

DATED: *14 September 2023*

(1) Environment Agency

and

(2) Bristol City Council

Initial Collaborative Agreement relating to Bristol Avon Flood
Strategy Development - Outline Business Case to Full
Business Case

Project Ref No

Commencement Date: *14 September 2023*

Project Period:

THIS AGREEMENT is made on the

BETWEEN:

(1) **THE ENVIRONMENT AGENCY**, whose principal office is at Horizon House, Deanery Road, Bristol BS1 5AH (“the Agency”) **AND**

(2) **BRISTOL CITY COUNCIL** of City Hall, College Green, Bristol (“the Council”)

together referred to as “the Parties”

WHEREAS:

- A. The Agency has statutory flood risk management functions in respect of main rivers under section 165(1) Water Resources Act 1991 (WRA 1991) and is a risk management authority for the purpose of the Flood and Water Management Act 2010 (FWMA 2010).
- B. The Council is a local authority within the meaning of Section 165(5) WRA 1991, as well as a Coast Protection Authority under the Coast Protection Act 1949, the Harbour Authority for the City Docks and a risk management authority within the meaning of the FWMA 2010.
- C. As outlined in a Memorandum of Agreement dated 16th September 2022, the Parties wish to continue to co-operate in the Project in order to develop and deliver the Bristol Avon Flood Strategy (“the Strategy”) to support the National Flood and Coastal Erosion Risk Management Strategy for England’s vision of a nation ready for and resilient to, flooding and coastal change and benefit citizens in the city of Bristol together with some parts of neighbouring areas of South Gloucestershire, Bath & North East Somerset and North Somerset.
- D. The objectives of the Strategy are:
 - (i) To support safe living, working and travelling in and around central Bristol by ensuring flood threat is reduced and measures address residual risks.
 - (ii) To facilitate the sustainable growth of Bristol and the West of England by supporting opportunities for employment and residential land, and infrastructure.
 - (iii) To maintain natural, historic, visual and built environments within the waterfront corridor and where possible deliver enhanced recreational, heritage and wildlife spaces.
 - (iv) To ensure navigation of river and marine activities continue.
 - (v) To ensure the strategy is technically feasible and deliverable.
 - (vi) To enhance walking and cycling links to enable greater access to opportunity work and housing.

- (vii) To bring existing communities closer together, as well as providing the opportunity to unlock new development land and attract residents, businesses and visitors.
 - (viii) To protect and enhance recreational, heritage and wildlife spaces, to create healthier and more resilient communities, particularly those with higher inequality or limited access to green space and contribute to ambitions for the Avon Corridor as a key green infrastructure resource.
- E. The objectives of the Project are to develop and deliver the Strategy.
- F. The aim of this initial collaborative agreement covering the period of Outline Business Case(s) production to the start of Full Business Case(s) (detailed design) is to:
- (a) agree the financial and non-financial contributions of each Party for this initial period
 - (b) define the roles and responsibilities of the Parties
 - (c) foster mutual trust and co-operation between the Parties
 - (d) agree the review processes to ensure the Project objectives are being met; and
 - (e) agree the process by which any dispute will be settled.
- G. The Parties further anticipate that the initial collaborative agreement may be extended / renewed thereafter on such terms as may appear appropriate at that time. This may include specific project collaboration agreements for delivery of all or part of each build stage, and/or include collaboration on FBCs as required for FDGiA and LPRG assurance.

NOW THE PARTIES AGREE AS FOLLOWS:

1. THE AGREEMENT & DEFINITIONS

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“Agreement”	means this collaborative agreement as further defined in Clause 1.4;
"CEDR"	means the Centre for Effective Dispute Resolution of The International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU;
“City Docks”	means the docks of the Council known as the Floating Harbour and all basins and other works constructed in connection therewith and includes:

(a) the River Avon from the line coloured blue on the signed plan for the Port of Bristol Harbour Revision Order 1993 to Hanham Mills and all other rivers or parts of rivers, harbours, canals, pills and creeks communicating directly with that part of the river and which on 5th December 1972 were or are for the time being within the city; and

(b) the banks of the River Avon from that line to Hanham Mills and the banks of all pills and creeks communicating directly with that part of the river together with a space of 5 yards in width on each of the banks thereof immediately above the level of mean high-water springs;

“Commencement Date” means the date on which this Agreement commences which shall be the date at the head of this Agreement;

“Completion Date” means the date that is 6 months after the date upon which the Council resolves to approve the Outline Business Case for the Strategy, or such later date as may be agreed in writing between the Parties, being the date upon which the rights and obligations of all the Parties in relation to delivering the Project under this Agreement shall be met;

“Contributions” means the Parties’ respective contributions to the Project including the Financial Contributions and the Non-Financial Contributions;

“External Funding” means any funding or assistance provided by any third party (including any state or public body) for the Project, or to any Party for use in the Project;

“Financial Contributions” means the financial contributions to be made by the Parties, as set out in Appendix 2;

“Force Majeure Event” means an event beyond the reasonable control of a Party that renders the performance of the Agreement impossible whether temporarily or otherwise which for the avoidance of doubt may include prohibitive government regulation, flood, lightning or other extreme weather conditions, fire, explosion, malicious damage, industrial actions or lockouts, terrorism, war, civil commotion, military operations, riot, national emergency, the

	act or omission of any third party not being its agent or sub-contractor, any change in the law or in the interpretation of the law by the courts;
"MoA"	means the Memorandum of Agreement between the Parties dated 16 th September 2022;
"Mediator"	means a neutral third party appointed pursuant to Clause 11 to assist in the resolution of disputes;
"Non-Financial Contributions"	means the Parties contributions-in-kind to the Project made without charge and including but not limited to contributions of staff time, resources, facilities, accommodation and equipment together with access to such of its Background Rights as are reasonably required for the Project where the same are contributed to the Project without charge;
"Parties"	means the parties listed to this Agreement;
"Project"	means the Bristol Avon Flood Strategy Outline Business Case(s) as set out in the Specification;
"Project Board"	means the body responsible for overseeing the management and supervision of the Project as set out in Clause 5;
"Project Manager"	means the person who shall be responsible for the day to day management and supervision of the Project as set out in Clause 5;
"Project Period"	means the duration of the Project as set out in Clause 2;
"Representative"	means a Party's representative(s) as further set out in Clause 5 which shall include the Project Manager;
"Specification"	means the Project specification set out at Appendix 1;
"Staff"	means employees, contractors, consultants, students and agents of a Party who are engaged or provided by the Party for the carrying out of its obligations in connection with this Agreement, and each of them; and
"VAT"	means Value Added Tax.

- 1.2 In this Agreement, unless otherwise expressly provided or unless the context otherwise requires:
- (a) reference to any statute, statutory provision or statutory instrument includes that statute, statutory provision or statutory instrument as from time to time amended, extended, consolidated or re-enacted and all statutory instruments or orders made under or pursuant to it;
 - (b) words importing a gender include all genders, words importing the singular include the plural and vice-versa;
 - (c) the words "including" or "includes" or any similar phrases shall be construed without limitation to the generality of the preceding words;
 - (d) reference to any person includes a legal entity; and
 - (e) all undefined words and expressions are to be given their normal English meaning.
- 1.3 The headings in this Agreement are for ease of reference only and shall not affect its construction and reference to any 'Clause', 'Schedule' or 'Appendix' shall be references to clauses, schedules or appendices of this Agreement unless expressly stated to the contrary.

AGREEMENT

- 1.4 This Agreement contains the whole agreement between the Parties in respect of its subject matter and supersedes all previous communications, representations and arrangements, whether written or oral. This Agreement consists of the following documents:
- (a) these terms and conditions;
 - (b) Appendix 1;
 - (c) Appendix 2;
 - (d) any other documentation annexed hereto; and
 - (e) any variations to this agreement made by the Parties in accordance with Clause 20.
- In the case of ambiguity or conflict between any of the documents set out above, the documents will take precedence in the order listed. For the avoidance of doubt, this Agreement is not intended to replace the MoA.

RELATIONSHIP BETWEEN THE PARTIES

- 1.5 The Agency hereby agrees with the Council that the Council will carry out the Project, which is developing the case for work including work on main river which the Agency is empowered to carry out under the Agency's statutory powers.
- 1.6 Nothing in this Agreement shall prejudice, conflict with or affect the exercise by either Party of its statutory functions, powers, rights, duties, responsibilities or obligations arising or imposed

under any legislative provision enactment, bylaw or regulation whatsoever, nor shall it fetter the exercise of any discretion each Party may have.

- 1.7 Except as specifically provided in Clause 1.5 above, nothing in this Agreement shall operate as a statutory licence, waiver, consent or approval from either Party.
- 1.8 The Parties shall be independent contractors for all purposes connected with this Agreement.
- 1.9 Nothing in this Agreement shall create a partnership or joint venture between the Parties, constitute one Party the agent of another, or deem the Staff of one Party to be those of another. No Party shall have any authority to enter into any contract, warranty or representation on behalf of another, nor shall any Party incur liabilities that bind or have the effect of binding another Party and in the absence of express agreement to the contrary no Party shall be bound by the acts or conduct of another.
- 1.10 No Party or its Staff shall represent themselves as having the authority to interpret the policies and procedures of any other Party.

2. DURATION

- 2.1 This Agreement shall commence on the Commencement Date and unless earlier terminated in accordance with this Agreement shall continue until the Completion Date.

