

# Appendix Two      **CONFIDENTIAL**

## **Oxfordshire Growth Board Memorandum of Understanding June 2020**

This memorandum of understanding is made by and between the Parties:

- i) Oxfordshire County Council of County Hall, New Road, Oxfordshire OX1 1ND (“OCC”)
- ii) Oxfordshire Growth Board; a joint committee formed by Cherwell District Council, Oxford City Council, Oxfordshire County Council, South Oxfordshire District Council, Vale of White Horse District Council and West Oxfordshire District Council.

The local authorities listed above comprising the county, city and district councils are together referred to as “the Parties” and each a “Party.” Individual constituent members of the Growth Board are as each a “Council.”

### **1. Introduction and Background**

- 1.1 The Growth Board was established in 2014 and has the purpose of facilitating and enabling collaboration between Oxfordshire local authorities and other bodies operating in Oxfordshire in relation to economic, housing and infrastructure development.
- 1.2 OCC is the designated accountable body for the Growth Board providing Section 151 and Monitoring Officer related services to the Growth Board.
- 1.3 The Growth Board and OCC may change these arrangements by mutual agreement, and the Memorandum of Understanding (MoU) shall be reviewed annually by the Growth Board and OCC to ensure it is accurate and complete.
- 1.4 The purpose of this MoU is to set out the respective roles and responsibilities of OCC acting as accountable body for the Growth Board and that of the Growth Board itself and therefore the Parties hereby agree the Scheme of Roles and Responsibilities set out in Section 6 hereto. This MoU also sets out commitments made in respect of existing joint programmes of work overseen by the Growth Board, and incorporates material elements of the formerly established Memorandum of Information Disclosure, which will cease in effect from the date of the signing of this document.
- 1.5 This MoU shall commence upon the date hereof and shall continue in effect until terminated by either Party.

### **2. Termination and Variation**

- 2.1 Termination can be enacted by either Party upon giving six months’ notice in writing to the other. In terminating this MoU the Parties shall comply with the requirements, if any, of Central Government and any other funding agencies.
- 2.2 If OCC cease to be the accountable body, it shall:
  - i) Continue to co-operate with the Growth Board and any successor accountable body and with all grantors to ensure a smooth transition; and
  - ii) Provide to the Growth Board or the new accountable body (where requested to do so by the Growth Board) all such invoices, receipts and other relevant records which are in its possession and which it holds in connection with its role of

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accountable body. For the avoidance of doubt, documents will be retained in accordance with OCC's Corporate Retention Schedule Policy.

- 2.3 This MoU shall terminate automatically upon the disbanding of the Growth Board. In such case, OCC and the Growth Board shall complete all of their obligations concerning:
- i) Monies granted to or by the Growth Board;
  - ii) Other assets held by OCC on behalf of the Growth Board; and
  - iii) Any accounts required to be submitted to Central Government or to any other relevant funding organisation.
- 2.4 This MoU shall be varied in writing only by the mutual agreement of OCC and the Growth Board save that this shall not prevent the Growth Board from making amendments to its Governance and Working Arrangements. Where a variation of this MoU requires a change to be made to the Growth Board's governance and working arrangements, that change shall not come into effect until the governance and working arrangements have been duly amended in accordance with its requirements.

### **3. Responsibilities**

- 3.1 The Growth Board is responsible for defining its strategic vision and overseeing delivery of the Growth Board priorities in accordance with any relevant funding arrangements.
- 3.2 The Growth Board will operate in accordance with:-
- i) Its Terms of Reference;
  - ii) This MoU;
  - iii) The guidelines provided by Central Government or any other body whose regulation controls the use of funds provided to the Growth Board; and
  - iv) Statutory requirements.
- 3.3 In addition, Growth Board members will
- i) where possible, work together to procure services to ensure best value is achieved;
  - ii) give assurance and commit to do everything reasonably possible to ensure the objectives and targets of jointly funded programmes (such as the Housing and Growth Deal) are met.
  - iii) once the Growth Board has determined funding allocations, take steps required to reflect those allocations within their budgets.
  - iv) accept that in certain circumstance spend relating to individual workstreams may be greater than the funding allocations. In these circumstances the source of additional funding will be clearly identified.
- 3.4 OCC will operate in accordance with:-
- i) Its Constitution;
  - ii) This MoU;
  - iii) Individual project collaboration agreements;
  - iv) The guidelines provided by Central Government or any other body whose regulation controls the use of funds provided to the Growth Board; and
  - v) Statutory requirements.

