

<b>Report to</b>	Council	<b>Item</b>
	29 September 2015	<b>9</b>
<b>Report of</b>	Executive head of regeneration and development and Chief Finance Officer	
<b>Subject</b>	Borrowing authorisation agreement to use future Community Infrastructure Levy revenues to support delivery of strategic infrastructure including the Norwich Northern Distributor Road	

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### **Purpose**

To consider the proposed legally binding borrowing authorisation agreement to use future Community Infrastructure Levy (CIL) revenues to fund costs associated with the delivery of the Norwich Northern Distributor Road (NDR).

### **Recommendation**

To resolve to make the necessary provision for repayment of borrowing associated with the delivery of Norwich Northern Distributor Road project, using Community Infrastructure Levy (CIL) revenues, as detailed in the report.

### **Corporate and service priorities**

The report helps to meet the corporate priorities of a prosperous and vibrant city and a healthy city with good housing.

### **Financial implications**

As detailed in the report.

**Ward/s:** All

**Cabinet member:** Councillor Alan Waters, leader of the council.

### **Contact officers:**

David Moorcroft, Executive head of regeneration and development 01603 212225

Justine Hartley, Chief Finance Officer 01603 212440

### **Background documents:**

None



## **Background**

1. The principle of using borrowing to secure the timely delivery of strategic infrastructure needed to support growth has been under discussion for some time.
2. In March 2011 Greater Norwich Development Partnership Policy Group agreed to use a significant proportion of future CIL revenues to establish a shared investment fund to support delivery of priority 1 key infrastructure projects and this includes up to £40m of local investment for the delivery of the NDR and related measures.
3. In December 2013 the Greater Norwich City Deal was signed. Among other things this gave City Deal partners access to the Public Works Loan Board (PWLB) project rate discount on £60 million borrowing to fund strategic infrastructure and included a commitment from the District Authorities to pooling CIL income to create a substantial local growth fund.
4. In March 2014, cabinet approved the Greater Norwich Growth Board (GNGB) agreement and constitution, and Council approved the pooling of CIL income to deliver infrastructure across Greater Norwich. The agreement provided for Councils across Greater Norwich (Broadland, Norwich and South Norfolk) to pool all of available CIL revenues, apart from elements reserved to cover administration costs and neighbourhood level expenditure, into an infrastructure investment fund to deliver a wide ranging capital programme of growth related projects, including the NDR.
5. In July 2015, Council approved the Norwich annual business plans for 2016-17 (setting out strategic infrastructure projects for Norwich proposed for funding from the pooled CIL fund in that year). This business plan included reference to agreeing to use pooled CIL funding in future years to ensure the delivery of Norwich Area Transportation Strategy, including particularly the NDR and Long Stratton Bypass. It noted that there would be no call on pooled funding in 16/17 for these schemes, but there would be in future years.

## **Proposed Borrowing Authorisation Agreement**

6. Following the approval of the NDR through its regulatory procedures the stage has been reached when funding draw down needs to occur in order to allow commencement of construction of the project. This requires the Council to enter into a formal borrowing authorisation agreement with the County Council and the other CIL raising Districts in the GNGB.
7. The proposed borrowing authorisation agreement is attached as Appendix 1. It is in two parts. The first part is an agreement between the County Council and the three District CIL raising partners (Norwich City, Broadland District and South Norfolk Councils) related to borrowing to support the delivery of strategic infrastructure. It is to provide assurance to the County Council, as the accountable body for the borrowing, that the District Councils will continue to make CIL revenues available to the infrastructure investment fund to fund the costs of repayment of the borrowing throughout the term of the loan.

8. This agreement relates to all borrowing that will be undertaken to deliver strategic infrastructure. It will apply to all of the £60m PWLB borrowing and potentially to other sources of borrowing if agreed. It sets out what the liabilities of the partners are and how these will be managed in certain circumstances, including in the event of one or more of the partners seeking to leave the agreement and/or the Greater Norwich Growth Board.
9. There is currently no certainty on the range of schemes which will be funded by the PWLB borrowing or when draw down of the funding will be needed. In addition to the Norwich Northern Distributor Road (NDR), it is expected that up to £10m of funding will be needed to deliver the Long Stratton Bypass and up to £10m to deliver other elements of the Norwich Area Transportation Strategy within the City, but further development work is needed on schemes before details of the funding arrangements can be agreed.
10. Schedule 2 of the agreement only relates to the drawdown of £40m of the borrowing provision. This is the amount that is needed to ensure the delivery of the NDR project. It stresses that £40m is the maximum contribution which will be met by the Districts and the County Council will be fully responsible for any overspend on the project. Similar schedules will need to be entered into separately by the Council for any subsequent projects to be supported by further borrowing.
11. Schedule 2 sets out how the borrowing of £40m of PWLB funding is to be allocated to the Infrastructure Investment Fund. The interest rate charged by the County Council on the borrowing allocated to the fund will be determined by the relevant PWLB discount project rate applicable on the day the County Council draws down the £40m funding. Currently schedule 2 sets out repayments to be met from the pooled CIL revenues over the period 2017/18-2041/42 based on the applicable rate at the end of June 2015. This is illustrative only and will need to be updated once the funding is drawn down (currently expected to be in October 2015). At the rate applicable at the end of June interest repayments of £15,433,328 would be due over 25 years on the £40m to be borrowed.
12. There are a number of noticeable features of the proposed agreements that should be noted.
13. It is a fundamental principle of the agreement that the funding of borrowing payments will not impinge on the capital or revenue funds of the three District Councils and will be met wholly from the allocation of a proportion of future CIL payments made into the Infrastructure Investment Fund.
14. The current Greater Norwich Growth Board (GNGB) joint working agreement provides for each Council to produce an annual business plan setting out its proposed schemes for inclusion in the Greater Norwich Annual Growth Programme. Where these are included within the growth programme the costs are attributed to the proposing District. Should any District withdraw from the pooling arrangements or the GNGB it can be held liable for any costs attributed to it if these are in excess of its contributions to the pooled fund. Conversely should any District withdraw from the GNGB it is entitled to a refund of any excess of contributions made over the cost of schemes delivered from its business plans.
15. The proposed agreement changes the above in relation to the strategic schemes that are to be delivered through the borrowing arrangements. Instead of such

