

## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
HEAD OF PROJECTS AND REGENERATION	SPECIAL COUNCIL	25 JULY 2022	4
<b>KIRKHAM FUTURES – PUBLIC REALM PHASE 1 WORKS CONTRACT</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

#### SUMMARY

One of the key projects delivered under the Kirkham Futures Programme banner is the enhancement of the Public Realm, which will be delivered in two phases. The first phase includes the works to Market Square and Poulton Street to be funded via a combination of sources including Future High Street (FHSF) (£2.113m), Heritage Action Zone (HAZ) (£0.095m), Fylde Council (£0.167m) and Lancashire County Council (LCC) (£0.845m).

Of the funding sources listed above, contributions from LCC (£0.845m) are not yet included within the capital programme. One of the purposes of this report is to increase the existing budget provision within the capital programme to include the LCC contribution, which will enable the Council to award the contract to the preferred supplier and maintain the current programme.

The Council is also requested to formally confirm the transfer of FHSF monies previously allocated to the Kirkgate project (£0.943m) into the budget provision for Public Realm phase 1. The principle of this transfer has been agreed by the Kirkham Futures Steering Group. However, final confirmation that the funds can be transferred to the Public Realm Phase 1 works is being sought in writing from Future High Street Funds Team in the Government's Levelling Up Department, until this is secured the council is asked to underwrite the £0.943m contribution for the contract to be awarded. This brings the total funding envelope to £4.163m.

The report contains a summary of the tender process for Public Realm phase 1 and the Council are requested to confirm contract award to the preferred contractor for £4,084,676. The remainder of the overall capital programme allocation for Public Realm phase 1 (£78k) will be spent on professional fees throughout the duration of the construction phase.

#### RECOMMENDATIONS

1. To approve a fully funded capital budget increase of £844,900 into the capital programme (£520,000 in 2022/2023 and £324,900 in 2023/2024) based on the LCC grant contribution to Public Realm phase 1;
2. To approve that officers, continue to seek written confirmation and approval from the Future High Street Fund Team at DLUHC for the transfer of £942,589 for 2022/2023 funding from the Kirkgate scheme of the Kirkham Futures programme to the budget provision for Public Realm phase 1 works;
3. To approve that the council underwrites the scheme funding sum of £942,589 for 2022/2023 financial year (from the capital investment reserve) in the event that approval is not ultimately confirmed from the Future High Street Fund team at DLUHC for this funding stream to be transferred from the Kirkgate scheme of the Kirkham Futures programme to the budget provision for Public Realm phase 1 works (this underwriting being required in order for the contract to be awarded for delivery of the public realm works) ;

4. To approve the proposed capital expenditure in 2022/2023 and 2023/2024 with respect to the scheme as outlined in this report of £4,084,676 (£2,513,646 in 2022/23 and £1,571,030 in 2023/24);
5. To approve the award of the Public Realm phase 1 works contract to Eric Wright Civil Engineering Ltd for the sum of £4,084,676 to carry out the scheme as outlined in this report; whilst noting that the progression of Public Realm Phase 1 works is subject to agreement of the Section 278 agreement with LCC; and
6. To delegate to the Head of Projects and Regeneration, in consultation with the Kirkham Futures Steering Group, the responsibility to sign off the final plans and drawings for the Phase 1 Public Realm works.

## **SUMMARY OF PREVIOUS DECISIONS**

### **Planning Committee - 23 June 2021**

Following consideration of this matter, it was RESOLVED:

1. To note the spend to date on delivery of the High Street Heritage Action Zone programme of £123,000 (2020/21) & £73,000 (2021/22) which has been undertaken in line with emergency powers.
2. To approve the further draw-down of £917,802 in respect of Kirkham Heritage Action Zone which is included within the approved Capital Programme for 2021/22 and further reports will follow requesting drawdown from 2022/23 onwards.
3. To note that a further report will be presented to Finance & Democracy Committee at the next cycle of meetings to request approval of a fully funded capital funded budget increase of £80,000 to this scheme phased as detailed (£35,000 2021/22; £35,000 2022/23 and £10,000 2023/24) and that subject to this decision committee authorise the draw-down of £35,000 of this additional grant during 2021/22 to deliver the cultural programme.
4. That Councillor Liz Oades be nominated to Chair the Council's Kirkham Futures Steering Group that will oversee the delivery of the HS HAZ and FHSF programmes.
5. To authorise officers to establish a Kirkham Futures Community Project Board, consisting of representatives of the local community, key stakeholders, and delivery partners to act as a vehicle to engage with the local community during the development and delivery of the HS HAZ programme.

### **Planning Committee - 1 December 2021 - approved at Council on 6 December 2021**

1. The Chief Executive recommends that the Council approves the acquisition of the property known as Hillside, 48, Preston Street, Kirkham, subject to the resolution of further negotiations with the owner to agree a purchase price as set out in the report, to be funded from the Future High Street Fund grant award, and to commence repair and conversion works to secure a sustainable future use as outlined in the report using High Street Heritage Action Zone Funding.
2. The Chief Executive recommends that the Council approves the acquisition of the freehold interest of the parcel of land to the rear of 46, Preston Street (The Stables), Kirkham, for a purchase price set out in the report to be funded from the Future High Street Fund grant award to allow the delivery of a comprehensive development of the building and grounds of Hillside.
3. The Chief Executive recommends that the Council approves the acquisition of the freehold interest of the property known as the former girls school/TSB bank 52 - 64, Poulton Street, Kirkham for a purchase price set out in the report and authorise officers to seek a potential restaurant / community tenant to take on a 7-year lease (insurance, utilities, internal repairs etc. including fit out will be met by the tenant), all costs being met from the Future High Street Fund grant award.
4. Subject to Council approval, to authorise the capital expenditure draw down as detailed within Tables 2 and 5 in the body of the report. The grant to fund this is broken down from the Future High Street Fund and the High Street Heritage Action Zone as detailed in the report.

5. To recommend that Full Council underwrite any additional costs to the project arising from the repair or rebuild of the retaining wall bounding Hillside (as estimated in the report) that cannot be met from the approved funding for this scheme (as detailed in Table 2), to be funded from the Funding Volatility Reserve, if required.
6. That the Head of Planning and Housing be requested to present a further report to members with all future options for the future use of Hillside, 48 Preston Street, Kirkham in order that the revenue cost implications of each associated proposal can be fully considered together with an outline of revenue costs which could fall to the council with respect to the former girls school/TSB bank 52-64 Poulton Street if no commercial end-user is immediately found following its acquisition and refurbishment and in any event to update the committee on developments with Kirkham Futures at each Planning Policy Committee.

