, using all reasonable skill and care and in a professional manner;
 - 3.3.2 in accordance with all applicable legislation and all terms and conditions of the Funding Requirements;
 - 3.3.3 to avoid infringing any third party rights;
 - 3.3.4 in a way which does not or is not likely to bring the Parties or any of them into disrepute;
 - 3.3.5 in such time and manner that the Host Authority shall not be put in breach of the Funding Requirements
 - 3.3.6 in compliance with the terms, conditions and other arrangements specified in the Funding Requirements and the SID.
- 3.4 Each Party confirms that it shall comply with the Scheme management obligations set out in the section with that heading in the SID and in the event that there is any ambiguity or insufficient detail regarding such obligations or related procedures that it shall act in good faith and liaise with the Host Authority to clarify and resolve such issues.
4. Commencement and Term
 - 4.1 This Agreement comes into force on the above date.
 - 4.2 This Agreement shall terminate when the Scheme has been implemented and any matters outstanding at the date of implementation have been concluded in accordance with this Agreement or otherwise as the Parties agree.
 - 4.3 The provisions of Clauses 13 and 14 shall bind the Parties following termination of this Agreement.
5. Obligations of Parties to implement the Scheme

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5.1 The Parties shall immediately commence and shall regularly and diligently proceed with the implementation of the Scheme undertaking all work and providing and securing all information in such manner and according to such allocation of tasks as set out in and to the standards prescribed in the SID in accordance with the timetable set out in Appendix 2 (Scheme timetable) or otherwise as agreed between the Parties.

6. Amendments to the Scheme

6.1 No Party shall without the written consent of the Other Parties make any amendment to the Scheme.

6.2 When giving consent pursuant to Clause 6.1 the Other Parties may stipulate such conditions for the consent as they think fit.

7. Programme Board

7.1 The Parties shall form a Programme Board for the purposes of coordinating and managing the Scheme.

7.2 The role and constitution of the Programme Board shall be as set out in Appendix 2.

7.3 Each Party shall appoint one representative to the Programme Board.

7.4 The Parties can replace their representative at any time at their discretion.

7.5 Minutes of meetings of the Programme Board shall be kept and circulated to the Parties.

7.6 The Programme Board shall meet every month.

7.7 The Programme Board shall be chaired by the SRO.

7.8 Each Party will put in place in accordance with its Constitution all necessary arrangements to enable any decisions required in connection with this agreement to be made expeditiously and so as to enable compliance with the requirements of the project

8. Work Packages

8.1 The Scheme shall be divided into a number of work packages and each work package shall be allocated to one of the Parties for implementation and delivery purposes.

8.2 For each work package allocated to it a Party shall appoint a Project Manager and shall ensure that it has internal processes in place to ensure that the work package is implemented and delivered in accordance with the provisions of this Agreement.

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9. The Role of the Host Authority

9.1 The role and functions to be performed by the Host Authority is as set out in Appendix 3.

10. Senior Responsible Officer

10.1 The role and functions to be performed by the SRO are set out in the Programme Handbook attached as Appendix 3.

11. Resources

11.1 Each Party shall provide the necessary resources to perform its obligations.

11.2 Without prejudice to the generality of the foregoing each Party agrees to meet in full the cost of its financial obligations under the Scheme.

11.3 The Parties shall meet in full the reasonable costs incurred by the Host Authority in administering and auditing the Scheme in order to comply with the Funding Requirements. Such costs shall be apportioned between the Parties on the basis set out in Part 3 of Appendix 3. Each Party shall pay to the Host Authority its share of such costs within 28 days of receipt of an invoice in respect thereof.

11.4 In the event of any extra or additional costs not previously contemplated being incurred by this Scheme, (including overrun on any contract or appointment) the provisions of Part 4 of Appendix 3 shall apply.

12. Preparatory Costs

specific conditions relating to preparatory costs to be inserted

13. Conditions of Grant

Additional conditions to be inserted to deal with detailed conditions as necessary

13.1 Each Party confirms that it shall only claim Grant from the DfT through the Host Authority for expenditure validly incurred in delivering its respective work packages as set out in the SID. All claims to be submitted by any Party through the Host Authority must be received by the Host Authority before the expiration of [...] working days after [...]. The Host Authority will use all reasonable endeavours to pay to a Party such proportion of the Grant as is properly payable in respect of valid claim(s) made by that Party within [...] days of receipt of cleared funds from the DfT.

13.2 The Host Authority will not accept any liability in respect of any loss attributable to any delay in the payment of any part of the Grant to the Parties or any of them for reasons beyond its reasonable control.

