



DATED \_\_\_\_\_ 20

## MEMORANDUM OF UNDERSTANDING

between

**WEST SUSSEX COUNTY COUNCIL**

and

**[PARTNER 1]**

and

**[PARTNER 2]**

and

**[PARTNER 3]**

and

**[PARTNER 4]**

Legal Services  
West Sussex County Council  
County Hall  
Chichester  
West Sussex  
PO19 1RQ

**PARTIES**

The parties to this Memorandum of Understanding (“**MoU**”) are:

1. **WEST SUSSEX COUNTY COUNCIL** of County Hall, Chichester, West Sussex, PO19 1RQ (“**WSCC**”);
2. **[NAME OF PARTNER 1]** of **[ADDRESS]**;
3. **[NAME OF PARTNER 2]** of **[ADDRESS]**;
4. **[NAME OF PARTNER 3]** of **[ADDRESS]**; and
5. **[NAME OF PARTNER 4]** of **[ADDRESS]**,

each being referred to as a “**Partner Authority**” and together “**the Partner Authorities**”.

**BACKGROUND**

- (A) The Partner Authorities have agreed to work together on the Project detailed in Schedule 1 (The Project) to this MoU.
- (B) The Partner Authorities each have a decision in principle to enable them to invest in the Project.
- (C) The purpose of this MoU is to facilitate mutual support and co-operation between the Partner Authorities in relation to the Project and to allow the Partner Authorities to agree the specific roles and the level of input, involvement and investment of each Partner Authority in the Project moving forward.
- (D) The Partner Authorities wish to record the basis on which they will collaborate with each other on the Project. This MoU sets out:
  - i. the key objectives of the Project and of this MoU;
  - ii. the principles of collaboration;
  - iii. the governance structures the Partner Authorities will put in place; and
  - iv. the respective roles and responsibilities of the Partner Authorities.
- (E) Except where expressly stated, this MoU is not legally binding but commits the Partner Authorities to taking part in a process of dialogue and negotiation to discuss and agree (without limitation):
  - i. the basis and form of the Formal Partnership Arrangement Documents; and
  - ii. the form and content of procurement and contractual documentation for the competitive dialogue procurement process to appoint a Delivery Partner.
- (F) This MoU will fall away on the signing of and will be replaced by the Formal Partnership Arrangement Documents to be agreed by the Partner Authorities.

**1. DEFINITIONS**

- 1.1. The following definitions shall apply to this MoU:

|                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“Commencement Date”</b>                        | means the date of this MoU;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>“Confidential Information”</b>                 | <p>means information relating to:</p> <p>(a) the Project which was imparted to the receiving Partner Authority on the basis that it is to be kept confidential or would, by its nature, normally be regarded as confidential or to the knowledge of the receiving Partner Authority was obtained by the disclosing Partner Authority on the basis that it was to be kept confidential or is of commercial value in relation to the Project; or</p> <p>(b) the business, products, affairs and finances of the disclosing Partner Authority for the time being confidential to the disclosing Partner Authority and trade secrets including, without limitation, technical data and know-how relating to the business of the disclosing Partner Authority or any of its suppliers, clients, customers, agents, distributors, or management,</p> <p>but shall not include any information which is for the time being in the public domain, otherwise than by reason of its wrongful disclosure by a receiving Partner Authority;</p> |
| <b>“Delivery Partner”</b>                         | means the partner(s) to be appointed as part of a competitive dialogue procurement process to provide the Project. The partner(s) will have the capabilities to deliver the Project alongside the Partner Authorities and to deliver all of the outcomes required of the partner(s);                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>“Formal Partnership Arrangement Documents”</b> | means the legally binding documents entered into by WSCC and one or more of the Partner Authorities, which shall be negotiated and agreed during the term of this MoU;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>“Intellectual Property Rights”</b>             | means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in Confidential Information (including know-how                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;

**“Law(s)”**

means any applicable statute or any delegated or subordinate legislation, any enforceable community rights within the meaning of section 2 of the European Communities Act 1972, duly applicable guidance, code of practice, direction, judgment or determination;

**“MoU”**

means this memorandum of understanding;

**“Project”**

means the project described in Schedule 1 (The Project) to this MoU;

