



## LEAD MEMBER FOR STRATEGIC MANAGEMENT AND ECONOMIC DEVELOPMENT

**DECISIONS** to be made by the Lead Member for Strategic Management and Economic Development, Councillor Keith Glazier

**TUESDAY, 24 NOVEMBER 2020 AT 9.30 AM**

**CC1, COUNTY HALL, LEWES**

**++Please note, the Lead Member will not be present in person, but will be taking the decisions remotely++**

### **AGENDA**

- 1 Decisions made by the Lead Cabinet Member on 12 November 2020 (*Pages 3 - 4*)
- 2 Disclosure of Interests  
Disclosure by all Members present of personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- 3 Urgent items  
Notification of any items which the Lead Member considers urgent and proposes to take at the appropriate part of the agenda.
- 4 Getting Building Fund - updated Service Level Agreement with the South East Local Enterprise Partnership (SELEP) (*Pages 5 - 28*)  
Report by the Director of Communities, Economy and Transport
- 5 Any urgent items previously notified under agenda item 3

PHILIP BAKER  
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16 November 2020

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NOTE: As part of the County Council's drive to increase accessibility to its public meetings, this meeting will be broadcast live on its website and is accessible at:  
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## **LEADER AND LEAD MEMBER FOR STRATEGIC MANAGEMENT AND ECONOMIC DEVELOPMENT**

DECISIONS made by the Leader and Lead Member for Strategic Management and Economic Development, Councillor Keith Glazier, on 12 November 2020 at County Hall, Lewes

++ The Leader and Lead Member was not present in person, but took the decisions remotely ++

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### 16 DECISIONS MADE BY THE LEAD CABINET MEMBER ON 10 NOVEMBER 2020

16.1 The Lead Member approved as a correct record the minutes of the meeting held on 10 November 2020.

### 17 REPORTS

17.1 Reports referred to in the minutes below are contained in the minute book.

### 18 OFFICER DELEGATIONS - ADULT SOCIAL CARE

18.1 The Leader and Lead Member considered a report by the Assistant Chief Executive.

#### DECISIONS

18.2 The Leader and Lead Member RESOLVED to (1) agree to delegate the functions set out in Appendix 1 to the report; and

(2) agree that the Executive Director of Adult Social Care and Health and the Director of Adult Social Care be considered Chief Officers and Directors for the purpose of delegations to officers and be delegated authority accordingly.

#### Reasons

18.3 The Governance Committee agreed on 28 October 2020 to the establishment of a new post of Executive Director – Adult Social Care and Health. The current post of Director of Adult Social Care and Health was retained in the existing staffing structure, but renamed as Director of Adult Social Care. As a consequence the delegation of functions was reviewed.

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**Report to:** Lead Member for Strategic Management and Economic Development

**Date of meeting:** 24 November 2020

**By:** Director of Communities, Economy and Transport

**Title:** Getting Building Fund – Service Level Agreement with the South East Local Enterprise Partnership

**Purpose:** To approve East Sussex County Council entering into a new Service Level Agreement with the South East Local Enterprise Partnership in order to deliver the Government's Getting Building Fund programme

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**Recommendations:** The Lead Member is recommended to:

- (1) Approve East Sussex County Council entering into a new Service Level Agreement with the South East Local Enterprise Partnership Limited and Essex County Council as the Accountable Body to SELEP in order to deliver the Government's Getting Building Fund programme in East Sussex; and**
  - (2) Delegate authority to the Director of Communities, Economy and Transport, in consultation with the Chief Finance Officer, to agree the terms of and enter into the GBF Service Level Agreement, and to take all other necessary actions as required to implement Recommendation 1 above.**
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## **1. Background information**

1.1. In June 2020 the Ministry of Housing, Communities and Local Government (MHCLG) issued a call for projects through Local Enterprise Partnerships to help aid economic recovery in the wake of the Covid-19 pandemic, to be funded through its new £900m Getting Building Fund (GBF).

1.2. East Sussex County Council (ESCC) officers, with the help of Borough and District colleagues, project promoters and other key partners, were able to provide the South East Local Enterprise Partnership (SELEP) with a list of 28 East Sussex projects. SELEP's submission to MHCLG contained 170 projects across the SELEP geography with an overall capital ask of around £573m.

1.3. In July 2020 MHCLG approved a final SELEP package of 34 GBF projects to the value of £85 million, including 8 East Sussex schemes with a GBF ask of £11,179,793. All of the schemes will need to spend the GBF monies by March 2022.

