

Appendix A
Draft Initial Promotion Agreement (version 3)

DATED

THIRD

INITIAL PROMOTION AGREEMENT

**Relating to MetroWest
(Phase 1)**

between

NORTH SOMERSET DISTRICT COUNCIL (1)

and

SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL (2)

and

BRISTOL CITY COUNCIL (3)

and

BATH & NORTH-EAST SOMERSET COUNCIL (4)

WEST OF ENGLAND COMBINED AUTHORITY (5)

N P BRAIN

HEAD OF LEGAL AND DEMOCRATIC SERVICES

NORTH SOMERSET DISTRICT COUNCIL

TOWN HALL

WESTON-SUPER-MARE

BS23 1UJ

(ACM/LS041589)

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THIS AGREEMENT is dated

AUTHORITIES

The Authorities to this Initial Promotion Agreement (“IPA”) are:

- (1) **NORTH SOMERSET DISTRICT COUNCIL** of Town Hall, Weston-super-Mare, Somerset, BS23 1UJ (“NSDC”).
- (2) **SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL** of Council Offices, Badminton Road, Nibley, South Gloucestershire (“SGDC”).
- (3) **BRISTOL CITY COUNCIL** of City Hall, College Green, Bristol, BS1 5TR (“BCC”).
- (4) **BATH & NORTH-EAST SOMERSET COUNCIL** of The Guildhall, High Street, Bath, BA1 5AW (“BANES”); and
- (5) **WEST OF ENGLAND COMBINED AUTHORITY** of 3 Rivergate, Temple Quay, Bristol BS1 6ER (“WECA”).

Together referred to as “The Authorities”.

1. BACKGROUND

- 1.1 NSDC, SGDC, BCC and BANES entered into an Initial Promotion Agreement dated 13 March 2014 (IPA 1) and a further Initial Promotion Agreement dated 13 February 2015 (IPA 2). Both IPA 1 and IPA 2 were entered into pursuant to a Joint Working Agreement (“the JWA”) dated 12 March 2013 for the creation of a Local Transport Body (“LTB”) to oversee the delivery of a programme of major transport schemes in the region.
- 1.2 Subsequently SGDC, BCC and BANES agreed to form WECA in accordance with the West of England Combined Authority Order 2017 inter alia to oversee certain functions relating to transport matters in the areas of South Gloucestershire, Bristol and Bath and North East Somerset. As a result the governance arrangements to oversee the delivery of major transport schemes in the region have changed. The arrangements agreed in the JWA no longer apply and are substituted by the MetroWest Governance arrangements dated March 2018 annexed to this Agreement at Annex A.
- 1.3 The Authorities are jointly promoting a programme of rail enhancement projects, known as the MetroWest Programme. The MetroWest Programme

aims to uplift the local rail network in terms of service provision and access to the network, through the delivery of specific projects. The MetroWest Programme includes:

- MetroWest Phase 1 – involving the re-opening of the Portishead rail line and stations and re-introduction of passenger train services, together with other infrastructure enhancements to provide enhanced half-hourly passenger train services for the Severn Beach line and the Bath line.
- MetroWest Phase 2 – involving re-opening the Henbury rail line and stations and re-introduction of passenger train services, together with other infrastructure enhancements to provide enhanced passenger train services for Yate line.

1.4 In accordance with the stated aims set out in the Outline Business Case annexed to this Agreement at Annex B (by reference to the web site) and the governance arrangements set out in Annex A the Authorities have agreed to work together on the project (“the **Project**”) as outlined in this paragraph and more particularly detailed in the Outline Business Case and to make further arrangements for the promotion and implementation of the Project by applying for and obtaining the necessary Orders and by procuring completion of GRIP 5 detailed design and associated technical work to take the Project to the completion of Full Business Case .

- (a) In summary the MetroWest Phase 1 Project is a joint cross boundary project to deliver the re-opening of the Portishead rail line and re-commence passenger train services, together with other infrastructure enhancements to provide enhanced half-hourly passenger train services for the Severn Beach line and the Bath line.
- (b) The Project will extend the UK passenger rail network by 9 miles and is to be the first major project of a long term programme under the MetroWest name, to deliver enhancements to local passenger train network across the West of England.

- (c) Upon the completion of construction and commencement of passenger train services, the land forming the track alignment between Portishead and Pill currently owned by North Somerset Council will be sold to Network Rail on a cost basis. Furthermore all assets delivered by the Project excluding new car parks and footpath / highway links will be transferred to Network Rail and will be accepted into the national rail network. Network Rail is a state owned not-for-profit company which owns and operates the UK rail network. Network Rail will be responsible for all operational liabilities for the maintenance and repair of all infrastructure delivered by the Project, from commencement of passenger train services.
- (d) The passenger train services will be procured by the Authorities in association with the Department for Transport (DfT). Under the current DfT rules the Authorities will need to meet the revenue liability (subsidy) for the first three years of the operation of passenger train services, after which the liability transfer to the DfT in perpetuity subject to meeting value for money tests. All aspects of the Project value for money will be laid out in the Project business case and this will be scrutinised by the Joint Committee prior to final sign off of funding.

