



Essex County Council

## Cabinet

<b>10:00</b>	<b>Tuesday, 25 February 2020</b>	<b>Committee Room 1, County Hall, Chelmsford, CM1 1QH</b>
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**For information about the meeting please ask for:**

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<b>3</b>	<b>Questions from the public</b> A period of up to 15 minutes will be allowed for members of the public to ask questions or make representations on any item on the agenda for this meeting. No statement or question shall be longer than three minutes and speakers will be timed.  On arrival, and before the start of the meeting, please register with the Democratic Services Officer.	
<b>4</b>	<b>Day Opportunities and inclusive employment service (FP/597/01/20)</b> The Equality Impact Assessment is available <a href="#">online</a>	<b>16 - 27</b>
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| 6  | <b>Proposed Essex-wide Bus Shelter Contract (FP/458/06/19)</b><br>The Equality Impact Assessment is available <a href="#">online</a>  | 35 - 46   |
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| 11 | <b>Date of next meeting</b><br>To note that the next meeting of the Cabinet will take place on Tuesday 17 March 2020 at 10.00am in Committee Room 1 at County Hall, Chelmsford, CM1 1QH.          |           |
| 12 | <b>Urgent Business</b><br>To consider any matter which in the opinion of the Chairman should be considered in public by reason of special circumstances (to be specified) as a matter of urgency. |           |

### **Exempt Items**

(During consideration of these items the meeting is not likely to be open to the press and public)

The following items of business have not been published on the grounds that they involve the likely disclosure of exempt information falling within Part I of Schedule 12A of the Local Government Act 1972. Members are asked to consider whether or not the press and public should be excluded during the consideration of these items. If so it will be necessary for the meeting to pass a formal resolution:

**That the press and public are excluded from the meeting during the consideration of the remaining items of business on the grounds that they involve the likely disclosure of exempt information falling within Schedule 12A to the Local Government Act 1972, the specific paragraph(s) of Schedule 12A engaged being set out in the report or appendix relating to that item of business.**

**13 Confidential Appendix: Essex-wide Bus Shelter Contract (FP/458/06/19)**

- Information relating to the financial or business affairs of any particular person (including the authority holding that information);

**14 Confidential Appendix: Extension of the Essex Highways Partnership Contract with Ringway Jacobs (FP/479/07/19)**

- Information relating to the financial or business affairs of any particular person (including the authority holding that information);

**15 Urgent Exempt Business**

To consider in private any other matter which in the opinion of the Chairman should be considered by reason of special circumstances (to be specified) as a matter of urgency.

## **Essex County Council and Committees Information**

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**Committee:** Cabinet

**Enquiries to:** Emma Tombs, Democratic Services Manager  
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**Membership, Apologies, Substitutions and Declarations of Interest**

**Recommendations:**

To note:

1. Membership as shown below
2. Apologies and substitutions
3. Declarations of interest to be made by Members in accordance with the Members' Code of Conduct

**Membership**

(Quorum: 3)

Councillor D Finch	Leader of the Council (Chairman)
Councillor K Bentley	Finance, Property and Housing
Councillor T Ball	Deputy Leader and Infrastructure (Vice-Chairman)
Councillor S Barker	Economic Development
Councillor R Gooding	Customer, Communities, Culture and Corporate
Councillor D Madden	Education and Skills
Councillor L McKinlay	Performance, Business Planning and Partnerships
Councillor J Spence	Children and Families
Councillor S Walsh	Health and Adult Social Care
	Environment and Climate Change Action

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## Minutes of a meeting of the Cabinet held in The Council Chamber, County Hall, Chelmsford, CM1 1QH on Tuesday, 21 January 2020

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### Present:

Councillor	Cabinet Member Responsibility
D Finch	Leader of the Council (Chairman)
K Bentley	Deputy Leader and Infrastructure
T Ball	Economic Development
D Madden	Performance, Business Planning and Partnerships
L McKinley	Children and Families
J Spence	Health and Adult Social Care
S Walsh	Environment and Climate Change Action

Councillors Henderson, Mackrory, Young, Grundy, Moran, Goggin, Wagland, Mitchell, Durham were also present.

### 1. Membership, Apologies, Substitutions and Declarations of Interest.

The report of Membership, Apologies and Declarations was received and the following were noted:

1. Councillor Finch advised that due to his recent election as an MP Councillor Mohindra had stood down as Cabinet Member for Finance, Property and Housing. As specified in the Constitution, Councillor Finch had assumed temporary responsibility for this portfolio.
2. Apologies for absence were received from Councillor S Barker (Customer, Communities, Culture and Corporate).
3. There were no declarations of interest.

### 2. Minutes: 17 December 2019

The minutes of the meeting held on 17 December 2019 were agreed as a correct record and signed by the Chairman.

### 3. Questions from the public

There were no public questions.

### 4. 2019/20 Financial Overview as at the Third Quarter Stage (FP/385/03/19)

The Cabinet received a report setting out the forecast financial position of Essex County Council's revenue and capital budgets as at the third quarter stage of the 2019/20 financial year. The report advised that on revenue, there

was a forecast full year over spend of £786,000 (0.08%) against a net budget of £940.2m. The capital programme was forecast to under spend by £18.6m (8.1%) against the current budget of £228.6m. After taking account of budget change requests in the report there would be a forecast under spend of £19,000.

Councillors Finch, Gooding, McKinlay, Bentley and Walsh provided answers to questions raised by Councillors Mackrory and Young in relation to budget overspends in respect of children and families, education and finance, property and housing, the Carbon Reduction reserve, and approved capital slippages. Written responses would also be provided to Councillors Mackrory and Young in relation to (respectively) the removal of £1m from the Legal Services Budget and redundancies within Adult Community Learning and Special Educational Needs.

**Resolved:**

1. To draw down funds from reserves as follows:
  - i. £400,000 from the Service Improvement reserve to the Leader Recharged Strategic Support Service (RSSS) to support the Just About Managing (JAM) programme of work (section 5.15.ii)
  - ii. £223,000 from the Reserve for Future Capital Funding to the Deputy Leader and Infrastructure portfolio relating to the Department for Transport Pothole grant expenditure incurred (section 5.9.ii)
  - iii. £352,000 from the Transformation reserve to the Education and Skills portfolio (£220,000) and Customer, Communities, Culture and Corporate RSSS (£132,000) to fund redundancies relating to Organisation Design (sections 5.5.ii and 5.13.ii)
  - iv. £151,000 from the Transformation reserve to the Children and Families portfolio in relation to Children's Sustainability programme (section 5.1.iv)
  - v. £95,000 from the Private Finance Initiatives (PFI) Equalisation reserves to the Education and Skills portfolio in relation to Building Schools for the Future (section 5.5.ii).
2. To appropriate funds to reserves as follows:
  - i. £1.3m to the Carry Forward reserve from the Health and Adult Social Care portfolio to support the continued transformation of the service in 2020/21 (section 5.8.iv)
  - ii. £304,000 to the Carry Forward reserve from Finance, Property and Housing RSSS to support delivery of the 2020/21 budget (section 5.14.ii)

- iii. £300,000 to the Carbon Reduction reserve from the Deputy Leader and Infrastructure portfolio due to lower energy prices this year (section 5.9.ii)
- iv. £103,000 to the Carry Forward reserve from the Customer, Communities, Culture and Corporate portfolio relating to the delivery of the Workforce Management System in 2020/21 (section 5.2.ii)
- v. £43,000 to the Carry Forward reserve from the Customer, Communities, Culture and Corporate RSSS portfolio in relation to Office 365 implementation delays (section 5.13.ii).

3. To approve the following adjustments:

- i. To close the Technology Services Trading Account due to the service no longer undertaking trading activity.
- ii. To create a new Technology Solutions reserve to set aside resources to meet the future cost of replacing key council's technology systems (section 9.2).
- iii. To create a new Highways reserve to set aside resources to meet the potential pressures on the highways network (section 9.2).
- iv. To create a new Emergency reserve. It is proposed that the current Emergency Contingency revenue budget of £4m in Other Operating Costs will be appropriated into this reserve (section 9.2).
- v. To draw down the following from the Transformation reserve into 2020/21. These have been previously approved but not drawn down within the approved timescale (financial regulation 4.3.4). New approval is therefore sought:
  - £396,000 to Health and Adult Social Care relating to Adult Sustainability programme (section 5.8.iv)
  - £465,000 to Customer, Communities, Culture and Corporate RSSS portfolio relating to Workforce Strategy (section 5.13.ii)
  - £197,000 to Health and Adult Social Care relating to Independent Living programme (section 5.8.iv)
  - £113,000 to Environment and Climate Change Action portfolio for the development of the energy and low carbon agenda (section 5.6.ii).
- vi. To amend the capital budget as shown in Appendices C (i) and C (ii) which allows for capital slippage of £17.9m, capital budget additions of £2.8m, capital budget reductions of £5.1m and advanced works of £1.6m (see section 7.2).

**5. Organisation Plan and Budget 2020/21 – Part 1: Section 151 Officer Report (FP/388/03/19)**



Cabinet received a report (part 1 of 2) setting out the Section 151 (S151) Officer's statement on the adequacy of reserves, robustness of the 2020/21 revenue budget, as well as the Financial Strategy and the Capital and Treasury Management Strategy.

Councillor Finch provided an answer to a question by Councillor Henderson in respect of the impact of the net pressure of £58m.

**Resolved:**

To note this report before making recommendations to Full Council on the revenue budget and capital programme, included within the Organisation Plan.

**Organisation Plan and Budget 2020/21 – Part 2: Budget and Plan (FP/388/03/19)**

Cabinet received a report (part 2 of 2) asking that a recommendation to Council that it adopts the Organisation Plan and Budget 2020/21 including the revenue budget, capital programme, financial strategy and capital strategy be made.

Councillors McKinlay, Spence, Finch and Spence provided answers to questions from Councillors Young, Henderson and Mackrory in relation to residents within the County who were struggling financially, funding for the Climate Change Commission, and addressing loneliness. A written answer would also be provided to Councillor Mackrory from Councillor Barker, who had given apologies to the meeting, regarding the impact of budget saving proposals as set out in point 6.8 of the Equality Impact Assessment.

**Resolved:**

**Organisation Plan and Revenue Budget:**

**Cabinet made the following recommendations to Full Council:**

1. That the Organisation Plan be approved in the form appended to this report.
2. The net cost of services to be set at £990.2million (m) for 2020/21 – Appendix A (page 34).
3. The net revenue budget requirement to be set at £912.9m (net cost of services less general government grants) for 2020/21 – Appendix A (page 34).
4. The total council tax funding requirement be set at £707.9m for 2020/21 – Appendix A (page 34).

5. That Essex County Council's element of the council tax be increased by 1.99% plus a 2% social care precept, therefore the Essex County Council element of the council tax charge for a Band D property in 2020/21 will be £1,321.11. A full list of bands is as follows:

Council Tax Band	2019/20	2020/21
	£	£
Band A	846.96	880.74
Band B	988.12	1,027.53
Band C	1,129.28	1,174.32
Band D	<b>1,270.44</b>	<b>1,321.11</b>
Band E	1,552.76	1,614.69
Band F	1,835.08	1,908.27
Band G	2,117.40	2,201.85
Band H	2,540.88	2,642.22

6. That the proposed total schools budget be set at £534.3m for 2020/21 which will be funded by the Dedicated Schools Grant, Pupil Premium Grant, Teachers Pay Grant, Teachers Pension Grant and the Universal Free School Meals Grant. The majority of this will be passed through to maintained schools.
7. That the underlying balance on the General Balance be set at £56.6m as at 1 April 2020 (Appendix A, Annex 1, page 60).
8. That the capital payments guideline be set at £235m for 2020/21 and that the Executive Director for Finance and Technology, in consultation with the Leader (who is currently the Cabinet Member for Finance, Property and Housing), be authorised to make adjustments to the phasing of payments between years (should that be necessary) as the capital programme is finalised, and to report any impact on the Prudential Indicators at the subsequent quarterly review to Cabinet in July 2020. Any requests to change the prudential borrowing indicators would be brought back before Full Council.

**Cabinet agreed the following:**

9. That the Leader (who is currently the Cabinet Member for Finance, Property and Housing), in consultation with the Executive Director for Finance and Technology, may adjust the recommendations to Full Council upon receipt of:

(a) the final tax base and forecast business rates receipts for 2020/21 from the billing authorities (due by 31 January 2020)

(b) the final settlement from Government (expected early February 2020)

10. That the report by the Executive Director for Finance and Technology (S151 officer) on the robustness of the estimates, reserves and capital strategy be noted (see the separate item on this agenda).

**Capital Strategy:**

**Cabinet made the following recommendations to Full Council:**

11. That the 2020/21 to 2023/24 Prudential Indicators and limits, together with updated limits for 2019/20 as set out in Annexes 3A and 3B of the Capital Strategy (Appendix A) be approved.
12. That the Treasury Management Strategy for 2020/21 be approved, comprising:
- a. Borrowing strategy, as set out in Annex 3 of the Capital Strategy (Appendix A, Annex 3, page 85).
  - b. Treasury management investments strategy, as set out in Annex 3 and Annex 3D of the Capital Strategy (Appendix A, Annex 3, page 94).
  - c. Indicative strategy for commercial investment activities, as set out in Annex 3 of the Capital Strategy (Appendix A, Annex 3, page 97).
13. That the policy for making a prudent level of revenue provision for the repayment of debt, (the Minimum Revenue Provision policy) as set out in Annex 3C of the Capital Strategy (Appendix A, Annex 3, page 106), be approved.

**Pay Policy Statement:**

**Cabinet made the following recommendation to Full Council for approval:**

14. Recommend that the Council adopts the Pay Policy Statement for 2020/21 as set out in Appendix C.

**Cabinet noted:**

15. Note the medium term (2021/22 to 2023/24) revenue issues facing the Council as set out in the report (Appendix A, page 25), highlighting the funding sources and implications. The position is based on the best intelligence available today including future funding, price rises and

demand; but there is inherent uncertainty given the possible changes in national and local circumstances.

16. Note that the recommendations in this report present a balanced budget for 2020/21. The Council's plans for 2021/22 to 2023/24 are not sufficiently firm as to allow for a balanced budget to be set. Further opportunities for improving income and funding, plus greater efficiencies, will need to be secured in the medium term which will be achieved by a focus on outcomes based commissioning.

17. Note that the above figures are based on a Band D equivalent tax base of 535,809 properties (see Appendix A, page 34).

18. Note that the Capital Strategy, which is presented as Annex 3 in Appendix A, sets out the long-term context in which capital expenditure and treasury management investment decisions are made by the Council and gives due consideration to both risk and reward and impact on the achievement of priority outcomes. It comprises a number of distinct, but inter-related, elements as follows:

- Capital expenditure – this provides an overview of the governance process for approval and monitoring of capital expenditure, including the Council's policies on capitalisation, and an overview of its capital expenditure and financing plans.

- Capital financing and borrowing – this provides a projection of the Council's capital financing requirement, how this will be funded and repaid, sets out the Council's borrowing strategy and explains how the Council will discharge its duty to make prudent revenue provision for the repayment of debt.

- Treasury management investments – this explains the Council's approach to treasury management investment activities, including the criteria for determining how and where funds will be invested to ensure that the principal sums are safeguarded from loss and that sufficient liquidity is maintained to ensure that funds are available when needed.

- Commercial investments – this provides an overview of the Council's intended approach to commercial investment activities, including processes, due diligence and defines the Council's risk appetite in respect of these, including proportionality in respect of overall resources.

**6. Direct award of the Integrated Community Equipment Service (ICES) (FP/581/12/19)**

Cabinet received a report requesting agreement to enter into an agreement with ECL for the provision of the ICES until 31 March 2023 (with the option to

extend for a further two year period until 31 March 2025) and the relevant agreements with CCG partners and Thurrock Council regarding the funding and delegation of function to the Essex County Council (the Council).

**Resolved:**

1. Agree to contract with Essex Cares Limited (ECL) for the provision of the ICES for a period of 3 years commencing on 1 April 2020 with an option for ECC to extend for a further 2 years until 31 March 2025.
2. Agree to enter into the relevant revised Section 75 and Section 101 Agreements between Essex County Council, Thurrock Council, Castle Point and Rochford, Basildon and Brentwood, Thurrock, Mid Essex CCGs and Mid Essex Hospital Services NHS Trust and East Suffolk and North Essex NHS Foundation Trust which relate funding and delegation of function from these Partners to the Council.

**7. Park and Ride Services and Fares (FP/519/09/19)**

Cabinet received a report setting out new and discounted fares for people who hold a concessionary bus pass and use Essex County Council run park and ride services in Essex.

Councillors Gooding and Bentley gave answers to questions from Councillors Mackrory, Gooding, Goggin and Young in respect of the estimated service usage should the proposals be agreed, the links to the Climate Change Commission, pressures on town centres and the need to ensure sustainability.

**Resolved:**

1. That with effect from 1 April 2020 the following changes will apply:
  - Holders of age-related concessionary passes will be able to use park and ride services at all times for £1.50 day fare.
  - Holders of disability related concessionary passes and, where eligible, their companion, will be able to use park and ride services:
    - o For £1.50 before 9am (Mondays to Fridays)
    - o Free at any other time.
2. Agree that for six months from 1 April 2020 an introductory offer which enables two concessionary pass holders travelling together to use services for £2 return on park and ride services.

**8. Proposed expansion of Clacton County High School from 1350 places to 1800 places (FP/557/10/19)**

Cabinet received a report requesting endorsement of the expansion of Clacton County High School (CCHS) by increasing capacity from 9 Forms of

Entry (FE) to 12 FE provision (1350 places to 1800 places) in order to meet the need for secondary school places in the locality.

**Resolved:**

1. To authorise the Director, Education, in consultation with the Cabinet Member for Finance, Property and Housing and the Cabinet Member for Education and Skills to vary the Project Agreement, Facilities Maintenance (FM) Contract and associated PFI documentation to accommodate the expansion of Clacton County High School.
2. To agree to the delivery of the reconfiguration work at CCHS and Tendring Education Centre (TEC) by the Private Finance Initiative (PFI) provider, QED Clacton.
3. To agree the transfer of recreation land neighbouring CCHS shown hatched red on the plan attached to this report titled plan 1, which currently forms part of the Clacton Leisure Centre site, from Tendring District Council (TDC) to ECC, and to endorse the transfer of an equivalent area of ECC land at TEC shown hatched red on the plan attached to this report titled plan 2, to TDC.
4. To agree to enter into a Funding Agreement with TDC in respect of payment of £1.11m to represent a balancing payment for the land and to fund improvements to the surroundings and facilities of the Clacton Leisure Centre site for the benefit of the school (as expanded) and the local community for a term of forty years.
5. To agree to direct award a contract to Pick Everard under the terms of Essex Professional Services Framework for professional design, planning, and survey services and all the pre-construction work necessary to establish a final design and cost for the new build infrastructure at CCHS (10 classrooms and a sports hall).
6. Following completion of activity described in 2.5, to agree to undertake an OJEU compliant procurement process to appoint a design and build contractor to construct the new build infrastructure at CCHS (10 classrooms and a sports hall).
7. Subject to the grant of satisfactory planning permission for the construction of the new Sports hall and classrooms and completion of the deed of variation to the PFI contract to agree to delegate to the Cabinet Member for Finance, Property and Housing and the Cabinet Member for Education and Skills that to:
  - a. Agree the procurement route for the design and build contractor;
  - b. Agree the winning bidder;
  - c. Award the construction contract to the successful bidder.

8. Approve the capital budget for construction and associated project fees, as per the profile stated in the confidential financial appendix.

**9. Decisions taken by or in consultation with Cabinet Members (FP/582/12/19)**

The report of decisions taken by or in consultation with Cabinet Members since the last meeting of the Cabinet was noted.

**10. Date of Next Meeting**

It was noted that the next meeting of the Cabinet would take place on Tuesday 25 February 2020 at 10.00am in Committee Room 1 at County Hall, Chelmsford.

**11. Urgent Business**

There was no urgent business.

**Exclusion of the Press and Public**

**Resolved:**

That the press and public be excluded from the meeting during consideration of the remaining item of business on the grounds that it involves the likely disclosure of exempt information as specified in paragraph 3 of Schedule 12A of the Local Government Act 1972 – information relating to the financial or business affairs of any particular person).

**12. To agree to support and fund the expansion of Clacton County High School from 1350 places to 1800 places - Confidential Appendix (FP/557/10/19)**  
(Press and public excluded)

The Cabinet considered the Confidential Appendix to report FP/557/10/19 which contained information exempt from publication referred to in that report and in decisions taken earlier in the meeting (minute 8 above refers).

**13. Urgent Exempt Business**

There was no urgent exempt business.

There being no further business, the meeting closed at 10.55am.

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**Chairman**  
**25 February 2020**

**Forward Plan reference number:** FP/597/01/20

<b>Report title:</b> Day opportunities and inclusive employment service	
<b>Report to:</b> Cabinet	
<b>Report author:</b> Chris Martin, Commissioning Director	
<b>Date:</b> 25 February 2020	<b>For:</b> Decision
<b>Enquiries to:</b> Jessica Stewart, Head of Commissioning Learning Disabilities and Autism email <a href="mailto:Jessica.stewart@essex.gov.uk">Jessica.stewart@essex.gov.uk</a>	
<b>County Divisions affected:</b> All Essex	

## 1. Purpose of Report

1.1. This report asks Cabinet to agree to the Council direct awarding to its wholly owned subsidiary, ECL, a five plus two years contract for two main services:

- Buildings based day opportunities for older people and adults with disabilities;
- An inclusive employment service for adults with disabilities.

## 2. Recommendations

2.1 To agree to the direct award to Essex Cares Limited a five year contract starting on 1 April 2020 on terms which allow for extension for a further two years which will include two elements:

- continuation of delivery of building based day services for adults with disabilities and older people, with revised service specifications to align with Meaningful Lives Matter and Transforming Community Care programmes.
- delivery of a new inclusive employment service to support adults with disabilities to get people job ready and increase employment. Allowing employees to move into employment and receive the necessary support to sustain their employment.

## 3. Summary of issue

3.1 In order to meet its duties under the Care Act 2014, Essex County Council currently commissions services known as 'day opportunities'. These services provide a chance for adults with disabilities and older people to take part in activities outside their home, as well as enabling a break for informal carers. ECL are currently the largest sole provider of day opportunities via placements made by ECC social workers through a contract with ECC and via the day opportunities framework. The current contract with ECL for day opportunities is worth £11 million per annum and serves 899 adults (660 LD and/or autism, 239 older people). At present 80% of the contract value is supporting Adults with LD and/or



Autism, and 20% of the value is supporting older people. The current contract comes to an end on the 31 March 2020.

- 3.2 The Council is working to improve services for people with a learning disability and/or autism. The programme of activity is referred to as 'Meaningful Lives Matter' (MLM). A review of these services provides the opportunity to improve life outcomes for this group of clients and also to review spend on these relatively high cost services to ensure that the Council's expenditure is proportionate and effective. One focus area within MLM is employment. Essex performs well compared to other local authority areas for the number of adults with a learning disability in employment. In 2019/20 16% of 18-64 year olds in Essex with a learning disability known to ASC are in employment, compared to a national average of 6%. However, this is still not high enough to reach our ambitions. Young people, and adults who currently attend day opportunities, have told commissioners that they want jobs in a variety of industries but society does not provide the support or opportunities to allow them this employment. This is a systemic issue covering education, adult learning, social care, local employers as well as societal expectations and education.
- 3.3 Essex County Council have engaged with young people, and adults with learning disabilities and autism who use day services, to ask them what is important and meaningful in their lives, and what their aspirations are. The most popular response was to the effect that they wanted paid jobs in industries which they were interested in. Currently, many people with learning disabilities and/or autism are in long term volunteering or work based training and there is evidence to suggest these people's skills could be transferred to employment so that they are fairly paid for their work.
- 3.4 Employment should be considered as a spectrum and whilst full time paid employment may be an achievable outcome for some adults with disabilities, for others, a successful outcome may be employment for one day per week. Nationally, the four main sectors of employment for people with a learning disability and/or autism are horticulture (eg garden centres), animal care, retail (eg charity shops) and hospitality (cafes). These sectors do not match the ambitions of the young people with whom we have engaged, who are interested setting up their own businesses, engineering, and health & beauty to name a few.
- 3.5 Between April and July 2019 ECC ran a "100 Day Challenge" for adults with learning disabilities and autism in three ECL day centres in Essex. The broad focus of the challenge was to look at more meaningful activity for those adults who attended the day centres, particularly to progress them into employment. During this period nine adults secured paid employment, which reduced the use of commissioned managed services, within the 100 days, with a further fourteen accessing volunteering as a step to employment. This was evidence for ECC, and system partners, that there are adults known to our services who are job ready and opportunities for skills progression and employment do already exist in Essex and can be achieved if facilitated.

