

DATED

2017

GRANT AGREEMENT

between

ESSEX COUNTY COUNCIL

and

TENDRING COUNCIL

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THIS DEED is dated

2017

PARTIES

- (1) ESSEX COUNTY COUNCIL, whose principal address is at County Hall, Market Road, Chelmsford, Essex CM1 1QH (**Funder**).
- (2) TENDRING COUNCIL, whose principal address is at Tendring District Council, Town Hall, Station Road, Clacton-on-Sea, Essex, CO15 1SE (**Recipient**).

Either of which shall be referred to as a "Party" or the two as "Parties"

BACKGROUND

The Funder wishes to

- (A) Part fund a fully inclusive play space to be located at bath House Meadow, Walton on the Naze, Essex as per the Tendring Council procurement exercise

The Recipient wishes to fund to the sum of Eighty Thousand Pounds (£80,000.00) a fully inclusive play space to be located at Bath House Meadow, Walton on the Naze (**the Facility**).

- (B) The Funder has agreed to pay the Grant to the Recipient to assist it in carrying out the Project.
- (C) This Agreement sets out the terms and conditions on which the Grant is made by the Funder to the Recipient.
- (D) These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.

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.

Commencement Date: December 2017

Conditions Precedent: any one of such pre-conditions that must be met by the Parties as set out in clause 3 of this Agreement.

Grant: the sum of One Hundred Thousand Pounds (£100,000.00) to be paid by the Funder to the Recipient in accordance with this Agreement.

Grant Period: the period for which the Grant is awarded starting on the Commencement Date and ending on 31st March 2018

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.

Necessary Consents: means planning permissions and all other consents, licences, permissions, and approvals whether of a public or private nature which shall be relevant in the context of the Project including all necessary approvals required for the land.

Prohibited Act: means:

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

Project: the project described in Schedule 1.

Project Manager: the individual who has been nominated to represent the Funder for the purposes of this Agreement.

2. PURPOSE OF GRANT

2.1 The Recipient shall use the Grant only for the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The Grant shall not be used for any other purpose without the prior written agreement of the Funder.

2.2 The Recipient shall not make any significant change to the Project without the Funder's prior written agreement.

3. CONDITIONS PRECEDENT

3.1 In addition to clause 4, the rights and obligations of each of the Parties to this Agreement are conditional on

- (a) The Recipient obtaining the Necessary Consents;
- (b) The Recipient taking all reasonable measures to ensure that the Facility shall remain in place for a minimum period of Ten years following the date of this Agreement;
- (c) The Recipient warranting to be responsible for all ongoing costs associated with the Project; including cleaning and maintenance
- (d) The Recipient warranting to be responsible for all ongoing cleaning and maintenance costs for the lifetime of this agreement

4. PAYMENT OF GRANT

4.1 Subject to clause 3, the Funder shall pay the Grant to the in accordance with Schedule 2,.

4.2 No Grant shall be paid unless and until the Funder is satisfied that such payment will be used for proper expenditure in the delivery of the Project.

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

- 4.4 The Recipient shall promptly repay to the Funder any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Grant monies have been paid in error before all conditions attaching to the Grant have been complied with by the Recipient.

5. USE OF GRANT

- 5.1 The Grant shall be used by the Recipient for the delivery of the Project The Recipient shall not use the Grant to:

- (a) purchase buildings or land; or
- (b) pay for any expenditure commitments of the Recipient entered into before the Commencement Date,

unless this has been approved in writing by the Funder.

- 5.2 The Recipient shall not spend any part of the Grant on the delivery of the Project after the Grant Period.

- 5.3 Should any part of the Grant remain unspent at the end of the Grant Period, the Recipient shall ensure that any unspent monies are returned to the Funder.

6. ACCOUNTS AND RECORDS

- 6.1 The Grant 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 Grant monies 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 Grant for a period of at least six years following receipt of any Grant monies to which they relate. The Funder shall have the right to review, at the Funder's reasonable request, the Recipient's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.

- 6.4 The Recipient shall provide the Funder with a copy of its annual accounts within six months (or such lesser period as the Funder may reasonably require) of the end of the relevant financial year in respect of each year in which the Grant is paid.

6.5 The Recipient shall comply and facilitate the Funder's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Funder.

7. MONITORING AND REPORTING

7.1 The Recipient shall closely monitor the delivery and success of the Project throughout the Grant Period 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 on request provide the Funder with such information, explanations and documents as the Funder may reasonably require in order for it to establish that the Grant has been used properly in accordance with this Agreement.

