**Folkestone Community Works Programme**

**Date: [ ] 2018**

**SME BUSINESS**

**GRANT FUNDING AGREEMENT**

# BETWEEN

**FOLKESTONE AND HYTHE DISTRICT COUNCIL**

**AND**

# [NAME OF GRANT RECIPIENT]

## Programme Name: Folkestone Community Works

**Project Reference: [ ]**

**Document Number: [ ]**

## PARTIES

(1) **FOLKESTONE AND HYTHE DISTRICT COUNCIL** of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (**the "Council**”);

## (2) [NAME OF GRANT RECIPIENT] of [ADDRESS] (the “Grant Recipient”). BACKGROUND

1. The Council has agreed to pay a Grant to the Grant Recipient in accordance with the terms set out in the Offer Letter and this Grant Funding Agreement including the following documents annexed:
	* Bank Details Form
	* Monitoring Information Requirements
	* State Aid Declaration
	* Diversity Monitoring Form
2. The Commission of the European Union (‘European Commission’) has adopted the Operational Programme for England, setting out its contribution to the Union strategy for smart, sustainable and inclusive growth and the achievement of economic, social and territorial cohesion.
3. The Council has secured a grant from the Commission of the European Union to deliver the Folkestone Community Works Programme to support the re-invigoration of an area of Folkestone that currently suffers from high levels of social deprivation.

**NOW THEREFORE IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:**

1. **DEFINITIONS:**

1.1 In this Grant Funding Agreement the following words and phrases shall have the following meanings:

|  |  |
| --- | --- |
| “Authorised Signatory”  | means that person authorised to act on behalf of the Grant Recipient to sign and to enter into the Grant Agreement and abide by the obligations under this Grant Agreement, and in respect of any Grant Recipient which is an unincorporated body refers to the Nominee properly appointed by them   |
| “Bribery Act**”**   | means 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 |
| “Council ” | means Folkestone and Hythe District Council  |
| “Change” | means in relation to the Grant Recipient any of the  |

|  |  |
| --- | --- |
|  | following:-1. A change in the ownership or control
2. A change in the nature or purpose of the Project
3. Any change affecting the Eligible Expenditure
4. Any change to any of the Outputs

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| “Data Protection Legislation” | means (i) the Data Protection Act 1998 (DPA 1998), (ii) the General Data Protection Regulation *(Regulation (EU) 2016/679)* (“GDPR”), Law Enforcement Directive *(Directive (EU) 2016/680)* (“LED”), (iii) the Data Protection 2018 (“DPA 2018”) (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy and (iv) all applicable Legislation about the processing of personal data and privacy |
| “MHCLG” | means the Ministry of Housing, Communities and Local Government whose name is subject to change |
| “Eligible Expenditure” | means expenditure detailed in the Offer Letter and complying with Clauses 2.5 and 5.2 |
|  “Environmental Information Regulations or EIR” | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such |
| “ESIF” | means European Structural Investment Funds which comprises funds from the European Regional Development Fund (ERDF) and European Social Fund (ESF) |
| “ESF” | means European Social Fund, which is the source of European funding available to support some of the Folkestone Community Works programme objectives |
| “ERDF” | means European Regional Development Fund, which is the source of European funding available to support some of the Folkestone Community Works programme objectives |
| “Folkestone Community Works Programme” | the Folkestone Community Led Local Development Programme funded by European Structural Investment Funds (ESIF) |
| “FOIA” | means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner (including the Annexes) and the Offer Letter |
| “Grant Funding Agreement” | means this document and includes all the Schedules  |
| “Grant” | means such sum as may be approved for payment under this Grant Funding Agreement |
| “Grant Application Form” | means the application for Grant and all supporting papers submitted to the Council, including the details of Project Activities, the Project Plan and any amendments to any of these documents approved by the Council in writing prior to the date of the Offer Letter |
| “Grant Period” | means the period for which the Grant is awarded commencing on the Start Date and ending on the date by which the Project Outputs are delivered.  |
| “Grant Recipient” |  means the person(s), organisation(s) or partnership/consortia to which a Grant is provided |
| “Information” | has the meaning given under section 84 of the Freedom of Information Act |
| “Match Funding”  | means the arrangements approved by the Council for securing contributions to the Project to meet the balance of Eligible Expenditure not supported by Grant  |
| “Maximum Sum” | means the maximum amount of grant payable  |
| “Monitoring Information Requirements” | means the specific activities and/or services the Grant Recipient is expected to deliver through the successful completion of the Project (as specified in the Schedules) |
| “Nominee” | means that person properly authorised to act on behalf of an unincorporated Grant Recipient |
| “Offer Letter” | means the letter accompanying this Grant Funding Agreement |
| “Project” | means the project in respect of which a Grant is being provided under this Grant Funding Agreement to enable delivery of the project fully described in the Grant Recipient’s Project Application Form (contained in Schedule 8) and briefly described in the Offer Letter |
| “Project Management Team” | means the Council’s Folkestone Community Works Programme Delivery Team |
| “Reporting End Date” | means the date by which the Project Outputs and Results Profile contained in Schedule 3 will be delivered and reported to the Project Management Team, as set out in this Grant Funding Agreement |
| “Start Date” | means the commencement of this Grant Funding Agreement from the date signed by the Grant Recipient  |

## 2. PURPOSE OF GRANT

2.1 In consideration of being in receipt of the Grant, the Grant 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 Council.