- 3.6. ECCs main provision of day opportunities is currently provided by Essex Cares Limited (ECL) who currently run their day opportunities service from 25 buildings situated across Essex; 20 of these are owned by ECC.
- 3.7 The current delivery model could be improved based on feedback from adults and frontline staff. Both ECC and ECL feel that there is scope to reduce the number of buildings within the life of the proposed new contract. This efficiency will be delivered by the number of people in building based day centres reducing as a result of existing customers, and new referrals, being supported by ECL to obtain employment. Delivery of the new service won't be restricted to the ECL buildings; delivery of both elements of the service could be from community settings, including employers' premises. Decisions in relation to the use of the current properties will need to be made on a case by case basis on the most appropriate and value for money use of each property throughout the life of the contract.
- 3.8 ECL have been evolving their day service to an outcome based model for a number of years. This transformation will continue by supporting Adults with disabilities and older people currently in building based services to develop meaningful activities, new skills, independence, travel training, and the growth of community engagement to find opportunities for working aged adults to work. This progression will help Adults to increasingly become active and vital members of their local community.
- 3.9 This proposed contract will help ECC to meet its strategic priorities in the Council's Organisation Strategy:
- Help people in Essex prosper by increasing their skills;
  - Enable Essex to attract and grow large firms in high growth industries;
  - Target economic development to areas of opportunity;
  - Help keep vulnerable children safer and enable them to fulfil their potential;
  - Enable more vulnerable adults to live independent of social care;
  - Improve the health of people in Essex;
  - Help to secure stronger, safer and more neighbourly communities;
  - Develop the capability, performance and engagement of our people.
- 3.10 The development of this service is closely aligned to one of the Council's priority areas of focus in Social Value, the creation of jobs for people with Disabilities.
- 3.11 This contract will form part of a wider strategic commitment from ECC to act as a strategic enabler for employment of those with disabilities or vulnerabilities.
- 3.12 At the same time it is proposed that ECC will improve their own recruitment and retention process to support people into employment and will work with local employers, of all sizes, on this agenda.
- 3.13 One option which may be considered in the future is incentivising employers, possibly utilising existing funding streams such as the apprenticeship levy to

provide a financial incentive to employers to recruit local adults supported by this service

### **National context and drivers**

3.14 The Government have shared that they want more people with disabilities getting into work, recognising that work is important for providing structure to life, contributing to a person's status and identity and that appropriate work is generally good for health and wellbeing. Unemployment can have negative consequences for individuals, reducing quality of life, wellbeing and financial stability.

3.15 However, people with disabilities are still considerably less likely to be in paid employment than people without a disability. As well as being costly for individuals, working age ill health is estimated to cost the economy around £100 billion a year.

3.16 In 2017, *Improving Lives: The Work, Health and Disability* Green Paper consulted on how to address these issues.

3.17 In May 2018, the British Association for Supported Employment (BASE) and the Association of Directors of Adult Social Services (ADASS) published Top Tips on Supported Employment which echoes the Government's position and set out that:

*"Councils can play an important role in helping people with a disability who are in receipt of social care to find and maintain a job if they want one, at the same time managing future demand for council-funded social care and helping employers to benefit from a more diverse workforce."*

The paper also shares that nationally:

- Employment rates for disabled people are 31% lower than for the non-disabled population (Commons Library briefing, January 2018).
- The proportion of working age adults with learning disabilities who are receiving long term social care support and are also in paid employment has fallen each year over the last three years, from 6.0% in 2014-15 and then 5.7% in 2016-17. There was a big variation in reported employment rates between local authorities.
- Research into the cost-effectiveness of supported employment for adults with learning disabilities has shown that supported employment is cost-effective in helping people into and maintaining people in paid work (National Development Team 2014).

3.18 In May 2018, ADASS published a checklist to support Councils to provide/commission the best possible support which includes encouraging local authorities to "strengthen the commissioning of employment services, to specify the outcomes and monitor quality".

## **4. Options**

- 4.1 **Option one (not recommended):** Re-commission ECL to deliver the building based day opportunities for older people and adults with disabilities following the current traditional model with no focus on putting adults with disabilities into employment
- 4.2 This option is not recommended as it does not deliver the substantial transformational changes required to meet the ambitions of ASC and particularly the 'Meaningful Lives Matter' programme. Engagement with service users with disabilities and ECL has shown us that the current delivery model is traditional and does not meet the ambitions of ECC, or the ambitions of the young people and the adults whom we serve.
- 4.3 Demand for these services could increase (due to lack of alternative options) which could result in request for further funding from ECL to keep adults with disabilities in day centres if we do not change the model.
- 4.4 **Option two (recommended)** Commissioning ECL to deliver the services under the new proposed model via a five plus two year contract with focus on the following improved outcomes:
- deliver an inclusive employment service for both the adults who currently attend ECL building based day opportunities, and for new referrals coming into their service and
  - buildings based day opportunities for adults with disabilities and older people who would not be able to take up employment and would require ECL to provide:
    - meaningful activities;
    - support for individuals to develop new skills;
    - support for individuals to maximise their independence;
    - support for individuals to travel safely and independently;
    - support for individuals to access their local communities, including social, leisure and health opportunities.
- 4.5 This option aligns with our vision for ASC and ECC's Organisation Strategy as set out in sections 3 and 4 above. The length of the contract has been proposed to allow for real transformational change, whilst also protecting the council by having a formal review point at the end of year two and the safeguards set out in section 6 below
- 4.6 ECC have worked with ECL as a strategic partner throughout and since the 100 Day Challenge and the recommendation to direct award to ECL is for a number of reasons:
1. ECL have evidenced that their staff could work in a way that focuses on increasing people's skills and independence to employment.
  2. as the lead provider of day opportunities in Essex, ECL are well positioned to work with the adults and older people who attend their centres who could be supported into employment. The wider day opportunities market is fragmented and would not be able to deliver this

system change at scale, for all cohorts of service users, without a long period of market shaping and procurement.

3. This would be a transformational contract reflecting our strategic intention to work with ECL on innovative and transformational projects as ECL continues to develop the investment into the progressive and outcome focused service they started to establish over the last two years.
4. would start from an already advanced position as they have already invested in training for their staff and the cultural shift to focus on employment across the organisation has already started as it is recognised that the traditional model does not fit our collective ambitions. As such, ECC would commission the new proposed model of care within the existing financial envelope without the need of fresh investment

4.7 This option will improve the service offer for 239 older people who attend the current building based ECL day opportunities. The service specification will be amended to focus on the points in 4.4 and specific KPIs and outcomes will be measured for older people around socialisation, wellbeing and community participation. ECL have already started this journey so the proposed contract will formalise this approach.

4.8 Having these services within a single contract will allow for adults to seamlessly move to different offers depending on their needs, for example an adult with Down's Syndrome may currently be attending a day centre three days a week but has the potential to be able to work. ECL can support this adult to gain the skills and confidence to obtain employment, thus reducing the need to attend the day centre. The same adult may experience dementia later in their life and ECL will be able to assess their needs and move them to attending an older person's day opportunity where they can socialise and be mentally stimulated to continue to live a good life. The contract will create the conditions for ECL to focus on people's capabilities and tailor the offer of support accordingly within a single contract.

**4.9 Option three (not recommended)** – run a public procurement process for the commissioning of the new proposed model of care.

4.10 This option is not recommended, as the current market across day opportunities and supported employment is not of consistent quality, scale and maturity to undertake the system change this service will require. The current market in Essex would not be able to undertake a service of this size or geographical coverage. The current service with ECL is delivering support to 49.5% of those adults commissioned by the Council to attend day opportunities across 25 sites county-wide. The rest of the support commissioned by Essex is delivered across circa 100 providers. ECL are one of the few organisations in the market with staff skilled to work across all cohorts of Adults (Learning Disabilities, Autism and Older people), again making it challenging to successfully transfer a service of this size and complexity to another experienced organisation.

4.11 The service specification for the new opportunity allows current Adults in the service to benefit from economy of scale and the prospect for different types of employment and training. This would be challenging to replicate in the open

market by much smaller or fragmented providers. Whilst other providers may also offer innovative and progressive services, they are not of the scale to deliver the outcomes of the Council within the proposed timeframes.

## **5. Next steps**

5.1 Award ECL a five plus two-year contract in line with the recommendation above.

## **6. Issues for consideration**

### **6.1 Financial implications**

6.1.1 The total cost of the contract is expected to be up to £55.1m in the initial 5 year contract period with an additional £22.6m for the extension period of 2 years (based on the maximum annual cost seen in the first 5 years year).

6.1.2 The annual cost of the proposed direct award to ECL is expected to be in the region of £10.8m per annum plus any performance payments. The actual value of which will vary depending on performance within the contract requirements. The cost of the contract has been allowed for within the draft 2020/21 Medium Term Resources Strategy (MTRS).

6.1.3 ECC commissioners have worked closely with ECL to collaboratively develop the proposed service, along with a payment mechanism that incentivises increasing the number of people with LD and/or autism into paid employment or non-building based activities where employment is not achievable, as an alternative to traditional day services.

6.1.4 The proposed payment mechanism is outlined in the confidential appendix to this paper along with a number of modelled scenarios for the expected costs of the contract, with varied assumptions in relation to volumes of activity delivered.

6.1.5 There will be no inflationary uplift for the lifetime of the contract. This provides an efficiency which contributes towards the savings against the MLM programme already built into the MTRS. Although there are currently no savings assumed within the MTRS in relation to the impact of this contract on care cost, there is potential for savings outside of the contract budget from reductions in other services currently provided to those who successfully attain employment. This will be monitored throughout 2020/21 and where appropriate built into the budget as a saving through the 2021/22 MTRS process.

### **6.2 Legal implications**

6.2.1 The proposed new contract to be awarded to ECL will have a duration of five years with the option to extend for further two years. This contract would be directly awarded to ECL under Regulation 12 of the Public Contracts Regulations 2015.

6.2.2 This is lawful because ECL is a wholly owned subsidiary of the Council and meets the other requirements in the regulation 12 which means that the Council is permitted to directly award contracts to it. The converse to this is that ECL is required, when buying works goods or services, to apply the provisions of the Public Contracts Regulations 2015.

6.2.3 The contract to be awarded to ECL will contain the following key terms to manage the risk to the Council and safeguard service continuity:

- Termination rights on both parties so that neither the Council or ECL are locked into a long term contract should the arrangements became unsatisfactory or unviable during the life of the contract;
- Payment mechanisms which from year 3 link reward to performance and provides the Council with the right to decide on how to re-invest savings as well as making deductions;
- Measurable Key Performance indicators and strict monitoring terms which are designed to enable the Council to exercise sufficient oversight of the service delivery as well as encourage joint strategy and collaboration between the parties;
- Sufficient flexibility to allow the Council and ECL to review the operations periodically so as to optimise the delivery model as needed to meet the needs of the relevant vulnerable adults and meet the outcomes set by the Council;
- The obligation on ECL to seek to reduce property occupancy throughout the life of the contract and co-operate with the Council in developing a property strategy for the utilisation of these properties as needed to meet the Council's statutory duties towards the population of Essex.

## **7. Equality and Diversity implications**

7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

- 7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## **8. List of appendices**

8.1 Equality Impact Assessment

8.2. Financial appendix

## **9. List of Background papers**

- 100 day challenge final report
- ECL 20/21 Business Plan
- British Association for Supported Employment – best practice guidance for local commissioners' report
- Day Opportunities Category plan
- Learning Disabilities and Autism Employment Strategy



## Financial Implications & Payment Mechanism

### 1. MTRS Impact

- 1.1** A number of scenarios, using varied assumptions on the volumes of service provided and performance in each category have been modelled as per the table below. Under these scenarios the maximum exposure for ECC in the first 5 years of the contract is £55.1m (a maximum £11.3m in any one year), based on £10.8m core contract cost plus performance payments, assuming contract performance of 150% of target for the employment services and 100% utilisation of PMLD & OP sessions. These costs can be contained within the current draft MTRS.

	£million						
	2020/21	2021/22	2022/23	2023/24	2024/25	Total	Comments
Low range	10.8	10.8	9.2	9.1	9.0	48.9	Achievement of only 50% of employment target & 75% of PMLD & OP sessions
Mid range	10.8	10.8	10.8	10.8	10.8	54.1	100% achievement of employment target & 100% PMLD & OP sessions
High range	10.8	10.9	11.0	11.1	11.3	55.1	Achievement of 150% of supported employment target & 100% of PMLD & OP sessions

### 2. Payment Mechanism

- 2.1** The contract will include expected volumes of provision against the following four categories of service:
- Supported Employment
  - Learning Disabilities
  - Complex Learning Disabilities
  - Older People
- 2.2** The payment mechanism has been structured to incentivise the movement of existing day service users into employment and apply deductions where the target volumes are not achieved. It also assumes volumes of ongoing provision in the other categories of service and applies penalties where these volumes fall below an agreed tolerance – this protects ECC from paying the full contract value of £10.8m where the contract is not delivering the expected improved outcomes.
- 2.3** There will be no inflationary uplift for the lifetime of the contract, ensuring ECL deliver annual efficiencies and offering ECC protection against the impact of

changes to National Living wage on the services provided through this contract for the contract duration

### 3. Contract Years 1 & 2

- 3.1** Core funding is guaranteed for the first 2 years of the contract at approx. £10.8m per year. This will facilitate the set up and growth of the Supported Employment service
- 3.2** In addition to the core funding, in order to incentivise ECL for working with other providers in supporting existing clients into employment, there will be a performance payment. This will be equal to 50% of net savings to ECC as a result of ECL achieving sustainable employment for adults currently placed with other day service providers. This is payable for the life of the contract, as long as the saving recurs and ECL achieve at least 75% of the annual target volumes for people in Supported Employment.

### 4. Contract Year 3 onwards

- 4.1** Core funding at approx. £10.8m will continue for each contract year.
- 4.2** In addition to the core funding, a per capita performance payment will be made for each client sustained in work for over 12 months, above an upper threshold (target plus 7.5%) and a deduction where actual numbers in supported work placements fall below the lower threshold (target less 7.5%).
- 4.3** The value of the per capita payment/deduction will be calculated at the end of year 2 and will be 50% of the average actual per capita saving, proportionate to the number of clients placed in to work placements who were previously in ECC funded day opportunities. This means the incentive payment to ECL will never exceed ECC's cash benefits and ECC's retained savings can contribute to efficiencies in future years.

Worked example:

(a) Total number of clients placed into supported work in period	200
(b) Those who were in a day opportunity at ECC's cost immediately prior to taking up a work-placement in period:	150
(c) Average net saving to ECC for each client in (b)	£7,000
Performance payment/deduction = $(b/a) \times (c \times 50\%) = 75\% \times £3,500$	£2,625

- 4.4** In order to protect ECC from this contract being treated as a block arrangement, where the agreed volumes of service for all categories, other than Supported Employment, falls below the agreed tolerance (target less 10%) there will be a deduction for each session below the threshold equivalent to average sessional rate for that cohort.

- 4.5** From year 3, clients assessed as not suitable for employment will take opportunities within ECLs other service categories, as defined in paragraph 2.1, where capacity exists within the agreed volumes.
- 4.6** Where an individual who has been in supported employment falls out of employment it is ECL's responsibility to provide the interim day opportunity whilst a new supported employment opportunity is sourced within the overall core funding – this protects ECC from a future budgetary pressure.
- 4.7** To ensure continued growth of the Supported Employment service, the contract will place an obligation on ECL to reinvest all ongoing savings realised from existing ECL customers placed into employment, to fund the ongoing cost of the Supported Employment service.

**Forward Plan reference number: FP/579/12/19**

<b>Report title:</b> Education Travel Contract Extensions and Awards 2020	
<b>Report to:</b> Cllr Ray Gooding, Cabinet Member for Education and Skills	
<b>Report author:</b> Andrew Cook, Director, Highways and Transportation	
<b>Date:</b> 25 February 2020	<b>For:</b> Decision
<b>Enquiries to:</b> Karen Saunders ( <a href="mailto:karen.saunders@essex.gov.uk">karen.saunders@essex.gov.uk</a> ) or Helen Morris, Head of Integrated Public Transport Unit ( <a href="mailto:helen.morris@essex.gov.uk">helen.morris@essex.gov.uk</a> )	
<b>County Divisions affected:</b> 'All Essex'	

**1 Purpose of Report**

- 1.1 To agree the extension of existing contracts and the procurement of new education transport contracts including the provision of travel allowance, hired transport and public transport tickets to enable the Council to fulfil its statutory and policy-based obligations to provide transport to school for children meeting the eligibility criteria.

**2 Recommendations**

- 2.1 Agree that the Director, Highways and Transportation, is authorised to extend any education transport contracts which expire in July 2020 for a one year period where extension is permitted under the terms of the contract and where he considers this to be in the Council's best interests.
- 2.2 Agree that the Director, Highways and Transportation, is authorised to procure new contracts via the Council's existing dynamic purchasing system where extension is not permitted or where extension is not considered to be in the Council's best interests, Any new such contract is to be for a period determined by the Director, Highways and Transportation initially for a maximum of three years and on terms which give the Council the right to extend for up to a further 3 years.
- 2.3. Agree that the Director, Highways and Transportation, is authorised to approve the entering into of such contracts following completion of the procurement process.

**3 Summary of issue**

- 3.1 The Council has a statutory and policy-based responsibility under the terms of the Education Act 1996 (as amended) and its Education Transport Policy to provide home to school transport to pupils who meet the eligibility criteria.
- 3.2 This report relates to transport arrangements for pupils who are transported on transport secured by the Council from commercial operators where the current contracts expire at the end of the 2019 - 20 academic year in July 2020.

- 3.3 The Council also arranges for a travel allowance for eligible pupils, where this represents better value for money. Where this is the case, travel allowance as whole is reviewed periodically to ensure it represents value of money and a procurement exercise may be necessary where this is not the case. This process will continue.
- 3.4 152 of the 182 education transport contracts that are in place are due to expire in July 2020 covering the full spectrum of primary, secondary and special school transport affecting 8,875 pupils. 23 of these are no longer required. In order to meet our continuing requirement to provide transport, action must be taken in respect of all of these contracts to either extend or re-tender them to ensure that transport is provided for the relevant children from September 2020.
- 3.5 For the purposes of this paper, the table and commentary below illustrate the current contract value in financial terms at the time of this report:

Number to be offered for 1 year extension at 0% price increase	90	Value of contracts to be extended for 1 year at 0% price increase	£12.78m
Number identified for tender	39	Value of contracts identified for tender	£4.34m
Number of ongoing long term contracts	30	Value of ongoing long term contracts	£8.96m
Number of contracts no longer required	23	Value of contracts no longer required	£0.53m
Number of contracts in total	<b>182</b>	Value based on number of school days travelled	<b>£26.61m</b>

- 3.6 In addition to the contracts detailed above, ECC also provides transport provision in the form of travelling expenses where this represents best value.
- 3.6.1 A total of 90 contracts have been identified as suitable for extension (see 3.8 below) for one year based upon a 0% price increase. The conditions of these contracts allow for such an extension. This would mean that the contracts in question would continue to be operated by the current contractor (subject to agreement) at the existing operating price. If the requirements have materially changed, and negotiation at 0% is not possible, such requirements will be included in the proposed tender process and new contracts entered into.
- 3.6.2 The reasons for concluding that extension of the 90 contracts is recommended are as follows:
- Requirements have not materially changed since the original tender/contract award with little or no increase to the average cost per passenger.
  - The contract(s) have been tendered in one of the most recent tender rounds.

- The daily operating price is considered to represent efficient value based on the nature and complexity of the contracts.
- There is opportunity to renegotiate the operating price of some of the contracts based upon reduced pupil numbers.
- It would not benefit pupils or the Council in the short term to change the contractor for a number of special needs contracts, whereas an extension would provide greater flexibility for the Council to consider more efficient and effective models of delivery in the medium to longer term.
- The contracts were awarded on terms which permit them to be extended on this occasion.

3.6.3 A total of 39 contracts have been identified as likely to require a new tender for some or all of the following reasons:

- The maximum term of the contract duration, including any extension clauses, has been reached.
- Material change of requirements due to natural variation in pupil numbers.
- Change of transport requirement due to impact of policy changes e.g. phasing out of faith school transport and effect of the new 'nearest school only' transport policy.
- A review of the current contract suggests that better value could be achieved by retendering, based on comparing the contract price with the current and historical data.
- The impact of an integrated approach such as cluster contracts, use of existing public transport and shared transport across passenger groups.

3.7 Where requirements need tendering, the procurement will be undertaken via the Council's existing dynamic purchasing system ("DPS"). Contracts will be awarded for a period of up to a maximum of three years with the option to extend for a further 3 years. Routes being tendered will be tendered to all existing operators on the DPS and therefore open up competition. Contracts will be awarded based on price only however all bidders on the DPS will have met all mandatory requirements such as safeguarding checks.

## **4 Options for Consideration**

### **4.1 Option 1: Tender all 129 contracts.**

4.1.1 The Council has statutory and policy based obligations to provide transport for pupils meeting the eligibility criteria.

4.1.2 To tender all contracts is likely to increase costs to the Council and cause unnecessary disruption to service users. Contracts were previously awarded

through a competitive tender process with the option to extend. An extension for a year is based upon a 0% price increase through negotiation.

4.1.3 This option is not recommended for the above reasons.

**4.2 Option 2 – Recommended Option: Where conditions allow, extend contracts at 0% increase and tender those where a 0% increase cannot be achieved.**

4.2.1 A total of 90 contracts have been identified as suitable for extension. The conditions of these contracts allow for such an extension. The contracts in question will continue to be operated by the current contractor (subject to agreement) at the existing contract cost, unless requirements materially changed.

4.2.2 Where a tender process is necessary, the procurement will be undertaken via the Council's dynamic purchasing system. Contracts will be awarded for a period of up to a maximum of three years, with the option to extend.

4.2.3 All contracts will be procured in such a way so as to comply with the law.

4.2.4 Option 2 is the recommended option because it minimises disruption for service users, is permitted under the terms of the existing contract and is the preferable value for money solution.

**5.0 Issues for consideration**

**5.1 Financial implications**

5.1.1 The proposed procurement approach of extending contracts by 12 months is likely to deliver the best value in overall cost if a nil % price increase can be negotiated with operators. As well as securing continued service delivery relatively quickly, the Authority has an opportunity to remain with existing contractors on existing terms and conditions.

5.1.2 For those contracts where a retender is now required, it should be noted that the costs of the contracts will fall across two financial years, as travel arrangements are being sought for the 2020/21 academic year. Once evaluated, service orders will be raised in each financial year accordingly.

5.1.3 The table below summarises the budget envelope for the two financial years the 2020 academic year crosses for hired transport, public tickets and travel allowances:

	2020/2021 Budget (£'000)			2021/2022 Budget (£'000)		
	Mainstream	SEN	Total	Mainstream	SEN	Total
Hired Transport	10,263	18,730	28,994	10,260	21,183	31,443
Hired Transport DSG	-	(2,405)	(2,405)	0	(2,850)	(2,850)
<b>Hired Transport Net</b>	<b>10,263</b>	<b>16,326</b>	<b>26,589</b>	<b>10,260</b>	<b>18,333</b>	<b>28,593</b>
Public Tickets	2,920	91	3,011	3,007	94	3,101
Client Travel Allowances	250	345	595	250	345	595
Education Recoupment	-	77	77	-	77	77
Contributions from OLA	-	(77)	(77)	-	(77)	(77)
Concessionary Fares	(316)	0	(316)	(316)	-	(316)
<b>Net Budget</b>	<b>13,117</b>	<b>16,762</b>	<b>29,879</b>	<b>13,201</b>	<b>18,772</b>	<b>31,973</b>

5.1.4 The current academic year continues to see an increase in demand for transport, predominantly for children with Special Educational Needs. It is anticipated that the growth in SEN will continue to increase over and above the rate of growth seen in the total number of school children within Essex. Consequently, cost pressures are being realised in the current financial year across both mainstream and SEN which is anticipated to continue across the medium term.

5.1.5 The value of the contracts that are continuing or are recommended for extension or re-procurement for the 2020/21 **academic** year is £26.1m. The equivalent total, on a like for like basis for the 2020/21 **financial** year is £26.3m. In isolation, this is contained within the £29.0m hired transport gross budget envelope, however this is on the basis that they are re-procured on an exact like for like basis. There has been significant and growing cost pressure in this area for some time and due to the risks set out below, this is not expected to reverse in 2020/21.

5.1.6 There is therefore significant risk when awarding the contract extensions and re-procurements as it will certainly not be able to happen on an exact like for like basis for the following reasons:

- Changing pupil numbers for the new academic year for existing transport
- New transport requirements for new pupils within the system
- The current trend of increasing complexity of need within the SEN population
- Unable to re-procure contracts at 0% inflation

5.1.7 Sensitivity analysis has been undertaken to assess the stressors in the assumptions that may mean that the budget envelope may be exceeded (£29.0m). The table below summarises this:



	2020/21 FY contract cost (£'000)	2020/21 Budget (£'000)	Variance to budget (£'000)
Base case: Re-procured like for like	26,283	28,994	(2,711)
Inflation at CPI (2%) on base case	526	-	526
Replacement of expired 19/20 contracts inflated by CPI (2%)	536	-	536
<b>Scenario modelled cost base at 19/20 pupil numbers</b>	<b>27,344</b>	<b>28,994</b>	<b>(1,650)</b>
Increase of 5% combined pupil numbers / cost base	28,712	28,994	(282)
Increase of 6% combined pupil numbers / cost base	28,985	28,994	(9)
Increase of 7% combined pupil numbers / cost base	29,258	28,994	264

5.1.8 The analysis has built in an assumption that there will be a 2% uplift in cost base due to general inflation. Anything over a combined further increase in cost due to pupil numbers and further contract inflation over 6% would lead to the 2020/21 budget being exceeded.

5.1.9 For comparison, based on the actual costs incurred in the period November 2018 to November 2019, the % increase in average cost per pupil was 16% which far exceeds the break even increase of 6% calculated in the above analysis. If an equivalent 16% increase was applied to the budget scenario modelled for 2020/21, there would be a potential cost pressure of £2.7m.

5.1.10 In order to contain cost pressures whilst ensuring that ECC fulfils its statutory duty, the most economical and suitable method of transport should be selected, which includes travel allowances, use of the commercial bus network and hired transport. There does, however, remain a cost pressure risk in 2020/21 and beyond. Increased funding agreed by the Schools Forum from the Dedicated Schools Grant for 2020/21 and 2021/22 may not sufficiently close the deficit, so alternative funding opportunities and mitigations to the pressure may have to be sought by the service to contain it within the budget envelope should this risk crystallise.

