

Dated:

(1) Environment Agency

and

(2) Somerset Council

Agreement relating to construction of Bridgwater Tidal
Barrier Scheme

Project Ref No

Commencement Date:

Project Period:

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THIS AGREEMENT is made on the

BETWEEN:

(1) **THE ENVIRONMENT AGENCY**, whose principal office is at Horizon House, Deanery Road, Bristol BS1 5AH (“the Agency”)

(2) **SOMERSET COUNCIL** of County Hall, The Crescent, Taunton, Somerset, TA1 4DY (“the Council”)

together “the Parties” and each individually “the Party”

1 Recitals

1.1 The Agency is an executive non-departmental public body, sponsored by the Department for Environment, Food & Rural Affairs and has statutory flood risk management functions in respect of main rivers under section 165(1) Water Resources Act 1991 (WRA 1991) and is a risk management authority for the purpose of the Flood and Water Management Act 2010 (FWMA 2010).

1.2 Section 165 of the WRA 1991 gives the Agency the power to carry out “flood risk management work” if the Agency considers the work desirable having regard to the national flood and coastal erosion risk management strategies under Section 7 and 8 of the FWMA 2010 and if the purpose of the work is to manage a flood risk (within the meaning of the FWMA 2010) from the sea or a main river.

1.3 The Council is a local authority within the meaning of Section 165(5) WRA 1991, as well as a Coast Protection Authority under the Coast Protection Act 1949, the Harbour Authority for the Bridgwater Docks and a risk management authority within the meaning of the FWMA 2010.

1.4 By a collaboration agreement dated 15 March 2018 Sedgemoor District Council and the Agency agreed to cooperate in a joint project to develop a proposal for a tidal barrier in the River Parrett and associated works to deliver an effective defence against tidal flooding in Bridgwater and the surrounding area.

1.5 That collaboration agreement was not anticipated to continue later than 12 months after the date of any Order under the Transport and Works Act 1992. The Bridgwater

Tidal Barrier Order 2022 took effect on 25 March 2022.

- 1.6 By reason of The Somerset (Structural Changes) Order 2022 all contracts entered into by Sedgemoor District Council automatically transferred by operation of law to Somerset Council on 1 April 2023. Somerset Council is therefore the statutory successor to Sedgemoor District Council.
- 1.7 The Parties wish to continue collaborating during the construction and delivery stages of the Bridgwater Tidal Barrier scheme on the basis of the terms and conditions set out below.

NOW THE PARTIES AGREE AS FOLLOWS:

2 Definitions & Interpretation

- 2.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“Agency” means the Environment Agency, its successors and assigns.

“Agency Funding” means (as indicatively described in Schedule 4):

- (i) the FDGiA, both (i) secured and (ii) forecast that the Agency anticipates realising for the Project:
- (ii) External Funding that the Agency, acting reasonably, may secure to defray any shortfall in the costs and expenses required to deliver the Project:
- (iii) Non- Financial Contributions that the Agency contributes to the Project.

“Agreement” means this Agreement.

“CEDR” means the Centre for Effective Dispute Resolution of The International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU.

“Commencement Date” means the date of this Agreement.

“Committed Funding”	the funding referred to in Schedule 2, that as at the date of this Agreement is available to the Council in cleared funds for expenditure relating to the Project and which may be released to the Agency in accordance with the provisions of clause 11 (Payment & Financial Contributions).
“Completion Date”	means the date of the completion of the Project (Gateway 6) or 31 December 2033, whichever is sooner.
“Contributions”	means the Agency Funding, the Council Funding, and the Parties’ respective Non-Financial Contributions.
“Council”	means Somerset Council, its successors and assigns.
“Council Approval”	means any internal approvals that the Council require in accordance with its written Constitution to authorise and enable (i) Council Funding to be lawfully released (ii) decisions concerning the Works and the Project (iii) material amendments to the Works or scope of the Project (iv) any contractual commitments which will bind the Council.
“Council Funding”	means (as indicatively described in Schedule 3): <ul style="list-style-type: none"> (i) the Committed Funding; (ii) The Forecast Funding when received in cleared funds by the Council that are recovered from defined flood defence receipts and contributions that the Council anticipates it is likely to receive during the currency of this Agreement to support the Project, as per the Forecast Funding identified in Schedule 2; (iv) External Funding that the Council, acting reasonably, may secure to defray any shortfall in the costs and expenses required to deliver the Project;

(v) Non- Financial Contributions that the Council contributes to the Project.

“Defra” means the Department for Environment, Food and Rural Affairs and where applicable includes reference to the Secretary of State for Environment, Food and Rural Affairs.

“External Funding” means any funding or assistance provided by any third party (including any state or public body) for the Project, or to any Party for use in the Project.

“External Funding Terms” means the terms, conditions, rules and policies on or subject to which External Funding is or shall be made available to either the Agency, the Council or both for the purposes of the Project.

“FDGiA” means Flood Defence Grant in Aid or any successor form of funding that the Agency shall secure for the Project.

“Financial Contributions” means the Agency Funding and the Council Funding for each year of this Agreement illustrated indicatively in Schedules 3 and 4.

“Forecast Funding” means the financial estimates and projections for funding from the Council, as set out in Schedule 3 and as updated from time to time, that the Parties acting reasonably consider are likely to be received from developers to support the Project.

“Force Majeure Event” means an event beyond the reasonable control of a Party that renders the performance of the Agreement impossible whether temporarily or otherwise which for the avoidance of doubt may include prohibitive government regulation, flood, lightning or other extreme weather conditions, fire, explosion, malicious damage, industrial actions or lockouts, terrorism, war, civil commotion, military operations, riot, national

emergency, government restrictions including those related to a pandemic, the act or omission of any third party not being its agent, contractor or sub-contractor, any change in the law or in the interpretation of the law by the courts that frustrates the furtherance or completion of the Project.

