

Decision under Delegated Powers

Officer Making the Decision

Strategic Director of Corporate Services

Recommendation

That a £2m conditional grant to the LLEP is approved, repayable from business rates generated by the Charwood campus Enterprise Zone site that would otherwise have been remitted to the LLEP, in accordance with the Forward Funding agreement, final draft of which attached as Appendix A.

Reason

To action the Cabinet report of 15 October 2021 and allow the LLEP to provide grant funding to Charnwood Campus, thereby enabling the refurbishment of building B42 within the Enterprise Zone

Authority for Decision

Cabinet Minute 44, relating to the Cabinet meeting held 15 October 2021 refers; resolution (3) is relevant to this decision.

RESOLVED

1. that the governance process and funding mechanism proposed in respect of the forward funding of infrastructure and buildings within the Enterprise Zone area be approved;
2. that a loan to the Leicester & Leicestershire Economic Partnership for an amount of up to £3.5m be approved;
3. that delegated authority be given to the Strategic Director; Environmental and Corporate Services, in conjunction with the Cabinet Lead Member for Finance, to finalise details of the loan agreement and other agreements associated with this transaction.

Reasons

1. To enable the Council to act as the funder of forward funding arrangements.
2. To facilitate the development of the Charnwood Campus site within the Enterprise Zone.
3. To facilitate efficient and timely completion of the loan arrangements.

Decision and Date



[] Jan 2021

Background

The background to this decision is set out in the Cabinet report of 15 October 2021. See:

<https://charnwood.moderngov.co.uk/documents/g593/Printed%20minutes%2015th-Oct-2020%2018.00%20Cabinet.pdf?T=1>

See also the Forward Funding Agreement attached as Appendix A.

Comments from HR

Not applicable

Financial Implications

The financial implications are as follows:

1. The Council will forward £2m as a 'conditional grant' to the LLEP
2. This grant will be financed via 'internal borrowing'
3. The LLEP will use this funding to 'forward fund' a grant to Charnwood Campus for the refurbishment of building B42 on the Enterprise Zone site
4. The Council will recover the grant paid over to the LLEP through the retention of business rates that would otherwise have been paid over to the LLEP as part of the overarching Enterprise Zone agreement
5. The repayment will be over four years on an annuity (~ repayment) basis

Risk Management

Risk Identified	Likelihood	Impact	Overall Risk	Risk Management Actions Planned
Grant paid over to the LLEP is not recovered	Remote (1)	Serious (3)	Low (3 - 4)	Business rates exceeding £1m p.a are already generated by the site Legal charge will be in place over Building B42 should rates not be fully received

Key Decision:

No *(decision already taken in effect by Cabinet)*

APPENDIX A

Dated

2020

**DEED OF FORWARD FUNDING CONDITIONAL GRANT AGREEMENT
IN RELATION TO THE ENTERPRISE ZONE AT CHARNWOOD CAMPUS**

between

THE INVESTOR

and

THE FORWARD FUNDING RECIPIENT

and

LEICESTER CITY COUNCIL

as accountable body for

Leicester and Leicestershire Enterprise Partnership Limited and

Ref: SE/113074
Leicester City Council
City Hall
Legal Services
4th Floor, Rutland Wing
115 Charles Street
Leicester
LE1 1FZ

THIS DEED is dated

PARTIES

- (1) **CHARNWOOD BOROUGH COUNCIL** of Council Offices, Southfield Road, Loughborough LE11 2TX (**INVESTOR**).
- (2) **LEICESTER CITY COUNCIL** of City Hall, 115 Charles Street, Leicester, LE1 1FZ as accountable body for and on behalf of the LEICESTER & LEICESTERSHIRE ENTERPRISE PARTNERSHIP LIMITED (**AB**).
- (3) **CHARNWOOD CAMPUS MANAGEMENT LIMITED** (Company number 09116109) whose registered office is at 15 Saxon Way East, Oakley Hay Industrial Estate, Corby, Northants, United Kingdom, NN18 9EY (**FORWARD FUNDING RECIPIENT**)

BACKGROUND

- (A) The Investor has agreed to pay the Grant to the AB for the purpose of making a grant to the Forward Funding Recipient.
- (B) The Forward Funding Recipient agrees to enter into a Legal Charge with the Investor in the form attached at Schedule 3.
- (C) This Agreement sets out the terms and conditions on which the Grant is made by the Investor to the AB.
- (D) The Grant will only be repayable by the AB together with Interest upon the conditions described in Schedule 1 being met.

