

**Report To:** EXECUTIVE CABINET

**Date:** 29 June 2016

**Executive Member/  
Reporting Officer:** Councillor Jim Fitzpatrick – First Deputy (Performance and Finance)  
Damien Bourke – Assistant Executive Director

**Subject:** VISION TAMESIDE PHASE 2

**Report Summary:** The report provides a further update on project development, costs, delivery timescales and risks associated with the Vision Tameside Programme and seeks approval for:

- Payments and virements as outlined in the report.
- Delegated authority for the award of a contract and making of all necessary decisions within the allocated capital budget.
- Delegated authority for any necessary virements that may be required during the delivery of the programme within the allocated capital budget.
- Delegated authority to accept the SFA funding offer of £4,060,000.

**Recommendations:** That Executive Cabinet:

1. Notes the substantial progress achieved since Executive Cabinet last received a report on the Vision Tameside Phase 2 programme in December 2015.
2. Notes the revised demolition completion date of 5 August 2016 as outlined in section 3.
3. Approves the payment of the balance of the costs incurred in reaching Stage 2 of £78,949 to the Tameside Investment Partnership as outlined in section 4.12. .
4. Approves the virements as set out in Section 4.3 of this report.
5. Approves the payment of the costs of post-stage 2 early works packages of £2,589,978.17 to the Tameside Investment Partnership as outlined in section 4.13.
6. Authorises the Executive Director (Place), in consultation with the Executive Director (Governance & Resources) and First Deputy (Performance and Finance), to award a construction contract and make all necessary decisions within the allocated capital budget for the Vision Tameside Phase 2 programme as outlined in section 4 of this report.
7. Authorises the Executive Director (Place), in consultation with the First Deputy (Performance and Finance), to approve any further early works packages necessary within the allocated capital budget for the Vision Tameside Phase 2 construction programme.
8. Authorises the Executive Director (Place), in consultation with the First Deputy (Performance and Finance) and the S151 Officer, to approve any necessary virements within the allocated capital budget for the Vision Tameside Phase 2 programme subject to any virements over £100k being approved in advance by the Strategic Planning and Capital Monitoring Panel;.
9. Authorises the Executive Director (Place), in consultation with the

Executive Director (Governance & Resources), to accept the SFA funding offer of £4,060,000 from the Greater Manchester Combined Authority and enter into a grant funding agreement on behalf of the Council.

**Links to Sustainable Community Strategy:**

The initiative supports the delivery of the Sustainable Community Strategy Prosperous Tameside aim.

**Policy Implications:**

In line with Council policy.

**Financial Implications: (Authorised by the Section 151)**

The overall costs of the Vision Tameside programme must be contained within the overall net budget of £48,673,794, which was approved in February 2015.

Contingency provisions were made for construction and overall programme related cost pressures as part of this budget allocation.

The construction programme has now progressed to Stage 2 and firmer costs have been determined.. This is based on a contract award by the end of June 2016. There are however still a small number of risks relating to ground conditions, and the Ashton Town Hall façade and there is a construction contingency of £250,000 to cover any costs related to these.

A key cost risk to the programme is not achieving contract award, as this will impact on the amount of inflation underwritten and also revenue budget impacts due to loss of rent from the new tenants and the potential need to extend the rental of some of the decant properties. As anticipated, there have been a number of variations to costs originally projected that now require approval if the programme is to progress.

The current approved budget, projected expenditure at this stage and virement requested is shown in the table below:

<b>Budget Heading</b>	<b>Approved Budget December 2015 (£)</b>	<b>Projected Budget June 2016 (£)</b>	<b>Requested Virements at June 2016</b>
Total Demolition / Construction costs (including revised commercial offer and inflation contingency)	38,989,083	39,373,279	384,196
TMBC Furniture Budget	1,500,000	1,500,000	0
Approved Change Orders To Date	0	1,616	1,616
Additional Asbestos Costs (now included in total demolition / construction cost)	706,997	0	-706,997
<b>Total Demolition / Construction Costs</b>	<b>41,196,080</b>	<b>40,874,895</b>	<b>-321,185</b>
Less SFA grant	-4,000,000	-4,000,000	0
Cost paid by partners for furniture	-287,000	-432,000	-145,000
TMBC Construction Contingency (for dark ground)	250,000	250,000	0

<b>Net Construction Costs</b>	<b>37,159,080</b>	<b>36,692,895</b>	<b>-466,185</b>
Decant / condition works	2,764,452	2,764,452	0
Co-op bank termination of lease	100,000	95,408	-4,592
Programme Management	100,000	100,000	0
Fit out costs of temporary store re Early Lease termination – Wilkos	832,978	832,978	0
College Fixed Furniture and Equipment	300,000	850,000	550,000
Fit Out Costs - Early Wilko's Lease Termination	859,900	859,900	0
Public Realm Works	2,631,000	2,631,000	0
Document Scanning	250,000	250,000	0
Potential Loss of profits Wilko's	550,000	550,000	0
Legal Costs of Construction Works	50,000	50,000	0
IT Enablement	2,194,000	2,194,000	0
Programme Contingency	882,384	803,161	-79,223
<b>Total</b>	<b>48,673,794</b>	<b>48,673,794</b>	<b>0</b>

Any additional costs that arise will need to be delivered from the remaining overall contingency to ensure that the project remains within the overall approved budget.

Following the requested virement the overall contingency that remains has again reduced to £803k this is not a large amount considering the size of the project and therefore costs needs to be closely monitored.

It is important that regular monitoring of all expenditure budgets, value for money and inflation projections are maintained throughout the programme. It is also important that the agreement for lease and lease with the college, CCG and JCP are completed as soon as possible so that the capital and revenue implications of the programme can be confirmed.

**Legal Implications:  
(Authorised by the  
Borough Solicitor)**

There needs to be some strong project management and the continued operation of a Project Board is key to assisting in the management of deadlines and future milestones going forward.

Formal completion of the Building Contract; and the negotiation and then entering into of legal agreements with Tameside College, CCG and JCP are now high priority to enable the project to move forward expediently.

The risks around the SFA Grant of £4,060,000 from the Greater Manchester Combined Authority are set out in the report. The Council must now ensure that it closely monitors and adheres strictly to the obligations set out in the Grant Funding Agreement attached at **Appendix 1**. Key to this will be ensuring that the College signs up to an agreement for lease at the earliest opportunity.

**Risk Management:**

The key risks and mitigation proposed are included in the report at Section 5.

**Access to Information:**

The background papers relating to this report can be inspected by contacting the report writer, Damien Bourke, Assistant Executive Director, Development, Growth and Investment by:



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## **1. BACKGROUND**

1.1 The purpose of this report is to provide a further update on project development, costs, delivery timescales and risks associated with the Vision Tameside Programme and seek approval for:

- Payments and virements as outlined in the report.
- Delegated authority for the award of a contract and making of all necessary decisions within the allocated capital budget.
- Delegated authority for any necessary virements that may be required during the delivery of the programme within the allocated capital budget.
- Delegated authority to accept the SFA funding offer of £4,060,000.