1.5 The purpose of this Third Initial Promotion Agreement is to set out the working arrangements between the Authorities for the Third Stage of the Project including applying for/obtaining the necessary Order(s) and completion of the GRIP 5 detailed design and associated technical work to take the Project up to the completion and submission of the Full Business Case (“Third Initial Stage”).

1.6 The Authorities wish to record the basis on which they will collaborate with each other on the Third Initial Stage. This Agreement sets out:

- (a) the key objectives of the Third Initial Stage and the Project as a whole;

- (b) the principles of collaboration;
- (c) the governance structures the Authorities will put in place; and
- (d) the respective roles and responsibilities the Authorities will have during the Third Initial Stage.

1.7 On or before the completion of the Third Initial Stage the Authorities intend to replace this Agreement with a Joint Promotion Agreement.

2. DEFINITIONS

2.1 In this Agreement the following words and phrases have the following meanings:

Word or Phrase	Meaning
“Accountable Body”	WECA or such other of the Authorities as appointed from time to time.
“Agreement”	This agreement
“Commencement Date”	The date of this Agreement
“Constitution”	The Constitution of the Joint Committee
“DfT”	Department for Transport
“Expiry Date”	90 days from and including the date of endorsement of the Full Business Case by the Joint Committee unless earlier terminated by the Parties in accordance with Clause 3
The Joint Committee	Means the West of England Joint Committee established under Section 101(5) of the Local Government Act 1972, as applied by Section 20 of the Local Government Act 2000 and Regulation 11 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 by the Executives of BANES, BCC, SGDC, NSDC and the Mayor of the WECA. .
“The Third Initial Stage”	The Third Initial Stage of the Project from inception

	to the production of the full business case
“Laws”	Means:- <ul style="list-style-type: none"> • Any applicable statute or proclamation or any delegated or sub-ordinate law; • Any enforceable community right within the meaning of Section 2(1) of the European Communities Act 1972; and • Any applicable judgment of a relevant court of law which is a binding precedent in England and Wales
LEP	The West of England Local Enterprise Partnership
“Lead Authority”	North Somerset District Council or such other of the Authorities as appointed from time to time in accordance with Clause 9
“MetroWest Programme”	MetroWest Phase 1, MetroWest Phase 2 and a range of new station/station re-opening projects.
MetroWest Governance Arrangements	The governance arrangements for the delivery of the MetroWest Programme adopted by WECA and NSDC dated March 2018 annexed to this Agreement at Annex A
“Order”	An order or order(s) necessary to implement the Project including Transport and Works Act Order(s), Development Consent Order(s), Compulsory Purchase Order(s) as appropriate
"Outline Business Case"	The MetroWest Phase 1 Outline Business Case dated December 2017 Case annexed to this Agreement at Annex B
“Project”	The project for the acquisition of land for and the procurement of the construction of the railway and associated works as described in the Outline Business Case.

"Programme Assurance Board"	The Programme Assurance Board established by the Joint Committee to oversee the programme budget for rail schemes across the West of England
"Programme Section 151 Officer"	shall mean for the purposes of this Agreement the officer with responsibility for the financial affairs of the MetroWest Programme from time to time appointed by the RPB in accordance with clause 8.4 and Section 151 of the Local Government Act 1972 as it may be amended from time to time.
"Project Section 151 Officer"	shall mean for the purposes of this Agreement the officer with responsibility for the Project's financial affairs from time to time appointed by the Lead Authority and Section 151 of the Local Government Act 1972 as it may be amended from time to time.
"Project Team"	The project team established for this Project in accordance with clause 11
"Project Manager"	Means NSDC's MetroWest Phase 1 Project Manager (currently James Willcock) or such other senior officer of the Lead Authority from time to time engaged in the management of the Project as the Authorities shall agree to appoint from time to time to the role
"RPB"	The Rail Programme Board established for this and other projects in accordance with clause Error! Reference source not found.
"The Programme SRO"	Means Head of Highways & Transport (currently Colin Medus) or such other senior officer of the Lead Authority from time to time engaged in the management of the West of England rail schemes as the Programme Assurance Board shall agree to appoint from time to time to the role.
"The Project SRO"	Means Head of Highways & Transport (currently

	Colin Medus) or such other senior officer of the Lead Authority from time to time engaged in the management of the Project as the RPB shall agree to appoint from time to time to the role.
“Standard Proportions”	The proportions, contributions and liability splits agreed and set out in Clause 14.4
“The Train Services”	The provision of a functioning passenger train service along the MetroWest Programme Phase 1 routes.

- 2.2 Anything defined in the Constitution shall have the same meaning in this Agreement unless the context clearly indicates otherwise.
- 2.3 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- 2.4 Words importing the singular include the plural, words importing any gender include every gender, the words importing persons include bodies corporate and unincorporated; and (in each case) vice versa.
- 2.5 Reference to Clauses and Schedules are references to clauses and schedules of this Agreement and any reference to a sub provision is unless otherwise stated a reference to a sub provision of the provision in which the reference appears.
- 2.6 The Clause and paragraph headings and titles appearing in this Agreement are for reference only and shall not affect its construction or interpretation.
- 2.7 No Party shall be required to do anything in the promotion or implementation of the Project that breaches its statutory duties or unlawfully fetters its discretion.
- 2.8 References to the Authorities save where otherwise stated (as for example in respect of Planning provisions) shall mean the Authorities in their capacity as

joint promoters of the Project and shall not refer to their other statutory functions, responsibilities or duties in any other capacity.

