

Dated



Liverpool City Region Combined Authority

- and -

Wirral Borough Council

Grant Funding Agreement for Transport Pre-Development Work

Birkenhead Central Gateway

ICTF 1005

Liverpool City Region Combined Authority
Jill Coule
Chief Legal Officer and Monitoring Officer
No.1 Mann Island
Liverpool L3 1BP
Ref: RSN 22711

THIS AGREEMENT is dated

Parties:

- (1) **LIVERPOOL CITY REGION COMBINED AUTHORITY** of No.1 Mann Island, Liverpool, L3 1BP (“the Funder”); and
- (2) **WIRRAL BOROUGH COUNCIL** of Wallasey Town Hall, Brighton Street, Wallasey CH44 8ED (“the Recipient”)

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

Background

- (A) The Recipient is proposing to undertake a development project in the Liverpool City Region. The Funder considers that this project falls within the objectives of its transport pipeline.
- (B) The Recipient has requested funding to support development work on the project, and the Funder has agreed to pay the Grant to the Recipient to assist the Recipient in carrying out this work 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:

Application: the Recipient’s request for funding for the Pre-Development Work submitted in the Funder’s standard template for transport pipeline projects, together with any supplemental information provided by the Recipient at the Funder’s request.

Eligible Costs: costs which are reasonably incurred by the Recipient in carrying out Pre-Development Works.

Grant: the maximum amount of £1,460,900 to be paid by the Funder to the Recipient in accordance with this Agreement.

Pre-Development Work: activities carried out in connection with the Project in order to achieve the Pre-Development Outputs.

Pre-Development Outputs: the outputs to be achieved from the Pre-Development Work set out in Schedule 1.

Project: the development project that the Recipient is proposing to undertake summarised in Schedule 1.

Project Consultants: the third party or third parties procured by the Recipient to undertake all or part of the Pre-Development Work.

Subsidy Control: the UK's subsidy control regime, including subsidy control commitments contained in the UK-EU Trade and Co-operation Agreement, commitments on subsidies arising from the UK's membership of the WTO (including but not limited to the Agreement on Subsidies and Countervailing Measures) and any system of subsidy control developed and maintained by the UK Government in accordance with the UK-EU Trade and Co-operation Agreement and/or the European Union (Future Relationship) Act 2020.

Working Day: means a day, other than a Saturday or Sunday, on which banks are open for general business in the United Kingdom.

- 1.2 In the event of any conflict between the terms of this Agreement and the Application or any other document relating to the subject matter of this Agreement, the terms of this Agreement shall prevail.

2. Pre-Development Work

- 2.1 Any revisions to the Pre-Development Outputs or the Pre-Development Work (as described in this Agreement or the Application) must be approved in writing by the Funder.
- 2.2 The Recipient must deliver, and ensure that, where utilised, any Project Consultants undertake to deliver, the Pre-Development Work in accordance with this Agreement and achieve the Pre-Development Outputs to the reasonable satisfaction of the Funder within specified timescales.
- 2.3 The Recipient will ensure that any Project Consultants instructed to carry out all or any part of the Pre-Development Work are suitably skilled, qualified and experienced to carry out the tasks that they are instructed to perform and hold a sufficient level of professional indemnity insurance to cover any risks or potential losses that may arise in relation to those tasks. The Recipient will provide evidence of the Project Consultants' skills, qualifications, experience and insurance cover to the Funder upon request.
- 2.4 The Funder confirms that funding of £350,000 has been allocated to Merseytravel in connection with Phase 1 Early Contractor engagement for the decommissioning and reprovision of the Woodside Ferry Terminal Pontoon ("the Merseytravel Pre-Development Works"). The Recipient will work collaboratively with Merseytravel to ensure that the Pre-Development Works and the Merseytravel Pre-Development Works are carried in a co-ordinated manner that supports successful and timely progression of the Project as a whole. The Funder confirms that Merseytravel has been asked to agree to a reciprocal obligation to work collaboratively with the Recipient under the terms of its funding arrangements.