1.2 At its meeting on the 16 December 2015, the Council's Executive Cabinet approved the following recommendations in respect of the Vision Tameside Programme:

- a) Note the Stage 2 Cost Plan Review report prepared by the Sweett Group which confirms that the Stage 2 cost plan price is considered reasonable and provides an acceptable level of value for money but recommends further negotiation in specific areas to achieve better value for money
- b) Accept the Stage 2 submission by the Tameside Investment Partnership in respect of the Vision Tameside Phase 2 building subject to further negotiation
- c) Approve the payment of the costs incurred in reaching Stage 2 of £1M to the Tameside Investment Partnership
- d) Note the draft Stage 2 Strategic Business Case prepared by Genecon which confirms that the project is supported by a compelling case for change, represent best public value, is commercially viable, affordable and achievable
- e) Approve the virements as set out in table 1 of this report
- f) Authorise the Executive Director (Place), in consultation with the Executive Director (Governance & Resources), to further negotiate and agree detailed project scope, technical terms and commercial terms set out in the Stage 2 submission prior to financial close and contract award subject to the price not exceeding the budget of £41,196,080
- g) Authorise the Executive Director (Place), in consultation with the Executive Director (Governance & Resources), to approve the final Tameside Investment Partnership Stage 2 submission in respect of the Vision Tameside Phase 2 building
- h) Authorise the Executive Director (Place), in consultation with the Executive Director (Governance & Resources) to award the Design and Build contract for the works for the construction of the Vision Tameside Phase 2 building conditional upon the contract sum not exceeding the budget of £41,196,080 and no significant increase in the risk allocation to the Council before financial close
- i) Approve the establishment of the Vision Tameside Project Board.

## **2. PROGRESS UPDATE**

2.1 A detailed update on the physical progress made to date was provided to the meeting of the Council's Executive Cabinet on the 16 December 2015 and the Strategic Planning and Capital Monitoring Panel on the 14 March 2016.

2.2 Since that time, substantial progress has been made with key elements of the Programme, as set out below.

### **Asbestos Removal**

- 2.3 Negotiations on liability for the removal of asbestos have now been satisfactorily completed. Details of the financial implications for the Council are set out in section 3 of this report.
- 2.4 An asbestos workshop has been held involving demolition experts from the Council and Carillion. The purpose of the event was to establish the process followed to identify, notify and remedy this issue and identify lessons learned to help improve communications in the future.

### **Lease Negotiations**

- 2.5 Lease discussions are nearing completion with the College, Job Centre Plus (JCP) and the Clinical Commissioning Group (CCG). Heads of Terms are to be agreed prior to the award of the Design and Build contract. The Council will then need to negotiate the legal agreements to reflect the Heads of Terms. Until these agreements are agreed and signed up then there is a risk of the parties requesting amendments to the terms, or ultimately withdrawing from the project.

### **Scope and Design of Building**

- 2.6 The scope of the building has not changed and remains as approved. It should be noted however that any further changes to the design or specification, following approval of the Stage 2 report, is likely to incur additional costs. Some change is inevitable given that we are over two years away from moving into the new building and for that reason a formal change control process has been embedded into project management processes.
- 2.7 Following recent changes in management at the College, the Stage 2 designs are currently under review and several design changes are anticipated. The College has been made aware that that they will be responsible for any costs associated with any requested design changes and that any impact on timescales will need to be considered carefully to ensure there is no negative impact on the overall programme.
- 2.8 Further detailed discussions with potential occupants are ongoing to gain a better understanding of partners' requirements and to identify if design changes are required to the first floor. These potential occupants include Customer Services, Citizen Advice Bureau, Cash Box, Credit Union and Welfare Rights.

### **Fixture, Fittings and Equipment (FF&E)**

- 2.9 An analysis of furniture, fittings and equipment, for all elements of the scheme, was completed as part of the Stage 2 submission. The original £1.5 million budget for the Council and partners had been confirmed to be sufficient at Stage 2. An original projection of FF&E costs to be recovered from JCP and CCG, for bespoke elements, was £287,000. However, the projected FF&E contribution, from these organisations, is now anticipated to be £432,000.
- 2.10 It was reported at the Council's Executive Cabinet meeting on the 21 October 2015 that the College fixed FF&E costs had been estimated at £1.065 million subject to further analysis and value engineering.
- 2.11 The current College FF&E costs are now projected at £2.2 million as shown in the table below:

<b>Type of FF&amp;E</b>	<b>Amount (£)</b>
Loose	827,486.57
Fixed	1,391,800.38
<b>Total</b>	<b>2,219,286.95</b>

- 2.12 Early negotiations with the College included an indication of a £300,000 Council contribution towards the fixed FF&E costs for their accommodation. Over the course of the development of the project, the College has repeatedly stated that this level of financial contribution is insufficient to meet their needs and enable them to move into the town centre.
- 2.13 Further negotiations with the College have resulted in an agreement for a capped £850,000 Council contribution towards the total £2.2 million costs of the College's FF&E. This ensures that Heads of Terms for the College's lease are agreed within the required timescales while limiting the Council's financial exposure.
- 2.14 The revised financial breakdown of FF&E costs for the College are as follows:

<b>Detail</b>	<b>Council Cost (£)</b>	<b>College Cost (£)</b>
Council capped contribution towards College fixed FF&E	850,000	
College to pay for balance of fixed FF&E		541,800 *
College to pay for all loose furniture		827,486 *
Specialist design advice (previously approved)	48,303	
<b>Total Projected Cost</b>	<b>898,303</b>	<b>1,369,286</b>

\*Note - the College is currently reviewing the designs so these costs are still subject to change.

#### **Contract Award**

- 2.15 The revised target date for financial close and contract award is 24 June 2016. Good progress is being made with final negotiations and legal documentation to ensure that this milestone is achieved.

#### **Public Realm Project**

- 2.16 Substantial progress has been made with the development of the Ashton Town Centre public realm project. An appropriate funding package is also being developed to enable the delivery of all elements of the project as identified in previous reports.
- 2.17 The current projected costs for the Ashton Town Centre project are £9,655,383 with Council commitments of £8,191,726 of which £2,631,000 sits within the overall Vision Tameside budget. The funding package therefore relies on financial contribution from external sources including the GM Growth Deal Round 3 programme and Network Rail. A detailed business case and funding bid for £1.2 million has been submitted to TfGM and informal feedback received to date has been positive. A formal decision is expected by the end of July 2016.
- 2.18 In addition, discussions with Network Rail regarding their current plans to replace the two bridges at the Turner Lane junction, have included potential improvements to the station façade and plaza.
- 2.19 Hamilton-Baillie, leading international urban design and movement experts, have recently been appointed to develop proposals for the rationalisation of the Turner Lane road junction and associated works. This work is aimed at complementing the wider public realm project, pedestrianisation of Wellington Road and creating an attractive arrival and pedestrian environment in Ashton.

- 2.20 A further report on the public realm project will be provided for consideration once project and funding details have been established.

### **Re-use of Ashton Town Hall**

- 2.21 A study to explore the potential for optimising the future use of Ashton Town Hall has recently been completed by Creative Heritage Consultants to assist in developing a vision and business plan for the future use of this important historic building. The emerging vision is based on the concepts of 'Inform, Debate and Celebrate' to communicate the distinctiveness and iconic beauty of the building. Proposed uses include arts and culture hub, retail/food & drink, meeting rooms and function rooms.
- 2.22 Ryder's Architecture, the architects for the Vision Tameside Phase 2 building, are currently developing design options and costings based on the emerging vision. This work will assist the Council in establishing the feasibility of re-interpreting the town hall in a commercially viable 21<sup>st</sup> Century context.
- 2.23 A further report on the re-use of Ashton Town Hall will be provided for consideration once project and funding details have been established.

### **Recant Task Group**

- 2.24 A Recant Task Group, which reports to the Vision Tameside Working Group, is in the process of developing an appropriate Recant Strategy for the new Joint Service Centre as part of the wider Council accommodation strategy.
- 2.25 The intention is to have a draft Recant Strategy available for further consideration by Autumn 2016.

## **3. PROJECT PROGRAMME**

- 3.1 Due to unforeseen delays in the demolition programme, a revised recovery programme was received on the 9 June 2016. Some of the reasons provided for the delays experienced include late scaffolding erection to the Octagon Tower; additional propping up requirements in the Octagon Tower, damage to the existing town hall having an impact on the heavy vibration demolition works progress.
- 3.2 The latest recovery programme indicates that the demolition programme will be complete by the 5 August 2016 rather than the previously reported date of 24 June 2016.
- 3.3 The revised high level programme is shown in the table below. This confirms a completion date for the construction of the new building as 26 May 2018 with recant and occupation completed by September 2018.