## 5.2 Legal implications

5.2.1 Contracts will only be extended where it is lawful to do so because they were awarded on terms which permit this extension. Where new contracts are to be procured, they will use the Council's dynamic purchasing system which was awarded in accordance with the Public Contracts Regulations 2015.

5.2.2 The Council has a legal duty to provide education transport in certain circumstances and provides transport to some children over and above statutory requirements in accordance with its Education Transport Policy.

## **6. Equality and Diversity implications**

- 6.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 6.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 6.3 The equality impact assessment indicates that the proposals in this report could have a potential impact on people with a protected characteristic. To mitigate this impact, should it arise, ECC will work with schools and providers to minimise the effect of any change. Additionally, ECC's contract terms and conditions for this service require action from the provider to manage the change directly with passengers and families.

## **7. List of appendices**

- 7.1 Appendix 1 – Equality Impact Assessment.

## **8. List of Background papers**

- 8.1 List of home to school transport contracts expiring in July 2020.

**Forward Plan reference number:** FP/458/06/19

<b>Report title:</b> Proposed Essex-wide Bus Shelter Contract	
<b>Report to:</b> Cabinet	
<b>Report author:</b> Andrew Cook, Director, Highways and Transportation	
<b>Date:</b> 25 February 2020	<b>For:</b> Decision
<b>Enquiries to:</b> James Hopkins, Business Development Manager; <a href="mailto:james.hopkins@essex.gov.uk">james.hopkins@essex.gov.uk</a>	
<b>County Divisions affected:</b> All Essex	

**Confidential Appendix**

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

**1. Purpose of Report**

- 1.1 To outline the background to bus shelter provision across the County of Essex and detail recommendations for a decision on the future management of the estate.

**2. Recommendations**

- 2.1 To approve entering into a Collaboration Agreement with the twelve Borough, City and District councils in Essex.
- 2.2 To approve procurement of a concession contract for the maintenance, the supply of bus shelters and advertising on those shelters for a 10 year period, with a 5 year extension option, with an estimated value of £10m to £30m over its lifetime.
- 2.3 That approval to award the contract is delegated to Executive Director, Public Health and Place.
- 2.4 To adopt the proposed Advertising and Sponsorship Policy for the Highways and Transportation services in the form appended to this report.
- 2.5 To note that under these arrangements ECC will become owner of all local authority bus shelters in Essex (other than those owned by parishes).
- 2.6 Agree that the Director, Highways and Transportation may procure and maintain a dynamic purchasing system for the procurement of suppliers to install and sell non-bus shelter advertising as set out in paragraph 3.20 of this report.

### 3. Summary of issue

- 3.1 In 2018/19 there were 43 million bus passenger journeys in Essex. The Council has an ambitious strategy to increase bus usage across the County by 1% year on year; recognising the important future that sustainable transport has in reducing congestion, carbon and air quality emissions and improving social mobility.
- 3.2 To support this ambition, the Council's vision is to develop *"a sustainable and quality bus infrastructure network that provides consistency of experience, is commercially focussed and future proofed"*.
- 3.3 The procurement of an Essex-wide Bus Shelter contract will be key in delivering this vision; by providing an improved bus stop experience for existing and prospective bus passengers and leveraging significant advertising potential to generate income that will support this venture.
- 3.4 Essex scores lower than the average score for all bus stop experience indicators than other Two-tier areas in the UK (Transport Focus, 2018). It is likely that bus usage could be higher if people were less exposed to the weather and if there was better provision available at bus stops.
- 3.5 ECC, unlike many Local Authorities around the UK, has maintained a high investment in local services, to the sum of £8 million per annum (2019/20 budget) along with the operation of a concessionary fares scheme which exceeds the minimum statutory requirement.
- 3.6 Bus shelter provision is currently patchy, inconsistent and uncoordinated across the County. Shelter ownership is split across multiple organisations and the Council does not benefit from any advertising income. ECC owns many bus shelters throughout the county. None of these have advertising space. The City, Borough and Districts also own several bus shelters. In addition, some districts have arrangements with an advertising contractor where the contractor provides, owns and maintains bus shelters and sells advertising space on it. ECC does not have an arrangement of this nature, all such arrangements are between contractors and Borough, City or District Councils. This means that in some areas there is a modern stock of bus shelters but in others the shelters are old and are not always well maintained. The real-time bus information system displays and bus stop flags are owned by ECC even though they may be attached to bus shelters owned by others.
- 3.7 To tackle these issues, over the last year the Council has been working collaboratively with all 12 district, city and borough councils across the County to bring the estate together and create a cohesive and attractive proposition for the market.
- 3.8 This partnership working will be formalised by way of a Collaboration Agreement. Under the proposed agreement and the proposed arrangements with the new contractor:

- \* ECC will be the Lead Party and will procure a 'concession' contract with a supplier.

- \* ECC will become the owner of all district council owned bus shelters in Essex
  - \* The bus shelters currently owned by contractors – mainly those used for advertising - will be removed by the outgoing contractor unless they are transferred to ECC.
  - \* ECC will use capital money to buy new bus shelters from the new contractor to replace those removed and, subject to funding being available, in additional locations.
  - \* The Contractor will sell advertising, where viable, on the shelters and maintain all shelters. In selling advertising, the contractor will comply with our advertising policy and ECC will retain right to direct removal of any advertisement it considers to be unsuitable.
  - \* ECC will receive a minimum income and there will be a profit-sharing mechanism where ECC and the contractor split income.
  - \* Any surplus funds will be spent on bus infrastructure.
- 3.9 In addition to the Council becoming the owner of all bus shelters currently owned by district councils, it would be agreed that bus shelters in all new locations would similarly be provided via the contract. This will provide a larger estate to leverage the best commercially-focussed, concession contract from the market.
- 3.10 For clarity, Parish and Town Council owned shelters are not included in the scope of the contract. The contract will enable those Councils to purchase shelters through it, via the current and established Local Highways Panel process, enabling an alignment, over time, with the new, consistent bus shelter estate desired.
- 3.11 A market engagement event was held in March 2019. This was to gain insight from suppliers in the market to inform and shape the contract specification; in order to present a viable and attractive proposal.
- 3.12 The contract would require the contractor to undertake a pro-active maintenance programme for shelters, to ensure a higher quality standard than is currently consistently achieved across Essex. ECC only carries out reactive cleaning of its own shelters.
- 3.13 The implementation of this contract forms part of the Council's wider approach to increasing sustainable transport use across the County. The increase in bus shelters across the County aides the comfort of bus passengers and increases the likelihood of those services being accessed by new users.
- 3.14 To ensure delivery of what is proposed the Council will adopt an Advertising and Sponsorship Policy relating to Highways and Transport advertising. The successful supplier will be required to adhere to this policy in conjunction with the Advertising Standards Authority (ASA) rules. The proposed policy meets this requirement and clearly outlines the Council's expectations, without being too restrictive and damaging the viability of the contracts commerciality.

3.15 Any and all advertising posted as part of this contract will be in accordance with the policy; which prohibits certain adverts, for example, political messages, payday lenders and smoking. The Collaboration Agreement with district councils makes clear that the contract will make use of the Council's proposed Advertising and Sponsorship Policy.

3.18 Key benefits for users of the bus shelters the Council expects are:

- Improved more consistent look and feel to the bus shelter estate; through contracting one supplier and requiring a standard specification as sites are replaced
- Increased shelter provision across the County; by generating income to fund future purchases and refurbishing, where possible, replaced shelters for use at current bus stops without shelter provision
- An excellent user experience, including key areas such as accessibility, by having a consistent and standard specification

3.19 In summary, the Essex-wide Bus Shelter contract and the requested capital investment, will improve the overall bus stop experience and lead to increased bus patronage, as well as replacing taxpayer funding with commercial funding. In turn, this will improve mobility of many Essex residents and directly impact the following Strategic Priorities within the Council's Organisation Strategy:

- Help people in Essex prosper by increasing their skills
- Enable Essex to attract and grow large firms in high growth industries
- Improve the health of people in Essex
- Help to secure stronger, safer and more neighbourly communities
- Help to secure sustainable development and protect the environment
- Facilitate growing communities and new homes
- Limit cost and drive growth in revenue.

3.20 The Council is also exploring other opportunities to sell advertising. In order to facilitate this, it is proposed to create a dynamic purchasing system which will facilitate awarding contracts for new sponsorship or advertising opportunities. DPS offers a simpler procurement process, is easier for suppliers to use; has less resource impact for ECC, allows shorter procurement timescales and increases market engagement and participation. This will enable ECC to maximise the benefits of this opportunity. This will be advertised through OJEU and evaluated through a standard selection questionnaire. It will be delivered through existing corporate procurement systems. Suppliers will need to meet minimum standards and be accredited to join. Suppliers will be able to join at any time. Suppliers will be able to bid for a diverse range of opportunities through mini competitions allowing flexibility. This system will not be used for the provision of bus shelters as this will be a separate contract. Any new advertising opportunity will be subject to approval in a formal decision.

## **4. Options**

4.1 Several options were considered in reaching the recommendations for Cabinet to approve.

#### 4.2 Option 1 – Do nothing (not recommended)

The Council could choose to take no action and continue to reactively fund and maintain its own estate.

Pros	Cons
Capital investment not required	Missed income generation opportunity
Asset responsibility for majority of shelters remains with district local authorities	Ongoing Council funded maintenance and capital costs of our shelter estate
	Arguable that shelters sitting on Highways land but owned by Tier 2 authorities remain a cost risk for ECC, if they fall into disrepair or damaged in a Road Traffic Collision
	Missed opportunity to improve consistency and quality of estate, thereby possibly increasing bus usage
	The number of shelters is reducing as some districts are removing damaged or life expired shelters and not replacing them
	Continued reactive cleaning regime for ECC-owned shelters

#### 4.3 Option 2 – The Council funds capital investment (Recommended)

In collaboration with District, Borough and City councils, this option is to put a long-term Essex-wide contract in place which incorporates the provision of all maintenance, replacement and supply of shelters and is cost neutral at minimum, paid for from the generation of income through advertising.

Pros	Cons
Income leveraged from advertising – unachievable as individual authorities	Capital investment required by the Council
Use advertising income to sustain the Council's estate	Asset responsibility sits with the Council whereas at the moment others own 75% of the bus shelters
A modernisation of the estate – improving customer experience for residents and by extension – increased and sustainable bus patronage	
Planned, programmed and sustainable cleaning regime – offering a better bus stop experience,	

aiding efforts to increase sustainable transport journeys	
Estate rationalisation and reduced street clutter – improved street scene environment for residents and improved accessibility	
Positive message to residents – showing clear commitment, and demonstration thereof, to sustainable bus transportation	
Collaborative approach – bringing all Tier 2 authorities onboard to the agreement, with a single brand and message	

#### 4.4 **Option 3 – Replace all shelters in-scope of the contract (not recommended)**

Equivalent to the description of Option 2, but with a higher Capital Investment by the Council to fund the replacement of every shelter in-scope of the contract.

Pros	Cons
Income leveraged from advertising – unachievable as individual authorities	Reduced ROI compared to the recommended option due to the requirement for greater capital investment
A modernisation of the estate – improving customer experience for residents and by extension – increased and sustainable bus patronage	Council funded maintenance and capital of our existing shelter infrastructure would have to be maintained
Planned, programmed and sustainable cleaning regime – offering a better bus stop experience, aiding efforts to increase sustainable transport journeys	Likely to narrow the supply market to two suppliers, due to the volume of installations required, reducing competition
Estate rationalisation and reduced street clutter – improved street scene environment for residents and improved accessibility	There are shelters that are of a suitable standard and do not need replacing during the lifetime of the contract
Positive message to residents – showing clear commitment, and demonstration thereof, to sustainable bus transportation	Potential for residents to perceive the investment as a waste of taxpayer monies
Collaborative approach – bringing all tier 2 authorities onboard to the agreement, with a single brand and message	



#### 4.5 **Option 4 – Put Capital Expenditure responsibility on the winning supplier, with a profit-share or minimum income guarantee (not recommended)**

As per the description for option 2 or 3, but the capital expenditure would be funded by the winning supplier, instead of the Council.

Pros	Cons
The Council wouldn't have to fund the requested capital investment	Limiting the market – research has shown that other Local Authorities who took this approach received between zero and two bids.  This resulted in those authorities being pushed into unfavourable contract arrangements
	Opaque costs – a minimum income guarantee model would not enable clear assessment of costs as part of evaluation, as suppliers would only provide an income figure. Therefore resulting in the Council being unable to identify whether we're receiving value for money
	Likely to result in no income being achieved due to the significant capital investment required and the risk that the supplier would price into delivering that scale of investment, resulting in a negative ROI and NPV  This is evidenced in similar contracts across the Country.

The financial appraisal for these options is included in Confidential Appendix A.

## 5. **Issues for consideration**

### 5.1 **Financial implications**

5.1.1 Please refer to Confidential Appendix A for details related to this paper's finances.

### 5.2 **Legal implications**

5.2.1 The Concession Contracts Regulations 2016 are applicable to those contracts where the value exceeds £4,733,252 and which the authority awards to a company on the basis that that company has the right to use the services or works to recoup its investment and make a commercial return.

5.2.2 The Local Government (Miscellaneous Provisions) Act 1953 allows the Council to provide bus shelters. Advertisement consent under the control of advertisement regulations is required for new advertisements.

5.2.3 The Collaboration Agreement with the district authorities includes provision for the transfer to be made, where applicable.

### **5.3 Procurement**

5.3.1 The Council proposes to run a competitive procurement to award a concession contract for the maintenance, the supply of bus shelters and advertising on those shelters. This will be via a single-stage process.

5.3.2 The proposed procurement process is anticipated to commence in March 2020, with bids to be received by May 2020. It is intended that the contract will be awarded in July 2020 in order for the service to commence in October 2020.

5.3.3 It is recommended that the evaluation criteria used for this procurement is 70% price and 30% quality, because the specification clearly defines the requirements of the contract. Having engaged with the market it is expected that at least three bidders will tender for this opportunity who have considerable experience within this area of work. Within the 30% quality element of the tender there will be a Social Value assessment broadly covering areas such as, spend within the local economy, volunteering and the circular economy. (This is will equate to 5% of the 30% quality).

5.3.4 Following the successful completion of the procurement process, the Executive Director for Place and Public Health will award the contract to the successful bidder in accordance with the outcome of the evaluation as set out in the procurement documents.

## **6. Equality and Diversity implications**

6.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

6.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

- 6.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## 7. List of appendices

- 7.1 Confidential Appendix A – Finances
- 7.2 Equality Impact Assessment (EQulA)
- 7.3 Essex County Council – Highways and Transport Advertising and Sponsorship Policy

## 8. List of Background papers

- 8.1 Transport Focus Survey 2018

<b>I approve the above recommendations set out above for the reasons set out in the report.</b>	<b>Date</b>
<b>Councillor Kevin Bentley, Deputy Leader and Cabinet Member for Infrastructure</b>	

### In consultation with:

<b>Role</b>	<b>Date</b>
<b>Mark Carroll, Executive Director for Place and Public Health</b>	<b>30 January 2020</b>
<b>Executive Director for Corporate and Customer Services (S151 Officer)</b>	<b>30 January 2020</b>
<b>Stephanie Mitchener</b>	
<b>Director, Legal and Assurance (Monitoring Officer)</b>	<b>30 January 2020</b>
<b>Paul Turner</b>	

## Essex County Council

### Advertising and Sponsorship Policy (Highways and Transport)

#### 1. Purpose

The purpose of this policy is to set out the terms upon which advertising or sponsorship may be secured or agreed by Essex County Council's Highways and Transport function to enable the generation of new and additional income to support its core activities.

#### 2. Definitions

For the purposes of this policy, advertising and sponsorship is defined as *“an arrangement between the Council and a sponsor, where the Council receives money or a benefit in kind in support for an event, activity, campaign, facility, asset or initiative from an organisation or individual, which in turn gains publicity or other benefits for them”*.

#### 3. Objectives

This policy supports the Council's Strategic Priorities within the Council's Organisation Strategy, specifically to transform the council to achieve more with less.

Objectives the policy seeks to meet are:

- Maximising opportunities to obtain commercial advertising and sponsorship for events, activities, campaigns, facilities, assets or initiatives;
- To offer advertisers and/or sponsors attractive packages, which provide value for money for all parties;
- To implement and manage a consistent, professional approach towards advertising and sponsorship;
- To protect the Council's reputation throughout all advertising and sponsorship agreements;
- To protect Members and Officers from allegations of inappropriate dealings or relationships with sponsors;
- To provide internal skills development to ensure consistency and secure best value from all current and future advertising and sponsorship arrangements

#### 4. Principles

The Council will actively seek opportunities to work with all forms of organisations to identify opportunities for advertising and sponsorship; which are in keeping with its Strategic Priorities and Organisation Strategy. It is keen to encourage and support advertising and sponsorship.

The Council reserves the right to evaluate the suitability of all advertisements or sponsorship before including them on/through its channels and all advertisements or sponsorships are accepted at the Council's absolute discretion.

The Council reserves the right to refuse to publish an advertisement or accept sponsorship or to withdraw a published advertisement without notice and it may cancel or withdraw any advertisement or sponsorship at any time. For specificity, an advertisement will not be approved, or permitted to remain if, in the Council's reasonable opinion, the advertisement does not comply with the law, does not comply with the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (or any relevant CAP code), is otherwise not appropriate, or is inconsistent with the Council's obligations under section 149 of the Equality Act 2010

## 5. Standards

All advertisements and sponsorship must adhere to the standards laid down by the Advertising Standards Authority (ASA). It is expected that current and prospective advertisers keep up-to-date with changes and new standards released by the ASA and take note of its rulings.

It is important for potential advertisers and sponsors to recognise that because of the Council's responsibility as a Local Authority, there are some restrictions on the adverts that will not be accepted. These are outlined below:

- Political organisations and messaging, including any adverts related to elections, referendums or similar
- Payday lenders
- Tobacco products, including Vaping
- Alcoholic beverages
- Pornography
- Any advert that is likely to damage the reputation of Essex County Council

The Council welcomes all opportunities to work in partnerships. It will not, however, put itself in a position where it might be said that such a partnership has, or might have, or may be thought to have:

- Influenced the Council or its Officers in carrying out its statutory functions.
- Been entered into, in order to gain favourable terms from the Council in any business or other agreements.
- Aligned the Council with any organisation which conducted itself in a manner which conflicted with the Council's Corporate Vision or Values.

The Council will agree with the sponsor the nature and content of the publicity and will retain the right to approve all advertising material.

Where the Essex County Council brand is used in any form of advertising or sponsorship; the advertiser or sponsor will adhere to the Council's Brand Guidelines.

All advertising and sponsorship opportunities will be subject to the Council's Procurement Policy and Procedure Rules and comply with any relevant legislation, such as the Public Regulations 2015 and the Equality Act 2010.

## 6. Procedures

All and any enquiries about Highways and Transport advertising or sponsorship opportunities must be directed to [advertising@essex.gov.uk](mailto:advertising@essex.gov.uk) in the first instance for consideration and review. The Council recognises that other organisations may have insight or opportunities that they consider suitable for advertising or sponsorship that the Council has not considered to date and welcomes proposals.

Current advertising and sponsorship opportunities will be made available via the Essex County Council website, for transparency and ease of access by other organisations.

Where a potential opportunity or proposal would result in more than £10,000 of income to the Council, additional steps may be taken to advertise the opportunity to secure best value for the Council. The Council will set up a Dynamic Purchasing System (DPS) platform to assist with getting the highest income for advertising or sponsorship opportunities.

It is expected that evidence-based evaluation will be obtained to assist with establishing value-for-money, return-on-investment and/or future contract decisions.

7. Marketing and media relations

All media information produced by an advertiser or sponsor must comply with regulations, be of suitable quality and approved before implementation.

The use of sponsors' logos and other branding must not interfere or conflict with Essex County Council's brand guidelines.

The use of the Council's brand within any advertisers or sponsors publicity must be approved by the Council's Marketing and Communications team.

8. Disclaimer

Acceptance of advertising or sponsorship by the Council does not imply endorsement of products or services by Essex County Council.

Any advertising and sponsorship accepted by the Council must not breach any contract, or infringe or violate any copyright, trademark or any other personal or proprietary right of any person or render the Council liable to prosecution or civil proceedings. The sponsor must fully and effectually indemnify the Council from and against all claims, costs or demands arising from the sponsor's activities.

9. Declaration of Interest (DOI)

Council Officers and Members are required to complete a declaration of interest if they have any personal interests, involvement or conflicts of interest with any potential sponsors or advertisers.

In the event of a conflict of interest, that Officer or Member will take no part in the decision of whether to permit of advertising and sponsorship with that particular organisation.

10. Policy review

This policy will be reviewed every 3 years, or earlier, if legislative or statutory guidelines require it.

**Policy/Governance owner and contact:**

James Hopkins,  
Business Development Manager  
Integrated Passenger Transport Unit (IPTU)

**Forward Plan reference number: FP/479/07/19**

<b>Report title:</b> Extension of the Essex Highways Partnership Contract with Ringway Jacobs	
<b>Report to:</b> Cabinet	
<b>Report author:</b> Andrew Cook Director for Highways and Transportation	
<b>Date:</b> 25 February 2020	<b>For:</b> Decision
<b>Enquiries to:</b> Laura Lee, Head of Procurement Place and Corporate, <a href="mailto:Laura.Lee@essex.gov.uk">Laura.Lee@essex.gov.uk</a> or Diane Crix Category and Supplier Relationship Specialist, <a href="mailto:diane.crix@essex.gov.uk">diane.crix@essex.gov.uk</a>	
<b>County Divisions affected:</b> All Essex	

**Confidential Appendix**

This report has a confidential appendix which is not for publication as it includes exempt information falling within information relating to the financial or business affairs of any particular person (including the authority holding that information) paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

**1. Purpose of Report**

- 1.1 In order to facilitate the continued operation of the Essex Highways Partnership for the delivery of highway services in Essex, Cabinet is asked to consider the extension of the existing contract with Ringway Jacobs until 2027.
- 1.2 This report makes a recommendation to extend the existing Essex Highways Partnership contract with Ringway Jacobs for a period of 5 years commencing 1 April 2022.

**2. Recommendations**

- 2.1 To agree to the commitments for the Contract extension period set out in the confidential appendix and paragraphs 3.11 to of this report which include a change to the payment mechanism and agreeing a new process for Red Claims ("the Commitments")
- 2.2 To agree, subject to the prior completion of the deeds identified in recommendation 2.3 and 2.4, to extend the Essex Highways Contract (the Contract) with Ringway Jacobs for a period of five years until 31 March 2027 with a break clause taking effect at the end of year thirteen of the contract by giving two year's notice.

- 2.3 To delegate authority to the Director for Highways to enter into a Deed of Variation to the Contract to implement the Commitments, including changes to the payment Mechanism and implementing a revised process for Red claims, the terms of which shall be agreed in consultation with the Monitoring Officer. Completion of both red claims and payment mechanism changes are pre-conditions of the extension.
- 2.4 To agree to settlement of Red Claims which have been notified to or settled by ECC before 31 March 2019, with Ringway Jacobs on the terms and for the figure contained in the Confidential Appendix to this Report and to delegate authority to the Director for Highways to enter into a Settlement Agreement the terms of which shall be agreed in consultation with the Monitoring Officer.
- 2.5 To agree to draw down from the Transformation Reserve of £105,955 in 2020/21 and £60,000 in 2021/22 to the Deputy Leader and Infrastructure portfolio for Highways and Transportation and to note that future requests will come through over the contract duration that cover the remaining values as detailed in the confidential appendix.

