

Item:

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Report to Partnership Meeting 11th November 2022

PARTNERSHIP

Electric Vehicle Infrastructure Fund Programme

PURPOSE OF REPORT

To outline a proposed shared service that will see HITRANS put in place project management resource on behalf of four Highlands and Islands local authorities to take forward local activity under the Electric Vehicle Infrastructure Fund (EVIF).

Introduction

For the past 10 years Transport Scotland have provided grant funding to each local authority to enable the delivery of electric vehicle charging points to encourage early adopters and support uptake

Following this successful investment programme, in January 2022 Transport Scotland announced a restructure of the current funding model and now require to leverage in private sector funding to enable delivery of infrastructure at the pace and scale required to meet demand and encourage further car users to switch to EV's to support the wider climate change objectives;

The new proposed structure will allow local authorities to access £30 million worth of funding and aims to leverage in a further £30 million of private sector investment bringing the total investment for Scotland to £60 million. The funding is aimed at identifying market failures to support local authorities in enabling a Just Transition;

Background

The Electric Vehicle industry is moving at a rapid pace and strategy and delivery has developed at different rates across Local Authorities. Internal resourcing has been fragmented and geographical, social, economic, environmental and technological factors effect the reliability of emerging infrastructure across the region.

This EVIF programme presents an opportunity for HITRANS to support the Councils and streamline resources, as well as identify and address common infrastructure challenges when trying to commercialise electric vehicle charging, particularly in remote, rural and island communities.

Project Manager – Electric Vehicle Infrastructure

It is proposed that HITRANS employ a project manager on an ongoing basis to manage delivery and reporting on Transport Scotland's Electric Vehicle Infrastructure Funding (EVIF) programme.

This staffing cost will be in line with the recent Scottish Islands Passport role advertised, with the salary and on-costs covered by the strategy and development grant allocated to each

participating Local Authority by Transport Scotland. The starting salary will be in the order of £34,000 per annum.

Listed below are the contributions from each local authority for the provision of the shared service approach in respect of electric vehicle infrastructure:

Local Authority	Annual Contribution
Comhairle nan Eilean Siar	£11,250
Shetland Island Council	£11,250
Moray Council	£11,250
Orkney Islands Council	£11,250

In addition, Councils will each contribute £25,000 to a shared working budget. The details of this are still being finalised with Council Officers.

RISK REGISTER

RTS Delivery

Impact – Positive

Comment – This work supports RTS objectives and the monitoring of their implementation.

Policy

Impact – Positive

Comment – This work supports the development of our Electric Vehicle Strategy Policy, particularly with regards to remote, rural and island provision.

Financial

Impact – Positive

Comment – Cost savings as a direct result of this shared service approach

Equality

Impact – Positive.

Comment – HITRANS support for improving electric vehicle infrastructure helps eliminate the barriers to decarbonised travel for all

RECOMMENDATION

Members are asked to approve:

1. Note the report.
2. Approve the shared service as set out above and in Appendix 1
3. Approve the recruitment of the Project Manager (Electric Vehicle Infrastructure) as set out above.

Report by: Ranald Robertson

Designation: Partnership Director

Date: 2nd November 2022

Background papers: Appendix 1 - Draft Memorandum of Agreement

Appendix 1 – Draft MOA

**COLLABORATION AGREEMENT
AMONG
THE HIGHLANDS AND ISLANDS TRANSPORT PARTNERSHIP
AND
SHETLAND TRANSPORT PARTNERSHIP
AND
COMHAIRLE NAN EILEAN SIAR
AND
MORAY COUNCIL
AND
ORKNEY ISLANDS COUNCIL
RELATING TO
ELECTRIC VEHICLE INFRASTRUCTURE**

