

CARDIFF CAPITAL REGION CITY DEAL

2015

**MEMORANDUM OF UNDERSTANDING
to assist in the development of a City Deal.**

THIS MEMORANDUM OF UNDERSTANDING is made between:

Blaenau Gwent County Borough Council whose principal office is situate at Municipal Offices, Civic Centre, Ebbw Vale, NP23 6XB

Bridgend County Borough Council whose principal office is situate at Civic Offices, Angel Street, Bridgend, CF31 4WB

Caerphilly County Borough Council whose principal office is situate at Penallta House, Tredomen Park, Ystrad Mynach, Hengoed CF827PG

The County Council of the City and County of Cardiff whose principal office is situate at County Hall, Atlantic Wharf, Cardiff CF10 4UW ("Cardiff Council")

Merthyr Tydfil County Borough Council whose principal office is situate at Castle Street, Merthyr Tydfil, Mid Glamorgan CF47 8AN

Monmouthshire County Council whose principal office is situate at County Hall, Rhadyr, Usk Monmouthshire NP15 1GA

Newport City Council whose principal office is situate at Civic Centre, Newport, NP20 4UR

Rhondda Cynon Taf County Borough Council whose principal office is situate at Ty Bronwydd, Porth, Mid Glamorgan CF39 9DL

Torfaen County Borough Council whose principal office is situate at Llanfrechfa Way, Cwmbran NP44 8HT

and

Vale of Glamorgan County Borough Council whose principal office is situate at Civic Offices, Holton Rd, Barry CF63 4RU

(collectively referred to as 'the Councils')

Recitals

- 1 On 15th March 2016 the Leaders of the Councils referred to above, along with Ministers of Welsh Government and UK Government signed a document in respect of the Cardiff Capital Region City Deal ('the City Deal'). The document (copy annexed as schedule 1) outlines in high level terms the scope, financial aspects and proposed governance arrangements for the City Deal.

- 2 The Councils are working together to develop the detailed City Deal proposals and put in place all arrangements and documentation required to finalise the City Deal, which activities are collectively referred to in this Memorandum as the ‘City Deal Project Work’.
- 3 The purpose of this Memorandum of Understanding is to set out how the Councils will allocate resources to undertake and co-ordinate the City Deal Project Work. This Memorandum supersedes a Memorandum concluded by the Councils in August 2015, which was put in place to initially develop the City Deal proposals
- 4 The Councils have concluded this Memorandum and are carrying out the City Deal Project Work pursuant to their powers conferred by section 101 and 111 of the Local Government Act 1972, section 25 of the Local Government (Wales) Act 1994, section 2, 19 and 20 of the Local Government Act 2000 and all other enabling powers now vested in the Councils.

Now it is hereby agreed that

1. OBJECTIVES AND SCOPE OF THE MEMORANDUM OF UNDERSTANDING

- 1 The Councils agree:-
 - 1.1 to work together to carry out the City Deal Project Work, as outlined in Schedule 2
 - 1.2 to continue, with some modification as set out in this Memorandum, the interim governance arrangements that have been put in place to oversee, direct and or carry out the City Deal Project Work. The arrangements, as modified, include:
 - (i) a shadow joint committee to be referred to as the Cardiff Capital Region Shadow Joint Committee (“the Shadow Joint Committee”). The membership and terms of reference of the Shadow Joint Committee shall be as set out in Schedule 3 part 1;
 - (ii) a Chief Executives Board. The membership and terms of reference shall be as set out in Schedule 3 Part 2; and
 - (iii) officer working groups to carry out the day to day activities required. The membership and terms of reference shall be as set out in Schedule 3 Part 3

2. DECISION MAKING

- 2.1 In terms of the need for decisions to facilitate the City Deal Project Work, then all such decisions shall be referred to each Council to make in accordance with their own decision making rules.
- 2.2 The parties acknowledge that to facilitate the timely progression of the City Deal Project Work that decisions will need to be made in a timely manner and where appropriate the Council's representatives on the various governance bodies referred to in clause 1 may be asked to make certain decisions in respect of their Council at such meetings, to the extent their delegated authority permits the same and subject always to the provisions of clause 2.3.
- 2.3 For the avoidance of any doubt neither the conclusion of this Memorandum of Understanding nor any decision made to facilitate the City Deal Project Work shall serve to commit the Councils or any one Council to approving the Final City Deal Agreement. The signing of this Memorandum of Understanding is without prejudice to the Councils' respective positions as regards approval of the final City Deal Agreement.

