

Dated: 5th November 2018

- (1) CORNWALL COUNCIL**
- (2) DEVON COUNTY COUNCIL**
- (3) PLYMOUTH CITY COUNCIL**
- (4) SOMERSET COUNTY COUNCIL**
- (5) TORBAY COUNCIL**

**COLLABORATION AGREEMENT
RELATING TO
THE ESTABLISHMENT OF THE SOUTH WEST PENINSULA SHADOW SUB-NATIONAL
TRANSPORT BODY**

THIS AGREEMENT is made this 5th day of November 2018

BETWEEN

- (1) **CORNWALL COUNCIL** of New County Hall, Treyew Road, Truro, Cornwall, TR1 3AY (“**CC**”)
- (2) **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter, Devon, EX2 4QD (“**DCC**”)
- (3) **PLYMOUTH CITY COUNCIL** of Ballard House, West Hoe Road Plymouth, PL1 3BJ (“**PCC**”)
- (4) **SOMERSET COUNTY COUNCIL** of County Hall, Taunton, Somerset, TA1 4DY (“**SCC**”)
- (5) **TORBAY COUNCIL** of Town Hall, Castle Circus, Torquay, TQ1 3DR (“**TC**”)

(who are together referred to in this Agreement as the “Parties”).

WHEREAS

- A. Section 102E of the Local Transport Act 2008 enables the Secretary of State to establish a sub-national transport body (“**STB**”) for any area in England (outside of Greater London). An STB can only be established where the Secretary of State considers that its establishment would facilitate the development and implementation of transport strategies for the area, and the objective of economic growth in the area would be furthered by the development and implementation of such strategies;
- B. The Parties have agreed that an STB covering their geographical areas would help secure influence over national and regional infrastructure providers, helping to ensure the infrastructure required to support continuing economic growth and, potentially, direct influence over decisions that are currently made elsewhere. The Parties have agreed, prior to the establishment of an STB, to enter into arrangements to establish a shadow body named the South West Peninsula Shadow Sub-National Transport Body (“**SWPSSTB**”) to help develop a strong strategic partnership; to develop an overarching Transport Strategy for the area that would further economic growth; and to work together towards establishing a statutory STB (“**the Project**”);
- C. The cornerstone of the SWPSSTB will be a Transport Strategy which will outline the ambition of the SWPSSTB and describe the vision for the peninsular in relation to the transport function for the area that would further economic growth, and will outline the proposals to establish a statutory STB (the “**Transport Strategy**”);
- D. The Parties acknowledge that there will be a resource requirement to establish the SWPSSTB,

including developing the governance arrangements, supporting the SWPSSTB and developing a draft Transport Strategy, which will require the procurement of external professional advice;

- E. The Parties agree to appoint a Party or Parties to act on their behalf (“**Lead Authority**”) to carry out those responsibilities set out in section 3 of this Agreement in relation to ensuring that the administrative requirements of the Project are met and undertake any necessary procurement exercises;
- F. This Agreement sets out the undertakings given by each of the Parties and the general arrangements between the Parties in relation to administration of the SWPSSTB;
- G. Unless the context requires otherwise, in this Agreement:
 - (a) reference to any statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended or re-enacted by any subsequent statute, order, regulation or instrument;
 - (b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - (c) words importing the masculine include the feminine and vice versa;
 - (d) the words “include”, “includes” “including” “for example” and “in particular” and words of similar effect shall be construed as if they were immediately followed by the words “without limitation”;
 - (e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - (f) headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - (g) any reference in this Agreement to a “clause”, “appendix” or “paragraph” are references respectively to a clause, appendix or paragraph of this Agreement.

IT IS HEREBY AGREED AS FOLLOWS

1. Key principles of Joint Working

1.1 The Parties agree to adopt the following principles when carrying out the Project, to:

- (a) collaborate and co-operate to ensure that all activities are delivered and actions taken in a timely manner and recognising the time critical nature of the Project;
- (b) be accountable for performance of the respective roles and responsibilities set out in this Agreement;
- (c) communicate openly about major concerns, issues or opportunities;

- (d) share information, experience, materials and skills to ensure effective working practices, and work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (e) act in a positive proactive manner;
- (f) adhere to statutory requirements and best practice, including EU and UK procurement rules, data protection and freedom of information legislation;
- (g) manage stakeholders effectively;
- (h) ensure sufficient and appropriately qualified resources are available and authorised to fulfil the Project objectives; and
- (i) act in good faith to support achievement of the Project objectives and comply with these principles.