3. Use of the Grant

- 3.1 The Recipient shall use the Grant only to cover Eligible Costs and in accordance with the terms of this Agreement.
- 3.2 The Grant shall not be used for any other purpose without the prior written agreement of the Funder.
- 3.3 The Recipient shall ensure that all use of the Grant is in accordance with any guidelines, standards or policies that the Funder may specify to the Recipient as being relevant to the Project, including guidelines and standards relating to national bus and cycling and walking strategies. The Recipient must endeavour to keep abreast of developments in national bus and cycling and walking strategies, and ensure that so far as practicable the development of the Project is in accordance with these strategies. At the date of this Agreement the key guidelines and standards relating to these strategies are LTN 1/20 (cycle design standards) and the Bus Back Better guidance (Bus Priority).
- 3.4 The Recipient shall ensure that its receipt and use of the Grant is in accordance with Subsidy Control. The Recipient agrees to maintain appropriate records of compliance with Subsidy Control and agrees to take all reasonable steps to assist the Funder to make any reports or respond to any investigation(s) in respect of its use of the Grant and the Project as a whole.

4. The Grant payment

- 4.1 The Recipient shall comply with such requirements as the Funder may stipulate in order to record and monitor the funding and costs associated with the Pre-Development Works which will be notified to the Recipient prior to payment of the Grant.
- 4.2 The Grant shall be paid by the Funder to the Recipient in quarterly instalments in arrears.
- 4.3 Payment of the Grant instalments shall be made within 20 Working Days of receipt by the Funder from the Recipient of evidence that the Eligible Costs relating to item(s) in the Activity Schedule Table have been paid by the Recipient.

5. Reduction, withdrawal and repayment of the Grant

- 5.1 The Funder may withdraw or reduce, or require the Recipient to repay all, or any proportion of, the Grant on the grounds in Schedule 2.
- 5.2 Should the Funder require the Recipient to repay all or any proportion of the Grant, it will notify the Recipient in writing. The Recipient must make that

repayment within 15 Working Days of the date of that notice or by any later deadline agreed by the Funder in writing.

6. Pre-Development Completion Report

- 6.1 Within 30 Working Days of completion of the Pre-Development Work, the Recipient shall provide the Funder with confirmation (in such form as may reasonably be required by the Funder) of the following:
- (a) how the Grant has been utilised;
 - (b) achievement of the Pre-Development Outputs; and
 - (c) any material changes to the Project arising from the Pre-Development Work.
- 6.2 If required, the Funder may ask for copies of any reports prepared by the Project Consultants to be annexed to the report provided under clause 6.1.

7. Accounts and records

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

8. Procurement

- 8.1 In procuring the services of the Project Consultants to undertake the Pre-Development Work, the Recipient must comply with its contract procedure rules and all applicable law, including the Public Contract Regulations 2015.

9. Warranties

- 9.1 In accepting the Grant and any payment of it, the Recipient represents and warrants that:
- a) in relation to the Pre-Development Work and its use of the Grant, 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;
 - b) it has obtained and will continue to have any consents or approvals, and has the resources and expertise necessary to deliver the Pre-Development Work and procure the services of the Project Consultants to undertake the Pre-Development Work, and to comply with the terms of this Agreement;

- c) it has disclosed in writing to the Funder all information which would or might reasonably be thought to influence the Funder's decision to award the Grant and which might materially and adversely impact on the Recipient's ability to deliver the Pre-Development Work or the Project, including procuring the services of the Project Consultants to undertake the Pre-Development Work, or comply with the terms of this Agreement; and
- d) the information and evidence in, and relating to or disclosed to the Funder in relation to the Grant, the Pre-Development Work and the Project, remain true, complete and accurate, and that it will advise the Funder of any fact, matter or circumstance which would render any such information or evidence false or misleading.

10. Duration

- 10.1 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 Grant payment and the date on which all obligations under this Agreement are fulfilled to the satisfaction of the Funder.
- 10.2 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.

