

DATED JANUARY 2009

MEMORANDUM OF UNDERSTANDING
EAST MIDLANDS PROPERTY ALLIANCE

BJ draft 3.1 18 July 2008 with DM amendment 6 Aug 2008 revised 26 Jan 08

THIS MEMORANDUM OF UNDERSTANDING is made on 2009

BETWEEN

(the "Parties")

Recitals

- a) The Parties wish to come together for the purpose of developing and implementing a strategy to establish an alliance of councils in the East Midlands by collective action improve the delivery of their property function to the benefit of their communities
- b) The parties wish to call this grouping the "East Midlands Property Alliance" or "EMPA".
- c) The parties are entering into this Memorandum of Understanding due to their shared intention to work together in the spirit of cooperation to deliver the Aims although they are not intending to create any kind of formal or statutory body by their actions or this memorandum.
- d) By signing this memorandum they wish to indicate their intention to act in good faith in their relationship with each other and the pursuit of the Aims.
- e) The Parties, save as set out in clause 7, do not intend that this memorandum will create legally binding rights or obligations between them in relation to its subject matter unless they otherwise separately agree.

1. Definitions and interpretation

1.1 In this memorandum (except where the context otherwise requires) the following words shall have the following meanings:

"Aims" the aims and objectives of the Parties set out in clause 2

"Business Case" means the description of an activity expressed in terms of inputs and outputs which assesses the commercial viability of the activity it shall comprise a statement as to the objective of the activity, an assessment of demand for the output of the activity, a forecast of income, an assessment of the resources required, an implementation plan and an analysis of risk and the methods by which risks will be mitigated.

"Confidential Information" means all information designated as such by either party in writing together with all other information which relates to the business, affairs, developments, trade secrets, know-how, personnel, Members and suppliers of either party or information which may reasonably be regarded as the confidential information of the disclosing party.

"FOIA" Freedom of Information Act 2000.

- “Managing Agent” such body as the Executive Committee shall determine who will provide administration support;
- “Members” means the Parties to this memorandum at the date hereof and any parties who may become parties pursuant to clause 3.5;
- “Executive Committee” the board comprising of the representatives of Parties elected by the Annual General Meeting and the Chairs of the Working Groups which is to oversee the relationship between the Parties and govern the achievement of the Aims.
- “Working Groups” means the groups established pursuant to clause 5.4

2. Aims of the EMPA

2.1 The Aims of the Members, through EMPA shall be, to enable its members improve the delivery of their property function for the benefit of their communities. The EMPA will do this by:

- 2.1.1 Developing areas of mutual interest on matters which have a bearing on the efficient provision of services;
- 2.1.2 Making environmental, economic and social sustainability the prime driver
- 2.1.3 Providing training and staff development on property related matters to harmonise methods of operation and procurement;
- 2.1.4 Developing the suppliers in the region to enhance their contribution;
- 2.1.5 Promoting Best Practice in all activities;
- 2.1.6 Improving systems of Performance Management;
- 2.1.7 Developing continuous improvement programmes;
- 2.1.8 Obtaining external development funding;
- 2.1.9 Facilitating the co-operation of Local Authorities working in clusters;
- 2.1.10 Facilitating the establishment of themed work groups to direct the establishment of regional frameworks; and
- 2.1.11 Establishing regional framework arrangements for the provision of property related works where it is deemed appropriate and legally acceptable to do so.

2.2 In furtherance of the Aims the Members through EMPA will always seek to:

- 2.2.1 act in good faith in their relationship with each other and the pursuit of the Aims ;
- 2.2.2 develop openness and trust between one another;
- 2.2.3 encourage a step change in innovation and continuous improvement;
- 2.2.4 share successes and learn from initiatives that are less successful
- 2.2.5 encourage employees to develop through participating in the work of the EMPA

3. Membership

- 3.1 The first Members of EMPA shall be the Parties, thereafter Full membership of EMPA shall be open to Local Authorities and other public bodies based in the east midlands.
- 3.2 Each member shall appoint one individual person to represent it and vote on its behalf at general meetings of EMPA. In the event of such individual person resigning or otherwise leaving an organisation he or she shall immediately cease to be a representative of such organisation.