**“Project Executive”**

means [Colin James, Head of Capital and Asset Management at WSCC, who shall have ultimate responsibility for the Project];

**“Prospectus Document”**

means the document produced by WSCC entitled ‘Energy Saving in Sussex’, setting out further details of the Project;

**“Relevant Public Bodies”**

means:

- a) the Districts and Boroughs of West Sussex;
- b) East Sussex County Council;
- c) the Districts and Boroughs of East Sussex;
- d) Brighton and Hove City Council;
- e) Registered Social Landlords operating in any of the above geographic areas;
- f) health and other public authorities operating in any of the above geographic areas; and
- g) the Local Economic Partnership (LEP);

**“Representative”**

means any employee, officer, worker, agent or service provider engaged by a Partner Authority or by a consultant, agent or sub-

contractor of any Partner Authority; and

**“Working Day(s)”**

means Monday to Friday inclusive of each week excluding Christmas Day, Good Friday and Bank Holidays in England.

**2. KEY OBJECTIVES**

The Partner Authorities shall work together to achieve the key objectives of both the Project and this MoU as set out in Schedule 1 (The Project) to this MoU (“**the Key Objectives**”).

**3. PRINCIPLES OF COLLABORATION**

3.1. The Partner Authorities agree to adopt the following principles when carrying out the Project:

- 3.1.1. collaborate and co-operate. Establish and adhere to the governance structure set out in this MoU to ensure that activities are delivered and actions are taken as required;
- 3.1.2. be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this MoU;
- 3.1.3. be open. Communicate openly about major concerns, issues or opportunities relating to the Project;
- 3.1.4. learn, develop and seek to achieve full potential. 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;
- 3.1.5. adopt a positive outlook. Behave in a positive, proactive manner;
- 3.1.6. adhere to statutory requirements and best practice. Comply with applicable Laws and standards, including EU procurement rules, data protection and freedom of information legislation;
- 3.1.7. act in a timely manner. Recognise the time-critical nature of the Project and respond accordingly to requests for support and with timely internal decision making;
- 3.1.8. involve stakeholders effectively where required and manage stakeholders effectively;
- 3.1.9. deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this MoU;
- 3.1.10. act in good faith to support achievement of the Key Objectives and compliance with these principles; and
- 3.1.11. co-operate by problem solving together for mutual benefit.

**4. ADDITIONAL RELEVANT PUBLIC BODIES**

4.1. Relevant Public Bodies who are not a party to this MoU at the Commencement Date may become Partner Authorities under this MoU at any time prior to its

expiry, on the same terms as set out in this MoU.

- 4.2. WSCC shall procure that any new Partner Authorities execute an accession agreement in substantially the form of the draft contained in Schedule 3 (Accession Agreement) to this MoU to confirm that they have joined this MoU.
- 4.3. WSCC shall notify all existing Partner Authorities of the inclusion of any new Partner Authorities as soon as reasonably practicable after the execution of an accession agreement.

## **5. PROJECT GOVERNANCE**

### **5.1. Overview**

- 5.1.1. The governance structure set out below and in Schedule 2 (Project Governance) to this MoU provides a structure for the development and delivery of the Project.
- 5.1.2. All Partner Authorities will be engaged in the governance structure for the Project.
- 5.1.3. In addition to the governance structure set out in this MoU, it will be necessary to formalise the governance arrangements for the competitive dialogue procurement process and post the appointment of the Delivery Partner. These arrangements will be developed during the discussions regarding the basis and form of the Formal Partnership Arrangement Documents and will be recorded in these documents.
- 5.1.4. The Partner Authorities acknowledge that WSCC shall lead and manage the Project on behalf of itself and the Partner Authorities and that duplication of work should be avoided.
- 5.1.5. Notwithstanding the above, nothing in this MoU seeks to fetter or curtail any of the Partner Authorities' decision making powers or rights or obligations in respect of their internal authorisation processes.

### **5.2. Guiding Principles**

- 5.2.1. The following guiding principles of governance are agreed by the Partner Authorities. The Project's governance will:
  - 5.2.1.1. provide strategic oversight and direction;
  - 5.2.1.2. be based on clearly defined roles and responsibilities at organisation, group and, where necessary, individual level;
  - 5.2.1.3. align decision-making authority with the criticality of the decisions required to ensure that all decisions are made in a timely manner and in accordance with any required deadlines;
  - 5.2.1.4. be aligned with Project scope (and may therefore require changes over time);
  - 5.2.1.5. leverage existing organisational, group and user interfaces where possible;

- 5.2.1.6. allow for coherent, timely and efficient decision-making;  
and
- 5.2.1.7. correspond with the key features of the Project governance arrangements set out in this MoU.

