

THIS MEMORANDUM OF UNDERSTANDING is made on
31 March 2016

BY AND BETWEEN

THE PARTIES:

- (1) **OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxfordshire OX1 1ND ("OCC")
- (2) **OXFORDSHIRE LOCAL ENTERPRISE PARTNERSHIP LTD (Limited Company , Company Number [....]Not for Profit)** of Oxford Centre for Innovation, New Road, Oxfordshire. OX1 1BY ("OxLEP")

each a "Party" and together known as the "Parties".

1. Introduction and Background

- 1.1 The Oxfordshire Local Enterprise Partnership was established in 2011 and entered into a memorandum of understanding with OCC in [2012]. OxLEP was founded in 2015 to replace the Oxfordshire Local Enterprise Partnership and is responsible for championing and developing the Oxfordshire economy. Working with businesses, academia and the public sector OxLEP is driving and co-ordinating economic development across the county.
- 1.2 The Working Arrangements of OxLEP are attached as Schedule One hereto.
- 1.3 OxLEP funding is issued by central government pursuant to section 31 of the Local Government Act 2003 and therefore can only be paid to a local authority nominated to act as accountable body. OxLEP has agreed that OCC act as its accountable body in respect of OxLEP's core funds and any additional central government funding received, including Growing Places Fund, City Deal and Local Growth Funds.
- 1.4 It is anticipated that OxLEP may receive additional funding streams in addition to those listed at 1.3 and consequently this Memorandum of Agreement (MoU) is intended to apply to all arrangements where OCC act as accountable body on behalf of OxLEP.
- 1.5 OxLEP and OCC may change these arrangements by mutual agreement or OxLEP may appoint other local authorities as accountable body for different funding streams should it choose to do so (as set out in 4.3).

- 1.6 The purpose of this MoU is to set out the respective roles and responsibilities of OCC acting as accountable body for OxLEP and that of OxLEP itself and therefore the Parties hereby agree the Scheme of Roles and Responsibilities set out in Schedule Two hereto.

2. Commencement

- 2.1 This MoU shall commence upon the date hereof and shall continue in effect until terminated by either Party upon giving three months' notice in writing to the other. In terminating this MoU the Parties shall comply with the requirements, if any, of central government and any other funding agencies.

3. Termination and Variation

- 3.1 If OCC cease to be the accountable body, it shall:
- a) Continue to co-operate with OxLEP and any successor accountable body and with all grantors to ensure a smooth transition; and
 - b) Provide to OxLEP or the new accountable body (where requested to do so by OxLEP) all such invoices, receipts and other relevant records which are in its possession and which it holds in connection with its role of accountable body. For the avoidance of doubt, documents will be retained in accordance with OCC's Corporate Retention Schedule Policy.
- 3.2 This MoU shall terminate automatically upon the disbanding of OxLEP. In such case, OCC and OxLEP shall complete all of their obligations concerning:
- a) Monies granted to or by OxLEP;
 - b) Other assets held by OCC on behalf of OxLEP; and
 - c) Any accounts required to be submitted to central government or to any other relevant funding organisation.
- 3.3 This MoU shall be varied only by the mutual agreement of OCC and OxLEP save that this shall not prevent OxLEP from making amendments to its Governance and Working Arrangements. Where a variation of this MoU requires a change to be made to OxLEP's Governance and Working Arrangements, that change shall not come into effect until the Governance and Working arrangements have been duly amended in accordance with its requirements.

4. Organisational Frameworks

4.1 OxLEP will operate in accordance with:-

- i) Its Articles and By-Laws;
- ii) This MoU;
- iii) The government's LEP assurance framework
- iv) The guidelines provided by central government or any other body whose regulation controls the use of funds provided to OxLEP; and
- v) Statutory requirements.

4.2 OCC will operate in accordance with:-

- i) Its Constitution;
- ii) This MoU;
- iii) The government's LEP assurance framework
- iv) The guidelines provided by central government or any other body whose regulation controls the use of funds provided to OxLEP; and
- v) Statutory requirements.

5. Financial Management Arrangements

5.1 As the accountable body, OCC are held accountable for OxLEP's funds in the same way that its own funds are. All funding received and expenditure incurred on behalf of OxLEP will be subject to the same scrutiny. Further details are set out in Schedule 3.

5.2 OCC, as recipient of the OxLEP's grant allocations from central government is responsible for compliance with the grant conditions which include the obligation to repay, in whole or in part, grants in the event of non-compliance with grant conditions.

