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(1) COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

(2) ADVANTAGE WEST MIDLANDS

(3) ESG HEREFORDSHIRE LIMITED

JOINT VENTURE AGREEMENT

**relating to
the Edgar Street Grid Redevelopment, Hereford**



Pinsent Masons

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THIS AGREEMENT is made on

day of

2008

PARTIES:-

- (1) **COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of "Brockington", 35 Hafod Road, Hereford (the "**Council**");
- (2) **ADVANTAGE WEST MIDLANDS** of 3 Priestley Wharf, Holt Street, Birmingham, B7 4BN (the "**Agency**"); and
- (3) **ESG HEREFORDSHIRE LIMITED** (Company No: 05479236) whose registered office is at 4 Blackfriars Street, Hereford, HR4 9HS (the "**Company**").

WHEREAS:-

- (A) Capitalised terms and expressions used in this recital shall have the meaning attributed to them in Clause 1.1.
- (B) The Parties have agreed to co-operate to facilitate the redevelopment of the ESG Area (as defined below). The Council will carry out land assembly, invest its existing landholdings into the Project (as defined below) and provide funding for the Project; AWM will provide funding for the Project; and the Company will co-ordinate, promote and facilitate the achievement of the Project objectives.
- (C) The Company is a private company limited by guarantee whose primary objective is to deliver the redevelopment of the ESG Area.
- (D) The ESG Area extends to approximately 40 hectares of land to the north of Hereford City Centre. The intention is for the ESG Area to be developed in phases. Any land needed for the Project (and not already owned by the Council) will be assembled by private treaty acquisition, conditional agreements and if required, by compulsory purchase (subject to necessary consents and approvals being obtained by the Council).
- (E) It is envisaged that development will take place under separate development agreements for each phase. The Company will be responsible for leading the process of selecting developers and negotiating development agreements.
- (F) The objectives of the Parties, in relation to the ESG Area are:-
 1. to procure a high quality development of the ESG Area to provide a dynamic and successful mixed use scheme capable of sustaining the economic future of Hereford, such development to be in accordance with:-
 - (a) the Master Plan;
 - (b) the relevant Unitary Development Plan and any subsequent planning document;
 - (c) the emerging Supplementary Planning Document;
 - (d) the Delivery Plan (which will be reviewed annually by the Company); and
 - (e) the agreed milestone dates to be identified in the Delivery Plan as reviewed from time to time;
 2. to deliver the strategy for the ESG Area as set out in the Master Plan and the Delivery Plan (as these are revised from time to time) and to secure contributions to public realm, infrastructure, the "civic" and "retail" quarters, the Urban Village

and open space within the ESG Area (and for such other projects as are identified in the Master Plan) working in conjunction with the local planning authority;

3. to identify and agree a time for the provision of key infrastructure for the Project;
4. to procure that the redevelopment is delivered in accordance with the agreed milestones identified from time to time in the Delivery Plan;
5. to tender for and select development partners for the redevelopment of each phase and to negotiate development agreements with chosen developers. The development agreements will contain obligations on the developers to carry out a specified development within an agreed time frame;
6. to obtain market value for development activity; and
7. to recognise a commitment for receipts from disposals and/or development to be re-invested in to the Project, and to obtain and distribute a financial return to reflect the Council and the Agency's financial investment in the Project.

(G) It is intended that the Council and the Agency will enter into a separate CPO Indemnity Agreement (as defined below).

IT IS AGREED THAT:

1. DEFINITIONS AND INTERPRETATION

1.1 Unless the Context otherwise requires the following expressions shall have the following meanings in the Agreement:-

"Acquisition" means any purchase of a freehold interest, or of a leasehold interest, option or right of pre-emption of any part of the ESG Area

"Agency Expenditure Statement" means a financial statement prepared by the Agency showing a running balance of Project Expenditure actually incurred by the Agency from time to time produced on an annual basis together with a final statement after the completion of all the Disposals and after all of the Agency's Project Expenditure has been incurred

"Agency Funding" means the funding to be made available by the Agency to the Council under this agreement, which funding together with any other funding advanced by the Agency in relation to the Project (including under any Existing Funding Agreement or under the CPO Indemnity Agreement) shall not exceed the Agency Project Maximum Sum

"Agency Funded Property" means:-

- (a) any Properties;
- (b) any of the land referred to at clause 6.2,

acquired by the Council using funding from the Agency and **"Agency Funded Properties"** shall be construed accordingly

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| "Agency Investment" | means the Agency's total contribution to the Project as calculated in Schedule 7 |
| "Agency Project Maximum Sum" | means (subject to the principle in clause 4.2) the sum of twenty million pounds (£20,000,000) representing the Agency's current maximum outline funding approval for the Project and which sum for the avoidance of doubt includes all monies advanced or to be advanced by the Agency whether under this Agreement, the CPO Indemnity Agreement or under the Existing Funding Agreements and any other agreements entered into between the Council and the Agency in connection with the Project |
| "Agency's Solicitors" | means Pinsent Masons LLP of 3 Colmore Circus, Birmingham B4 6BH (ref: JZG/601912.07015) |
| "Application" | means an application for Agency Funding under this Agreement to be made by the Council to the Agency in the form reasonably required by the Agency and each Application shall relate to Qualifying Expenditure |
| "Audit Requirements" | means the audit requirements of the Agency, details of which are annexed at Appendix 3 and any additional audit monitoring and reporting requirements for grant recipients notified by the Agency to Council from time to time |
| "Authority" | includes any statutory, public, local, regulatory or other competent authority, the fire officer and building regulations control office and any court of law or government department |
| "Business Plan" | means the delivery plan produced by the Company for delivering the Objectives the current draft version being dated February 2008 and titled "ESG Hereford Delivery Plan" |
| "Cattle Market" | means the land within the ESG Area shown edged blue on the Plan |
| "Company's Board" | means the board of directors of the Company |
| "Claim Form" | means a claim form, a copy of which is annexed at Appendix 4, or such revised claim form as may be notified by the Agency to Council from time to time |
| "Company Funding" | means funding provided to the Company by the Council and AWM to enable it to carry out its obligations under this Agreement |
| "Compulsory Purchase Order" or "CPO" | means a compulsory purchase order (or orders) in respect of the acquisition of third party land or other interests within the ESG Area and which need to be acquired in order to fulfil the Objectives |
| "Confidential Information" | means all information in respect of the Agency's business including information communicated |

verbally and including but not limited to the following any ideas; business methods; finance; prices, business, financial marketing, development or manpower plans, customer lists or details, computer systems and software; products or services, including but not limited to know-how provided or obtained by the Agency and information concerning the Agency's relationship with actual or potential clients, customers or suppliers and the needs and requirements of the Agency and/or such persons and all records, reports, documents, papers and other material whatsoever originated or generated pursuant to this Agreement

"Consents"

means approval consent exemption licence permission or registration by of or from any governmental or other authority or any other person including but not limited to any adjoining owner or from the local planning authority in relation to the Works or any part of them or otherwise required to enable the same to be lawfully carried out and maintained

"Consultants"

means such consultants who shall be appointed by the Council and/or the Company and agreed by the Agency in connection with:-

- (a) Site Assembly;
- (b) the undertaking of surveys and investigations required in connection with the Project; and
- (c) the design, inspection, supervision and/or the carrying out of the Works,

and any other consultants required to be employed in connection with the Project and approved from time to time by the Agency

"Council Expenditure Statement"

means a financial statement prepared by the Council showing a running balance of Project Expenditure actually incurred by Council from time to time produced on an annual basis together with a final statement after the completion of all Disposals and after all of the Council's Project Expenditure has been incurred

"Council Investment"

means the Council's total contribution to the Project as calculated in Schedule 7

"Council Land"

means:-

- (a) all those parcels of land forming part of the ESG Area, which are in the freehold or leasehold ownership of the Council as at the date of this Agreement but excluding the Agency Funded Property; and

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| | (b) the land referred to at clause 6.2(b) |
| "CPO Indemnity Agreement" | means the Compulsory Purchase Order Indemnity Agreement to be agreed between the Council and the Agency pursuant to which the Agency will provide funding for land acquisitions and related costs connected with the Compulsory Purchase Order and which is subject to the Agency's extant approvals |
| "Delivery Plan" | means the delivery plan for the Project prepared by the Company and agreed by the Council and the Agency updated annually in accordance with the terms of this Agreement |
| "Developer" | means the developer(s) selected by the Company, the Council and AWM in accordance with the terms of this Agreement to procure the carrying out of the relevant Development |
| "Development" | means the development by a Developer of a Development Phase in accordance with:- <ul style="list-style-type: none"> (a) this agreement; and (b) the Project Documents |
| "Development Agreement" | means a development agreement to Dispose of a Development Phase and to undertake the agreed Development thereon to be entered into by the Company and the Council and the Agency (if required) as appropriate with the Developer and containing development obligations on the part of the Developer in respect of such Development Phase |
| "Development Phase" | means each phase of the ESG Area which is to be the subject of a Disposal to a Developer and which phases in accordance with the Project Documents are currently the following:- <ul style="list-style-type: none"> (a) the Retail Quarter; (b) the Urban Village; and (c) the Civic Quarter, as each of these areas are identified in the Project Documents |
| "Development Team" | means all:- <ul style="list-style-type: none"> (a) contractors (including the Works Contractor); (b) consultants; and (c) sub-contractors having design responsibility for any part of the Works or |

carrying out a substantial part of the Works

who are appointed or are to be appointed by any party (including the Council) in relation to the Works and includes any replacement of any such contractor(s), consultants or sub-contractors