1.4. Essex County Council (ECC), as the lead accountable body for SELEP, issues GBF funds on a project-by-project basis to the relevant local upper tier (county/unitary) authority. That upper tier authority then acts as *local* accountable body, responsible for defraying the funds to the individual projects and monitoring progress. The terms of this arrangement are set out in Service Level Agreements (SLAs) with each authority, which allow project funding and accountability to be devolved. Each SLA is a tripartite agreement between SELEP Ltd, ECC as the lead accountable body, and the relevant upper tier authority. For the current 8 East Sussex GBF projects, a Service Level Agreement needs to be entered into by the 3 parties of SELEP Ltd, ECC and ESCC.

## **2. Supporting information**

2.1. At the Lead Member for Strategic Management and Economic Development meeting on 2 October 2020 (see Background Documents below), it was resolved that the following 8 East Sussex projects receive GBF funding, and that the County Council enters into grant agreements with the respective project promoters:

- Charleston Access Road (£89,293)
- Creative Hub Lewes (£250,000)
- Fast Track Business Solutions for the Hastings Manufacturing Sector (£3,500,000)
- Observer Building Hastings Phase 2 (£1,713,000)
- Restoring the Glory of the Winter Garden (£1,600,000)
- Riding Sunbeams Solar Railways (£2,527,500)
- Sussex Innovation Falmer Covid-Secure Adaptions (£200,000)
- UTC Maritime and Sustainable Technology Hub (£1,300,000)

2.2. The county will receive over £11 million to support initiatives that will drive economic growth across the region. These projects will deliver new jobs and safeguard existing jobs, create additional construction jobs, unlock commercial space, and assist learners through new skills facilities and programmes. The funding will also help to release an additional £9.7 million in public/private sector contributions, meaning a total investment of nearly £21 million into East Sussex.

2.3. In responding to the Covid-19 crisis the GBF projects also directly respond to the aims and ambitions of the new East Sussex Economy Recovery Plan, termed 'East Sussex Reset' and launched by Team East Sussex (TES) in mid-September 2020. Delivery of these projects also contributes to the County Council's core priorities of 'driving sustainable economic growth' and 'making best use of resources by maximising the funding available through external bidding'.

2.4. The SLA – attached at Appendix 1 – was drafted by the legal team at ECC (as the lead accountable body to SELEP). It has been reviewed and endorsed by our own officers in ESCC's legal and finance teams.

2.5. The County Council has previously entered into a similar SLA with SELEP Ltd and ECC for the Government's Local Growth Fund (LGF) programme. The SLA for GBF follows the same structure as that LGF SLA, which was approved by the Lead Member for Strategic Management and Economic Development (LM SMED) on 28 July 2020.

2.6. Once the new GBF SLA is in place, back-to-back grant agreements will be executed between ECC and the County Council, and between the County Council and the individual project promoters (private sector and other public sector bodies), in order for GBF monies to be defrayed to the East Sussex projects to ensure financial spend of GBF monies by March 2022.

## **3. Conclusion and reason for recommendations**

3.1. The 8 projects highlighted in this report all help to support the objectives and priority areas of the Government's new Getting Building Fund, as well as the aims and ambitions of the Team East Sussex led East Sussex Economy Recovery Plan (East Sussex Reset) and the County Council's core priorities. The county will receive more than £11 million of GBF funding, supporting projects to create new jobs, new workspace, assist new learners and unlock additional funding through public/ private sector contributions to drive economic growth across the region.

3.2. All required due diligence has been, or will be, completed on each project prior to entering into any funding agreements with the individual project promoters, and specific terms and conditions will be applied where appropriate.

3.3. Before any GBF monies can be defrayed to East Sussex projects, it is necessary for the County Council to enter into a new tripartite Service Level Agreement with SELEP Ltd and Essex County Council for this new Getting Building Fund programme.

3.4. Therefore, as a result of SELEP obtaining an award of £85 million through the Getting Building Fund programme, the Lead Member is recommended to approve the County Council entering into a new SLA with SELEP Ltd and ECC in order to deliver the Government's GBF programme in East Sussex.

3.5. The Lead Member is further recommended to delegate authority to the Director of Communities, Economy and Transport, in consultation with the Chief Finance Officer, to agree the terms of and enter into the GBFSLA, and to take all other necessary actions as required to implement the above recommendation.