schemes being attributed to a single promoting District the liabilities are shared between the Districts, the attribution to the individual District will only be identified in the event of the District seeking to leave the agreement. This will be determined by the application of the criteria set out in para 6.5 of the borrowing agreement. There is a provision for dispute resolution should a financial settlement not be agreed between the parties to the agreement.

16. It is therefore not possible to identify at this stage what proportion of the borrowing liabilities illustrated as £55,433,328 in schedule 2 for the NDR would be attributed to the City Council in the event of it seeking to leave the agreement before the loan is repaid. It should be noted though that these risks are limited only to the possible use of future CIL income (or any equivalent or replacement developer tax or levy) as set out in para 3.8 of the borrowing authorisation agreement. There is no risk to the reserves or future revenue budgets of the City Council. Should CIL be scrapped with no replacement mechanism put in place then 100% of the costs of borrowing would need to be met by the County Council. It should also be noted that Schedule 2 provides for the County Council to be 100% liable for any overspend on the NDR project.
17. The ability of the GNGB to fund infrastructure investment through future annual growth programmes will be affected by the need to make provision for borrowing repayments. The extent of this will depend on the level of CIL revenues generated and the nature of infrastructure required.
18. Current projections of future levels of CIL arising would suggest that repayments on the NDR will be relatively affordable as a proportion of total pooled CIL revenues up to 2026. However, the level of CIL revenues generated will be influenced by the rate of delivery of CIL liable development, the rates at which CIL is charged (which are subject to periodic review), and regulatory change to the CIL charging system either increasing or reducing the proportion of development that is CIL liable. As such it is not possible to project what level of CIL income may be generated by the pooled fund across the 25 year period over which repayments are needed. If growth rates stall in future it is possible that a significant proportion of future CIL revenues will be needed to go to meet debt repayments rather than enabling delivery of further infrastructure.

### **Process for formal sign off of the agreement**

19. Further meetings of Broadland, South Norfolk and the County Councils are not needed for these organisations to enter into the attached agreement. Therefore should the recommendations in this paper be agreed it is anticipated that the borrowing authorisation agreement will be capable of being signed within days allowing borrowing draw down to take place and commencement of construction of the NDR shortly thereafter. If there is a need for any further minor drafting changes to be made as part of the formal sign off process it is suggested that these should be agreed by the Executive Head of Regeneration and Development and the Chief Finance Officer in consultation with the Leader of the Council.

**Integrated impact assessment****NORWICH**  
City Council**Report author to complete**

<b>Committee:</b>	Council
<b>Committee date:</b>	29 September 2015
<b>Head of service:</b>	Graham Nelson
<b>Report subject:</b>	Borrowing authorisation agreement to use future Community Infrastructure Levy revenues to support delivery of strategic infrastructure including the Norwich Northern Distributor Road
<b>Date assessed:</b>	21 September 2015
<b>Description:</b>	To approve the borrowing authorisation agreement to use future Community Infrastructure Levy revenues to support delivery of strategic infrastructure including the Norwich Northern Distributor Road.

<b>Economic (please add an 'x' as appropriate)</b>	<b>Neutral</b>	<b>Positive</b>	<b>Negative</b>	<b>Comments</b>
<b>Finance (value for money)</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Use of CIL income to support at discounted PWLB rates will support the early delivery of key strategic transport projects needed to improve transport and unlock sites for residential and employment development. This should further stimulate the flow of various revenues into the Council and partners.

<b>Other departments and services e.g. office facilities, customer contact</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Delivery of key strategic transport projects increase the prospect of delivery of the Joint Core Strategy which includes the provision of homes, jobs and community facilities. The impact of this on other services is hard to identify but is potentially wide ranging.
<b>ICT services</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Economic development</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Major investment in strategic transportation projects will make Norwich more attractive for investors
<b>Financial inclusion</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Social (please add an 'x' as appropriate)</b>	<b>Neutral</b>	<b>Positive</b>	<b>Negative</b>	<b>Comments</b>
<b>Safeguarding children and adults</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b><u>S17 crime and disorder act 1998</u></b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Human Rights Act 1998</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Health and well being</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Equality and diversity (please add an 'x' as appropriate)</b>	<b>Neutral</b>	<b>Positive</b>	<b>Negative</b>	<b>Comments</b>
<b>Relations between groups (cohesion)</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Eliminating discrimination &amp; harassment</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Advancing equality of opportunity</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Environmental (please add an 'x' as appropriate)</b>	<b>Neutral</b>	<b>Positive</b>	<b>Negative</b>	<b>Comments</b>
<b>Transportation</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Borrowing will significantly improve transportation in Norwich

<b>Natural and built environment</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Borrowing will be used to speed up the delivery of strategic transport projects. Whilst these projects will undoubtedly have an impact on the environment, resource use, pollution and climate change all these issues have been thoroughly assessed both at the strategic level through the production of the Joint Core Strategy and in more detail through the processes to approve the individual schemes.
<b>Waste minimisation &amp; resource use</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Pollution</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Sustainable procurement</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Energy and climate change</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>(Please add an 'x' as appropriate)</b>	<b>Neutral</b>	<b>Positive</b>	<b>Negative</b>	<b>Comments</b>
<b>Risk management</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Recommendations from impact assessment</b>				
<b>Positive</b>				
The borrowing authorisation agreement will enable the draw down of funding at competitive rates to speed up the delivery of strategic transport infrastructure. This will not only improve transport infrastructure but should also stimulate the economy more generally leading to the provision of more homes and jobs and increasing the flow of investment into the area and improving Council finances.				
<b>Negative</b>				
<b>Neutral</b>				



Whilst these transport projects will undoubtedly have an impact on the environment, resource use, pollution and climate change all these issues have been thoroughly assessed both at the strategic level through the production of the Joint Core Strategy and in more detail through the processes to approve the individual schemes. They do not need to be re-examined in the context of the borrowing authorisation agreement.

**Issues**

Dated \_\_\_\_\_ 2015

**BROADLAND DISTRICT COUNCIL**

**NORWICH CITY COUNCIL**

**SOUTH NORFOLK DISTRICT COUNCIL**

and

**NORFOLK COUNTY COUNCIL**

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**AGREEMENT**

Relating to GNGB Partner Draw-down and Borrowing Authorisations

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nplaw  
Norfolk County Council  
County Hall  
Martineau Lane  
Norwich  
NR1 2DH

**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2015

BETWEEN

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Norwich, Norfolk, NR7 0DU ("**Broadland**")
- (2) **NORWICH CITY COUNCIL** of City Hall, St Peter Street, Norwich, NR2 1NH ("**Norwich**")
- (4) **SOUTH NORFOLK DISTRICT COUNCIL** of South Norfolk House, Swan Lane, Long Stratton, Norfolk, NR15 2XE ("**South Norfolk**")
- (4) **NORFOLK COUNTY COUNCIL** of County Hall, Martineau Lane, Norwich, NR1 2DH ("**County Council**")

(together "the Parties"; Broadland, Norwich and South Norfolk together the "District Councils")

#### **Recitals**

- (i) The Parties have with the New Anglia Local Enterprise Partnership established the Greater Norwich Growth Board to oversee the delivery of the Greater Norwich Growth Programme as more particularly set out in the Joint Working Agreement dated 26 September 2014.
- (ii) The Greater Norwich Growth Board has agreed the Infrastructure Investment Fund Programme Governance (as appended to the Joint Working Agreement), the purpose of which is to deliver the capital programme of infrastructure projects identified in the Joint Core Strategy and the Greater Norwich Infrastructure Plan (formerly the Local Investment Plan and Programme).
- (iii) The Parties agree that the County Council shall borrow funds from various sources as they are identified to assist with the delivery of the Growth Programme. The County Council shall ensure that the cost of any

borrowing (up to £60m) for this purpose will be undertaken at the equivalent of the prevailing Public Works Loan Board preferential rate as set out in the City Deal dated 12 December 2013.

- (iv) The Parties acknowledge the collective and individual benefits of delivering the Growth Programme to each of them. Furthermore the Parties have agreed to enter into this Agreement to formalise their commitment and their financial obligations in respect of any borrowing undertaken for the purpose of funding schemes and projects approved in the Growth Programme by the Greater Norwich Growth Board.
- (v) More particularly this Agreement is intended to give assurance to the County Council, as the accountable body, of the District Councils' agreement that their Community Infrastructure Levy will be made available to the County Council (or other accountable bodies if different to Norfolk County Council) for purposes of meeting the District Council's liabilities in respect of borrowing undertaken by the County Council on behalf of the Greater Norwich Growth Board for the delivery of the Growth Programme.
- (vi) In agreeing to work together in relation to these matters the Parties accordingly wish to record the basis on which they will collaborate with each other. This Agreement sets out the terms of financial arrangements, the principles of collaboration and respective roles and responsibilities of the Parties.

THE PARTIES AGREE as follows:

#### 1.1 Interpretation

"Annual Growth Programme" means the programme of capital projects developed by the GNGB and approved annually by the Parties in accordance with clause 5, more particularly set out in Schedule 1;

"CIL Revenues" means all that party's Community Infrastructure Levy revenues less an administration deduction to the extent permitted by the Regulations but not to exceed a deduction of 5%, and a further deduction of 15% or 25% neighbourhood contribution as applicable;

“Commencement Date” means 1<sup>st</sup> October 2015;

“Community Infrastructure Levy” means the Community Infrastructure Levy pursuant to the Planning Act 2008 and Community Infrastructure Levy Regulations 2010 or equivalent or replacement developer tax or levy as implemented from time to time;

“Event of Default” means any event or circumstance specified in this definition:-

- (a) the Party fails to perform and/or observe any provision of this Agreement;
- (b) the Greater Norwich Growth Board is dissolved;
- (c) the Party terminates its participation in or is discharged from the Greater Norwich Growth Board;
- (d) any fraud on the part of the Party;
- (e) any representation or warranty made or repeated by the Party pursuant to this Agreement, is incorrect when made or repeated;

“FOIA” means the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and any subordinate legislation made thereunder and any guidance and codes of practice issued under such legislation;

“GNGB” means the Greater Norwich Growth Board established pursuant to the Joint Working Agreement;

“Greater Norwich Infrastructure Plan” means the plan supporting the delivery of infrastructure identified in the Joint Core Strategy for the Greater Norwich area.

“Joint Core Strategy” means the overarching strategy for growth across the Greater Norwich area.

“Joint Working Agreement” means the agreement between the Parties and New Anglia Local Enterprise Partnership establishing the Greater Norwich Growth Board for the joint management of the Greater Norwich Growth Programme dated 26 September 2014;

“Loan” means any loan, or other form of finance accessed by the County Council for the purpose of funding strategic projects as may be agreed by the GNGB from time to time. Furthermore it is understood that any finance accessed by the County Council up to £60m on behalf of the GNGB will be on terms equal to the equivalent prevailing PWLB Project Rate loan rate and terms;

“PWLB” means Public Works Loan Board;

“Project” means a capital project agreed by the GNGB in accordance with clause 5 in relation to which the parties will collaborate in accordance with this Agreement, as further described in a particular Project Schedule;

“Project Period” means subject to earlier termination in accordance with this Agreement, the period from the start date to the end date for a Project, as set out in a Project Schedule;

“Project Schedule” means a document specifying particulars in relation to a particular Project, agreed by the parties in accordance with clause 5 and attached to this Agreement as a Schedule;

“Regulations” means the Community Infrastructure Levy Regulations 2010;

“Infrastructure Investment Fund” means the pooled fund comprising the CIL Revenues out of which payments may be made by the County Council towards its liabilities in respect of any Loan drawn down for the purposes of funding the Annual Growth Programme; and

“Termination Date” means 31<sup>st</sup> March 2026.

1.2 In this Agreement:

- (a) clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement;
- (b) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (c) a reference to a party shall include that party's successors, permitted assigns and permitted transferees;

- (d) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (e) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (f) a reference to this Agreement (or any provision of it) or to any other agreement or document referred to in this Agreement is a reference to this Agreement that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Agreement) from time to time;
- (g) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Agreement and a reference to a paragraph is to a paragraph of the relevant Schedule;
- (h) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (i) a reference to an amendment includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- (j) a reference to continuing in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (k) a reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (l) references to a document in agreed form are to that document in the form agreed by the parties and initialled by them or on their behalf for identification and
- (m) the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

## 2. **Status of this Agreement**

- 2.1 This Agreement shall commence on the Commencement Date and subject to all the Parties' liabilities arising under the Agreement having been settled and subject to the Project Schedules shall continue until the Termination Date ("the Initial Term"), when it shall terminate automatically without notice unless, no later than 12 months before the end of the Initial Term (or any Extended Term agreed under this clause), the Parties agree in writing that the term of the Agreement shall be extended for an agreed period ("the Extended Term"). Unless it is further extended under this clause, and subject to all the Parties' liabilities arising under the Agreement having been settled the Agreement shall terminate automatically without notice at the end of an Extended Term.
- 2.2 The Parties agree that this Agreement shall take the form of a legally binding contractual relationship and shall from the Commencement Date be construed accordingly.
- 2.3 The Parties agree to adopt the following principles when carrying out the Annual Growth Programme ("the Principles"):
- 2.4 collaborate and co-operate in accordance with Joint Working Agreement governance structures to ensure that the Annual Growth Programme is successfully delivered;
- 2.5 be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this Agreement;
- 2.6 be open. Communicate openly about major concerns, issues or opportunities relating to the Annual Growth Programme;
- 2.7 work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- 2.8 adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation.



- 2.9 act in a timely manner. Recognise the time-critical nature of the Annual Growth Programme delivery and respond accordingly to requests for support;
- 2.10 manage stakeholders effectively;
- 2.11 deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this Agreement; and
- 2.12 act in good faith to support achievement of these Principles.

### **3. Payment Obligations**

- 3.1 The District Councils agree to the use of a proportion of their future Community Infrastructure Levy revenues as more particularly set out in this Agreement to establish the Infrastructure Investment Fund which shall support the delivery of GNGB priority infrastructure projects (including £40m of investment for the delivery of the Norwich Northern Distributor Road and its related measures).
- 3.2 The District Councils agree to pay on a half yearly basis their respective CIL Revenues to the County Council.
- 3.3 The County Council shall on receipt of the CIL Revenues in accordance with clause 3.2 above promptly allocate the CIL Revenues to the Infrastructure Investment Fund.
- 3.4 The County Council shall manage the Infrastructure Investment Fund for the purposes of the Annual Growth Programme and in accordance with the terms of this Agreement.
- 3.5 The County Council is the accountable body for the Infrastructure Investment Fund and shall invest this fund for treasury management purposes in accordance with the County Council's Treasury Strategy and at the average interest rate achieved by the County Council for such investments. All interest that accrues on the credit balance of the Infrastructure Investment Fund from time to time pursuant to this clause 3.3 shall be credited to the Infrastructure

Investment Fund. For the avoidance of doubt interest charges payable in respect of an Infrastructure Investment Fund deficit shall be chargeable at the rate in accordance with the County Council Treasury Strategy's average interest rate for investments current at that time and the Infrastructure Investment Fund shall be debited accordingly. As accountable body the County Council shall report to the GNGB on a twice yearly basis in appropriate terms on the performance of its obligations hereunder.

- 3.6 From time to time the County Council will enter into Loan agreements as a borrower on such terms as are approved in writing by the Parties for the purposes of the Annual Growth Programme as more particularly set out in the relevant Project Schedule (appended as a Schedule to this Agreement).
- 3.7 The County Council shall repay any such Loan as is referred to in clause 3.6 plus any associated borrowing costs above from the Infrastructure Investment Fund.
- 3.8 For the avoidance of doubt the District Councils will not be required by this Agreement to contribute any funds (e.g. general revenue or cash reserves) or make any payment other than as provided for in clause 3.2 above.

#### **4. Representations and Warranties**

- 4.1 At the date of this Agreement each of the Parties represents and warrants to the other Parties that:-
- 4.2 It has full power to enter into and perform this Agreement and the execution of this Agreement has been validly authorised.
- 4.3 Neither the execution of this Agreement by the Party nor the performance of its obligations under it will conflict with or result in any breach of any law or enactment or any deed, agreement or other instrument, obligation or duty to which the Party is bound save that nothing in this Agreement shall operate to unlawfully fetter the exercise of the Party's statutory powers or unlawfully constrain or unlawfully prevent the Party's compliance with its statutory duties;

or cause any unlawful limitation on any of the powers whatsoever of the Party or on the right or ability of the officers of the Party to exercise such powers.

4.4 The Parties agree that the terms of this Agreement shall apply when borrowing is required to support the delivery of a Project (or Projects) within the Annual Growth Programme as detailed in the attached Project Schedules.

## 5. **Projects**

5.1 The GNGB will recommend on an annual basis a programme of projects (“the Annual Growth Programme”), including any recommended draw down on borrowing, taking into account each Party’s annual business plans.

5.2 Projects in the Annual Growth Programme in the majority of cases will be derived from the Greater Norwich Infrastructure Plan.

5.3 Upon endorsement by the Parties of the recommendations of the GNGB, the Parties shall within 21 days sign the Project Schedule in the template form appended at Schedule 1. Once signed by the Parties, a Project Schedule becomes part of this Agreement.

5.3.1 A Project Schedule that has been signed by all Parties may be amended at any time in accordance with clause 16.

5.3.2 Unless terminated earlier in accordance with this Agreement, each Project Schedule has contractual effect during the applicable Project Period.

5.3.3 Each Party shall in relation to the obligations allocated to it in a Project Schedule agreed in accordance with this clause:

5.3.3.1 perform such obligations, including by providing the Inputs in accordance with timeframes or milestones (if any) specified in the Project Schedule;

5.3.3.2 use reasonable care and skill in performing such obligations;

5.3.3.3 comply with all laws applicable to it;

5.3.3.4 obtain and maintain consents, licences and permissions (statutory, regulatory, contractual or otherwise) that are necessary to enable it to comply with such obligations.

5.4 Liabilities in respect of any overspend or delay in respect of Project Schedule timeframes or milestones shall be as set out in the respective Project Schedule.

## 6. **Binding Agreement**

6.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each Party has executed at least one counterpart.

6.2 No person who is not a party to this Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

6.3 Where any Party withdraws from this Agreement:

6.3.1 the rights of that Party in respect of the Agreement shall cease on such withdrawal;

6.3.2 the Agreement shall continue in full force in respect of (a) any liabilities which arise out of this Agreement up to the date of withdrawal pursuant to clause 6.4 and (b) those Loan related liabilities referred to in and assumed pursuant to clause 6.5; and

6.3.3 the disputes procedure set out in Clause 11 shall remain in force in respect of any of the matters arising from the performance of or withdrawal of a Party under this Agreement.

6.4 A Party wishing to withdraw from this Agreement shall give written notice to each of the other Parties such notice to expire at any time and the date of withdrawal of that Party shall be the date 12 months from the date of the receipt of the notice by the other Parties.

6.5 In the event of a District Council withdrawing from the Agreement before the Termination Date the withdrawing District Council commits in respect of those Projects to which by means of a Project Schedule it is party and that have been agreed to prior to receipt of notice of the Party's withdrawal in accordance with clause 6.4 to continue to pay to the County Council such proportion of its CIL Revenues to enable the County Council to meet fully from such payments its obligations to meet repayment and associated interest liabilities pursuant to any Loans in relation to those Projects. Without prejudice to the obligation of the withdrawing District Council to make such payments all Parties agree to use reasonable endeavours to negotiate a financial settlement in regard to the remaining debt payable by the withdrawing District Council that is fair and reasonable to all Parties. Unless specifically set out in Project Schedules in calculating for the purposes of such settlement the withdrawing District Council's remaining debt to the County Council on the Projects for which borrowing has been undertaken pursuant to this Agreement the Parties shall take into account the following factors::

6.5.1 Past CIL Revenue contributions made pursuant to this Agreement;

6.5.2 Any surplus or deficit in the Infrastructure Investment Fund at the point of withdrawal;

6.5.3 Future CIL Revenue contributions that will need to be made by all Parties to fund any outstanding loans including interest until they are repaid;

6.5.4 The Community Infrastructure Levy projected to arise within the area of the withdrawing District Council over the remaining period of the Loan(s); and

6.5.5 Any other financial obligations/commitments entered into under this Agreement.

6.6 If the Parties cannot agree a financial settlement in regard to the remaining debt referred to in clause 6.5 within 9 months of the issuing of notice pursuant to clause 6.4, the dispute resolution procedure in clause 11 shall be invoked.

## **7. Information flow and Project management**

7.1 To enable the Parties to maximise the benefits of their collaboration, each Party shall:

7.1.1 engage the others in planning discussions in relation to the Projects and proposed projects from time to time;

7.1.2 keep the other Parties informed about its own progress in relation to each Project; and

7.1.3 facilitate regular discussions between appropriate members of its personnel and those of the other Parties in relation to each Project, including in relation to:

7.1.3.1 repayment and funding aspects

7.1.3.2 performance and issues of concern in relation to each Project;

7.1.3.3 new developments and resource requirements;

7.1.3.4 compliance with deadlines; and

7.1.3.5 such other matters as may be agreed between the Parties from time to time.

7.1.4 Each Party shall:

7.1.4.1 supply to the other Parties information and assistance reasonably requested by them relating to a Project as is

necessary to enable other Parties to deliver their own obligations in relation to the Project; and

7.1.4.2 review documentation, including draft specifications or service descriptions or other technical documentation, for use when performing its obligations in relation to a Project (if any), as soon as reasonably practicable at the request of the other party, and notify it of any errors or incorrect assumptions made in any such documents so far as it is aware.

## **8. Escalation**

8.1 If any Party has any issues, concerns or complaints about a Project, or any matter in this Agreement, that Party shall notify the other Parties and the Parties shall then seek to resolve the issue by a process of consultation.

8.2 If any Party receives any formal inquiry, complaint, claim or threat of action from a third party (including, but not limited to, claims made by a supplier or requests for information made under the Freedom of Information Act 2000) in relation to the Project, the matter shall be promptly referred to the GNGB (or its nominated representatives). No action shall be taken in response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect the Project, without the prior approval of the GNGB (or its nominated representatives).

## **9. Events of Default**

9.1 Where an Event of Default occurs, the County Council may by notice in writing to the defaulting Party require the Party to meet as soon as reasonably practicable and agree, acting reasonably, a repayment plan to repay the outstanding repayment amount.

9.2 In the event of there being insufficient funds in the Infrastructure Investment Fund to meet the Loan repayments including for the avoidance of doubt any interest charges:

9.2.1 the County Council, in consultation with and by written notice to the GNGB, may at its sole discretion restructure the Loan or defer further drawdowns from the Infrastructure Investment Fund until such time that sufficient funds become available;

9.3 Upon notice by the County Council the Parties always acting in accordance with the Principles will agree the reasonable restructuring and amendment of the Districts' respective payment obligations to ensure that the County Council is "no better nor no worse" financially in relation to its provision and administration of the Loan facility, using 9.2 methodology.

## 10. **Freedom of Information and Environment Information Regulations**

10.1 Nothing in this Agreement shall prevent the Parties from disclosing any Information which any Party is required to disclose in order to comply with the FOIA and any other statutory requirements whether or not existing at the date of this Agreement, provided always that the Parties shall, where reasonably practicable, seek to collaborate in relation to Requests for Information with a view to treating such requests in a consistent manner as between the Parties.

10.2 The Parties commit to share data and knowledge relevant to the Agreement where appropriate and in accordance with their duties under the Data Protection Act 1998.

## 11. **Dispute Resolution Procedure**

11.1 The Section 151 officers of the Parties shall attempt in good faith to negotiate a settlement to any dispute arising between them arising out of or in connection to this Agreement. If an agreement cannot be reached the issue will be referred to the Parties' Chief Executive Officers or Managing Directors.

11.2 If the Parties are for any reason unable to resolve the dispute within 45 days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve.



To initiate the mediation, a Party must serve notice in writing (ADR notice) to the other parties to the dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

- 11.3 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the dispute under clause 19 which clause shall apply at all times.

**12. Effect on Invalidity of any Provision**

- 12.1 If at any time any of the provisions of this Agreement become illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this Agreement shall be in any way affected or impaired as a result.

**13. No Waiver**

- 13.1 No failure or delay on the part of the Parties in exercising any right or power and no course of dealing between the Parties hereto shall operate as a waiver nor shall any single or partial exercise of any right or power of a Party prevent any other or further exercise thereof or the exercise of any other right or power of the Parties. The rights and remedies of the Parties are cumulative and not exclusive of any rights or remedies which the Parties would otherwise have.

**14. No Fettering of Discretion/Statutory Powers and Novation**

- 14.1 Nothing contained in or carried out pursuant to this Agreement and no consents given by the Parties shall unlawfully prejudice the Parties' rights powers or duties and/or obligations in the exercise of their functions or under any statutes, byelaws, instruments, orders or regulations.
- 14.2 The County Council shall be entitled to novate the Agreement to any other body which substantially performs any of the functions that previously had been performed by the County Council.

## 15. **Entire Agreement**

- 15.1 This Agreement and the documents referred to in it including for the avoidance of doubt the Joint Working Agreement constitute the entire Agreement between the Parties and supersede and replace any previous Agreement, understanding, representation or arrangement of any nature between the Parties relating to the subject matter of this Agreement.
- 15.2 The Parties shall only represent themselves as being an agent, partner or employee of any other Party to the extent specified by this Agreement and shall not hold themselves out as such nor as having any power or authority to incur any obligation of any nature express or implied on behalf of any other Party except to the extent specified in this Agreement.
- 15.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement including clauses 2, 3, 5, 6, 9 and 11 shall remain in full force and effect.
- 15.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## 16. **Variation**

- 16.1 This Agreement may only be varied by written agreement of the Parties

## 17. **Set-off**

- 17.1 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 18. **Further assurance**

18.1 At any time upon the written request of the County Council, the Party will promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for the Parties the full benefit of this Agreement and of the rights and powers granted in it.

**19. Governing Law & Jurisdiction**

19.1 This Agreement shall be governed by and construed in accordance with English law and, without affecting the dispute resolution procedure set out in clause 11, each Party agrees to submit to the exclusive jurisdiction of the courts of England.

**IN WITNESS** hereof the parties hereto have executed this Agreement as a Deed the day and year first written

THE COMMON SEAL OF **NORFOLK**  
**COUNTY COUNCIL** was affixed hereto

in the presence of:-

.....

Authorised Signatory

THE COMMON SEAL OF **BROADLAND**  
**DISTRICT COUNCIL** was affixed hereto

in the presence of

.....

Authorised Signatory

THE CORPORATE SEAL OF **NORWICH**

**CITY COUNCIL** was affixed hereto

in the presence of:-

.....

Authorised Signatory

THE COMMON SEAL OF **SOUTH NORFOLK**

**DISTRICT COUNCIL** was affixed hereto

in the presence of:-

.....

Authorised Signatory

DRAFT

## **SCHEDULE 1**

### **Annual Growth Programme**

Relating to GNGB Partner Draw-down and Borrowing Authorisations Agreement

Dated \_\_\_\_\_ 20[ ]

**BROADLAND DISTRICT COUNCIL**

**NORWICH CITY COUNCIL**

**SOUTH NORFOLK DISTRICT COUNCIL**

**&**

**NORFOLK COUNTY COUNCIL**

- 
- Project
  - Project Period
  - Background
  - Agreed terms
  - Project period
  - Additional Terms & Conditions
  
  - Fees and expenses
  
  - Repayment and review
  
  - Payment schedule: loan repayment profile to include interest payments

Repayment Date	Repayments (£)	Repayment Date	Repayments (£)

### VOLUNTARY PREPAYMENTS

Details to be considered/set out.

Signed by [ ] .....  
 Section 151 Officer [ ]  
 for and on behalf of [ ]  
 Signed by [ ] .....  
 Section 151 Officer [ ]  
 for and on behalf of [ ]  
 Signed by [ ] .....  
 Section 151 Officer [ ]  
 for and on behalf of [ ]  
 Signed by [ ] .....  
 Section 151 Officer [ ]  
 for and on behalf of [ ]

## **SCHEDULE 2**

### **Annual Growth Programme Project re Construction of the Norwich Northern Distributor Road**

Relating to GNGB Partner Draw-down and Borrowing Authorisations  
Agreement

Dated \_\_\_\_\_ 20[ ]

**BROADLAND DISTRICT COUNCIL**

**NORWICH CITY COUNCIL**

**SOUTH NORFOLK DISTRICT COUNCIL**

**&**

**NORFOLK COUNTY COUNCIL**

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#### **1 Project**

- Construction of the Norwich Northern Distributor Road (the 'NDR')

#### **2 Project Description**

- The NDR is a dual carriageway all-purpose strategic distributor road, which will link the A1067 Fakenham Road near Attlebridge to the A47 Trunk Road (T) at Postwick. This will be over a length of approximately 20.4km. The NDR will improve connectivity and accessibility across both the northern part of the Norwich urban area and areas of the county in an arc from the northwest to the east of this main urban area. Such improvement will ease the relative



disadvantage of the peripheral location of these areas and provide the basis of the transport infrastructure required to address existing and future problems, and to achieve the growth objectives which have been identified for Norwich and its surrounding area.

- The NDR is an essential piece of transport infrastructure that releases an estimated £1bn of economic benefits for Norwich and Norfolk by reducing congestion and offering new access to key strategic employment and growth locations.

### **3 Project Period**

- The project is due to mobilize in autumn 2015 with essential ground clearance work to be carried out before ground nesting season commencing late October 2015. Should this be achieved, full mobilization and construction will begin in March 2016 with a majority of the works completed by autumn 2017.

### **4 Background**

- As part of the consultation on a revised Norwich Area Transportation Strategy (NATS) undertaken in 2003, the public were asked if they supported a NDR. The consultation indicated strong local support for the NDR with 78% of respondents being in favour.
- The overall strategy for the revised NATS was agreed in 2004. It recognised the Norwich Area as a centre where growth would be focussed and therefore the strategy looked to provide the essential infrastructure needed to accommodate this growth, including a Northern Distribution Road.
- The NDR is of national significance pursuant to a direction made by the Secretary of State for Transport under section 35 of the Planning Act 2008.
- Following public consultation in 2013 and examination in public during summer 2014 the panel of inspectors from the Planning Inspectorates report recommended the NDR for development. SoS Patrick McLoughlin MP signed a Development Consent Order (DCO) giving permission for the NDR to be constructed

## 5 Agreed terms

- Loan funding would be repaid over a 25 year period

## 6 Additional Terms & Conditions

- In accordance with paragraph 5.4 of the Agreement, Liabilities in respect of any overspend or delay in respect of Project Schedule timeframes and milestones shall be shared as follows:

Partner	Share of overspend risk	Share of timeframes and milestones risk
Norfolk County Council	100%	100%

## 7 Fees and expenses

- The County Council shall borrow funds from various sources as they are identified to assist with the delivery of the Growth Programme. The County Council shall ensure that the cost of any borrowing (up to £40m) for this purpose will be undertaken at the equivalent of the prevailing Public Works Loan Board preferential rate as set out in the City Deal dated 12 December 2013.
- Funding from the Infrastructure Investment Fund for the purposes of the NDR shall be capped at £40 million plus any associated borrowing costs incurred by the County Council as provided for herein.

## 8 Repayment and review

- In accordance with paragraph 3.4 of the Agreement, Norfolk County Council shall use the Infrastructure Investment Fund to fund the costs of borrowing costs in accordance with the following schedule.

Illustrative costs of borrowing to be funded from Infrastructure Investment Fund:

*DRAFTING NOTE: The interest rate incorporated within this costs of borrowing table is that applicable at the end of June 2015 and will be updated by the County Council at the date of funds drawdown.*

Financial year	Borrowing requirement	Re-payment	Annual costs of borrowing to be funded	Cumulative costs of borrowing to be funded
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		year	from Infrastructure Investment Fund	from Infrastructure Investment Fund
	£		£	£
2015/16	7,623,953			
2016/17	19,100,380			
2017/18	10,075,949	1	1,913,679	1,913,679
2018/19	2,749,718	2	2,066,707	3,980,386
2019/20	450,000	3	2,229,269	6,209,655
2020/21		4	2,256,747	8,466,402
2021/22		5	2,256,747	10,723,149
2022/23		6	2,256,747	12,979,896
2023/24		7	2,256,747	15,236,643
2024/25		8	2,256,747	17,493,390
2025/26		9	2,256,747	19,750,137
2026/27		10	2,256,747	22,006,884
2027/28		11	2,256,747	24,263,631
2028/29		12	2,256,747	26,520,378
2029/30		13	2,256,747	28,777,125
2030/31		14	2,256,747	31,033,872
2031/32		15	2,256,747	33,290,619
2032/33		16	2,256,747	35,547,366
2033/34		17	2,256,747	37,804,113
2034/35		18	2,256,747	40,060,860
2035/36		19	2,256,747	42,317,607
2036/37		20	2,256,747	44,574,354
2037/38		21	2,256,747	46,831,101
2038/39		22	2,256,747	49,087,848
2039/40		23	2,256,747	51,344,595
2040/41		24	2,256,747	53,601,342
2041/42		25	1,831,986	55,433,328
<b>Total</b>	<b>£40,000,000</b>		<b>£55,433,328</b>	

## 9 VOLUNTARY PREPAYMENTS

If the Parties agree to make additional repayments over and above those listed above, a new schedule will be produced based on the remaining outstanding debt, including interest, in accordance with paragraph 16 of the Agreement "Variation".

Signed by [ ] Section 151 Officer .....

for and on behalf of [ ]  
[ ]

Signed by [ ] Section 151 Officer .....

for and on behalf of [ ]  
[ ]

.....  
Signed by [ ] Section 151 Officer

for and on behalf of [ ]  
[ ]

.....  
Signed by [ ] Section 151 Officer

[ ]  
for and on behalf of [ ]