

DATED

June 2022

POWYS COUNTY COUNCIL (“the Council”)

and

CANAL AND RIVER TRUST (“the Trust”)

SERVICE LEVEL AGREEMENT

**Regarding: The Administration and Delivery of the Levelling Up Fund
(‘LUF’) proposal Montgomery Canal Restoration**

Project Name: Montgomery Canal Restoration

LUF Project Ref: LUF 0268

This Service Level Agreement (“SLA”) is made the day of June 2022

BETWEEN

(1) **POWYS COUNTY COUNCIL** of Spa Road East, Llandrindod Wells,
Powys , LD1 5LG (“**the Council**”); and

(2) **Canal and River Trust** (company number 7807276) National Waterways
Museum Ellesmere Port, South Pier Road, Ellesmere Port, Cheshire,
England, CH65 4FW (“**the Trust**”)

and collectively known as ‘the Parties’.

Background

- A. On 27 October 2021, HM Government announced the outcome of the LUF competition. The Council were successful with their bid for Montgomery Canal Restoration.
- B. The Department for Levelling Up, Housing and Communities (‘**DLUHC**’) considered the Bid Application submitted by the Council for the LUF proposal Montgomery Canal Restoration and agreed to allocate funding up to £13,937,565 across FY2021-22, FY2022-23, FY2023-24 and FY2024-25 in accordance with the Financial and Payment arrangements set out in Schedule 5.
- C. The DLUHC and the Council have entered into a Memorandum of Understanding dated 18th February 2022 (“MOU”) the contents of which are set out in Schedule 4 and the Parties agree to undertake the Project in accordance with the MOU.
- D. The purpose of this Service Level Agreement (“**SLA**”) (‘is to set out the terms, principles and practices that will apply to the working relationship between the Parties regarding the administration and delivery of the Levelling Up Fund (‘**LUF**’) proposal Montgomery Canal Restoration (“**the Project**”)

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this agreement:-

<p>“Agreement”</p> <p>“Bid Application”</p>	<p>means this Service Level Agreement and any schedules attached hereto;</p> <p>means the Levelling Up Fund Application (and supporting documentation) for Montgomery Canal Restoration submitted to DLUHC dated 17th June 2021;</p>
<p>“Claw Back”</p>	<p>means Claw Back of any of the LUF funding legally made by the DLUHC as a result a failure to deliver the Project as per the requirements of the LUF as set out in the MOU[];</p>
<p>“Commencement Date”</p> <p>“Confidential Information”</p> <p>“DfT”</p> <p>“DLUHC”</p>	<p>means the date of this Agreement;</p> <p>means any information which has been designated as confidential by all Parties or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which related to the business, affairs, assets, goods or services or contract/ agreements of the Parties;</p> <p>means the Department for Transport;</p> <p>means the Department for Levelling Up, Housing and Communities</p>
<p>“End Date”</p>	<p>means for the duration of the term of the MOU as may be extended from time to time (with the written agreement of the Trust) and/or the completion of the Project whichever event shall occur later</p>

“FOIA”	means the Freedom of Information Act 2000;
“HMT”	means HM Treasury;
“LUF”	means the Levelling Up Fund;
“LUF Conditions”	means the terms and conditions relating to the LUF and set out in the MOU;
“MOU”	means the memorandum of Understanding agreed between the DLUHC and Powys County Council dated 18 February 2022 (see Schedule 4)
“PAR”	means a Project Adjustment Request submitted by the Council to the DLUHC during the Project in accordance with this Agreement and the MOU;
“Project Board”	means the group responsible for the overall strategic direction of the Project whose terms of reference are detailed in Schedule 1
“PMU”	means the project management update submitted to the DLUHC as part of the Bid Application and as amended from time to time.

“Project” means the Montgomery Canal Restoration project as set out in Clause 4 below

- 1.2 Clause, Schedules and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.7 A reference to writing or written includes fax and e-mail.

2. TERM AND TERMINATION

- 2.1 If a Party wishes to withdraw from this Agreement it must notify the other Party by giving not less than six (6) months' notice in writing of its intention to withdraw.
- 2.2 This Agreement shall begin on the Commencement Date and (subject to earlier termination in accordance with this Agreement) shall continue until the End Date.