3. EXTERNAL ADVICE

- 3.1. The Councils anticipate that specialist financial, legal, technical and other advice will be required to assist the Councils in the City Deal Project Work and have agreed that Cardiff Council should put in place arrangements to secure such specialist advice and deal with all ancillary matters relating thereto.
- 3.2 The Councils agree that all costs incurred by Cardiff Council pursuant to clause 3.1 shall be met from the financial contributions to be paid by the parties and referred to in clause 4 or as provided by clause 9.

4. FINANCIAL CONTRIBUTIONS

Each Council hereby agrees:-

- (i) to pay to Cardiff Council its respective financial contribution listed in Schedule 4 on or before the 15th July 2016 ("Financial Contributions"). Cardiff Council shall hold and use such monies solely in connection with the City Deal and

- account for any payments made therefrom in accordance with normal accountancy rules and share any interest earned on such monies in accordance with the percentages set out in Schedule 4,
- (ii) that it consents to Cardiff Council liaising with HMRC on its behalf in respect of any permissions necessary to ensure that VAT is correctly accounted for on all Cardiff Capital Region City Deal expenditure properly incurred and to indemnify Cardiff Council for any irrecoverable VAT that may arise.
 - (iii) that, save as provided in clauses 6 and 9, the Financial Contributions from each of the Councils is intended to form each Council's maxim contribution payable for the City Deal Project Work ,
 - (iv) that in the event any Council determines to withdraw from the City Deal before the expiry of this Memorandum then the withdrawing Council shall not be entitled to any refund of its financial contributions and it shall remain liable in respect of its financial and indemnity obligations under this Memorandum of Understanding,
 - (v) that any residual balance held by Cardiff Council on expiry of this Agreement shall be shared between the Councils in accordance with the percentages set out in Schedule 4, subject to the provisions of clause 9, and
 - (vi) that Cardiff Council shall be entitled to retain and use as set out in clause 4
 - (i) any residual balance of monies held by it out of the financial contributions made by the Councils in the financial year 2015/16 under the Memorandum concluded by the Councils in August 2015, to develop the initial City Deal proposals.

5 COMMENCEMENT AND TERM

This Memorandum of Understanding will be deemed to have come into operation on the 1st June 2016 and shall continue until:-

- 5.1.1 such time as the City Deal Project Work has been completed;
- 5.1.2 it is changed in any way or superseded by any new arrangement agreed between the Councils; or
- 5.1.3 the 31st March 2017;

which ever is the first to occur.

6 GENERAL RESPONSIBILITIES OF EACH PARTNER

6.1 Each Council will co-operate with each and every other Council in order to carry out and complete the work required to finalise the City Deal and will provide the resources reasonably required in terms of officers' time and information within their possession and use of Council facilities so as to enable the City Deal Project Work to be carried out and completed.

6.2 In carrying out the City Deal Project Work the Councils will have due regard to all legislative requirements, including without limitation to the generality of the foregoing, their duties as regards the Welsh language and the Public Sector Equality Duty.

7 RISK

7.1 Each of the Councils should take steps to assess the risk involved for their Council in the City Deal or any part of the process and it shall be a matter for each Council to determine if it wishes to conclude the final City Deal Agreement.

7.2 No Council (" the Indemnifier") shall be responsible, liable or be obliged in any way to indemnify another Council or the other Councils (" the Beneficiary") in respect of any decision the Beneficiary may take in respect of the City Deal or for any reliance placed by a Beneficiary on any information or advice provided, assembled , procured or contributed to by the Indemnifier Council.

8 PROGRAMME DIRECTOR

8.1 It is intended to appoint a programme director to help deliver the City Deal Project Work ('The Programme Director').