7.3 The Recipient shall permit any person authorised by the Funder such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.

7.4 The Recipient shall provide the Funder with a final report on completion of the Grant Period which shall confirm whether the Project has been successfully and properly completed.

8. ACKNOWLEDGMENT AND PUBLICITY

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

8.2 The Recipient shall not publish any material referring to the Project or the Funder without the prior written agreement of the Funder. The Recipient shall acknowledge the support of the Funder in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by the Funder) shall include the Funder's name and logo (or any future name or logo adopted by the Funder) using the templates provided by the Funder from time to time.

8.3 In using the Funder's name and logo, the Recipient shall comply with all reasonable branding guidelines issued by the Funder from time to time.

- 8.4 The Recipient agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Funder.
- 8.5 The Funder may acknowledge the Recipient's involvement in the Project as appropriate without prior notice.
- 8.6 The Recipient shall comply with all reasonable requests from the Funder to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Funder in its promotional and fundraising activities relating to the Project.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Funder and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Funder or the Recipient before the Commencement Date or developed by either party during the Grant Period, shall remain the property of that party.
- 9.2 Where the Funder has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Funder.

10. CONFIDENTIALITY

- 10.1 Subject to clause 11 (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.
- 10.2 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.

11. FREEDOM OF INFORMATION

- 11.1 The Parties acknowledge that they are both subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (EIR) and shall assist and co-operate with each other (at their own expense) to enable the Parties to comply with these information disclosure requirements.
- 11.2 The Parties shall:
- (a) transfer the request for information to the other Party as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
 - (b) provide the other Party with a copy of all information in its possession or power in the form that the other Party requires within five working days (or such other period as the Parties may specify) of the other Party requesting that information; and
 - (c) provide all necessary assistance as reasonably requested by the other Party for a request for information to be responded to within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 11.3 The Party holding the requested information shall be responsible for determining at its absolute discretion whether the information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;
 - (b) is to be disclosed in response to a request for information.
- 11.4 It is acknowledged that both Funder and Recipient have duties under the FOIA and EIR and it is agreed that each Party will keep the other fully informed of any requests received and information to be provided, including the consultation requirements through the discharge of its functions under the FOIA or EIR.

- 11.5 The Parties shall both ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and either Party may inspect such records as requested from time to time.

12. DATA PROTECTION

The Recipient shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Act 1998 (**DPA**) and both Parties will duly observe all their obligations under the DPA, which arise in connection with the Agreement.

13. WITHHOLDING, SUSPENDING AND REPAYMENT OF GRANT

- 13.1 The Funder's intention is that the Grant will be paid to the Recipient in full. However, without prejudice to the Funder's other rights and remedies, the Funder may at its discretion withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant if:
- (a) the Recipient uses the Grant for purposes other than those for which they have been awarded;
 - (b) the delivery of the Project does not start within [6 months] of the Commencement Date and the Recipient has failed to provide the Funder with a reasonable explanation for the delay;
 - (c) the Funder considers that the Recipient has not made satisfactory progress with the delivery of the Project;
 - (d) the Recipient is, in the reasonable opinion of the Funder, delivering the Project in a negligent manner;
 - (e) the Recipient obtains funding from a third party which, in the reasonable opinion of the Funder, undertakes activities that are likely to bring the reputation of the Project or the Funder into disrepute;
 - (f) the Recipient provides the Funder with any materially misleading or inaccurate information;
 - (g) the Recipient commits or committed a Prohibited Act;
 - (h) any elected member, employee or volunteer of the Recipient who is directly involved with the Project 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 the Funder, bring or are likely to bring the Funder's name or reputation into disrepute; or
 - (i) 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.

- 13.2 Wherever under the Agreement any sum of money is recoverable from or payable by the Recipient (including any sum that the Recipient is liable to pay to the Funder in respect of any breach of the Agreement), the Funder may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Recipient under the Agreement or under any other agreement or contract with the Funder.
- 13.3 The Recipient shall make any payments due to the Funder without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 13.4 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 the Funder as soon as possible so that, if possible, and without creating any legal obligation, the Funder will have an opportunity to provide assistance in resolving the problem or to take action to protect the Funder and the Grant monies.

14. ANTI-DISCRIMINATION

- 14.1 The Recipient shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.
- 14.2 The Recipient shall take all reasonable steps to secure the observance of clause 14.1 by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

15. LIMITATION OF LIABILITY

- 15.1 The Funder accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Grant or from withdrawal of the Grant. The Recipient shall indemnify and hold harmless the Funder, 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.
- 15.2 Subject to clause ~~15.146.1~~, the Funder's liability under this Agreement is limited to the payment of the Grant.