CORPORATE PRIORITIES	
Economy – To create a vibrant and healthy economy	✓
Environment – To deliver services customers expect	✓
Efficiency – By spending money in the most efficient way	✓
Tourism – To create a great place to live and visit	✓

## REPORT

### BACKGROUND

1. The Planning Committee at its meeting on 23 June 2021 received an updated report on the Kirkham Future High Street Fund which included details of the background to the initiative; the Council's application; the scope of the scheme and the approved scheme projects/ programme. [Link to Planning Committee 23 June documents.](#)
2. A significant element of the programme is the enhancement of key Public Realm within Kirkham which will contribute to the overall aim of rejuvenating Kirkham Town Centre and trigger new economic growth within the Town.
3. The Public Realm scheme will be delivered in two phases; the first is the area of Market Square and Poulton Street, and the second is Kirkgate to Town End. The original phase 1 scheme has been revised to remove planned interventions to Preston Street and Freckleton Street due to increasing material costs. This revision was agreed by the Kirkham Futures Steering Group.

### FUNDING PROFILE SUMMARY

4. The summary of the Public Realm phase 1 funding profile is shown below in Table 1 below:

**Table 1: Public Realm phase 1 funding profile**

Funding Source	Amount	Included in existing Capital Programme
Future High Street Fund	£2,113,740	Yes
Heritage Action Zone	£95,001	Yes
Fylde Council Capital Contribution	£167,006	Yes
Lancashire County Council - LERG	£844,900	No
<b>Sub Total</b>	<b>£3,220,647</b>	

<b>Preferred Contractor Tender Price</b>	<b>£4,084,676</b>	<b>(see Table 2)</b>
<b>Professional Fees</b>	<b>£78,560</b>	
<b>Funding Gap</b>	<b>£942,589</b>	

5. To ensure that the budget was sufficient to deliver the Public Realm works, an application was prepared and submitted to LCC for the Lancashire Economic Recovery Grant (LERG) funding scheme. This application has been agreed in principle by LCC and a draft Grant Funding Agreement is in place, subject to a Section 278 agreement to approve work in the Highways. Discussions are in progress with LCC to secure the Section 278 agreement, the performance fee and commuted sum are being negotiated but will be within the capacity of the Kirkham Futures programme to accommodate. The LERG grant totals £3.2m, of which **£844,900** is allocated to Public Realm phase 1 works. The remaining funding will be allocated to Public Realm phase 2 works and the Hillside project. Further reports will be brought to the relevant committee to include funds in the Capital Programme and drawdown as required.
6. The sub total of the existing funding sources identified in the table above at point 5, highlights a shortfall of **£942,589**, which is required to fund the Public Realm phase 1 works based on the preferred contractor tender price received and held as the offer until July 26<sup>th</sup>, 2022.
7. On the 12<sup>th</sup> May 2022, the Kirkham Futures Steering Group met to discuss the shortfall and agreed the proposal to re-purpose monies previously allocated to the Kirkgate scheme and distribute to other projects within the overall programme under budgetary pressures. The proposal was tabled to transfer £942,589 over to the Public Realm phase 1 project to enable the scheme to proceed. An update on the reasons for the removal of Kirkgate from the programme was included in the last progress report on the Kirkham Futures Programme, presented to the Planning Committee on 8<sup>th</sup> June 2022. The proposal to transfer funds within the wider Kirkham Futures programme was discussed with the Future High Street Fund team at DLUHC as a change request and there was verbal confirmation that this would be acceptable.
8. The Council is requested to note that the £942,589 to be transferred from Future High Street Fund monies previously allocated to Kirkgate has not yet received formal change request approval from the funders. An agreement in principle has been received, however officers continue to work through the formal change request process at the time of writing this report. If the formal change request approval is received from Future High Street Fund before the Council meeting on 25<sup>th</sup> July, it will be reported to members and the need to underwrite the funds will be removed from the recommendations. The purpose of the recommendation is to make the Council aware of the potential risk in agreeing to the transfer without 'formal' approval from Future High Street Fund. The Council is asked to underwrite the £942,589 funding shortfall from the council's capital investment reserve if the formal agreement is not obtained

## PROCUREMENT PROCESS & EVALUATION

9. Officers from the Projects and Regeneration Team and the Corporate Procurement Officer have led the tender process using a 'traditional' procurement route whereby the design is fully detailed by the Client design team prior to tender.
10. The tender process was undertaken using a restricted procedure. The opportunity was advertised on Contracts Finder via the 'Chest Procurement Portal' with interested contractors required to populate a Standard Questionnaire response by the deadline of 22<sup>nd</sup> October 2021
11. 13 Standard Questionnaire submissions were received. The Standard Questionnaire responses were evaluated and a shortlist of 6 contractors were selected to take through to Invitation to Tender stage. The selected shortlist was as follows:
  - A E Yates Ltd
  - Colas Ltd
  - Eric Wright Construction Group
  - Fox Building & Engineering Ltd

- Keltbray Highways Ltd
- The Casey Group Ltd

- The Invitation to Tender documents were issued to the shortlist on 30<sup>th</sup> November 2021 with a submission deadline of 28<sup>th</sup> January 2022.
- Four bids were received by A E Yates, Eric Wright Construction Group, Keltbray Construction and The Casey Group. Unfortunately, all bids were exceeded the maximum budget and it was decided to remove some elements of the scheme and send out a revised tender to the four contractors, with a return date of 6<sup>th</sup> May 2022.
- The tender was scored on a 70% price basis and 30% quality basis. A concise summary of the price evaluation section and how this was scored is contained in Table 2 below:

**Table 2: Tender Evaluation: Prices**

Description	A E Yates	Eric Wright Construction Group	Keltbray Construction
Tender Price	£4,883,730.36	£4,084,676.00	£4,928,390.84

The tenders were evaluated as a pro-rated score relative to the lowest tendered price. The calculation to work out scoring for the tender prices is as follows; (Lowest Tender Price / Actual Tender Price) multiplied by 70. The outturn scores are then rounded to the nearest whole number.

**Table 3: Summary of Tender Quality scores**

Criteria	Max. Score	Criteria Weighting	Max. Weighted Score	A E Yates	Eric Wright Construction Group	Keltbray Construction
		%				
Project Delivery	5	25%	7.5	6	7.5	7.5
Quality Management	5	25%	7.5	4.5	7.5	7.5
Programme Management	5	25%	7.5	7.5	6	4.5
Sustainability	5	25%	7.5	6	7.5	7.5
Total				24	28.5	27

**Table 4: Overall Tender Evaluation Scores**

	A E Yates	Eric Wright Construction Group	Keltbray Construction
Price	57.01	70.00	58.29
Quality	24.00	28.50	27.00
Total	81.01	98.50	85.29

- The highest scoring tenderer from the evaluation is Eric Wright Civil Engineering Ltd.

## **COST BREAKDOWN OF THE SCHEME**

- The table below gives a broad outline of the cost breakdown of the Phase 1 Public Realm works:

**Table 5: Breakdown of the Phase 1 Public Realm Works Costing**

	2022/23 £	2023/24 £	Total £
Market Square	1,074,230	671,394	1,745,624
Poulton Street	831,652	519,783	1,351,435
Provisional Sums	187,692	117,308	305,000
Preliminaries	420,072	262,545	682,617
<b>Total</b>	<b>£2,513,646</b>	<b>£1,571,030</b>	<b>£4,084,676</b>

## METHOD AND COST OF FINANCING THE SCHEME

17. Funding for a scheme for this purpose is included within the approved Capital Programme for 2022/2023 and 2023/2024, subject to the approval of the recommendations contained within this report which outlines the various funding sources to achieve the required budget

## VALUE FOR MONEY AND DETAILS OF PROCUREMENT PATH

18. To ensure that value for money is achieved a procurement exercise has been undertaken in accordance with the Council's contract procedure rules. Selection of the successful bid has been based on value for money using a cost / quality assessment as outlined in Table 3 included in this report.