AGREED TERMS

Definitions

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

Agreement: this agreement;

Commencement Date: [TBD (will be when the Campus want the money)]

Data Protection Legislation: (i) the UK GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

DPA 2018: Data Protection Act 2018

Enterprise Zone Business Rates Retention Agreement/ EZBRA: the agreement entered into between the AB, the Investor and The Leicester and Leicestershire Enterprise Partnership dated 12th November 2020 as attached at Schedule 4

Forward Funding Recipient Agreement (FFRA): means the agreement dated [*to be added*] between the AB and the Forward Funding Recipient under which funding is paid to the Forward Funding Recipient for the specified works.

UK GDPR: means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

Grant: the sum of £2,000,000.00 (two million pounds) to be paid to the AB by the Investor in accordance with this Agreement.

Initial Term: the period from the Commencement Date of this agreement until 31st March 2025

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.

Interest means an amount calculated at the Interest Rate on a daily basis on the Undischarged Balance.

Interest Rate: means a rate of [1% above PWLB certainty rate for a 4 year annuity loan as at the week prior to the Commencement Date] [to be inserted]

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.

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

LED: Law Enforcement Directive (*Directive (EU) 2016/680*)

LLEP Retained Rates: means such of the business rates arising at the sites to be retained by the Leicester and Leicestershire Economic Partnership.

Legal Charge: the legal charge to be entered into between the Forward Funding Recipient and the Investor in the form set out in Schedule 3.

Party: a party to this Agreement

Repayment means a payment made in respect of the Grant and/or Interest to the Investor in accordance with Schedule 1.

Request for Information means a request for information or an apparent request for information under the FOIA or EIR.

Subsidy Rules: means the World Trade Organisation subsidy rules, known as the Agreement on Subsidies and Countervailing Measures, and subsidy related commitments contained within the UK's Free Trade

Agreements (FTAs), including but not limited to the UK-EU Trade and Cooperation Agreement, and all guidance as issued by the UK government entitled "Technical guidance on the UK's international subsidy control commitments from 1 January 2021" and all other such guidance as issues in relation to the same by the UK government from time to time.

Term: the period of the Initial Term, or the Initial Term as extended in accordance with clause 2.2

Undischarged Balance means the Grant plus Interest minus any Repayments made in accordance with Schedule 1.

Working Day: means any day which is a Monday to Friday excluding public bank holidays in England.

Duration

Except where otherwise specified, the terms of this Agreement shall apply for the Term.

Provided that the Term shall only be extended so as to terminate on the 31st March on any extension period, the Parties may extend the Initial Term for a further period or periods of 12 months up to a maximum of three (3) years in total ('Extension Period'). If the Parties wish to extend the Initial Term or any previous Extension Period, they shall agree the period of extension in writing at least three months prior to the expiry of the Term and the Term shall be extended by that period. The Parties shall agree to such extension if requested by the Investor or the Forward Funding Recipient.

Where the Grant and Interest are fully repaid to the Investor prior to the end of the Term (the Undischarged Balance being nil), the AB shall provide notice to the Investor and the Forward Funding Recipient and the agreement shall terminate with immediate effect.

Any obligations under this Agreement that remain unfulfilled following the expiry of the Term or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

Purpose of Grant

The Grant shall be used by the AB solely to make payments to the Forward Funding Recipient in accordance with the FFRA.

Payment of Grant

The Investor shall pay the Grant to the AB in a single sum on the Commencement Date.

The Investor warrants and confirms that the funds for the payment of the Grant are approved and available for payment in accordance with the terms of this Agreement on the date of this agreement.

The Forward Funding Recipient's Obligations

The Forward Funding Recipient agrees to meet the obligations as set out in the FFRA.

The Forward Funding Recipient and the Investor agree to enter into the Legal Charge in the form attached at Schedule 3 to this Agreement

Accounts and records

The Parties shall facilitate compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to them.

Monitoring and reporting

The AB shall monitor the delivery and success of the specified works under the FFRA throughout the Term to ensure that the aims and objectives of the FFRA are being met by the Forward Funding Recipient and that the FFRA is being adhered to.

The AB shall ensure that the Forward Funding Recipient shall, and the Forward Funding Recipient agrees to, comply with any monitoring and reporting requirements as set out in the FFRA.

The AB shall report to the Investor in accordance with Schedule 2.

Acknowledgment and publicity

No Party shall publish any material referring to the Grant without the prior written agreement of the other Party.

Intellectual Property Rights

The Investor and the AB 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 Investor or the AB before the Commencement Date or developed by either party during the Term, shall remain the property of that Party.

Where either Party has provided the other Party with any of its Intellectual Property Rights for use in connection with this Agreement (including without limitation its name and logo), the other Party shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the other Party..

