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19 October 2011

Dear David,

MERSEY GATEWAY BRIDGE PROJECT

I am pleased to inform you that Ministers have now agreed to award Conditional Approval to the Mersey Gateway Bridge Project, subject to the acceptance of the terms and conditions in this letter. This letter sets out the conditions which must be satisfied following Conditional Approval and the wider funding conditions for the project.

Please provide written confirmation that Halton Borough Council agrees to these terms and conditions including certification from your section 151 officer that the Council accepts the requirements set out in this document.

This Funding Offer, subject to the conditions set out below, comprises:

1. **Development Cost Grant** of up to £86m payable (including preparatory, land and remediation costs)
2. **Availability Support Grant** of a maximum of £14.55m per annum for 26.5 years following full service commencement under the proposed DBFO agreement.

This Funding Offer is made on the conditions below and is based on the Outline Business Case submitted to the Department for Transport (DfT) in February 2011, as revised in September 2011 and agreed with HM Treasury. Ministers reserve the right to re-consider this Funding Offer if there are any significant changes to the scheme or the business case at any time and/or if a complete Full Business case (FBC) has not been submitted for approval by 30 October 2014.

The Funding Offer is conditional on

- (i) Halton Borough Council implementing a process to monitor the ongoing costs of the project (including preparatory, land and remediation costs) and report the results of this to the Department on a regular basis. To the extent that Halton Borough Council becomes aware of a potential shortfall in funding available to deliver the project that it will notify the Department immediately setting out how it proposes to remedy the shortfall. The Secretary of State reserves the right to make no further payments under this

- Funding Offer if such a notification is made and is not remedied to his satisfaction.
- (ii) Approval by the Department and HM Treasury of a Final Business Case in accordance with DfT/HM Treasury guidance that applies at the time.
 - (iii) The unitary charge of the scheme does not exceed that set out in the September 2011 Finalised Outline Business Case (section 8.6, taking into account any changes in the unitary charge profile).
 - (iv) Sufficient private finance (in the context of the Outline Business Case) being raised at financial close on reasonable market terms to the satisfaction of the Secretary of State.
 - (v) The use of a privately financed procurement route remaining value for money at the point of Full Approval in the opinion of the Secretary of State.

In relation to the **Development Cost Grant:**

- (vi) Development Cost Grant will be paid in accordance with normal DfT grant rules and be limited to net costs necessarily incurred directly by Halton Borough Council in the connection with the development of the Scheme.
- (vii) The £86m Development Cost Grant will be available and, subject to the aforementioned, payable as set out below:
 - a. £3.0m already paid
 - b. £1.7m at Conditional Approval (October 2011)
 - c. a maximum of £10m available in 2013/14 subject to the scheme having received full approval
 - d. a further £71.3m available from April 2014 subject to the scheme having received full approval
- (viii) To the extent that actual eligible costs incurred, net of any actual or potential cost recovery, are less than £86m in total then the total Development Cost Grant will be the lower amount.
- (ix) Halton Borough Council is responsible for seeking to minimise Development Costs incurred and any development costs above the maximum Development Cost Grant are at Halton Borough Council's own risk.
- (x) In the event that the Secretary of State decides not to proceed with the scheme or the parties agree the scheme is undeliverable at or before Full Approval is confirmed, DfT would review the situation jointly with Halton Borough Council at that time but with no obligation on our part to reimburse any costs incurred.

In relation to the **Availability Support Grant:**

- (xi) The Department, HM Treasury and Halton Borough Council acknowledge that the project is not a PFI, but recognise that the principles set out in the Department for Communities and Local Government Local Government PFI Project Support Guide 2009-10, 1st Revision (September 2009), available on DCLG's website will apply to the project unless otherwise agreed. In particular, Halton Borough Council is reminded of the requirements on the use of standardised PFI contract documentation (SoPCv4) and on sharing documentation. The Department, HM Treasury and Halton Borough Council will seek to agree prior to the commencement of procurement a flexible

procedure for agreeing any derogations from this documentation that may be required. It is also a requirement that a finalised outline business case (OBC) is published on the promoter's website (redacting any sensitive information) and we would expect this to occur by the end of October 2011. At financial close you should also provide the Department with a copy of the project agreements and the financial model.

