

**DATED**

-----

**FINANCIAL CONTRIBUTION AGREEMENT**

between

**STRATFORD ON AVON DISTRICT COUNCIL**

and

**ETTINGTON PARISH COUNCIL**

relating to land at Banbury Road, Ettington (15/01342/FUL)

## **CONTENTS**

---

### **CLAUSE**

1.	Definitions .....	1
2.	Legal Basis.....	3
3.	Purpose of Contribution.....	3
4.	Payment of Contribution.....	3
5.	Use of Contribution.....	4
6.	Accounts and records.....	4
7.	Monitoring and reporting .....	4
8.	Acknowledgment .....	5
9.	Confidentiality.....	5
10.	Freedom of information.....	5
11.	Withholding, suspending and repayment of Contribution .....	6
12.	Limitation of liability .....	6
13.	Warranties.....	7
14.	Duration.....	7
15.	Assignment .....	8
16.	Waiver .....	8
17.	Notices.....	8
18.	Dispute resolution .....	8
29.	No partnership or agency .....	9
20.	Contracts (Rights of Third Parties) Act 1999 .....	9
21.	Governing law.....	9

THIS AGREEMENT is dated

2019

## **PARTIES**

- (1) STRATFORD ON AVON DISTRICT COUNCIL of at Elizabeth House, Church Street, Stratford-upon-Avon, Warwickshire, CV37 6HX (**SDC**).
- (2) ETTINGTON PARISH COUNCIL of PO Box 6271, Stratford upon Avon, CV37 1NX (**Recipient**).

## **BACKGROUND**

- (A) Pursuant to an agreement made on 12 May 2016 under section 106 Town and Country Planning Act 1990 between (1) Gillian Sharrock. (2) Spitfire Properties LLP (3) Carl Reginald Woodwiss and Brendan Douglas Hele (4) Stratford on Avon District Council (5) Warwickshire County Council the owner agreed to pay to SDC financial contributions towards off-site allotments and community gardens and childrens' play area ("the s.106 Agreement")
- (B) SDC has agreed to pay the Contributions to the Recipient to enable the Recipient to carry out the Project.
- (C) This Agreement sets out the terms and conditions on which the Contributions are paid by SDC to the Recipient.
- (D) These terms and conditions are intended to ensure that the Contributions are used for the purpose for which they were paid to SDC pursuant to the s.106 Agreement.

## **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.

**Contribution A:** the sum of TEN THOUSAND EIGHT HUNDRED AND SIXTY POUNDS AND SIXTY SIX PENCE (£10,860.66) to be paid to the Recipient in accordance with this Agreement.

**Contribution B:** the sum of the sum of THIRTY FIVE THOUSAND SEVEN HUNDRED AND EIGHTY ONE POUNDS AND SIX PENCE

(£35,781.06) to be paid to the Recipient in accordance with this Agreement.

**Contributions:** means Contribution A and Contribution B

**End Date:** means 1 February 2024

**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.

**Prohibited Act:** means:

- (a) offering, giving or agreeing to give to any servant of SDC 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 SDC or
  - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with SDC;
- (b) entering into this Agreement or any other contract with the SDC 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 SDC;
- (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 SDC or
- (d) defrauding or attempting to defraud or conspiring to defraud SDC

**Project:** (1) in respect of Contribution A the enhancement and upgrading of existing allotments and community gardens within the parish of Ettington which might reasonably be used by residents of the Development (as defined in the s.106 Agreement) and

(2) in respect of Contribution B the enhancement and upgrading of existing recreation facilities for children within the parish of Ettington which might reasonably be used by residents of the Development (as defined in the s.106 Agreement).

## **2. LEGAL BASIS**

2.1 This Agreement is made pursuant to sections 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.

## **3. PURPOSE OF CONTRIBUTION**

3.1 The Recipient shall use the Contributions only for the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The Contributions shall not be used for any other purpose.

3.2 The Recipient shall not make any change to the Project.

## **4. PAYMENT OF CONTRIBUTION**

4.1 Subject to clause 11, SDC shall pay the Contributions to the Recipient within 10 working days of the date of this Agreement.

4.2 The amount of the Contributions shall not be increased in the event of any overspend by the Recipient in its delivery of the Project.

4.3 The Contributions shall be paid into a bank account in the name of the Recipient which must be an ordinary business bank account. All cheques from the bank account must be signed by at least two individual representatives of the Recipient.

4.4 The Recipient shall not transfer any part of the Contributions to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of SDC.

4.5 The Recipient shall promptly repay to SDC any money incorrectly paid to it either as a result of an administrative error or otherwise.