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- 13.3 Each Party shall at all times upon request by the Host Authority, the DfT or any District/External Auditor allow inspection and copying without charge of all records of expenditure including original invoices, receipts and other relevant documents relating to the Scheme, and shall keep all such records for at least 6 years after completion of the Scheme. Each Party shall co-operate fully with all requests for information or enquiries from the Host Authority, the DfT or any District/External Auditor.
- 13.4 Each Party must, in delivering the Scheme, comply with all terms and conditions set out in its own financial regulations, standing orders, administrative procedures and controls from time to time in force. Copies of such documents shall be supplied to the Host Authority on request.
- 13.5 Each Party must be able to demonstrate value for money in the procurement of any goods and services required for the purposes of delivering the Scheme in accordance with the SID.
- 13.6 Each Party shall notify the Host Authority immediately if any financial irregularity in the use of the Grant is suspected and indicate the steps being taken in response. Irregularity means any fraud or other impropriety, mismanagement or use of Grant funds for purposes other than those set out in this Agreement.
- 13.7 In the event of any Grant paid to a Party exceeding actual expenditure by that Party on the Scheme, the recipient shall forthwith notify the Host Authority and repay the amount of Grant paid in excess of actual expenditure within [.....] days of such notice unless the Host Authority agrees otherwise in writing.
- 13.8 Each Party shall keep the Host Authority fully informed of any alterations or problems arising from the process of the implementation and delivery of the Scheme and where these are identified shall report these to the Host Authority within [....] days of them arising.
14. Indemnity
- 14.1 Each Party shall indemnify (the “Indemnifying Party”) any and all other Parties including the Host Authority (the “Indemnified Party”) against all or any liabilities, claims, costs and/or expenses of or incurred by the Indemnified Party(ies) in or in connection with the Indemnifying Party’s:
- 14.1.1 negligence in the delivery of the Scheme;
- 14.1.2 gross misconduct in the delivery of the Scheme;
- 14.1.3 breach of law or duty in the delivery of the Scheme;
- 14.1.4 acts or omissions with respect to delivery of the Scheme including, without limitation, withdrawal from the Scheme; or

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- 14.1.5 substantial or persistent failure (after due notice) to redress deficient performance of the obligations of the Indemnifying Party
- 14.2 No Party shall be liable for any breach of this Agreement directly or indirectly caused by Force Majeure.
- 14.3 No Indemnified Party shall be entitled under clause 14.1 to recover from the Indemnifying Party any indirect or consequential loss suffered by the Indemnified Party.
- 14.4 The extent of the liability of the Host Authority shall be limited to the amount of funds in hand at any given time and the other parties to the agreement will contribute in the agreed proportion to the costs of the Host Authority, howsoever incurred in respect of its liabilities as Host Authority, save insofar as the Host Authority acts other than in good faith in the discharge of its responsibilities.
15. Breach of Conditions and Recovery of Funds
- 15.1 The Host Authority may, and if a majority of the other Parties so require shall reduce, suspend or withhold Grant payment to a Party or require all or part of the Grant paid to a Party to be repaid, if:
- 15.1.1 a Party commits or allows to be committed a material breach of any term of this Agreement that is capable of remedy, provided that:
- 15.1.1.1 the Host Authority has served notice in writing on the Party specifying details of the breach, the steps the Party must take to remedy the breach and the period in which the Party has to remedy the breach which shall be not more than [...] days; and
- 15.1.1.2 at the end of the period given to remedy the breach, the Party has not remedied the breach or the breach proves incapable of remedy;
- 15.1.2 a Party commits or allows to be committed any material breach of any term of this Agreement that is incapable of remedy including by way of example and without limitation the giving of notice of intention to withdraw from the Scheme.
- 15.1.3 The DfT requires the Host Authority to repay that part of the Grant.
- 15.2 Each Party confirms that it shall forthwith on demand pay to the Host Authority (without deduction, lien, set off, counterclaim or withholding) any Grant paid to it if, at any time and in any circumstances, the DfT requires the Host Authority to repay such sum.