- (xii) A recalculation of the scheme funding requirements will be performed by Halton Borough Council immediately following Financial Close to reduce permanently the maximum Availability Support Grant for 70% of project savings emerging prior to Financial Close, and confirmed at Financial Close in comparison with the base case unitary charge in the Outline Business Case on a like for like basis. The Availability Support Grant cannot exceed the £14.55m per annum noted in 2 above.
- (xiii) Should the DBFO undergo refinancing, any gains for the Authority will need to be shared on a 50/50 basis with the Department, in a manner to be agreed at the time. The option as to the manner of sharing chosen by the Department and Halton Borough Council will be based on Value for Money considerations.
- (xiv) A Crossings Board is being established and empowered as set out in Draft in Appendix 7-B of the Outline Business Case and operating with key actions as set out in this agreement. The Crossings Board will establish, prior to the introduction of charges, a Liquidity Reserve for holding cash or cash equivalent assets to a minimum value of 20% of the net revenues forecast for the following 12 months from the Crossings.
- (xv) The Liquidity Reserve should be held separately from the other assets of the Crossings Board and used solely to manage unexpected deviations in revenues and costs for the Crossings Board from the prevailing forecasts at that time, and in accordance with its objectives as set out in Appendix 7-B. It will be for the Council and Crossings Board to decide how this reserve will be established and funded prior to scheme opening and they will need to satisfy the Department that this is robust and in place before scheme opening
- (xvi) The actual amount of Availability Support Grant will be adjusted periodically, subject always to the maximum amount calculated in (xii) above, in line with the Review procedures described below.

Availability Support Grant Review Procedures

- (xvii) There will be specified Review Points following full service commencement of the project where the Mersey Gateway Crossings Board and DfT will consider the financial performance of the Crossings and the Board since the last Review Point (or in the case of the first Review Point, since the commencement of full service) and agree forecasts for the revenues and costs of the scheme together with the operating costs of the Crossing Board for the period to the next Review Period (or in the case of the last Review Point, for the period to the end of the concession period). The first Review Point will be on the 5th anniversary of full service commencement with subsequent review points every 3 years thereafter until the end of the period during which Availability Support Grant is payable.

- (xviii) The review of performance for the next period will consider revenue levels achieved in the preceding years, future economic and transport forecasts and other issues that will impact on revenues as agreed between the parties. In the event that revenues for the next period cannot be agreed, then the average of the annual revenues since the last Review Point, adjusted for expected future changes in RPI, will be used as the forecast revenues for each year during the next period.
- (xix) To the extent that actual net revenues in the period since the last Review Point have exceeded the amount assumed in setting the Availability Support Grant for that period (or in the case of the first Review Point the revenues expected in the Outline Business Case), after allowing for discounts (subject to these not exceeding 10% of the revenue that would have been earned in the absence of any discount regime) and the cost of maintaining the Liquidity Reserve at the required amount (including to replenish any use of the Liquidity Reserve to cover revenue shortfalls during the last Review Period), but before any deductions for revenue leakage then this will be an Actual Excess. If forecast revenues, after taking into consideration any monies for discounts (subject to these not exceeding 10% of the revenue that would have been earned in the absence of any discount regime) and the cost of maintaining the Liquidity Reserve at the required amount (including to replenish any use of the Liquidity Reserve to cover revenue shortfalls during the last Review Period), but before any deductions for revenue leakage, exceed those used at the Outline Business Case Stage then this will be a Forecast Excess.
- (xx) The Availability Support Grant payable in each year by the DfT shall be the maximum Availability Support Grant set out in (xii), subject to a reduction for the years to the next Review Point equal to 85% of any Forecast Excess and 85% of any Actual Excess calculated at a Review Point.
- (xxi) For the avoidance of doubt, the term discounts refers to all discounts given to local residents and regular users of the bridge, including all vehicle types.