3. COMMENCEMENT AND DURATION

3.1 This Agreement shall come into force on the Commencement Date and shall continue in force until:

- (a) It is terminated in accordance with the termination provisions; or
- (b) The Authorities enter into an agreement that replaces this Agreement, or
- (c) The Authorities agree and confirm in writing that the Project is abandoned or terminated; or
- (d) The Expiry Date.

4. SCHEME OBJECTIVES FOR THE THIRD INITIAL STAGE OF THE PROJECT

4.1 The Authorities shall undertake the Third Initial Stage of the Project to achieve the scheme objectives up to the end of the Third Initial Stage as set out in paragraph 1.3.4 of the Outline Business Case (**Scheme Objectives**).

5. PRINCIPLES OF COLLABORATION

The Authorities agree to adopt the following principles when carrying out the Third Initial Stage (**Principles**):

- (a) collaborate and co-operate. Establish and adhere to the governance structure set out in this Agreement to ensure that activities are delivered and actions taken as required;
- (b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this Agreement;

- (c) be open. Communicate openly about major concerns, issues or opportunities relating to the Project and commit to sharing data and knowledge relevant to the Project where appropriate;
- (d) learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (e) adopt a positive outlook. Behave in a positive, proactive manner;
- (f) adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation;
- (g) act in a timely manner. Recognise the time-critical nature of the Project and respond accordingly to requests for support;
- (h) manage stakeholders effectively;
- (i) deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this Agreement. In particular the Authorities agree to make the contributions in the Standard Proportions;
- (j) work together to secure external funding from the DfT, the LEP and any other available source in respect of the Project; and
- (k) act in good faith to support achievement of the Scheme Objectives and compliance with these Principles.

6. PROJECT GOVERNANCE

6.1 Overview

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

6.2 Guiding principles

The following guiding principles are agreed. The Third Initial Stage of the Project's governance will:

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

7. THE JOINT COMMITTEE

7.1 The Joint Committee provides overall strategic oversight and direction to the Project. It shall decide on the allocation of all Local Growth Fund funding and devolved DfT capital funding.

7.2 The Joint Committee shall also review and approve the revenue liabilities of transport projects across the Authorities' sub-region, and in relation to this Project shall review and approve the revenue liabilities of the Train Service.

7.3 The Joint Committee shall be managed in accordance with the terms of reference set out in the in the Constitution.

8. RPB AND PROGRAMME ASSURANCE BOARD

8.1 The Joint Committee has appointed a RPB and a Programme Assurance Board (PAB)

- 8.2 The PAB has representatives from BCC, BANES, SGDC, NSDC and the LEP and provides high-level challenge and independent assessment to the Joint Committee. It receives high-level reports on all rail schemes across the West of England. The PAB has a particular emphasis of overseeing the programme budget. The PAB is responsible for:
- (a) Ensuring programme priorities are met and cross-scheme actions are delivered
 - (b) Providing critical review, monitoring of progress and performance, and oversight of joint actions
 - (c) Overseeing the integrated programme plan and Benefits Realisation Plan
 - (d) Ensuring strategic programme-level risks are effectively managed
 - (e) Overseeing strategic relationships with LEP and other key stakeholders
 - (f) Reporting high-level progress to the LEP
- 8.3 The Programme SRO is responsible for ensuring that the Rail Programme's objectives are met.
- 8.4 The RPB consists of board members and representatives from each of the Authorities. The overall rail programme is made up of a number of projects including the Project. The RPB directs, steers and oversees the direction of each project and authorises project plans to be delivered by the project managers and authorise strategic decisions, or seeks authority for key strategic decisions from the RPB, PAB, the Joint Committee and the Programme Section 151 Officer augmented by specialists from related areas. Key decision making will be made by the RPB members only each of whom has voting rights. The RPB shall have responsibility for:
- (a) Appointments such as the appointment of the Project SRO, the Lead Authority, and the Programme Section 151 Officer,
 - (b) the creation and execution of the project plan and deliverables, and therefore it can draw technical, commercial, legal and communications resources as appropriate into the RPB .

8.5 The core RPB comprises:

Job Title and Current Officer Name	Organisation	Title
Director of Development & Environment (currently vacant)	NSDC	Board Member
Service Director: Transport (currently Peter Mann)	BCC	Board Member
Group Manager Highways & Traffic (currently Kelvin Packer)	BANES	Board Member
– Interim Head of Transport (currently Emma Blackham)	SGDC	Board Member
Head of Highways & Transport (currently Colin Medus) –	NSDC	Project SRO (Metro Phase 1) & Programme SRO
Strategic Public Transport Manager (currently Janet Kings)	SGDC	SRO (Metro Phase 2)
– Chairman of Severnside Rail Partnership (Keith Walton)	Severnside Community Rail Partnership	
– Principal Programme Sponsor (West) (currently Michelle Scogings)	Network Rail	
Head of Finance (currently Dave Perry)	SGDC	Programme Section 151 Officer
Interim Head of Transport (currently James White) –	WECA	Programme Manager
Director (currently John Czyrko) -	Great Western Railways	

9. LEAD AUTHORITY

9.1 The Authorities (acting jointly) appoint, with effect from the Commencement Date, NSDC to be the Lead Authority for the carrying out of the Project which shall be carried out for and on behalf of the Authorities and NSDC agrees to

act in that capacity subject to and in accordance with the terms and conditions of this Agreement.