### **3. Summary of issue**

#### **Background**

- 3.1.1 Ringway Jacobs are ECC's highways partner enabling ECC to fulfil its statutory requirements as the local highway authority for Essex. The contract with Ringway Jacobs commenced in February 2012 (the Contract). The scope of the Contract includes but is not limited to reactive repairs footway and carriageways, winter services, white lining, gully maintenance, capital structure maintenance. The contract services 5000 miles of highway, 4000 miles of footways, 4000 miles of public rights of way, 127,000 streetlights, 1500 structures. By 2018, 2002 miles of carriageway had been surface treated, 24,000 km's per year of carriageway is inspected, an average of 37,000 street lighting defects are dealt with p.a., an average of 70 miles of footways surfaced p.a., 65,000 driver improvement courses delivered annually, and an average of 100,000 gullies cleaned p.a.
- 3.1.2 The Contract is for an initial period of 10 years which expires on 31 March 2022. The Contract allows for an extension up to a maximum of 5 years until 31 March 2027. An extension to the contract is at ECC's discretion and is based on performance of Ringway Jacobs on the contract Key Performance Indicators in the preceding two years of the contract. RJ have met the performance Targets required and ECC is able to consider an extension.
- 3.1.3 The annual capital and revenue expenditure on the Contract in the last four years is currently between £137m - £155m per annum. The forecast for capital and revenue expenditure for the next five years is estimated at £130m per annum. The value of the five-year extension is estimated to be in the region of approx. £700m subject to continued levels of capital budgets, grant funding, and revenue budgets. The total forecast spend over the 15-year life of the



contract is within the original limits published in the original 2011 procurement documentation

- 3.1.4 The Contract performance is managed through a set of Key Performance Indicators. The contract has achieved 94 - 99% performance against these indicators from year 4. The partnership between ECC and Ringway Jacobs is an award-winning partnership and recognised nationally among ECC's peers and with the Department for Transport for its achievements.
- 3.1.5 The Contract is managed through a robust governance structure comprising monthly contract and board meetings, bi-monthly strategic meetings and quarterly Strategic Partnership Board meetings.
- 3.1.6 Ringways Jacobs deliver some of the works and services under the contract through directly employed resources with approximately 75% of delivery being managed through their supply chain and through shareholder relationships with Eurovia and Jacobs. Ringway Jacobs is a wholly owned joint venture company between Jacobs and Eurovia which has been in place since 2005. The ECC contract represents just under 50% of Ringway Jacobs business.
- 3.1.7 In the most recent years of the contract through its collaborative approach, the contract has delivered a number of improvements and innovative solutions including: -
- Developing an enhanced Report-it tool to improve customer experience.
  - Introduction of new communication channels including Highway Highlights newsletter.
  - A significant reduction in outstanding defect numbers.
  - A continued LED conversion programme for street lighting and illuminated signs.
  - Exemplar in securing external funding.
  - Creation of a series of taskforces to tackle the most challenging schemes (A120, A12, A127, Army & Navy, Beaulieu Park Station).
  - Achieving BS11000 collaborative business relationship accreditation.
  - In excess of 51,000 people now interface with the Essex traffic control centre's daily traffic updates
- 3.1.8 Customer service and communication for the highway function is managed jointly between ECC and Ringway Jacobs. A joint review has looked to improve areas of the service to reduce complaints for example, Ringway Jacobs has positively changed to way it operates when delivery Local Highway Panel (LHP) schemes to reduce cost and speed up delivery times by creating an in-house direct delivery team for implementation of small Local Highway Panel schemes, reducing the time spent on design and contracting the supply chain. Direct-delivery gangs can be involved earlier and start delivery on the ground sooner. Overall this has resulted in works being delivered more quickly and at lower overall cost. In addition, where potholes need repair, the broader carriageway area surrounding it has been assessed to see whether larger-scale patching can combine deterioration repairs and prevent repeat visits, thus reducing complaints

Additionally, relationships have been developed with lay assessors acting as community volunteers, as well as Parish clerk representatives. ECC has assigned each County Member a person within Essex Highways to whom they can escalate Highways issues.

- 3.1.9 Ringway Jacobs deliver a number of social value initiatives in support of Essex and its residents including apprenticeship schemes, recruitment of ex Armed Forces personnel, fundraising for local charities, volunteering and environmental projects. Ringway Jacobs have their head office located in Chelmsford employing local people in support of the Essex economy.

## **Evidence Based Decision**

- 3.2 Officers embarked on an extensive programme of evidence gathering in order to inform the options for the future delivery of Highways services and whether to extend the Contract. Details of this process is set out in the below paragraphs

### **Cranfield University Proving Services**

- 3.3.1 Six workshops were held between Ringway Jacobs and ECC Officers, led by Proving Services. Proving Services are a research body associated with Cranfield University who work closely with The Association of Directors of Environment, Economy, Planning and Transport (ADEPT) to deliver benchmarking services for their membership.
- 3.3.2 The workshops focused on value for money on Highways service delivery, mutuality (the relationship between ECC and Ringway Jacobs), value for money on Major Infrastructure Schemes, communications, and commercial income generating opportunities.
- 3.3.3 In terms of benchmarking for value for money highways services, ECC scored 7<sup>th</sup> highest out of 21 authorities assessed and through the development of a range of commercial opportunities, this position is likely to improve. In terms of Major Infrastructure Scheme design for capital works, Jacobs in its capacity as an independent professional service provider scored 45% each for effectiveness and economy, which is equal to the performance of other professional service supplier's in the Major Infrastructure Scheme design arena despite the relatively low percentage.
- 3.3.4 Proving Services also conducted a workshop analysing alternative service delivery models available in the market. The models included single provider, multiple providers, use of frameworks, ECC entering into a corporate joint venture with a partner, ECC operating a wholly owned trading company, PFI, and bringing the service back for delivery by ECC and 'top up' of delivery through the supply chain. The analysis considered attractiveness, achievability and political appetite for each model. The results were highly in favour of continuation of the current style of Integrated model, followed by a model of single provider for highways and single provider for design as the best fit for ECC.

- 3.3.5 To determine relative provider performance, Proving Services undertook a survey of 18 ADEPT members on the performance of their Highways provider. The results compared to a previous survey in 2015. The survey concluded that Ringway Jacobs was the 2<sup>nd</sup> highest performing supplier of those reviewed and the most improved since 2015. Their overall score was within 2% of the top performer and the improvement trajectory suggests they will continue to close this gap.

### **Market Testing**

- 3.4.1 Officers conducted independent market testing during 2018 and 2019 and tendered packages of works worth £2.3 million through the Eastern Highways Alliance framework, while at the same time instructing delivery of similar packages of works through Ringway Jacobs.
- 3.4.2 The results demonstrated that 75% (3 of 4 packages) of the areas tested delivered better value for money through the existing Contract as further detailed in the confidential appendix. The Contract makes provision where a benchmarking/market testing exercise shows that the Authority is paying prices which exceed those payable for the same goods, works or services under other contracts, this will be taken forward in the supply chain joint review workstream
- Inlay being 6% cheaper
  - Footways being 30% cheaper
  - Road Markings 13% more expensive
  - Gullies being 36% cheaper
- 3.4.3 In all cases these comparisons are made between works delivered through Ringway Jacobs, and the Eastern Highways Alliance Framework
- 3.4.4 Due to the size of the Essex Highways contract, Ringway Jacobs can negotiate long-term deals with their own suppliers which reduces the impact of future cost increases to ECC. For example, negotiating multi-year contracts with set rates, shields ECC from unmanaged inflationary increases. Furthermore, due to the length of the contract that Ringway Jacobs will be able to offer to their suppliers, longer-term discounts can be negotiated which pass directly back to ECC.

### **Market Intelligence**

- 3.5.1 Similar suppliers in the market to Ringway Jacobs were invited by ECC to discuss their approach to a contract of this size. These suppliers included Amey, Balfour Beatty, Colas, Costain, Skanska and Kier. Following this, it was determined that all were interested in integrated contracts rather than separate contracts being let for single specific elements such as surfacing, street lighting gully cleansing. This analysis confirmed the Service Delivery model approach for ECC.
- 3.5.2 All alternative suppliers in paragraph 3.5.1 confirmed that they were exploring innovation in their delivery of highways services but no one provider appeared

to have an innovative edge. Due to the size of ECC's highways contract, ECC's contract is always likely to be a large part of any supplier's business, as ECC's is with Ringway Jacobs, therefore this risk of proportionality would always be apparent.

- 3.5.3 The market has seen recent instability with the collapse of Carillion and profit warnings from other major suppliers. This is a risk for consideration in the event of re-procurement. There is no guarantee that a re-procurement would deliver the level of savings sought in the shorter term, or that a better commercial arrangement was obtainable.
- 3.5.4 Peers from other highways authorities have reported that recent procurements have resulted in a lack of bidders which may be due to suppliers being selective about the cost and resources they deploy to tender for large contracts. As a result, reduced competition for contracts due to market conditions has seen a consequential increase in fee margins significantly above that which ECC is currently paying.

### **Engagement with Other Local Highway Authorities**

- 3.6.1 Officers engaged with over 20 large authorities including Suffolk, Norfolk, Leicestershire, Kent and Warwickshire who have been or are in the process of procuring their Highways Services. The source of these contacts came from Public sector market insight (PORGE). Experience from other Local Authorities suggested that the market required contracts for at least seven years duration to achieve the maximum return on initial investment costs.
- 3.6.2 It is apparent from those Local Authorities who moved away from integrated contracts such as this Contract, that they needed to increase the size of their in-house commissioning teams. It was also apparent from the engagement that co-location with a provider was generally seen as a good enabler for better collaboration.
- 3.6.3 Most local Authorities operated a Contract based on NEC3 or NEC4 with a mix of payment methods, and some had incentivisation, and some did not. The engagement confirmed that innovation was seen to be generally lacking in the highways sector. Many have used Proving Services consultancy to aide their decision making.

### **Scrutiny Committee**

- 3.7 ECC Place and Corporate Scrutiny Committee panel created a Task and Finish Group comprised of cross-party members, to extensively review the Contract. Officers presented contractual requirements and data over a period of several months on a number of key themes which were determined by the Scrutiny committee including performance, and benchmarking with other authorities. Their overall recommendation was to renew the contract for 5 years with some suggested improvements which are being taken forward and tracked and reported through the usual contract governance meetings. The full report is appended to this report.

## **Supply Chain**

- 3.8 ECC undertook a review of Ringway Jacobs supply chain, through a deep dive into the ordering process for, and invoicing of, selected key suppliers which resulted in several recommendations arising from it. It has been agreed with Ringways Jacobs that a joint review of the supply chain will be conducted by ECC and Ringway Jacobs.

The supply chain review recognised the good work already in practice in this area but also made the following recommendations for continuous improvement: -

- Introducing more robust contract management and key performance indicators to drive performance
- A more robust procurement process to drive best value
- Developing the supply chain for greater market competition
- More frequent auditing of subcontractors
- Closer management of subcontractor risk
- Seeking further continuous improvement and efficiencies from the supply chain

## **Bid Pledges**

- 3.9 ECC officers undertook a review of the original tender submission made by Ringway Jacobs at procurement in 2012, and the 900 pledges within it. These pledges have been analysed against delivery and the majority have been delivered by Ringway Jacobs. There are very few minor items outstanding which will be progressed through the usual contract governance channels, excepting development of the productivity tracker which is a milestone delivery requirement.

## **Ringway Jacobs Proposals**

- 3.10.1 Having determined through the evaluation work detailed in this report that continuation of the existing Contract was a viable option for ECC, Ringway Jacobs were invited to make a series of proposals to ECC for improvements to the Contractual service offer.
- 3.10.2 Ringway Jacobs were specifically tasked with developing ideas to facilitate a 20% reduction in revenue expenditure at ECC for the Contract which equates to £5.029m per annum. ECC, like most authorities, has reducing budgets and increasing demand and as such collaborate with our strategic partners to support the authority to deliver services within the financial envelope. In addition to revenue savings, Ringway Jacobs were also asked to realise further efficiencies in the delivery of capital schemes. Ringway Jacobs provided a range of options made up of service reductions, efficiencies, service cuts and income generation. Please see confidential appendix.

3.10.3 Ringway Jacobs have also developed a forward plan for innovation in service delivery to demonstrate that the contract remains abreast of industry developments, with a commitment to delivery which covers four themes: - Carbon Neutrality, Materials, Communications and Customer, and Technology Enablers.

Innovation during the contract to date includes: -

- Introducing drone surveys
- 3D mapping for underground services
- Introduction of MultiHog and Entyre machinery
- Introduction of the Technology and Innovation working group and delivery of the Essex Technology Strategy for Transport
- Implementing Vehicle Informed Asset Management (VIAM) studies which gathers real time data from vehicles to report on road conditions
- Access to leading R&D centre to inform the materials working group on appropriate and cost-effective materials

## **Discussion with Ringway Jacobs**

### **Contract Mechanism Changes**

3.11.1 ECC officers have been working with Ringway Jacobs to jointly review and streamline the payment mechanism for the contract and agree the interpretation of the contract. A solution for a streamlined and workable payment mechanism has now been finalised and will assist with prompt closure of year end accounting. Completion of the payment mechanism contract changes are a prerequisite to the proposed 5-year contract extension. Further details are set out in the Confidential appendix to this Report.

### **Red Claims**

3.11.2 Red Claims are insurance claims bought against ECC in relation to damage or accidents on the highway network (Red Claims). There has been an extended disagreement between ECC and Ringway Jacobs in relation to liability for payment of Red Claims.

3.11.3 ECC and Ringway Jacobs have worked to resolve the disagreement between the parties and terms of settlement for the backlog of liability has been agreed subject to drafting. Further detail on the Red Claims disagreement and the terms of settlement are contained in the confidential appendix

3.11.4 A Settlement Agreement in relation to all claims notified to or settled by ECC, is required between ECC and Ringway Jacobs to formalise the settlement, and the Deed of Variation to the Contract to formalise the extension Commitments contained in this report includes a new contractual process and clear allocation of responsibility for future claims. The recommendations in this report make completion of the payment mechanism contract changes a prerequisite to the proposed 5-year contract extension

## **Commitments Agreed**

- 3.11.5 As a result of this extensive range of evidence and the proposals received from Ringway Jacobs, discussion commenced with Ringway Jacobs on details for an extension
- 3.11.6 A group of ECC Members, led by the Cabinet Member for Infrastructure, set pre-requisites to these discussions, that the savings put forward were to be delivered by year 10 (2021/22) of the contract and a stretch target into year 11 (2022/23). The stretch target enables Ringway Jacobs to continue to find further savings opportunities through the full life of the contract. The 5-year extension term is conditional on delivery of these savings and implementation of the innovation plan to keep abreast of industry developments, with progress review at commencement of year 11.
- 3.11.7 Formal discussion commenced between Ringway Jacobs and a cross directorate ECC team comprised of Commissioning, Finance, and Procurement.
- 3.11.8 The parties agreed to a set of Commitments for delivery of the highways service during any extension period and such commitments include the following which will need to be formalised in a change to the Contract by way of Deed of Variation.
- Commitment from Ringway Jacobs to a sustained programme of planned innovation to keep abreast of developments in the industry over the remainder of the contract with clear deliverable benefits for ECC.
  - Commitment from Ringway Jacobs to the delivery of a 20% reduction in the revenue cost of the service
  - Confirmation of a five-year extension with contractual provision to manage performance against the Commitments and reduce the length of the extension from five years to three if Ringway Jacobs fail to meet the Commitments. ECC will review the performance at the end of year 10 of the original contract. If the Commitments are not being met, we can shorten the extension and have sufficient time to scope and go out to the market to procure an alternative provider at the end of the shortened extension period. Further details are contained in the confidential appendix
  - Ringways Jacobs to make additional savings on ECC's capital spend to improve the efficiency of this significant investment.
  - A reduction in Ringway Jacobs profit and corporate overhead charges at volumes beyond those envisaged in the original bid once a level of throughput has been reached which is based on historic work levels. Therefore, increased throughput will result in lower costs being charged to ECC.
  - Commitment to fund 50% of the investment costs required to reduce the cost of service delivery
  - Ringway Jacobs wage increases capped no greater than 1% above local authority pay awards
  - Commitment to a joint review of the supply chain to drive efficiency and address the findings from the benchmarking exercise set out in paragraph 3.4.2.

- Agreement to an amended process for red claims. Red Claims are claims by third parties against the ECC arising out of the condition of the Area Network or the performance of Ringway Jacobs services
  - Agreed changes to the Payment Mechanism of the contract designed to streamline the elongated year end accounts closure process.
  - Continued delivery by Ringway Jacobs of the existing annual cashable efficiency targets.
  - Delivery of a productivity tracker for capital delivery, to monitor output and cost for benchmarking purposes, as a key milestone priority.
- Further details are set out in the confidential appendix.

3.11.9 The delivery progress against these commitments will be monitored through the usual governance of Essex Highways Board, Strategic Essex Highways Board and Strategic Partnership Board as established in the existing contract. Milestone metrics will also be put in place to monitor progress at key junctures to ensure delivery is on track to confirm the full 5-year extension beyond the initial 3 years milestone delivery period.

## **4. Options**

4.1 Three options were considered: -

### **4.2 No Extension (Do Nothing)**

- The option to do nothing would result in the current contract expiring at the end of year 10 in March 2022, requiring an alternative provision to be procured to enable ECC to continue to deliver its statutory duty as the Highways Authority for Essex.
- The extensive evidence undertaken suggests that not extending is not the best option as the current contract has demonstrated that it provides appropriate value for money.
- Ringway Jacobs have made a number of delivery commitments for the coming 5 years which would not be delivered if no extension was given
- The cost of re-procurement would be significant, estimated at £1 - 1.5m in our work with Proving Services.
- There are no guarantees ECC would obtain a better commercial offer at the current time – in fact market intelligence suggests the opposite.

### **4.3 Full Extension with Break Clause (Preferred Option)**

- Ringway Jacobs have made commitments that ECC consider will improve the current delivery performance.
- The commitments made by Ringway Jacobs require milestone delivery measures which enables ECC to curtail the full extension period should there be underperformance.
- The current contract demonstrates value for money.
- Provides the maximum term to amortise required investment costs required for innovation and reduction in service delivery costs.
- Provides consistent and continuous service delivery.



- Avoids the immediate re-procurement allowing ECC to adequately plan and prepare for a full re-procurement in 2027.
- Provides longer for ECC to prepare the future requirements for re-procurement.

#### **4.4 Partial Extension**

- A partial extension is a possibility, however good progress has been made through discussions with Ringway Jacobs that could enable a full 5-year extension with the flexibility to reduce that if milestones were not achieved.
- Avoids immediate cost of re-procurement
- The current contract evidences value for money
- A shorter extension period does not provide as long to amortise investment costs, reducing commercial attractiveness.
- This extensive assessment would need to be revisited again to evidence a further extension.
- Provides consistent and continuous service delivery.

### **5. Next steps**

- 5.1 Subject to agreement to this recommendation, ECC will need to work with Ringway Jacobs to formalise the commitments made in extension discussions into a formal contract change.

### **6.0 Financial implications**

- 6.1 The financial implications associated with this decision are commercially sensitive and as such are contained within the confidential appendix. The £5.029m of savings reflected within ECC's future years budgets result in one off investment costs which are requested to be funded from the transformation reserve. Approval is sought to request drawn down from the Transformation Reserve of £105,955 in 2020/21 and £60,000 in 2021/22 to fund officer resources to support the project to facilitate the delivery of the £5.029m savings. Further requests for a draw down will be made over the contract period to support the workstreams as detailed in the confidential appendix.
- 6.2 In relation to Red Claims ECC and Ringway Jacobs have worked to resolve the disagreement between the parties, and terms of settlement for the backlog of liability have been agreed subject to drafting. Further detail on the financial terms of the settlement are contained in the confidential appendix.
- 6.3 The below provides an overview of the draft Revenue and Capital budgets for the Deputy Leader and Infrastructure Portfolio for future years. Within the below budgets there is sufficient funding to meet the obligations which may arise under this contract in these years beyond the one-off investment costs explained above. The service will manage within these budget allocations, seeking to secure external funding to support delivery of outcomes for Essex residents. Both the revenue and capital budgets detailed below also fund

activities outside of the Ringway Jacobs contract, which include but are not limited to areas such as the A130 PFI, BDUK, and Major Capital Projects.

	£,000			
	Budget 2020/21	Draft Budget 2021/22	Draft Budget 2022/23	Draft Budget 2023/24
Revenue - Deputy Leader & Infrastructure Portfolio	44,257	48,364	47,568	48,494

	£,000			
	Budget 2020/21	Aspirational 2021/22	Aspirational 2022/23	Aspirational 2023/24
Capital - Deputy Leader & Infrastructure Portfolio	143,098	168,354	251,619	303,449

## 7.0 Legal implications

- 7.1.1 The Contract provides for an extension of the terms for five years and provided that the processes are followed to extend the Contract, an extension can be given to Ringway Jacobs
- 7.1.2 ECC are a contracting authority for the purposes of the Public Contract Regulations 2015. The extension is permitted by the terms of the contract and the proposed changes to the contract are relatively minor compared to the value of the contract and would not have allowed for different tenders to bid for the original contract and do not change the balance of the contract in favour of the contractor.
- 7.1.3. Given the history of red claims it is important that this is resolved before any commitment to an extension is given. Therefore in the unlikely event that the Council is unable to agree the terms of the settlement agreement a further report to the Cabinet will be needed to determine the future of the service.

## 8 Equality and Diversity implications

- 8.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

8.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

8.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## **9 List of appendices**

- Equality impact assessment
- Confidential appendix
- ECC Place and Corporate Scrutiny Committee Task and Finish Group Report

		<b>AGENDA ITEM 4</b>
		<b>CPSC/08/19</b>
<b>Committee:</b>	<b>Corporate Policy and Scrutiny Committee</b>	
<b>Date:</b>	<b>Tuesday 30 April 2019</b>	
<b>Enquiries to:</b>	<b>Name: Richard Buttress</b>  <b>Designation: Democratic Services Manager</b>  <b>Contact details: <a href="mailto:richard.buttress3@essex.gov.uk">richard.buttress3@essex.gov.uk</a></b>	

### **Ringway Jacobs Joint Task and Finish Group – draft report**

Members are asked to discuss and endorse the final draft of the Ringway Jacobs Task and Finish Report. The final draft of the report will follow publication of the agenda to allow time for amendments to be made following discussion at the Place Services and Economic Growth Policy and Scrutiny Committee on the 18<sup>th</sup> April 2019. A summary of report recommendations can be found below.

### **Summary of recommendations**

#### **Contract Re-procurement**

1. Members of the Task and Finish group conclude that the most sensible option for the cabinet member is to renew the contract with Ringway Jacobs for five years, with the caveat that a number of changes are made to current arrangements. These are set out in the recommendations below in the following categories: ongoing scrutiny, maintenance, reporting of defects, customer services and communications and supply chain works.
2. Members still have serious concerns regarding the readiness of Essex County Council (ECC) to re-procure. Within three years, both Place Services and Economic Growth Scrutiny Committee and Corporate Policy and Scrutiny Committee need to be satisfied that ECC is in a secure position to re-procure, with a clear place for scrutiny factored into the timeline.

#### **Ongoing Scrutiny**

3. A working group (hereafter referred to as the Ringway Jacobs and Essex Highways Working Group) should be established to facilitate an ongoing engagement with Ringway Jacobs and ECC Highways officers. This will continue the work of the task and finish group, encouraging member-driven scrutiny looking at procurement, highways policy and overall contract

performance. This should meet quarterly. A six-monthly update, presented by the Chairman of this working group, will be delivered to both scrutiny committees. The group will be comprised equally of members from both the Place Services and Economic Growth and Corporate Policy and Scrutiny Committees and operated through current task and finish arrangements.

4. The annual review of KPI's that are presented to the Cabinet Member should also be presented to the Place Services and Economic Growth Policy and Scrutiny Committee and the Corporate Policy and Scrutiny Committee for further review, with time to offer recommendations.
5. The Ringway Jacobs and Essex Highways Working Group will continue the benchmarking work of this committee, exploring the work of other highways authorities.
6. The cabinet member is to be commended for improvements in the quality of relationships between members and Ringway Jacobs officers. This is due, in large, to the success of the 'buddy system'. Member relationships with regards to local pieces of work however, could be improved. There should be a mechanism put in place for direct scrutiny of specific contract elements or pieces of work, even if this simply involves the local member being consulted upon request. This could be through an enhanced version of the 'buddy' system already in operation.

## **Maintenance**

7. The cabinet member should consider asking officers to review the risk matrix. As it stands, serious defects that might register significantly on the 'risk impact' scale, but only slightly on the 'risk probability' scale could potentially receive a less urgent timescale for repair than their impact would necessitate. This should be addressed. Members should be engaged through the Ringway Jacobs Working Group to aid in the review and update of the risk register.
8. The Cabinet Member and officers should explore reviewing the current maintenance strategy (last updated in 2008) with a view to determining suitability to ECCs current policy priorities and is encouraged to make use of the Working Group. This should include a conversation around road classifications and priorities as well as the current criteria for defects to warrant repair.
9. Members noted with concern that particular KPIs outlining timescale requirements for streetlight repairs had been removed from the contract. Members ask that KPI A14 (Average number of days taken to repair lighting faults within control of LA) is reinstated.
10. Members should receive a more accurate indicative timetable for remedial works and larger schemes, with estimates on timescales provided for communication with local residents.

11. A specific KPI should be included within the contract for all work carried out by utility companies to be inspected before the two-year maintenance repair ends. This inspection should determine whether the work has been completed properly and to an agreeable standard.

### **Reporting of defects**

12. Officers and Members raised a number of concerns regarding the interaction between Ringway Jacobs and Essex Highways systems (confirm/online reporting tool). This should be seen as a priority moving forward, to ensure a more effective, joined up service is offered in future.
13. The ease with which faults can be reported has a huge amount of impact on overall public perception of the highways service offered by ECC. Ringway Jacobs and ECC should learn from best practice in terms of fault reporting with a view to designing a more effective system. This should provide members of the public with more detailed information regarding the defect including an estimated timescale for repair. We are aware that work is already being undertaken to improve the online tools and the Working Group would welcome being involved in this moving forward.
14. All Members should receive quarterly training opportunities on issues around reporting of defects, changes to the online tool, and follow up enquiries. (Change to quarterly drop-ins and training for changes/improvements).

### **Customer Services and Communications**

15. It was noted by members that, While ECC and Ringway Jacobs are both excellent with regards to reactive communications, both need to work together to produce a more proactive communications agenda. Members of the Working Group gave considerable time investigating this area and would like to undertake further analysis as part of its future programme. Members understand that expectations need to be managed, but feel strongly that Ringway Jacobs should be measured on overall public perception through an additional KPI – the manner of which to be determined by the cabinet and officers, with input from the Essex Highways Ringway Jacobs Working Group.
16. Members question the value of the National Highways Tracker (NHT) as an effective method of measuring satisfaction. Officers and Members should explore whether the NHT is fit for ECC, and whether an in-house alternative could potentially lead to greater ownership of results, more validity of feedback, and more control over the questions asked.
17. A single, clearer set of lines of responsibility for informing members of changes to roadworks and reported repairs be implemented which could be written into the Ringway Jacobs contract.

