

[West Northamptonshire Council]

The 78 Derngate Northampton Trust

82 Derngate,  
Northampton NN1 1UH

<Date>

Dear <NAME>

### **Towns Fund - Grant offer 2021/22**

I am pleased to inform you that, subject to the Specific and General Conditions set out in this Grant offer letter, West Northamptonshire Council (the **Council**) will provide you with a Grant from the Towns Fund provided to the Council. The amount of the Grant offer and the Specific Conditions in respect of it are set out in Section 1 to this Grant offer letter. The General Conditions in respect of the Grant offer are set out in Section 2.

#### **1. Specific Conditions**

1.1	The Project:	78, Derngate
1.2	Earliest eligible expenditure date	15 <sup>th</sup> September 2021
1.3	Total grant offered	£400,000
1.4	Eligible costs which the grant may be used to pay for	
	The 78 Derngate project will comprise an extension of the Charles Rennie Mackintosh Museum providing 675m <sup>2</sup> of flexible space and the purchase of an adjoining parcel of land of 575m <sup>2</sup> to provide additional outside space to create a new functional learning garden.	
1.5	Total Grant payable in 2021/22 allocation	£400,000
1.6	SUBSIDY CONTROL	
	<p>This funding is made available subject to the grant recipient demonstrating, to the Council's satisfaction, that the receipt and use of the funding by the grant recipient will not amount to an unlawful State Subsidy.</p> <p>State Subsidy means a financial contribution granted by a public authority or through State resources in any form whatsoever which confers a benefit on the recipient, which shall include, but not be limited to, the definition of a subsidy contained in the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community and the United Kingdom, signed on 30 December 2020, including such amendments as are agreed between the parties from time to time.</p> <p>This will, in the first instance, be based on any legal advice provided to the grant recipient and forwarded to the Council, which the Council will then consider. The grant recipient will remain responsible for compliance with State Subsidy control laws, notwithstanding the Council's acknowledgement of the grant recipient's State Subsidy control compliance proposals.</p>	

	<p>The details in the second column of box 1.6 set out the basis on which the grant recipient considers the funding for the project as defined above either is not a State Subsidy or, if it is a State Subsidy, is not an unlawful State Subsidy and the grant recipient must comply with any conditions that reduce or eliminate the risk that there is a State Subsidy or an unlawful State Subsidy.</p>
	<p>An independent legal opinion has been provided with respects to Subsidy Control. Their comment is detailed below.</p> <p>The sum of £400,000 in total is in part to be spent on a range of activities, ie improving a café and space for third party usage. Insofar as monies are being spent on those aspects of this facility, this can be regarded as aid to an enterprise carrying out commercial activities. On the other hand, monies spent on the core Museum and associated garden itself would fall to be regarded as part of general infrastructure which is not subject to the Subsidy Control Regime.</p> <p>The total sum of £400,000 is over the de minimis level. However, we believe that it is logical to separate out the monies as follows:</p> <ol style="list-style-type: none"> <li>1. (a) for the provision of facilities with a commercial usage, for example commercial floor space and café – this should amount to £41,820 and as such will fall within the “<i>de minimis</i>” exemption; and</li> <li>2. (b) support to the development of the core areas of the Museum and garden itself – these monies £358,180 are not subject to the Subsidy Control Regime as they are in support of the provision of general infrastructure.</li> </ol> <p>Given the above, provided that the £400,000 can properly be divided up between the various aspects of the project, such that the support towards the Museum works are separated from “commercial” areas, we believe that the support is lawfully within the Subsidy Control Regime as created by the TCA.</p>

The Grant will be paid in <X> instalments subject to satisfactory progress being made in meeting the agreed milestones and outputs. A Funding and Milestone Schedule is attached at the Schedule to this letter.

## 2. General Conditions

### 2.1 The Grant offer

2.1.1 The Grant offer may not be used for any expenditure which does not qualify for assistance under the terms and conditions set out by the Council as the funding body.

2.1.2 If the total eligible expenditure is less than the Grant offer, or the Grant is used in breach of paragraph 2.1.1, the Council will reduce the final amount of Grant paid or require repayment of any Grant already paid.

2.1.3 The Grant is only to be spent on the project approved above and on capital items as part of the above Project within the 2021/22 financial year.

## 2.2 **The Project**

2.2.1 The Project should be implemented fairly and without unlawful discrimination and you should have due regard to the Public Sector Equality Duty as set out in the Section 149 of the Equality Act 2010. You must comply with all applicable laws and obtain and maintain and supply and retain copies of all applicable consents, licenses, and approvals in implementing the Project.