3. CONSEQUENCES OF TERMINATION

- 3.1 If this Agreement is terminated the Parties will meet to agree which element(s) of the Project shall be continued during the period of notice including the extent to which those elements of the Project will be continued and any changes to those elements of the Project as a result of the termination as may be necessary.
- 3.2 Each Party shall be responsible for Claw Back of the LUF funding legally recoverable by the DLUHC which arises as a result of (and to the extent of) a defaulting Party's negligent act or negligent omission resulting in the failure to deliver the Project as per the requirements of the LUF as set out in the MOU as varied by a PAR.[].

4. THE PROJECT

- 4.1 The Project is set out in the Bid Application and in particular the PMU and the MOU which reflects the requirements of the LUF approval by DLUHC, DfT and HMT.
- 4.2 In summary, the Project aims to encompass several elements of work to revitalise a disused section of the Montgomery Canal to be an exemplar of

sustainable development, in North Powys. The Project will make a substantial contribution to the phased restoration and regeneration of the Canal as a flagship visitor attraction providing long term economic, cultural and recreational benefits to local communities, subsequently protecting and enhancing the canals unique natural environment and built heritage, making it accessible to local people and visitors. In addition, complementary infrastructure and improvements works will be undertaken to enhance the economic, social and environmental benefit from the Canal, including the development of a community cultural hub on the canal at Welshpool Wharf, utilising historic Canalside buildings.

- 4.3 The Parties agree to use the LUF for the purposes outlined in the Bid Application, as approved by DLUHC, DfT and HMT.
- 4.4 The Parties agree that if there is a future need to alter, amend and/or vary the Project purposes in any way during the term of this Agreement and the End Date that they will follow the PAR process as set out in clause 9 of the MOU and seek DLUHC's prior approval to any proposed change. Each Party shall at its own cost and expense, use its reasonable endeavours to perform all acts, and sign, execute and deliver all information and documents as the DLUHC shall require in a timely matter, as may be reasonably required for the purpose of giving full effect to this Clause 4.4 in the opinion of either party or DLUHC.
- 4.5 The component elements of the Project works as fully outlined in the Bid Application and PMU scheduled hereto are as follows:

Trust Projects

- 4.5.1 Rebuild Walls Bridge and Williams Bridge; and
- 4.5.2 Create 3 off-line water-based nature reserves; and
- 4.5.3 Dredging to remove silt and weed growth, bank protection works; and

- 4.5.4 Aqueduct repairs, relining locks, repairing leaks and sluices, replace missing masonry and other infrastructure works to enable the utilisation of the Canal for the project purposes; and

Council Project

- 4.4.5 Development and enhancement of a canal side cultural hub at Welshpool town centre.

5. GOVERNANCE

- 5.1 This Agreement is entered into by the Parties on a basis of co-operation and good faith. The Parties confirm that they have all necessary powers to enter into this Agreement and in the case of the Council it warrants that it has taken all steps necessary in order to delegate powers as referred to in this Agreement in accordance with its constitution and financial rules.
- 5.2 By entering into this Agreement the Parties agree to work in collaboration and good faith:
 - 5.2.1 To establish a project governance structure as set out in Schedule 2 to this Agreement.
 - 5.2.2 To establish a Project Board consisting of one or more senior officials who have the authority to make strategic decisions on behalf of the Party within the parameters of the MOU/PMU, associated application bid documentation and this Agreement. The Project Board will be responsible for the overall strategic direction of the Project and its functions and terms of references are set out in Schedule 1 to this Agreement.
 - 5.2.3 Convene the Project Board on the basis set out in this Agreement and the agreed Terms of Reference.
 - 5.2.4 Ensure that the Project Board meets at regular intervals, at least every 3 months, to review progress and resolve outstanding issues, in particular those escalated to the Project Board by either Party.
 - 5.2.5 Share such Project information between Parties as is necessary for the smooth and cooperative running of the Project, including, but not limited to:

- 5.2.5.1 cross-project risks or issues;
 - 5.2.5.2 problem or dispute resolution;
 - 5.2.5.3 identified best practice;
 - 5.2.5.4 financial or Grant information; and
 - 5.2.5.5 any other information deemed to be relevant by the Project Board
 - 5.2.5.6 publicity and press announcements in accordance with the Comms Strategy which will be approved by the Project Board.
- 5.2.6 Contribute towards and implement a Communication Plan:
- 5.2.5.1 for the dissemination of the information; and
 - 5.2.5.2 to provide such information as may be required by Powys County Council to satisfy DLUHC for the collecting of data, monitoring and evaluation of the LUF under clause 7 of the MOU and for evidencing the LUF assurance requirement as set out in clause 8 of the MOU.
- 5.2.7 To discuss with each other, through the Project Board, as soon as possible, any problems or disputes which arise, attempting to resolve any difficulties through negotiation at an early stage and ensuring appropriate officers are available upon reasonable notice to discuss any issues under dispute.
- 5.2.8 To undertake and agree that they will adhere to the terms of this Agreement and will observe, perform and comply in all material respects with the LUF Conditions. In particular the Parties agree to act in accordance with and be subject to declarations or decisions which have been made under the MOU and provisions in respect of eligibility, monitoring, audit, record retention, match funding and Claw Back that may arise in relation to the LUF.
- 5.2.8 That any Party whose actions or failure to act constitute a breach of the LUF Conditions or MOU will accept sole responsibility for any compliance failure and / or breach of conditions and will fully indemnify the other Party against any [Claw Back] and associated expenses which might arise and as a result of such default by the Trust who will comply with any instructions of the Council in order to remedy or

mitigate any such breach OR in the case of a breach by the Council, with any instructions of the Project Board in order to remedy or mitigate such breach by the Council. Where more than one party is responsible for any compliance failure they shall be jointly responsible for any such Claw Back and associated costs (in proportion(s) that are fair and commensurate to the loss caused by each respective Party for their failure leading to the breach.

- 5.3 The parties agree that, upon receipt of reasonable written notice by one Party to the other, the recipient Party will permit rights of access to the other for audit, assurance, compliance and any other purposes set out within the MOU, undertaking to provide in a timely manner information requested by the requesting Party to enable all relevant deadlines to be met.
- 5.4 Each Party will notify the other immediately of any event that could temporarily or permanently jeopardise the continuation of the Project. The Council shall notify the Trust and the Project Board of any such events that it has become aware of as soon as possible.
- 5.5 Each Party will notify the other immediately if it knows of any circumstance that may adversely affect the financial viability of the Project or which places the Parties in jeopardy through the possible failure of the delivery of the Project. The Council shall notify the Trust and Project Board of any such events that it has become aware of as soon as possible.
- 5.6 Without prejudice to the generality of Clause 5.1 to 5.5 if any Party receives notification of any (actual or potential) **Claw Back**, financial imposition, or deduction of LUF imposed by HM Government or DLUHC (acting in its capacity as legal authority to monitor subsidy control and adherence to procurement laws) as a result of any non-compliant procurement process or breach of subsidy control rules then the non-compliant party will be solely responsible for reporting the notification to the other party as soon as possible and for repayment of such monies to the HM Government or DLUHC and shall indemnify the other party in respect thereof.
- 5.7 Each party is personally responsible for ensuring compliance with procurement and subsidy control rules in relation to any LUF to be spent by them. That party shall be responsible for the repayment of any sums to be paid or repaid to the

HM Government or DLUHC as a result of any failure to comply with procurement, subsidy control rules or other levelling up grant rules in force on the date of this Agreement in relation to the LUF allocated to them, and shall fully indemnify the other party against [] any Claw Back and associated costs of LUF by HM Government or DLUHC in relation to the same.