<b>Phase</b>	<b>Milestone</b>	<b>Target Date as of May 2016</b>
Design Stage	Stage 1 design	Achieved
Design Stage	Stage 2 design submission for Planning	Achieved
Decant Phase	TAC vacated	Achieved
Decant Phase	Retail vacated	Achieved
Planning Approval and Listed Building Consent	Approval granted	Achieved
Demolition and Enabling Phase	Start separation works from Ashton Town Hall	July 2015
Demolition Phase	Demolition starts	17 August 2015
Stage 2 Costs	Approval	December 2015



Demolition Phase	Demolition complete	5 August 2016
Contract Negotiation	Financial close / contract award	By 24 June 2016
Future Use of ATH	Business case complete	July 2016
Construction Phase	Construction phase starts	8 August 2016
Construction Phase	Completion	26 May 2018
Recant Phase	Recant commences	June 2018
Recant Phase	Recant completes	September 2018

- 3.4 Carillion has provided details of the mitigation measures which have been implemented to reduce the risk of further delays. In addition, they will continue, where possible, to identify opportunities to claw back time on the programme.
- 3.5 This delay in the programme does not have a significant impact on the current contract and lease arrangements. However it is essential that the programme continues to be monitored closely to ensure there is no further slippage, ensuring that the new building will be open and fully functioning by September 2018.

#### 4. FINANCIAL IMPLICATIONS

- 4.1 The report to the Council's Executive Cabinet meeting on the 16 December 2015 gave authority to further negotiate specific areas in the cost plan to achieve better value for money.
- 4.2 These negotiations are now complete and the following revised offer has been made by Carillion:

Detail	Original Cost (£)	Revised Cost (£)	Variance (£)
Final asbestos removal costs - Carillion to omit overhead and profit for undertaking the work. Cost now incorporated into the Demolition costs identified in table 4.3.	720,000	680,000	40,000
Further additional, without prejudice commercial adjustment to close the agreement	680,000	650,000	30,000
<b>Total</b>			<b>70,000</b>

- 4.3 The costs approved by the Council's Cabinet Executive in December 2015 are shown in the table below along with further virements which require approval:

Budget Heading	Approved Budget December 2015 (£)	Projected Budget May 2016 (£)	Requested Virements at June 2016
Total Demolition / Construction costs (including revised commercial offer and inflation contingency)	38,989,083	39,373,279	384,196
TMBC Furniture Budget	1,500,000	1,500,000	0
Approved Change Orders To Date	0	1,616	1,616

Additional Asbestos Costs (now included in total demolition / construction cost)	706,997	0	-706,997
<b>Total Demolition / Construction Costs</b>	<b>41,196,080</b>	<b>40,874,895</b>	<b>-321,185</b>
Less SFA grant	-4,000,000	-4,000,000	0
Cost paid by partners for furniture	-287,000	-432,000	-145,000
TMBC Construction Contingency (for dark ground)	250,000	250,000	0
<b>Net Construction Costs</b>	<b>37,159,080</b>	<b>36,692,895</b>	<b>-466,185</b>
Decant / condition works	2,764,452	2,764,452	0
Co-op bank termination of lease	100,000	95,408	-4,592
Programme Management	100,000	100,000	0
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Public Realm Works	2,631,000	2,631,000	0
Document Scanning	250,000	250,000	0
Potential Loss of profits Wilko's	550,000	550,000	0
Legal Costs of Construction Works	50,000	50,000	0
IT Enablement	2,194,000	2,194,000	0
Programme Contingency	882,384	803,161	-79,223
<b>Total</b>	<b>48,673,794</b>	<b>48,673,794</b>	<b>0</b>

4.4 If the virements are approved, the table below outlines the high level capital requirements for the project.

<b>Capital Costs</b>	<b>Amount (£)</b>
VTP2 Demolition	3,298,474
VTP2 Construction (inc inflation contingency)	36,074,805
TMBC Furniture Budget	1,500,000
Construction Contingency (dark ground risk)	250,000
Approved Change Orders To date	1,616
Less Potential Income	-4,432,000
<b>Total Net Construction Costs</b>	<b>36,692,895</b>

Additional VTP2 Programme Elements	11,177,738
Programme Contingency	803,161
<b>Total</b>	<b>48,673,794</b>

4.5 Dialogue continues with the TIP regarding the final construction contract sum which will not exceed the capital budget envelope.

### Funding

4.6 A Council Key Decision in October 2014 authorised the submission of a funding bid to the Local Growth Fund for a capital contribution towards the costs of the College's demise in the new building.

4.7 The Skills Capital bid was successful and the Greater Manchester Combined Authority (GMCA) issued an offer of grant to the Council, of up to £4,060,000, in June 2015 subject to a number of grant conditions being met. A summary of the grant conditions are as follows:

- a. Confirmation that the Council have entered into an Agreement to Lease of Part of the premises created by the Project for a term of not less than 25 years. As noted in part 2.5 of this report, the Council has reached agreement on the Heads of Terms for the lease, but has not yet entered into a formal agreement for lease. Once the agreement for lease is entered into there is a risk that the lease might not be completed. The risks of this must be factored into the risk register for this project and appropriate steps taken to mitigate the risks of non-completion of the lease and any clawback of funding.
- b. Submission of an independent Confirmatory Due Diligence report to the GMCA which will provide confirmation of the following:
  - grant compliance with State Aid rules;
  - the Council has sufficient capital funding in its cash-reserves, that is has been approved by its governing body and that it will not adversely impact on its overall financial position;
  - credibility and accuracy of the projects financial projections.
- c. Appointment of an independent Project Monitor who will verify to the GMCA that the project is being satisfactorily delivered and that claims for payment of the grant are made in accordance with the terms and conditions of grant.

4.8 The Confirmatory Due Diligence and Independent Project Monitor reports have now been completed and approved by the GMCA. On this basis the GMCA issued a draft formal funding agreement for £4,060,000 on the 12 May 2016 – **Appendix 1**.

4.9 A breakdown of the estimated eligible expenditure is as follows:

Item	Estimated Eligible Expenditure	Maximum GMCA Grant Contribution (% of estimated Eligible Expenditure)
Consultant costs (due diligence, project monitor, independent accountant)- these are not included in the costs above for Vision Tameside.	Up to £60,000	£60,000 (100%)
Construction costs (including prelims, contingencies and professional fees)	Up to £12,000,000	£4,000,000 (33%)

- 4.10 The FF&E contribution from JCP and CCG is currently estimated to be £432,000.
- 4.11 Funding for the balance of the capital requirements for the programme will be from reserves and/or Public Works Loan Board borrowing in line with the Council's capital strategy.

### **Disbursements**

- 4.12 A Council Key Decision in February 2015 authorised the procurement of the Stage 2 planning and design work through the Tameside Investment Partnership (TIP) at a projected cost of £1,078,949. Executive Cabinet subsequently approved an initial payment of £1,000,000 in December 2015. Approval is now sought to make payment of the balance of £78,949 to the TIP for the Stage 2 costs.
- 4.13 The Stage 2 submission approved by Executive Cabinet in December 2015 was based upon contract award by the end of January 2016. This timescale was extended to the end of February 2016 in the post-stage 2 submission commercial negotiations. With the contract award still pending, approval is now sought to underwrite the TIP costs in progressing the post-stage 2 planning, design and procurement of early works packages during March – May 2016 inclusive totaling £2,589,978.17. The early works packages were required to mobilise supply chains to ensure construction works can start on site by the end June 2016 and maintain the project programme. It also mitigated the risks of construction cost inflation to the Council.
- 4.14 In addition, delegated authority is also sought to underwrite further TIP costs in progressing any additional post-stage 2 planning, design and procurement of early works packages that may be necessary prior to prior to financial close and contract award.

