

GRANT AGREEMENT

Relating to Evergreen Surpluses Grant Funding for Tameside St Petersfield

**NW EVERGREEN HOLDINGS (GP) LIMITED
(AS THE GENERAL PARTNER OF
NW EVERGREEN HOLDINGS
LIMITED PARTNERSHIP)**

And

TAMESIDE METROPOLITAN BOROUGH COUNCIL

This Grant Agreement is made the day of 2020

Between

- (1) NW Evergreen Holdings (GP) Limited (incorporated and registered in England with company number 10372741) whose registered office is at 1st Floor Churchgate House, 56 Oxford Street, Manchester M1 6EU in its capacity as the general partner of NW Evergreen Holdings Limited Partnership (registered in England with company number LP017585) whose registered office is at 1st Floor Churchgate House, 56 Oxford Street, Manchester, M1 6EU (“the Funder”)
- (2) Tameside Metropolitan Borough Council (TMBC) whose principal address is at Tameside One, Market Place, Aston-under-Lyne, Tameside, OL6 6BH (“the Recipient”).

WHEREAS

- (A) Grant funding is being provided from the Funder to support strategic priority projects in Greater Manchester.
- (B) The Funder has agreed to make available to the Recipient the Grant to carry out the Purpose. This Agreement sets out the terms and conditions on which the Grant is made by the Funder to the Recipient.

IT IS AGREED AS FOLLOWS:

1. Introduction and definitions

1.1 This grant agreement (the “Grant Agreement”) consists of these terms and conditions and the Schedules hereto

1.2 In this Grant Agreement:

- (i) **“EU Procurement Requirements”** includes but is not limited to the Public Contracts Regulations 2015 (SI No.102/2015) the EU Commission Interpretative Communication (2006/C 179/02) and the principle of transparency, non-discrimination, equality of treatment proportionality and mutual recognition in the Treaty of the European Union
- (ii) **“Environmental Information Regulations”** means the Environmental Information Regulations 2004
- (iii) **“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
- (iv) **“Grant Period”** means the period specified in Schedule 1 or ending on earlier termination of this Grant Agreement.
- (v) **“Grant”** means the grant payable by the Funder to the Recipient under the terms of this Grant Agreement, the maximum amount of which (the **“Grant Amount”**) is specified in Schedule 1.
- (vi) **“Information”** has the meaning given under s84 of the FOIA
- (vii) **“Law”** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, or judgment of a relevant court of law.
- (viii) **“Match Funding”** means the monetary contribution to the Purpose from the Recipient, which is an amount equivalent or greater than the Grant Amount provided by the Funder.
- (ix) **“Purpose”** means the purpose set out in Schedule 1.
- (x) **“Request for Information”** means a request for Information relating to this Grant Agreement under the FOIA or Environmental Information Regulations

1.3 References to any statute or sub-ordinate legislation in this Grant Agreement include references to any amendments or replacements to the statute or sub-ordinate legislation that may be enacted from time to time.

2. Grant Offer and Capacity

2.1 Subject to the Recipient complying with the terms and conditions set out in this Grant Agreement, the Funder shall pay the Grant to the Recipient as a contribution towards eligible expenditure for the Purpose.

2.2 The Recipient acknowledges that the Funder agrees to fund it only for the Grant Amount and for the Purpose specified in this Grant Agreement.

2.3 The Recipient warrants and represents as follows:

- (i) the execution of and the observance of the Recipient's obligations under this Grant Agreement does not and will not contravene any of the provisions of its constitution, and
- (ii) on the date of this Grant Agreement it has taken all necessary action and has the power and authority to execute, deliver and perform its obligations under this Grant Agreement and the transactions contemplated by it and that all such authorisations are in full force and effect, and
- (iii) no litigation, arbitration or administrative proceedings are taking place, pending or, to the Recipient's knowledge, threatened against it, any of its directors or assets which, if adversely determined, might reasonably be expected to have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this Grant Agreement.

3. Purpose and extent of the Grant

3.1 The Recipient shall use the Grant for the Purpose for the Grant Period as set out in and in accordance with this Grant Agreement or as approved in writing by the Funder and the Recipient shall not use the Grant for any other purpose.