- “Full Business Case” means the comprehensive and agreed business case for the Project as approved by the Strategic Directors Board.
- “Gateway 6” means when the Project is complete, user acceptance has been verified and all financial and contractual issues have been closed. All defect issues are resolved. Any funding commitments and outstanding payments for ongoing items such as landscape maintenance are in place.
- “Material Amendment” means a change to any aspect of the Project or the Works that trigger the requirement to seek Council Approval prior to the change or variation taking effect.
- “Mediator” means a neutral third party appointed pursuant to clause 16 (Dispute Resolution) to assist in the resolution of disputes.
- “Necessary Consent” means any consent, permission, authorisation, licence or certificate required in relation to the Works (including without limitation Council Approvals and as applicable planning permission under the Town & Country Planning Act 1990, consent under the Environmental Permitting Regulations 2016 and a licence under the Marine and Coastal Access Act 2009).
- “No Fault Termination Notice” means a written notice to terminate this Agreement with immediate effect if the circumstances referred to in clause 15.2 (Termination) occur.

“Non-Financial Contributions”	means the Parties contributions-in-kind to the Project made without charge and including but not limited to the waiver of certain non-statutory fees and charges, (provided that the persons responsible for the collection of such fees and charges agree to the waiver) that would otherwise be ordinarily be payable, contributions of staff time, resources, facilities, accommodation and equipment.
“Outstanding Costs”	details and the overall value of all expenditure commitments and reimbursement of External Funding that will need to be made by reason of a No Fault Termination Notice being issued.
“Project”	means the construction of the Project, to be managed and overseen by the Agency as fully described in the Full Business Case for the Project and as described in summary in the Specification (Schedule 1) including without limitation: <ul style="list-style-type: none"> (i) the commissioning of the Project including the operational buildings necessarily required; (ii) improved and new downstream embankments and fish & eel passage works; and (iii) the landscaping of the site and opening up of public rights of way, cycle paths and public realm spaces to the extent that these activities and the costs therefore are not being discharged under a separate written Town Deal funding agreement between the Parties with the works required thereunder being managed by the Agency.
“Project Manager”	means the persons appointed by the Agency who shall be responsible for the day-to-day management and supervision of the Project as set out in clause 10 (Agency Working Arrangements & Key Personnel).

“Project Period”	means from the Commencement Date to the Completion Date.
“Quarter Date”	means the 25 th day of each of March, June, September and December in each year and were such date falls on a day that is not a working day, the next immediately following working day.
"Senior User"	means in respect of each Party the person named as such in the Specification or such other person as a Party may nominate from time to time.
“Specification”	means the summary Project specification set out at Schedule 1 (as amended from time to time in accordance with this Agreement).
“Staff”	means employees, contractors, consultants and agents of a Party who are engaged or provided by the Party for the purpose of carrying out of its obligations under this Agreement, and each of them.
“Strategic Directors Board”	means the body responsible for overseeing the management and supervision of the Project as set out in clause 8 (Governance).
"VAT"	means Value Added Tax.
“working day”	means a day excluding weekends and public holidays in England.
“Works”	means any and all works or services relating to the Project including without limitation the works and services described in the Specification and any ancillary works or services to be identified in the Full Business Case.

2.2 In this Agreement, unless otherwise expressly provided or unless the context otherwise requires:

- (a) reference to any statute, statutory provision or statutory instrument includes that statute, statutory provision or statutory instrument as from time to time amended, extended, consolidated or re-enacted and all statutory instruments or orders made under or pursuant to it;
- (b) words importing a gender include all genders and words importing the singular include the plural and vice-versa;
- (c) the words "including" or "includes" or any similar phrases shall be construed without limitation to the generality of the preceding words;
- (d) reference to any person includes a legal entity; and
- (e) all undefined words and expressions are to be given their normal English meaning.

2.3 The headings in this Agreement are for ease of reference only and shall not affect its construction and reference to any 'clause', 'Schedule' or 'Appendix' shall be references to clauses, schedules or appendices of this Agreement unless expressly stated to the contrary.

3 Basis of Agreement

3.1 This Agreement contains the whole agreement between the Parties in respect of its subject matter and supersedes and replaces the collaboration agreement referred to in clause 1.4 (Recitals) above from the Commencement Date.

3.2 This Agreement consists of the following documents;

- (a) these terms and conditions;
- (b) the Schedules and Appendices to this Agreement;
- (c) any other documentation specifically incorporated by reference including without limitation the Full Business Case; and
- (d) any variations made by the Parties in accordance with clause 25 (Variations).

3.3 In the case of ambiguity or conflict between any of the documents set out above, the documents will take precedence in the order listed above.

4 Purpose of Agreement

4.1 The primary aim of the Project is to secure the construction of the Bridgwater Tidal Barrier scheme in line with the Somerset Levels and Moors 20 Year Flood Action Plan, the Bridgwater Tidal Barrier Order 2022 and the Full Business Case in order to deliver the following strategic objectives:

- 4.1.1 Reduce flood risk to the greatest practicable number of residential and business properties in Bridgwater and the surrounding area, subject to available funding and the constraints of Flood and Coastal Erosion Risk Management Appraisal Guidance:
 - 4.1.2 Reduce flood risk to life and critical infrastructure and utilities in Bridgwater and the surrounding area:
 - 4.1.3 Deliver a scheme that combines robust engineering solutions with positive environmental outcomes:
 - 4.1.4 Secure sufficient funding to enable delivery of the scheme within the Project Period.
- 4.2 The parties each acknowledge that the following pre-construction actions relating to the Project have been fully and properly undertaken or secured:
- 4.2.1 The carrying out of all necessary investigations, evaluations and assessments, including but not limited to:
 - (a) Environmental Impact Assessments:
 - (b) Habitats Regulations Assessment:
 - (c) Ground investigations:
 - (d) Flood risk modelling:
 - (e) Design and access statement.
 - 4.2.2 Agreement that the location for the Tidal Barrier to be constructed as part of the Project is to be situated across the River Parrett between Express Park and Chilton Trinity:
 - 4.2.3 Agreement concerning the outline design and methodology for the delivery of the scheme:
 - 4.2.4 The submission of applications for the following required consents:
 - a) The Bridgwater Tidal Barrier Order 2022 under the Transport & Works Act 1992, which Order has been made and includes authority to interfere with the public right of navigation on the River Parrett, deemed planning for the Project and provisions relating to public rights

of way closures and diversions:

- b) other relevant planning permissions and consents including 'Planning Directions' to the extent not authorised by the Bridgwater Tidal Barrier Order 2022:
- c) A Marine Licence from the Marine Management Organisation:
- d) Environmental Impact Assessment required for the Marine Licence:
- e) Flood Risk Activity Permits under the Environmental Permitting Regulations 2016:
- f) protected species licences.

