

**THIS FUNDING AGREEMENT** is made on 16 September 2021

**BETWEEN:-**

- (1) The Secretary of State for Housing, Communities and Local Government whose head office is at Fry Building, 2 Marsham Street, London SW1P 4DF (the “**Department**”); and
- (2) Exeter City Council whose principal address is at Civic Centre, Paris Street, Exeter, Devon, EX1 1JN (the “**Grant Recipient**”).

**RECITALS:-**

- (A) This grant is made on the basis of the Grant Recipient’s Bid(s), a copy of which is attached to this Funding Agreement at Annex A.
- (B) The Department has agreed to make a financial contribution to the Grant Recipient for the purposes of supporting the Project as described in the Bid.
- (C) The parties have agreed that the Grant shall be provided and managed in accordance with the terms and conditions of this Funding Agreement as set out below.
- (D) The Department acts through the One Public Estate teams within the Cabinet Office and Local Government Association in respect of this Grant as set out below, but remains ultimately responsible for the Grant, including in relation to its payment, management, administration and termination.

**IT IS AGREED** as follows:-

**1. DEFINITIONS**

In this Funding Agreement:

“**Bid**” means the bid(s) by the Grant Recipient for financial assistance attached at Annex A.

“**Brownfield Land**” means land which is or was occupied by a permanent structure including the curtilage of the developed land (although it should not be assumed that the whole curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last

occupied by agricultural or forestry buildings: land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where remains of the permanent structure or fixed surface structure have blended into the landscape.

**Eligible Expenditure**” means payments by the Grant Recipient during the Funding Period as defined in clause 5.

**Fixed Assets**” means property, plant and equipment owned by the Grant Recipient.

**Funding Agreement**” means this agreement, Schedule and Annexes.

**Funding Period**” means the period set out in the Schedule.

**Grant**” means the sum to be paid to the Grant Recipient in accordance with clause 3.

**Land Release**” means:

- (a) The execution of an unconditional contract, development agreement or building license with a private sector partner or a freehold or leasehold transfer (whichever is sooner) in respect of Project Land;
- (a) The transfer of Project Land to a development vehicle owned, or partly owned, by the Grant Recipient; or
- (b) (if (a) and (b) above have not occurred) The point at which development of Project Land begins on site ; or
- (c) (in the case of Self and Custom Build) the exchange of contracts on the first plot of Project Land;

on or before the Project Longstop Date.

**One Public Estate**” means the One Public Estate programme – a partnership between the Department, Cabinet Office and the Local Government Association – which manages the Brownfield Land Release Fund on behalf of the Department.

**Project**” means the project as described in the Bid.

**Project Longstop Date**” means 31 March 2024.

**Project Targets**” means the objectives, activities or targets described in the Bid.

**“Project Land”** means land or buildings which are improved as a planned step in the implementation of the Project;

**“Self and Custom Build”** means, the building or completion by: individuals; associations of individuals; or persons working with or for individuals or associations of individuals, of houses to be occupied as homes by those individuals. It does not include the building of a house on a plot acquired from a person who builds the house wholly or mainly to plans or specifications decided or offered by that person”.

**“Terms and Conditions”** mean the terms and conditions of the Grant, as set out in this Funding Agreement. For the avoidance of doubt, this includes the Special Conditions set out in the Schedule to this Funding Agreement.

## **2. INTERPRETATION**

In this Funding Agreement:

- a) references to an Annex, Schedule, clause or sub-clause shall mean an Annex, Schedule, clause or sub-clause of this Funding Agreement so numbered;
- b) headings in this Funding Agreement shall not affect its interpretation;
- c) reference to ‘this Funding Agreement’ includes any variations made from time to time pursuant to these Terms and Conditions; and
- d) reference to any statute or legislation shall include any statutory extension or modification, amendment or re-enactment of such statutes and include all instruments, orders, bye-laws and regulations for the time being made, issued or given thereunder or deriving validity therefrom, and all other legislation of the European Union that is directly applicable to the United Kingdom, including but not limited to retained direct EU legislation as defined within section 20(1) European Union Withdrawal Act 2018.

