

**Dated**

**2016**

**NORTH DEVON DISTRICT COUNCIL**  
and  
**INSTOW PARISH COUNCIL**

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**Grant Agreement**

For the provision of funding for Marine Parade Car Park, Instow

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Legal Services Unit  
North Devon District Council  
Lynton House  
Commercial Road  
Barnstaple  
Devon  
EX31 1DG  
LS/SF/13678

**THIS DEED** is dated

**BETWEEN**

- (1) NORTH DEVON DISTRICT COUNCIL, whose principal address is at Lynton House, Commercial Road, Barnstaple, Devon EX31 1DG (the **Funder**); and
- (2) INSTOW PARISH COUNCIL, whose principal address is at Instow Parish Hall, Quay Lane, Instow, Bideford, Devon EX39 4JR (the **Recipient**).

**BACKGROUND**

- (A) The Funder has agreed to pay the Grant to the Recipient to assist it in carrying out the Project.
- (B) This Agreement sets out the terms and conditions on which the Grant is made by the Funder to the Recipient.
- (C) These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.

**AGREED TERMS**

**1. Definitions**

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

**Bribery Act:** 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.

**Commencement Date:** the date of this Agreement.

**Governing Body:** the governing body of the Recipient including its directors or trustees.

**Grant:** the sum of Fifty Nine Thousand, Five Hundred and Ninety Two Pounds Only (£59,592.00) to be paid to the Recipient in accordance with this Agreement.

**Grant Period:** the period for which the Grant is awarded starting on the Commencement Date and ending on the expiry of the Lease.

**Intellectual Property Rights:** 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:** 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.

**Lease:** the lease of the Site dated 14 April 2016 between the

Funder and the Recipient.

**Plan:** means the plan showing the location of the Site annexed to this Agreement

**Prohibited Act:** means:

- (a) offering, giving or agreeing to give to any servant of the Funder 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 Agreement or any other contract with the Funder; or
  - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Funder;
- (b) entering into this Agreement or any other contract with the Funder where a commission has been paid or has been agreed to be paid by the 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 Funder;
- (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 Agreement or any other contract with the Funder; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Funder.

**Project:** as defined at clause 2.1.

**Site:** the land shown edged red on the Plan attached to this Agreement.

## **2. Purpose of Grant**

2.1 The Project shall include:

2.1.1 the resurfacing of the car park at the Site to be completed by 31 March 2021; and

2.1.2 the on-going maintenance and improvement of the Site.

2.2 The Recipient shall use the Grant only for the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The

Grant shall not be used for any other purpose without the prior written agreement of the Funder.

- 2.3 The Recipient shall not make any significant change to the Project without the Funder's prior written agreement.
- 2.4 Where the Recipient intends to apply to a third party for other funding for the Project, it will notify the Funder in advance of its intention to do so and, where such funding is obtained, it will provide the Funder with details of the amount and purpose of that funding. The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that the Funder is funding in full under this Agreement.

### **3. Payment of Grant**

- 3.1 Subject to clause 12, the Funder shall pay the Grant to the Recipient in full and in advance within seven days of the Commencement Date subject to the necessary funds being available when payment falls due. The Recipient agrees and accepts that payments of the Grant can only be made to the extent that the Funder has available funds.
- 3.2 No Grant shall be paid unless and until the Funder is satisfied that such payment will be used for proper expenditure in the delivery of the Project.
- 3.3 The amount of the Grant shall not be increased in the event of any overspend by the Recipient in its delivery of the Project.
- 3.4 The Recipient shall promptly repay to the Funder any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Grant monies have been paid in error before all conditions attaching to the Grant have been complied with by the Recipient.

### **4. Use of Grant**

- 4.1 The Grant shall be used by the Recipient for the delivery of the Project.
- 4.2 The Recipient shall not use the Grant to:
  - 4.2.1 make any payment to members of its Governing Body;
  - 4.2.2 purchase buildings or land; or
  - 4.2.3 pay for any expenditure commitments of the Recipient entered into before the Commencement Date,unless this has been approved in writing by the Funder.
- 4.3 The Recipient shall ensure that, when carrying out the Project and using the Grant, it complies with any applicable provisions of the Public Contracts Regulations 2015 and any other applicable laws and standards, including EU procurement rules.
- 4.4 The Recipient shall not spend any part of the Grant on the delivery of the Project after the Grant Period.
- 4.5 Should any part of the Grant remain unspent at the end of the Grant Period, the Recipient shall ensure that any unspent monies are returned to the Funder or, if agreed in writing by the Funder, shall be entitled to retain the

unspent monies to use for charitable purposes as agreed between the parties.