## ONGOING REVENUE IMPLICATIONS OF THE SCHEME

19. The Phase 1 Public Realm works for Kirkham replaces existing public realm and infrastructure (i.e. street furniture) and included in the contract is a five year maintenance and repair commitment by the contractor. The ongoing cleansing, maintenance and repairs after the five-year contracted period will be included in existing revenue budgets, there are no significant additions to the public realm that would require specific or different cleaning and maintenance. There is a lighting scheme that will be implemented in Market Square that the local authority will maintain and repair within existing revenue budget provision.

## PROCUREMENT SUMMARY

20. The Council is requested to approve expenditure for the Public Realm Phase 1 works to be delivered under the Kirkham Futures Programme. The winning tender sum is £4,084,676. The Council is also requested to approve the letting of the contract to Eric Wright Civil Engineering Ltd, following a compliant tender process detailed above.

## RISK ASSESSMENT

21. The risks associated with the Phase 1 Public Realm works and the decision on the funding arrangements are outlined below:

RISK	IMPLICATIONS	PROBABILITY
The contract is not awarded	The preferred contractor would withdraw/revise their tender price resulting in additional cost and programme implications. Fylde would potentially need to re-tender the works	<b>LIKELY</b> – Without an identified alternative funding source the council is required to consider committing a significant sum of money to the project
The transfer of funds is not approved by the Future High Street team	The council would be required to identify an alternative funding source for the £942,859 – the report proposes that this is underwritten from the council's capital investment reserve	<b>UNLIKELY</b> – Verbal confirmation has been obtained on the change request from the lead officer with Future High Street Fund team

The Section 278 Agreement with LCC is not agreed and/or is delayed.	The works could not be carried out on the highway and the scheme would not be possible or the programme would need to be extended bringing with it additional cost implications.	<b>UNLIKELY</b> - Since LCC are part funding the project and the track record of Section 278 arrangements. Negotiations over performance fees and commuted sums are currently in progress with any cost to be funded from capacity within the existing Kirkham Futures programme.
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IMPLICATIONS	
Finance	<p>The report requests approval for expenditure of £4,084,676 (£2,513,646 in 2022/23 and £1,571,030 in 2023/24) in respect of the Kirkham Public Realm phase 1 project as outlined in this report. The report also requests approval to the letting of the contract for works.</p> <p>In addition, the report requests approval for a capital budget increase of £844,900 to be fully funded from LCC LERG funding for the Public Realm phase 1 works (£520,000 in 2022/23 and £324,900 in 2023/24).</p> <p>Finally, the report requests approval that the council underwrites the scheme funding sum of £942,589 for 2022/2023 financial year (from the capital investment reserve) in the event that approval is not ultimately confirmed from the Future High Street Fund team at DLUCH for this funding stream to be transferred from the Kirkgate scheme of the Kirkham Futures programme to the budget provision for Public Realm phase 1 works (this underwriting being required in order for the contract to be awarded for delivery of the public realm works). This recommendation presents a financial risk to the Authority if the transfer is not permitted by DLUCH.</p>
Legal	As noted, there is a risk in committing to the expenditure involved before the funding has been secured. However, the risk has been properly considered and evaluated, and a backup source of funding (the capital investment reserve) has been identified. The recommendations are therefore proper ones for the council to accept.
Community Safety	No implications arising from this report
Human Rights and Equalities	No implications arising from this report
Sustainability and Environmental Impact	No implications arising from this report
Health & Safety and Risk Management	A risk assessment is contained within the body of the report.

LEAD AUTHOR	CONTACT DETAILS	DATE
Charlie Richards	Charlie.richards@fylde.gov.uk	18/07/2022

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
N/A		

**Attached documents**

Appendix 1: Kirkham Futures Steering Group meeting minutes 12<sup>th</sup> May 2022

Appendix 2: LCC LERG Draft Grant Funding Agreement



# Notes

## Kirkham Futures Steering Group

<b>Date:</b>	Thursday, 12 May 2022	
<b>Venue:</b>	Remote Meeting Via Zoom	
<b>Present:</b>	Councillor Liz Oades (Chairman) Councillor Karen Buckley - Leader Tracy Manning - Deputy Chief Executive. Mark Evans - Head of Planning. Melissa Thorpe - Town Centres Manager & Acting Project Manager. Derek Appleton - Corporate Finance Manager. Carly Smith - Legal Officer. Mike Harris – Press Officer.	
<b>Note Taker:</b>	Lyndsey Lacey-Simone	Principal Democratic Services Officer

### 1. Apologies

Apologies were received from Paula Huber, Marie Percival, Gemma Broadley and Erin Coar.

### 2. Welcome and Introductions

Following introductions, the Chairman welcomed all those present to the meeting.

### 3. Notes and Actions from Previous Meeting

**Tracy Manning (TM)** introduced this item. In doing so, she referred to the notes of the last meeting which detailed a list of actions arising from the previous meeting of the KFSG. In summary, these were reported as follows:

#### Actions Brought Forward from 12 April 2022

- **ME to review the committee reporting arrangements/timetable and come back to Councillors Oades and Buckley at the earliest opportunity.** It was reported that **Melissa Thorpe (MT)** had drafted an information report to go the June meeting of the Planning Cttee which will include past minutes of the group meetings.

**Cllr Buckley (KB)** requested that a report come to the next meeting of the Steering Group setting out the timetable for the delivery of the projects running to 31<sup>st</sup> March 2024 **Action: MT**

- **25 car parking spaces had been lost in Market Square** – Actioned - This was covered on the agenda under item 4.
- **ME to further clarify the position about the “programme not being at risk” with the MP and report back to the Group** – It was reported that the MP for Fylde had met with Minister and further feedback was sought **Action: ME to chase up and update the group at the earliest opportunity.**

- ***It was reported a review/update of the content of website would be timely to strip out outdated information and refresh with updated information.*** This was dealt with in the Comms item.
- ***The opportunity for visuals to engage with the community by putting up posters/ banners up in Kirkham town centre to highlight the current/ongoing works/car parking etc.*** This was dealt with in the Comms item.
- ***KB asked that a comms plan be put in place highlighting the shop front scheme in particular.*** This was dealt with in the Comms item.

#### 4. Project Updates

**Shop Front Improvement Scheme - Melissa Thorpe (MT)** introduced this item. In doing so, she referred to the document previously circulated to the Group on the matter.

Details regarding to recent challenges relating to the allocation of grant funding for three shopfront conversions were highlighted at the meeting. Members were invited to consider 3 options (detailed below) and the associated risks to the HAZ & FHSF shopfront scheme. It was also suggested that consideration be given to any changes that the group deem necessary to the amount of grants offered to the three applicants in the first instance, and to the scheme moving forward.