RUPERT CLUBB

Director of Communities, Economy and Transport

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#### LOCAL MEMBERS

All

#### BACKGROUND DOCUMENTS

Lead Member for Strategic Management and Economic Development decision making meeting, 2 October 2020 – Item 9: Getting Building Fund – Funding Agreements

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## **Appendix 1 – GBF Service Level Agreement (SLA) between ESCC, ECC and SELEP Ltd**

**THIS SERVICE LEVEL AGREEMENT** (“Agreement”) is made on the                      day of  
2020

### **BETWEEN**

- (1) **ESSEX COUNTY COUNCIL** of County Hall, Chelmsford, Essex CM1 1LX (“the Accountable Body”);
- (2) **SOUTH EAST LEP LIMITED** a company registered in England and Wales whose registered office is at County Hall, Market Road, Chelmsford, Essex CM1 1QH with company number 12492037) (“SELEP Ltd); and
- (3) **Insert Local Authority** of [ADDRESS] (“the Council”)

### **BACKGROUND**

- (A) The unincorporated South East Local Enterprise Partnership (SELEP) was established in 2011 with the aim of stimulating growth in the economy across South East of England area. In part it aims to do this by playing a central role in determining local economic priorities and undertaking activities to drive economic growth and the creation of local jobs. It is a primary partnership of the Councils.
- (B) The South East LEP Ltd (SELEP Ltd) was incorporated on 28 February 2020 at Companies House, as a company limited by guarantee, in response to the requirement of Central Government for all Local Enterprise Partnerships to have legal personality.
- (C) In 2020, SELEP Ltd was allocated £85million Getting Building Fund (GBF) by the Ministry for Housing Communities and Local Government. This funding will be transferred in annual instalments to the Accountable Body for SELEP for 2020/21 and 2021/22.
- (D) The Accountable Body is the local authority which has responsibility for adhering to any conditions made by the Government in relation to the Grant, including ensuring that expenditure is spent in accordance with all legal requirements and complying with any reporting requirements to the Government.
- (E) Essex County Council (ECC) is the Accountable Body for the purposes of Grant allocated to SELEP Ltd by Central Government and other responsibilities as set out in the Assurance Framework.
- (F) The Council is the County Council or Unitary Council within SELEP Ltd that is the Partner Authority responsible for delivery of the Getting Building Fund projects.
- (G) The Project Allocation to deliver the projects will be transferred from the Accountable Body to the Council under the arrangements set out within this Agreement.
- (H) The Grant Conditions shall be issued annually by the Government under Grant Determination Letters.

**IT IS HEREBY AGREED** as follows

**1. Definitions**

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

**Accountability Board:** means the Joint Committee of the Partner Authorities established under sections 101 and 102 of the Local Government Act 1972, and section 9EA of the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 and any other enabling legislation to form a joint committee to manage the distribution of Funding.

**Project Variation Agreement:** means the agreement between the parties entered into pursuant to clause 12 and substantially in the same form as set out in Schedule 3.

**Additional Projects:** inclusion of a new project within the Getting Building Fund (GBF) programme, which has been prioritised by SELEP Ltd and approved by the Accountability Board.

**Assurance Framework:** means a guide to the structure of the SELEP Ltd with the processes and systems which are used to manage its activities, including the detailed processes applied to manage the funding awarded from Government. It is reviewed and agreed at least annually or as required by the Strategic Board, consulting the Accountability Board and in accordance with the SELEP Ltd Framework Agreement.

**Business Case:** means the business case for each Project as assessed by the SELEP Ltd Independent Technical Evaluator and approved by the Accountability Board, in line with the requirements specified in the Assurance Framework;

**Change:** means the occurrence of any one of the following:

- (a) cancellation of a project which has received a funding approval by Accountability Board as part of the GBF programme;
- (b) inclusion of a new project within the GBF programme, which has been prioritised by SELEP Ltd;
- (c) acceleration of a project previously programmed to start in later years;
- (d) delays to project start or end dates of more than six months;
- (e) any reduction to the GBF allocation due to underspend having been returned to the Accountable Body;
- (f) any re-profiling of GBF between financial years;
- (g) any changes to total project costs above 30% or a £500,000 threshold which are identified prior to the construction contract award;
- (h) any substantial changes to the expected project benefits, outputs and outcomes as agreed in the business case which may detrimentally impact on the value for money assessment. In such circumstances, it is expected that the business case should be re-evaluated by the ~~Prepared~~

(i) any further changes as may be defined by the Government.

**Exempt Information:** means any information or class of information relating to this Agreement which may fall within an exemption to disclosure under FOI Legislation.

**Financial Year:** means during the continuance of the Agreement any period commencing on 1 April and ending on the following 31 March

**Framework Agreement:** means the agreement in relation to the South East Local Enterprise Partnership between the Partner Authorities and SELEP Ltd setting out the duties and obligations, roles and responsibilities of the parties to that agreement in relation to delivery of SELEP Ltd's objectives.

**FOI Legislation:** means the Freedom of Information Act 2000 and subordinate legislation made under this and the Environmental Information Regulations 2004.

**Grant:** means the Getting Building Fund (GBF) capital investment grant received by the Accountable Body from Government.