2.2 The Grant Recipient shall not make any significant change to the Project without the Council's prior written agreement.

2.3 Where the Grant Recipient intends to apply to a third party for other funding for the Project, it will notify the Council in advance of its intention to do so and, where such funding is obtained, it will provide the Council with details of the amount and purpose of that funding. The Grant 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 Council is funding in full under this Grant Funding Agreement.

2.4 In consideration of the Parties’ respective obligations contained in this Grant Funding Agreement the Council offer the Grant and the Grant Recipient accepts the Grant up to the Maximum Sum on the terms and conditions of this Grant Funding Agreement.

2.5 The Grant will only be paid in respect of Eligible Expenditure. Eligible Expenditure includes:-

[As set out in the application and to be agreed with grant holder and in accordance with ESIF eligible expenditure]

2.6 Subject to entering into this Grant Funding Agreement Eligible Expenditure that has been defrayed on or after the Start Date may be claimed pursuant to this Grant Funding Agreement.

2.7 For the avoidance of doubt the reference to Grant and the provisions of this Grant Funding Agreement shall apply to all claims and expenditure beginning on the Start Date.

2.8 If the Grant Funding Agreement is not entered into for any reason there shall be no expectation of Grant and any expenditure incurred from the Start Date in that case shall be entirely for the account and at the risk of the Grant Recipient and shall be repayable to the Council at the Council’s sole discretion.

## 3. THE APPLICATION AND ACCEPTANCE OF GRANT TERMS

3.1 In order to accept this Grant Funding Agreement, the Grant Recipient shall sign and date this Grant Funding Agreement as appropriate.

3.2 The Start Date of the Grant is the date that the Grant Recipient signs this Grant Funding Agreement.

3.3 The Grant Recipient warrants to the Council that the Grant Application Form is accurate in all respects, having made proper and full enquiry in relation to the same. The Council has based its decision to offer and pay the Grant (and has relied) upon the representations made by the Grant Recipient in the Grant Application and in all documents and information provided as part of the appraisal process.

 3.4 For the avoidance of doubt, clause 3 is intended to ensure that:-

3.4.1 no disclaimer of liability for the contents of the Grant Application affects the Council’s right to recover any sum under this Grant Agreement; and

3.4.2 there is reserved to the Council any rights of action or remedies for any mistake, negligent misstatement, misrepresentation or error of judgment made in the Grant Application upon which the Council has relied in agreeing to provide Grant to the Grant Recipient.

3.5 The Grant Recipient accepts and agrees to all of the conditions having made full and proper enquiry before giving the warranties contained in this Grant Funding Agreement.

3.6 The Grant Recipient acknowledges that the Grant has been offered to it to carry out the Project specified within the Grant Application and repeated in the Offer Letter and to achieve the Outputs as set out in the Monitoring Information Requirements.

3.7 The Grant Recipient acknowledges and agrees that all the Schedules form part of this Grant Funding Agreement and are accurate in every respect.

3.8 The Grant Recipient acknowledges and agrees that it is responsible for being cognisant with all relevant legislation with regards to the Folkestone Community Works Programme.

## 4. GRANT CLAIMS

4.1 Amount of Grant payable;

4.1.1 The total amount of Grant payable is detailed in the Offer Letter as the Maximum Sum

4.1.2 The total amount of Grant paid to the Grant Recipient shall not exceed the Maximum Sum and the Grant shall be paid, for the period specified, in this Grant Funding Agreement and does not imply any commitment or agreement to any further funding.

4.2 Match Funding arrangements;

4.2.1 The payment of Grant is conditional upon the receipt by the Grant Recipient of the Match Funding or the Match Funding being committed

4.2.2 The Grant Recipient shall secure a minimum of 50% match funding. Eligible private sector match funding includes;

1. Bank loan or overdraft facility
2. Company/Organisation own funds
3. Own funds (including Owners/Directors loan)
4. Personal funds from Company/Organisation
5. Private investor/New Share capital/New equity

investors

 (f) (for ESF funded delivery work) Volunteer time

4.3 Sources regarded as ineligible match funding include;

1. Costs already incurred prior to the Start Date
2. Loans or overdraft facilities which have been

committed to cover previous expenditure and potential future profits

4.4 Payment of the Grant shall only be made in respect of actual costs incurred, as follows:

* + 1. on receipt by the Council of invoices properly certified,
		2. on receipt by the Council of evidence of expenditure properly incurred (See PROGRAMME GRANT MANUAL) as may be required by the Programme Management Team,
		3. on receipt of evidence that ESIF National Procurement Requirements rules have been respected,
		4. subject to such future provision or proof of expenditure as the Council may from time-to-time require.