16. 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 Grant);
- (b) it has not committed, nor shall it commit, any Prohibited Act;
- (c) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Funder immediately of any significant departure from such legislation, codes or recommendations;
- (d) it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
- (e) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (f) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (g) all financial and other information concerning the Recipient which has been disclosed to the Funder is to the best of its knowledge and belief, true and accurate;
- (h) 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 Grant;
- (i) it is not aware of anything in its own affairs, which it has not disclosed to the Funder or any of the Funder's advisers, which might reasonably have influenced the decision of the Funder to make the Grant on the terms contained in this Agreement; and
- (j) since the date of its last accounts there has been no material change in its financial position or prospects
- (k) it shall be responsible for all on-going cleaning and maintenance costs arising in connection with the Project.

17. INSURANCE

- 17.1 The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's performance of the Agreement,

including death or personal injury, loss of or damage to property or any other loss (the **Required Insurances**).

- 17.2 The Required Insurances referred to above include (but are not limited to):
- (a) public liability insurance with a limit of indemnity of not less than [ten] million pounds [(£10,000,000)] in relation to any one claim or series of claims arising from the Service; and
 - (b) employer's liability insurance with a limit of indemnity of not less than [five] million pounds [(£5,000,000)] in relation to any one claim or series of claims arising from the Service.

The Recipient shall (on request) supply to the Funder a copy of such insurance policies and evidence that the relevant premiums have been paid.

18. DURATION

- 18.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the anniversary of expiry of the Grant Period or for so long as any Grant monies remain unspent by the Recipient, whichever is longer.
- 18.2 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.

19. TERMINATION

The Funder may terminate this Agreement and any Grant payments on giving the Recipient three months' written notice should it be required to do so by financial restraints or for any other reason.

20. ASSIGNMENT

The Recipient may not, without the prior written consent of the Funder, 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 Grant.

21. 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.

22. NOTICES

- 22.1 The Recipient does not accept service of Notices by email. Notices must be personally delivered or mailed (first class postage prepaid) to the Recipient's address.

- 22.2 All other notices and communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, 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 or if e-mailed 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.

23. DISPUTE RESOLUTION

- 23.1 In the event of any complaint or dispute (which does not relate to the Funder'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 the Project Manager or any other individual nominated by the Funder from time to time.

- 23.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Project Manager or other nominated individual, as the case may be, either party may refer the matter to the Chief Executive of the Funder and the Chief Executive 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 the Funder and the Recipient.

- 23.3 In the absence of agreement under clause [23.224.2](#), 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.

24. NO PARTNERSHIP OR AGENCY

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

25. 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.

26. 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 document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 The Project

[
Part fund a fully inclusive play space at Bath House Meadow, Walton on the Naze as per attached tender document



Inclusive Play Area
Walton (2) (2).doc

Destination, Inclusive Play Area, Walton-on-the-Naze

Project timeline(s)

1. Project tendered – deadline for submissions 18 April 2017
2. Tenders evaluated and successful bidder notified May 2017
3. Requirement for re design and re location of main equipment complete July 12th 2017
4. Planning Application submitted 14 July 2017
5. ECC to provide agreement and confirm share of project cost
6. TDC agreed s106 contribution of £80,000 subject to ECC confirmation of £100,000
7. TDC to submit report to seek approval for heads of terms for the Funding Agreement with ECC and to confirm s106 money for project. - **The report is a Portfolio Holder report and the Portfolio Holder has already signed a concurrence for use of the s106 money under a separate procedure – therefore this will be complete as soon as we have agreement delivered for consideration.**
8. Planning hearing scheduled for 6th October 2017.
9. Subject to above, anticipated construction commence November 2017 with completion of destination play area within 6 to 8 weeks.
10. Landscaping additions to be added in Spring 2018.

Schedule 2 Payment Schedule

Amount of Grant Payable	Date of Payment
£100,000.00	October 2017

Schedule 3 Breakdown of Grant

Comment [.1]: Would suggest removing this section

Comment [np2]: Agreed

Item of Expenditure	Budget (in UK Sterling)
<i>Not required</i>	

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The Common Seal of **ESSEX COUNTY COUNCIL** was hereunto affixed in the presence of:

.....
Attesting Officer

The **COMMON SEAL of TENDRING COUNCIL** was hereunto affixed in the presence of:

.....
Proper Officer