### 5.3. **Joint Steering Group**

- 5.3.1. The Joint Steering Group will provide overall strategic and political oversight of the Project.
- 5.3.2. The terms of reference for the Joint Steering Group are set out in Schedule 2 (Project Governance) to this MoU.

### 5.4. **Joint Project Board**

- 5.4.1. The Joint Project Board led by the Project Executive will provide strategic management and decision making at the Project and work stream level.
- 5.4.2. The Joint Project Board will provide assurances to the Joint Steering Group that the Key Objectives are being met and that the Project is being performed within the agreed boundaries.
- 5.4.3. Day to day decisions will be made by the Project Executive reporting to the Joint Project Board.
- 5.4.4. The terms of reference for the Joint Project Board are set out in Schedule 2 (Project Governance) to this MoU.

### 5.5. **Joint Project Team**

- 5.5.1. The Joint Project Team led by the Project Executive will be responsible for the day to day operational delivery of the Project and project management in line with the decisions, direction and guidance from the Joint Project Board.
- 5.5.2. The terms of reference for the Joint Project Team are set out in Schedule 2 (Project Governance) to this MoU.
- 5.5.3. The Joint Project Team shall also contain three sub-groups looking at the legal, technical and financial aspects of the Project on an operational level and these sub-groups will report to the Project Executive and the Joint Project Team.

### 5.6. **Reporting**

- 5.6.1. Project reporting shall be undertaken at the following levels:
  - 5.6.1.1. Joint Project Board: Minutes and actions will be recorded for each Joint Project Board meeting. Any additional reporting requirements shall be at the discretion of the Joint Project Board.
  - 5.6.1.2. Joint Steering Group: Reporting shall be monthly, or as otherwise agreed, based on the minutes from the Joint Project Board highlighting:
    - 5.6.1.2.1. progress during that month, or such other period as may be agreed;

- 5.6.1.2.2. issues being managed;
  - 5.6.1.2.3. any issues requiring help (that is, escalations to the Joint Steering Group); and
  - 5.6.1.2.4. progress planned for the next month or such other period as may be agreed.
- 5.6.1.3. Organisational: the Joint Project Board or Joint Project Team members (as appropriate) shall be responsible for drafting reports into their respective organisations as required for review by the Joint Project Board before being issued.

## **6. ROLES AND RESPONSIBILITIES**

- 6.1. The Partner Authorities shall undertake the following roles and responsibilities, and agree the following principles to deliver the Project:
- 6.1.1. Lead: WSCC shall have principal responsibility for management and delivery of the Project and, following consultation with all Partner Authorities via the Joint Steering Group, the Joint Project Board and the Joint Project Team and its sub-groups and any other processes or procedures agreed by the Partner Authorities from time to time, will be authorised to determine how tasks required to deliver the Key Objectives shall be undertaken. If relevant, WSCC shall also act as the accountable body for the purposes of any external finance or funding requirements. WSCC shall act in compliance with the Key Objectives at all times, and consult with the other Partner Authorities in advance if they are identified as having a role to 'assure' the relevant activity;
  - 6.1.2. Assure: Project assurance will be provided in line with standard WSCC project assurance responsibilities. This role will give assurance to the Joint Project Board on the actual status of the Project and to ensure that the WSCC 'Project Management Framework' is being followed. This role will be elected by the Joint Project Board.
- 6.2. The Partner Authorities agree:
- 6.2.1. to ensure sufficient and appropriate officer time to undertake the tasks and processes under this MoU, to be empowered to take or secure decisions and otherwise represent the interests of the Partner Authority;
  - 6.2.2. to ensure that all processes agreed by the Partner Authorities are followed;
  - 6.2.3. to secure decisions and responses within the required timescales and with an appropriate level of approval;
  - 6.2.4. to support the Project by way of suitable marketing and information dissemination, including in conjunction with the appointed Delivery Partner in due course, to ensure the risk of insufficient take up is mitigated;
  - 6.2.5. to share all relevant data, not protected by Law, including but not



limited to the Data Protection Act 1998, to allow the Project, this MoU and other joint working, to be properly monitored and managed. It is accepted that this data may therefore become public;