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### **4      Financial Management Arrangements**

- 4.1      The Growth Board is currently allocated public funding under a Housing and Growth Deal. Use of this funding, and any other future funding deals, must be undertaken in accordance with statute and the principles of democratic and financial accountability.
- 4.2      This requires there to be a public-sector body identified as the accountable body for audit and transparency purposes. Oxfordshire County Council is the accountable body for the Growth Board.
- 4.3      As the accountable body, OCC is held accountable for the Growth Board's funds in the same way that it is for its own funds. All funding received and expenditure incurred on behalf of the Growth Board will be subject to the same scrutiny. This means that OCC will administer any funds held on behalf of the Growth Board under its own accounting policies, financial procedure rules and contract procedure rules as set out in the Council's constitution to ensure that funds are applied and accounted for appropriately. This will be carried out under the direction of the Section 151 Officer.
- 4.4      OCC, as recipient of the Growth Board's grant allocations from Central Government in relation to the Housing and Growth Deal is responsible for compliance with the grant conditions which may include the obligation to repay, in whole or in part, grants in the event of non-compliance with grant conditions.
- 4.5      OCC will hold any funding it receives and all interest or income earned for and on behalf of the Growth Board and ensure that the money is not moved or converted to cash without specific instruction from the Growth Board.
- 4.6      OCC will consolidate the Growth Board's cash balances with its own cash balances and deposit the co-mingled funds in accordance with the OCC's Treasury Management Strategy. OCC will pay interest on the Growth Board daily cash balances based on the 'Average 7 Day Rate'.
- 4.7      Any infrastructure constructed or acquired by OCC acting on the Growth Board's behalf, will be accounted for as part of the Council's asset register in line with OCC's normal accounting procedures.

### **5      Provision of Services by OCC**

- 5.1      OCC provide a range of services to the Growth Board. Those that are only incurred because of the requirement to have an accountable body are provided free of charge. These include Section 151 Officer time to provide advice and support to the Growth Board and relevant sub committees/groups with regard to the use of any public funds that are allocated to the Growth Board. This also includes Monitoring Officer time to provide advice in relation to legal matters.
- 5.2      In addition, OCC also provide the following chargeable services to the Growth Board:
- i)      Finance functions relating to the monitoring and reporting of total funding received and available to the Growth Board; the monitoring and reporting of programmes and schemes; the payment of funds to Growth Board delivery partners; the calculation of interest earned on funds received; the provision of financial information for internal and external audit requirements and the completion of relevant government financial returns

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- ii) Internal Audit functions in regard to the governance arrangements between the Growth Board and the accountable body as well as use of public funds allocated to the Growth Board
- iii) legal functions including preparation of funding agreements with regard to the use of any public funds that are allocated to the Growth Board and advice on state aid issues.

5.3 Chargeable and non-chargeable arrangements will be reviewed annually and if/ when the scale of accountable body responsibilities, managed resources or project portfolio resource requirements increase significantly. Where specific, additional work is required then these may be charged where mutually agreed.

### **6 Scheme of Roles and Responsibilities**

6.1 The Growth Board shall:

- i) make all decisions on the allocation of the Housing and Growth Deal (the Deal) grant funding agreed by Government as well as other funding for the purposes of the Housing and Growth Deal;
- ii) prioritise and allocate funding and be accountable for the delivery of projects funded by funding streams for which OCC is to act as accountable body including the Housing and Growth Deal;
- iii) monitor all activities financed by the Growth Board and ensure that all decisions are fully documented and recorded in writing;
- iv) agree robust and transparent assessment criteria against which funding will be allocated;
- v) ensure that projects are approved only after an appraisal has been carried out and that the separation of duties between project appraisal and project approval;
- vi) through agreed project plans, ensure appropriate timescales and operating practices are in place to support effective implementation of decisions made
- vii) following approval, request OCC to effect the payment of funding to the relevant organisations;
- viii) fulfil the client role vis a vis OCC as the accountable body and, in particular, give OCC clear and comprehensive instructions in relation to the performance by OCC of its roles and responsibilities as set out in paragraph 6.2 below;
- ix) Co-operate with and assist OCC acting in its role as accountable body in undertaking the day to day responsibility for financial matters.

