



Environment, Climate Emergency and Transport Committee

Date:	Monday, 1 February 2021
Time:	6.00 p.m.
Venue:	On Microsoft Teams

Contact Officer: Mike Jones, Principal Democratic Services Officer
Tel: 0151 691 8363
e-mail: michaeljones1@wirral.gov.uk
Website: www.wirral.gov.uk

AGENDA

1. **WELCOME AND INTRODUCTION**
2. **APOLOGIES**
3. **MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST**

Members are asked to consider whether they have any disclosable pecuniary interests and/or any other relevant interest in connection with any item(s) on this agenda and, if so, to declare them and state the nature of the interest.

4. **MINUTES (Pages 1 - 12)**

To approve the accuracy of the minutes of the meeting held on Thursday 3rd December 2020.

5. **PUBLIC AND MEMBER QUESTIONS**

5.1 **Public Questions**

Notice of questions to be given in writing or by email, by 12noon, Monday 25th January 2021 to the Council's Monitoring Officer (committeeservices@wirral.gov.uk) and to be dealt with in accordance with Standing Order 10.

5.2 Statements and petitions

Notice of representations to be given in writing or by email by 12 noon - Monday 25th January 2021 to the Council's Monitoring Officer (committeeservices@wirral.gov.uk) and to be dealt with in accordance with Standing Order 11.1 and 11.2.

5.3 Questions by Members

Questions by Members to be dealt with in accordance with Standing Orders 12.3 to 12.8.

SECTION A - KEY AND OTHER DECISIONS

- 6. LIVERPOOL CITY REGION DIGITAL CONNECTIVITY DIG ONCE POLICY (Pages 13 - 86)**

SECTION B - BUDGET AND PERFORMANCE MANAGEMENT

- 7. ACCEPTANCE OF TENDER AND AWARD OF CONTRACT - ARBORICULTURAL MAINTENANCE CONTRACT (Pages 87 - 92)**
- 8. ENVIRONMENT, CLIMATE EMERGENCY AND TRANSPORT COMMITTEE BUDGET CONSULTATION REPORT (Pages 93 - 102)**

SECTION C - WORK PROGRAMME / OVERVIEW AND SCRUTINY

- 9. WORK PROGRAMME UPDATE (Pages 103 - 110)**

ENVIRONMENT, CLIMATE EMERGENCY AND TRANSPORT COMMITTEE

Thursday, 3 December 2020

Present: Councillor EA Grey (Chair)

Councillors	C Cooke	S Foulkes
	B Berry	C Muspratt
	H Cameron	T Norbury
	A Corkhill	I Williams
	T Cox	A Wright

11 WELCOME AND INTRODUCTION

The chair welcomed everyone to the meeting.

12 APOLOGIES

The Chair announced that no apologies had been received.

A membership query was raised which would be taken up as a potential issue for Standards Committee.

13 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Members were asked to declare any disclosable pecuniary interests and any other relevant interest and to state the nature of the interest.

No declarations of interest were made.

14 MINUTES

Resolved – That the minutes of the meeting held on 22 October, 2020, be approved and adopted as a correct record subject to an amendment to the proposed work programme from parking charges which is already covered in the work programme to the problem of litter as an additional item.

15 PUBLIC AND MEMBER QUESTIONS

The Chair reported that no questions from Members had been submitted. However, five questions from the public had been submitted and the Chair invited each individual to ask their question. The questions, answers and any supplementaries are details in the attached document.

16 **STATEMENTS AND PETITIONS**

A statement was made by Mr Paul Brownbill regarding Hoylake Beach.

Mr Brownbill noted that as a Wirral resident he felt the management of the beach was not just an issue for Hoylake and Meols but was important to all Wirral residents who used it. He stated his support for the recent policy with regards to allowing nature on the beach and asked that it be noted that the beach was very popular with families and appreciated by many for its natural beauty.

The Chair noted Mr Brownbill's statement.

17 **NETWORK MANAGEMENT PLAN**

Simon Fox, Assistant Director for Highways and Infrastructure, introduced a report from the Director of Neighbourhood Services on the Network Management Plan (NMP) and sought approval to appoint a statutory Traffic Manager. The NMP outlined the Council's approach to the network management duty placed upon it by the Traffic Management Act 2004. The plan reflected updates to the local network arrangements, changes in national and local priorities as well as legislative changes.

The Chair thanked Simon Fox and all the officers involved for the report and commended the references to sustainability and air quality.

Members acknowledged it was a comprehensive report and commended officers for achieving level 3 funding based on how well the Local Authority looks after the Network as part of the devolved City Region. Members asked that reference to electric vehicle charging points, bike hire schemes, car sharing schemes, and provisions for pedestrians be added which Simon Fox agreed could be considered and built into the plan. It was requested that 'may' be changed to 'will' in point 10 regarding the Environment and Climate implications which it was agreed would be the case for future reports as well. Concerns were raised about potential congestion and pollution from freight routes following Brexit and it was agreed that this would be investigated further. It was asked that hyperlinks be inserted when reference to other documents and it was agreed these would be added to the final version.

On a motion by the Chair, seconded by Councillor Steve Foulkes, it was -

Resolved – That

- (1) the report be noted and the Council's approach to its Network Management duty be endorsed;**

- (2) the draft Wirral Network Management Plan (NMP) be approved and the Director of Neighbourhood Services be authorised to finalise any further minor changes in consultation with the Chair and Spokespersons of the Environment, Climate Emergency and Transport Committee;**
- (3) it be noted that the post of Senior Network Manager, Highways & Infrastructure, performs the role of Traffic Manager for Wirral Council under the Traffic Management Act, 2004.**

18 **HIGHWAYS INFRASTRUCTURE ASSET MANAGEMENT POLICY, STRATEGY AND STREET LIGHTING POLICY**

Simon Fox, Assistant Director for Highways and Infrastructure, introduced a report from the Director of Neighbourhood Services to approve and adopt the 2020 Highway Infrastructure Asset Management Policy (HIAMP), 2020 Highway Infrastructure Asset Management Strategy (HIAMS) and 2020-2025 Street Lighting Policy.

The HIAMP and HIAMS represented no change in direction from those approved by the Cabinet Member in February 2020 but were reviewed and updated to align more closely with the Wirral Plan 2025, specifically the themes for 'Safe and Pleasant Communities' and 'Sustainable Environment'. The 2020-2025 Street Lighting Policy outlined the positive effect street lighting had on the ambiance of a place and its reputation, and the role it plays in reducing crime and fear of crime. The Policy stated that lighting equipment provided should be suitable for fulfilling the lighting needs in each specific area, illuminating it in the most effective manner.

Members queried the luminosity of the streetlights, when the full LED replacement would be completed, whether areas with older residents could be prioritised, and whether the streetlight map displayed all the streetlights accurately. Simon Fox confirmed a Public Consultation was being carried out to understand residents attitudes with regards to luminosity and backlighting and stated that the contractual finish date for the LED project was Autumn 2021 but additional works may result in a legitimate extension to early 2022. It was noted that streetlights across the whole borough were being replaced and that the contractor had been given the ability to determine where resources were best placed to ensure value for money, but that demographics were always considered and could be looked at again. It was agreed that specific cases where the new streetlight map may not locate all the streetlights could be investigated and that Councillors would be liaised with regarding any planned changes to columns.

On a motion by the Chair, seconded by Councillor Chris Cooke, it was -

Resolved: That

- (1) the report be noted and the authority's approach to the Highway Infrastructure Asset Management be endorsed.**
- (2) the draft Wirral 2020 HIAMP, 2020 HIAMS and 2020-2025 Street Lighting Policy be approved and the Director of Neighbourhood Services be authorised to make any further amendments that the Director considers will correct errors and omissions or will otherwise aid in the operation of the policy in consultation with the Chair and Spokespersons of the Environment, Climate Emergency and Transport Committee.**

19 **HOYLAKE BEACH MANAGEMENT**

Colin Clayton, Assistant Director for Parks and the Environment, introduced a report from the Director of Neighbourhood Services on the management of Hoylake beach. The future management of Hoylake beach aligned with both the Sustainable Environment and Safe and Pleasant Communities themes of the Wirral Plan 2025.

The report set out the progress in delivering the recommendations of the Executive Member Decision of 13 March 2020 to determine a long-term management strategy for Hoylake beach and provided an update on the decision to cease mechanical raking. In line with the guidance from Natural England Officers had established that a scientific evidence base of the beach ecology and geomorphological changes was needed in order that the future options for the beach could be developed. Based on the draft specification it was estimated that this would cost in the region of £30,000 from existing budgets including the Climate Emergency fund.

Members asked officers to outline the objectives of the scientific study, to which it was clarified that the objectives of the ecological and geomorphological studies were to define the extent and variety of vegetation growth on Hoylake foreshore, as well as how it will respond to sediment changed in order to model how the foreshore would evolve. It was confirmed that the studies would look at both the short and longer term so current drainage could be assessed as well as the future of the beach.

The cost of the studies was discussed and the issue of value for money raised, with Members recommending accredited academics be approached for the contract and querying whether it would be appropriate to use Climate Emergency Funding. Colin Clayton confirmed that academic institutions would be welcomed to bid for the contract through the formal bidding process as long as they met the procurement requirements.

The Committee debated the parameters of a public consultation given the legal limits which would be applied by Natural England and agreed an independent and transparent process consulting all stakeholders was needed. It was agreed that given the public interest in the topic, officers would work with the Chair and spokes to identify all groups which should be consulted.

An amendment to the recommendations was then moved by Councillor Christina Muspratt, seconded by Councillor Steve Foulkes, that –

- (1) Note the progress in developing a specification for an ecological and geomorphological survey and, subject to a suitable budget being identified in consultation with the E, CE & T Committee, to agree to the procurement of independent studies as a scientific evidence base upon which to develop future management options for Hoylake beach.
- (2) Agree that the Director of Neighbourhoods produces a Communications Strategy for the development of the beach management plan for Hoylake in consultation with a politically proportionate Working Group.
- (3) Approve the submission of an extension request for assent to NE for the continuation of non-vegetation management activities at Hoylake beach which were not subject to cessation as a result of the Cabinet Member decision of 13 March 2020, subject to clear specification of these activities and agreement with the Committee, and that all such activities be publicised and local councillors and this committee be notified at least a week in advance of any such planned activities.

The amendment was put and won (10:1).

Resolved – That

- (1) the progress in developing a specification for an ecological and geomorphological survey be noted and, subject to a suitable budget being identified in consultation with the Environment, Climate Emergency & Transport Committee, to agree to the procurement of independent studies as a scientific evidence base upon which to develop future management options for Hoylake beach.**
- (2) the Director of Neighbourhoods produce a Communications Strategy for the development of the beach management plan for Hoylake in consultation with a politically proportionate Working Group.**
- (3) the submission be approved of an extension request for assent to Natural England for the continuation of non-vegetation management activities at Hoylake beach which were not subject to cessation as a result of the Cabinet Member decision of 13 March 2020, subject to clear specification of these activities and agreement with the Committee, and that all such activities be**

publicised and local councillors and this committee be notified at least a week in advance of any such planned activities.

20 **UPDATE ON THE EXERCISE TO TRIAL ALTERNATIVES TO GLYPHOSATE IN THE USE OF WEED CONTROL**

Colin Clayton, Assistant Director for Parks and the Environment, introduced a report from the Director of Neighbourhood Services on an update of the position regarding the exercise to trial alternative methods of weed control. The Council has historically used glyphosate, under licence, for weed control across the authority and was under licence until 2022 with the delivery of weed control operations undertaken by the Council's contractor Man Coed.

In response to the recommendations of the Environment Overview and Scrutiny Committee of 28th November 2019, officers had conducted a series of exercises to trial alternative methods of weed control with the report providing the findings identified for each method. The Committee was also updated on the delivery of the weed control programme, which was subject to delay caused by service cessation during the initial Covid-19 lock down. The exercise had so far demonstrated that alternative weed control methods were less effective, and the machinery required was more expensive. It was concluded that alternatives would continue to be sought and the Committee updated, but that glyphosate was the only practical method in the short to medium term in certain areas.

The Committee debated the matter at some length given that other countries had banned glyphosate and other councils were also struggling to find a workable alternative. It was suggested that international case studies be considered and community involvement with clearing weeds was proposed, however Colin Clayton explained upscaling community involvement like that trialled at New Brighton would be difficult and required significant training. Members agreed that glyphosate would have to be phased out while working to find an effective alternative.

On a motion by the Chair, seconded by Councillor Steve Foulkes, it was –

Resolved – That

- (1) the contents of this report and outcome to date of the exercise to trial glyphosate alternatives for weed control be noted.**
- (2) glyphosate will not be used for weed control operations across the Parks and Countryside estate (with the limited exceptions set out in this report).**
- (3) the exercise to trial alternative methods of weed control will continue during the next 12 months with Committee updated further following this.**

21 **CAR PARKING CHARGES - WORKING GROUP**

The Chair introduced and presented the report from the Working Group on Car Parking Charges which was then considered by Members.

The report was brought to the Policy and Resources Committee on the 7th October 2020 by the Director of Neighbourhood Services. This report 'car parking charges options' informed Members of considerations for the reintroduction of the current car parking charges in Wirral in 2020/21 and alternative options for parking charges in 2021/22 and beyond. The group considered the request made by the Policy and Resource Committee to consider the options attached in appendix 1 of the report. After much debate, Members considered options 4 and 6 (to re-introduce parking charges immediately at all locations and respectively and to re-introduce charges at long-stay and on-street and County parks but not 'shoppers' car parks) acceptable with some caveats. They wished to submit these to the Policy and Resource Committee for consideration.

On a motion by the Chair, seconded by Councillor Christina Muspratt, it was –

Resolved (7:4) – That

(1) the findings of the Working Group attached as appendix 1 of this report be noted and the recommendations be agreed:

- **Members support the upcoming transport strategy and recommend that any future transport strategy consults with Members, businesses, communities to ensure that it is environmentally, economically, and socially sustainable.**
- **The panel also recommends that a comprehensive review and survey is undertaken in Wirral as to the local impact of car parking charges on footfall and spend in retail areas and the high street.**
- **Members considered the request made by the Policy and Resource committee to consider the options attached in appendix 1 of this report. After much debate, Members considered the following options were acceptable and wish to submit them to the Policy and Resource Committee for consideration.**

Option 4 (re-introduce parking charges immediately at all locations) Members understood that there would be no reintroduction of car parking charges until early 2021. They acknowledge the need to support local retailers during the second lockdown and in the run up to Christmas. Five of the six working group Members wished to put

forward Option 4 to be considered alongside any subsequent reviews or studies.

Two of the five Members requested an additional caveat that Country Parks remain free until after lockdown due to the perceived health and wellbeing implications. Concerns were raised that introducing car parking charges in Country Parks would limit their accessibility to low-income car owners, especially during COVID-19 when more people are facing financial pressures. One Member also raised the point that charging for parking in country parks did not reduce visitor number and that the income generated would help with repairs and maintenance of the parks.

Option 6 (re-introduce charges at long-stay and on-street and County parks but not 'shoppers' car parks) One Member of the working group also wished to put forward option 6 for consideration. This Member was satisfied with this option in its entirety, however other working group members again raised concerns about reintroduction of car parking charges in Country Parks, for the reasons stated above and because of the environmental impact.

(2) this report be referred to the Policy and Resources Committee for their consideration.

22 ENVIRONMENT, CLIMATE EMERGENCY AND TRANSPORT COMMITTEE WORK PROGRAMME

The Chair presented the Work Programme for review.

Members asked that allotments be removed as they had been thoroughly considered by a previous Working Group; that Hoylake Beach Management be addressed at the next meeting which the Chair agreed could be discussed at the agenda setting meeting; and that a Road Safety Working Group be established.

Resolved –

That the proposed Environment, Climate Emergency, and Transport Committee work programme for the remainder of the 2020/21 municipal year be noted, subject to additional requests and the deletion of allotments.

Questions for Environment Committee 3 December 2020

Question 1

Will the members of the committee continue to back the unanimous declaration of a climate emergency by reflecting that emergency in all decisions, including those regarding Hoylake Beach which necessitate the development of sand dunes to combat the rising sea levels which threaten to flood parts of the Wirral?

Answer 1

Yes we will.

Supplementary question 1

Will this be made obvious to contractors as there was recent raking on Hoylake Beach.

Supplementary Answer 1

Yes.

Question 2

I would like to ask the Committee if the relevant Councillors could be informed in advance of any work scheduled for Hoylake beach and Hilbre Island. I suggest at least one week's notice be given unless there is an environmental incident which makes the attendance of contractors vital for public safety. However in such an emergency the chair of the committee should be informed immediately in any case.

I would also ask them if any such planned work could be posted on the Council website also one week in advance. This is partly to avoid wasting police time. Concerned members of the public who monitor the beach recently called them out to attend what they (reasonably) believed to be a wildlife crime taking place.

Answer 2

I'm happy to define 'relevant Councillors' as local Ward Councillors and members of this Committee and yes, that strikes me as a really good idea that advance warning could be given of any works where possible and put on the Council website.

Question 3

Raised an extensive question about poor management of street lighting repairs in Liscard and the safety risks this poses. Mr Jiang asked why the work has been so slow and when it is likely to be completed, highlighting that forty lights are out and one stretch of road has no lights.