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- 15.3 Where any Party has incurred any liability to repay all or any part of the Grant paid to it the Host Authority may if the same is not repaid set off the amount of such liability against any sum that would otherwise be due to that Party under this Agreement.
16. Termination of Agreement or Withdrawal
- 16.1 The Parties may by agreement in writing terminate this Agreement at any time (but with the date to be specified) on such terms and conditions as they may agree (subject to the provisions of Clause 16.2).
- 16.2 Any Party may withdraw from the Scheme at anytime subject to the following:-
- 16.2.1 The withdrawing Party shall give at least [.....]. months written notice to the other parties.
- 16.2.2 The withdrawing Party shall meet all unpaid existing liabilities and costs associated with the Scheme (including fees and related expenses)
17. Consequences of Termination
- 17.1 In the event of termination pursuant to Clause 16.1 the outstanding costs and expenses of the Scheme shall be apportioned in accordance with Part 5 of Appendix 3.
18. Transfer and Assignment
- 18.1 No Party shall assign or transfer any of its rights or obligations in relation to Funding Requirements or the Scheme including, without limitation, the right to receive payment, without the written consent of the Host Authority (which consent the Host Authority may in its absolute discretion withhold).
19. Waiver
- 19.1 No exercise or failure to exercise or delay in exercising any right, power or remedy vested in any Party under or pursuant to this Agreement shall constitute a waiver by that Party of that or any other right, power or remedy.
20. Costs
- 20.1 Each Party shall bear its own costs on or in connection with the preparation execution of this Agreement and any associated Agreements.
21. Statutory Provision
- 21.1 Nothing in this Agreement shall in any way limit or prejudice the rights duties and/or obligations of any of the Parties under all statutes orders rules or regulations in the exercise of any of their functions as a local authority.
22. Third Parties

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22.1 Without Prejudice to Clause 22.2 a person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

22.2 The Provisions of Clause 22.1 shall not effect any right or remedy of a third party to whom this Agreement is lawfully assigned or in whom this Agreement becomes vested in law otherwise than by operation of the Contracts (Rights of Third Parties) Act 1999.

23. Dispute Resolution

23.1 In the event of any dispute or disagreement between Parties which cannot be resolved by the Programme Board the matter shall in the first instance be referred to a meeting of the Chief Executives of the respective Parties.

23.2 The Parties shall thereafter refer to the Dispute Resolution Procedure set out in Appendix [x] to this Agreement.

24. Best Value

24.1 The Parties agree to use their reasonable endeavours during the Scheme to assist each other in complying with their best value duty (under Part 1 of the Local Government 1999) in relation to the Scheme and in so doing shall (without limitation to the generality of the foregoing) comply with any reasonable request made by any Party (in connection with the Scheme):

24.2 for assistance in conducting best value reviews, preparing best value performance grants

24.3 for information, data or other assistance in pursuance of its best value duty.

25. Discrimination

25.1 The Parties shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.

25.2 The Parties shall take all reasonable steps to secure the observance of Clause 23.1 by all servants, employees or agents of the Parties and all sub-contractors employed in the execution of this Agreement.

26. Confidentiality and Data Protection

26.1 Each Party shall at all times use its best endeavours to keep confidential (and to procure that its employees, sub-contractors and agents shall keep confidential) any information of a confidential nature which it or they may have acquired or may at any time after the date of this agreement acquire in relation to the business or affairs of

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another Party and shall not use or disclose such information except with the consent of that other Party or when required by law or when reasonably required to discharge any function including any function of elected members of any of the Parties.

- 26.2 No Party shall use or disclose any such confidential information other than for the purposes of the Scheme or as expressly permitted by this agreement save for any information which is or becomes in the public domain through no fault of the receiving Party or where they are required by law to disclose it.
- 26.3 The obligation in this clause shall continue without limit in point of time but shall cease to apply to any information for the time being in the public domain (otherwise than by a Party's breach of those obligations), but nothing in this clause shall prevent a Party from disclosing any information to the extent required in or in connection with legal proceedings arising out of this Agreement or the Scheme.

27. Freedom of Information

- 27.1 The Parties acknowledge that they are subject to the requirements of the Freedom of Information Act (FOIA) and the Environmental Information Regulations and shall cooperate to enable each to comply with these information disclosure requirements.
- 27.2 Each Party shall ensure that any contractor shall transfer any request for information to the employing Party as soon as practicable after receipt and in any event within two working days of receipt, and provide all necessary assistance as reasonably requested by any Party in responding to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 27.3 The Programme Board shall consider whether commercially sensitive information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations or is to be disclosed in response to a request.
- 27.4 The Parties acknowledge that any Party may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose information relating to the Scheme.

28. Nature of Agreement

These terms and conditions relate only to the Scheme and shall neither constitute any Party to it as the agent of any other Party to it, nor shall they constitute or be deemed to constitute a legal partnership between the Parties.