"Disposal"

means:-

- (a) the freehold sale; or
- (b) the grant of a long leasehold interest

to a Developer in respect of any Development Phase and **"Dispose"** shall be construed accordingly

"Distribution Date"

means all of the following dates:-

- (a) the date 12 months after practical completion of the development of a Development Phase (unless waived by the Council and the Agency);
- (b) the last day of the Project Period; and
- (c) any other date the Council and the Agency agree will be a "Distribution Date"

"Enactment"

means any statute statutory instrument or byelaw or any EC or other supranational legislation or decrees having force in the United Kingdom and any rules regulations instruments orders schemes codes of practice or directions made or issued under or deriving validity from any Enactment

"ESG Area"

means an area of approximately 40 hectares of land to the north of Hereford City Centre shown edged red on the Plan (subject to clause 6)

"Event of Default"

means any party fails materially or substantially to perform and observe its obligations under this Agreement

"Existing Funding Agreements"

means the following agreements:-

- (a) the Agreement dated 28 February 2005 made between the Agency (1) and the Council (2) in relation to land at Station Approach, Hereford;
- (b) the Agreement dated 30 November 2006 made between the Agency (1) and the Council (2) in relation to land at the Edgar Street Grid Site, Hereford; and
- (c) the preliminary expenditure contract made between the Council and the Agency dated

2 November 2007

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| "Expert Determination" | means the procedure for the resolution of disputes between the Parties set out in Clause 16 |
| "Expert" | means the person appointed to deal with any matters required to be dealt with by Expert Determination |
| "Market Value " | means the market value as defined in the Royal Institution of Chartered Surveyors Appraisal and Valuation statement 5 th Edition (as amended or replaced from time to time by the RICS during the period in which this agreement is current) |
| "Master Plan" | means the master plan for the ESG Area produced by Urban Initiatives and dated July 2007 and as amended from time to time |
| "Maximum Sum" | means the maximum amount of Agency Funding paid pursuant to any Application |
| "Monitoring Requirements" | means the requirements of the Agency for the monitoring of the delivery of the Project and the evaluation of the Project Outputs and Outcomes, details of which are annexed at Appendix 5 |
| "Objectives" | means the common objectives of the Parties as contained in paragraph (F) of the recitals to this Agreement |
| "Operating Budget" | means the annual operating budget of the Company |
| "Other Consideration" | means the monetary value of any non-cash consideration received or receivable by the Council whether following the completion or conclusion of a Disposal or otherwise and can include (but without limitation):- (a) the value of works and replacement land and/or buildings or other assets created (such as a library); (b) the capitalised value of any geared rental under a lease |
| "Party" | means the Agency, the Council or the Company and "Parties" shall be construed accordingly. |
| "Plan" | means the plan annexed at Appendix 1 |
| "Preliminary Project Expenditure" | means expenditure connected with the obtaining of feasibility and appraisal studies and reports to inform project investment decisions (and which has not already been funded by the Agency under the terms of the agreement referred to at (c) of the definition of "Existing Agreements") |

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| "Proceeds" | means the total amount of all proceeds received or receivable by the Council from a Disposal (including any deferred sums, overage or clawback or other contingent sum received following the completion or conclusion of a Disposal or after the end of the Project |
| "Project" | means the development of the ESG Area in accordance with the Project Documents in order to achieve:- <ul style="list-style-type: none"> (a) the Objectives; and (b) the Project Outputs and Outcomes |
| "Project Account" | means a separately designated account into which Receipts (to the extent the particular Receipts comprise monetary payments) are to be paid |
| "Project Documents" | means each of the following documents:- <ul style="list-style-type: none"> (a) the Master Plan; (b) the Delivery Plan; and (c) the Business Plan; |
| "Project Expenditure" | means the actual expenditure properly incurred by the Agency and the Council in relation to the Project from time to time and includes the expenditure listed in Schedule 5 but subject to the provisos in Schedule 5 |
| "Project Expenditure Statement" | means financial statements (comprising a profit and loss account, balance sheet and cash flow) to be produced and maintained by the Company showing a running balance of Project Expenditure actually incurred by the Council and the Agency |
| "Project Infrastructure" | means works connected with:- <ul style="list-style-type: none"> (a) the provision of civil engineering flood alleviation works; (b) the provision of the new roads utility infrastructure and related infrastructure required for the development of the ESG Area in order to deliver the Objectives; and (c) the provision of Public Realm in accordance with a public realm strategy agreed between the Agency and the Council, <p>all as approved by the Agency and required in connection with the Project</p> |
| "Project Outputs and | means the headline outputs and outcomes to be created and delivered by the Project as listed in |

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| Outcomes" | Schedule 6 as reviewed from time to time by the Agency |
| "Project Period" | means the period commencing on the date of this Agreement and expiring on the date which is 15 years from the date of this Agreement |
| "Property" | means any parcel of land or buildings within the ESG Area (and "Properties" shall be construed accordingly) |
| "Public Realm" | means those part of the ESG Area which will be areas of open space, roads and footpaths, areas for the provision of services or otherwise for public benefit and which in most cases will be adopted or otherwise dedicated for public use |
| "Public Sector Financial Assistance" | includes all funding (including de minimis funding) received or receivable by the Council from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998 |
| "Purchase Contract" | means any agreement for an Acquisition which may be entered into by the Council |
| "Purchase Price" | means the actual purchase price payable by Council to a landowner to purchase a Property (which shall have been agreed by the Agency) |
| "Qualifying Expenditure" | means approved expenditure payable under this Agreement in relation to the Project comprising:- <ul style="list-style-type: none"> (a) the cost of carrying out any Works; (b) the cost of employing any Consultants; and (c) Preliminary Project Expenditure |
| "Receipts" | means all or any of the following:- <ul style="list-style-type: none"> (a) the Proceeds; (b) the Other Consideration; (c) rents, licence fees or other payments and income received by the Council from Agency Funded Property (including for the avoidance of doubt from property acquired under a compulsory purchase order and funded by the Agency); (d) interest accruing on the Receipts whilst held in the Project Account; (e) the proceeds of any insurance policy |

effected pursuant to this agreement and/or any building contract and/or any other document;

- (f) any reimbursement of any items already treated as Project Expenditure (including without limitation by a Developer under a Development Agreement, service charges, insurance cost or other contribution from tenants or occupiers);
- (g) any grant or subsidies (other than monies from the Agency);
- (h) any contributions received by the Council as local planning authority for the Works and/or Public Realm under any planning agreement made pursuant to section 106 of the Town and Country Planning Act 1990 relating to the ESG Area;
- (i) any other receipts which have the effect of off setting or reimbursing Project Expenditure

"Representative"

means the representative of each Party at a Senior Officers Working Group initially being:-

- (a) for the Council: being the Council's directors of Environment, Adult and Community Services and Resources;
- (b) for the Agency: being the relevant Development Team Leader; and
- (c) for the Company: being the Company's Chief Executive

"Senior Officer's Working Group"

means a group established by the Parties (and comprising of the Representatives) which will provide a forum to support the operation of the Company's Board and to assist in the delivery of the Project

"Senior Officer's Working Group Meeting"

means a meeting of the Senior Officer's Working Group as referred to in Clause 8

"Site Assembly"

means the Acquisition of all the freehold/leasehold or other interests in the ESG Area (not already owned by the Council) by the Council and which are needed to implement the Project in accordance with the Site Assembly Strategy

"Site Assembly Strategy"

means the strategy detailing the acquisition of the third party land within the ESG Area required for the Project to be agreed between the parties in accordance with the principles set out in paragraph 1.3 of Schedule 1

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| "Statutory Requirements" | means any existing or future notices, orders, directions, requirements and schemes imposed by any Authority under any Enactment |
| "Sustainability Framework" | means the document appended at Appendix 6 to this Agreement as amended from time to time |
| "Valuer" | means the Valuer to be appointed by [the Agency/the Council] to assess the value of any property which is to be an Acquisition and to verify that the Purchase Price is Market Value |
| "VAT" | means Value Added Tax and any similar tax levied in addition to it or in substitution for it |
| "Working Day" | means any day other than Saturday, Sunday and bank or public holidays |
| "Works" | means:- <ul style="list-style-type: none"> (a) any works connected with the provision of Project Infrastructure as approved by the Agency in accordance with the provisions of paragraph 8 of Schedule 3; (b) any other works approved by the Agency under the terms of this Agreement such approval not to be unreasonably withheld or delayed, <p>as such works are or will be more particularly detailed in the Works Drawings and Specification</p> |
| "Works Contract" | means the contract or contracts for the Works or parts of them to be entered into with the Works Contractor |
| "Works Contractor" | means any contractor appointed in relation to the Works or any part of them or any replacement thereof |
| "Works Drawings and Specification" | means any drawings and/or specification detailing any element of the Works |

1.2 Interpretation

- 1.2.1 References to a clause or schedule where the context so admits are to a Clause or Schedule of this agreement.
- 1.2.2 References to a numbered paragraph are to a paragraph in the relevant Schedule.
- 1.2.3 The Clause and paragraph headings in this agreement are for ease of reference only and are not to be taken into account in the interpretation of the Clause or paragraph to which they refer.
- 1.2.4 Words importing the singular meaning where the context so admits include the plural meanings and vice versa.

