

## Cardiff Capital Region City Deal Special Regional Joint Cabinet

### A G E N D A

- 1 Welcome and Apologies
- 2 Declarations of Interest  
To be made at the start of the Agenda Item in question, in accordance with the members Code of Conduct.
- 3 Grant Funding Terms and Conditions Report (*Pages 1 - 20*)  
To receive the Report of the City of Cardiff Council Corporate Director of Resources in relation to the acceptance of the terms and conditions of the grant transfer from Welsh Government and HM Treasury to the Accountable Body.
- 4 Annual Business Plan 2017-2018 (*Pages 21 - 26*)  
To receive the Report of the Cardiff Capital Region Programme Director in relation to the proposed Annual Business Plan for 2017-2018.
- 5 Compound Semi-Conductor Project Proposal (*Pages 27 - 36*)  
To receive the Report of the Cardiff Capital Region Programme Director in relation to a Candidate Scheme proposal seeking Wider Investment Fund support.

**Sheila Davies**  
**CCR Programme Director**  
**25<sup>th</sup> April 2017**

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# CARDIFF CAPITAL REGION CABINET

## CABINET MEETING 2<sup>nd</sup> May 2017

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### GRANT FUNDING TERMS AND CONDITIONS

### REPORT OF ACCOUNTABLE BODY - CORPORATE DIRECTOR OF RESOURCES CITY OF CARDIFF COUNCIL

### AGENDA ITEM: 3

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#### Reason for this Report

1. To inform Joint Cabinet of the Welsh Government funding terms and conditions relating to the HM Treasury Contribution (£375 million), including the clarification raised and responses agreed with Welsh Government.
2. To discharge the Condition Subsequent within the Cardiff Capital Region City Deal (CCRCD) Joint Working Agreement (Clause 2.3).
3. To recommend that Joint Cabinet approve the Welsh Government funding terms and conditions, whilst noting any residual risks that remain.

#### Background

4. Between 25th January and 9th February 2017 Full Council approval was received from each of the ten authorities within the Cardiff Capital Region for the establishment of a Cardiff Capital Region Joint Cabinet to deliver the commitments in the City Deal Heads of Terms document.
5. Each Council approved the conclusion of a Joint Working Agreement (JWA) in respect of the City Deal, which establishes the Joint Cabinet, and includes the Assurance Framework and Implementation Plan. The Joint Working Agreement was formally signed by the region's ten local authorities on 1<sup>st</sup> March 2017.
6. The JWA contains a Condition Subsequent which sets out that the Councils shall consider and, if deemed appropriate, approve the terms of any Welsh Government funding conditions relating to the £375 million HM Treasury funding contribution as a Joint Committee Matter (JWA Clause 2.3), with the prior agreement of the Accountable Body (in consultation with the other Councils).
7. Furthermore, the Affordability Envelope outlined within the JWA is predicated on HM Treasury funding over the next 20 years. The profile of that funding was set-out in a letter from HM Treasury to Welsh Government dated 11<sup>th</sup> November 2016 is set out in paragraph 10 of this report.

8. Approval of CCRC's Investment Fund was received from Welsh Government on 9<sup>th</sup> March 2017. The letter highlights that Welsh Government do not intend to impose additional terms and conditions in line with the city deal ethos of local accountability, but fully expect matters to be conducted that ensure financial propriety and good governance. The funding conditions were subsequently detailed in a letter dated 22<sup>nd</sup> March 2017 (Appendix 1).
9. The funding letter was distributed to all partnering Councils for review and comment and a list of clarification issues' were documented based on the responses received. Officers from the Accountable Body met, proposed and agreed with Welsh Government a number of clarifications to the original funding conditions. The accepted clarifications are set out in (Appendix 2), in line with Condition 20c of its funding letter.

## **Issues**

### Funding Profile:

10. The confirmed funding profile reflects the assumptions used in the CCRC financial modelling exercises, considered by Shadow Joint Cabinet in January and February 2017. Specifically, the £375m of HM Treasury funding over 20 years for the purposes of CCRC, profiled as follows:
  - 2016/17 – 2020/21: £10m revenue funding per year (£50m in total during this period);
  - 2021/22 – 2030/1: £22m capital funding per year (£220m in total during this period);
  - 2031/32 – 2035/36: £21m capital funding per year (£105m in total during this period).

### Use of Funding:

11. The funding will be paid to the Accountable Body on behalf of the ten CCRC local authorities. The funding must be used solely to support the objectives of CCRC through the implementation of projects and schemes agreed by the Cardiff Capital Region Joint Cabinet in accordance with arrangements set out in its Joint Working Agreement, Wider Investment Fund, Assurance Framework, Implementation Plan and, when agreed, JWA Business Plan.

### Gateway Review:

12. An outcome based Gateway Review of CCRC led by HM Treasury will be undertaken in in 2020/21. It is important to note that funding for 2021/22 and beyond is conditional on CCRC successfully passing this Gateway Review, whilst any unspent funding up to this time may be subject to repayment if Gateway Review is not passed.

### State Aid:

13. CCRCDC must comply with the European Commission's State Aid Rules. The funding conditions require CCRCDC to comply with all applicable laws or regulations or official directives whether derived from domestic, EU or international law.

### Buying Goods and Services:

14. Any goods and / or services bought by CCRCDC must be purchased in a competitive and sustainable way so as to demonstrate best value in the use of public funds.

### Notification Events and their consequences

15. CCRCDC must notify the Welsh Government immediately if a Notification Event (listed within the Schedule attached to the funding terms and conditions letter from Welsh Government dated 22<sup>nd</sup> March) has occurred or is likely to occur. Examples of Notification Events include: non-approval of the JWA Business Plan, repayment of any part of the funding is required under European Law (whether under State Aid rules or otherwise), failure to comply with the funding terms and conditions, the funding, in full or in part, is not being used for the purpose, there is suspicion of fraudulent activity involving the use of CCRCDC funding etc.
16. If a Notification Event occurs which is not capable of remedy, if the remedial actions are not implemented or are implemented but not successful, the Welsh Government reserves the right to take any of a range of defined actions. These include withdrawal of the award of funding; and / or repayment of all or part of the funding; and / or suspension or cessation of further funding payments.

### **Clarification Issues**

17. As outlined above, the Accountable Body on behalf of the project has engaged with Welsh Government to seek clarification on a number of issues raised by partnering Councils. The key points are summarised below.
18. Whilst the Welsh Government funding terms and conditions letter covers the first 5 years to 2020/21, totalling £50 million, there is no intention from Welsh Government to restrict CCRCDC commitments (in respect of HM Treasury funding) to this sum. It is important to note that it will be a matter for the committee to determine how any monies committed in advance of receipt of HM Treasury monies will be funded, noting the potential risk referred to above; i.e. funding for 2021/22 and beyond is conditional on CCRCDC successfully passing the Gateway Review
19. Subsequent funding letters will also cover periods of 5 years, subject to the scheduled Gateway Reviews being passed at those intervals. It is important to note that whilst Welsh Government have confirmed that it has no intention to vary the conditions that will apply to future funding letters, until future funding conditions are confirmed in writing, a residual

risk remains that future conditions could be different to those set-out within the current funding letter.

20. The funding letter sets out that Welsh Government will pay each annual instalment of funding within the first 6 months of the beginning of each financial year. The project has asked Welsh Government to explore whether these payments can be made earlier than this. The project has requested that payments in respect of 2016/17 and 2017/18 is received by the 1st June 2017, and future years' payments are received at the beginning of each financial year or within 10 working days of Welsh Government receiving monies from HM Treasury, whichever is later. Welsh Government have agreed to consider these requests.
21. Until the above point is confirmed, or otherwise, it remains possible that the 2016/17 and 2017/18 funding may not be received until 1<sup>st</sup> September 2017, which could represent a risk to any projects or schemes that require early investment. If Cardiff Capital Region Joint Cabinet determine that CCRCD scheme(s) require early investment, this must be pursuant to the terms of the Assurance Framework and the Annual Business Plan.
22. Welsh Government have confirmed that in any year, where funds have been committed and / or there is a clear intention to spend, carry forward of funding to future years will be permitted. Carry forward in respect of the final year (2020-21), will also be permitted providing that the Gateway review is passed.
23. As set out in clause 2.3 of the JWA the funding terms and conditions will need to be approved by Joint Cabinet with the prior agreement of the Accountable Body (in consultation with the other Councils). This consultation was carried out and agreement and approval was received from all ten authorities.

