

EXAMPLE LOCAL AUTHORITY TREESCAPE FUND MOU 2021

Memorandum of understanding between

THE FORESTRY COMMISSION

and

THE LA

On the Local Authority Treescapes Fund

This Memorandum of Understanding (MoU) is made on 1 August 2021 between:

(1) the Forestry Commission (FC); and

(2) the Lead Applicant Local Authority (LA)

(each a “Party” and together the “Parties”).

1. BACKGROUND

- 1.1 The Secretary of State for Defra has determined under Section 31 of the Local Government Act 2003 that a grant of £250000 should be paid to Example County Council in 2021-22. (Grant Determination Reference: 31/001). Maintenance payments for associated aftercare can be claimed by the LA for 3 years following tree planting, as per the Activity Schedule in Annex 5.
- 1.2 The Treasury has consented to payment of this capital Grant. An agreement is made between the FC and the Secretary of State pursuant to section 78 of the Natural Environment and Rural Communities Act 2006 (“NERC”) authorising the FC to deliver the Grant funding on behalf of the Secretary of State.
- 1.3 The Parties commit to working in partnership on the successful delivery of the Local Authority Treescapes Fund (LATF). The Parties agree that failure to meet any of the obligations in the MoU could lead to payments being stopped.
- 1.4 The LA accepts that payment of Grant will only be made to the Lead Applicant LA. It is the responsibility of the Lead Applicant LA to transfer funds to other organisations as appropriate.
- 1.5 The FC accepts no liability for any consequences, whether direct or indirect, that may arise from the LA delivering/running the Funded Activities, the use of the Grant or from withholding future payments or suspension of the Grant.

2. PURPOSE AND DURATION OF THE GRANT

- 2.1 The Grant covers capital expenditure relating to tree planting (or supported natural colonisation) and related aftercare in response to recovery for trees outside woodlands.
- 2.2 The Funding Period starts on 10 August 2021 and ends 31 March 2022, with maintenance payments ending on 31 March 2025 unless the agreement is terminated earlier in accordance with this MoU. The Parties agree that the Grant will be used for the purpose of delivering of the Funded Activities.
- 2.3 This MoU is not intended to be legally binding and no legal obligations or legal rights shall arise between the Parties from the provisions of the MoU. The Parties enter into the MoU intending to honour all their obligations and responsibilities in the MoU. The process that will be followed should a party not fulfil these is set out below.

3. PAYMENT OF GRANT AND ROLES & RESPONSIBILITIES

- 3.1 The LA set a bid value of £ X to deliver the planting and maintenance set out in the LATF Application Form and Grant Determination Letter (Annex 1).

- 3.2 This was within the costs expected by the FC for this planting and has been accepted.
- 3.3 No payment can be made to the LA in advance of receipt of the signed MoU.
- 3.4 The Activity Schedule (Annex 5) sets out the payment schedule to the LA and the delivery profile agreed by the LA.
- 3.5 The Parties agree that:
- 3.5.1 Once the FC is in receipt of the signed MoU, the FC will release funding in stages. In the first financial year of the agreement, the FC will make an initial payment to the LA. This will be 50% of the agreed payment for works carried out in the first year. The first instalment (Payment 1) will be made within 30 days of receipt of the signed MoU and Claim Form.
- 3.5.2 Following submission and review of the post-planting report and Grant Claim, a second instalment (Payment 2) will be paid within 30 days of the FC approving the Grant Claim. This will be up to 50% of the agreed payment for works carried out in the first year.
- 3.5.3 The FC will pay the LA annual maintenance payments following submission of a LATF Grant Claim Form by the LA and subsequent FC confirmation that maintenance activity has been undertaken.. The FC may also make on site visits to check maintenance activity has been undertaken.
- 3.6 The Parties agree that the FC may downwards adjust the Payment 2 if the final planting within the post planting report differs from the activity outlined in the LATF Application Form. This definition is set out in Amendment to second payment (Annex 3). The LA will receive a Post-Planting Report Outcome Letter, detailing the adjustment and will amend and reissue the Grant Determination Letter and Annex 3 of the MoU if the Value of your Grant is amended. The FC will not upwards adjust payments should the cost of delivery increase.
- 3.7 Unless otherwise stated in this MoU, Payment 2 of the Grant will be made within 30 days of the FC approving the LA's Grant Claim, which may be after the end of the financial year. The FC reserves the right not to pay any Grant Claims that are not submitted by the claims deadline or Grant Claims that are incomplete, incorrect or submitted without the full supporting documentation.
- 3.8 Where the LA enters into a contract with a Third Party in connection with the Funded Activities, the LA will be responsible for payment to the Third Party and all LA obligations under the MoU will remain.