- 1.2.5 Words of one gender include both other genders, and words denoting natural persons include corporations and firms and all such words are to be construed interchangeably in that manner.
- 1.2.6 Words denoting an obligation on a Party to do any act, matter or thing include an obligation to procure that it be done, and words placing a Party under a restriction include an obligation not to permit infringement of the restriction.
- 1.2.7 References to "liability" include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses.

2. COUNCIL'S OBLIGATIONS

- 2.1 The Council covenants with the Company and the Agency to comply with its obligations in Schedules 1 and 8.
- 2.2 Where the Council is undertaking any Works the Council covenants to undertake them in accordance with the works obligations contained in Schedule 8.
- 2.3 The Council warrants to the Agency that:-
- 2.3.1 the execution on behalf of Council of this agreement has been validly authorised and the obligations expressed as being assumed by Council under this agreement constitute valid legal and binding obligations of Council enforceable against Council in accordance with their terms.
- 2.3.2 Neither the execution of this agreement by Council nor the performance or observation of any of its obligations under it will:-
- (a) conflict with or result in any breach of any law or enactment or any deed, agreement or other instrument, obligation or duty to which Council is bound;
 - (b) cause any limitation on any of the powers whatsoever of the Council, or on the right or ability of the directors of Council to exercise such powers, to be exceeded;
 - (c) all consents required in connection with the execution, validity or enforceability of this agreement have been obtained and have not been withdrawn;
 - (d) the Council is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the Project;
 - (e) no Event of Default has occurred and is continuing; or
 - (f) the representations in this Clauses 2.3 above will be deemed to be repeated by Council when each claim for an instalment of Agency Funding is submitted pursuant to Schedule 4 as if made with reference to the facts and circumstances existing at such date

3. COMPANY'S OBLIGATIONS

Subject to the Company being provided with sufficient funding (as required by the Business Plan) to carry out its duties and obligations, the Company covenants with the Council and the Agency to comply with its obligations in Schedule 2.

4. **THE AGENCY'S OBLIGATIONS**

4.1 The Agency covenants with the Council and the Company to comply with its obligations in Schedule 3 and Schedule 4.

4.2 Notwithstanding any other provision of this Agreement or of any other agreement whilst the Agency has current maximum outline funding approval for the Project of £20,000,000 its actual financial commitment to the Project (up to the maximum sum of £20,000,000) is not to exceed the level of the Council's financial commitment to the Project.

5. **MUTUAL RESPONSIBILITY OF THE PARTIES AND GOOD FAITH**

5.1 The Parties will co-operate with each other, using sound commercial sense to achieve the Objectives and to deliver the Project Outputs and Objectives and act fairly, reasonably and in good faith to enable the others to discharge their duties and to comply with the terms of this agreement and accordingly will respond promptly to requests properly made by the other Parties for approvals, information or assistance.

5.2 Each Party will at all times make full disclosure to the others of relevant information, data reports and opinions with respect to the Project. Without prejudice to the Parties specific obligations contained in this Agreement, each Party will maintain proper books and accounts connected with the Project which are to be open to inspection by the other Parties. In particular the Company is to produce an annual Operating Budget which will be provided to the Council and the Agency in January of each year.

5.3 The Parties will work together in a non adversarial, open and collaborative manner

5.4 The Parties duly appointed Representatives will:-

5.4.1 attend and participate at Senior Officers Working Group Meeting in respect of which the object of the meetings are stated in the notice convening it;

5.4.2 produce to the other Parties in sufficient time to enable them to consider them beforehand (so far as may be practicable) such information, data reports and opinions in writing as shall form the subject matter of the objects of the meeting; and

5.4.3 do such other acts, matters and things as may be necessary or desirable to implement decisions of the Parties and in order to achieve the Project.

5.5 Each of the Parties shall at all times take all reasonable efforts to minimise and mitigate:-

5.5.1 any costs, expenses, losses or liabilities for which any party is entitled to bring a claim against another Party pursuant to this Agreement; and

5.5.2 any effect of (including without limitation in respect of compensation and/or extensions of time) circumstances and/or events adversely affecting the performance of the obligations hereunder which would otherwise entitle that Party to relief and/or compensation.

5.6 The Parties agree they will:-

5.6.1 support the Project development, application and delivery at executive level through appropriate appraisal and approval processes;

5.6.2 support the management and delivery of the Project so that the Objectives are achieved within the wider local and regional context as outlined in the Master Plan, the relevant Unitary Development Plan (and any subsequent planning document) and the emerging Supplementary Planning Document;

- 5.6.3 identify approaches to the delivery and funding of the Developments; and
- 5.6.4 consult and communicate with affected communities and relevant agencies.

6. **ESG AREA**

- 6.1 The Parties agree that the extent or the boundary of the ESG Area may change from that shown on the Plan and in these circumstances the Parties shall agree a revised plan for the boundary of the ESG Area and the provisions of this agreement shall relate to that revised extent.
- 6.2 The Parties also agree that any land outside of the ESG Area and being:-
 - 6.2.1 land acquired by the Council with the Agency's approval (where the Agency's funding is used to acquire such land); or
 - 6.2.2 existing land ownerships of the Council,in either case on to which the Parties agree that existing occupiers or tenants of the ESG Area are to be relocated, will fall within the scope of the Project and this Agreement.
- 6.3 In addition to the above, the Parties also agree that any land outside of the ESG Area on which flood alleviation works (comprising part of the Project Infrastructure) are to be undertaken will also fall within the scope of the Project and this Agreement.

7. **CONTINUATION OF THE EXISTING FUNDING AGREEMENTS AND THE CPO INDEMNITY AGREEMENT**

- 7.1 The Council and the Agency confirm and accept that the Existing Funding Agreements shall continue to operate and shall not come to an end or terminate as a result of the completion of this agreement. In particular the Council and the Agency will continue to abide by the terms of the Existing Funding Agreements (in particular the Council match funding the Agency's investment).
- 7.2 The Agency shall as soon as practicable enter into the CPO Indemnity Agreement with the Council.

8. **SENIOR OFFICER'S WORKING GROUP**

- 8.1 The operations of the Company will be supported by the Senior Officer's Working Group which will be set up by the Parties. The Senior Officer's Working Group shall meet monthly with the meetings to be attended by the Chief Executive of the Company. The members of the Senior Officer's Working Group shall be responsible for ensuring delivery of the Objectives within their respective organisations and for giving direction to the subordinate officer working groups.
- 8.2 The Chief Executive of the Company shall be responsible for reporting from the Senior Officer's Working Group to the Company's Board.
- 8.3 The terms of reference of the Senior Officer's Working Group Meeting are as annexed in Appendix 2 (and as further agreed between them within 3 months of the date of this Agreement) and the Parties covenant with each other to do all that is reasonably necessary to provide for the operation of the Senior Officer's Working Group to achieve the Objectives.
- 8.4 Any Representative may appoint an alternate to represent him at a Senior Officer's Working Group Meeting where he is unable to attend provided that reasonable prior notice in writing of the name and details of the alternate is given.

9. **SUPPORT STRUCTURE AND FUNDING OF THE COMPANY**

9.1 **Support and Funding**

9.1.1 The Agency and the Council will participate in the running of the Company. In particular:-

- (a) the Council will:-
 - (i) provide such office accommodation as the Company may reasonably require;
 - (ii) provide sufficient support from the Economic Development Manager at the Council; and
 - (iii) fund items of Preliminary Project Expenditure identified by the Company and as agreed by the Senior Officer's Working Group from time to time;
- (b) the Council will provide the Company with a rolling 3 year Operational Budget which is to be reviewed annually in line with the reviews of the Business Plan and the Delivery Plan.

9.2 **The Company's Board**

9.2.1 The Council shall have two seats on the Company's Board;

9.2.2 The Agency shall have the right by notice in writing to the Company to nominate an Agency representative as a member of the Company's Board. Until this is exercised the Agency shall have the right to appoint an observer to the Company's Board.

9.2.3 Neither the AWM observer nor the Council's directors on the Company's Board shall be required to retire by rotation at each annual general meeting of the Company.

9.2.4 The Company shall have an independent non-executive Chairman and a Chief Executive.

9.2.5 Other board members may join at the invitation of the Board,

all of the above to be in accordance with the Memorandum and Articles of Association of the Company.