## **5. RISK MANAGEMENT**

- 5.1 The Vision Tameside Phase 2 programme has a comprehensive risk register and issues log which is pro-actively managed by the Project team. The primary risks associated with the proposals outlined in this report are shown in the table below.

<b>Risk</b>	<b>Mitigation</b>	<b>Status</b>
Financial	<ul style="list-style-type: none"> <li>• Affordability confirmed against the Council's financial position</li> <li>• Costs within affordable financial envelope</li> <li>• Value for Money assurance from Stage 2 review</li> <li>• Rigorous change control procedures</li> <li>• Income from subletting space</li> </ul>	Green
Stakeholder	<ul style="list-style-type: none"> <li>• Comprehensive communication strategy consistently delivers key messages regarding benefits</li> </ul>	Green
Economic	<ul style="list-style-type: none"> <li>• Economic benefits confirmed in stage 2 business case</li> </ul>	Green
Service Delivery	<ul style="list-style-type: none"> <li>• Flexible, fit for purpose accommodation for Council and partners</li> <li>• Working Better Together to ensure office systems, technologies and recant strategy delivers exceptional service delivery</li> </ul>	Green

## **6. CONCLUSION**

- 6.1 Delivery of the Vision Tameside Phase 2 programme is key to the achievement of the Council's overall strategic priorities and a new exciting future for Tameside attracting new businesses, creating new jobs and future opportunities for Tameside Residents.
- 6.2 Approval of the proposals contained in this report will enable the Vision Tameside Phase 2 Programme to be progressed in line with agreed key milestones thereby achieving the revised target completion date of 26 May 2018 in addition to mitigating the risk of construction cost inflation to the Council.

## **7. RECOMMENDATIONS**

- 7.1 As shown on the front of the report.

# APPENDIX 1

**DATED**

**2016**

**THE GREATER MANCHESTER COMBINED AUTHORITY (1)**

and

**TAMESIDE METROPOLITAN BOROUGH COUNCIL (2)**

**GRANT FUNDING AGREEMENT**

**In respect of Ashton Town Centre Advanced Services Industries Centre**

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**THIS DEED** is dated 2016

**PARTIES**

- (1) **THE GREATER MANCHESTER COMBINED AUTHORITY**, whose principal address is at Town Hall, Albert Square, PO Box 532, M60 2LA (**GMCA**).
- (2) **TAMESIDE METROPOLITAN BOROUGH COUNCIL**, whose principal address is at Dukinfield Town Hall, King Street, Dukinfield, Tameside SK16 4LA (**Grant Recipient**).

Each one a “Party” and together the “Parties”.

**BACKGROUND**

- (A) The Greater Manchester Local Enterprise Partnership (“the GM LEP”) has assumed responsibility for the commissioning and management of Skills Capital funding provided by the Department for Business Innovation and Skills (“BIS”) for investment in the estate and teaching equipment of further education providers within Greater Manchester.
- (B) Under the Greater Manchester Growth Deal, which was announced by Government in July 2014, the Government committed to provide funding to support the construction on the Site (as defined below) of new facilities for further education and training activities targeted at the service industries sector (“the Project”).
- (C) The GMCA is the accountable body for the GM LEP for the purpose of the receipt of Local Growth Fund Payments made by the Secretary of State for Communities and Local Government under section 31 of the Local Government Act 2003.
- (D) In the exercise of its functions to promote economic, social and environmental well-being under section 2 of the Local Government Act 2000, and in the exercise of its functions under sections 15ZA, 15ZB and 15ZC of the Education Act 1996, the

GMCA has agreed to pay the Grant to the Grant Recipient to assist it in carrying out the Project.

- (E) This Agreement sets out the terms and conditions on which the Grant is made by the GMCA to the Grant Recipient.
- (F) These terms and conditions are intended to ensure that the Grant is used by the Grant Recipient for the purposes for which it was awarded.

**Now this Deed witnesses as follows:**

## **1. DEFINITIONS**

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

**“Application”** means the application for Grant (and the annexures thereto) which is contained in Schedule 4;

**“Approved Use”** means use of an Asset as set out in the Application and for its Useful Economic Life and which can be summarised as an Advanced Service Industries Centre for the provision of further education and training (as defined by sections 82 and 86 of the Apprenticeships, Skills, Children and Learning Act 2009 and for such other activities of a further education corporation as are permitted by the Further and Higher Education Act 1992);

**“Asset”** means an asset which may be either a Fixed Asset or a Major Asset as appropriate in the relevant context and **“Assets”** shall be construed accordingly;

**“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;

**“Change”** means in relation to the Project as defined in the Application any of the following changes:-

- (a) a change in the nature or purpose of the Project;
- (b) a change to the Project Specific Conditions; or
- (c) a change to the Detailed Proposals once these have been approved by the GMCA;

**“Commencement Date”** means the date of this Agreement;

**“Completion”** means completion of the Project Activities to the satisfaction of the GMCA;

**“Consents”** includes any approval, authorisation, consent, exemption, licence, permit, permission or registration by or of from any governmental or other authority or any person including but not limited to consents required from the Grant Recipient’s landlord (if any), any adjoining owner or any mortgagee of the Site or from the local planning authority in relation to the Project or any part thereof or otherwise required to enable the same to be lawfully carried out and maintained;

**“Contribution Rate”** means the percentage rate of Eligible Expenditure at which Grant is paid as contained in the Project Specific Conditions;



**“Cost Apportionment Methodology”** means the basis upon which Eligible Expenditure will be calculated where costs for the Project form part of wider expenditure;

**“Data”** means:-

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are (i) supplied to the Grant Recipient by or on behalf of the GMCA; or (ii) which the Grant Recipient is required to generate, process, store or transmit pursuant to this Funding Agreement; or
- (b) any Personal Data for which the GMCA is the Data Controller;

**“Data Controller”** shall have the same meaning as set out in the Data Protection Act 1998;

**“Data Processor”** shall have the same meaning as set out in the Data Protection Act 1998;

**“Data Protection Legislation”** means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

**“Data Subject”** shall have the same meaning as set out in the Data Protection Act 1998;

**“Detailed Proposals”** means:

- (i) a full detailed design and scope of Works for the Project;
- (ii) a detailed construction programme for the Project;
- (iii) the Project Spend Profile;
- (iv) the Cost Apportionment Methodology

(together **“the Detailed Proposals”**)

submitted by the Grant Recipient and approved by the GMCA in accordance with clause 5.2.5 and as amended from time to time (subject always to clause 6.6);

**“Development”** means the development of new facilities on the Site which incorporate the Premises and other facilities for the use and occupation of the Grant Recipient;

**“EIR”** means the Environmental Information Regulations 2004 (SI No 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

**“Eligible Expenditure”** means the expenditure reasonably and properly incurred by the Grant Recipient in relation to this Project as set out in the profile at Schedule 1, provided that such expenditure shall not exceed the Maximum Sum;

**“EU Procurement Requirements”** includes, but is not restricted to the Public Contracts Regulations 2015 (SI 2015/102), the Utilities Contracts Regulations 2006

(SI No 6/2006), the Public Contracts and Utilities Contracts (Amendment) Regulations 2007 (SI No 2007/3542) the EU Commission Interpretative Communication (2006/C 179/02) and the principles of transparency, non discrimination, equality of treatment, proportionality and mutual recognition in the EEC Treaty;

**“Event of Default”** means an event or circumstance as defined by clause 16.1;

**“Expenditure Profile”** means the information to be provided by the Grant Recipient to the GMCA detailing the spend forecast for carrying out the Project Activities and defrayal of expenditure;

