

DATED _____

DEED OF VARIATION

between

WEST YORKSHIRE COMBINED AUTHORITY

and

LEEDS CITY COUNCIL

relating to the Grant Agreement for
WEST YORKSHIRE PLUS TRANSPORT FUND
A6110 Outer Ring Road Improvements

This **DEED** is dated

PARTIES

(1) **WEST YORKSHIRE COMBINED AUTHORITY** whose principal office is at Wellington House, 40-50 Wellington Street, Leeds, LS1 2DE (the “**Funder**”);
and

(2) **LEEDS CITY COUNCIL** whose principal address is at Civic Hall, Leeds, LS1 1UR (the “**Recipient**”)

each a **party**, together the **parties**

BACKGROUND

(A) The Funder and the Recipient entered into the Grant Agreement on 1 November 2019.

(B) The parties wish to amend the Grant Agreement as set out in this Deed with effect from the Variation Date.

1. INTERPRETATION

1.1 In this Deed, the following words shall have the following meanings, unless the context requires otherwise:

Grant Agreement means the grant agreement entered into by the Funder and Recipient on 1 November 2019 in relation to A6110 Outer Ring Road Improvements and set out at Appendix B; and

Variation Date means the date of execution of this Deed.

2. VARIATIONS

2.1 With effect from the Variation Date, the parties agree that the Grant Agreement shall be varied as follows:

Clause	Amendment
Clause 1.1– Definitions “ Grant ”	The definition of “Grant” shall be deleted in its entirety and replaced with the following definition: ‘ Grant: the maximum sum of £596,000 (five hundred and ninety six thousand pounds) to be paid to the Recipient in accordance with this Agreement.’
Schedule 3 – Budget and Funding Profile	Schedule 3 of the Grant Agreement shall be deleted in its entirety and replaced by the Schedule set out at Appendix A to this Deed.

2.2 In addition to the amendments set out in clause 2.1, the Grant Agreement shall be construed and interpreted with such further consequential amendments as are

necessary to give effect to the amendments set out in this Deed, as if such further amendments were also expressly set out in this Deed.

- 2.3 The Grant Agreement shall continue in full force and effect as varied by this Deed and the terms of the Grant Agreement shall have effect as though the provisions contained in this Deed had been originally contained in the Grant Agreement.

3. GENERAL

- 3.1. Each right or remedy of either party under this Deed is without prejudice to any other right or remedy of the other party whether under this Deed or not.
- 3.2. If any provision of this Deed is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed not to form part of this Deed and none of the parties shall be in breach for failure to comply with any such provision but the remaining provisions of this Deed and the remainder of such provision shall continue in full force and effect.
- 3.3. Each party warrants and undertakes that it has full power and authority to enter into and shall be responsible for its own costs arising in relation to this Deed.
- 3.4. A person who is not a party to this Deed has no right under the Contracts (Right of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

4. COUNTERPARTS

- 4.1. This Deed may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original of this Deed, but all the counterparts shall together constitute the same Deed.

5. GOVERNING LAW AND JURISDICTION

- 5.1. This Deed shall be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

IN WITNESS of which the parties have executed this Deed as a deed and delivered it on the date written at the top of this document.

The Common Seal of **WEST YORKSHIRE**)
COMBINED AUTHORITY affixed to this Deed)
was authenticated by:)

Authorised Signatory

The Common Seal of **LEEDS CITY COUNCIL**)
affixed to this Deed)
was authenticated by:)

Authorised Signatory

Appendix A

New Schedule 3 – Budget and Funding Profile

Project Cost Table

Mandate – Outline Business Case (DP3)	Value £k	Change Request Value £k	Total Value £k
Feasibility and Design – Further work on assessing the feasibility of the improvements outlined and more detailed design (sufficient for OBC)	80	70	150
Topographic/Geotechnical/Traffic Surveys – Detailed design work will require information about the existing sites to be collected. Traffic surveys may be required to collect inputs for the traffic model.	40	43	83
Transport Modelling – A significant element of generating evidence for the Outline Business Case will be the development and use of a transport model to predict future traffic.	80	43	123
Specialist Advice (e.g. Land Valuation, CPO and Legal) – Specialist advice about certain aspects of the scheme may be required, especially if land acquisition is required.	20	10	30
OBC Report Preparation – This includes preparation of the Business Case to include PM and Liaison	40	81	121
Consultation	0	20	20
Contingency Allowance (10%)	26	43	69
TOTAL	286	310	596