## 5. GRANT CLAIMS PROCEDURE

5.1 The Council will make an advance payment of 10% of the ESIF funding for projects delivered by third sector organisations that have a total project cost under £400 000 and 5% for projects over this amount. This payment will be made after the signature of the Grant Agreement.

5.2 The Council will not make the payment of the rest of the Grant unless all of the following preconditions have been complied with and it maintains the right to withhold 10% until satisfactory project completion:

5.2.1 the expenditure is Eligible Expenditure;

5.2.2 that Eligible Expenditure has been defrayed (that is that Eligible Expenditure has been incurred and that payment has been made by the Grant Recipient) in respect of any Eligible Expenditure to which a Grant relates;

5.2.3 evidence to demonstrate Eligible Expenditure and defrayal has been provided including:

1. relevant procurement document
2. invoices
3. bank statement showing payment
4. Timesheets
5. Any other evidence of defrayal for expenditures related to the match funding and the grant

5.2.4 the Council has received an invoice for the relevant grant amount from the Grant Recipient;

5.2.5 the Grant Recipient shall make all Grant claims in arrears;

5.2.6 the first Grant claim shall relate to all Eligible Expenditure incurred and paid by the Grant Recipient from the Start Date; and

5.3 The Council reserves the right at its exclusive discretion to require repayment of all or part of the Grant including the 10% proportion paid in advance in the event any of the circumstances referred to in Clause 5.2 are not met.

5.4 The Council will normally meet a Grant claim within 25 Working Days of receipt, but this is subject to the Grant Recipient satisfactorily meeting any request for further particulars about the Eligible Expenditure specified in the Grant claim or any other details provided for in the Grant claim. The time for payment of the Grant claim shall not be of the essence. The Council shall have no liability to the Grant Recipient for any losses caused by a delay in the payment of a Grant claim howsoever arising.

## 6. PUBLICITY AND BRANDING

6.1 This Grant is provided by the Folkestone CLLD Programme which is part-funded by the European Regional Development Fund Operational Programme for England 2014-2020 and The European Social Fund Operational Programme for England 2014-2020. These programmes are funded under the overarching European Structural and Investment Funds, Operational Programme for England 2014-2020. As such the following guidelines must be adhered to.

6.2 In accepting this Grant, the Grant Recipient agrees to participate in any publicity or advertisement organised by the Council and/ or its representative.

6.3 The Grant Recipient shall not:

6.3.1 carry out any publicity of this Agreement or the Grant without the prior agreement of the Council.

6.3.2 support or promote any activities by any organisation that is not relevant to the Project for which the Grant has been provided, and

6.3.3 publish any material which, in whole or in part, appears to be designed to affect public support for a political party where the Grant is made in whole or part for the purposes of publishing material.

6.4 All publicity materials **must**:

6.4.1 Be viewed and approved by the Council prior to public release. In some cases it may be a requirement for publicity materials to be approved by the MHCLG. The Council will co-ordinate this where necessary and a reasonable time MUST be allowed to achieve this,

6.4.2 Clearly identify that the grant is part-funded by the European Structural Investment Fund Operational Programme for England 2014-2020 and include the EU, the Folkestone Community Works Programme and the Council’s logos.

## 7. MONITORING

7.1 Following the payment of the final Grant amount, the Folkestone Community Works Programme Management Team will undertake a monitoring visit to ensure that the grant has been spent exclusively in line with the Offer Letter and this Grant Funding Agreement.

7.2 The Grant Recipient shall be given 2 weeks’ notice of the monitoring visit.

7.3 The Grant Recipient shall closely monitor the delivery and success of the Project 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.

7.4 The Grant Recipient shall not make any significant change to the Project without the Council's consent.

7.5 The Grant Recipient shall achieve the outputs and results contained in Schedule 3 which show the intended rate of progress of the Project.

7.6 If necessary, the Council will consider extending the Grant period provided that the delay is not such as to necessitate a reduction or suspension or the withholding or recovery of Grant under Clause 9.

7.7 The Grant Recipient shall comply with the deadlines that the Council sets for any requests for additional information in whatever form concerning the progress of the Project.

7.8 The Grant Recipient shall on request provide the Council with such further information, explanations and documents as the Council may reasonably require in order for it to audit the Project and establish that the Grant has been used properly in accordance with this Agreement.

7.9 The Grant Recipient shall permit any person authorised by the Council such reasonable access to its employees, agents, premises, facilities and systems, records, for the purpose of auditing, discussing, monitoring and evaluating the Project and the Grant Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.

7.10 The Grant Recipient shall permit any person authorised by the Council to visit the Grant Recipient when required by the Council in its reasonable opinion for the purpose of monitoring the delivery of the Project.

7.11 The obligations in this Clause 7 shall survive expiry or termination of this Agreement, and shall continue until the date specified in the relevant Guidance Documentation Including Electronic Data Exchange for 2014-20 ERDF Projects and ESF Projects (as appropriate).

