

DELIVERY AGREEMENT (DA)
BETWEEN
COLCHESTER CITY COUNCIL (CLIENT AND ACCOUNTABLE BODY)
AND
ESSEX COUNTY COUNCIL (DELIVERY PARTNER)
LEVELLING UP FUND ROUND 2

1. Introduction

- 1.1 The Levelling Up Fund programme represents a significant opportunity to develop and implement a range of capital projects which will bring long-term benefits to Colchester's residents and businesses and builds on the established Town Deal programme in which Colchester City Council (CCC) and Essex County Council (ECC) are already working in partnership.
- 1.2 This new Delivery Agreement (DA) focuses on the £19.66m Department of Levelling Up, Housing and Communities (DLUHC) funding awarded to Colchester under the **Levelling Up Fund Round 2**, for which CCC has signed a Memorandum of Understanding (Schedule G) with DLUHC to proceed with the project and receive the first phase of funding for the ECC-led St Botolph's LUF Regeneration Works in July 2023 as per Schedule C. This formally confirms that the submitted programme has been accepted by DLUHC. CCC is the Accountable Body for the proposed LUF programme and therefore the onus is on CCC to communicate with ECC regarding its discussions with DLUHC, particularly in terms of ECC's delivery of the St Botolph's Circus project in line with the terms of the MoU with DLUHC.
- 1.3 Team Colchester Regeneration Board has a specific governance oversight role, and at the time of writing (May 2023), the formal Terms of Reference (TOR), work programme, resourcing and governance arrangements for Team Colchester Board are being prepared, with this Board having the lead role for the governance of programmes and initiatives including the LUF-funded scheme.
- 1.4 This DA should be read in conjunction with the following supporting documents:
- A. Schedule A: Levelling Up Fund commissioning brief – see Work Package 3 Saint Botolph's Circus.
 - B. Schedule B: Project Initiation Document (PID) provided by ECC in response to commissioning brief (schedule B).
 - C. Schedule C: Payment schedule.
 - D. Schedule D: Monitoring & Evaluation Framework.

- E. Schedule E: Levelling Up Fund Bid as submitted (approved 19-01-23).
- F. Schedule F: Progress Report Template.
- G. Schedule G: MOU signed between CCC and DLUHC for Levelling Up Fund R2.

1.5 The total funding envelope available for this project (including the funding provided by DLUHC via CCC) is expressed in Table 1 below:

Table 1

Project	Theme	Total budget	Budget available to ECC from LUF funding	Match funding
St Botolph's Round-about (LUF)	Levelling Up Fund / Work Package 3	£11,800,000	£9,286,031	£2,513,969 (from S106 already secured by ECC)

- 1.6 For the LUF scheme, unlike the Town Deal programme, there is no intention that CCC draw down or ring fence any part of the DLUHC funding award for internal governance and overheads. Thus, the £9,286,031 value shown in Table 1 above is available in full to ECC. Overheads for LUF programme are subject to wider support, including Team Colchester contributions.
- 1.7 The LUF bid originally submitted to DLUHC specified a programme-wide delivery date of March 2025 in line with the terms of the funding award criteria. Following subsequent discussions and project planning between CCC and ECC at the appropriate project governance level, it is proposed that ECC aims to be “commercially committed” (i.e. tender award to a construction contractor) to deliver its element of the programme by this date in view of the size, scope and associated complexities of this project. To confirm this aspiration, ECC will produce an updated project plan as part of the stage 2 phase (post-bid announcement).
- 1.8 The project aims of stage 2 include:
- develop the preferred design further and confirm the preferred option;
 - improved costings & programme;
 - carry out more detailed modelling and appraisal (e.g. environmental appraisal) and;
 - carry out wider engagement with stakeholders.
- 1.9 Subsequently, completion of stage 2 will enable the production of an updated programme plan that will reflect the scheme completion date. The expectation is that stage 2 will conclude during Summer 2023.

- 1.10 As the project is being delivered by ECC, as agreed with CCC, ECC will follow the “Major Projects Contract Manual” (MPCM) process. Any substantive changes to the project need to follow the process set out in section 5.

2. Purpose of this DA

- a) To define Reporting Requirements.
- b) To provide ECC with delegated responsibility for delivering the project set out in Table 1 above.