8.2 The Programme Director once appointed shall produce for the Chief Executive Board monthly monitoring reports setting out:-

- a. progress made on the City Deal Project Work,
- b. financial monitoring reports , including details of actual expenditure measured against the financial contributions received , contract sums measured against budget allocations and any financial information reasonable required by the Chief Executive Board ,
- c. identified risks relating to the completion of the City Deal Project Work, and
- d. such other information as the Chief Executive Board may reasonable require .

- 8.3 Cardiff Council (or such other Council) shall, as its deems appropriate, following full discussion with the Chief Executives of the other Councils, second, engage or employ the Programme Director with all costs and expenses incurred by Cardiff Council (or such other Council) in respect of such secondment, engagement, employment or termination of any such secondment, engagement or employment being met out of the Financial Contributions or as provided in clause 9.
- 8.4 In the event that the Council's agree that a support team is required (to be managed by the Programme Director) then all such costs and expenses shall be met out of the Financial Contributions or as provided in clause 9.

9 INDEMNITY

- 9.1 Each Council agrees to indemnify Cardiff Council and to pay Cardiff Council within 10 working days of Cardiff Council issuing a demand, its proportion (calculated in accordance with the percentages set out in schedule 4) of:-
- (i) any cost and expenses incurred by Cardiff Council in respect of the matters referred to in clause 3 and 8 (if appropriate) that are not met out of the Financial Contributions should the same prove insufficient to meet the costs and expenses, and
 - (ii) any costs, expenses, claims, demands, losses or liabilities how so ever incurred by Cardiff Council as a result of any of the matters referred to in clause 3 and 8.3 (if appropriate).
- 9.2 This clause 9 shall remain operative following the expiry of the Memorandum of Understanding.

10. DISPUTE RESOLUTION

All Councils will use best endeavours to work together to achieve the aims and objectives of this Memorandum, complete the City Deal Project Work and avoid disputes. In the event of any dispute the dispute shall be referred to the Councils' Chief Executives to find a resolution.

11 LIABILITY OF THE COUNCILS

No Council shall make any claim of what so ever nature against Cardiff Council to recover any loss, damage, expense, cost or the like which it may incur by reason of

or arising out of the carrying out by Cardiff Council of any of its obligations under this Memorandum unless and to the extent such loss, damage or expense arises from a wilful default or wilful breach by Cardiff Council of its obligations under this Memorandum. This clause 11 shall not operate so as to limit any liability that Cardiff Council may have, where such liability cannot be limited by law.

12 CONTRACTS (THIRD PARTY RIGHTS)

The Councils as parties to this Memorandum do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

13 NOTICES

13.1 Any notice or demand in connection with this Memorandum shall be in writing and may be delivered by hand, prepaid first class post, special delivery post, or email, addressed to the recipient at the address set out for each Council in this Memorandum or such other recipient address as may be notified in writing from time to time by any of the parties to this Memorandum to all the other parties to this Memorandum.

13.2 The notice or demand shall be deemed to have been duly served:-

13.2.1 if delivered by hand, when left at the proper address for service;

13.2.2 if given or made by prepaid first class post or special delivery post, 48 hours after being posted (excluding days other than Business Days);

13.2.3 if given or made by email, at the time of transmission,

provided that, where in the case of delivery by hand or email such delivery or transmission occurs either after 4.00pm on a Business Day or on a day other than a Business Day service shall be deemed to occur at 9.00am on the next following Business Day.

13.3 For the avoidance of doubt, where proceedings to which the Civil Procedure Rules apply have been issued, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

14 GOVERNING LAW

This Memorandum shall be governed by and construed in all respects in accordance with the laws of England and Wales and the English and Welsh Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Memorandum.

15 ASSIGNMENTS

- 15.1 The rights and obligations of the Councils under this Memorandum shall not be assigned, novated or otherwise transferred

16 WAIVER

- 16.1 No failure or delay by any Council to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or some other right, power or remedy unless a waiver is given in writing by that Council.
- 16.2 Each Council shall pay their own costs incurred in connection with the preparation, execution and completion of this Memorandum.

17 COUNTERPARTS

This Memorandum may be executed in any number of counterparts each of which so executed shall be an original but together shall constitute one and the same instrument.