Confidentiality

Subject to clause 01 (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.

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:

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;

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

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.

Freedom of information

The AB and the Investor are public authorities as defined within the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and therefore recognise that information relating to this Agreement may be the subject of a Request for Information.

11.2 The Forward Funding Recipient shall assist the AB and Investor and the AB and Investor shall each assist the other in complying with its obligations under FOIA and/or EIR's including but not limited to assistance without charge in gathering information to respond to a Request for Information; and each Party shall notify the other upon receipt of a Request for Information relating to this Agreement or any obligations thereunder.

11.3 The AB and the Investor shall be entitled to disclose any information relating to this Agreement (or the obligations contained therein) in response to a Request for Information, save that in respect of any Request for Information which is in whole or part a request for exempt information or information covered by an exception under EIR.

11.3.1 The Party (the Receiving Party) which receives the Request for Information shall use its reasonable endeavours to consult with the other Party in deciding whether to disclose information pursuant to FOIA and/or EIR but it shall not be obliged to so consult where to do so would put it in breach of its obligations under FOIA and/or EIR; and

11.3.2 the Party that receives the Request for Information shall not disclose any information beyond the disclosure required by FOIA and/or EIR without the consent of the Party to which it relates.

11.4 The Parties acknowledge and agree that any decision made by a Party which receives a Request for Information as to whether to disclose information relating to this Agreement pursuant to the FOIA and/or EIR is solely the decision of that Party.

11.5 A Party will not be liable for any loss, damage, harm or detrimental effect arising from or in connection with the disclosure of information in response to a Request for Information.

Data protection

12.1 The 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 the Data Protection Legislation and all Parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Agreement.

Anti-discrimination

The Parties 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.

The Parties shall take all reasonable steps to secure the observance of clause 0 by all servants, employees or agents and all suppliers and sub-contractors engaged in accordance with this Agreement..

Limitation of liability

The Investor and Forward Funding Recipient shall indemnify and hold harmless the AB, 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 its actions and/or omissions in relation to this Agreement, the non-fulfilment of its obligations under this Agreement or the AB's obligations to third parties.

In respect of the Investor the AB's liability is limited to Repayments in accordance with this Agreement.

In respect of the Forward Funding Recipient the AB shall have no liability arising from or in connection with this Agreement.

The Investor indemnifies the AB in relation to all costs, losses and expenses incurred directly as a result of a breach of this Agreement by the Investor.

Nothing in this agreement shall exclude or limit liability for death, or personal injury caused by any Party's negligence, fraud or fraudulent misrepresentation.

Warranties

15.1 The Parties warrant, undertake and agree that:

they shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations,

they shall keep in place adequate procedures for dealing with any conflicts of interest;

they shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;

they are not subject to any contractual or other restriction imposed by their own or any other organisation's rules or regulations or otherwise which may prevent or materially impede them from meeting their obligations in connection with the Grant.

15.2 The Investor warrant that it has all necessary approvals and authorisations in place on the date of this agreement authorising it to enter into this Agreement and comply with its terms.

Insurance

The Parties shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by them, arising out of their performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss.

Subsidy Rules

The Parties acknowledges the requirements in relation to Subsidy Rules and hereby agree that they have taken their own independent legal advice in respect thereof in relation to this Grant.

The Parties, however, undertake to keep proper records in relation to the Project such that should there be any legal challenge to the Grant on the basis that it is contrary to the Subsidy Rules, they will be able to produce relevant records.

Assignment

No Party may, without the prior written consent of the other Parties, 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, transfer or pay to any other person any part of the Grant.

Waiver

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

Notices

All notices and other communications in relation to this Agreement shall be in writing addressed to the authorised officer of the relevant Party 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 from time to time. 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 day which is not a 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.

Dispute resolution

In the event of any complaint or dispute arising between the AB and the Investor in relation to this Agreement the matter should first be referred for resolution to the officers appointed under s. 151 of the Local Government Act 1972 for the Parties.

Should the complaint or dispute remain unresolved within 14 Working Days of the matter first being referred to the officers nominated by virtue of clause 21.1, , either party may refer the matter to the Chief Operating Officer/Chief Executive of the other Party with an instruction to attempt to resolve the dispute by agreement within 28 Working Days, or such other period as may be mutually agreed by the Investor and the AB.

In the absence of any agreement under clause 21.2 either Party may seek to resolve the matter in dispute through mediation under the CEDR Model Mediation Procedure (or such other appropriate mediation model as agreed between the Parties in writing) and unless otherwise agreed the parties shall bear the costs and expenses of such mediation equally.

No partnership or agency

This Agreement shall not create any partnership or joint venture between the Parties, 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.