2. Project Governance

2.1 Overview

2.1.1 The governance structure set out in Appendix A provides a structure for the development and delivery of the Project and may be varied by the SWPSSTB or the Senior Officers Group at their discretion.

2.2 SWPSSTB Board

2.2.1 The Parties shall form a SWPSSTB Board made up of elected representatives from the Parties and co-opted members from other partner organisations as agreed by voting members of the Board. The SWPSSTB Board will provide the overall strategic oversight and direction to the Project. The terms of reference and functions of the SWPSSTB Board will be determined by the Parties as part of the Constitution of the SWPSSTB.

2.3 Senior Officers Group

2.3.1 The senior officers of each Party will provide strategic management at Project and at workstream level in "**the Senior Officers Group**". The Senior Officers Group will provide assurance to the SWPSSTB Board that the objectives of the Project are being met and that the Project is performing within the boundaries set by the Board. The terms of reference for the Senior Officers Group will be determined by the Board.

2.3.2 The Senior Officer Group shall have responsibility for the creation and execution of the Project plan and deliverables, and therefore it can draw technical, commercial, legal and communications resources as appropriate, and can establish such support groups as they consider necessary.

2.4 Reporting

2.4.1 **SWPSSTB Board:** Board meetings will be held under the provisions of the Local Government Access to Information requirements. The Minutes and actions will be recorded for each meeting and published by the Lead Authority. Any additional reporting requirements shall be at the discretion of the SWPSSTB Board.

2.4.2 **Senior Officers Group:** Minutes and actions will be recorded for each SOG meeting highlighting: progress in the relevant period; issues being managed; issues requiring a decision from the SWPSSTB Board but will not be published outside of the membership.

3. Roles and Responsibilities

3.1 The Lead Authority shall be such Party or Parties as may be agreed from time to time by the Parties. The Lead Authority shall:

- (a) co-ordinate and administer the Project and meetings of the Board;
- (b) manage the budget for, and the sound financial management of, the Project. The budget will be allocated in accordance with the decisions of the Board as authorised by the Parties;
- (c) claim, draw down and account for all funds due from the Parties and any other body;
- (d) provides procurement services to all contracts let on behalf of the Board;
- (e) keep appropriate accounting and operational records;
- (f) procure on behalf of the Parties such external support, advice or consultancy services that are considered necessary by the Partnership Board or the Senior Officer Group having considered opportunities to utilise contracts already held by individual authorities;
- (g) oversee the preparation of business case for the proposal to the Secretary of State to transition to a statutory STB; and
- (h) prepare a communications and marketing strategy for the Project for the approval of the Board and then to implement the strategy.

4. Length of the Agreement

4.1 This Agreement shall commence on 5th November 2018 (“**Commencement Date**”) and shall expire upon the earlier of:

- (a) the date on which each Party agrees in writing to its termination; or
- (b) the date on which only one Party remains a party to this Agreement; or
- (c) the establishment of an STB by the Secretary of State covering the administrative areas of the Parties.

4.2 Termination of a Party’s interest under this Agreement shall have no effect on any rights or remedies of any Party already accrued, prior to the date upon which such termination takes effect.

5. Contractual Relationship between the Parties and Service Providers of the Contract

5.1 The Lead Authority will enter into any contracts with third parties “**Third Party Contracts**” on behalf of itself and the Parties.

- 5.2 The Lead Authority will under any Third Party Contract act as a prime contractor for the delivery of the services to the Parties and will be responsible for ensuring delivery of the services to the Parties by the service provider and management of the Third Party Contract.
- 5.3 The Parties agree that the terms and conditions of any Third Party Contract between the Lead Authority and a service provider shall be largely that of the Lead Authority's standard terms and conditions of services, save for any particular amendments the Parties reasonably request to these standard terms or any additional specific terms and conditions reasonably requested to be included in the Third Party Contract to reflect the different Parties' requirements (such requests not to be unreasonably refused). For the avoidance of doubt, the Parties agree that the Lead Authority shall retain ultimate discretion over the terms and conditions to be included in a Third Party Contract.
- 5.4 Notwithstanding any other provision of this Agreement, where a Party has provided notice to withdraw from this Agreement pursuant to clause 8.1, the Lead Authority may not enter into any new Third Party Contracts prior to the date of withdrawal which would result in the withdrawing Party incurring costs after the date of withdrawal unless the Lead Authority has obtained the prior written consent of the withdrawing Party.
- 5.5 All Third Party Contracts must include a novation clause, allowing for the Third Party Contract to be novated from the Lead Authority to its successor, should the need arise, in line with Clause 8.6 of this Agreement.
- 5.6 Save as expressly provided in this Agreement or otherwise agreed in writing, no Party shall:
- (a) incur any liabilities on behalf of another Party;
 - (b) make any representations or give any warranty on behalf of another Party;
 - (c) enter into any contract or obligation on behalf of another Party; or
 - (d) commit to any expenditure as a result of which another Party shall be required to pay it.

