

**THIS MEMORANDUM OF AGREEMENT is made on
2015**

the day of

BY AND BETWEEN

THE PARTIES:

**(1) HAMSPHIRE COUNTY COUNCIL of the Castle, Winchester, S023
8UJ (hereinafter referred to as “the County Council”)**

**(2) THE ENTERPRISE M3 LOCAL ENTERPRISE PARTNERSHIP
(hereinafter referred to as “the Enterprise M3 LEP”)**

each a “Party” and together known as the “Parties”

1. Introduction and Background

1.1 The Enterprise M3 LEP is a business led Local Enterprise Partnership, one of 39 in England established in 2011, which is working to secure economic growth along the M3 Corridor. The Enterprise M3 LEP is an informal partnership.

1.2 The Enterprise M3 LEP’s geographical area covers south west Surrey and mid and north Hampshire, including the New Forest, Test Valley, Winchester, East Hampshire, Basingstoke, Rushmoor and Hart.

1.3 The Enterprise M3 LEP is led by a private sector chaired Board.

1.4 The Government recently asked all Local Enterprise Partnerships (“LEPs”) to sign up to working with them to develop a single local assurance framework for each LEP, covering all Government funding flowing through the LEP, and to ensure each LEP has robust value for money processes in place. Any funding will be deployed solely in accordance with decisions made through this single local accountability and assurance framework and monitoring and evaluation framework.

1.5 The Enterprise M3 Assurance Framework (“the Assurance Framework”) addresses those areas the Government expects LEPs to cover in their single local assurance frameworks. The County Council, as the Accountable Body for the Enterprise M3 LEP, will support the Enterprise M3 LEP in implementing the requirements of the Assurance Framework, meeting the standards articulated in the Assurance Framework and ensuring that all funding decisions are made in accordance with it. The County Council will also, through its Chief Financial Officer, be accountable for the proper use and administration of all funding streams under the control of the Enterprise M3 LEP, all of

which are subject to the County Council's normal internal and external audit controls. A copy of the Assurance Framework is attached at Appendix 'A'.

1.6 Funding will be paid to the Enterprise M3 LEP by the Department for Communities and Local Government ("DCLG"), the Department for Transport ("DfT"), the Department for Business Innovations and Skills ("BIS") and/or any other relevant Government funding agencies, on the basis of a section 31 Grant Determination of the Local Government Act 2003 and/or under any other relevant legislation to the County Council as the lead Accountable Body for the Enterprise M3.

1.7 The County Council has the power under section 1 Localism Act 2012 to do anything that individuals generally may do. The County Council may therefore undertake the role of Accountable Body and may also enter into agreements with funding recipients in terms of both loan and grant funding distributed by the Enterprise M3 LEP.

1.8 By virtue of the Cabinet meeting held on 27 October 2014 the County Council is authorised to enter into a revised Memorandum of Agreement ("MoA") with the Enterprise M3 LEP to enable the scope of the County Council's role as Accountable Body to encompass all funding streams under the control of the Enterprise M3 LEP. The decision also endorsed the provision of support from the County Council, as the Accountable Body, in relation to the delivery of the Local Growth Fund programme in 2015/16 and in future years, on the basis that the reasonable costs of providing such services are to be recovered from the Enterprise M3 LEP.

1.9 The purpose of this MoA is to set out the support arrangements that the County Council, in its role as Accountable Body, currently provides to the Enterprise M3 LEP in the form of administrative, business and technical support arrangements, including the arrangements around the employment of staff to the Enterprise M3 LEP.

1.10 This MoA is to be read in conjunction with the Assurance Framework.

2. Commencement

2.1 This MoA shall commence upon the date hereof and shall continue in effect until terminated by either Party giving three months notice in writing to the other. In terminating this MoA the Parties shall comply with the requirements, if any, of DCLG, BIS and the DfT and any other funding agencies.

3. Principles of Decision Making

3.1 The following principles apply to decision making:-

- due regard to all relevant considerations and disregard of all irrelevant factors;
- proportionality (ie the action must be proportionate to the desired outcome);
- lawfulness and financial propriety and prudence;
- the ability to explain the options considered and the reasons for decisions;
- due consultations;
- taking of professional advice as required;
- respect of human rights and application of the Human Rights Act 1998;
- respect of equalities and application of the Equality Act 2010;
- a presumption in favour of openness;
- clarity of aims and desired outcomes

4. Termination and Variation

4.1 If the County Council cease to be the accountable body, it shall:-

- a) continue to co-operate with the Enterprise M3 LEP and any successor Accountable Body and with all grantors to ensure a smooth transition; and
- b) provide to the Enterprise M3 LEP or the new Accountable Body (where requested in writing to do so by the Enterprise M3 LEP and where reasonably practicable to do so) all such invoices, receipts and other relevant records which are in its possession and which it holds in connection with its role of Accountable Body.

4.2 This MoA shall terminate automatically upon the disbanding of the Enterprise M3 LEP. In such case, the Enterprise M3 LEP and the County Council shall complete all of their obligations concerning:-

- a) monies granted to or by the Enterprise M3 LEP;
- b) other assets held by the County Council in its role as Accountable Body on behalf of the Enterprise M3 LEP; and
- c) any accounts required to be submitted to DCLG, BIS and/or DfT or to any other relevant funding organisation.