11. Intellectual property

- 11.1 The Funder and the Recipient 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 Pre-Development Work or developed by either Party for or as part of the Pre-Development Work shall remain the property of that Party. The Recipient hereby grants to the Funder an irrevocable royalty free, non-exclusive licence to use any Intellectual Property Rights funded in whole or in part by the Grant for or in connection with the discharge of its functions.

12. Termination

- 12.1 The Funder may terminate this Agreement and any obligation to make any further payment of Grant on giving the Recipient three months' written notice should it be required to do so by financial restraints or a change in legislation or Government policy, or if in the reasonable view of the Funder it is no longer necessary or appropriate to support the Project to achieve the Funder's objectives.
- 12.2 The Funder may terminate this Agreement and any Grant payment immediately and without notice following the occurrence of any of the grounds listed in Schedule 3.

13. Limitation of liability

- 13.1 The Funder's liability under this Agreement is limited to payment of the Grant.
- 13.2 The Recipient remains entirely responsible for its risks and liabilities in delivering the Pre-Development Work and the Funder accepts no liability for any consequences, whether direct or indirect, that may arise from the Recipient delivering the Pre-Development Work, the Recipient's use of the Grant or any reduction, withdrawal or repayment of the Grant.
- 13.3 The Recipient shall indemnify and hold harmless the Funder, 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 the Recipient in relation to the Pre-Development Work or the Recipient's use of the Grant, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties. The Recipient shall hold sufficient insurance to cover its potential liabilities under this clause 13 and shall provide evidence of such insurance to the Funder on request.

14. Assignment etc.

- 14.1 The Recipient may not, without the prior written consent of the Funder, assign, novate, sub-contract or otherwise transfer the benefit and/or the burden of this Agreement or, except as contemplated as part of the Pre-Development Work, transfer or pay to any other person any part of the Grant.

15. Variation

- 15.1 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.

16. Freedom of information

- 16.1 The Recipient and the Funder are both subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, and shall assist and co-operate with each other to comply with these requirements.

17. Data protection

- 17.1 The Recipient and the Funder shall (and shall procure that any 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 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.

18. Confidentiality and Publicity

- 18.1 The Recipient shall not publish any material referring to the Pre-Development Work, the Project or this Agreement without the prior written agreement of the Funder. 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.

19. Waiver

- 19.1 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.

20. Third Party rights

- 20.1 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.

21. Law and jurisdiction

- 21.1 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 and Wales.

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

The Common Seal of)
LIVERPOOL CITY REGION COMBINED)
AUTHORITY)

is affixed opposite and is authenticated by:)

.....

Authorised Officer

Name:

(block capitals)

The Common Seal of)
WIRRAL BOROUGH COUNCIL)

is affixed opposite and is authenticated by:)

.....

Authorised Officer

Name:

(block capitals)

Schedule 1 - The Pre-Development Works

Summary of Project

The objective of the Project is to reduce the severance between the town centre and a major housing site at Hind Street through the removal of two flyovers, with related works including preferred highway alignment and a green travel corridor linking Hind Street to Wirral Waters. The Pre-Development Works comprise of the following:

1. Argyle Street

Connectivity and public realm improvements at Argyle Street, including widened footways, segregated cycle infrastructure, street furniture and greening. Supports the active travel elements of the Birkenhead Landing programme resulting from the Hind Street Movement Strategy.

2. Woodside

Woodside is a key area of opportunity on Birkenhead's Waterfront and pre-development funding is needed to enable:

- Recommissioning of the Woodside Ferry Terminal Pontoon;
- Reconfiguration of the Woodside Gyratory;
- Realignment/relocation of bus turnaround;
- Investment in Public Realm and Wayfinding;
- Delivery of new and improved Walking and Cycling infrastructure;
- Rosebrae Village; and
- A new Visitor Attraction.

3. Placemaking

Delivery of vital place-making enablers which sit across the transport, infrastructure and movement projects in the Birkenhead 2040 Regeneration programme. Specifically the project will deliver transport and movement modelling, resident/business engagement focused on transport behaviour change, and active travel design and implementation. This approach will ensure that the portfolio of transport and movement projects will be designed and delivered in order to achieve true place-making transformation for Birkenhead.