9.2 The scope of the Lead Authority is on the basis that it is only authorised to act as lead authority so far as it is clearly authorised to do so and the Lead Authority shall act under the direction of the RPB .

9.3 Where the Lead Authority incurs any costs or liability in discharging its duties under this **Clause 9**, the Lead Authority shall from time to time inform the RPB promptly of that cost or liability and such cost or liability shall be apportioned between the Authorities pursuant to the **Standard Proportions**.

10. ACCOUNTABLE BODY

10.1 WECA has been appointed by BCC, BANES and SGDC and has agreed with the DfT to act as the Accountable Body for the purposes of devolved major scheme funding and it will provide the Programme Section 151 Officer.

11. PROJECT TEAM

11.1 The Project Team will provide day to day management of the Third Initial Stage of the Project and work streams. It will provide assurance to the RPB that the Project is being delivered within the boundaries set by the RPB.

11.2 The Project Team consists of the Project SRO, representatives from each of the Authorities, the Project Manager, the Programme Section 151 Officer, the Project Section 151 Officer and representatives from specialist external consultants as required. The Project Team shall have responsibility for the creation and execution of the project plan and deliverables, and therefore it can draw technical, commercial, legal and communications resources as appropriate into the Project Team. The Authorities may recharge the cost of employee time to the Project where the employee has been tasked with delivering specific outputs for the Project, subject to the prior written approval of the Project Manager or Project SRO. The Authorities will provide sufficient staff and resources at their own cost to enable the Project Team and

any working Authorities and groups established under them to function adequately and effectively. The Authorities may not recharge the cost of employee time to attend meetings or to fulfil in-house (i.e. for their employer Authority) functions, for example writing Council committee reports. The costs of any external consultants or significant internal staff costs shall only be chargeable to the Project if previously approved in writing by the Project Manager or Project SRO in accordance with **clause 11.7**.

11.3 The Project Team shall meet not less than bi-monthly and the minutes and actions will be recorded for each Project Team meeting. Any additional reporting requirement shall be at the discretion of the RPB.

11.4 For the avoidance of doubt, among the matters for which the Project Team shall be responsible are the following:-

- (a) What authority it reserves to itself and what authority it delegates to the Project Team or the Project SRO and the Project Section 151 Officer;
- (b) The appointment and instruction of consultants and other advisors and delegation of authority in respect of this;
- (c) The management of its own roles and the roles of those that report to it;
- (d) Approval of agreements with third parties in respect of the Project carried out by the Project Team in accordance with **clause 15**; and
- (e) Day to day financial and risk management of the Project.

11.5 The Project Team shall not have authority to do or agree anything or go beyond the budgeted expenditure as approved by the Programme Section 151 Officer in writing in accordance with this clause and:

- (a) The Project Section 151 Officer in consultation with the Project Manager shall prepare detailed annual budget which shall be approved with the RPB (“the Approved Budget”);

- (b) The Project Section 151 Officer shall with the approval of the RPB submit all financial claims to the WoE LEP and any other funders on behalf of both Authorities;
- 11.6 All commitments, orders and payments under the Approved Budget shall be submitted to the SRO for approval. Agreement to any change that would be outside the scope of the Project or the budgeted expenditure for the Project as confirmed by the Programme Section 151 Officer shall be referred to the Joint Committee.
- 11.7 Every 3 months the Project Section 151 Officer shall prepare and submit to the Authorities an invoice of each of the relevant Authority's Standard Proportion of the costs incurred for the Project, including a detailed breakdown of such costs. If the Project Team agrees to allow the recharge of internal staff costs to the Project (in accordance with **clause 11.2**) the recharge rate inclusive of any overheads must be agreed in advance by the RPB.

Powers Outside the Scope of the Project Team

- 11.8 Neither the RPB nor the Project Team shall have power to commit an Authority to expenditure or any other commitment that is outside the scope of the Project, the Joint Transport Strategy or beyond its own budgeted expenditure on the Project without the agreement of that Authority.
- 11.9 The Project Team will endeavour to make decisions by consensus. Where this is not possible if the representatives of the Authorities are in agreement with each other they may decide matters on their own.
- 11.10 The Project Team shall ultimately report to the Joint Committee (in respect of devolved DfT capital funding and Local Growth Fund funding) and in the event that the representatives of the Project Team do not agree with each other they will refer it to RPB for decision and if the Authorities are not satisfied with such decision any Authority may refer the matter to the Joint Committee and if the Authorities are still not satisfied with such decision any Authority may refer the matter for Dispute Resolution in accordance with **clause 19**.

11.11 Unless or until the Project Team decides otherwise, the Project shall use the Managing Successful Program (MSP) system of project management.