6. No Partnership or Agency

- 6.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between any of the Parties, constitute any Party, the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party except as expressly provided in this Agreement.
- 6.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

7. Variations to this Agreement

- 7.1 Any variation to this Agreement will only be effective if it is made in writing and signed by duly authorised representatives of all the Parties.

8. Withdrawal

- 8.1 A Party may withdraw from this Agreement and any Third Party Contract upon giving the other Parties no less than six (6) months written notice, such notice to expire on 31 March in the relevant year. It is acknowledged by the Parties that it is the intention that this Agreement will remain in place for the duration of any Third Party Contract and any Party's withdrawal from the Agreement should be due to exceptional circumstances. Where any Party is considering withdrawing from the Agreement it shall, prior to serving notice under this clause, convene a meeting between all Parties to discuss the reasons for withdrawal and any reasonable solutions.
- 8.2 Each Party acknowledges that its withdrawal from this Agreement may result in the remaining Parties incurring additional costs. These additional costs could include, but are not limited to, the costs of undertaking a variation of any Third Party Contract or a re-procurement of the services provided under a Third Party Contract, any outstanding Third Party Contract price payable, costs that may result from any consequential delay in the service commencement of any Third Party Contract and potential increased costs arising from any re-apportionment of contributions over a reduced number of Parties where a Third Party Contract does not provide for a possible variation in the level of services and price.
- 8.3 In the event of a withdrawal pursuant to Clause 8.1, the withdrawing Party shall indemnify the remaining Parties against any costs, liabilities or expenses reasonably incurred as a result of the withdrawal. The remaining Parties acknowledge that they will be under a duty to mitigate such costs, liabilities and expenses. The withdrawing Party's total liability under Clauses 8.2 and 8.3 shall not exceed the sum of their Financial Contribution (as set out in Appendix B).
- 8.4 Where any Party withdraws from this Agreement:
- (a) save as otherwise set out in this Agreement, its obligations in relation to the Agreement and delivery of the Project shall cease from the date of expiry of the notice given under clause 8.1;
 - (b) regardless of the date on which it exits this Agreement, the withdrawing Party shall remain liable for payment of their Financial Contribution (as set out in Appendix B);
 - (c) the Agreement shall continue in respect of the remaining Parties;
 - (d) this shall not affect any accrued right or remedies under this Agreement;
 - (e) Clause 8 (Withdrawal) and Clause 14 (Dispute Resolution) shall remain in force in respect of any of the matters arising from the performance of or withdrawal of any Party under this Agreement.
- 8.5 A withdrawing Party shall not be entitled to any reimbursement of its Financial Contribution (as set out in Appendix B).
- 8.6 If the Lead Authority wishes to withdraw from this Agreement under Clause 8.1 and no longer act as the Lead Authority it shall do all things necessary to novate (transfer) any Third Party Contracts to its successor Lead Authority.

9. Information

- 9.1 Each Party shall ensure that it complies with and assists the other Parties to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation, (i) the Data Protection Act 2018 and any successor UK legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK) in so far as they apply to the Project and shall provide sufficient guarantees in respect of the security measures taken with regard to all information.
- 9.2 The Parties acknowledge that all other Parties are subject to the requirements of the Freedom of Information Act 2000 (the "FOIA") and shall, where reasonable, assist and cooperate with all other Parties at their own expense to enable each Party to comply with its information disclosure obligations and nothing in this Agreement shall inhibit a Party in complying with its obligations under the FOIA.
- 9.3 Each Party shall use all reasonable endeavours to ensure that any formal public statements made by a Party as to each other's activities or the terms or performance of the Agreement and/or the Contract shall only be made after consultation with the other Parties. Formal partnership communications may only be made by the Lead Authority. The Parties may comment on partnership business, subject to compliance with this clause. No Party shall make use of another Party's logo without their express permission.