[November], 2022
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among

THE HIGHLANDS AND ISLANDS TRANSPORT PARTNERSHIP, a statutory regional transport partnership established under the Transport (Scotland) Act 2005 with its principal office located at 6/7 Ardross Terrace, Inverness, IV3 5NQ and its successors (statutory and otherwise) and assignees whomsoever (all together hereinafter referred to as “HITRANS”);

and

SHETLAND TRANSPORT PARTNERSHIP, a statutory regional transport partnership established under the Transport (Scotland) Act 2005 with its principal office located at 8 North Ness Business Park, Lerwick, Shetland ZE1 0LZ and its successors (statutory and otherwise) and assignees whomsoever (all together hereinafter referred to as “ZetTrans”);

and

COMHAIRLE NAN EILEAN SIAR, a Local Authority incorporated under the Local Government etc. (Scotland) Act 1994 and having their Head Office at Council Offices, Sandwick Road, Stornoway, Isle of Lewis HS1 2BW and its successors (statutory and otherwise) and assignees whomsoever (all together hereinafter referred to as “CNES”)

and

MORAY COUNCIL a Local Authority incorporated under the Local Government etc. (Scotland) Act 1994 and having their Head Office at High Street, Elgin, Moray IV30 1BX and its successors (statutory and otherwise) and assignees whomsoever (all together hereinafter referred to as “Moray”)

and

ORKNEY ISLANDS COUNCIL a Local Authority incorporated under the Local Government etc. (Scotland) Act 1994 and having their Head Office at School Place, Kirkwall, Orkney KW15 1NY at and its successors (statutory and otherwise) and assignees whomsoever (all together hereinafter referred to as “Orkney”)

1.0 Introductory

Whereas in terms of section 14 of the Transport (Scotland) Act 2005 in the case of HITRANS and ZetTrans, and section 20 of the Local Government in Scotland Act 2003 in the case of CNES, Moray and Orkney the parties have agreed to collaborate on delivery of a number of transport functions as described in this agreement, and:

1.1 Electric Vehicle charging infrastructure (EVI) provides an opportunity to support net zero infrastructure in order to achieve national climate targets and transition from traditional fossil fuelled vehicles to low emission alternatives, all in line with the existing Regional Transport Strategies for the area

1.2 EV charging has the ability to influence regional transport use, support development in sites that enable active and public transport options, whilst also supporting the local economy and attracting investment;

1.3 In January 2022 Transport Scotland announced a restructure of the current funding model for local authorities to deploy electric vehicle charging infrastructure;

1.4 For the past 10 years Transport Scotland have provided grant funding to each local authority to enable the delivery of electric vehicle charging points to encourage early adopters and support uptake;

1.5 Following this successful investment programme, Transport Scotland have now revised the grant funding process and now require to leverage in private sector funding to enable delivery of infrastructure at the pace and scale required to meet demand and encourage further car users to switch to EV's to support the wider climate change objectives;

1.6 The new proposed structure will allow local authorities to access £30 million worth of funding and aims to leverage in a further £30 million of private sector investment bringing the total investment for Scotland to £60 million. The funding is aimed at identifying market failures to support local authorities in enabling a Just Transition;

1.7 In the light of successful Pathfinder Pilots having been carried out in various parts of Scotland including the HITRANS region, it is intended that the parties to the agreement work together (and where expedient with others) with a view to maximising use of resources and achieving joint objectives in relation to EVI;

Now therefore the parties agree as follows.

2.0 Definitions

2.1 In this agreement, unless otherwise indicated, the following words and phrases shall have the following meanings:

“Agreement” means this agreement and any variations or amendments hereto from time to time applying;

‘best value’ shall have the meaning ascribed to it in the Local Government in Scotland Act 2003;

‘Central Resource’ means the person or persons to be employed by HITRANS to assist all parties in the collaboration to pursue the agreed Joint Aims;

‘EVIF’ means the Electric Vehicle Infrastructure Fund, jointly developed and managed by Transport Scotland and the Scottish Futures Trust, and any replacement funding for it;

‘existing contractors’ means any consultant or other contractor engaged individually by one of the parties with a view to obtaining external advice and assistance in relation to the EVIF;

‘Further Funding’ means the sum or sums referred to in Clause [];

‘Initial Funding’ means the sum referred to in Clause [];

‘the Joint Aims’ are those objectives referred to in Clause [1.7] and also as set out in the Joint Steering Committee Terms of Reference at Appendix A or as otherwise from time to time agreed between the parties;

‘Joint Steering Committee’ mean the body constituted in terms of this agreement in terms of Clause [];

‘the parties’ means the parties to this agreement named above, and any other bodies who may become parties to it in terms of Clause [];

‘party’ means one of the parties to this agreement, and any other body who may become party to it in terms of Clause [];

2.2 Any reference to an Act of Parliament whether generally or specifically shall include any modifications, extension or re-enactment thereof from time to time in force or as applied by or under any other enactment and shall also include all instruments, rules, regulations, orders, plans, bye-laws, proposals, directions,

licences, notices, permissions, consents and others from time to time made or given thereunder or deriving validity therefrom;

