Memorandum of Understanding

Proposed Highway Works to the A565 (Derby Rd/Great Howard St/Regent Road)

1. Introduction

1.1. The Parties to this Memorandum of Understanding (MoU) are solely

1.1.1. Liverpool City Council (LCC), the highway authority for the Road within the administrative boundaries of Liverpool and

1.1.2. Sefton Metropolitan Borough Council (SC), the highway authority for the Road within the administrative boundaries of Sefton

1.2. The parties have agreed to work together to deliver the Works to the Road to bring about highway improvements to the area which will benefit the highways network administered by the Parties.

1.3. The Road means those parts of the A565 and known as Derby Road and/or Great Howard Street /Regent Road which are not dual carriageway (as shown on the plan attached).

1.4. The Works mean those works to be agreed and funded by the Parties as set out in this MoU to provide for the dualling of those parts of the Road which are not currently dualled together with ancillary works including new junction works, traffic signals, signage, road markings and crossings. The Works are more particularly set out in the First Schedule to this Memorandum.

1.5. This MoU seeks to provide a framework for the Parties to work together to deliver the Works and reflects the agreed approach between the Parties about the services to be provided by them, and their responsibilities with regard to the delivery of the Works.

1.6. Nothing in this MoU shall affect the Parties statutory functions or the statutory duties or responsibilities of either party provided that each party shall have regard to the contents of this MoU in carrying out such functions, duties or responsibilities in so far as it may detrimentally impact on the delivery of the Works.

1.7. For the avoidance of doubt, the MoU does not commit either party to the allocation of additional funds above the figures stated in Schedule 2 or other resources to deliver the
Works although both Parties will use their reasonable endeavours to enable the delivery of the Works should further funding or resources be required but always subject to appropriate authority being obtained to allocate those further funds or resources.

1.8. This MoU is not legally binding between the Parties

2. Funding

2.1. The total estimated cost of the Works (excluding the costs of acquiring land and land interest to deliver the Works) is [ ]. A Breakdown of the costs is set out in Schedule 2 to this MoU. It is agreed that the estimated costs are reasonable based on current construction costs and land values.

2.2. It is intended that the Works will be funded from the following sources;
   2.2.1. Growth Fund Contribution of £13,300,000
   2.2.2. a financial contribution from LCC of to meet the balance of the Funding Gap
   2.2.3. a financial contribution from SC to meet SC’s proportion of the Funding Gap

2.3. The Funding Gap shall be the difference in the total estimated costs of delivering the Works and the Growth Fund Contribution amount.

2.4. SC’s proportion of the Funding Gap shall be calculated on the following basis quarterly until the substantial completion of the Works (and the estimated contributions will be varied in accordance with that calculation);
   2.4.1. SC’s financial contribution = [(b)/(a+b)] x Funding Gap amount where,
   2.4.2. (a) shall equal the construction cost of the Works within LCC’s area
   2.4.3. (b) shall equal the construction cost of the Works within SC’s area

2.5. The Parties agree that they will seek delegated authority to exceed the estimated costs by up to [10%] to enable the Works to proceed should unexpected expenses arise or should costs increase during the course of the Works.

2.6. Neither Party shall be committed to expending more than the figures set out as their respective contributions (with regard to works and land acquisitions) as set out in more
detail in Schedule 2 without the necessary authority required and as set out in the Constitution and Standing Orders of the authority in question.

2.7. Neither Party shall be obliged to make any payments in respect of any part of the Works which do not fall within their administrative area.

2.8. The Parties agree that they will endeavour to identify and secure funding from alternative and available funding streams should this prove possible during the course of the project.

2.9. The Parties agree that they will each bear their own costs in relation to the acquisition of land and/or land interests within their administrative area to enable the delivery of the Works. The Parties will co-operate on land acquisition as detailed below.

2.10. LCC shall procure the services of land referencing agents and shall

2.10.1. secure their services to identify the land interests affected in each Party’s administrative area

2.10.2. ensure that the land referencing agents services are procured on the basis that their conclusions and results can be relied upon for all purposes directly related to the proposed Works by both LCC and SC and that the land referencing agents professional indemnity insurance is acceptable to the Parties.

2.11. The cost of employing agents to carry out land referencing associated with the proposed Works shall be borne by both Parties proportionately and based on the number of land interests affected in the administrative area of each Party.