**“Fixed Asset”** means any Asset which consists of land and/or buildings, plant, machinery or other thing that is, or is to be, fixed to any land and which is to be acquired, developed, enhanced, constructed and/or installed as part of the Project;

**“FOIA”** means the Freedom of Information Act 2000;

**“Funding Agreement”** means this agreement and the schedules;

**“Grant”** means the monies which the GMCA shall make available to the Grant Recipient towards the Eligible Expenditure of the Project provided that such grant shall not exceed the Maximum Sum;

**“Grant Claim Form”** means the grant claim form as set out in Schedule 3;

**“Grant Offer Letter”** means the letter from the GMCA to the Grant Recipient dated 17 June 2015;

**“Information”** has the meaning given in the FOIA;

**“Information Commissioner”** has the meaning given in the FOIA;

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

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

**“Law”** means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements or any Regulatory Body, delegated or subordinated legislation or notice of any Regulatory Body;

**“Longstop Date”** means 31 March 2018

**“Major Asset”** means an Asset which is not a Fixed Asset but has a value as at the date of this Funding Agreement (or date of acquisition if the acquisition is funded) (in whole or in part) by this Grant) of at least £10,000;

**“Material Breach”** means a breach of this Funding Agreement that is material including (but without limitation) the events and circumstances specified in clause 16.2.

**“Maximum Commitment”** means the sum of £4,060,000 (Four Million and Sixty Thousand Pounds) being the maximum sum for which the GMCA shall be liable to make payment;

**“Payment Request”** means a request for payment of Grant issued by the Grant Recipient in the form set out at Schedule 3 and in accordance with the terms of this Funding Agreement and containing the information required by clause 8;

**“Personal Data”** shall have the same meaning as set out in the Data Protection Act 1998;

**“Plan”** means the plan of the Site and the Premises which is attached at Schedule 5;

**“Premises”** means that part of the Site on which the Advanced Service Industries Centre is to be constructed by the Grant Recipient shown edged blue on the Plan;

**“Prohibited Act”** means:

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

**“Project”** means the project as more particularly described in Schedule 1 and in the Application;

**“Project Activities”** means all activities to be carried out in implementing the Project and includes any Works to be carried out in relation to any Fixed Assets;

**“Project Monitor”** means Rider Hunt Management Services Limited (company registration number 1987338) (contact person, Richard FD Schofield FRICS, Hon FAPM) or such relevant professional appointed by the Grant Recipient and approved by the GMCA in respect of the Project;

**“Project Monitor’s Certificate”** means a progress report to be submitted with each Payment Request prepared by the Project Monitor in the form set out at Schedule 2; confirming:

- (a) that the expenditure incurred is in accordance with the Project Spend Profile; and
- (b) that the Project is making progress in accordance with the Project Spend Profile and the Detailed Proposals;

**“Project Specific Conditions”** means those Conditions which are specific to the Project and are contained in Schedule 1;

**“Project Spend Profile”** means the detailed breakdown of the Project costs and timing of Eligible Expenditure in such form as the GMCA in its absolute discretion shall approve;

**“Public Sector Financial Assistance”** includes all funding received or receivable by the Grant Recipient from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998;

**“Regulatory Bodies”** means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes or practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Funding Agreement or any other affairs of the GMCA and “Regulatory Body” shall be construed accordingly;

**“Request for Information”** means any request for Information or an apparent request under the FOIA or the EIR, as appropriate;

**“Site”** means the land comprising [*insert details*] in the ownership of the Grant Recipient and registered at HM Land Registry with Title Number [*insert details*] on which the Advanced Services Industries Centre is to be constructed by the Grant Recipient shown for the purpose of identification only edged red on the Plan including any part thereof and also includes any estate or interest therein;

**“State Aid Law”** means the law embodied in Articles 107-109 of Section 2, Title VII, of the Common Rules on Competition, Taxation and Approximation of Laws – Consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union (2008/C 115/01);

**“Useful Economic Life”** means the period that any Asset shall be used for the purpose stated in the Application as specified in the Project Specific Conditions;

**“Works”** means any works of construction and/or demolition and/or any Works in relation to a Fixed Asset which are described in the Detailed Proposals and which form part of Project Activities;

## 2. INTERPRETATION

In this Funding Agreement unless the contrary intention appears:

- 2.1 references to the Parties shall include their respective successors acting under statutory powers;
- 2.2 references to any statute, byelaw, regulation, rule, standard, delegated legislation or order shall include references to that statute, byelaw,

regulation, rule, standard, delegated legislation, or order as amended or re-enacted, or as other statutes modify its application from time to time, and any subordinate legislation, byelaw, regulation, rule, standard, delegated legislation, or order made, or to be made, thereunder;

- 2.3 references to clauses or schedules are references to clauses in or schedules to this Funding Agreement, and references to paragraphs are references to paragraphs in the schedule in which those references are made, and references to this Funding Agreement include the schedules to this Funding Agreement;
- 2.4 references to the singular include the plural and vice versa;
- 2.5 references to persons include individuals, companies, firms, partnerships, joint ventures, associations, organisations, or trusts (in each case whether or not having separate legal personality), and corporations sole and aggregate, government agencies, committees, departments, authorities and other bodies, incorporated or unincorporated;
- 2.6 references to the masculine gender include the feminine and the neuter genders and vice versa;
- 2.7 any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 2.8 save where otherwise provided in this Funding Agreement, any reference to this Funding Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 2.9 references to “determined” or “determine” means, unless the contrary is indicated a determination made at the discretion of the person making it;
- 2.10 where the consent, approval or agreement of the Grant Administrator or any other person is required pursuant to the terms of this Funding Agreement, it shall not be construed as having been given unless provided in writing;

### **3. GRANT**

- 3.1 In consideration of the parties respective obligations contained in this Funding Agreement the GMCA offers the Grant and the Grant Recipient accepts the Grant up to the Maximum Commitment on the terms and conditions of this Funding Agreement.
- 3.2 The GMCA shall pay the Grant to the Grant Recipient towards the Eligible Costs of the Works in accordance with clause 8 of this Funding Agreement.
- 3.3 The Grant shall not exceed the Maximum Commitment and the Grant Recipient shall be responsible for all costs incurred in relation to the Project over and above the Maximum Commitment.

#### **4. COMMENCEMENT**

This Funding Agreement shall take effect on the Commencement Date. The termination of this Funding Agreement, howsoever arising, is without prejudice to the rights, duties and liabilities of any part hereto accrued prior to termination.

#### **5. CONDITIONS**

5.1 The Grant Recipient shall not make any claim for funding and the GMCA shall not pay funding to the Grant Recipient unless the conditions specified in clause 5.2 have been met.

5.2 The conditions referred to in clause 5.1 are as follows:

5.2.1 The GMCA has received a satisfactory due diligence report in line with the provisions of Schedule 2 of the Grant Offer Letter;

5.2.2 The Grant Recipient has appointed the Project Monitor;

5.2.3 The Grant Recipient has demonstrated to the GMCA that it has full title to the Site and all necessary rights (including, without prejudice to the generality of the foregoing, all necessary rights of access, drainage, rights to install and connect to services) appurtenant to its estate or interest in the Site to enable the Project and the Works to be full carried out and fully serviced without the need to acquire any further land or obtain any rights from any other party and the Site is free from any conditions, restrictions, or covenants which do or might affect the Grant Recipient's right to carry out and maintain the Works;

5.2.4 The Grant Recipient has entered into the Lease of Part of the premises created by the Project in accordance with the condition at paragraph 6a of the Grant Offer Letter;

5.2.5 The Grant Recipient has submitted and the GMCA has approved the Detailed Proposals.

5.3 The GMCA may in its absolute discretion and on such terms as it may specify agree to pay funding to the Grant Recipient before the conditions under 5.2 have been satisfied, without prejudicing the GMCA's right to require subsequent fulfilment of such conditions;

5.4 If the conditions set out in clause 5.2 have not been complied with within 3 months of the date of this Funding Agreement (or such later date as the GMCA may in its absolute discretion agree) the GMCA may terminate this Funding Agreement by serving written notice on the Grant Recipient.