5.3 In the event that the recipient of a funding granted by OxLEP fails to comply with the repayment terms or any other aspect of the funding agreement, OCC will use reasonable endeavours to recover such sums as may be due and to enforce such terms. In the event that full recovery is not possible, the risk of any shortfall will be borne by the funding stream against which the grant was originally issued where possible.

5.4 A record of income and expenditure that is recorded in OCC's financial system relating to OxLEP will be prepared by OCC on an annual basis and reported to the board. Internal Audit arrangements are set out in Schedule 3.

5.5 OCC will consolidate the OxLEP's cash balances with its own cash balances and deposit the co-mingled funds in accordance with the OCC's Treasury Management Strategy. OCC will pay interest on OxLEP daily cash balances based on the 'Average 7 Day Rate'.

Interest will be charged on OxLEP overdrawn balances at 2% above the Bank of England Base Rate.

- 5.6 OCC currently provide accountable body services to OxLEP free of charge. These arrangements will be reviewed annually and if/ when the scale of accountable body responsibilities, managed resources or project portfolio resource requirements increase significantly.
- 5.7 External support may be procured where specialist skills are needed for example for the due diligence process in support of Growing Places Funds and preparing legal agreements and to deal with peak workflows. Revenue funds available to the OxLEP may, with the advance approval of OxLEP Board, be used to support such specialist services.
- 6.1 Any infrastructure constructed or acquired by OCC acting on OxLEP's behalf, will be accounted for as part of the Council's asset register in line with OCC's normal accounting procedures.

6. Data Protection

- 6.1 The Parties hereto shall comply with their obligations under the Data Protection Act 1998 in the performance of their obligations under this agreement.

7. Confidentiality

- 7.1 Neither Party will use or disclose any confidential material provided by the other pursuant to this agreement otherwise than for the performance of their obligations under this agreement, save as may be otherwise agreed or required by law.

For the avoidance of doubt, confidential information shall not include (a) any information obtained from a third party who is free to divulge such information; (b) any information which is already in the public domain otherwise than as a breach of this agreement; or (c) any information which was rightfully in the possession of a Party prior to the disclosure by the other Party and lawfully acquired from sources other than the other Party.

8. Freedom of Information

- 9.1 OxLEP shall co-operate with OCC and supply to it all information properly required in connection with any request received by the OCC under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and shall supply all such information and documentation at no cost to the Council within 7 days of a request from OCC.
- 9.2 OxLEP acknowledges that in responding to requests received by OCC under the Freedom of Information Act 2000 or the

Environmental Information Regulations 2004, the Council will be entitled to provide information relating to the MoU.

9. Dispute resolution

- 9.1 If either Party has any issues, concerns or complaints about any matter in this MoU, that Party shall notify the other Party and the Parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to OxLEP's Chief Executive Officer and OCC's Chief Finance Officer 151 Officer who shall decide on the appropriate course of action to take.
- 9.2 If either Party receives any formal inquiry, complaint, claim or threat of action from a third party they shall notify the other Party and co-operate with each other to respond, or take such action, as is appropriate and/or necessary

10. Equality

- 11.1 In performing their obligations in pursuance of this MoU, the Parties shall comply with requirements of the Equality Act 2010.

11. The Contracts (Rights of Third Parties) Act 1999

- 12.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this MoU but this does not affect any rights which are available apart from this Act.

12. Status

- 12.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the Parties from this MoU. The Parties enter into the MoU intending to honour all their obligations.

13. Governing Law and Jurisdiction

- 13.1 This MoU shall be governed by and construed in accordance with English law.

14. Insurance

- 14.1 OxLEP is not covered for Liability and Professional Indemnity insurance via OCC's insurance policy. Separate insurance cover is required.

This Memorandum of Understanding is agreed and signed by:

Signed for and on behalf
of Oxfordshire County Council by

.....

Signed for and on behalf
of Oxfordshire Local Enterprise Partnership Ltd

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Schedule One

Oxfordshire Local Enterprise Partnership (OxLEP) Working Arrangements

1. Overview

1.1. The Oxfordshire Local Enterprise Partnership became a Limited Company (not for profit) on 1 April 2015. It is responsible for championing and developing the Oxfordshire economy. Working with businesses, academia and the public sector OxLEP is driving and co-ordinating economic development across the county.

1.2. The governance and working arrangements are designed so as to ensure that the Partnership fulfils its primary aim. In so doing it works with existing partnerships or working arrangements that are already operating successfully in support of economic growth. The working relationship between the Partnership and any other partnership and/or working group will be set down and agreed by both parties in form of a Memorandum of Understanding.