3. THE PARTIES' OBLIGATIONS

- 3.1 The Parties agree:
 - (a) the programme for the administration, scope and delivery of the Project as set out in the Specification at Appendix 1; and
 - (b) to make their respective Contributions and carry out their responsibilities in relation to the Project as set out in the Specification and Appendix 2 and otherwise in this Agreement.
- 3.2 The Parties shall each:
 - (a) make their Contributions and fulfil their responsibilities as set out in the Specification and Appendix 2 and otherwise in this Agreement;
 - (b) co-operate and use reasonable endeavours to ensure the success of the Project;
 - (c) act in good faith and in the spirit of co-operation in carrying out the Project;
 - (d) ensure that all communications are constructive, comprehensive and open;
 - (e) provide information reasonably promptly to one another relating to their involvement in the Project including all results and interim results;

- (f) promptly raise and use reasonable endeavours to resolve any issues, difficulties, problems or opportunities that arise; and
 - (g) aim to reach agreement in discussions for the good of the Project rather than for individual advantage.
- 3.3 In carrying out their obligations under this Agreement each Party shall:
- (a) use reasonable care, attention and diligence; and
 - (b) perform their obligations in accordance with this Agreement.
- 3.4 The Parties shall each inform the Project Board promptly of any event that is likely to prejudice or delay the performance or completion of the Project, or of any situation or event that may hinder or prevent that Party from providing its Contributions or any of them. The provision of information under this Clause shall not release or excuse that Party from any of its obligations under this Agreement, except and only insofar as Clause 17 (Force Majeure) may apply.
- 3.5 No Party shall do anything that may damage or prejudice the reputation of another Party or their business or other interests.
- 3.6 Each Party agrees to carry out the Project during the Project Period and shall:
- (a) procure the services of its Staff in carrying out the Project;
 - (b) carry out the Project at the times stated in the Specification or as subsequently varied in writing by the Parties;
 - (c) provide its share of the Contributions; and
 - (d) comply with its obligations hereunder.
- 3.7 The Parties agree to exercise reasonable, care, attention and diligence in carrying out the Project and obligations under this Agreement.
- 3.8 The Parties agree that it shall only employ in the execution and superintendence of the Project persons who are suitable, and appropriately skilled and experienced in the type of work which they are to perform, and with proper guidance and supervision as required to ensure the work is carried out with due care, skill and diligence.
- 3.9 The Parties shall ensure that their Staff and each of them:
- (a) are sufficiently qualified, trained, skilled and experienced in the type of work which they are to perform;
 - (b) exercise reasonable due skill, care, attention and diligence in their work;
 - (c) carry out the Project in accordance with the agreed timescales in the Specification or otherwise or, where none have been agreed, within a reasonable time;

- (d) carry out the reasonable lawful instructions, suggestions or directions given by the Parties' Representatives, subject where appropriate to the consultation with and agreement of the Project Board;
- (e) liaise closely in every aspect of their work;
- (f) carries out the work in accordance with the Specification;
- (g) inform the Parties via its Representatives reasonably promptly of any difficulties, problems or opportunities that arise in their work; and
- (h) provide all reports at the times and in the manner specified in this Agreement or otherwise agreed between the Parties.

3.10 The Council shall deliver to the Project Board a bi-monthly progress report on its activities in the Project during the previous period, which shall include progress made and difficulties encountered with the Project,

4. LEAD PARTNER

4.1 The Council will be the Lead Partner for the Project.

4.2 The Lead Partner shall:

- (a) manage the delivery of the Project as set out in the Specification;
- (b) provide adequate management and support staffing to deliver and administer the Project effectively;
- (c) appoint the Project Manager pursuant to Clause 5.1;
- (d) be responsible for financial management and administrative aspects of the Project; and
- (e) be responsible for safe systems of work and proper risk assessments to safeguard the health safety and wellbeing of all persons working on the Project or present on the Land during work under the Project.

5. WORKING ARRANGEMENTS & KEY PERSONNEL

(A) Project Manager

5.1 The Council shall appoint the Project Manager who shall:

- (a) manage the day-to-day operation of the Project in accordance with this Agreement;
- (b) be the Council's Representative;
- (c) act as the first point of contact with the Council for all purposes in connection with the Project;
- (d) provide effective liaison between the Council, the other Parties and the Project Board;
- (e) ensure that the Project is carried out and operated in a manner consistent with its objectives as described in the Specification;

- (f) report on Project progress to the Project Board bi-monthly and as otherwise necessary or required;
- (g) ensure that safe systems of work and proper risk assessments are employed to safeguard the health safety and wellbeing of all persons working on the Project or present on the Land during work under the Project.

5.2 The first Project Manager shall be the person identified as such in the Specification.

(B) Agency Representatives

5.3 The Agency shall appoint one or more Representatives who shall:

- (a) be responsible for management of the day-to-day operational delivery of the Project by the Agency;
- (b) ensure that Agency contributes to the Project in a manner consistent with the Specification and otherwise in this Agreement;
- (e) provide effective liaison between the Agency, the Lead Partner and the Project Board; and
- (f) represent the Agency on the Project Board.

The first Agency Representatives shall be the person(s) named as such in the Specification.

5.3.1 The Parties shall promptly notify one another of any change in the identity of the Project Manager or Agency Representatives.

5.3.2 Each Party may appoint such deputies for the Project Manager or Representatives as they consider appropriate, such appointments to be notified to all other Parties. Such a deputy shall act in substitution for the Project Manager or Representative in the event that the Project Manager or Representative is unavailable.

5.3.3 A deputy shall have the same powers and authority as the Project Manager or Representative and any act of the deputy will be deemed to be an act of the Project Manager or Representative.

(C) Project Board

5.4.1 The Parties will continue to form a Project Board to oversee the management and delivery of the Project. The role of the Project Board shall include but shall not be limited to:

- (a) monitoring the overall progress of the Project against the objectives set out in this Agreement and the Specification;
- (b) taking a strategic overview of the Project to ensure successful implementation and timely reporting;
- (c) considering and approving correspondence and publications in respect of the Project;
- (d) considering and recommending to the Parties proposals for changes to:

- (i) the timescales for delivery of the Project; and/or
- (ii) the Contributions.

- 5.4.2 Final decisions on any change recommended by the Project Board under Clause 5.4.1(d) must be approved in writing by the Parties in accordance with Clause 23.
- 5.4.3 The Project Manager and Representatives from the Parties and any other persons as listed in the Specification shall be members of the Project Board.
- 5.4.4 In addition to being a member of the Project Board, the Project Manager shall chair the Project Board.
- 5.4.5 The Project Board shall normally meet every 2 months during the Project Period and at such other times as the Parties see fit. Attendance at Project Board meetings may be in person, by telephone or by such other means as the Parties may agree.
- 5.4.6 The quorum of the Project Board for decision making shall be the Project Manager and at least one Agency Representative.
- 5.4.7 Decisions of the Project Board shall be made by unanimous resolution. The Parties shall seek to agree all decisions for the benefit of the Project and not for individual advantage.
- 5.4.8 In addition to its permanent members, the Project Board shall be entitled to invite any contractors or advisors or stakeholders to participate in its meetings, but such persons shall not be entitled to vote on decisions of the meeting.
- 5.4.9 The costs of hosting the Project Board shall be met from the Financial Contributions and the costs of the attendance for a Party's Representative and other members of its Staff shall be borne by the relevant party and shall not be met from the Financial Contributions.
- 5.4.10 The Parties' Representatives will co-operate and communicate as required for the effective day to day management and steering of the Project in between Project Board meetings.

6. PAYMENT & FINANCIAL CONTRIBUTIONS

- 6.1 In consideration for the performance of obligations by the Agency, the Council agrees to pay one pound sterling (£1.00) to legally form this Agreement, and such payment the Agency hereby acknowledges and accepts. This is an initial collaboration agreement and does not specify any amounts of financial contributions in Appendix 2, only the intention to progress the BAFS funding strategy and FIVA monitoring process. Future collaboration agreements for specific build stages, or pieces of discrete delivery, will typically provide a tabulation of monetary figures in Appendix 2.

- 6.2 The Financial Contributions are exclusive of all VAT and all other taxes and duties, and each Party shall bear the cost of all VAT from time to time levied upon its Financial Contributions.
- 6.3 The Council shall be responsible for holding the Financial Contributions contributed to the Project and for the financial management of the Project. It shall put in place appropriate financial management and auditing procedures for the Project, in order to control expenditure and ensure that costs are properly incurred and can be clearly identified.
- 6.4 Payment shall be made in arrears and only on completion of satisfactory progress in the project and compliance with milestones as set out in the Specification.
- 6.5 Financial Contributions and other resources allocated to the Project shall only be expended or committed in accordance with this Agreement unless otherwise agreed in writing by the Parties. In the event of Financial Contributions being expended in breach of this Clause 6.5 the Party expending those funds shall be liable to repay the Council an amount equal to such proportion of the misapplied funds in proportion to the Parties' share of the Financial Contributions due up to that date.
- 6.6 The repayment obligations in Clause 6.5 above shall be subject to the following conditions:
- (a) where specific deliverables and milestones in the Project have been met by the Party with the repayment obligation, the notice of demand shall provide for a reasonable allowance for part performance; and
 - (b) where repayment is in consequence of matters beyond the reasonable control of the Party with the repayment obligations, the obligation shall be to repay such part of the Financial Contributions received in the last instalment paid prior to the repayment demand being made as are representative of the portion of the unexpired part of the Project Period following the date of repayment demand, after any allowance provided for in Clause 6.6(a); or
 - (c) where repayment is in consequence of matters within the reasonable control of the Party with the repayment obligations, the obligation shall be to repay the whole amount of the Financial Contributions received after any allowance provided for in Clause 6.6(a); and
 - (c) other than as stated in this Clause 6.6 there shall be no allowance for part performance unless specifically stated as such in the notice of demand.
- 6.7 The Council shall, whenever reasonably required by the Agency, any of its authorised officers or contractors, or by the National Audit Office, provide to such persons as the Agency may

nominate access to that Party's Staff, premises, records and such other items or persons as may be reasonably required in order for the Agency to fulfil its audit obligations in respect of this Agreement. In the event that any additional costs are reasonably and necessarily incurred by the Council a result of the requirements of this Clause then those costs shall be met by the Agency.

- 6.8 A Party shall have the right to withhold further Financial Contribution payments should the circumstances set out in Clause 6.5 arise regardless of whether that Party serves a notice for repayment of monies under that Clause.
- 6.9 Where applicable, if a Party fails to make any of its Financial Contributions by the due date for payment of them after receiving a correct demand therefor, the invoicing Party may charge interest on any amount outstanding, at a rate equal to the Bank of England Base Rate from time to time in force during the period when the amount remains outstanding.
- 6.10 Each Party shall ensure that it has in place appropriate financial management and auditing procedures and all shall ensure that it complies with all tax requirements faced by it in connection with this Agreement.
- 6.11 The Council shall comply and shall be responsible for ensuring compliance with the terms of the External Funding in relation to the Project.

7. PUBLICATION & PUBLICITY

- 7.1 All external correspondence and publicity relating to the Project must be agreed in advance by the Project Board and neither Party will make any public announcement, disclosure or statement concerning the Project without such prior approval.
- 7.2 Each Party shall, in all documents submitted or published, include in a prominent position an acknowledgement of the other Parties' Contributions to the Project
- 7.3 Nothing in this Agreement in any way limits a Party's rights to prepare independent reports on the Project for internal or statutory use, to meet its legal obligations or for internal communications applicable to the management of its Staff.

8. LIABILITY

- 8.1 Subject always to the provisions of Clause 8.3 below each Party shall indemnify the other Party, and its Staff against:

- (a) all claims, demands, actions, costs, expenses, losses and damage made or notified to the indemnified party and arising from or incurred by reason of the actions or failure to act of the indemnifying Party
 - (b) the acts, errors or omissions of its Staff that are a result of or due to the negligence of the indemnifying Party.
- 8.2 Neither Party seeks to exclude or limit its liability for death or personal injury caused by its negligence, or fraudulent misrepresentation made by it or on its behalf, or such other matters where exclusion of liability is regulated by operation of law
- 8.3 The Council shall be responsible for and shall indemnify and hold harmless the Agency against third party costs claims damages and liabilities which may arise out of any advice given by or on behalf of the Agency as part of the Project, or as a result of any works carried out as part of the Project for the lifetime of the Project and beyond.