12. ROLES AND RESPONSIBILITIES

12.1 The Authorities shall undertake the following roles and responsibilities to deliver the Project:

(a) Each Authority will nominate a Lead Officer with senior management responsibilities for transport functions in their area. The Lead Officer shall ensure that his / her Council provides the support necessary to secure the effective achievement of the Project. In this context, “support” shall include the involvement and time of capable officers, the provision of information and the prompt consideration of matters referred to his / her Authority for determination. The Authorities’ respective Lead Officers at the Commencement Date are:

(i) BCC – Head of Strategic City Transport (currently Adam Crowther)

(ii) NSDC – Head of Highways & Transport (currently Colin Medus)

(iii) SGDC – Strategic Public Transport Manager (currently Janet Kings)

(iv) BANES – Group Manager Transport (currently Gary Peacock)

(b) Each Authority shall ensure that whenever its Lead Officer is on leave or otherwise unavailable, it appoints an alternative person to act in his or her place with full power to do anything he or she would be able to do, and who will be their Lead Officer.

(c) Each Authority will authorise its Lead Officer and the Project SRO will authorise the Project Team to take any steps necessary to ensure the efficient promotion of the Project whether in response to any objection or requests by the Inspector at any Public Inquiry or for any

other reason relating to the effective promotion of the Project provided the within the scope of Project.

13. PROMOTING THE PROJECT

13.1 The Authorities will jointly promote the Project in accordance with their respective Council resolutions and the terms of this agreement.

13.2 Each Authority will keep the other fully informed in relation to matters that relate to the progress of any Order and the Project so as to promote timely and well-informed decision-making.

14. FINANCIAL ARRANGEMENTS

14.1 The Authorities will assume joint and several liability to perform their obligations under any Order and any agreements that may be reached with third parties, including any agreements or concessions to implement the Third Initial Stage of the Project.

14.2 On 17 May 2018 the DfT notified NSDC that its Large Local Major Scheme funding bid had not been successful. However the DfT notification letter stated a willingness to continue to have detailed discussions with WECA NSDC and other stakeholders in the West of England about potential improvements to rail services, including the MetroWest programme, and how they might be funded. The Parties will continue to work together to secure appropriate funding for the Project. As an interim measure and to prevent any delay in completion of the Project the Parties agree that the Third Initial Stage should be completed. NSDC is taking responsibility for all the additional liability required to progress the delivery of the scheme over and above the estimated out-turn of £58m as per the total scheme estimated cost of £58.159m referred to in the Preliminary Business Case endorsed by the WoE Joint Transport Board on 3rd September 2014. For the avoidance of any doubt the liability for BCC, B&NES and SGC remains at the same level as included in the Second Initial Stage.

14.3 In the event that WECA agrees to take on liability for the Project (including any obligations under any Order any agreements that may be reached with

third parties and any agreements or concessions to implement the Third Initial Stage of the Project) instead of BCC, BANES and SGDC then from the date that WECA notifies the Authorities that it takes on liability for the Project, BCC, BANES and SGDC shall be released from all liability and obligations in this Agreement and since 1st April 2013 (the Project Cost Baseline Date) but without prejudice to the rights of the parties in relation to any antecedent breach of their obligations.

14.4 Notwithstanding **clause 14.1** above, all financial liabilities under the Third Initial Stage of the Project during the term of this Agreement will be apportioned between the Authorities according to the following proportions (“the Standard Proportions”):

	Liability agreed in the Second Initial Stage based on a scheme estimated out-turn cost of £58m	Liability for the additional £58m taken on by NSDC, for the revised estimated capital cost of £116M (as set out in the Outline Business Case)	Net share of total liability for the Third Initial Stage
B&NES	15% of £58M	0% of additional £58M	15% of £58M
BCC	30% of £58M	0% of additional £58M	30% of £58M
NSDC	50% of £58M	100% of additional £58M	50% of £58M + 100% of a further £58M
SGC	5% of £58M	0% of additional £58M	5% of £58M
WECA	0% of £58M	0% of additional £58M	0%
Total	100%	100%	100.0%

14.5 In the event that WECA notifies the Authorities in accordance with **clause 14.5** above that it takes on the obligations and liabilities of BCC, BANES and SGDC then from the date of notification until the Expiry Date WECA shall bear the total of the Standard Proportions borne by BCC, BANES and SGDC.

14.6 The Authorities agree that and in relation to Project expenditure:-

- (a) each Party shall bear its own costs incurred by them up to but not including the Project Cost Baseline Date and such costs shall not be treated as Project costs;

- (b) From and including the Project Cost Baseline Date until completion of the Full Business Case the costs shall be shared in the Standard Proportions as defined in **clause 14.6**

14.7 The Authorities shall indemnify each other in respect of all costs, expenses, actions, proceedings or other expenditure arising under or in connection with a project agreement to the extent that either of them bears, has borne or is exposed to the risk of bearing more than their share of such based on the Standard Proportions.

14.8 Each Authority will make available the necessary funds to ensure that the Authorities and the Project Team can satisfy all liabilities falling due for payment, without one Authority having to make a payment on behalf of the other.

15. THIRD PARTY LIAISON

15.1 The Project Team shall be responsible for all negotiations with third parties including objectors and potential objectors to the Order(s).