**Grant Conditions:** means those conditions set out in the Grant Determination Letters;

**Grant Determination Letters:** means the letters issued by Government annually which set out the amount of Grant that the SELEP Ltd is allocated in that respective year, and the conditions under which the Grant will be released to the Accountable Body. Separate letters may be issued by different Government Departments and may stipulate different Grant Conditions; where this is the case, the respective Grant Conditions will be clarified by the Accountable Body on approval of the Grant Allocation;

**Independent Technical Evaluator (ITE):** means an independent technical evaluator (ITE) who has been appointed by the Accountable Body on behalf of the SELEP Ltd, to provide impartial technical advice to SELEP Ltd, Accountability Board, SELEP Secretariat and local project sponsors;

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

**Partner Authority:** means either East Sussex County Council, Essex County Council, Kent County Council, Medway Council, Southend-on-Sea Borough Council or Thurrock Council as appropriate;

**Programme Consideration Meetings:** means the quarterly meetings between representatives from the SELEP Secretariat, the Accountable Body and Partner Authorities to monitor progress of the Grant funded projects;

**Project Allocation:** means the sum to be paid to the Council for each Project from the Grant in accordance with this agreement;

**Projects:** those GBF projects set out within Schedule 2 as approved by Accountability Board and as may be amended from time to time pursuant to this Agreement.

**Publicity Requirements:** means the requirements for publicity for Projects as specified by the Government as may be updated by the Government from time to time and notified to the Council by the SELEP Secretariat;

**Quarterly Expenditure Profile:** means the planned quarterly expenditure profile for each Project including GBF and other funding sources towards the delivery of the project. The profile is to be revised on a quarterly basis, in line with the Reporting Period, to reflect the latest spend to date and forecast position for each Project. The profile may include planned spend for Projects that have yet to receive approval from the Accountability Board, but funding for these will not be transferred to the Council until such approval has been given by the Accountability Board;

**Reported Spend:** means the total actual or estimated spend incurred against a Project within a Reporting Period;

**Reporting Period:** means the dates specified by the SELEP Secretariat for the submission of each Quarterly Expenditure Profile and for Reported Spend for discussion at the Programme Consideration Meetings. The reporting period dates will reflect a quarterly profile;

**SELEP Secretariat:** means those persons employed by the Accountable Body for the purposes of providing administrative, technical or professional support to the SELEP Ltd and the Accountability Board in accordance with this Agreement;

**Underspend:** means a reduction to the total Project Allocation required by a Project.

## **2. Condition Precedent**

- 2.1 The terms of this agreement will come into force for each individual Project or Additional Project on the condition that Accountability Board approval is provided for that specific Project or Additional Project.

## **3. Period of Agreement**

- 3.1. This Agreement takes effect from the date of signature and (without prejudice to clause 13.1) remains applicable until it is cancelled by any party on written notice to each respective Section 151 (S.151) Officer for the Accountable Body and for the Council and to the Chief Executive of SELEP Ltd.

## **4. The Purpose of the Grant**

- 4.1. The Grant shall at all times be used in accordance with the Grant Determination Letters.

- 4.2. The Council shall use the Project Allocation only for the purposes of the Projects and in accordance with the terms and conditions set out in this Agreement.

## **5. Payment Of The Grant**

- 5.1 The Project Allocation for each Project will be paid to the Council on a quarterly basis in advance provided:
- 5.1.1 The Business Case for the Project has been agreed by the Accountability Board;
  - 5.1.2 The Accountable Body is in receipt of the Grant from the Government; and
  - 5.1.3 In accordance with the process set out in Schedule 1.
- 5.2 The Project Allocation, as approved by the Accountability Board, shall not be increased in the event of any overspend by the Council in its delivery of the Project.
- 5.3 The Council shall promptly repay to the Accountable Body 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 Project Allocations have been paid in error before all conditions in 5.1 have been complied with by the Council.
- 5.4. The Council must repay all or part of the funding received with respect to the Project Allocation if the Accountability Board so requires because:
- 5.4.1. The Council fails to deliver the Project in accordance with the approved Business Case;
  - 5.4.2. A Project is Changed and the Accountability Board declines to agree the Change; or
  - 5.4.3 The Project can no longer meet the Grant Conditions;
- 5.5. SELEP Ltd will be responsible for the future allocation of any returned Project Allocation in accordance with the provisions set out in the Assurance Framework.

## **6. Grant Responsibilities of the Accountable Body**

- 6.1 The Accountable Body is required to ensure that the Grant fulfils the following requirements:
- 6.1.1 It will be used to support and secure the outcomes of the GBF programme agreed between the Government and the SELEP Ltd;
  - 6.1.2 It will be deployed solely in accordance with the requirements of the Assurance Framework;
  - 6.1.3 That progress against agreed core metrics and outcomes are tracked in line with the national monitoring and evaluation framework;
  - 6.1.4 All expenditure of the Grant must be in accordance with all applicable legal requirements, including state aid and public procurement law, and in accordance with the Grant Conditions.
  - 6.1.5 The current Publicity Requirements (including any branding guidelines) as defined by Government must be complied with; and

6.1.6 In line with the Assurance Framework, in transferring the Project Allocations to the Council, it will also transfer all Grant Conditions, and monitoring and reporting requirements that are required of the Accountable Body by the Government.