The options presented at the meeting were as follows:

**Option 1-** Provide a 90% intervention rate on all projects taking part in the scheme regardless of cost, size, or location within the town centre.

**Option 2** - Provide an 80% intervention rate on all projects taking part in the scheme regardless of cost, size or location within the town centre.

**Option 3** - A grant panel will assess Shopfront projects against the scoring criteria which will result in a varying degree of intervention rates based on pre-set criteria

**Cllr Oades (EAO)** stressed the importance attached to this scheme and suggested that the Council move forward with Option 2 to provide an 80% max intervention rate. This was supported by **KB**. **Action: MT**

**Public Realm Improvements - ME** reported that whilst the scheme had been designed and had the benefit of planning permission, the key issue that remained is that the tenders for the works had come in considerably over the budget allocation.

The Group was reminded that the other element of funding secured was the LCC grant (Lancs Economic Recovery Fund) which had been agreed in principle by LCC's Cabinet. **ME** informed the group that a business plan had now been submitted to LCC to allow the Council to draw down the funding. Once concluded, the intention was to bring a report to committee and add to the Capital programme at the earliest opportunity. The group was advised that LCC had asked for some additional information and anticipated start dates at this stage were nebulous until the funding was secured.

**KB** asked that a copy of business plan be shared with group. **Action: ME/PH**

**Future Car parking Provision** - A detailed discussion took place about matters associated with the displaced Market Square car parking and the impact on the high street generally including the proposal to move the car parking to Kirkgate if the scheme was progressed in Phase 2 of the design works.

**Market Square Planting Works** - Issues relating to the maintenance of Market Square planting works and the associated planning condition were raised at the meeting.

Reference to the Town Council's proposal to continue public realm themes outside project area including the design rationale were further highlighted.

**Councillor Oades (EAO)** sought clarification on a number of areas including: LCC decision making process regarding funding; loss car parking spaces/ use of Market Square when events are not taking place; feasibility of a parking permit scheme at Kirkgate; general management/maintenance of planting works and the town councils role; restrictions on planting in Market Square and issues of securing alternative locations whilst the public realm works were ongoing; relationship/communications between planning and parks; entrance to market square

being pulled up/ closed. **ME** addressed these points. **MT confirmed that the issues relating to the works at the entrance to the market square were due to the repair of a sink hole.**

**KB** asked financial aspects of the open spaces contract. **EAO** addressed this point.

**Former Girls School, schedule of works and timetable** - **ME** reported that he would update members on the indicative timetable at the next meeting. A local architect, who had been commissioned to undertake the works was currently putting together a schedule of adjustments to the scheme that had previously received planning permission. **Action: ME to circulate indicative programme and include on agenda for the next meeting.**

**KB** asked about ongoing revenue costs -**Derek Appleton (DA)** addressed this matter.

**Kirkgate** - **ME** stated that as previously advised, the Kirkgate centre acquisition is not going to go ahead as it was not viable for partner organisations. The initial project was to acquire the building and pass on to a registered provider.

It was reported that officers had spoken to our FHSF case officer at Dept for the Levelling Up Fund about the possibility of reallocating /redistributing the funds for other purposes such as works to the frontage of the building or the shop front scheme funds and to seek an 'in principle' agreement. 4 potential options had been put forward.

**ME** advised that any alternative proposal must:

- Meet the original objectives of the FHSF programme.
- Meet the minimum BCR of 2:1.
- A project change request must be submitted, and this would take at least 6-8 weeks to process.

Potential deliverable options put forward for consideration were:

1. Private scheme for Kirkgate working with current building owner to deliver market homes.
2. Public realm  
Required to meet increased cost in materials.  
Delivers more of the 'original' scheme.
3. Shopfronts  
Potential to offer higher intervention rates and scheme throughout
4. Former TSB Bank refurb  
Committed to scheme following purchase and costs increasing as with other projects.  
About £100k additional cost estimate (at current prices)

It was acknowledged that the ongoing increase in the costs of materials/ labour was deemed to be a high risk.

**EAO** stated that her preference would be to reinvest in existing projects (Options 2, 3 and 4) with the priority being (Option 2) public realms works that would benefit everyone in the community. This was agreed by the Group. **Action: ME to progress.**

**Health and Wellbeing Project** - **MT** presented an updated report on Year 3 of the Health & Wellbeing programme. She advised that the Council was in receipt of job description, person specification and a Service Level Agreement for a Local Heritage Health and Wellbeing Coach which will be jointly funded by Fylde Council and Wyre Rural Extended Network (WREN) Primary Care Network. WREN will manage the work of the postholder over the next 2 years of the project, with referrals being made into a social prescribing programme of events specifically developed for the Kirkham Futures Project. Year 3 will continue with the current post holder to provide a consultancy service over the next 12 months. The postholder will provide the link between the Council and WREN.

In addition to the above, an evaluation of the scheme (led by consultants) would be undertaken. It is proposed to extend their work until end of June to drive Year 3 and Year 4 work.

**Staffing - TM** reported on this matter and in doing so, referred to the staffing document previously circulated. She highlighted the new/ key posts and other supporting officers that would be involved in the delivery of the project.

5. Project Communications Plan

**Mike Harris (MH)** was invited by the Chairman to present an update in this matter. **MH** stated that a draft project Communication Plan which had recently been prepared included key milestones of the project. He added that this currently runs to July 2022. In addition, Kirkham Futures website was currently under review to update and remove outdated information. Social media details from Rhodes Media had been received which would enable Facebook coverage re Kirkham Futures to be implemented.

**KB** highlighted the need to prioritise the update the website to enable the update on the shop front scheme to be communicated. **Action: MH/ EC**

6. Growth Lancashire Mid Term Review

**TM** reported that both she and **Paula Huber** had recently attended a meeting with the Acting Head of Growth Lancashire (GL). The Group was reminded that the Council had previously agreed to be a member of Growth Lancashire and the Leader would sit on the Board.

Some of the areas discussed at the meeting were highlighted including: the need to conduct a mid- term review, which looked at the original aspirations being delivered /funding streams; economics / sustainability of some of the projects/end use of buildings alongside opportunities created with partner organisations.

**TM** stated that GL would draw up the methodology which would be focused on programme sustainability and approach to be agreed by the group in due course. **Action: TM to bring a report to the next appropriate meeting.**

7. Any Other Business

There was no other business.

8. Date of Next Meeting

The Chairman thanked all for their attendance and contributions. It was suggested that the next meeting be held w/c 20 June 2022 onwards. Date TBC.