15.2 No Authority shall meet, correspond or negotiate with such third parties without the consent of the Project Team.

15.3 In accordance with **clause 11.4(d)** any agreement which the Project Team makes with any third party must either be within the scope of an express authority delegated to it by the Authorities in writing or subject to ratification by the RPB and not binding until so ratified.

15.4 Subject to any authorisation required from the Authorities the RPB is authorised to and may settle the terms of any agreement with an objector, undertaking or revision to the Orders.

15.5 The Project Team shall where appropriate and reasonably practicable invite an officer from the Authority whose area any objection or third party issue concerns to attend any meeting with that objector or third party.

- 15.6 The representative of an Authority at such meeting shall not publicly disagree with the Project Team's position in respect of the negotiations with the objector or third party and all Authorities shall observe the requirements of **clause 22 (Publicity)**

16. LIABILITIES & INDEMNITIES

- 16.1 Notwithstanding the cost allocation provisions, where a liability under the Project arises out of either where one Authority ("the Indemnifying Party"):

- (a) fails to comply with the terms of this agreement; or
- (b) acts deliberately or negligently or commits an omission; or
- (c) makes a decision which leads to an increase in the costs of the Project;

the Indemnifying Party will bear the whole cost of the resulting costs and indemnify the other Authorities accordingly.

- 16.2 Each Authority shall ensure that it has on its own account, or co-operates with the other Authority to ensure that the Authorities jointly or the Project Team has appropriate insurance policies in force at all times to cover all risks the Project is reasonably able to insure against.

- 16.3 For the avoidance of doubt, any disputes as to valuation or the amounts of any claims by one Authority against the Project or the other are within the scope of the provisions on Remediation and Dispute Resolution referred to below.

17. WITHDRAWAL

- 17.1 Each Authority acknowledges that, if it withdraws from the Project that withdrawal is likely to cause loss of income and additional cost to the other Authorities, including but not limited to, the loss of funding from the Department for Transport and the loss of any economies resulting from the joint working between the Authorities in the implementation of local transport improvements. Similarly, each Authority acknowledges that if it takes any

decision within the powers delegated to the Joint Committee (“an Independent Decision”) such decision may cause loss to the other Authorities.

- 17.2 An Authority may withdraw from this Agreement by giving notice in writing of its intention to withdraw to the other Authorities. Such notice shall be no less than **3** months’ notice expiring at any time.
- 17.3 Subject **clauses 17.4 and 17.5** each Authority agrees that in the event that it gives notice of withdrawal to the other Authorities under **clause 17.1** or takes an Independent Decision, it will use its reasonable endeavours to minimise and will indemnify the remaining Authorities against, any loss or additional expense which the other Authorities may suffer as a result of its Independent Decision or withdrawal from this Agreement and the Project.
- 17.4 Where an Authority takes an Independent Decision, it shall be liable to the other Authorities for any loss suffered by the remaining Party or Parties as a consequence of the Independent Decision.
- 17.5 Where any Authority withdraws from the Project:-
- (a) Any obligations which the withdrawing Authority has entered into with the other Authorities in pursuance of any funding provided or to be provided by the Joint Committee shall remain in force;
 - (b) The Disputes Procedure set out in **clause 18** shall remain in force in respect of any matters arising from the performance of or withdrawal of either Party under this Agreement;
 - (c) **Clause 21 (Confidential Information)** of this Agreement shall continue without limit and shall survive the termination of this Agreement; and
 - (d) All Authorities will seek to minimise costs arising from the other Authority's withdrawing.

18. DISPUTES

- 18.1 Where an Authority is of the opinion that another Authority is failing to comply with the provisions of this Agreement in respect of any matter, including the provisions of **Clause 5** to work together in good faith and in an open, co-operative and collaborative manner, the Authorities shall use their reasonable endeavours to resolve any such matter amicably without resort to the formal remediation and dispute resolution procedures set out below.
- 18.2 Notwithstanding **Clause 19**, at any time the Chief Executive of any Authority ("**the first Party**") may serve on the Chief Executive of the other Authority ("**the second Party**") a "**Default Notice**", alleging that the second Authority has failed to comply with its obligations under this Agreement, setting out any suggested remedial action and any damage which the first Authority has or is likely to suffer as a result of the alleged failure.
- 18.3 The second Authority on receipt of a Default Notice shall have 14 days within which to serve on the Chief Executive of the first Party a "**Counter notice**", setting out in respect of every matter contained in the Default Notice, proposals for the remediation of the alleged failure and making good any loss which the first Authority may have suffered or may suffer as a result of the failure, or the reasons why that alleged failure is disputed.
- 18.4 Within 14 days of receipt of a Counter notice, the Chief Executive of the first Authority shall send to the Chief Executive of the second Authority a "**Notice of Acceptance**" of any proposals contained in the Counter notice in so far as those proposals are accepted by the first Authority, and may send a "**Notice of Dispute**" in so far as no proposal satisfactory to the first Authority is contained in the Counter notice, setting out in respect of each proposal which is not accepted by the first Authority why it is considered to be unacceptable.
- 18.5 Where any proposal in a Counter notice is accepted in a Notice of Acceptance, the second Party shall implement that proposal.