2.3 Words importing the singular include the plural and vice versa, words importing the masculine gender include the feminine gender and vice versa and words importing the neuter include the masculine and feminine genders and vice versa and references to any person, where appropriate, include references to any corporation, Council, firm, Board or other body;

2.4 A reference to "Clause" is a reference to a clause of this Agreement;

2.5 Headings and recitals shall not affect the interpretation of this Agreement.

Collaboration Terms

General Obligation to Collaborate

The parties agree to collaborate to maximise mutual benefit in terms of developing strategy, carrying out research, procuring specialist, technical and other support, and implementing electric vehicle infrastructure. Although not a formal legal partnership, all parties agree to be bound to work together towards these outcomes.

To assist in the above aims, the parties agree to form a Joint Steering Committee in terms of Appendix A and to participate in it, and to be otherwise bound by the terms of this Agreement.

Financial Contributions

The parties (other than HITRANS) agree to make over to HITRANS within seven working days of the execution of this agreement the sum of THREE THOUSAND, SEVEN HUNDRED AND FIFTY POUNDS (£3,750), [N.B. assumes pro rata starting December so may be adjusted] and thereafter on the first April in each of the years 2023, 2024 and 2025 the sum of ELEVEN THOUSAND, TWO HUNDRED AND FIFTY POUNDS (£11,250) being the Initial Funding required for the employment of a Central Resource; said sum to be intended to cover all costs of employing such a person or persons, including overheads and oncosts such as pension contributions.

The parties (other than HITRANS) agree to make over to HITRANS the Further Funding of TWENTY FIVE THOUSAND POUNDS (£25,000) and such other sums as may reasonably be required to allow HITRANS to continue to fund the Central Resource and agreed procurement of additional consultancy support.

Employment of Central Resource

Following payment of the Initial Funding and (as appropriate) any Further Funding required for the length of the proposed employment of them, HITRANS shall employ such person(s) as are considered necessary after agreement in the Joint Steering Committee to assist all parties in achieving the Joint Aims.

[more detail on employment terms?]

Existing Contractors

The parties shall use reasonable endeavours to ensure that all reports, findings, or other advice received from existing contractors can be shared as freely as practicable amongst the parties, recognising that it would not be reasonable to require such existing contractors to grant collateral warranties or otherwise give any undertakings to anyone other than those who have engaged them;

Joint Procurement

Given the Joint Aims, it is likely that best value will be achieved by jointly procuring using EVIF monies for consultancy and other support. This may involve other bodies who are not parties to this agreement. In carrying out such procurement, the parties agree to:

- Agree amongst themselves which party is to be the procuring party, who shall in the normal course be HITRANS;
- Ensure that appropriate Further Funding is in place to enable the procurement;
- Agree the terms of the brief or other invitation to tender documentation, subject always to the next bullet point;
- Carry out such procurement as is expedient and compliant with the procuring party's internal governance requirements as well as with general procurement law;

- Ensure that the other parties are allowed to have an appropriate level of input to the procurement process, as agreed at the Joint Steering Committee;
- Make such arrangements as regards intellectual property rights and data protection requirements as allows all parties to benefit from the works carried out by the relevant contractor;
- In the event of the contractor defaulting in respect of any of their requirements, to discuss along with the procuring party the extent to which such default should be enforced.
- The procuring party ensuring that appropriate contract management arrangements are in place, and that regular reporting to the Joint Steering Committee on progress forms part of the contractor's duties.

Applications for Funding

The parties shall collaborate in applications for funding to enable pursuit of the Joint Aims; such that:

- Joint applications where appropriate are made;
- Where separate applications are made, these are made in such a way as to be complementary;
- Where possible, joint resources including but not limited to the Central Resource are used.

Assumption of additional collaborating bodies

Additional collaborating bodies may be admitted into the collaboration by invitation, following a unanimous decision by the Joint Steering Committee subject always (where appropriate) to a proper procurement process being followed, and to the new party becoming a party to this agreement by way of a deed of adherence.

Supplementary

Term of the Agreement and Termination

This agreement shall terminate on the sixth anniversary of its execution unless the parties agree to its extension.