Demand Management Participation Agreement

- (xxii) The Department recognises that Halton Borough Council wishes to explore the possibility of putting in place a Demand Management Participation Agreement (“DMPA”) and Halton Borough Council will explore this during the dialogue phase of the procurement.
- (xxiii) The Department wishes to assess the benefits of such an approach based on the information gained during the procurement and agree jointly with Halton Borough Council whether such an approach will be beneficial. Decisions on whether to go ahead with the DMPA and how these proposals would be reflected in the funding arrangements will need to be made before the end of dialogue and as part of the submission of the IFBC to the DfT and the Treasury Approval Point Panel.
- (xxiv) To the extent that a DMPA or similar is put in place it will be necessary to reflect any savings in unitary charge levels in accordance with (xii) above and revenue forecasts made at the Review Points will need to be net of any revenue share due to the DMPA party under that arrangement.

Future Tolls and Charges

- (xxv) At any date prior to the date being the later of
- (a) the end of the Availability Support Grant payment period; or
 - (b) repayment in full of any Mersey Gateway Crossings Board borrowing
- no commitments shall be made by Halton Borough Council or the Crossings Board as to whether tolls/charges will or will not continue after these dates and/or at what level.
- (xxvi) At a point 3 years before the later of (a) or (b) above the Crossings Board, Halton Borough Council and DfT will jointly assess the benefits of continuing with tolling/charges in the light of the economic and transport network needs of the region, the overall context relating to road charging, and also considering any legal constraints and the prevailing legal position at that time.
- (xxvii) If tolling/charges continue then DfT will be entitled to share in the net financial benefits either directly in terms of direct payments to DfT or through reduced contributions to other local or regional transport schemes and initiatives as agreed with the Secretary of State. The sharing will be 70/30 in favour of Government unless otherwise agreed at the time.

Mersey Gateway Crossings Board

- (xxviii) The Governance arrangements of the Mersey Gateway Crossings Board will be agreed with the Secretary of State and cannot be amended without the specific agreement of the Secretary of State. Draft Heads of Terms / Governance Arrangements are detailed within Appendix 7-B of the Outline Business Case and fully detailed arrangements must be in place and agreed by the Secretary of State before Full Approval;
- (xxix) The Secretary of State reserves the right to withdraw funding if further amendments to Governance arrangements are made without his consent;
- (xxx) The Board should have an independent capability to carry out its main tasks and should not solely rely upon Halton Borough Council and / or its officers;
- (xxxi) As a minimum the Crossings Board will be required to:
- Increase average weighted tolls/charges annually by RPI;
 - Have the ability to decide independently to increase average weighted tolls/charges by as much as 20% (in real terms) above the toll/charging levels set out in the Outline Business Case during the life of the concession (subject to the limits set out in the Scheme Orders) to take into account revenue shortfalls and overall finances of the Crossings Board;
 - Act in a transparent and open book manner;
 - Operate to ensure the financial stability of the Board.
- (xxxii) It will be for the Crossings Board to establish and implement their actual discounts policy, in accordance with the Crossings Board governance arrangements.

Other Requirements

- (xxxiii) That the Department's Commercial & Technical Services team (CTS) will be invited to attend the Mersey Gateway Bridge Project Board meetings to support the successful delivery of the project and to monitor its progress;
- (xxxiv) That you keep us closely informed on the progress of this scheme, complete the Department's three monthly monitoring forms by the due date and provide such information as the Department may reasonably require in relation to this Funding Offer;
- (xxxv) That you notify the Department immediately in the event of any significant changes to the scope, design or expected benefits of the scheme;
- (xxxvi) The Department will use reasonable endeavours to ensure that all necessary regulations to permit open road tolling to be implemented on the Mersey Gateway and Silver Jubilee Bridges from the scheduled full service commencement date will be in force by October 2012 but your procurement process should still allow for a switch to plaza tolling if for any reason the required orders/ regulations are not in place by this date. If this occurs the Department and Halton Borough Council will jointly review the situation.