3. Project Objectives and Funding Arrangements

- 3.1 By signing this DA, CCC and ECC jointly agree that the Objectives and Budgets of the project are as defined by project features and financial information provided in the **Levelling Up Fund commissioning brief** (schedule A), and corresponding **Project Initiation Document** (schedule B) provided by ECC in response to the brief. These Objectives and Budgets may only be varied by mutual agreement between ECC and CCC and on the understanding that the scheme is only what is deliverable to the available budget and latest agreed programme (recognising that both will be updated following completion of stage 2 of the MPCM, and then subsequent MPCM stage completions).
- 3.2 Project costs include a contingency for cost increases and inflation as appropriate. The project has undertaken a risk analysis, with actions to mitigate each risk identified. Should there be an increase in costs during the delivery of the project, in accordance with good project management practice project leads are advised to set a maximum level of cost tolerance for the project and will additionally need to identify where cost savings can be made to mitigate impact (e.g. through such measures as value engineering, exploration of other relevant and available funding sources in partnership with CCC, and adjustments to scope in ways that do not significantly impact the intended outcomes). In such instances, decisions over scope and cost will be delegated to the St Botolph's Circus Project Board. If, after all identified and reasonable mitigations have been explored, cost increases continue to place an untenable financial burden to the project delivery and ECC considers that delivery of the project has become financially unviable due to the prospective additional financial burden on ECC, then ECC may notify the Accountable Body of this fact and cease delivery. In such a case, ECC shall hand back the remaining, unspent and uncommitted balance of the “Budget available to ECC from DLUHC funding” (as set out in Table 1) for the project that has ceased. ECC shall have no further liability after the cessation on that project. This circumstance also relates to instances of force majeure and enforced variations to the project scope / conditions that lead to untenable increases in cost.

- 3.3 CCC as the Accountable Body will in turn release funding to ECC in accordance with an agreed schedule (Schedule C), which will be provided in advance of payment. ECC will draw down these funds via its invoicing process and upon receipt of a CCC purchase order. This is dependent on the terms of this DA being honoured, performance reports being provided as per this DA and the agreed approach to project monitoring and evaluation, and projects or programmes being delivered as per the agreed PID and Commissioning Brief.
- 3.4 Should the ECC-led project have a position of underspend at the end of project delivery, the remaining balance will be returned to CCC as the accountable body. Furthermore, should there be a need to redistribute the funds to other parts of the LUF programme at any point during delivery, CCC must get prior agreement from Team Colchester Regeneration Board and DLUHC.
- 3.5 Details of the agreed Objectives and Budgets are set out in the Schedules A & B).

4. Reporting Requirements

- 4.1 Set out by DLUHC, a condition of receiving Levelling Up funding will be providing regular feedback on progress, to allow for monitoring and evaluation of projects. CCC will be required to provide monitoring data to government on a 6-monthly and annual basis for the duration of the project. Therefore, ECC will provide a report to CCC using the Progress Report Template (Schedule F) every two months throughout the life of the projects by no later than the end of Week 1 of the Month (unless this falls on a bank holiday, in which case the report would be due on the next working day). This Report will set out the following for the ECC-led project, in accordance with the delivery details provided in Schedule A and B:
- RAG Status – Delivery
 - RAG Status – Time
 - RAG Status – Cost
 - Project Budgets – Accrued Spend and Annual Forecasts
 - Summary with Action Required
 - Engagement and Communications – latest activity against the Plan
- 4.2 ECC will also provide CCC with such information required for programme Monitoring and Evaluation Reporting purposes.
- 4.3 This Report should be sent to the CCC Programme Owner – Levelling Up Fund (Matthew Brown) and copied to the CCC Programme Management Office (PMO) by email.

- 4.4 In the event that any of these agreed minimum requirements of reporting (as set out in Section 4.1) and/or delivery (as set out in Schedule A and B) are not met, this will be deemed to be a breach of this DA by the Accountable Body and escalated by the CCC Senior Responsible Officer.
- 4.5 Failure by ECC to comply with these reporting requirements may lead to scheduled payments being delayed or withheld.
- 4.6 To ensure CCC as Accountable Body has visibility of project activity which may affect or benefit other projects in the programme, upon request by CCC, ECC will invite the CCC Programme Owner – LUF (or nominated alternative) to such Delivery Group / Team meetings as appropriate to achieve this objective.

5. Changes to approved bid application

- 5.1 In order for CCC to comply with the full requirements of the MoU with DLUHC, ECC must notify CCC of any proposed changes to the approved project. In accordance with the instructions provided by DLUHC in July 2023, decisions may be made locally by the Accountable Body (CCC) on project changes that relate to up to 30% change in funding profile and up to 30% change in output and outcomes. This is provided the project remains materially the same. Changes that exceed these thresholds will need to be referred to DLUHC by submitting a Project Adjustment Request (PAR). These notifications will need to be agreed in advance of changes by CCC and DLUHC.
- 5.2 A range of project changes, including but not limited to changes to spending profiles, delivery timescales, outputs and outcomes may be requested through the process. Alterations to the project are anything that changes the “ask” or “offer” expected by the Parties which is set out in the MoU and Annex A of Schedule G.