Annual spend profile

Year					
	2018/19	2019/20	2020/21	2021/22	Total (£k)
Mandate to Outline Business Case (DP3)	£30k	£175k	£198k	£192k	£596

Appendix B
Original Grant Agreement

DATED

18th November 2019

GRANT AGREEMENT

between

WEST YORKSHIRE COMBINED AUTHORITY

and

LEEDS CITY COUNCIL

for the delivery of
WEST YORKSHIRE PLUS TRANSPORT FUND
A6110 Outer Ring Road Improvements

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Appendix 1 Assurance Process

THIS DEED is dated

1st November

2019

PARTIES

- (1) **WEST YORKSHIRE COMBINED AUTHORITY** whose principal address is at Wellington House, 40-50 Wellington Street, Leeds, LS1 2DE (**Funder**); and
- (2) **LEEDS CITY COUNCIL** whose principal address is at Civic Hall, Leeds LS1 1UR (**Recipient**)

each a party together the parties

BACKGROUND

- (A) The Funder has agreed to pay the Grant to the Recipient to assist it in carrying out the Grant Funded Activity. The Grant is part of the Baseline Allocated Amount.
- (B) This Agreement sets out the terms and conditions on which the Grant is made by the Funder to the Recipient.
- (C) These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.
- (D) The Funder and Recipient enter into this Agreement in good faith.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

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

Assurance Process: the process (based on the Combined Authority's Assurance Framework) for securing Funder approval at the various stages of the Project as summarized at Appendix 1, as may be varied by the Funder from time to time.

Assurance Process Activity: each activity of the Project as set out within the Assurance Process (each within an Assurance Process Stage).

Assurance Process Decision Point: each Project decision point as set out within the Assurance Process.

Assurance Process Stage: each stage of the Assurance Process, as set out in Appendix 1.

Audit Declaration means a signed declaration by the Recipient verifying the spend on the Project in the following terms:

- (a) **for quarterly audit declarations** in the following terms: *"I certify that the information provided on this form is accurate to the best of my knowledge and satisfies the conditions under our Funding Agreement with the Combined Authority as at the date of this report was signed. I apply for payment toward the expenditure detailed above."* – signed by the Project Senior Responsible Officer; and
- (b) **for annual and final audit declarations** in the following terms: *"To the best of our*

knowledge and belief, and having carried out appropriate investigations and checks, in our opinion, in all significant respects, the expenditure incurred by [name of the Recipient] complies with the terms and conditions of the Grant Agreement dated [dd/mm/yy]" – signed by the Recipient's Chief Financial Officer (section 151 Officer) and Chief Internal Auditor.

Baseline Allocated Amount: the sum of £12,000,000 (twelve million pounds) which constitutes the maximum amount indicatively allocated to the Project subject to the Recipient obtaining appropriate approval through the Assurance Process.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Budget and Funding Profile: the budget and funding profile set out in Schedule 3 as updated from time to time and approved by the Funder as part of the Assurance Process.

Business Case: the Leeds A6110 Outer Ring Road Improvements Outline Business Case (to be submitted as part of the Assurance Process).

Commencement Date: 4 January 2017

Data Protection Legislation: all applicable data protection legislation and privacy legislation in force from time to time in the UK including the General Data Protection Regulations ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); any other directly applicable European Union regulation relating to privacy; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data and the privacy of electronic communications.

Governing Body: the Recipient's Executive Board.

Grant: the total sum of £286,000 (two hundred and eighty six thousand pounds) to be paid to the Recipient in accordance with this Agreement.

Grant Funded Activity: the relevant part of the Project for which the Grant is to be used as set out in Part B of Schedule 1.

Grant Period: the period for which the Grant is awarded starting on the Commencement Date and ending on 31 March 2025 or such later date as shall be agreed by the Funder.

Intellectual Property Rights: means any or all of the following: patents, trade marks, service marks, drawings, designs, registered designs, utility models, design right, copyright (including copyright in computer software), database right, inventions, trade secrets and other confidential information, technical information, know-how, business or trade names, rights to prevent passing off, and all other intellectual property rights and rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including all applications and the right to apply for any of the foregoing rights;

Know-How: information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.

Land Acquisition Amount: the aggregate of all monies drawn down from the Grant by the Recipient and which have been used by the Recipient to acquire land required to implement the Project.

Longstop Date: 31 March 2025 or such revised date as the Parties agree in writing.