2.2.2 The Project should be carried out in accordance with the Project business case proposal submitted to the Council, subject to any variations permitted or required by the Council, and you need to ensure that you have taken account of State Subsidy and appropriate procurement legislation. You will also need to ensure that any necessary approvals are in place. Any changes of greater than 10% of costs, financial profile or outputs must be agreed by the Council. You should notify the Council about any likely changes greater than 10% and then seek agreement as early as practicable.

2.2.3 If you incur any additional expenditure to the original business case in respect of the Project no additional grant will be payable.

## 2.3 **Payment of Grant**

2.3.1 The first instalment of the Grant monies of the total Grant offer for 2021/22 will be released upon receipt of a signed Funding Agreement or achievement of the first milestone (whichever is later). Claims and evidence of the achievement of milestones for release of further payments should be made to the Council as part of reporting to the progress on the Project and in accordance with the Specific Conditions. An audit trail of progress against milestones and financial reporting should be maintained. A governance process to ensure effective project management must be in place and reported to the Council.

2.3.2 Subsequent instalments of Grant monies will be released to you when you have demonstrated that you have fulfilled the milestone and output requirements set out in the Schedule. The evidence will be gathered by the Council using quarterly monitoring forms and approval of the Grant payments will be considered by the Council. The Council reserves the right to seek any further information that it deems necessary to satisfy itself that the funding has been spent appropriately.

2.3.3 The Council can accept no liability in respect of the loss attributable to any delay in the payment of claims or to any suspension, reduction or cancellation of the Grant.

## 2.4 **Milestones and monitoring**

2.4.1 The Grant is dependent on achieving the milestones and outputs by the dates stated in the Schedule and the Business Case for the Project. If these milestones and outputs are not achieved in full, the Council may reduce the final amount of the Grant already paid and/or require repayment of any grant already paid.

- 2.4.2 You may seek to vary milestones or outputs by seeking written consent from the Council. Variation will only be considered where you have not met (or do not believe that you will meet) the milestones or outputs as a result of events or circumstances beyond your reasonable control and you have sought a variation as soon as reasonably practicable. The Council may discuss varying milestones or outputs with you, but any oral consent is indicative only, consent will not formally be given other than in writing and is at the Council's sole discretion.
- 2.4.3 Regular monitoring will be undertaken and you must comply with all requests from the Council and from MHCLG for information regarding the progress of the Project. This will include a Project monitoring form which is currently required every quarter. Failure to return the forms by the deadlines may result in loss of and/or delays to the Grant funding.
- 2.4.4 The monitoring form will record information on expenditure and the progress being made towards delivery of the outputs as well as risk management and communication plans. It will contain a project summary section which may be used to update the Council's website and HM Government websites.
- 2.4.5 You will be required to carry out a full evaluation of the Project once completed and keep records of outputs achieved until the later of the date when the agreed targets have been met and 10 years following completion of the project. You must provide monitoring information as required by the Council and/or MHCLG from time to time during this period.
- 2.4.6 You will be required to retain all original documents and an audit trail relating to the implementation of the Project for a period of 10 years following completion of the Project.
- 2.4.7 Representatives from HM Government and the Council shall have the right to inspect the Project and all information held and you must permit such inspections on the receipt of reasonable notice. You must also provide copies of any documents they require. You should invite the Council for site visit inspections at least once during the duration of the build, as well as on completion.

## 2.5 **Assurance and Compliance**

- 2.5.1 You will be required to confirm that you have complied with State Subsidy control and procurement requirements.
- 2.5.2 If you are required to comply with the Public Contracts Regulations 2015 or the Utilities Contracts Regulations 2016, you must comply with the relevant Regulations and with your internal procedures where procuring goods, services or works which are funded or part funded by a Grant. If you are not required so to comply, you must confirm with the Council the procedures that you must implement for procurement and you must comply with these. The Council also asks that in all procurement you are mindful of using locally based supply chains.
- 2.5.3 The Council shall not be required to pay part or all of the Grant and may require you to repay part or all of it, together with any interest at the rate required by law, if the

Council considers that payment of the Grant would be, was or is in breach of any law of the United Kingdom limiting State Subsidy including the European Union (Future Relationship) Act 2020.

## **2.6 Freedom of information and confidentiality**

- 2.6.1 Nothing in the Grant offer or this Grant offer letter shall prevent the Council from disclosing any information which the Council is required (in the Council's opinion) to disclose under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (as each has been amended) and/or under any other legal and/or regulatory requirement whether or not existing at the date of this Grant offer.
- 2.6.2 You must provide the Council with any assistance it reasonably requires if it receives a request under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (as each has been amended).
- 2.6.3 Each party shall keep confidential all confidential information which it has obtained as a result of your application for a Grant. This will not apply to confidential information which: is lawfully otherwise obtained; is already in the recipient's possession; is in the public domain other than as a breach of this paragraph or is required to be disclosed by law.