4.3 This MoA shall be varied only by the written and mutual agreement of the Enterprise M3 LEP and the County Council save that this shall not prevent the Enterprise M3 LEP Board from making amendments to the Assurance Framework (“the Governance Documents”). Where a variation of this MoA requires a change to any of the Governance Documents, that change shall not come into effect until the respective Governance Documents have been duly amended in accordance with its requirements. The Enterprise M3 LEP shall notify the County

Council in writing on becoming aware of the need to vary this MoA due to a change to the Governance Documents.

5. Charges and Liabilities

5.1 Except as otherwise provided, the Parties shall bear their own costs and expenses in the preparation of this MoA.

5.2 Furthermore any such funding must be used in accordance with statute and the principles of democratic and financial accountability. The County Council in undertaking its role as Accountable Body to the Enterprise M3 LEP shall act in accordance with local government law and the County Council's rules and procedures as set out in its Constitution and Financial Procedures.

5.3 The County Council, as the Accountable Body of all funding streams under the control of the Enterprise M3 LEP, is responsible for compliance with the funding terms and conditions laid down by DCLG, BIS, the DfT and/or any other government funding agencies, which includes the obligation to repay, in whole or in part in the event of non-compliance with those terms and conditions (hereinafter referred to as "the Clawback").

5.4 For the avoidance of any doubt, in the event of the Enterprise M3 LEP funding containing insufficient sums to meet any Clawback, the Enterprise M3 LEP agrees to indemnify the County Council from any possible Clawback which the County Council should incur as a result of non-compliance.

5.5 In the event that the fund applicant/recipient of any funding allocated by the Enterprise M3 LEP fails to comply with the repayment terms and/or conditions or any other aspect of the initial funding or funding agreement, the County Council will use all reasonable endeavours to recover such sums as may be due and to enforce such terms and conditions contained within such initial funding or funding agreement. In the event that full recovery is not possible the risk of any shortfall will be borne by the Enterprise M3 LEP.

5.6 A record of income and expenditure for all Enterprise M3 LEP funding streams, of which the County Council is the Accountable Body, shall be prepared by the County Council on an annual basis.

6. Asset Related Matters

6.1 Any infrastructure constructed or acquired by the County Council acting on Enterprise M3 LEP's behalf, will be accounted for in line with the County Council's normal accounting procedures, compliant with its Constitution and Financial Procedures.

7. Support Arrangements

7.1 The County Council currently provides to the Enterprise M3 LEP the following administrative, business and technical support arrangements free of charge:

- Work stations/Office space for the core Enterprise M3 LEP staff and any programme management staff;
- Meeting rooms;
- ICT equipment and access to the County Council's IT network (where required);
- Financial and human resources transactional services relating to the funds held and the staff hosted

7.2 The Enterprise M3 LEP will be provided access to relevant County Council framework arrangements including:-

- Strategic partner arrangements;
- Technical resources framework; and
- Specialist legal panel.

7.3 The secretarial/administration support functions for the Enterprise M3 LEP, including any Board meetings and meetings of sub-Board groups are provided for and funded by the Enterprise M3 LEP. The governance and decision making of the Enterprise M3 LEP is contained within the Assurance Framework.

7.4 The County Council has agreed to make an annual cash contribution to the Enterprise M3 LEP, subject to agreement between the Parties on an annual basis.

7.5 The County Council has agreed to the secondment from the County Council of a 'G' grade post holder into a management role of the Enterprise M3 LEP ("Seconded Post"). The Seconded Post is funded by the County Council to the cost of a 'G' grade post (including all on costs at this grade), with any costs above and beyond the cost of a 'G' grade post funded by the Enterprise M3 LEP. The County Council will not fund any of the costs in excess of the cost of a 'G' grade post.

7.6 The County Council has also agreed to the secondment of a 'H' grade post holder into a role of the Enterprise M3 LEP. The costs of such secondment are borne by the Enterprise M3 LEP.

7.7 The County Council shall reserve the right to charge the Enterprise M3 LEP for the use of the provision of finance services, legal services, procurement services, and/or research and intelligence services. The schedule of charging rates and work programme shall be agreed

between the County Council and the Enterprise M3 LEP on an annual basis.

- 7.8** The County Council and the Enterprise M3 LEP shall each nominate respective named contacts in relation to the overall management of the relationship between the parties. The named contact details shall be provided to the Parties, to include their name, title, telephone number and email address.
- 7.9** The 'in-kind' support arrangements referred to at clause 7.1 hereto will be continually reviewed between the County Council and the Enterprise M3 LEP.
- 7.10** External business and technical support may be procured by the County Council and/or the Enterprise M3 LEP where specialist skills are needed for example for the financial due diligence process and/or the preparing of legal funding agreements and/or to deal with peak in workflows.
- 7.11** The Enterprise M3 LEP shall provide early engagement/consultation with the County Council where external business and technical support have to be procured where specialist arrangements need to be put in place to ensure that the County Council can fully evaluate and consider the risks associated with such arrangements.
- 7.12** The County Council will maintain satisfactory insurances to cover its obligations under this MoA.