The parties will be able to terminate this agreement in terms of this clause by mutual consent. An individual party shall be entitled to terminate their involvement in this agreement by giving the other parties one year's notice of their intention to do so, subject only to remaining bound by any continuing financial obligations incurred before service of such notice.

The other parties shall be entitled to terminate this Agreement in respect of an individual party with immediate effect if the that party commits a material breach of the Agreement provided the party in breach has been given reasonable time to rectify such breach following notice from one of the other parties. Such termination shall be subject only to the party remaining bound by any continuing financial obligations incurred before service of such notice.

Dispute Resolution

In the event of any disagreement or dispute arising out of or in connection with this Agreement the parties will use all reasonable efforts to resolve it amicably firstly by submitting such disagreement or dispute to their respective senior management and secondly, by using a form of mutually agreed alternative dispute resolution, before resorting to any court process (except where injunctive relief is considered necessary by a party to adequately protect its business). If the parties are not able to resolve any disagreement or dispute in accordance with this Clause, such disagreement or dispute shall be resolved in accordance with **Clause []**.

Sharing Information/FOI/Data Protection

In general, the parties wish to ensure that all relevant information is shared between them and with others such as contractors to ensure the success of the Joint Aims. The parties also recognise that they are public bodies subject to legal requirements in relation to sharing of information and, in particular, data.

The parties shall procure that all information which may reasonably be required by another party for audit purposes shall be shared with them, subject to the next two paragraphs.

The parties recognise that they are all subject to the Freedom of Information (Scotland) Act 2002, and the Environmental Information (Scotland) Regulations 2004, and will require to comply with same. In the event of one of the parties receiving a request under such legislation which requires the disclosure of information which may be prejudicial or otherwise potentially affect another party, then they shall advise that other party (or parties) of their receipt of such request, and such discuss with such other party or parties whether any exemptions under said legislation applies.

The parties recognise that they are bound by the provisions of the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and shall co-operate and collaborate in such a way as to facilitate full compliance with them. [For discussion]

Applicable Law

This Agreement shall be governed and interpreted in accordance to the laws of Scotland and, subject to Clause [], any question, dispute or difference which may at any time arise between the Parties in connection with this Agreement (or any terms thereof) shall be finally settled, failing an amicable resolution between the Parties, under the Rules of Conciliation and Arbitration (“the Rules”) of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the Rules. The arbitration shall take place as agreed or failing such agreement in Scotland and shall be conducted in English. All costs of the arbitration proceedings and recovery of legal fees and expenses incurred by the Parties in connection with the proceedings shall be borne by the Parties in accordance with the Rules. The award(s) rendered by the arbitral tribunal shall be binding upon the Parties.

Anti-Bribery

The Parties shall, and shall procure that persons associated with it or other persons who are disclosing information in connection with this Agreement have committed to comply with all applicable laws and regulations relating to anti-bribery and anti-corruption, and

will not enter into any contract or arrangement which involves any act or omission worldwide which breaches the applicable laws and regulations.

No Assignment

Subject to any provision in this Agreement to the contrary, neither this Agreement nor any right granted hereunder shall be assignable or otherwise transferable by one Party without the prior written consent of the other Parties.

Entire Agreement

This Agreement is considered to represent the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes any and all prior oral discussions and/or written correspondence or agreements (if any) between the Parties with respect to this Agreement.

Variation and Waiver

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties. The failure of a party to enforce its rights in the case of any breach of this Agreement shall not be construed to constitute a waiver of its rights with respect to any subsequent breach.

Notices

Any formal notices requiring to be given hereunder shall be deemed delivered upon receipt of delivery confirmation from Royal Mail if sent to the following:

for the attention of HITRANS to: F.A.O Randal Robertson, CEO, HITRANS, 6/7 Ardross Terrace, Inverness, IV3 5NQ;

for the attention Council to: **BLANK. [insert for Councils]**

or such other address, or person as may be notified in writing from time to time by the relevant Party to the other Parties for the purposes of this Clause .

Third Party Rights

This Agreement does not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of it.

Execution Details

This Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts.

Where executed in counterparts:

this document will not take effect until each of the counterparts has been delivered;

each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered;

the parties may choose to evidence the date of delivery of this document by inserting this in the blanks provided on the front page of this document.