4. IN-YEAR REPORTING

- 4.1 The LA will complete an interim report on progress towards tree planting by end of calendar year 2021, using the template provided by the FC.
- 4.2 The LA shall return the report to the FC as detailed in the timeline in the report.
- 4.3 In-year reporting will identify risks before they arise. The FC will implement a performance improvement plan if it judges that the LA may not meet the delivery profile set out in the MoU. The FC may request meetings with the LA to discuss progress and offer support.

5. POST PLANTING REPORT AND SECOND PAYMENT

- 5.1 The LA will provide written, photographic & map-based evidence of planting activities from the LA will be provided as part of a post planting report to the FC which will cover:
- 5.1.1 The species, location and number of trees planted.
 - 5.1.2 The evidence that planting meets the minimum standards set out in the application form (e.g. photos).
 - 5.1.3 The evidence of a minimum survival rate of 75% of trees that are planted.
 - 5.1.4 evidence that any funded activities to support natural colonisation have been carried out.
- 5.2 Should the planting report identify that LA has diverged from MoU, the FC will consider the divergence and where appropriate adjust the Payment 2 to reflect the final planting delivery. This adjustment is set out in Annex X.
- 5.3 The FC reserves the right to carry out inspections of planting and maintenance throughout year one to inform the Payment 2 in line with 6.2.
- 5.4 The LA agrees to complete a final progress report at the end of the maintenance period and submit this with the final maintenance claim.

6. SUPPORT VISIT (INSPECTION)

- 6.1 The LA shall closely monitor the delivery and success of the Funded Activities throughout the Funding Period to ensure that the aims and objectives of the Funded Activities are achieved.
- 6.2 The FC will implement a risk-and-random inspection regime according to an annual selection process.
- 6.3 Where activities funded under the LATF have occurred on land owned by the LA, the LA and must provide access to land at any time, where tree planting under the LATF has occurred, for the purposes of an inspection.
- 6.4 . Where funded activities have taken place on a third party's land, the LAs will take any reasonable steps to ensure the FC can access the land for the purposes of inspection.
- 6.5 The FC will notify the LA and third party no more than 48 hours in advance of an inspection. A representative of the LA does not need to be present at the time of inspection, but the LA agrees

that the named agreement holder on behalf of the LA (or their confirmed agent) will sign the FC's subsequent inspection report to confirm that they understand the inspection outcome and the reasons for it. Failure to sign the report by either Party will be handled in line with section 13 of this MoU: Dispute Resolution and Appeals .

- 6.6 In cases of where the outcome of inspection is that remedial works are required in order to fulfil the obligations of this MoU and the objectives of the Funded Activities, the FC may withhold all or part payment until a further inspection shows that the LA or its sub-contractors have undertaken work to correct issues found at the initial inspection (either qualitative or quantitative). A performance improvement plan maybe developed to support you to fulfil the activities in this MoU or undertake any remedial work.
- 6.7 Inspections will look for evidence of defrayal, necessary consents, licences and permissions (in particular, that they were in place prior to activities taking place), and evidence that the Grant-funded works have been undertaken in accordance with the MoU and published prescriptions, and to an acceptable standard.
- 6.8 The LA agrees to provide the FC with all reasonable assistance and co-operation in relation to any ad-hoc information, explanations and documents as the FC may require, from time to time, to establish whether the LA has used the Grant in accordance with the MoU.