Answer 3

All the council's streetlights on main roads were replaced with more reliable and energy-efficient LED lanterns in 2016. The council's remaining 28,000 street lights on all its other roads are currently being replaced with LED and this work will be completed by autumn 2021. There is a location-based schedule of work on this replacement programme set by our supplier SSE, based on most efficient use of their resources and value for money for the council. Meanwhile we have significantly improved the on-line process by which customers can report routine street lighting faults. Where available resource allows, we aim to attend to priority repairs within 15 working days. The majority are repaired during the first attendance, but if supply faults or replacement equipment is identified this can take a lot longer to resolve. There are currently about 5% of our street lights not working at any one time, which is similar to the national average, but we aim to improve this once the LED programme is concluded.

Supplementary question 3

Why is there inconsistency with other areas being replaced when Liscard has been without so many lights for over a year?

Supplementary Answer 3

We are addressing the new street lighting policy which should work towards addressing any problems we may have.

Question 4

What internal scrutiny and performance management system is there to be in place monitoring the council officer responsible for Hoylake foreshore under the soon to be enacted restructure of the department for Parks, Allotments and Countryside? Particularly in light of the likely changes to the way that Hoylake foreshore is to be managed/protected in future and the previous disruptive politicisation of beach management.

Answer 4

Following the restructure the appointed managers will be subjected to the Corporate Human Resources policies and any concerns about performance or failure to comply with standard Corporate response times can be logged through the Corporate Complaint System all complaints will be investigated and all complainants will be responded to in line with Corporate complaints policy.

With regard to the historical issues raised I can advise that the current Local Leader wasn't involved in the 2010 beach management agreement, which expired in 2015 but they did request for it to be taken down from the Council website as GDPR concerns had been raised. However, it is our understanding that it remains posted on the Hoylake Village Life website.

The HRA for the renewed sandyacht licence was submitted to Natural England on 25th November at Wirral Council's expense (£3500 fee to contractor plus officer time). Natural England have previously permitted the licence, however it remains to be seen what their comments will be this time around.

A full account of how information was assembled to inform the new HRA, who was consulted and timescales, is available if necessary – I have been advised by Officers that frequent consultation with the new secretary took place by telephone and email. The new secretary has been kept informed at each and every step throughout the process. Timescales have been aimed at recommencement of sandyachting in spring 2021.

Question 5

Will the council review the recommendations of the important Jemmett report of 2000 and publish into the public domain an update to that in the light of findings of the new geomorphological survey?

Answer 5:

Wirral Council will be appointing an independent, competent, suitably qualified expert(s) to undertake the required Ecological and Geomorphological Studies and they will be instructed on a specification based on the formal guidance report as provided by Natural England in 2020.

Officers will be basing future recommendations to Members based on the very latest information provided by Natural England and the appointed experts. There are no plans to use any information from other non-Council appointed source. If further information is required then the required experts will be appointed to provide the latest information and data as Officers deem required.

Question 6

Will the council review the recommendations of the important Jemmett report of 2000 and publish into the public domain an update to that in the light of findings of the new geomorphological survey?

Answer 6

I don't see that that would be a problem if it is already in the public domain. It is perfectly reasonable for us to do that. That can be published alongside the current geomorphological survey that we get commissioned.

Wirral Council will be appointing an independent, competent, suitably qualified expert(s) to undertake the required Ecological and Geomorphological Studies and they will be instructed on a specification based on the formal guidance report as provided by Natural England in 2020.

Officers will be basing future recommendations to Members based on the very latest information provided by Natural England and the appointed experts. There are no plans to use any information from other non-Council appointed source. If further information is required then the required experts will be appointed to provide the latest information and data as Officers deem required.

Supplementary question 6

Will the Council consider alternative and more affordable solutions to discharge surface water from the road?

Supplementary Answer 6

I will ask Neil Thomas to report back to me about if we can do that.

(Additional information from Neil Thomas: The Council, in line with its Coastal Strategy, is looking to reinforce coastal defences at Meols Parade. The first stage to developing a business case to secure grant aid funding for this is to develop a feasibility study which will look at identifying all possible benefits the scheme could realise. The Flood and Coastal Erosion Risk Management Appraisal Guidance encourages risk management authorities to consider additional, wider benefits when developing schemes in order to take a joined-up approach with flood risk management activities and other initiatives nearby. The drainage issues nearby at Hoylake present such an opportunity for inclusion within the Meols Parade scheme and as such the business case for the feasibility study will include for their consideration as they may bring additional, measurable, flood risk and possible water quality benefits to the scheme. There is no guarantee however that the business case for the feasibility study or the scheme itself will be supported and funding secured.

This is not a short term proposal however with the current Environment Agency Investment Programme identifying indicative funding in 2027/28.)

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ENVIRONMENT, CLIMATE EMERGENCY AND TRANSPORT COMMITTEE

Monday, 1 February 2021

REPORT TITLE:	LIVERPOOL CITY REGION DIGITAL CONNECTIVITY DIG ONCE POLICY
REPORT OF:	DIRECTOR OF RESOURCES

REPORT SUMMARY

Liverpool City Region Combined Authority (LCRCA) are building a 200+ km underground fibre network that will run through all six local authorities and will be delivered through a Combined Authority (CA) Joint Venture partnership with a private company. The purpose is to create a new telecommunications network infrastructure that will provide ultrafast broadband connectivity across the region and create conditions that improve choice for businesses and residents, stimulating competition and improving products and pricing.

The initial network will consist of four ducts which will run through all 6 Local Authority Areas and will connect LCR to external national and international networks. An initial route has been proposed for Wirral which takes in our major regeneration areas. In time it is planned that the network will be expanded to other parts of Wirral. The plan is to build the initial network in 3 years starting from mid-2021.

As part of the build Wirral Council has been asked to sign up to a "Dig Once" policy. Dig Once is the proposal that we install ducting at the same time that we undertake road, cycling and walking schemes. This approach can reduce the cost of deployment by as much as 50%, minimises disruption to road and public transport users and helps avoid any future embargos in specific locations across LCR.

The CA team have secured £6.39m from LCRCA's Strategic Investment Fund (SIF) for Dig Once. The CA team will assess each "Dig Once" opportunity and decide if the particular scheme meets their criteria. If it does, they will fund the authority to put ducting in the ground as part of the project delivery. Once the work is completed ownership of the ducts and fibre network will revert to LCRCA.

The Dig Once approach has been formally-recognised in the Government DCMS (Department for Culture, Media and Sport) 'Barrier Busting Toolkit' which aims to make it as cheap, quick, and easy as possible to deploy network infrastructure.

RECOMMENDATION/S

The Environment, Climate Emergency and Transport Committee are recommended to approve the Dig Once Collaboration Agreement and the Inter Authority Agreement and authorise the Director of Law and Governance to arrange the execution of the documents on behalf of the Council in accordance with the Council's Constitution".

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 Adopting a Dig Once policy will reduce costs and minimise disruption during the build process.
- 1.2 Dig Once is an important component of the LCRCA Infrastructure plan as it underpins the cost base and delivery timescales.
- 1.3 Not taking advantage of a Dig once opportunity would mean not being able to excavate that route for between 2-3 years because of Highway regulations.
- 1.4 Wirral will benefit from having a world class fibre network to supplement other commercial networks such as Openreach and Virgin Media.
- 1.5 To keep costs down and accelerate deployment the new network is likely to utilise existing Openreach ducting which is available for use under Ofcom Open Access rules for some parts of the route. This along with Dig Once will minimise disruption during the build process.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The only other option is that the Council does not sign up to the Dig Once Policy. This would significantly increase network build costs in Wirral and could have the effect of de-scoping areas of Wirral from this programme of work.

3.0 BACKGROUND INFORMATION

- 3.1 The Liverpool City Region (LCR) Fibre Network is a city regional telecoms network of high capacity fibre cabling. It is intended to improve LCR fibre connectivity for long-term productivity improvements. Once operational, the network will stimulate the private sector to deliver fibre broadband in areas that roll out would not otherwise extend to. This maximises the reach of improved digital connectivity and will support both digital inclusion and economic growth.
- 3.2 The project will cost circa £30m with 50% funding coming from LCRCA and the rest from the joint venture partner (JV) . It will create an estimated 500+ jobs (mainly in construction) and over the 15 year JV period has estimated benefit values of £110m. It is estimated that 100% Fibre-to-the-Premise (FTTP) coverage, which this project aims to accelerate, could be worth £1b to the Liverpool City Region.
- 3.3 Without intervention, incumbent providers will still deploy fibre to the premises broadband(FTTP), but their rollout plan will lead to sub-optimal social and economic outcomes because:

- The rate of rollout will be slower without the planned intervention.
- The pattern of rollout would exacerbate the LCR's digital divide given the tendency for commercial rollout to focus on areas of economic opportunity at the expense of more deprived and rural communities.
- Speeds and phasing could be sub-optimal as commercial operators will be unlikely to prioritise the Metro Mayor's transformational change agenda.

3.4 Following the impacts of COVID-19, digital ecosystems such as this could play a vital role in the recovery of the retail, hospitality, tourism, and leisure economies.

4.0 FINANCIAL IMPLICATIONS

4.1 There are no direct financial implications to Wirral Council to signing up to a Dig Once policy. All funding requirements for the programme will come from LCRCA.

5.0 LEGAL IMPLICATIONS

5.1 Wirral Councils Legal Services team have reviewed the Inter Authority Agreement and Collaboration Agreement and have advised that the documents identify and address all the relevant legal implications.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 Wirral Council Highways and Infrastructure Design and Commissioning team would include Dig Once requirements as part of future commercial tenders.

7.0 RELEVANT RISKS

7.1 Dig Once opportunities change the scope and duration of planned schemes.

7.2 Ducting is not delivered to required standard and hence not serviceable in any future contract.

7.3 General project delays associated with COVID-19 (e.g., project team illness, construction stoppages, supply chain issues).

7.4 LCRCA are to be found in breach of State Aid regulation at some future date.

8.0 ENGAGEMENT/CONSULTATION

8.1 Engagement and consultation activities will be picked up through the various schemes, the fibre network ducting programme would piggy-back.

9.0 EQUALITY IMPLICATIONS

9.1 The policy and associated actions may bring a positive impact for all socio economic groups in the long term by helping to make services and utilities more affordable.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 Signing up to the Dig Once Policy will have a positive impact on Wirral Environment and Climate Change priorities as outlined in the 'Sustainable Environment' theme in the Wirral Plan 2025. This is because the programme removes the need for separate excavations, digs and refills and the additional traffic movement and disruption generated as a result. This will reduce plant, machinery and materials required to complete the work as well as reducing associated pollution. The implementation of improved connectivity through the fibre network will also support the delivery of the 'Inclusive Economy' theme in the Wirral Plan 2025 and will reduce the requirement for journeys as more commerce will be conducted through digital means.

REPORT AUTHOR: **John Williams**
Fibre Infrastructure Manager
telephone: 07884 475720
email: johnwilliams5@wirral.gov.uk

APPENDICES

Appendix 1

High level map of proposed route through LCR.



Appendix 2

See enclosed document 1- IAA Schedule 1 Wayleave Agreement.

Appendix 3

See enclosed document 2- Dig Once Collaboration Agreement schedule1- Project profile form.

Appendix 4

See enclosed document 3- Dig Once Collaboration Agreement schedule2 -Inspection sign off.

Appendix 5

See enclosed document 4- Dig Once Collaboration Agreement.

Appendix 6

See enclosed document 5- Inter Authority Agreement for Dig Once.

BACKGROUND PAPERS.

Link to video

<https://www.liverpoolcityregion-ca.gov.uk/what-we-do/digital/>

SUBJECT HISTORY (last 3 years)

Council Meeting	Date

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DATED _____

**[CONTRACTING
AUTHORITY (GRANTOR)]**

and

LCRCA

WAYLEAVE AGREEMENT
in respect of
the installation of electronic communication
apparatus (fibre optic cabling ducts etc.) at [_____]

DATE

PARTIES

- (1) [COUNCIL] of [] (the "Grantor"); [and]
(2) [LCRCA] (incorporated and registered in England and Wales under company registration number [], the registered office of which is at [] (the "Operator");

BACKGROUND

- (A) This Agreement is a code agreement under, and made in accordance with, Part 2 of the Code by the Grantor, as "occupier", and by the Operator, as "operator", conferring upon the Operator rights for statutory purposes with respect to the Works described in **clause 3.1** and certain powers under the Code.
(B) The Grantor is the freeholder of the Property (as defined in **clause 1**).
(C) The expressions, "Code", "Operator" "Property" and "Works" are defined in **clause 1. IT IS**

AGREED as follows:

1 Definitions

In this Agreement:

1.1 Apparatus

"Apparatus" means the apparatus described in **Schedule 2**, (including "electronic communications apparatus" as defined by the Code), supplied by the Operator for the use of the Grantor as altered or upgraded in accordance with this Agreement from time to time in any of the ways permitted under **clause 3.1.3**; a reference to the Apparatus is to all or part of it as the context so allows;

1.2 Code

"Code" means the Electronic Communications Code contained in Schedule 3A to the Communications Act 2003;

1.3 Code Rights

"Code Rights" means such of the rights granted by the Grantor to the Operator in **clause 3.1** of this Agreement as are referred to in paragraph 3 of the Code;

1.4 Extra Apparatus

"Extra Apparatus" means apparatus added to the Apparatus, or otherwise installed, or which is treated under **clause 3.1.3** as permitted; once Extra Apparatus has been added, installed or treated as permitted in accordance with this Agreement, the expression "Apparatus" is to be treated as including the Extra Apparatus without differentiation;

1.5 Group Company

"Group Company" means a member of the group of companies of which the Operator is a member; for this purpose, two bodies corporate are to be taken as member of a group if one is a subsidiary of the other or both are subsidiaries of a third body corporate within the meaning of section 1159 of the Companies Act 2006;

1.6 Operator

"Operator" means the Operator named above in the **Parties clause**, or such other party to whom this Agreement is from time to time assigned in accordance with its terms during its continuance;

1.7 Permitted Strip

"Permitted Strip" means the part of the Property which comprises a strip one metre or thereabouts in width running over and to either side of the Route;

1.8 Plan(s)

"Plan(s)" means the [plan(s),] [drawings] [and] [specifications] referred to and annexed in **Schedule 2**;

1.9 Property

"Property" means the property described in **Schedule 1**; a reference to the Property is to all or part of it as the context so allows;

1.10 Route

"Route" means such part of the Property as now shown edged red on the Plan, but as may be changed from time to time by the Grantor, acting reasonably, to accommodate the Apparatus or as determined in accordance with **clause 7.8**;

1.11 Works

"Works" means any of the works to the Property necessary for the purposes set out in **clause 3.1** whether by way of initial installation of the Apparatus, upgrading, other alteration to the Apparatus, repairs or otherwise, and includes any related works.

2 Interpretation

2.1 A reference to the Grantor includes those other persons bound by this Agreement, or who will become bound by it, under the Code.

2.2 A reference to the Operator includes an entity to whom the benefit of this Agreement is assigned, or with whom the Apparatus is shared, under **clause 9**.

2.3 A reference to particular legislation includes that legislation as amended, consolidated, re-enacted or replaced, and all subordinate legislation made under it as is, in each case, from time to time in force.

2.4 In this Agreement where the context so allows:

2.5.1

words importing the singular meaning include the plural meaning and vice versa;

2.5.2

an obligation of a party includes the obligation to procure its observance or performance;

2.5.3

a restriction on a party includes the obligation not to permit the infringement of the restriction; and

2.5.4

a reference to a Schedule or to a clause is to a Schedule to or to a clause in this Agreement.

2.5 Where the consent or approval of the Grantor to any matter is required under this Agreement:

2.6.1

the consent or approval is not to be unreasonably withheld unless expressly indicated otherwise; but

2.6.2

in order to be effective, the consent or approval must be in writing.

3 Rights of the Operator

3.1 The Grantor grants to the Operator, for the period until it is terminated in accordance with **clause 11**, or the Code Rights of the Operator later come to an end, the rights for it and its duly authorised agents to:

3.1.1

install, keep installed and operate the Apparatus in, on, under, over or through the Route [and to connect to a power supply];

3.1.2

inspect, maintain, adjust, repair, decommission and power down the Apparatus;

3.1.3

upgrade the Apparatus, and to alter the Apparatus whether or not by the addition of Extra Apparatus within the limits of the Route, but not outside those limits without the consent of the Grantor;

3.1.4

remove the Apparatus as required or entitled so to do under this Agreement on or after the coming to an end of this Agreement; and

3.1.5

carry out the Works,

with such rights over the Permitted Strip (but none other) as are necessary, reasonably to gain access to the Route and Apparatus in the execution of the rights granted under this **clause 3.1**. The rights so granted to the Operator are to be exercised in accordance with the Operator's obligations under this Agreement.

3.2 For the purposes of **clause 3.1.3**, Extra Apparatus is to be treated as kept within the limits of the Route if it does not involve taking up substantially more space within, or enlarging, the Route.

3.3 Subject to **clause 11.6.2**, the Apparatus is at all times to remain the property of the Operator.

3.4 For the purposes of **clause 3.1**, the Operator and its duly authorised agents may enter the Permitted Strip at reasonable times, subject to **clause 4.4**, with or without vehicles (where appropriate), and with workmen, plant, equipment or machinery as may reasonably be required to carry out the Works.