### **Supply Chain**

18. The Cabinet Member should consider the potential for ECC to employ or contract its own independent inspectors to assess the quality of works carried out by Ringway Jacobs parent companies, as well as the wider supply chain. This could be conducted as a sampling exercise, with a KPI associated to ensure that the quality of works remains consistent.
19. ECC needs to more closely oversee larger pieces of supply chain work. The working group should be more engaged moving forward and provided assurances as to the value for money and quality of work provided by third parties.
20. All third parties carrying out work on ECCs behalf should be branded accordingly, explicitly stating that the organisation is representing ECC. The quality and consistency of signage on Essex Highways works also needs to be greatly improved in terms of the information provided and the expected timescales outlined for completion.
21. The Cabinet Member should explore encouraging Ringway Jacobs to adopt an incentive-based scheme when procuring further works beyond those originally contracted. This could take the form of a ranked preference system as already in operation in authorities such as Leicestershire County Council.
22. ECC should draw more on expertise from within the Supply Chain Forum, collectively determining solutions to local government pressures around efficiency and reputational damage. There need to be mechanisms in place to ensure that these efficiencies are monitored and fed back into the supply chain. The Ringway Jacobs working group should engage with the minutes of these meetings and the Chairman of the Ringway Jacobs working group should be invited to attend Supply Chain Forum meetings.
23. Ringway Jacobs is to be commended for its social value work and commitment to activities beyond those required through the contract, especially with regards to work carried out with the armed forces. ECC should be better at publicising this work. The Cabinet Member should encourage Ringway Jacobs to adopt more internal social value measures, particularly around hiring more apprentices into the Ringway Jacobs workforce. The Cabinet Member might consider adding a KPI determining a minimum expectation (i.e. number of apprentices as a percentage of the overall workforce) into the contract.

## **Session aims**

Members to agree the report and recommendations as set out in the final report.





Approval to place 2020/21 contractual task orders with Ringway Jacobs for values over £5m

**Forward Plan reference number: FP/607/01/20**

<b>Report title:</b> Approval to place 2020/21 contractual task orders with Ringway Jacobs for values over £2m	
<b>Report to:</b> Cabinet	
<b>Report author:</b> Andrew Cook, Director, Highways and Transportation	
<b>Date:</b> 25 February 2020	<b>For:</b> Decision
<b>Enquiries to:</b> Deana James, Business Planning Manager, Essex Highways Commissioning, email: <a href="mailto:deana.james2@essex.gov.uk">deana.james2@essex.gov.uk</a>	
<b>County Divisions affected:</b> All Essex	

## 1. Purpose of Report

- 1.1 The Council's highways contract with Ringway Jacobs Limited requires the Council to place orders for all work undertaken. Some task orders within this programme of work have a value in excess of £2m.
- 1.2 Although Council sets the highways budget as part of the annual budget, spending decisions on executive functions of over £5m should be taken by the Cabinet.
- 1.3 This report asks the **Cabinet to** approve the issue of those task orders likely to exceed £2m to Ringway Jacobs for the 2020/21 financial year.

## 2. Recommendations

- 2.1 Agree that the Director, Highways and Transportation may issue the task orders to Ringway Jacobs as outlined in **Table 1, Appendix 1** after taking legal advice about the form and content of the task orders.
- 2.2 Agree that the Deputy Leader and Cabinet Member for Infrastructure may change the work to be undertaken under the task orders.

## 3. Summary of issue

- 3.1 Essex County Council (ECC) is the local highway authority for Essex and as such it has many legal duties and powers with respect to the local highways network, including a legal duty under the Highways Act 1980 to maintain the Essex highways network. At present ECC primarily meets this duty by commissioning Ringway Jacobs to deliver highways services. The Council has a ten-year contract which commenced in April 2012. The Council only issues task orders to Ringway Jacobs for the work it asks Ringway Jacobs to do. As such ECC has a broad discretion as to which task orders are issued.

Approval to place 2020/21 contractual task orders with Ringway Jacobs for values over £5m

- 3.2 Due to the high value of some task orders approval is required at the start of the new financial year (2020/21) for the task orders to be issued.
- 3.3 The high-level budgets for Essex Highways were formally approved by Council on 11 February 2020. Those budgets were based on planned levels of expenditure under a number of headings. This report seeks authority to issue task orders to reflect the assumptions made when the budget was proposed.
- 3.4 Task orders are issued under a number of headings. Some of them are for planned maintenance such as resurfacing, some are for upgrading services – such as the installation of LED streetlighting and some are for fixed costs.
- 3.5 The task orders are listed in the appendix to this report. One of the task orders relates to the basic costs of running the service, such as management costs and the costs of running depots and IT systems.
- 3.6 Most of the task orders relate to planned maintenance. In these cases, the value of the task order is calculated by reference to the target costs of a number of schemes. RJ is required to achieve the target cost and both ECC and RJ share any under and over spends above a certain limit. The number of schemes deliverable is likely to change over the year, as it may need to change as a result of unexpectedly long periods of hot or cold weather or the impact of the network of a cold spell. It may also need to change to respond to major issues occurring (e.g. the need for bridge maintenance). Changes are dealt with by variations to the task order issued under the contract.
- 3.7 For responsive maintenance there is a value attached to the task order. The format of the task order is being revised to ensure that work is prioritised in the best way possible and to clarify the position on liability for claims.
- 3.8 For major schemes, the schemes we expect to deliver in 2020/21 are in the appendix but again these may be subject to change. Any decision to change task orders will be taken in accordance with the constitution.
- 3.9 The highways service helps achieve the following aims of the Organisational Strategy:
  - **Help create great places to grow up, live and work**  
Secure sustainable development and protect the environment
    - Reduce the environmental impact and cost to the taxpayer of dealing with waste, by working effectively with partners to minimise waste.
    - Improve the image of the county, by promoting the benefits of Essex Highways and the County Council.
    - Reduce carbon emissions and energy costs for Essex Highways by supporting the development of new strategies that promote clean growth and the use of affordable energy.
  - **Transform the council to achieve more with less**  
Limit cost and drive growth in revenue

Approval to place 2020/21 contractual task orders with Ringway Jacobs for values over £5m

- Optimise revenue from services, by charging appropriately and realising commercial benefit
- Drive out inefficiency, by reducing costs, increasing productivity and adopting lean methodology.
- Work collaboratively with partners to deliver maximum value for taxpayers' money that is spent through Essex Highways.

#### **4. Options**

- 4.1 **Option 1:** Issue the task orders as in **Table 1, Appendix 1** which will enable Essex Highways to commission Ringway Jacobs to deliver planned highways maintenance services, within the already agreed budget for 2020/21.

This is the preferred option which will ensure there is no further delay to delivering works and services already scheduled for this financial year.

- 4.2 Other options include not issuing task orders, but this is not recommended as it means that no highway works will be delivered. The task orders are recommended as they represent a balance between
- \* planned maintenance – which reduces the cost of responsive maintenance
  - \* responsive maintenance - to discharge the council's legal duties
  - \* investment in improving the service which may lead to a reduction in revenue costs (eg installation of LED lighting)

#### **5. Issues for consideration**

##### **5.1 Financial implications**

- 5.1.1 Essex Highways has an approved 2020/21 revenue budget allocation of £23m within which the revenue task orders detailed in Appendix 1 can be accommodated. The task orders will be set at a level to ensure the budget can accommodate any cost pressures that contractually must be incurred.
- 5.1.2 Essex Highways has an approved 2020/21 capital budget allocation of £76.9m within which the capital highways maintenance task orders detailed in Appendix 1 can be accommodated. The £76.9m Highways capital budget allocation is assumed to be funded partly by an un-ring-fenced Department for Transport (DfT) grant which is estimated to be £28.8m and ECC resources. The associated revenue cost of borrowing to fund the remainder of the maintenance programme is approximately £3.2m per annum (based on £48.1m borrowing being required). This is accounted for within the proposed Medium-Term Resources Strategy (MTRS), there are no additional costs as a result of this decision.
- 5.1.3 Also within the approved 2020/21 capital programme is a capital budget allocation of £47m in relation to named Highways Major schemes which can accommodate the named schemes task orders as detailed in Appendix 1. This is funded by a mixture of grants and ECC resources. It is estimated that the associated revenue cost of borrowing is approximately £902,000 per

Approval to place 2020/21 contractual task orders with Ringway Jacobs for values over £5m

annum (based on £13.4m borrowing being required). This is accounted for within the MTRS, there are no additional costs as a result of this decision.

## **5.2 Legal implications -**

5.2.1 The contract with Ringway Jacobs Limited requires task orders to be issued. Ringway Jacobs must comply with the task orders. It is important that the task orders reflect sufficient information about the works which the contractor is required to do otherwise it is difficult to legally hold it account if it does not deliver what the Council is expecting. It is therefore of importance that Legal advice is taken on the content of the task orders.

## **6. Equality and Diversity implications**

- 6.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 6.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 6.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## **7. List of appendices**

Appendix 1 – Task order values  
Appendix 2 - Equality Impact Assessment

## **8. List of Background papers**

List of proposed schemes  
Draft task orders

**Table 1: Task Order values are within the allocated ECC budget for 2020/21:**

<b>REVENUE Task Orders: Values over £2m</b>
<p><b>Street Lighting - Task Order 11. Value £2m</b></p> <p>This relates to the maintenance of the street lights, including repairing defects on lights, signs and bollards. It also includes electrical and structural testing on all street lighting columns and some traffic management / out of hours costs as needed to undertake the work safely.</p>
<p><b>Routine/Emergency Maintenance - Task Order 7. Value £5.0m</b></p> <p>This relates to emergency response service which deals with dangerous and urgent defects, plus the routine repair of identified defects on footways, cycleways, signs, non-illuminated bollards, fencing and guardrail, drains and their metal covers, and road markings. These are dealt with in priority order.</p>
<p><b>Local Overheads - Task Order 28. Value £5.4m</b></p> <p>This relates to the cost of local overheads incurred by Ringway Jacobs which are required in order to deliver the highways service. These include RJ staff and general costs such as ICT hardware and ICT software and licences, mobile telephones, office and depot rent and running costs, training, insurances, personal protective equipment.</p>
<p><b>Carriageway Patching - Task Order 77. Value between £1.3m and £4.0m</b></p> <p>This relates to the delivery of permanent carriageway patching in line with the agreed maintenance strategy. (Additional external funding may be forthcoming from the Department for Transport as there was in 2019/20)</p>
<p><b>Third Party Works (External) - Task Order 35. Value estimated to be £3.0m</b></p> <p>This relates to the delivery of individual services and schemes for third parties, for example other highway authorities and District Councils. Services and schemes are wholly funded by the third party clients and not ECC.</p> <p>Examples include the selling Intelligent Transport Systems (ITS), Network Management and Passenger Transport Management services to Southend and Thurrock Unitary Authorities. These deliver financial benefits by enabling ECC to share overhead costs with other authorities and generating economies of scale for everyone.</p>
<b>Maximum Revenue Total; £19.4m</b>
<b>CAPITAL Task Orders: Values over £2m</b>
<p><b>Safety Barriers - Task Order 82. Value £2.0m</b></p> <p>The delivery of a planned programme of Capital Vehicle Restraint System works which includes an ongoing review of the current VRS assets as well as the replacement and upgrade of existing to the current standard where appropriate.</p>
<p><b>Street Lighting - Task Order 10. Value £2.5m</b></p> <p>This relates predominantly to the provision of programmed street lighting column replacement, plus the replacement of other illuminated assets such as bollards and beacons as necessary, for example when they are damaged or destroyed in accidents. The capital funding will also be used to replace sign posts where this is required on safety grounds.</p>
<p><b>Carriageway / Footway Patching and Gully Cleansing - Task Order 18. Between £1.0m to £4.0m</b></p>

This relates to the delivery of a large capital patching programme and includes the cleansing and maintenance of drainage systems prior to capital surfacing works taking place to ensure no drainage issues impact the new surfacing work. This programme helps to maintain the condition of the carriageway and footway assets alongside the larger programme of surface treatments/replacement.

**Local Highways Panels - Task Order 21. Value £4.0m**

This relates to the delivery of a planned programme of capital schemes (selected by the Cabinet Member on the advice of the Local Highways Panels). These schemes are generally allocated to support local priorities for minor infrastructure improvements but may also be used to maintain highways assets to a higher standard than would otherwise be the case.

Work is prioritised and confirmed by the LHPs to deliver an efficient, cost effective service, for example extending the use of direct delivery gangs to support delivery.

**Surface Water Alleviation Scheme (SWAS) - Task Order 83a, 83b and 83c. Value £2.5m**

This relates to the repair and complete renewal of existing highway surface water drainage systems to remove and prevent highway flooding. Works are targeted towards the PR1/PR2 network predominantly, plus high risk / flooding areas on Local Roads. Officers will decide which schemes are progressed and implemented.

**Advance Scheme Design Programme (ASD) - Task Order 84. Value £4.0m.**

This relates to the development of options, feasibility and preliminary design work for a programme of work to produce a 'pipeline' of schemes which can move forward quickly when external funding becomes available. Officers will decide which schemes are progressed for design work in the Advanced Scheme Design (ASD) programme, including planning and management of large major schemes. It also covers ASD stages 1,2 & 3a for proposed new infrastructure.

**Large Major Schemes - Task Order 85. Value £4.5m**

This relates to large major schemes identified by ECC. Four projects are covered by this task order:

**1) M11 Jct. 7A and Gilden Way Upgrading (£800,000) - Roll over scheme with 2020/21 activities as follows:**

- The Design & Build Main Works Contract (Design & Build) will be awarded in early 2020.
- Design reviews for the Contract start FY 19/20 and continuing into 2020/21.
- Design and Build construction starts FY20/21 and there will be site support to the main works.

Award of the design and build contract for construction of Junction 7a of the M11 approved by Cabinet in December 2019.

**2) A127 Fairglen (£600,000) - Roll over scheme with 2020/21 activities as follows:**

- Production of Tender Documents.
- Tender, evaluation and award of Main Works Contract.
- Site Support to the Main Works Contract.

**3) A133/A120 Link Road and Colchester Rapid Transit - (£1,0m)** (new HIF Schemes):

- Design of the Link Road and Rapid Transit schemes.

**4) Chelmsford North Eastern Bypass and Beaulieu Park Station (£1.1m)** (new HIF Scheme)

- Design of the Bypass
- Progressing the approval stages with Network Rail

**Structures - Task Order 13. Value between £8.5m and £14.0m (depending on outcome of Challenge Fund bid)**

This relates to the planned programme of capital maintenance and strengthening of structures on the network, including bridges, retaining walls and culverts (drains). In addition to the ECC budgeted £8.45m the DfT Challenge Fund could provide up to £5m to repair the Oasis bridge in Chelmsford.

**Carriageways Capital Investment - Task Order 17. Value £41.0m**

This relates to the programme of resurfacing and replacement of carriageways using various treatment types. It also includes the cost of designing schemes and the preparation of the proposed capital programme for future years. It includes feasibility works for future schemes and the management of a coring programme (T17c), related to the design of Carriageway capital works.

**Named Capital Schemes - Task Order 32a&b. Value between £5.0m and £7.0m**

This relates to the delivery of named capital schemes identified by the Major Projects team, which contribute towards ECC's promotion of economic growth and future infrastructure development. The schemes are:

**1. A120 Millennium Way, Braintree: £300,000**

This order is to fund the continuation of work on a project to create slip roads at this junction. The task order will deliver:

- Land access and cost resolution (significant issues to resolve)
- Producing a Preliminary / indicative design
- Procurement for potential start in late 20/21 (Design & Build likely)

**2. A133 Colchester to Clacton Route Based Strategy: £20,000**

Continuation of South East Local Enterprise Partnership (SELEP) funding project to construct the remaining two junction improvements at Weeley and Frating. This task order will cover the close out of the works.

**3. Colchester ITP (Borough Wide) - Ipswich Road, Colchester: £150,000**

Continuation of a SELEP funded project to improve roundabouts at Ipswich Road, Colchester. This funding will see the completion of the work

**4. M11, J8: £400,000**

Continuation of major scheme to construct improvements at junction 8 North of Harlow. This funding is for:

- Construction phase commencement and administration of the Works (construction will be completed in 2020/21)

**5. A127 Autonomous and Connected Highway: £600,000**

Continuation of the previous A127 task force to identify and assess the feasibility of a number of improvements along the A127 corridor. .

<p><b>6. Army and Navy RAB, Chelmsford: between £1.0m and £2.0m (depending on outcome of Challenge Fund bid)</b> Continuation of the Army and Navy Task Force, implementation of Short Term options and development of Long Term options.</p> <p><b>7. Cycling Infrastructure: £750,000 (new)</b> Delivery of cycle schemes resulting from the Essex Cycle Strategy, Area Action Plans, and LCWIPS (Local Cycling &amp; Walking Infrastructure Plans)</p> <p><b>8. Colchester Sustainable Transport Package: £300,000 (new)</b> Feasibility, design and implementation of a package of sustainable travel improvements in Colchester to support the ongoing development of the Colchester Transportation Strategy.</p> <p><b>9. Harlow Sustainable Transport Corridors North/South: £750,000 (new)</b> Feasibility, design and implementation of a package of sustainable travel improvements in Harlow along the North/South Corridor.</p> <p><b>10. South Maldon Relief Road: £500,000 (new)</b> Feasibility and Preliminary Design of the relief road to the south of Maldon.</p> <p><b>11. Cycling Programme: £2.0m (new)</b> To deliver a range of studies and schemes to encourage cycling and improve cycling facilities throughout Essex</p>
<p><b>Chelmsford Growth Area – Task Order 33. Value £5.4m</b> This relates to the detailed design and delivery of the parts of the Chelmsford City Growth Package which includes planning and management aspects of developing new infrastructure in Chelmsford. This is the final year of the delivery programme. Officers will decide which schemes are progressed and implemented. Schemes are likely to include:</p> <ul style="list-style-type: none"> <li>• New Street Cycle improvements</li> <li>• Broomfield Road Cycle improvements</li> <li>• Chelmer Valley Road Bus lane improvements</li> <li>• Tindal Square improvements</li> <li>• New London Road improvements</li> <li>• Great Waltham to City Centre cycle improvements</li> </ul>
<p><b>LED Phase 4 - Task Order 73. Value £9.1m</b> This is the estimated cost of delivering year 1 of a 4-year programme of work, which will be the final delivery phase 4 of the LED project. Year 1 (2020/21) aims to install around 20,000 LED lanterns out of the total of 85,000 lanterns being installed over the 4 years of the LED conversion project.</p>
<p><b>Footways capital works - Task Order 81. Value £8.3m</b> This relates to the delivery of a programme capital footway works, mainly but not exclusively prioritising low footfall footways which are mainly on the local road network (residential), across 12 districts, due to previous years prioritisation around high footfall footways in town centres This will include delivery of low-cost maintenance treatments and smaller footway repairs.</p>
<p><b>Maximum Capital Total; £108.3m</b></p>



**Forward Plan reference number:** FP/609/01/20

<b>Report title:</b> Incorporation of South East Local Enterprise Partnership	
<b>Report to:</b> Cabinet	
<b>Report author:</b> Paul Turner, Director, Legal and Assurance	
<b>Date:</b> 21 January 2020	<b>For:</b> Decision
<b>Enquiries to:</b> Paul Turner, Director, Legal and Assurance and Monitoring Officer email <a href="mailto:paul.turner@essex.gov.uk">paul.turner@essex.gov.uk</a>	
<b>County Divisions affected:</b> All Essex	

## 1. Purpose of Report

- 1.1 The South East Local Enterprise Partnership exists to promote employment opportunities and distribute Government funding. All Local Enterprise Partnerships are now required by central Government to set up a company and this report explains how this is proposed to happen and asks Cabinet to take the necessary decisions to allow this to happen.

## 2. Recommendations

- 2.1. Agree that the Council will become a member of South East LEP Limited with articles of association as at appendix 1.
- 2.2 Agree to sign the framework agreement in the form at appendix 2.
- 2.3 Agree that the Leader will be the Council's initial member of the Board with the Deputy Leader as alternate director.
- 2.4 Agree that the Leader will be the Council's initial member of the Accountability Board with the Deputy Leader as principal substitute.
- 2.5 Agree that Essex County Council will continue as the Accountable Body for SELEP on incorporation of the company SELEP Ltd.

## 3. Summary of issue

- 3.1 Local Enterprise Partnerships were created locally to replace Regional Development Agencies. In order to allow flexibility, the Government did not have any prescriptive requirements as to legal structure and there has been diversity as to how they operate. However, over time Government thinking has changed and the Government now requires all LEPs to create a company if they are to continue to be eligible to receive Government funding.
- 3.2 Essex is part of the South East Local Enterprise Partnership (SELEP). This covers the combined administrative areas of:

- East Sussex
- Essex
- Kent
- Medway
- Southend on Sea
- Thurrock

3.3 SELEP currently operates with Essex County Council (ECC) acting as the 'Accountable Body'. As Accountable Body it is legally accountable to Government for how the money is spent across the SELEP area. SELEP has a Strategic Board and four Federated Boards which are all informal bodies with no legal constitution. These organisations consider applications for funding and the Strategic Board makes recommendations to a local authority joint committee comprising one member for each of the six local authorities and an independent non-voting chairman, who is also vice-chairman of the strategic board. Funding passes from ECC to the relevant local authority who then enter into an agreement with the recipient, ensuring there is local accountability for funding. SELEP is supported by a small team of officers (Secretariat) who are employed by ECC but who report directly to the Section 151 Officer rather than to the economic growth team. The current structure therefore gives:

- A strong voice for business who dominate the federated and strategic boards.
- An efficient structure which uses existing employers, pension arrangements and financial systems.
- Local accountability so that local authorities have an input in allocation of funds via the Strategic Board via the joint committee and are accountable for the activities of recipients of funding by signing agreements with the Accountable Body.

3.4 A diagram showing how SELEP currently operates is at appendix 3.

3.5 Although SELEP members and partners are happy with how SELEP is operating, there have been some concerns about how other LEPs are operating and in 2018 the Government decided that all LEP's would need to operate via a company and SELEP are required to incorporate by April 2020

3.6 The SELEP partners have been working on how best to achieve this. The consensus is that a company should be included in the arrangements with as little change as possible to the current arrangements to ensure continuation of the robust governance arrangements currently in place.

3.7 It is therefore proposed that a company limited by guarantee should be created. A diagram showing how the company will operate is at appendix 3. The members of the company would be:

- Members of the Federated Boards who wish to become members of the company.

- One member nominated by each local authority.

This will continue to give Federated Boards a strong voice in the running of the company and the members/Federated Boards will continue to make recommendations on allocation of funding and will continue to have a say in the appointment of the board of the company.

- 3.8 The board of the company would be comprised of between 20-25 unpaid directors as follows:

**(1) Fourteen Private Sector Directors:**

- The Chair (independently appointed)
- The Deputy Chair (independently appointed)
- Two individuals nominated by the Success Essex Members
- Two individuals nominated by the Opportunity South Essex Members
- Five individuals nominated by Kent & Medway Members
- Three individuals nominated by East Sussex Members

**(2) Six Public Sector Directors**, one appointed by each of the six local authorities.

**(3) Up to five co-opted directors:**

- Two District/Borough/City Council Leaders or Cabinet Members
- One Further Education representative
- One Higher Education representative
- One Third Sector representative

- 3.9 It is important to note that company directors are required to act in the best interests of the company rather than representing their employer. The proposals on the composition of the Board is the maximum size of board permitted by central Government and strikes a balance between Essex, Kent and East Sussex. The Government also requires a local authority to remain as Accountable Body since the statutory power used to pay money only allows money to be paid to local authorities.
- 3.10 In order to disturb the arrangements as little as possible the Strategic Board has decided that it does not want the company to hold the funding or employ any staff. This minimises risk and cost, but does have the consequence that it is still the local authorities which will be making the final decision on allocation of funding via the Accountability Board and money will still pass from the Accountable Body to the local authority or FE college for the beneficiary's area.
- 3.11 The business members of the SELEP Boards have decided that this is the way in which they want to work. They are comfortable with this because in practice the SELEP partners and the Secretariat have worked hard to develop consensus on funding, meaning that in practice funding is rarely contentious by the time decisions are taken. The joint committee will of course continue to

give great weight to the views expressed by the Federated Boards and the business representatives.

3.12 The SELEP Strategic Board has therefore recommended that this approach is taken.

3.13 The other main option considered was to have the company employing the Secretariat and receiving and distributing the funding, but this would involve a lot of legal and financial structures and the consensus is that the costs and bureaucracy involved in this outweighs the benefits.

3.14 The recommended approach has been developed in consultation with the Ministry of Communities, Housing and Local Government and the Department for Business, Energy and Industrial Skills who are happy with the proposals.

## **4. Issues for consideration**

### **4.1 Financial Implications**

4.1.1 This report will have no direct financial implications since SELEP will continue to operate in the current manner and the Council will continue to contribute and passport funding to recipients in the same way as it currently does.

4.1.2 As the Accountable Body, Essex County Council, retains overall legal accountability for the funding streams, and is responsible for overseeing the proper administration of financial affairs when these affairs relate to public funds.

4.1.3 The Accountable Body will receive funds from Government on behalf of the SELEP Ltd. The Accountable Body ensures that public funds are handled in line with the relevant procedures and grant conditions and that funds are used with propriety, regularity and deliver value for money. This includes an oversight function of processes such as LEP governance and transparency arrangements, compliance with the framework and agreement on scrutiny arrangements, to ensure that the checks and reporting requirements of the Section 151 Officer are met, this includes retaining appropriate documentation on decisions around funding.