6.2 In acting as the Accountable Body for the SELEP Ltd, the role of the Authority's Section 151 Officer, in overseeing the proper administration of financial affairs, is extended to include those of the SELEP Ltd.

6.3 The standards set out in the Chartered Institute of Public Finance and Accountancy (CIPFA) document, "Principles for Section 151 Officers in accountable bodies", form part of the assurance process undertaken by the Accountable Body on behalf of the SELEP Ltd.

6.4 The following five principles set out in the CIPFA guidance are required to be addressed by the SELEP Ltd and the Accountable Body:

6.4.1 Enshrining a corporate position for the Section 151 Officer in LEP assurance;

6.4.2 Creating a formal/structured mandate for the Section 151 Officer;

6.4.3 Embedding good governance into decision making;

6.4.4 Ensuring effective review of governance; and

6.4.5 Ensuring appropriate skills and resourcing.

6.5 The Section 151 Officer will exercise their duties in line with the CIPFA guidance and the Assurance Framework.

## **7. Grant Responsibilities of the Council**

7.1 In accepting the Project Allocations the Council is agreeing to the requirements and expectations as defined by the Government for receipt and use of the Grant within the Council's area, including ensuring that all Grant Conditions applicable to the Project Allocations are met and all reasonable measures are made to enable the Accountable Body to meet its obligations in respect of all aspects associated with meeting the Grant responsibilities set out in paragraph 6 above.

7.2 In accepting the Project Allocations, the Council is agreeing to take all reasonable measures to ensure that the Accountable Body and the SELEP Ltd are able to meet their obligations under the Assurance Framework.

7.3 The S.151 Officer of the Council in accepting the Project Allocations, including ensuring that all Project Allocations are subject to the Council's normal internal and external audit requirements, shall be responsible for:

7.3.1 Carrying out the normal stewardship role in terms of monitoring and accounting for all aspects with regard to the Project Allocations

7.3.2 Providing the reporting to the SELEP Secretariat as set out in paragraph 8. All reports provided must be approved by the Council's S.151 officer or their nominated representative prior to distribution to the SELEP Secretariat;

- 7.3.3 Confirming that paragraphs 7.1 and 7.2 have been complied with following the end of each respective financial year for the Project Allocation;
- 7.3.4 Ensuring that the Publicity Requirements are complied with; and
- 7.3.5 Bringing to the attention of the Accountability Board where there are delays and risks to Projects.
- 7.3.6 Ensuring that Internal Audit for the Council, as a minimum, ensures the Project adheres to the terms and conditions of the Grant Agreement and the approved Business case.
- 7.4 The Council accepts responsibility for ensuring delivery of the Project and the outputs and outcomes agreed in the respective Business Cases.
- 7.5 The Project Allocation is a capped contribution per Project. The Council is responsible for all additional costs, for example overspends, arising from the implementation of the Project
- 7.6 The Council is expected to ensure that any development decisions required for individual Projects must go through the normal planning process as required by the relevant local authority and be guided by local plans, taking into account all material considerations.
- 7.7 Through the Section 151 Officer of the Council, SELEP Ltd in conjunction with the Accountable Body may undertake an audit or request the Council carries out an internal audit, of the partner's Projects to ensure the correct use of funding and may, if necessary, arrange for the recovery of any funds.
- 7.8 The Business Case related to the Funding Allocation will include sign-off by the promoting Council's Section 151 Officer, or equivalent, before being submitted to the SELEP Ltd for ITE review.
- 7.9 SELEP Secretariat will seek assurances from the Council's Section 151 Officer, or equivalent responsible financial officer, that the information contained within the Business Case is true and accurate.
- 7.10 The Council shall ensure that where third parties are funded by the Project Allocation for delivery of a Project that the agreement between the Council and the third party shall set out the relevant rights and obligations imposed on the Council under this Agreement and that the third party shall be bound to the Council under the third party agreement in the same way as the Council shall be bound to the Accountable Body under this Agreement for the relevant rights and obligations.