- 18.6 Where any matter is contained in a Notice of Dispute, cannot be resolved by the procedure in **clauses 18.1 to 18.4** it shall fall to be dealt with under the Disputes Procedure set out in **Clause 19**.

19. DISPUTE RESOLUTION

- 19.1 In the event of any dispute arising between the Authorities (including the service of a Notice of Dispute), as a matter of urgency, the Authorities will first attempt to settle the issue in dispute by referring the matter as follows:

- (a) Initially to a meeting of the Lead Officers;
- (b) in the event of failure of Lead Officers to agree a resolution, to the Joint Committee
- (c) In the event of the Joint Committee failing to resolve the matter to a meeting of the Leaders of three Authorities the Mayor for BCC and the WECA Mayor

- 19.2 If the dispute is not resolved by such means within 14 days of such reference, the Authorities will attempt to settle the issue in dispute ("Dispute") by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Authorities. To initiate a mediation, any Party may give notice in writing (a "Mediation Notice") to any one or more of the others requesting mediation of the Dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Authorities, asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. If there is any point in respect of the conduct of the mediation upon which the Authorities are unable to agree within ten (10) Working Days from the date of the Mediation Notice, CEDR will, at the request of one of the Authorities, decide that point for the Authorities, having consulted with them. The Authorities will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or, in the absence of such determination, such costs will be shared equally.

- 19.3 None of the Authorities may commence any court proceedings in relation to any Dispute until they have attempted to settle it by mediation under **Clause 19.1(c)** and/or such mediation has terminated. The Authorities will take no further steps in the court proceedings until any such mediation commenced under **Clause 19.1(c)** has terminated. Nothing in this **Clause** shall prevent an Authority from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.
- 19.4 If the Dispute has not been resolved by the mediation procedure detailed in **Clause 19.1(c)** within one (1) month of the initiation of such procedure, the Dispute may be referred to the courts for resolution.
- 19.5 Copies of all notices issued under **clause 18** shall be sent to the other Party's proper officers and/or lead officer (as the case may be).

20. INTELLECTUAL PROPERTY

- 20.1 All intellectual property in any material created by or on behalf of the Authorities or any of the Authorities in the course of the Project shall be owned jointly by those Authorities which are participating in the Project and shall be available equally to each such Party.
- 20.2 Each Party warrants that any intellectual property created by its officers for the purposes of the Project does not infringe any third party's intellectual property rights.
- 20.3 Each Party shall indemnify the other Authorities against any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its intellectual property rights by use of the first Party's intellectual property for the purpose of the Project.
- 20.4 Where existing intellectual property of an Authority has been used for the purpose of the Project that Authority agrees to grant the other Party a non-

exclusive perpetual non-transferable and royalty free licence to use, modify, amend and develop the same for the purpose of the Project.

- 20.5 Where the Authorities generate any receipts from the licensing or sale of any intellectual property generated by this Project the net surplus shall be divided between them in the Standard Proportion.

21. CONFIDENTIAL INFORMATION

- 21.1 Subject to **Clause 23.3** and where disclosure of any Confidential Information is required by Laws, the Authorities shall at all times use their reasonable endeavours to keep confidential and ensure that such information is used only for the purpose of the Project (and to procure that their respective employees agents consultants contractors and sub-contractors shall keep confidential and shall use such information only for the purpose of the Project) all Confidential Information concerning the Project or the business and affairs of any other Authority which may now or at any time hereafter be in an Authority's possession and shall not disclose it except with the consent of that other Authority, such consent not to be unreasonably withheld.
- 21.2 For the purpose of this Agreement "Confidential Information" means any information imparted to any of the Authorities or their employees agents consultants contractors or sub-contractors ("the Receiving Party") which was imparted to the Receiving Party on the basis that it is to be kept confidential or would by its nature normally be regarded as being confidential or to the knowledge of the Receiving Party was obtained by the other Authorities on the basis that it was to be kept confidential or is of commercial value in relation to the Project but shall not include any information which is for the time being in the public domain otherwise than by reason of its wrongful disclosure by the Receiving Party.

22. PUBLICITY

22.1 The Authorities will make such venues available for the provision of information about the Project and such other publicity as the Project Team may reasonably require.

22.2 The Project Team and the Project SRO on its behalf shall: -

- (a) co-ordinate all press releases, advertisements and other publicity material in connection with the Project,
- (b) ensure that it keeps members of the Joint Committee and of the Authorities up to date and briefed on the progress of the Project and establish a protocol for doing so.
- (c) Each Party will refrain from making statements about the application for the Orders and Project other than statements that have been authorised by the Project Team

23. COMPLIANCE WITH LAWS & DATA PROTECTION

23.1 The Authorities shall at all times comply with all Laws including but not limited to the Data Protection Act 1998 and will, where appropriate maintain a valid and up to date registration or notification under such Laws.

23.2 Each Authority shall indemnify and keep indemnified the other Authorities against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by the other Authorities in respect of any breach of this Clause by the Authority and/or any act or omission of any employee, agent, consultant, contractor or sub-contractor.

23.3 Each Authority shall grant to the other Authorities the right of reasonable access to all records of Personal Data relevant to the Project, as defined in the Data Protection Act 1998, and shall provide reasonable assistance at all times during the currency of this Agreement to ensure the quality and security of data collected.