9.3 **Governance, operational management and reporting**

9.3.1 The Company's Board shall appoint Audit, Remuneration and Nomination Committees whose operations shall be governed by the authorities approved by the Company's Board as provided in the Company's Memorandum and Articles of Association.

9.3.2 The Company will produce an annual report setting out the achievements of the Company over the preceding year, priorities for the forthcoming year and the Company's audited accounts.

10. **FINANCIAL PROVISIONS**

10.1 The Parties covenant with each other to comply with Schedule 7 as regards:-

- 10.1.1 assessing the Council Investment and the Agency Investment in to the Project; and
- 10.1.2 the distribution of any Receipts from the Project.
- 10.2 The Council and the Agency are to commit to reinvesting their entitlement to the Receipts in order to promote development activity within the ESG Area and to support the Project and the fulfilment of the Objectives as established through the Business Plan and the Delivery Plan process.
- 10.3 The Council may with the Agency's consent (such consent not to be unreasonably withheld or delayed) draw down monies from the Project Account to pay for the cost of:-
 - 10.3.1 undertaking the Works; and
 - 10.3.2 relocating the Cattle Market from the ESG Area as provided in paragraph 1.5.1 of Schedule 1.

11. **PROJECT OUTPUTS AND OUTCOMES AND THE SUSTAINABILITY FRAMEWORK**

- 11.1 The Parties covenant with each other to use all reasonable endeavours to achieve the delivery of the Project Outputs and Outcomes by complying with the terms of this agreement and by taking such actions as shall be appropriate to bring about the Objectives.
- 11.2 The Council and the Company covenant with the Agency that where necessary to ensure the delivery of the Project Outputs and Outcomes that there will be imposed on Developers and contained in the Development Agreements an obligation to deliver the Project Outputs and Outcomes in so far as they relate to a particular Development Phase. In addition the Council and the Company shall ensure that a Developer is required under the terms of a Development Agreement to undertake the development of a Development Phase in accordance with the Sustainability Framework.
- 11.3 The Parties are to establish a monitoring and evaluation framework to capture and record the delivery of the Project Outputs and Outcomes.

12. **PROJECT REVIEW AND TERMINATION**

- 12.1 The Parties will undertake a comprehensive review of the Project on each Distribution Date (except for the one on the last day of the Project Period) and on the tenth anniversary of the date of this Agreement to assess:-
 - 12.1.1 whether the Objectives are still achievable and viable; and
 - 12.1.2 whether there should be any variations of the Objectives or of any other provision of this Agreement,
 and following such review the Parties will implement any revisions or variations of the Objectives and/or the Project.
- 12.2 This Agreement shall commence on the date hereof and shall continue until the earlier of:-
 - 12.2.1 the date on which any party lawfully terminates this Agreement pursuant to this Clause 12; and
 - 12.2.2 the date of expiry of the Project Period.
- 12.3 If an Event of Default occurs, then the Chief Executives of each Party shall endeavour to resolve the cause of the default.

12.4 Where an Event of Default occurs and the Chief Executives are unable to resolve the matter causing default a non defaulting Party (being the Council or the Agency only) may give to the defaulting Party notice in writing of its intention to suspend or terminate this agreement and the defaulting Party shall be entitled (if possible) to remedy the relevant Event of Default within such reasonable time as may be specified in the notice.

12.5 Subject to clause 16, where an Event of Default occurs:-

12.5.1 if the default is capable of remedy but the Party does not comply with a notice given under Clause 12.4 within the period specified in such notice; and

12.5.2 the Chief Executives are unable to resolve the default pursuant to Clause 12.3;

then the non-defaulting party (but being the Council or the Agency only) can serve a notice upon the defaulting party to terminate this agreement. The Company can not use the provisions of this clause 12.5 to terminate this agreement.

12.6 On termination of this Agreement under Clause 12.5 at the discretion of the Agency one or more of the following shall occur:-

12.6.1 clause 8.5 of the agreement referred to at sub-clause (b) of the definition of "Existing Agreements" shall apply in respect of any land acquired pursuant to the terms of that Agreement;

12.6.2 in respect of any property the acquisition of which was funded by the Agency under the terms of this Agreement or under the terms of the CPO Indemnity Agreement the Council will (subject to the proviso below in this clause 12.6.2) at the direction of the Agency dispose of such properties on such terms as the Agency may properly require within the open market at a price agreed by the Agency (acting reasonably) and the proceeds of such disposal are to be dealt with as follows:-

(a) the proceeds shall firstly be used to pay any agreed costs of disposal;

(b) after deducting the costs referred to at sub-clause (a) the proceeds shall be used to repay the Agency's funding,

save that this obligation to dispose is subject to the requirement that where any such properties have been acquired by the Council under compulsory purchase powers, to firstly offer for sale the property at market value to the owner from whom the Council acquired the particular property under its compulsory purchase powers with the proceeds from such sale to be treated as provided above;

12.6.3 in respect of the Council Land the Council shall endeavour to manage and/or dispose of and/or develop such land in a way which maximises the value of such land but also complies with the Objectives and/or delivers the Project Outputs and Outcomes with the receipts from such management of the land and/or disposal and/or development to be used to repay the funding provided by the Agency in connection with the Project save that this obligation will come to an end at the end of the period of 15 years from the date of this Agreement.

13. **CONTINUATION OF THE AGREEMENT**

The provisions of this agreement are to remain in full effect so far as they remain to be observed and performed notwithstanding a Disposal of any part of the ESG Area.

14. **NO ALIENATION**

The Parties may not assign or dispose of their interest in this agreement except:

- 14.1 as may be required under this agreement; and
- 14.2 notwithstanding the foregoing any Party may assign its interest to a successor statutory authority.

15. **COUNCIL'S POWERS**

- 15.1 The Council enters into this Agreement as landowner, funder, promoter of the Project and recipient of the Agency Funding (save where expressly stated otherwise) and nothing herein contained shall prejudice or affect any of the statutory rights powers obligations and duties for the time being vested in the Council.
- 15.2 Any approval consent direction permission or authority given by the Council as any statutory authority shall not be deemed to be an approval consent direction permission or authority given under this agreement or vice versa.

16. **DISPUTE RESOLUTION AND EXPERT DETERMINATION**

- 16.1 Subject to Clause 16.2 if any dispute or issue should arise between the Parties which cannot be resolved by the Representatives then such dispute or issue shall be referred to the Chief Executives of all of the Parties (as provided in clause 12.3) who shall be obliged to endeavour to seek a solution which is consistent with the Objectives and the Project Outputs and Outcomes.

- 16.2 If the dispute cannot be resolved in accordance with the provision of clause 16.1 then any Party may refer the dispute to an Expert for Expert Determination subject to the following requirements:-

16.2.1 the Expert is to be of at least ten years relevant professional standing and is to be appointed by the Parties jointly, or, if they cannot or do not agree on the appointment, appointed by the President (or other acting senior officer for the time being) of the relevant professional body on the request of any Party;

16.2.2 a person so appointed is to act as an expert and not as an arbitrator;

16.2.3 the Expert so appointed is required to afford the Parties the opportunity to make representations to him and permit each Party to make submissions on the representations of any other; and

16.2.4 the fees and expenses of the Expert including the cost of his nomination are to be determined by the Expert.

- 16.3 For the purposes of Clause 16.2.1, the relevant professional body in relation to any dispute or difference over the Development or the Disposal of Property is to be in the case of property valuation issues the Royal Institute of Chartered Surveyors and in relation to any financial aspect of the Project is to be the Institute of Chartered Accountants in England and Wales and in all other cases is to be the Law Society.

17. **NOTICES AND NOTIFICATIONS**

- 17.1 Any notice demand or communication to be given or served under this agreement shall be in writing.

- 17.2 Any notice demand or communication to be given or served under this agreement shall be given or served:

17.2.1 in the case of notice to be served upon the Agency, by personal delivery or by sending it by pre-paid recorded postal delivery to:

The Chief Executive, Advantage West Midlands of 3 Priestley Wharf,
Holt Street, Aston Science Park, Birmingham B7 4BN;

or to such other address as may from time to time be notified by the Agency to the other Parties;

- 17.2.2 in the case of notice to be served upon the Council, by personal delivery or by sending it by pre-paid recorded postal delivery to:

Head of Legal and Democratic Services, Herefordshire Council,
"Brockington", 35 Hafod Road, Hereford

or to such other address as may from time to time be notified by Council to the other Parties; and

- 17.2.3 in the case of notice to be served upon the Company, by personal delivery or by sending it by pre-paid recorded postal delivery to:

The Chief Executive, ESG Herefordshire Limited, 4 Blackfriars Street,
Hereford, HR4 9HS

or to such other address as may from time to time be notified by Company to the other Parties.

- 17.3 Any such notice shall (where sent by post) be deemed to have been served and received on the second working day following the day of posting and where delivered personally be deemed to have been given when delivery is made.