A.1. The oversight function includes ensuring;

- A.1.1. all grants are transferred to Partner Authorities under an SLA or grant agreement, as appropriate, which reflects the grant requirements of the awarding body and any additional requirements agreed by the SELEP Ltd Strategic Board and/or Accountability Board;
- A.1.2. all loans are transferred to Partner Authorities under a loan agreement, which reflects the loan requirements of the awarding body and any additional requirements agreed by the SELEP Ltd Strategic Board and/or Accountability Board;

- 4.1.4 The Framework Agreement in place between SELEP Ltd, the respective County and Unitary Authorities, including Essex County Council clearly defines the roles and relationships between the SELEP Ltd and the Accountable Body; this will be supported by a service level agreement (SLA) which will be agreed between the Accountable Body and SELEP Ltd and published on the SELEP Ltd website. The SLA will set out how the Accountable Body will collaborate with the SELEP Ltd to ensure that the terms of the Framework Agreement and the SLA are met.
- 4.1.5 ECC will be paid a sum set and agreed each year for the reasonable costs of acting as the Accountable Body. This will comprise of a fixed charge for the basic services. This service level is the minimum service required for ECC to represent SELEP Ltd as the Accountable Body. ECC will also be paid a sum for services provided during the year for enhanced activities as the Accountable Body. The basic and enhanced services will be detailed in the SLA.
- 4.1.5 The service levels will be reviewed annually and agreed with SELEP Ltd during the budget setting process.

## **4.2 Legal Implications**

- 4.2.1 The recommendations in this report have been developed in consultation with the other five local authorities and with the current SELEP boards.
- 4.2.2 SELEP has obtained counsel's advice on liabilities of directors of the company. Counsel has advised that since the company has no assets the risks are low and most liabilities will be covered by directors and officers insurance which the company intends to procure via the Accountable Body.

## **5. Equality and Diversity implications**

- 5.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 5.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

- 5.3 No equality impact assessment has been written as this report will largely continue with SELEP's existing processes. One positive impact which is related to but not directly caused by the incorporation of SELEP is that the new Assurance Framework requires SELEP to meet requirements relating to equalities and diversity which is therefore likely to lead to a greater participation in public life by people with a protected characteristic.

## **6. List of Appendices**

Appendix 1 – Articles of Association

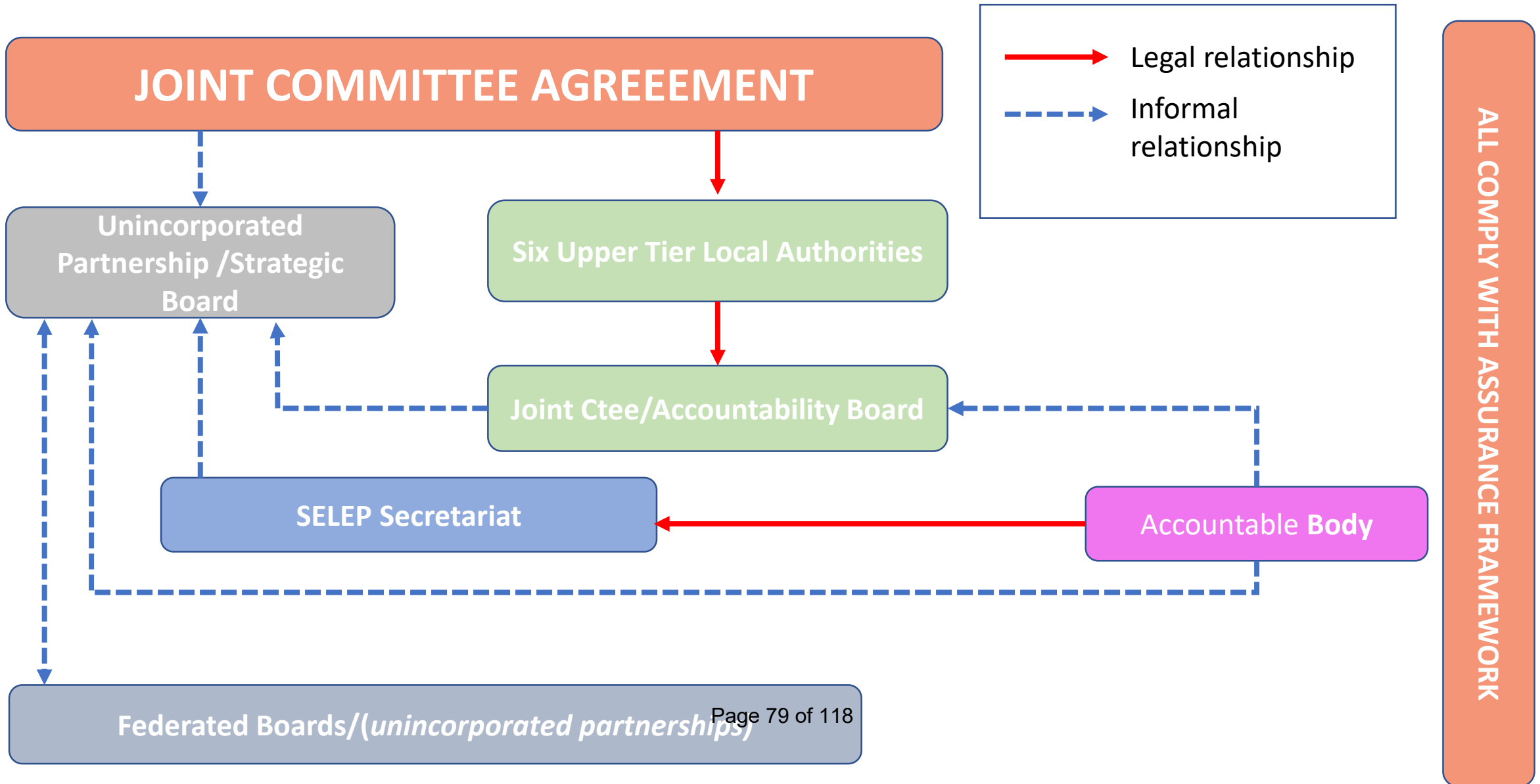
Appendix 2 – Framework Agreement

Appendix 3 - Diagrams showing how SELEP operates

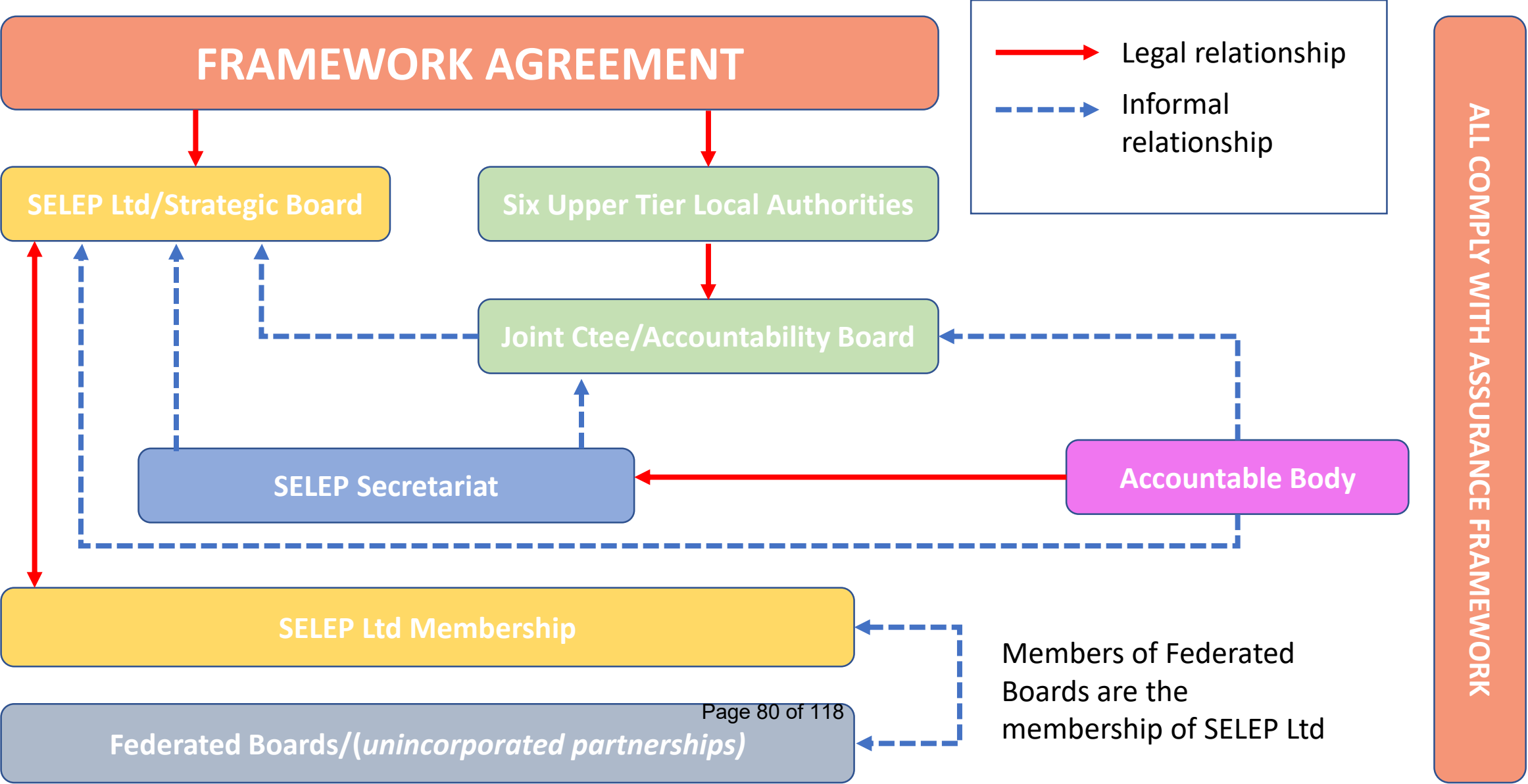
## **7. List of Background papers**

**None**

# SELEP Governance Diagram – Old Structure



# SELEP Governance Diagram – New Structure





**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY**  
**GUARANTEE**

**ARTICLES OF ASSOCIATION**  
**OF**

**SOUTH EAST LEP LIMITED (the "Company") Dated 2020**

**Interpretation, objects and limitation of liability**

**1. INTERPRETATION**

1.1. In these Articles, unless the context otherwise requires

**Accountability Board** means the joint committee of the Councils constituted in accordance with the Framework Agreement

**Accountable Body:** means Essex County Council or such other local authority from time to time having responsibility for overseeing the proper administration of financial affairs within the LEP Area when these relate to public funds;

**Act:** means the Companies Act 2006;

**AGM:** has the meaning given to it in article 26;

**Articles:** means the Company's articles of association for the time being in force;

**Assurance Framework:** means the local assurance framework as adopted by the Company with the agreement of the Accountable Body from time to time in accordance with the requirements of the central government in order to pay funding to local enterprise partnerships;

**Bankruptcy:** includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

**Business Day:** means any day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business;

**Chair:** has the meaning given to it in article 12.1;

**Code of Conduct:** means the code of conduct contained in the Assurance Framework

**Confidential:** information is classified if it falls within the definition of 'exempt information' or "confidential information" by virtue of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. This includes:

- (a) Information provided by a Government Department on terms which forbid the disclosure of the information to the public;
- (b) Where disclosure to the public is prohibited by a court or;
- (c) Where the Accountability Board holds "exempt information" under Schedule 12A of the Local Government Act 1972.

This also includes information relating to an individual, relating to the financial or business affairs of a particular person, negotiations, labour relations, legal professional privilege and in connection to the investigation or prosecution of a crime.

**Conflict:** means a situation in which a Director has or can have, a direct or indirect interest that conflicts or may conflict, with the interests of the Company;

**Conflicts of Interest Policy:** means the policy of the Company governing Conflicts, as set out in the Assurance Framework.

**Co-opted Directors:** means the following, selected in accordance with the Assurance Framework

- Two District/Borough/City Council Leaders or Cabinet Members
- One Further Education representative
- One Higher Education representative
- One Third Sector representative

**Councils** means Southend on Sea Borough Council, East Sussex County Council, Essex County Council, Kent County Council, Medway Council and Thurrock Council

**Deputy Chair:** has the meaning given in article 12.2;

**Director:** means a Director of the Company and includes any person occupying the position of Director, by whatever name called;

**Directors:** means all of the Co-opted Directors, the Private Sector Directors, the Public Sector Directors, the Chair and the Deputy Chair.

**Document:** includes, unless otherwise specified, any document sent or supplied in electronic form;

**Electronic form:** has the meaning given in section 1168 of the Act;

**Eligible Director:** means a Director who would be entitled to vote on the matter at a meeting of Directors (but excluding any Director whose vote is not to be counted in respect of the particular matter pursuant to article 15 and/or the Conflicts of Interest Policy);

**Federated Boards:** means all or any of the four groups of persons known at the date of incorporation from the four federated areas known as follows,

- "Success Essex",
- "Opportunity South Essex",
- "the Kent and Medway Economic Partnership" and
- "Team East Sussex "

or such successor or replacement body approved by the Directors as part of the Assurance Framework with the consent of each Council whose administrative area is served by the relevant Federated Board.

**Federated Board Members:** means a person who appears to the Directors to be a member of any of the Federated Boards.

**Framework Agreement:** means the agreement between the Councils and the Company constituting the Accountability Board

**Class of Members** means either the East Sussex Members, the Essex Members, the South Essex Members, the Kent and Medway Members as the case may be

**LEP Area:** means the combined administrative areas of the Councils or such other geographical area as is assigned to the Company by government from time to time;

**Member:** means a person whose name is entered in the Register of Members of the Company and **Membership** shall be construed accordingly;

**East Sussex Member** means a Member who was either

- nominated by the **East Sussex Members**;
- was a member of the Team East Sussex Federated Board at the date of incorporation; or has been nominated by the Directors as an East Sussex Member in accordance with article 23

**Essex Member** means a Member who was either

- nominated by the **Essex Members**;
- was a member of the Success Essex Federated Board at the date of incorporation; or
- has been nominated by the Directors as an Essex Member in accordance with article 23

**Kent and Medway Member** means a Member who was either

- nominated by the **Kent and Medway Members**;
- was a member of the Kent and Medway Economic Partnership Federated Board at the date of incorporation; or
- has been nominated by the Directors as a Kent and Medway Member in accordance with article 23.

**South Essex Member** means a Member who was either

- nominated by the **South Essex Members**;
- was a member of the Opportunity South Essex Federated Board at the date of incorporation; or
- has been nominated by the Directors as a South Essex Member in accordance with article 23.

**Model Articles:** means the model articles for private companies limited by guarantee contained in Schedule 2 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these Articles;

**Objects:** has the meaning given to it in article 2.1 and **object** shall mean any one of them;

**Private Sector Director:** means the following:

- The Chair
- The Deputy Chair
- Two individuals nominated by the Success Essex Members as the Success Essex business representatives
- Two individuals nominated by the Opportunity South Essex Members as the Opportunity South Essex business representatives
- Five individuals nominated by Kent & Medway Members as the Kent & Medway Economic Partnership business representatives
- Three individuals nominated by East Sussex Members as the Team East Sussex business representatives

**Public Sector Director:** means a person nominated as such by one of the Councils being

- One person from Essex County Council,
- One person from Thurrock Council,
- One person from Southend-on-Sea Borough Council,
- One person from Medway Council,
- One person from Kent County Council and
- One person from East Sussex County Council

**Scheme of Delegation:** has the meaning given to it in article 7.3;

**Secretariat** means those persons employed by the Accountable Body or a Council for the purposes of providing administrative, financial, secretarial or professional support to the Company and the Accountability Board pursuant to the Framework Agreement

**Secretary:** means an officer of the Secretariat nominated by the Accountable Body to act

as such

**Special Resolution:** has the meaning given in section 283 of the Act;

**Subsidiary:** has the meaning given in section 1159 of the Act;

**Writing:** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

- 1.2. Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles.
- 1.3. Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.
- 1.4. A reference in these Articles to an **article** is a reference to the relevant article of these Articles unless expressly provided otherwise.
- 1.5. Unless expressly provided otherwise, a reference to a statute or statutory provision shall include any subordinate legislation from time to time made under that statute or statutory provision.
- 1.6. Any word following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.7. The Model Articles shall not apply to the Company.

## **2. OBJECTS**

2.1. The objects for which the Company is established (**Objects**) are:

- 2.1.1. to stimulate economic growth, productivity, employment, community development, job creation, inward investment, training and development, and commerce in the LEP Area;
- 2.1.2. to promote the LEP Area positively at regional, national, European and international levels on matters affecting its economic development; and
- 2.1.3. to act as a facilitator to develop strong working relationships between key stakeholders across the South East of England, ensuring there is a shared vision for a prosperous LEP Area to unlock barriers to growth.

## **3. POWERS**

3.1. In pursuance of the Objects, the Company has the power to:

- 3.1.1. do all such things which in the opinion of the Directors are in the best interests of the Company and its Members; and
- 3.1.2. do all such other lawful things as are incidental or conducive to the pursuit or to the attainment of any of the Objects.

## **4. INCOME**

- 4.1. The income and property of the Company from wherever derived shall be applied solely in promoting the Objects.
- 4.2. No distribution shall be paid or capital otherwise returned to the Members in cash or otherwise. Nothing in these Articles shall prevent payment in good faith by the Company of expenses to Members or Directors in accordance with policies that may be adopted from time to time in the Assurance Framework.

## 5. WINDING UP

On the winding-up or dissolution of the Company, after provision has been made for all its debts and liabilities, any assets or property that remain available to be distributed or paid, shall not be paid or distributed to the Members but shall be transferred to similar bodies or another body with objects similar to those of the Company within the LEP Area or as directed by the government department then responsible for Local Enterprise Partnerships or their successor body.

## 6. GUARANTEE

- 6.1. The liability of each Member is limited to £1.00, being the amount that each Member undertakes to contribute to the assets of the Company in the event of its being wound up while he or she is a Member or within one year after he or she ceases to be a Member, for
  - 6.1.1. payment of the Company's debts and liabilities contracted before he or she ceases to be a Member;
  - 6.1.2. payment of the costs, charges and expenses of the winding up; and
  - 6.1.3. adjustment of the rights of the contributories among themselves.

### Directors: General

## 7. DIRECTORS' GENERAL AUTHORITY AND CONDUCT

- 7.1. There shall be between twenty and twenty-five Directors of the Company
  - Fourteen Private Sector Directors
  - Six Public Sector Directors (no more than one nominated by each Council)
  - Five Co-opted Directors
- 7.2. Subject to these Articles, Directors are responsible for the management of the Company's business and may exercise all the powers of the Company accordingly.
- 7.3. Each of the Directors shall use their respective rights and powers to procure, so far as they are each able, that decisions of the Company are carried out in accordance with the Assurance Framework and any scheme of delegation for the time being adopted by the Company and contained in the Assurance Framework (**Scheme of Delegation**).
- 7.4. Subject always to the Act, in their conduct of the Company's business the Directors shall at all times:
  - 7.4.1 conduct themselves in a professionally responsible manner;
  - 7.4.2 have due regard to all confidentiality obligations concerning the Company's business;
  - 7.4.3 observe the seven principles as set out by The Committee on Standards in Public Life (as amended from time to time); and
  - 7.4.4 comply with the provisions of the Assurance Framework.

## **8. DIRECTORS MAY DELEGATE**

### **8.1. Subject to the Articles:**

- 8.1.1 the Directors may delegate any of the powers which are conferred on them under the Articles and which are in line with the Assurance Framework and any Scheme of Delegation:
  - i. to such person or committee;
  - ii. by such means (including power of attorney)
  - iii. to such an extent;
  - iv. in relation to such matters or territories; and
  - v. on such terms and conditions;
  - vi. as they think fit.
- 8.1.2 If the Directors so specify, any such delegation may authorise further delegation of the Directors' powers by any person to whom they are delegated.
- 8.1.3 The Directors may revoke any delegation in whole or part, or alter its terms and conditions at any time.

### **Directors: Decision-Making**

## **9. DIRECTORS TO TAKE DECISIONS COLLECTIVELY**

- 9.1. The general rule about decision-making by Directors is that any decision of the Directors must be a majority decision taken in one of the following ways:
  - 9.1.1. on show of hands at a meeting of the Directors;
  - 9.1.2. by written resolution, copies of which have been signed by a majority of the Eligible Directors or to which a majority of the Eligible Directors have otherwise indicated agreement in writing; or
  - 9.1.3. by a majority of the Eligible Directors indicating to each other, by any means, that they share a common view on a matter.
- 9.2. A decision may not be taken in accordance with this article 9 if the Eligible Directors purporting to take the decision would not have formed a quorum had the decision taken place in a meeting.

## **10. DIRECTORS' MEETINGS**

- 10.1. Directors' meetings shall take place not less than once per every three months. Directors meetings shall be open to the public, with the exception of any information or items classified as Confidential
- 10.2. Notwithstanding the provisions of article 10.1 meetings of the Directors are called by the Chair or Deputy Chair by giving not less than twenty Business Days' notice of the meeting to the Directors or by authorising the Secretary (if any) to give such notice.
- 10.3. A Director who is absent from the UK and who has no registered address in the UK shall not be entitled to notice of the Directors' meeting.

- 10.4. A person is able to exercise the right to speak at a Directors' meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting
- 10.5. No business shall be transacted at a meeting of directors unless it is either:
- (a) included on the agenda for the meeting which is sent out with the notice given under article 10.2 convening the meeting; or
  - (b) certified by the Chair as urgent after consulting all directors by email.

## **11. QUORUM FOR DIRECTORS' MEETINGS**

- 11.1. At a meeting of the Directors, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 11.2. The quorum for the transaction of business at a meeting of Directors is any fifteen Eligible Directors, provided that such number must include
- At least one Success Essex business representative
  - At least one Opportunity South Essex business representative
  - At least one Kent & Medway Economic Partnership business representative
  - At least one Team East Sussex business representative
  - At least three public sector Directors
- 11.3. If the total number of Directors in office for the time being is less than the quorum required, the Directors must not take any decisions other than to appoint Co-opted Directors if there is a vacancy in accordance with article 19.

## **12. CHAIRING OF DIRECTORS' MEETINGS, APPOINTMENT OF CHAIR AND DEPUTY CHAIR AND TERMS OF OFFICE**

- 12.1. The Company shall have at all times appointed a chairperson who shall be a Private Sector Director and who shall be appointed in accordance with the process set out in the Assurance Framework and the person so appointed for the time being is the **Chair**.
- 12.2. The Company shall have at all times appointed a deputy to the Chair (Deputy Chair), who shall be a Private Sector Director and who shall be appointed in accordance with the process set out in the Assurance Framework and the person so appointed for the time being is the **Deputy Chair**.
- 12.3. Subject to clause [12.4], a Chair or Deputy Chair (as applicable) shall be appointed for periods of no more than two years, such appointment ending at the meeting of the Directors falling closest to the second anniversary of their appointment (or re-appointment). Unless otherwise determined by [special resolution], the Chair or Deputy Chair (as applicable) shall be entitled to put themselves forward for re-election for a further period of two years in accordance with the Assurance Framework provided that no Chair or Deputy Chair shall be able to serve more than six years in their respective role.
- 12.4. Where the Chair or Deputy Chair puts him or herself forward for re-election, such election shall occur at the board meeting at which their board appointment ends in accordance with article [12.3].

## **13. NOT USED**

[not used]

#### **14. CASTING VOTE**

- 14.1 If the numbers of votes for and against a proposal at a meeting of Directors are equal, the Chair or Deputy Chair chairing that meeting has a casting vote.
- 14.2 But this does not apply in respect of a particular meeting (or part of a meeting) if, in accordance with the Articles, the Chair or Deputy Chair chairing the meeting is not an Eligible Director for the purposes of that meeting (or part of a meeting).

#### **15. DIRECTORS' CONFLICTS OF INTEREST**

- 15.1 The Company shall at all times keep in force the Conflicts of Interest Policy to deal with Conflicts.
- 15.2 Subject always to the provisions of the Conflicts of Interest Policy, if a proposed decision of the Directors is concerned with an actual or proposed transaction or arrangement with the Company in which a Director is interested, that Director is not to be counted as participating in the decision-making process for quorum or voting purposes unless the Director's interest cannot in the opinion of the Chair reasonably be regarded as likely to give rise to a conflict of interest
- 15.3 For the purposes of this article, references to proposed decisions and decision-making processes include any Directors' meeting or part of a Directors' meeting.

#### **16. RECORDS OF DECISIONS TO BE KEPT**

Where decisions of the Directors are taken by electronic means, such decisions shall be recorded by the Directors in permanent form, so that they may be read with the naked eye.

#### **17. DIRECTORS' DISCRETION TO MAKE FURTHER RULES**

Subject to these articles, the Directors may make any rule which they think fit about how they and any committees formed by them take decisions, and about how such rules are to be recorded or communicated to Directors, provided always that any such rule is consistent with the Assurance Framework, the Framework Agreement and these Articles.

#### **Directors: numbers and appointment**

#### **18. NUMBER OF DIRECTORS**

Unless otherwise determined by special resolution, the number of Directors shall not be less than twenty but shall not exceed twenty-five.

#### **19. APPOINTMENT OF DIRECTORS**

- 19.1 The Directors shall be composed of Private Sector Directors, Public Sector Directors and Co-opted Directors.
- 19.2 Upon a vacancy arising for any reason for a Private Sector Director, other than the Chair and the Deputy Chair, a replacement shall be appointed by the Class of Members for the area in which the vacancy has arisen.
- 19.3 The person appointed to a vacancy as set out in article 19.2 shall be the person securing the largest number of votes at a meeting of the relevant Class of Members held for this purpose and notified to the Secretary by the person chairing that meeting



in accordance with any applicable requirements and policies set out in the Assurance Framework.

