

DATED – 30TH APRIL 2019

MEMORANDUM OF UNDERSTANDING
RELATING TO THE BRIGHTON MARINA TO RIVER ADUR
COAST PROTECTION SCHEME

BRIGHTON AND HOVE CITY COUNCIL (1)

ADUR DISTRICT COUNCIL (2)

SHOREHAM PORT AUTHORITY (3)

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PARTIES

- (1) Brighton and Hove City Council of Hove Town Hall, Norton Road, Hove, BN3 3BQ UK ('**BHCC**').
- (2) Adur District Council of the Town Hall, Chapel Road, Worthing, West Sussex, BN11 1HA ('**ADC**').
- (3) Shoreham Port Authority of Nautilus House, 90-100 Albion Street, Brighton, West Sussex, BN42 4ED, United Kingdom ('**SPA**').

1. BACKGROUND

- 1.1 BHCC, ADC and SPA have agreed to work together on the project detailed in Annex A (**Project**).
- 1.2 The parties wish to record the basis on which they will collaborate with each other on the Project. This Memorandum of Understanding (**MoU**) sets out:
 - (a) the key objectives of the Project;
 - (b) the principles of collaboration;
 - (c) the governance structures the parties will put in place; and
 - (d) the respective roles and responsibilities the parties will have during the Project.

2. KEY OBJECTIVES FOR THE PROJECT

- 2.1 The parties shall undertake the Project to achieve the key objectives set out in Annex A to this MoU (**Key Objectives**).
- 2.2 The parties acknowledge that the current position with regard to the Project and the contributions already made (financial and otherwise) are as detailed in Annex A to this MoU.

3. PRINCIPLES OF COLLABORATION

The parties agree to adopt the following principles when carrying out the Project (**Principles**):

- (a) collaborate and co-operate. Establish and adhere to the governance structure set out in this MoU to ensure that activities are delivered and actions taken as required;
- (b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this MoU;
- (c) be open. Communicate openly about major concerns, issues or opportunities relating to the Project;

- (d) 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;
- (e) adopt a positive outlook. Behave in a positive, proactive manner;
- (f) adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation. In particular the parties agree to comply with the requirements of the Information Sharing Protocol attached to this MoU in Annex B;
- (g) act in a timely manner. Recognise the time-critical nature of the Project and respond accordingly to requests for support;
- (h) manage stakeholders effectively;
- (i) deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this MoU; and
- (j) act in good faith to support achievement of the Key Objectives and compliance with these Principles.

4. PROJECT GOVERNANCE

4.1 Overview

The governance structure defined below provides a structure for the development and delivery of the Project.

4.2 Guiding principles

The following guiding principles are agreed. The Project's governance will:

- (a) provide strategic oversight and direction;
- (b) be based on clearly defined roles and responsibilities at organisation, group and, where necessary, individual level;
- (c) align decision-making authority with the criticality of the decisions required;
- (d) be aligned with Project scope and each Project stage (and may therefore require changes over time);
- (e) engage with and influence existing organisational, groups and users;
- (f) provide coherent, timely and efficient decision-making; and
- (g) correspond with the key features of the Project governance arrangements set out in this MoU.

4.3 **Executive Board**

- (a) The **Executive Board** provides overall strategic oversight and direction to the Project, and is the ultimate decision making body. The Board will also provide advice and be expert in the legal and financial issues that affect the project. This group will consist of senior managers from:

Brighton and Hove City Council: Mark Prior – Assistant Director – City Transport

Adur District Council: [INSERT DETAILS]

Shoreham Port Authority: [INSERT DETAILS]

Environment Agency: [INSERT DETAILS]

- (b) The Executive Board shall operate in accordance with the terms of reference set out in Annex C to this Memorandum of Understanding ('MoU').

4.4 **Project board**

- (a) The Project Board will provide strategic management at Project and work stream level. It will provide assurance to the Executive Board that the Key Objectives are being met and that the Project is performing within the boundaries set by the Executive Board.

- (b) The Project Board consists of representatives from each of the parties. The Project Board shall have responsibility for the creation and execution of a project plan and deliverables, and therefore it can draw technical, commercial, legal and communications resources as appropriate into the Project Board. The core Project Board members (or their nominated replacements or substitutes) are:

Brighton and Hove City Council: Martin Eade & Alistair Booton who will attend meetings accompanied by an advisor if required.

Adur District Council: Derek Magee who will attend meetings accompanied by an advisor if required.

Shoreham Port Authority: Tony Parker who will attend meetings accompanied by an advisor if required.

From time to time a representative from the Environment Agency may ask or be asked to attend to discuss or be acquainted with particular aspects of the Project.

The Project Board shall meet as requested by any of the parties or as suggested by the Project Manager.