## **2.7 Publicity**

- 2.7.1 The Council will publish the amount of Grant offered with the name of the recipient and a brief description of the Project after the acceptance of this Grant offer letter. This will be available on the Council's website and you will provide regular written and photographic evidence to ensure that the Council's website remains up to date on your project progress. HM Government may also publish information about the Project.
- 2.7.2 If you issue any publicity or make any announcement regarding the Project you will ensure that the assistance of the Towns Fund and the Council is fully acknowledged. You must co-operate with any publicity arranged by the Council. You will supply updated communications plans with monitoring forms.
- 2.7.3 Any hoardings or display boards will acknowledge the Towns Fund monies and contain a Council logo in equal prominence and in full colour.
- 2.7.4 Invites will be sent to the Council for any events or openings for the Project with sufficient notice to attend. Press releases must be shared with the Council for events. Any social media about the project must acknowledge the Towns Fund and the Council.
- 2.7.5 In all publicity, you must follow the Council's communications and branding protocols, policies and procedures and all media must be run past the Council's communication lead – Craig Forsyth, [craig.forsyth@westnorthants.gov.uk](mailto:craig.forsyth@westnorthants.gov.uk)

## **2.8 Withholding Payment or Requirement for Repayment of Grant**

2.8.1 Without limiting the Council's other rights and remedies, this paragraph sets out circumstances in which the Council may decline to pay all or part of the Grant and/or may require repayment of part or the entire Grant:-

2.8.1.1 assistance for the Project is received from another institution, government department, local authority or charitable fund unless this assistance was taken into account in making this Grant offer,

2.8.1.2 in the Council's opinion progress on the Project including reaching the milestones or outputs is not satisfactory, though the Council may (but is not required to) take into account mitigating circumstances,

2.8.1.3 any information provided on the application for in supporting documentation or subsequent correspondence is found to be incorrect or incomplete,

2.8.1.4 you are in breach of any term of this Grant offer letter or

2.8.1.5 any financial mismanagement has been identified following investigation.

## 2.9 **Amendments to this Grant offer letter and assignment**

2.9.1 No amendment or variation to this Grant offer letter will be effective unless approved by the Council in writing and then agreed as a contract variation to this document.

2.9.2 The Council may assign and/or novate this Grant agreement or any part of it without your consent.

2.9.3 You may not assign or novate this Grant agreement or any part of it without the Council's prior consent in writing.

## 2.10 **Disposal of assets**

2.10.1 You must not dispose of the whole or part of your interest in any capital assets funded or part funded by the Grant or change their use within [5] years of the completion of the Project without first obtaining the consent of the Council (at its sole discretion). Any consent may be conditional.

## 2.11 **Acceptance**

2.11.1 This Grant offer can only be accepted by an authorised signatory signing the enclosed copy letter and returning a PDF copy by e-mail to Deven Efde, [deven.efde@westnorthants.gov.uk](mailto:deven.efde@westnorthants.gov.uk) within two weeks of this Grant offer letter. If the acceptance is not received within the indicated timescale, the Grant offer will be deemed to have lapsed and the Grant offer will be deemed to be withdrawn.

2.11.2 No payments will be made under this Grant offer until the Council has received written acceptance of it.

If you have any queries regarding Towns Fund and your Project please contact Deven Efde, [deven.efde@westnorthants.gov.uk](mailto:deven.efde@westnorthants.gov.uk)

Yours sincerely

[ ]

I confirm that I accept the Grant offer letter.

Authorised signatory.....

Name.....

Position.....

Organisation.....

Date.....

## Annex 1

Schedule 1	Date & estimated Payment amount	Activity to be completed
Milestone 1	By 01/10/21 £150,000	Purchase of adjoining parcel of land and the pre-order of structural glass
Milestone 2	By 31/12/2021 £110,000	Completion of steel frame of extension
Milestone 3	By 28/02/2022 £100,000	Glass and roof completed
Milestone 4	By 30/06/2022 £40,000	Practical completion

Schedule 2 – Outputs	Numbers to be achieved	By when
Flexible commercial floor space to be used for the shop, restaurant	675m <sup>2</sup>	2022
Improved independent disabled access		2022
Additional landscaped garden to be used by schools and for corporate hire	575m <sup>2</sup>	2022
Annual increase in visitor numbers	13% (additional 1000 museum visitors, 1250 Dining Room customers and 500 Gallery visits per annum)	2023
Safeguarded jobs	1.5	
New direct job roles created	2	
Indirect construction jobs	20	2022
Combined revenue increase	£54K per annum based on an average £20 spend per head at today's prices	
Businesses assisted	91	