1.3. The OxLEP Board is responsible for overseeing delivery of OxLEP priorities as set out in City Deal and Local Growth Fund funding agreements, and any future funding streams that may be applicable.

1.4. The focus for the Partnership's activities are:

- Innovative People

Deliver and attract specialist and flexible skills at all levels, across all sectors, as required by our businesses, with full, inclusive employment and fulfilling jobs.

- Innovative Place

Provide the quality environment and choice of homes needed to support growth and capitalise upon the exceptional quality of life, vibrant economy and the dynamic urban and rural communities of our county.

- Innovative Enterprise

Encourage innovation led growth, underpinned by Oxfordshire's strengths in University research and development, business collaboration and supply chain potential.

- Innovative Connectivity

Allow people to move freely, connect easily and provide the services, environment and facilities needed by a dynamic, growing and dispersed economy.

1.5. OxLEP will to the greatest extent possible conduct its business in an open and transparent way, with minutes of all meetings made publicly available subject to considerations of commercial confidentiality, legal professional privilege and privacy.

Support functions provided by OCC

2. Accountable Body

2.1 The Local Enterprise Partnership is allocated public funding, both for core costs and programmes identified/awarded by the Government. Funding must be undertaken in accordance with statute and the principles of democratic and financial accountability.

2.2 This requires there to be a public sector body identified as the accountable body for audit and transparency purposes. Oxfordshire County Council is the accountable body for the Partnership. As such it provides:

- i) Accountancy and legal functions with regard to the use of any public funds that are allocated to OxLEP.
- ii) Internal Audit functions in regard to the use of public funds allocated to OxLEP.
- iii) Advice on what information (both technical and financial) is required in order to assess the eligibility of projects put forward for funding;
- iv) Staff resource to undertake financial appraisal of projects put forward for consideration and advise OxLEP on their merits;
- v) Staff resource to monitor the schemes funding/investments made using resources allocated by the Partnership, to include:

- Financial monitoring reports on schemes funded/investments made by the Partnership
- Financial position statements setting out total funding to the LEP
- Financial monitoring reports on the value of EZ Business Rates (via Vale of White Horse District Council as Accountable Body for the EZ)

Oxfordshire Local Enterprise Partnership Executive Board

Schedule Two

Scheme of Roles & Responsibilities

General

1.1. OxLEP shall

- i) undertake all strategic decision making to determine policy necessary for resource allocation and delivery of projects funded by funding streams for which OCC is to act as accountable body;
- ii) plan, manage, deliver and monitor all activities financed by OxLEP and ensure that all decisions are fully documented and recorded in writing;
- iii) agree robust and transparent assessment criteria against which funding will be allocated;
- iv) agree the robust and objective assessment methodology based on the assessment criteria to support the prioritisation of projects and to facilitate independent assessment in accordance with the appropriate use of public funds;
- v) ensure that projects are approved only after an appraisal has been carried out and that the separation of duties between project appraisal and project approval;
- vi) through agreed project plans, ensure appropriate timescales and operating practices are in place to support effective implementation of decisions made
- vii) procure the delivery of projects by inviting applications for funding;
- viii) determine applications for funding following independent assessment, subject to referral to OCC for due diligence, and provided always that, where in OCC's reasonable opinion, any allocation would be in breach of the conditions of grant, OCC may refuse to give effect to the determination;
- ix) make procurement decisions on other goods, works, services necessary to the day to day running of OxLEP within the available resource envelope; and
- x) fulfil the client role vis a vis OCC as the accountable body and, in particular, give OCC clear and comprehensive instructions in relation to the performance by OCC of its roles and responsibilities as set out in paragraph 1.2 below.

1.2. OCC shall

- i) will administer any funds held on behalf of the LEP under its own accounting policies, financial procedure rules and contract procedure rules as set out in the Council's constitution to ensure that funds are applied