3.5 This **clause 3.5** applies where an alteration is made to the Apparatus or it is relocated:

3.5.1

the provisions of this Agreement are to continue to apply to the Property and the Apparatus as altered and, so far as applicable, in the new location; and

3.5.2

each party shall promptly sign a memorandum recording the details of the alterations to the Apparatus and, (if applicable) the new location and any consequential adjustment of the terms of this Agreement, and retain a copy with its part of this Agreement.

3.6 The Operator may use the Apparatus only for the purpose of providing to the Property a system infrastructure to be available for use by providers of electronic communication networks for the provision by them of their networks until this Agreement is terminated under **clause 11**, or the Code Rights of the Operator later come to an end.

3.7 This Agreement does not create the relationship of landlord and tenant between the Grantor and the Operator in respect of the Property.

4 The Operator's Obligations

4.1 The Operator undertakes with the Grantor to observe and perform the obligations in the following

provisions of this **clause 4**.

4.2 Before commencing any Works:

4.2.1

to obtain such statutory consents, permits to work, licenses, permissions, approvals and authorisations as are required, necessary for the commencement, execution and retention of the Works; and

4.2.2

unless in case of the initial installation of Apparatus the Grantor has approved the specification and the Works involved, to provide to the Grantor details of the Works for prior approval; but

4.2.3

if consent of the Grantor is not required to Works to be carried out under **clause 3.1.3**, to give details of the Works within two months after they have been completed; and

4.2.4

unless the Grantor has approved the specification for the initial installation of Apparatus and the Works, or has granted consent to the alteration of the Apparatus, to provide to the Grantor details of the Apparatus as installed or altered within two months after completion of the Works.

4.3 Before entering the Property to carry out Works, to give to the Grantor reasonable notice to that effect (except in the case of emergency when as much notice as is reasonably practicable, or none if not practicable, has to be given). [articulation/illustrations needed as to what constitutes an emergency]

4.4 To carry out and complete the Works:

4.4.1

in accordance with the Plans, and in a proper, safe and workmanlike manner;

4.4.2

in compliance with applicable statutory requirements and international standards, and in accordance with health and safety regulations and permits to work;

4.4.3

in accordance with the reasonable guidelines of the Grantor of which the Operator has been notified;

4.4.4

taking all proper precautions as may reasonably be practicable:

(a) to avoid unnecessary or undue obstruction or interference with the access to or use of the Property, or any neighbouring property; and

(b) so as not to cause unnecessary or undue damage, nuisance or inconvenience to the Grantor, and the [tenants or occupiers of the Property, or of any neighbouring property; and

4.4.5

in compliance with the reasonable security and access requirements of the Grantor as notified to the Operator.

4.5 By way of reinstatement, to make good to the reasonable satisfaction of the Grantor damage caused to the Property, or any neighbouring property of the Grantor, by the Works as soon as may reasonably be practicable, but no later than 1 month following completion of the Works. In case of temporary reinstatement of affected areas of the Property during the course of the Works, to render them safe for their intended use until final reinstatement can be carried out.

4.6 Not to use any part of the Property apart from the Route and such other parts of the Property as it is

reasonably necessary to enter in order to carry out the Works or in connection with the Works as permitted by **clause 3.1**.

4.7 To maintain and keep the Apparatus:

4.7.1

identifiably labelled with the name of the Operator; and

4.7.2

in good repair and condition and so as not to be a danger to the Grantor, its employees or property, or to the tenants and occupiers of, or visitors to, the Property,

and to use and operate the Apparatus in accordance with applicable legislation and recommended guidelines.

4.8 To maintain third party and public liability insurance cover in respect of the exercise of the Operator's rights and the performance of the Operator's obligations under this Agreement, whether by the Operator, its employees, agents, or persons under its control or by a Group Company:

4.8.1

with a reputable insurance company for not less than [£10,000,000] for each insurance year:

- (a) during the course of this Agreement; and then
- (b) for each insurance year until the Operator is no longer actually or contingently liable in respect of matters arising from actions and omissions on its part, or for those for whom it would be vicariously liable, during the course of this Agreement; and

4.8.2

against injury or death and loss caused to persons and damage or destruction caused to property,

and to provide to the Grantor details of the insurance and evidence that cover is in force upon reasonable request, but no more than once in any insurance year applicable to the policy unless in the meantime there is a change of insurer, policy conditions or cover.

5 The Grantor's Obligations to the Operator

5.1 The Grantor undertakes with the Operator to observe and perform the obligations in this **clause 5.1**:

5.1.1

to use reasonable endeavors:

- (a) to prevent damage, or anything likely to cause damage to be done, to the Apparatus; and
- (b) not to interfere or tamper with the Apparatus and its operation.

5.1.2

to give reasonable notice of any activity, by way of power outages or otherwise, that it intends to carry out, that would or might affect the continuous operation of the Apparatus or otherwise limit the ability of Operator to provide electronic communications services to the Property.

5.2 The Grantor confirms that it does not require the consent of any person freely to enter into this Agreement.

5.3 Nothing in this Agreement will prevent or restrict the Grantor from altering, amending developing or redeveloping the Property or any other buildings, property or land.

6 Not Used

7 Relocation of Apparatus Required by the Grantor

7.1 This **clause 7** applies if the Grantor intends to repair or redevelop the Property, necessarily involving the relocation of the Apparatus. For these purposes, the expressions:

7.1.1

“**repair**” is to be construed as including any operation by way of repair, improvement, alteration, refurbishment, renewal or addition of or to the Property, or of or to the plant and equipment of the Grantor in the Property; and

7.1.2

“**relocation of the Apparatus**” means the relocation of the Apparatus whether it is to be temporary or permanent.

7.2 The parties shall use reasonable endeavors to collaborate with a view to providing acceptable solutions to situations that:

7.2.1

allow for the Grantor’s requirements to repair or redevelop the Property, and to require the relocation of the Apparatus; and

7.2.2

enable the Operator to provide a continuous electronic communications service to its customers in the Property.

7.3 The Grantor shall give to the Operator:

7.3.1

not less than 3 months’ notice of its intention so to repair or redevelop the Property except in case of emergency when as much notice as is reasonably practicable, or none if not practical, has to be given;

7.3.2

details of how the relocation of the Apparatus is to be accommodated to enable, or allow for, the Property to be repaired or redeveloped; and

7.3.3

evidence that it has obtained, if applicable, planning permission or other permissions, or licenses, enabling it to commence carrying out repair or the redevelopment.

7.4 If the nature or extent of the repair or the redevelopment is such that the continuation in the location specified in this Agreement would not be practicable, the Grantor shall use reasonable endeavors:

7.4.1

to find an alternative, suitable, location in the Property for the Apparatus reasonably satisfactory to the Operator and the Grantor; and

7.4.2

to meet the Operator's reasonable requirements to secure the uninterrupted service provided by the Apparatus.

7.5 The Operator shall not materially hinder, prevent, impede or increase the cost to the Grantor of works of repair or redevelopment.

7.6 The Grantor may not require relocation of the Apparatus more than three times in any consecutive period of five years during the continuance of this Agreement.

7.7 [The reasonable costs of relocating the Apparatus are to be borne by the Grantor.]

7.8 If the parties are unable to agree an alternative location for the Apparatus by a time at least one month before the expiry of the notice given by the Grantor under **clause 7.3.1**, either the Grantor or the Operator may refer the matter for determination under **clause 13**.

7.9 The Operator acknowledges that nothing in this Agreement is intended to prevent or restrict the right of the Grantor to repair or redevelop the Property or any other buildings, property or land.

8 Interference

If it is demonstrated by the Grantor that the Apparatus at any time materially interferes (electronically, electromagnetically, mechanically or otherwise) with the operation of other equipment installed at the Property before the date of this Agreement, the parties are to co-operate and use reasonable endeavors to find and implement a technical solution.

9 Assignment

9.1 This Agreement may be assigned only to an operator to whom the Code is applied under section 106 of the Communications Act 2003.

9.2 The assignor is not liable for a breach of this Agreement occurring after the assignment if:

9.3.1

the Grantor is given notice of the name of the assignee, to whom this Agreement has been assigned, and the assignee's address for service in the form of (or a form of notice containing all the same information as) the notice set out in Schedule 3; and

9.3.2

the notice has been given to the Grantor before the occurrence of the breach.

9.3 The Operator shall notify the Grantor of the completion of the assignment of this Agreement within 28 days after the date of the assignment, and shall provide to it a certified copy of the assignment.

10 Upgrading

10.1 The Operator may upgrade the Apparatus subject to meeting the tests applying, and the requirements, in the following provisions of this **clause 10**.

10.2 The changes to the Apparatus so required may only be made if they do not:

10.2.1

have an adverse impact, or no more than a minimal adverse impact, on the appearance of the Apparatus; or

10.2.2

impose an additional burden of any kind on the Grantor, including anything that has an additional adverse effect on the Grantor's enjoyment of the Property, or causing it additional loss, damage or expense,

unless the Grantor consents to the changes being made on terms it reasonably requires to mitigate the adverse impact or additional burden which would otherwise result, or the changes are ordered by the court.

10.3 The Operator shall give to the Grantor not less than [] weeks' notice of its intention to make changes to the Apparatus of more than minimal adverse impact upon the Grantor or the Property before commencing any

Works, and shall provide:

10.3.1

evidence (including drawings, specifications, plans and method statements as appropriate) to show to the reasonable satisfaction of the Grantor that the conditions in **clause 10.2** are to be met; and

10.3.2

if applicable, details of the identity of the operator with whom the Apparatus is to be shared.

11 Termination

11.1 This Agreement may be terminated in any of the circumstances set out in this **Clause 11**. Following termination of this Agreement by the Grantor, the Code Rights of the Operator may nevertheless continue to be exercised by it for so long as they remain exercisable in accordance with Part 5 of the Code and to be binding during that period on the Grantor.

11.2 This Agreement terminates immediately:

11.2.1

on [Date];

11.2.2

if the Operator ceases to be a person to whom the Code is applied; or

11.2.3

if the Apparatus is no longer being used, nor likely to be used, at the Property, or is removed by the Operator otherwise than temporarily for repair or replacement.

11.3 This Agreement may be terminated if either the Operator or the Grantor is in substantial breach of this Agreement, and has failed to remedy the breach within three months following service of notice by the other specifying the breach and requiring it to be remedied. The Grantor or the Operator (as the case may be) may then, or at a later time while the breach has not been remedied, terminate this Agreement immediately by giving notice to the other to that effect.

11.4 The Grantor may terminate this Agreement by giving to the Operator not less than three months' notice that it intends to commence to repair (as defined in **clause 7.1.1**) the Property in circumstances in which the continuation of this Agreement under **clause 7.4** could not be practicable.

11.5 The Grantor may terminate this Agreement and the Operator's Code Rights by giving to the Operator not less than 18 months' notice that it intends to redevelop the whole or part of the Property and could not reasonably do so unless this Agreement is terminated and the Code Rights come to an end.

11.6 Following the termination of this Agreement and the coming to an end of the Code Rights of the Operator:

11.6.1

the Operator shall, at the Grantor's reasonable request by notice given within a period, not exceeding [6] months after the date of termination of this Agreement and the coming to an end of the Operator's Code Rights:

- (a) remove the Apparatus from the Property as soon as reasonably practicable; and
- (b) make good damage occasioned to the Property by its removal to the reasonable satisfaction of the Grantor within a reasonable period not exceeding three months after the date of the Grantor's request; but

11.6.2

if the Operator does not comply within 3 months with the request of the Grantor given under **clause 11.6.1**, the Grantor:

- (a) is to be entitled to treat the Apparatus as abandoned and of no value; and
- (b) may remove and dispose of the Apparatus and recover from the Operator the reasonable costs of doing so.

12 Indemnity provisions

12.1 The Operator shall keep the Grantor indemnified against liabilities suffered or incurred by it arising out of the breach, non-observance or non-performance of the obligations of the Operator in this Agreement.

12.2 In this **clause 12**, “**liabilities**” includes losses, claims, demands, proceedings, damages, compensation, costs and expenses.

12.3 The indemnity of the Operator under **clause 12.1** applies to liabilities suffered by the Grantor arising from any cause, including the following causes:

12.3.1

delay to, prevention or redesign of works of repair (as defined in **clause 7.1**) by the Grantor of the Property (or adjoining property, or the plant and machinery serving it); and

12.3.2

loss of rent from the Property, or loss of value equal to the difference between the value of the Grantor's interest in the Property with the continuing presence of the Apparatus and the value of its interest without it.

12.4 Claims of the Grantor under these indemnity provisions, howsoever the liability of the Operator arises, are not to exceed [£10,000,000] in aggregate in any insurance year under the policy of insurance, unless it involves death or personal injury caused by negligence of the Operator or those for whom it is vicariously responsible.

12.5 The Grantor:

12.5.1

shall notify the Operator as soon as may reasonably be practicable on becoming aware of any liabilities and shall use reasonable endeavours to mitigate the liabilities for which it seeks indemnity; but

12.5.2

may not compromise or settle any of the liabilities, unless required under an order of court, without the consent of the Operator, and shall permit the Operator to defend the claims in the name of the Grantor at the expense of the Operator.

13 Mediation of Disputes and Dispute Resolution

13.1 Either the Grantor or the Operator may refer a dispute in connection with this Agreement to the respective nominated managers of each for resolution, both of whom are to use their reasonable endeavours to resolve the dispute in the first instance as soon as reasonably practicable. A nominated manager must be a senior representative empowered to make executive decisions on behalf of the party he or she represents.

13.2 If the dispute is not so resolved within twenty-eight (28) days after referral in accordance with **clause 13.1**, either party may request by notice given to the other (“**dispute notice**”) that the dispute is referred to mediation for resolution. In that event:

13.2.1

the parties shall appoint a single mediator to perform the mediation;

13.2.2

where the parties are unable to agree on the appointment of a mediator within twenty-eight (28) days of the dispute notice, the mediator is to be appointed by the Centre for Effective Dispute Resolution, or its successor or replacement body, on the application of either party; and

13.2.3

the mediation is to be conducted in England pursuant to a procedure established by the mediator in his or her absolute discretion.

13.3 Neither party may commence court proceedings in relation to the dispute until (acting in good faith):

13.3.1

it has first attempted to settle the dispute by mediation in accordance with **clause 13.2**; and

13.3.2

either the mediation has terminated or the other party has failed to participate in the mediation, but the right to issue proceedings is not to be prejudiced by unreasonable delay in the mediation proceedings.

13.4 A dispute or difference between the parties (other than one in relation to the Code), that is not resolved by mediation under this **clause 13**, is to be referred to a single arbitrator, if the parties can agree on one, but otherwise to an arbitrator appointed by the President of the Royal Institution of Chartered Surveyors at the request of either party.

13.5 The Arbitration Act 1996 is to apply to the reference.

13.6 The parties acknowledge the power of the arbitrator, under section 37 of the Arbitration Act 1996, to appoint experts or legal advisers, or technical assessors to assist on technical matters.

13.7 Disputes relating to the Code are to be resolved through the courts of England and Wales.

14 Notices

14.1 A notice or notification given under or in connection with this Agreement must be given in writing and signed by or on behalf of the party giving it.

14.2 A notice given under the Code must comply with the provisions of Part 15 of the Code. Notice of required access to the Property may be given by email at the following email addresses:

The Grantor: *[insert email address]*;

The Operator; *[insert email address]*;

but in case of change of address, at such other email address as has been notified to the other [party] [parties].

14.3 Notices (other than notices of required access given by email) given under or in connection with this Agreement will be validly served if personally delivered, or if sent by a registered post service (within the meaning of the Postal Services Act 2000), or by first class recorded delivery or first class ordinary post, and (in any such case) addressed to:

14.3.1

the Grantor at *[insert the address]*;

14.3.2

the Operator at *[insert the address]*;

but in case of change of address, at such other location as has been notified to the other [party] [parties].

14.4 Any such notice is to be deemed to have been served if it is:

14.4.1

personally delivered and with immediate effect on delivery; or

14.4.2

sent in accordance with **clause 14.3** and having effect 48 hours after posting.

14.5 Either [Any] of the parties may change its address for service and other relevant details by giving to the other[s] notice of the changes in accordance with this **clause 14**.

15 Costs and VAT

15.1 All costs payable to a party are exclusive of value added tax chargeable on taxable supplies made by that party under or in connection with this Agreement; the tax is to be paid in addition.

15.2 A party supplying goods or services under this Agreement is to be paid the amount of any input value added tax incurred by that party to the extent to which it is not entitled to credit under section 26 of the Value Added Tax Act 1994.

16 Local Authority

16.1 The Grantor enters into this Agreement in its capacity as landowner only and nothing contained or implied in this lease shall prejudice or affect the rights powers duties and obligations of [NAME OF CONTRACTING AUTHORITY] in the exercise of its statutory functions and the rights powers duties and obligations of [NAME OF CONTRACTING AUTHORITY] under all statutes may be fully and effectively exercised in relation to the Property as if this Agreement had not been entered into.