- 6.2.6. to assure themselves as to the suitability of all proposals and documentation to ensure their ongoing participation;
- 6.2.7. the Project governance arrangements as detailed in the body of this MoU and Schedule 2 (Project Governance) to this MoU;
- 6.2.8. to ensure that all meetings are intended appropriately;
- 6.2.9. that the exact details of the delivery of the Project including, but not limited to, the structure of any financial vehicle or special purpose vehicle, the development of the method for programming of installation timetables, marketing of the Project, development of supply chain and outputs will be developed during the process of this MoU and during the competitive dialogue procurement process;
- 6.2.10. to consider the utilisation of the scheme by other potential parties and/or authorities including the potential of those other parties to provide funding subject to agreement of the terms of participation and agreement as to any pro rata adjustments to financial obligations;
- 6.2.11. the Key Objectives and that these will form the basis of both the method of establishing and evaluating the most economically advantageous tender (MEAT) and the ultimate contractual form to be entered into with the Delivery Partner;
- 6.2.12. within the confines of commercial confidentiality, to allow the wider dissemination of information and learning from the Project to other local authorities;
- 6.2.13. within the confines of commercial confidentiality, to allow the wider dissemination of information and learning from the Project to national and European stakeholders;
- 6.2.14. to provide updates as to the requirements and position in respect of internal reporting and decision making processes; and
- 6.2.15. that all formal press releases or information dissemination regarding the Project shall be dealt with and issued by WSCC via the Project Executive to ensure consistency of information.

## **7. INTELLECTUAL PROPERTY**

- 7.1. All Intellectual Property Rights in any material created by or on behalf of any of the Partner Authorities for the purposes of the Project shall vest in the relevant Partner Authority whose Representative(s) created the Intellectual Property Rights or on whose behalf the Intellectual Property Rights were created.
- 7.2. Where any Intellectual Property Rights related to the Project vest in any Partner Authority, that Partner Authority hereby agrees to grant to each of the other Partner Authorities a perpetual, non-exclusive, royalty free licence to use, operate, copy and modify such Intellectual Property Rights for all

purposes connected with the Project, including publicising and promoting the Project in accordance with agreed protocols and the over-arching communications plan for the Project.

- 7.3. For the avoidance of doubt, the licence granted pursuant to clause 7.2 shall not be revoked upon the relevant Partner Authority's withdrawal from this MoU or upon termination or expiry of this MoU for any reason, but shall be limited to any Intellectual Property Rights created prior to the date of such termination or withdrawal.
- 7.4. Each Partner Authority warrants to the other Partner Authorities that the Intellectual Property Rights created by its Representative(s) for the purpose of the Project will not infringe any third parties' Intellectual Property Rights.
- 7.5. Each Partner Authority ("**the Indemnifying Partner Authority**") shall indemnify the other Partner Authorities against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Rights as a result of a Partner Authority's use of any Intellectual Property Rights created by the Indemnifying Partner Authority's Representative(s) for the purpose of the Project.

## **8. CONFIDENTIAL INFORMATION**

- 8.1. Each Partner Authority shall at all times use its reasonable endeavours to appropriately safeguard and keep confidential (and shall procure that its Representatives shall appropriately safeguard and keep confidential) all Confidential Information concerning the Project or the other Partner Authorities which may now or at any time hereafter be in its possession and shall not disclose such Confidential Information except with the consent of the Project Executive or pursuant to clause 8.2.
- 8.2. This Clause shall not prevent the disclosure of any Confidential Information relating to the Project by any Partner Authority which is:
  - 8.2.1. required in order for the Partner Authority to discharge its obligations under this MoU; or
  - 8.2.2. reasonably disclosed for the furtherance of, or the promotion of, the Project, including information required to support the procurement of the Delivery Partner; or
  - 8.2.3. required by Law.
- 8.3. This clause 8 shall continue without limit of time and shall survive the termination of this MoU.