Application for Full Approval

An application for Full Approval (Full Business Case) should be submitted to the Department following completion of the tender process and should include:-

1. a brief report of the tender exercise with details of the preferred bidders Best and Final Offer;
2. a revised estimated total scheme cost in light of the prices bid during the procurement process;
3. a report on the private financing of the project and confirmation from your advisors that the final proposal represents value for money in the context of prevailing market conditions;
4. updated assessment of the value for money of the procurement route chosen;
5. your confirmation that the broad scope and design of the scheme remains unaltered, with details of any substantive changes resulting from the detailed design and procurement process;
6. confirmation by the authority's Section 151 officer that a Gateway 3 Review has been completed and the necessary remedial action has been taken in respect of any 'Red' recommendations;
7. an agreed approach to monitoring and evaluation of the scheme, the scope of which will be subject to the Department's agreement prior to submission of the Full Business Case and funded by the promoter.
8. an assessment of the Social and Distributional Impacts of the scheme in accordance with DfT guidance as it stands at the time of the Full Approval application. The results of this assessment will be considered by Ministers as part of Full Approval consideration. You will be expected to show that you have made reasonable efforts to mitigate any significant negative impacts associated with the scheme.
9. an up to date risk register and project plan with milestones;
10. an up to date mobilisation and operational management plan; and
11. your confirmation that you take full responsibility to bear any further increases in cost following Full Approval;

12. your plans for the tolling structure for the crossing including how discounts will be applied including requirements to consider value for money; and
13. confirmation of the detailed Governance Structures, policies and constitution of the Mersey Gateway Crossings Board.

In addition to those areas outlined above, the Full Business Case should also specifically highlight those areas where there have been changes from the Outline Business Case

This letter is without prejudice to any other consent that may be required, for example, in connection with planning legislation.

Procedures

Please keep in touch with us about the progress of your project during procurement.

You must inform us immediately if you wish to change aspects of the project in any material way from the case agreed, in particular the scope or the timetable. If changes are required to any of these aspects of the project you will need to obtain the Department's written agreement in good time before the contract is signed. Subject to the protocol to be agreed pursuant to (xi), written consent will also be needed for any significant derogations from the standard contract conditions. Failure to obtain any of these could potentially mean withdrawal of support for the project, and would invalidate any undertaking by the Department to support your scheme. We hope our involvements in the Project Board during the procurement phase will help keep us up to date with progress.

You should be aware that the project is subject to further review by the Treasury Approval Point Panel at two points in the future; firstly at the end of the dialogue phase and then when you are seeking full approval.

This will require the submission of an **interim final business case** (IFBC) at least four weeks prior to the close of dialogue. The IFBC should comprise of a Full Business Case detailing progress from the OBC submission, financing terms and noting where there have been changes. Subject to the protocol to be agreed pursuant to (xi), the IFBC approval submission may need to include a full list of the derogations proposed by the authority and each of the remaining bidders and will require endorsement by the Department and HM Treasury before the project can proceed to close dialogue.

The Full Business Case itself will also be subject to review and appraisal by the Department and the Treasury Approval Point Panel before a full approval letter is issued.

In good time prior to the submission of the Interim and Final Business Case, please seek further guidance from the Department as to what the exact requirements are.

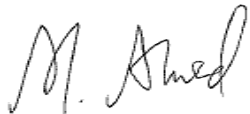
The full approval letter will provide details of how and when Availability Support Grant can be claimed. Your Authority will need to ensure that funds are available to cover that part of the payments to the contractor which will not be met by central Government. You will be eligible for Availability Support Grant on full service commencement under the DBFO agreement.

Availability Support Grant is not intended to match or correlate directly to the payments that arise under the DBFO contract. However, subject to affordability and value for money the Government is committed to supporting good projects and to assisting the development of such projects in the local authority sector. Its policy is therefore to maintain revenue for such projects in the long term, consistent with the long-term nature of these contracts, even though formally such support cannot be guaranteed.

The main Departmental contact point for this scheme will continue to be Charlie Sunderland although the Department's CTS (Nick Joyce/Colin Goodwillie) will be able to help if any specific technical advice is required on the procurement process.

We look forward to continuing to work with you on this project.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Ahmed', written in a cursive style.

Mostaque Ahmed