### **Reasons for Recommendations**

24. To enable CCRCD to spend and / or commit funds from the Wider Investment Fund, as outlined in the CCRCD Joint Working Agreement.
25. To discharge the Condition Subsequent within the CCRCD Joint Working Agreement (Clause 2.3).

### **Financial Implications**

26. The financial implications are primarily set out in the main body of the report. However, it is explicit that any project agreed and approved by the CCRCD Joint Cabinet must comply with the terms of the Assurance Framework and the Annual Business Plan in order to eliminate the risk of grant being reclaimed.

### **Legal Implications**

27. The legal implications are set out in the main body of the report.

## RECOMMENDATIONS

It is recommended that the Cardiff Capital Region Joint Cabinet:

- a) Consider and if deemed acceptable, approve the Welsh Government funding terms and conditions, including the clarifications formally agreed, which terms and clarifications are set out in Appendix 2.
- b) Authorise the Section 151 Officer of the CCRCDC Accountable Body to formally sign acceptance of the Welsh Government funding terms and conditions on behalf of the Cardiff Capital Region Joint Cabinet.

**Christine Salter**  
**25<sup>th</sup> April 2017**

*The following appendices are attached:*

- Appendix 1:** Welsh Government Funding Terms and Conditions Letter (22<sup>nd</sup> March 2017).
- Appendix 2:** Clarifications to the Welsh Government funding terms and conditions, dated 11<sup>th</sup> April, formally accepted and signed by Welsh Government.

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Eich cyf / Your ref:  
Ein cyf / Our ref:

Christine Salter  
Corporate Director, Resources  
Cardiff City Council  
[C.Salter@cardiff.gov.uk](mailto:C.Salter@cardiff.gov.uk)

22 March 2017

Dear Christine,

**Payment of Funding in relation to Cardiff Capital Region City Deal Investment Fund for the years 2016-17 to 2020-21.**

**1. Award of Funding**

- (a) HM Treasury has committed to provide funding totalling £375m over 20 years for the purposes of the Cardiff Capital Region City Deal (CCRCD), profiled as follows:
  - 2016-17 to 2020-21 £10m resource funding per year;
  - 2021-22 to 2030-31 £22m capital funding per year;
  - 2031-32 to 2035-36 £21m capital funding per year.
- (b) The funding will be provided to Welsh Government with the expectation that it will be passed to CCRCD on the agreed profile.
- (c) This letter relates to the provision of the agreed HM Treasury funding by Welsh Government to CCRCD for the years 2016-17 to 2020-21.
- (d) Welsh Government will pay £10m resource funding to CCRCD in respect of each of the years 2016-17 to 2020-21 or until a Gateway Review of CCRCD is conducted by HM Government, whichever is the earlier. The payment of this funding by Welsh Government to CCRCD is conditional on the equivalent funding being provided to Welsh Government by HM Treasury.
- (e) Funding for 2021-22 and subsequent years is conditional on CCRCD passing an outcome based Gateway Review to be led by HM Treasury. If the Gateway Review is passed and continued HM Treasury funding agreed, a further grant letter will be issued.



## 2. Statutory Authority and State Aid

- (a) This award of Funding is made on and subject to the Conditions and under the authority of the Cabinet Secretary for Finance and Local Government, one of the Welsh Ministers, acting pursuant to section 31 of the Local Government Finance Act 2003.
- (b) You must comply with the European Commission's State Aid Rules.

## 3. Interpreting these Conditions

Any reference in these Conditions to:

**'you', 'your'** is to Cardiff City Council as Accountable Body for CCRC.

**'we', 'us', 'our'** is to the Welsh Ministers;

**'Welsh Government Official'** is to Debra Carter, Deputy Director, Local Government Finance Policy, or such other Welsh Government official as we may notify you.

**'Programme Manager'** is to

Sheila Davies, Programme Manager, Cardiff Capital Region City Deal.

**'Conditions'** is to the terms and conditions set out in this letter;

**'Costs Incurred'** is to the cost of goods and services you have received.

**'Notification Event'** is to any of the events listed in Schedule;

**'Personnel'** is to your management/employees and suppliers or any other person appointed or engaged by you in relation to the Funding;

**'Schedule'** is to the schedule attached to this letter;

**'State Aid Rules'** is to the rules set out in Articles 107 to 109 of the Treaty on the Functioning of the European Union (or in those Articles that may succeed Articles 107 to 109), secondary legislation such as frameworks, guidelines and block exemptions produced by the European Commission derived from Articles 107 to 109, case law of the European Courts and decisions of the European Commission regarding the application of Articles 107 to 109; and

**any legislation** will include all amendments to and substitutions and re-enactments of that legislation in force from time to time;

## 4. What you must use the Funding for

- (a) You must use the Funding solely to support the objectives of the CCRC through the implementation of projects, schemes and interventions agreed by the Cardiff

Capital Region Joint Cabinet (Regional Cabinet) in accordance with the arrangements set out in its Joint Working Agreement, Wider Investment Fund Assurance Framework, CCRC Implementation Plan and, when agreed, the JWA Business Plan (“the purposes”).

- (b) Where any borrowing has been undertaken for the purpose of (a), the Funding may be used to pay off the debt principle.
- (c) Any change to the purposes will require our written consent which must be obtained from us in advance of implementing any change. Please note that we are not obliged to give our consent but we will consider all reasonable written requests.
- (d) You must not use any part of the Funding for: (1) party political purposes; (2) the promotion of particular secular, religious or political views; (3) gambling; (4) pornography; (5) offering sexual services; (6) purchasing capital equipment (other than as specified in the Purposes); (7) your legal fees in relation to this letter; (8) Costs Incurred or costs incurred and defrayed by you in the delivery of the Purposes prior to the period referred to in Condition 1 (c); (9) any kind of illegal activities; or (10) any kind of activity which in our opinion could bring us into disrepute.

#### **5. Payment Profile**

- (a) The first payment of funding of £10m, originally profiled for 2016-17, will be made within the first six months of 2017-18.
- (b) Thereafter, four payments of £10m will be made within the first six months of each of the years 2017-18 to 2020-21, provided the equivalent funding has been paid to Welsh Government by HM Treasury.
- (c) You will be permitted to carry forward unspent funding between years, up to and including carrying forward unspent funding from 2019-20 to 2020-21.
- (d) If CCRC does not pass its Gateway Review, any unspent funding may be subject to repayment to Welsh Government, if HM Treasury so advise or if HM Treasury require the repayment of this funding by Welsh Government.

#### **6. Your general obligations to us**

You must:

- (a) safeguard the Funding against fraud generally and, in particular, fraud on the part of your management, employees and/or suppliers and notify us immediately if you have reason to suspect that any fraud has occurred or is occurring or is likely to occur. You must also participate in such fraud prevention initiatives as we may require from time to time.
- (b) comply with all applicable laws or regulations or official directives whether derived from domestic, EU or international law;
- (c) put in place and maintain adequate insurances to cover against the risks which may arise in connection with any property or any activity undertaken in delivery of the Purposes. We reserve the right to require you provide proof of your insurance;

- (d) put in place and maintain appropriate systems to undertake due diligence before utilising any part of the Funding to provide a grant to or procure any goods or services from third parties;
- (e) co-operate fully with the Welsh Government Official and with any other employee of the Welsh Government or consultant appointed by us to monitor your use of the Funding and your compliance with these Conditions.

