

# **LOCAL AUTHORITY TREESCAPE FUND**

Memorandum of understanding between

THE FORESTRY COMMISSION

**and**

THE LOCAL AUTHORITY

In relation to the Local Authority Treescapes Fund

**Amended January 2022**

This Memorandum of Understanding (MoU) is made between:

(1) the Forestry Commission (FC); and

(2) the Lead Local Authority (LA)

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

<b>Definitions</b>	
Agreement Holder	The Lead Local Authority that applies for funding, agrees to the MoU and receives the funds.
BPS Payments	Payments made under the Basic Payments Scheme for land (owned by either the LA or a Third Party) on which the Funded Activities will be undertaken.
Code of Conduct	A set of principles that outline the expectations placed on recipients of government general grants.
Funded Activities	The actions undertaken to deliver LATF that are supported by the LATF, including tree planting, relevant actions relating to natural colonisation and maintenance activities.
Funding Period	4-5 year LATF grant period
Grant	The grant awarded under LATF
Grant Claim	The submission by the recipient to FC for payment of funds.
Grant Manager	Individual/s responsible for designing the grant programme and determining funding needs.
Grant Payments	Capital payments to cover costs of trees, planting activities and maintenance payments .
LATF Application Form	The form used by potential LATF applicants to apply for the LATF.
LATF Claim Form	A form used by the Lead LA to claim capital costs awarded for trees and planting activities (including Payment 1 & Payment 2).
LATF Grant Determination Letter (Annex 1)	Correspondence to the Applicant detailing the grant decision and total funding awarded for financial year 22/23.
LATF Offer Letter	Correspondence to the Applicant detailing an indicative grant decision for the full Funding Period, subject to review based on performance.
LATF Post-Planting Report (PPR)	A report submitted by the Lead LA detailing evidence of planting works completed and submitted within the financial year that planting activities are completed

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LATF Post-Planting Report Outcome Letter (Annex 2)	Correspondence to the Applicant detailing the result of the PPR submission and confirming further funding.
Maintenance Payments	Establishment payments to support the cost of weeding, watering and checking trees during multiple visits over a 3-year period.
Maintenance Period	A period of three(3) years after the final grant payment is made by FC to the LA.
Parties Representatives	Individuals acting or purporting to act on behalf of the LA or FC.
Payment 1	50% payment for year 1 planting costs made upon claim by the Applicant, following MoU agreement.
Payment 2	Further 50% payment for year 1 planting costs made upon claim by the Applicant, following submission of the PPR.
Performance Improvement Plan	A formal document used to address failures and support the LA to fulfil the funded grant activities.
Representative	Person/s chosen to act and speak on behalf of the Local Authority or Forestry Commission.
Third Party	A person or group besides the FC and Lead LA involved in delivering LATF activities.
UK Forestry Standard	The UK Forestry Standard (UKFS) is the reference standard for sustainable forest management in the UK

### 1. BACKGROUND

- 1.1 1.1 The Secretary of State for Defra has determined under Section 31 of the Local Government Act 2003 that a grant should be paid to the LA in 2022-23.
- 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 Local Authority 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 the Funded Activities, the use of the Grant, withholding future LATF Grant 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 (Maintenance Payments) in response to recovery for trees outside woodlands. The Parties agree that the Grant will be used for the purpose of delivering of the Funded Activities.
- 2.2 The Funding Period starts on the Commencement Date of this MoU and ends at the end of the financial year in which the last payment outlined in the LATF Offer Letter (Annex 1) is scheduled, unless terminated earlier in accordance with this MoU .
- 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 this MoU intending to honour all their obligations and responsibilities within the MoU. The process that will be followed by the Parties should any party not fulfil these obligations is set out below in Paragraph 12.

## **3. PAYMENT OF GRANT AND ROLES & RESPONSIBILITIES**

- 3.1 The LA specified a bid value to deliver the planting and maintenance detailed out in the LATF Application Form Annex A. The FC have determined the total to be awarded within the LATF Offer Letter and the LATF Grant Determination Letter (Annex 1).
- 3.2 The capital funds awarded are within the costs expected by the FC for this planting and have been accepted.
- 3.3 The LA specified a bid value to deliver the planting and maintenance detailed out in the LATF Application Form Annex A. The FC have determined the total to be awarded for Year 1 within the LATF Grant Determination Letter (Annex 1).
- 3.4 The Parties agree that:
- 3.4.1 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 LATF Claim Form.
- 3.4.2 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.
- 3.4.3 The FC will pay the LA three annual Maintenance Payments following submission of a LATF 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.
- 3.5 The Parties agree that the FC may adjust any future payments downwards if the final planting within the Post-Planting Report differs from the activity outlined in the LATF Application Form. .

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This reduction mechanism for future payments is set out in the LATF Notification of Successful Post Planting Report Review Letter (Annex 2) detailing the adjustment and will amend and reissue the LATF Grant Determination Letter (Annex 1) of the MoU if the value of your Grant is amended. The FC will not adjust the payments upwards should the cost of delivery increase.