2.12. If it becomes apparent that the costs of the Works and/or land acquisition are such that a party has to seek authority as required by its Constitution and/or Standing Orders for additional funding then the operation of this MOU will be suspended (apart from this clause and such other clauses as are needed to interpret it) and the party seeking authority will advise the other party accordingly. THE MOU will become operative again if and when such additional authority is given.
2.13. If the Growth Fund monies are subject to conditions that cannot be fulfilled without either or both parties exceeding the cost contributions allocated to them in Schedule 2 then the operation of this MOU will be suspended (apart from this clause and such other clauses as are needed to interpret it) until such time if at all as the parties are able to agree if and how the Works can progress.

3. Scope and Progress of the Works

3.1. LCC shall be the lead authority in procuring the following matters;
   3.1.1. The design of the proposed Works
   3.1.2. The procurement of materials goods and services to deliver the Works
   3.1.3. The administration of any contracts associated with the delivery of the Works and any associated matters
   3.1.4. The supervision of the Works and any associated CDM client function

3.2. In procuring these matters LCC and SC agree, that;
   3.2.1. SC will need to approve the final form of any tender assessment criteria proposed by the Parties
   3.2.2. SC will need to approve the form of any contract and any Final Contract documents
   3.2.3. SC will need to approve the scheme risk register prior to any contract being let
   3.2.4. SC will need to approve the final design for any of the Works to be carried out within its administrative area (together with any significant changes which may be required/proposed as the Works progress)
   3.2.5. SC will need to approve the identity of the main contractor undertaking the Works within SC’s area
   3.2.6. SC will need to approve any cost overrun that could result in SC being required to pay a contribution higher than that set out in Schedule 2 as being its contribution

3.3. During the course of the Works the Parties agree that SC may at its discretion participate in the inspection of any of the Works within their administrative boundary which may impact on future ongoing maintenance costs.

3.4. LCC and SC will endeavour to secure and complete any relevant traffic orders (for matters within their respective administrative areas.)
3.5. The Parties agree that a Project Board will be established to oversee the operation of this MOU and provide strategic guidance to the project as provided in Section 7 of the Liverpool City Region – Major Scheme Business Case programme (LSR – MSBC) (February 2016)

3.5.1. The key contact for LCC will be: John Davies Assistant Highways Manager

3.5.2. The key contact for SC will be: Jerry McConkey, Service Manager - Transportation & Highway Infrastructure

3.6. The Project Board will meet in accordance with the process agreed in the LSR-MSBC and minutes and resulting actions will be recorded and circulated

3.7. The Parties agree to adopt the following principles when carrying out the Project (including the Works)

3.7.1. Collaboration and co-operation to ensure that activities are delivered and actions are taken as required

3.7.2. Be accountable – take on, manage and account to each other for their roles as set out in this MoU and generally

3.7.3. Be open; to communicate openly about major concerns, issues or opportunities relating to the project

3.7.4. Adhere to statutory requirements and best practice

3.7.5. Act in a timely manner

3.7.6. Manage stakeholders effectively

3.7.7. Deploy appropriate resources to deliver the project

3.7.8. Act in good faith to achieve the delivery of the Works

3.8. The Parties agree that a schedule of design and contract meetings will be agreed and each party will be entitled to attend and that [quarterly] Scheme progress and financial reports will be secured and circulated to the Parties.

4. **Public Engagement**

4.1. The Parties shall engage with those owners and occupiers of land or land interests which may be affected by the Works, whether or not the Parties propose to acquire those interests, to explain the proposals, time frames and purpose of the Works and;
4.1.1. As soon as reasonably practical (once authority has been obtained to consult on the Works) to agree a method of consultation which shall include public exhibition(s) in the locality of the Works, direct mailing to those interests affected as well as direct communication via telephone, e-mail and face to face visits.

4.1.2. To use their reasonable endeavours to carry out the agreed approach to consultation in a co-ordinated manner so that all of those affected by the Works have the same opportunities to engage with the consultation process.

4.1.3. To agree the approach that will be taken by appointed land referencing agents to contacting those potentially affected by the Works.

5. **Compulsory Purchase Order**

5.1. The Parties agree that they will work together to secure, in so far as possible, the making, advertisement and confirmation of any compulsory purchase order which may be necessary to enable the Works as quickly as possible following the date of this MoU. This shall include the sharing of draft committee reports and similar documents (including any appendices) to ensure that the case for making the Order between Parties is consistent and coherent.

5.2. The Parties will liaise to ensure, as far as possible, that authority to make the Order will be made contemporaneously by both LCC and SC and that the Order will be made as expediently as possible following authority being given.