Material Commitment: the entering into of one or more agreements by the Recipient having contractual effect and with no conditions precedent that the parties to these agreements do not have a realistic prospect of satisfying which facilitate the implementation of either preparatory work or actual construction and civil engineering work in connection with the Project.

PIMS: the Funder's Portfolio Information Management System, details of which shall be provided to the Recipient by the Funder.

Prohibited Act: means:

- (a) offering, giving or agreeing to give the Funder or third party any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Funder; or
 - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Funder or any third party;
- (b) entering into this Agreement or any other contract with the Funder or any third party where a commission has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Funder;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Funder; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Funder.

Project: the project as set out in Schedule 1 and more fully described in the latest approved Business Case.

Portfolio Management Office: the office that represents the Funder for the purposes of this Agreement.

- 1.2 any reference in this Agreement to approval of the Funder shall mean to the formal approval of the West Yorkshire Combined Authority Board or such other Committee or Officer of the West Yorkshire Combined Authority to which the authority to make decisions has been delegated.

2. PURPOSE OF GRANT

- 2.1 The Recipient shall use the Grant only for the Grant Funded Activity and in accordance with the terms and conditions set out in this Agreement. The Grant shall not be used for any other purpose without the prior written agreement of the Funder.
- 2.2 Where the Recipient intends to apply to a third party for other funding for the Project, it will notify the Funder in advance of its intention to do so and, where such funding is obtained, it will provide the Funder with details of the amount and purpose of that funding. The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that the Funder is funding in full under this Agreement.

3. PAYMENT OF GRANT

- 3.1 The obligation on the Funder to pay the Grant to the Recipient shall be conditional upon the Recipient first obtaining the appropriate approval of the Funder in accordance with the Assurance Process.
- 3.2 Subject to clause 15, the Funder shall pay the Grant to the Recipient within 28 days of receipt of valid claims from the Recipient in accordance with clause 4 (Grant Claims).
- 3.3 The Recipient shall promptly repay to the Funder any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Grant monies have been paid in error before all conditions attaching to the Grant have been complied with by the Recipient.

4. GRANT CLAIMS

- 4.1 The Recipient must claim only eligible expenditure as defined at Part 1 of Schedule 2.
- 4.2 The Recipient shall submit Grant claims at quarterly intervals via PIMS (unless otherwise instructed by the Funder) in line with Instructions for Submitting Grant Claims at Part 2 of the Schedule 2.
- 4.3 The Grant shall be claimed by the Recipient for the Grant Funded Activity in accordance with the Budget and Funding Profile.
- 4.4 For the avoidance of doubt, the amount of the Grant that the Recipient claims on any item of expenditure listed in the Budget and Spending Profile shall not exceed the corresponding total sum of money listed without the prior written agreement of the Funder.
- 4.5 The Recipient shall not claim the Grant to:
- (a) make any payment to members of its Governing Body;
 - (b) not used;
 - (c) pay for any expenditure commitments of the Recipient entered into before the Commencement Date;
 - (d) pay any Project costs in excess of the agreed budget as set out in the Budget and Funding Profile;
 - (e) fund any changes to the scope of the Project; or

- (f) pay any maintenance liabilities, operating costs or other whole life costs of the Project following completion.

unless this has been approved in writing by the Funder.

4.6 The Recipient may not claim any part of the Grant for the Project before or after the Grant Period save for that part of the Grant allocated to Part 1 compensation claims as follows:

- (a) The Recipient shall (at the time of submission of the final claim for Grant in accordance with Part 2 of Schedule) notify the Funder of the estimated total cost of the claims;
- (b) The Funder shall, following notification from the Recipient, retain Grant equal to the notified estimate to cover part 1 compensation claims for a period of 6 years from the date the Project becomes operational.

4.7 At the sole discretion of the Funder and in accordance with Schedule 2 the Funder may pay amounts up to 80% (eighty per cent) of the Grant in aggregate in advance of expenditure. The Recipient shall still be required to submit claims via PIMS against outgoing expenditure and shall when requested by the Funder provide proof of expenditure on the Project. Any unspent monies in respect of the expenditure paid in advance shall be returned to the Funder promptly on demand or, if agreed in writing by the Funder, retained by the Recipient to be used against subsequent Grant claims

5. NOT USED

6. USE OF GRANT

6.1 Where any part of the Grant is exceptionally claimed in advance, by agreement with the Funder, the Recipient shall ensure that any unspent monies in respect of that expenditure item are returned to the Funder or, if agreed in writing by the Funder, retained by the Recipient against subsequent Grant claims.