- 3.6 Unless otherwise stated in this MoU, Payment 2 of the Grant will be made within 30 days of the FC approving the LA's second Grant Claim, which may be after the end of the financial year. The FC reserves the right not to pay any Grant Claim not submitted by the claims deadline or Grant Claim that is incomplete, incorrect, or submitted without the full supporting documentation.
- 3.7 Where the LA enters 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 shall return the report to the FC, using the template provided, by the deadline agreed.
- 4.2 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 as part of a post planting report to the FC on completion of planting activities and before second payment. The PPR submission will include:
- a. specific management information species, location and number of trees planted in the post-planting review. This will meet the plans set out in the application form and in the MoU.
- 5.1.2 evidence that planting has met minimum standards set by the activity prescriptions detailed by the Lead LA in the LATF application form and any associated annexes.
- 5.1.3 Evidence of a 75% survival rate of trees planted.
- 5.1.4 Evidence of any funded activities to support natural colonisation.
- 5.2 Where FC determine that the LATF Post Planting Report (PPR) has diverged from the objectives of the Funded Activities and the MoU, the FC will consider the divergence and where appropriate adjust future payments downwards (but not upwards) to reflect the final planting delivery. This adjustment is set out in (Annex 2) LATF Post-Planting Report Outcome Letter.
- 5.3 Losses beyond 75% will be this will be subject to FC Performance Improvement Plans. All losses will be expected to be funded by the LA in order to meet the stated award-level KPI and received maintenance payments.
- 5.4 The FC reserves the right to carry out inspections of planting and maintenance throughout year 1 to inform subsequent payments in line with Paragraph 6.6 .

5.5 The LA agrees to complete a final LATF 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 must provide access to land at any time, where tree planting under the LATF has occurred, for the purposes of an inspection by FC.
- 6.4 Where funded activities have taken place on a third parties land, the LA's will take 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 (where relevant) 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. 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 12 of this MoU: Dispute Resolution and Appeals.
- 6.6 In cases where an inspection determines that remedial works are required 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 the work required to correct the issues found at the initial inspection (either qualitative or quantitative). A Performance Improvement Plan may be developed to support the LA 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 agrees that by signing this MoU they are agreeing to the condition that LATF funding can only be used for capital purposes.
- 7.2 The LA will use the Grant for delivery of the Funded Activities. Eligible costs within this valuation will include:
- 7.2.1 Costs associated with initial planting (trees, stakes, shelters, other authorised capital items).
  - 7.2.2 Costs associated with supported natural colonisation (ground preparation, herbivore fencing, supplementary planting, other authorised capital items).

7.2.3 Maintenance costs to support establishment including the cost of weeding, watering and checking trees during multiple visits over a 3-year period.

7.3 Funding will not be awarded for work undertaken prior to the start date of an LATF MoU (the date when the MoU has been signed by the LA and 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 consider the exception under regulation 12(5)(f) (the interests of the person who provided the information) regarding 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 always comply with all applicable legislation relating to anti-bribery and anticorruption, 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 on the grounds of reasonable suspicion of financial irregularity (even if unproven). Grounds for reasonable suspicion shall include what the LA, acting with due care, should have suspected.
- 10.5 The LA agrees and accepts that it may become ineligible for Grant 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, and the LA is subsequently 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 planned changes relating to the administration and monitoring of the LATF.
- 11.2 The LA will accommodate on a best endeavours 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](http://gov.uk).

## **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 a known 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 REQUIREMENTS**

- 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 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.
- 14.3.2 The Grant Recipient understands that conversion to another land use after planting may be subject to the Environment Impact Assessment Regulations (Forestry) (England and Wales) Regulations 1999, as amended, as deforestation and that the current policy in England is that conversion of forest to other land uses shall not occur except in exceptional circumstances.
- 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.
- 14.8.1 The LA will take all reasonable actions to deliver over 75% survival rate of planted trees.
- 14.8.2 For a period of three (3) years after the final grant payment is made by FC to the LA under this Grant Funding Agreement, the LA shall use reasonable endeavours to ensure the trees planted by the LA as part of the Funded Activities are maintained and become established ('the Maintenance Period'). The LA understands that if the trees are not established successfully by the end of the Maintenance Period the Grant support may be reclaimed.
- 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.

#### **15. TERMINATION RIGHTS**

- 15.1 Either Party may terminate the MoU at any time by giving written notice to the other Party.

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- 15.2 If the FC terminates the MoU, FC payments will be made to the LA to cover the delivery of the Funded Activities performed up to the termination date. These costs will be identified by the LA and may result in inspection by the FC, prior to any reimbursement.
- 15.3 If the LA terminates the MoU, the FC will cease further payment of funds. The FC will request that the LA repay to the FC an amount equal to such part of the monies as the local authority has not spent in the financial year(s) that planting activities were carried out. If the LA terminates the MoU, the FC will cease further payment of funds. The LA agrees to pay back the funds to the FC, as an amount equal to such part of the monies as the local authority has not spent in the financial year(s) that planting activities were carried out.
- 15.4 The FC will not be liable to pay any of the LA's costs or those of any contractor/supplier of the LA.
- 15.5 Expiry or termination of the MoU shall not affect any of the 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.

**For Forestry Commission Use**

<b>SIGNED by: (Signature)</b>	
<b>Name in block capitals:</b>	
<b>FC Representative (Job Title) for and on behalf of the Forestry Commission.</b>	
<b>Date of Signature:</b>	

**For Local Authority Use**

<b>SIGNED by: (Signature)</b>	
<b>Name in block capitals:</b>	
<b>LA Representative (<i>Job Title</i>)</b>	
<b>for and on behalf of:  (Insert name of Lead Local Authority)</b>	
<b>Date of Signature:</b>	

Please send this signed MoU to [LATF@forestrycommission.gov.uk](mailto:LATF@forestrycommission.gov.uk)