## 8. REQUIREMENTS OF GRANT RECIPIENT

8.1 The Grant Recipient shall perform the obligations set out below.

8.1.1 In accordance with Clause 5 above, complete the Grant Agreement and provide the necessary evidence of Eligible Expenditure to enable the Grant to be paid to the Grant Recipient.

8.1.2 Use the Grant wholly and exclusively for the purpose specified in the Offer Letter.

8.1.3 The Grant shall be shown in the Grant Recipient’s accounts as a restricted fund and shall not be included under general funds.

8.1.4 Provide the Project Management Team with periodic progress reports and other information which may be required from time to time, and keep the Council fully informed at all times of all matters relating to the need for, and use of, the Grant. The Grant Recipient shall immediately notify the Project Manager (appointed by the Council) in writing if there is any material change affecting its finances or activities or any other matters stated in the Grant Application throughout the period that the Grant is being provided.

8.1.5 Assist the Council in the production of case studies to show how the grant has been used as required.

8.1.6 Submit for inspection the books of accounts and other records (or certified copies of them), as may be required relating to the use of the Grant, within 14 days of a request to do so.

8.1.7 Where the Grant exceeds £1,000, ensure that the audited accounts include a statement showing the use to which the Grant has been put.

8.1.8 Strive to achieve best practice, particularly in respect of the application of equalities and anti-discriminatory legislation, including active support of the programmes Equalities and Diversity Implementation Plan.

8.1.9 Demonstrate the Grant Recipient has a Sustainable Development Policy and actively supports the programme’s sustainable development implementation plan (which has been previously approved in writing by the Council).

8.1.10 Comply with all relevant statutory and other legal requirements (including all relevant rules, regulations and orders) pertaining to the operation of its business and all associated matters, including those obligations relating to employment.

## 9. VARIATION, WITHHOLDING AND REPAYMENT OF GRANT

9.1 The Council may cancel, vary or withhold any or all of the Grant payments

and/or require repayment of a Grant payment already made where at the sole and absolute discretion of the Council:-

9.1.1 the MHCLG cancels varies or withholds any funds granted to the Council under a Grant Offer letter from the MHCLG for any reason;

 9.1.2 the arrangements for financing the Project are changed;

9.1.3 in the Council’s opinion, progress on the Project is not

 satisfactory;

 9.1.4 in the Council’s opinion, the future of the Project is in jeopardy;

9.1.5 in the Council’s opinion, there is a significant change in the scale or nature of the Project;

9.1.6 in the Council’s opinion, any information given in relation to the Project changes substantially or is shown to be incorrect or misleading or any claim is based on misleading information;

9.1.7 the Grant Recipient fails to comply with and/or is in breach of the conditions of this Agreement;

9.1.8 the Council is required to do so as a result of any decision by the European Commission or as a result of any obligation arising under European Union law.

9.3 The Council may demand that the Grant Recipient repay the Grant funding forthwith in the following circumstances:

9.3.1 All or part of the Grant (as may be specified by the Council) if the Grant Recipient is dissolved, wound-up, disbanded, declared insolvent or bankrupt or otherwise ceases to operate (whether the subject of formal proceedings or not).

9.3.2 All or part of the Grant (as may be specified by the Council) if the Grant Recipient ceases to be a voluntary organisation or ceases to operate for the purposes in respect of which the Grant was paid.

9.3.3 All or part of the Grant (as specified by the Council) if the Grant Recipient has failed to comply with any Grant Conditions or any other obligations under this Grant Funding Agreement.

9.3.4 Wherever under the Grant Funding Agreement any sum of money is recoverable from or payable by the Grant Recipient (including any sum that the Grant Recipient is liable to pay to the Council in respect of any breach of the Agreement), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Grant Recipient under the Grant Funding Agreement or under any other agreement or contract with the Council.

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

9.5 Should the Grant 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 Grant Funding Agreement it will notify the Council as soon as possible so that, if possible, and without creating any legal obligation, the Council will have an opportunity at its sole discretion to provide assistance in resolving the problem or to take action to protect the Council and the Grant monies.

## 10. FIXED ASSETS

10.1 The Grant Recipient acknowledges and agrees that:

1. if it uses the Grant to purchase a Fixed Asset and this Asset is later sold, disposed of and/or leased in the useful economic life of the Asset, the Council shall require the Grant Recipient to reimburse the Council with the actual or estimated open market value of the Fixed Asset at the time of disposal less any necessary sale expenses reasonably incurred;
2. where the Fixed Asset was partly funded by the Grant, the Council may require the reimbursement of the percentage of the net sale value which represents the initial Grant Funding contribution to the purchase.

10.2 For the avoidance of doubt unless otherwise agreed by the Council all disposals of Fixed Assets shall be at the best price reasonably obtainable based on an open market valuation evidenced in writing.