## **7. Declarations**

You declare that:

- (a) you have the power to enter into and to perform the obligations set out in these Conditions and you have taken all necessary action to authorise the entry into and performance of the obligations under these Conditions;
- (b) no litigation or arbitration is current or pending or, so far as you are aware, threatened, which have or could have an adverse effect on your ability to perform and comply with any of these Conditions;
- (c) you have disclosed to us all material facts or circumstances which need to be disclosed to enable us to obtain a true and correct view of your business and affairs (both current and prospective) or which ought to be provided to any person who is considering providing funding to you;

## **8. Notification Events and their consequences**

- (a) You must notify us immediately if a Notification Event has occurred or is likely to occur but we also reserve the right to notify you where we believe a Notification Event has occurred or is likely to occur.
- (b) If we consider it appropriate, taking into account both the seriousness of the Notification Event and whether or not in our opinion it can be remedied, we will seek to discuss the Notification Event with you and to agree a course of action to be taken to address the Notification Event.
- (c) We will be entitled to take any of the actions listed in Condition 8(d) if:
  - (i) despite our reasonable efforts we have been unable to discuss the Notification Event with you, or
  - (ii) we notify you that the Notification Event is not capable of remedy, or
  - (iii) a course of action is agreed with you but you fail to follow it, or any conditions attached to it are not met (including without limitation the timescale for such course of action), or
  - (iv) the course of action fails to remedy the Notification Event to our satisfaction.
- (d) If any of the circumstances set out in Condition 8(c) occurs we may by notice to you:

- (i) withdraw the award of Funding; and/or require you to repay all or part of the Funding immediately; and/or
  - (ii) suspend or cease all further payment of Funding; and/or
  - (iii) make all further payments of Funding subject to such conditions as we may specify; and/or
  - (iv) deduct all amounts owed to us under these Conditions from any other funding that we have awarded or may award to you; and/or
  - (v) exercise any other rights against you which we may have in respect of the Funding.
- (e) All repayments of Funding must be made to us within 28 days of the date of our demand. You must pay interest on any overdue repayments at a rate of 1.5% per annum above the Bank of England Bank Rate from time to time or at such other rate as may be required by the State Aid Rules. Interest will accrue on a daily basis from the date the repayment is due until actual repayment of the Funding, whether before or after judgment. You must pay the interest together with the overdue repayment.

## **9. Monitoring Requirements**

You must:

- (a) provide us with such documents, information and reports which we may reasonably require from time to time in order for us to monitor your compliance with the Conditions. This will include quarterly reports on progress in implementing the CCRCD and progress towards achievement of its objectives, as required by the CCRCD Wider Investment Fund Assurance Framework.
- (b) meet with the Welsh Government Official and such other of our representatives as we may from time to time reasonably require. This will include regular progress meetings as required by the CCRCD Wider Investment Fund Assurance Framework;
- (c) ensure that the Programme Manager (or such other person as we may agree) attends all meetings with the Welsh Government Official.

## **10. Audit Requirements**

- (a) You must:
  - (i) maintain clear accounting records identifying all income and expenditure in relation to the Purposes;
  - (ii) without charge, permit any officer or officers of the Welsh Government, Wales Audit Office or European Commission at any reasonable time and on reasonable notice being given to you to visit your premises and/or to inspect any of your activities and/or to examine and take copies of your books of account and such other documents or records as in such officer's reasonable view may relate in any way to your use of the Funding. This undertaking is without prejudice and subject to any other statutory rights and powers exercisable by the Welsh Government, Wales Audit Office or the European Commission or any officer, servant or agent of any of the above;

- (iii) retain this letter and all original documents relating to the Funding until we inform you in writing that it is safe to destroy them.
- (b) Under paragraph 17 of Schedule 8 to the Government of Wales Act 2006 the Auditor General for Wales has extensive rights of access to documents and information relating to monies provided by the Welsh Government. He and his officials have the power to require relevant persons who control or hold documents to give any assistance, information and explanation that they may require; and to require those persons to attend before them for such a purpose. The Auditor General and his staff may exercise this right at all reasonable times.

#### **11. Third Party Obligations**

- (a) Nothing in the Conditions imposes any liability on us in respect of any liability incurred by you to any third party (including, without limit, employees and contractors).
- (b) You must indemnify us against any liabilities, claims, proceedings, demands, losses, costs and expenses suffered or incurred by us directly or indirectly arising as a result of or in connection with any failure by you to perform fully or in part any obligation you may have to a third party.

#### **12. Intellectual Property Rights & Publicity**

Nothing in these Conditions transfers to us any rights in any intellectual property created by you as a result of the Purposes.

#### **13. Access to Information**

- (a) You acknowledge that we are subject to the requirements of the Freedom of Information Act 2000 (the "FOIA"), the Environmental Information Regulations 2004 (the "EIR") and the Data Protection Act 1998 (the "DPA").
- (b) You acknowledge that we are responsible for determining in our absolute discretion whether:
  - (i) to disclose any information which we have obtained under or in connection with the Funding to the extent that we are required to disclose such information to a person making a disclosure request under the FOIA or the EIR; and/or
  - (ii) any information is exempt from disclosure under the Code, the FOIA or the EIR.

#### **14. Buying Goods and Services**

If you decide to buy any goods and/or services to deliver the Purposes, they must be purchased in a competitive and sustainable way so as to demonstrate that you have achieved best value in the use of public funds.

## 15. Giving Notice

- (a) Where notice is required to be given under these Conditions it must be in writing (this does not include email but may include a letter attached to an email) and must prominently display the following heading:

***“Notice in relation to Cardiff Capital Region City Deal funding”.***

- (b) The address and contact details for the purposes of serving notice under these Conditions are as follows

You: the Project Manager at the address stated in Condition 3.

Us: the Welsh Government Official at the address stated in Condition 3.

- (c) A notice will be deemed to have been properly given as follows:-

Prepaid first class post: on the second working day after the date of posting.

By hand: upon delivery to the address or the next working day if after 4pm or on a weekend or public holiday.

By email attachment: upon transmission or the next working day if after 4pm or on a weekend or public holiday.

## 16. Equal Opportunities

You must apply a policy of equal opportunities as employers, as users of volunteers, and as providers of services, regardless of race, gender/gender identification, sexual orientation, religion and belief, age or any disability.

## 17. Welsh Language

Where the Purposes include or relate to the provision of services in Wales they must be provided in such a way as to not treat the Welsh language less favourably than English, in line with the Welsh Language Measure (Wales) 2011.

## 18. Sustainability

Your use of the Funding must (where reasonably practicable) meet the Welsh Government's current agenda for sustainable development and the environment.

## 19. Welsh Ministers' Functions

You acknowledge that the Welsh Ministers have a range of functions which will continue to accrue and be amended and that decisions in relation to each such function are obliged to be taken in the light of all relevant and to the exclusion of all irrelevant considerations. You agree that nothing contained or implied in , or arising under or in

connection with, these Conditions will in any way prejudice, fetter or affect the functions of the Welsh Ministers or any of them nor oblige the Welsh Ministers or any of them to exercise, or refrain from exercising, any of their functions in any particular way.

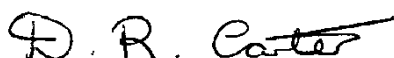
## 20. General

- (a) If at any time any of these Conditions is deemed to be or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.
- (b) No failure or delay on our part to exercise any power, right or remedy under these Conditions will operate as a waiver of any such power, right or remedy or preclude its further exercise or the exercise of any other power, right or remedy. The powers, rights or remedies hereby provided are cumulative and not exclusive of any powers, rights or remedies provided by law.
- (c) Any amendment or variation to these Conditions must be in writing and signed by us and you in the same manner as this letter.
- (d) You may not assign or otherwise dispose of in any way your rights, benefits, obligations or duties under these Conditions.
- (e) Conditions 6, 8, 10, 13, and 20(e) and such other Conditions which by implication need to continue in force beyond the final payment of Funding will so continue in full force and effect.
- (f) The award of the Funding is to you alone and no one else is entitled to make any claim in respect of the Funding or seek to rely on or enforce any of these Conditions.
- (g) These Conditions are to be governed by and construed in accordance with the laws of Wales and England as applied in Wales and the parties hereto submit to the exclusive jurisdiction of the courts of Wales and England.