18 RELATIONSHIP OF COUNCILS

No Council shall have the right to act on behalf of another nor to bind the other by contract or otherwise except to the extent expressly permitted by the terms of this Memorandum. In particular and for the avoidance of doubt, none of the provisions relating to the principles of working together shall be taken to establish any Partnership as defined by The Partnership Act 1890.

19 DATA PROTECTION

Each Council shall comply with its obligations under the Data Protection Act.

20. FREEDOM OF INFORMATION AND ENVIRONMENT INFORMATION

- 20.1 Each Council acknowledges that the other Councils are subject to the requirements of the Freedom of Information Act 2000 ("FoIA") and the Environmental Information Regulations 2004 ("EIR") and each Council shall where reasonable assist and co-

operate with the other Councils (at their own expense) to enable the other Councils to comply with these information disclosure obligations in relation to the City Deal.

20.2 The Councils shall be responsible for determining in their absolute discretion whether any information requested of them under the FoIA or the EIR is exempt from disclosure under the FoIA or the EIR or is to be disclosed in response to a request for information.

20.3 Each Council acknowledges that the other Councils may be obliged under the FoIA or the EIR to disclose information:

20.3.1 without consulting with the other Councils where it has not been practicable to achieve such consultation; or

20.3.2 following consultation with the other Councils and having taken their views into account.

21. MITIGATION

Each Council shall at all time take all reasonable steps to minimise and mitigate any loss for which the relevant Council is entitled to bring a claim against the other Council(s) pursuant to this Memorandum.

22. STATUTORY RESPONSIBILITIES

Notwithstanding anything apparently to the contrary in this Memorandum, in carrying out their statutory duties, the discretion of any Council shall not be fettered or otherwise affected by the terms of this Memorandum.

AS WITNESSED the duly authorised representatives of the Councils have signed this Memorandum as a deed on the date written at the beginning of this Memorandum.

Signed for and on behalf of

Signed by way of acceptance of the above terms

Authorised signatory on behalf of

Blaenau Gwent County Borough Council

Authorised signatory on behalf of

Bridgend County Borough Council

Authorised signatory on behalf of

Caerphilly County Borough Council

Authorised signatory on behalf of

The County Council of the City and County of Cardiff

Authorised signatory on behalf of

Merthyr Tydfil County Borough Council

Authorised signatory on behalf of

Monmouthshire County Council

Authorised signatory on behalf of

Newport City Council

Authorised signatory on behalf of

Rhondda Cynon Taf County Council

Authorised signatory on behalf of

Torfaen County Borough Council

Authorised signatory on behalf of

Vale of Glamorgan County Borough Council

Schedule 1 – City Deal Document 15/3/16

Schedule 2 – City Deal Project Work

Outline of City Deal Project Work required

1. Preparation of the Joint Working Agreement (that is the detailed agreement that would be required between the Councils to underpin the proposed City Deal arrangements and to establish a Joint committee (referred to as the Cardiff Capital Region Cabinet).
2. Financial work, by way of illustration only:
 - (i) preparation of mechanisms for apportionment of costs between the Councils,
 - (ii) preparation of an assurance framework for the Investment Fund, and
 - (iii) preparation of a Gateway Assessment process.
3. Consideration of the potential for the parties to seek new powers and fiscal flexibilities to support the delivery of the City Deal.
4. Carrying out the preparatory work required to facilitate the establishment of the following new bodies (PROVIDED ALWAYS that the decision to establish such bodies will be a matter for each Council to make in accordance with its own decision making rules and procedures):-
 - (i) Non Statutory Regional Transport Authority
 - (ii) Cardiff Capital Region Skills and Employment Board
 - (iii) Cardiff Capital Region Business Organisation
 - (iv) Cardiff Capital Region Economic Growth Partnership
 - (v) Independent Growth and Competitiveness Commission

Schedule 3 Terms of Reference

Part 1

CARDIFF CAPITAL REGION CITY DEAL SHADOW JOINT COMMITTEE

TERMS OF REFERENCE

1. Parties

Blaenau Gwent County Borough Council
Bridgend County Borough Council
Caerphilly County Borough Council
The County Council of the City and County of Cardiff
Merthyr Tydfil County Borough Council
Monmouthshire County Council
Newport City Council
Rhondda Cynon Taf County Borough Council
Torfaen County Borough Council, and
Vale of Glamorgan County Borough Council

Welsh Government

2. Status and Membership

Status - The Cardiff Capital Region City Deal Shadow Joint Committee is established to provide direction, oversee and facilitate the development of a City Deal for the Cardiff Capital Region, which final arrangements will be submitted to each authority for approval. The City Deal proposal is to be developed in line with the vision and interests of all participating parties and the City Deal Document signed on 15th March 2016.