## 11. ANTI-DISCRIMINATION

11.1 The Grant 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.

11.2 The Grant Recipient shall take all reasonable steps to secure the observance of clause 13.1 by all servants, employees or agents of the Grant Recipient and all suppliers and sub-contractors engaged on the Project

## 12. ANTI-BRIBERY

12.1 The Grant Recipient shall:

12.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 **(Relevant Requirements**);

12.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

12.1.3 comply with the Council's Ethics, Anti-bribery and Anti-corruption Policies (to be provided to the Grant Recipient(“**Relevant Policies”)**

12.1.4 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 12, and will enforce them where appropriate;

12.1.5 promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Grant Recipient in connection with the performance of this agreement;

12.1.6 immediately notify the Council in writing if a foreign public official becomes an officer or employee of the Grant Recipient or acquires a direct or indirect interest in the Grant Recipient, and the Grant Recipient warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement;

12.2 The Grant Recipient shall ensure that any person associated with the Grant Recipient who is performing services ,or providing goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Grant Recipient in this clause 12 (Relevant Terms). The Grant Recipient shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly

liable to the Council for any breach by such persons of any of the Relevant Terms.

12.3 Breach of this clause 12 shall be deemed a cause for termination under clause 20 of this agreement.

12.4 For the purpose of this clause 12 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this clause 12, a person associated with the Grant Recipient includes but is not limited to any subcontractor of the Grant Recipient.

**13. PROTECTION OF PERSONAL DATA, FREEDOM OF INFORMATION LEGISLATION, & ENVIRONMENTAL INFORMATION REGULATIONS**

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13.1 The Grant Recipient’s attention is hereby drawn to the Data Protection Legislation and any associated Legislation that arises in connection with this Agreement.

13.2 The Grant Recipient warrant that they will duly observe all their obligations under the Data Protection Legislation which arise in connection with this Agreement or any Services Agreement and shall promptly provide the Council with such information (including but not limited to a copy of the Grant Recipient’s registration under the Data Protection Legislation) as the Council may reasonably require to satisfy itself of the Grant Recipient’s compliance with the Data Protection Legislation.

The Grant Recipient shall comply with the Council's data protection policy and relevant obligations under the Data Protection Legislation and associated codes of practice when processing personal data relating to any employee, worker, customer, supplier or agent of the Council or any third party and undertakes to the Council that it will not knowingly place the Council in breach of that other party’s obligations under the Data Protection Legislation.

13.3 The Grant Recipient shall assist the Council at no additional charge in meeting any reasonable requests for information which are made to it in connection with the Freedom of Information Act 2000, the Environmental Information Regulations 2004, or any other similar guidelines, codes of practice, or legislation which arise in connection with this Agreement

13.4 The Grant Recipient acknowledges and agrees that all information submitted to the Folkestone Community Works Programme by it will be subject to the requirements of the Freedom of Information Act 2000.

13.5 For the avoidance of doubt the Council shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Grant Recipient shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Council.

## 14. CONFIDENTIALITY

14.1 The Grant Recipient undertakes that they will keep the contents of this Agreement confidential except to the extent that disclosure is required by FOIA or EIR or otherwise by law.

## 15. LIMITATION OF LIABILITY AND INDEMNITY

15.1 The Council accepts no liability for any costs, losses, expenses, damages and/or liabilities, whether direct or indirect and howsoever incurred, that may come about from the Grant Recipient running the Project, the use of the Grant and/or from withdrawal of the Grant. The Grant Recipient irrevocably agrees to

indemnify and hold harmless the Council, 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 Grant Recipient in relation to the Project, the non-fulfilment of obligations of the Grant Recipient under this Agreement and its obligations to third parties.

15.2 Subject to clause 15.1 and applicable laws, the Council's liability under this Agreement is limited to the payment of the Grant.

## 16. REPRESENTATION AND WARRANTIES

16.1 The Grant Recipient represents, warrants, undertakes and agrees with the Council that:

16.1.1 it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Grant);

16.1.2 it has not committed, nor shall it commit, and prohibited act pertinent to English criminal law;

16.1.3 it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Council immediately of any significant departure from such legislation, codes or recommendations;

16.1.4 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;

16.1.5 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;

16.1.6 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;

16.1.7 all financial and other information concerning the Grant Recipient which has been disclosed to the Council is to the best of its knowledge and belief, true and accurate;

16.1.8 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;

16.1.9 it is not aware of anything in its own affairs, which it has not disclosed to the Council or any of the Council's advisers, which might reasonably have influenced the decision of the Council to make the Grant on the terms contained in this Agreement; and

16.1.10 since the date of its last accounts there has been no material change in its financial position or prospects

## 17. EVENTS OF DEFAULT

17.1 An event of default will occur if;

17.1.1 the Grant Recipient shall use the Grant for any purpose other than the Eligible Expenditure; or

17.1.2 the Council establishes that the Grant is not or has ceased to be compliant with State Aid rules; or

17.1.3 the Grant is not being used for the delivery of the Project in accordance with the terms and conditions set out in this agreement; or

 17.1.4 the Grant Recipient fails to advise the Council beforehand on

significant changes to the Project as set out in the Grant Recipient’s application; or

17.1.5 there is unsatisfactory progress against, or there is a failure to complete any Project milestone as set out in Schedule 3; or

17.1.6 there is unsatisfactory progress or failure to deliver any output set out in Schedule 3; or