16.2 Nothing herein contained or implied shall prejudice or affect [NAME OF CONTRACTING AUTHORITY]'s rights, powers duties and obligations in the exercise of its functions as a local authority, planning authority, highway authority or any other statutory capacity whatsoever nor relieve the Operator from the necessity to obtain all such approvals or consents as may from time to time be requisite from [NAME OF CONTRACTING AUTHORITY] in such capacities as aforesaid and the rights powers duties and obligations of [NAME OF CONTRACTING AUTHORITY] under all public and local statutes byelaws orders and regulations may be as fully and effectually exercised in relation to the Property as if this Agreement had not been entered into.

17 Entire Agreement

This Agreement constitutes the entire agreement between the Grantor [and] the Operator.

18 Misrepresentation

18.1 The Grantor and the Operator each acknowledge to the other that no statement or representation, whether written or oral, previously made to it by or on behalf of the other has induced it to enter into this Agreement.

18.2 Liability of the Grantor on the one hand and the Operator on the other and any remedy at law, in equity or under statute in respect of such a statement or representation, if innocently made, or for implied warranty, is excluded.

19 Severance of Invalid Provisions

If a term of this Agreement, or its application to any person or circumstance, is held to be invalid or unenforceable, the term, or the relevant extent of its application, is to be treated as severable; the remainder of this Agreement is to continue in force and to be enforceable to the extent permitted by law.

20 Exclusion of Third Party Rights

Nothing in this Agreement is intended to create rights in favour of a third party under section 1(1)(b) of the Contracts (Rights of Third Parties) Act 1999.

21 Governing Law and Jurisdiction

21.1 This Agreement, and a dispute or claim arising out of or in connection with it (including its formation and non-contractual disputes or claims), are to be governed by the laws of England and Wales.

21.2 The courts of England and Wales are to have the exclusive jurisdiction to determine disputes or claims that arise out of or in connection with this Agreement, including its formation and non-contractual disputes or claims.

This Agreement has been entered into on the date given at the beginning of it.

SCHEDULE 1

The Property

The land [and buildings] known as [] being [part of] the land registered at
the Land Registry under [freehold] [leasehold] title number [].

SCHEDULE 2

Apparatus

[Ducting/sub-ducting, chambers and cable trays; [fibre-optic] cables [within the ducting/sub-ducting and chambers and supported from cable trays]; terminating equipment] as further shown and described in the drawings and specifications annexed to this Agreement, namely:

[Drawing number .]

[Method statement dated .]

[Plan number .]

[.].

[Working area included if any]

SCHEDULE 3

[Text of the Statutory notice of the assignment of an agreement under the Electronic Communications Code – Paragraph 16(5), Part 3 of Schedule 3A of the Communications Act 2003]

1. This is a statutory notice pursuant to paragraph 16(5) of the Electronics Communications Code in Schedule 3A to the Communications Act 2003 (the “**Code**”).
2. We, *[insert name of the Operator]*, are currently party to an agreement under Part 2 of the Code with you *[insert name of the Grantor]* (the “**Agreement**”). Under the Agreement, you agreed to *[confer][be bound by]* a number of Code rights in order to facilitate the deployment by us of our electronic communications network. These Code rights relate to land occupied by you at *[insert address]*.
3. The purpose of this notice is to inform you that, on *[insert date]*, we assigned the Agreement to *[insert name and address of assignee]* (the “**Assignee**”). This means that we have assigned the benefit of the Code rights *[conferred by] [binding on]* you under the Agreement to the Assignee, and the Assignee is (from the date of the assignment) bound by the terms of the Agreement.
4. Please note that, from the date on which this notice has been given to you, we will not be liable for any breach of a term of the Agreement (unless that breach took place before the date on which this notice was given to you). As a result, should you have any concerns in the future about the exercise of Code rights on your land, please contact the Assignee.
5. The address of the Assignee is *[insert address]*.
6. If you have any questions about this notice, please do not hesitate to contact us via telephone (*[insert telephone number]*) or email (*[insert email address]*)

[insert date of notice]

Signed by **[NAME OF SIGNATORY]** a duly authorised signatory for and on behalf of **[GRANTOR]**:

[Signature]

Signed by **[NAME OF SIGNATORY]** a duly authorised signatory for and on behalf of **[OPERATOR]**:

[Signature]

DIG ONCE PROJECT PROFILE FORM

The viability of the Dig Once Works proposed in this Dig Once Project Profile Form will be objectively assessed against the criteria established by the LCRCA in respect of the Dig Once Programme.

LOCAL AUTHORITY (LA) DETAILS:

LA Name	TO BE COMPLETED BY THE COMBINED AUTHORITY
Project Name & Ref.	TO BE COMPLETED BY THE COMBINED AUTHORITY [Ref: LA + scheme number, e.g. HAL01, SEF02 etc.]
Project Location	TO BE COMPLETED BY THE COMBINED AUTHORITY
LA Payment Address	TO BE COMPLETED BY THE LOCAL AUTHORITY
LA Representative	
Email	
Telephone	

LCRCA DETAILS:

Funder	Liverpool City Region Combined Authority (LCRCA)
Project Manager	Matthew Guinan
E-mail	matthew.guinan@liverpoolcityregion-ca.gov.uk
Telephone	07785656169
Address	1 Mann Island, Liverpool, L3 1BP
Existing CA Scheme	YES / NO (delete as appropriate)
Existing CA Funding	STEP / SUD / TCF / KRN / NA etc. (more detail section x.x)
PMO Representative	Name email telephone / Not applicable
LTP Representative	Name email telephone / Not applicable

CONTRACTING DETAILS:

Main Contractor	Organisation
Role	e.g. design, project management
Representative	Name email telephone
Sub-contractor(s)	Organisation
Role	e.g. construction, installation

Representative	Name email telephone
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<p><u>1. Description of main project (prior to Dig Once):</u> TO BE COMPLETED BY THE COMBINED AUTHORITY</p>
<p><u>2. Description of funding arrangement for main project (prior to Dig Once):</u> TO BE COMPLETED BY THE COMBINED AUTHORITY</p>
<p><u>3. Description of proposed Dig Once Works:</u> TO BE COMPLETED BY THE COMBINED AUTHORITY</p>
<p><u>4. Proposed delivery timeline and commencement date:</u> TO BE COMPLETED BY THE COMBINED AUTHORITY</p>
<p><u>5. Quotation for Dig Once Works (including quote reference):</u></p> <ul style="list-style-type: none"> - Maximum Sum payable by the LCRCA: £ - Value: total (£) £ per metre - Issued by: name date - Approved by: <p>TO BE COMPLETED BY THE COMBINED AUTHORITY</p>
<p><u>6. List of drawings, details and information to be relied upon:</u> TO BE COMPLETED BY THE COMBINED AUTHORITY</p>
<p><u>7. Description of pre-agreed deviations to specification [spec. ref.]</u> YES / NO [if yes, describe below] Note: any deviations from [spec. ref] beyond this date must be agreed by LCRCA upon receipt of Deviation to Specification form [ref] TO BE COMPLETED BY THE COMBINED AUTHORITY</p>
<p><u>8. Details of Collateral Warranties, Indemnities, Warranties and Defects Liability Period in favour of the Local Authority:</u></p>
<p><u>9. Project Manager's notes:</u> e.g. known project constraints, design features, risks etc. TO BE COMPLETED BY THE COMBINED AUTHORITY</p>
<p><u>10. Scheme appraisal summary</u></p> <ul style="list-style-type: none"> - Project Manager: - Technical Advisor comments:

Completed Dig Once Works will be reviewed and accepted by the LCRCA in accordance with the Dig Once Acceptance and Sign Off Form.

By Signing and returning this Dig Once Project Profile Form [Local Authority] agrees to deliver the Dig Once Works at the cost and to specification detailed above and on the terms of the Dig Once Collaboration Agreement.

FOR AND ON BEHALF OF [LOCAL AUTHORITY]:

Name and Title	TO BE COMPLETED BY THE LOCAL AUTHORITY
Signature	
Date	TO BE COMPLETED BY THE LOCAL AUTHORITY
Authorised Representative for Contract (if different)	TO BE COMPLETED BY THE LOCAL AUTHORITY

FOR AND ON BEHALF OF LIVERPOOL CITY REGION COMBINED AUTHORITY:

Name and Title	TO BE COMPLETED BY THE COMBINED AUTHORITY
Signature	
Date	TO BE COMPLETED BY THE COMBINED AUTHORITY

LCRCA OFFICE PURPOSES ONLY:

<i>Approved / Rejected</i>	TO BE COMPLETED BY THE COMBINED AUTHORITY
<i>Funding to be allocated</i>	TO BE COMPLETED BY THE COMBINED AUTHORITY
<i>Name and Title</i>	TO BE COMPLETED BY THE COMBINED AUTHORITY
<i>Signature</i>	
<i>Date</i>	TO BE COMPLETED BY THE COMBINED AUTHORITY

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Dig Once Inspection & Sign-Off Sheet

(Page 1 of this document can be taken from Dig Once Project Profile document)

LOCAL AUTHORITY (LA) DETAILS:

LA Name	TO BE COMPLETED BY THE COMBINED AUTHORITY
Project Name & Ref.	TO BE COMPLETED BY THE COMBINED AUTHORITY [Ref: LA + scheme number, e.g. HAL01, SEF02 etc.]
Project Location	TO BE COMPLETED BY THE COMBINED AUTHORITY
LA Payment Address	TO BE COMPLETED BY THE LOCAL AUTHORITY
LA Representative Email Telephone	

LCRCA DETAILS:

Funder	Liverpool City Region Combined Authority (LCRCA)
Project Manager	Matthew Guinan
E-mail	matthew.guinan@liverpoolcityregion-ca.gov.uk
Telephone	07785656169
Address	1 Mann Island, Liverpool, L3 1BP
Existing CA Scheme	YES / NO (delete as appropriate)
Existing CA Funding	STEP / SUD / TCF / KRN / NA etc. (more detail section x.x)
PMO Representative	Name email telephone / Not applicable
LTP Representative	Name email telephone / Not applicable

CONTRACTING DETAILS:

Main Contractor	Organisation
Role	e.g. design, project management
Representative	Name email telephone
Sub-contractor(s)	Organisation
Role	e.g. construction, installation
Representative	Name email telephone

Ducting

No:	Description:	Comments and Evidence	Accepted (Y/N)
1	4 x ducts installed in a symmetric 2-lower and 2-upper configuration		
2	All ducts are 110(94) mm x 6m twin wall HDPE pipe		
3	All ducts are coloured magenta		
4	Location of duct as agreed		
5	All duct depths shown on As Built		
6	All ducts entering a street cabinet are sealed internally and externally		
7	Approved connectors are used for any duct joints		
8	All trench widths are 150mm wider than the duct formation		
9	All ducts are surrounded by fine fill material (Class 1, 2 & 3)		
10	Fine fill material hand rammed around ducts and 100mm above the duct		

11	All backfill above ducts is compliant to HAUC/SHW standards up to sub-base level and mechanically compacted every 100mm		
12	All ducts that do not terminate at a cabinet or mounting post have their ends marked with marker blocks and location posts		
13	Yellow marker tape laid across the width of all trenches, 150mm above the uppermost duct stating "LCRCA Fibre Optic Cable" in black writing		
14	All ducts have been cleaned and tested		
15	Blue nylon (gnaw proof) draw rope present in all ducts and securely fitted to a jointing chamber		
16	All duct entrances are sealed by a suitable removable sealing compound		

Chambers

No:	Description:	Comments and Evidence	Accepted (Y/N)
17	All chambers are installed to the agreed depth		
18	All chambers are constructed to the agreed size		
19	All chambers are installed to the agreed location and frequency		
20	All none-modular footway chambers are constructed of C35 concrete and all carriageway chambers are constructed of C40 concrete		

21	Any reinforcement is secured together using approved wire ties		
22	All duct entries are positioned 75mm from any adjacent wall and are flush with the face of the chamber		
23	All frames and covers have "LCRCA Comms" stamped on and are manufactured to BS EN124 class D400		
24	All footway covers in grass or unmade surfaces have a 100mm wide strip of C35 concrete surrounding the frame		

Documentation

No:	Description:	Comments and Evidence	Accepted (Y/N)
25	Photographic evidence of duct runs and chambers (during and after install, internal and external and showing key features: draw cords, marker tape, chamber reinstatement etc.)		
26	Geo-location details of all chambers and duct runs		
27	General arrangement details and cross-sectional drawings showing as-built depth, layout and any variations to standard LCRCA specification		
28	Test certificates and any maintenance confirmation (from original contract) that explains what LCRCA will benefit from (i.e. 12 months defects + product)		

Additional Comments:

FOR AND ON BEHALF OF [LOCAL AUTHORITY]:

Name and Title	
Signature	
Date	

FOR AND ON BEHALF OF LIVERPOOL CITY REGION COMBINED AUTHORITY:

Name and Title	
Signature	
Date	

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**LIVERPOOL
CITY REGION**
COMBINED AUTHORITY

METROMAYOR
LIVERPOOL CITY REGION

STRATEGIC INVESTMENT FUND

Dated

2020

Liverpool City Region Combined Authority

- and -

[]

Dig Once Digital Infrastructure -

Collaboration Agreement for

[Dig Once Project]

SIF2092

Liverpool City Region Combined Authority
Jill Coule
Chief Legal Officer and Monitoring Officer
No.1 Mann Island
Liverpool L3 1BP
Ref: RSN20587

THIS AGREEMENT is dated

2020

Parties:

- (1) **LIVERPOOL CITY REGION COMBINED AUTHORITY** of No.1 Mann Island, Liverpool, L3 1BP (“the LCRCA”); and
- (2) [_____] of [_____] (“the Contracting Authority”)

(each a “Party” and together the “Parties”).

Background

- (A) The LCRCA has adopted the Dig Once Programme (defined below).
- (B) Under the LCRCA’s Strategic Investment Fund (SIF) process £6.39m has been made available to achieve the objectives and outputs of the Dig Once Programme.
- (C) The Contracting Authority is proposing to undertake a works project in the Liverpool City Region that falls within the objectives of the Dig Once Programme.
- (D) The Contracting Authority has submitted to the LCRCA and the LCRCA has approved a Dig Once Project Profile Form and the LCRCA agrees to pay the Contracting Authority for the provision of the Dig Once Project Services under the terms of this Agreement.

Agreed terms

1. Definitions and Interpretation

1.1 In this Agreement the following terms shall have the following meanings:

Business Day: means a day, other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the maximum sum payable by the LCRCA to the Contracting Authority for the Dig Once Project Services as such sum is set out in the Dig Once Project Profile Form attached at Schedule 1;

Contracting Authority Works: a works project in the Liverpool City Region to be undertaken by the Contracting Authority and that aligns with the objectives of the Dig Once Programme.

Dig Once Inspection and Sign-Off Form: a form as set out in Schedule 2.

Dig Once Inter-Authority Agreement: the agreement entered into or due to be entered into which the LCRCA and the Contracting Authority, together with other contracting authorities within the Liverpool City Region, are parties to and which sets

out the general principles upon which this Agreement has been entered into between the LCRCA and the Contracting Authority and the other contracting authorities.

Dig Once Programme: the installation of digital infrastructure (ducts, chambers and other associated equipment) at the same time as a Contracting Authority undertakes highway or other works, and in so doing, save money, time and disruption.

Dig Once Project Profile Form: the Contracting Authority's Dig Once Project profile form providing details of the Dig Once Works as set out in Schedule 1.

Dig Once Project Services: the procurement, the project management and ancillary services provided by the Contracting Authority to the LCRCA under this Agreement.

Dig Once Works: the works described in the Dig Once Project Profile Form attached at Schedule 1 in relation to the Dig Once Programme to be delivered under the terms of this Agreement to the LCRCA by the Contracting Authority as part of the Contracting Authority Works.

Losses: all damages, losses, liabilities, claims, actions, costs, expenses (including reasonable fees and disbursements for legal or professional services), proceedings, judgements, consensual settlements, penalties, fines, demands, interest and charges whether arising under statute, contract or at common law.

Works Contract: the contract for the provision of the Contracting Authority Works under which the Work Contractor will deliver, inter alia, the Dig Once Works.

Works Contractor: the third party or third parties procured by the Contracting Authority to undertake, inter alia, the Dig Once Works.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this **Agreement** includes the Schedules.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 A reference to any **Party** shall include that Party's personal representatives, successors and permitted assigns.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 Save for the service legal proceedings or notices of termination of this Agreement a reference to **writing** or **written** includes fax and email.
- 1.9 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.11 Where there is a conflict between the terms and conditions of this Agreement and the Dig Once Inter-Authority Agreement or the Works Contract such conflict (so far as it relates to the interpretation of this Agreement only) shall be determined in accordance with the following order of precedence:
- i. this Agreement; and
 - ii. the Dig Once Inter-Authority Agreement;
 - iii. the Works Contract.

2. Dig Once Project Services

- 2.1 The Contracting Authority shall:
- (a) deliver the Dig Once Project Services;
 - (b) deliver, and procure that any Works Contractor shall deliver, the Dig Once Works in accordance with this Agreement unless agreed otherwise in writing by the LCRCA;
 - (c) procure that the Works Contractor instructed to carry out all or any part of the Dig Once Works is suitably skilled, qualified and experienced to carry out the tasks that they are instructed to perform and hold a sufficient level of insurance to cover any risks or Losses that may arise in relation to those tasks. The Contracting Authority will provide evidence of the Works Contractor's skills, qualifications, experience and insurance cover to the LCRCA upon its reasonable request;
 - (d) as soon as possible notify the LCRCA in writing of any early warning of a compensation event or notification of a proposed variation it receives from the project manager of the Works Contract in relation to any circumstance that could affect the completion, progress, quality or cost of the installation of any Dig-Once Works.