## 21. How to accept this offer of Funding

- (a) To accept this award of Funding you must sign and return a copy of this letter to the Welsh Government Official. None of the Funding will be paid to you until we have received your signed letter.

Yours sincerely



Signed by Debra Carter, Deputy Director for Local Government Strategic Finance, under authority of the Cabinet Secretary for Finance and Local Government, one of the Welsh Ministers.



**SCHEDULE**  
**Notification Events**

The Notification Events referred to in Condition 8 are listed below:

1. repayment of any part of the Funding is required under European Law (whether under State Aid Rules or otherwise);
2. you fail to comply with any of the Conditions;
3. the Funding, in full or in part, is not being used for the Purposes;
4. you fail to provide information about the Purposes requested by us, the European Commission or the European Court of Auditors, or any of their auditors, agents or representatives;
5. there is any suspicion that you and/or any of your Personnel is/are involved in fraudulent activity or has/have been involved in fraudulent activity whilst the Purposes are/were being carried out;
6. we have made an overpayment of Funding to you;
7. any declaration made in Condition 7 is incorrect in any respect or, if repeated at any time with reference to the facts and circumstances then existing, would be incorrect;
8. any event occurs or circumstances arise which in our opinion gives reasonable grounds for believing that you may not, or may be unable, to perform or comply with any of your obligations under these Conditions.

**TWO SIGNATORIES ARE REQUIRED**

We hereby accept the award of Funding in relation to Cardiff Capital Region City Deal Investment Fund for the years 2016-17 to 2020-21 and the Conditions relating to the Funding

\_\_\_\_\_ Signature  
An authorised signatory of Cardiff City Council, Accountable Body for CCRCD

Christine Salter  
\_\_\_\_\_ Name

Corporate Director, Resources  
\_\_\_\_\_ Job Title

\_\_\_\_\_ Date

\_\_\_\_\_ Signature  
An authorised signatory of Cardiff City Council, Accountable Body for CCRCD

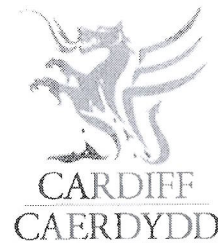
Ian Allwood  
\_\_\_\_\_ Name

Head of Finance  
\_\_\_\_\_ Job Title

\_\_\_\_\_ Date

Fy Nghyf / My Ref: CDR/rr  
Eich Cyf/Your Ref.:

Dyddiad/Date: 11 April 2017



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FAO Debra Carter  
Deputy Director for Local Government Strategic Finance  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

Dear Debra

**Re: Payment of Funding in relation to Cardiff Capital Region City Deal Investment Fund for the years 2016-17 to 202-21**

Thank you for your funding letter dated 22<sup>nd</sup> March 2017 and arranging to meet with us on 6<sup>th</sup> April to review the clarifications raised by the project, which we had sent on the 31<sup>st</sup> March.

At the meeting you very helpfully clarified Welsh Government's intentions in respect of a number of funding conditions. Please find below our understanding of the points discussed, which subject to your confirmation, would form an amendment/variation to the funding letter and be signed by both Welsh Government and the Accountable Body as set-out in Condition 20c of your funding letter.

**Condition 1 – Award of Funding**

It was confirmed by Welsh Government that whilst this funding letter covers the first five years to 2020-21, totalling £50 million, there is no intention on its part to restrict Cardiff Capital Region City Deal (CCRCD) commitments (in respect of HM Treasury funding) to this sum.

HM Treasury's letter dated 11<sup>th</sup> November 2016 is attached as Appendix 1 to this letter. This sets out that funding totalling £375 million has been committed for CCRCD and will be provided to Welsh Government as block grant over the next twenty years.

Condition 1b confirms that this funding will be provided to Welsh Government with the expectation that it will be passed on to CCRCD. Subsequent funding letters will also cover a period of five years, which are subject to the scheduled Gateway Reviews being passed at those intervals. This is the case for all City Deals across the UK. Furthermore, Welsh Government confirmed that it has no intention to vary the Terms and Conditions that will apply to future funding letters.

### **Condition 3 – Interpreting these Conditions**

Welsh Government confirmed that the definition of 'you' is intended to cover the City of Cardiff Council as the Accountable Body for CCRCD for and on behalf of all ten local authorities. This definition applies to the funding letter in its entirety and in particular to Condition 20f.

It was accepted that 'Programme Manager' will mean 'Regional Programme Director'. This definition applies equally to Condition 9c – Monitoring Requirements.

### **Condition 5 – Payment Profile**

Welsh Government agreed to consider that in future years (from 2018-19 onwards) that funding is paid in full, at the beginning of each financial year or within 10 working days of receipt from HM Treasury, whichever is later.

CCRCD can confirm that subject to Joint Cabinet approval (scheduled for the end of April) it may have a requirement to drawdown circa £16 million to £20 million, no later than 1<sup>st</sup> June 2017 (the project is aiming to finalise the expenditure profile this week). Welsh Government agreed to explore whether it could make available funds in respect of financial years 2016-17 and 2017-18 within this timescale. In the event that this date cannot be achieved by Welsh Government, funds will be made available as soon as practicably possible after this date particularly in respect of 2016/17 funding and in any event no later than six months from the 1<sup>st</sup> April 2017.

In terms of the payment process, Welsh Government confirmed that it will issue a notification in advance of the payment being released and there will be no requirement to complete and submit a grant claim form.

Welsh Government confirmed that in any year, where funds have been committed and/or there is a clear intention to spend, carry forward of funding to futures years will be permitted. Carry forward in respect of the final year (2020-21), will also be permitted providing that the Gateway Review is passed.

### **Condition 10aii – Audit Requirements**

Welsh Government confirmed that 'Wales Office' will mean 'Auditor General for Wales'.

### **Condition 15b – Giving Notice**

Welsh Government confirmed that 'You' will mean 'Corporate Director Resources at the address stated in Condition 3'.

**ATEBWCH I / PLEASE REPLY TO: Cyfarwyddwr Corfforaethol Adnoddau/Corporate Director Resources, Ystafell / Room 343C, Neuadd y Sir / County Hall, Glanfa'r Iwerydd / Atlantic Wharf, Caerdydd / Cardiff, CF10 4UW. Ffon / Tel (029) 20872300; E-bost / E-Mail: Treasurersoffice@cardiff.gov.uk**

I would be grateful if you could confirm that the points outlined above are accepted by signing the declaration at the end of this letter or please provide any amendments as appropriate.

Finally, Welsh Government confirmed that there is no deadline for accepting the funding terms and conditions. However, we outlined that clause 2.3 of the Joint Working Agreement requires Joint Cabinet to approve the terms of any Welsh Government funding conditions within six months of the Commencement Date (1<sup>st</sup> March 2017), with the prior agreement of the Accountable Body (in consultation with the other Councils). Please accept this letter as our intention to recommend the funding conditions to Joint Cabinet for approval at their meeting at the end of this month, subject to the agreement of the above matters.

Yours sincerely



**Christine Salter**

**Cyfarwyddwr Corfforaethol Adnoddau /Corporate Director Resources**

**Declaration:**

I hereby accept the amendments/variations outlined above in respect of the award of funding in relation to Cardiff Capital Region City Deal Investment Fund for the years 2016-17 to 2020-21.