## **8. Reporting, Monitoring and Evaluation Requirements**

- 8.1 The Council is responsible for providing regular reports to the Accountable Body and the SELEP Secretariat in the timescales and format specified by the SELEP Secretariat, to enable quarterly reporting to the Accountability Board and Government.
- 8.2 The reports must provide Project updates on the following aspects:
- 8.2.1. Spend of Project Allocation to date against the planned spend profile;
  - 8.2.2. Total Project spend to date, including forecast spend of matched contributions and funding leveraged to deliver the Project compared to the agreed profile;
  - 8.2.3. The forecast Quarterly Expenditure Profile;
  - 8.2.4. Project delivery against the agreed milestones in the Business Case;
  - 8.2.5. The outputs and outcomes forecast and delivered to date against the agreed profile;
  - 8.2.6. Explanation of variances in spend and milestone delivery against the Business Case, including identifying the impact on timelines, costs, outputs and outcomes;
  - 8.2.7. Identification of Project risks and the mitigations to be put in place to manage them; this will include a review of Project delivery risks, financial risks and risks to agreed outputs and outcomes;
  - 8.2.8. Confirmation of expected Project completion date;
  - 8.2.9. Identification of any required Changes to Projects; and
  - 8.2.10. Any other reporting aspects as may be required by the Government in relation to the Grant.
- 8.3. The Council will provide quarterly updates to the SELEP Secretariat with regard to anticipated Changes to Projects. The Changes in paragraph 9 would require approval by the Accountability Board. The partner shall not implement a Change, without the Accountability Board's prior approval.
- 8.4. In accepting the Project Allocation, the Council understands that future SELEP Ltd funding allocations under GBF will be subject to the outcome of future annual conversation meetings between the Government, the SELEP Ltd and the Accountable Body. These meetings focus on progress with GBF delivery over the duration of the programme and will pick up on how successfully agreed mitigating actions have been implemented. The Council therefore agrees to make all reasonable efforts to ensure that spending, output and outcome performance is in line with planned spend profiles and performance levels.
- 8.5. The Council will identify sufficient resource to fulfil the Project evaluation requirements, as set out in the Assurance Framework.

## **9 Changes to Projects**

- 9.1 Subject to paragraph 12, the Council shall not implement a Change without the Accountability Board's prior approval.



9.2 When seeking approval from Accountability Board for a Change that may impact on the Project's value for money, those Changes must be reflected in an updated Business Case which has been subject to an updated assessment by the SELEP Ltd Independent Technical Evaluator in line with the provisions set out in the Assurance Framework. Examples of such Changes which may impact the Project's value for money assessment include amendments to any of the following:

- 9.2.1. Total Project cost
- 9.2.2. Project Allocation
- 9.2.3. Expected Project benefits
- 9.2.4. Project outputs and / or outcomes.

9.3. Any underspend of the Project Allocation must be returned to the Accountable Body on behalf of SELEP Ltd.

9.4. Project Allocation underspends must not be used to fund projects outside of the GBF, unless approved by the Accountability Board in the following circumstances:

9.4.1 Transfer to fund non-Grant funded projects within the approved capital programme, in accordance with paragraph 11.

9.5. The Council and Accountable Body will abide by any alternative definition of Change and any approval process for reporting a Change, as imposed by the Government.

## **10. Managing slippage of the Project Allocation**

10.1 At the end of the Financial Year, if the amount of the Project Allocation exceeds the actual spend on the Project, the Project Allocation slippage may be transferred to another Grant funded project which has been approved by the Accountability Board.

10.2 In the event that the Council wishes to utilise the Project Allocation against another Grant funded project, the Council is required to adjust its Project Allocation claim in the subsequent financial year to reverse the virement of the Project Allocation, such that the total Project Allocation remains unchanged.

10.3. Following the end of each financial year, the Council's S.151 Officer shall write to the Accountable Body confirming that the following conditions have been met:

- 10.3.1. confirmation that the Project Allocation will be applied within the relevant financial year to a Project which has been approved by the Accountability Board;
- 10.3.2. demonstration that funding equivalent to the full Project Allocation for the Project has been properly applied to the Project over the duration of the Project; and
- 10.3.3. any temporary virement of the Grant must not adversely affect the outputs and outcomes of Projects.

## 11. Transfer of Grant to other capital projects

- 11.1 Where the Council is incurring slippage in any individual Projects within the current financial year and where that slippage cannot be transferred to another Project under paragraph 10, the Project Allocation may be used to fund non Grant funded projects within the approved capital programme of the Council.
- 11.2 In the event that the Council wishes to utilise the Project Allocation against non-Grant funded projects, the Council is required to recycle its deferred Project Allocation in future financial years, such that the total Project Allocation remains unchanged.
- 11.3 Approvals for any virement between Project Allocations and non-Grant funded projects must be secured from the Accountability Board regardless of value, following confirmation to the Accountable Body that paragraph 11.4 will be satisfied.
- 11.4 The Council's S.151 Officer shall write to the Accountable Body following the end of the Financial Year confirming that the following conditions have been met:
  - 11.4.1 confirmation that the Grant will be applied to capital expenditure within the relevant financial year;
  - 11.4.2 identification of the equivalent unrestricted local capital financing sources that have been displaced by the Grant in the relevant financial year, and demonstrates that these funding sources will be applied in future financial years against the Projects;
  - 11.4.3 demonstration that funding equivalent to the full amount of allocated Grant for the Project has been properly applied over the agreed Project delivery profile; and
  - 11.4.4 any virement to funding must not adversely affect the outputs and outcomes of Projects.