## **9. DATA PROTECTION**

Each Partner Authority shall (and shall procure that its Representatives shall) at all times comply in all respects with all Laws relating to data protection, including, but not limited to, the Data Protection Act 1998 as amended, in relation to all information made available to it during the term of this MoU or arising through the provision of

the Project and will, where appropriate, maintain a valid and up to date registration or notification under such Laws.

## **10. FREEDOM OF INFORMATION ACT 2000 ("FOIA") AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 ("EIR")**

- 10.1. The Partner Authorities acknowledge that each of them is subject to the requirements of the FOIA and the EIR.
- 10.2. Each Partner Authority shall where reasonable assist and co-operate with the other Partner Authorities (at its own expense) to enable the other Partner Authorities to comply with these information disclosure obligations.
- 10.3. Where any Partner Authority receives a request which should have been directed to another Partner Authority, the receiving Partner Authority shall promptly (and in any event within two Working Days) refer the request to the relevant Partner Authority.
- 10.4. Wherever practicable, the party receiving a request for information relating to this MoU or the Project shall consult the other Partner Authorities and have reasonable regard to their representations prior to the release of any information.
- 10.5. However, each Partner Authority shall retain ultimate responsibility for determining how it shall respond to such requests and/or whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA and EIR and each Partner Authority shall be responsible for determining in its absolute discretion whether any information:
  - 10.5.1. is exempt from disclosure under the FOIA or the EIR; and / or
  - 10.5.2. is to be disclosed in response to a request for information.
- 10.6. Each Partner Authority acknowledges that the other Partner Authorities may be obliged under the FOIA or the EIR to disclose information:
  - 10.6.1. without consulting with the other Partner Authorities where it has not been practicable to achieve such consultation; or
  - 10.6.2. following consultation with the other Partner Authorities and having taken their views into account.

## **11. DISPUTE AND ESCALATION**

- 11.1. If any Partner Authority has any issues, concerns or complaints regarding the Project or any matter in this MoU, that Partner Authority shall notify the Project Executive who will seek to resolve the issue by a process of consultation.
- 11.2. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the Joint Project Team for consideration and referral of any proposed resolution to the Joint Project Board, who shall decide on the appropriate course of action to take.
- 11.3. If any Partner Authority receives any formal inquiry, complaint, claim or threat of action from a third party in relation to the Project or this MoU, the matter shall be promptly referred to the Joint Project Board (or its nominated

representatives).

- 11.4. 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 Joint Project Board (or its nominated representatives).

## **12. TERM AND TERMINATION**

- 12.1. This MoU shall commence on the Commencement Date and shall expire on cessation of the Project or on the signature of the Formal Partnership Arrangement Documents.
- 12.2. Any Partner Authority may withdraw from this MoU and terminate its interest under this MoU at any time by giving notice in writing to the other Partner Authorities.

## **13. CHARGES AND LIABILITIES**

- 13.1. Except as otherwise provided, the Partner Authorities shall each bear their own costs and expenses incurred in complying with their obligations under this MoU.
- 13.2. Each Partner Authority shall remain liable for any losses or liabilities incurred due to its own actions or the actions of its Representatives and each Partner Authority acknowledges that it does not intend the other Partner Authorities to be liable for any losses it suffers as a result of this MoU.
- 13.3. The Partner Authorities shall agree the process for sharing any costs and expenses arising in respect of the Project between them as part of the negotiation processes under this MoU and any such costs and expenses will be documented in the Formal Partnership Arrangement Documents.

## **14. STATUS OF THIS MoU**

- 14.1. This MoU is a statement of intent, signalling the intention of the Partner Authorities to work together to achieve the Key Objectives and, except in relation to clause 8 (Confidential Information) is not intended to be a legally binding agreement.
- 14.2. The Partner Authorities acknowledge that this MoU is an indication of their commitment to support the delivery of the Project and each Partner Authority enters into this MoU intending to honour its obligations.

## **15. CONFLICT OF INTEREST AND INDEPENDENT ADVICE**

- 15.1. WSCC may appoint advisors to the Project in appropriate disciplines including legal, technical and financial. Such advisors will provide advice to the Project as a whole in order to most appropriately deliver the ultimate aims, including the Key Objectives, of the Project. The Partner Authorities acknowledge the basis of this advice and that it is not envisaged that Partner Authorities shall procure their own external advice.
- 15.2. It is however acknowledged that in certain specific circumstances it may be necessary for individual Partner Authorities to obtain their own independent advice, such as where there could be a potential conflict of interest or where a Partner Authority requires advice on a matter relevant only to its specific

position.