9. DEFAULT

9.1 A Party shall be in default if it:

- (a) fails to perform its obligations hereunder with reasonable skill, care, diligence and timeliness; or
- (b) is otherwise in breach of any provision of this Agreement.

9.2 It shall be a material breach of this Agreement if a Party:

- (a) fails to perform and comply fully with its obligations under this Agreement; or
- (b) fails to use reasonable skill, care, diligence and timeliness in performing and complying with its obligations under this Agreement;
- (c) fails to pay any Contribution at the time specified or agreed for payment;
- (d) misuses any Project funds or Contribution;
- (e) commits a series of defaults under Clause 9.1 of this Agreement which taken together amount to a material breach.

9.3 The short temporary non-availability of Staff for reasons outside a Party's reasonable control or the occurrence of a Force Majeure Event shall not constitute events that give rise to a material breach of this Agreement.

9.4 Where, in the reasonable opinion of a Party, the other Party appears to be in material breach of contract, that Party shall where consult the Project Board regarding the appropriate course of action, and thereafter shall be entitled to serve a written notice of default upon the other Party notifying that Party:

- (a) of the material breach of this Agreement;

- (b) whether the breach appears to be capable of remedy or not and, if capable of remedy, specifying how the default may be remedied;
- (c) that if that Party does not take steps to remedy the specified breach within such period as may be specified in the written notice of default (that being a period of not less than 30 (thirty) days) the Agreement may be terminated without further notice.

9.5 if in the opinion of the Agency, the Council does not complete its obligations under this Agreement on time or with the specified degree of care and skill then the Agency shall be entitled to:

- (a) require the Council to rectify the situation at its own cost; or
- (b) arrange completion of the work at its own expense, such costs to be reimbursed by the Council on demand.

10. TERMINATION

10.1 The Parties may terminate this Agreement by mutual consent at any time during the Project Period on such terms as the Parties may agree.

10.2 The Council shall have a right to terminate its participation in this Agreement with immediate effect or if it so elects upon notice if it considers in its sole discretion that to continue all or part of this Agreement does or will conflict with its functions, powers, duties, aims or is otherwise inconsistent with its obligations as a public body.

10.3 The Agency shall have a right to terminate its participation in this Agreement with immediate effect or if it so elects upon notice in the event that it considers in its sole discretion that to continue all or part of this Agreement does or will conflict with the Agency's functions, powers, duties, aims or is otherwise inconsistent with its obligations as a public body.

10.4 No Party shall be entitled to assign or transfer any part of its benefits under this Agreement to a third party, save for the purposes of reorganisation or transfer to a successor body, without the prior written consent of all Parties

10.5 Termination of this Agreement shall not prejudice the rights of any Party which arise on or before the date of termination.

10.6 Without prejudice to the generality of this Agreement, where the terms of Clause 17 apply, the occurrence of a Force Majeure Event, whilst not a material breach of contract, may give rise to termination of this Agreement where the circumstances envisaged by Clauses 17.3 or 17.4 apply.

10.7 Without prejudice to the generality of Clause 10.5 any outstanding reasonable costs and commitments reasonably and necessarily incurred in connection with the Project and not paid at the date of termination will be allocated between the Parties in proportion to their Contributions to the Project,

11. DISPUTE RESOLUTION

11.1 During the Project Period the Parties shall attempt to resolve all disputes and differences between themselves and if they are unable to do so such matters, it shall first be referred to the Project Board.

11.2 If the Project Board is unable to resolve the dispute or difference to the satisfaction of the Parties in dispute within two weeks, the Parties in dispute shall attempt to resolve the issue by negotiation between their Representatives or such other persons as those Parties may reasonably designate for resolving disputes. If the dispute or difference is not so resolved within a reasonable period, the Representatives shall refer the matter to their respective senior managers for resolution.

11.3 If any dispute arises after the Project Period, the Parties in dispute shall attempt to resolve it via their Representatives or such other persons as those Parties may reasonably designate for resolving disputes in such circumstances. If the Representatives or other persons are unable to resolve the dispute within a reasonable period, the matter shall be referred to their respective senior managers for resolution.

11.4 If the matter referred to the Parties' senior managers pursuant to Clause 11.2 or 11.3 cannot be resolved, the Parties in dispute shall consider referring the matter to mediation in accordance with Clause 11.5. If those Parties acting in good faith do not consider that mediation is an appropriate method of dispute resolution, they shall consider such other methods of alternative dispute resolution as they reasonably consider to be appropriate in the circumstances and shall seek to resolve the matter using such methods as they may agree.

11.5 In the event that the Parties in dispute decide that mediation is appropriate, they will use the following procedure:

- (a) The Mediator shall be chosen by agreement between the Parties, provided that any Party may within 14 (fourteen) calendar days from the date of the proposal to appoint a mediator, or within 14 (fourteen) calendar days of notice to any Party that the chosen mediator is unable or unwilling to act, apply to CEDR to appoint a mediator;

- (b) The Parties to the dispute shall within 14 (fourteen) calendar days of the appointment of the Mediator agree a timetable for the mediation. If appropriate, the relevant Parties may at any stage seek guidance from CEDR on a suitable procedure;
 - (c) Unless otherwise agreed, all negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the Parties in any future proceedings;
 - (d) Where the Parties agree that mediation is appropriate, the dispute resolution procedure in this Clause 11 shall be binding on the Parties but the Parties shall not be bound by the outcome of the mediation unless and until the Parties agree to be so bound and set out the agreed resolution in a written agreement;
 - (e) Failing agreement, any Party to the dispute may invite the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the dispute without the prior written consent of the relevant Parties. The Party requesting the opinion shall bear the costs incurred in obtaining that opinion unless the Parties agree otherwise;
 - (f) For a period of 60 (sixty) calendar days from the date of the appointment of the Mediator, or such other period as the Parties to the dispute may agree, none of those Parties may commence any proceedings in relation to the matters referred to the Mediator save that those Parties shall be free to apply to the courts for interlocutory relief at any time.
- 11.6 For the avoidance of doubt, recourse to the means of alternative dispute resolution provided for in this Clause 11 shall not preclude the exercise of the rights under Clauses 9 (Default) and 10 (Termination) including the service of notices and termination provisions.

12. NOTICES

- 12.1 All notices given under this Agreement shall be in writing and will be sent to the address of the Party being served as set out in the Specification or any other address a Party may from time to time designate by notice given in accordance with this Clause 12.
- 12.2 Notices may be delivered personally, by first class pre-paid letter or fax transmission.
- 12.3 Any notice served in accordance with Clauses 12.1 and 12.2 above will be deemed to have been served:
- (a) at the time of delivery when served in person; or
 - (b) 2 (two) working days from the date of posting when served by first class post;
- 12.4 In proving service, it shall be sufficient to show that:
- (a) when delivery is in person, the notice was delivered to the appropriate address; or

- (b) when service is by post, the notice was submitted to an appropriate carrier for delivery, was properly addressed and all postage was fully paid;

13. STATUTORY OBLIGATIONS & PERMISSIONS

- 13.1 The Parties shall each at their own expense comply, and procure that their Staff comply, with all laws and regulations applicable to the Project and their involvement in it including all health and safety legislation, Data Protection Legislation, the Equality Act 2010, Bribery Act 2010 and the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. The Parties also agree to provide such mutual assistance as may be required in carrying out these obligations.
- 13.2 Each Party shall be responsible for securing and maintaining such permissions, licences, consents or approvals as it needs in connection with the Project.

14. ENVIRONMENT & SUSTAINABILITY

- 14.1 The Parties shall ensure that sustainable development, which includes environmental, social and economic factors, is taken into account during all stages of the Project and this Agreement and in any relevant contracts entered into with third parties.
- 14.2 Unless there is a specific requirement otherwise, the Parties shall require that all reports in connection with this Agreement be made in electronic format. Where paper copies of reports or other hard copy communications are required and where there are written announcements or publications required, they will be printed on minimum 80% post-consumer waste recycled paper and where possible will be printed double-sided.

15. HEALTH & SAFETY

- 15.1 Where Staff of one Party are working under the direction of another Party, that Party shall make those Staff aware of its health and safety and security requirements and those Staff shall comply with all instructions and requirements of that other Party relating thereto
- 15.2 Each Party reserves the right to refuse access to their premises to any person at any time or to require such person to leave its premises, without being required to give any reason for its decision and without incurring any liability for any loss that may be suffered as a result of that refusal. Such reasons may include where it has reasonable grounds to believe that person is a risk to the health and safety of others on those premises.
- 15.3 The following provisions apply where any construction project is carried out under this Agreement:

- a) The Council shall be treated for the purposes of the CDM Regulations as the only client in relation to the project;
- b) The Council shall perform its client duties in accordance with the CDM Regulations;
- c) The Council shall ensure that it has available to it from the Commencement Date the resources and expertise necessary to perform its client duties;
- d) in performing its client duties, the Council shall have regard to the Health and Safety Executive's guidance document L153 *Managing Health and Safety in Construction* (including any amendment or replacement from time to time);
- e) this Clause 15.3 does not affect the application to any Party other than the Council of the duties specified in regulation 4(8)(c) of the CDM Regulations (pre-construction information and ongoing co-operation); and
- f) in this Clause 15.3:
 - 'the CDM Regulations' means the Construction (Design and Management) Regulations 2015;
 - 'client' has the same meaning as in the CDM Regulations;
 - 'client duties' means duties under the CDM Regulations as client for the project including in respect of the appointment of a principal designer and principal contractor under regulation 8(3);
 - 'construction project' has the meaning given to 'project' in the CDM Regulations.

16. ASSIGNMENT & SUB-CONTRACTING

- 16.1 No Party shall be entitled to sub-contract, assign or otherwise transfer the whole or any part of its obligations under this Agreement (except in the case of assignment or transfer where for the purposes of solvent reorganisation or transfer to a successor body or by operation of law) without the prior written consent of all Parties. As the nature of the relationship between the Parties is to be a close collaborative relationship, it shall be reasonable in any case to refuse to consent to assignment or transfer.
- 16.2 No assignment, transfer or sub-contracting by a Party shall relieve it of any of its obligations or duties under this Agreement and that Party shall remain fully liable as though the matter assigned, transferred or sub-contracted matters were carried out by itself.
- 16.3 The terms of any sub-contract entered into by a Party in connection with this Agreement shall be consistent with and shall ensure compliance with this Agreement, including all auditing and financial requirements.

