

Decision under Delegated Powers

Officer requesting decision

Building Control Team Leader

Officer making decision

Head of Planning and Regeneration Services

Recommendation

That approval be given to enter into a Cost Sharing Agreement, executed as a deed, with North West Leicestershire District Council and Hinckley and Bosworth Borough Council to equally share the costs of preparing evidence and providing project support for the Building Control Alternative Service Delivery Model Project up to a value of £50,000

Reason

To define the terms and conditions for the joint procurement and funding of consultancy services to assist the Project Board in its work.

Authority for Decision

Under the provisions of the Constitution the Head of Service has delegated authority to sign contracts up to a value of £50,000 entered into on behalf of the Council in the course of the discharge of an Executive function (subject to compliance with the Financial Regulations).

Decision and Date

Background

Charnwood Borough Council, North West Leicestershire District Council and Hinckley and Bosworth Borough Council are working jointly to bring forward proposals for an alternative service delivery model for building control services across the joint administrative area.

This work is being overseen by a joint project board formed of senior management team representatives from the three local authorities and led by Charnwood Borough Council. The Project Board has requested consultancy support to provide specialist advice on the feasibility of alternative service delivery options so that a preferred option can be identified for members' consideration in a Cabinet meeting in March/April 2019. It is also expected that a dedicated project manager will be required to assist the Project Board during 2019/20 to assist in the implementation of the agreed proposal.

Each of the three councils may take the procurement lead on behalf of the partnership and this is detailed in the legal agreement along with an explanation on how costs will be shared on an equal basis. This legal agreement is contained in the appendix.

Comments from HR

The report has no HR implications

Financial Implications

There are no financial implications of entering into the cost sharing agreement in itself. total cost of project consultancy support is expected to be about £45k during 2018/19 split equally between the three partners. The cost sharing agreement will run for the duration of the project (nominally until April 2020) with any further expenditure controlled through the cost sharing agreement by the Project Board and expenditure made within budget.

Risk Management

No specific risks have been identified with this report.

Key Decision: No

Appendix	Cost sharing agreement
Background Papers:	None.

CHARNWOOD BOROUGH COUNCIL (1)
HINCKLEY AND BOSWORTH BOROUGH COUNCIL (2)
NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL (3)

In relation to the
Building Control Shared Service Project

COST SHARING AGREEMENT

This **DEED** is made the

day of

2018

B E T W E E N:

- (1) **CHARWOOD BOROUGH COUNCIL** of Council Offices, Southfield Road, Loughborough, LE11 2TN
- (2) **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** of Hinckley Hub, Rugby Road, Hinckley, Leicestershire LE10 0FR
- (3) **NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL** of Council Offices, Coalville, Leicestershire, LE67 3FJ

(hereinafter together called “the Members” and references to “Member” shall be to any one individual party) **W H E R E A S** the Members have agreed to collaborate together as set out in this Agreement to jointly fund a feasibility and consultancy study.

1. DEFINITIONS AND INTERPRETATION

- 1.1 The following words and expressions shall have the meanings assigned to them except where the context otherwise requires:
 - 1.1.1 “**Agreement**” means the terms and conditions contained herein together with the Schedules attached hereto and such other documents as may be specified as forming part of this Agreement;
 - 1.1.2 “**Contribution**” means the cost of the Engagement Process to be agreed by the Project Board;
 - 1.1.3 “**Contribution Proportion**” means the proportion of the Contribution to be paid by each Member, as set out in Schedule 3 and as amended in accordance with this Agreement;
 - 1.1.4 “**Engagement Process**” means the Lead Member’s procuring (both before and after the date of this Agreement) consultancy services to support the Project;