Membership - 10 Local Authority Leaders (or their nominated deputies) from across the Cardiff Capital Region.

The Chief Executives or delegated deputies may attend any meetings held, as advisors,

An officer appointed by the Minister for Finance of the Welsh Assembly Government may attend meetings as an observer.

Decision Making - Any formal decision required will be a matter for each authority to make in accordance with its own decision making rules and procedures. Where direction on any matters is required from the Board, views will be sought of each Leader Representative on the Board (or deputy) with the aim of reaching a consensus as to the direction to be given.

It is acknowledge that any direction given or comment made by any member at a Board meeting is without prejudice to any decisions that his/her respective authority

may be asked to make on this matter and shall not serve to fetter an authority in its decision making.

3. Functions of the Shadow Joint Committee

The Shadow Joint Committee is established to provide direction, oversee and facilitate the development of the Cardiff Capital Region City Deal in line with the vision and interests of all participating parties and the City Deal document signed on 15th March 2016. The Shadow Joint Committee will be requested to consider the final proposed report on the City Deal and business case prior to its submission to each Authority for approval.

The Cardiff Capital Region City Deal Shadow Joint Committee will be invited to consider any reports and recommendations from the Cardiff Capital Region City Deal Chief Executives Group and provide such direction thereon to the Chief Executives Group, as they deem appropriate.

4. Professional and administrative support

The City of Cardiff County Council shall act as the accountable body for the Cardiff Capital Region City Deal Shadow Joint Committee in respect of financial matters and its financial procedure rules will apply in this context.

Administrative support to the Cardiff Capital Region City Deal Shadow Joint Committee will be provided by the City of Cardiff County Council.

The procurement, finance and other rules of the City of Cardiff County Council will apply in respect of projects.

5. Quorum and Notice of meetings

No formal quorum is set for the meetings but each party shall use its reasonable endeavours to ensure one member representative (the Leader or nominated deputy) is in attendance.

Reasonable notice is to be given of the dates, times and venues of the proposed meetings.

Schedule 3 Part 2

CARDIFF CAPITAL REGION CITY DEAL CHIEF EXECUTIVES BOARD

TERMS OF REFERENCE

1. Parties

Blaenau Gwent County Borough Council
Bridgend County Borough Council
Caerphilly County Borough Council
The County Council of the City and County of Cardiff
Merthyr Tydfil County Borough Council
Monmouthshire County Council
Newport City Council
Rhondda Cynon Taf County Borough Council
Torfaen County Borough Council, and
Vale of Glamorgan County Borough Council

Welsh Government

2. Status, Membership and Decision Making

Status - The Cardiff Capital Region City Deal Chief Executives Board has been established to act as a forum in order to provide senior level officer direction and make arrangements to discharge the instructions of the Cardiff Capital Region City Deal Shadow Joint Committee.

Membership - 10 Chief Executives of the South East Wales local authorities or nominated deputies with delegated authority to act on behalf of their respective Chief Executive (i.e. one from each of the ten member Councils).

An officer appointed by the Minister for Finance of the Welsh Assembly Government may be in attendance as an observer.

A Chair and Deputy of the Chief Executives Board will be appointed by the 10 Chief Executives.

Decision making – Any decision required relating to the functions of the Executive Board will be a matter for each authority to make through its Chief Executive Representative on the Board (or deputy) to the extent that such decision falls within his or her delegated authority. All decisions must be made on a consensual basis of all ten authorities, with each attendee's agreement, if given, being deemed (i) to represent the decision of their respective authority to the course of action / authorisation concerned and (ii) to be within their delegated authority.