16.4 Any Party sub-contracting work under this Agreement shall ensure that it and any contractor to whom that work is sub-contracted has appropriate financial and auditing procedures in place to manage its commitments to the Project and that Party shall ensure that both it and its sub-contractor have complied with all relevant tax requirements relevant to the Agreement and their involvement with it.

16.5 The Council will be the contracting party and responsible person in respect of any contracts entered into with third parties, including any persons employed for the purpose of delivering the Project and who are not existing members of the Council's Staff.

17. FORCE MAJEURE

17.1 If the performance by any Party of any of its obligations under this Agreement is prevented or delayed by a Force Majeure Event then that Party shall be excused from performance of that obligation for the duration of the Force Majeure Event.

17.2 If a Party becomes aware of a Force Majeure Event that is or is likely to give rise to a failure or delay on its part, then that Party shall notify the Project Board members as soon as reasonably practicable giving a description of the Force Majeure Event and, where possible, an estimate of its likely duration.

17.3 If the Force Majeure Event in question continues or is likely to continue for a continuous period in excess of 30 (thirty) calendar days the Parties shall enter into discussions with regard to alternative arrangements in respect of this Agreement which may include but are not limited to termination of it pursuant to Clause 10.

17.4 Where a Force Majeure Event has extended or is reasonably anticipated to extend for a period of more than 60 (sixty) calendar days or for periods in aggregate of more than 60 (sixty) calendar days in any 12 (twelve) month period then this Agreement may be terminated by any Party with immediate effect.

17.5 The Parties agree that the Government's decision to implement a national lockdown in response to the outbreak of Covid19 virus in the United Kingdom constitutes a Force Majeure Event. The Parties nevertheless undertake to continue to work together to ensure the delivery of the Project, making such variations to the Project timetable as the Parties deem reasonably necessary.

18. THIRD PARTIES

18.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its

provisions. This does not affect any right or remedy of any such party which exists or is available apart from that Act.

18.2 A Party shall forthwith notify the Project Board of any third parties involved in the Project

19. CONFLICT

19.1 The Parties shall not (whether directly or indirectly) cause or permit their Staff to undertake work which would be in conflict with work under this Agreement, where such conflict would have a direct and adverse impact on the Party's ability to comply with its obligations under this Agreement or would otherwise impede or interfere with the Party's proper performance of this Agreement.

19.2 A Party shall forthwith notify the Project Board of actual or potential conflict of interest of which it becomes aware.

20. VARIATIONS

No change or variation to this Agreement will be effective unless and until it is agreed in writing, signed by the Parties and annexed to this Agreement.

21. WAIVER

No failure or delay or grant of indulgence by a Party to exercise or enforce any right, power or remedy available to it, will operate or be construed as a waiver of such right, power or remedy under this Agreement or otherwise, nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.

22. SEVERABILITY

If any court or other competent authority finds that any part or provision of this Agreement is void, unlawful or unenforceable then that part or provision will be deemed to have been severed from this Agreement and shall have no force and effect. The remaining provisions of this Agreement will continue to be valid and enforceable to the fullest extent permitted by law, and the Parties shall negotiate in good faith to agree the terms of a mutually acceptable and satisfactory alternative part or provision in that, as amended, it is valid and lawful and enforceable.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which constitute a duplicate original, but all such counterparts shall together constitute one and the same agreement.

24. GOVERNING LAW & JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of England and subject to the agreed provisions in respect of alternative dispute resolution the Parties agree to submit to the exclusive jurisdiction of the courts of England regarding any claim or matter arising under this Agreement.

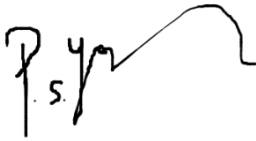
25. SURVIVAL

25.1 The provisions of Clauses 1 (Definitions), 6.4, (Payment & Financial Contributions), 7 (Publication & Publicity), 8 (Liability), 10.5, and 10.7 (Termination), 11 (Dispute Resolution), 16.2 (Assignment & Sub-Contracting), 18 (Third Parties), 21 (Waiver), 22 (Severability), 24 (Governing Law & Jurisdiction), and 25 (Survival) shall survive termination of this Agreement.

THIS AGREEMENT WAS SIGNED the day of and year first above written:

SIGNED for and on behalf of the **Environment Agency** in the presence of:

SIGNED for and on behalf of **The Council** in the presence of:



.....
Authorised Signatory – Signature

.....
Authorised Signatory – Signature

Name: PENELOPE YORATH

Name: JOHN SMITH

Position: SENIOR LAWYER (TEAM LEADER)

Position: INTERIM EXEC DIRECTOR FOR GROWTH AND REGENERATION

APPENDIX 1 – OVERVIEW

Narrative

- A1.1 The Parties' aim is to deliver the Strategy as a long-term adaptive approach to better protect people and property from the increasing risk of flooding from the River Avon at the earliest opportunity and enhance the river corridor for all. The Strategy anticipates creating new flood defences and/or raising the level of existing flood defences in phases along sections of the River Avon.
- A1.2 The Strategy will respond to the flood risk management requirements of the National Planning Policy Framework by seeking to deliver a 1 in 200-year (0.5% Annual Exceedance Probability) standard of protection, whilst ensuring no adverse impact elsewhere. It envisages two main tranches of delivery – Phase 1 in the 2020s to improve defences along the Avon from upstream as far as Swineford, through Bristol city centre and as far downstream as Shirehampton and Pill, and then Phase 2 at a later date (estimated 2060s) to raise the height of those defences as required.
- A1.3 The Strategic Outline Business Case (SOC) was approved by the EA's Large Projects Review Group and published for public consultation in 2020. A supporting Strategic Environmental Assessment (SEA) was completed in Autumn 2020.
- A1.4 It is envisaged that the Strategy will be delivered through at least two build stages, each with its own Outline Business Case (OBC) to secure Flood Defence Grant in Aid (FDGiA). The first OBC is expected to be completed in 2023. Each OBC will be followed by detailed design, surveys, investigations, public engagement / consultation within the Full Business Case (FBC) stage. Approval of the FBCs by BCC and EA will be required before the start of construction.
- A1.5 BCC is leading the development and delivery of the Strategy in recognition of the potential impact and opportunity for the city. With the EA's support, BCC is best placed to deliver the full range of benefits for the city, manage the complex interfaces and access the range of funding required. Furthermore, the Strategy will interface with BCC's harbour, highway, planning, lead local flooding, coastal protection, civil protection and major landowner roles.
- A1.6 BCC's ambition is for infrastructure that works for Bristol year-round, not just when the river floods. By designing defences that improve public spaces, the Strategy will provide new green spaces, better access to the river, enhanced heritage features, and improved transport connections. Thus the Strategy will better protect Bristol and create a more active, sustainable and resilient city.

Governance

- A1.7 The Memorandum of Agreement (MoA) sets out the parties' commitment to work together collaboratively to develop and deliver the Bristol Avon Flood Strategy. Although the MoA is not legally binding on the parties, endorsement by the BCC and the EA at senior level demonstrates a clear statement of intent and commitment. The MoA sets out the agreed basis upon which the Strategy will continue to be developed and implemented, including the key strategic goals, roles and responsibilities, the steps required to achieve delivery of the Strategy and the appropriate governance arrangements.

A1.8 Under the framework of the MoA, the parties intend to enter into collaborative agreements to settle detailed arrangements for each stage of the development of the Strategy, for FDGiA and LPRG assurance and for delivery of each build stage of the Strategy. These collaborative agreements will contain legally binding obligations and will set out the financial and non-financial contributions of each party, the roles and responsibilities of each party, the review processes to ensure that project objectives are met and an appropriate process by which any dispute will be settled.

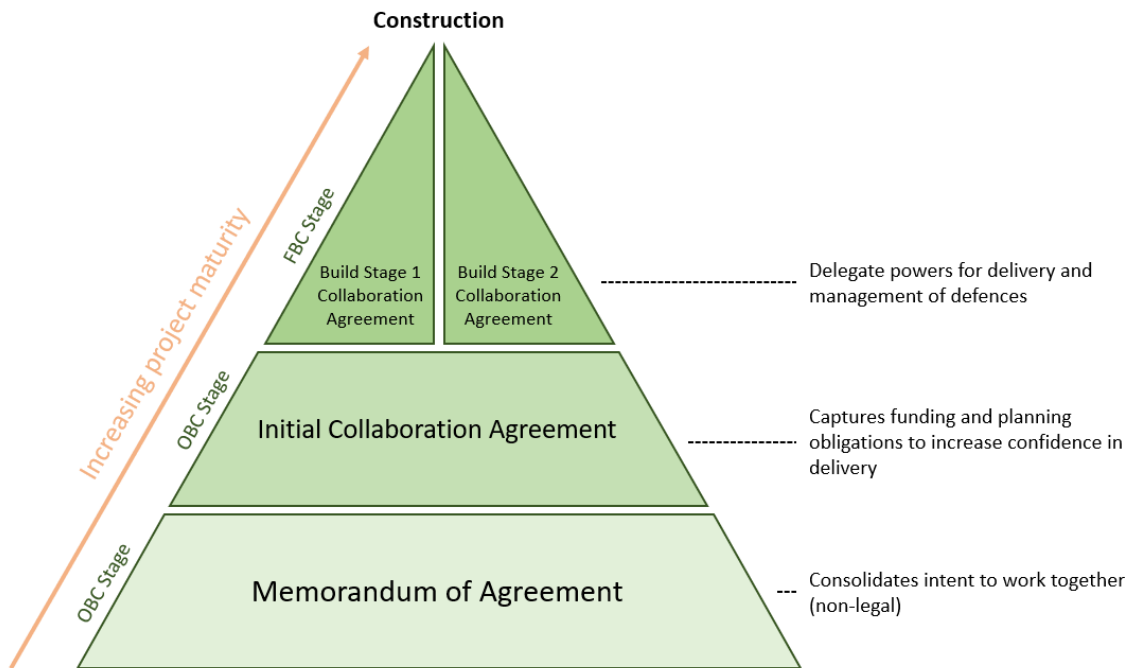


Figure 1 – Intended relationship between Agreements

A1.9 The parties agree to use their best endeavours to ensure that all collaborative agreements are in conformity with the MoA and that the obligations and stipulations in a collaborative agreement do not derogate from the MoA.

Project Interface Management

A1.10 The Strategy will interface with other ongoing projects, including BCC’s Bristol Temple Quarter and Western Harbour strategic growth and regeneration areas, BCC’s Harbour Operational Review project and the EA’s Pill Flood Scheme.

