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Dated

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MALVERN HILLS DISTRICT COUNCIL

and

FUNDING AGREEMENT

Relating to funding for ...

Legal Services
The Council House
Avenue Road
Malvern
Worcestershire
WR14 3AF

Project the project more particularly described in Schedule 1.

2. Purpose and use of Funding

- 2.1 The Recipient shall use the Funding only for the delivery of the Project and in accordance with the terms of this Agreement.
- 2.2 The Recipient shall not make any alteration or amendment to the Project without the Funder's prior written agreement.
- 2.3 The Recipient agrees that it shall not apply for duplicate funding in respect of any part of the Project that the Funder is funding in full under this Agreement.
- 2.4 Upon delivery/completion of the Project, the Recipient shall return to the Funder any unspent Funding, save as where agreed under this Agreement, within fourteen days of Project completion

3. Payment of Funding

- 3.1 Subject to the provisions of clause 10, the Funder shall pay the Funding to the Recipient in accordance with the timescale set out in Schedule 2.
- 3.2 The amount of the Funding shall not be increased in the event of any overspend by the Recipient in its delivery of the Project.

4. Accounts and records

- 4.1 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Funding for a period of at least six years following delivery of the Project. The Funder shall have the right to review the Recipient's accounts and records that relate to the expenditure of the Funding and shall have the right to take copies of such accounts and records.

5. Monitoring and reporting

- 5.1 The Recipient shall monitor the delivery of the Project and shall provide the Funder with information on the use of the Funding and delivery of the Project.
- 5.2 The Recipient shall notify the Funder upon completion of the Project and shall confirm and produce evidence that the Funding has been used for the delivery of the Project.

6. Acknowledgment and publicity

- 6.1 Acknowledgement and Publicity regarding this award must be undertaken by the Recipient in accordance with clauses 6.2 – 6.6.

- 6.2 **Media:** Any press releases or news articles to be distributed to the media or public must be approved prior to their distribution by the Funder. The release/article should acknowledge both the Funding contribution from the Funder and the source of the Funding (i.e. Section 106 agreement contributions). Help with the writing and distribution of press releases and media activity is available by contacting the Funder's Communications Team.
- 6.3 **Social media:** Any social media post about the Project should reference the Funder as a funder of the Project.
- 6.4 **Printed material:** Leaflets, banners, posters and other material do not need to be approved by the Funder. However, they must include the Funder's logo and the words 'Supported by' or 'Funded with support from' must appear above or next to the logo.
- 6.5 **Communications regarding major projects:** The Recipient should agree with the Funder's Nominated Officer whether a formal opening/launch event should be held. Projects will be considered on a case by case basis but, for any project that receives more than £50,000 in funding, a formal opening/launch is likely to be required. A representative from the Funder, usually the Chairman or relevant Portfolio Holder, must be invited to attend the event. Publicity for such an event would be subject to the conditions set out in 6.2, 6.3 and 6.4.
- 6.6 **Plaque:** Projects will be reviewed on a case by case basis by the Funder's Nominated Officer but it is expected that all projects Any project that received more than £ in will receive a plaque from Malvern Hills District Council in recognition of the Funder's contribution. This must be displayed in a prominent location either inside or outside of the building.
- 6.7 On occasion the Funder may wish to instigate its own publicity in one or more of the formats set out in clauses 6.2 – 6.6 (inclusive) or another agreed format. The Funder will confirm if this is the case and, in such cases, the Recipient shall co-operate with the Funder on any promotional activities.

7. **Freedom of information**

- 7.1 The Recipient acknowledges that the Funder is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and co-operate with the Funder (at the Recipient's expense) to enable the Funder to comply with these information disclosure requirements.
- 7.2 In doing so, the Recipient shall provide all necessary assistance as reasonably requested by the Funder to enable the Funder to respond to a request for information within the time for compliance set out in the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

7.3 The Recipient 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 Funder to inspect such records as requested from time to time.

8. Data protection

8.1 The Recipient shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Agreement.

9. Withholding, suspending and repayment of Funding

9.1 The Funder's intention is that the Funding will be paid to the Recipient in full. However, without prejudice to the Funder's other rights and remedies, the Funder may withhold or suspend payment of the Funding (if applicable) and/or require repayment of all or part of the Funding if:

9.1.1 the Recipient uses the Funding for purposes other than for the delivery of the Project;

9.1.2 the delivery of the Project does not start within [TIME] of the date of this agreement and the Recipient has failed to provide the Funder with a reasonable explanation for the delay;

9.1.3 the Funder considers that the Recipient has not made satisfactory progress with the delivery of the Project;

9.1.4 the Recipient is, in the reasonable opinion of the Funder, delivering the Project in a negligent manner;

9.1.5 the Recipient obtains duplicate funding from a third party for the Project;

9.1.6 the Recipient provides the Funder with any materially misleading or inaccurate information;

9.1.7 the Recipient commits or has committed a Prohibited Act;

9.1.8 any employee or volunteer of the Recipient has:

(a) acted dishonestly or negligently at any time, whether directly or indirectly, to the detriment of the Project; or

(b) taken any actions which, in the reasonable opinion of the Funder, bring, or are likely to bring, the Funder's name or reputation into disrepute;

9.1.9 the Recipient ceases to operate for any reason, whether by Court order or its own resolution, other than for the purpose of a bona fide and solvent reconstruction, amalgamation or merger;

9.1.10 the Recipient becomes insolvent, is declared bankrupt, is placed into receivership, administration or liquidation, a petition has been presented for its winding up, 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,

9.1.11 the Recipient fails to comply with any of the terms and conditions set out in this Agreement.

9.2 Where it is determined under this Clause 10 that any part of the Funding is repayable to the Funder, the Recipient shall make such payment to the Funder no later than fourteen days from the date of any valid written request.

9.3 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 immediately notify the Funder so that, if possible, and without creating any legal obligation, the Funder will have an opportunity to provide assistance in resolving the problem or to take action to protect the Funder and the Funding.

10. Duration

10.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until 12 months after the delivery/completion of the Project or for so long as any Funding monies remain unspent by the Recipient, whichever is longer.

10.2 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.

11. 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.

12. Notices

12.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in another case).

12.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
 - (b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting.
- 12.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 12.4 A notice given under this agreement is not valid if sent by email or fax.

13. Dispute resolution

- 13.1 In the event of any complaint or dispute (which does not relate to the Funder'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 Funder's Deputy Chief Executive together with an individual nominated by the Recipient.
- 13.2 Should the complaint or dispute remain unresolved within 28 days of the matter first being referred to the Deputy Chief Executive of the Funder and the individual nominated by the Recipient, then 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.

14. No partnership or agency

This Agreement shall not create any partnership or joint venture between the Funder 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.

15. 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.

SCHEDULE 1
The Project

Details of Project

SCHEDULE 2
Payment Schedule

Amount of Funding Payable	Date of Payment