8. Employment of Staff

- 8.1** The County Council shall act as the 'host employer' for core staff directly employed by the Enterprise M3 LEP. This shall not prevent the Enterprise M3 LEP from employing staff from other organisations under a secondment arrangement or similar.
- 8.2** The County Council currently hosts certain core employment posts on behalf of the Enterprise M3 LEP, of which for the avoidance of any doubt, includes the Secondment Post referred to at clause 7.5 and clause 7.6 hereto. These employees are under the direction and control of the Enterprise M3 LEP, however, they are employed by the County Council. The County Council is responsible for the payment of the employees' salary, PAYE, National Insurance and pension contributions.
- 8.3** The Enterprise M3 LEP reimburses the County Council for the employment costs of the employees referred to at clause 8.2 hereto, the amount includes:

- the salary paid by the County Council to the employees under their contracts of employment;
- the National Insurance contributions provided by the County Council in respect of the employees' salary;
- the Pension contributions payable by the County Council due under the employees' contracts of employment;
- any travel/subsistence claims relating to the employees' contracts of employment;
- all other expenses and benefits paid to the employees by the County Council under their contracts of employment
- all other expenses and benefits paid to the employees by the County Council under their contracts of employment.

8.4 The Enterprise M3 LEP agrees to indemnify the County Council against any liabilities, costs and expenses incurred by the County Council in respect of any claim or action brought by any of the employees referred to at clause 8.2 hereto, any acts or omissions of the employees referred hereto and any claims brought by any third party arising out of the acts or omissions of the employees referred hereto, to which the County Council incurs as a result of:-:

1. any personal injury (including injury resulting in death) or disease sustained by the employees (referred to at clause 8.2 hereto) during or in any way connected with the employees' contracts of employment, and/or
2. any Employment Tribunal claim by the employees (referred to at clause 8.2) arising out of or in the course of the contracts of employment; and/or
3. any claim by any third party arising out of the employees referred to at clause 8.2) acts or omissions during the course of their contracts of employment, except where such claim is caused by the acts or omissions of the County Council, its officers or other employees and/or where such liabilities are within the cover provided by the County Council's existing insurance arrangements

9. Data Protection and Freedom of Information

9.1 The Parties hereto shall comply with their obligations under the Data Protection Act 1998 in the performance of their obligations under this MoA.

9.2 The Parties hereto shall process information which amounts to personal data in accordance with the Memorandum of Agreement dated 28th July 2014. The purpose of this Memorandum of Agreement is to set out the basis upon which the County Council as the data controller of personal data supplied by the SFA will share anonymised data with the Enterprise M3 LEP.

9.3 The Enterprise M3 LEP shall co-operate with the County Council and supply to it all information properly required in connection with any request received by the County Council under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and shall supply all such information and documentation at no cost to the County Council within seven days of a request from the County Council.

9.4 The Enterprise M3 LEP acknowledges that in responding to requests received by the County Council under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, the County Council will be entitled to provide information relating to this MoA.

10. Confidentiality

10.1 Neither Party will use or disclose any confidential material provided by the other pursuant to this MoA otherwise than for the performance of their obligations under this MoA, save as may be otherwise agreed or required by law.

10.2 For the avoidance of doubt, confidential information shall not include (a) any information obtained from a third party who is free to divulge such information; (b) any information which is already in the public domain otherwise than as a breach of this MoA; or (c) any information which was rightfully in the possession of a Party prior to the disclosure by the other Party and lawfully acquired from sources other than the Party.

11. Escalation

11.1 If either Party has any issues, concerns or complaints about any matter in this MoA, that Party shall notify the other Party and the Parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, then the matter shall be escalated to the Executive Director of the Enterprise M3 LEP and the County Council's Director of Economy, Transport and Environment who shall decide on the appropriate course of action to take. If the issue can still not be resolved then the matter will be referred to an independent arbitrator to reach an agreement. The costs of an independent arbitrator shall be borne by the County Council and the Enterprise M3 LEP respectively.

12. Equality

12.1 In performing their obligations in pursuance of this MoA, the Parties shall comply with their responsibilities under the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010, as amended, and should have regard to these requirements when apportioning any funding.

13. Contract (Rights of Third Parties) Act 1999

13.1 No person who is not a party to this MoA shall have the right to enforce any of its terms.

14. Governing Law

14.1 This MoA shall be subject to and construed in accordance with English Law and subject to the exclusive jurisdiction of the courts of England and Wales.

15. Status

15.1 This MoA is not intended to be legally binding and no legal obligations or legal rights shall arise between the Parties from this MoA. The Parties enter into this MoA intending to honour all obligations contained herein, including their respective roles and responsibilities

This MoA is agreed and signed by the Parties on the day and year first before written:-

Signed for and on behalf of Hampshire County Council by:-

Signed

Name

Position

Date

Signed for and on behalf of the Enterprise M3 Local Enterprise Partnership by:-

Signed

Name

Position

Date