#### **6. THE GRANT RECIPIENT'S OBLIGATIONS**

6.1 The Grant Recipient shall ensure at all times that the Project is delivered in accordance with the Application, the Project Specific Conditions and the Detailed Proposals and the Grant Recipient shall ensure the Project is delivered by the Longstop Date.

6.2 The Grant Recipient shall ensure that the Premises and Assets are used for the Approved Use for the Useful Economic Life.

6.3 The Grant Recipient shall not dispose of the Premises and Assets for the duration of the Useful Economic Life other than by way of the Lease of Part required by condition 6 of the Grant Offer Letter.

6.4 The Grant Recipient shall ensure at all times that the Project is delivered:

- (i) in compliance with all relevant Law (including EU Procurement Requirements);
- (ii) in a proper and professional manner in accordance with good industry practice; and
- (iii) in all respects to the reasonable satisfaction of the GMCA.

**6.5 The Grant Recipient shall obtain all necessary Consents, (in so far as they remain to be obtained) as soon as practicable after the Commencement Date.**

6.6 The Grant Recipient shall not make any material alteration to the Detailed Proposals without the GMCA's prior written consent;

6.7 The Grant Recipient shall maintain or procure that there are maintained full and proper insurance policies in respect of any loss, damage or destruction of the Works, Assets and Premises.;

**6.8 The Grant Recipient shall supply any evidence that the GMCA may request in order to satisfy itself that the Grant Recipient has met its obligations under this Funding Agreement.**

**6.9 The Grant Recipient shall use the Grant only for Eligible Expenditure and in accordance with the terms and conditions set out in this Funding Agreement. The Grant shall not be used for any other purpose without the prior written agreement of the GMCA.**

## **7. PAYMENT OF GRANT FUNDING**

7.1 Subject to the provisions of this Funding Agreement the GMCA shall pay funding up to the Maximum Commitment into the bank account of the Grant Recipient at [*insert bank details*] in quarterly instalments in line with the value of Eligible Expenditure incurred in the preceding quarter and the Contribution Rate.

7.2 The Parties acknowledge and agree that the GMCA shall not be liable for any payment under this Funding Agreement until the conditions in clause 5 have been met to the reasonable satisfaction of the GMCA.

7.3 The GMCA shall not pay any funding unless the requirement of this Funding Agreement and the Project Specific Conditions have been fully complied with provided that the GMCA may waive in whole or in part a Project Specific Condition without prejudicing the GMCA's right to require subsequent fulfilment of such conditions provided always that the payment of a Grant Claim shall not operate as a waiver of any of the obligations in this Funding Agreement. or exclude the right for the GMCA to exercise any of its rights under this Funding Agreement.

7.4 The GMCA shall not pay any grant claim which is not in accordance with the following:

- (i) Submitted on a Grant Claim Form in line with the template at Schedule 3;
- (ii) Accompanied by a Progress Monitoring Certificate from the Grant Recipient in accordance with the template at Schedule 2;
- (iii) Relates solely to Eligible Expenditure and is in line with the Contribution Rate;

- (iv) Includes evidence to the satisfaction of the GMCA that Eligible Expenditure to which the claim relates has been legitimately incurred by the Grant Recipient;
- (v) The GMCA has received the Project Monitor's quarterly report confirming that the Project is being satisfactorily delivered and can be completed in line with the Detailed Proposals.

7.5 Subject to the above and there being no Events of Default, the GMCA shall pay the Grant to the Grant Recipient within 20 working days of receipt of a Grant Claim.

**7.6 The Grant Recipient shall use the payment advanced by the GMCA under this clause 7 in satisfaction (full or partial as appropriate) of the invoices to which the Payment Request relates.**

7.7 The GMCA will not pay a Grant Claim that is not in accordance with the annual grant expenditure set out in the Project Spend Profile agreed as part of the Detailed Proposals.

7.8 In the event that the Grant Recipient's Grant Claims in any financial year fall below the amount of planned Grant Claims for that financial year agreed under the Project Spend Profile, the Grant Recipient accepts that the underspend will not be rolled forward and the Maximum Commitment will therefore be reduced by an equivalent sum.

7.9 The GMCA will, at its sole discretion, agreed to fund Eligible Expenditure in any quarter at a higher rate than the Contribution Rate.

**7.10 The amount of the Grant shall not be increased in the event of any overspend by the Grant Recipient in its delivery of the Project.**

**7.11 Notwithstanding any other provision of this Funding Agreement, the GMCA shall only be liable to pay to the Grant Recipient under this Funding Agreement such sums which in the aggregate (taking into account sums previously paid under this Funding Agreement) do not exceed the Maximum Commitment.**

7.12 The Grant Recipient will make all Grant Claims prior to the Longstop Date, and the GMCA shall not be obliged to pay any grant funding which is not claimed prior to the Longstop Date.

## **8. MONITORING AND REPORTING**

8.1 The Grant Recipient must arrange for the Project Monitor to submit a quarterly progress report (the "**Progress Report**") to the GMCA in the format specified by the GMCA. The Grant Recipient must arrange for the Project Monitor to submit their quarterly Progress Report until the Project is completed. (with the definition of the completion of the Project for the purposes of this clause 8.1 being as set out in the Detailed Proposals approved by the GMCA);

8.2 The Grant Recipient must ensure that the Project Monitor has access to all information necessary for the Project Monitor to provide the Progress Report.

8.3 The Grant Recipient must permit the GMCA, the Project Monitor and their respective representatives to inspect the Project on reasonable notice.



- 8.4 The Grant Recipient must arrange for the GMCA to be provided with an annual report from an independent firm of accountants (the “**IAR**”) in the form specified by the GMCA. The Grant Recipient must arrange for the IAR to cover the Eligible Expenditure made by the Grant Recipient during the financial year preceding the IAR. The Grant Recipient must arrange for the IAR to be submitted to the GMCA by the 31 May following the end of the financial year to which the IAR relates. The final IAR to be submitted by the Grant Recipient should be submitted within 3 months of the date of submission of the Grant Recipient’s final Grant Claim ;
- 8.5 Within 3 months of the date of this Funding Agreement the Grant Recipient must submit for approval by the GMCA a monitoring and evaluation plan (the “**Monitoring Plan**”) which details the target beneficiaries of the Project and the methodology under which the Project’s skills and employment impacts will be captured and evidenced.
- 8.6 Following approval by the GMCA of the Monitoring Plan referred to at clause 8.5, the Grant Recipient will provide an annual monitoring report (the “**Monitoring Report**”) setting out the Project impacts that the Grant Recipient has captured and evidenced in line with the agreed Monitoring Plan. The first annual Monitoring Report will be submitted to the GMCA by the Grant Recipient on the anniversary of the date of this Funding Agreement and the Grant Recipient will continue to provide annual Monitoring Reports to the GMCA on this date for three years following the Project Completion.