6. Disputes

- 6.1 Recognising that issues which arise from time to time are often best resolved quickly and informally, partners to this DA will engage with each other before the need to escalate items through the governance structure.
- 6.2 Should the need arise to formally escalate an issue this should first be raised with the **CCC Programme Owner: Matthew Brown** and copied to the CCC Programme Management Office (PMO) by email. The matter will be investigated, and the Programme Owner shall provide a response-within 5 working days of the date of escalation.
- 6.3 Should both CCC and ECC decide that the matter requires further escalation, it will then be escalated to the **Deputy Chief Executive and Executive Director**

Place, who will provide a response within 5 working days of the date of this further escalation.

- 6.4 Should the matter continue to be unresolved it will be escalated on request to the **Programme Sponsor (CCC's Chief Executive)**, who will discuss with the respective ECC Project Manager within 3 working days. Thereafter, the Programme Sponsor shall provide a written response to ECC within 10 working days.
- 6.5 In the event that the matter remains unresolved, or the outcome of the resolution proposed by CCC is deemed unsatisfactory by ECC for legitimate reasons, if appropriate and proportionate to the matter in question an independent mediator may be appointed by both parties to resolve the dispute. Under such circumstances, delivery of the project experiencing the issue in question may be temporarily halted for the duration of the resolution process if either of the parties deem this to be an appropriate course of action. The impact of this delay would need to be closely monitored by CCC and ECC and reviewed accordingly. The cost of the mediation would be split equally between the parties and with each party paying their own preparation costs. In the event mediation does not resolve the issue, the instigation of court proceedings may be required, although it is recognised that in the spirit of collaborative partnership working, every reasonable endeavour will be deployed to prevent this ultimate occurrence.

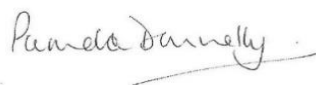
7. Changes to Delivery Agreement

- 7.1 The arrangements under this DA will be kept under review. Amendments to the DA may only be made upon written agreement between the parties. In order for changes to be made, notifications to the affected party must be provided in advance by the party proposing the change to the other party's project manager (who will in turn consult that party's project owner and sponsor). Both parties must be in agreement before the change can be implemented. Each party must ensure that it obtains the appropriate and necessary governance to enable it to agree any such change.

Signed and agreed on [date] by

CCC Programme Sponsor

Pam Donnelly, Chief Executive



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CCC Programme Senior Responsible Officer

Lindsay Barker, Deputy Chief Executive and Executive Director Place



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Signed on behalf of ECC

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Cllr Tom Cunningham, Portfolio Holder for Planning a Growing Economy

Definition of Terms

Accountable Body: Colchester City Council, as the lead authority for the Levelling Up Funding bid submission.

Budget: Refers to the £11,800,000 of total budget for St Botolph's Regeneration including £9,286,031 of Government funding received for the Colchester Levelling Up Fund Projects and £2,513,969 Section 106 match funding.

Objectives:

The objectives for St Botolph's:

- Create a sustainable key gateway into the city centre
- Improve air quality
- Provide safer greener healthier infrastructure
- Support regeneration and economic growth of the area
- Create a place to help stimulate growth, reflect the heritage of the area and design out fear of crime
- Reduce anti-social behaviour

Reporting Requirements: Set out by DLUHC, a condition of receiving Levelling Up funding will be providing regular feedback on progress, to allow for monitoring and evaluation of projects. This is therefore extended out as a requirement of ECC.

CCC: Colchester City Council.

DLUHC: Department of Levelling Up, Housing and Communities.

ECC: Essex County Council.

ECC-Led Project: Refers to the one Levelling Up Fund Round 2 project that is specifically being delivered by Essex County Council (within LUF): St Botolph's Highway Scheme.

Monitoring & Evaluation: Refers to the conditions set out in the Monitoring & Evaluation Framework provided in the Document Pack, Schedule D.

Progress Report: Refers to the bi-monthly project progress report that project managers need to complete in order for Colchester City Council to track the progress of the overall programme delivery against key measures.

Team Colchester Regeneration Board: The member and officer steering group overseeing the regeneration of Colchester City Centre through an active place-based partnership comprising of the two Local Authorities: CCC and ECC.

Document Pack

Schedule A: Levelling Up Fund commissioning brief – see Work Package 3 Saint Botolph's Circus.

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Schedule C: Payment schedule.

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