Registration

The parties hereto consent to the registration hereof: IN WITNESS WHEREOF these presents consisting of this and the **BLANK** preceding pages together with the Schedule in **X** parts are executed as follows:-

SUBSCRIBED for and on behalf of
HITRANS by

.....
(Full name of Partnership Director) **Partnership.Director.signature...**

before this witness **Director signature**

.....
(Full name of Witness) **Witness signature**

Witness Address:
Witness signature

.....

At (place of signing)

.....

on
2022

[insert for Councils]

SUBSCRIBED for and on behalf of
COUNCIL BLANK by

.....

....
(Full name of Proper Officer)

A Proper Officer before this witness

.....

....
(Full name of Witness)

Witness Address:

.....

....

at

.....

....

on
2022

.....

Proper Officer signature ...

.....

Witness signature ...

Appendix A: Terms of Reference for Joint Steering Committee

Title

The Steering Committee shall be called the Highlands and Islands Electric Vehicle Infrastructure Steering Committee (HI-EVISC, or for the purposes of these terms of reference, 'the Committee.')

Purpose [taken from Glasgow ToR: for discussion]

To support a Just Transition it is key that EVI is deployed in a manner that strategically supports disadvantaged communities and enables investment from the private sector.

The purpose of the Committee is to facilitate joined up working across the north of Scotland to enable cohesive role out of infrastructure and attract private sector investment whilst ensuring a Just Transition.

It is proposed that the Committee shall:

- Provide strategic direction for the future of EV charging infrastructure investment needs across the north of Scotland.
- Establish business cases and funding models for this investment
- Support the strategic planning of EVI across the region.
- Work collaboratively to ensure investment within the scope of the funding programme is targeted at key areas most in need.
- Member authorities will commit to developing the regional strategy and expansion plan as set out by Transport Scotland.

Membership

The initial membership shall comprise HIITRANS, ZetTrans, CNES, Moray and Orkney Committee members should be representatives of their organisations with decision making authority, oversight of EV charging provision and expertise on commercial models. Organisations may have more than one representative and should send the most appropriate representative for each meeting.

Provision for substitutes [may not be necessary for this]

Observers/special advisers the parties may agree to have observers from other organisations. Parties will be able to bring their own advisers, and/or advisers or consultants jointly appointed or procured in terms of this agreement.

Chairing arrangements

A representative of HITRANS shall normally chair the meetings. In the absence of a HITRANS representative, the parties will select an ad hoc chair for the meeting.

Frequency of meetings

Meetings shall be three weekly or as otherwise agreed between the parties.

Provision for special meetings for urgent matters email agreement

Notice of meetings standing slot agreed

Provision for standing once a year items

Quorum

Certain amount of organisations/specific organisations to be represented to constitute a meeting?

Secretariat

The secretariat will be provided by one of the Councils, rotating once a year on an alphabetical basis unless the parties otherwise agree.

The secretariat will ensure that a minute or action note is taken at each meeting recording key decisions and actions arising from discussion. These will be approved by the Chair and circulated with the agenda for the next meeting.

Agenda formation

Standing Items

Minute/action note for approval

Rest TBA at first meeting

Additional agenda items should normally be asked for in advance but can be raised under AOCB.

Agenda items will be dealt with in order of priority at the Chair's discretion.

Sub-groups/working groups [for discussion]

General provision to form them, with some idea of structure

Standing groups

Normally to follow similar process as the Steering Committee

Voting mechanism

Wherever possible the Committee shall attempt to reach decisions by consensus. In the unlikely event of a vote being required, each party to the agreement present shall have a single vote.

In the event of a tied vote, the Chair shall be entitled (but not bound) to use their casting vote.

Confidentiality/publication of documents

See clauses in agreement, above – for discussion.

In the event of any information arising (written or verbal) at the meeting which is notified as being confidential, the parties shall respect the need for such confidentiality, subject always to statutory requirements relating to Freedom of Information.

Dispute Resolution

In the event of a dispute between the parties which is incapable of resolution at the meeting, the dispute resolution clauses of the Collaboration Agreement shall be used to reach a resolution as soon as possible.

Review

These Terms of Reference shall be kept under review to ensure they are fit for purpose.

Exit Strategy

In the event of four fifths of the Joint Committee agreeing that its purposes have been fulfilled, or can be fulfilled better by another organisational structure, then the parties to the agreement shall consult each other as to what changes to the terms of reference and the Collaboration Agreement are required, and/or whether the termination provisions of the Collaboration Agreement should be invoked.