4.3 The purpose of this Agreement is to:

- 4.3.1 Record the purposes and strategic objectives of the Project:
- 4.3.2 Define the roles and responsibilities of each of the Parties and the partnering principles that apply to the relationship between the Parties:
- 4.3.3 Identify the projected and available financial and Non-Financial Contributions of each Party to defray the costs of the Project, to the extent reasonably practicable:
- 4.3.4 Foster mutual trust and co-operation between the Parties: and
- 4.3.5 Agree the regular review processes required to:
 - a) monitor all income and expenditure relating to the Project; and
 - b) ensure that the Contributions are fully and properly applied to the Project; and
 - c) ensure that the Project's strategic aims and objectives are being monitored and met; and
 - d) Agree the process by which any dispute between the Parties in connection with the Project will be settled.

5 **Council's Role and Obligations**

5.1 The main role of the Council in relation to this Agreement and the Project shall be to provide strategic direction as part of the Strategic Directors Board, to contribute financially to the Project by releasing Available Funding and to seek External Funding.

5.2 The Council shall:

- 5.2.1 seek such Council resolutions or decisions as may be necessary from time to time to facilitate the delivery of the Project:
- 5.2.2 seek to secure access to such land owned or controlled by the Council as may be required in connection with the Project:
- 5.2.3 make Council Funding available to the Agency for the Project in accordance with Schedule 3 to the extent that the Council has secured the same in cleared funds:
- 5.2.4 coordinate with the Agency in managing communication and engagement with stakeholders, landowners and the public.

6 Relationship Between the Parties

- 6.1 The Council and the Agency shall be independent contractors for all purposes connected with this Agreement.
- 6.2 The Parties agree to work together to secure the delivery of the Project.
- 6.3 Nothing in this Agreement shall create a partnership or joint venture between the Parties, constitute one Party the agent of another, or deem the Staff of one Party to be those of the other. No Party shall have any authority to enter into any contract, warranty or representation on behalf of the other without their prior written consent, nor shall any Party incur liabilities that bind or have the effect of binding the other Party.
- 6.4 Nothing in this Agreement shall prejudice, conflict with or affect the exercise by either Party of its statutory functions, powers, rights, duties, responsibilities or obligations arising or imposed under any legislative provision enactment, byelaw or regulation whatsoever, nor shall it fetter the exercise of any discretion each Party may have.
- 6.5 Nothing in this Agreement shall operate as a statutory licence, waiver, consent or approval from either Party.
- 6.6 No Party or its Staff shall represent themselves as having the authority to interpret the policies and procedures of the other Party.

7 Duration

- 7.1 This Agreement shall commence on the Commencement Date, and shall continue until the Completion Date, unless sooner termination occurs in accordance with this Agreement, or this Agreement is expressly superseded by a subsequent agreement between the Parties.

8 Governance

- 8.1 Both Parties acknowledge that the Agency and the Council each have statutory obligations, responsibilities and constraints placed upon them and shall cooperate to achieve the delivery of the Project throughout the Project Period.
- 8.2 The Parties further acknowledge that due to the complexities of the Project and in an effort to better manage expectations and funding requirements, the Parties shall through the Strategic Directors Board and with Council Approval collaboratively agree a programme and delivery stages for the Project, applying an agreed project management method.
- 8.3 Decision making shall be undertaken by the Strategic Directors Board noting that from time to time Council Approval may be additionally required.
- 8.4 The Parties shall each:
- (a) provide their Contributions to the Project as set out in this Agreement;
 - (b) use reasonable endeavours to secure External Funding for the Project;
 - (c) use reasonable endeavours to progress and deliver the Project to the agreed programme and timescales;
 - (d) otherwise fulfil their responsibilities as set out in this Agreement;
 - (e) co-operate and use reasonable endeavours to ensure the success of the Project;
 - (f) act in utmost good faith and in the spirit of co-operation in carrying out the Project;
 - (g) ensure that all communications between the Parties are constructive, timely and open;
 - (h) provide information promptly to one another relating to their involvement in the Project;
 - (i) promptly raise and use reasonable endeavours to resolve any issues, difficulties, problems or opportunities that arise; and
 - (j) aim to reach agreement in discussions for the good of the Project rather than for individual advantage.
- 8.5 The Parties shall each inform the other and the Project Manager promptly of any event or situation that is likely to prejudice or delay the performance or completion of the Project, or of any situation or event that may, hinder or prevent that Party from providing its Contributions.

- 8.6 The Parties agree to exercise reasonable, care, attention and diligence in carrying out the Project and obligations under this Agreement and shall ensure that their Staff:
- (a) carry out the Project in accordance with the directions and decisions of the Strategic Directors Board;
 - (b) are sufficiently qualified, trained, skilled and experienced in the type of work which they are to perform;
 - (c) exercise due skill, care, attention and diligence in their work;
 - (d) carry out the Project in accordance with the agreed timescales;
 - (e) inform the Project Manager promptly of any difficulties, problems or opportunities that arise; and
 - (h) provide all reports at the times and in the manner specified in this Agreement or otherwise agreed between the Parties.
- 8.7 No Party, its staff or contractors, shall do or knowingly cause or permit anything that may damage or prejudice the reputation, interests or operation of the other Party.

9 **Agency's Lead Responsibility and Obligations**

- 9.1 The Agency possesses the necessary skill, knowledge and expertise to deliver the Project in an expert and timely manner, (subject to the availability of sufficient secured Contributions), and shall have lead responsibility for:
- 9.1.1 The appointment of consultants and contractors as required to secure the necessary consents and commence the Works required to produce the detailed design and inform the delivery of the Project:
 - 9.1.2 Managing the construction and delivery of the Project with sufficient staff with appropriate skills and experience to include without limitation:
 - a) Ensuring that the Contributions are wholly and properly applied to the Project:
 - b) The preparation of accounts and financial statements and financial management including maintaining all necessary records, accounts and financial information for not less than 6 years after the expiry of the Project Period:
 - c) Undertaking all actions and tasks associated with the administration of the Project:
 - d) Overseeing the timely and cost effective completion of the Works

within agreed budgets.