- 15.3. In the circumstances set out in clause 15.2, the individual Partner Authority obtaining such advice shall be solely responsible for any associated costs and expenses incurred and shall procure such advice from advisors who are independent to the advisors appointed by the Project.
- 15.4. Each Partner Authority shall take appropriate steps to ensure that neither it nor any of its Representatives are placed in a position where in the reasonable opinion of WSCC there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Partner Authority or its Representatives and the duties owed to WSCC and the other Partner Authorities under the provisions of this MoU.

## **16. GENERAL**

- 16.1. Nothing contained or implied in this MoU shall prejudice or affect the rights, powers, duties or obligations of the Partner Authorities in the exercise of their statutory functions and/or in any other capacity and all rights, powers, discretions, duties and obligations of the Partner Authorities under all Laws may at all times be fully and effectually exercised as if the Partner Authorities were not parties to this MoU and as if this MoU had not been made.
- 16.2. The Partner Authorities shall only represent themselves as being an agent, partner or employee of any other Partner Authority to the extent specified by this MoU and the Partner Authorities shall not hold themselves out as such, nor as having any power or authority to incur any obligation of any nature express or implied on behalf of any other Partner Authority except to the extent specified in this MoU.
- 16.3. This MoU is personal to the Partner Authorities and no Partner Authority shall assign, transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this MoU.
- 16.4. Save for any accession agreements executed in accordance with clause 4, this MoU may only be varied in writing by the Partner Authorities and such variation executed by authorised signatories of the same.
- 16.5. A person who is not a party to this MoU shall not be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 16.6. Any notice required or permitted to be given by a Partner Authority to another Partner Authority under this MoU shall be in writing and addressed to the other Partner Authority at its principal office.
- 16.7. This MoU may be executed in any number of counterparts and this shall have the same effect as if the signatories on the counterparts were on a single copy of this MoU.
- 16.8. This MoU shall be governed by and construed in accordance with English law and, without affecting the dispute and escalation procedure set out in clause 11, each Partner Authority agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS hereof the Partner Authorities hereto have executed this MoU on the day and

year first before written.

Signed for and on behalf of **WEST SUSSEX COUNTY COUNCIL**

Signature:

Name:

Position:

Date:

**Authorised Signatory**

Signed for and on behalf of [**PARTNER 1**]

Signature:

Name:

Position:

Date:

**Authorised Signatory**

Signed for and on behalf of [**PARTNER 2**]

Signature:

Name:

Position:

Date:

**Authorised Signatory**

Signed for and on behalf of [**PARTNER 3**]

Signature:

Name:

Position:

Date:

**Authorised Signatory**

Signed for and on behalf of [**PARTNER 4**]

Signature:

Name:

Position:

Date:

**Authorised Signatory**

## **SCHEDULE 1 – THE PROJECT**

### **1. PROJECT OVERVIEW**

- a. The Project is a ~£75m three or four year scheme to eco-refurbish some 18,000 homes in West Sussex and the surrounding areas, through mechanisms such as the Green Deal, the Energy Company Obligation (ECO), the Renewable Heat Incentive (RHI) and Feed in Tariffs (FiTs).
- b. The Project is primarily an eco-refurbishment scheme, with the opportunity for expansion into other areas such as delivering affordable warmth and developing a low carbon economy. Such additional projects / schemes shall be discussed and agreed by the Partner Authorities on a project by project basis.
- c. WSCC has worked with the Energy Saving Trust and Marksman Consulting to develop a business case for the Project.
- d. The Project will procure a Delivery Partner to arrange for the fitting of energy efficiency measures to an estimated 18,000 homes as part of the eco-refurbishment scheme. It is anticipated that this will be done via the use of a special purpose vehicle (SPV), which will contract with the Delivery Partner.
- e. This funding will be repaid gradually by consumers from a standing charge on utility bills through the new 'green deal' mechanism. Partner Authorities will receive green deal payments relating to the funding they provide for the installation of measures in the homes within the boundaries agreed during the process of negotiating the Formal Partnership Arrangement Documents and during the competitive dialogue procurement process.
- f. The cost of the procurement stage is currently estimated to be £1.5 million, which will cover the eco-refurbishment scheme until the appointment of a Delivery Partner. An additional £0.5 million has been identified for essential mobilisation activities needed to identify, prioritise and prepare provision of affordable warmth, and the creation of local supply chains. WSCC has committed the funds to cover these start-up costs and no contribution will be sought from the other Partner Authorities towards these costs.
- g. Further information regarding the Project, and possible opportunities for future projects / schemes, can be found in the Prospectus Document produced by WSCC.