- 3.3 Each member organisation may appoint:
 - 3.3.1 a deputy to replace its appointed representative if the appointed representative is unable to attend any particular meeting of EMPA; and
 - 3.3.2 observers (who shall not be entitled to vote) to attend any such meeting.
- 3.4 Honorary members may be appointed at the discretion of the Executive Committee. Honorary members shall not be entitled to vote.
- 3.5 The Executive Committee shall have the right to:
 - 3.5.1 to approve or reject applications for membership of EMPA (subject to such conditions as they see fit); and
 - 3.5.2 for good and sufficient reason to terminate the membership of any individual or organisation provided that the individual member concerned or the individual representing such organisation (as the case may be) shall have the right to be heard by the Executive Committee before a final decision is made.
 - 3.5.3 discuss matters with relevant partner organisations on behalf of EMPA for the development of services and frameworks in furtherance of the Aims

4. Annual General Meeting

- 4.1 Once a year an Annual General Meeting of EMPA shall be held at such time (not being more than 15 months after the holding of the preceding Annual General Meeting) and place as the Executive Committee shall determine. At least 21 clear days' notice shall be given in writing by the Managing Agent to each member.
- 4.2 At an Annual General Meeting its business shall include the election of the Chair, Vice Chair and two other officers to serve on the Committee; the appointment of , auditors or an independent examiner as required by this memorandum of understanding; the consideration of an annual report of the work done by or under the auspices of the Executive Committee and of the report of the auditor or independent examiner; and the transaction of such other matters as may from time to time be necessary.
- 4.3 The Chair of the Committee may at any time at their discretion, and the Managing Agent shall within 21 days of receiving a written request so to do signed by not less than 4 Members whether individual or representative and giving reasons for the request, call a special general meeting of EMPA.

5. Executive committee

- 5.1 The Executive Committee shall comprise of the Chair, Vice Chair and two officers elected by the Annual General Meeting and the Chair of each Working Group. Decisions of the Executive committee will decided by an ordinary majority.
- 5.2 Executive Committee Meetings will be held every 3 months. The first such meeting will be held on _____ at _____ thereafter the time and place for the next meeting will be at a time and place agreed in the preceding meeting.
- 5.3 The objective of the Executive Committee will be to:
 - 5.3.1 meet to discuss and proactively take forward the Aims;
 - 5.3.2 keep this Memorandum under review in the light of emerging legislation guidance and directions and the developing needs of the EMPA and the AIMS;

- 5.3.3 promote the activities and programmes of the EMPA
- 5.4 The Executive Committee may by unanimous agreement establish a working group or groups (each being a "Working Group") to:-
 - 5.4.1 Receive a brief from the Executive Committee to examine a need in a property related activity
 - 5.4.2 Evaluate options to meet the need.
 - 5.4.3 Develop an outline Business Case to demonstrate viability of the options.
 - 5.4.4 Prepare a report for the Executive Committee making recommendations supported by a Business Case.
- 5.5 The Chair of a Working Group shall be by invitation of the Executive Committee and removal of a Chair of a Working Group will be effected by a resolution of the Executive.
- 5.6 The Working Group Chair shall be free to resign immediately upon giving written notice to the Executive Committee.
- 5.7 A Working Group shall conduct its activities as directed by the Executive Committee in the absence of direction it shall, subject to the provisions of this memorandum, be free to organise its meetings as it sees fit and shall be free to invite any interested third party to speak at its meetings. Resolutions of a Working Group shall be passed by a simple majority of those members of a Working Group present at the meeting.
- 5.8 The Members and or the Executive Committee shall not be obliged to comply with or implement any recommendation or findings of a Working Group and a Working Group shall not have any power or authority to bind EMPA or any Member.

6. Rules of procedure at all meetings

6.1 Quorum

The quorum at a meeting of EMPA shall be the higher of 3 and *one-tenth* of the total actual membership of EMPA for the time being and the quorum of the Executive Committee (or any sub committee or working group set up by it) shall be one-half of the Executive Committee or committee or working group (as the case may be) or such other number as EMPA may in general meeting from time to time determine.

6.2 Voting

Save as otherwise provided, all questions arising at any meeting shall be decided by a simple majority of those present and entitled to vote. Arrangements for proxy voting may from time to time be made by the Committee. No person shall exercise more than one vote notwithstanding that he or she may have been appointed to represent 2 or more interests, but in case of an equality of votes the Chair of the meeting shall have a second or casting vote.

6.3 Minutes

Minute books shall be kept by the Committee and all other committees, and the appropriate secretary shall enter in the minute book a record of all proceedings and resolutions.

6.4 Standing orders and rules

The Executive Committee shall have power to adopt and issue standing orders and/or rules for EMPA. Such standing orders and/or rules shall come into operation

immediately provided that they shall be subject to review by EMPA in general meeting and shall not be inconsistent with the provisions of this Memorandum.

6.5 Delegation

Nothing in this agreement or the EMPA arrangements will be deemed to be a delegation of powers or functions by any Member. Any decision resulting from the Executive Committee's consideration shall be taken either by each representative of the Parties on the Executive Committee if the decision is within their delegated powers or otherwise in accordance with the Parties' delegation arrangements.

7. Confidential Information and costs

7.1 The Parties agree that they will share in good faith information, opportunities and knowledge with one another so far as it is relevant to the Aims and EMPA generally save that no member will be required to disclose information which is either commercially sensitive or subject to a confidentiality undertaking.