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**DATED**

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**GRANT AGREEMENT**

between

**LANCASHIRE COUNTY COUNCIL**

and

**FYLDE BOROUGH COUNCIL**

## CONTENTS

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### CLAUSE

1.	Definitions .....	1
2.	Purpose of Grant.....	4
3.	Payment of Grant.....	4
4.	Use of Grant .....	5
5.	Accounts and records .....	6
6.	Monitoring and reporting .....	6
7.	Acknowledgment and publicity.....	7
8.	Intellectual Property Rights.....	8
9.	Confidentiality .....	8
10.	Freedom of information.....	9
11.	Data protection .....	10
12.	Withholding, suspending, repayment and termination of Grant.....	10
13.	Anti-discrimination .....	12
14.	Human rights .....	12
15.	Limitation of liability .....	12
16.	Warranties and undertakings .....	13
17.	Insurance .....	14
18.	Duration.....	14
19.	Provisions relating to Subsidy Control .....	14
20.	Assignment.....	16
21.	Waiver .....	17
22.	Notices.....	17
23.	Dispute resolution.....	17
24.	No partnership or agency.....	17
25.	Joint and several liability.....	18
26.	Contracts (Rights of Third Parties) Act 1999.....	18
27.	Further assurance.....	18
28.	Managers .....	18
29.	VAT.....	18
30.	Governing law .....	18

### SCHEDULE

SCHEDULE 1	THE PROJECT .....	20
SCHEDULE 2	PAYMENT.....	21
SCHEDULE 3	MONITORING AND REPORTING.....	22
SCHEDULE 4	SUBSIDY CONTROL LEGAL ADVICE .....	23
SCHEDULE 5	DRAWDOWN CONDITIONS.....	24

THIS DEED is dated [DATE]

## **PARTIES**

- (1) **LANCASHIRE COUNTY COUNCIL**, whose principal address is at P0 Box 78, County Hall, Preston, Lancashire, PR1 8XJ ("**Authority**").
- (2) **FYLDE BOROUGH COUNCIL**, whose principal address is at [ ] ("**Recipient**").

## **BACKGROUND**

- (A) the Authority has agreed to pay the Grant to the Recipient to assist it in carrying out the Project.
- (B) This Agreement sets out the terms and conditions on which the Grant is made by the Authority to the Recipient.
- (C) These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.

## **AGREED TERMS**

### **1. DEFINITIONS**

In this Agreement the following terms shall have the following meanings:

**Authorised Representative:** means any person or company contracted by the Authority to monitor the use of the grant and outcomes on behalf of the Authority under any services contract or otherwise.

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Business Case:** means a Business Case in a form acceptable to and approved by the Authority

**Commencement Date:** the date of this Agreement.

**Data Protection Legislation:** the Data Protection Act 2018 ("**DPA**") and the General Data Protection Regulation (Regulation (EU) 2016/679) as amended from time to time.

**Drawdown Conditions:** means the conditions set out in Schedule 5

**Funding Schedule:** means a funding profile (template provided in Schedule 2) for each Project Element approved by the Authority and setting out the profile of anticipated claims for Grant which will be made by the Recipient.

**FOI Legislation:** means the Freedom of Information Act 2000 ("**FOIA**") and subordinate legislation made under this and the Environmental Information Regulations 2004 (each as amended or replaced from time to time), or any other

information access information regimes as may be applicable to the parties from time to time;

**Grant:** the sum of £3.2m comprising the aggregate of the LERG Grant and the Highways Capital Grant to be paid to the Recipient in accordance with this Agreement, allocated to each element of the Project as set out in Schedule 1,.

**Grant Period:** (a) LERG Grant: the period for which the Grant is awarded starting on the Commencement Date and ending on 31 March 2024. (b) Highways Capital Grant: the period for which the Grant is awarded starting on the Commencement Date and ending on 24<sup>th</sup> March 2024.

**Highways Capital Grant:** means the sum of £2.8m allocated from the Authority's Highways and Transport Capital Programme Budget

**Information Request:** a request for information or an apparent request under FOI Legislation.

**Intellectual Property Rights:** all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions.

**Know-How:** information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.

**LERG Grant:** £0.4m allocated from the Authority's Lancashire Economic Recovery & Growth Fund

**Prohibited Act:** means:

- (a) offering, giving or agreeing to give to any officer of the Authority any gift or consideration of any kind as an inducement or reward for:
  - (a) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority; or
  - (b) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority;
- (b) entering into this Agreement or any other contract with the Authority where a commission has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;
- (c) committing any offence:
  - (a) under the Bribery Act;
  - (b) under legislation creating offences in respect of fraudulent acts; or



(c) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Authority; or

(d) defrauding or attempting to defraud or conspiring to defraud the Authority.

**Project:** the project and each Project Element described in Schedule 1

**Project Element:** each of the elements of the Project described in Schedule 1

**Project Funding;** means the project funding as specified in the relevant Business Case and Funding Schedule.

**Project Manager:** the individual who has been nominated to represent the Authority for the purposes of this Agreement.

**Project Milestones:** means the Project Milestones specified in Schedule 1

**Project Outputs:** means those project outputs specified in Schedule 1

**Project Outcomes:** means those project outcomes specified in Schedule 1

**Recipient Manager:** the individual who has been nominated to represent the Recipient for the purposes of this Agreement

**Significant Change:** a change which:

(a) changes the overall cost of any Project Element from that detailed in the agreed Funding Schedule; or

(b) results in a change of more than 10% from time to time in any periodic scheduled profile spend as set out in the agreed Funding Schedule (notwithstanding that the overall cost of any Project Element may not change); or

(c) results in an overall change of more than 10% of the aggregate profile spend relating to any head of expenditure as set out in the agreed Funding Schedule (notwithstanding that the overall cost of any Project Element may not change); or

(d) results in any change to the Project Outputs, Project Outcomes or Project Milestones detailed in Schedule 1 (as updated to ensure consistency with any approved Business Case).

**Subsidy Control:** means all subsidy control rules applying from time to time in the UK which shall particularly include (but without limit):

a) the subsidy control rules as applies in the United Kingdom from the 1st January 2021 pursuant to, derived from , the UK-EU Withdrawal Agreement, the UK-EU Trade and Co-operation Agreement, the WTO Rules, UK FTA's and the Northern Ireland Protocol

b) the Subsidy Control Act 2022.

**Subsidy Control Legal Advice:** means the legal advice provided to the Applicant by a lawyer or lawyers experienced and expert in the field of Subsidy Control law, a copy of which is in Schedule 4.

**Transparency Database:** means the Transparency Database to be maintained by UK Government providing for details of grants awarded in compliance with Subsidy Control

**Trade and Co-operation Agreement:** means the Trade and Co-operation Agreement concluded by the UK and EU 2020

**UK-FTA's:** means any and all free trade agreements entered into, or to be entered into in the future, by the United Kingdom with sovereign nations, trading blocs, or other international entities

**Withdrawal Agreement:** means the withdrawal agreement entered into by the United Kingdom and the European Union 2019

**WTO Rules:** means the World Trade Organisation rules including but not limited to the Agreement on Subsidies and Countermeasures, the Agreement on Trade Related Investment Measures, the General Agreement on Trade in Services and the Agreement on Agriculture

## **2. PURPOSE OF GRANT**

- 2.1 The Recipient shall use the Grant only for the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The Grant shall not be used for any other purpose without the prior written agreement of the Authority.
- 2.2 The Recipient shall not make any Significant Change to the Project or any Project Element without the Authority's prior written agreement.
- 2.3 The source and amounts of Project Funding for each Project Element will be set out in the relevant Business Case and Funding Schedule. Where the Recipient intends to apply to a third party for other funding for the Project, it will notify the Authority in advance of its intention to do so and, where such funding is obtained, it will provide the Authority with details of the amount and purpose of that funding. The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that the Authority is funding under this Agreement.