6.2 Any liabilities arising at the end of the Project including any redundancy liabilities for staff employed by the Recipient to work on the Project must be managed and paid for by the Recipient using the Grant (if this item of expenditure has been included within the Grant) or other resources of the Recipient. There will be no additional funding available from the Funder for this purpose.

7. DEVELOPMENT, DELIVERY AND MAINTENANCE OF THE PROJECT

The Recipient shall deliver the Project and:

7.1 comply with:

- (a) the terms and conditions set out in this Agreement;
- (b) the Assurance Process; and
- (c) any conditions imposed by the Funder on the Recipient in respect of the Project during the Assurance Process as if such conditions are set out within this Agreement;

7.2 not make any significant change to the scope of the Project without the Funder's prior written approval;

- 7.3 pay any costs of the Project which are not payable from the Grant;
- 7.4 meet all maintenance and operating costs and liabilities or other whole life costs associated with the Project, from completion, for the life of the Project deliverables; and
- 7.5 following completion of the Project, and for a period of 10 years thereafter, not modify the completed Project or take any part of it out of public use (other than for temporary interruptions) where such actions would have a material impact upon the benefits of the Project, without the prior written consent of the Funder but the Funder acknowledges that it cannot fetter the statutory duties of the Recipient as Highway Authority or Planning Authority.

8. ACCOUNTS AND RECORDS

- 8.1 The Grant shall be shown in the Recipient's accounts as capital grant spent or capital grant allocated.
- 8.2 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it.
- 8.3 The Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least [six] years following receipt of any Grant monies to which they relate. The Funder shall have the right to review, at the Funder's reasonable request, the Recipient's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.
- 8.4 The Recipient shall provide the Funder with a copy of its annual accounts within six months (or such lesser period as the Funder may reasonably require) of the end of the relevant financial year in respect of each year in which the Grant is paid.
- 8.5 The Recipient shall comply and facilitate the Funder's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Funder.

9. MONITORING AND REPORTING

- 9.1 The Recipient shall closely monitor the development, delivery and success of the Project throughout the Grant Period to ensure that the aims and objectives of the Project are being met and that this Agreement is being adhered to.
- 9.2 Not used.
- 9.3 In carrying out monitoring and reporting of the Project the Recipient shall follow the Assurance Process and the requirements of PIMS.
- 9.4 The Recipient shall provide the Portfolio Management Office with a monthly highlight report via PIMS (or such other method required by the Funder) in the format agreed between the parties.
- 9.5 The Recipient shall provide the Funder with a monitoring report on the development and delivery of the Project every quarter when making a Grant claim in accordance with Part 2 of Schedule 2. The Recipient shall provide the Funder with each report via PIMS (or such other method required by the Funder) within three months of the last day of the quarter to

which it relates.

- 9.6 Where the Recipient has obtained funding from a third party toward the costs of the Project, the Recipient shall include the amount of such funding in its monitoring reports together with details of what that funding has been used for.
- 9.7 The Recipient shall establish a board for the running of the Project ("**Project Board**") which shall include a Project Executive, Senior User and Senior Supplier as defined by the latest **PR**ojects **I**N **C**ontrolled **E**nvironments ("**PRINCE**") methodology. The Funder shall be entitled to attend the Project Board.
- 9.8 The Recipient shall on request provide the Funder with such further information, explanations and documents as the Funder may reasonably require in order for it to establish that any Grant claim is in accordance with this Agreement.
- 9.9 The Recipient shall permit any person authorised by the Funder such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Agreement and to monitor the Project and shall, if so required, provide appropriate oral or written explanations from them.
- 9.10 The Recipient shall provide the Funder with a final monitoring report when making its final Grant claim in accordance with the grant claim provisions set out in Part 2 of Schedule 2 which shall confirm whether the Project has been successfully and properly completed.