## 12 Variation

- 12.1 The parties agree that the following types of variations shall be dealt with pursuant to this paragraph 12:
  - 12.1.1 the addition of Additional Projects;
  - 12.1.2 cancellation of a project which has received a funding approval by Accountability Board as part of the GBF programme;
  - 12.1.3 any reduction to the GBF allocation due to underspend having been returned to the Accountable Body;
  - 12.1.4 any substantial changes to the Project outputs which impact the project description.
- 12.2 The parties agree that within 20 working days, or such other time frame as agreed between the parties, of Accountability Board approving a Change pursuant to paragraph 12.1 the parties shall enter into a Project Variation Agreement. A **Project Variation Agreement** will be in substantially the form set out in Schedule 3 of this agreement.

## **13 Consequences of Termination**

- 13.1 Determination of this agreement will not affect any rights or liabilities of the parties that have accrued before the date of determination or which later accrue and (without limitation to the foregoing) where Accountability Board approval has been provided for any specific Project or Additional Project the Project Allocation for such Project or Additional Project will continue to be paid to the Council notwithstanding determination of this agreement.
- 13.2 Upon receipt of a notice to cancel this agreement the parties shall convene a meeting. The meeting shall consider the implications of the cancellation and endeavour to agree any immediate steps. The parties shall agree an exit management plan.

## **14 Indemnity**

- 14.1 The Council will indemnify the Accountable Body and SELEP Ltd against all costs and losses arising out of, or in connection with, a breach of this Agreement by the Council.

## **15 Freedom of Information**

- 15.1 The parties recognise that the Accountable Body and the Council are public bodies under FOI Legislation. Each party acknowledges that where the other party is subject to the requirements of the FOI Legislation each party shall, where reasonable, assist and co-operate with the other (at their own expense) to enable each party to comply with these information disclosure obligations.
- 15.2 Where a party receives an Information Request in relation to information which it is holding on behalf of another party it shall:
- 15.2.1 transfer the request for information to the other party as soon as practicable after receipt and in any event within 5 (five) business days of receiving an Information Request;
- 15.2.2 provide the other party with a copy of all information in its possession in the form that the other party reasonably requires within ten (10) business days (or such longer period as the other party may specify) of the other party requesting that information unless the cost of compliance exceeds the limit set down pursuant to FOI Legislation (and provides reasonable proof of this to the other party); and
- 15.2.3 provide all necessary assistance as reasonably requested by the other party to enable the other party to respond to a request for information within the time for compliance set out in the FOI Legislation.
- 15.3 Where a party receives an Information Request which relates to this Agreement, it shall inform the other parties of the Information Request as soon as practicable after receipt and in any event at least four (4) business days before disclosure and shall

use all reasonable endeavours to consult with the other parties prior to disclosure and shall consider all representations made by the other party in relation to the decision whether or not to disclose the information requested.

15.4 The parties acknowledge and agree that any decision made by a party which receives an Information Request as to whether to disclose information relating to this agreement pursuant to FOI legislation is solely the decision of that party. A party will not be liable to the other for any loss, damage, harm or detrimental effect arising from or in connection with the disclosure of information in response to an Information Request.

15.5 Each party shall be responsible for determining in their absolute discretion whether any information for the purposes of FOI Legislation:

15.5.1 is exempt from disclosure under FOI Legislation; and

15.5.2 is to be disclosed in response to an Information Request.

## **16 Entire Agreement**

16.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## **17 Counterparts**

17.1 This agreement may be executed in any number of counterparts, each of which shall be regarded as an original, but all of which together shall constitute one agreement binding on the parties, notwithstanding that all of the parties are not signatories to the same counterpart.