- 1.1.5 “**Lead Member**” means the Member appointed by agreement of the members on the Project Board which shall act on behalf of the Members together and not on its own account in order to run the Engagement Process;
- 1.1.6 “**Notice**” means notice in writing to be delivered to any Member under the terms of this Agreement by another Member or Members and to take effect no less than seven (7) days from the date of the Notice;
- 1.1.7 “**Project**” means the Building Control Shared Services Project as detailed in the Project Initiation Document at Schedule 4
- 1.1.8 “**Project Board**” means the individual appointed by each respective Member as detailed at Schedule 2 or such person as notified to the other Members from time to time in writing;
- 1.1.9 “**Proportions**” means the individual shares to be the responsibility of a Member as set out in Schedule 3 of any amount due under this Agreement expressed to be shared by all the Members;
- 1.1.10 “**Representative**” means the individual appointed by each respective Member as detailed at Schedule 1 or such person as notified to the other Members from time to time in writing;
- 1.1.11 “**Schedules**” means the schedules attached to this Agreement and “Schedule” shall be construed accordingly.
- 1.2 Words importing the singular also include the plural and the masculine includes the feminine and vice-versa where the context requires.
- 1.3 The headings in this Agreement shall not be taken into consideration in its interpretation.
- 1.4 Unless otherwise stated all references to Clauses and Schedules are references to Clauses and Schedules numbered in the terms and conditions of this Agreement and not to those in any other document attached or incorporated by them.

2. COLLABORATION

- 2.1 This Agreement is made under the provisions of section 113 Local Government Act 1972 and S1(1) (b) Local Authorities (Goods and Services) Act 1970, together with all other enabling powers.
- 2.2 The Members hereby agree to collaborate in accordance with the terms and conditions of this Agreement.
- 2.3 The Members hereby appoint North West Leicestershire District Council as the Lead Member and confirm their individual addresses and their Representatives as stated in Schedule 1.
- 2.4 Unless otherwise agreed in writing by the Members, this Agreement shall not terminate if a Member changes its name or is taken over by, or merged with, another local authority or district or area.

3. TERM

- 3.1 The term of this Agreement shall be from the date of this Agreement until the end of the Project, unless terminated in accordance with clause 10 of this Agreement ('the Term').
- 3.2 Provided that the terms of this Agreement shall nevertheless continue to bind the Members to such extent and for so long as may be necessary to give effect to the rights and obligations specified in this Agreement.

4. COSTS

- 4.1 The Project Board shall determine the initial Contribution required for the Engagement Process.

- 4.2 When notified of the initial Contribution by the Project Board, each Member shall pay to the Lead Member their Contribution Proportion within 15 (fifteen) working days of the notification.
- 4.3 If the Project Board determines that further Contributions are required for the Engagement Process, this shall be notified to each Member and each Member shall pay to the Lead Member their Contribution Proportion within 15 (fifteen) working days of the notification.

5. PERFORMANCE OF THE ENGAGEMENT PROCESS

- 5.1 The Lead Member shall use its reasonable endeavours to promptly after the date of this Agreement complete the Engagement Process.

6. EXECUTIVE AUTHORITY

- 6.1 No Member shall have authority to bind or to make any commitment on behalf of any other Member unless such authority is expressed in writing by the Member concerned.
- 6.2 Under the authority granted to him or her, the Representative of a Member shall represent the Member for all purposes connected with the performance of the Member's obligations under this Agreement.
- 6.3 Each Member shall give prior reasonable notice to all Members of any change in its Representative as may occur from time to time.
- 6.4 In the event of there being disagreement between the Members, the relevant Representative or Chief Executive or Chief Operating Officer of the relevant Members shall meet together and seek a resolution within ten (10) working days.

6.5 Nothing in this Agreement shall render a Member an employee or agent of another Member, nor any of a Member's employees, agents or sub-contractors to be the same of another Member, save to the extent expressly provided for in this Agreement. Nor shall anything in this Agreement establish a relationship of partnership or joint venture between any of the Members or authorise any Member to make or enter into any commitments for or on behalf of any other Member, except as agreed pursuant to Clause 5.