10. ACKNOWLEDGMENT AND PUBLICITY

- 10.1 The Recipient shall acknowledge the Grant in its annual report and accounts, including an acknowledgement of the Funder as the source of the Grant in the supporting notes.
- 10.2 The Recipient shall not publish any material referring to the Project or the Funder without the prior written agreement of the Funder (which shall not be unreasonably withheld). The Recipient shall acknowledge the support of the Funder in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by the Funder) shall include the Funder's name and logo (or any future name or logo adopted by the Funder) using the templates provided by the Funder from time to time.
- 10.3 In using the Funder's name and logo, the Recipient shall comply with all reasonable branding guidelines issued by the Funder from time to time.
- 10.4 The Recipient agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Funder.
- 10.5 The Recipient shall comply with all reasonable requests from the Funder to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Funder in its promotional and fundraising activities relating to the Project.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Funder and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Funder or the Recipient before the Commencement Date or developed by either party during the Grant

Period, shall remain the property of that party.

- 11.2 Where the Funder has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Funder.

12. CONFIDENTIALITY

- 12.1 Subject to clause 13 (Freedom of Information), each party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.

- 12.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:

- (a) is required to be disclosed by law (including, subject to Clause 13, where disclosure is required in accordance with the FOIA and the EIR);
- (b) at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
- (c) it is reasonably necessary for either party to disclose to those of its employees, representatives, advisers, agents, consultants and sub-contractors as may be reasonably necessary or desirable in order to implement the provisions of this Agreement, provided that before any such disclosure the receiving party shall make those employees, representatives, advisers, agents, consultants and sub-contractors aware of its obligations of confidentiality under this Agreement and shall at all times procure compliance by those employees, representatives, advisers, agents, consultants and sub-contractors with them;
- (d) is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or
- (e) is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

13. FREEDOM OF INFORMATION

- 13.1 It is acknowledged that both the Funder and Recipient are subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).

- 13.2 Both Recipient and Funder shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the

other to enable the other to comply with its obligations under the FOIA and EIRs;

- (b) transfer to the other all requests for information relating to this agreement that it receives as soon as practicable and in any event within 2 working days of receipt;
- (c) provide the other with a copy of all information belonging to the other requested in the request for information which is in its possession or control in the form that the other requires within 5 working days (or such other period as the other may reasonably specify) of the other's request for such information; and
- (d) not respond directly to a request for information unless authorised in writing to do so by the other.

13.3 It is acknowledged that either party may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the other. The other shall take reasonable steps to notify the other of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the other shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

14. DATA PROTECTION

Both parties shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Legislation and both Parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Agreement.

15. WITHHOLDING, SUSPENDING AND REPAYMENT OF GRANT

15.1 The Funder's intention is that the Grant will be paid to the Recipient in full. However, without prejudice to the Funder's other rights and remedies, the Funder may at its discretion withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant in the following circumstances:

- (a) the Recipient fails to obtain approval of the Funder in accordance with the Assurance Process;
- (b) the Project costs are lower than the budget as set out within the Budget and Funding Profile resulting in a saving;
- (c) the Recipient has at any time breached any of the terms, conditions or obligations set out in this Agreement;
- (d) the Recipient varies the scope of the Project without the consent of the Funder;
- (e) the Recipient fails to complete any phase of the Project within a timeframe considered reasonable by the Funder acting reasonably and/ or at any time the progression of the Project is significantly behind the Recipient's programme for the Project so as to cause the Funder (acting reasonably) to conclude that it is not reasonably practicable for the Recipient to complete the Project by the Longstop Date;

- (f) the Recipient obtains duplicate funding from a third party for the Project;
 - (g) the Recipient obtains funding from a third party which, in the reasonable opinion of the Funder, undertakes activities that are likely to bring the reputation of the Project or the Funder into disrepute;
 - (h) the Recipient provides the Funder with any materially misleading or inaccurate information;
 - (i) any member of the governing body, employee or volunteer of the Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of the Funder, bring or are likely to bring the Funder's name or reputation into disrepute; and/or
 - (j) any use by the Recipient of the Grant or part thereof is held to be a breach of any relevant legislation.
- 15.2 The Funder may retain or set off any sums owed to it by the Recipient which have fallen due and payable against any sums due to the Recipient under this Agreement or any other agreement pursuant to which the Recipient provides goods or services to the Funder.
- 15.3 The Recipient shall make any payments due to the Funder without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 15.4 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective development and delivery of the Project or compliance with this Agreement it will notify the Funder as soon as possible so that, if possible, and without creating any legal obligation, the Funder will have an opportunity to provide assistance in resolving the problem or to take action to protect the Funder and the Grant monies.
- 15.5 In the event that the Project does not proceed to implementation (which the Parties agree is to be demonstrated through the entering into by the Recipient of a Material Commitment) the Recipient may thereupon become liable to refund in full to the Funder the Land Acquisition Amount.
- 15.6 Without prejudice to the generality of Clause 15.1(e) if at any time the Funder (acting reasonably) has reason to believe that the Recipient without reasonable cause has suspended progression of the Project or is devoting insufficient resource and/or attention to the progression of the Project with a view to entering into a Material Commitment so as to be using reasonable endeavours to achieve the Longstop Date the Funder may serve notice in writing upon the Recipient to this effect. Upon receipt of such notice the Recipient shall provide such evidence as the Funder may reasonably request to demonstrate that there is a reasonable prospect that the Longstop Date will be achieved.
- 15.7 The Funder shall act reasonably in considering representations made and evidence provided in accordance with Clause 15.6 and where it is satisfied or ought to be satisfied by the representations made shall by further notice in writing to the Recipient withdraw the notice delivered under Clause 15.6.
- 15.8 The Funder shall be entitled to exercise its rights under Clause 15.6 on more than one occasion and notwithstanding that on a previous occasion a notice delivered under clause 15.6 has withdrawn. Any such subsequent application of Clause 15.6 shall also require the Funder to comply with the provisions of Clause 15.7.