Signature

Debra Carter

Name

Deputy Director for Local Government Strategic Finance

Title

11.04.2017

Date

**ATEBWCH // PLEASE REPLY TO: Cyfarwyddwr Corfforaethol Adnoddau/Corporate Director Resources, Ystafell / Room 343C, Neuadd y Sir / County Hall, Glanfa'r Iwerydd / Atlantic Wharf, Caerdydd / Cardiff, CF10 4UW. Ffon / Tel (029) 20872300; E-bost / E-Mail: [Treasurersoffice@cardiff.gov.uk](mailto:Treasurersoffice@cardiff.gov.uk)**

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# CARDIFF CAPITAL REGION CABINET

## CABINET MEETING 02 May 2017

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### THE WIDER INVESTMENT FUND ANNUAL BUSINESS PLAN 2017-18

### REPORT OF CARDIFF CAPITAL REGION PROGRAMME DIRECTOR

### AGENDA ITEM: 4

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#### Reason for this Report

1. Subject to the agreement of the Regional Cabinet to Terms and Condition of the Welsh Government and subsequent receipt of HMT contributions by the Accountable Body, covered in a separate report, there is a need to produce an Annual Business Plan, to comply with Section 2.4 and 7.3 of the Joint Working Agreement (JWA), to allow Regional Cabinet to commit up to £50,000,000 (fifty million pounds) in advance of the agreement and adoption of the JWA Business Plan.

#### Background

2. The report of the Accountable Body received and approved by the Regional Cabinet at its meeting held on 17<sup>th</sup> March 2017, included the Regional Cabinet's Annual Budget for 2017-2018 amounting to £1 million (one million pounds), along with details of each council's respective contribution.
3. That report of the Accountable Body also proposed that 3% of the Wider Investment Fund (£742,500) would be ring-fenced for programme development and support, including support of the Advisory/Consultation Bodies, and was approved, (subject to acceptance of the Terms and Conditions for grant transfer).
4. The report of the Regional Programme Director contained the work plan for 2017-2018 called the Transition Plan, which was also approved by the Regional Cabinet at its meeting on 17<sup>th</sup> March.

#### Proposal

5. To allow Regional Cabinet to proceed to commit up to £50,000,000 (fifty million pounds), in advance of the agreement and adoption of the JWA Business Plan, Section 2.4 of the Joint Working Agreement (JWA) needs to be complied with. Section 2.4 states that an Annual Business Plan needs to be in place and agreed by the Joint Cabinet.
6. Regional Cabinet have already approved £742,500 of the 2017-2018 Wider Investment Fund monies for partnerships and programme development support as stated above. This means that for 2017/18 the remaining budget available for project development and implementation is £19,257,500.

7. As the JWA Business Plan, (as detailed in Section 7 of the JWA), is still under development and hence key projects and programmes have not yet been prioritised and agreed, it is proposed that the use of the £19,257,500 is limited to the development and implementation of schemes, projects and programmes as detailed in the Cardiff Capital Region Implementation Plan, which was approved as part of the JWA, with any specific proposal subject to approval of the Regional Cabinet.
8. It is proposed that the CCRC Annual Business Plan 2017-2018 will consist of:
  - the Transition Plan 2017-2018 as agreed by Regional Cabinet on 17<sup>th</sup> March 2017; and
  - £19,257,500 available for the support of schemes, projects and programmes detailed in the Cardiff Capital Region Implementation Plan, which was approved as part of the JWA.
  - Any decision made by the Joint Cabinet related to 2.4 of the JWA.
9. To allow the Annual Business Plan to be implemented there may be a need to establish delivery mechanisms to take forward approved schemes, projects and programmes. It is therefore proposed that the Joint Cabinet agree that appropriate delivery mechanisms, for example appointment of a lead authority; a special purpose vehicle; a community interest company, be put in place to deliver approved projects.
10. The Annual Business Plan for the Regional Cabinet should be prepared and circulated no later than 90 Business Days prior to the envisaged commencement of the relevant Accounting Period” and the Regional Cabinet shall meet within 30 Business Days of the date of circulation to approve its contents. As the proposed Plan for 2017-2018 is required to allow Joint Cabinet to comply with section 2.4 of the JWA and is proposed to be superseded in the near future by the JWA Business Plan it is proposed that these prior notification periods are waved.

### **Financial Implications**

11. *(to follow)*

(received and inserted 26<sup>th</sup> April 2017)

12. The source of the funding for the Annual Business Plan is £20 million to be received in 2017/18 from the HM Treasury Contribution on ‘Initial Project Investments’. The spend is subject to the terms of the Assurance Framework as per clause 2.4 of the Joint Working Agreement.

### **Legal Implications**

13. *(to follow)*

(received and inserted 26<sup>th</sup> April 2017)

14. Clause 7.3 of the Joint Working Agreement (‘JWA’) provides that the Programme Director shall procure a draft Annual Business Plan for consideration and, if deemed suitable, approval by the Joint Cabinet. The



Annual Business Plan is defined as meaning the plan in relation to the annual spend for approved projects to be implemented in the accounting period to which the report relates.

15. The JWA provides timescales in which the annual business plan should be prepared and the periods of notice to be given to the parties. In this case, because of time constraints, it is proposed to waive the timing and notice requirements set out in clause 7.3. The waiver of requirements required by the JWA, in effect, amount to an amendment of the terms of the JWA. The waiver is not a deemed a substantive amendment to the terms and conditions of the JWA and the amendment can be agreed by the Joint Committee, within the scope of its delegated powers. The delegation to the Joint Cabinet including the authority to make amendments to the terms of the JWA, which are not substantive. That said however, Members need to be satisfied that they have had appropriate time to consider the content of the Annual Business Plan and are content with the same. In this case, it is understood that there has been no consultation with stakeholders as regards the proposed Annual Business Plan, which may be a point of criticism that such stakeholders may raise.
16. In preparing the Annual Business Plan regard should be had, amongst other matters, to:
  - (i) the Council's duties under The Well-being of Future Generations (Wales) Act 2015 and; (ii) public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties, Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: a. Age; b. Gender reassignment; c. Sex; d. Race – including ethnic or national origin, colour or nationality; e. Disability; f. Pregnancy and maternity; g. Marriage and civil partnership; h. Sexual orientation; i. Religion or belief – including lack of belief.
17. As and when any individual project proposals are developed legal advice should be sought.

### **Equalities Impact Statement**

18. Included above.

### **Reasons for Recommendations**

19. To comply with 2.4 and 7.3 of the JWA and allow Regional Cabinet to commit up to £50,000,000 (fifty million pounds) in advance of the agreement and adoption of the JWA Business Plan.

### **RECOMMENDATIONS**

It is recommended that the Cardiff Capital Region Cabinet:

- a) For 2017-2018, waive all requirements for prior notification of an Annual Business plan, and

- b) For the purposes of complying with 2.4 and 7.3 of the Joint Working Agreement approve the Annual Business Plan 2017-2018, attached as **Appendix 1**, consisting of:
- the Transition Plan 2017-2018 as agreed by Regional Cabinet on 17<sup>th</sup> March 2017;
  - a budget (money received) of £19,257,500 and the ability to commit up to £50m (fifty million pounds fifty) for the support of schemes, projects and programmes detailed in the Cardiff Capital Region Implementation Plan, which was approved as part of the JWA, with any specific proposal subject to approval of the Regional Cabinet;
- c) To note that if commitments exceed the available monies received in 2017-2018 this will result in committing future annual budgets;
- d) Agree to establish appropriate delivery vehicles to implement approved projects, for example a lead authority; special purpose vehicle; a community interest company.