24. FOI & EIR

24.1 Each Authority acknowledges that the other Authorities are subject to the requirements of the Freedom of Information Act 2000 (“FoIA”) and the Environmental Information Regulations 2004 (“EIR”) and each Authority shall where reasonable assist and co-operate with the other Authority (at their own expense) to enable the other Authorities to comply with these information disclosure obligations.

24.2 Where an Authority receives a request for information under either the FoIA or the EIR in relation to information which it is holding on behalf of any of the other Authorities in relation to the Project, it shall (and shall procure that its sub-contractors shall):

- (a) transfer the request for information to the other Authority as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
- (b) provide the other Authority with a copy of all information in its possession or power in the form that the Authority requires within ten Working Days (or such longer period as the Authority may specify) of the Authority requesting that information; and
- (c) provide all necessary assistance as reasonably requested by the other Authority to enable the Authority to respond to a request for information within the time for compliance set out in the FoIA or the EIR.

24.3 Where an Authority receives a request for information under the FoIA or the EIR which relates to this Agreement or the Project, it shall inform the other Authorities of the request for information as soon as practicable after receipt and in any event at least two Working Days before disclosure and shall use all reasonable endeavours to consult with the other Authorities prior to disclosure and shall consider all representations made by the other Authorities in relation to the decision whether or not to disclose the information requested.

- 24.4 The Authorities shall be responsible for determining in their absolute discretion whether any information requested under the FoIA or the EIR:
- (a) is exempt from disclosure under the FoIA or the EIR;
 - (b) is to be disclosed in response to a request for information.
- 24.5 Subject to **Clause 24.3** above each Authority acknowledges that the other Authorities may be obliged under the FoIA or the EIR to disclose information:
- (a) without consulting with the other Authority where it has not been practicable to achieve such consultation; or
 - (b) following consultation with the other Authority and having taken its views into account.

25. ASSIGNMENT

- 25.1 Save as may be imposed as part of any re-organisation of local government neither Authority may assign, subcontract or transfer its rights or obligations under this Agreement

26. VARIATION

- 26.1 This Agreement, including the Annexes, may only be varied by written agreement of the Parties

27. CHARGES AND LIABILITIES

- 27.1 Except as otherwise provided, the Authorities shall each bear their own costs and expenses incurred in complying with their obligations under this Agreement.
- 27.2 For the avoidance of doubt, in accordance with **Clause 14** the Authorities agree to share the costs and expenses arising in respect of the Third Initial Stage of the Project between them in accordance with the Standard Proportions.

27.3 Each Authority shall remain liable for any losses or liabilities incurred due to its own or its employee's actions and no Authority intends that the others shall be liable for any loss it suffers as a result of this Agreement.

28. STATUS

28.1 This Agreement is intended to be legally binding, and legal obligations or legal rights arising between the Authorities from this Agreement shall from the date of this Agreement be construed accordingly.

29. WAIVER

29.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

30. SEVERANCE

30.1 If any condition, provision or Clause of this Agreement shall become or shall be declared by any court of competent jurisdiction to be void, invalid, illegal or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect

31. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law and, without affecting the Dispute Procedure set out in **clause 19**, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

32. GENERAL

- 32.1 Nothing contained or implied herein shall prejudice or affect the Authorities' rights and powers duties and obligations in the exercise of their functions as local authorities and/or in any other capacity and all rights powers discretions duties and obligations of the Authorities under all laws may at all times be fully and effectually exercised as if the Authorities were not party to this Agreement and as if this Agreement had not been made.
- 32.2 The Authorities shall only represent themselves as being an agent partner or employee of any of the other Authorities to the extent specified by this Agreement and shall not hold themselves out as such nor as having any power or authority to incur any obligation of any nature express or implied on behalf of any of the other Authorities except to the extent specified in this Agreement.
- 32.3 Save as may be imposed as part of any re-organisation of local government, this Agreement is personal to the Authorities and no Authority shall assign transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this Agreement.
- 32.4 No person other than the Authorities shall be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 32.5 Any notice required or permitted to be given by an Authority to the other Authorities under this Agreement shall be in writing and addressed to the Chief Executive of the other Authorities at their principal office.
- 32.6 This Agreement constitutes the entire agreement and understanding of the Authorities and supersedes any previous agreement between the Authorities relating to the subject matter of this Agreement

Signed for and on behalf of **NORTH
SOMERSET DISTRICT COUNCIL**

Signature:
Name:
Position:
Date:

Signed for and on behalf of **SOUTH
GLOUCESTERSHIRE DISTRICT
COUNCIL**

Signature:
Name:
Position:
Date:

Signed for and on behalf of **BRISTOL
CITY COUNCIL**

Signature:
Name:
Position:
Date:

Signed for and on behalf of **BATH AND
NORTH EAST SOMERSET COUNCIL**

Signature:
Name:
Position:
Date:

Signed for and on behalf of **WEST OF
ENGLAND COMBINED AUTHORITY**

Signature:
Name:
Position:
Date:

Annex A. The Metrowest Governance Arrangement Chart

See attached document

Annex B. The Outline Business Case

See www.travelwest.info/projects/MetroWest