7.2 In respect of any Confidential Information it may receive from the other party or a Contractor ("the Discloser") and subject always to the remainder of this Clause 7, each party ("the Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:

7.2.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Agreement;

7.2.2 the provisions of this Clause 7 shall not apply to any Confidential Information which:-

7.2.2.1 is in or enters the public domain other than by breach of this Agreement or other act or omissions of the Recipient;

7.2.2.2 is obtained by a third party who is lawfully authorised to disclose such information;

7.2.2.3 is authorised for release by the prior written consent of the Discloser;

7.2.2.4 the disclosure of which is required to ensure the compliance of MANAGING AGENT and each MEMBER with the Freedom of Information Act 2000 (the FOIA) the Environmental Information Regulations 2004.

7.3 Nothing in this Clause 7 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, provided that the information is subject to equivalent confidentiality undertaking set out in Clause 7.2, to its professional advisors or insurers.

7.4 Each Party acknowledges that the other is or may be subject to the FOIA. Each notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time. Each will act in accordance with the FOIA, these Codes of Practice and these Regulations (and any other applicable codes of practice or guidance from time to time

issued) to the extent that they apply to either Party's performance under this Agreement.

7.5 Each Party agrees that:

7.5.1 without prejudice to the generality of Clause 7.2.2, the provisions of this Clause 7 are subject to the obligations and commitments of the other under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 the Code of Practice;

7.5.2 where it considers that any information should not be available for disclosure, it will:

7.5.2.1 identify it specifically; and

7.5.2.2 explain the grounds for exemption from disclosure and the time period applicable to that sensitivity.

7.6 All decisions regarding disclosure of information following a Request For Information (as defined under section 8 of the FOIA) will be made at the sole discretion of either MANAGING AGENT or the MEMBER as the case may be. Each Party acknowledges that, even where the CONTRACTOR or MANAGING AGENT has indicated that information is commercially sensitive, MANAGING AGENT or the MEMBER (as may be) may be required to disclose it under the FOIA, with or without consulting the Contractor and although MANAGING AGENT or the MEMBER (as the case may be) will use reasonable endeavours to consult with the other or a Contractor prior to any disclosure, neither MANAGING AGENT nor any MEMBER shall be under any obligation to consult the other or a Contractor prior to disclosure.

7.7 Where MANAGING AGENT or a MEMBER is managing a request as referred to in Clause 0, the other party shall co-operate with MANAGING AGENT or the MEMBER and shall respond together with copies of any documentation so requested within five (5) working days of any request by it for assistance.

7.8 Should the Annual General Meeting decide by unanimous resolution incur any liability on behalf of the East Midlands Property Alliance (and for the avoidance of doubt it must in these circumstance be unanimous and not merely those present at a meeting), in the absence of unanimous agreement to the contrary, such liability will be borne equally between the Parties apart from in respect of any member which has served notice of its resignation in accordance with clause 9.1 prior to the date of any decision to incur liability under this clause.

7.9 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Memorandum. No Party shall have, nor represent that it has, any authority to make any commitments on any of the other Parties' behalf.

7.10 The provisions of clauses 7.1 to 7.10 shall have legal effect and will survive termination of this Agreement.

8. **Role of the Managing Agent**

8.1 The Managing Agent, whose activities may at their discretion be funded by East Midlands Improvement and Efficiency Partnership, shall:

8.1.1 Provide administrative support to the EMPA Annual General Meeting, Executive Committee and Working Groups. This administrative support shall include communication with members, distribution of agendas, minutes and papers, providing venues and a staff member in attendance.

8.1.2 Provide technical support to the EMPA to enable it to scope and prepare programmes of work and schedules of activities to further its Aims.

8.1.3 Promote the objectives and Aims of the EMPA.

8.1.4 Agree matters with the Executive Committee on initiatives to further the objectives and Aims of the EMPA

8.1.5 Make available to the auditor/independent examiner such documents as are necessary for the auditor / independent examiner to prepare a report annually on expenditure and income pertaining to the delivery of services to the EMPA and such initiatives undertaken in pursuit of the EMPA's Aims.

9. **Term**

9.1 Any Member may resign their membership of EMPA at any time by giving 3 months notice. This is without prejudice to and shall not effect any continuing obligations set out in clause 7

9.2 The giving of notice by any one Party his shall not affect the continuance of this memorandum or EMPA or any liability agreed to be incurred pursuant to clause 7.8 prior to service of the notice.

10. **Counterparts**

The Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

11. **Legal Consequences**

Other than in respect of clause 7 which is to have legal effect and therefore be enforceable in accordance with English Law, this Memorandum only sets out the intentions of the parties, it is not intended that failure by any party to achieve those intentions will incur legal consequences actionable as a result of this Memorandum.

THIS MEMORANDUM has been entered into on the date stated at the beginning of it

Authorised to sign on behalf of

NAME (in capitals)

POSITION IN ORGANISATION

SIGNATURE

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