**Sheila Davies**  
**CCR Programme Director**  
**25<sup>th</sup> April 2017**

*The following Appendix is attached:*

- Annual Business Plan 2017-2018

*Background papers:*

- Cardiff Capital Region City Deal Agreement dated 1.3.17
- The report of the Accountable Body received and approved by the Regional Cabinet at its meeting held on 17<sup>th</sup> March 2017
- The report of the Regional Programme Director received and approved by the Regional Cabinet at its meeting held on 17<sup>th</sup> March 2017

## APPENDIX 1

### ANNUAL BUSINESS PLAN 2017-2018

The report of the Accountable Body received and approved by the Regional Cabinet at its meeting held on 17<sup>th</sup> March 2017, included the Regional Cabinet's Annual Budget for 2017-2018 amounting to £1 million (one million pounds), along with details of each council's respective contribution.

That report of the Accountable Body also proposed that 3% of the Wider Investment Fund (£742,500) would be ring-fenced for programme development and support, including support of the Advisory/Consultation Bodies, and was approved, (subject to acceptance of the Terms and Conditions for grant transfer).

The report of the Regional Programme Director contained the work plan for 2017-2018 called the Transition Plan, which was also approved by the Regional Cabinet at its meeting on 17<sup>th</sup> March.

Regional Cabinet have already approved £742,500 of the 2017-2018 Wider Investment Fund monies for partnerships and programme development support as stated above. This means that for 2017/18 the remaining budget available for project development and implementation is £19,257,500.

As the JWA Business Plan, (as detailed in Section 7 of the JWA), is still under development and hence key projects and programmes have not yet been prioritised and agreed, it is proposed that the use of the £19,257,500 is limited to the development and implementation of schemes, projects and programmes as detailed in the Cardiff Capital Region Implementation Plan, which was approved as part of the JWA, with any specific proposal subject to approval of the Regional Cabinet.

The capital expenditure in financial year 2017-2018 is:

	<b>Capital Expenditure Profile:</b>	
<b>Financial Year Ending</b>	<b>Development of Schemes detailed in the Implementation Plan</b>	<b>Total</b>
	<b>£m</b>	<b>£m</b>
31-Mar-18	19.257	19.257

To allow the Annual Business Plan to be implemented there may be a need to establish delivery mechanisms to take forward approved schemes, projects and programmes. It is therefore proposed that the Joint Cabinet agree that appropriate delivery mechanisms, for example appointment of a lead authority; a special purpose vehicle; a community interest company, be put in place to deliver approved projects.

Note:

The capital expenditure profile may vary dependent on any decision made by the Joint Cabinet related to 2.4 of the JWA which allows the Regional Cabinet to commit up to £50,000,000 (fifty million pounds) in advance of the agreement and adoption of the JWA Business Plan.

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# CARDIFF CAPITAL REGION CABINET

## CABINET MEETING 02 May 2017

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### THE COMPOUND SEMICONDUCTOR PROJECT PROPOSAL

### REPORT OF CARDIFF CAPITAL REGION PROGRAMME DIRECTOR

### AGENDA ITEM: 5

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Appendices 1, 2, 3a, 3b, 4, 5a, 5b, 6a, 6b, and 7 of this report are exempt from publication because they contain information of the kind described in paragraphs 14 and 21 of parts 4 and 5 of Schedule 12A to the Local Government Act 1972.

#### Reason for this Report

1. To present the Regional Cabinet with a proposal received from the private sector to invest funding from the Wider Investment Fund to support the development of a Compound Semiconductor Industry Cluster in the region by establishing an anchor space in the region for high end production and manufacturing.
2. To provide the Regional Cabinet with information, advise and analysis of the proposal to enable it to decide on this investment proposal.
3. To explain to the Regional Cabinet why the proposal would require the creation of a Special Purpose Vehicle to acquire a site and undertake associated works.

#### Background

4. The Cardiff Capital Region City Deal Document (Heads of Terms) included the following commitments to:
  - *“Transform the UK’s capability and help **position Cardiff as the European leader in Compound Semiconductor applications, the UK Government will invest £50million to establish a new Catapult in Wales. This new Catapult will complement the work of other organisations in Wales who are already working in this important area, including the Compound Semiconductor Institute at Cardiff University and the Compound Semiconductor Centre, a joint venture between Cardiff University and IQE;***
  - *Recognising this opportunity, the Cardiff Capital Region will **prioritise interventions that support the development of an internationally-competitive Compound Semi-Conductor cluster. Local partners believe that this will put the UK at the heart of an emerging global growth technology;***
  - *Accelerate the growth of innovation and facilitate investment in research and development, the Cardiff Capital Region will seek to prioritise:*
    - **Mechanisms to support high growth sectors;**
    - **The development of new facilities and employment sites;**
    - **Investment in intellectual property creation and commercialisation;**
    - **Adding value and complimenting existing innovation support.”**

5. The Cardiff Capital Region City Deal Implementation Plan 2016-2020, adopted by all 10 authorities as part of the Joint Working Agreement, included:

### **T2.5 /2 Developing an Internationally Competitive Compound Semiconductor Cluster**

Accelerate growth of innovation by:

- Establishing an anchor space in the region for high end production and manufacturing in 2017/18.
6. The objective of these commitments is to create a complete compound semiconductor eco-system in South Wales to take advantage of the growing prominence of compound semiconductor technology. This requires the development and integration of a compound semiconductor supply chain in South Wales, with the economic and social benefits that will bring.
  7. The benefits of clusters are well understood, with Silicon Valley in the US being a prime example. Indeed, there are semi-conductor clusters across Europe, namely Eindhoven, Dresden, Leuven and Grenoble. However, these are based on silicon technology, hence this is a unique opportunity for Wales to establish the world's first compound semiconductor cluster and establish itself at the forefront of compound semi-conductor technology globally.
  8. The cluster would build on existing investment into this technology by Cardiff University, IQE Plc, and Welsh Government. It would see a complete eco-system for the compound semi-conductor market in South Wales, allowing full movement from research through to production and commercialisation. The establishment of a UK Government funded Catapult at the proposed site would further enhance the reputation of the cluster.
  9. A proposal has been received from the private sector to invest £37.9m funding from the Wider Investment Fund to support the development of a Compound Semiconductor Industry Cluster in the region by establishing an anchor space for high end production and manufacturing. It is proposed that this investment would be repaid, over an agreed period of time, by means of leasing and resale of the property, the detail is attached as **Appendix 1**.
  10. As this proposal supports the Regional Cabinet's aspiration to support innovation and specifically helping to develop an internationally competitive compound semiconductor cluster the Cardiff Capital Region Programme Board (CCRPB) approved the proposal going forward for full assessment. It was agreed that Monmouthshire and Rhondda Cynon Taf Councils would lead on the assessment work.

### **Assessment**

11. As part of the assessment process several specialist independent reviews have been undertaken or commissioned.
12. External legal advice has been procured from Pinsent Masons and contained in **Appendix 2**.
13. External property advice has been commissioned from JLL and contained in **Appendices 3(a) and 3(b)**.

14. An external due diligence report including an economic impact assessment has been commissioned from KPMG and is contained in **Appendix 4**.
15. External advice has been sought from Pinsent Masons and KPMG in relation to delivery options and this is contained in **Appendices 5(a)** and **5(b)**.

### **Cardiff Capital Region Programme Board Observations**

16. The CCRPB have met twice to review the proposal, at those meetings they acknowledged that the City Deal Assessment Toolkit is still being developed and the Advisory Bodies are yet to be put in place, however, due to time constraints the proposal requires a decision to be made.
17. The CCRPB have reviewed the proposal and the specialist independent reviews and have formed the views listed below:

17.1 The proposal has the potential to:

- Create the environment for the successful development of a CSC cluster that could generate 4,000-5,000 jobs;
- Directly create and safeguard over 2,400 well paid jobs in the region;
- Provide a positive ratio of £1 public funding to £9.90 of private sector investment.