4. Amount of the Grant and VAT

4.1 The Funder has agreed funding of up to the Grant Amount, subject to compliance by the Recipient with the terms of this Grant Agreement.

4.2 The payment of Grant is believed to be outside the scope of Value Added Tax but if any Value Added Tax shall become chargeable all payments shall be deemed to be inclusive of all Value Added Tax and the Funder shall not be obliged to pay any additional amount by way of Value Added Tax.

4.3 The payment of Grant is conditional upon the Match Funding of £127,000 being committed to the Purpose.

5. Payment of the Grant

- 5.1 Subject to compliance with this Grant Agreement payments of the Grant Amount will be made as detailed in Schedule 2 and Schedule 3.
- 5.2 In order for any payment to be released, the Recipient is required to:
- 5.2.1 have signed and returned a copy of this Grant Agreement to the Funder, and
 - 5.2.2 have provided the appropriate bank details and any other information, as appropriate, in accordance with Schedule 3, and
 - 5.2.3 have submitted a valid invoice and other information, as appropriate, in accordance with Schedule 2, and
 - 5.2.4 be in compliance with the terms and conditions of this Grant Agreement.
- 5.3 The Funder reserves the right to withhold all or any payments of the Grant if the Funder has reasonably requested information/documentation from the Recipient and this has not been received by the Funder in the timescales reasonably required.

6. Eligible expenditure

- 6.1 Eligible expenditure consists of payments by the Recipient for the Purpose.

7 Managing the Grant

- 7.1 Each party must notify the other of:
- (a) the nominated person who will act as the party's authorised representative; and
 - (b) the contact details of the authorised representative and any deputies.
- 7.2 The Funder may, in addition, ask the Recipient to clarify information provided to it. If so, the Recipient shall comply with any reasonable request.
- 7.3 The Funder may, in addition, ask the Recipient to provide it with forecast information for the financial year end. If so, the Recipient shall comply with any reasonable request.
- 7.4 The Recipient must notify the Funder as soon as reasonably practicable that an underspend is forecast. Any underspend of Grant funds must be returned to the Funder. In light of the Match Funding, any forecast underspend in respect of the Purpose will be split equally between the Funder and Recipient.

- 7.5 If an overpayment of the Grant has been made, the Recipient shall return such overspend to the Funder promptly.
- 7.6 The Recipient may not vire funds between this Grant and other grants made to it.
- 7.7 The 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. The Treasurer, Finance Officer, or equivalent should take all necessary steps to ensure that the Grant is accounted for and monitored separately from the Recipient's other funding streams.

8. Records to be kept

- 8.1 The Recipient must:
- (a) maintain and operate effective monitoring and financial management systems; and
 - (b) keep a record of expenditure funded partly or wholly by the Grant, and retain all accounting and other records relating to this for a period of at least six years after the end of the Grant Period. Accounting records include: original invoices, receipts, minutes from meetings, accounts, deeds, and any other relevant documentation, whether in writing or electronic form.
- 8.2 Where the Recipient is working in partnership and its partner(s) wish to retain such documentation, the Recipient should obtain from the partner(s):
- (a) an annual, written statement, signed by the partner's treasurer, of how the money was spent; and
 - (b) a signed undertaking that the partner will retain such documents for the period prescribed above.

9. Audit and inspection

- 9.1 The Recipient, without charge, will permit any officer or officers of the Funder, external funding and/or auditing bodies (including but not limited to Ministry of Housing, Communities & Local Government, National Audit Office or Audit Commission) or their nominees, to visit its premises and/or inspect any of its activities and/or to examine and take copies of the Recipient's books of account and such other documents or records as in such officers' view may relate to the use of Grant. In addition, examinations may be carried out into the economy, efficiency and effectiveness with which the Grant has been used. The Funder shall endeavour, but is not obliged, to provide notice of its intent to conduct an audit.

9.2 The Recipient shall provide the Funder with such documentation and information as the Funder may require in connection with the Purpose and this Grant Agreement.

10. Lawful conduct, equal opportunities and activities funded by the Grant

10.1 The Recipient must ensure that it and anyone acting on its behalf complies with any applicable Law for the time being in force relating to the Purpose and this Grant Agreement.