Meetings – may be held in person or by telephone conference or matters may be considered via email exchange between all members.

3. Functions of the Executive Board

The Cardiff Capital Region City Deal Chief Executives Board will provide support to the Cardiff Capital Region City Deal Shadow Joint Committee to ensure that the development of the Cardiff Capital Region City Deal is in line with the vision and interests of participating parties and the City Deal Document signed on 15.3.16.

The Cardiff Capital Region City Deal Chief Executives Board will be responsible for developing the final proposal and business case for a City Deal for consideration by the Cardiff Capital Region City Deal Shadow Joint Committee and approval by each of the 10 authorities.

The Cardiff Capital Region City Deal Chief Executives Board will be responsible for authorising the City of Cardiff County Council to (i) commission external support and (ii) oversee the management of the project expenditure.

The Cardiff Capital Region City Deal Chief Executives Board will be responsible for delegating actions, as appropriate, to the Project Officer Group.

4. Professional and administrative support

The City of Cardiff County Council shall act as the accountable body for the Cardiff Capital Region City Deal Chief Executives Board in respect of financial matters and its financial procedure rules will apply in this context.

Administrative support to the Cardiff Capital Region City Deal Chief Executives Board will be provided by the City of Cardiff County Council.

The procurement, finance and other rules of the City of Cardiff County Council will apply in respect of projects.

Any expenditure on preparatory work required to develop the detailed City Deal proposals, which preparatory work has a value in excess of £20,000, will require the full approval of the Cardiff Capital Region City Deal Chief Executives Board.

Expenditure decisions falling below a cumulative value of £20,000 in a financial year may be made by the Chair of the Project Officers Group.

Expenditure would also be subject to the appropriate delegations relating to the City of Cardiff Council.

5. Reports and recommendations

The Cardiff Capital Region City Deal Shadow Joint Committee will receive reports and recommendations from the Chief Executives Group as appropriate.

Schedule 3 Part 3

Cardiff Capital Region City Deal Officers Group

The Cardiff Capital Region City Deal Officers Group will provide support to the Cardiff Capital Region City Deal Chief Executives Board to ensure that the development of the Cardiff Capital Region City Deal is in line with the vision and interests of participating parties.

The Cardiff Capital Region City Deal Officers Group will comprise officers nominated by the Cardiff Capital Region City Deal Chief Executives Board and may be split into sub groups reflecting particular professional disciplines and expertise.

The Cardiff Capital Region City Deal Officers Group will undertake such activities as directed by the Cardiff Capital Region City Deal Chief Executives Board, to progress the development of the City Deal.

The Cardiff Capital Region City Deal Officers Group will, if required, work with any appointed specialist advisor to develop the City Deal .

Welsh Government appointed officials may attend all City Deal Officer Group meetings as appropriate.

Schedule 4 - Financial Contributions

CITY DEAL PARTNER CONTRIBUTIONS

	Pro Rata
Blaenau Gwent	£23,366
Bridgend	£47,034
Caerphilly	£59,989
Cardiff	£117,736
Merthyr Tydfil	£19,751
Monmouthshire	£30,832
Newport	£49,076
Rhondda, Cynon, Taff	£79,037
The Vale of Glamorgan	£42,582
Torfaen	£30,597
Column Total	£500,000

Calculations

<u>local authority</u>	<u>Population</u>	<u>%</u>	<u>£ pro-rata</u>
Blaenau Gwent	69,800	5%	£23,366
Bridgend	140,500	9%	£47,034
Caerphilly	179,200	12%	£59,989
Cardiff	351,700	24%	£117,736
Merthyr Tydfil	59,000	4%	£19,751
Monmouthshire	92,100	6%	£30,832
Newport	146,600	10%	£49,076
Rhondda, Cynon, Taff	236,100	16%	£79,037
The Vale of Glamorgan	127,200	9%	£42,582
Torfaen	91,400	6%	£30,597
Column Total	1,493,600	100%	£500,000

ACCOUNTING PERIODS

Start of Accounting Period	End of Accounting Period
1 April	30 June
1 July	30 September
1 October	31 December
1 January	31 March