7. ELIGIBLE AND INELIGIBLE EXPENDITURE

- 7.1 The LA will use the Grant for delivery of the Funded Activities. Eligible costs within this valuation will include:
- 7.1.1 Costs associated with initial planting (trees, stakes, shelters, other relevant capital items).
- 7.1.2 Costs associated with supported natural colonisation (ground preparation, herbivore fencing, supplementary planting, other relevant capital items).
- 7.1.3 Maintenance costs.
- 7.2 Funding will not be awarded for work undertaken prior to the start date of an LATF grant funding agreement (the date when the MoU has been signed by the LA and by the FC).

8. CONFLICTS OF INTEREST

- 8.1 Neither the LA nor its Representatives shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to the MoU.
- 8.2 The LA will keep in place adequate procedures to manage and monitor any actual or perceived bias or conflicts of interest.

9. STATUTORY DUTIES

- 9.1 The Parties will comply with all relevant legislation, including all relevant environmental legislation and public procurement .
- 9.2 The LA will provide all necessary assistance and cooperation which is reasonably requested by the FC for the purposes of complying with its obligations under the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR). If the FC requires the LA to supply information pursuant to a FOIA/EIR request, the LA will supply all such information which is within its possession or control within 5 working days (or such other period as is reasonably required).
- 9.3 If the LA receives a FOIA/EIR request from a member of the public in connection with LATF, it will notify the FC within 2 working days of receipt. The FC expects the LA to give careful consideration to the exception under regulation 12(5)(f) (the interests of the person who provided the information) in regard to information it received from the FC and seek consent for disclosure of information provided by the FC.
- 9.4 The LA will ensure that delivery of the Funded Activities do not put the FC in breach of the UK's international obligations in respect of subsidies.
- 9.5 The LA will maintain appropriate records of compliance with the relevant subsidy control regime and will take all reasonable steps to assist the FC to comply with the same and respond to any proceedings or investigation(s) into the Funded Activities by any relevant court or tribunal of relevant jurisdiction or regulatory body.
- 9.6 The LA will follow internal processes regarding governing debt and double payment.
- 9.7 The LA will undertake all required actions in relation to subsidies.

10. FINANCIAL MANAGEMENT AND PREVENTION OF BRIBERY, CORRUPTION, FRAUD AND OTHER IRREGULARITY

- 10.1 The LA will at all times comply with all applicable legislation relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010.
- 10.2 The LA must have a sound administration and audit process, including internal financial controls to safeguard against fraud, theft, money laundering, counter terrorist financing or any other impropriety, or mismanagement in connection with the administration of the Grant. The LA shall require that the internal/external auditors report on the adequacy or otherwise of that system.
- 10.3 All cases of fraud or theft (whether proven or suspected) relating to the Funded Activities must be notified to the FC within 10 working days. The LA shall explain to the FC what steps are

being taken to investigate the irregularity and shall keep the FC informed about the progress of any such investigation. The FC may however request that the matter (which the LA is obliged to carry out) is referred to external auditors or other Third Party as required.

- 10.4 The FC will have the right, at its absolute discretion, to insist that the LA address any actual or suspected fraud, theft or other financial irregularity and/or to suspend future payment of the Grant to the LA. Any grounds for suspecting financial irregularity includes what the LA, acting with due care, should have suspected as well as what is actually proven.
- 10.5 The LA agrees and accepts that it may become ineligible for Grant support and may be required to repay all or part of the Grant if it engages in tax evasion or aggressive tax avoidance in the opinion of Her Majesty's Revenue and Customs.
- 10.6 For the purposes of paragraph 10.4 "financial irregularity" includes (but is not limited to) potential fraud or other impropriety, mismanagement, and the use of the Grant for any purpose other than those stipulated in the MoU. The LA may be required to provide statements and evidence to the FC or the appropriate organisation as part of pursuing sanctions, criminal or civil proceedings.
- 10.7 If, having agreed to statement 10 in the declarations section of the LATF Application Form and having received funding, the LA is then found to have made serious misrepresentation in relation to offences listed in the ['List of Mandatory and Discretionary Exclusions'](#) the LA may be excluded from further funding, or have payment rescinded.