### **2. DELIVERY**

- a. In order to implement the Project, WSCC on behalf of itself and the Partner Authorities will undertake to procure, via a competitive dialogue procurement, a suitable Delivery Partner who will undertake practical delivery of the Project alongside the Partner Authorities and who will help deliver the Key Objectives of the Project.
- b. The exact nature and role of the Delivery Partner, as well as the contractual and financial arrangements, shall be developed during the term of this MoU and

during the competitive dialogue procurement process and shall reflect the requirements of the Project.

### 3. KEY OBJECTIVES OF THE PROJECT

- a. To procure, by way of a competitive dialogue procurement, a Delivery Partner to implement and deliver the Project outputs including but not limited to:
  - i. delivery of local employment and local economic growth;
  - ii. reduction of fuel poverty;
  - iii. enable reductions in domestic CO<sub>2</sub> emissions and provide evidence of actual tonnes saved;
  - iv. ensure the scheme operates to the ultimate benefit of the householders and meets Green Deal 'Golden Rule';
  - v. marketing the scheme to the public;
  - vi. assessment of properties;
  - vii. installation of all energy measures;
  - viii. ensuring Energy Companies collect payments via utility bills;
  - ix. managing recovery and payment of investment back to relevant Partner Authorities;
  - x. delivery of the Project on a not-for-profit approach cost recovery pricing model;
  - xi. retaining potential for Delivery Partner to bring on additional finance and develop the programme for any extension phase;
  - xii. limiting Partner Authority exposure to its finance provided;
  - xiii. structure delivery so as to maximise potential of refinancing programme to enable further houses to be delivered and / or recover investment; and
  - xiv. ensure delivery in compliance with all relevant Laws.

### 4. KEY OBJECTIVES OF THIS MoU

- a. Partner Authorities to discuss and agree the level of involvement and investment (if any) of each Partner Authority in the Project, such arrangements to be reflected in the Formal Partnership Arrangement Documents. An agreement and commitment as to the level of involvement and investment of each Partner Authority will be required by [DATE].
- b. Partner Authorities to discuss and agree the structure of the corporate vehicle to be used in the delivery of the Project, such structure to be proposed by WSCC for review and comment by the Partner Authorities.
- c. Partner Authorities to discuss and agree the financing and funding structure arrangements for the Project, such arrangements to be proposed by WSCC for review and comment by the Partner Authorities.
- d. Partner Authorities to negotiate and agree the basis and form of the Formal Partnership Arrangement Documents.
- e. Partner Authorities to negotiate the key principles for the funding / investment terms for Partner Authorities and the terms relating to the repayment of the



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funding / investment, taking into account external factors that may arise such as, but not limited to, State Aid compliance. The key principles of such terms shall be reflected in the Formal Partnership Arrangement Documents, with an acknowledgement that such terms will need to be further negotiated and refined during the competitive dialogue procurement process.

- f. Partner Authorities to negotiate and agree the terms of apportionment of any surpluses between Partner Authorities on a fair and equitable basis should the Delivery Partner generate a surplus due to the volume or nature of the measures installed at properties. Such terms shall be reflected in the Formal Partnership Arrangement Documents.
- g. Partner Authorities to negotiate the key principles relating to the apportionment of any deficits (including, but not limited to, any under recovery by the Energy Companies) between Partner Authorities on a fair and equitable basis and / or between the Partner Authorities and the Delivery Partner. These apportionments will need to be further negotiated and refined determined during the competitive dialogue procurement process.
- h. Partner Authorities to discuss and develop the form and content of competitive dialogue procurement documentation and the contractual documentation, including the detailed specification, relating to the Project.
- i. Partner Authorities to discuss and agree any additional projects / schemes which may be included as part of the Project or procured separately by the Partner Authorities. These shall be discussed by the Partner Authorities on a project by project basis.