Installation and Inspection

2.2 The Contracting Authority:

- (a) Shall carry out, as reasonably requested by the LCRCA, inspections of the materials, works and testing of the Dig Once Works during the period of its delivery;
- (b) shall, and shall procure that the Works Contractor shall, grant to the LCRCA and its authorised agents the right of access upon reasonable prior notice and provide all reasonable assistance to enable inspection of the materials, works and testing of the Dig Once Works during the period of its delivery;
- (c) with respect to any remedial items identified during inspection of the Dig Once Works under clause 2.2(b) above, shall procure that the Supplier shall properly rectify them to the LCRCA's reasonable satisfaction;

Dig Once Works Defects Liability Period and Warranties

2.3 The Contracting Authority shall:

- (a) insofar as reasonably practicable, procure that that the Works Contractor shall execute a collateral warranty for the benefit of the LCRCA in respect of the Dig Once Works in a form reasonably specified by the LCRCA;
- (b) where unable to procure the execution of the collateral warranty described in clause 2.3(a) above, it shall hold on trust for the sole benefit of the LCRCA, the benefit of the defects liability period and all warranties and indemnities provided by the Works Contractor under the Works Contract in respect of the Dig Once Works and as specified in the Project Profile Form;
- (c) where any such warranties are held on trust, at the LCRCA's cost enforce such warranties in accordance with any reasonable directions that the LCRCA may notify from time to time to the relevant Contracting Authority;
- (d) unless it is legally incapable of doing so, assign to the LCRCA on the LCRCA's written request and at the cost of the LCRCA any such warranties and/or indemnities as are referred to in clause 2.3(b) above.

3. Title and Risk

- 3.1 Without prejudice to any other rights or remedies of the LCRCA the legal and beneficial ownership of and risk and liabilities arising from (unless otherwise agreed) the Dig Once Works installed under a Works Contract shall pass immediately to the LCRCA on the date of practical completion under the respective Works Contract for the installation of such assets.

- 3.2 Each Contracting Authority shall procure that terms are included in its respective Works Contract with its Supplier to give effect to clause 3.1 above and shall provide the LCRCA promptly with written evidence of such transfer of ownership and risk to the LCRCA.
- 3.3 Prior to the point at which title to the assets passes to the LCRCA under clause 3.1 above the assets shall be at the risk of the Contracting Authority or the Supplier as agreed between them and the Contracting Authority shall ensure that appropriate all risks insurance cover is maintained in respect of the assets.
- 3.4 On the point at which title and risk to the assets passes to the LCRCA under clause 3.1 above the assets shall be at the risk of the LCRCA which shall be responsible for ensuring that insurance cover is maintained in respect of the assets.

4. Repair and Maintenance

- 4.1 Subject to clauses 2.3(a) to (c) above (where the Works Contractor shall be responsible), or as otherwise agreed with a Contracting Authority, from the point that title and risk in the assets passes to the LCRCA under clause 3 above the LCRCA shall be responsible for the repair and maintenance of the assets.

5. Access and Wayleave

- 5.1 Each Contracting Authority shall, where required by the LCRCA, enter into an industry standard wayleave substantially in the form as set out in Schedule 3 allowing the LCRCA or its agents access to land to perform its repair and maintenance obligations under clause 4.
- 5.2 If the LCRCA and the Contracting Authority have not entered into the wayleave as set out in clause 5.1 above then the Contracting Authority shall nevertheless permit the LCRCA or its agents access to land to perform its repair and maintenance obligations under clause 4.

6. Payment of Charges

- 6.1 Unless otherwise set out in the Project Profile Form payment of the Charges shall be made within 30 calendar days of:
- (a) signature by both Parties of the Dig Once Inspection and Sign-Off Form in the form set out in Schedule 2; and
 - (b) receipt by the LCRCA from the Contracting Authority an invoice and evidence that the costs relating to the Dig Once Works have been paid by the Contracting Authority.

7. Accounts and records

- 7.1 The Contracting Authority shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Charges.
- 7.2 The Contracting Authority shall keep all invoices, receipts, and accounts, and any other relevant documents, relating to the expenditure of the Charges for a period of at least six years following the day on which the final payment in respect of the Charges is made. The LCRCA shall have the right to review, at the LCRCA's reasonable request, the Contracting Authority's records that relate to the Charges.

8. Warranties

- 8.1 The Contracting Authority represents and warrants that:
- a) in procuring the Works Contractor to undertake the Dig Once Works, the Contracting Authority has complied with all applicable law, including the Public Contract Regulations 2015;
 - b) it has full capacity and authority to deliver the Dig Once Works including procuring the services of the Works Contractor to undertake the Dig Once Works;
 - c) in relation to the Dig Once Works, it has and will continue to comply with any applicable law, guidance or industry code, rule of court or directives or requirements of any regulatory body;
 - d) it has obtained and will continue to have any consents or approvals, and has the resources and expertise necessary to deliver the Dig Once Works and procure the services of the Works Contractor to undertake the Dig Once Works, and to comply with the terms of this Agreement;
 - e) it has disclosed in writing to the LCRCA all information which might materially and adversely impact on the Contracting Authority's ability to deliver the Dig Once Works, including procuring the services of the Works Contractor to undertake the Dig Once Works, or complying with the terms of this Agreement; and
 - f) the information and evidence in, and relating to or disclosed to the LCRCA in relation to the Dig Once Works, remain true, complete and accurate, and that it will advise the LCRCA of any fact, matter or circumstance which would render any such information or evidence false or misleading.

9. Duration

- 9.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the later of the date of the final payment of the Charges and the date on which all obligations under this Agreement are fulfilled to the satisfaction of the LCRCA.

- 9.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

10. Intellectual property

- 10.1 The LCRCA and the Contracting Authority agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other intellectual property rights (“the Intellectual Property Rights”) owned by either Party before the start of the Dig Once Works or developed by either Party for or as part of the Dig Once Works shall remain the property of that Party.
- 10.2 The Contracting Authority hereby grants to the LCRCA an irrevocable royalty free, non-exclusive licence to use any Intellectual Property Rights created in whole or in part in connection with the provision of the Dig Once Services.

11. Termination

- 11.1 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- (a) the other Party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (b) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.
- 11.2 The LCRCA may terminate this Agreement and any obligation to make any further payment under it on giving the Contracting Authority one month’s written notice should it be required to do so by financial restraints or a change in legislation or Government policy.

12. Consequences of Termination

- 12.1 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 12.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

13. Limitation of liability

- 13.1 Subject to any amendment to this clause as set out in the Project Profile Form the LCRCA accepts no liability for any consequences or Losses, whether arising directly or indirectly, that may arise in connection with:
- (a) The Contracting Authority operating and managing the Works Contract or the Dig Once Works;
 - (b) the Contracting Authority's procurement, and the Works Contractor's performance, of the Works Contract; and/or
 - (c) termination of this Agreement in accordance with clause 11 save that any Charges directly incurred by the Contracting Authority up to the date of termination shall be paid by the LCRCA to the Contracting Authority.
- 13.2 Save in respect of any liabilities that cannot be lawfully limited, the LCRCA's liability to the Contracting Authority under this Agreement is limited to:
- (a) the obligation to make payment of the Charges when due and payable; and
 - (b) the obligation to assume ownership of the Dig Once Works assets in accordance with clause 3 above and responsibility for repair and maintenance under clause 4 above and, in each case, the obligation, risks and liabilities arising therefrom.
- 13.3 The Contracting Authority shall indemnify and hold harmless the LCRCA, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the negligent actions and/or omissions of the project manager engaged by the Contracting Authority (either from internal personnel or by external appointment) in relation to the Dig Once Works, the non-fulfilment of obligations of the Contracting Authority under the Works Contract or this Agreement or its obligations to third parties.
- 13.4 The LCRCA shall indemnify and hold harmless the Contracting Authority, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of a breach of contract or the negligent actions and/or omissions of the LCRCA in relation to the Dig Once Works or this Agreement.
- 13.5 Nothing in this agreement shall exclude or limit any Party's liability for death or personal injury caused by its negligence or any other liability which cannot be limited or excluded by law.

14. Insurance

14.1 Each of the Contracting Authority and the LCRCA shall ensure that it has adequate insurance cover (including public liability insurance) in place with an insurer of good repute to cover all claims and liabilities under or in connection with this Agreement and the Contracting Authority shall provide evidence of such insurance to the LCRCA on request and the LCRCA shall provide evidence of such insurance in response to such request from a Contracting Authority.

15. Assignment etc.

15.1 The Contracting Authority may not, without the prior written consent of the LCRCA, assign, novate, sub-contract or otherwise transfer the benefit and/or the burden of this Agreement.

16. Variation

16.1 Any variation to the terms of this Agreement shall be agreed in writing between the Parties and shall take effect following execution by the Parties of a valid deed of variation or other written instrument appropriate to the variation.

17. Freedom of information

17.1 Each Party acknowledges that the other is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, and each Party shall assist and co-operate with the other to enable it to comply with these requirements.

18. Data protection

18.1 Each Party shall (and shall procure that any of its staff or contractors involved in connection with the activities under this Agreement shall) comply with all applicable requirements and all of its obligations under the Data Protection Act 2018, General Data Protection Regulation (EU 2016/679) and any other national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, and any successor legislation, which arise in connection with this Agreement.

19. Confidentiality and Publicity

19.1 The Contracting Authority shall not publish any material referring to the Dig Once Works or this Agreement without the prior written agreement of the LCRCA. Each Party shall during the term of this Agreement and thereafter keep secret and confidential all business, technical or commercial information disclosed to it by the other Party as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement, to meet any legal

or regulatory requirements or as expressly authorised in writing by the other Party.

20. Notices

20.1 All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given personally delivered or mailed (first class postage prepaid), to the address of the relevant Party, as referred to above or otherwise notified in writing. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-Business Day or after 5.00 pm on any Business Day they shall be deemed received on the next Business Day) and if mailed all such communications shall be deemed to have been given and received on the second Business Day following such mailing.

21. No partnership or agency

21.1 This Agreement shall not create any partnership or joint venture between the LCRC and the Contracting Authority, nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

22. Waiver

22.1 No failure or delay by either Party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

23. Counterparts

23.1 This Agreement may be signed in any number of counterparts, each of which when signed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute a single agreed Agreement. Transmission of a signed counterpart of this Agreement by email in PDF format shall take effect as delivery of a signed counterpart of this Agreement.

24. Costs

24.1 Each Party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this agreement and any documents referred to in it.

25. Third party rights

25.1 This Agreement does not and is not intended to confer any contractual rights or benefits on any person for the purposes of the Contracts (Rights of Third Parties) Act 1999.

26. Dispute resolution

- 26.1 Insofar as this Agreement is a construction contract as defined in the Housing, Grants, Construction and Regeneration Act 1996 (the Act) it shall be governed by the Act in particular with regard to adjudication.
- 26.2 Subject to clause 26.1 above, if a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided otherwise in this agreement, the Parties shall follow the dispute resolution procedure set out in this clause:
- (a) a Party to the Dispute shall give to the other Party written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documentation. On service of the Dispute Notice the LCR Dig Once Programme Director of the LCRCA and the Director of the Dig Once Project Team of the Contracting Authority shall attempt in good faith to resolve the Dispute;
 - (b) if the LCR Dig Once Programme Director of the LCRCA and the Director of Project Team of the Contracting Authority are for any reason unable to resolve the Dispute within ten Business Days of service of the Dispute Notice, the Dispute shall be referred to the LCRCA's Senior Responsible Officer for the LCR Dig Once Programme and the Chief Executive of the Contracting Authority who shall attempt in good faith to resolve it; and
 - (c) if the LCRCA's Senior Responsible Officer for the LCR Dig Once Programme and Chief Executive of the Contracting Authority are for any reason unable to resolve the Dispute within 15 Business Days of it being referred to them, the Parties shall attempt to settle it by mediation in accordance with the CEDR model mediation procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (**ADR Notice**) to the other Party requesting a mediation. A copy of the ADR Notice should be sent to CEDR. The mediation shall start not later than 30 Business Days after the date of service of the ADR Notice. Unless otherwise agreed by the Parties, CEDR, in conjunction with the mediator, shall make the necessary arrangements for the mediation including:
 - (i) nominating, and obtaining the agreement of the Parties to, the mediator;
 - (ii) organising a suitable venue and dates;
 - (iii) organising exchange of documents;
 - (iv) meeting with the Parties (and the mediator if appointed), either together or separately, to discuss any matters or concerns relating to the mediation; and
 - (v) general administration in relation to the mediation.

26.3 No Party may commence any court proceedings in relation to any dispute arising out of this agreement until 60 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay in appointment. Nothing in this clause shall be construed as prohibiting a Party from applying to a court for interim injunctive relief.

27. Law and jurisdiction

27.1 This Agreement shall be governed by and construed in accordance with the law of England, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England.

28. Entire agreement

28.1 This Agreement and any document referred to herein constitutes the entire agreement between the Parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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

Schedule 1

The Dig Once Project Profile Form

Schedule 2

Dig Once Inspection and Sign Off-Form

Schedule 3

Industry Standard Wayleave

EXECUTED as a DEED by
LIVERPOOL CITY REGION
COMBINED AUTHORITY

in the presence of:

Authorised Signatory

EXECUTED as a DEED by
THE CONTRACTING AUTHORITY

in the presence of:

Authorised Signatory



**LIVERPOOL
CITY REGION**
COMBINED AUTHORITY

METROMAYOR
LIVERPOOL CITY REGION

STRATEGIC INVESTMENT FUND

Dated

2020

INTER AUTHORITY AGREEMENT FOR THE
LIVERPOOL CITY REGION COMBINED
AUTHORITY DIGITAL INFRASTRUCTURE DIG-
ONCE PROJECT

between

- (1) Liverpool City Region Combined Authority
- (2) Halton Borough Council
- (3) Knowsley Metropolitan Borough Council
- (4) Liverpool City Council
- (5) Sefton Metropolitan Borough Council
- (6) St Helens Council
- (7) Wirral Borough Council

and

- (8) Merseytravel

THIS AGREEMENT is made on

2020

BETWEEN:

1. **LIVERPOOL CITY REGION COMBINED AUTHORITY** whose address is No.1 Mann Island, Liverpool L3 1BP (**LCRCA**)
2. **HALTON BOROUGH COUNCIL** whose address is Municipal Buildings, Kingsway, Widnes WA8 7QF
3. **KNOWSLEY METROPOLITAN BOROUGH COUNCIL** whose address is 20 Archway Road, Huyton, Liverpool L36 9UX
4. **LIVERPOOL CITY COUNCIL** whose address is Cunard Building, Water Street, Liverpool, L3 1DS
5. **SEFTON METROPOLITAN BOROUGH COUNCIL** whose address is Magdalen House, 30 Trinity Road, Bootle, Liverpool L20 3NJ
6. **ST HELENS METROPOLITAN BOROUGH COUNCIL** whose address is 3rd Floor, Wesley House, Corporation Street, St Helens WA10 1HF
7. **WIRRAL METROPOLITAN BOROUGH COUNCIL** whose address is Wallasey Town Hall. 51 Brighton Street, Wirral, Wallasey CH44 8ED; and
8. **MERSEYTRAVEL** whose address is No.1 Mann Island, Liverpool L3 1BP

BACKGROUND

- (A) The LCRCA has adopted the Dig Once Programme (defined below).
- (B) Under the LCRCA's Strategic Investment Fund process £6.39m has been made available to achieve the objectives and outputs of the Dig Once Programme.
- (C) Under the Dig Once Approval Process (defined below) Contracting Authorities will propose via submission of a Dig Once Approval form and, if approved, receive funding for the provision of Dig Once Project Services.
- (D) This agreement is supplemental to a Dig Once Collaboration Agreement that each Contracting Authority will individually enter into with the LCRCA in respect of delivering to the LCRCA the respective Dig Once Project Services in the territory of each such Contracting Authority.

- (E) This agreement records the principles and terms in relation to the activities of the LCRCA and of each Contracting Authority under its respective Dig Once Collaboration Agreement and the applicable Contract, including:
- (i) to commit the relevant Contracting Authority to perform the Dig Once Project Services under the relevant Works Contract;
 - (ii) to commit the LCRCA, subject to success of a Dig Once Approvals, to pay to the relevant Contracting Authority the Funding for the provision of the relevant Dig Once Project Services identified under the relevant Dig Once Collaboration Agreement; and
 - (iii) to bind the Contracting Authorities to adhere to the terms of their respective Dig Once Collaboration Agreements to the extent applicable to their respective activities in relation to Dig Once Project Services.

IT IS AGREED as follows:

1 INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement. Other capitalised terms used but not defined in this agreement shall have the meanings given to them in the relevant Dig Once Collaboration Agreement.

Business Day means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date means the date when this agreement has been signed and dated by the last of the parties to sign it.