- 9.2 Without prejudice to clause 9.1 above the Agency shall secure and be responsible for:
- 9.2.1 procuring and managing contracts for consultancy services and the construction Works and the Project;
 - 9.2.2 appointing a Project Manager pursuant to clause 10 (Agency Working Arrangements & Key Personnel) and providing sufficient Project management;
 - 9.2.3 Finalising the detailed design process for the Project to include;
 - a) developing the outline design into a detailed design;
 - b) technical reviews; and
 - c) updating environmental assessment and mitigation
 - 9.2.4 progressing the Project through the Approvals Process and ensuring that all required business cases including the Full Business Case and funding submissions are produced and submitted for approval by the Parties, Defra and HM Treasury as appropriate;
 - 9.2.5 confirming financial arrangements with between the Parties and with Defra and HM Treasury;
 - 9.2.6 obtaining any necessary statutory and other consents and drafting any legal or other agreements which may be necessary or desirable to deliver the Project to include securing the grant of a Marine Licence from the Marine Management Organisation (MMO) being the licensing authority for England;
 - 9.2.7 satisfying requirements for all legal consents and permissions required for the Project;
 - 9.2.8 working details through with landowners;
 - 9.2.9 securing temporary possession and access to land as required;
 - 9.2.10 managing communication and engagement with stakeholders, landowners and the public;
 - 9.2.11 ensuring that a comprehensive health & safety file is maintained for the Project and doing all that is required to ensure safe systems of work and proper risk assessments are undertaken to safeguard the health safety and

wellbeing of all persons working on or visiting the site or part thereof on which the Project is to be constructed.

10 **Agency Working Arrangements & Key Personnel**

- 10.1 The Agency shall appoint a Project Executive and an appropriate number of Project Managers who shall:
- (a) manage the day-to-day operation of the Project in accordance with this Agreement;
 - (b) act as the first point of contact with the Council for all purposes in connection with the Project;
 - (c) provide effective liaison between the Parties and the Strategic Directors Board;
 - (d) ensure that the Project is carried out and operated in accordance with the Project Approvals and in a manner consistent with the Specification;
 - (e) report on Project progress to the Strategic Directors Board as required.
- 10.2 The first Project Executive and Project Managers shall be the persons identified as such in the Specification (Schedule 1).
- 10.3 The Project Executive will be accountable to the Project Sponsor for the delivery of the Project and shall have authority to make non-material amendments to the approved design, the Specification or any aspect of the delivery plan or timescale for the Project (including the Completion Date) provided that any Project Approvals have been given. Any material change or amendment must be referred to the Strategic Directors Board for approval.
- 10.4 The Project Sponsor and Senior Responsible Officer will be appointed by the Agency and shall be responsible for commissioning the Project and liaising with the appropriate senior managers of the Council to ensure that the Council's views are taken into account.

Senior Users

- 10.5 Each Party shall appoint a Senior User who shall:
- (a) represent that Party on the Strategic Directors Board;
 - (b) ensure that the Party they are representing participates in the Project in a manner consistent with this Agreement and the Specification;

- (c) provide effective liaison between the Parties and the Strategic Directors Board.

The first Senior Users shall be the persons named as such in the Specification.

- 10.6 Each Party may appoint a deputy for the Senior User, such appointments to be notified to all other Parties. A deputy may act in substitution for the Senior User in the event that person is unavailable. A deputy shall have the same powers and authority as the Senior User and any act of the deputy will be deemed to be an act of the Senior User.

Strategic Directors Board

- 10.7 The Parties will work together on a Strategic Directors Board to oversee the management and delivery of the Project. The role of the Strategic Directors Board shall include but shall not be limited to:
- a) ensuring the Project is appropriately managed and delivered by the Agency in partnership with the Council;
 - b) monitoring the overall progress of the Project against the objectives set out in this Agreement and the Specification;
 - c) taking a strategic overview of the Project to ensure successful implementation and timely delivery;
 - d) considering any issues referred by the Project Executive or a Senior User;
 - e) considering any proposal to change the timescale for delivery of the Project, the Specification or the Contributions.
- 10.8 The Project Sponsor, Project Executive, Project Manager, Senior Users and any other persons as listed in the Specification shall be members of the Strategic Directors Board.
- 10.9 The Strategic Directors Board shall normally meet every 2 months and at such other times as the Parties see fit. Attendance at Board meetings may be in person, by telephone or by such other means as the Parties may agree. The Project Executive shall usually chair meetings of the Strategic Directors Board.
- 10.10 The quorum of for decision making shall be the Project Sponsor or Project Executive together with the Agency's Senior User or Project Manager and at least one representative of the Council.
- 10.11 Decisions shall be made by consensus (unanimous or no objections). If there is no consensus the issue shall be recorded as unresolved, pending further discussion between the Parties.

10.12 In addition to its permanent members, the Board shall be entitled to invite any advisors, staff, contractors or stakeholders to attend and participate in its meetings, but such persons shall not be entitled to vote on any resolution or in any decision.

11 **Payment & Financial Contributions**

11.1 The Parties recognise that as at the date of this Agreement all of the Contributions for the Project have not been secured.

11.2 The Agency shall use reasonable endeavours to secure all of the projected Agency Funding (Schedule 4) in a timely manner and shall not be obliged to commit Agency Funding to the Project if and to the extent that such monies have not been received in cleared funds by the Agency.

11.3 The Council shall use reasonable endeavours to secure the Forecast Funding and External Funding in a timely manner but shall not be obliged to pay the Forecast Funding or Council secured External Funding to the Agency in support of the Project where such monies have not been received in cleared funds by the Council.

11.4 Neither Party shall be obliged to make any External Funding contribution if that Party is not in receipt of the External Funding or that Party is prevented from doing so by reason of the applicable External Funding terms.