### **3. GRANT**

- 3.1 Payment of the Grant is subject to the Grant Recipient complying with these Terms and Conditions and to such further conditions and requirements that the Secretary of State may from time to time specify in writing.
- 3.2 The Secretary of State agrees to pay the Grant to the Grant Recipient as a contribution towards Eligible Expenditure incurred by the Grant Recipient in the delivery of the Project.
- 3.3 The Grant shall not be used for any other purpose without the prior written consent of the Department.
- 3.4 The Grant must be spent or committed within the Funding Period.
- 3.5 Details of the programme, powers under which the Grant is paid and Treasury consent (if needed) are listed in the Schedule.

### **4. PAYMENT OF GRANT**

- 4.1 Subject to clause 9, the Department shall pay the Grant to the Grant Recipient in accordance with the payment arrangements listed in the Schedule.
- 4.2 The Grant Recipient shall promptly repay to the Department any money incorrectly paid to it either as a result of administrative error or otherwise.

### **5. ELIGIBLE EXPENDITURE**

- 5.1 Subject to clause 5.2, Eligible Expenditure consists of payments by the Grant Recipient during the Funding Period for the purposes of delivering the Project. Eligible Expenditure is net of VAT recoverable by the Grant Recipient from HM Revenue & Customs, and gross of irrecoverable VAT.
- 5.2 The following costs are not Eligible Expenditure:-
  - a) payments for activities of a political or exclusively religious nature;
  - b) payments that support activity intended to influence or attempt to influence Parliament, Government or political parties, or attempting to influence the awarding or renewal of contracts and grants, or attempting to influence legislative or regulatory action;
  - c) payments for goods or services that the Grant Recipient has a statutory duty to provide;
  - d) payments reimbursed or to be reimbursed by other public or private sector grants;

- e) contributions in kind (a contribution in goods or services as opposed to money);
- f) depreciation, amortisation or impairment of Fixed Assets owned by the Grant Recipient;
- g) interest payments (including service charge payments for finance leases);
- h) gifts to individuals, other than promotional items with a value no more than £10 a year to any one individual;
- i) entertaining payments (entertaining for this purpose means anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations);
- j) statutory fines, criminal fines or penalties;
- k) liabilities incurred before the issue of this Funding Agreement unless agreed in writing by the Department;
- l) revenue costs (e.g. staffing costs)

## **6. PROGRESS REPORTING**

- 6.1 The Grant Recipient must be in regular communication with One Public Estate regarding progress of the Project as set out in the Schedule.
- 6.2 If the Grant Recipient is experiencing any financial, administrative, managerial etc. difficulties that may hinder or prevent the completion of the Project, the Grant Recipient must inform One Public Estate as soon as possible.

## **7. CHANGES TO THE PROJECT**

- 7.1 Any changes to the Project must be agreed in writing by way of Variation Request (Annex B) with the Department before implementation.

## **8. GRANT RECIPIENT OBLIGATIONS**

- 8.1 The Grant Recipient must comply with the reporting requirements set out in the Schedule.

**9. EVENTS OF DEFAULT AND RIGHTS RESERVED FOR BREACH OF THE FUNDING AGREEMENT**

- 9.1 If the Grant Recipient fails to comply with any of these Terms and Conditions, or if any of the events mentioned in clause 9.3 occur, the Department may reduce, suspend, or terminate payments of Grant, or require any part or all of the Grant to be repaid.
- 9.2 Where any part or all of the Grant is required to be repaid in accordance with clause 9.1 above, the Grant Recipient must repay this amount within 30 days of receiving the demand for repayment.
- 9.3 An Event of Default is the occurrence of any of the following:-
- a) the Grant Recipient fails, in the Department's sole opinion, to make satisfactory progress with the Project; and in particular with meeting the Project Target Longstop Date;
  - b) there is a change in control or ownership of the Grant Recipient or the Grant Recipient ceases to operate or changes the nature of its operations to an extent which the Department considers to be significant or prejudicial to the satisfactory continuance of the Project;
  - c) any information provided in the Bid or in any subsequent supporting correspondence is found to be incorrect or incomplete to an extent which the Department considers to be significant;
  - d) the Grant Recipient takes inadequate measures to investigate and resolve any reported irregularity;
  - e) it appears to the Department that the Grant Recipient no longer requires financial assistance in order to carry out the Project;
- 9.4 In the event that it becomes necessary to take steps to enforce the Terms and Conditions of this Funding Agreement, the Department will write to the chief executive (or equivalent) of the Grant Recipient giving particulars of its concerns about the Project or of any breach of the Terms and Conditions.
- 9.5 The Grant Recipient must act within 21 days to address the Department's concern or rectify the breach, and may consult or agree an action plan to resolve the problem with the Department.
- 9.6 If the Department is not satisfied with steps taken by the Grant Recipient pursuant to clause 9.5 above, it may withhold or suspend any further payment of the Grant (including by way of clause 9.4 above), or recover Grant already paid.