A1.11 BCC management of the project will include the production and maintenance of an Interface Management Plan, with EA support. BCC and EA will endeavour to identify opportunities and risks. Issues will be escalated within the above project governance structures.

A1.12 The Parties will work together to identify and agree priorities between interfacing projects.

Phase 2

A1.13 BCC, in collaboration with the EA, will review and update phase 2 of the BAFS to check that it will continue to protect Bristol from flooding to the required standard, meet the objectives of the BAFS and is still the right solution for Bristol. BCC will continue to lead on monitoring the adaptive strategy, identify and collect funding as necessary to deliver Phase 2, and start planning for Phase 2 delivery sufficiently early (in advance of the

expected rise in flood levels). The BAFS will be updated every 6 years (or other interval jointly agreed in advance between the parties), following completion of the phase 1 defences, until the completion of the phase 2 defences. This will include updating the MOA or legal agreement as appropriate. The funding strategy and FIVA, planning instruments and phasing and delivery plan will also be updated as set out in the next sections.

- A1.14 BCC will assess the residual flood risk to the city from overtopping of the phase 1 defences, with the expected flood level in 100 years (but before Phase 2 is delivered). This is to demonstrate the benefit of building Phase 2 of the BAFS and the residual flood risk for new development in the meantime. This information will be updated at each review, whenever the Strategic Flood Risk Assessment (SFRA) is updated or when there is a significant change to the climate change projections.

APPENDIX 2 – FUNDING

Definition of ambition

- A2.1 The parties acknowledge the value of clear statements of intent to commit funding and/or identify financing. The parties recognise that in order to have full confidence in the funding strategy it will be necessary to have identified and secured the majority of the required funding and also for there to be a good prospect that the remainder of the required funding can be found and secured.
- A2.2 For any Outline Business Case(s) assurance the parties' will have identified all indicative funding/financing required for delivery of the works justified by the OBC (with allowance for whole-life cost, contingency, risk and inflation), and have secured funding for Full Business Case production and assurance for those works.
- A2.3 At any Full Business Case assurance, the parties' will have demonstrate that all funding/financing required for delivery of the works justified by the FBC (with allowance for whole-life cost, contingency, risk and inflation) is secured.

Responsibilities and support for delivering funding

- A2.4 Nothing in this initial agreement commits either party to fund or underwrite the cost of delivery of the Strategy.
- A2.5 BCC will continue to lead on developing a funding strategy, supported by the EA. The funding strategy will contain details of a range of potential funding and financing mechanisms needed for delivery of the Strategy.
- A2.6 The Environment Agency will proactively support BCC's work to deliver successful Business Case(s) for Flood Defence Grant in Aid towards the Strategy, and allocate enabling funding towards their production. The EA will administer any eligible FDGiA and/or Local Levy allocations for the Strategy. The Environment Agency will provide advice to BCC on maximising the allocation of Flood Defence Grant in Aid, Local Levy and wider Defra funding streams.
- A2.7 BCC will lead work to engage and secure commitments from other prospective partners (including WECA) to support delivery of the Strategy. BCC will proactively pursue other suitable partnership funding and financing opportunities, with support from the Environment Agency.
- A2.8 The Environment Agency will also assist BCC in efforts to access non-Defra government funding streams and highlight any other funding opportunities that could arise. The Environment Agency will share best practice, case studies, and general FCERM benefits/cost-avoided information.

Monitoring delivery

- A2.9 BCC will monitor the funding strategy document with a supplementary Funding and Investment Viability Assessment (FIVA), where the progress on each funding source is reviewed and re-evaluated by the parties. BCC will lead on the FIVA, supported proactively by the Environment Agency.
- A2.10 FIVAs will be a live monitoring tool to assist the process of progress tracking, but not a formally issued document due to the sensitive information contained. They will normally

take place annually, or when a significant funding element is secured (whichever is the sooner). The aim will be to provide a concise technical note/dashboard (the precise format is to be agreed between the parties) showing:

- the status, timing and amount of each funding/finance source,
- how likely it is that each will deliver the required amount,
- if there are any constraints, dependencies or timescales attached, and
- which organisation is delivering the funding stream.

A2.11 Although not limited to such, the FIVA will specifically indicate and explain how each of the funding streams is progressing and will be used to support the delivery of the Strategy and aligned with the latest Phasing Plan.

A2.12 The FIVA should also identify if there are any new sources of funding or finance that have become available since the last update, or could likely become available in the future, and how these might be approached to help close any remaining funding shortfall.

A2.13 BCC will summarise funding strategy progress when formal key decisions are published at periodic delivery milestones of the Strategy.

Phase 2:

A2.14 BCC, in collaboration with the EA, will update the Funding Strategy and FIVA for Phase 2 of the BAFS every 6 years (or other interval jointly agreed in advance between the parties) following the completion of the phase 1 defences until the completion of the phase 2 defences, to ensure that BCC continue to identify and collect the funding required to enable delivery of the phase 2 defences sufficiently in advance of the need.

Practicalities

A2.15 BCC will convene and chair a Funding Strategy Working Group. Environment Agency will support the group. Appropriate representatives of the parties will attend up to monthly working group meetings at no cost to the project.

A2.16 The Parties will work together during the Business Cases to give appropriate consideration to the best-placed organisation to own, operate and maintain of each asset delivered or enhanced as part of the Strategy.

APPENDIX 3 – PLANNING POLICY

The Role of Planning Policy

- A3.1 The Parties recognise that the Strategy needs to be supported by policies in the Development Plan and guidance in Spatial Framework documents. This will be important at a strategic level to provide a steer for development and to safeguard land needed for strategic flood defences. It will also be important that policies support delivery of the strategic defences while resisting development which would not make an appropriate contribution to delivery of the Strategy.
- A3.2 As confidence in the delivery of the Strategy increases, the Strategy is expected to gain increasing weight as a material planning consideration in planning decisions.
- A3.3 With a view to building confidence in delivery of the Strategy, BCC commits to take the following interim measures:
- (a) Develop a Bristol Avon Flood Strategy Planning Position Statement, working collaboratively with the EA. This will be supported by BCC's updated Strategic Flood Risk Assessment that will set out the existing situation and also outline the implications/benefits of the Strategy using best available information, developed in consultation with the EA.
 - (b) Embed the strategic objectives set out in the Strategy in emerging Growth and Regeneration masterplans, and ensure their alignment with the delivery of the Strategy in consultation with the EA.
 - (c) Use BCC's wider controls and democratic decision-making to resist development incompatible with the Strategy, including development which:
 - i. Fails to provide on-site strategic defences where these are required as indicated by the Strategy
 - ii. Proposes development which would impede or prevent the construction of strategic defences as indicated by the Strategy
 - iii. Would cause unacceptable increase in flood risk off-site
 - iv. Would otherwise be prejudicial to the implementation of the Strategy
 - v. Where residual flood risk is not adequately mitigated
 - vi. Where a site-specific Flood Risk Assessment (FRA) fails to demonstrate the safety of the development for its lifetime, taking into account the predicted impacts of climate change
 - (d) Support a monthly coworking surgery with BCC (Local Planning Authority and Lead Local Flood Authority) and EA resources to enable, when necessary, proactive discussion of issues arising from development proposals and to explore opportunities and the implementation of the Strategy.
 - (e) Support joint training (as required) of EA and BCC officers, councillors and developers on the Bristol Avon Flood Strategy and how to make development safe from flooding.
- A3.4 The EA commits to:
- (a) Use the latest available information being developed in partnership for the Strategy when considering planning applications, in recognition of the dynamic nature of the emerging proposals.
 - (b) Support a monthly coworking surgery with BCC (Local Planning Authority and Lead Local Flood Authority) and EA resources to enable, when necessary, proactive

discussion of issues arising from development proposals and to explore opportunities and the implementation of the Strategy.

- (c) Support joint training (as required) of EA and BCC officers, councillors and developers on the Bristol Avon Flood Strategy and how to make development safe from flooding.

A3.5 The Parties agree that there is a pressing need for planning policy support for delivery of the Strategy, as soon as reasonably practicable and that the strategic objectives set out in the Strategy should be embedded into the policies of the Local Plan and associated development plan documents as soon as reasonably practicable.

A3.6 It is also agreed that there is a need for clear planning policy support to resist development incompatible with the Strategy.

A3.7 It will be important for the planning system to deliver appropriate developer contributions to the Strategy. The Community Infrastructure Levy provides the most appropriate current mechanism for securing such contributions. If the current law and mechanisms relating to infrastructure funding through the planning process is amended or reformed (such as the Government's proposed Infrastructure Levy as set out in the Levelling Up and Regeneration Bill, 2022) it will be essential to ensure that a funding avenue for developer contributions to the delivery of the Strategy is identified in any new arrangements.

Separation of Roles

A3.8 BCC and the Agency are both public bodies with a range of statutory functions, responsibilities and powers. Neither party can agree to fetter its discretion unlawfully or predetermine whether statutory or other consents should be issued. The parties therefore declare and confirm that nothing in this commitment to collaborative working shall:

- (d) have any bearing on the exercise by BCC of its statutory functions, powers, rights, duties, responsibilities or obligations arising or imposed under any legislative provision, enactment, bylaw or regulation whatsoever, nor shall it fetter the exercise of any discretion BCC may have in any matter.
- (e) have any bearing on the exercise by the Agency of its statutory functions, powers, rights, duties, responsibilities or obligations arising or imposed under the Environment Act 1995 or any other legislative provision, enactment, bylaw or regulation whatsoever, nor shall it fetter the exercise of any discretion the Agency may have in any matter.
- (f) create a partnership or joint venture between BCC and the Agency, constitute BCC or the Agency the agent of the other party.

A3.9 Further, save as may be expressly agreed between the parties from time to time, neither party shall:

- (a) exercise the functions or responsibilities of the other party
- (b) have any authority to enter into any contract, warranty or representation on behalf of the other party
- (c) incur liabilities that may bind or have the effect of binding the other party.
- (d) be bound by the acts or conduct of the other party.

Planning and the Environment

A3.10 Environmental impact assessment will ascertain the scale of potential impacts to habitats and areas of loss, and to inform any requirements for compensatory habitat, biodiversity net gain and consenting.

A3.11 The Parties agree to work together to ensure that the relevant environmental, social and economic factors are properly taken into account in the delivery of the Strategy, with a view to the importance of delivering sustainable development and environmental net gain in line with the ambitions of the UK Government's 25 Year Environment Plan.