17.1.7 the Grant Recipient commits any breach of any obligation or undertaking in this Agreement and either such breach is in the Council’s opinion not capable of remedy or such breach is capable of remedy and is not remedied within 28 days after the date of notice by the Council to the Grant Recipient requiring remedy; or

17.1.8 the Grant Recipient repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to fully perform the terms of this Agreement; or

17.1.9 any representation, warranty or statement made repeated or deemed to be made by the Grant Recipient in or pursuant to this Agreement is or proves to have been untrue or incorrect in any material respect when made or when deemed to be repeated with reference to the facts and circumstances existing at such time; or

17.1.10 this Agreement is held by a court to be unlawful or unenforceable in any respect; or

17.1.11 the Grant Recipient suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR any individual who is or is comprised in the Grant Recipient or partner of the Grant Recipient is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR any partner of the Grant Recipient(being a partnership) has any partner to whom any of the foregoing apply; or

17.1.12 a receiver or administrative receiver or administrator or trustee in bankruptcy or supervisor shall be appointed over all or any of the Grant Recipient's assets; or a person becomes entitled to make such appointment; or an application is made to court for such an appointment; or if a notice is given of intention to make such an appointment; or

17.1.13 a petition shall be presented, or a resolution passed or proposed, or an order shall be made, for the winding up of the Grant Recipient or the appointment of a trustee in bankruptcy or supervisor of the Grant Recipient; or

17.1.14 a creditor or encumbrancer of the Grant Recipient attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Recipient's assets; or

17.1.15 a proposal shall be presented or made for a voluntary arrangement of the Grant Recipient, or a resolution passed or order made in readiness for such a proposal, or the Recipient applies for an interim order for a voluntary arrangement; or

 17.1.16 where the Grant Recipient is dissolved or suspends or ceases,

or threatens to suspend or cease, carrying on all or a substantial part of its business ceases trading; or

17.1.17 any event occurs, or proceeding is taken, with respect to the Grant Recipient in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses 17.1.13 to 17.1.15 inclusive; or

17.1.18 any individual comprised in the Grant Recipient dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

17.2 Each event of default will be deemed to be a repudiatory breach of this Agreement by the Grant Recipient. The Council may (without prejudice to any of its other rights and remedies it may have) upon and at any time after the occurrence of an event of default, so long as the same is continuing, by notice to the Grant Recipient do any one or more of the following:

17.2.1 declare that its commitment and any obligation of the Council to make any further payment under this Agreement (including any further payment of Grant under Clause 4) shall be reduced and/or deferred, to such amount and/or, to such later period as the Council may determine, whereupon such commitment shall be reduced and or deferred accordingly; and/or

17.2.2 declare that its commitment and any obligation of the Council to make any further payment under this Agreement shall be terminated, whereupon such commitment shall be reduced to zero and such obligation shall be terminated forthwith; and/or

17.2.3 declare that the Grant has become immediately repayable in full, and demand that the Grant Recipient shall forthwith repay the same together with all other sums payable under this Agreement and in such event the Council shall also be deemed to have made a declaration under clause 17.2.2.

17.3 For as long as any event of default is continuing, and if any subsequent new default event occurs, the Council shall be entitled from time to time to further exercise again all the rights in Clause 17.2 and change its position concerning any exercise of rights under Clause 17.2 that has already taken place.

17.4 The Grant Recipient shall notify the Council forthwith in writing of the occurrence of any of the events specified in clause 17.

17.5 The Grant Recipient shall indemnify the Council against any losses, costs, expenses, damages and liabilities incurred by the Council as a consequence of any event of default under clause 17. The Council’s certificate of any amounts due to the Council under this clause 17.4 shall be conclusive unless manifestly incorrect.

## 18. INSURANCE

18.1 The Grant 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 Grant Recipient, arising out of the Grant Recipient's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss (the Required Insurances).

18.2 The Required Insurances referred to above include (but are not limited to):

 18.2.1 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

18.2.2 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.

 18.2.3 The Grant Recipient shall (on request) supply to the Council a

copy of such insurance policies and evidence that the relevant premiums have been paid

## 19. DURATION

19.1 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 or for so long as any Grant monies remain unspent by the Grant Recipient, whichever is longer.

19.2 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.

## 20. TERMINATION

20.1 The Council may terminate this Grant Funding Agreement and any Grant payments on giving the Grant Recipient three months' written notice should it be required to do so by financial restraints or for any other reason.

## 21. ASSIGNMENT

21.1 The Grant Recipient may not, without the prior written consent of the Council, 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.

## 22. WAIVER

22.1 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.

## 23. NOTICES

23.1 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, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered or if e-mailed 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 second working day following such mailing.

## 24. DISAGREEMENT AND DISPUTE PROCEDURES

24.1 Both parties shall use their reasonable endeavours to resolve any disagreements between them in relation to the operation of this Grant Funding Agreement in the course of day-to-day liaison.

24.2 Disagreement which cannot be resolved in the course of the day-to-day liaison should, in the first instance, be addressed by a special meeting between the Authorised Representatives of both parties, and involving any other appropriate parties. This should take place within a month of either party raising the disagreement in writing to the other party.