## **5. USE OF THE CONTRIBUTIONS**

- 5.1 The Contributions shall be used by the Recipient for the delivery of the Project and for no other purpose.
- 5.2 The Recipient shall not spend any part of the Contributions after the End Date
- 5.3 Should any part of the Contributions remain unspent on the next day following the End Date, the Recipient shall ensure that any unspent monies are returned to SDC within 10 working days of the End Date together with any interest that has accrued thereon.

## **6. ACCOUNTS AND RECORDS**

- 6.1 The Contributions shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds.
- 6.2 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Contributions received by it.
- 6.3 The Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Contributions for a period of at least seven years following receipt of any Contributions to which they relate. SDC shall have the right to review, at SDC's reasonable request, the Recipient's accounts and records that relate to the expenditure of the Contributions and shall have the right to take copies of such accounts and records.
- 6.4 The Recipient shall comply and facilitate SDC's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and SDC.

## **7. MONITORING AND REPORTING**

- 7.1 The Recipient shall closely monitor the delivery and success of the Project to ensure that the aims and objectives of the Project are being met and that this Agreement is being adhered to.
- 7.2 The Recipient shall provide SDC with a financial report and an operational report on its use of the Contributions and delivery of the

Project within one month after the end of each financial year or within 2 months following a request from SDC for a financial and operational report where this is prior to the end of a financial year and in such formats as SDC may reasonably require.

7.3 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.

7.4 The Recipient shall on request provide SDC with such further information, explanations and documents as SDC may reasonably require in order for it to establish that the Contributions have been used properly in accordance with this Agreement.

## **8. ACKNOWLEDGMENT**

8.1 The Recipient shall acknowledge the Contributions in its annual report and accounts, including an acknowledgement of SDC as the source of the Contributions.

## **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:

- (a) 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;
- (b) 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

- (c) 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 parties acknowledge that the parties are subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).

## **11. WITHHOLDING, SUSPENDING AND REPAYMENT**

- 11.1 SDC's intention is that the Contributions will be paid to the Recipient in full. However, without prejudice to SDC's other rights and remedies, SDC may at its discretion withhold or suspend payment of the Contributions and/or require repayment of all or part of the Contributions if:

- (a) the Recipient uses the Contributions for purposes other than those for which they have been awarded;
- (b) SDC considers that the Recipient has not made satisfactory progress with the delivery of the Project;
- (c) the Recipient is, in the reasonable opinion of SDC, delivering the Project in a negligent manner;
- (d) the Recipient obtains duplicate funding from a third party for the Project;
- (e) the Recipient provides SDC with any materially misleading or inaccurate information;
- (f) the Recipient commits or committed a Prohibited Act;
- (g) 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 SDC, bring or are likely to bring SDC's name or reputation into disrepute;
- (h) 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.



- 11.2 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 SDC as soon as possible so that, if possible, and without creating any legal obligation, SDC will have an opportunity to provide assistance in resolving the problem or to take action to protect SDC and the Contributions.

## **12. LIMITATION OF LIABILITY**

- 12.1 SDC accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Contributions or from withdrawal of the Contributions. The Recipient shall indemnify and hold harmless SDC, 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.
- 12.2 The Recipient shall indemnify and hold harmless SDC, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from any actions by the person who paid the Contributions to SDC pursuant to the s.106 Agreement to recover the Contributions pursuant to the s106 Agreement.
- 12.3 SDC's liability under this Agreement is limited to the payment of the Contributions.

## **13. WARRANTIES**

The Recipient warrants, undertakes and agrees that:

- (a) it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Contributions);
- (b) it has not committed, nor shall it commit, any Prohibited Act;
- (c) 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 Contributions;

**14. DURATION**

14.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the anniversary of the expiry of the End Date.

14.2 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.

**15. ASSIGNMENT**

The Recipient may not, without the prior written consent of SDC 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 Contributions.

**16. 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.

**17. 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, 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 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.

**18. DISPUTE RESOLUTION**

18.1 In the event of any complaint or dispute (which does not relate to SDC'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 SDC's Head of Planning and

Housing or any other individual nominated by SDC from time to time.

18.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Head of Planning and Housing or other nominated individual, as the case may be, either party may refer the matter to the Executive Director of SDC and the Chair 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 SDC and the Recipient.

18.3 In the absence of agreement under clause 18.2, 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.

**19. NO PARTNERSHIP OR AGENCY**

This Agreement shall not create any partnership or joint venture between SDC 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.

**20. 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.

**21. 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 on the date stated at the beginning of it.