Funding is sought to commission the following:

- Transport and movement concept design and modelling for Birkenhead to enable neighbourhood and street design to facilitate the take up of active travel and public transport, taking into account the dynamic environment arising from delivery of a number of major transport and regeneration projects.
- Specialist advice and campaign management to engage Birkenhead residents, businesses and visitors to change behaviour to increase use of active travel and public transport modes, alongside the development of transport and regeneration projects to facilitate and encourage sustainable patterns of movement.

4. Dock Branch Park

Dock Branch Park is an iconic, catalytic and transformational project for Birkenhead's regeneration. It involves the creation of a new active travel corridor linking three key developments areas: Wirral Waters, Birkenhead Town Centre and Hind Street. It will create a beautiful linear park whilst also strengthening the East West cultural axis through its links into the existing network, creating new residential and commercial neighbourhoods with opportunities for surrounding sites which will permeate the corridor. Pre-Development Work includes consultancy support to undertake design lead services (including planning) for RIBA design stage 2 & 3.

Pre-Development Outputs

The Pre-Development Outputs are summarised in Table 1 below.

Table 1

Element	Outputs	Funding £K	
		Development	Project Management
Argyle Street	<ul style="list-style-type: none"> • Preliminary Design • Public Consultation • Detailed Design (in part to March 2022) • Project Management 	150	50
Woodside	<ul style="list-style-type: none"> • Design • Early Contract Engagement for decommissioning and reprovision of the ferry pontoon (<i>note this includes work to be carried out by Merseytravel and subject to separate funding arrangements are per clause 2.4</i>) • Project Management 	300	30

		Funding £K	
Placemaking	<ul style="list-style-type: none"> • Concept design and modelling Design (in part to March 2022) • Behaviour change engagement and campaigns Design (in part to March 2022) • Project Management 	125	39.9
Dock Branch Park	<ul style="list-style-type: none"> • RIBA Stage 2 design • RIBA Stage 3 design • Submission of Planning Application • Submission of FBC • Tender issued for construction works • Project Management 	700	66
TOTAL		1,275	185.9

Further detail in relation to the Pre-Development Outputs is set out in the Application.

Timescale for achievement of Pre-Development Outputs

All Pre-Development Outputs must be completed by no later than 31st March 2022.

Funding Allocation

Funding of up to £1,460,900 will be allocated based on Eligible Costs to support the Pre-Development Works, and the following breakdown:

£1,275,000 for the development activities comprised within the Pre Development Works.

£185,900 for project management support for the Pre Development Works.

Estimates of the funding required for different elements of the Project are set out in Table 1, above however funding may be moved between the different elements with the agreement of the Funder, following consideration of the impact of any adjustments on the achievement of the Pre-Development Outputs as a whole.

Schedule 2

Grounds for reduction, withdrawal and repayment of the Grant

In accordance with clause 5.1, the Funder may withdraw or reduce, or require the Recipient to repay all, or any proportion, of the Grant, on any of the following grounds.

1. The Recipient fails to comply with the terms of this Agreement and the non-compliance is not remedied within a reasonable period or is not capable of remedy;
2. The Funder has reasonable grounds to consider that the Recipient has used the Grant other than in accordance with the terms of this Agreement;
3. The Funder has reasonable grounds to consider that the information and evidence provided by the Recipient in relation to the Pre-Development Works or the Grant has not been complete and accurate or supplied honestly and in good faith;
4. There is a change to the Pre-Development Works which the Funder reasonably considers to be material and has not agreed to in writing;
5. The Grant or any proportion of the Grant remain unspent or uncommitted to the delivery of the Pre-Development Works by 31st March 2022;
6. There is a finding of Subsidy Control non-compliance by a Court or other agency of competent jurisdiction which leads to the Recipient being ordered to repay the Grant or any part of it; or
7. There is a risk or a genuine belief that there is a risk that reputational damage to the Funder will occur as a result of this Agreement continuing.