Confidential Information means all confidential information relating to the which any party to this agreement directly or indirectly discloses, or makes available, to another party to this Agreement

Contracting Authority means each of the parties named at 2-8 at the head of this Agreement.

Dig Once Approval means an approval made by the LCRCA in respect of Funding under the Dig Once Approval Procedure.

Dig Once Approval Procedure means the procedure for approving a Dig Once Approval as set out in Schedule 3 attached and as may be updated by the LCRCA and notified to Contracting Authorities from time to time.

Dig Once Collaboration Agreement means the collaboration agreement related to the Dig Once Project Services and between LCRCA and the relevant Contracting Authority under which the funding for the Dig Once Project Services are to be provided a template for which is attached at Schedule 2 hereto.

Dig Once Programme means the installation of digital infrastructure (ducts, chambers and other associated equipment) at the same time as a Contracting Authority undertakes highway or other works, and in so doing, save money, time and disruption.

Dig Once Project Services means the services relating to the procurement, the project management, the delivery of the relevant works (to be delivered to such Contracting Authority by the relevant Supplier under the relevant Works Contract) and ancillary services to be provided by the each Contracting Authority under the terms of its respective Dig Once Collaboration Agreement and this agreement.

Funding means the funding from LCRCA to be made available to a Contracting Authority in relation to the Dig Once Project Services and to be distributed by the LCRCA pursuant to the respective Dig Once Collaboration Agreement and this agreement.

Procurement Regime all applicable law pertaining to public procurement, including the Public Contract Regulations 2015.

Project Governance Requirements means the requirements related to Dig Once Project Services governance and the Dig Once Programme as set out in Schedule 4.

Reporting Requirements means the reporting requirements related to Dig Once Project Services and the Dig Once Programme as set out in Schedule 5.

Services means any and all services to be provided by a Supplier to the relevant Contracting Authority under the Works Contract.

State Aid Law means the law embodied in Articles 107 to 109 of the Treaty on the Functioning of the European Union and such further decisions of the European Institutions and Courts as supplement the state aid provisions contained within the treaty, as well as any broadly equivalent provisions in any other international treaty or instrument which is applicable to the United Kingdom and which governs the giving of aid by the state to undertakings..

Supplier means Contracting Authorities' own Services supplier/contractor under the Works Contract.

Works Contract means a works contract for the provision of Services by the Supplier to a Contracting Authority under which it will deliver, inter alia, the Dig Once Project Services.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this **agreement** includes the Schedules.
- 1.4 References to clauses and Schedules are to the clauses and Schedules of this agreement, unless specified otherwise, and references to paragraphs are to paragraphs of the Schedule.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.6 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to any **party** shall include that party's personal representatives, successors and permitted assigns.
- 1.10 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.11 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.12 A reference to **writing** or **written** includes fax but not email.

- 1.13 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 A reference to **this agreement** or to **any other agreement or document referred to in this agreement** is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.15 Where any statement is qualified by the expression **so far as a party is aware or to a party's knowledge** (or any similar expression), that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.16 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.17 Where there is a conflict between the terms and conditions of this agreement and the Dig Once Collaboration Agreement or the Works Contract such conflict shall be determined in accordance with the following order of precedence:
- 1.17.1 the Dig Once Collaboration Agreement;
 - 1.17.2 this agreement; and
 - 1.17.3 the Works Contract.

2 **COMMENCEMENT AND DURATION**

- 2.1 This agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, until all available Funding has been drawn down and all capability under each Dig Once Collaboration Agreement has been deployed or the end of the Dig Once Programme (whichever is the later), at which point this agreement shall terminate automatically without notice.

3 **PRICE AND PAYMENT**

- 4 Subject to the due and proper performance by the relevant Contracting Authority of its obligations under its Dig Once Collaboration Agreement and this agreement the LCRCA shall make payment of the relevant Funding as set out in the respective Dig Once Collaboration Agreement.

5 PROJECT MANAGEMENT

- 5.1 The Project Governance Requirements shall apply to the Dig Once Project Services and each party shall comply with them.
- 5.2 Each party shall co-operate with the other in good faith and provide all reasonable assistance to each other in respect of the Dig Once Project Services.

6 ACCESS AND WAYLEAVE

- 6.1 Each Contracting Authority shall enter into an industry standard wayleave substantially in the form as set out in Schedule 1 allowing the LCRCA or its agents access to land to perform its repair and maintenance obligations.

7 REPORTING REQUIREMENTS

- 7.1 Each Contracting Authority undertakes to the LCRCA that it shall comply with its reporting requirements pursuant to Schedule 5 of this agreement.
- 7.2 Where Contracting Authorities have entered into Works Contracts, they shall, and shall procure that their respective Suppliers shall, keep detailed records of all Dig Once Project Services including but not limited to any such records as are expressly required to be kept in accordance with the Reporting Requirements.

8 CO-OPERATION

- 8.1 Each Contracting Authority shall:
 - 8.1.1 not do or omit to do any act that would constitute a breach of the Dig Once Collaboration Agreement provided that nothing shall prevent a Contracting Authority from adhering to applicable law or from doing what is necessary in an emergency to mitigate the risk of harm to persons or property;
 - 8.1.2 provide all reasonable co-operation and assistance to the LCRCA and its agents and take any further actions as reasonably requested by the LCRCA (all in a timely manner) to enable the LCRCA and its agents to comply with its obligations, and receive the benefit of its rights, pursuant to the Dig Once Collaboration Agreement;
 - 8.1.3 comply in all respects with the terms of its Works Contract; and

- 8.1.4 at all times, use its reasonable endeavours to comply with the provisions of the Dig Once Programme in relation to carrying out its Dig Once Project Services;

9 **DIG ONCE PROJECT SERVICES GOVERNANCE**

9.1 Each party shall:

9.1.1 supply to the other parties information and assistance reasonably requested by it relating to the Dig Once Project Services as is necessary to enable that other party to perform its own obligations in relation to the Dig Once Services ; and

9.1.2 review documentation, including draft specifications or service descriptions or other technical documentation, for use when performing its obligations in relation to the Project, as soon as reasonably practicable at the request of the other parties, and notify it of any errors or incorrect assumptions made in any such documents so far as it is aware.

9.2 Notwithstanding the generality of clause 9.1 the Dig Once Project Services shall be governed in accordance with the structure set out in Schedule 4.

10 **STATE AID AND OTHER LAWS**

10.1 Each party, in relation to the exercise of its rights and obligations under this agreement, including with regard to Dig Once Project Services, shall at all times for the duration of this agreement:

10.1.1 comply with any applicable provisions in the Dig Once Collaboration Agreement in relation to State Aid Law, the Procurement Regime, the Public Services (Social Value) Act 2012 and any other applicable laws and regulations;

10.1.2 not do or omit to do any act that would cause itself or the other party to breach State Aid Law, the Procurement Regime or any other laws or regulations referred to in the Dig Once Collaboration Agreement.

11 **CONFIDENTIALITY**

11.1 Each party undertakes that it shall not at any time, disclose to any person any Confidential Information of the other parties, except as permitted by clause 11.2.

- 11.2 Each party may disclose the other parties' Confidential Information:
- 11.2.1 to its employees, officers, sub-contractors or professional advisers on a need to know basis for the performance of its obligations or receipt of benefits under this agreement. Each party shall procure that anyone to whom it discloses the other party's Confidential Information under this clause shall comply with clause 11.1 as though they were a party to this agreement; or
 - 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 On the termination or expiry of this agreement, each party shall promptly return (or if requested destroy) all Confidential Information of the other party.
- 11.4 No party will make any public announcement or publicity statement relating to the other parties, any dispute between the parties or the subject matter of this agreement without the other parties' prior written consent (except as required by law or by any legal or regulatory authority).

12 **DATA PROTECTION**

Each party shall, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as applicable in England).

13 **FREEDOM OF INFORMATION**

- 13.1 Each party acknowledges that the other parties are subject to the requirements of the Freedom of Information Code of Practice ("Code"), the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) which require either party to make available to the public information that it holds.
- 13.2 Each Contracting Authority shall assist and cooperate with the LCRCA (and vice versa) to enable the other party to comply with its obligations under the FOIA and the EIR.

14 LIMIT OF LIABILITY

- 14.1 Unless otherwise agreed in a Dig Once Collaboration Agreement the LCRCA accepts no liability for any consequences or Losses, whether arising directly or indirectly, that may arise in connection with:
- 14.1.1 a Contracting Authority providing its Dig Once Project Services;
 - 14.1.2 the Contracting Authority's procurement, and the Supplier's performance, of the Contract; and/or
 - 14.1.3 the Dig Once Collaboration Agreement being terminated;
 - 14.1.4 termination or expiry of this agreement in accordance with clause 2.1.
- 14.2 Save in respect of any liabilities that cannot be lawfully limited, the LCRCA's liability to each Contracting Authority under this agreement is limited to:
- 14.2.1 the obligation to make payment of the Funding monies when due and payable in accordance with the Dig Once Collaboration Agreements; and
 - 14.2.2 The liabilities arising under the terms of the relevant Dig Once Collaboration Agreement.
- 14.3 Each Contracting Authority shall indemnify and hold harmless the LCRCA, its employees, agents, officers or subcontractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the respective Contracting Authority in relation to the relevant Dig Once Project, the non-fulfilment of obligations of the respective Contracting Authority under the Works Contract or this agreement or its obligations to third parties.
- 14.4 The LCRCA shall indemnify and hold harmless each Contracting Authority, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of LCRCA in relation to the relevant Dig Once Project, this agreement and/or the relevant Dig Once Collaboration Agreement.

14.5 Nothing in this agreement shall exclude or limit any party's liability for death or personal injury caused by its negligence or any other liability which cannot be limited or excluded by law.

15 **Not Used**

16 **CONSEQUENCES OF TERMINATION**

16.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

16.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination [or expiry.

17 **ASSIGNMENT AND OTHER DEALINGS**

17.1 The LCRCA may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement provided that it gives prior written notice of such dealing to the Contracting Authorities.

17.2 No Contracting Authority shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement save that it shall be permitted to assign or transfer its rights and obligations under this agreement either as required by law or to any other body which substantially performs any of the functions that previously had been performed by the Contracting Authority.

18 **VARIATION**

Any amendments to this agreement shall only be valid if they are in writing and signed by an authorised representative of the parties.

19 **NOTICES**

19.1 Any notice or other communication required to be given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or sent by prepaid first-class post or other next working day delivery service, at the

address of the party as set out in at the head of this agreement or as otherwise notified in writing from time to time.

19.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

19.3 This clause 18 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any mediation or other method of dispute resolution.

20 **SEVERANCE**

If any provision of this agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions.

21 **NO PARTNERSHIP OR AGENCY**

This agreement shall not create any partnership or joint venture between the LCRCA and any Contracting Authority, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other parties.

22 **WAIVER AND CUMULATIVE REMEDIES**

22.1 The rights and remedies provided by this agreement may be waived only in writing by an authorised representative of the parties in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

22.2 Unless a right or remedy of the LCRCA is expressed to be an exclusive right or remedy, the exercise of it by the LCRCA is without prejudice to the LCRCA's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by a party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

22.3 The rights and remedies provided by this agreement are cumulative and, unless otherwise provided in this agreement, are not exclusive of any right or remedy provided at law or in equity or otherwise under this agreement.

23 **COUNTERPARTS**

This agreement may be signed in any number of counterparts, each of which when signed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute a single agreed agreement. Transmission of a signed counterpart of this agreement by email in PDF format shall take effect as delivery of a signed counterpart of this agreement. If this method of delivery is adopted, without prejudice to the validity of the agreement so made, the LCRCA and the Contracting Authorities shall provide each other with the original of such counterpart as soon as reasonably practicable.

24 **THIRD PARTY RIGHTS**

This agreement does not and is not intended to confer any contractual benefit on any person who is not a party pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

25 **FURTHER ASSURANCE**

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

26 **COSTS**

Each party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this agreement and any documents referred to in it.

27 **ENTIRE AGREEMENT**

27.1 This agreement and any documents referred to therein, constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

27.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this agreement. No party shall have any claim for innocent or negligent misrepresentation based on any statement in this agreement.

28 DISPUTE RESOLUTION

28.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided otherwise in this agreement, the parties shall follow the dispute resolution procedure set out in this clause:

28.1.1 a party to the Dispute shall give to the other parties written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documentation. On service of the Dispute Notice the LCR Dig Once Programme Director of the LCRCA and the Director of the Dig Once Project Team of the applicable Contracting Authority shall attempt in good faith to resolve the Dispute;

28.1.2 if the LCR Dig Once Programme Director of the LCRCA and the Director of Project Team of the applicable Contracting Authority are for any reason unable to resolve the Dispute within ten Business Days of service of the Dispute Notice, the Dispute shall be referred to the LCRCA's Senior Responsible Officer for the LCR Dig Once Programme and the Chief Executive of the applicable Contracting Authority who shall attempt in good faith to resolve it; and

28.1.3 if the LCRCA's Senior Responsible Officer for the LCR Dig Once Programme and Chief Executive of the applicable Contracting Authority are for any reason unable to resolve the Dispute within 15 Business Days of it being referred to them, the parties shall attempt to settle it by mediation in accordance with the CEDR model mediation procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR Notice**) to the other parties requesting a mediation. A copy of the ADR Notice should be sent to CEDR. The mediation shall start not later than 30 Business Days after the date of service of the ADR Notice. Unless otherwise agreed by the parties, CEDR, in conjunction with the mediator, shall make the necessary arrangements for the mediation including:

28.1.3.1 nominating, and obtaining the agreement of the parties to, the mediator;

28.1.3.2 organising a suitable venue and dates;

28.1.3.3 organising exchange of documents;

28.1.3.4 meeting with the parties (and the mediator if appointed), either together or separately, to discuss any matters or concerns relating to the mediation; and

28.1.3.5 general administration in relation to the mediation.

28.2 No Party may commence any court proceedings in relation to any dispute arising out of this agreement until 60 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay in appointment. Nothing in this clause shall be construed as prohibiting a party from applying to a court for interim injunctive relief.

29 **GOVERNING LAW**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

30 **JURISDICTION**

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

THIS AGREEMENT has been entered as a deed into on the date stated at the beginning of it

SCHEDULE 1

FORM OF INDUSTRY STANDARD WAYLEAVE

SCHEDULE 2

DIG ONCE COLLABORATION AGREEMENT TEMPLATE

SCHEDULE 3

DIG ONCE APPROVAL PROCEDURE

Once schemes have been identified by a Contracting Authority it will submit a Dig Once Project Profile Form (in the form set out in Schedule 1 to the Dig Once Collaboration Agreement attached at Schedule 2 hereto and each scheme shall be objectively assessed by the LCRCA against the following criteria:

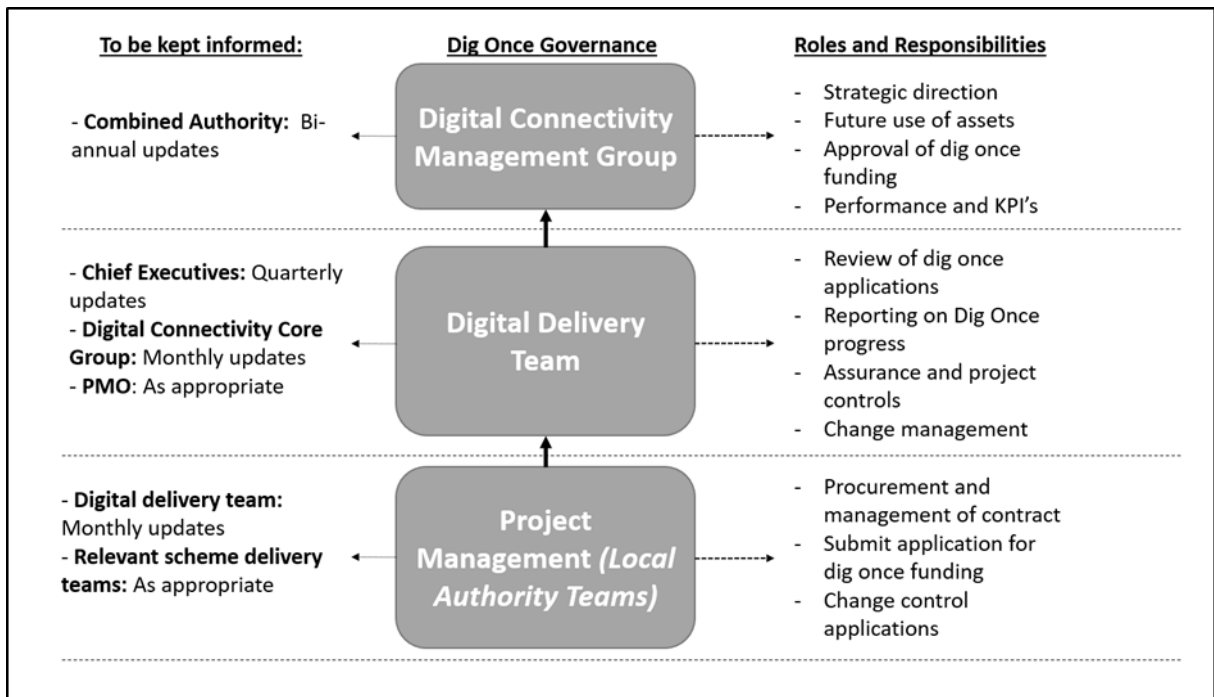
- Location
- Scheme type
- Time
- Affordability
- Stakeholders
- Existing Asset
- Contract

SCHEDULE 4

PROJECT GOVERNANCE

Contracting Authority responsibilities

1. Be the main Signatory on an individual Works Contract between the Contracting Authority and the Supplier;
2. Work collaboratively with the Supplier, LCRCA and the other Contracting Authorities and adhere to the requirements of the Works Contract and this Agreement;
3. Seek to mitigate and minimise delivery risks and issues under the Contract;
4. Participate in progress monitoring, reporting, meetings and overall delivery management.
5. Undertake reviews of the works under the Works Contract and to enable payments to be made to the Supplier under the Works Contract;
6. Co-Ordinate stakeholder engagement activity within locality.