## **9. THE APPLICATION AND ACCEPTANCE OF GRANT TERMS**

- 9.1 The Grant Recipient warrants to the GMCA that the Application is accurate in all respects having made proper and full enquiry. The GMCA has based its decision to offer and pay the Grant (and has relied) upon the representations made by the Grant Recipient in the Application and in all documents and information provided as part of the appraisal process. No disclaimer or other statement that precludes the right of any person to rely upon the Application or any other document that forms part of the Application, or has a similar effect, shall apply with respect to the GMCA or affect the GMCA’s right to enforce any provision of the Funding Agreement.
- 9.2 For the avoidance of doubt, clause 9.1 is intended to ensure that:-
- (a) no disclaimer of liability for the contents of the Application affects the GMCA’s right to recover any sum under this Funding Agreement; and
  - (b) there is reserved to the GMCA any rights of action or remedies for any mistake, negligent misstatement, misrepresentation or error of judgment made in the Application upon which the GMCA has relied in agreeing to provide Grant to the Grant Recipient.
- 9.3 The Grant Recipient accepts and agrees to all of the terms having made full and proper enquiry before giving the warranties contained in this Funding Agreement.
- 9.4 The Grant Recipient shall use its best endeavours to carry out and complete the Project Activities and comply with the requirements of this Funding Agreement within the time limits set out in this Funding Agreement and the Key Milestone Dates set out in the table contained in the Project Specific Conditions.
- 9.5 The Grant Recipient shall procure and maintain the necessary expertise and resources to provide the Project in accordance with EU Procurement Requirements and State Aid Law (as applicable). The Grant Recipient agrees to maintain appropriate records of compliance with State Aid Law and agrees to take all reasonable steps to assist the GMCA to respond to any investigation(s) instigated

by the European Commission into the Project. A finding of State Aid non-compliance by the European Commission or a Court of competent jurisdiction may lead to the Grant Recipient being ordered to repay the Grant with interest in accordance with the European Commission's reference rates.

## **10. PUBLICITY**

10.1 The Grant Recipient must comply with any publicity requirements regarding the GMCA's support for the Project which the GMCA may notify to the Grant Recipient from time to time.

10.2 The Grant Recipient will not make any public announcement by way of press release, other media communication or otherwise in relation to the Project unless the Grant Recipient:

- (i) has obtained the GMCA's prior approval of the contents of such press release or other media communication; and
- (ii) unless notified by the GMCA not to do so, includes in the press release or other media communication a statement that the Project is being supported by the GMCA.

## **11. MANAGING THE GRANT**

### **11.1 Each Party must notify the other of**

- (i) the nominated person who will act as the Party's authorised representative; and**
- (ii) the contact details of the authorised representative and any deputies**

**11.2 The Grant Recipient shall not spend any part of the Grant on the delivery of the Project after the Longstop Date;**

**11.3 Should any part of the Grant remain unspent at the Longstop Date, the Grant Recipient shall ensure that any unspent monies are returned to the GMCA.**

**11.4 The Grant Recipient may not vire funds between this Grant and other grants made to it.**

**11.5 If an overpayment of the Grant has been made, the GMCA will recover the overpayment.**

**11.6 The Grant Recipient's treasurer, finance officer or equivalent will ensure that appropriate professional arrangements are put in place for the management of the Grant and the reporting of expenditure.**

## **12. MONITORING PROGRESS, TENDERING AND REPORTING**

### **12.1 The Grant Recipient must:**

- (i) Maintain and operate effective monitoring and financial management systems;**
- (ii) Keep a record of all expenditure relating to the Project;**
- (iii) Retain all accounting records relating to the Project for a period of at least 10 years. Accounting records include: original invoices, receipts, minutes from meetings, accounts, deeds, and any other relevant documentation, whether in electronic or written form; and**

- (iv) **Allow the GMCA to inspect and take copies of those documents and records referred to in this clause 12 at any reasonable time and upon reasonable notice.**

**12.2** 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 Funding Agreement is being adhered to. The Grant Recipient shall provide to the GMCA such monitoring information at such intervals as set out in Clause 8 and Schedule 2.

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

**12.4** The Grant Recipient shall provide the GMCA with a final report within 12 months of the Longstop Date which shall confirm whether the Project has been successfully and properly completed.

### **13. INTELLECTUAL PROPERTY RIGHTS**

The GMCA and the Grant Recipient agree that all rights, title and interest in or to any information, Data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the GMCA or the Grant Recipient before the Commencement Date or developed by either Party during the Grant Period, shall remain the property of that Party.

### **14. CONFIDENTIALITY**

**14.1** Subject to clause 15 (Freedom of Information), each Party shall during the term of this Funding Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Funding Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Funding Agreement or save as expressly authorised in writing by the other Party.

**14.2** The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:

- (i) **at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Funding Agreement by the receiving party;**
- (ii) **is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or**
- (iii) **is at any time after the date of this Funding Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.**

## **15. FREEDOM OF INFORMATION**

**15.1** The Grant Recipient acknowledges that the GMCA is subject to the requirements of the EIR and FOIA and shall assist and co-operate with the GMCA (at the Grant Recipient's expense) to enable the GMCA to comply with these information disclosure requirements.

**15.2** The Grant Recipient shall:

- (i)** transfer the request for information to the GMCA as soon as practicable after receipt and in any event within five Working Days of receiving a request for information; and
- (ii)** provide the GMCA with a copy of all information in its possession or power in the form that the GMCA requires within twenty working days of the GMCA requesting that information; and

**15.3** The GMCA shall be responsible for determining at its absolute discretion whether the information:

- (i)** is exempt from disclosure in accordance with the provisions of the EIR or FOIA;
- (ii)** is to be disclosed in response to a request for information, and in no event shall the Grant Recipient respond directly to a request for information unless expressly authorised to do so by the GMCA.

**15.4** The Grant Recipient acknowledges that the GMCA may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIR to disclose information:

- (i)** without consulting with the Grant Recipient; or
- (ii)** following consultation with the Grant Recipient and having taken its views into account,

provided always that where clause 15.4(ii) applies the GMCA shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Grant Recipient advanced notice, or failing that, to draw the disclosure to the Grant Recipient's attention after any such disclosure.

## **16. DATA PROTECTION**

Both Parties 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 Data Protection Legislation and both Parties will duly observe all their obligations under Data Protection Legislation, which arise in connection with the Funding Agreement.

## **17. EVENTS OF DEFAULT, MATERIAL BREACH AND RIGHTS RESERVED FOR BREACH OF THE FUNDING AGREEMENT**

### **17.1 An Event of Default is the occurrence of any of the following:**

- (i) the Grant Recipient fails to comply with this Funding Agreement and/or the Project Specific Conditions;**
- (ii) the Grant Recipient uses the Grant for purposes other than those for which they have been awarded;**
- (iii) the Grant Recipient commits or committed a Prohibited Act;**
- (iv) the Grant Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);**
- (v) the Grant Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;**
- (vi) The European Commission or a European Court requires any Grant paid to be recovered by reason of a breach of State Aid Law;**
- (vii) the Grant Recipient fails to deliver the Project in accordance with the Detailed Proposals;**
- (viii) the Grant Recipient fails to deliver the Project by the Longstop Date.**

### **17.2 A Material Breach is a breach of the Funding Agreement that is fundamental including but not limited to the occurrence of any of the following:**

- (i) any fraud has been committed by the Grant Recipient and/or its employees in connection with the Project;**
- (ii) the Grant Recipient fails to materially comply with this Funding Agreement or the Project Specific Conditions.**

### **17.3 Where the GMCA determines that an Event of Default or a Material Breach has occurred the GMCA may by written notice to the Grant Recipient take any one or more of the following actions:**

- (i) Suspend the payment of Grant for such period as the GMCA shall determine; and/or**
- (ii) Cease to make the payment of Grant; and/or**
- (iii) Terminate this Funding Agreement; and/or**
- (iv) require repayment of the whole or any part of the Grant previously paid to the Grant Recipient.**

- 17.4 If the GMCA serves written notice to the Grant Recipient to suspend payment of the Grant in accordance with clause 17.2(i) such notice shall specify the relevant Event of Default and give the Grant Recipient an opportunity to rectify the relevant Event of Default within such period as the GMCA shall determine to be reasonable (or such extended period as the GMCA shall thereafter determine)
- 17.5 The GMCA shall not by reason of an occurrence of an Event of Default which is, in the reasonable opinion of the GMCA capable of remedy exercise its rights under clause 17.2(ii) or 17.2(iii) or 17.2(iv) unless the Grant Recipient has failed to rectify the default pursuant to clause 17.3 within such period referred to in clause 17.3 to the satisfaction of the GMCA.
- 17.6 If the GMCA exercises its rights under clause 17.2(ii) the GMCA shall give written notice to the Grant Recipient that it is ceasing to make payment of the Grant and from the date of such notice the GMCA shall cease to be under any obligation to pay any amount of Grant to the Grant Recipient under this Funding Agreement.
- 17.7 Where the GMCA requires repayment of any amount of the Grant under clause 17.2(iv) the Grant Recipient shall repay the amount concerned within such timescales as determined by the GMCA (acting reasonably).
- 17.8 For the avoidance of doubt the actions set out under clause 17.2 above are without prejudice to any other rights, remedies or claims which the GMCA may have in respect of any breach by the Grant Recipient under the Funding Agreement.