29. Notices



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- 29.1 Any notice to be given by any Party to any other Party shall be in writing and shall be deemed served if delivered personally or by fax or by pre paid registered post to the addressee at the address or as the case may be the fax number of that Party set opposite its name below:

Bath and North East Somerset Council

Bristol City Council:

North Somerset Council:

South Gloucestershire Council:

or at such other address (or fax number) as the Party to be served may have notified in accordance with the provisions of this clause) for the purposes of this Agreement.

- 29.2 Any notice given as required in this clause shall be deemed to be served two working days after delivery or despatch by the sending Party.

Time shall be of the essence in this Agreement as regards any date time or period mentioned in this Agreement or subsequently substituted as a time date or period by agreement in writing between the Parties.

30. Succession

References to a Party include references to any successor body or person to which shall fall the right to enforce the benefit of this Agreement or any paragraph in it or to which shall be transferred any statutory function of any of the Parties whether by way of Act of Parliament, Statutory Instrument, express agreement or deed or otherwise.

31. Exclusion of the contra proferentum rule

The Parties acknowledge and agree that this Agreement has been jointly drafted by the Parties and accordingly it should not be construed strictly against any Party.

32. Governing Law

This Agreement shall be governed by and construed in accordance with the law of England and subject to the exclusive jurisdiction of the English Courts.

33. Publicity, Media etc

Without prejudice to the Party's respective obligations under the FOIA, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Parties.



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The Parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all their servants, employees, agents, professional advisors and consultants.

The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

34. Warranty

The Parties warrant to each other that they have the full capacity and authority and all necessary consents to enter into and perform this Agreement and that the Agreement is executed by a duly authorised representative.

35. Force Majeure

For the purpose of this clause, “Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster.

No Party shall be liable to any other Party for any delay in or failure to perform its obligations under the Agreement if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. [However, if any such event prevents any Party from performing all of its obligations under the Agreement for a period in excess of 6 Months, any Party may terminate the Agreement by notice in writing with immediate effect].

If any of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the others by the most expeditious method then available and shall inform the others of the period which it is estimated that such failure or delay shall continue.

Annex 1 - Construction Profile (See Chapter 5)

Annex 2 - Programme Handbook (See Appendix 4A)

Annex 3 - Part 1 Role of the Host Authority (See below)

Annex X - Dispute Resolution Procedure (To be drafted)



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3. Annex 3 - Draft Financial Administration of the GBBN Project

Legal Principles

That the legal relationship of DfT as grant awarding body is directly with each of the 4 UAs in relation to their defined scheme element, as defined the construction profile. This means that responsibility for delivery and financial administration of their element of the project rests with each UA individually.

The Governance arrangements contain full dispute resolution mechanisms (between the 4UAs) which are legally binding.

Financial administration role for B&NES Council (in relation to the above principles).

Should the DfT require one authority to take a lead role in financial administration then this would operate on the following basis.

- 1) Each UA procures and delivers its element of the scheme. This does not preclude joint procurement, should that be mutually agreed.
- 2) Each UA makes a grant claim according to the terms and conditions of the grant and submits this to B&NES Council. These claims would need to be authorised by the individual UA s151 officer and subject to audit as part of the individual UAs audit arrangements, and any audit requirements that may form part of the grant requirements.
- 3) B&NES will collate the 4 UA claims and submit these to DfT in accordance with the terms and conditions of the grant.
- 4) DfT will make grant payments to each individual UA (either direct) or via B&NES. If the latter, than B&NES will transfer funds received in respect of each UA to each UA. Should DfT dispute any element of any claim and/or withhold any payments then the individual UA concerned will have responsibility for resolving this with DfT.
- 5) B&NES will be fully re-imbursed for their financial administration costs by the other 3UAs, in proportion to each UAs share of the scheme costs claimed in financial each year / overall.
- 6) B&NES will be indemnified by each of the other 3UAs in relation to any disputes arising from performance of this role.

The Governance arrangements contain full dispute resolution mechanisms (between the 4UAs) which are legally binding.

This will set out the principle that each authority can spend up to its share of the agreed budget, and claim grant accordingly

That if a UA needs to spend more / claim more then the first call is the scheme risk reserve – there needs to be a clear decision making mechanism in relation to the allocation of this risk reserve (e.g. principles for allocation and voting mechanism (majority or unanimity?))



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That if the risk reserve is exhausted then each authority is the fully responsible for its own expenditure unless an individual other UA agrees to transfer funding to the risk reserve or to that UA.



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