4.5 Reporting

Project reporting shall be undertaken at three levels:

- (a) **Executive Board:** Minutes and actions will be recorded for Board meeting. Any additional reporting requirement shall be at the discretion of the Executive Board. As project manager BHCC will chair the meetings. The Board will only meet when asked to by the Project Board or by any member of the Executive Board.
- (b) **Project Board:** Reporting shall be on a regular basis as agreed between the parties, generally once per month during the construction period or as requested by the project manager, and as required, agreed or requested by the parties at other time, highlighting : progress this period; issues being managed; any issues requiring a decision by the Executive Board and progress planned next period. As project manager BHCC will chair the meetings
- (c) **Organisational:** the Project Board members shall be responsible for drafting reports into their respective organisations as required by the Executive Board.

5. ROLES AND RESPONSIBILITIES

5.1 The parties shall undertake the following roles and responsibilities to deliver the Project:

5.2

Activity	Brighton and Hove City Council	Adur District Council	Shoreham Port Authority
Overall project management	Lead	Assure	Assure
Secure local approval to the OBC and their financial contribution	Lead	Lead	Lead

Other activities can be added at the discretion of the Project or Executive boards.

5.3 For the purpose of the table above:

Lead: the party that has principal responsibility for undertaking the particular task, and that will be authorised to determine how to undertake the task on a day to day basis. The Lead must act in compliance with the Objectives and Principles at all

times, and consult with the other parties in advance if they are identified as having a role to Assure the relevant activity.

Assure: the party that will defer to the Lead on a particular task, but will have the opportunity to review and provide input to the Lead before they take a final decision on any activity. All assurance must be provided in a timely manner. Any derogations raised must be limited to raising issues that relate to specific needs that have not been adequately addressed by the Lead and/or concerns regarding compliance with the Key Objectives and Principles.

- 5.4 Within 3 months of the date of this MoU the party with the lead role for any aspect of the Project may be required to develop a delivery plan for that part of the Project which shall identify some or all of the following:
- (a) the key milestones for the delivery of the Key Objectives;
 - (b) what employees (other than employees identified in this MoU) will be required to work on the project;
 - (c) whether any staff will need to be seconded from one party to the other;
 - (d) what staff will require access to the premises of the other parties;
 - (e) The aim is to implement phase 1 of the Brighton Marina to River Adur Flood and Coastal Erosion Risk Management Strategy 2014 and as detailed in the 2018 Outline Business Case ('OBC').

Each delivery plan must be approved by the Project Board prior to being implemented.

6. ESCALATION

- 6.1 If any party has any issues, concerns or complaints about the Project, or any matter in this MoU, that party shall notify the other parties and the parties shall then seek to resolve the issue by a process of consultation. 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. If the matter cannot be resolved by the Project Board within fourteen days, the matter may be escalated to the Executive Board for resolution.
- 6.2 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 or requests for information made under the Freedom of Information Act 2000) 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).

7. INTELLECTUAL PROPERTY

7.1 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 jointly by employees of both parties in the party that is lead party noted in clause 5 above for the part of the project that the intellectual property right relates to).

7.2 Where any intellectual property right vests in any of the parties in accordance with the intention set out in clause 7.1 above, that party shall grant an irrevocable licence to the other parties to use that intellectual property for the purposes of the Project

8. TERM AND TERMINATION

8.1 This MoU shall commence on the date of the last party's signature (the start date) and shall expire:-

- (a) when the Final Statement of Account is submitted to the Environment Agency; or
- (b) upon any party giving not less than 3 months' notice in writing to the other Parties to this MOU.

9. VARIATION

This MoU, including the Annexes, may only be varied by written agreement of the Executive Board.

10. CHARGES AND LIABILITIES

10.1 Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU.

10.2 Subject to Member approval and available budget, the parties agree to share the costs and expenses arising in respect of the Project between them in accordance with a Contributions Schedule to be developed by the Project Board and approved by the Executive Board before 1st January 2020.

10.3 The Parties are not jointly and severally liable to each other under this MoU. Each Party shall remain solely responsible for any loss or damage suffered by it and arising under this MoU and neither Party will be responsible to another Party (whether or not in negligence or for breach of an obligation in this MoU) for any loss or damage suffered which arises directly from this MoU.

11. STATUS

11.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU. The parties enter into the MoU

in good faith and shall use reasonable endeavours to progress their individual obligations herein.

- 11.2 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitutes any of the parties as the agent of the other parties, nor authorise any of the parties to make or enter into any commitments for or on behalf of any of the other parties.

12. GOVERNING LAW AND JURISDICTION

This MoU shall be governed by and construed in accordance with English law and, without affecting the escalation procedure set out in clause 6, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

Signed by Mark Prior
 for and on behalf of Brighton and Director
 Hove City Council

Signed by [NAME OF DIRECTOR]
 for and on behalf of Adur District Director
 Council

Signed by [NAME OF DIRECTOR]
 for and on behalf of Shoreham Port Director
 Authority

CONTACT POINTS

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Annex A. The Project

Project overview

This project relates to a coast protection and flood risk management scheme extending from the western breakwater of Brighton Marina to the River Adur.