## 25. NO PARTNERSHIP OR AGENCY

25.1 This Agreement shall not create any partnership or joint venture between the Council and the Grant 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.

## 26. JOINT AND SEVERAL LIABILITY

26.1 Where the Grant 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 Grant Recipient accept joint and several liability for the Grant Recipient's obligations and liabilities arising under this Agreement.

## 27. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

27.1 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.

## 28. GOVERNING LAW

 This Agreement shall be governed by and construed in accordance with

the laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

**Project Reference:**

**IN WITNESS of which the parties have executed this Agreement on the date first appearing above**

For and on behalf of

## Folkestone and Hythe District Council

Signed: …………………………………………………..

For and on behalf of [NAME OF COMPANY/ORGANISATION]

SIGNED by

Director:

Witnessed by

Name:

Address:

## SCHEDULES

**Schedule 1** Bank Details Form

**Schedule 2** Project spend/claim profile

**Schedule 3** Project Outputs and Results Profile

**Schedule 4** Monitoring Information Requirements

**Schedule 5** State Aid Guidance & Declaration

**Schedule 6** Diversity Monitoring Form

**Schedule 7** VAT Declaration Form

**Schedule 8** Project Application Form

## SCHEDULE 1: BANK/BUILDING SOCIETY DETAILS FORM

Bank/Building Society Details for **<insert name of Grant Recipient>**

1. **Legal Name of Grant Recipient:**

|  |
| --- |
|   |

1. **Name of Bank/Building Society:**

|  |
| --- |
|   |

1. **Address of Bank/Building Society:**

|  |
| --- |
|     |

1. **Name of Account:**

|  |
| --- |
|   |

1. **Sort Code:**

|  |
| --- |
|   |

1. **Account Number:**

|  |
| --- |
|   |

1. **Bank Stamp (to be completed by your Bank/Building Society):**

Note: To the Bank/Building Society: Folkestone and Hythe Borough Council requires you to validate that the account details on this form correspond to the organization named in Box 1 by stamping this space with a stamp indicating the branch name and number

**SCHEDULE 2: PROJECT SPEND/CLAIM PROFILE**

**SCHEDULE 3: PROJECT OUTPUTS AND RESULTS PROFILE**

**SCHEDULE 4: MONITORING INFORMATION REQUIREMENTS**

In accordance with the Grant Application, the Grant Recipient shall demonstrate evidence of the following Outputs:

|  |  |  |  |
| --- | --- | --- | --- |
| **TARGETS**  | **DESCRIPTION**  | **TO BE** **ACHIEVED** **BY**  | **EVIDENCE REQUIREMENTS**  |
| Output 1 (C1) ERDF | Number of enterprises receiving support  | Quarterly schedule of output delivery based on timescale of project as set out in Schedule 3. | As set out in ESIF eligible expenditure documentation and Grant Manual. |
| Output 2 (C5) ERDF | Number of new enterprises supported   | Quarterly schedule of output delivery based on timescale of project as set out in Schedule 3. | As set out in ESIF eligible expenditure documentation and Grant Manual. |
| Output 3(C8)ERDF | Employment increase in supported enterprises | Quarterly schedule of output delivery based on timescale of project as set out in Schedule 3. | To be agreed with Programme Management Team and  |
| Output 4(P2)ERDF | Public or commercial buildings built or renovated | Quarterly schedule of output delivery based on timescale of project as set out in Schedule 3. | As set out in ESIF eligible expenditure documentation and Grant Manual. |
| Output 5(P11)ERDF | Number of potential entrepreneurs assisted to be enterprise ready | Quarterly schedule of output delivery based on timescale of project as set out in Schedule 3. | To be agreed with Programme Management Team and  |
| Output 6(CO01)ESF | Unemployed, including long-term unemployed | Quarterly schedule of output delivery based on timescale of project as set out in Schedule 3. | As set out in ESIF eligible expenditure documentation and Grant Manual. |
| Output 7(CO03)ESF | Inactive  | Quarterly schedule of output delivery based on timescale of project | To be agreed with Programme Management Team and  |
| Output 8(CO4)ESF | Participants over 50 years of age | Quarterly schedule of output delivery based on timescale of project as set out in Schedule 3. | As set out in ESIF eligible expenditure documentation and Grant Manual. |
| Output 10(CO16)ESF | Participants with disabilities | Quarterly schedule of output delivery based on timescale of project as set out in Schedule 3. | To be agreed with Programme Management Team and  |
| Result 1(CR01)ESF | Inactive participants engaged in job-searching upon leaving | Quarterly schedule of output delivery based on timescale of project | As set out in ESIF eligible expenditure documentation and Grant Manual. |
| Result 2(CR02)ESF | Participants in education/training upon leaving | Quarterly schedule of output delivery based on timescale of project as set out in Schedule 3. | To be agreed with Programme Management Team and  |
| Result 3(CR04)ESF | Participants in employment, including self employment, upon leaving | Quarterly schedule of output delivery based on timescale of project as set out in Schedule 3. | As set out in ESIF eligible expenditure documentation and Grant Manual. |