Phase 2

A3.12 BCC, in consultation with the EA, will continue to update the local plan and other suitable planning instruments every 6 years (or other interval jointly agreed in advance between the parties) following the completion of the phase 1 defences, until the phase 2 defences are completed. This is to ensure that the BAFS will protect new development for its lifetime in accordance with national planning policy, that new development is delivered in line with the BAFS and the Local Planning Authority and Lead Local Flood Authority continue to plan for the phase 2 defences and gather funds sufficiently in advance of the need.

APPENDIX 4 – PHASING

- A4.1 The Phasing and Delivery Plan will set out the proposed tranches of construction work, the costs and funding requirement for each tranche, together with an outline programme for detailed design, OBC and FBC approval and all other matters relevant to implementation.
- A4.2 Its purpose is to ensure each phase contributes to the overall delivery of the Strategy and can be used as a reference point through delivery. It will ensure that funding is distributed in a way that allows delivery of the whole Strategy, that delivery constraints are managed and that the timescales and delivery goals align with the Local Plan, development master plans and other projects. It will be a live plan that evolves as circumstances change and the Strategy matures.
- A4.3 The Phasing and Delivery Plan will be produced and submitted to the EA's Large Project Review Group with each Outline Business Case and updated and submitted with each Full Business Case. It should also be updated and shared at the time of publication of the Local Plan update or Strategic Flood Risk Assessment (SFRA).
- A4.4 It will be used to show how the Bristol Avon Flood Strategy fits together as a whole strategy and will be referenced when reviewing each business case as well as for assessing new development in line with the Local Plan and SFRA. It will contribute towards building confidence that the BAFS will be delivered successfully.
- A4.5 Each build stage will have an allocation of various funding streams and their relevant benefits and a plan for how it will be delivered.
- A4.6 The Phasing and Delivery Plan should identify the following information:
- The overall cost of the strategy and the cost of each build stage;
 - The overall allocations and how much FDGiA and other funding sources will be allocated to each build stage;
 - The allocation of EA Outcome Measures for each build stage;
 - The remaining gap in funding for each build stage;
 - Whether there are any particular funding constraints or mechanisms for obtaining funding for each stage;
 - The programme for each business case submission and construction timescales of each build stage;
 - The timescales for updates to the Local Plan, SFRA and development masterplans and how this aligns with the overall phasing and delivery arrangements;
 - How it is anticipated that each build stage will be delivered and who will be responsible for the delivery of each build stage/phase;
 - Information on land ownership and other constraints and interfaces that could impact on delivery;
 - Any interdependencies between build stages.
 - Intention for future maintenance of defences.

Phase 2

- A4.7 The Phasing and Delivery Plan should include all phases and build stages, with estimates for later build stages and phases and up to date calculations for the first build stages and phases. The remaining stages can be updated when information becomes available, but there should be a plan for phase 2.
- A4.8 BCC, in collaboration with the EA, will continue to be review and update the Phasing and Delivery Plan every 6 years (or other interval jointly agreed in advance between the parties) following the completion of the phase 1 defences until the phase 2 defences are completed, to ensure that BCC continue to monitor the adaptive strategy and plan for the delivery of the phase 2 defences sufficiently in advance of the need.
- A4.9 The Phase 1 defences will be built to allow for the future raising of the defence to the Phase 2 level and industry guidance relating to residual uncertainty (freeboard).

Richard Ennis
Interim Chief Executive
West of England Combined Authority
70 Redcliff Street
Bristol BS1 6AL
E: richard.ennis@westofengland-ca.gov.uk

Stephen Peacock
Chief Executive Officer
Bristol City Council

Date: 29 January 2024

Dear Stephen,

LETTER OF SUPPORT FOR THE BRISTOL AVON FLOOD STRATEGY

I am writing to you to express the West of England Mayoral Combined Authority's (MCA) support for, and to recognise the regional importance of, the Bristol Avon Flood Strategy (BAFS) for the ongoing economic success of the region.

The BAFS sets out a long-term plan to better protect homes and businesses in Bristol and neighbouring communities from River Avon flooding. This is of critical importance for Bristol, but also for the wider region's growth and prosperity.

We support the delivery of the strategy and the ambition to use the flood defence works as a catalyst for growth and regeneration, including strategic projects such as Bristol Temple Quarter and Western Harbour. A co-ordinated approach to flood risk management is needed to safely unlock these strategic sites, delivering crucial new homes, employment opportunities, and future-proofed infrastructure for the region.

The BAFS is the largest flood risk management project in the region, with the potential to deliver many co-benefits for society, alongside vital life-saving flood protection for at risk communities. Both Mayors Rees and Norris are rightly focused on meeting the challenge of the climate emergency. With new or raised defences proposed along the River Avon corridor, we encourage a high priority is placed on improving public amenity through active travel (cycling & walking), delivery of biodiversity net gain, enhancement of nature and public realm, and the

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The West of England Combined Authority covers Bath & North East Somerset, Bristol, and South Gloucestershire. The Combined Authority also supports the Local Enterprise Partnership and the Joint Committee, which includes North Somerset.

protection of cultural heritage.

Funding

We recognise the significant scale of funding required for this critical project and the important progress made by the Bristol City Council team in closing the funding gap. Importantly £10m has already been set aside within the Regional Economic Development Fund. The drawdown of this expenditure will require a Joint Committee decision. We will continue to support the Bristol Avon Flood Strategy Board and Funding subgroup to help ensure that sufficient funding is secured.

In addition, we will continue to support the emerging approach through the funding strategy work, specifically to leverage contributions from the private sector, which we see as critical to the project's success. Clearly any additional funding required from the Combined Authority will need to be agreed at the MCA Committee.

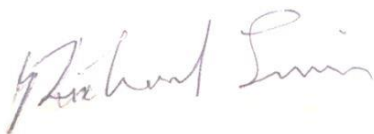
Ongoing support

Mindful of the recent lessons we have learnt from progressing major projects such as Bristol Temple Quarter, we will engage partners at an early stage. We will work with the Metro Mayor and Unitary Authority leaders from across the region to use the Combined Authority's voice to raise the profile of the project with the UK Government, identifying the positions between the need for new sustainable homes and the delivery of flood risk/enabling infrastructure. Cross departmental support will be needed.

We also plan to convene regional discussions, initially with the Environment Agency and Unitary Authority partners, to increase levels of awareness on the BAFS and explore the role other organisations could play in mitigating flood risk in the region. This could be through options including upstream catchment-based solutions and/or supporting innovative cross-boundary arrangements with neighbouring authorities.

Please let me know if you would like to meet to discuss next steps.

Yours sincerely



Richard Ennis

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Interim Chief Executive

Cc: Environment Agency; CEO's of Bath and North East Somerset UA and South Gloucestershire UA

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Bristol Avon Flood Strategy Outline Business Case statement of support

We are working with the council to develop a flood risk management strategy that works for the city, protecting existing housing and infrastructure as well as enabling new development in the city. This outline business case builds on the principles that were agreed in the strategic outline case and sets out a clear achievable pathway to deliver the council's vision for defences that provide a multitude of benefits to the city. We continue to support the proposed approach and will do what we can to enable the council to deliver these defences.

Yours sincerely



Ron Curtis

Area Flood & Coastal Risk Manager

Environment Agency – Wessex Area

Dated: 16th September 2022

Bristol Avon Flood Strategy

Memorandum of Agreement

Between:

(1) **Bristol City Council** of City Hall, College Green, Bristol (“BCC”); **and**

(2) **The Environment Agency** of Horizon House, Deanery Road, Bristol (“the EA”)
together referred to as “the Parties”

Whereas:

- A. The EA has statutory flood risk management functions in respect of the sea and main rivers under section 165(1) Water Resources Act 1991 (WRA 1991) and is a risk management authority for the purpose of the Flood and Water Management Act 2010 (FWMA 2010).
- B. BCC is the unitary authority for the city of Bristol and is a local authority within the meaning of Section 165(5) WRA 1991, as well as a Coast Protection Authority under the Coast Protection Act 1949, the Harbour Authority for the floating harbour and a risk management authority within the meaning of the FWMA 2010.
- C. The Parties wish to continue to co-operate in a BCC project to develop and deliver the Bristol Avon Flood Strategy (“the Strategy”) to support the National Flood and Coastal Erosion Risk Management Strategy for England’s vision of a nation ready for and resilient to, flooding and coastal change and benefit citizens in the city of Bristol together with some parts of neighbouring areas of South Gloucestershire, Bath & North East Somerset and North Somerset.
- D. This Memorandum of Agreement aims to:
 - (a) set out the agreed basis upon which the Strategy will continue to be developed and implemented
 - (b) identify and agree the key strategic goals for the Strategy
 - (c) clarify roles and responsibilities in delivering the Strategy
 - (d) clarify the steps required to achieve delivery of the Strategy

- (e) set out the agreed governance arrangements for the continued development and implementation of the Strategy

1. Common Objectives

1.1 BCC and the EA have agreed to co-operate and work together to develop the following common objectives:

- (a) to support work to develop the Strategy
- (b) to support work to deliver the Strategy
- (c) to develop and agree:
 - (i) a robust funding strategy
 - (ii) suitable planning instrument(s)
 - (iii) a phasing delivery plan
 - (iv) detailed legal agreement(s)
 - (v) delegation agreement(s) under the FWMA 2010

1.2 The Parties acknowledge that there will be various activities and workstreams identified in the common objectives that although separate are interdependent and are likely to be delivered on their own timescales dependent on funding, planning permission and other factors.

2. Principles

2.1 The Parties agree to adopt the following principles when working towards the common objectives:

- (d) to share information, experience and skills
- (e) to work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and minimise cost
- (f) to communicate openly about concerns, issues or opportunities relating to the Strategy
- (g) to make available resources in accordance with agreed programme and be accountable for the performance of the roles and responsibilities set out in this Memorandum of Agreement
- (h) to adopt a positive, solution-focused outlook cognisant of the project stage and governance
- (i) to act in a timely manner, so as to avoid undue delay

2.2 The Parties acknowledge that developing the Strategy will require workstreams and activities to be undertaken by BCC, the EA and other stakeholders (such as WECA).

3. Progress to date

3.1 The Strategy aims to set out a long-term plan for managing at a strategic level flood risk from the River Avon to Bristol and its neighbouring communities. The Strategy focuses on the city of Bristol (Shirehampton, Sea Mills, Cumberland Basin, Ashton, Cumberland Road, Commercial Road, Clarence Road, St Philip's, Bath Road, Netham, Feeder Road, St Anne's and Crews Hole) but also covers some areas within neighbouring authorities of South Gloucestershire (Hanham and Swineford), Bath & North East Somerset (Keynsham) and North Somerset (Pill).

3.2 The Strategy currently exists as a Strategic Outline Business Case (SOC). There has been public consultation on the SOC and a supporting Strategic Environmental Assessment (SEA) was completed in Autumn 2020.