18. **CONTRACTS**

A person who is not party to this agreement is not intended to have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

19. **JURISDICTION**

This agreement shall be governed by and construed in accordance with the law of England and each party submits to the exclusive jurisdiction of the English Courts.

20. **VALUE ADDED TAX AND TAXATION ISSUES**

- 20.1 Sums payable under this agreement for the supply of goods and services are exclusive of VAT chargeable on the payment.

- 20.2 The Party to whom the relevant supply is made shall pay an amount equal to any such VAT to the other Party against production of a valid VAT invoice by the Party by whom the supply is made.

- 20.3 The Council and the Agency will provide "grossed up" Project contributions where relevant to ensure the Company remains VAT neutral.

21. **INTEREST**

Any sums which fall due to be paid under Schedule 7 of this agreement and not paid on the due date shall bear interest at a rate of 2% above the base rate of the Bank of England, from the date due for payment to actual payment (as well after as before any judgment).

22. **MISCELLANEOUS**

22.1 No variation of this agreement shall be effective unless made in writing signed by or on behalf of the Parties hereto and expressed to be such a variation.

22.2 This agreement may be executed in two or more counterparts and execution by each of the Parties of any one of such counterparts will constitute due execution of this agreement.

22.3 No Party is or is intended to be the agent of any other Party and a Party shall not hold itself out as agent for any other Party nor have any power to bind any other Party (unless such other Party shall agree in writing).

22.4 No partnership has been created or is intended to be created between the Parties by this agreement and no Party shall hold itself out to be in partnership with and/or a partner of any other Party.

23. **SURVIVAL OF CLAUSES**

If at any time any of the provisions of this agreement becomes illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this agreement shall be in any way affected or impaired as a result.

24. **STATUTORY POWERS**

Nothing contained in or done under this agreement and no consents given by the Agency or the Council shall prejudice their rights, powers or duties and/or obligations in the exercise of their functions or under any statutes, bye-laws, instruments orders or regulations.

25. **LIABILITIES**

Nothing in this agreement nor any other document shall impose any obligation or liability on any Party with respect to any actions of or obligations or liabilities assumed or incurred by the other Parties or their agents, contractors or employees whether under contract, statute or otherwise.

26. **APPROVALS**

Any approval by or on behalf of any Party pursuant to this agreement of any matter submitted by another Party for approval shall not be deemed to be an acceptance by the other Parties of the correctness or suitability of the contents of the subject of the approval or consent.

27. **COSTS**

Each of the Parties shall bear their own costs and expenses relating to the preparation and completion of this agreement.

28. **EXECUTION AND DELIVERY**

The Parties have executed this agreement as a deed with the intention that it be delivered on the date appearing on the front cover and page 1 of this agreement.

29. **FREEDOM OF INFORMATION ACT 2000**

29.1 The Council and the Company acknowledges that the Agency is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and the Council and the Company shall assist and co-operate with the Agency to enable the Agency to comply with these information disclosure requirements.

29.2 The Agency and the Company acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and the Agency and the Company shall assist and co-operate with the Council to enable the Council to comply with these information disclosure requirements.

30. **CONFIDENTIAL INFORMATION**

30.1 Each Party shall:

30.1.1 keep confidential all Confidential Information which it has obtained or received as a result of the discussions leading up to or the entering into or the performance of this agreement; and

30.1.2 not disclose any Confidential Information in whole or in part to any person or other party without the consent of the other Parties; and

30.1.3 use the Confidential Information solely in connection with the performance of this agreement and not otherwise.

30.2 The provisions of Clause 30.1 shall not apply to the whole or any part of the Confidential Information which is:

30.2.1 lawfully obtained free of any duty of confidentiality otherwise than directly or indirectly from a Party;

30.2.2 already in the Party's possession other than as a result of a breach of Clause 30.1;

30.2.3 in the public domain (other than as a result of a breach of Clause 30.1);

30.2.4 necessarily disclosed pursuant to a statutory legal or regulatory obligation (including in compliance with the provisions detailed in clause 29);

30.2.5 disclosed with the Parties consent (as appropriate).

The restrictions contained in Clause 30 shall continue to apply for five years after any termination of this agreement.

31. **PUBLICITY**

31.1 The Company shall lead on and be primarily responsible for any publicity connected with the Project (other than in respect of the relocation of the Cattle Market) but the Parties will liaise over any publicity for the Project to maintain an agreed approach in accordance with their obligations in this Agreement.

31.2 The Parties shall not issue any press release or other public announcement or divulge or communicate to any person any of the terms of this agreement without the approval of the other Parties.

31.3 The obligations in this Clause apply except to the extent required by law or regulatory requirements in force from time to time and save where necessary to implement this agreement.

SCHEDULE 1

OBLIGATIONS ON THE COUNCIL

1. **SITE ASSEMBLY AND THE CATTLE MARKET**

1.1 **Site Assembly Strategy**

The Council will use reasonable endeavours to achieve Site Assembly as soon as possible in accordance with the provisions of the Site Assembly Strategy in order that the Project may be progressed.

1.2 **CPO**

1.2.1 Without prejudice to its obligations in paragraph 1 above the Council will provided it is satisfied that it is in the public interest to do so seek a resolution from its Cabinet to make the Compulsory Purchase Order.

1.2.2 The Council will use its reasonable endeavours to make the Compulsory Purchase Order expeditiously and proceed with the making of the Compulsory Purchase Order as soon as it is reasonably practicable. All costs (other than internal management costs which shall exclude legal officer time) incurred in relation to the Compulsory Purchase Order will be Project Expenditure.

1.3 **Private Treaty Acquisitions**

1.3.1 The Council will, in parallel with progressing the Compulsory Purchase Order, negotiate in advance of the confirmation of the Compulsory Purchase Order with landowners for the acquisition of Properties by private treaty. Such Properties will be acquired by the Council, funded by the Agency Funding in accordance with the Existing Funding Agreements.

1.3.2 The Site Assembly Strategy will identify Properties within the ESG Area to be acquired by private treaty. The Council shall instruct a surveyor on terms to be agreed between the Council and the Agency to act on behalf of itself and the Agency to negotiate Acquisitions at the earliest opportunity after the date of this agreement in accordance with the Site Assembly Strategy.

1.3.3 The Council will instruct, on terms to be agreed between the Council and the Agency, the Valuer to value any Property to be acquired. The consideration payable in respect of any Acquisition shall be agreed between the Agency and the Council, having regard to the Site Assembly Strategy and the respective internal protocols and accounting practices of the Agency and the Council.

1.3.4 Neither the Council nor the Company shall enter into any negotiation with a landowner for the acquisition of a Property, without referring such matters to the Agency for approval.

1.3.5 The Parties agree that unless the Agency notifies the Council otherwise, it is the Council which will enter into a Purchase Contract and it is the Council which will take the transfer of a Property, using where relevant funding from the Agency under the Existing Funding Agreements for the Acquisition.

1.3.6 Council shall use reasonable endeavours to acquire any Property in accordance with the Site Assembly Strategy.

1.4 **Investment of the Council Land and the Agency Funded Property**

The Council acknowledges that as part of the Site Assembly and to progress the Project it will invest and commit (subject to the provisions of paragraph 1.5 below) the Council Land and the Agency Funded Property to the Project.

1.5 **Cattle Market and vacant possession**

1.5.1 The Council will use all reasonable endeavours to deliver vacant possession of the Cattle Market by 1 December 2009 (ensuring that the market thereon is relocated outside of the ESG Area) and if such vacant possession is not achieved by this date then the Council will use all reasonable endeavours to ensure that such vacant possession is achieved as soon as reasonably possible thereafter. The Council shall be entitled to use the Receipts to fund such relocation and the delivery of vacant possession, but the use of such Receipts is to be capped at £5,000,000. Any costs involved in relocating the Cattle Market and delivering vacant possession which are in excess of £5,000,000 are to be met by the Council out of its own resources not connected to the Project.

1.5.2 The Council will deliver vacant possession of the Council Land (excluding the Cattle Market which is dealt with at paragraph 1.5.1 above) as soon as possible and which ties in with the implementation of the Project but this obligation is subject to the Council's relocation strategy for properties which the Council itself occupies or uses.

2. **THE COUNCIL'S OTHER OBLIGATIONS**

2.1 The Council will:-

2.1.1 invest its entitlement to the Receipts (other than the £5,000,000 entitlement for the cost of relocating the Cattle Market as set out in paragraph 1.5.1 above) in to the Project;

2.1.2 provide resources to deliver:-

(a) planning consents for the various aspects of the Project;

(b) the Compulsory Purchase Order where required; and

(c) highway authority approvals,

subject to all statutory requirements and procedures.

2.1.3 manage the Council Land to optimise income and delivery and to provide good estate management of both the Council Land and the Agency Funded Property;

2.1.4 provide support for the Company and attendance at Project meetings;

2.1.5 be the accounting body for the Agency and other funding and will prepare applications for funding when requested to do so by the Company;

2.1.6 ensure continuity of funding for the Company in accordance with its obligations in this Agreement;

2.1.7 not promote competing schemes to the Project;

2.1.8 comply with the terms of the Existing Funding Agreements;

- 2.1.9 have due regard to any recommendations made by the Company connected with the selection of a Developer and the proposed development of a Development Phase and shall enter into Development Agreements with the Developers negotiated by the Company and following recommendations from the Company to do so and in accordance with the timescale appropriate to the Project; and
- 2.1.10 not dispose of the Council Land otherwise in accordance with the terms of this Agreement and as part of the Project.

