

Appendix H - Legal Commentary

Key Contractual Documents for City Leap

The City Leap contractual documents include the following:

- a) A Concession Agreement pursuant to which the Council grants the Strategic Partner access to the Council's estate for the purpose of installing low carbon energy infrastructure;
- b) Articles of Association and a Subscription and Shareholders' Agreement pursuant to which the Council will become a 50/50 joint shareholder in a joint venture company with the Strategic Partner;
- c) A Framework Agreement under which the City Leap Partnership can provide low carbon energy services to other public bodies;
- d) A parent company guarantee from the Strategic Partner's parent company guaranteeing to the Council the obligations of the Strategic Partner in the Concession Agreement;
- e) A Share Purchase Agreement relating to purchase of the shares in Bristol Heat Networks by the Strategic Partner (or a company nominated by it) from the Council's holding company, Bristol Holding Limited; and
- f) An Intellectual Property (IP) Agreement relating to IP contributed by the Council and the Strategic Partner to the City Leap Partnership.

The Concession Agreement

The key document containing the Council's obligations and the Preferred Bidder's obligations in respect of City Leap is the Concession Agreement. The Concession Agreement sets out:

- the terms on which the Council will grant to the Preferred Bidder access to its estate (subject to certain criteria being met) to install low carbon energy infrastructure, and pursuant to which the Preferred Bidder will be held to key elements of their tender including the delivery of a heat network and considerable social value.
- certain obligations on the Council to enable the Preferred Bidder to install such infrastructure on the Council's estate.
- certain provisions relating to information flow and governance of the projects which are initiated by City Leap.
- commitments given by the Strategic Partner in the Concession Agreement in relation to the heat network, in particular in relation to continuity of service provision and fair pricing, which the council views as critical.

Approval of projects on the Council's estate/Project Acceptance Criteria

Where the Preferred Bidder originates new projects on the Council's estate, those projects are subject to a detailed project approval process before they are developed. The purpose of this process is to protect the Council's interests as land owner. This project approval process requires the proposed project to meet certain Project Acceptance Criteria ("PAC"). The Project Acceptance Criteria do not apply to any other projects.

The Concession Agreement sets out both generic project acceptance criteria that must be met in relation to any LCEI project on the Council's Estate and specific project acceptance criteria, which only apply to City Leap Projects to be developed with particular Service Areas, e.g. social housing and the need for sub-contracts to contain relevant targets in relation to delivery of high customer care standards.

The Project Acceptance Criteria include items such as value for money, contractual terms and availability of the land for the proposed use. New projects on the Council's estate which do not meet those criteria will not be permitted to proceed. There is a staged approval process to be followed in order that the Strategic Partner can show that a project meets all the Project Acceptance Criteria.

Cabinet approval

While the Concession Agreement grants the Preferred Bidder the right to access the Council's estate to install low carbon energy infrastructure projects where those projects meet certain Project Acceptance Criteria, where any project involves the Council choosing to invest over £500,000, separate Cabinet authority for that project will also be required and sought.

Key Performance Indicators

The Concession Agreement sets out the Key Performance Indicators to which the Preferred Bidder will be held. These are performance targets relating to matters such as carbon savings, social value delivery and performance of the heat network. If the Preferred Bidder does not meet these targets then the Council can take remedial action, including in some instances imposing financial consequences.

Protection of heat network customers

The Council has included certain contractual and shareholder protections (through the Concession Agreement and the grant of a non-voting special share in any company that owns the heat network) intended to ensure protections for heat network customers pending the introduction of national regulation of heat networks.

To supplement the commitments given by the Strategic Partner in the Concession Agreement in relation to the heat network, the council will be given a "special" share in the company that will own the heat network assets in the future. This share will give the council a veto over certain actions by that company such as a future sale unless, for example, any future owner of the heat network agrees to abide by the contractual commitments given by the Strategic Partner and so enable the council to continue to protect the interests of customers of the heat network prior to national regulation being introduced that provide the same protections.

Governance arrangements

The relationship with the Strategic Partner under the Concession Agreement is supplemented by the governance documents for City Leap Energy Partnership Limited and an Intellectual Property Agreement.

The Strategic Partner is required to ensure its parent company guarantees its obligations under the Concession Agreement and other key documents. The guarantee exists for the duration of the Concession Agreement and is subject to a financial cap.

The City Leap Partnership will be established as a 50/50 joint venture between the council and Ameresco to originate low carbon energy infrastructure, enabling both parties to contribute to the direction and success of City Leap. The council will own 50% of the shares in the City Leap Energy Partnership (the joint venture company), with Ameresco owning the other 50% of the shares.

The council and Ameresco will be able to nominate the same number of directors to the board of the company. In addition, the board of directors will not be able to take certain decisions unless the council has consented (in its capacity of shareholder of the company). The governance arrangements setting this out are contained in the Articles of Association and a Subscription and Shareholders' Agreement.

Share Purchase Agreement

The Council owns 100% of the shares in a group holding company called Bristol Holding Limited (BHL). BHL currently owns 100% of the shares in the company that will own, subject to cabinet approval, the heat network (Bristol Heat Network Limited, BHNL). BHNL will be transferred from the council to the Preferred Bidder as part of City Leap, via a Share Purchase Agreement.

TUPE

The services to be provided by the Preferred Bidder pursuant to City Leap will constitute a transfer of an undertaking for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”). The TUPE regulations provide for the protection of contractual terms and conditions of employment for staff who will transfer to City Leap Energy Partnership. The procedures set out by those regulations should be followed. The Concession Agreement apportions liability in the event of any failure to comply with those regulations.

In accordance with the Best Value Authorities Staff Transfers (Pensions) Direction 2007 and the principles of HM Treasury’s “Fair Deal for staff pensions” guidance published October 2013, the council’s intention is that transferring employees who are currently active or eligible members in the Local Government Pension Scheme (“LGPS”) would have continued access to the LGPS following the transfer of their employment and that the employing entity would participate in the LGPS.