7. DOCUMENTS

7.1 During the Term of this Agreement and after its termination without limit in time, no Member shall, save as required by law, disclose to any person any information which it obtains through its participation under this Agreement (and shall ensure that its employees and elected members shall observe such restrictions) unless the said information:

7.1.1 becomes public knowledge;

7.1.2 must be disclosed for the proper performance of the Duties;

7.1.3 or as required under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, or by order of a Court of competent jurisdiction; or

7.1.4 is released with the prior written consent of all Members.

7.2 Each Member shall deal with and co-operate with any requests for information regarding this Agreement it receives in accordance with the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and shall promptly upon receipt notify the other Members in writing to enable Members to recommend a response to that request for information within five (5) working days. The relevant Member shall consider the recommended responses received within five (5) working days when responding to the request.

7.3 Notwithstanding the provisions of Clause 7.2, each Member shall have absolute discretion in relation to the nature of the response to any such request for information directed to that Member.

8 DEFAULT

8.1 A Member that delays or fails to fulfil its obligations in whole or in part under this Agreement shall be in default and shall indemnify the other Members in respect of any losses directly or indirectly arising from such default.

8.2 A Notice in writing to a Member from all the other Members or the Lead Member on behalf of the other Members, that the performance of its obligations under this Agreement is unsatisfactory, shall set out such reasonable steps to remedy its performance and give the relevant Member a reasonable time to implement these steps, such period being not less than seven (7) days. Failure to remedy its performance within the reasonable timescales specified shall for the purposes of this clause mean that the Member concerned is in default.

8.3 Upon termination of this Agreement and receipt of all amounts due thereunder, the Lead Member shall account to the other Members for any amounts unspent and these shall be refunded to the Members in the Proportions.

9. FORCE MAJEURE

9.1 The Members shall have no liability to each other in respect of any event excusing performance for a reason beyond its control including without prejudice to the generality of the foregoing fire, flood, acts of God, riot, civil disturbance, war or sabotage, the coming into force of any statute, statutory instrument, regulation or byelaw of the government or any competent authority rendering the continued performance of the obligations under this Agreement illegal, unlawful or impossible.

10. TERMINATION

- 10.1 No Member shall seek to terminate this Agreement with effect prior to the end of the Project.
- 10.2 The Members may terminate this Agreement unanimously on a notice period.

11. LIABILITY

- 11.1 The Members shall indemnify and keep indemnified the Lead Member for and against all liabilities, costs, expenses, damage and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other reasonable professional costs and expenses) suffered or incurred by the Lead Member arising from any arrangement under this Agreement or its termination thereof and/or in respect of any action taken by the Officer against the Lead Member, which arises as a result of any act, omission or negligence of the Members, its officers or employees.
- 11.2 The Lead Member shall indemnify and keep indemnified the Members for and against all liabilities, costs, expenses, damage and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other reasonable professional costs and expenses) suffered or incurred by any of the Members arising from the arrangement under this Agreement or its termination thereof and/or in respect of any action taken by the Officer against any of the Members, which arises as a result of any act, omission or negligence of the Lead Member, its officers or employees.
- 11.3 Each of the Members warrants that it will indemnify and keep indemnified the other Members against all legal liabilities arising out of or in connection with the performance, or otherwise, of its individual obligations under this Agreement insofar that the Member's acts or omission has resulted in the liability arising.
- 11.4 In the event of it being alleged by one Member in writing that any legal liability is attributable to another Member or Members, the Members shall use reasonable endeavours to reach agreement on the liabilities to be borne by each of the Members, and in the event of the Members failing to so agree, a proper

apportionment shall be determined by resolution between the respective senior officers in accordance with Clause 6.4.

12. CONFIDENTIALITY

12.1 Nothing in this Agreement shall act to limit any duties imposed on any Member under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the General Data Protection Regulations 2018.

13. FINANCIAL ADMINISTRATION AND ACCOUNTING

13.1 Each Member shall be responsible for keeping its own accounts in respect of payments due to it and for its own financial affairs generally.

14. NOTICES

14.1 Notices under this Agreement shall be in writing and will take effect from actual receipt at the address stated in Schedule 1. Delivery can be by hand or facsimile message against a written confirmation of receipt or by registered letter or by e-mail promptly confirmed by letter.