10.2. No aspect of the activity funded by the Funder may be party-political in intention, use, or presentation.

10.3 The Grant may not be used to support or promote religious activity.

11. Value for Money

11.1 The Recipient must maximise value for money and shall act in a fair, open and non-discriminatory manner in all purchases of goods and services and shall comply with its internal procurement and contracting rules where applicable.

11.2. Without prejudice to clause 11.1 the Recipient shall comply with current EU Procurement Requirements at all times in relation to the Purpose and the Grant Funding

11.3 The Recipient shall provide such information as the Funder requests to verify that there has been compliance with EU Procurement Requirements.

12. Breach of Grant Terms

12.1 If the Recipient fails to comply with any of the terms set out in this Grant Agreement, or if any of the events referred to in clauses 12.2 occur, then without prejudice to any other rights or remedies of the Funder under this Grant Agreement, the Funder may reduce, suspend, or withhold Grant payments, or require all or any part of the Grant to be repaid (with interest if required). The Recipient must repay any amount required to be repaid under this clause within 30 days of receiving the demand for repayment.

12.2 The events referred to in Clause 12.1 are as follows:

- a) the Recipient purports to transfer or assign any rights, interests or obligations arising under this Grant Agreement without the prior written agreement in advance of the Funder; or
- b) Any information provided in the application for the Grant (or in a claim for payment) or in any subsequent supporting correspondence is found to be incorrect or incomplete to an extent which the Funder considers to be material; or

- c) The Recipient takes inadequate measures to investigate and resolve any reported irregularity; or
- d) The Recipient changes the nature of its operations to an extent which the Funder considers to be significant or prejudicial; or
- e) there is a finding of state aid non-compliance relating to the Grant by the EU Commission

12.3 The Recipient must act within 28 days (or earlier, depending on the severity of the problem) to address the Funder's concern or rectify the breach, and may consult the Funder or agree with it an action plan for resolving the problem. If the Funder is not satisfied with steps taken by the Recipient to address its concern or rectify the breach, it may take steps to withhold or suspend the further payment of Grant, or to recover Grant funds already paid.

12.4 On termination of this Grant Agreement for any reason, the Recipient as soon as reasonably practicable shall return to the Funder any assets or property or any unused Grant funds (unless the Funder gives its written consent to their retention) then in its possession in connection with this Grant Agreement.

13. Insurance

13.1 The Recipient shall ensure that it has adequate insurance coverage (including but not limited to public liability insurance) in place, and shall provide evidence of such insurance to the Funder on request.

14. Indemnity

14.1 The Funder accepts no liability to the Recipient or to any third party for any costs, claims, damage or losses, however they are incurred, except to the extent that they arise from personal injury or death which is caused by the Funder's negligence.

14.2 The Recipient shall indemnify the Funder against any liabilities, costs, claims, damages or losses which arise as a result of negligence by the Recipient or out of any breach by the Recipient of any terms of this Grant Agreement.

15. Intellectual Property Rights

15.1 The Recipient shall grant to the Funder at no cost an irrevocable, royalty-free perpetual license to use and to sub-license the use of any material created by the Recipient pursuant to this Grant Agreement for such purposes as the Funder shall deem appropriate.

15.2 Publicity and written material relating to the work funded by the Grant shall acknowledge this either in the body of the copy or with 'Funded by:' written alongside the Funder

16. Grant Period and Termination

16.1. The Funder does not commit to renew or continue financial support to the Recipient beyond the Grant Period.

16.2 The Funder may terminate this Grant Agreement forthwith by serving a written notice on the Recipient if:

- a) the Grant or any part of it is being used for any purpose other than the Purpose set out in this Grant Agreement; or
- b) the Recipient has made any false, incorrect or misleading statement in order to obtain this Grant or has been involved in any illegal activity or improper act in its administration; or
- c) the Recipient has failed to comply with any of the obligations of this Grant Agreement and fails to remedy the same within 28 days (or such other period as the Funder specifies in writing) of being served with a notice pointing out the breach requiring its rectification; or
- d) any meeting of creditors of the Recipient is held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) is proposed or entered into by or in relation to the Recipient; or
- e) if a supervisor, receiver, administrator, administrative receiver or other encumbrancer takes possession of or is appointed over or any distress, execution or other process is levied or enforced (and is not discharged within seven days) upon the whole or any substantial part of the assets of the Recipient; or
- f) the Recipient ceases to carry on business or is or becomes unable to pay its debts with the meaning of Section 123 Insolvency Act 1986; or
- g) if a petition is presented, or a meeting is convened for the purpose of considering a resolution, for the making of an administration order, the winding up, bankruptcy, or dissolution of the Recipient; or
- h) any competent authority directs the repayment of the Grant.