3.3 On 9th March 2021 the Strategy was endorsed by BCC's Cabinet and several Key Decisions were taken, in particular:

- to approve the preferred approach of adaptive raised defences to manage the risk of flooding from the river Avon, as set out in the SOC.
- to approve the development of a funding strategy to address the capital funding required to deliver phase one of the Strategy.
- to approve the development of Outline Business Cases to further refine proposals and progress the case for investment.

3.4 In March 2022, BCC reiterated its commitment to the Strategy and supported this by appointing a Cabinet Member for Strategic Planning, Resilience and Flood Strategy.

4. Developing the Strategy

- 4.1 The Parties' aim is to deliver the Strategy as a long-term adaptive approach to better protect people and property from the increasing risk of flooding from the River Avon at the earliest opportunity and enhance the river corridor for all. The Strategy anticipates creating new flood defences and/or raising the level of existing flood defences in phases along sections of the River Avon.
- 4.2 The Strategy will respond to the flood risk management requirements of the National Planning Policy Framework by seeking to deliver a 1 in 200 year (0.5% Annual Exceedance Probability) standard of protection, whilst ensuring no adverse impact elsewhere. It envisages two main tranches of delivery – Phase 1 in the 2020s to improved defences along the Avon from Swineford upstream, through Bristol city centre and as far downstream as Shirehampton and Pill, and then Phase 2 at a later date (2060s) to raise the height of those defences as required.
- 4.3 Development of the Strategy is currently at an early stage. The Strategic Outline Business Case (SOC) was approved by the EA's Large Projects Review Group and published for public consultation in 2020. A supporting Strategic Environmental Assessment (SEA) was completed in Autumn 2020. It is envisaged that the Strategy will be delivered through at least two build stages, each with its own Outline Business Case (OBC) to secure Flood Defence Grant in Aid (FDGiA). The first OBC is expected to be completed in 2023. Each OBC will be followed by detailed design, surveys, investigations, public engagement / consultation within the Full Business Case (FBC) stage. Approval of the FBCs by BCC and EA will be required before the start of construction.
- 4.4 BCC is leading the development and delivery of the Strategy in recognition of the potential impact and opportunity for the city. With the EA's support, BCC is best placed to deliver the full range of benefits for the city, manage the complex interfaces and access the range of funding required. Furthermore, the Strategy will interface with BCC's harbour, highway, planning, lead local flooding, coastal protection, civil protection and major landowner roles. BCC's ambition is for infrastructure that works for Bristol year-round, not just when the river floods. By designing defences that improve public spaces, the Strategy will provide new green spaces, better access to the river, enhanced heritage features, and improved transport connections. Thus the Strategy will better protect Bristol and create a more active, sustainable and resilient city.
- 4.5 BCC and the EA have both made a commitment to continue working collaboratively to develop and deliver the Strategy.

- 4.6 The EA has given an in-principle commitment to delegating to BCC statutory powers for flood risk management works to facilitate the construction works and to maintain the flood defences.
- 4.7 The EA is also committed to work with BCC to secure the necessary funding for the Strategy, including applications for FDGiA funding, local levy funding and other funding applications.
- 4.8 BCC anticipates that the design for the defences and associated infrastructure will evolve and refine through the OBC and FBC stages. This is likely to include refinement of designs and alignments to integrate regeneration and place-making opportunities as well as address feedback from engagement and consultation. Environmental assessment will ascertain the scale of potential impacts to habitats and areas of loss, and to inform any requirements for compensatory habitat, biodiversity net gain and consenting.

5. Delivery of the Strategy

- 5.1 The Strategy will provide a robust framework for identifying and delivering the necessary strategic solution(s) required to manage current day and predicted future climate change flood risk impacts to the city centre from the River Avon
- 5.2 The Parties acknowledge the importance of progressing work on the Strategy as quickly as practicable, in order to build confidence that there is a reasonable prospect of delivery of the Strategy and in due course achieve full delivery of the Strategy.
- 5.3 It is anticipated that as confidence in delivery of the Strategy increases it will make it possible for appropriate development to come forward, with the EA's support, in areas of flood risk which will benefit from the Strategy, in line with the NPPF and the relevant Strategy documents and planning instruments.
- 5.4 The Parties have agreed to use five defined workstreams to build confidence in the Strategy and measure progress towards delivery of the Strategy

(i) Strategic Outline Business Case (SOC)

BCC has produced a SOC which sets out a clear route map to deliver safe management of flooding across the City without increasing flood risk elsewhere. This SOC was approved by the EA's Large Project Review Group assurance team on 14 January 2021. This workstream is considered to be complete.

(ii) Funding Strategy

BCC will continue to lead on developing a funding strategy. This funding strategy will contain details of a range of potential funding and financing mechanisms needed for delivery of the Strategy.

The parties acknowledge the value of clear statements of intent to commit funding and/or identify financing.

The existence of an agreed and actively monitored funding strategy, which sets out how funding streams and arrangements can be identified and accessed, will improve confidence that partnership funding/finance is being secured in a timely manner. By clearly identifying funding commitments and potential funding amounts and sources of monetary and in-kind contributions, the funding strategy will help build confidence in the delivery of the Strategy.

The parties recognise that in order to have full confidence in the funding strategy it will be necessary to have identified and secured the majority of the required funding and also for there to be a good prospect that the remainder of the required funding can be found and secured.

BCC will monitor the funding strategy document with a supplementary Funding and Investment Viability Assessment (FIVA), where the progress on each funding source is reviewed and re-evaluated by the parties. FIVAs will be a monitoring tool to assist the process of progress tracking, but not a formally issued document due to the sensitive information contained. They will normally take place annually, or when a significant funding element is secured (whichever is the sooner). The aim will be to provide a concise technical note/dashboard (the precise format is to be agreed between the parties) showing:

- the status, timing and amount of each funding/finance source
- how likely it is that each will deliver the required amount
- if there are any constraints, dependencies or timescales attached, and
- which organisation is delivering the funding stream.

Although not limited to such, the FIVA will specifically indicate and explain how each of the funding streams is progressing and will be used to support the delivery of the Strategy.

The FIVA should also identify if there are any new sources of funding or finance that have become available since the last update, or could likely become available in the future, and how these might be approached to help close any remaining funding shortfall.

The EA will administer any eligible FDGiA and/or Local Levy allocations for the Strategy and highlight any other known funding opportunities that may arise. BCC will proactively pursue suitable other partnership funding and financing opportunities, with support where appropriate.

(iii) Suitable planning instrument(s)

The Parties recognise that the Strategy needs to be supported by and recognised in the policies of the Local Plan. This will be important both to provide a steer for development and to safeguard land needed for strategic flood defences. Appropriate planning instrument(s) will influence future development to incorporate strategic flood defences, where appropriate.

As confidence in the delivery of the Strategy increases, the Strategy is expected to gain increasing weight as a material planning consideration in planning decisions.

The Parties agree:

- that there is a pressing need for planning policy support for delivery of the Strategy as the strategic response to flood risk
- the strategic objectives set out in the Strategy should be embedded into the policies of the Local Plan as soon as practicable
- there needs to be clear planning policy support for resisting development incompatible with the Strategy;
- the Community Infrastructure Levy provides the primary mechanism for securing appropriate developer contributions to the Strategy.

With a view to building confidence in delivery of the Strategy, BCC commits to take the following interim measures:

- develop a Bristol Avon Flood Strategy Planning Position Statement, working collaboratively with the EA. This will be supported by BCC's updated Strategic Flood Risk Assessment that will set out the existing situation and also outline the implications/benefits of the Strategy using available information, developed in consultation with the EA.
- embed the strategic objectives set out in the Strategy in emerging Growth and Regeneration masterplans, and ensure their alignment with the delivery of the Strategy in consultation with the EA.
- support an approach to resist development incompatible with the Strategy through BCC's wider controls and democratic decision-making.

(iv) Phasing Delivery Plan

The Phasing Delivery Plan will set out the proposed tranches of construction work, the costs and funding requirement for each tranche, together with an outline

programme for detailed design, OBC and FBC approval and all other matters relevant to implementation.

Its purpose is to ensure each phase contributes to the overall delivery of the Strategy and can be used as a reference point through delivery. It will ensure that funding is distributed in a way that allows delivery of the whole Strategy, that delivery constraints are managed and that the timescales and delivery goals align with the Local Plan, development master plans and other projects. It will be a live plan that evolves as circumstances change and the Strategy matures.

The Phasing Delivery Plan should include the following information as available for each build stage:

- Estimated construction costs;
- How FDGiA and other funding sources will be allocated to each build stage;
- Whether there are any particular funding constraints or mechanisms for obtaining funding for each stage;
- Information on land ownership and other constraints and interfaces that could impact on delivery;
- How each build stage will be delivered;
- Any interdependencies between stages; and
- The estimated timescales for delivery of each build stage, and how they relate to the timescales for the local plan and development master plans.

(v) Detailed Legal Agreement

It is recognised that this Memorandum of Agreement does not address in detail all of the uncertainties and risks associated with the delivery of the Strategy. It is considered that these risks and uncertainties may not be capable of being fully particularised until questions associated with the Funding Strategy, Planning Instrument(s) and Phasing Delivery Plan have been fully resolved, and work on the Outline Business Case(s) progressed.

The parties agree to develop and enter into an initial collaborative agreement to progress the Strategy on a broad collaborative basis, with the aim of providing OBC(s) for FDGiA and LPRG assurance. This step is acknowledged by the parties as being essential to review the amount of FDGiA eligibility for the Strategy beyond the initial figures set out in the SOC.

It is anticipated that the initial collaborative agreement will cover the period to January 2024, which is anticipated to be the start of the detailed design process. The parties further anticipate that the initial collaborative agreement may be extended / renewed thereafter on such terms as may appear appropriate at that time. This may include specific project collaboration agreements for delivery of all or part of each

build stage, and/or include collaboration on FBCs as required for FDGiA and LPRG assurance

6. Project Governance

- 6.1 Delivery of the Strategy will be managed by BCC, with the EA providing advice and opinion as appropriate. The governance structure for the project and details of roles and responsibilities are outlined below.