- 19.4 Upon a vacancy arising for any reason in the office of Chair or Deputy Chair a replacement shall be appointed in accordance with article 12.
- 19.5 Upon a vacancy arising for a Public Sector Director, a replacement shall be appointed on the written nomination of the relevant Council given to the Secretary by the proper officer of that Council.
- 19.6 If at any time there are fewer than five Co-opted Directors then the Directors may co-opt a person appearing appropriate to the Board in accordance with the Assurance Framework.

## **20. RETIREMENT OF DIRECTORS**

- 20.1 A Private Sector Director shall retire from office on the second anniversary of their appointment. Subject to articles 20.2 and 20.3, such retiring Director shall be eligible for re-appointment by relevant Class of Members .
- 20.2 A Private Sector Director shall, subject to article 20.3, be eligible for re-appointment for two further periods of two years.
- 20.3 Any Private Sector Director (including the Chair and Deputy Chair) who shall have served for a total of six years shall not be entitled to be re-appointed.
- 20.4 Co-opted Directors shall retire from office on the first anniversary of their appointment.
- 20.5 A Director may resign from office by notice given to the Secretary.

## **21. DISQUALIFICATION AND REMOVAL OF DIRECTORS**

- 21.1 A person ceases to be a Director as soon as:
  - 21.1.1 that person ceases to be a Director by virtue of any provision of the Act or these Articles or s/he becomes prohibited by law from being a Director;
  - 21.1.2 that person shall for more than twelve months have been absent without permission of the Directors from meetings of Directors held during that period and the Directors resolve that that person's office be vacated;
  - 21.1.3 a Bankruptcy order is made against that person;
  - 21.1.4 a composition is made with that person's creditors generally in satisfaction of that person's debts;
  - 21.1.5 two-thirds of the board of Directors resolve that the person has failed to conduct themselves in accordance with article 7 and should as a consequence be removed from office; or
  - 21.1.6 in the case of a Public Sector Director, they cease for any reason to be a member of Cabinet of the Council which appointed them; or
  - 21.1.7 in the case of a Private Sector Director (other than the Chair and Deputy0, by a vote to that effect passed by a majority of those present and voting at a meeting of their appointing Class of Members .
- 21.2 Save where a Director is a Public Sector Director, a Director shall upon ceasing to be a Director by virtue of article 21 at the same time cease to be a Member.

### **Directors: alternate Directors and miscellaneous**

## **22 ALTERNATE DIRECTORS**

- 22.1 Directors may appoint alternates in accordance with the provisions of the Assurance Framework for the Directors and any alternate appointed in accordance with such provisions shall be bound by any rules relating set out in the Assurance Framework [and Terms of Reference] for the Directors.

### **Members: becoming and ceasing to be a Member**

## 23 MEMBERSHIP

- 23.1 The first Members of the Company at incorporation shall be those who have subscribed to these articles.
- 23.2 Subject to article 23.3 any person appearing to the Directors to be a Federated Board member shall be entitled to become a Member if they submit an application for membership in the form prescribed by the Company
- 23.3 The maximum number of each Class of Members (East Sussex Members, Essex Members, South Essex Members and Kent and Medway Members) shall be as specified in the Assurance Framework from time to time but shall not in any event exceed fifty Members per Federated Board.
- 23.4 If the number of any category of Members is fewer than the maximum determined by reference to Article 23.3 then the Members of that category may, at a meeting of that category of Members called for the purpose, nominate a further Member to that category of Members by a majority of those present and voting.
- 23.5 Each Council is entitled to nominate one Member.
- 23.6 If anyone nominated as a member does not opt to become a member within one month of being nominated (or their nomination being accepted by the Directors if later) then the person or group entitled to nominate to that vacancy may make a further nomination to replace the original nominee.

## 24 DISQUALIFICATION AND REMOVAL OF MEMBERS

- 24.1 A person ceases to be a Member as soon as:
  - 24.1.1 that person ceases to be a Member by virtue of any provision of the Act or these Articles or s/he becomes prohibited by law from being a Member;
  - 24.1.2 that person misses two consecutive AGMs without attending any meetings in the intervening period;
  - 24.1.3 a Bankruptcy order is made against that person;
  - 24.1.4 a composition is made with that person's creditors generally in satisfaction of that person's debts;
  - 24.1.5 notification is received by the Company from the Member that the Member is resigning, and such resignation has taken effect in accordance with its terms;
  - 24.1.6 The Member is in breach of the Code of Conduct or is otherwise disrupting the business of the Company and at a meeting of that category of Members called for the purpose a majority of those present and voting resolve to remove that person as a Member;
  - 24.1.7 In the case of an Essex Member an East Sussex Member, a Kent and Medway Member or a South Essex Member, it appears to the Directors that the Member is no longer a member of a Federated Board.

## 25 TRANSFER OF MEMBERSHIP

Membership shall not be transferable.

### Decision making by Members: general meetings

## 26 ANNUAL GENERAL MEETING

- 26.1 The Company shall hold an annual general meeting (**AGM**) at least once every calendar year and which shall be open to the general public save at a time when the meeting is considering items classified as Confidential.

## 27 ATTENDANCE AND SPEAKING AT GENERAL MEETINGS

- 27.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- 27.2 A Member is able to exercise the right to vote at a general meeting when:
- 27.2.1 that Member is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
- 27.2.2 that Member's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other Members attending the meeting.
- 27.3 The Directors may make whatever arrangements they consider appropriate to enable those Members attending a general meeting to exercise their rights to speak or vote at it.
- 27.4 In determining attendance at a general meeting, it is immaterial whether any two or more Members attending it are in the same place as each other.

## **28 Not used**

### **29. CHAIRING GENERAL MEETINGS**

- 29.1. The Chair or, in his or her absence, the Deputy Chair shall preside as chair of every general meeting.
- 29.2. If neither the Chair nor the Deputy Chair is present within fifteen minutes after the time appointed for holding the meeting and willing to act, the meeting shall be adjourned and reconvened.

### **30. ATTENDANCE AND SPEAKING BY NON-MEMBERS**

- 30.1 At an AGM the Chair of the meeting shall permit such other persons who are not Members of the Company to attend and speak in accordance with the Assurance Framework.
- 30.2 In addition to the other provisions of these articles the Chair of a general meeting may permit others to attend a meeting and speak.

### **31. ADJOURNMENT**

- 31.1. The chair of the meeting may adjourn a general meeting if:
- 31.1.1. the meeting consents to an adjournment; or
- 31.1.2. it appears to the chair of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- 31.2. The chair of the meeting must adjourn a general meeting if directed to do so by at least 50% of the Members present at the meeting.
- 31.3. When adjourning a general meeting, the chair of the meeting must:
- 31.3.1. either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the Directors; and
- 31.3.2. have regard to any directions as to the time and place of any

adjournment which have been given by the meeting.

- 31.4. If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):
- 31.4.1. to the same persons to whom notice of the Company's general meetings is required to be given; and
  - 31.4.2. containing the same information which such notice is required to contain.
- 31.5. No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

### **Voting at general meetings**

## **32. VOTING: GENERAL**

Without prejudice to any other provision of these Articles, a resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the Articles.

## **33. ERRORS AND DISPUTES**

- 33.1. No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- 33.2. Any such objection must be referred to the chair of the meeting whose decision is final.

## **34. POLL VOTES**

- 34.1. A poll on a resolution may be demanded:
- 34.1.1. in advance of the general meeting where it is to be put to the vote; or
  - 34.1.2. at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- 34.2. A poll may be demanded by:
- 34.2.1. the chair of the meeting;
  - 34.2.2. the Directors;
  - 34.2.3. two or more persons having the right to vote on the resolution; or
  - 34.2.4. a person or persons representing not less than one tenth of the total voting rights of all the Members having the right to vote on the resolution.
- 34.3. A demand for a poll may be withdrawn if:

- 34.3.1. the poll has not yet been taken; and
- 34.3.2. the chair of the meeting consents to the withdrawal.
- 34.4. Polls must be taken immediately and in such manner as the chair of the meeting directs.

### **35. CONTENT OF PROXY NOTICES**

- 35.1. Proxies may only validly be appointed by a notice in writing (a "proxy notice") which:
  - 35.1.1. states the name and address of the Member appointing the proxy;
  - 35.1.2. identifies the person appointed to be that Member's proxy and the general meeting in relation to which that person is appointed;
  - 35.1.3. is signed by or on behalf of the Member appointing the proxy, or is authenticated in such manner as the Directors may determine; and
  - 35.1.4. is delivered to the Company in accordance with the Articles and any instructions contained in the notice of the general meeting to which they relate.
- 35.2. The Company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- 35.3. Unless a proxy notice indicates otherwise, it must be treated as:
  - 35.3.1. allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
  - 35.3.2. appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

### **36. DELIVERY OF PROXY NOTICES**

- 36.1. A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Company by or on behalf of that person, and if s/he does so the proxy (notice) shall be revoked.
- 36.2. An appointment under a proxy notice may be revoked by delivering to the Company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- 36.3. A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- 36.4. If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointer's behalf.

### **37. AMENDMENTS TO RESOLUTIONS**

- 37.1. An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:

- 37.1.1. notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine); and
- 37.1.2. the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 37.2. If the chair of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chair's error does not invalidate the vote on that resolution.

## **Administrative arrangement**

### **38. MEANS OF COMMUNICATION TO BE USED**

- 38.1. Any notice, document or other information shall be deemed served on or delivered to the intended recipient:
  - 38.1.1. if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five Business Days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
  - 38.1.2. if properly addressed and delivered by hand, when it was given or left at the appropriate address;
  - 38.1.3. if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
  - 38.1.4. if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this article, no account shall be taken of any part of a day that is not a Business Day.

- 38.2. In proving that any notice, document or other information was properly addressed, it shall suffice to show that the notice, document or other information was addressed to an address permitted for the purpose by the Act.

### **39. INDEMNITY AND INSURANCE**

- 39.1. Subject to article 39.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:
  - 39.1.1. each relevant officer shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer in the actual or purported execution and/or discharge of his duties, or in relation to them, including any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which s/he is acquitted or the proceedings are otherwise

disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's (or any associated company's) affairs; and

- 39.1.2. the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in article 39.1.1 and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.
- 39.2. This article does not authorise any indemnity to the extent that such indemnity would be prohibited or rendered void by any provision of the Act or by any other provision of law and any such indemnity is limited accordingly.
- 39.3. The Directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.
- 39.4. In this article:
  - 39.4.1. companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and
  - 39.4.2. a **relevant loss** means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company; and
  - 39.4.3. a **relevant officer** means any Director or other officer or former Director or other officer of the Company, but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not s/he is also a Director or other officer), to the extent s/he acts in his capacity as auditor.

#### **40. Changes to Articles or Assurance Framework**

- 40.1 No change to these articles or to the Assurance Framework shall take effect unless agreed in advance by the Accountable Body and until the Accountability Board has been given written notice of the proposed changes, those changes have been considered at a meeting of the Accountability Board and the decision maker has considered any comments or views expressed by the Accountability Board or any members thereof.
- 40.2 The Accountable Body shall not withhold its approval under article 40.1 unless in its opinion the change is likely to prejudice the ability of the Company or the Accountable Body to comply with the terms of any agreement to which the Accountable Body is party relating to the administration of funds or the ability to be allocated Government Funds.
- 40.3 In addition to the preceding clauses, no change to the articles which would affect the number of directors or members who may be appointed or nominated by any Class of Members may be approved without the approval of a majority of all Classes of Members
- 40.4 In addition to the preceding clauses, no change to the number of directors to be appointed by any Local Authority may be approved without being approved without the approval all local authority members.

**DATED**

**2020**

**SOUTHEND-ON-SEA BOROUGH COUNCIL** (1)

and

**EAST SUSSEX COUNTY COUNCIL** (2)

and

**ESSEX COUNTY COUNCIL** (3)

and

**KENT COUNTY COUNCIL** (4)

and

**THURROCK COUNCIL** (5)

and

**MEDWAY COUNCIL** (6)

and

**[SOUTH EAST LEP LIMITED]** (7)

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**FRAMEWORK AGREEMENT**

**In relation to South East Local Enterprise Partnership**

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**THIS AGREEMENT** is made on

2019

**BETWEEN**

- (1) **SOUTHEND-ON-SEA BOROUGH COUNCIL** of Civic Centre, Victoria Avenue, Southend-on-Sea, SS2 6ER ("Southend");
- (2) **EAST SUSSEX COUNTY COUNCIL** of County Hall, St Anne's Crescent, Uckfield, Lewes, East Sussex, BN7 1UE ("East Sussex");
- (3) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, Essex, CM1 1QR ("Essex");
- (4) **KENT COUNTY COUNCIL** of County Hall, Maidstone, Kent, ME14 1XQ ("Kent"); and
- (5) **THURROCK COUNCIL** of Civic Offices, New Road, Grays, Essex, RM17 7SL ("Thurrock");
- (6) **MEDWAY COUNCIL** of Gun Wharf, Dock Road, Chatham, Kent, ME4 4TR ("Medway")

together referred to as "**the Councils**" and individually as a "**Council**".

- (7) **[SOUTH EAST LEP LIMITED]** of [ ] ("**Company**")

**BACKGROUND**

- (A) The Councils are local authorities for the purposes of the Local Government Act 1972 and best value authorities for the purposes of the Local Government Act 1999.
- (B) The unincorporated SELEP partnership was established in [ ] with the aim of stimulating growth in the economy across [ ] area. In part it aim to do this by playing a central role in determining local economic priorities and undertaking activities to drive economic growth and the creation of local jobs. It is a primary partnership of the Councils.
- (C) The Company was incorporated on [ ] in response to the requirement of Central Government for all Local Enterprise Partnerships to have legal personality.
- (D) Essex is the Accountable Body for the purposes of Funding allocated to the Company by central government and other responsibilities as set out in the Assurance Framework.
- (E) The purpose of this Agreement is to create an overarching framework setting out the duties and obligations, roles and responsibilities of the Councils, the Accountability Board, Accountable Body and the Company in relation to the activities undertaken to enable the delivery of the LEP achieve the Company's objects (as defined in its articles of association) and ithe Aims and Objectives.

## IT IS AGREED AS FOLLOWS:

### 1 Definitions

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

**Accountable Body** means Essex

**Accountability Board** means the joint committee of the Councils constituted in accordance with Schedule 2

**Agreement** means this Framework Agreement and any schedules;

**Aims and Objectives** means those aims and objectives set out in the Assurance Framework

**Assurance Framework** means the local assurance framework of the Company as adopted by the Company with the agreement of the Accountable Body and the Accountability Board from time to time in accordance with the requirements of central government in order to pay funding to local enterprise partnerships

**Commencement Date** means [xxxx] 2020

**Councils** means Southend, East Sussex, Essex, Kent, Medway, Thurrock.

**Council Contribution** for a particular Financial Year means a contribution which a Council has agreed to make to the Support Funding

**EIR** means the Environmental Information Regulations 2004;

**FOIA** means the Freedom of Information Act 2000;

**Financial Year** means during the continuance of the Agreement any period commencing on 1 April and ending on the following 31 March

**Funding** means all and any devolved government revenue and capital funding which central government pays to the Accountable Body for the purpose of SELEP;

**Funding Agreement** means an agreement between the Accountable Body a Council or such other Party to receive funding as may be necessary under which the Accountable Body pays Project Funding to that Council or such other party for onward transmission to a Recipient

**Parties** means the parties to this Agreement.

**Project Funding** means that part of the Funding which is to be used for the purposes of schemes allocated by the Company and Accountability Board

**Recipient** means a person or entity which has received Project Funding from a Council

**Secretariat** means those persons employed by the Accountable Body for the purposes of providing administrative, technical or professional support to the Company and the

Accountability Board in accordance with this Agreement

**Support Funding** means that part of the Funding which is not Project Funding aggregated with the Council Contributions.

**SELEP Area** means the combined administrative area of the Councils

**Support Contracts** means contracts entered into by the Accountable Body to the extent that they relate to the provision of advice or support or the provision of services to the Company and the Accountability Board.

**Terms of Reference** means the terms of reference of the Accountability Board as set out in Schedule 1.

1.2 Headings contained in this Agreement are for reference purposes only and should not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

1.3 References to any statute or statutory provision include references to:

1.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom;

1.3.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;

## **2. Duration**

2.1 This Agreement shall commence on the Commencement Date and shall continue in effect until terminated in accordance with Clause 25 of this Agreement.

## **3 Principles and Key Objectives**

3.1 The Parties will work together to deliver the Aims and Objectives acting in their respective capacities as Accountable Body, Accountability Board and the Company.

3.2 The Parties agree that the following principles underpin their collaborative working and the terms of this Agreement as follows:

3.2.1 mutual co-operation and collaboration;

3.2.2 accountability;

3.2.3 transparency;

3.2.4 mutual benefits

3.3 In order to achieve these objectives and the Aims and Objectives, the Parties agree that they will work together with mutual trust, good faith and in an open, co-operative and collaborative manner. The Parties will work together in a spirit of mutual trust in order to ensure the successful management of the Aims and Objectives and will respond in a timely manner (or within the timescales agreed between the Parties

where appropriate) to all reasonable requests from each other.

- 3.4 It is the overriding responsibility of the Parties to ensure that Funding is allocated in such a way which
  - 3.4.1 ensures that the Company and the Accountable Body comply with the terms and conditions on which Funding is paid to the Accountable Body
  - 3.4.2 ensures that public money is spent in the best way to develop and enhance the economy of the SELEP Area
  - 3.4.3 is in accordance with the Assurance Framework.

#### **4 Accountability Board**

- 4.1 The Accountability Board is constituted in accordance with Schedule 2 to this Agreement
- 4.2 The Parties agree that each will comply with its obligations set out in Schedule 1 to this Agreement.
- 4.3 In making decisions the Accountability Board will primarily have regard to the need to ensure that decisions it makes are supported by the people and organisations who participate in achieving the aims and objectives of the Company, the need to maintain the confidence of such persons in their ability to influence the award of funding insofar as it is proper to do so. Accordingly, the Accountability Board will give great weight to any recommendation made to it by or on behalf of the Company. The Accountability Board will also have regard to the following:
  - 4.3.1 The fact that Funding is paid to the Accountable Body by central government so that it can be spent in accordance with the Assurance Framework
  - 4.3.2 The fact that the Assurance Framework includes checks and safeguards designed to ensure that recommendations made to the Accountability Board have been made having regard to Aims and Objectives articulated by the Company and without the participation of any person or organisation which has a conflict of interest.
  - 4.3.3 The need to ensure that Funding is only paid when it is received from Central Government by the Accountable Body and the Accountable Body is satisfied that the conditions of Funding attached by central government have been complied with and that the Recipient has agreed to comply with any conditions of Funding required by central government or the Accountable Body.

#### **5 Finance**

- 5.1 The Accountable Body will hold all Funding on behalf of the Company and Accountability Board and will
  - 5.1.1 Maintain accounting records of transactions undertaken by or on behalf of the Company and Accountability Board in accordance with proper accounting practice
  - 5.1.2 Provide such information as the Accountability Board, Secretariat or the Company shall reasonably require about the money held by the Accountable Body
  - 5.1.3 Arrange for the external audit of the Funding.

- 5.1.4 Ensure that the Chief Executive Officer of SELEP is accountable to the Company in the discharge of his duties in accordance with the Assurance Framework.
- 5.2 The Accountable Body's section 151 officer will be responsible for ensuring that the Accountable Body complies with its duties under this agreement
- 5.3 The Accountable Body will not spend any Project Funding unless:
  - 5.3.1 The spend is in accordance with a decision taken by the Accountability Board;
  - 5.3.2 The spend is required in accordance with the conditions upon which the Funding was paid to the Accountable Body; or
  - 5.3.3 The spend is to defray a liability incurred by the Accountable Body wholly as a result of and in accordance with its role as the Accountable Body
- 5.4 The Accountable Body will only spend Support Funding on:
  - 5.4.1 The costs incurred in connection with employing the Secretariat
  - 5.4.2 Making an internal recharge in accordance with proper accounting practices to reflect the cost of providing services to the Company, the Accountability Board or to the Secretariat.
  - 5.4.3 The costs incurred in connection with the Company and Accountability Board Support Contracts.
- 5.5 Before the start of each Financial Year the Secretariat in consultation with the Company will bring a report to the Accountability Board with the proposals (a **Proposed Budget**) setting out
  - 5.5.1 the proposed level of Council Contributions (subject to agreement by the relevant Council, such agreement not to be unreasonably withheld and it shall be reasonable if the proposed Council Contribution is no more than the previous year's contribution increased in line with the retail prices index (excluding mortgages) over the previous 12 months using the most recent figures published at the time of calculation),
  - 5.5.2 the total Support Funding available
  - 5.5.3 how the Support Funding is to be allocated with respect to that Financial Year.
- 5.6 The Accountability Board shall approve the proposals with such amendments as they reasonably require, but in making amendments they must ensure that there will be sufficient Support Funding available in that year to defray the cost of implementing the Proposed Budget.
- 5.7 The Proposed Budget as approved by the Accountability Board shall be the Budget for that Financial Year.
- 5.8 The Budget may be amended by the Secretariat from time to time after consulting the Accountable Body with approval of the Accountability Board, but subject always to continuing obligation to ensure that there will be sufficient Support Funding available in that Financial Year to defray the cost of implementing the Budget
- 5.9 The Accountable Body shall manage the Support Funding with an officer in the Secretariat being the budget holder in accordance with the Accountable Body's constitution and financial regulations and shall use all reasonable endeavours to only spend the Support Funding in accordance with the Budget as amended from time to time.
- 5.10 If the Accountable Body incurs expenditure contrary to the Budget it shall report this to the Company and the Accountability Board promptly.
- 5.11 Each Council shall pay its Council Contribution to the Accountable Body no later than 1

July in each Financial Year

## **6 The Secretariat**

- 6.1 The Accountable Body will employ the Secretariat who will be employed on the Accountable Body's terms and conditions of employment and be subject to the employment policies of the Accountable Body.
- 6.2 The Accountable Body will ensure that line management is provided to the Secretariat in consultation with the Chair, where necessary, in order to ensure that the Secretariat is effectively performing its role.
- 6.3 The role of the Secretariat is
  - 6.3.1 to support allocation of Funding
  - 6.3.2 to liaise with members of the Company and Accountability Board, applicants
  - 6.3.3 to procure and manage the Company and Accountability Board contracts
  - 6.3.4 to administer the Company and Accountability Board
  - 6.3.5 to respond to requests for information regarding the Company and its business from the Accountability Board, and the Company;
  - 6.3.6 to manage the expenditure and recovery of Project Funding
  - 6.3.7 to manage the Company website and ensure it is kept updated
  - 6.3.8 to report to the Company, to the Accountability Board and to the Accountable Body about issues affecting SELEP and to provide such information as those bodies shall reasonably require.
  - 6.3.9 to liaise with central government and anyone providing Funding.
  - 6.3.10 to draft the Assurance Framework and to review it annually to ensure that it meets the requirements of the National Local Growth Assurance Framework
  - 6.3.11 to ensure that all operations and decision making of the Company and the Accountability Board meet the requirements of the Assurance Framework

## **7 Project Funding**

- 7.1 The process for allocation of Project Funding shall be in accordance with the Assurance Framework..
- 7.2 Subject to clause 5.3, the Accountable Body will not spend any Project Funding unless it has been allocated to the proposed spend by the Accountability Board on the recommendation of the Company and there is a contract (a Funding Agreement) relating to that Funding which is in such form as may be approved by the Company and the Accountable Body in place between
  - 7.2.1. the Accountable Body
  - 7.2.2. the Company; and
  - 7.2.3. the Council in whose administrative area the project will be delivered.
- 7.3 The Accountable Body will release Project Funding in accordance with the terms of Funding Agreements subject to the Accountable Body being reasonably satisfied that
  - 7.3.1 the terms of such agreements have been complied with, and
  - 7.3.2 the Accountable Body having received sufficient Project Funds to meet the release of the Funding.
- 7.4 A Council which is Party to a Funding Agreement will ensure that it is only paid out on

terms which require the Recipient to use the funding for the approved purposes and achieve those outputs within a defined time and which otherwise comply with the Assurance Framework and the terms upon which the relevant Project Funding is received.

7.5 A Council which is a party to a Funding Agreement must take action against the Recipient to enforce the terms of the agreement with the Recipient of the funding where there has been a breach of the agreement between the Council and the Recipient and either

- The Accountable Body considers that the Council needs to take action in order to comply with the terms of any Project Funding;
- The Accountable Body considers that it is necessary to do so in order to maintain public confidence in the Company and/or the Accountability Board or to minimize or avoid fraud; or
- the Company makes a written request.

## **8 Governance and decision making**

8.1 The Assurance Framework sets out governance and how decisions will be made and may only be changed:

8.1.1 By the Company with the agreement of the Accountable Body.

8.1.2 By the Accountability Board where agreement in accordance with 8.1.1 has not been possible and the change is the minimum required in order to comply with the requirements of the National Local Growth Assurance Framework, as may be amended from time to time, and the terms upon which any Funding is paid or is proposed to be paid or which the Company and/or the Accountability Board is required to make.

8.2 The Company agrees that it will not change its articles of association other than with the prior agreement of the Accountability Board (not to be unreasonably withheld or delayed).

8.3 The Company will

8.3.1 Approve an Economic Plan which sets out the Company's Strategic Direction and aims and objectives from time to time.

8.3.2 Appoint an investment panel to prioritise the allocation of Project Funding

8.3.3 Provide an Interface with central government

8.3.4 Oversee pan LEP work

8.3.5 Develop an annual delivery plan

8.3.6 Develop strategic economic plans and policies.

8.3.7 Identify a prioritised list of schemes within the available Project Funding including under / over programming to enable prudent management.