- and accounted for appropriately. This will be carried out under the direction of the Section 151 Officer;
- ii) hold any funding it receives and all interest or income earned for and on behalf of OxLEP and ensure that the money is not moved or converted to cash without specific instruction from the OxLEP;
 - iii) provide support and assistance to OxLEP to ensure both legal and financial probity in relation to the receipt and use of specific funding for which it acts as accountable body;
 - iv) ensure decisions and activities of OxLEP conform with legal requirements with regard to equalities, social value, environment, State Aid and procurement;
 - v) ensure that funds are used appropriately and advise the OxLEP on the procedures necessary to ensure formal compliance with any terms and conditions of funding or grant;
 - vi) provide advice on proper and effective governance for overseeing the allocation and spend of OxLEP funding;
 - vii) enter into funding agreements on behalf of OxLEP for mutually agreed funding streams;
 - viii) Undertake any necessary action to seek recovery of funding following a decision by the OxLEP;
 - ix) enter into appropriate legal agreements or contracts with project delivery or sponsor organisations or other providers on behalf of OxLEP for funding streams for which it acts as accountable body once the project is approved by the Board following a successful due diligence process;
 - x) ensure that the funding is passed on to the project delivery organisation in line with the conditions of the funding and loan/grant agreements;
 - xi) submit the claims to the funding body and prepare and submit relevant documents for inspection by central government or external auditors as required;
 - xii) where the funding streams is working on a claim basis, ensure that the claimed funding is passed on to the project delivery team or organisation without delay and in line with the conditions of the funding or loan agreements;
 - xiii) ensure that performance and financial systems are robust;
 - xiv) provide details of all monies expended in accordance with the terms and conditions of funding;
 - xv) monitor approved projects during and after implementation in line with the agreed monitoring framework or as required by the funding body;
 - xvi) inform and keep OxLEP informed of any grant funding allocations received and the procedures and recommended criteria for distributing the funding based on the funding body's requirements;

- xvii) assist OxLEP in identifying other sources of funding or to apply for these where commissioned by the OxLEP;
- xviii) ensure that the OxLEP adheres to the LEP assurance framework in respect of maintaining the official record of LEP proceedings and holding copies of all relevant documents relating to LGF funding and
- xix) report and take appropriate action where it has reason to believe that OxLEP, or anybody acting as its agent, is failing to
 - a) adhere to the terms and conditions of funding requirements or the funding or loan agreements;
 - b) comply with its Governance and Working Arrangements or any statutory requirement;
 - c) provide a suitable standard of probity.

Financial/Audit

2.1. OxLEP shall

- i) Co-operate with and assist OCC acting in its role as accountable body in undertaking the day to day responsibility for financial matters;
- ii) make funding available through OCC to persons and organisations who it has resolved shall receive these;
- iii) request OCC to effect the payment of such funding to the said persons or organisations;
- iv) co-operate with and assist OCC in regular audit examinations of all operating systems;
- v) act upon all recommendations contained within the OCC's internal audit reports where OCC's Chief Finance Officer so requires;
- vi) report any financial irregularity or suspected irregularity in the use of any funding to OCC.

2.2. OCC shall

- i) establish and maintain a financial system to account for all monies received and disbursed on OxLEP's behalf;
- ii) transfer , subject to due diligence, funding for projects identified by OxLEP;
- iii) receive income and make payments for and on behalf of OxLEP;
- iv) maintain proper records, in accordance with its Constitution, of all monies received and disbursed for OxLEP and make such records available for inspection by both internal and external regulators;
- v) arrange regular audit examination of OxLEP's activities with regards to use of public resources and, following each audit, present a report to OxLEP with recommendations to strengthen their governance and

- management practices;
- vi) allow funding bodies to have access to all files/ records of projects for which it acts as accountable body; and
- vii) supply, as necessary, completed statements of income, expenditure and disbursements to OxLEP, funding organisations, central government and external auditor.

Recovery of the Growing Places Funds and other loan/grant agreements

- 3.1. In most instances the conditions where funds will be recovered will be laid out in the initial funding or loan agreement. OCC will only take the step to recover funds from those parties it has a direct agreement with. If the project concerned is a third party such as a subcontractor it would be up to the body OCC is seeking funds from to determine and take any action they require to recover their losses from any 3rd parties.
- 3.2. The general stage of fund recovery will be as follows:
 - Stage 1: Notice sent containing the reason for concern, outlining the potential fund recovery situation and giving time where appropriate for corrective action;
 - Stage 2: If no corrective action is taken or is deemed insufficient to avoid fund recovery a further notice will be sent asking for the return of funds with a deadline for the return of the funds. In cases of particular difficult OCC, in consultation with the OxLEP Board, may accommodate a fund return payment plan of instalments over an agreed period of time. However, this must be agreed in writing and cannot be assumed;
 - Stage 3: If funds are not returned within the set deadline then OCC may then instigate debt recovery procedures which may result in legal action being taken.
- 3.3. OCC does not wish to undertake these steps if at all avoidable but will do so in order to protect the public purse and ensure that public funding is being used appropriately.