7. Governance Roles

- 7.1 Decisions will be made through the three-tiered central governance of Project Board, Steering Group and Strategic Meetings.
- 7.2 **Strategic Meetings** will be arranged as necessary between the Mayor or delegated cabinet member and the Environment Agency's Area Director. The purpose is to provide strategic oversight by exception.
- 7.3 The **Steering Group** is the senior decision-making forum to guide and steer the development and implementation of the Strategy and is comprised of the BCC's Executive Director for Growth and Regeneration, the Environment Agency's Area Flood Risk Manager and WECA's Director of Infrastructure, together with such other persons as may be appointed by agreement from time to time.
- 7.4 The Steering Group will meet quarterly in order to:
- Ensure Strategy priorities are identified and met
 - Oversee the strategic relationships with the West of England Combined Authority and neighbouring affected Local Authorities
 - Ensure coordination and integration with other relevant schemes and projects
 - Advise on management of programme risks
 - Approve variations to budget, project and communication plans as required
- 7.5 BCC's Economy of Place Director will act as **Sponsor** and is accountable to the Steering Group for ensuring the realisation of the Strategy and its benefits over time. The Sponsor will provide day to day contact for WECA and political leadership and manage the production of exception reports on key changes to project budget or plans. The Sponsor will engage with all relevant multi-partner BCC projects to ensure active management of interfaces. The Sponsor is also **Senior Responsible Officer** for the Strategy and will ensure that the Strategy achieves identified outcomes and will delegate responsibilities for day-to-day delivery to the Project Executive and Project Manager.

- 7.6 A multi-agency **Project Board** will direct, steer and oversee direction of the Strategy's development and implementation, meeting every two months. Membership will include the Sponsor, the Senior Responsible Officer (Chair), Senior Supplier(s) and Senior Users from the Environment Agency, BCC (flood risk, planning and development, city docks, estates, harbour and regeneration) and WECA.
- 7.7 The Project Board will authorise the project plan to be delivered by the Project Manager and will authorise strategic decisions or seek authority for key strategic decisions from the Steering Group.
- 7.8 Appendix 1 contains details of the key contacts on governance matters.

8. Responsibility for Delivery

- 8.1 BCC will be responsible for development and delivery of the Strategy and its workstreams. The Senior Responsible Officer will be supported day to day by the **Project Executive** who will provide day-to-day leadership and is accountable for the overall delivery of the Strategy.
- 8.2 The project team will be led by a **Project Manager** who will be responsible for planning, organizing, managing, controlling and communicating all phases of the Strategy. The Project Manager's primary responsibility is to ensure that the project produces the required outcomes to the required standard of quality and within the specified constraints of time and cost.
- 8.3 The **Environment Agency Project Representative** from the Wessex Area team will represent the interests and requirements of the Environment Agency and provide general advice for delivery of the Strategy. This time will not be charged directly to the Strategy. Advice from the Environment Agency cost and carbon lead, NEAS, modelling, legal or other specific advice will be charged to the Strategy.
- 8.4 A **Stakeholder Working Group** will be convened as appropriate to engage with other statutory bodies with an interest in the Strategy (in particular Historic England, Natural England, Wessex Water, neighboring risk management authorities and BCC and Environment Agency in their role as regulators).

9. Reporting

- 9.1 **Highlight Reports** will be produced by the Project Manager for each meeting of the Project Board and a summary for each Steering Group meeting. These will include progress against plan, budget and risk management.

- 9.2 The Project Manager will also prepare **Exception Reports** for any project issue that risks materially impacting on programme or budget, with a recommendation for Board Approval.
- 9.3 The **Project Delivery Risk Register** will be maintained, with significant risks reviewed at each meeting of the Project Board and risk owners identified to best manage the risk.

10. Approval Requirements

- 10.1 BCC will be the lead Risk Management Authority. A Cabinet 'Key Decision' will approve significant funding commitments (*where "significant" means (a) greater than £0.5 Million or (b) is considered to have significant effect on communities or two or more wards of the city*). Key Decisions will include the approval of OBC(s) prior to commencing the FBC(s). A further Key Decision will be sought of FBC(s) prior to construction commencing.
- 10.2 The Environment Agency will advise on the content of the OBCs for FDGiA in their role as Risk Management Authority with operational responsibility for managing the risk of flooding from main rivers, estuaries and the sea, and their statutory overview of all sources of flooding. The Environment Agency's **Large Project Review Group** will assure the OBCs to ensure FDGiA is spent in accordance with Defra and Treasury guidance and gives value for money.
- 10.3 All plans will be approved by the Project Sponsor following endorsement by the Environment Agency's Flood Risk Manager. All messaging and materials will be approved by the Project Board.

11. Assurance

- 11.1 Project Board **Senior Users** will support assurance at the Project Team's request.
- 11.2 A **peer review group** will be established to support Quality Assurance, convened at the discretion of the Project Board. The purpose of the group will be to provide internal 'challenge' to support the Project Board.
- 11.3 At project gateways, the Strategy will be subject to assurance from the LPRG for the outline business case(s) and the full business case(s). This will complement the **BCC scrutiny process** including the Growth and Regeneration Scrutiny Commission and the current inquiry into climate adaption.
- 11.4 Any package of works exceeding £100 million is likely to have to satisfy Defra and HM Treasury assurance requirements.

11.5 Appendix 2 contains further details of the relevant assurance mechanisms.

12. Confidentiality

12.1 BCC and the Agency undertake that they will not at any time use, divulge or communicate to any person, except to their professional representatives or advisers or as may be required by law or any legal or regulatory authority, any **Confidential Information** concerning the business or affairs of the other Party which may have come to their knowledge as a result of entering into this Memorandum of Agreement and each of the Parties shall use its reasonable endeavours to prevent the publication or disclosure of any Confidential Information concerning such matters.

12.2 For the purposes of this Memorandum of Agreement, "*Confidential Information*" shall mean all information, of whatever nature and however recorded or preserved, disclosed by one Party to another, which (a) is marked as confidential at the time of disclosure; (b) is stated by a Party to be confidential at the time of disclosure; (c) would be regarded as confidential by a reasonable person with knowledge of all the facts; except to the extent that any part of that information is already in the public domain at the time of disclosure or subsequently enters the public domain otherwise than by a breach of any obligation of confidentiality.

13. Environment & Sustainability

13.1 The Parties shall ensure that the relevant environmental, social and economic factors are properly taken into account in all work under this Memorandum of Agreement and in any relevant contracts entered into with third parties, with a view to the importance of delivering sustainable development and environmental net gain.

14. Liability

14.1 Neither Party seeks to exclude or limit its liability for death or personal injury caused by its negligence, or fraudulent misrepresentation made by it or on its behalf, or such other matters where exclusion of liability is regulated by operation of law

14.2 BCC shall be solely responsible for any actions or decisions made by BCC, its staff, consultants and contractors in work under this Memorandum of Agreement.

14.3 The EA shall be solely responsible for any advice given by or on behalf of the EA by its staff, consultants and contractors in work under this Memorandum of Agreement.

15. Dispute Resolution

15.1 The Parties shall attempt to resolve all disputes and differences between themselves and if they are unable to do so, such matters shall first be referred to the Project Board.

15.2 If the Project Board is unable to resolve the dispute or difference to the satisfaction of the Parties within two weeks, the matter shall be escalated to the Steering Group.

15.3 If the Steering Group is unable to resolve the matter, it shall be referred to the Strategic Meeting.

15.4 If the matter cannot be resolved by the Strategic Meeting it shall remain unresolved.

16. Variation

16.1 No change or variation to this Memorandum of Agreement will be effective unless it is agreed in writing by the Parties.

17. Term and Termination

17.1 This Memorandum of Agreement shall commence on the date at the head of this document and shall continue until terminated by a Party.

17.2 This Memorandum of Agreement may be terminated at any time, without cause, by giving 30 days written notice to the other Party.

18. Legal Status

18.1 This Memorandum of Agreement is not intended to be legally binding, and it shall not give rise to any legally enforceable obligations or legal rights between the Parties.

18.2 The Parties enter into the Memorandum of Agreement in good faith and intending to honour their obligations under it.

18.3 Nothing in this Memorandum of Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party as the agent of the other Party, or authorise either Party to make or enter into any commitments for or on behalf of the other Party.

18.3 Each Party acknowledges that the other Party has their own internal governance requirements that may be required before any formal view or decision can be taken on a matter by that Party.

Appendix 1

Assurance Mechanisms

Body	Assurance and approval responsibilities
EA Large Project Review Group [LPRG] with Defra	Assurance: To review business case submissions for compliance with EA guidance and Defra Policy. Recommend approval or otherwise to the Environment Agency Officer who has the delegation to approve the business case.
EA Director of Operations	Approval: To provide strategic guidance; to act individually or jointly as required by the financial scheme of delegation in approving or otherwise the OBC and FBC.
EA Executive Director of Operations	
EA Chief Executive	
EA Board	Approval: Agreement that the project can be submitted to Defra, in accordance with the FSoD, for their consideration and agreement.
Defra Director General Chief Operating Officer	Assurance: To provide strategic guidance; to be advised of business cases and major projects. Provide input and support on Defra committee decisions.
Defra Network Executive Committee	Approval: Has high level oversight and scrutiny of operational cross-network matters within Defra. The NEC is supported, and informed, by four panels (The Risk Panel, The Finance Panel, The Operations Panel, and The People Panel).
Defra Risk Panel	Assurance: Focussed on strategic risk, risk appetite and risk processes
Infrastructure and Projects Authority	<p>Validates (in partnership with HM Treasury) IAAPs for highest risk major projects in the GMPP</p> <p>Oversight of IAAPs and monitor execution of IAAPs across the GMPP including escalation of non-compliance or slippage.</p> <p>Implements consequential assurance, applied support and/or intervention (as appropriate) when planned assurance identifies that a major project is in significant difficulty</p> <p>Monitors indications of significant new initiatives which are likely to be delivered through a major project – identifies requirement for Project Validation Review</p>
HM Treasury	Approval: HMT approval is required for projects outside departments' delegated authority, including the Bristol Avon Flood Strategy.

Body	Assurance and approval responsibilities
Senior Responsible Owner (SRO) / Project Sponsor	<p>Agrees IAAP;</p> <p>Sponsors assurance reviews;</p> <p>Communicates and actions assurance findings and recommendations</p> <p>Owns programme/project response and implementation of recommendations in assurance reports</p>
RMA internal stakeholders – specifically the client	<p>To act as client for the Plan and the delivery of works;</p> <p>To act as the principal point of contact for dialogue with Local Authorities;</p> <p>To influence assurance activities and receive the reports;</p> <p>To act on the recommendations of assurances.</p> <p>Approves IAAP</p>
Project Team	<p>Develops IAAP;</p> <p>Completes Risk Potential Assessment (RPA) and sends to SRO for approval;</p> <p>Liaises with potential assurance providers to schedule and resource assurance reviews;</p> <p>Reviews IAAP and updates as necessary;</p> <p>Monitor execution of IAAP.</p> <p>Provides technical input to all elements of the project</p>
EA stakeholders – NEAS, PSO & FCRM teams	<p>To act as the principal point of contact for dialogue with EA;</p> <p>To influence assurance activities and receive the reports;</p> <p>To act on the recommendations of assurances.</p>