## **18. LIMITATION OF LIABILITY**

Save in respect of the GMCA's obligations to pay the Grant up to the Maximum Commitment the GMCA shall have no liability to the Grant Recipient in respect of the Project or otherwise under this Funding Agreement.

## **19. WARRANTIES**

The Grant Recipient warrants, undertakes and agrees that:

- (i) **it has the power and authority to execute, perform and deliver its obligations under this Funding Agreement;**
- (ii) **it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Grant);**
- (iii) **it has not committed, nor shall it commit, any Prohibited Act;**
- (iv) **it has and shall keep in place adequate procedures for dealing with any conflicts of interest;**
- (v) **it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction; and**
- (vi) **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;**

## **20 VAT**

The payment of the Grant by the GMCA is believed to be outside the scope of VAT. In the event that VAT becomes chargeable all payments shall be deemed to be net of VAT recoverable by the Grant Recipient from HM Revenue & Customs and gross of irrecoverable VAT.

## **21. ASSIGNMENT**

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

## **22. WAIVER**

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

## **23. NOTICES**

All notices and other communications in relation to this Funding Agreement shall be in writing and shall be deemed to have been duly given if personally delivered 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 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 posted all such communications shall be deemed to have been given and received on the second working day following such mailing.

## **24. DISPUTE RESOLUTION**

- 24.1** In the event of any complaint or dispute (including but not limited to those which relate to the GMCA's right to withhold funds or terminate) arising between the parties to this Funding Agreement in relation to this Funding Agreement the matter should first be referred for resolution to the nominated representatives who shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.
- 24.2** In the absence of agreement by the nominated representatives within 10 working days (or such longer period as agreed between the Parties to the dispute) within 10, the dispute shall be referred to the Chief Executives (or such similar standing)
- 24.3** In the event that the Chief Executives cannot agree within 20 working days (or such longer period as agreed between the Parties to the dispute) 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.

## **25. NO PARTNERSHIP OR AGENCY**

This Funding Agreement shall not create any partnership or joint venture between the GMCA 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. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

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

## **27. COUNTERPARTS**

This Funding Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one (1) counterpart. Each counterpart shall constitute an original of this Funding Agreement, but all the counterparts shall together constitute one and the same Funding Agreement.

## **28. GOVERNING LAW**

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

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



## Schedule 1 Project Specific Conditions

### 1. Description of Project

The Project can be summarised as the construction by the Grant Applicant of an Advanced Services Industry Centre at the Premises for the provision of further education and training (as defined by sections 83 and 86 of the Apprenticeships, Skills, Children and Learning Act 2009 and for such other activities of a further education corporation as are permitted by the Further and Higher Education Act 1992).

### 2. Contribution Rates

The amount of the Grant payable is up to the Maximum Commitment of £4,060,000 (four million and sixty thousand pounds) and has been determined as follows:

#### Summary of Estimated Eligible Expenditure

Item	Estimated Eligible Expenditure	Maximum GMCA Grant Contribution (% of estimated Expenditure)
Consultant costs (Due Diligence, Project Monitor, Independent Accountant)	Up to £60,000	£60,000 (100% GMCA Contribution Rate)
Construction costs (including prelims., contingencies and professional fees)	Up to £12,000,000	£4,000,000 (33% GMCA Contribution Rate)

### 3. Contact.

The principal contact for this Project on behalf of the GMCA is Michael Walmsley, 0161 234 1834.

### 4. Instalment Periods and Costs

4.1 The Instalment Periods will be quarterly ending on 31 March, 30 June, 30 September and 31 December. The first Instalment Period will start following the date on which the correctly executed Funding Agreement is received by the principal contact named at clause 3 above.

### 5. Useful Economic Life

The Useful Economic Life of the Assets shall be 15 years.



## Schedule 2 Monitoring Information



### GREATER MANCHESTER COMBINED AUTHORITY – GRANT PROGRESS MONITORING FORM

<b>1.1 Project Name:</b>	Tameside Metropolitan Borough Council – Construction of Advanced Services Industry Centre.
<b>1.3 Grant Recipient:</b>	Tameside Metropolitan Borough Council
<b>1.4 Name and Contact Details for Queries:</b>	
<b>1.5 Claim Period:</b>	
<b>1.6 Name and Position of Senior Responsible Officer:</b>	

### 2. Please provide a summary of progress

*Include:*

- *Works carried out in period;*
- *Progress against detailed construction programme;*
- *Achievement of key milestones;*
- *Any key risks which have emerged or changes to the agreed proposals which are required;*
- *Look ahead to key activities in next claim period;*

3. Type of eligible expenditure set out in Project Spend Profile	Amount in approved Project Spend Profile (£)	(a) Total cumulative defrayed expenditure on the project to date (£)	(b) Amount of expenditure achieved since last claim (£)	(c) Variance against agreed profile (£)
<i>Insert key cost types</i>				
<b>Total (£)</b>				



<b>PROGRESS REPORT COMPLETED BY</b>	
Name	
Signature	
Date	

## Schedule 3 Grant Claim Form



### **GREATER** **MANCHESTER COMBINED AUTHORITY – Funding Drawdown Request**

<b>1.1 Project Name:</b>	Tameside Metropolitan Borough Council – Construction of Advanced Services Industry Centre	
<b>1.2 Project Number:</b>		
<b>1.3 Project Funding Approval Totals:</b>	GMCA Grant	
<b>1.3 Grant Request Amount</b>		
<b>1.4 Grant Recipient</b>	Tameside Metropolitan Borough Council	
<b>1.5 Name and Contact Details for Project:</b>		
<b>1.6 Project Applicant – Bank Account Details:</b>	Bank – Sort Code – Account number -	
<b>1.7 GMCA Finance Lead</b>		
<b>1.8 Date of Drawdown Request:</b>		

<b>Notes</b>	
You are reminded that:	
(i)	you must notify us immediately if the circumstances of the Project change.
I certify that to the best of my knowledge and belief:	
1)	The information in this form is true and correct.
2)	The drawdown request is made in accordance with the Grant Agreement dated XX.XX.15
Finance Director's Signature:	Name (block capitals):
Position in organisation if different from above:	Grant recipient Name of Borrower:
Date:	
<b>GMCA Finance Approval</b>	
Date Approved by GMCA Finance	
Name	Signature
<b>SECTION 151 OFFICER APPROVAL</b>	
Date Approved by Section 151 Officer	
Name	Signature



**Schedule 4**  
**The Application**

## **Schedule 5**

### **The Plan**

The **COMMON SEAL** of the  
**GREATER MANCHESTER  
COMBINED AUTHORITY** was  
hereunto affixed in pursuance of an  
Order of the said Authority:

.

Authorised Signatory

The **COMMON SEAL** of **TAMESIDE  
METROPOLITAN BOROUGH  
COUNCIL** was hereunto affixed in  
pursuance of an Order of the said  
Council:

.

Authorised Signatory