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

The common seal of

**ESSEX COUNTY COUNCIL**

was hereunto affixed in the presence of

Attesting Officer

Executed as a deed by **SOUTH EAST LEP LIMITED**

Executed as a deed by  Adam Bryan as joint attorney for South East LEP Ltd under a power of attorney dated 3 September 2020 in the presence of:	..... Adam Bryan
..... <i>signature of witness</i>	
Name of Witness:	
Address of Witness:	
and Suzanne Bennett as joint attorney for South East LEP Ltd under a power of attorney dated 3 September 2020 in the presence of:	..... Suzanne Bennett  <b>Attorneys for South East LEP Ltd</b>
..... <i>signature of witness</i>	
Name of Witness:	
Address of Witness:	



The common seal of

**[COUNCIL]**

was hereunto affixed in the presence of

Attesting Officer

## **SCHEDULE 1**

### **Grant Payment Process**

1. The Project Allocation for each Project will be paid to the Council on a quarterly basis in advance, based on the Quarterly Expenditure Profile for that quarter, providing that the following conditions have been met:
  - a. The Council is required to submit to the SELEP Secretariat, in the format specified by the SELEP Secretariat and within the agreed Reporting Period, a Quarterly Expenditure Profile of the Grant Allocation that has been signed-off by the Council's S.151 officer, or their nominated representative. The sign-off will be to confirm that:
    - i. The Quarterly Expenditure Profile reflects a locally agreed estimate of total spend to date and the forecast profile of spend per Project; and
    - ii. That all necessary local governance has been undertaken, or is planned, to support the planned spend in the quarter for which Grant is to be provided. Where local governance is planned, but not yet in place, it is expected that this will, for example, be on the forward plan for the respective decision-making body and be undertaken in the period for which Grant is being requested.
2. The total Project Allocation requested in the Quarterly Expenditure Profiles in each financial year must not exceed the level that has been approved by the Accountability Board for the respective financial year.
3. In the event that the Grant allocated in the previous quarter was lower or higher than the Reported Spend for that period, any difference will be reflected in the profiled spend for the subsequent quarter to ensure that the Council has the total funding required to adhere to the Quarterly Expenditure Profile for each respective quarter.
4. The timetable for submission of the Quarterly Expenditure Profile is as agreed in the Reporting Period.
5. The Quarterly Expenditure Profile will be subject to review and agreement at the respective Programme Consideration Meeting, and, if required, subject to approval by Accountability Board at the next opportunity.
6. Payment of the Quarterly Expenditure Profile will be made within 15 working days following receipt of the Quarterly Expenditure Profile, in accordance with the timetable for submissions set out in the agreed Reporting Period. Where a decision is required from the Accountability Board, the payment will be made within 15 days following Accountability Board approval.

**SCHEDULE 2**  
**PROJECTS**



**SCHEDULE 3 –PROJECT VARIATION SCHEDULE**  
**Project Variation Schedule template**

**THIS PROJECT VARIATION IS DATED**  
**AND IS MADE BETWEEN**

**20**

**ESSEX COUNTY COUNCIL** of County Hall, Chelmsford, Essex CM1 1LX (“the Accountable Body”);

**SOUTH EAST LEP LIMITED** a company registered in England and Wales whose registered office is at County Hall, Market Road, Chelmsford, Essex CM1 1QH with company number 12492037) (“SELEP Ltd); and

**[NAME OF COUNCIL]** of **[ADDRESS]** (“the Council”)

**BACKGROUND**

- (A) The Accountable Body, SELEP Ltd and the Council entered into an agreement dated [DATE] for payment of the Getting Building Fund (GBF) grant by the Accountable Body to the Council following agreement with SELEP Ltd for projects agreed by the parties (“the **Contract**”).
- (B) The parties agree that changes to the GBF programme set out in this Project Variation Agreement, which have been approved by Accountability Board (“**Project Variation**”) are in accordance with the Assurance Framework and shall form part of the Contract.
- (C) In consideration of their mutual obligations under this Project Variation Agreement and the payment by each party to the other of £1 (the sufficiency of which each party acknowledges), the parties have therefore agreed to vary the Contract on the terms set out in this Project Variation Agreement.

**AGREED**

**1. PROJECT VARIATION**

With effect from the date of this agreement, the parties agree to amend the Contract to include the Project Variation set out in the Annex to this agreement.

**2. CONTINUING EFFECT**

Subject to the variation set out in this agreement, the Contract shall continue in full force and effect in all respects.

**3. COUNTERPARTS**

The Project Variation Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, but all of which together shall constitute

one agreement binding on the parties, notwithstanding that all of the parties are not signatories to the same counterpart.

#### 4. GOVERNING LAW AND JURISDICTION

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

This agreement has been entered into on the date stated at the beginning of it.

**SIGNED for and on behalf of** .....  
**Essex County Council** Signature

.....  
Name

## SECTION 151 Officer

**SIGNED for and on behalf of** .....  
**SELEP Ltd** Signature

.....  
Name

(Authorised Signatory)

**SIGNED for and on behalf of** .....  
**[COUNCIL]** .....  
 Signature

.....  
.....  
Name

**SECTION 151 Officer**

## ANNEX

<b>Project reference number</b>	
<b>Project Title:</b>	
<b>Description of Project:</b>	
<b>Nature of project variation:</b>	
<b>Total Project Grant Allocation:</b>	
<b>Date of Accountability Board's decision on Project variation:</b>	

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