2.2 Maintenance of Council Land

- 2.2.1 The Council shall manage the Council Land and the Agency Funded Property having regard to the principles of good estate management and the delivery of the Project and shall keep it well maintained and to optimise income therefrom until such time it is required for the implementation of the Project and it is agreed such costs shall be Project Expenditure.
- 2.2.2 If the parties so agree the Council may grant tenancies of the Council Land and/or the Agency Funded Property in order to maximise income from such properties until such time as such land is required for the Project and the Council shall ensure that any such tenancy allows the Council to secure vacant possession upon expiry of such tenancy or earlier on not giving more than three months notice. The Council are to exclude such tenancies from the operation of sections 24 – 28 of the Landlord and Tenant Act 1954.

2.3 Contributions under Section 106 Agreements

The Council will use reasonable endeavours to maximise the level and amount of any contributions payable towards the cost of the Works and/or the Public Realm under:-

- 2.3.1 any planning agreement made pursuant to Section 106 of the Town and Country Planning Act 1990; and
 - 2.3.2 any other similar agreement under which it can call for such contributions,
- in each case relating to the ESG Area.

SCHEDULE 2

THE COMPANY'S OBLIGATIONS

1. PROJECT DELIVERY

1.1 The Company is responsible for:-

1.1.1 the co-ordination, promotion, management and delivery of the Project and the Objectives (with the Council and the Agency hereby appointing the Company to undertake this role);

1.1.2 the creation and implementation of the Delivery Plan; and

1.1.3 the production of the relocation strategy (to be agreed between the Parties) for the relocation of third party occupiers (excluding the cattle market) from the ESG Area and to subsequently manage and implement such process with the assistance of the Council (in particular where the Council is the landlord).

1.2 The Company is to lead the process of selecting Developers, including reporting and providing recommendations to the Council and the Agency. The Company will be a party to the Development Agreements where required by the other Parties.

2. CONSULTANTS

2.1 Where required the Company has appointed or will appoint the Consultants to advise in relation to the Project.

2.2 The Company may engage the services of such professional advisers and Consultants as may reasonably be required to enable it to carry out its obligations in relation to the Project. Where possible, appointments shall be from the Agency's panel of consultants or such other consultants as the Council and the Agency may approve (such approval not to be unreasonably withheld or delayed). The Company shall procure that Consultants provide duty of care warranties to the other Parties.

3. BUSINESS PLAN AND DELIVERY PLAN

3.1 The Company shall undertake an annual review of both the Delivery Plan and the Business Plan such review to be completed by the end of March in each year and to involve (but not exclusively) the following:-

3.1.1 a review of the preceding year's activities;

3.1.2 the preparation and review of project management plans for future activity;

3.1.3 financial statements of the Company's activity; and

3.1.4 forecast of funding requirements for the following year.

3.2 The review of the Business Plan and the Delivery Plan is to be referred to the Senior Officer's Working Group and thereafter, if approved, to the Council and the Agency, for formal approval as soon as is possible after it has been produced.

3.3 The Company shall manage the implementation of the Business Plan and the Business Plan.

4. DISPOSAL AND DEVELOPMENT AGREEMENTS

4.1 To procure the Disposal of a Development Phase in accordance with the Delivery Plan.

- 4.2 Disposals of the Development Phase must be pursuant to a Development Agreement and on terms which realise proceeds of not less than the Market Value of the Development Phase.
- 4.3 The heads of terms of all Disposals must be agreed by the Agency and the Council.
- 4.4 The Company will lead the negotiations:-
- 4.4.1 for the selection of the Developer, in compliance with public sector and other EU procurement rules and regulations;
 - 4.4.2 on the terms of the appointment of the Developer;
 - 4.4.3 on the financial terms for the sale of the relevant Development Phase and the carrying out of the Development by the Developer; and
 - 4.4.4 the negotiation of all legal agreements and documents relating to such Disposal,
- but all of the above shall be on terms approved by both the Council and the Agency.
- 4.5 The Company will keep the other Parties fully informed of all aspects of the selection of a Developer, the Disposal and negotiations with it of terms for the Development and the Disposal.
- 4.6 Whilst the Company will take the lead responsibility for negotiating agreements with the Developer relating to the carrying out of the Development, it is agreed that the Council will enter into any Development Agreement with the Developer.

5. **EXIT STRATEGY**

To identify and propose an exit strategy which delivers the long term regeneration of the ESG Area as part of the annual review of the Delivery Plan.

6. **REPORTING AND FINANCIAL STATEMENTS**

- 6.1 To deliver financial and management reports as required by the Council and the Agency.
- 6.2 To maintain financial statements (comprising profit and loss account, balance sheet and cash flow) detailing Project expenditure.

7. **APPLICATIONS FOR AGENCY FUNDING**

The Company shall provide such information as the Council reasonably requests to enable the Council to apply for Agency Funding.

8. **PUBLIC REALM STRATEGY**

The Company are to draw up a strategy for the management of Public Realm for approval by the Council and the Agency. The strategy, where relevant, is to be incorporated as part of the Developer's obligations in the Development Agreements.

9. **PUBLIC RELATIONS AND PUBLICITY**

- 9.1 The Company shall ensure that all marketing material in respect of the Project refers to the roles of all the Parties in relation to the Project.
- 9.2 The Company shall ensure that all marketing material in respect of the Project includes an acknowledgement of the Agency's and the Council's role in providing financial assistance and the Company shall not issue any such material until the manner in which and the

wording by which such acknowledgement is to be given shall have been approved by the Agency and the Council.

SCHEDULE 3

THE AGENCY'S OBLIGATIONS

1. To consider and respond to applications for funding for Qualifying Expenditure submitted by the Council and the Company in the form of the Agency's usual application provided that they fall within the Agency Project Maximum Sum and subject to the principle in clause 4.2. In connection with such applications the Agency shall comply with its obligations in Schedule 4.
2. To commit officer time to the Project.
3. To ensure the availability of funding for the ESG Area as a regional priority with reference to the regional spatial strategy and the Regional Economic Strategy and the Agency's Corporate Plan.
4. To provide support for the Project in relation to third parties involved in the evolution of the Project such as the Highways Agency and the Environment Agency.
5. Not to approve any third party funding applications within the ESG Area without the Company and the Council's endorsements.
6. To have due regard to any recommendations made by the Company connected with the selection of a Developer and the proposed development of a Development Phase and enter into Development Agreements with Developers if reasonably required.
7. To comply with the terms of the Existing Funding Agreements.
8. Subject to the Company and/or the Council providing to the Agency full details of any works connected with the provision of Project Infrastructure the Agency shall not unreasonably withhold or delay its approval to such works.

SCHEDULE 4

AGENCY FUNDING PROVISIONS

1. AGENCY FUNDING

- 1.1 The Agency has agreed to make the Agency Funding available to Council subject to:
- 1.1.1 the terms and conditions for the payment of Agency Funding contained in this agreement; and
 - 1.1.2 compliance by Council with all the terms, conditions and obligations to be observed or otherwise complied with by it under this agreement.
- 1.2 Council undertakes:
- 1.2.1 to use Agency Funding in order to carry out and complete the Project and to deliver the Project Outputs and Outcomes which relate to the Agency Funding in accordance with the terms of this agreement;
 - 1.2.2 to comply with the terms and conditions subject to which Agency Funding is made available pursuant to the terms of this agreement; and
 - 1.2.3 to comply with all the obligations to be observed or otherwise complied with by Council under this agreement.
- 1.3 1.3.1 The Agency shall not be obliged to pay any Agency Funding to Council unless it is satisfied that the conditions specified in paragraph 1.3.2 have been met.
- 1.3.2 The conditions for payment of Agency Funding are as follows:-
- (a) the Agency Funding will only be used for Qualifying Expenditure;
 - (b) the Council having satisfied the Agency that the Council has (and continues to have) sufficient funding (whether from its own resources or otherwise) to comply with its obligations under this agreement.
 - (c) the Agency having received from Council any other evidence as the Agency may reasonably require that the representations and warranties by Council in this agreement are true and correct in all material respects and are not misleading.
- 1.3.3 Council shall provide the Agency with such information as the Agency may reasonably require in relation to the satisfaction of the conditions detailed at paragraph 1.3.2 above.
- 1.4 1.4.1 The Agency Funding will be paid to the Council by the Agency pursuant to this agreement but shall not exceed the Agency Project Maximum Sum.
- 1.4.2 Subject to paragraph 1.3.2 of this Schedule, the Council shall:
- (a) use the Agency Funding solely for the purpose of defraying Qualifying Expenditure in relation to the Project;
 - (b) provide to the satisfaction of the Agency evidence that the expenditure for which the Agency Funding has been used relates to Qualifying Expenditure.