15.9 Where the Recipient has failed to demonstrate the requirements made of it by the Funder under Clause 15.6 or for any other reasons powers to be exercised by the Recipient to enable completion of the Project cease to be capable of valid exercise then in such circumstances the Funder may serve notice upon the Recipient requiring repayment by the Recipient of the Land Acquisition Amount.

15.10 Upon service of a notice pursuant to Clause 15.9 the Recipient shall thereupon become liable to make repayment of the Land Acquisition Amount within 90 calendar days of the date of service of the notice. Interest shall be payable upon any part of the Land Acquisition Amount that is not repaid by the Recipient to the Funder by the due date at a rate of 4% above the base lending rate from time to time of Barclays Bank interest being compounded with quarterly rests the first period commencing on the date such amount fell overdue.

16. LIMITATION OF LIABILITY

15.1 The Funder accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Grant or from withdrawal of the Grant. The Recipient shall indemnify and hold harmless the Funder, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.

15.2 Subject to clause 15.1, the Funder's liability under this Agreement is limited to the payment of the Grant which has been validly claimed in accordance with the terms of this Agreement.

17. WARRANTIES

16.1 The Recipient warrants, undertakes and agrees that:

- (a) it has all necessary resources and expertise to develop and deliver the Project (assuming due receipt of the Grant);
- (b) it has not committed, nor shall it commit, any Prohibited Act;
- (c) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Funder immediately of any significant departure from such legislation, codes or recommendations;
- (d) it shall comply with state aid and procurement rules and legislation;
- (e) it shall ensure that all design, construction and safety standards are adhered to;
- (f) for the purposes of the Construction (Design and Management) Regulations 2015, the Recipient is the CDM client for any works associated with the Project
- (g) it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
- (h) it has obtained or will obtain all statutory consents required for the Project;
- (i) it has and shall keep in place adequate procedures for dealing with any

conflicts of interest;

- (j) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (k) all financial and other information concerning the Recipient which has been disclosed to the Funder is to the best of its knowledge and belief, true and accurate;
- (l) it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant; and
- (m) it is not aware of anything in its own affairs, which it has not disclosed to the Funder or any of the Funder's advisers, which might reasonably have influenced the decision of the Funder to make the Grant on the terms contained in this Agreement.

18. INSURANCE

- 17.1 The Recipient shall effect and maintain or shall procure that any external advisors and/or contractors appointed to develop or deliver of the Project on behalf of the Recipient effects and maintains with a reputable insurance company a policy or policies sufficient to cover all liabilities which may be incurred by the Recipient or its advisors or contractors, arising out of the Recipient's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss.
- 17.2 The Recipient shall (on request) supply to the Funder a copy of such insurance policies and evidence that the relevant premiums have been paid.

19. DURATION AND TERMINATION

- 18.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the first anniversary of expiry of the Grant Period or, where agreed by the Funder, for so long as any Grant monies remain unspent by the Recipient.
- 18.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

20. ASSIGNMENT

The Recipient may not, without the prior written consent of the Funder, novate, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Grant.

21. WAIVER

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

22. NOTICES

All notices in relation to this Agreement shall be in writing and shall be deemed to have

been duly given if personally delivered or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

23. DISPUTE RESOLUTION

23.1 In the event of any complaint or dispute (which does not relate to the Funder's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the Portfolio Management Office or any other individual nominated by the Funder from time to time.