11.5 Without prejudice to each Parties obligation to inform the other promptly of any event or situation that is likely to support, prejudice or delay the performance or completion of the Project, or of any situation or event that may support, hinder or prevent that Party from providing its Contributions or releasing External Funding;

11.5.1 the Agency shall update and send to the Council bi-annually, an updated Agency Funding schedule that shall detail:

- a) all Agency Funding received in cleared funds for Project:
- b) all Committed Funding received by it from the Council in cleared funds for the Project:
- c) all anticipated Contributions that it is hoped will be secured over the remaining Project Period: and
- d) all expenditure made and to be made in relation to the Project.

11.5.2 The Council shall update and send to the Agency on or about each Quarter Date, the changes to the Council Funding schedule appearing at Schedule

3 of this Agreement that shall detail:

- a) all Committed Funding received by it in cleared funds for the Project:
- b) the value of the Committed Funding paid by the Council to the Agency:
- c) the balance of the Committed Funding retained by the Council for future payments as outlined in the Council's Payment Schedule (Schedule 3):
- d) an updated Forecast Funding profile that the Council anticipates it will receive and External Funding that it hopes to secure over the remaining Project Period.

11.6 The Agency shall invoice the Council for Council Funding in accordance with the most up to date Council's Payment Schedule provided that:

11.6.1 the value of the invoice correlates with the most recent available Committed Funding figures supplied by the Council to the Agency; and

11.6.2 the Council holds the available Committed Funding in cleared funds.

11.7 The Council shall pay the invoice within 60 days unless clause 11.5 has not been fully complied with.

11.8 The Agency shall be entitled to add VAT (if applicable) to any invoice. Where it does so it will provide a valid VAT invoice.

11.9 Each party shall promptly inform the other of any discrepancy, errors, underpayments or overpayments.

11.10 Any overpayments, howsoever caused, that are made by the Council to the Agency shall at the Council's sole option either be retained by the Agency for the Project or reimbursed by the Agency to the Council within 20 working days of a written request for reimbursement.

11.11 The Agency shall be responsible for holding the Financial Contributions and any other monies contributed to the Project and expending them in relation to the Project in accordance with this agreement.

11.12 The Agency shall be responsible for the financial management of the Project as described in clause 9 (Agency Lead Responsibility and Obligations) above and shall put in place appropriate financial management, control and auditing procedures for the Project, to ensure that costs are only incurred as authorised and that the details

of all payments are readily identifiable.

- 11.13 Financial Contributions, and Non-Financial Contributions shall only be expended or committed in accordance with this Agreement, unless otherwise mutually agreed in writing by the Parties.
- 11.14 In the event of Financial Contributions, or other monies being expended in breach of this clause 11 the Party expending those funds shall be liable to repay to the Project an amount equal to the misapplied funds.
- 11.15 The Agency shall, whenever reasonably required by the Council provide to such persons as the Council may nominate reasonable access to the Agency's staff, premises, records and such other items or persons as may be reasonably required in order for the Council to fulfil its audit obligations in respect of this Agreement.

12 **Publication & Publicity**

- 12.1 External communications relating to the Project shall be agreed in advance by the Strategic Directors Board or Project Executive or Project Manager and the Council's chief communications officer, unless otherwise agreed between the Parties.
- 12.2 The Parties shall work collaboratively to communicate and engage with stakeholders, the media and the public, to promote and support the delivery of the Project.
- 12.3 Except as may be otherwise agreed, the Agency shall lead on communication relating to the technical development of the Project and the delivery of the Works.

13 **Liability**

- 13.1 Each Party shall indemnify the other Party, and its Staff from and against:
 - (a) all claims, demands, actions, costs, expenses, losses and damage made or notified to the indemnified party and arising from or incurred by reason of the actions or failure to act of the indemnifying Party;
 - (b) the acts, errors or omissions of its Staff that are a result of or due to the negligence of the indemnifying Party.
- 13.2 Neither Party seeks to exclude or limit its liability for death or personal injury caused by its negligence, or fraudulent misrepresentation made by it or on its behalf, or such other matters where exclusion of liability is regulated by operation of law.
- 13.3 Each Party shall be responsible for its own acts and omissions, the acts and omissions of its Staff and the acts and omissions of the contractors and consultants that it employs or engages in connection with the Project.

- 13.4 Except as otherwise expressly provided in this Agreement, neither Party shall be liable to the other Party for:
- (i) loss of actual or anticipated profits, loss of revenue or loss of contract; or
 - (ii) indirect, special or consequential loss or damage; arising out of or in connection with this Agreement, whether in contract, in tort (including negligence) under statute or otherwise.
- 13.5 Each Party shall use reasonable endeavours to mitigate the relevant loss, damage, cost, expense, liability or penalty or (as appropriate) to defend the relevant action, claim, demand or proceedings.
- 14 **Default**
- 14.1 A material breach of this Agreement occurs if a Party:
- (a) fails to perform and comply fully with its obligations under this Agreement; or
 - (b) fails to use reasonable skill, care, diligence and timeliness in performing and complying with its obligations under this Agreement; or
 - (c) fails to pay or apply any Contribution at the time specified or agreed for payment; or
 - (d) misuses any Project funds or Contribution.
- 14.2 The short temporary non-availability of Staff for reasons outside a Party's reasonable control or the occurrence of a Force Majeure Event shall not constitute events that give rise to a material breach of this Agreement.
- 14.3 Where, in the reasonable opinion of a Party, the other Party appears to be in material breach of contract, the 'aggrieved' Party shall, provide written notice of the breach and where appropriate, mutually seek a prompt resolution to the breach in accordance with clauses 16.1 to 16.3 inclusive of clause 16 (Dispute Resolution).
- 14.4 The aggrieved Party shall promptly inform the Strategic Directors Board of the dispute or difference.
- 14.5 The written notice of the breach shall include the following information
- (a) the material breach complained of;
 - (b) whether the breach appears to be capable of remedy or not and, if capable of remedy, specifying how the default may be remedied;
 - (c) that if the Party in default fails to take steps to remedy the specified breach within such period as may be specified in the written notice of default (that being

a period of not less than 20 working days) the Agreement may be terminated without further notice.