6 CONFIDENTIALITY AND DATA PROTECTION

- 6.1 Each Party shall ensure that it complies in all respects with the provisions of the Data Protection Act 1998 (DPA) and the General Data Protection Regulation 2016/679 (from the date the latter is in force) and all parties shall duly observe their obligations under the DPA which arise under this Agreement. References to the DPA in this Agreement shall be interpreted as reference to the General Data Protection Regulation 2016 from the date that such regulation is in force.
- 6.2 Neither Party shall disclose any Personal Data as defined under the DPA which they have received from each other to any third party without the prior written consent of the other or subject to statutory provision including the DPA other than is required under the Offer Letter.
- 6.3 The Parties shall:
- 6.3.1 treat all Confidential Information as confidential and safeguard it accordingly and
 - 6.3.2 not disclose any Confidential Information of any other Party without the prior written consent of that Party, except to such person and to such extent as may be necessary for the performance of the Project
- 6.4 Each Party shall take all necessary precautions to ensure that all Confidential Information obtained from other Parties under or in connection with the Project:-
- 6.4.1 is given only to such of the staff or contractors engaged in connection with the performance of the Project as is strictly necessary for the performance of the Project and only to the extent necessary for performance of the Project;
 - 6.4.2 is treated as confidential and not disclosed (without prior approval) or used by any person otherwise than for the purposes of the Project.

6.5 Each Party shall ensure that its relevant staff are aware of the confidentiality obligations under this Agreement.

7. FREEDOM OF INFORMATION AND OPENNESS

7.1 Notwithstanding clause 6 (Confidentiality) each Party acknowledges, its own obligations and the obligations of the other Party under the Freedom of Information Act 2000, the Statutory Code issued under Section 45 of the Act and the Environment Information Regulations 2004 (the "Information Laws"), that the Council and the Trust shall in all respects and at no additional cost to the other Party co-operate with a Party's requests for assistance in complying with the other Party's disclosure obligations under the Information Laws .

7.2 Each Party agrees that

(a) the provisions of clause 6 are subject to the Party's respective obligations and commitment under the Information Laws; and

(b) where a Party is managing a request for information made pursuant to the Information Laws the other Party shall co-operate with the Council and shall respond within 5 Working Days of any written request by the other Party for assistance in determining how to respond to a request for disclosure.

7.3 The Parties will use reasonable endeavours to consult the other in writing in relation to any request for disclosure of information regarding the other Party or the Project in accordance with the Information Laws.

7.4 [Subject to clause 7.5, the Trust shall not respond directly to a request for information regarding the Project or this Agreement pursuant to the Information Laws unless it is expressly authorised to do so by the Council or is required to do so by Law (in which case the Council must be notified of the disclosure as soon as reasonably possible).

7.5 The Parties acknowledge that they are both directly subject to Information Laws.

7.6 Whilst the Parties will work together to seek opinion of each other but it is acknowledged and agreed that each party is responsible for determining at its absolute discretion whether information held by it is exempt from disclosure in accordance with the provisions of FOIA and whether the information is to be disclosed in respect of any request made to the Trust directly.

8. HEALTH AND SAFETY

8.1 All Parties shall comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, regulations or orders relating to health and safety.

8.2 Each Party shall indemnify the other Parties against any claim, liability, loss or expense incurred as a consequence of breach of the Health and Safety legislation as listed in 8.1.

9. INSURANCE

9.1 Each Party will have in place and will maintain in force valid, adequate and appropriate insurance in respect of certain of its property assets (which it does not consider to be within its self-insured programme) and undertakings in this Agreement against professional negligence, public and employers' liability in such amounts as may be reasonably expected and/or required, from time to time.

9.2 [not used];

9.3]

9.4 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which it is entitled to bring a claim against the party pursuant to this Agreement.

9.5 Notwithstanding any other provision of this Agreement no party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) loss of or damage to property;
- (c) death or personal injury caused by its negligence; or
- (d) any other liability which cannot in law be limited.

10. STAFFING

- 10.1 Each Party will employ sufficient staff to ensure that the elements of the Project for which they are responsible are resourced at all times and in accordance with the Bid Application and PMU. Each Party will ensure that staff used to provide the services are suitable, competent and appropriately qualified and experienced to undertake the duties required of them. Each Party will create, maintain and preserve adequate and comprehensive records as evidence of the monitoring and supervision of the competence of the staff and volunteers it uses.