- 1.4.3 If the Agency shall determine that any expenditure for which the Agency Funding has been used is not Qualifying Expenditure, the Council shall forthwith on demand repay to the Agency the amount of such Agency Funding stipulated by the Agency.
- 1.4.4 Subject to the provisions of this agreement the Agency shall pay the Agency Funding into the bank account of the Council (Account Number 10313281 at National Westminster Bank Plc of Broad Street, Hereford, Sort Code Number 53-50-41).
- 1.4.5 Unless the Agency otherwise agrees, the Agency shall not be liable to provide (or as the case may be to continue to provide) Agency Funding (or any instalment of Agency Funding):-
- (a) unless a claim by the Council for an instalment of Agency Funding shall:-
 - (i) be submitted in a Claim Form;
 - (ii) relate to Qualifying Expenditure in relation to which Council has not submitted any other claim;
 - (b) if an Event of Default by the Council has occurred and is continuing;
 - (c) if the representations and warranties made in paragraph 1.3 do not remain true and correct.

1.5 **Public Sector Financial Assistance**

- 1.5.1 The Council shall notify the Agency, as soon as practicable, in the event of the receipt of any other Public Sector Financial Assistance or guarantees of other Public Sector Financial Assistance, or the offer of the same, in respect of the Project (or any part of it).
- 1.5.2 In the event of the receipt of any other Public Sector Financial Assistance or guarantees of other Public Sector Financial Assistance, then the Agency reserves:-
- (a) the right to vary the Maximum Sum and/or the Agency Project Maximum Sum;
 - (b) the right to require repayment by the Council to the Agency of an appropriate proportion of the Agency Funding paid to Council under this agreement.
- 1.5.3 If the Council shall receive any other Public Sector Financial Assistance in respect of the Project then such Public Sector Financial Assistance shall be used by the Council to facilitate the Project.

1.6 The Council shall notify the Agency:-

- 1.6.1 as soon as practicable thereafter, of any event which might adversely affect the delivery of the Project Outputs and Objectives;
- 1.6.2 forthwith, on the occurrence of an Event of Default.

- 1.7 1.7.1 The Council shall establish effective appraisal, project monitoring and financial systems so that the use of the Agency Funding and the progress in delivering the Project and the Projects Outputs and Outcomes can be clearly identified and the propriety and regularity of all payments ensured.

- 1.7.2 The Council shall comply with the Monitoring Requirements.
- 1.8
 - 1.8.1 The Council shall maintain full and accurate accounts and documentary evidence for the Agency Funding on an open book basis and the Council shall permit the Agency and persons authorised by the Agency to inspect audit and take copies of all reports books accounting records and vouchers which the Agency properly considers relevant to the Agency Funding.
 - 1.8.2 The Council shall comply with the Audit Requirements and shall ensure that any report or document required reaches the Agency on the due date.

SCHEDULE 5

PROJECT EXPENDITURE

Agreed items of Project expenditure include (but are not limited to) the following:-

- (a) all costs of acquiring Properties within the ESG Area;
- (b) all costs connected with a CPO unless funded by a third party;
- (c) the cost of acquisition extinguishment or variation of any interests or rights in, over or against the ESG Area held by a person who, by the lawful exercise of his powers, could prevent or impede the carrying out or progress of the Project or its use and enjoyment;
- (d) the fees and expenses and costs of the Consultants appointed in relation to the Project;
- (e) legal and surveyor fees, advertising, promotional and marketing expenses and other costs connected with any Disposal;
- (f) the cost agreed in advance by the Council and the Agency to be appropriate (the Council and the Agency acting reasonably) of pursuing defending settling or meeting any claim arising out of the Project or its conduct of whatsoever nature provided that the allowance of such cost as an item of Project Expenditure shall not prejudice the rights of any Party to seek redress against the other for breach of contract or negligence;
- (g) VAT on supplies of goods and services to the extent that it is not recoverable by credit against output tax or repayment by HM Revenue and Customs;
- (h) costs of funding the Company as agreed through the Delivery Plan; and
- (i) any other appropriate item of expenditure in relation to the Project agreed between the Council and the Agency as appropriate (the Council and the Agency acting reasonably);

PROVIDED THAT in respect of such expenditure:-

- (i) no item of expenditure counted under one head shall to that extent be counted under another;
- (ii) any expenditure which accrues over or relates to a period shall (if apportionment is necessary) be treated as if accruing from day to day throughout the period to which it relates and shall be apportioned in respect of time accordingly;
- (iii) no item of expenditure shall be included to the extent that proceeds of insurance are received in respect of such expenditure unless and to the extent that insurance monies have been withheld in whole or part due to the act or omission of the Council;
- (iv) no item of expenditure shall be included which arises from the failure of the any party to comply with the terms of this Agreement or any agreement with any third party;
- (v) the costs of any litigation or dispute between the Parties under this Agreement, shall not constitute Project Expenditure;

SCHEDULE 6

THE PROJECT OUTPUTS AND OUTCOMES

1. Potential tasking framework outputs to be achieved – as per the outline application and appraisal approved by the Agency on 1 March 2007:-
 - 1.1 £240 million of other public and private sector investment in to the Project, split as follows:-
 - 1.1.1 £200 million private;
 - 1.1.2 £20 million other public (that is excluding the Agency's contribution);
 - 1.2 40 hectares of brownfield land remediated; and
 - 1.3 905 new jobs created.
2. Other significant outputs (non-tasking framework) include:-
 - 2.1 142,600 m² new floorspace; and
 - 2.2 600 – 1000 new homes.

SCHEDULE 7

THE FINANCIAL PROVISIONS

1. There will be an assessment of the Council Investment and the Agency Investment into the Project which shall include (but without duplication):-
 - 1.1 funding advanced by the Agency under the Existing Funding Agreements and the CPO Indemnity Agreement and under this Agreement;
 - 1.2 payments towards the Project paid in accordance with the terms of this Agreement;
 - 1.3 the funding of the Company advanced by either the Agency or the Council;
 - 1.4 contributions to Project Expenditure paid by either the Agency or the Council;
 - 1.5 the funding of the purchase of any of the land referred to at clause 6.2;
 - 1.6 the existing book value of the Council Land assessed as at March 2006 being the date of formation of the Company;
 - 1.7 the investment of rental streams from Agency Funded Property in to the Project; and
 - 1.8 the Council's legal fees connected with the Project (which include reasonable Council legal officer time incurred in advising the Company (but not the Council)).

2. **Receipts**

All Receipts (to the extent the particular Receipts comprise monetary payments) are to be paid by the Council into the Project Account to which interest shall accrue.

3. **Distribution of Receipts**

- 3.1 On each Distribution Date the Agency and Council shall procure the preparation by the Company of a financial statement which incorporates the following as at such date:-
 - 3.1.1 the Project Expenditure Statement calculated to such date;
 - 3.1.2 details of the financial terms of all Disposals;
 - 3.1.3 a statement of all Receipts received (or to be received in the case of any overage or deferred payments or contingent payments);
 - 3.1.4 any drawing down of Receipts made by the Council in accordance with clause 10.3 of this Agreement;
 - 3.1.5 a calculation of the Council Investment (having regard to the principles set out in paragraph 1 above);
 - 3.1.6 a calculation of the Agency Investment (having regard to the principles set out in paragraph 1 above).
- 3.2 Receipts will be distributed to the Agency and Council (subject to clause 10.2 and paragraph 3.4 below) as follows:-
 - 3.2.1 to repay the Agency Investment and the Council Investment on a pro rata basis but having regard to any draw downs from Receipts already made by the Council as provided in paragraph 3.1.4 above;

- 3.2.2 any Receipts remaining after 3.2.1 above are to be shared between the Council and the Agency in proportion to their overall investment in to the Project.
- 3.3 Receipts will be distributed to the Agency and the Council (unless paragraph 3.4 applies) within 10 Working Days of the later of the Distribution Date and the date of agreement of the financial statement referred to in Paragraph 3 above. Any dispute between the Council and the Agency will be referred to the dispute resolution provisions contained in this Agreement.
- 3.4 The Council and the Agency can agree at any time for a distribution of the Receipts not to occur on a Distribution Date in which event the next distribution of Receipts will occur on the next Distribution Date.

SCHEDULE 8

THE COUNCIL'S WORKS OBLIGATIONS

The Council agrees with the Agency that:

1. **Consents**

- 1.1 The Council confirms that all the Consents necessary to complete the Works have been or shall be obtained at the appropriate times.
- 1.2 The Council shall not carry out the Works without having obtained all necessary Consents for that work and in particular (but without prejudice to the generality of the foregoing) shall not carry out any work constituting development for which planning permission is required under the Town and Country Planning Act 1990 without having obtained detailed planning consent for that work.
- 1.3 The Council shall at all times throughout the Project comply with all Consents in connection with the Works.
- 1.4 The Council shall prior to the submission of any application for planning permission or any application for any amendment or variation to any planning permission relating to the Works, submit to the Agency copies of all plans and drawings to be submitted to the local planning authority and shall obtain the consent of the Agency to the design and layout of the Works and the planning application such consent not to be unreasonably withheld or delayed.
- 1.5 The Council shall if requested by the Agency produce to the Agency such documents or copy documents as the Agency may require to demonstrate satisfaction of the Council's obligations under this paragraph 1.