**10. DISPUTES**

10.1 All disputes and complaints shall, in the first instance be referred to One Public Estate who will inform the Grant Recipient's manager for the Project and the Grant Recipient's principal contact in the Department who shall use all reasonable endeavours to negotiate in good faith, and settle the dispute or complaint amicably.

***Attachments:***

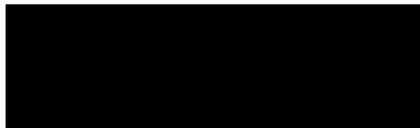
**Schedule**

**Annex A** Bid

**Annex B** Variation Request

**Authorised to sign for and on behalf of the Secretary of State for Communities and Local Government**

Signature



Name in Capitals



Date

10 September 2021

**The Grant Recipient accepts the Grant and agrees to comply with the Terms and Conditions contained in this Funding Agreement:**

**Authorised to sign for and on behalf of Exeter City Council**

Signature

Name in Capitals

Date

***Principal contact(s):***

Name

Email

Telephone

Name

Email

Telephone

## SCHEDULE

<b>Name of Project/programme:</b>	Bonhay Meadows Exeter Canal Basin Mary Arches Car Park Belle Isle Cathedral and Quay Car Park (Brownfield Land Release Fund)
<b>Power under which Grant is to be paid:</b>	Housing Grants, Construction and Regeneration Act 1996, s.126. Grant paid with the consent of Her Majesty's Treasury.
<b>Grant Recipient's principal contact in the Department:</b>	MHCLG: [REDACTED] [REDACTED] 030 3444 0000  OPE: <b>Your OPE <a href="#">Regional Manager</a></b>
<b>Funding Period:</b>	The period commencing 16 September 2021 and ending 31 March 2022
<b>Amount of Grant:</b>	Brownfield Land Release Fund - £5,966,470.00
<b>Payment arrangements :</b>	Payment will be made in one instalment by 11.59pm on or before 31 October 2021.
<b>Project Targets:</b>	Not applicable (but please see the Special Conditions) below.
<b>Reporting requirements:</b>	As stated on the One Public Estate: Brownfield Land Release Fund April 2021 website at the time of application, BLRF-supported schemes will be asked to report three times a year – or as otherwise determined by MHCLG and OPE – through your OPE partnership. Your project leads for your BLRF scheme(s) will be asked to report on the six milestones detailed below within each tri-annual report, as well as provide a narrative on the project's key risks/issues to delivery.  The six milestones are:  <b>1. Procurement of infrastructure works: contractor commencement date</b>  This relates to the specific works funded by the BLRF award (the "BLRF funded works") e.g. decontamination, utility or infrastructure provision. The date entered should be the date on which tenders are issued.

	<p><b>2. Commencement of BLRF funded works date</b></p> <p>This refers to the first of the funded works, if multiple. BLRF funded works are defined as above.</p> <p><b>3. Completion of BLRF funded works date</b> (last of the funded works, if multiple)</p> <p><b>4. Date land is to be released</b></p> <p>Land can be defined as “released” when:</p> <ol style="list-style-type: none"> <li>a) An unconditional contract, development agreement or building license with a private sector partner is signed, or a freehold or leasehold transfer takes place</li> <li>b) Land has transferred to a development vehicle owned, or partly owned, by the local authority; or</li> <li>c) The point at which development begins on site if (a) and (b) have not happened.</li> <li>d) In the case of self and custom-build, if (a), (b) or (c) do not apply, land is released when contracts are exchanged on the first plot.</li> </ol> <p><b>5. Expected start on site</b> (new homes)</p> <ol style="list-style-type: none"> <li>a. A “start” is an excavation for strip or trench foundations or for pad footings; digging out and preparation of ground for raft foundations; vibro-flotation, piling, boring for piles or pile driving; or draining work specific to the scheme.</li> </ol> <p><b>6. Expected development end date</b> (final housing unit completion).</p>
<p><b>Special conditions:</b></p>	<p>Applications have only been considered when the Gateway Criteria, set out on the “One Public Estate: Brownfield Land Release Fund April 2021” webpage at the time of application, were satisfied:</p> <p>For Brownfield Land Release Fund sites (i.e. not self and custom build sites):</p> <ul style="list-style-type: none"> <li>• the land to which the application relates is brownfield land, fully owned by the local authority. For schemes of mixed land ownership funding would only be available to support work that delivers local authority land release;</li> <li>• funding must enable the release of the land for housing by end March 2024 or earlier, and must address market failure;</li> <li>• The definition of land release is set out above.</li> </ul> <p>For Self and Custom Build sites:</p> <ul style="list-style-type: none"> <li>• the land to which the application relates must be fully owned by the local authority. For schemes of mixed land ownership, funding would only be available to support work that delivers local authority land release. The land can be both brownfield and greenfield land;</li> </ul>