11. BRANDING and COMMUNICATION

- 11.1 The Parties agree to adhere to the guidance issued by DLUHC from time to time on the Branding and Communication associated with LUF projects and the branding guidelines of each Party in accordance with the Comms Strategy.

12. DEFAULT

- 12.1 Without prejudice to any other right or remedy, if either Party discovers evidence which, in its reasonable opinion, indicates non-compliance with the LUF Conditions and/or breach of this Agreement, either Party may serve a Default Notice upon the defaulting Party. Any such Default Notice shall set out the nature of the alleged Default and require the defaulting Party to remedy the default within such reasonable times as may be specified in the Default Notice.
- 12.2 Any dispute as to Default Notices, and / or the service thereof, under this Clause, shall be referred to the Project Board to make a decision at the earliest opportunity in line with the agreed Terms of Reference for that group.
- 12.3 If any Default Notice served under Clause 12.1 is not complied with within the timescale set out in the Default Notice, then the Project Board may instruct the Council to:
- 12.3.1 Terminate this Agreement either immediately or on reasonable notice as instructed by the Project Board; and / or

12.3.2 Deduct from any amount then due, or to become due to the defaulting Party such amount as is reasonable to rectify the default

13. DISPUTE RESOLUTION

13.1 If there is a dispute between the Parties concerning the interpretation of this Agreement then any Party may notify the others in writing that it wishes the dispute to be referred to a meeting of the Project Board to resolve, all Parties negotiating on the basis of good faith and in line with the agreed Terms of Reference for the Project Board.

13.2 If the Project Board is unable to resolve the matter within 30 working days then the issue shall be referred to the Chief Executive Officers of the Parties.

13.3 If the said Chief Executive Officers are not able to resolve the matter within a further thirty (30) working days the provisions of paragraph(s) 13.4 and 13.5 shall take effect.

13.4 In the event of the Chief Executive Officers not being able to resolve the matter the dispute shall be dealt with by the following mediation procedure:

13.4.1 for the purpose of this paragraph 13.4 a dispute shall be deemed to arise when one Party serves on the other a notice in writing stating the nature of the dispute

13.4.2 every dispute notified under this paragraph 13.4 shall first be referred to mediation in accordance with the mediation procedures of the Centre for Effective Dispute Resolution

13.4.3 the Mediator shall be agreed upon by the Parties and failing such agreement within fifteen (15) working days of one Party requesting the appointment of a Mediator and proposing a name then the Mediator shall be appointed by the Centre for Effective Dispute Resolution.

13.4.4 unless agreed otherwise the Parties shall share equally the costs of mediation

13.5 The decision of the Mediator shall be final and binding on all Parties .

13.6 This dispute resolution procedure cannot be used in relation to any dispute relating to any revision of this Agreement.

14. FINANCIAL ARRANGEMENTS

- 14.1 The Parties agree to use the funding provided by the Levelling Up Fund for the purposes outlined in the Bid Application and PMU approved by DLUHC as set out in Schedule 5 and to collaborate with each other to demonstrate this.
- 14.2 The Parties agree to use LUF grant payments issued by DLUHC for capital expenditure only.
- 14.3 The Trust agrees to provide the Council with;-
- 14.3.1 such evidence as may be required by the Council to enable the Council's Section 151 Officer to provide six monthly written assurance(s) to DLUHC and DfT that the Project continues to represent value for money/best value and provisions of accurate data and information within the assurance cycle as set out in the CLGU Assurance and Performance Management Framework as provided in clause 8.2 of the MOU and corresponding quarterly monitoring return to enable the grant payments to be made in accordance with the detail outlined in Schedule 5, Financial and Payment; and
- 14.3.2 Provide regular project, financial, and risk reporting in such a format as by DLUHC so as to demonstrate expenditure of the previous funding and that outputs and outcomes are being met, in line with the approved Bid Application and subsequent PMU; and
- 14.4 If either Party needs to amend the annual spending profile, requiring a change to the indicative allocations set out in the Background section of this Agreement, the Party requiring the amendment will provide the required evidence and documentation to enable the Council to submit a PAR within the time parameters of the PAR process. The Council agrees to submit to DLUHC any PAR request received from the Trust in a timely manner. The Parties accept that there are no guarantees that such requests will be accommodated by DLUHC.
- 14.5 It is accepted by the parties that there remains uncertainties around the detail of ground investigations, permissions and full design solutions yet to be done and therefore the cost variance arising from these is yet to be settled. The proposed approach to mitigation is the funding of works to be delivered at fixed value only. This will mean:

- a. that the agreed LUF will be fully spent in progressing the proposals for the Projects and carrying out what is settled and agreed.
- b. that the full extent of the works listed may not be achieved if specific elements prove more expensive than the budget estimate and any such shortfall cannot be obtained by way of grant funding elsewhere by the Parties:.. and provided that this Clause 14.5 is subject to the provisions pertaining to the requirement for the parties to complete the PAR process pursuant to Clause []]

14.6 The Parties agree and acknowledge that they must spend the LUF connected to the MOU by the end of the funding period (31 March 2024) unless otherwise agreed with DLUHC.

[discussion required about quarterly then monthly payments required]

15. MONITORING and EVALUATION

15.1 The Parties hereby adopt and agree to follow the Levelling Up Fund Monitoring and Evaluation Guidance provided by DLUHC (“LUF M&E Guidance”).

15.2 The Parties agree to full transparency open book working and a duty of good faith regarding all matters relating to the Project and this Agreement.

15.3 The Council agrees to collect and provide to the Trust upon request data on Project specific inputs, outputs and outcomes as set out in the Project Output Indicators and Outcome Indicators tabs of the Bid Application or the PMU to enable the DLUHC to undertake programme-level evaluation including data collection for outcomes and impacts The Trust will if agreed between the parties allocate £30,000 from its allocation to support this.

15.4 The Parties agree to provide DLUHC with such evaluation assistance as they may request including collecting baseline data where alternative data sources are not available and facilitating meetings with key stakeholders.

15.5 The Parties agree to undertake a project level local evaluation as described in the Bid Application.

15.6 The Parties agree to collaborate with DLUHC over monitoring and evaluation requirements, which will involve reporting quarterly on project expenditure, project progress, stakeholder engagement, risks, milestones and any project

changes. The Parties will also collaborate with DLUHC to provide six-monthly reporting on project outputs and potentially some outcomes. DLUHC shall assist the Council where possible, and the Parties will work together to satisfy these requirements. This includes collecting accurate data and using the agreed metrics and methods as set out in the LUF M&E Guidance.

15.7 The Parties Agree to promptly share information at appropriate times as and when requested by DLUHC, including:

- Current funding that has been spent
- Planned expenditures
- Updates on key project milestones and risks
- Procurement and governance

16. ASSURANCE

16.1 The Parties agree to follow the Assurance and Performance Management Framework provided by DLUHC setting out the LUF assurance processes.

16.2 The Parties will collaborate with DLUHC via the Council over assurance requirements, to enable the Council's Section 151/95/114/54 Officer to give six-monthly written assurance to DLUHC and DfT where appropriate. This includes written confirmation that the project continues to represent value for money / best value and provisions of accurate data and information within the assurance cycle as set out in the CLGU Assurance and Performance Management Framework.

16.3 The Parties will also collaborate with DLUHC if required to support further assurance through risk based Deep Dive activity as set out in clause 8.2 of the MOU. Deep Dives will include engagement with the Council's SRO, Section 151 Officer and Project Leads, alongside the provision of specified procurement, financial and decision-making evidence on request for review. The Parties agree to work together to satisfy these requirements.

- 16.4 The Parties agree to ensure that data can be shared for the prevention and detection of fraud by including the following clause in all agreements with companies or external entities:

“Data may be shared with other enforcement agencies for the prevention and detection of crime.”

- 16.5 The Parties agree to fully comply with all obligations set out in the Fraud Risk Assessment guidance in Schedule 3 to ensure the safe administration of grants and that appropriate measures are put in place to mitigate against the risk of both fraud and payment error.