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## **SCHEDULE 2 - PROJECT GOVERNANCE**

### **1. Governance Structure**

An overview of the governance structure is set out in clause 5 of the MoU.

### **2. Terms of reference of the Joint Steering Group**

#### **2.1. Remit**

To provide overall strategic and political oversight to the Project.

#### **2.2. Meetings**

2.2.1. Frequency: As scheduled by the Project Executive.

2.2.2. Location: To be arranged by the Project Executive.

2.2.3. Notice for meetings: 2 weeks or such other period as may be agreed.

#### **2.3. Members of the Joint Steering Group**

2.3.1. The Joint Steering Group shall consist of members from each of the Partner Authorities.

### **3. Terms of reference of the Joint Project Board**

#### **3.1. Remit**

To provide strategic management and decision making at the Project and work stream level. The Joint Project Board will also provide a mechanism for both information dissemination to the Partner Authorities and input back in to the Joint Project Board from Partner Authorities.

#### **3.2. Meetings**

3.2.1. Frequency: As scheduled by the Project Executive.

3.2.2. Location: To be arranged by the Project Executive.

3.2.3. Notice for meetings: 1 week or such other period as may be agreed.

#### **3.3. Members of the Joint Project Board**

3.3.1. The Joint Project Board shall consist of officers from each of the Partner Authorities. The Joint Project Board will be an extension of the current WSCC project board.

3.3.2. In order to ensure that the Joint Project Board meetings are as effective and as efficient as possible, groups of Partner Authorities, for example the District and Borough Councils in West Sussex or a number of Registered Social Landlords, may agree to appoint one representative to attend the Joint Project Board meetings on behalf of all of the Partner Authorities who have agreed to appoint that joint representative.

### **4. Terms of reference for the Joint Project Team**

#### **4.1. Remit**

Led by the Project Executive, responsible for the day to day operational delivery of the Project and Project Management in line with the decisions, direction and guidance from the Joint Project Board.

4.2. **Meetings**

4.2.1. Frequency: As scheduled by the Project Executive.

4.2.2. Premises: To be arranged by the Project Executive.

4.3. **Members of the Joint Project Team**

4.3.1. To be agreed by the Joint Project Board.

**5. Terms of reference for sub-groups**

5.1. **Remit**

To disseminate work stream specific operational Project information, to consider all finance, funding, technical, legal and procurement implications for the Project and to communicate queries or issues back to the Joint Project Board or the Joint Project Team for consideration as required.

5.2. **Meetings**

5.2.1. Frequency: Meetings of the sub-groups shall held as and when required – to be arranged by the Project Executive.

5.2.2. Premises: To be arranged by the Project Executive.

5.2.3. Notice for meetings: 1 week or such other period as may be agreed.

5.3. **Members**

5.3.1. The sub-groups will consist of relevant operational officers from each Partner Authority (or nominated representatives) and external advisors if appropriate.

**SCHEDULE 3 – ACCESSION AGREEMENT**

This is Accession Agreement referred to in clause 4 of the MoU.

**ACCESSION AGREEMENT**

1. This Accession Agreement dated [ ] is supplemental to the memorandum of understanding (“**the MoU**”) dated [ ] between (1) WEST SUSSEX COUNTY COUNCIL, (2) [NAME OF PARTNER 1], (3) [NAME OF PARTNER 2], (4) [NAME OF PARTNER 3] and (5) [NAME OF PARTNER 4].
2. Words and expressions defined in the MoU shall have the same meanings when used in this Accession Agreement.
3. [NAME OF NEW ORGANISATION] hereby agrees with each Partner Authority who is or who becomes a party to the MoU, that with effect from the date of this Accession Agreement it is bound by the MoU as a Partner Authority as if it had been party originally to the MoU in that capacity.
4. The address and details for notices of [NAME OF NEW ORGANISATION] for the purposes of the MoU are:  
[ ]
5. This Accession MoU is governed by English law.

Signed for and on behalf of [NAME OF NEW ORGANISATION]

Signature:

Name:

Position:

Date:

**Authorised Signatory**