15. ARBITRATION

15.1 In event of a failure to resolve any dispute or difference arising out of or in connection with this Agreement the matter shall be determined by the appointment of a single arbitrator to be agreed between the Members in dispute, or failing agreement within fourteen (14) calendar days, after such Members have given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators. The costs of such appointment to be borne by the Members in dispute in such proportions as the arbitrator may determine.

16. ENTIRE AGREEMENT

16.1 This Agreement contains the whole agreement between the Members and supersedes any prior written or oral agreements, representations or understandings between them relating to the subject-matter. The Members confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

17. GOVERNING LAW

17.1 This Agreement is made and shall be governed by and construed in accordance with English Law and the Members irrevocably submit to the jurisdiction of the English Courts.

18. COUNTERPARTS

18.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered to the Lead Member shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

19. SUPPLEMENTAL

19.1 If any provision of this Agreement shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

19.2 This Agreement is enforceable by the parties and their successors in title. Any rights of any person to enforce the terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999 are excluded.

19.3 Any intellectual property rights subsisting in any original work created by the Officer during the course of undertaking the Duties shall belong to the Members in equal shares.

- 19.4 Each of the Members will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Agreement.
- 19.5 In respect of the Officer, the Lead Member agrees to comply with all of its legal obligations, statutory or otherwise as the Officer's employer.

This agreement **EXECUTED** as a **DEED** by
CHARNWOOD BOROUGH COUNCIL:

Authorised Signatory

This agreement **EXECUTED** as a **DEED**
by **HINCKLEY AND BOSWORTH BOROUGH**
COUNCIL:

Witness to the Seal

EXECUTED as a **DEED** by affixing
THE COMMON SEAL of **NORTH WEST**
LEICESTERSHIRE DISTRICT COUNCIL
in the presence of:

Witness to the Seal

SCHEDULE 1

Local Authority Member	Representative
Charnwood Borough Council	Name: Richard Bennett Title: Head of Planning and Regeneration Email: Richard.Bennett@Charnwood.gov.uk Charnwood Borough Council Council Offices Southfield Road Loughborough LE11 2TN
Hinckley and Bosworth Borough Council	Name: Steve Meynell Title: Planning Manager (Major Projects) Email: steve.meynell@hinckley-bosworth.gov.uk Hinckley & Bosworth Borough Council Hinckley Hub, Rugby Road, Hinckley, Leicestershire, LE10 0FR
North West Leicestershire DC	Name: David Darlington Title: Building Control Manager Email: David.darlington@NWLeicestershire.gov.uk North West Leicestershire District Council Council Offices Whitwick Road Coalville Leicestershire LE67 3FJ

**SCHEDULE 2
PROJECT BOARD**

<p>Charnwood Borough Council</p>	<p>Name: Eileen Mallon Title: Strategic Director Housing, Planning and Regeneration Services Email: eileen.mallon@Charnwood.gov.uk</p> <p>Charnwood Borough Council Council Offices Southfield Road Loughborough LE11 2TN</p>
<p>Hinckley and Bosworth Borough Council</p>	<p>Name: Rob Parker Title: Director of Planning and Environment Email: @hinckley-bosworth.gov.uk</p> <p>Hinckley & Bosworth Borough Council Hinckley Hub, Rugby Road, Hinckley, Leicestershire, LE10 0FR</p>
<p>North West Leicestershire DC</p>	<p>Name: James Arnold Title: Strategic Director of Place Email: @NWLeicestershire.gov.uk</p> <p>North West Leicestershire District Council Council Offices Whitwick Road Coalville Leicestershire LE67 3FJ</p>

SCHEDULE 3
Contribution Proportions

Local Authority Member	Contribution Proportions
Charnwood Borough Council	33.3%
Hinckley and Bosworth Borough Council	33.3%
North West Leicestershire District Council	33.3%

SCHEDULE 4

Project Initiation Document