SCHEDULE 5

REPORTING REQUIREMENTS

Monthly progress reports as further detailed in the Dig Once Collaboration Agreement consisting of cost, programme, performance data and planning/asset mapping data information.

[Note: correct execution blocks awaited from Contracting Authorities]

Executed as a deed by **LIVERPOOL CITY REGION COMBINED AUTHORITY** acting by [NAME OF OFFICER], an officer, in the presence of:

[SIGNATURE OF OFFICER]

.....
[SIGNATURE OF WITNESS]
NAME
ADDRESS
OCCUPATION OF WITNESS]

Executed as a deed by **MERSEYTRAVEL** acting by [NAME OF OFFICER], an officer, in the presence of:

[SIGNATURE OF OFFICER]

.....
[SIGNATURE OF WITNESS]
NAME
ADDRESS
OCCUPATION OF WITNESS]

[The Corporate Seal of HALTON BOROUGH COUNCIL was affixed to this Deed in the presence of:)
)
)
)

Chief Executive

[The Corporate Seal of)
KNOWSLEY METROPOLITAN BOROUGH COUNCIL was)
affixed to this Deed in the)
presence of:)

Chief Executive

[The Common Seal of)
LIVERPOOL CITY COUNCIL was)
affixed to this Deed and is)

[The Common Seal of)
SEFTON METROPOLITAN BOROUGH COUNCIL was)
affixed to this Deed in the)
presence of:)

[]

[The Corporate Seal of)
ST HELENS METROPOLITAN BOROUGH COUNCIL was)
affixed to this Deed in the)
presence of:)

Chief Executive

[The Corporate Seal of)
WIRRAL BOROUGH COUNCIL was)
affixed to this Deed in the)
presence of:)

Chief Executive



ENVIRONMENT, CLIMATE EMERGENCY AND TRANSPORT COMMITTEE

Monday, 1 February 2021

REPORT TITLE:	ACCEPTANCE OF TENDER AND AWARD OF CONTRACT - ARBORICULTURAL MAINTENANCE CONTRACT
REPORT OF:	DIRECTOR OF NEIGHBOURHOOD SERVICES

REPORT SUMMARY

This report recommends acceptance of a tender from Man Coed VM Ltd and award of a term service contract for the Wirral Arboricultural Services Contract (Corporate Tree Maintenance Contract). The contract will run from April 2021 until March 2026 with a conditional extension option of 2 further years.

The effective management and maintenance of the Council's tree stock contributes to the Wirral Plan 2025 pledge to promote a Sustainable Environment and "A cleaner, greener borough which celebrates, protects and improves our environment and urgently tackles the Climate Emergency declared by the Council".

The services carried out within this contract will take place across all Wards.

This report has been classed as a Key Decision and included on the Council's Forward Plan.

RECOMMENDATIONS

The Environment, Climate Emergency & Transport Committee is recommended to:

- (1) Accept the tender for the Wirral Arboricultural Services Contract Apr 2021-Mar 2026 submitted by Man Coed VM Ltd to Wirral Council on 8 January 2021;
- (2) Approve the award of the contract to Man Coed VM Ltd, subject to contract and subject to the Official Journal of the European Union (OJEU) standstill period.

SUPPORTING INFORMATION

1.0 REASON FOR RECOMMENDATIONS

1.1 The tender from Man Coed VM Ltd represents the most economically advantageous tender received, is fully compliant, is within allocated budgetary provision and is within the estimated value of the contract price for the service.

2.0 OTHER OPTIONS CONSIDERED

2.1 Tenders for the Wirral Arboricultural Services Contract Apr 2021- Mar 2026 were invited on 20 November 2020 in open competition in accordance with the applicable Official Journal of the European Union (OJEU) procedures. Tender return date was 8 January 2021.

2.2 Six fully-compliant tenders were received by the due date and have been evaluated, with moderation of the process by the Council's Procurement service and all quantitative evaluations validated by the Resources directorate, on a 65/20/15 price/quality/social value model, as follows:

Tenderer	Price (65%)	Quality Score (20%)	Social Value Score (normalised) (15%)	Total Score (normalised)
Man Coed VM Ltd	£1,232,594.00	90.00%	100.00%	100.00%
Tenderer rank 2	£2,008,800.00	90.00%	61.36%	66.11%
Tenderer rank 3	£2,071,473.50	85.00%	40.12%	63.58%
Tenderer rank 4	£2,971,236.60	70.50%	47.19%	49.71%
Tenderer rank 5	£2,842,475.00	60.00%	43.36%	48.30%
Tenderer rank 6	£3,837,740.00	62.50%	27.03%	38.82%

2.3 All tenderers included a pricing schedule based on 'dayworks' activity items. The submitted price rates were applied to a hypothetical 'basket of work', indicating predicted quantities for each work item over the five-year term of the contract, to generate an indicative price sum for comparative evaluation.

2.4 A seventh tender was received which was submitted via the Social Value Portal, not the Due North Chest Portal, which is the process tenderers were instructed to follow. The Council could have legitimately omitted this tender from consideration, but it has been evaluated to reduce the risk of legal challenge and to avoid compromising the selection process. This tenderer

would have ranked 6th in the table above, with a price element of £2,631,958.00.

3.0 BACKGROUND INFORMATION

3.1 Procurement route and contract form:

On 26 February 2020 the Cabinet Member for Community Services decided to endorse the recommendations of a report of the Interim Director – Highways & Streetscene, titled: Arboriculture Services – Approval of Contract Strategy and Procurement Route, including: that the contract be long-term, five to seven years duration; that the contract be with a single supplier covering all the Council's tree stock; that the form of contract be based upon the NEC3 Term Service Contract (TSC) form and that the tender evaluation model be based upon a 65/20/15, price/quality/social value, ratio.

3.2 Contract Services Scope:

The services included within this contract cover routine, planned and 24/7 emergency response maintenance and improvement of all the Council's tree stock, and will include, but is not limited to: tree pruning, crown lifting, crown thinning, crown reduction, deadwood removal and formative reduction, minor root pruning, aerial inspection, tree removal (dismantling in sections and clear felling), stump removal and tree planting. A comprehensive tree maintenance service is required across all the Council's estate which is comprised of street trees (approximately 26,000), trees in parks and public greenspaces, trees in cemeteries and church yards, trees on public commons, trees within the grounds of Council buildings across all directorates, including schools, and trees situated on a wide range of small incidental public spaces. Occasionally trees on private land will require intervention where they pose an immediate threat to public or highway safety.

4.0 FINANCIAL IMPLICATIONS

4.1 Man Coed VM Ltd is the current incumbent supplier of tree maintenance services to the Council and commenced in service on 1 December 2016; that contract being due to expire on 31 March 2021. The pricing schedule submitted by Man Coed VM Ltd has been closely scrutinised and where there are activity items equivalent or similar to those in the current contract it is clear that the rates tendered are very similar or slightly reduced from the rates in the current contract. Consequently, the evaluation team is satisfied that the rates tendered by Man Coed VM Ltd are suitable and sufficient, and represent very good value for money.

4.2 The total value of works likely to be ordered through this contract is up to £400,000 per annum, funded from the relevant service area revenue budgets in the approximate ratios: Highways and Infrastructure £220,000; Parks and Environment £100,000; Asset Management £80,000. The Council is not contractually committed to issue any particular value of work. Task order instruction will be managed within each service using a risk-based

prioritisation approach, with advice from the Council's specialist arboricultural officers, having regard for the pertaining budgetary provision at time of order.

5.0 LEGAL IMPLICATIONS

- 5.1 Under UK Public Sector Procurement Regulations, post Brexit, since this tender was issued pre 31 December 2020, it will proceed under full OJEU, EC Directive, Open Procedure. Therefore, the contract award will proceed to full award after a successful Alcatel period, 10 day standstill, and notification of the successful and unsuccessful bidders.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 ICT: The Council's tree stock inventory has recently moved onto the 'Insight' software package on Symology and where applicable this system will be linked to the contractor's ICT systems to manage the contract efficiently.
- 6.2 Staffing: The Council's contract management team will be provided from current staffing resources and will consist of the Tree Risk Management Coordinator and two specialist Tree Officers, with support from the Highways and Infrastructure Service Support team.
- 6.3 Assets: there are no additional assets implications.

7.0 RELEVANT RISKS

- 7.1 As part of the evaluation process all necessary quality management, health and safety and environmental accreditations, together with: economic and financial viability, employment legislation, Modern Slavey Act compliance and insurance checks have been undertaken for the recommended supplier, Man Coed VM Ltd.
- 7.2 There remains a risk to the contract award and a service commencement delay should a procurement challenge be lodged during the 10 day standstill period (paragraph 5.1 refers). This risk to a continuation of service is less onerous if the recommendation for award is for the current service provider, as the incumbent post-contract re-mobilisation should be minimal.
- 7.3 It is essential the Council provides an effective tree maintenance service in order to mitigate risks to public safety. Following the Coroner's Inquest in 2019 in relation to a tragic accident in 2016 when a large horse chestnut tree on the perimeter of Arrowe Park Road fell onto a busy carriageway, tragically killing a baby girl, the Coroner issued a 'Regulation 28 Report' to Prevent Future Deaths. The report stated there needs to be a proactive strategic management of trees policy, with a written policy system to ensure all trees are checked. Whilst a Council tree strategy is now in place, any delay to

award of contract and provision of a supplier to support an effective service may expose the Council's Chief Officers to risk of prosecution as a result.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Tree management operational practices are an extremely sensitive and emotive issue in the local community, often with polarised opinions being expressed. This contract is a works service supply contract. Thus, the tree management activities undertaken will be planned and instructed by the Council's professional specialist arboricultural officers in accordance with the Council's policies and procedures, not managed by the supplier. However, Man Coed VM Ltd has undertaken to work with the Council to pro-actively engage with the public and Members in advance of planned works taking place, in order to explain the rationale and methodology to be employed. It would be the intention to promote and launch this service in conjunction with Man Coed VM Ltd.
- 8.2 The contract includes a comprehensive performance management framework (PMF) with a set of ten key performance indicators (KPIs), with corrective actions for failure to meet performance targets. One of the KPIs requires customer satisfaction surveys to be completed by the contractor on a 3 monthly basis distributed to the general public living in the areas where the previous 3 months works have been carried out.
- 8.3 As part of its tender submission, Man Coed VM Ltd has committed to provide substantial social value benefits into the community during the course of the contract, which will be monitored and evaluated by contract officers, as well as significant local employment commitments, including: apprenticeships, young offender rehabilitation and long-term unemployed, they have offered to engage with local schools and colleges and volunteer and donate to local community projects.

9.0 EQUALITY IMPLICATIONS

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help Council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.
- 9.2 This report is concerned with contract award and associated procurement and legal processes so there are no direct equality implications arising from this report.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 Tree health plays a significant role in supporting a diverse local ecology, pollution sequestration and carbon capture. Sub-standard tree works can predispose trees to disease and greatly reduces their safe useful life

expectancy, therefore it is imperative that high quality tree maintenance is carried out. Likewise, correct tree planting techniques can greatly improve the successful establishment of new tree planting. Therefore, ensuring that the Council has the necessary skills and competent suppliers available for restocking schemes is paramount in ensuring the Council's Climate Emergency targets for improved tree cover. It has been verified through the tender evaluation process that Man Coed VM Ltd possesses the necessary skills and resources to meet these requirements.

- 10.2 As our weather becomes more and more unpredictable and hitherto once in a generation severe weather events become an almost biennial occurrence resilience, capacity to quickly and effectively deal with the aftermath of such events (extensive windthrow and storm damage clear up) becomes paramount. Therefore, a service supplier with sufficient and flexible staff, plant and machinery resources is essential. It has been verified through the tender evaluation process that Man Coed VM Ltd possesses the necessary skills and resources to meet these requirements.
- 10.3 Man Coed VM Ltd has confirmed a 100% recycled arboricultural waste policy, a new vehicle and plant fleet including European stage 5 emission compliant specification wood-chipper engines, is currently trialling battery-powered hand tools, and will work with the Council to achieve our net zero carbon targets. As part of their social value tender commitment, Man Coed VM Ltd has also offered to volunteer in the creation and management of green infrastructure.

REPORT AUTHOR: Simon Fox
 (Simon Fox, Assistant Director: Highways and Infrastructure)
 telephone: 0151 606 2334
 email: simonfox@wirral.gov.uk

APPENDICES

None

BACKGROUND PAPERS

Commercial tender submission information.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet Member for Community Services decision: Arboriculture Services – Approval of Contract Strategy and Procurement Route	26 February 2020



ENVIRONMENT, CLIMATE EMERGENCY AND TRANSPORT COMMITTEE

Monday, 1 February 2021

REPORT TITLE:	BUDGET CONSULTATION
REPORT OF:	DIRECTOR OF RESOURCES

REPORT SUMMARY

This report forms part of the Council's formal budget setting process, as set out in the constitution and in accordance with the legal requirements to set a balanced and sustainable budget for 2021/22.

Policy and Resources Committee must recommend a 2021/22 balanced Budget proposal to the Council for its meeting in March 2021, it is good practice for service committees to consider and feedback on Budget proposals.

This is not a key decision.

RECOMMENDATION

The Committee is invited to comment and provide feedback on the budget proposals which fall under the remit of the Committee so that those comments can be presented for consideration to the Policy and Resources Committee in February 2021.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 Policy and Resources Committee (P&R) is required to recommend a Budget to the Council for its meeting in March 2021. The Council has to set a budget for 2021/22 by 11 March by law 2020. This report is a key step in facilitating the Policy and Resources Committee to be in a position to recommend a Budget proposal.
- 1.2 The Council's Budget supports the delivery of the Wirral Plan and is key to ensuring the Council is financially stable. Our residents and businesses expect to be informed and consulted about how services are going to be run and how their money is going to be raised and spent. The benefits of consultations are:
- to improve planning, policy and decision making
 - to make better use of resources
 - to access new information, ideas and suggestions
 - to encourage greater participation in the activities of the council
 - to govern by consent (a full and fair consultation, with careful consideration of all views, can strengthen the legitimacy of the prevailing view among those people not in favour of the final decision)
 - to measure residents' satisfaction with the council
 - to shape council activities around residents' needs and aspirations

2.0 OTHER OPTIONS CONSIDERED

- 2.1 No other options were considered as the views of the Policy Committees are sought to enable them to be submitted to the Policy & Resources Committee for consideration.

3.0 BACKGROUND INFORMATION

- 3.1 Views are being sought on the Council's future budget and spending priorities, which will be delivered through a programme of community and stakeholder consultation.
- 3.2 The public consultation began on 21 December 2020 and will finish on 22 January 2021. The objectives of the consultation are:
- **Understanding:** Stakeholders understand the scale of the budget challenge, and how we are going about overcoming it
 - **Engagement:** Stakeholders feel able to contribute and that their views are valued and are being considered
 - **Support:** Stakeholders support the budget proposals, appreciate the work which has been done to involve them, and understand the reasons for budget decisions
- 3.3 The roles of the Service Committees is to formalise any feedback from the workshops in November and December 2020 and provide feedback on the proposals to Policy & Resources Committee

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications from this report, however the feedback requested is part of the consideration for the budget setting process, and as such, there could be financial implications.

5.0 LEGAL IMPLICATIONS

- 5.1 The Council is required to agree a budget for 2021/22 by March 2020. The Council must set the budget in accordance with the provisions of the Local Government Finance Act 1992 and approval of a balanced budget each year is a statutory responsibility of the Council.
- 5.2 The provisions of section 25, Local Government Act 2003 require that, when the Council is making the calculation of its budget requirement, it must have regard to the report of the chief finance (s.151) officer as to the robustness of the estimates made for the purposes of the calculations and the adequacy of the proposed financial reserves. This is in addition to the personal duty on the Chief Finance (Section 151) Officer to make a report, if it appears to them that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.
- 5.3 It is essential, as a matter of prudence, that the financial position continues to be closely monitored. In particular, Members must satisfy themselves that sufficient mechanisms are in place to ensure both that savings are delivered and that new expenditure is contained within the available resources. Accordingly, any proposals put forward must identify the realistic measures and mechanisms to produce those savings.
- 5.4 Consultation must take place in accordance with the Council's duties under section 65 of the Local Government Finance Act 1992. It must be borne in mind that this is consultation on the budget proposals, not on the decision to take whatever decision is implied by the adoption of that budget. This is because the budget is a sufficiently high-level estimate or cap and, in relation to much of the estimated income and expenditure in exercise of the budget, not set in relation to the distinct decisions that will make up that expenditure throughout the year. As such, when setting and formulating the budget it would be difficult to compile a sufficiently detailed consultation document or undertake a focussed impact assessment.
- 5.5 It should be noted, however, that this exercise must also form the essential preliminary consultation under section 3 of the Local Government Act 1999 and section 27 of the Children and Families Act 2014, as well as due regard under section s.149 of the Equality Act 2010 (the public sector equality duty) and section 11 of the Children Act 2004 if consultation is necessary, where there is any significant, sufficiently focussed and, in financial terms, apparently rigid relationship of spending to a specific proposal, even if taken as part of the setting of a budget. The consultation process, including the Council's consideration of the responses, is

required to comply with the following overarching obligations (unless detailed statutory rules supplant these):

- Consultation must be at a time when proposals are at a formative stage.
- The proposer must give sufficient reasons for its proposals to allow consultees to understand them and respond to them properly.
- Consulters must give sufficient time for responses to be made and considered.
- Responses must be conscientiously taken into account in finalising the decision.