11. CHANGES TO THE FC'S REQUIREMENTS

- 11.1 The FC will notify the LA of any changes to their activities, which are supported by the Grant.
- 11.2 LA will accommodate on a best endeavour basis any changes to the FC's needs and requirements under this MoU.

12. DISPUTE RESOLUTION AND APPEALS

- 12.1 The Parties will use all reasonable endeavours to negotiate in good faith, and settle amicably, any dispute that arises during the continuance of the agreement.
- 12.2 All disputes shall be referred in the first instance to the Parties Representatives.
- 12.3 If the dispute cannot be resolved between the Parties Representatives within a maximum of 60 days then the matter will be escalated to formal meeting between the Grant Manager and the LA's chief executive (or equivalent).

- 12.4 further escalation of issues or complaints will be handled in line with the FC's complaints and appeals procedure on gov.uk (LINK).

13. CODE OF CONDUCT FOR GRANT RECIPIENTS

- 13.1 The LAs acknowledges that by signing the MoU it agrees to take account of the Code of Conduct, which includes ensuring that its Representatives undertake their duties in a manner consistent with the principles set out in the [Code of Conduct](#).
- 13.2 The LA shall immediately notify the FC if it becomes aware of any actual or suspected breaches of the principles outlined in the Code of Conduct.
- 13.3 The LA acknowledges that a failure to notify the FC of an actual or suspected breach of the Code of Conduct may result in the FC immediately suspending or the Grant funding, adjusting the Grant awarded and terminating the MoU.

14. ENVIRONMENTAL REQUIRMENTS

- 14.1 The LA shall perform the Funded Activities in accordance with the FC's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 14.2 The LA will ensure all planting or activities to support natural colonisation undertaken follow best practice and meets the principles of UK Forestry Standard requirements.
- 14.3 The LA will carry out environmental due diligence in accordance with the planting plan. Including ensuring no planting or natural colonisation on sensitive or unsuitable sites.
- 14.4 The LA will have management control or consent and access agreements for all land where activities have taken place.
- 14.5 The LA agrees that trees will be sourced following best biosecurity guidance. We would encourage applicants to source their planting stock from nurseries with robust biosecurity measures, including by way of example, those with Plant Healthy certification (or similar), where possible.
- 14.6 The LA will not fund felling activities through this scheme
- 14.7 The LA will seek to use approaches to minimise plastic waste.
- 14.8 The LA will take all reasonable actions to deliver over 75% survival rate of planted trees.

- 14.9 The LA will not include tree planting within this application or MoU that is already funded by other relevant government grant schemes, or restocking as required under a Felling Licence. Failure to notify FC of any other government funding may result in an adjustment to your grant award or a request for a return of Grant Funding.
- 14.10 The LA will ensure any land managers engaged with LATF that are already receiving BPS payments, will inform the RPA if necessary and follow due process relating to BPS.
- 14.11 The LA agrees that by signing this MoU they are agreeing to the condition that LATF funding can only be used for capital purposes.

15. TERMINATION RIGHTS

- 15.1 Either Party may terminate the MoU at any time by giving written notice to the other Party.
- 15.2 If the FC terminates the MoU the FC may choose to pay the LA's reasonable costs in respect of the delivery of the Funded Activities performed up to the termination date. Reasonable costs will be identified by the LA, the amount of reasonable costs payable will be determined by the FC.
- 15.3 The FC will not be liable to pay any of the LA's costs or those of any contractor/supplier of the LA.
- 15.4 Expiry or termination of the MoU shall not affect any obligations of the parties that have accrued up to the date of expiry or termination which existed at or before the date of expiry or termination.

SIGNED by:
Signature

FC representative
.....
for and on behalf of the **Title**
Forestry Commission
.....
Date

SIGNED by
Signature

LA representative

**for and on behalf of Example
LA**

.....
Title

.....
Date

Please send this signed MoU to LATF@forestrycommision.gov.uk by 31 August 2021.