	<ul style="list-style-type: none"> <li>• funding must enable the sale of the first self and custom build plot for housing by 31 March 2024 or earlier, and must address market failure.</li> </ul> <p>For all applications:</p> <ul style="list-style-type: none"> <li>• the project must be undertaking capital works on local authority-owned land only;</li> <li>• the works for which funding is sought are deliverable and within a timeframe that will enable the land to be released in time;</li> <li>• A threshold of 1.5 for Benefits Cost Ratio (BCR) + non-monetised benefits must be reached to proceed further; <ul style="list-style-type: none"> <li>○ The project must provide a BCR of 1.0 or higher; The BCR is calculated using the LRF Technical Annex;</li> <li>○ Where the BCR is 1.5 or greater, a project will have achieved the gateway criteria;</li> <li>○ Where the BCR is between 1.0-1.5, non-monetised benefits will also be considered as part of the gateway assessment;</li> <li>○ An assessment of non-monetised benefits (with evidence of the scale of the benefit(s)) should be included for all projects as the non-monetised benefits score will form part of the project’s overall score;</li> <li>○ All non-monetised benefits will be scored and a maximum of 0.5 can be added to the project BCR;</li> <li>○ BCR + non-monetised benefits will be assessed following the principles set out in the Green Book and the DCLG Appraisal Guide, 2016.</li> </ul> </li> <li>• Sufficient evidence in support of these assertions must form part of the application;</li> <li>• The applicant is not one of the seven Mayoral Combined Authorities or constituent lower tier authorities that have had the opportunity to receive funding under the £400m Brownfield Fund.</li> </ul> <p>If the project no longer meets the Gateway Criteria, this constitutes a breach of this Funding Agreement and MHCLG will be entitled to exercise the rights set out at clause 9.1 of this Funding Agreement.</p>
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## **Annex A**

*Bid proposal included under separate cover.*

## Annex B

### VARIATION REQUEST

WHEREAS the Grant Recipient and the Secretary of State for Communities and Local Government entered into a grant funding agreement for the approved Project dated [INSERT DATE] [as varied on [INSERT DATE]] (the "Funding Agreement") and now wish to amend the Funding Agreement.

IT IS AGREED as follows

#### 1. DEFINITION

1.1 Terms defined in the Funding Agreement shall have the same meaning when used in this Variation Request, unless defined otherwise.

#### 2. VARIATION

2.1 With effect from [INSERT START DATE] the Funding Agreement shall be amended as set out in this Variation Request:

Variation requestor:	[INSERT NAME, TEAM & DIVISION]
Summary of variation:	[INSERT FULL DETAILS OF VARIATION]
Reason for variation:	[INSERT REASON FOR VARIATION]
Revised Grant:	[INSERT NEW AMOUNT IN FIGURES]
Revised Funding Period:	[INSERT NEW START DATE TO END DATE]
Revised Payment Arrangements:	[INSERT NEW PAYMENT ARRANGEMENTS]
Other Variation:	[INSERT ANY OTHER PROPOSED CHANGE TO FUNDING AGREEMENT TERMS]

2.2 Save as herein amended all other Terms and Conditions of the Funding Agreement shall remain in full force and effect.

**Authorised to sign for and on behalf  
of the Secretary of State for  
Communities and Local  
Government**

Signature

Name in Capitals

Date

Address in full

**Authorised to sign for and on  
behalf of the  
[GRANT RECIPIENT]**

Signature

Name in Capitals

Date

Address in full