5.6 The results of the consultation exercises will form part of the report to Policy and Resources Committee. This will be under three headings and accompanying appendices concerning:

- (a) the public consultation responses, which will be presented in a form that allows the Policy and Resources Committee, and therefore full Council, to be able to give conscientious consideration to the consultation responses in making their recommendation and decision (This summary will also be shared with all Members at the earliest opportunity);
- (b) The responses of the individual policy and service committees, the collation of which forms the purpose of this report; and
- (c) Consultation and comments received directly from stakeholders and from other sources

5.7 This is the same whether or not a public body was required to consult or chooses to do so. This is because all of those rules are aspects of an overriding requirement for 'fairness'. The process must be substantively fair and have the appearance of fairness. The setting of the budget and council tax by Members involves their consideration of choices.

5.8 When considering options, Members must bear in mind their fiduciary duty to the council taxpayers of Wirral. Members must have adequate evidence on which to base their decisions on the level of quality at which services should be provided.

5.9 Where a service is provided pursuant to a statutory duty, it would not be lawful to fail to discharge it properly or abandon it, and where there is discretion as to how it is to be discharged, that discretion should be exercised reasonably.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 There are no implications for resources as a result of this report.

7.0 RELEVANT RISKS

7.1 The Council's ability to close the funding gap is highly dependent on the accuracy of assumptions used for Government funding and levies from other bodies, as well as demand estimates for Council services. As the Local Government Finance

Settlement only covers one year, the uncertainty around future funding over the MTFP period remains high.

7.2 A key risk to the Council's financial plans is that funding and demand assumptions in particular can change as more information becomes available. As such, the MTFP is regularly reviewed and updated as part of routine financial management.

7.3 There is a risk that external factors could impact on agreed savings, which means that may not be delivered or may be delayed. Progress on delivery of agreed savings will be monitored using Budget Monitoring reports presented to P&R Committee. As such the Council continues to hold a General Fund reserve of £10.7m. This represents a minimum level of contingency to support the organisation if savings cannot be delivered and no other options for mitigation can be identified.

8.0 ENGAGEMENT/CONSULTATION

8.1 Views are being sought on the Council's future budget and spending priorities, which will be delivered through a programme of community and stakeholder consultation.

8.2 The Council has also worked with staff and Trade Unions where required to ensure obligations in relation to statutory staff consultation is delivered appropriately and within agreed guidelines.

8.3 Should any financial proposals agreed by Policy and Resources Committee require specific consultation, the Council will commence appropriate consultation directly with any service users and stakeholders who are affected and will feedback their views before final decisions are taken.

9.0 EQUALITY IMPLICATIONS

9.1 It is recognised that some of the developing proposals could have equality implications. Any implications will be considered and any negative impacts will be mitigated where possible.

9.2 Equality implications will be assessed during planning, decision and implementation stages and will be recognised as an ongoing responsibility. Equality issues will be a conscious consideration and an integral part of the process.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 No direct implications. The content and/or recommendations contained within this report are expected to have no impact on emissions of Greenhouse Gases.

REPORT AUTHOR: **Vikki Gregorich**
(Vikki Gregorich)
telephone:
email: vikkigregorich@wirral.gov.uk

APPENDICES

Appendix 1 – Savings Proposals

BACKGROUND PAPERS

2021/22 Budget Transition Process (Policy and Resources Committee 7 October 2020)
Local Government Association: Consulting Residents

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Policy & Resources Committee	7 October 2020
Council	19 October 2020
Policy & Resources Committee	18 December 2020

Environment, Climate Emergency and Transport Committee		
<p>As a council we are supporting active travel networks that work for all, increased recycling and reduction in the overall collected general waste (non-recycling) per household. We are focused on increased our own energy efficiency in Council-owned buildings and look to increase in the number of wildflower verges in Wirral.</p> <p>The council's budget situation means all services which are not legally required to be provided are being reviewed to find savings. It may be that not all the options being put forward will be taken up, but it is vital we look at everything we do to ensure the council is fit for the future.</p>		
OPTION	VALUE	NARRATIVE
Review of the Neighbourhood Services Directorate	£350,000	To carry out a fundamental review of the newly created Neighbourhood Services Directorate, to drive efficiencies and realign service provision and deliver the objectives of the Wirral Plan. The existing Directorate provides a wide range of services and functions, some of which are statutory. However, there is a need to bring services together in order to sharpen focus and develop a blended and combined approach to create and protect an environment our residents can be proud of. The review will generate better, more focused and aligned Neighbourhood Services to residents, as services are brought together to provide joined-up service provision. It is expected this could lead to a potential saving of £350,000 .
Additional and increased parking charges: Whole scale car parking review	£1,000,000	It is vital the council maximises its income where possible to ensure frontline services can be delivered. Furthermore, parking charges can help control car use in busy locations, contributing to the council's climate emergency declaration outcomes by encouraging active travel and public transport alternative transport modes, and potentially help address inequality across the borough by not unduly benefitting car owners. It is proposed that a wide ranging and review of car parking charges looking at the options to increase parking charges and add charges where

		appropriate. It is anticipated this would provide additional income to the council of £1,000,000.
Stopping School Crossing Patrols	£276,300	The School Crossing Patrol Service is not a statutory council function – i.e. the council is not legally obliged to provide this service. By ceasing the School Crossing Patrol Service the council would save £276,300.
Reduction in grass cutting and maintenance of roadside verges and all Parks and Open Spaces	£250,000	A reduction in grass cutting and maintenance of roadside verges and all parks and open spaces would mean changes such as on roadside verges a reduction in the cutting and maintenance schedule, only edge cuts would be carried out at suitable grass panels/verges which are over 200sqm. Operators would only cut around pathways and alongside roads leaving the middle/centre to grow long. There would also be a significant enlargement of the wildflower meadows. For all parks and open spaces across the borough there would be reduction in the grass cutting frequencies and where appropriate and possible at the grass interface with suitable boundaries for example areas of woodland the grass would be allowed to grow and effectively re-wild or be cut at a much reduced capacity. This option could lead to a saving of £250,000.
Amenity space and grass verge maintenance cessation	£100,000	Ceasing maintenance (grass cutting and litter removal) at 45 amenity green spaces and 85 grass verge sites, possibly planting of trees, re-wilding or where appropriate creating new allotments. Sites have been identified where reduced maintenance would have the least impact on the local area. Stopping amenity space and grass verge maintenance could lead to savings of £100,000.
Closure of Public Conveniences	£142,000	The council maintains nine public convenience sites at mainly in coastal areas. These include Harrison Drive New Brighton, Moreton Common, Moreton Cross, West Kirby Marine Lake, West Kirby Concourse (outside), Parade Gardens Hoylake, Meols Parade, New Ferry and Thornton Hough. Closure of these would lead to a saving of £142,000.

3 weekly collection of general rubbish	£180,000	Reducing the collection frequency of green general rubbish bins from once every two weeks, to once every three weeks while maintaining the grey recycling bin collection at every two weeks. This proposal could lead to a requirement to collect additional packaging (e.g. plastic pots, tubs and trays, tetra pack type cartons and aerosol cans) to be permitted in the grey recycling bin and/or a separate food collection to deal with the reduction in general waste disposal capacity. The option could mean a saving of £180,000.
Contract Efficiency Savings with BIFFA	£75,000	The refuse collection and street cleansing contract the Council has with Biffa has been in place for over 10 years and following a contract extension will run until 2027. Over the course of the contract a significant amount of efficiencies have been taken, particularly at the time of the extension. However, a specific requirement of the terms of the extension was for both parties to pursue further efficiencies. It is estimated this could result in a saving of £75,000.
Income generated from establishing targeted and discretionary environmental enforcement	£150,000	The Council's Enforcement Policy was amended to remove the zero-tolerance approach but it is possible to re-establish this robust approach. Environmental crime has increased during the Covid-19 lockdown. The return to zero tolerance would involve education and engagement with residents and targeted to high profile locations where there has been significant anti-social behaviour and environmental crime. Establishing targeted and discretionary environmental enforcement could lead to an income of £150,000.

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ENVIRONMENT, CLIMATE EMERGENCY AND TRANSPORT COMMITTEE

Monday 1st February 2021

REPORT TITLE:	ENVIRONMENT, CLIMATE EMERGENCY AND TRANSPORT COMMITTEE WORK PROGRAMME UPDATE
REPORT OF:	DIRECTOR OF LAW AND GOVERNANCE

REPORT SUMMARY

The Environment, Climate Emergency and Transport Committee, in co-operation with the other Policy and Service Committees, is responsible for proposing and delivering an annual committee work programme. This work programme should align with the corporate priorities of the Council, in particular the delivery of the key decisions which are within the remit of the Committee. It is envisaged that the work programme will be formed from a combination of key decisions, standing items and requested officer reports. This report provides the Committee with an opportunity to plan and regularly review its work across the municipal year. The work programme for the Environment, Climate Emergency and Transport Committee is attached as Appendix 1 to this report.

RECOMMENDATION/S

Members are invited to note and comment on the proposed Environment, Climate Emergency and Transport Committee work programme for the remainder of the 2020/21 municipal year.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 To ensure Members of the Environment, Climate Emergency and Transport Committee have the opportunity to contribute to the delivery of the annual work programme.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 A number of workplan formats were explored, with the current framework open to amendment to match the requirements of the Committee.

3.0 BACKGROUND INFORMATION

- 3.1 The work programme should align with the priorities of the Council and its partners. The programme will be informed by:

- The Council Plan
- The Council's transformation programme
- The Council's Forward Plan
- Service performance information
- Risk management information
- Public or service user feedback
- Referrals from Council Terms of Reference

The Environment, Climate Emergency and Transport Committee has responsibility for parks and open spaces, highways management and infrastructure, coastal protection and flood defence and environment and waste matters. It is the Committee that leads on behalf of the Council in responding to and matters concerning the Climate Emergency.

The Committee is charged by full Council to undertake responsibility for the Council's role and functions:

- (a) in co-ordinating the response to cross-cutting sustainability issues such as reducing carbon emissions, climate change response, improving resource efficiency and developing sustainable energy;
- (b) in relation to all highways matters and as highway authority, street authority, bridge authority, including but not limited to public open spaces, street furniture on the highway and open spaces or parts of open spaces immediately adjacent to the highway;
- (c) in relation to traffic management and transport and as traffic authority, including but not limited to public passenger transport and the co-ordination of transport for service users, traffic orders and rights of way issues;
- (d) in relation to parking, including on and off-street parking and civil parking enforcement;

- (e) in respect of parks, open spaces, countryside management, allotments, playgrounds and cemeteries, including arboricultural, gardening and warden services;
- (f) in relation to the management of authorised and unauthorised sites and encampments, this to include all activities necessary or incidental to the Council's performance of its responsibilities in relation to Gypsies, Roma and Travellers;
- (g) in relation to waste and as waste collection authority, litter authority, including but not limited to dealing with litter, street cleansing, abandoned vehicles and dog fouling, and the Council's relationship with Merseyside Recycling & Waste Authority (MRWA) as the joint waste disposal authority;
- (h) as coast protection authority and lead local flood authority;
- (i) in respect of emergency planning and community resilience (infrastructure and contract services);
- (j) providing a view of performance, budget monitoring and risk management in relation to the Committee's functions; and undertaking the development and implementation of policy in relation to the Committee's functions, incorporating the assessment of outcomes, review of effectiveness and formulation of recommendations to the Council, partners and other bodies, which shall include any decision relating to the above functions.

4.0 FINANCIAL IMPLICATIONS

- 4.1 This report is for information and planning purposes only, therefore there are no direct financial implication arising. However, there may be financial implications arising as a result of work programme items

5.0 LEGAL IMPLICATIONS

- 5.1 There are no direct legal implications arising from this report. However, there may be legal implications arising as a result of work programme items.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 There are no direct implications to staffing, ICT or Assets.

7.0 RELEVANT RISKS

- 7.1 The Committee's ability to undertake it's responsibility to provide strategic direction to the operation of the Council, make decisions on policies, co-ordinate spend, and maintain a strategic overview of outcomes, performance, risk management and budgets may be compromised if it does not have the opportunity to plan and regularly review its work across the municipal year.

8.0 ENGAGEMENT/CONSULTATION

8.1 Not applicable

9.0 EQUALITY IMPLICATIONS

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity. This report is for information to Members and there are no direct equality implications.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 This report is for information to Members and there are no direct environment and climate implications.

REPORT AUTHOR:

Anna Perrett: Senior Democratic Services Officer
telephone: 0151 691 8564
email: annaperret@wirral.gov.uk

APPENDICES Appendix 1: Environment, Climate Emergency and Transport Committee Work Plan

BACKGROUND PAPERS

<http://democracy.wirral.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13641&path=0>

SUBJECT HISTORY (last 3 years) Council Meeting Date

Council Meeting	Date
Environment, Climate Emergency and Transport Committee	22 nd October 2020
	3 rd December 2021



ENVIRONMENT, CLIMATE EMERGENCY AND TRANSPORT COMMITTEE

WORK PROGRAMME 2020/21

Contact Officer/s: Mike Jones
Anna Perrett

PROPOSED AGENDA FOR ENVIRONMENT, CLIMATE EMERGENCY AND HIGHWAYS COMMITTEE

February 1st Agenda

Item	Key Decision	Lead Departmental Officer	Wirral Plan Priority
Acceptance of Tender and Award of Contract - Arboricultural Maintenance Contract	Yes	Simon Fox	Sustainable Environments
Liverpool City Region Digital Connectivity Dig Once Policy	Yes	Tim Games	Sustainable Environment
Budget Consultation Update	No	Vicki Gregorich	Sustainable Environment
Work Programme Update	No	Anna Perrett	All

KEY DECISIONS

Item	Key Decision Yes/No	Lead Departmental Officer	Wirral Plan Priority
Highway Structural Maintenance Programme (SMP) 2021/22	Yes	Simon Fox	Sustainable environments
Combined Authority Transport Plan (CATP) 2021/22	Yes	Simon Fox	Sustainable environments
Council's Climate Emergency Action Plan	Yes	Mike Cockburn	Sustainable environments
Littering update and dog fouling PSPO	Yes	Mike Cockburn	Sustainable environments
Road Safety action plan and update	Yes	Simon Fox	Sustainable environments
LCR Cycling Walking Investment Plan – Birkenhead to New Brighton	Yes	Julie Barnes/Alan Evans Sally Shah	Sustainable environments
Department for transport Active Travel Allocation (TBC)	Yes	Alan Evans	Sustainable Environment
A41 Phase 1 Business Case (TBC)	Yes	Alan Evans	Sustainable Environment
Dog Control PSPO Dog Fouling Strategy	Yes	Mark Cockburn/Clare Brandwood	Sustainable Environment

West Kirby Flood alleviation	Yes	Colin Clayton/Neil Thomas	Sustainable Environment
Wallasey Embankment Reinforcement	Yes	Colin Clayton/Neil Thomas	Sustainable Environment
Highway Maintenance Term Service Contracts Review and Re-Procurement	Yes	Simon Fox	Sustainable Environment
Road safety Action Plan and Update	Yes	Simon Fox	Sustainable Environment

ADDITIONAL AGENDA ITEMS – WAITING TO BE SCHEDULED

Item	Approximate timescale	Lead Departmental Officer
Hoylake Beach update	March 2021	Colin Clayton
Marine Lake Update	2020/21	Colin Clayton
Pollinators update	2020/21	Colin Clayton

STANDING ITEMS AND MONITORING REPORTS

Item	Reporting Frequency	Lead Departmental Officer
Performance and Budget Monitoring	TBC	Shaer Halewood

WORK PROGRAMME ACTIVITIES OUTSIDE COMMITTEE

Item	Format	Timescale	Lead Officer	Progress
Working Groups/ Sub Committees				

Parking Charges Working Group	Focus Group	October/November 2020	Anna Perrett	Completed
Road Safety Working Group	Focus group	Jan/Feb 2021	Anna Perrett	In progress
Hoylake Beach working Group	Focus group	Feb 2021	Anna Perrett	In progress
Task and Finish work				
Allotment provision Task & Finish	Workshop and Report	October 2020	Alex Davidson	Complete
Spotlight sessions / workshops				
Budget Consultation	Workshop	November 2020	Nicki Butterworth	Complete
Corporate scrutiny / Other				