17. COMMUNICATION IN WRITING

- 17.1 Any communication required to be in writing under the terms of this Agreement shall be sent to the addresses indicated at the beginning of this Agreement and marked for the attention of the relevant Lead Officer as identified from membership of the Project Board. Each party shall use reasonable endeavours to communicate in accordance with the Agreement.

18. THIRD PARTY RIGHTS

- 18.1 The parties to this Agreement confirm and agree that they do not intend any provision of it to be enforceable by any other person pursuant to the Contract (Rights of Third Parties) Act 1999 save as set out in this Agreement.

19. NO PARTNERSHIP

- 19.1 The Trust and the Council are independent from each other and save as set out in this Agreement nothing contained in this Agreement shall be construed as implying that there is any relationship between the Trust and the Council of partnership or of principal / agent or of employer / employee.

20. VARIATION

20.1 The terms of this Agreement may be varied with the mutual agreement of both parties. Such variation will be recorded in writing.

21. GOVERNING LAW

21.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales as they apply in Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

22. GENERAL

22.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

22.2 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

SCHEDULE 1

Terms of Reference for the Project Board

1. PURPOSE:

The purpose of the Board is to oversee the delivery of the Montgomery Canal Restoration Levelling Up project. The Board will:

- 1.1 Oversee and monitor delivery of the project and programme of works as set out in the LUF funding application and any subsequent changes agreed by UK Government.
- 1.2 Ensure that roles and responsibilities are clearly defined at the commencement of the project and that staff resources are in place to enable the effective implementation of the project.
- 1.3 Ensure the project is delivered to time and key milestones are met.
- 1.4 Monitor and approve work packages ensuring that the project does not exceed the available budget.
- 1.5 Monitor the procurement of consultants and contractors
- 1.6 Receive and consider exception reports to identify variances in project delivery and where appropriate ensure actions are implemented to address any variances.
- 1.7 Oversee the financial management and monitoring of the project and external grant funding requirements.
- 1.8 Receive and agree project risk and issues logs and take actions accordingly to mitigate risks and resolve issues that have been elevated by the Project Manager.
- 1.9 Report progress with the delivery of the project and escalate any significant issues, decisions or changes in project and risk register to the Economic Development Delivery Group / Canal & River Trust Board for information/decision as appropriate.
- 1.10 Ensure that the project benefits, outcomes and outputs are delivered, and that appropriate monitoring and evaluation of the project is in place in accordance with LUF grant funding requirements.

- 1.11 Agree a communication plan and approve external communications and protocols.
- 1.12 Ensure key stakeholders are consulted, engaged and updated as appropriate.
- 1.13 Confirm the successful delivery and sign-off of the project.

2. FUNCTIONS:

- 2.1 The Project Board is reporting to the Cabinet of the Council and to the Canal & River Trust Board.
- 2.2 Where actions relating to matters considered by this Board reasonably fall on officers to undertake, then the Board may steer officers in taking those actions provided that such decisions did not exceed the limitations on cost, scope and programme outlined in the MOU/PMU and associated documentation.
- 2.3 Where a decision is require that exceed the limitations on cost, scope and programme outlined in the MOU/PMU and associated documentation, then the Board may make recommendations to the Cabinet of the Council and to the Canal & River Trust Board as appropriate.

3. MEMBERSHIP:

3.1 The core membership of the Board will comprise:

Job Title/Role
Regional Director of Wales and South West, Canal & River Trust
Head of External Programme Delivery', Canal & River Trust
Chair of Montgomeryshire Canal Partnership (Observer)
Head of Economy & Digital Services, Powys CC - Chair
Senior Manager (Highways, Technical and Business Development), Highways Powys CC

- 3.2 Substitutes are permitted.
- 3.3 The chair of the Board will be appointed by the Council as the lead authority will be agreed at the outset.
- 3.4 External attendees may be invited to the meeting, such as to present information or offer expert advice.
- 3.5 Agendas and papers for meetings will be sent to attendees at least 5 calendar days prior to each meeting of the Board.