16.3 Where termination of this Grant Agreement is pursuant to clause 16.2 above the Funder shall cease to be under any obligation to make payments of any Grant and may require the Recipient to repay all or any part of the Grant (with interest if required). The Recipient must repay any amount required to be repaid under this clause within 30 days of receiving the demand for repayment. Any termination of this Grant Agreement will be without prejudice to any other rights or remedies of the parties under this Grant Agreement or at law and will not affect any accrued rights or liabilities of the parties at the date of termination

16.4 Nothing in this Grant Agreement shall effect the coming into force or the continuance in force of any provision of this Grant Agreement which is

expressly or by implication to come into force or continue in force upon termination or expiry of this Grant Agreement

17. Entire Agreement and Amendments to the Grant Agreement

- 17.1 This Grant Agreement sets out the entire agreement between the parties and replaces all previous negotiations, agreements, understandings and representations between the parties, whether oral or in writing.
- 17.2 Any amendments to this Grant Agreement shall only be valid if they are in writing and signed by an authorised representative of both parties.

18. Freedom of Information

- 18.1 Both parties acknowledge that the other may be subject to the requirements of the FOIA and the Environmental Information Regulations and each party shall assist and cooperate with the other party to enable the other party to comply with these Information disclosure requirements.
- 18.2 Each party shall itself and shall procure that its subcontractors shall:
- (a) transfer any Request for Information relating to the other party as soon as practicable after receipt and in any event within two working days of receiving a Request for Information;
 - (b) provide the other party with a copy of all Information relating to a Request for Information in its possession or power in the form that the other party requires within five working days (or such other period as the other party may specify) of the other party requesting that Information; and
 - (c) 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 section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 18.3 The party receiving the Request for Information and to whom it relates shall be responsible for determining at its absolute discretion whether Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
 - (b) is to be disclosed in response to a request for Information.
- 18.4 Each party acknowledges that either party may, acting in accordance with the Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, July 2018), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

- (a) without consulting with the other party, or
- (b) following consultation with the other party and having taken its views into account.

18.5 Each party shall ensure that all Information produced in the course of this Grant Agreement is retained for disclosure and shall permit the other party to inspect such records as requested from time to time.

18.6 Each party acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the other party may nevertheless be obliged to disclose confidential information in accordance with clause 18.4

19. Notices

19.1 All notices, invoices and other communications relating to this Grant Agreement shall be in writing and in English and shall be served by a party on the other party at its address shown at the head of this Grant Agreement.

19.2 Notices delivered hereunder shall be delivered by hand or sent by 1st class recorded or special delivery post and shall be deemed to be delivered:

19.2.1 if delivered by hand, upon receipt;

19.2.2 if sent by first class recorded or special delivery post (providing it is not returned as undelivered to the sender), two (2) working days after posting;

20 Contract (Rights of Third Parties) Act 1999

20.1 No person who is not a party to this Grant Agreement shall have the right to enforce any its terms.

21. Governing Law

21.1 This Grant Agreement shall be subject to and construed in accordance with English Law and subject to the exclusive jurisdiction of the courts of England and Wales.

22 Completion and Electronic Signature

22.1 This Grant Agreement may be executed in any number of counterparts and by the different parties in different counterparts each of which when executed and delivered shall be deemed to constitute one and the same instrument. Each party agrees that the delivery of this Grant Agreement by electronic transmission, including copies of the executed signature pages via pdf, shall have the same force and effect as delivery of original signatures and that each party may use such copies of the executed signature pages as evidence of the execution and delivery of this Grant Agreement by all parties.

22.2 This Grant Agreement may be signed by any party by electronic signature (whatever form the electronic signature takes) and this method of signature is as conclusive of such party's intention to be bound by this Grant Agreement as if signed by each party's manuscript signature.

This Agreement is executed by the parties hereto as a deed the day and year first before written.