23.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Portfolio Management Office, either party may refer the matter to the Funder's Managing Director and the Chief Executive of the Recipient with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Funder and the Recipient.

23.3 In the absence of agreement under clause 23.2, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

24. NO PARTNERSHIP OR AGENCY

This Agreement shall not create any partnership or joint venture between the Funder and the Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

25. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

26. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

27. SEVERABILITY

27.1 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.

27.1.1 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible validly gives effect to their intentions as expressed in this Agreement. The obligations of the parties under any invalid, illegal or unenforceable

provision of this Agreement shall be suspended during such a negotiation.

28. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.

29. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to it.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.



2019/104

The Common Seal of **WEST YORKSHIRE**)
COMBINED AUTHORITY affixed to this Deed)
was authenticated by:)

JAD

Authorised Signatory

The Common Seal of **LEEDS CITY COUNCIL**)
affixed to this Deed was authenticated by:)

Sarah Blenkin

Sarah Blenkin
Commercial Property Team Leader
Legal Services

Seal No. 011666

)

Authorised Signatory

Schedule 1 The Project

Part A – the Project

1. The A6110 forms the south west corner of the Leeds Outer Ring Road and is the busiest section in terms of vehicle numbers. Congestion is evident on a daily basis particularly at the junctions with the key radial A58 (Whitehall Road) and A62 (Gelderd Road) routes. The scheme includes improvements to a number of junctions on the route between the junction with the Stanningley By-pass in the north and to the interface with the Mirfield to Dewsbury to Leeds (M2D2L) scheme which is looking at the Dewsbury to Leeds corridor. The scheme also links in with changes planned for the Armley Gyratory associated with the City Centre Package And other outer ring road improvements at Dawsons Corner and Fink Hill. The Project also includes improvements to cycling infrastructure along the route and crossing facilities
2. Looking at the corridor as a whole means that the changes at the junctions referred to in Clause 2 above, can be considered alongside related improvements to other junctions and the implications for the corridor as a whole considered. It also means that the traffic impacts associated with new developments along the corridor can be considered properly in terms of their effect on the corridor as a whole.
3. The proposed scheme will support SEP priorities by:
 - Facilitating opportunities for future employment and housing growth on the corridor
 - Reducing traffic congestion and air pollution
 - Provide improvements for pedestrians and cyclists
 - Embed Green Streets principles

Part B – the Grant Funded Activity

4. A study of possible improvements to the corridor and to develop an outline business case (OBC) for the selected improvements. These improvements may include significant changes at both the A58 A62, A643 Elland Road and A653/White Rose Shopping Centre junctions with the A6110 Leeds Outer Ring Road, feasibility studies including associated survey work for other changes on the corridor as well as pedestrian and cycle facilities between Stanningley By-pass and the White Rose Shopping Centre. These will include a cycleway along the A6110 connecting to the City Connect Cycle Superhighway (which passes to the north of the A647 Stanningley By-pass junction) and pedestrian crossings over the same stretch.

Schedule 2
Part 1 Eligible Expenditure

1. Grant claims are made on an accruals basis as set out in "The Code of Practice on Local Authority Accounting in the United Kingdom" ("the Code") issued by the Chartered Institute of Public Finance and Accountancy (CIPFA).
2. The Recipient may only claim for expenditure within the budget as set out within the Budget and Funding Profile which has been lawfully incurred by it on the Project.
3. Exceptionally, where agreed in advance by the Funder and the Recipient the Funder may also make payments in advance of work being done where that is justified commercially and subject to the sole discretion of the Funder. Such amounts may not exceed 80% (eighty per cent) of the Grant amount in aggregate and are subject to the sole discretion of the Funder.] The Recipient shall still be required to submit claims via PIMS against outgoing expenditure and shall if requested by the Funder provide proof of expenditure on the Project.
4. The Recipient may only claim costs which are directly attributable to bringing the tangible fixed assets (within the scope of the Project) into working condition. This must be in accordance with the Code. In particular:
 - (a) the costs which are directly attributable to bringing the relevant asset into use, and therefore properly charged to capital, must be consistent with the definitions in the Code; and
 - (b) claims should not be made for directly attributable costs when substantially all the activities that are necessary to get the tangible fixed asset ready for use are complete, even if the asset has not yet been brought into use.
5. In all circumstances it is the responsibility of the Recipient with its advisors to come to decisions on whether it is appropriate to charge costs to revenue or capital.
6. Grant claims shall not include reclaimable VAT.