6.2 OCC shall:

- i) provide support and assistance to the Growth Board to ensure both legal and financial probity in relation to the receipt and use of specific funding for which it acts as accountable body;
- ii) ensure decisions and activities of the Growth Board conform with legal requirements with regard to transparency, equalities, social value, environment, State Aid and procurement;
- iii) ensure that funds are used appropriately and advise the Growth Board on the procedures necessary to ensure formal compliance with any terms and conditions of funding or grant;
- iv) provide advice on proper and effective governance for overseeing the allocation and spend of the Growth Board funding;
- v) enter into funding agreements on behalf of the Growth Board for agreed funding streams;
- vi) enter into appropriate legal agreements or contracts with the relevant Growth Board member on behalf of the Growth Board once the project is approved by the

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- Growth Board following a successful due diligence process;
- vii) ensure that the funding is passed on to the relevant Growth Board member without delay and in line with the conditions of the funding; where this is to be passed onto a third party it will be for the Growth Board member to action;
  - viii) submit the claims to the funding body and prepare and submit relevant documents for inspection by Central Government or external auditors as required;
  - ix) where the funding stream is working on a claim basis, ensure that the claimed funding is passed on to the relevant Growth Board member delivery partner without delay and in line with the conditions of the funding or loan agreements;
  - x) ensure that the Growth Board performance and financial systems are robust;
  - xi) provide details of all monies expended in accordance with the terms and conditions of funding;
  - xii) monitor approved projects during and after implementation in line with the agreed monitoring framework or as required by the funding body;
  - xiii) inform and keep the Growth Board informed of any grant funding allocations received and the procedures and recommended criteria for distributing the funding based on the funding body's requirements;
  - xiv) assist the Growth Board in identifying other sources of funding or to apply for these where commissioned by the Growth Board;
  - xv) ensure that the Growth Board adheres to its assurance framework in respect of maintaining the official record of Growth Board proceedings and holding copies of all relevant documents relating to funding; and
  - xvi) report and take appropriate action where it has reason to believe that the Growth Board, or anybody acting as its agent, is failing to
    - a) adhere to the terms and conditions of funding requirements or the funding or loan agreements;
    - b) comply with its governance and working arrangements or any statutory requirement;
    - c) provide a suitable standard of probity.

### **7      Audit**

#### **7.1      The Growth Board shall**

- i) co-operate with and assist OCC in audit examinations relating to governance arrangements, use of public funds and all operating systems;
- ii) act upon all agreed management actions contained within the OCC's internal audit report;
- iii) report to OCC any financial irregularity or suspected irregularity in the use of any funding.

#### **7.2      OCC shall**

- i) maintain proper records, in accordance with its Constitution, of all monies received and disbursed for the Growth Board and make such records available for inspection by both internal and external regulators;
- ii) arrange regular audit examination of the Growth Board's activities with regards to use of public resources and, following each audit, present a report to the Growth Board with recommendations to strengthen their governance and management practices;
- iii) allow funding bodies to have access to all files and records of projects for which it acts as accountable body; and
- iv) supply, as necessary, completed statements of income, expenditure and disbursements to the Growth Board, funding organisations, Central Government and external auditor.

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### **8      Recovery of funds**

- 8.1      The conditions where funds will be recovered will be laid out in the initial funding or grant agreement. Where recovery of funds is at risk, the general stage of fund recovery will be as follows:
- i)      Stage 1: OCC will send notice containing the reason for concern, outlining the potential fund recovery situation and giving time where appropriate for corrective action;
  - ii)     Stage 2: If corrective action is not taken or is deemed insufficient to avoid fund recovery a further notice will be sent by OCC asking for the return of funds with a deadline for the return of the funds. In cases of particular difficulty OCC may accommodate a fund return payment plan of instalments over an agreed period of time. However, this must be agreed in writing and cannot be assumed;
  - iii)    Stage 3: If funds are not returned within the set deadline then OCC may then instigate debt recovery procedures which may result in legal action being taken.
- 8.2      OCC will only take the step to recover funds from those Growth Board members it has a direct agreement with. In the case of a third party such as a subcontractor it would be up to the Growth Board member OCC is seeking funds from to determine and take any action they require to recover their losses from any third parties.
- 8.3      OCC does not wish to undertake stage 3 if at all avoidable but will do so in order to protect the public purse and ensure that public funding is being used appropriately.

### **9      Data Protection**

- 9.1      The Parties hereto shall comply with their obligations under the EU General Data Protection Regulation EU 2016/679(GDPR) and the Data Protection Act 2018 and any subordinate legislation made under such Act together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation in the performance of their obligations under this agreement.

### **10     Publicity and Disclosure in Relation to Meetings**

- 10.1     The Growth Board will operate in accordance with the publicity requirements applicable to a joint committee under Part VA of the Local Government Act 1972. Papers relevant to meetings of the Growth Board will be placed into the public domain in the normal way by the Party with administrative control of that joint committee in compliance with s100A to 100K (and Schedule 12A) of the Local Government Act 1972. In accordance with those provisions confidential information as defined in that Act will not be disclosed. Exempt information as defined in that Act may or may not be disclosed. It is acknowledged that under these provisions information is exempt if the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **11     Requests under Freedom of Information and Environmental Information**

- 11.1     The Growth Board and the Monitoring Officers of the relevant Councils have developed a Protocol for Handling Freedom of Information and Environmental Information requests. This is based on the principle that the Growth Board itself and each member authority is a 'freedom of information authority' in its own right. The agreed Protocol (Annex 1 to the MoU) shall guide how the Board and the member authorities will handle requests relating to the work of the Growth Board.