15 Termination

15.1 This Agreement may be terminated by giving not less than 20 working days prior written notice where:

15.1.1 The events referred to in clause 14 (Default) have occurred and the breach has not been remedied to the satisfaction of the aggrieved party, acting reasonably;

15.1.2 A No Fault Termination Notice has to be issued for the any of the reasons set out in clause 15.2 below.

15.2 The Agency shall have the right, acting reasonably and after obtaining the written approval of the Council, Defra and HM Treasury, to issue a No Fault Termination Notice in the event that:

15.2.1 the Project is or becomes financially unviable or unsustainable and no suitable alternative solutions present;

15.2.2 any of the matters referred to in clause 9.2.3 to 9.2.8 inclusive (Agency's Responsibilities and Obligations) cannot be fully and properly achieved and render the completion of the Project impossible;

15.2.3 the proposed site on which the Project is to be situated is found to be unsuitable and no suitable alternative site is identified;

15.2.4 any other material Project approval, permission or consent is declined and will not be subsequently granted and no suitable alternative solutions present; or

15.2.5 the outcome of any materially required environmental assessment renders the Works inappropriate or impracticable and no suitable alternative solutions present;

15.2.6 where the circumstances envisaged by clauses 22.3 or 22.4 (Force Majeure) apply.

15.3 In the event of termination for material and un-remediable or unremedied breach as referred to in clause 15.1 above:

15.3.1 The Parties shall seek to promptly agree an exit strategy:

15.3.2 The Agency shall take reasonable steps to mitigate losses to both the

Council and itself and avoid incurring further Project Costs:

15.3.3 Where the Agency is the defaulting party by no later than 40 working days from the date of the written notice of termination for breach, the Agency shall:

- a) reimburse to the Council all unexpended Contributions that the Council has secured and previously paid to the Agency that by reason of law or contract, the Council will, be required to reimburse to the external contributors and funder/s; and
- b) seek to negotiate the value of such settlement payments as the parties may mutually agree.

15.4 Where the Council is the defaulting Party, the Council shall pay to the Agency, by no later than 40 working days from the date of the written notice of termination for breach, all Contributions that the Council has secured and received in clear funds and has not previously paid to the Agency.

15.5 In the event of the issue of a No Fault Termination Notice

15.5.1 The parties shall seek to promptly agree an exit strategy:

15.5.2 The Agency shall take reasonable steps to mitigate losses to both the Council and itself and avoid incurring further Project Costs:

15.5.3 By no later than 20 working days (or such other period as the parties may mutually agree), the Agency shall provide the Council with a final statement of account that shall detail all;

- a) Financial Contributions and External Funding that it holds;
- b) All Outstanding Costs;
- c) details and financial values of all refunds and reimbursement due to the Agency;
- d) the balances of the Council Contributions and all Agency Contributions that it holds.

15.6 The Agency shall apply all Contributions that it holds and all refunds and reimbursement due to the Agency from Agency contracts, to the Outstanding Costs.

15.7 In the event of a shortfall between the Outstanding Costs and the sums available to the Agency to discharge the Outstanding Costs, the Council shall pay to the Agency all Contributions that the Council has secured and received in clear funds that have

not previously been paid to the Agency.

- 15.8 The Council shall be entitled to withhold from the sums referred to in Clause 15.7 above such sums as the Council shall be required to reimburse to any persons or organisations who is/ are entitled to reimbursement of any Externally Funded Contributions from the Council in accordance with the relevant External Funding agreements and for the avoidance of doubt, the Agency shall not be entitled to claim loss of profit damages or Forecast Funding from the Council or that must be repaid to developers by operation of law.
- 15.9 The Agency shall thereafter account to and reimburse to the Council any surplus of the Council's Financial Contributions it holds within 20 days of the identification of the surplus by the Agency.
- 15.10 Termination of this Agreement shall not unless expressly agreed to the contrary in this Agreement, prejudice the rights of any Party which arise on or before the date of termination.

16 **Dispute Resolution**

- 16.1 During the Project Period the Parties shall attempt to resolve any disputes or differences between their respective Senior Users (or Senior Users Representatives) and if they are unable to do so such matters shall be referred to the Strategic Directors Board.
- 16.2 If the Strategic Directors Board is unable to resolve the dispute or difference to the satisfaction of the Parties within two weeks, the Parties shall attempt to resolve the issue by negotiation between their Project Sponsor, Directors or Senior Officers or such other persons as the Parties may reasonably designate for resolving disputes.
- 16.3 If any dispute arises after the Project Period, the Parties shall attempt to resolve it via their representatives or such other persons as the Parties may reasonably designate for resolving disputes in such circumstances.
- 16.4 If the matter cannot be resolved pursuant to clauses 16.1 to 16.3 above, the Parties shall consider referring the matter to mediation in accordance with clause 16.5. If the Parties acting in good faith do not consider that mediation is an appropriate method of dispute resolution, they may propose such other methods of alternative dispute resolution as they reasonably consider to be appropriate in the circumstances and shall seek to resolve the matter using such methods as they may agree, failing which either Party may commence legal proceedings through the courts.

- 16.5 In the event that the Parties decide that mediation is appropriate, they will use the following procedure:
- (a) The Mediator shall be chosen by agreement between the Parties. If the Parties cannot agree the identity of the Mediator within 10 working days from the date of the proposal to appoint a Mediator, or within 10 working days of notice to any Party that the chosen Mediator is unable or unwilling to act, either Party may apply to CEDR to appoint a mediator.
 - (b) The Parties shall within 10 working days of the appointment of the Mediator agree a timetable for the mediation. If appropriate, the Parties may at any stage seek guidance from CEDR on a suitable procedure.
 - (c) Unless otherwise agreed, all negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the Parties in any future proceedings.
 - (d) Where the Parties agree that mediation is appropriate, the dispute resolution procedure in this clause 16 shall be binding on the Parties but the Parties shall not be bound by the outcome of the mediation unless and until the Parties agree to be so bound and set out the agreed resolution in a written agreement.
 - (e) Failing agreement, any Party to the dispute may invite the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the dispute without the prior written consent of the relevant Parties. The Party requesting the opinion shall bear the costs incurred in obtaining that opinion unless the Parties agree otherwise.
 - (f) For a period of 40 working days from the date of the appointment of the Mediator, or such other period as the Parties may agree, neither Party may commence any proceedings in relation to the matters referred to the Mediator save that those Parties shall be free to apply to the courts for interlocutory relief at any time.
 - (g) Save for the specific costs identified in clause 16.5(e), the costs of the Mediator shall be apportioned between the Parties equally.
- 16.6 For the avoidance of doubt, recourse to the means of alternative dispute resolution provided for in this clause 16 shall not preclude the exercise of the rights under clauses 14 (Default) and 15 (Termination) including the service of notices and

termination provisions.