By agreement of the 3 parties BHCC intends to project manage the coast protection and flood risk management project using its legal powers for the benefit of all three parties to this agreement. ADC and SPA agree that BHCC may prepare and submit the OBC on their behalf.

The parties to this MoU have indicated a willingness to contribute towards the construction costs of the coast protection scheme.

The cost of these works is partly met with grant aid from the Environment Agency but successful delivery is dependent upon sufficient additional funding being secured to enable the works to proceed, final agreement on design details, appointment of a contractor and obtaining various consents, permissions and licences.

The parties have powers to maintain assets to manage coastal erosion. The parties will not enter into any contractual obligation to maintain the assets, but agree to maintain the sections of the works carried out in their areas of responsibility.

Although the coast protection scheme is designed by reference to the aim of achieving a particular standard of protection at the time of construction, BHCC will not enter into a contractual promise that the asset will deliver a particular standard of protection over time. The contribution agreement will refer to the particular design and design height (where applicable) but will not promise a particular standard of protection.

The Key Objectives

- Completion of the OBC by the consultant within the agreed budget and to the agreed programme
- Formal acceptance of the OBC by all 3 parties in committee, cabinet or board.
- Secure all other necessary approvals – planning, CPA notice, MMO, etc.
- Submit draft OBC to the Environment Agency by September 2018 and make any subsequent alterations and amendments based on their recommendations
- Submit the OBC to the Environment Agency’s Large Project Review Group (LPRG) in July 2019 for the Environment Agency’s formal technical approval.
- Discuss and agree the design and construction programme with the 3 parties and the Environment Agency subsequent to LPRG’s formal approval.
- Agree the division of construction costs with the 3 parties and compile the Contributions Schedule

- Subject to Clause 10.2, to agree and sign up to a formal agreement containing the Contributions Schedule, committing the 3 parties to their share of the construction costs.
- Appoint a consultant to undertake the detailed design and tender preparation
- Appoint a contractor to construct the works
- Complete the works on time and on budget and to the required standards and specification

The existing position and contributions already made

The coastline between the western arm of Brighton Marina and the River Adur varies in its standard of defence against flooding and erosion. A strategy covering the next 100 years for improving and sustaining the defences to a 1 in 200 year standard has been approved by all 3 parties and the Environment Agency.

The 3 parties to this MoU will work together to implement phase 1 of the strategy (the first 15 years) as detailed in the OBC, to improve the standard to 1 in 200 and then sustain that standard to end of phase 1.

So far BHCC, with the agreement of the other parties has led the project and will continue to do so.

The cost of the preparation of the strategy was 100% grant aided by the Environment Agency.

The cost of the OBC is being met with financial contributions as follows:

Environment Agency - £98,000

Shoreham Harbour Regeneration Board - £10,000

Shoreham Port Authority - £20,000

Adur District Council - £5,000

Brighton & Hove City Council – staff time in project management, ongoing

Annex B. Information Sharing Protocol

It will be necessary for the parties to share information for the purposes of this MoU and this Information Sharing Protocol is to enable information to be shared between the parties and the Environment Agency.

Information will be disclosed to the parties to this agreement and anyone else they think necessary, including elected members.

Information will be shared between the parties provided this is justified by the merits of this agreement. Any information shared must be proportionate to the purpose.

Annex C. Terms of reference**Executive Board****1.1 Remit:**

- (a) actions of Project Board requiring approval and advice to the project on legal and financial matters.

1.2 Decision-making:

- (a) named individuals.
- (b) voting rights.

1.3 Meetings:

- (a) frequency: as requested by any of the parties or as requested by the Project Manager.
- (b) quorum: Three - one representative for each of the parties.
- (c) premises: To be agreed between the parties.
- (d) notice: reasonable.

Project Board**1.4 Remit:**

- (a) actions of Project Board requiring approval.

1.5 Decision-making:

- (a) named individuals.
- (b) voting rights.

1.6 Meetings:

- (a) frequency: as requested by any of the parties or as requested by the Project Manager.
- (b) quorum: Three - one representative for each of the parties.
- (c) premises: To be agreed between the parties.
- (d) notice: reasonable.

Project Manager

1.7 Remit:

- (a) actions of Project Board requiring approval.

1.8 **Decision-making:**

- (a) named individuals.
- (b) voting rights.

1.9 **Meetings:**

- (a) frequency: as requested by any of the parties or as requested by the Project Manager.
- (b) quorum: Three - one representative for each of the parties.
- (c) premises: To be agreed between the parties.
- (d) notice: reasonable.