

At Luton Borough Council At SEMLEP

Roy Baker

Judith Barker

01582 546320

01234 436100

REF: GBF

Kevin Langley
Interim Head of Major Projects and Regeneration
West Northamptonshire Council
The Guildhall
St Giles Square
Northampton
NN1 1DE

15th September 2021

Dear Kevin

Getting Building Fund – Revised 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, Luton Borough Council (“the Council”) acting as the Accountable Body for the South East Midlands Local Enterprise Partnership (“SEMLEP”) will provide you with a Grant from the Getting Building Fund provided to the Council. The amount of the Grant offer and the Specific Conditions in respect thereof 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. SEMLEP and the Getting Building Fund are subject to the SEMLEP assurance framework which covers all SEMLEP decision making and financial management, as well as the accountable body role of Luton Borough Council.

1. Specific Conditions

1.1	The Project:	NN Contemporary Gallery Relocation
1.2	Earliest eligible expenditure date	1 st April 2021
1.3	Total Grant offered	£1,150,000
1.4	Eligible Costs which the Grant may be used to pay for	Work to relocate and refurbish the NN Contemporary Gallery
1.5	Total Grant payable in 2021/22 allocation	£1,150,000
1.6	SUBSIDY CONTROL	
	This funding is made available subject to the grant recipient demonstrating, to SEMLEP’s satisfaction, that the receipt and use of the funding by the grant recipient will not amount to an unlawful subsidy. This will, in the first instance, be based on legal advice provided to the grant recipient and forwarded to SEMLEP, which SEMLEP will then consider. The grant	There is no economic benefit to the Council and therefore no subsidy. This is based on there being a 25 year lease to NN Contemporary. To the extent that the Gallery is being used by NN Contemporary for artistic and

	<p>recipient will remain responsible for compliance with subsidy control laws, notwithstanding SEMLEP’s acknowledgement of the grant recipient’s subsidy control compliance proposals.</p> <p>The details in box 1.6 set out the basis on which the grant recipient considers the funding for the project as defined above either is not an subsidy or, if it is a subsidy, is not an unlawful subsidy and the grant recipient must comply with any conditions that reduce or eliminate the risk that there is a subsidy or an unlawful subsidy.</p>	<p>cultural uses, these are non economic activities and thus there is no subsidy as a result of the grant or, if these do amount to economic activities, there is no unlawful subsidy on the basis that funding is compliant with the UK-EU TCA principles, not least because the funding would have been compliant with Article 53 of GBER under the State aid rules.</p> <p>Where NN Contemporary lets space to sub-tenants, it will ensure that there is no unlawful subsidy to those sub-tenants by letting space at market rates or, if the space is let at below market rates, by ensuring that the space is used for non-economic activities, the “de minimis” rules are complied with or the subsidy is compliant with the UK-EU TCA principles (or, if applicable, any new domestic subsidy control regime that has been implemented).</p>
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The Grant will be paid in 2 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 SEMLEP 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 Growth Fund 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, licences 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 SEMLEP and you need to ensure that you have taken account of State Aid 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 Growth Funds Task Group at SEMLEP. You should notify SEMLEP 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 but not before the 1st of April 2021. Claims and evidence of the achievement of milestones for release of further payment should be made to SEMLEP 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 SEMLEP.
- 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 SEMLEP for the Programme Management Board using quarterly monitoring forms. Approval of the Grant payments will be made by the Growth Funds Task Group. 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 Proforma and Business Case. 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 SEMLEP and 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 of circumstances beyond your reasonable control and you have sought a variation as soon as reasonably practicable. SEMLEP may discuss varying milestones or outputs with you, but any oral consent is indicative only, and consent will not formally be given other than in writing.

- 2.4.3 Regular monitoring will be undertaken and you must comply with all requests from SEMLEP 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 LGF page of the SEMLEP website.
- 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 from time to time during this period. At present Government has indicated that output information will be required until 2024/25 as a minimum.
- 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, SEMLEP 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 SEMLEP for site visit inspections at least once per year.

2.5 **Assurance and Compliance**

- 2.5.1 You will be required to confirm that you have complied with State Aid 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 SEMLEP the procedures that you must implement for procurement and you must comply with these. SEMLEP also ask that in all procurement you are mindful of using local SEMLEP 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 interest at the rate required by law, if the Council considers that payment of the Grant would be, was or is in breach of the laws embodied in Articles 107-109 of the Treaty on the Functioning of the European Union, as amended (State aid laws) and/or any law of the United Kingdom limiting State Subsidy including the European Union (Future Relationship) Act 2020 (to the extent that this applies to the Grant). 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.

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 any other requirements 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; is required to be disclosed by law; or is transferred between the Council and SEMLEP and vice-versa.

2.7 **Publicity**

- 2.7.1 SEMLEP 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 SEMLEP's website and you will provide regular written and photographic evidence to ensure that the SEMLEP website remains up to date on your project progress.
- 2.7.2 If you issue any publicity or make any announcement regarding the Project you will ensure that the assistance of the Getting Building Fund and SEMLEP is fully acknowledged. The involvement of SEMLEP should also be required and you are required to co-operate with any publicity arranged by SEMLEP. You will supply updated communications plans with monitoring forms.
- 2.7.3 Any hoardings or display boards will acknowledge the Getting Building Fund monies and contain a SEMLEP logo in equal prominence and in full colour.
- 2.7.4 Invites will be sent to SEMLEP for any events or openings for the project with sufficient notice to attend. Press releases will be shared with SEMLEP for events. Any social media about the project will acknowledge Getting Building Fund and SEMLEP.
- 2.7.5 In all publicity you will follow the guidelines provided in the SEMLEP Communications protocol: <https://www.semlep.com/resource-hub/marketing-materials/> .

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

- 2.8.1 Without limiting SEMLEP/the Council's other rights and remedies, this paragraph sets out circumstances in which SEMLEP and/or 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, EU, government department, local authority or charitable fund unless this assistance was taken into account in making this Grant offer,

2.8.1.2 in SEMLEP's opinion progress on the Project including reaching the milestones or outputs is not satisfactory, though SEMLEP 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.

This would only occur with approval of the Growth Funds Task Group and Board.

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 Growth Funds Task Group 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 and SEMLEP (at their 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 roy.baker@luton.gov.uk within one calendar month 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 the written acceptance thereof.

If you have any queries regarding Getting Building Fund and your project please contact Judith Barker at SEMLEP on 01234 436100.

Yours sincerely



Darren Lambert
Finance Business Partner (for and on behalf of the Section 151 Officer)

I confirm that I accept the Grant offer letter.

Authorised signatory.....

Name.....

Position.....

Organisation.....

Date.....

Annex 1

Schedule 1	Date & Payment amount	Activity to be completed
Milestone 1	By 31 October 2021 £1,000,000	a) Works commenced b) Heads of terms for lease with NN Contemporary agreed c) Confirmed planning position d) Updated partnership agreement signed off
Milestone 2	By 31 January 2022 £150,000	a) 1 st Fix complete b) Construction Phase Programme confirming Practical Completion prior to the end of Q1 2022/23

Schedule 2 Outputs	Numbers to be achieved	By when
Supported cultural organisations	18	March 2025
FTE jobs	22.1	March 2025
Construction jobs	36	March 2022
Area of new cultural and educational space	833sqm	March 2022