**SCHEDULE 5: STATE AID GUIDANCE & DECLARATION FORM**

***You are being offered assistance under the European Commission’s* de minimis *regulation (Commission Regulation (EC) No 1998/2006 of 15 December***

***2006 on the application of Articles 87 and 88 of the Treaty to* de *minimis aid, Official Journal L 379 of 28.12.2006). This allows an enterprise to receive up to €200,000 worth of assistance over any three fiscal year period.***

***To confirm that you are able to receive this assistance you must declare the full amount of* de minimis *aid you have already received over the past two***

***fiscal years and the current. You must also declare the amount of aid received under the new ‘*Small amounts of compatible aid’ *scheme (N43/2009) – see***

***below for further information. The maximum combined aid that can be granted to any enterprise under* de minimis *and the* Small amounts of compatible aid *scheme is €500,000.***

***Potentially any assistance you may have received from a public body might be* de minimis *aid. This could be from central, regional, devolved governments or agencies or a local council. However, in this declaration you must only***

***included aid that was strictly classified as* de minimis *(or was specifically***

***granted under the* Small amounts of compatible aid *scheme). Below is a list of possible forms of aid that might be given as* de minimis.**

…………………………………………………………………………………………………

I declare that the amount of State Aid received by **<insert name of Grant Recipient>** is;

|  |  |  |  |
| --- | --- | --- | --- |
| **Dates of Assistance**  | **De Minimis\* (£)**  | **Small Amounts** **Compatible Aid\* (£)**  | **of**  |
|  |  |  |  |
|  |  |  |  |
| **TOTAL =**  |  |  |  |

**Signed:**

**Name:**

**Position:**

**Date:**

\*You should only include amounts which were strictly classified as de minimis aid or small amounts of compatible aid

**The ‘Small Amounts of Compatible Aid’ Scheme**

**The ‘*small amounts of compatible aid’* scheme is a temporary measure that was approved by the European Commission in response to the economic**

**downturn. It allows aid, of up to €200,000, to be granted to small and large**

## enterprises in 2009 and/or 2010. The aid granted under this scheme can not be combined with aid granted as *de minimis* for the same expenditure. The

**maximum combined aid under *de minimis* and this scheme cannot exceed €200,000 to any individual enterprise during the period from 1 January 2016 to 31 December 2019.**

|  |
| --- |
| **List of Potential Aid** The following are examples of possible forms of aid (this is not a comprehensive list). It should give you an indication of common forms of aid which you may have been given over the past three fiscal years. If you are not sure whether or not any public assistance you have received is classified as *de minimis* aid please contact the body which granted the assistance to get clarification.  * Grant from public bodies
* interest rate relief;
* tax relief and tax credits;
* state guarantees or holdings;
* state provision of goods or services on preferential terms;
* direct subsidies and/or tax exemptions;
* preferential interest rates and/or guarantees of loans on especially favourable terms;
* acquisition of land or buildings either gratuitously or on favourable terms;
* provision of goods and services on preferential terms;
* indemnities against operating losses;
* reimbursement of costs in the event of success;
* State guarantees, whether direct or indirect, to credit operations preferential rediscount rates;
* dividend guarantees;
* preferential public ordering;
* reduction of, or exemption from, charges or taxes, including accelerated depreciation and the reduction of social contributions;
* deferred collection of fiscal or social contributions;
* assistance financed by special levies;
* capital transfers and/or certain State holdings in the capital of undertakings.
* consultancy advice provide either free or at a reduced rate;
* assistance to help companies invest in environmental projects;
* assistance to help a public enterprise prepare for privatisation;
* legislation to protect or guarantee market share;
* public private partnerships and contracts not open to competitive tendering;  receipt of landfill tax credit funding.
 |

**SCHEDULE 6: DIVERSITY MONITORING FORM (For ERDF Funding only)**

NOTE: ESF funded projects will require further metrics beyond those set out below

**Please answer the following 3 questions in respect of the majority of the company’s Owners, Partners or Directors:**

1. **Gender:** Male / Female (Delete as Appropriate)

1. **Ethnicity:** (Please tick 1 box only)

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White – British

White – Irish

White – Other

Mixed – White & Black Caribbean

Mixed – White & Black African

Mixed – White & Asian

Mixed – Other

Chinese

Asian or Asian British – Indian

Asian or Asian British – Pakistani

Asian or Asian British – Bangladeshi

Asian or Asian British – Other

Black or Black British – Caribbean

Black or Black British – African

Other

3. **Disability\*:** Yes / No (Delete as Appropriate)

\* Defined by the disability discrimination act as *“A physical or mental impairment which has a substantial and adverse effect on the ability to carry out day to day activities.”* This can include impairments such as asthma, diabetes, epilepsy, dyslexia, multiple sclerosis, mental health issues etc.

**SCHEDULE 7: VAT DECLARATION FORM**

**SCHEDULE 8**

**PROJECT APPLICATION FORM**