Part 2 Instructions for Claiming Grant

1. Unless otherwise agreed by the Funder, Claims should be made on a quarterly monitoring report and grant claim form via PIMS (or such other method required by the Funder).
2. All claims must include an Audit Declaration.
3. For the final claim for Grant for the Project the Recipient shall submit an Audit Declaration within six months of completion of the Project. The final payment of Grant shall only be payable on receipt by the Funder of the Recipient's final Audit Declaration.
4. Any claims for Grant in relation to compensation claims arising from the Project following completion of its delivery shall be made on a quarterly basis in accordance with the terms of this Agreement.

**Schedule 3
Budget and Funding Profile**

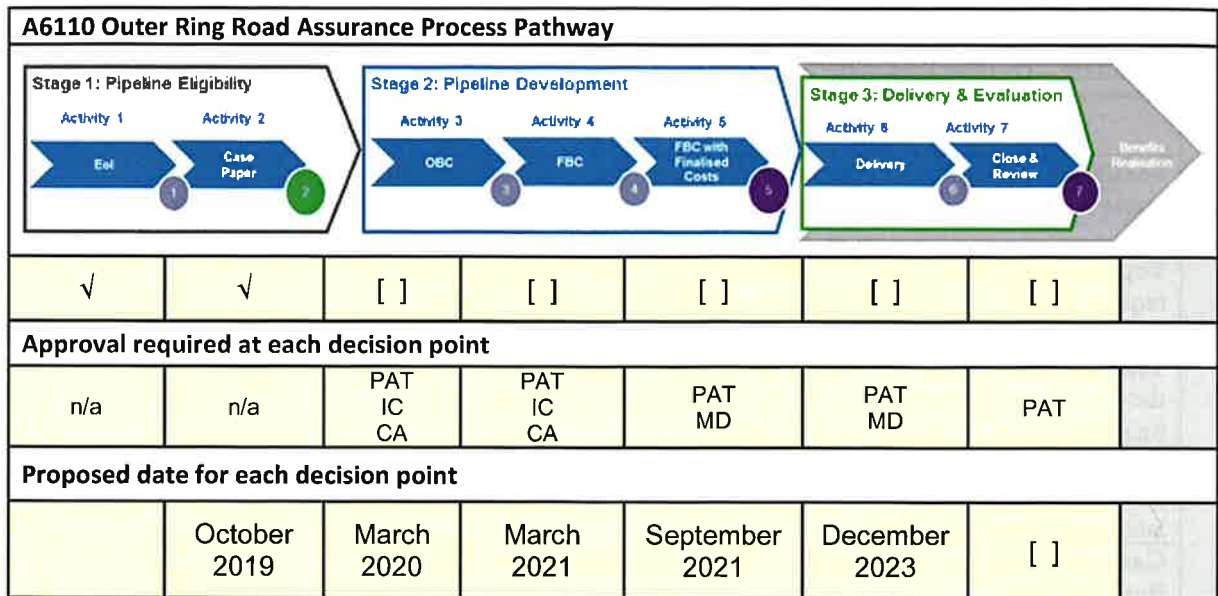
Project Cost Table

Mandate – Outline Business Case (DP3)	Value £k
Feasibility and Design – Further work on assessing the feasibility of the improvements outlined and more detailed design (sufficient for Gateway 1)	80
Topographic/Geotechnical/Traffic Surveys – Detailed design work will require information about the existing sites to be collected. Traffic surveys may be required to collect inputs for the traffic model.	40
Transport Modelling – A significant element of generating evidence for the Gateway 1 Business Case will be the development and use of a transport model to predict future traffic.	80
Specialist Advice (e.g. Land Valuation, CPO and Legal) – Specialist advice about certain aspects of the scheme may be required, especially if land acquisition is required.	20
Gateway 1 Report Preparation – This includes preparation of the Business Case.	40
Contingency Allowance (10%)	26
TOTAL	286

Annual spend profile

Year	
	2019/20
Mandate to Outline Business Case (DP3)	£286k

**APPENDIX 1
Assurance Process**



Key



Assurance Process Activity



Assurance Process Decision Points

- CA West Yorkshire Combined Authority
- IC West Yorkshire and York Investment Committee
- PAT Programme Appraisal Team
- MD Managing Director (WYCA)
- DoD Director of Delivery (DoD)