- 4.6 Any liabilities arising at the end of the Project including any redundancy liabilities for staff employed by the Recipient to deliver the Project must be managed and paid for by the Recipient using the Grant or other resources of the Recipient. There will be no additional funding available from the Funder for this purpose.

## **5. Accounts and Records**

- 5.1 The Grant shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds.
- 5.2 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it.
- 5.3 The Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six years following receipt of any Grant monies to which they relate. The Funder shall have the right to review, at the Funder's reasonable request, the Recipient's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.
- 5.4 The Recipient shall provide the Funder with a copy of its annual accounts within six months (or such lesser period as the Funder may reasonably require) of the end of the relevant financial year in respect of each year in which the Grant is paid.
- 5.5 The Recipient shall comply and facilitate the Funder's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Funder.

## **6. Monitoring and Reporting**

- 6.1 The 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 Agreement is being adhered to.
- 6.2 The Recipient shall provide the Funder with a financial report and an operational report on its use of the Grant and delivery of the Project in such formats and at such regularity as the Funder may reasonably require.
- 6.3 Where the Recipient has obtained funding from a third party for its delivery of part of the Project, the Recipient shall include the amount of such funding in its financial reports together with details of what that funding has been used for.
- 6.4 Where reasonably requested by the Funder, the Recipient shall provide the Funder with a risk register and insurance review in the format provided by the Funder. The Recipient shall address the health and safety of its staff in the risk register.
- 6.5 The Recipient shall on request provide the Funder with such further information, explanations and documents as the Funder may reasonably

require in order for it to establish that the Grant has been used properly in accordance with this Agreement.

- 6.6 The Recipient shall permit any person authorised by the Funder such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.
- 6.7 The Recipient shall provide the Funder with a final report on completion of the Grant Period which shall confirm whether the Project has been successfully and properly completed.

## **7. Acknowledgment and Publicity**

- 7.1 The Recipient shall not publish any material referring to the Project or the Funder without the prior written agreement of the Funder. The Recipient shall acknowledge the support of the Funder in any materials that refer to the Project and in any written or spoken public presentations about the Project.
- 7.2 The Recipient agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Funder.
- 7.3 The Funder may acknowledge the Recipient's involvement in the Project as appropriate without prior notice.

## **8. Intellectual Property Rights**

- 8.1 The Funder and the 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 Funder or the Recipient before the Commencement Date or developed by either party during the Grant Period, shall remain the property of that party.

## **9. Confidentiality**

- 9.1 Subject to clause 10 (Freedom of Information), each party shall during the term of this 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 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 Agreement or save as expressly authorised in writing by the other party.
- 9.2 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:
  - 9.2.1 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 Agreement by the receiving party;
  - 9.2.2 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

- 9.2.3 is at any time after the date of this 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.

## **10. Freedom of Information**

- 10.1 The Recipient acknowledges that the Funder is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).

- 10.2 The Recipient shall:

10.2.1 provide all necessary assistance and cooperation as reasonably requested by the Funder to enable the Funder to comply with its obligations under the FOIA and EIRs;

10.2.2 transfer to the Funder all requests for information relating to this agreement that it receives as soon as practicable and in any event within 2 working days of receipt;

10.2.3 provide the Funder with a copy of all information belonging to the Funder requested in the request for information which is in its possession or control in the form that the Funder requires within 5 working days (or such other period as the Funder may reasonably specify) of the Funder's request for such information; and

10.2.4 not respond directly to a request for information unless authorised in writing to do so by the Funder.

- 10.3 The Recipient acknowledges that the Funder may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Recipient. The Funder shall take reasonable steps to notify the Recipient of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Funder shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **11. Data Protection**

The Recipient 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 the Data Protection Act 1998 (**DPA**) and both Parties will duly observe all their obligations under the DPA, which arise in connection with the Agreement.

## **12. Withholding, Suspending and Repayment of Grant**

- 12.1 The Funder's intention is that the Grant will be paid to the Recipient in full. However, without prejudice to the Funder's other rights and remedies, the

Funder may at its discretion withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant if:

- 12.1.1 the Recipient uses the Grant for purposes other than those for which they have been awarded;
  - 12.1.2 the Funder considers that the Recipient has not made satisfactory progress with the delivery of the Project;
  - 12.1.3 the Recipient is, in the reasonable opinion of the Funder, delivering the Project in a negligent manner;
  - 12.1.4 the Recipient obtains duplicate funding from a third party for the Project;
  - 12.1.5 the Recipient obtains funding from a third party which, in the reasonable opinion of the Funder, undertakes activities that are likely to bring the reputation of the Project or the Funder into disrepute;
  - 12.1.6 the Recipient provides the Funder with any materially misleading or inaccurate information;
  - 12.1.7 the Recipient commits or committed a Prohibited Act;
  - 12.1.8 any member of the governing body, employee or volunteer of the Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of the Funder, bring or are likely to bring the Funder's name or reputation into disrepute;
  - 12.1.9 the 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);
  - 12.1.10 the 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; or
  - 12.1.11 the Recipient fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure.
- 12.2 The Funder may retain or set off any sums owed to it by the Recipient which have fallen due and payable against any sums due to the Recipient under this agreement or any other agreement pursuant to which the Recipient provides goods or services to the Funder.
  - 12.3 The Recipient shall make any payments due to the Funder without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
  - 12.4 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this Agreement it will notify the Funder as soon as possible so that, if possible, and without creating any legal obligation, the Funder will

have an opportunity to provide assistance in resolving the problem or to take action to protect the Funder and the Grant monies.

### **13. Anti-discrimination**

- 13.1 The Recipient shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.
- 13.2 The Recipient shall take all reasonable steps to secure the observance of clause 13.1 by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

### **14. Human Rights**

- 14.1 The Recipient shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Recipient were a public body (as defined in the Human Rights Act 1998).
- 14.2 The Recipient shall undertake, or refrain from undertaking, such acts as the Funder requests so as to enable the Funder to comply with its obligations under the Human Rights Act 1998.

### **15. Limitation of Liability**

- 15.1 The Funder accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Grant or from withdrawal of the Grant. The Recipient shall indemnify and hold harmless the Funder, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.
- 15.2 Subject to clause 15.1, the Funder's liability under this Agreement is limited to the payment of the Grant.

### **16. Warranties**

- 16.1 The Recipient warrants, undertakes and agrees that:
  - 16.1.1 it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Grant);
  - 16.1.2 it has not committed, nor shall it commit, any Prohibited Act;
  - 16.1.3 it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Funder immediately of any significant departure from such legislation, codes or recommendations;
  - 16.1.4 it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;

- 16.1.5 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- 16.1.6 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- 16.1.7 all financial and other information concerning the Recipient which has been disclosed to the Funder is to the best of its knowledge and belief, true and accurate;
- 16.1.8 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;
- 16.1.9 it is not aware of anything in its own affairs, which it has not disclosed to the Funder or any of the Funder's advisers, which might reasonably have influenced the decision of the Funder to make the Grant on the terms contained in this Agreement; and
- 16.1.10 since the date of its last accounts there has been no material change in its financial position or prospects.

## **17. Insurance**

- 17.1 The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss.
- 17.2 The Recipient shall (on request) supply to the Funder a copy of such insurance policies and evidence that the relevant premiums have been paid.

## **18. Duration**

- 18.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the anniversary of expiry of the Grant Period or for so long as any Grant monies remain unspent by the Recipient, whichever is longer.
- 18.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

## **19. Assignment**

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

## **20. Waiver**

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

## **21. Notices**

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

## **22. Dispute Resolution**

22.1 In the event of any complaint or dispute (which does not relate to the Funder's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the an individual nominated by the Funder from time to time.

22.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the individual nominated in accordance with clause 22.1 either party may refer the matter to the Chief Executive of the Funder and the Chief Executive of the Recipient with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Funder and the Recipient.

22.3 In the absence of agreement under clause 22.2, 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.

## **23. No Partnership or Agency**

This Agreement shall not create any partnership or joint venture between the Funder and the 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.

## **24. Joint and Several Liability**

Where the Recipient is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Recipient shall be jointly and severally liable for the Recipient's obligations and liabilities arising under this Agreement.

## **25. Contracts (Rights of Third Parties) Act 1999**

This 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.

**26. Governing Law**

This 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 AGREEMENT** has been entered into as a deed on the date stated at the beginning of it.

**EXECUTED AS A DEED** by the affixing of the **COMMON SEAL** of **NORTH DEVON DISTRICT COUNCIL** in the presence of:

.....  
Authorised signatory

**SIGNED AS A DEED** by two councillors for and on behalf of **INSTOW PARISH COUNCIL**:

Signature: .....

Full name of councillor: .....

In the presence of a witness: .....

Full name of witness (please print): .....

Address of witness (please print): .....

Occupation of witness (please print): .....

Signature: .....

Full name of councillor: .....

In the presence of a witness: .....

Full name of witness (please print): .....

Address of witness (please print): .....

Occupation of witness (please print): .....