3.6 For every meeting the agenda shall include: Highlight Report; Programme; Project Risk Register; Issues; Change Control; Finance Log.

4. FREQUENCY:

- 4.1 At the first meeting of the Board the regularity, time, length, and location of future meetings will be agreed.
- 4.2 The frequency and format of the meetings may be reviewed in future and is subject to change dependent on the agreement of members. The Chair may request additional meetings if they consider this to be appropriate.

5. SECRETARIAT

- 5.1 Administrative support for the Board will be provided by Powys County Council's Economy & Digital Service. Powys CC will be responsible for undertaking the following roles and functions which includes:
- 5.2 Ensuring the Board is established and meets regularly
- 5.3 Preparing the agenda, minutes for meetings in conjunction with the Project Manager
- 5.4 Inviting participants and managing attendance
- 5.5 Supporting the follow up and actions from meetings

6. REVIEW:

- 6.1 Terms of reference, functions and membership of the Board will be reviewed as necessary.

SCHEDULE 2

Montgomery Canal Restoration Project - Governance & Delivery Structure



LUF0268 MCR
Project Delivery Struc

DRAFT

SCHEDULE 3

Fraud Risk Assessment Guidance



Schedule%203%20-
%20Fraud%20Risk%2

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Schedule 4 – Memorandum of Understanding & Approved PMU

Department for Levelling Up, Housing and Communities and Powys County Council



Schedule 4a -
LUF0268 DLUHC LUF

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SCHEDULE 5

Finance & Payments

- 1) DLUHC have agreed to allocate LUF funding to the Project of up to £13,937,565 with indicative yearly allocations as follows:

Financial Year	Total (£)
2021-22	425,524
2022-23	4,321,645
2023-24	9,190,396
2023-24	0
TOTAL	13,937,565

- 2) LUF Grant funding will be paid to Powys County Council in six monthly tranches in January and July of each approved financial year. LUF payment to the Council will be made in accordance with the profiled LUF spend identified in the quarterly monitoring reports submitted by the Council on behalf of the project and on the basis that agreed project delivery targets have been met.
- 3) Where variance exists between profiled spend and milestones/progress achieved by the Project, DLUHC may reduce the award of grant or withhold altogether until satisfactory evidence of progress has been received.
- 4) Release of grant from Powys County Council to the Canal & River Trust is therefore subject to approval of monitoring reports submitted on behalf of the Project and grant funding being received by Powys County Council]The Council will use its best endeavours to ensure that DLUHC honour the MOU.
- 5) For the avoidance of doubt, the **maximum** project costs and **maximum** LUF grant support and funding profile for the projects of both parties outlined in clause 4.0 of the Agreement, are as follows:

Funding Body	CRT Works	PCC Works	Total
LUF	£12,626,138.28	£1,311,426.72	£13,937,565.00
CRT	£774,308.99	£0.00	£774,308.99
PCC	£628,594.94	£145,714.05	£774,308.99
	£14,029,042.20	£1,457,140.77	£15,486,182.97

- 6) At quarterly reporting points or as required by the Council to progress release of LUF grant payment from DLUHC on behalf of the Project, CRT will provide the Council with satisfactory financial and progress information and associated evidence to enable the Council to submit detailed monitoring reports in accordance with DLUHC requirements.
- 7) The level of detail required shall be determined by the Council following discussion with the Project Board. The detail required must satisfy the

potential audit of project finances as covered in section 7 (Monitoring) and section 8 (Assurance) of the MOU.

- 8) On confirmation of receipt of satisfactory information, the Trust will submit a grant claim to the Council for 94.48067% of spend incurred during the 6 monthly period reported.
- 9) On receipt of funds from DLUHC, the Council will release payment to CRT.
- 10) In the event that DLUHC, for any reason, identify the need for Claw back of LUF, then other clauses in within this Agreement respect of liabilities will apply.
- 11) In the event that requests to reprofile funding are not approved by DLUHC, then this schedule will be updated to reflect revised apportionment that is approved by the Project Board and formally endorsed by both parties.

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