## **3. PAYMENT OF GRANT**

- 3.1 Subject to clause 12, the Authority shall pay the Grant to the Recipient in accordance with Schedule 2.
- 3.2 No Grant shall be paid unless and until the Authority is satisfied that such payment will be used for proper expenditure in the delivery of the Project or any Project Element and at the Authority's discretion may not in any event be

payable before the expiry of three (3) calendar months after the publication of details of the Grant (or relevant part thereof) on the Transparency Database.

- 3.3 The amount of the Grant shall not be increased in the event of any overspend by the Recipient in its delivery of the Project or any Project Element.
- 3.4 The Recipient shall promptly repay to the Authority any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Grant monies have been paid in error before all conditions attaching to the Grant have been complied with by the Recipient.

#### **4. USE OF GRANT**

- 4.1 Each element of the Grant shall be used by the Recipient for the delivery of the Project and each Project Element in accordance with Schedule 1.
- 4.2 Where the Recipient has obtained funding from a third party in relation to its delivery of the Project (including without limitation funding for associated administration and staffing costs), the amount of such funding shall be included in the budget in Schedule 2 together with a clear description of what that funding shall be used for.
- 4.3 The Recipient shall not use the Grant to pay for any expenditure commitments of the Recipient entered into before the Commencement Date unless this has been approved in writing by the Authority.
- 4.4 The Recipient shall not spend any part of the Grant on the delivery of the Project or any Project Element after the Grant Period.
- 4.5 To ensure that there is not a significant delay in the commencement of any Project Element, if the Drawdown Conditions are not satisfied in accordance with the timetable referred to in Schedule 5 or the Recipient's first claim in relation to the relevant Project Element has not been made by the date one month from the anticipated date of claim under the Business Case for that Project Element then the Authority may by notice in writing terminate this Agreement in relation to that Project Element and shall be under no further obligation to provide funding in relation to that Project Element.
- 4.6 Unless otherwise agreed in writing by the Authority should any part of the Grant remain unspent at the end of the Grant Period, the Recipient shall ensure that any unspent monies are returned to the Authority.

- 4.7 Any liabilities arising at the end of the Project or any Project Element must be managed and paid for by the Recipient from other resources of the Recipient. There will be no additional funding available from the Authority for this purpose.
- 4.8 The Recipient agrees to cooperate and act in good faith in the receipt and use of this Grant.

## **5. ACCOUNTS AND RECORDS**

- 5.1 The Grant shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds.
- 5.2 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it.
- 5.3 The Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the Project and the expenditure of the Grant for a period of at least six years following receipt of any Grant monies to which they relate. The Authority shall have the right to review the Recipient's accounts and records and shall have the right to take copies of such accounts and records.
- 5.4 If requested by the Authority the Recipient shall provide the Authority with a copy of its annual accounts within six months (or such lesser period as the Authority may reasonably require) of the end of the relevant financial year in respect of each year in which the Grant is paid.
- 5.5 The Recipient shall comply and facilitate the Authority's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Authority.

## **6. MONITORING AND REPORTING**

- 6.1 The Recipient shall closely monitor the delivery and success of the Project (including the progress towards and the achievement of the Project Outputs, Project Outcomes and Project Milestones) throughout the Grant Period to ensure that the aims and objectives of the Project are being met and that this Agreement is being adhered to.
- 6.2 The Recipient shall meet with the Authority as requested by the Authority (but not less than quarterly) to review the Project and in addition shall provide the Authority or its Authorised Representative with such reports and in such form as the Authority shall reasonably require in the manner and covering the issues or principles identified in Schedule 3 (as revised from time to time by the

Authority) on a quarterly basis (or such other frequency as is requested by the Authority) and always to ensure the timely reporting of information as may be required by any Governmental agency.

- 6.3 Where the Recipient has obtained funding from a third party for its delivery of part of the Project, the Recipient shall include the amount of such funding in its financial reports together with details of what that funding has been used for.
- 6.4 The Recipient shall on request provide the Authority or its Authorised Representative with such further information, explanations and documents as the Authority or its Authorised Representative may reasonably require in order for it to establish that the Grant has been used properly in accordance with this Agreement.
- 6.5 The Recipient shall permit any person authorised by the Authority or its Authorised Representative such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.
- 6.6 The Recipient shall provide the Authority or its Authorised Representative with a final report on completion of the Grant Period which shall confirm whether the Project and each Project Element has been successfully and properly completed.

## **7. ACKNOWLEDGMENT AND PUBLICITY**

- 7.1 The Recipient shall acknowledge the Grant in its annual report and accounts, including an acknowledgement of the Authority as the source of the Grant.
- 7.2 The Recipient shall not publish any material referring to the Project or the Authority without the prior written agreement of the Authority. The Recipient shall acknowledge the support of the Authority in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by the Authority) shall include the Authority's name and logo (or any future name or logo adopted by the Authority) using the templates provided by the Authority from time to time.
- 7.3 In using the Authority's name and logo, the Recipient shall comply with all reasonable branding guidelines issued by the Authority from time to time.
- 7.4 The Recipient agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Authority.

- 7.5 The Authority may acknowledge the Recipient's involvement in the Project as appropriate without prior notice.
- 7.6 The Recipient shall comply with all reasonable requests from the Authority or its Representatives to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Authority in its promotional and fundraising activities relating to the Project.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 The Authority and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Authority or the Recipient before the Commencement Date or developed by either party during the Grant Period, shall remain the property of that party.
- 8.2 Where the Authority has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Authority.

## **9. CONFIDENTIALITY**

- 9.1 Subject to clause 10 (Freedom of Information), each party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.
- 9.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:
- (a) at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
  - (b) is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired

by the receiving party from the disclosing party under any obligations of confidence; or

- (c) is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

## **10. FREEDOM OF INFORMATION**

- 10.1 The parties acknowledge that each party is a public authority as defined by FOI Legislation and that information relating to this Agreement may be the subject of an Information Request which shall be considered in accordance with this Clause 10.
- 10.2 The parties shall assist each other in complying with their obligations under FOI Legislation, as they relate to Information Requests made in relation to this Agreement, including but not limited to assistance, without charge, in gathering information to respond to an Information Request relating to this Agreement. For the avoidance of doubt, nothing in this Clause 10, shall require a party to provide information, if the relevant information has not been held on behalf of the party that received the Information Request.
- 10.3 Where a party receives an Information Request in relation to this Agreement ("**Receiving Party**") and the other party holds information or records on behalf of the Receiving Party, upon request, such other party agrees to provide the Receiving Party with a copy of all such information related to the Information Request, in the form that the Receiving Party reasonably requires within five working days (or such other period as the Receiving Party may reasonably specify) of the Receiving Party's request.
- 10.4 Each party, as a separate public authority shall, in its absolute and sole discretion, decide:
  - (a) whether the Information Request is valid under the FOI Legislation, as well as all other considerations relevant in the assessment of an Information Request under the FOI Legislation, such as any considerations (as may be applicable) regarding the cost of complying with a request or any charges for responding to a request, whether the request is repeated, vexatious or manifestly unreasonable and any other relevant considerations;
  - (b) whether the information requested is relevant to the Agreement;
  - (c) whether the information is exempt information;
  - (d) where appropriate, whether or not in all circumstances of the case the public interest in maintaining any exemption outweighs the public interest in disclosing the requested information; and

- (e) whether the information requested in the Information Request is to be disclosed or not.