**9** The Accountable Body will take reasonable steps to

9.1 Ensure decisions and activities of the Company and the Accountability Board conform with legal requirements with regard to equalities, social value, environment, State Aid, public procurement;

9.2 Ensure that the funds are used appropriately, and in a manner that is consistent with the contents of the offer letter from central government, where appropriate;

9.3 Ensure that the Assurance Framework is adhered to;

## **10 Freedom of Information, Environmental Information and Transparency**

10.1 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the EIR and each Party shall, where reasonable, assist and co-operate with the other (at their own expense) to enable each Party to comply with these information disclosure obligations.

10.2 Where a Party receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of another Party it shall:

10.2.1 transfer the request for information to the other Party as soon as practicable after receipt and in any event within 2 (two) Business Days of receiving a request for information;

10.2.2 provide the other Party with a copy of all information in its possession in the form that the other Party reasonably requires within ten (10) Business Days (or such longer period as the other Party may specify) of the other Party requesting that information unless the cost of compliance exceeds the limit set down pursuant to FOIA (and provides reasonable proof of this to the other party); and

10.2.3 provide all necessary assistance as reasonably requested by the other Party to enable the other Party to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

10.3 Where a Party receives a request for information under the FOIA or the EIR which relates to this Agreement, it shall inform the other Parties of the request for information as soon as practicable after receipt and in any event at least four (4) Business Days before disclosure and shall use all reasonable endeavours to consult with the other parties prior to disclosure and shall consider all representations made by the other Party in relation to the decision whether or not to disclose the information requested.

10.4 Subject to Clause 12 (Confidentiality), each Party shall be responsible for determining in their absolute discretion whether any information for the purposes of FOIA or the EIR,:

10.4.1 is exempt from disclosure under the FOIA or the EIR; and

10.4.2 is to be disclosed in response to a request for information.

10.5 Each Party acknowledges that the other parties may be obliged under the FOIA or the EIR to disclose information:

10.5.1 without consulting with the other Party where it has not been practicable to achieve such consultation; or

10.5.2 following consultation with the other Party and having taken its views into account.

10.6 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or the EIR, the content of this Agreement is not Confidential Information.



- 10.7 Notwithstanding any other provision of this Agreement, the parties hereby consent to the publication of this Agreement in its entirety including from time to time agreed changes to this Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.

## **11 Data Protection**

- 11.1 The Parties shall comply with their obligations under the Data Protection Act 2018 in the performance of their obligations under this Agreement.
- 11.2 The provisions of this Clause 11 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

## **12 Confidentiality**

- 12.1 The parties will not use or disclose any confidential information provided by any other Party pursuant to this Agreement otherwise than for the performance of their obligations under this Agreement, save as may be otherwise agreed or required by law.
- 12.2 For the avoidance of doubt, confidential information shall not include:
- 12.2.1 any information obtained from a third Party who is free to divulge such information;
  - 12.2.2 any information which is already in the public domain otherwise than as a breach of this Agreement; or
  - 12.2.3 any information which was rightfully in the possession of a Party prior to the disclosure by any other Party and lawfully acquired from sources other than any other Party.
- 12.3 Subject to Clause 12.2 the Parties shall not make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the agreement of the other Parties

## **13 Equality**

- 13.1 The Parties shall perform their respective obligations under this Agreement in accordance with:
- 13.1.1 all applicable equality laws (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
  - 13.1.2 any applicable equality and diversity policy of the Parties from time to time; and
  - 13.1.3 take all necessary steps, and inform each other of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

## **14 Social Value**

- 14.1 In performing their respective obligations in pursuance of this Agreement the Parties shall comply with the requirements of Public Services (Social Value) Act 2012.

## **15 Environmental**

- 15.1 In performing their respective obligations in pursuance of this Agreement the Parties shall at all times co-operate with each other to improve environmental performance where it is not detrimental to the interests of any Party to do so.

## **16 NOT USED**

[Not used]

## **17 Disputes**

- 17.1 Any dispute between the Accountable Body, the Company and the Accountability Board shall

17.1.1 first be escalated to the Chair of the Company, the Deputy Chair (as Chairman of the Accountability Board) and the and the Section 151 Officer of the Accountable Body within ten working days of the dispute arising. The Chair of the Company and the Accountable Body shall procure that Section 151 Officer agree to discuss and, in good faith, attempt to resolve any such dispute and try and reach agreement on the action required to resolve the dispute.

17.1.2 In the event that the Chair and the said Section 151 Officer are unable to resolve the dispute, then the matter shall be referred to central government (or grant awarding body if not central government) by any party to the dispute for consideration.

- 17.2 Prior to action under [TO BE INSERTED] of the Assurance Framework, if any Party has any issues, concerns or complaints about any matter relating to this Agreement that Party shall notify the other Party/Parties and the Parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the Secretary of State for Business Environment and Industrial Strategy to resolve such dispute ([ ] Assurance Framework, paragraph [ ]).

- 17.3 If any Party receives any formal inquiry, complaint, claim or threat of action from a third Party they shall notify the Accountable Body and the Secretariat and co-operate with each other to respond, or take such action, as is appropriate and/or necessary in accordance with the complaints Policy in the Assurance Framework.

## **18 The Contracts (Rights of Third Parties) Act 1999**

- 18.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement but this does not affect any rights which are available apart from this Act.

## **19 General**

- 19.1 Each of the Parties represents and warrants to the others that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Agreement, and that this Agreement is executed by its duly authorised representative.

- 19.2 This Agreement cannot be varied except in writing signed by a duly authorised representative of each of the Parties.
- 19.3 The Agreement contains the whole agreement between the Parties. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 19.4 The Company shall permit any intellectual property created by or on behalf of the Company to be used by the Accountable Body and the Secretariat for the management and running of the Accountability Board, but for the avoidance of doubt, this clause does not operate to transfer the ownership of any intellectual property;
- 19.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of this Agreement shall be valid only if it is communicated to every other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.
- 19.6 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. No Party shall have, nor represent that it has, any authority to make any commitments on the other Parties' behalf.
- 19.7 Except as otherwise expressly provided by this Agreement, all remedies available to any Party for breach of this Agreement (whether under this Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of any other remedy.
- 19.8 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the relevant provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## **20 Notices**

- 20.1 Any notice to be given under this Agreement shall be in writing and may be served by personal delivery, first class recorded or e-mail to the address of the relevant Party set out below, or such other address as that Party may from time to time notify to the other Parties in accordance with this clause.

## **21 English Law**

- 21.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 21.2 The Parties hereby agree and declare irrevocably that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-

contracted disputes or claims) arising out of or in connection with this Agreement or its subject matter or jurisdiction.

## **22. Insurance**

- 22.1 The costs of public liability insurance and employee insurance for the Secretariat will be covered by the Accountable Body's insurance arrangements where that liability arises due to the actions of the Secretariat. Where a Council incurs liability, that Council will need to deal with that liability itself.
- 22.2 All costs including claims administration and legal costs and a fair proportion of the premium paid by the Accountable Body will be paid for by the Accountable Body from the Support Funding.
- 22.3 All insurance claims made against or on behalf of the Secretariat or the Accountability Board will be managed on their behalf by the Accountable Body.
- 22.4 All Councils will cooperate with insurance claims investigations and notify the Accountable Body of any potential claims relevant to this Agreement in its subject matter as soon as is reasonably practicable and take all reasonable action to prevent and minimise any loss.
- 22.5 It is the responsibility of the individual Councils separately to ensure that appropriate insurance in relation to insurance for that Council's buildings and contents and other assets are in place. Consequently the insurance cost for buildings and assets shall not be charged to the Accountability Board.
- 22.6 The Accountable Body shall consider any reasonable request made by the Councils for the purpose of facilitating the procurement, administration and maintenance of any insurance relating to the Company and/or the Accountability Board.

## **23 Variation**

- 23.1 Any proposed variation to this Agreement will be discussed at the Accountability Board and at a board meeting of the Company. Each Party will then be responsible for agreeing those changes that are passed at such board meeting.

## **24. Withdrawal from this Agreement**

- 24.1 A Council may serve notice in writing to the Accountable Body at least nine months before the date on which it is to take effect, that they will be withdrawing from this Agreement. Such withdrawal may only take effect on 1 April in any year.
- 24.2 When the withdrawal of a Council takes effect
  - (a) it shall no longer be entitled to contribute to the decisions taken by the Accountability Board or the Company.
  - (b) It shall no longer be required to pay a Council Contribution
  - (c) It shall not be responsible for debts or liabilities which are incurred by the Accountability Board after the withdrawal takes effect
- 24.3 A Council which withdraws from this Agreement shall continue to be liable under any Funding Agreements to which it is Party and may be required to enforce the terms of any Project Agreement under the terms of this Agreement as if it were still a party.

- 24.4 If any Party incurs any cost as a result of a Council withdrawing from this agreement then that Council shall bear that cost in full, and pay the same within [4] days of demand.
- 24.5 The provisions of this clause 24 shall survive a Council's withdrawal from this agreement.

## **25. Dissolution of the Company**

- 25.1 If the Company wound up or passes a resolution for its winding up or shall otherwise cease to exist then this clause 25 shall apply from the date of the resolution to terminate or the dissolution of the Company (whichever is the sooner) ('the Cessation Date').
- 25.2 From and after the Cessation Date:
- 25.2.1 The Accountability Board shall not approve any further allocation of funding.
  - 25.2.2 All Councils shall continue to be liable under Funding Agreements to which they are a Party and may be required to enforce the terms of any Project Agreement under the terms of this Agreement as if this Agreement were still fully in effect.
  - 25.2.3 Each Council shall pay to the Accountable Body within 30 days of demand an equal proportion of all costs incurred by the Accountable Body relating to the costs of closing down the Secretariat and other parts of SELEP relating thereto insofar as they cannot be met by any Funding.
- 25.4 The Parties shall work together with the relevant Secretary of State to decide how any remaining public funds will be managed.
- 25.5 This agreement shall terminate three months after all liabilities under clause 25.2.3 have been discharged or on such other date as may be agreed by the parties.
- 25.6 This clause applies subject to any contrary obligation on the Accountable Body imposed by any agreement between central government and the Accountable Body relating to the award of Funding.

**IN WITNESS WHEREOF** the parties have signed this Agreement as a Deed on the day and year first before written.

## **Schedule 1**

### **Terms of Reference of the Accountability Board**

- 1 The Accountability Board shall exercise the functions with respect to:
  - 1.1 the implementation of the Assurance Framework and all processes by which bids are assessed, risks considered, approvals made and performance managed
  - 1.2 appraisals and approvals of grants and loans, in accordance with recommendations made by the Company;
  - 1.3 monitoring project assessment and delivery;
  - 1.4 ensuring accountability from each of East Sussex, Essex, South Essex and Kent and Medway, relating to expenditure and programme delivery in accordance with recommendations made by the Company;
  - 1.3 considering and, if thought fit, approving variations to schemes which have received Project Funding;
  - 1.4 quarterly performance reporting on an exceptions basis to the board of the Company;
  - 1.5 reporting on progress to central government;
  - 1.6 any other accountability or assurance function required by central government or recommended by the Accountable Body's auditors or the S.151 Officer of the Accountable Body;
  - 1.7 approving an Annual Report to be made available to the Councils;
2. The Accountability Board will not have responsibility for
  - (a) staffing decisions.
  - (b) decisions about operational implementation and decisions will be taken as appropriate by the Secretariat or their representatives.
3. The Accountability Board may perform such other functions as the Councils may from time to time delegate to the Accountability Board with the written agreement of the Accountability Board and the Company.
4. Each Council agrees that it will not exercise its functions in relation to the function of the Accountability Board except;
  - 4.1 via the Accountability Board;
  - 4.2 via powers delegated to an officer by the Accountability Board; or

- 4.3 after consultation with the other Councils and the Company

## **Schedule 2**

### **Constitution of the Accountability Board**

#### **1. Definitions and Interpretation**

##### **1.1 In this Schedule:**

**the Act** means the Local Government Act 1972;

**Annual Report** means the report(s) which sets out the Accountability Board's activities, finance and performance for the preceding year, as required by paragraph 1.7 of Schedule 1;

**Clerk** means the person appointed in accordance with paragraph 12;

**Committee Member** means a member of the Accountability Board;

**Co-opted Members** means a Committee Member who is not a Council Member;

**Council Member** means a Committee Member who is a councillor of a local authority;

**Executive Member** means an elected member of a Council that is a Cabinet Member or a member of the Executive.

**Further Education Sector** means educational institutions or facilities providing education and training beyond compulsory education, but not falling within the definition of Higher Education Sector

**Higher Education Sector** means the education institutions which provide education and training at degree level and above;

**Deputy Chair** has the meaning given in the Company's articles of association.

#### **2. Joint Committee**

2.1 The Councils hereby exercise their powers under sections 101 and 102 of the Act, section 9EA of the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 and any other enabling legislation to form a joint committee to be known as the Accountability Board to manage the distribution of Funding

2.2 The Councils hereby delegate to the Accountability Board each Council's functions as set out in the Terms of Reference.

#### **3. Membership of the Accountability Board**

3.1 The Accountability Board shall consist of nine members:

- (a) Six local authority members comprising one executive member nominated by each Council (if a Council ceases to operate executive arrangements then it shall appoint its leader or deputy or the Chair or Vice-Chairman of a relevant Committee)
- (b) Three non-voting Co-opted Members, appointed as follows;

- (i) One member appointed by the Accountability Board on the nomination of the Higher Education Sector in the SELEP Area;
  - (ii) One member appointed by the Accountability Board on the nomination of the Further Education Sector in the SELEP Area; and
  - (iii) the Deputy Chair of the board of the Company (ex officio).
- 3.2 A person who is disqualified under Part V of the Act from being an elected member of a relevant authority shall be disqualified from membership of the Accountability Board.
- 3.3 Each Council may change its nominated Committee Member at any time provided that written notice of any such change is given to the Secretariat, taking effect upon receipt. Such written notice may be given by electronic mail. Such change may be temporary or permanent.
- 3.4 Subject to the provisions of this Agreement officers and elected members of the Councils may attend meetings of the Accountability Board (or any sub-committee) to support their Committee Member in attendance at that meeting.

#### **4. Term of office**

- 4.1 A Council Member will hold office until one of the following occurs;
- (a) they are removed or replaced by the Council which appointed them; or
  - (b) they cease to be an elected member of the Council which appointed them
- 4.2. Where a vacancy occurs under paragraph 4.1 it shall be filled as soon as possible by the relevant Council.
- 4.3 Co-opted Members shall be appointed for a term of two years and shall be eligible for re-appointment for a maximum of two further two-year terms (i.e. a maximum of six years including their first term).
- 4.4 A Co-opted Member shall cease to hold office if
- (a) they resign by giving written notice to the Secretariat (in the case of the Deputy Chair that notice shall also take effect as a resignation as Deputy Chair of the Company);
  - (b) in the case of the Deputy Chair, they cease to hold that office;
  - (c) they are removed from office by the Accountability Board
  - (d) they are replaced by the sector which appointed them.
  - (e) in the case of the education representatives they cease to be employed by or hold office in an institution in the relevant sector in the SELEP Area.
- 4.5 Where a vacancy occurs under paragraph 4.4 it shall be filled as soon as possible in accordance with this schedule and the Assurance Framework .

#### **5. Voting**

- 5.1 Any question arising at a meeting of the Accountability Board shall be decided by a simple majority of the Council Members present and voting,
- 5.2 All voting shall be by a show of hands. Any Council Member may require the way they



voted to be recorded in the minutes of the meeting.

5.3 Co-opted Members are not entitled to vote.

## **6. Substitute Members**

6.1 A Council may appoint another Executive Member from the same Council to be a substitute member. No later than 30 minutes before the start of the meeting a substitution notice may be given to the Secretariat by:

- (a) the Council Member concerned; or
- (b) the Council

that the Substitute will be attending a meeting of the Accountability Board in place of the Council Member. Where a substitution notice is in effect the substitute will be in all respects a member of the Accountability Board in place of the Council Member.

## **7. Chair and Vice Chair of the Accountability Board**

7.1 The Deputy Chair shall be the Chair of the Accountability Board.

7.2 At its first meeting in the municipal year the Accountability Board shall appoint a Co-opted Member as Vice Chair.

7.3 If the Deputy Chair is not present within 15 minutes of the time at which the meeting was scheduled to begin the Vice Chair shall chair the meeting. If neither the Deputy Chair nor the Vice Chair are present within 15 minutes of the time at which the meeting was scheduled to begin, or are otherwise both unwilling to chair the meeting, then another Council Member present, chosen from amongst those present, shall chair the meeting. The person chairing the meeting shall be the "Chair" for the purposes of this Schedule for the duration of the meeting.

## **8. Assurance**

8.1 The Section 151 Officer and Monitoring Officer of the Accountable Body, or their representative, will attend meetings of the Accountability Board meetings in an advisory capacity.

8.2 Unless otherwise agreed all reports to the Accountability Board must also be sent to the Section 151 Officer and Monitoring Officer of the Accountable Body at least five clear working days before they are due to be published.

8.3 The Section 151 Officer and the Monitoring Officer, or their representatives, from the other Councils will be invited to observe the Accountability Board meetings.

## **9. Meetings of the Accountability Board**

9.1 The Accountable Body will maintain the official record of the Company and Accountability Board proceedings and hold copies of all relevant documents relating to funding allocated to the Accountable Body for the purposes of allocation by the Company;

9.2 The Accountability Board shall meet at least four times in each year save and except that;

9.3. The Chair of the Accountability Board may cancel any meeting if there is insufficient

business to be transacted but must give detailed reasons for doing so and as much notice as is reasonably possible.

- 9.4 A meeting of the Accountability Board must be convened to take place within one month of receipt of a written requisition from
- (a) the Chair of the Accountability Board
  - (b) at least three Council Members.
  - (c) the Monitoring Officer or Section 151 officer of the Accountable Body
- 9.5 The dates for the meetings in any year shall be agreed at a meeting of the Accountability Board, other than those convened pursuant to paragraph 9.4.
- 9.6 Meetings of the Accountability Board shall normally take place at High House, Production Park, Purfleet, RM19 1RJ or at such reasonable alternative venue as notified to the Councils by the Secretariat from time to time.
- 9.7 The agenda and reports for each meeting shall be issued by the Secretariat at least five clear days in advance of the meeting unless by exception by agreement of the Chair before the meeting and sent to each Committee Member and to the proper officer of each Council.
- 9.8 No item of business may be considered at a meeting of the Accountability Board unless it is on the agenda for the meeting or unless the Chair has agreed to accept the item on the grounds of special urgency which shall be set out in the minutes for the meeting.
- 9.9 Any key decisions must be included on the Forward Plan published 28 days in advance of the meeting.
- 9.9 Meetings of the Accountability Board will be open to the public and press except where the Accountability Board resolves that the press and public be excluded (which may only be during consideration of items containing confidential or exempt information within the meaning of Schedule 12A of the Act).
- 9.10 The agenda for each meeting shall include an opportunity for the public to ask questions or make statements on a matter within the remit of the Accountability Board.
- 9.11 The Secretariat and any Council may make a request to the Chair of the Accountability Board that a particular person or organisation is to be invited to attend a meeting of the Accountability Board for the purpose of making a presentation, or participating in discussion, on any item relevant to the Accountability Board's functions.

## **10. Quorum**

- 10.1 The Quorum for meetings of the Accountability Board is two thirds of the Committee Members, including at least four Council Members.

## **11. Minutes**

- 11.1 The minutes of the meeting shall be circulated to all Committee Members and shall be approved or amended at the next available meeting and, once approved, signed as an accurate record of the meeting by the Chair of the Accountability Board or by the person presiding at the meeting.
- 11.2 Minutes of the Accountability Board shall be published as required by law except to

the extent that they include any exempt information.

## **12. Clerk**

12.1 The Clerk shall be nominated by the Accountable Body from time to time. The Clerk in conjunction with the Secretariat is responsible for ;

- (a) Organising and publishing dates of forthcoming meetings;
- (b) Production, publication and distribution of agendas, reports and minutes of meetings;
- (c) Ensuring representation at meeting;

12.2 Advising on the operation of the Accountability Board; and

12.3 Providing guidance to, and the recording of Committee Members' declarations of interest in accordance with the code of conduct and the Assurance Framework.

## **13. Sub-Committees**

13.1 The Accountability Board may from time to time appoint such sub-committees as it considers appropriate to exercise such functions as may be delegated to it by the Accountability Board and to advise the Accountability Board in the discharge of its functions, save and except that the Accountability Board may not delegate to any sub-committee the approval of the budget or Annual Business Plan or the fixing of the annual contributions payable by the Councils.

13.2 The Accountability Board will determine the membership and terms of reference of any sub-committee.

## **14 Scrutiny Arrangements**

14.1 The decisions made by the Accountability Board may be subject to the individual scrutiny arrangements of each Council.

14.2 Committee Members and their officer advisers shall co-operate with the relevant Scrutiny Committee of any of the Councils and shall, where requested, comply with any statutory duty to attend any meeting of any relevant Scrutiny Committee.

## **15. Call in**

15.1 Call in should only be used in exceptional circumstances Day to day management decisions or routine operational decisions should not be subject to Call in.

15.2 Other than in the case of a decision which the Accountability Board resolves is a decision that shall be exempt from Call-in as it needs to be implemented urgently, no decision of the Accountability Board may be implemented until the later of

- (a) 5pm on the third day after the decision has been published on the Company website and sent to the Councils ('the Call-in Period');
- (b) the conclusion of any call-in received during the Call-in Period

15.3 A decision is called in by an elected member or members of a Council in the same way they would call in a decision of each Council's Cabinet except that elected members of a Council may only call-in a decision which affects that Council or its administrative area.

- 15.4 Once a decision or other action taken has been called in it may not be implemented until the scrutiny arrangements of the relevant Council whose membership has called in the decision or action have been completed. Where a relevant Scrutiny Committee (or full Council) makes recommendations to the Accountability Board, the Accountability Board shall arrange for the decision or action to be reconsidered in the light
- 15.5 When a Council receives notification that a decision has been called-in it will immediately notify the Clerk and the Secretariat by telephone or email.
- 15.6 If the Accountability Board is required to reconsider a decision at the request of a Council's Scrutiny Committee or full Council then it shall do so at a meeting and it may be necessary to convene a special meeting to deal with this.
- 15.7 Where any Member or officer is required to attend a Scrutiny Committee, the Chair of that Scrutiny Committee will inform the Secretariat who will ensure that the monitoring officer of that authority and that of the Accountable Body is informed
- 15.8 The operation this clause shall be kept under review.

## **16. Conduct and expenses of members**

- 16.1 All Council Members shall observe at all times the provisions of the Code of Conduct adopted by their respective Councils.
- 16.2 Each Council shall be responsible for meeting any expenses to which any Committee Member or officer appointed by them, as its representative, is entitled as a result of their attendance at meetings of the Accountability Board.

**Forward Plan Ref No. FP/606/01/20**

<b>Report title:</b> Decisions taken by or in consultation with Cabinet Members	
<b>Report author:</b> Secretary to the Cabinet	
<b>Date:</b> 25 February 2020	<b>For:</b> Information
<b>Enquiries to:</b> Emma Tombs, Democratic Services Manager, 03330 322709	
<b>County Divisions affected:</b> All Essex	

The following decisions have been taken by or in consultation with Cabinet Members since the last meeting of the Cabinet:

**Leader of the Council**

<b>FP/612/01/20</b>	Essex Cares Limited – Access Group Contract
<b>FP/617/01/20</b>	Drawdown from the Transformation Reserve for provision of new technology for Children and Families social care staff
<b>FP/626/02/20</b>	Funding for the Modernising Customer Contact Programme
<b>FP/627/02/20</b>	Sourcing strategy for Construction Projects
<b>FP/629/02/20</b>	Increase duration of Essex County Council's nomination rights to the specialist housing units at Moulsham Lodge, Chelmsford from 80 years to 250 years
<b>*FP/610/01/20</b>	Council Tax Sharing Agreement for 2020/21
<b>FP/630/02/20</b>	Appointment of Independent Chair of Essex Climate Action Commission

**Deputy Leader & Cabinet Member for Infrastructure**

<b>FP/608/01/20</b>	Proposed implementation of a No Entry and a Right Turn Prohibition on the A13 London Road and Morrison's entry and exit junction, Hadleigh in the Borough of Castle Point
<b>FP/616/01/20</b>	Proposed 30mph and 40mph Speed Limits, B1052 Little Walden Road, Saffron Walden
<b>FP/619/01/20</b>	Additional Schemes Approval for Brentwood Local Highway Panel Delivery within the 2019/20 Financial Year

**FP/620/01/20** Local Highway Panel - Scheme Approvals for Essex Local Highway Panel Delivery for Financial Year 19/20

**\*FP/577/11/19** High Street, Colchester (Lewis Gardens) U-turn restriction

**FP/628/02/20** Zebra Crossing, Ashdon Road, Saffron Walden

### **Cabinet Member for Customer, Corporate, Culture and Communities**

**FP/625/02/20** The implementation of a cancellation policy and an amendment to the deposit policy for Registrars undertaking wedding and civil ceremonies in approved venues

### **Cabinet Member for Education and Skills**

**FP/611/01/20** Colchester Institute Groundworks and Scaffolding Training Centre

**FP/618/01/20** Appointment and Re-Appointment of School Governors by Essex LA - Schedule 340

**FP/624/02/20** Appointment of Trustees to the Colchester Ragged School Education Trust

**\*FP/585/12/19** Proposed Cycle Event - Road Closures

### **\* Key Decisions**