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### **12      Confidentiality**

- 12.1 Each Party agrees not to unilaterally disclose any information identified by any Council as confidential information or exempt material (under the Local Government Act 1972) information unless required by law without giving notice of at least 14 calendar days to the Council or Councils who provided the confidential/exempt information. No confidential/exempt information will be disclosed without full consideration having been given to any objection made to its disclosure, unless disclosure is otherwise required by law.
- 12.2 Neither Party will use or disclose any confidential material provided by the other 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.
- 12.3 For the avoidance of doubt, confidential information shall not include (a) any information obtained from a third party who is free to divulge such information; (b) any information which is already in the public domain otherwise than as a breach of this agreement; or (c) any information which was rightfully in the possession of a Party prior to the disclosure by the other Party and lawfully acquired from sources other than the other Party.

### **13      Dispute resolution**

- 13.1 If either Party has any issues, concerns or complaints about any matter in this MoU, they shall notify the other Party 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 Growth Board's Chair (or if the Chair is an OCC appointee, the Vice-chair) and OCC's Section 151 Officer (or if the dispute is between the Growth Board and OCC, one of the district/city council's Section 151 Officer) who shall decide on the appropriate course of action to take.
- 13.2 If either Party receives any formal inquiry, complaint, claim or threat of action from a third party they shall notify the other Party and co-operate with each other to respond, or take such action, as is appropriate and/or necessary

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

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

### **15      Status**

- 15.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the Parties from this MoU. The Parties enter into the MoU intending to honour all their obligations.

### **16      Governing Law and Jurisdiction**

- 16.1 This MoU shall be governed by and construed in accordance with English law.

**This Memorandum of Understanding is agreed and signed by:**

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Signed for and on behalf  
of Oxfordshire County Council by

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Signed for and on behalf  
of Oxford City Council

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Signed for and on behalf  
of Cherwell District Council

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Signed for and on behalf  
of South Oxfordshire District Council

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Signed for and on behalf  
of Vale of White Horse District Council

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Signed for and on behalf  
of West Oxfordshire District Council

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### Annex One

#### FOI/EIR PROTOCOL – INFORMATION REQUESTS RELATING TO THE OXFORDSHIRE GROWTH BOARD

This process has been agreed by Oxfordshire's Monitoring Officers and the Growth Board managers. It provides a means of handling Freedom of Information and Environmental Information requests regarding the work of the Growth Board. Each member authority of the Growth Board and the Growth Board's officers themselves may be recipients of information requests.

This outline provides a legally compliant means of dealing with such requests while providing a degree of mutual consultation whilst also ensuring the identity of requesters is not disclosed to other members of the Growth Board. **Each authority will be responsible for responding to requests submitted to it. Authorities should not simply redirect requesters 'to the Growth Board'** but should answer the request on the basis of any information held by the receiving authority in relation to it.

Freedom of Information Teams should adopt the following principles and process:

1. Each of the county's principal councils, and the Growth Board, are **separate FOI authorities** in their own right. Requesters may therefore submit requests from time to time to any or all of the bodies, about the Growth Board partnership's work.
2. Should there be such an FOI or EIR request in relation to the Growth Board's work received by any of the authorities, then the **receiving body's FOI Team will notify each of the other bodies' FOI Teams**: for the purpose of consulting them about how the receiving authority intends to respond.
3. The original receiving body will **consider all representations** (which shall also be made at the earliest opportunity) received in discharging its statutory obligations. The requester's **name will not be disclosed** to the other authorities.
4. In the event of a disclosure of information in response to a request under the Environmental Information Regulations or the Freedom of Information Act, the **disclosing body shall notify all other Councils immediately** and shall provide an explanation of its decision-making process on request.
5. A similar process will then be followed if an Internal Review request is received; or an Information Commissioner referral.
6. This process is on the basis that, while each authority is an FOI authority in its own right, **consultation between authorities** on a proposed response does not breach that principle.

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7. If all authorities receive the same request, then each must respond to it at its own relevant level of management. **Achieving a 'consistent' response can not be the primary aim.** While approaches can be discussed, it will be for each authority to 'sign off' its own responses. This will also be important if a request is referred to the Commissioner, who would be likely to ask how each authority addressed the response.
8. It should be borne in mind that **a requester can also ask for the 'metadata'** to any request, which would bring into frame any information shared between authorities in the consideration of a response.

NB The County Council will be acting as FOI advisers to the Growth Board.