17 Notices

17.1 All notices given under this Agreement shall be in writing and will be sent to the address of the Party being served as set out in the Specification or any other address a Party may from time to time designate by notice given in accordance with this clause 17.

17.2 Notices may be delivered by hand or by first class pre-paid letter or recorded delivery service.

17.3 Any notice served in accordance with clauses 17.1 and 17.2 above will be deemed to have been served:

- (a) at the time of delivery when served in person or by recorded delivery post; or
- (b) two working days from the date of posting when served by first class post.

17.4 In proving service, it shall be sufficient to show that:

- (a) when delivery is by hand, the notice was delivered to the appropriate address:
- (b) when service is by recorded delivery post, the notice was submitted properly addressed to an appropriate carrier for delivery and a certificate of delivery has been issued:
- (c) when service is by first class post, the notice was submitted to an appropriate carrier for delivery, was properly addressed and full postage was paid.

18 Statutory Obligations & Permissions

18.1 The Parties shall each at their own expense comply, and procure that their Staff comply, with all laws and regulations applicable to the Project, (as the same may be amended or replaced from time to time) including all health and safety legislation, data protection legislation, the Equality Act 2010, Bribery Act 2010 and the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

18.2 Each Party shall be responsible for securing and maintaining such permissions, licences, consents or approvals as it needs in connection with the Project.

18.3 The Project is not subject to the Subsidy Control Act 2022 because economic activity as defined by section 7(2) Subsidy Control Act is not present.

18.4 Each Party shall procure the external Staff required by it in accordance with the Public Contracts Regulations 2015.

19 **Environment & Sustainability**

19.1 The Parties shall ensure that sustainable development, which includes environmental, social and economic factors, is taken into account during all stages of the Project and this Agreement and in any relevant contracts entered into with third parties.

19.2 Unless there is a specific requirement otherwise, the Parties shall require that all reports in connection with the Project be made in electronic format. Where paper copies of reports or other hard copy communications are required and where there are written announcements or publications required, they will where appropriate, be printed on minimum 80% post-consumer waste recycled paper and will where possible be printed double-sided.

20 **Health & Safety**

20.1 Where the Staff of one Party are working under the direction of the other Party, that Party shall make those Staff aware of its health and safety and security requirements and those Staff shall comply with all instructions and requirements of that other Party relating thereto.

20.2 Each Party reserves the right to refuse access to their premises to any person at any time or to require such person to leave its premises, without being required to give any reason for its decision and without incurring any liability for any loss that may be suffered as a result of that refusal. Such reasons may include where it has reasonable grounds to believe that person is a risk to the health and safety of others on those premises.

20.3 The following provisions apply where any construction project is carried out under this Agreement:

- a) The Agency shall be treated for the purposes of the CDM Regulations as the only client in relation to the Project;
- b) The Agency shall perform its client duties in accordance with the CDM Regulations;
- c) The Agency shall ensure that it has available to it from the Commencement Date the resources and expertise necessary to perform its client duties;

- d) in performing its client duties, the Agency shall have regard to the Health and Safety Executive's guidance document L153 *Managing Health and Safety in Construction* (including any amendment or replacement from time to time);
- e) this clause 20.3 does not affect the application to the Council of the duties specified in regulation 4(8)(c) of the CDM Regulations (pre-construction information and ongoing co-operation); and
- f) in this clause 20.3:
 - 'the CDM Regulations' means the Construction (Design and Management) Regulations 2015;
 - 'client' has the same meaning as in the CDM Regulations;
 - 'client duties' means duties under the CDM Regulations as client for the project including in respect of the appointment of a principal designer and principal contractor under regulation 8(3);
 - 'construction project' has the meaning given to 'project' in the CDM Regulations.

21 **Assignment & Sub-Contracting**

- 21.1 The Agency will be the contracting party and responsible body in respect of any contracts entered into with consultants, contractors and third parties, including any persons employed for the purpose of delivering the Project who are not existing members of the Agency's Staff.
- 21.2 Neither Party shall be entitled to sub-contract, assign or otherwise transfer the whole or any part of its obligations under this Agreement (except in the case of assignment or transfer where for the purposes of solvent reorganisation or transfer to a successor body or by operation of law) without the prior written consent of the other Party. As the nature of the relationship between the Parties is to be a close collaborative relationship, it shall be reasonable in any case to refuse to consent to assignment or transfer.
- 21.3 Clause 21.2 shall not prejudice the Agency's ability to appoint external consultants and contractors to carry out design, construction or other activities in connection with the Works and the Project.
- 21.4 No assignment, transfer or sub-contracting by a Party shall relieve it of any of its obligations or duties under this Agreement and that Party shall remain fully liable as

though the matter assigned, transferred or sub-contracted matters were carried out by itself.

- 21.5 The terms of any sub-contract entered into by a Party in connection with this Agreement shall be consistent with and shall ensure compliance with this Agreement, including all auditing and financial requirements.
- 21.6 Any Party sub-contracting work under this Agreement shall ensure that it and any contractor to whom that work is sub-contracted has appropriate financial and auditing procedures in place to manage its commitments to the Project and that Party shall ensure that both it and its sub-contractor have complied with all relevant tax requirements relevant to the Agreement and their involvement with it.