10. Announcements

- 10.1 Subject to Clause 10.2, no Party shall make, or permit any person to make, any public announcement, communication or circular (announcement) concerning the existence, subject matter or terms of this Agreement, the wider transactions contemplated by it, or the relationship between the Parties, without the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed). The Parties shall consult together on the timing, contents and manner of release of any announcement.
- 10.2 Where an announcement is required by law or any governmental or regulatory authority, or by any court or other authority of competent jurisdiction, the Party required to make the announcement shall promptly notify the other Parties. The Party concerned shall make all reasonable attempts to agree the contents of the announcement before making it.
- 10.3 This Agreement does not transfer any interest in intellectual property. All intellectual property developed or created by a Party pursuant to the Project shall be owned by that Party ("**Created IPR**"). Each Party grants to the other Parties a non-exclusive, personal, royalty-free licence during the Project to use its Created IPR in relation to the Project to the extent necessary for the other Parties to carry out its obligations in relation to the Project. At the end of the Project, a Party licensed to use Created IPR under this clause shall cease to use that Created IPR and shall return any physical embodiment of the Created IPR (including any copies) in its possession or control to the original party.

11. Insurance

11.1 Each Party shall obtain and maintain throughout the term of this Agreement insurance sufficient to cover their obligations under this Agreement. Each Party shall indemnify the others against loss sustained from a breach of this clause.

12. Budget, Costs and Expenses

12.1 The costs of the Project, including, but not limited to, any costs incurred by the Lead Authority relating to the Project (which may include any staffing, redundancy, or procurement costs) shall be shared by the Parties according to the contributions set out in Appendix B (“**Financial Contributions**”) and based on proportions in relation to the total resident population of the area of each authority at the relevant date as estimated by the Statistics Board (see Appendix B).

12.2 Each Party may contribute additional funds to meet the costs of the Board to those required under 12.1 individually if it chooses to do so.

12.3 The Board will seek funding from the Department for Transport to accelerate the development and delivery of its transportation strategy including supporting plans such as the Board’s evidence base and communications/marketing plan.

12.4 The Board’s budget will be held and administered by the Lead Authority – see Clause 3.1 above.

13. Confidentiality

13.1 The Parties must use all reasonable endeavours to ensure that they (and any person employed or engaged by them) will:

- (a) only use Confidential Information for the purposes of this Agreement; and
- (b) not disclose any Confidential Information to any third party without the other’s Parties’ prior written consent (which the Parties shall be entitled to refuse without giving any reason).

13.2 Notwithstanding Clause 13.1 above the Parties shall be allowed to disclose any Confidential Information to any permitted sub-contractor or other person properly engaged by any Party in connection with this Agreement or the delivery of the Project provided that in each such case the sub-contractor or person concerned has signed a confidentiality undertaking on substantially the same terms as set out here.

13.3 The restrictions in Clause 13 shall continue to apply after this Agreement has come to an end (however caused), but they shall not apply (whether whilst this Agreement is in force or after) to information which:

- (a) is in, or comes into, the public domain (except if this is as a result of a breach by any Party of this Clause);
- (b) is required to be disclosed by law;
- (c) was already in any Party’s possession without any restriction as to its use; or
- (d) subsequently lawfully comes into any Party’s possession from a third party; or

(e) is required to be disclosed by any regulatory body or governmental body.

13.4 For the purposes of this Clause 13, "Confidential Information" shall mean any information data and/or material of any nature which has been designated as confidential by any Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business affairs, properties, assets, trading practices, services, developments, trade secrets, intellectual property rights, know-how, staff and other personnel suppliers of any Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 (as may be amended by the General Data Protection Regulation).

13.5 Each Party shall, in relation to this Agreement and the Project, comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

14. Dispute Resolution

14.1 Where any dispute arises between the Parties in connection with this Agreement, all Parties will use their best endeavours to resolve that dispute on an informal basis.

14.2 Where any dispute is not resolved under Clause 14.1, any Party may convene a meeting of the Senior Officers Group to attempt to resolve the dispute.

14.3 If any dispute is not resolved under Clauses 14.1 or 14.2, any Party may refer the dispute to the SWPSSTB Board to resolve. Subject to Clause 17, a resolution passed by the SWPSSTB Board to determine the matter shall be final and binding on the Parties.

15. Entire Agreement

15.1 This Agreement, together with the Appendices and all other documents attached or referred to in this Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes any prior agreement, arrangement or understanding between the Parties regarding its subject matter.

15.2 No representation, promise or undertaking shall be taken to have been made or implied from anything said or written in negotiations between the Parties prior to the date of this Agreement, except as expressly set out in this Agreement.

15.3 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

16. Counterparts

16.1 This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each person who is a Party at the date hereof has executed at least one counterpart.

16.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

17. Governing Law and Jurisdiction

17.1 This Agreement shall be governed by and construed in accordance with English law and, without affecting the escalation procedure set out in Clause 14, each Party agrees to submit to the exclusive jurisdiction of the courts of England.

18. Notices

18.1 Except as otherwise expressly provided within this Agreement or as required by the Civil Procedures Rules, any notice or other communication required to be given under or pursuant to this Agreement shall be in writing and may be given by:

18.1.1 delivering the notice by hand, in which case the notice shall be deemed to have been duly served at the time it is so delivered or left; or

18.1.2 posting the notice in a pre-paid envelope by first class, special delivery or recorded delivery post, in which case the notice shall be deemed to have been duly served at the time it would be delivered in the ordinary course of that method of posting.

18.2 For the purposes of a notice pursuant to this Clause 18, the address of each Party shall, unless a Party notifies otherwise, be as set out in this Agreement.

18.3 Any Party may change its address for service by serving a notice in accordance with this Clause.

Signed for and on behalf of **The Cornwall Council**

Authorised Signatory

Print Name:.....

Date:.....

Signed for and on behalf of **Devon County Council**

Authorised Signatory

Print Name:.....

Date:.....

Signed for and on behalf of **Plymouth City Council**

Authorised Signatory

Print Name:.....

Date:.....

Signed for and on behalf of **Somerset County Council**

Authorised Signatory

Print Name:.....

Date:.....

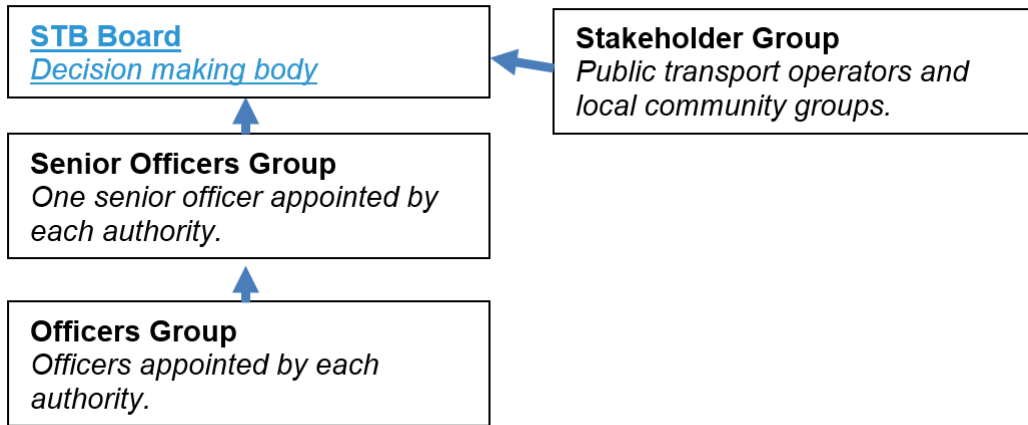
Signed for and on behalf of **Torbay Council**

Authorised Signatory

Print Name:.....

Date:.....

APPENDIX A – GOVERNANCE STRUCTURE



APPENDIX B – FINANCIAL CONTRIBUTIONS

B1 The Parties' Financial Contributions as set out below shall cover the period from the date of establishment (5th November 2018) through to 31st March 2020 and will be reviewed annually following a first review in advance of the 2020/21 financial year. Each Parties' contribution shall be calculated in accordance with the latest population figures available at the time of the review:

Name of Party	Type of Authority	Population	% cost share	Budget
Cornwall Council	Unitary	536,000	23.9%	£76,480
Devon County Council	County	779,000	34.7%	£111,040
Plymouth City Council	Unitary	262,400	11.7%	£37,440
Somerset County Council	County	530,000	23.6%	£75,520
Torbay Council	Unitary	134,400	6.0%	£19,200
Total		2,241,800	100%	£319,680

B2 The Lead Authority shall invoice each Party for their Financial Contribution on a basis to be agreed with that Party. The basis for such agreement being that the total sum for each Party outlined above shall be received by no later than 31st May 2019. The Financial Contribution due to the Lead Authority shall be paid by each relevant Party within 30 days of receipt of the invoice.