10.5 The parties acknowledge that the Receiving Party may, acting in accordance with the Cabinet Office Freedom of Information Code of Practice (issued under section 45 of the FOIA, July 2018), be obliged under the FOI Legislation to disclose information:

- (a) without consulting with the other party; or
- (b) following consultation with the other party and having taken its views into account,

provided always that where clause 10.5(b) applies the Receiving Party shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the other party advanced notice, or failing that, to draw the disclosure to the other party's attention after any such disclosure.

10.6 The Receiving Party shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the other party to inspect such records as requested from time to time.

## **11. DATA PROTECTION**

The Recipient shall, and shall procure that any of its staff involved in connection with the activities under this Agreement shall, comply with the provisions and obligations imposed by the Data Protection Legislation in relation to the storing and processing of Personal Data and all Personal Data acquired by either party to the other shall be returned to the disclosing party on request. Both parties agree to indemnify each other in respect of any unauthorised disclosure or processing of Personal Data or breach of Data Protection Legislation which arise in connection with the Agreement.

## **12. WITHHOLDING, SUSPENDING, REPAYMENT AND TERMINATION OF GRANT**

12.1 The Authority's intention is that the Grant will be paid to the Recipient in full. However, without prejudice to the Authority's other rights and remedies, the Authority may at its discretion by notice to the Recipient withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant and/or terminate this Grant Agreement in whole or in part with immediate effect if:

- (a) the Recipient uses the Grant for purposes other than those for which they have been awarded;
- (b) the Recipient is in breach of Clause 4.5 relating to significant delay;
- (c) the Authority considers that the Recipient has not made satisfactory progress with the delivery of the Project or any Project Element or does not achieve



the Project Outputs, Project Outcomes or Project Milestones when they fall due;

- (d) the Recipient is, in the reasonable opinion of the Authority, delivering the Project in a negligent manner;
- (e) the Recipient obtains duplicate funding from a third party for the Project;
- (f) the Recipient obtains funding from a third party which, in the reasonable opinion of the Authority, undertakes activities that are likely to bring the reputation of the Project or the Authority into disrepute;
- (g) the Recipient provides the Authority or its Authorised Representative with any materially misleading or inaccurate information;
- (h) the Recipient commits or committed a Prohibited Act;
- (i) the Recipient or any person associated with it has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of the Authority, bring or are likely to bring the Authority's name or reputation into disrepute;
- (j) the Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- (k) the Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or
- (l) there is a breach at any time of any of the Warranties and Undertakings set out in Clause 16; or
- (m) the Recipient otherwise fails to comply with any of the terms and conditions set out in this Agreement and (where in the opinion of the Authority the breach is capable of being rectified) fails to rectify any such failure within 30 days of receiving written notice detailing the failure.

12.2 Wherever under the Agreement any sum of money is recoverable from or payable by the Recipient (including any sum that the Recipient is liable to pay to the Authority in respect of any breach of the Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Recipient under the Agreement.

12.3 The Recipient shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

- 12.4 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this Agreement it will notify the Authority as soon as possible so that, if possible, and without creating any legal obligation, the Authority will have an opportunity to provide assistance in resolving the problem or to take action to protect the Authority and the Grant monies.

### **13. ANTI-DISCRIMINATION**

- 13.1 The Recipient shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.
- 13.2 The Recipient shall take all reasonable steps to secure the observance of clause 13.1 by all officers, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

### **14. HUMAN RIGHTS**

- 14.1 The Recipient shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Recipient were a public body (as defined in the Human Rights Act 1998).
- 14.2 The Recipient shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

### **15. LIMITATION OF LIABILITY**

- 15.1 The Authority accepts no liability whether in contract or tort for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Grant or from withdrawal of the Grant. The Recipient shall indemnify and hold harmless the Authority, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.
- 15.2 Subject to clause 15.1, the Authority's liability under this Agreement is limited to the payment of the Grant.

## **16. WARRANTIES AND UNDERTAKINGS**

16.1 The Recipient warrants, undertakes and agrees as a continuing obligation during the course of this Agreement that:

- (a) it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Grant);
- (b) it has not committed, nor shall it commit, any Prohibited Act;
- (c) it shall at all times comply with all relevant legislation (including laws relating to Subsidy Control and public procurement) and all applicable codes of practice and other similar codes or recommendations, and shall notify the Authority immediately of any significant departure from such legislation, codes or recommendations;
- (d) it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
- (e) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (f) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (g) all financial and other information concerning the Recipient which has been disclosed to the Authority or its Authorised Representative is to the best of its knowledge and belief, true and accurate;
- (h) it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant;
- (i) it is not aware of anything in its own affairs, which it has not disclosed to the Authority or any of the Authority's advisers, which might reasonably have influenced the decision of the Authority to make the Grant on the terms contained in this Agreement; and
- (j) since the date of its last accounts there has been no material change in its financial position or prospects.
- (k) it will use the Grant as expenditure strictly in compliance with Subsidy Control and warrants that all representations made pursuant to Clause 19.5 (b) were when given and shall continue to be true, complete and accurate .
- (l) it will deliver the Project and each Project Element in a responsible and lawful manner having due regard to its obligations in relation to dealing with third parties (including any relevant Highways Authority).

## 17. INSURANCE

- 17.1 The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss (the **Required Insurances**).
- 17.2 The Required Insurances referred to above include (but are not limited to):
- (a) public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Project; and
  - (b) employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Project.
- 17.3 The Recipient shall (on request) supply to the Authority or its Authorised Representative a copy of such insurance policies and evidence that the relevant premiums have been paid.

## 18. DURATION

- 18.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the anniversary of expiry of the Grant Period.
- 18.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

## 19. PROVISIONS RELATING TO SUBSIDY CONTROL

- 19.1 The Recipient hereby confirms that the Grant is compliant with all Subsidy Control in relation to each Project Element as set out within this clause 25. The Recipient shall comply with all applicable Subsidy Control law, regulation and guidance and shall ensure that all such Subsidy Control requirements are met and shall further ensure that the Grant to the Project or any Project Element does not constitute an illegal subsidy.
- 19.2 Furthermore and to the extent that the Grant constitutes a subsidy (and not a permitted de minimis subsidy) within the Subsidy Control regulations, the Recipient confirms that the six Subsidy Control Principles set out in the UK-EU Trade and Co-operation Agreement listed below are fully satisfied:

- (a) The Grant pursues a specific public policy objective to remedy an identified market failure or to address an equity rationale such as social difficulties or distributional concerns (“the objective”).
  - (b) The Grant is proportionate and limited to what is necessary to achieve the objective.
  - (c) The Grant is designed to bring about a change of economic behaviour of the Recipient that is conducive to achieving the objective and that would not be achieved in the absence of the subsidy being provided.
  - (d) The Grant does not compensate for the costs the Recipient would have funded in the absence of any subsidy.
  - (e) The Grant is an appropriate policy instrument to achieve a public policy objective and that objective cannot be achieved through other less distortive means.
  - (f) The Grant’s positive contributions to achieving the Project or any Project Element outweighs any negative effects, in particular any material effect on trade or investment between the UK and the EU.
- 19.3 The Grant does not and will not in any event rank as an award which is a prohibited subsidy or a subsidy which is subject to conditions under the Subsidy Control requirements.
- 19.4 The Recipient shall co-operate with and report to the operationally independent authority or body with an appropriate role in the Subsidy Control requirements to be established, whether upon a temporary or permanent basis, and shall abide by and comply with its requests and directions.
- 19.5
- (a) The Recipient will fully co-operate with and assist the Authority in fulfilling its obligations to assess compliance with Subsidy Control, make returns and disclose information relating to the Grant on the Transparency Database. The Recipient consents to the publication on the Transparency Database of any information which may be required including (but not limited to): (1) legal basis justifying compliance, policy objective and purpose of the Grant, (2) name of the Recipient, (3) amount of Grant expressed in full in national currency, (4) date of making the Grant, its duration and any other time limits and in addition (5) other information of the nature mentioned in any sub-clause of this clause 19.
  - (b) The Recipient acknowledges that the Authority will rely on written representations (whether of fact or opinion) made by the Recipient to justify compliance with Subsidy Control.

- 19.6 The Recipient shall maintain detailed records with the information and supporting documentation necessary to establish that all the conditions set out in this Agreement are fulfilled and so as to show a clear audit trail. Such records shall be maintained for 12 (twelve) years from the date of either this Agreement or payment of Grant (whichever shall be the later) and shall be made available to the authority or body referred to sub-clause 19.4.
- 19.7 The Authority may monitor the Applicant's compliance with the requirements of this clause 19 and for the avoidance of doubt any failure to comply with such requirements (where applicable) shall be deemed a breach of this Agreement entitling the Authority to exercise its rights under Clause 12 of this Agreement. In addition the Authority may vary or withhold any or all of the funding and/or require repayment of the Grant already paid, together with Interest from the date of payment of the Grant, if there is a breach or default of Subsidy Control. The Recipient hereby acknowledges that any such breach or default of will compel repayment of the Grant.
- 19.8 The Subsidy Control Legal Advice confirms that the Grant may be properly and validly delivered in compliance with Subsidy Control and which may legitimately be relied upon as regards the receipt by the Recipient of the grant funding being lawful.
- 19.9 In order to secure transparency that the funding for the purpose of Subsidy Control the Grant funding shall be ring fenced within the Recipient's accounts and shall be used only for the purpose set out in this Agreement.
- 19.10 The Recipient agrees to fully comply with the advice and recommendations set out in the Subsidy Control Legal Advice to ensure that the Project or any Project Element continues to comply with Subsidy Control.
- 19.11 In addition to Clause 19.10 above, it will be a Condition Precedent on the Recipient that prior to the first drawdown request and any subsequent drawdown requests, the Subsidy Control Legal Advice is and remains satisfactory to the Authority in compliance with Subsidy Control rules and receipt of the grant funding remains lawful.

## **20. ASSIGNMENT**

- 20.1 The Recipient may not, without the prior written consent of the Authority, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Grant.

**21. WAIVER**

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

**22. NOTICES**

All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or mailed (second class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the third working day following such mailing.

**23. DISPUTE RESOLUTION**

23.1 In the event of any complaint or dispute (which does not relate to the Authority's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the Project Manager and the Recipient Manager from time to time.

23.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred as in Clause 23.1 either party may refer the matter to the respective Chief Executives of the parties with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Authority and the Recipient.

23.3 In the absence of agreement under clause 23.2, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

**24. NO PARTNERSHIP OR AGENCY**

This Agreement shall not create any partnership or joint venture between the Authority or its Authorised Representative and the Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

**25. JOINT AND SEVERAL LIABILITY**

Where the Recipient is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Recipient shall be jointly and severally liable for the Recipient's obligations and liabilities arising under this Agreement.

**26. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

**27. FURTHER ASSURANCE**

At any time upon the written request of the Authority it shall promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for the Authority the full benefit of this Agreement and of the rights and powers herein granted and hereby irrevocably appoints the Authority its attorney for that purpose. Such instruments and documents may include security documents to secure any repayment obligation of the Recipient relating to the Grant funding under this Agreement.

**28. MANAGERS**

The parties will ensure that the Project Manager and the Recipient Manager have decision-making authority to act, or make decisions, on their respective behalfs and shall be the primary contact points between the respective organisations for the purposes of this Agreement.

**29. VAT**

The payment of the Grant by the Authority under this Agreement is believed to be outside the scope of Value Added Tax but if any Value Added Tax shall become chargeable all payments comprising the Grant shall be deemed to be inclusive of all Value Added Tax and the Council shall not be obliged to pay any Value Added Tax over and above the Grant.

**30. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.



This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**EXECUTED as a DEED** )  
By affixing the COMMON SEAL of )  
**LANCASHIRE COUNTY COUNCIL** )  
)

Authorised Signatory-----

)  
**EXECUTED as a DEED** )  
By affixing the COMMON SEAL of )  
**FYLDE BOROUGH COUNCIL** )  
)

Authorised Signatory-----

## **Schedule 1 The Project**

[Insert]

## Schedule 2 Payment

Subject to the continued compliance by the Recipient with the terms of this Agreement and the satisfaction of the Drawdown Conditions relevant to any grant element, the Grant will be payable within 30 working days of the receipt of a valid claim by the Recipient for elements of the Grant in respect of each Project Element in accordance with an agreed Funding Schedule as follows:

- Contribution rate – as per attached Funding Schedule
- Form of Claim – Quarterly in arrears based upon defrayed expenditure
- Min frequency and level of claim – Quarterly/£10,000
- A list of agreed categories of expenditure for each Project Element – set out in the agreed Funding Schedule.
- Agreed profile of spend – as Funding Schedule.
- Details of Recipient Bank Account as follows:

Bank: HSBC

Sort Code: 40-40-02

Account No: 11006428

Account Name: General



Funding  
Schedule.xlsx

### **Schedule 3 Monitoring and Reporting**



Progress  
Report.docx

#### **Schedule 4 Subsidy Control Legal Advice**

## **Schedule 5 Drawdown Conditions**

1. The approval by the Authority of a Business Case (applicant requirements to be included in a template to be provided by the Authority) and an updated Schedule 1 relating to each Project Element to the timetable set out in Schedule 1 and to incorporate:

- a) relevant Funding Schedule detailing anticipated Heads of Expenditure, spending profile, funding sources, contribution rates;
- b) Project Outputs and Milestones.

2. Evidence satisfactory to the Authority of:

- a) commitment of other funding to the Project (or any Project Element).
- b) relevant internal approvals of the Recipient.
- c) relevant third party consents (e.g Highways Authority)