22 **Force Majeure**

- 22.1 If the performance by any Party of any of its obligations under this Agreement is prevented or delayed by a Force Majeure Event then that Party shall be excused from performance of that obligation for the duration of the Force Majeure Event.
- 22.2 If a Party becomes aware of a Force Majeure Event that is or is likely to give rise to a failure or delay on its part, then that Party shall notify the Strategic Directors Board as soon as reasonably practicable giving a description of the Force Majeure Event and, where possible, an estimate of its likely duration.
- 22.3 If the Force Majeure Event in question continues or is likely to continue for a continuous period in excess of three months the Parties shall enter into discussions with regard to alternative arrangements in respect of the delivery of the Project and the continuation of this Agreement which may include but are not limited to termination pursuant to clause 15 (Termination).
- 23 Where a Force Majeure Event affecting substantially the whole of the Project continues or is reasonably anticipated likely to for a period of more than 6 months then this Agreement may be terminated by any Party with immediate effect in accordance with clause 15 (Termination).

Third Parties

- 23.1 Save where this Agreement expressly provides to the contrary, for the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions. This does not affect any right or remedy of any such party which exists or is available apart from that Act.

23.2 The Parties shall ensure that the Strategic Directors Board is made aware of any third parties involved in the Project

24 **Conflict in Interest**

24.1 The Parties shall not (whether directly or indirectly) cause or permit their Staff to undertake work or responsibilities which would cause a conflict in interest with the work or responsibilities that Party is undertaking under this Agreement, where such conflict would have a direct and adverse impact on the Party's ability to comply with its obligations under this Agreement or would otherwise impede or interfere with the Party's proper performance of this Agreement.

24.2 A Party shall forthwith notify the Strategic Directors Board of actual or potential conflict of interest of which it becomes aware.

25 **Variations**

25.1 No change or variation to this Agreement will be effective unless and until it is agreed in writing and signed by both Parties and, where required, ratified by Council Approval.

26 **Waiver**

26.1 No failure or delay or grant of indulgence by a Party to exercise or enforce any right, power or remedy available to it, will operate or be construed as a waiver of such right, power or remedy under this Agreement or otherwise, nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.

27 **Severability**

27.1 If any court or other competent authority finds that any part or provision of this Agreement is void, unlawful or unenforceable then that part or provision will be deemed to have been severed from this Agreement and shall have no force and effect. The remaining provisions of this Agreement will continue to be valid and enforceable to the fullest extent permitted by law, and the Parties shall negotiate in good faith to agree the terms of a mutually acceptable and satisfactory alternative part or provision in that, as amended, it is valid and lawful and enforceable.

28 **Counterparts and Electronic Signatures**

28.1 This Agreement may be executed electronically and in any number of counterparts each of which constitute a duplicate original, but all such counterparts shall together constitute one and the same Agreement.

28.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement. If this method of transmission is adopted, without prejudice to the validity of the Agreement, each Party shall on request provide the others with the "wet ink" hard copy original[s] of their counterpart. No counterpart shall be effective until each Party has executed at least one counterpart.

29 **Governing Law & Jurisdiction**

29.1 This Agreement shall be governed by and construed in accordance with the laws of England and subject to the agreed provisions in respect of alternative dispute resolution the Parties agree to submit to the exclusive jurisdiction of the courts of England regarding any claim or matter arising under this Agreement.

30 **Survival**

30.1 The provisions of clauses 2 (Definitions), 11 (Payment & Financial Contributions), 12 (Publication & Publicity), 13 (Liability), 15 (Termination), 16 (Dispute Resolution), 21 (Assignment & Sub-Contracting), 23 (Third Parties), 26 (Waiver), 27 (Severability), 29 (Governing Law & Jurisdiction), and 30 (Survival) shall survive expiry or termination of this Agreement.

SCHEDULE 1 – Specification – Overview and Key Personnel

The Agency shall procure:

- the grant of a Marine Licence by the Marine Management Organisation (MMO) being the licensing authority for England
- the detailed design process for the scheme
- the preparation and submission of the Full Business Case
- the appointment of a main contractor for the Tidal Barrier construction works
- the construction of the Tidal Barrier scheme, including improved and new downstream embankments and fish & eel passage works
- the commissioning of the new Tidal Barrier and Operational Buildings

Description of the Works

- To construct and implement a Tidal Barrier structure in the river Parrett
- to carry out works to improve existing primary downstream flood defence embankments
- to construct new secondary flood defence embankments to prevent floodwater from bypassing the primary defences
- to carry out mitigation works to improve fish and eel passage at designated upstream sites
- to implement fully the environmental action plan and the mitigation action plan

all such works being in conformity with the details approved in the Bridgwater Tidal Barrier Order 2022, the associated planning direction and planning conditions and the Marine Licence issued for the scheme.

Key Contacts

The following individuals shall be the key contacts for the project until further notice:

Strategic Directors Board	
Steve Moore (EA)	Senior Responsible Officer
Ian Withers (EA)	Area Director
Rachel Burden (EA)	Project Sponsor
Mickey Green (SC)	Executive Director
Kirsty Larkins (SC)	Service Director
Other Project Staff	
Nol Vincent	Project Executive

Chris Smith (EA)	Project Managers
Simon Rendell (EA)	
Alison Forshaw (EA)	
Jacqui Howley (EA)	
Nigel Bennetts (EA)	Senior User
Nick Tait (SC)	Senior User
Tim O'Shea (EA)	Environmental assurance
Christopher Walledge (EA)	Legal Services
	EA Senior User's Representative (Downstream Defences)
Steve Reeves	EA Senior User's Representative (Barrier)
Vanessa Dare	EA Engagement and Communications
Louise Dale	EA Senior NEAS Officer
Lauren Timms	EA Senior Estates Surveyor
Olivia Yates	Estates Surveyor (Fisher German)
Luke Tobitt	Defra Group Commercial – Senior Officer

SCHEDULE 2 - Overview of Forecast Funding Arrangements

SCHEDULE 3

Forecast funding – Somerset Council contribution (indicative)

as at 28 June 2024 *(includes some external funding)*

Forecast Funding

SCHEDULE 4

Forecast Funding – Environment Agency (indicative)

as at 28/06/2024

EXECUTION CLAUSE

THIS AGREEMENT WAS SIGNED AND DELIVERED AS A DEED the day and year first above written:

EXECUTED AS A DEED for and on behalf of Somerset Council

in the presence of:

EXECUTED AS A DEED for and on behalf of the Environment Agency

in the presence of:

Authorised Signatory

Name:

Position:

Date:

Authorised Signatory

Name:

Position:

Date:

