

... - WEF ...

MEMORANDUM OF UNDERSTANDING

between

SCOTTISH ENVIRONMENT PROTECTION
AGENCY

and

... COUNCIL

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THIS MEMORANDUM OF UNDERSTANDING (“MoU”) is made between:-

- (1) SCOTTISH ENVIRONMENT PROTECTION AGENCY, a body corporate established under Section 20 of, and Schedule 6 to, the Environment Act 1995, having its principal place of business at Strathallan House, Castle Business Park, Stirling, FK9 4TZ (it and its successors and assignees being hereinafter referred to as “SEPA”);
- (2) [REDACTED] a LOCAL AUTHORITY constituted by the Local Government etc (Scotland) Act 1994 and having its registered head office at [REDACTED] (it and its successors and assignees being hereinafter referred to as “[REDACTED] Council”)

(each a “Party” and together the “Parties”).

WHEREAS:-

- (A) SEPA and [REDACTED] COUNCIL have agreed to work together on the project detailed in Part A of the Schedule to this MoU (the “Project”).
- (B) The Parties wish to record the basis on which they will collaborate with each other on the Project. This MoU sets out:
 - (a) the key objectives of the Project;
 - (b) the principles of collaboration;
 - (c) the governance structures the parties will put in place; and
 - (d) the respective roles and responsibilities the Parties will have during the Project.

THE PARTIES HAVE AGREED as follows:-

1. DEFINITIONS

For the purposes of this MoU:-

- 1.1. “Commencement Date” means the last date of execution hereof;
- 1.2. “Funding Agreement” means the agreement for the provision of a grant of WEF funds, from SEPA to the Grantee.
- 1.3. “Information Asset Owner” has the meaning provided in clause 8;
- 1.4. “Key Objectives” means the key objectives of the Project set out in Part A of the Schedule to this MoU;
- 1.5. “MoU” means this Memorandum of Understanding;

- 1.6. “Principles” means the principles as set out in Clause 4;
- 1.7. “Project” is the Project identified at Schedule Part A;
- 1.8. “Project Board” is as defined and composed in Schedule Part B;
- 1.9. “Responsible Officer” has the meaning provided in clause 7.
- 1.10. “SEPA” means the Scottish Environment Protection Agency, whose principal office is at Strathallan House, Castle Business Park, Stirling, FK9 4TZ, which includes their statutory successors and permitted assignees;
- 1.11. “Working Day” means each day when banks are open for normal business in Edinburgh (excluding Saturdays & Sundays and public holidays in Edinburgh)

2. PURPOSE OF THE MOU

- 2.1. This MoU has been drawn up following discussions between the Parties. It reflects the wishes of the Parties to collaborate on the Project.

3. KEY OBJECTIVES FOR THE PROJECT

- 3.1. The Parties shall undertake the Project to achieve the Key Objectives set out in Part A of the Schedule to this MoU.
- 3.2. The Parties acknowledge that the current position with regard to the Project and the contributions already made (financial and otherwise) are as detailed in Part A of the Schedule to this MoU.

4. PRINCIPLES OF COLLABORATION

- 4.1. The Parties agree to adopt the following principles when carrying out the Project (the “Principles”):
 - 4.1.1. collaborate and co-operate - establish and adhere to the governance structure set out in this MoU to ensure that activities are delivered and actions taken as required;
 - 4.1.2. be accountable - take on, manage and account to each other for performance of the respective roles and responsibilities set out in this MoU;
 - 4.1.3. be open - communicate openly about major concerns, issues or opportunities relating to the Project;
 - 4.1.4. learn, develop and seek to achieve full potential - share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;

- 4.1.5. adopt a positive outlook - behave in a positive, proactive manner;
- 4.1.6. adhere to statutory requirements and best practice - comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation;
- 4.1.7. act in a timely manner - recognise the time-critical nature of the Project and respond accordingly to requests for support;
- 4.1.8. manage stakeholders effectively;
- 4.1.9. deploy appropriate resources - ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this MoU; and
- 4.1.10. act in good faith to support achievement of the Key Objectives and compliance with these Principles.

5. GOVERNANCE PRINCIPLES

- 5.1. The following guiding principles are agreed. The Project's governance will:
 - 5.1.1. provide strategic oversight and direction;
 - 5.1.2. be based on clearly defined roles and responsibilities at organisation, group and, where necessary, individual level;
 - 5.1.3. Form a Project Group consisting/supported by technical specialists responsible for delivering project stages;
 - 5.1.4. Form a Project Board with suitable representation to provide governance support, strategic oversight and direction to the Project Group.
 - 5.1.5. align decision-making authority with the criticality of the decisions required;
 - 5.1.6. be aligned with Project scope [and each Project stage] (and may therefore require changes over time);
 - 5.1.7. leverage existing organisational, group and user interfaces;
 - 5.1.8. provide coherent, timely and efficient decision-making; and
 - 5.1.9. correspond with the key features of the Project governance arrangements set out in Schedule Part B

6. ROLES AND RESPONSIBILITIES

- 6.1. The Parties shall undertake the following roles and responsibilities to deliver the Project.

Activity	SEPA	Council
Provide funds for the project, subject to appraisal, for which SEPA is responsible for contributing, in accordance with the Funding Agreement, subject to the Project meeting defined stage gates.	Lead	Assure
Provide funds for the project for which Council is responsible for contributing.	Assure	Lead
To act as Project Leader, leading and directing the various elements comprised in the Project, co-ordinating the works and services to be performed by those engaged in the Project, monitoring the performance of those engaged in the project, and reporting to SEPA's Responsible Officer on the progress and performance of the Project.	Assure	Lead
Contributing specialist technical input	Joint-Lead	Joint-Lead

6.2. For the purpose of the above table:

Lead: the Party that has principal responsibility for undertaking the particular task, and that will be authorised to determine how to undertake the task. The Lead must act in compliance with the Key Objectives and Principles at all times, and consult with the other Party in advance if they are identified as having a role to Assure the relevant activity;

Assure: the Party that will defer to the Lead on a particular task, but will have the opportunity to review and provide input to the Lead before they take a final decision on any activity. All assurance must be provided in a timely manner. Any derogations raised must be limited to raising issues that relate to specific needs that have not been adequately addressed by the Lead and/or concerns regarding compliance with the Key Objectives and Principles.

7. RESPONSIBLE OFFICERS

7.1. Each Party shall appoint an individual as its Responsible Officer who shall represent such Party and be responsible for the day-to-day operation of the MoU.

7.2. Each Party may replace its Responsible Officer, whether temporarily or permanently, by giving written notice to the other Party. A Party shall use its reasonable endeavours to issue any such notice prior to the replacement being made.

7.3. The Responsible Officer for SEPA is:

name

address

Tel: ..

...@sepa.org.uk

7.4. The Responsible Officer for ... Council is:

...

8. INFORMATION ASSET OWNERS

8.1. Each Party shall appoint an individual as its Information Asset Owner who shall represent such Party and be responsible for the security of and release of information to be provided or shared as part of this MoU.

8.2. Each Party may replace its Information Asset Owner, whether temporarily or permanently, by giving written notice to the other Party. A Party shall use its reasonable endeavours to issue any such notice prior to the replacement being made.

8.3. The Information Asset Owner for SEPA is:

name

address

Tel: ..

...@sepa.org.uk

8.4. The Information Asset Owner for ... Council:

...

9. INCOME AND EXPENDITURE

9.1. Except as otherwise provided, the Parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU.

9.2. The Parties agree to share the costs and expenses arising in respect of the Project between them in accordance with the Funding Agreement entered into by the Parties.

- 9.3. The Parties shall remain liable for any losses or liabilities incurred due to their own or their employee's actions and neither Party intends that the other Party shall be liable for any loss it suffers as a result of this MoU.
- 9.4. SEPA will undertake a stage review process between each stage of the Project, and will appraise the merits of SEPA's continued funding of the Project. ... Council shall not commence any work, spend any granted funds or commit any granted funds until SEPA's Responsible Officer has approved in writing, progression to the relevant stage. SEPA's approval of progression to the relevant stage shall not be unreasonably withheld, however will be subject to continuing internal appraisal of the project.
- 9.5. ... Council shall be responsible for administering all funds received in respect of the Project.

10. REVIEW

- 10.1. This MoU shall be reviewed on each anniversary of the Commencement Date with a view to evaluating the effectiveness of the Project and whether any amendments to MoU are required.
- 10.2. Notwithstanding the provisions of Clause 10.1, either Party may require a review of the MoU at any time by serving 4 weeks written notice on the other Party, stating the Party's concerns regarding the Project and the MoU and summarising what changes it believes are necessary.
- 10.3. Where a review of this MoU is required under Clauses 10.1 or 10.2, the Parties shall meet to consider the Project and the MoU.

11. DISPUTE RESOLUTION PROCEDURE

- 11.1. If either Party has any issues, concerns or complaints about the Project, or any matter in this MoU, that Party shall notify the other party's Responsible Officer and the Parties shall seek to resolve the issue by a process of consultation. Such consultation shall take place within 10 working days of the date of receipt of a notice issued under this Clause 11 or as soon as reasonably practicable. If the issue cannot be resolved within 10 working days of consultation, the matter may be escalated to the Project Board for resolution. If the matter cannot be resolved by the Project Board within a reasonable time, either party may refer the matter to the chief executive (whosoever termed) of the other Party and the chief executives (or their nominees) of the Parties shall then meet to seek to resolve such issues, concerns or complaints.

12. DATA SECURITY

- 12.1. The Parties shall comply in full with all laws and guidance applicable to SEPA and to ... Council, including but not limited to, those relating to data security,

and accordingly, shall comply with the mandatory requirements of the Security Policy Framework (as amended from time to time) by HM Government, including the Baseline Personnel Standard.

- 12.2. Each Party shall release data for use for the purposes of this MoU only after obtaining the agreement of its Information Asset Owner.

13. DATA PROTECTION

- 13.1. The Parties do not otherwise anticipate that they will share any Personal Data, jointly Process any Personal Data, or that either Party will Process any Personal Data on behalf of the other under or in connection with this MoU or the Project. If and to the extent that (i) the Parties will share Personal Data with each other; (ii) the Parties will jointly Process any Personal data; and/or (ii) either Party is to Process Personal Data on behalf of the other, then the Parties will first enter into a data processing agreement or data sharing agreement (or a variation to this MoU) on terms acceptable to SEPA.
- 13.2. Notwithstanding Clause 13.1, each party shall comply with its obligations under Data Protection Law.
- 13.3. In this Clause 13, “**Personal Data**” and “**Processing**” shall have the meanings given to those terms in the General Data Protection Regulation 2016/679 and the Data Protection Act 2018 and any other applicable laws relating to the processing of personal data and privacy from time to time (“**Data Protection Law**”), and “**Process**” shall be construed accordingly.

14. TERM AND TERMINATION

- 14.1. This MoU shall commence on the Commencement Date, and shall expire and shall expire 5 years after the Commencement Date or such later other as may be agreed between the Parties.
- 14.2. Either Party may terminate this MoU by giving at least three months’ notice in writing to the other Party at any time.
- 14.3. Notwithstanding termination of this MoU under Clause 14.1 or 14.2, the Parties shall continue to co-operate in accordance with this MoU with respect to all requests for assistance that were made under the MoU prior to the termination.

15. VARIATION

This MoU, including the Schedule, may only be varied by written agreement of both Parties.

16. STATUS

16.1. This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the Parties from this MoU. The Parties enter into the MoU intending to honour all their obligations.

16.2. Nothing in this MoU is intended to, or shall be deemed to:-

16.2.1. establish any partnership or joint venture between the Parties, constitute any Party as the agent of any other Party, nor authorise any of the Parties to make or enter into any commitments for or on behalf of the other Party; and

16.2.2. adversely affect or prejudice the ability of SEPA to act in its capacity as a regulator.

17. MISCELLANEOUS

The Parties shall execute one principal copy of this MoU which shall be retained by SEPA. Certified copies of the MoU shall be supplied by SEPA on request.

IN WITNESS WHEREOF these presents comprising this and the 10 preceding pages are executed as follows:-

SIGNED for and on behalf of
SCOTTISH ENVIRONMENT PROTECTION AGENCY by
[redacted] at [redacted] on the [redacted]

[redacted]

in the presence of:-

Witness:

Full Name:

Address.....

.....

SIGNED for and on behalf of

... COUNCIL by ...

at ... on the ...

...

in the presence of:-

Witness

Full Name

Address

.....

This is the Schedule referred to in the foregoing MoU among Scottish Environment Protection Agency and ... Council

SCHEDULE

PART A: THE PROJECT

Project overview

The ... Restoration Project aims to restore natural river morphology and associated river habitats in combination with wider socio-economic improvements such as reduced flood risk and improved climate change resilience; improved access, greenspace and amenity; and nourish a stronger connection between the local community and the river environment in The project will be coordinated by ... COUNCIL and will contribute towards flood risk attenuation and climate change resilience work being undertaken by ... COUNCIL. SEPA and ... COUNCIL are working together to provide environmental restoration with a range of wider benefits for the local community including improved access, recreation and visual amenity; and awareness and connectivity with the river environment.

In order to maximise the benefits of the project, SEPA and ... COUNCIL will provide and share relevant expertise and information, and work in a positive manner together to achieve project success. This MoU describes how SEPA and ... COUNCIL will work together to support the project.

SEPA will provide funding and offer relevant expertise, form part of the project board and project group; ... COUNCIL will hold and manage funds in accordance with the Funding Agreement, commission works and form part of the project board and project group.

The Key Objectives

The objectives of the project are to deliver the following:

- Make significant improvement to the river's physical condition and morphological status in order to achieve Good Ecological Potential, or as close as possible;
- Reduce flood risk to communities and improve resilience to climate change;
- Improve and enhance instream and riparian habitat and biodiversity of the waterbody;
- Improve access, recreation opportunities and visual amenity in the area;
- Ensure the work aligns with ... Council's green network strategy.

- Increase awareness and connectivity of the local community with the river environment.

The existing position

...

Funding

SEPA Funding of the Project shall be governed by the Funding Agreement. Funding will be granted from SEPA's Water Environment Fund (WEF) to ... COUNCIL who will also contribute funds to ensure all objectives of the project can be delivered. ... COUNCIL will use the funds to contract a consultant to produce ... which meets the key objectives outlined above. No guarantee is given on future funding.

To date the following funding has been agreed:

- WEF funding confirmed for RIBA Stage 1 – feasibility work (£50K).
- AC confirmed funding for RIBA Stage 1 – feasibility work (£25K)

Funding contribution 20/21 has been agreed:

- WEF funding for RIBA Stage 2 & 3- concept and developed design (£100K)
- AC funding for RIBA Stage 2 & 3- concept and developed design (£35K)

SCHEDULE PART B - GOVERNANCE ARRANGEMENTS

1. **Overview**

- 1.1. The governance structure defined below provides a structure for the development and delivery the Project.

2. **Project Group**

- 2.1. The Project Group provides technical expertise and partnership support to assist the Project Lead in delivering their role. The Project Group Members are:

2.1.1. ...

2.1.2. ...

2.1.3. ...

- 2.2. Other technical specialists from ... Council or SEPA may join Project Group meetings when deemed appropriate.

3. **Reporting**

- 3.1. Project reporting shall be undertaken as follows:

3.1.1. **Project Group:** An action log will be recorded for each Project Group meeting. Any additional reporting requirement shall be at the discretion of the Project Group.

3.1.2. **Organisational:** the Project Group shall be responsible for updating the Project Board.

4. **Project Group Terms of Reference**

4.1. *Remit*

4.1.1. Manage project programme and finances;

4.1.2. Identify risks/issues in the project

4.1.3. Provide support and technical specialist assistance to Project Lead;

4.1.4. Provide updates to the Project Board

4.2. *Decision Making*

4.2.1. Decisions by the Project Group shall be agreed by consensus

4.3. *Meetings*

- 4.3.1. The Project Group shall meet regularly during the existence of this Memorandum of Understanding to carry out its duties.
- 4.3.2. The Project Group shall comprise a minimum quorum of 1 authorised representative nominated from each Party.

5. Project Board

- 5.1. The Project Board provides strategic oversight and direction to the Project. The Project Board members are:

5.1.1. ...

- 5.1.2. SEPA, Unit Manager

- 5.2. Other Project Board members from ... Council, SEPA or identified Stakeholder may be added to the Project Board

6. Reporting

- 6.1. Project reporting shall be undertaken as follows:
 - 6.1.1. **Project Board:** Minutes and actions will be recorded for each Project Board meeting. Any additional reporting requirement shall be at the discretion of the Project Board.
 - 6.1.2. **Organisational:** the Project Board members shall be responsible for reporting into their respective sponsoring organisation. Project Board required to review reports before being issued.

7. Project Board Terms of Reference

7.1. *Remit*

- 7.1.1. Set out and vary the budget and business plan;
- 7.1.2. Approve all design and final requirements of the partners;
- 7.1.3. Ensure the effective running of the project.

7.2. *Decision Making*

- 7.2.1. Decisions by the Project Board shall be agreed by consensus

7.3. *Meetings*

- 7.3.1. The Project Board shall meet regularly during the existence of this Memorandum of Understanding to carry out its duties.

- 7.3.2. The Project Board shall comprise a minimum quorum of 1 authorised representative nominated from each Party.
- 7.3.3. The Project Board shall meet at SEPA Perth office or Dundee Doubletrees Hilton Hotel or such other locations as the Project Board members may determine, and will be held monthly or at such other intervals as the members of the Project Board may determine.
- 7.3.4. The Project Board members shall not be involved in considering planning applications or CAR Licenses (and if involved in considering planning applications or CAR Licenses, Parties shall ensure probity and that no challenge on that basis can successfully be made to any planning permission or license granted).
- 7.3.5. A Project Board member may nominate a substitute representative to attend a meeting in their place by notifying the other Party in advance.
- 7.3.6. Other representatives of the Parties shall be entitled to attend meetings of the Project Board at the discretion of the Project Board.
- 7.3.7. The Project Board shall require minutes to be made of all meetings of the Project Board and these shall be evidence of the proceedings. Minutes of the Project Board's actions and decisions shall be circulated in a timely manner to the Project Board members.
- 7.3.8. Project Board members shall declare any interest which could be prejudicial to the Project Board, prior to any Project Board meeting.
- 7.3.9. The appointment of the chairman shall be made by consensus of the Project Board members. If the chairman is not present at any Project Board meeting the Project Board members may appoint one of their number present to act as chairman for the purpose of the meeting.