17.2 The proposal is structured to maximise the potential for the £37.9m to be repaid over an agreed period of time.

17.3 The proposal represents value for money and can comply with the HMT 5 Case Business Model requirements.

17.4 The proposal is legal and state aid compliant.

17.5 The proposal meets the terms of the Joint Working Agreement and the Assurance Framework.

17.6 The risk related to this proposal is medium / low with the probability of moderate implication being “unlikely” to “very unlikely”.

17.7 To effectively implement this proposal there is a requirement for the Joint Cabinet to establish a Special Purpose Vehicle.

18. On the basis of the above views, in accordance with 3.10 of the Assurance Framework, the CCRPB recommendation to the Regional Cabinet is:

**The proposal should be recommended to the Regional Cabinet for support via the Wider Investment Fund.**

19. The full observations of the CCRPB are contained in **Appendix 7**.

## Summary of Proposal

20. That the Regional Cabinet establish an anchor space in the region for high end production and manufacturing to assist in the establishment of a Compound Semiconductor Industry Cluster, by:
  - acquiring suitable premises;
  - entering into a development agreement to fit out the premises; and
  - entering into an agreement to lease the premises with an option for the lessee to acquire the freehold at a future date.
21. To enable this proposal to proceed to establish a Special Purpose Vehicle (SPV).
22. The full updated proposal is contained in **Appendix 6**, including a Risk Register.

## Financial Implications

23. *(to follow)*

(received and inserted 26<sup>th</sup> April 2017)

24. The ten partnering Councils approved the Cardiff Capital Region City Deal (CCRCD) Wider Investment Fund (WIF) totalling £495 million, consisting of £375 million grant from HM Treasury, passported via Welsh Government over the next 20 years. The remaining £120 million will be contributed by the ten partnering councils based on their respective population base and is currently modelled as being 100% capital in nature. The latter will become available once the JWA Business Plan is approved by all ten partner Councils. This constitutes the 'Reserved Matter' and is scheduled to be discharged no later than the 28<sup>th</sup> February 2018.
25. In order to drawdown the £375 million, Regional Cabinet must first discharge the 'Condition Subsequent' by approving the funding terms and conditions. The funding terms and conditions outline that £10 million per year of revenue funding will be provided from 2016/17 through to 2020/21 i.e. £50 million in total. The first two tranches of grant totalling £20 million will be paid no later than 30<sup>th</sup> September 2017, although Welsh Government are considering a request made by the project for this cash to be released by the 1<sup>st</sup> June 2017.
26. At its meeting of the 17<sup>th</sup> March 2017, Regional Cabinet approved that £742,500 be set aside in 2017/18 to meet the costs associated with (1) Regional Bodies and (2) Programme Development and Support.
27. The attached report seeks approval of £38.4 million (£37.9 million investment ask plus £0.5 million to agree the SPV programme management budget for the first two years) from the Wider Investment Fund, to support a request for investment funding ahead of the Joint Working Agreement (JWA) Business Plan being prepared and considered for approval by the ten partnering Councils.
28. Clause 2.4 of the Joint Working Agreement (JWA) provides that up to £50 million may be committed from the HM Treasury Contribution on 'Initial Project Investments' pursuant to the terms of the Assurance Framework and Annual Business Plan.



29. The Annual Business Plan has been prepared and presented to Regional Cabinet for consideration and approval at its meeting of the 2<sup>nd</sup> May 2017 – Agenda Item 4. This report is prepared on the basis that the Annual Business Plan is duly approved by Regional Cabinet.
30. The 'Total Costs' outlined for the project amount to £38.4 million and are scheduled to be paid on a quarterly basis from around June 2017 to 31<sup>st</sup> March 2019. This excludes the cost (£2 million) of acquiring the building from Welsh Government as it is anticipated, that subject to the Cabinet Secretary's approval, this sum will represent Welsh Government support towards the project. If approval is not secured, then the total investment cost will increase by this amount, albeit the costs will be met from the receipt generated by a future sale of the site.
31. Whilst Welsh Government are yet to confirm the exact timing for releasing the 2016/17 and 2017/18 grant monies, it is anticipated that a shortfall in cashflow will arise in both 2017/18 (circa £7.1 million) and in 2018/19 (circa £2.8 million). If Welsh Government are unable to meet the June 2017 date, then the short-term borrowing requirement will increase further. The proposal outlines the need to identify one or more councils to make available a temporary bridging loan to meet the cashflow requirements associated with the project's required investment profile. Therefore once approved, Recommendation B will be subject to the nominated Authority / Authorities budget framework approval processes and timescales for securing the same.
32. If the request for investment funding is approved, then Regional Cabinet should note that it will be committing just under 76.8% of the HM Treasury contribution due over the first five years to 2020/21. Furthermore, if Regional Cabinet decide to commit similar sums in respect of Regional Bodies and Programme Development and Support, then this will represent a further commitment of 5.9% over the remaining funding term to 2020/21. Therefore, the amount available to support other schemes will be greatly reduced over this period and will be largely dependent on funding from the Council contributions.
33. Furthermore, the scope for approving new revenue based projects will amount to around £8.63 million or 17.3% and be available in Year 5 only, and is likely to result in partnering councils having to consider whether a proportion of their respective capital allocations may now need to be provided as revenue. Whilst this would reduce the total cost of their contributions, it could have a disproportionate impact on the annual affordability cost approved as part of the affordability envelope. An alternative would be to approach Welsh Government / HM Treasury and request that an element of capital funding from Year 6 is provided as revenue.
34. The 'Project Proposal' is attached at Appendix 1 and is supplemented by the work carried out by a number of specialist advisors as detailed in paragraphs 11 to 15, with the advisors final reports attached as confidential appendices. Regional Cabinet should satisfy themselves that the format and detail of information referred to above complies with the requirements of its Assurance Framework.
35. The reports represent a substantial amount of complex technical, legal and financial information and therefore it is imperative that Regional Cabinet are given sufficient time to read and understand the advice given, as well as having the opportunity to raise any clarifications deemed appropriate. In particular, Regional Cabinet should note any key assumptions listed within the reports and be mindful of any caveats outlined. Equally important is the need to ensure that any risks identified (and the

associated mitigation measures) are fully understood, accepted and arrangements for their ongoing review and management are in place. Furthermore, Regional Cabinet should be confident that any residual issues outlined at this time are clearly articulated, and are capable of being resolved within the parameters e.g. cost estimates etc., before entering into legally binding commitment.

36. The Assurance Framework forms Schedule 8 of the JWA and was formally approved on the 1<sup>st</sup> March 2017. Schedule 2 of the JWA (Joint Committee Terms of Reference), states:

*“Agree the detail of the decision-making process and assessments (as referred to in the Assurance Framework and where yet to be completed) prior to Joint Cabinet considering individual projects.”*

37. The detailed decision-making processes and assessments will be developed in parallel with the timescales for finalising the JWA Business Plan. However, as an interim measure, the Programme Management Office (PMO) has developed a ‘Candidate Scheme Observation Record’ which will capture and reflect the consensus views of Programme Board. To assist Programme Board in formulating their individual views, PMO have also developed and populated an ‘Assessment Against 5 Case Business Model Requirements’, based on the information available at this time.
38. Cardiff Capital Region Programme Board observations are attached at Appendix 7 and summarises the Board’s view of the extent to which the Project Proposal has met the requirements outlined above.