Contracts (Rights of Third Parties) Act 1999

Other than to the Leicester and Leicestershire Economic Partnership, on behalf of who the AB acts, 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.

variation

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties. For the avoidance of doubt no variation shall be effected by email and reference to writing in this clause does not include email.

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

EXECUTED AS A DEED By
CHARNWOOD BOROUGH COUNCIL by
affixing of the **COMMON SEAL** in the presence of:

Authorised Signatory

EXECUTED AS A DEED by
LEICESTER CITY COUNCIL in its capacity as
the accountable body for the Leicester and Leicestershire Enterprise Partnership
by affixing of the COMMON SEAL in the presence of:

Authorised Signatory

By CHARNWOOD CAMPUS MANAGEMENT LIMITED
on the year first before written acting by:

Director _____

Name _____

Director/Secretary _____

Name _____

Schedule 1 Grant Payment and Conditions for Repayment

1. The Investor shall be entitled to Repayments in accordance with this Schedule 1.
2. All Repayments shall be applied by the Investor to redeem the Undischarged Balance and the total Repayments received by the Investor shall not exceed the amount required to redeem the Undischarged Balance. In the event that the Investor receives Repayments that exceed the Undischarged Balance it will pay such excess to the AB with Interest within 7 days of becoming aware of the overpayment or notice from the AB of the same.
3. Other than Repayment in accordance with paragraph 4, the AB will not be liable to make any payment to the Investor in respect of the Grant or Interest.
4. The Investor will receive a Repayment only in accordance with the following:
 - a) Where the Forward Funding Recipient does not draw down all of the grant in accordance with the terms of the FFRA, such sum as is not drawn down will be payable by the AB to the Investor once the period for drawdown under the FFRA has expired (up to the amount of the Undischarged Balance); and/or
 - b) Such sums as are reclaimed from the Forward Funding Recipient under the FFRA where they have acted in breach of the same will be payable by the AB to the Investor (up to the amount of the Undischarged Balance); and/or
 - c) Any sums which the AB holds as accountable body to the Leicester and Leicestershire Economic Partnership Limited and is instructed to pay to the Investor by the Board of Directors of the Partnership; and/or
 - d) The Investor shall be entitled to deduct Repayments from the LLEP Retained Rates in accordance with paragraph 5 of this Schedule 1, the LLEP Retained Rates being sums which would otherwise be payable by the Investor to the AB in accordance with EZBRA.
5. The Investor shall be entitled to deduct from the LLEP Retained Rates that are generated in any financial year (which falls within the Term) on or after 1st April 2021 sums in accordance with the following:
 - a) an amount sufficient to redeem the Undischarged Balance in quarterly instalments on 30th June, 30th September, 31st December and 31st March, calculated on an annuity basis ending on the final day of the Term;
 - b) the deduction being the sum of the quarterly amounts due in the financial year in question.
6. Where paragraph 4(a) to (c) applies, payment shall be made by the AB to the Investor as soon as practicable.
7. For the avoidance of doubt where the Undischarged Balance is not fully redeemed at the end of the Term no further Repayment shall be made by the AB. Further the Investor shall not be entitled to make any further deductions from the LLEP Retained Rates in respect of the Grant and/or Interest.

8. For the avoidance of doubt, the AB does not guarantee the repayment of the Grant and/or Interest to the Investor. Further, the AB shall not be required to make any payment or Repayment from its own resources. The Investor acknowledges that the risk of there being insufficient LLEP Retained Rates to repay the Grant and the Interest is a risk solely borne by the Investor. The Investor may seek to recover monies directly from the Forward Funding Recipient after expiry of the Term in accordance with the Legal Charge attached at Schedule 3.

9. If during the Term, the Investor receives monies from the Forward Funding Recipient in respect of the Grant or Interest, the Investor shall immediately notify the AB and paragraph 2 of this Schedule 1 shall apply as if the monies were a Repayment.

Schedule 2 Monitoring and Reporting

- i. The AB will provide a statement to the Investor for each financial year, after the LLEP Retained Rates figure for that year has been finalised.
2. The statement will include:
- (a) The Undischarged Balance on 1st April of the year in question;
 - (b) Repayments made under Schedule 1;
 - (c) Sums notified to the AB by the investor in accordance with paragraph 9 of Schedule 1;
 - (d) Interest added for the financial year;
 - (e) The Undischarged Balance on 31st March;
 - (f) A statement of the amounts which would be required to be deducted from LLEP Retained Rates and as described at clause 5 of Schedule 1 to fully repay the Undischarged Balance by the end of the Term.

Schedule 3 Legal Charge

[separate document]