5.3. For the avoidance of doubt, the determination by one Party not to make a compulsory purchase order will not prevent the other from making an Order to enable the Works or part thereof within their administrative area.

5.4. LCC will be lead authority to produce or procure the production of:

   5.4.1. The compulsory purchase orders,
   5.4.2. The Order Plans,
   5.4.3. The Order Schedule, and
   5.4.4. The Statement of Reasons to support the making of the Orders.

5.5. Prior to any Order being made in respect of SC’s area, SC will approve the said Order, Order Plan, Schedule and Statement of Reasons in so far as they relate to SC’s area.
5.6. LCC will be the lead authority for arranging for the service of notices confirming the making of the Order and public advertisements but this shall be carried out in consultation with and agreement of SC in respect of interests within SC’s area. For the avoidance of doubt documents will be issued in the name of the authority within whose area the Order is made but a party will endeavour to act in such a way that cases are consistent so far as practicable.

5.7. If any objections are made to the Orders LCC and SC shall keep each other advised on the content of the objections and the ongoing negotiations to overcome the objections (on a monthly basis and at any time when any material change in circumstances occurs).

5.8. If objections are referred to the Planning Inspectorate LCC will act as lead authority to administer the ongoing relationship with the Planning Inspectorate but will keep SC informed of any communications between LCC and the Planning Inspectorate.

5.9. In the event of a public inquiry being called to determine the Order(s) the Parties will determine the management of the inquiry process (and the responsibility for the costs of that process) between themselves acting reasonably and based upon the nature and number of objections received.

6. **Acquisition of Land and Other Interests**

6.1. The Parties acknowledge that land and land interest will need to be acquired within each party’s area to deliver the Works.

6.2. The Parties will undertake negotiations to acquire these interests in their own area and will appoint/employ suitably qualified and experienced negotiators to seek to obtain those interests by agreement and to avoid, where possible, objections to the proposed compulsory purchase Order.

6.3. The principles and the approach to negotiations with third party land owners/affected land interests will be agreed between the Parties before any negotiations commence.

6.4. The Parties agree that;

6.4.1. The relevant negotiators will arrange to meet/report to each other on a no less than monthly basis or at any time when there is a material change in circumstances to keep each other informed of the progress of negotiations.
6.4.2. They will co-operate at all times in agreeing a suitable range of land values to underpin any negotiations so that the negotiations within each administrative area are on a comparable basis.

6.4.3. In any case where it is proposed to exceed the agreed land values the proposing Party will give the other party an explanation of its valuation process and will allow representations to be made before making a final determination to make any settlement.

6.4.4. At all times to act in good faith towards each other to ensure that any land acquisition costs are kept to a minimum.

6.5. Each Party shall be responsible for meeting the costs of acquiring any land or land interest within its area (and for the avoidance of doubt this shall include any costs associated with a reference to the Upper Tribunal (Lands Chamber)).

6.6. Where land interest cannot be acquired by negotiation the Parties will determine how to secure title to the interest in respect of their own area but at all times seeking to achieve any necessary deadlines to enable the delivery of the Works.

7. General Matters

7.1. In delivering the compulsory purchase order the parties will endeavour to meet the following anticipated timescales;

7.1.1. Submit LCR – MSBC February 2016
7.1.2. Obtain authority to make the compulsory purchase order - February 2016
7.1.3. Make CPO and serve notices on those affected – as contemporaneously as possible with making the Order (March 2016)
7.1.4. Period for objecting to the Order – April 2016
7.1.5. Decision on the need for any public inquiry – Mid May 2016
7.1.6. Seek Public Inquiry date as soon as possible with an intention to hold an inquiry into any objections (and any side road orders which may be required) no later than August 2016

7.2. If either Party has any issues, concerns or complaints resulting from the delivery of the Works of any matter to which this MoU relates then that Party shall notify the other Party and the Parties shall then seek to resolve the issue by a process of consultation. If the issue...
cannot be resolved within reasonable period of time the matter shall be escalated to the Project Board [If the matter cannot be resolved by the Project Board the matter shall be determined by each Party acting through its democratic process.

7.3. This MoU may only be varied by written agreement between the Parties
7.4. This MoU shall terminate upon the substantial completion of the Works or until it is superseded.
7.5. This MoU shall be governed and construed in accordance with English Law as applied in the courts of England and Wales.

Appendices.
Schedule 1 – The Works
Schedule 2 – Cost Estimates
Schedule 3 – Committee Dates