Schedule 1

Grant Amount, Purpose and Grant Period

Grant Amount: £127,000

Purpose:

In line with the grant application submitted to GMCA in February 2020, the purpose of the Grant is to part fund a development prospectus and feasibility works to bring the St Petersfield, Ashton development to market including delivery of Plots 1 and 3. The Grant is agreed towards the delivery of the following tasks:

Site Wide Development Prospectus

To procure a multidisciplinary team to prepare a Development Prospectus to cover the St Petersfield masterplan area. To include agreed strategies for utilities, access, drainage, landscape, public realm, wayfinding, pedestrian, cycle and parking/loading strategies.

Task 2 RIBA Stage 2 Development for Office Building 03

Design development of office building 03 up to end of RIBA Stage 2 with associated cost plan and risk assessments, sufficient for the submission of a detailed planning application.

Task 3 Cost Plan Update for Office Building 01

Preparation of an RIBA Stage 2 cost plan for office building 01.

Task 4 Development/ Marketing Prospectus for office buildings 01 and 03

The preparation of a development prospectus/marketing brochure for both office buildings 01 and 03. The document is to be an A4/A3 graphic design quality brochure to include marketing plan, visuals and outline specification for promotional purposes.

The feasibility work supported by the Grant (described above) will support the delivery of the following scheme outputs:

Commercial Floor space (sq.):	250,000 sqft
Number of New Jobs Created:	1900
Brownfield Land Regenerated (ha):	4.77 hectares

Grant Period: 31st December 2021

Schedule 2
Grant Payments
Monitoring Requirements

The Recipient can claim the Grant against costs incurred for the Purpose. In order to claim the grant the Recipient should provide copies of the following to the Funder:

- Completed Grant claim form (see Schedule 3)
- Evidence of costs being incurred and paid
- Evidence supplied of competitive tendering or agreed fee
- Confirmation of Match Funding

Schedule 3 Grant Claim Form

To: Evergreen Holding Board
From: Tameside Metropolitan Borough Council

Date: []

Evergreen Surpluses Grant Funding

1. I refer to the Grant Agreement. This is a claim form for the Purpose as referenced in the Grant Agreement.
2. I wish to claim the following amount of Grant funding:
 - 2.1 Grant amount to be claimed: []
 - 2.2 Date requested for payment of Grant: []
3. Payment Instructions
 - 3.1 Bank name: []
 - 3.2 Bank branch/address: []
 - 3.3 Bank sort code: []
 - 3.4 Bank account number: []
 - 3.5 Bank account number: []
4. Additional Information
 - 4.1 Total Grant amount approved **£127,000**
 - 4.2 Total Grant amount claimed, approved and paid to date to date (excluding this claim): []
5. The claim form and request for Grant funding is made in accordance with the Grant Agreement.
6. I confirm that:
 - 6.1 each condition specified in the Grant Agreement is satisfied;
 - 6.2 the Grant to be provided pursuant to this claim form is in respect of Purpose and will be used to meet the Grant Purpose and that no other claim form has been submitted or payment of Grant made in respect of such costs;

- 6.3 supporting evidence (to the Funder's satisfaction) submitted with this claim form provides accurate and complete evidence of the costs incurred by us to date in relation to the Purpose;
- 6.4 we have not received and will not receive any other grants, financial support or contributions towards the Purpose for which payment is now being sought; and
- 6.5 the information in this form is true and correct.

By:
Section 151 Officer
for and on behalf of
Tameside Metropolitan Borough Council

Name (Printed):

Position:

Dated:

By:

ACCEPTANCE OF GRANT

We accept the offer of Grant contained in this Grant Agreement and agree to comply with the terms and conditions of this Grant Agreement.

EXECUTED AS A DEED)
BY AFFIXING THE COMMON SEAL OF)
TAMESIDE METROPOLITAN BOROUGH)
COUNCIL)

in the presence of:

Authorised Signatory

Name:

Title:

EXECUTED AS DEED BY
NW EVERGREEN HOLDINGS (GP)
LIMITED IN ITS CAPACITY AS
THE GENERAL PARTNER OF
NW EVERGREEN HOLDINGS
LIMITED PARTNERSHIP,
acting by

Director

Director