#### Structure of the deal and Financial Standing

39. In addition, Regional Cabinet should be satisfied that the Project Proposal and related advice adequately covers the following key financial and commercial points:
- Matters pertaining to the financial standing and creditworthiness of the applicant at this time. Furthermore, that the forecasted performance of the applicant over the period of the proposal remains within an acceptable range, given the level of investment planned;
  - That the applicant remains incentivised at all times to manage costs and ensure that works are completed on time and within budget;
  - The Project Proposal is structured in a way which ensures the transfer of risk associated with delays and/or costs over-runs to the applicant;
  - That agreed benefits are realised and that all rental income due to Council’s SPV is received as expected;
  - All income and costs in relation to the Catapult are appropriately reflected within the terms of the proposal and where appropriate reflected within the level of investment being sought;
  - That Parent Company Guarantee provided will be enforceable and provides the required level of security, given the planned scale of investment;
  - An assessment of the ‘opportunity cost’ forgone in approving this request for investment versus over any other proposal or opportunity available;
  - Regional Cabinet need to be satisfied with the advice provided in relation to the deal needing to be structured as an operating lease and therefore being accounted for as being off-balance sheet;

- Matters relating to the funding terms and conditions, including but not limited to State Aid, Procurement, the purposes etc;
  - An assessment of VAT, SDLT and wider taxation implications in respect of the proposed delivery vehicle;
  - That the proposal is ultimately affordable and represents value for money.
40. The report seeks approval to create a Special Purpose Vehicle (SPV) through which all approved investment monies will flow. Legal advice on Regional Cabinet's powers in this regard is attached at Appendix 5a. Setting-up and managing the day to day operations of the SPV will give rise to budgetary implications, for example legal costs associated with constituting and registering the SPV, the need to discharge financial and administrative duties etc. In addition, costs associated with taking forward the project's next steps i.e. Implementation Plan, ongoing contract monitoring and evaluation arrangements, including landlord obligations. Regional Cabinet should satisfy itself that the costs identified within the Financial Case are sufficient to meet the above.
41. These financial implications were written ahead of all external advice being finalised and may require to be supplemented once the Authority has had sight of the final advice reports.

### **Legal Implications**

42. *(to follow)*

(received and inserted 26<sup>th</sup> April 2017)

43. The legal advice in respect of the Compound Semiconductor Project Proposals ('the Project') has been provided by external lawyers Pinsent Masons and Members are referred to that advice set out in the confidential appendices to the report.
44. As will be seen from the body of the report, the Project has had the benefit of taking external advice from a number of advisers; KPMG, JLL, GVA, Pinsent and a QC, which recognise the exciting potential of the proposals. In looking at the external advice, please note, however, that each advice:-
- (a) is based on a number of assumptions and
  - (b) contain caveats which serve to limit the advice
45. Whilst it is not unusual for external advice to be based on assumptions and to contain caveats, it is important that the decision makers are satisfied as to the robustness of the assumptions made and, as regards any caveats, the resulting limitation on the advice given.
46. From the report it can be seen that the investment required is of significant magnitude. As with any decision, Members will need to be satisfied that they have before them all material information and have had appropriate time to consider matters and raise any queries they may have, so that a reasonable and informed decision may be made.
47. In considering this matter Members should be mindful of the WG funding conditions (see previous report which sets out advice on the terms and conditions attaching to the funding) and the Authorities potential liabilities if found to have breached the WG funding conditions - in terms of both claw back and jeopardising

future funding if the CCRCD fails to pass a gateway review because of such a breach. Here the position as regards compliance with all legislation, including procurement and state aid are key issues (please see the external advice for the detailed legal advice on these matters).

48. The Joint Working agreement provides powers to the Joint Cabinet to make Initial project investment decisions (authorised to commit up to £50 000 000 of the HMT contribution) on projects approved pursuant to (i) the terms of the Assurance framework and the (ii) Annual Business Plan. It is therefore important that the decision makers are content that point (i) and (ii) are satisfied before making the decision in respect of the Project.
49. The proposal involves expenditure of monies in excess of the HMT contribution that will have been received by the date the proposed expenditure is required. The question therefore arises how such shortfall in funding is being met? The intention of the JWA is clear that it is only the HMT contribution (up to £50 million) that can be committed ahead of the JWA business Plan being approved. At the time of writing these legal implications it is understood that it is proposed that one local Authority would take the lead and use its prudential borrowing powers to borrow the shortfall in funding required and subsequently be repaid from future tranches of HMT funding, once received. The condition to proceed with the Project will need to be conditional on such Authority making a decision to prudentially borrow the monies required and with the 9 remaining Authorities agreeing to enter into an appropriately worded agreement (back to back agreement) whereby they commit to make good their share of such funding, if for any reason future year HMT contribution is not received.
50. As will be appreciated the JWA Business Plan has yet to be agreed .The decision to approve the JWA Business Plan is a matter reserved to each Council and as a consequence there is a risk that the JWA Business Plan may not be agreed as we simply do not know what each council may decide. It should be appreciated that if the JWA Business Plan is not approved, the authorities will still be left with meeting the costs of the current Project to the extent that HMT funding does not cover the same or if, for whatever reason, the HMT funding is reclaimed or future years funding stopped. This point is further addressed in the Business Case at paragraph 4.12, which is understood to reflect the external legal advice received.
51. The external advice makes a number of recommendations in terms of conditions that should be attached to the proposed transaction, should a decision be taken to proceed. To point out the obvious these conditions should be applied if a decision is made to progress the Project.
52. These legal implication were written ahead of all external legal advice being finalised and may require to be supplemented once the Authority has had sight of the final advices.
53. In this case it is understood that there has been no consultation with stakeholders as regards the proposal, which may be a point of criticism that such stakeholders may raise
54. In considering this matter, regard should be had, amongst other matters, to:
  - (i) The Councils' duties under the Well-being of Future Generations (Wales) Act 2015 and;

- (ii) Public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: a. Age; b. Gender reassignment; c. Sex; d. Race – including ethnic or national origin, colour or nationality; e. Disability; f. Pregnancy and maternity; g. Marriage and civil partnership; h. Sexual orientation; i. Religion or belief – including lack of belief.

### **Equalities Impact Assessment.**

55. Included above.

### **Reasons for Recommendations**

56. To support the development of a Compound Semiconductor Industry Cluster in the region and in accordance with the Cardiff Capital Region Wider Investment Fund Assurance Framework provide the views of the Cardiff Capital Region Programme Board (contained in **Appendix 7**) in supporting this proposal.

### **RECOMMENDATIONS**

Subject to the agreement of terms for the purchase of the specific facility:

- a) To enter into a Heads of Terms agreement for the purchase of a specific facility with finalisation of the transaction delayed until such time as the property is sold-on or at the cessation of the lease;
- b) In accordance with section 2.4 of the JWA, commit £37.9m of the HMT Contribution to the Wider Investment Fund for landlord works, building fit-out and ancillary works;
- c) To enter into a Heads of Terms agreement for an eleven-year lease, with an in-built stair-cased rental profile and flexible Option to Purchase;
- d) To support a further Heads of Terms that allows the head lessee, to enter into a sub-lease arrangement;
- e) To make a direct award for the development and fit-out of the facility;
- f) Establish a Special Purpose Vehicle to implement the proposal, the detail of which will be the subject of a further report.
- g) Prior to a Special Purpose Vehicle being established, to agree that for purposes of continuity, that Monmouthshire County Council continues to act as lead Authority.
- h) To accommodate this proposal will require an amendment to the Annual Business Plan 2017-2018 which will be reported back to the next meeting of the Regional Cabinet.

**Sheila Davies**  
**CCR Programme Director**  
**25<sup>th</sup> April 2017**

*The following Appendices are attached:*

Confidential Appendix 1:	Proposal to CCR City Deal – March 2017
Confidential Appendix 2:	Legal Observations - Pinsent Masons
Confidential Appendix 3(a):	Property Market Review – JLL
Confidential Appendix 3(b):	Property Feasibility Estimate - JLL
Confidential Appendix 4:	Due Diligence Report including an Economic Impact Assessment - KPMG
Confidential Appendix 5(a):	Establishing an SPV – Pinsent Masons
Confidential Appendix 5(b):	SPV Investment Issues – KPMG
Confidential Appendix 6(a):	Full Revised Proposal
Confidential Appendix 6(b):	Risk Register
Confidential Appendix 7:	Cardiff Capital Region Programme Board Observations Record

*Background paper:*

- Cardiff Capital Region City Deal Joint Working Agreement dated 1.3.17