2. **No material alteration of the Works**

The Council shall not make any material variations to the Works without the consent of the Agency such consent not to be unreasonably withheld or delayed.

3. **The Project Drawings and Specification**

- 3.1 The Council shall not make any material variations to the Works Drawings and Specification without the consent of the Agency such consent not to be unreasonably withheld or delayed.
- 3.2 The Council shall obtain the Agency's approval to any variations to the Works Drawings and Specification prior to commencing any Works to which such variations relate (such approval not to be unreasonably withheld or delayed). Any revised plans, drawings and specifications detailing any such variations that are approved by the Agency will then form part of the Works Drawings and Specification.

4. **Consent to variations**

In the event of the issue of a consent by the Agency to vary the Project and/or the Works and/or the Project Drawings and Specification, then the Agency reserves the right to vary any Agency Funding provided in connection with such Works.

5. **Public Procurement**

- 5.1 The Council acknowledges that (as a consequence of the payment of funding pursuant to this agreement) state aid and European Union and United Kingdom procurement legislation will apply to the Works.

- 5.2 The Council shall comply with all applicable United Kingdom and European Union State aid and procurement legislation and any implementing measures and any other legislation in connection with the procurement of any of the Works or any services in respect of the Project.
- 5.3 The Council shall ensure that any contracts outside the scope of such procurement legislation are subject to a competitive tender process approved by the Agency such approval not to be unreasonably withheld or delayed.
- 5.4 The Council shall promptly provide to the Agency any information which the Agency may request in order to satisfy itself that the Council has complied with the provisions of paragraphs 5.1 and 5.3.

6. The Development Team and collateral warranties

- 6.1 The Council shall appoint or procure the appointment of the Development Team in sufficient time to comply with the Council's obligations under this agreement in connection with the Works.
- 6.2 The Council shall obtain the Agency's approval to the proposed procurement process and to the proposed selection criteria for the appointment of the Development Team such approval not to be unreasonably withheld or delayed.
- 6.3 The Council shall obtain the Agency's approval to the proposed terms of appointment of the Development Team such approval not to be unreasonably withheld or delayed.
- 6.4 The Council shall procure (as a condition of appointment of each member of the Development Team) that each such member of the Development Team maintains an appropriate level of professional indemnity and/or product liability insurance (as appropriate) with a reputable insurer throughout the period during which it retains liability for breach of the terms of its appointment and provided that such insurance remains available at commercially reasonable rates and on commercially reasonable terms.
- 6.5 The Council shall supply the Agency with a certified copy of the terms of appointment of any member of the Development Team within ten working days of the date of such appointment.
- 6.6 The Council shall procure that institutionally acceptable collateral warranties are entered into and delivered to any purchasers, tenants and funders of the ESG Area from each member of the Development Team as soon as reasonably practicable after receipt of a request to do so by the Agency or the Company.

7. The Works Contract

- 7.1 The Council shall enter into the Works Contract with the Works Contractor for the carrying out of the Works (or relevant elements of them).
- 7.2 The Works Contract shall be executed as a deed.
- 7.3 If the appointment of the Works Contractor under the Works Contract is terminated for any reason the Council shall negotiate and enter into a contract for the carrying out of the remainder of the Works with a contractor and in a form in each case approved by the Agency such approval not to be unreasonably withheld or delayed) but the approval of the Agency to the form of the contract shall not be required to the extent that the new contract is in the same form as the Works Contract.
- 7.4 Where paragraph 7.4 applies, the new contract and the new contractor shall constitute the Works Contract and the Works Contractor.
- 7.5 The Council shall require as a condition of appointment of the Works Contractor that the Works Contractor maintains an appropriate level of professional indemnity insurance with a

reputable insurer throughout the period during which it retains liability for breach of the terms of the Works Contract.

7.6 The Council shall:

7.6.1 diligently take all steps necessary to procure the due performance and observance of the obligations and duties of the Works Contractor;

7.6.2 not waive, release, vary nor estop itself from enforcing or seeking redress for any such obligation or duty without the Agency's approval such approval not to be unreasonably withheld or delayed; and

7.6.3 not do nor omit to do any act or thing which would entitle the Works Contractor to treat the Works Contract as terminated by breach.

7.7 The Council will:

7.7.1 will discharge its obligations and will use its reasonable endeavours to enforce the obligations of the Works Contractor under the Works Contract; and

7.7.2 will take all remedial steps available to the Council under the Works Contract.

7.8 **The Works**

7.8.1 The Council shall procure that the Works are carried out with all due diligence and expedition:

(a) in a good and workmanlike manner using good quality materials;

(b) in accordance with the Consents;

(c) in accordance with the Works Drawings and Specification and the Sustainability Framework; and

(d) in accordance with British Standards, good building practice and standards required by any competent authority, all statutory requirements and requirements of the European Union and the provisions of this agreement.

7.8.2 The Council shall comply with all Statutory Requirements affecting the Works.

7.8.3 The Council shall do all things required of a "client" during the construction of the Works as set out in the Construction (Design and Management) Regulations 2007 (and/or any modifications or replacement thereof for the time being in force) and the Council accepts that it is a client under the said Regulations and shall promptly notify the Health and Safety Executive of the particulars specified in Schedule 1 of the said Regulations.

7.9 **Prohibited Materials**

The Council shall ensure:

7.9.1 that any member of the Development Team shall act in accordance with the guidance contained in the publication; "Good Practice in the Selection of Construction Materials" (1997) by Tony Sheehan, Ove Arup & Partners, (published by the British Council for Offices and the British Property Federation); and

7.9.2 that no other substances or materials generally known to be deleterious at the time of specification or approval or which do not comply with any applicable British

Standard or European Standard or any applicable Code of Practice shall be specified or approved for use in the Works.

7.10 Construction industry scheme

7.10.1 In the case of payments made by the Agency to the Council on or after 6 April 2007 the Council warrants and undertakes that:-

- (a) the Council will (and will procure that the contractor appointed in relation to the Works shall) at all times comply with the requirements of Chapter 3 Part 3 Finance Act 2004 (as amended from time to time); and
- (b) in the event that the Agency is required to verify the Council's status the Council will supply to the Agency on demand its unique payer reference and any other information which the Agency may be required to provide to HM Revenue & Customs in order to verify the Council's status (and for the avoidance of doubt references in this sub-clause to the "Council" include references to any person nominated by the Council to receive payments on behalf of the Council).

7.10.2 Where the provisions of paragraph 7.10.1 apply the Agency shall verify the Council's status and shall confirm to the Council in writing:-

- (a) any intention to make a statutory deduction; and
- (b) the rate at which any such deduction will be made.

7.11 Insurance

At all times the Council shall:-

- 7.11.1 maintain or procure that there are maintained full and proper insurance policies in respect of the Works;
- 7.11.2 if requested, supply evidence of such insurance policies to the Agency;
- 7.11.3 if any building or any works forming part of the Works or any materials or goods required to undertake such works are destroyed or damaged (other than as necessary as part of the carrying out of the Works), procure the rebuilding, reinstatement or replacement of such building, work, goods or materials in accordance with the provisions of this agreement as soon as reasonably practicable;

7.12 Site visits, meetings and inspections

- 7.12.1 The Council shall ensure that Agency and/or its representatives are permitted access at all reasonable times on reasonable notice in order to inspect the Works.
- 7.12.2 The Council shall keep the Agency fully informed of the progress of the Works and shall supply to the Agency as soon as practicable copies of all relevant documents, correspondence and other information relating to the Works as the Agency may from time to time reasonably require.
- 7.12.3 The Council shall hold site meetings as often as may be appropriate.
- 7.12.4 The Council shall give the Agency at least five working days' notice (or in emergency as much notice as possible) of all site meetings and shall permit the Agency and/or its representatives (if they so desire) to attend the site meetings.

- 7.12.5 The Council shall within five working days supply the Agency with copies of the full minutes of the site meetings (whether or not the meetings have been attended by the Agency and/or its representatives).
- 7.12.6 The Council shall give the Agency full written details and copies of the results of any inspection or testing of the Works within ten working days of their being carried out (whether or not the inspection or test was attended by the Agency and/or its representatives).
- 7.12.7 If the Agency wishes representations to be made to the Works Contractor or to any consultant or sub-contractor appointed by any party in relation to the Works then the Agency shall make such representations to the Council and the Council shall take and shall procure that the Works Contractor or the appropriate consultant or sub-contractor takes proper account of such representations and shall inform the Agency of any observations on such representations.
- 7.12.8 No inspection, testing, approval or review nor any omission to inspect, test, approve or review on the part of the Agency shall diminish any duty or liability of the Council under this agreement.

7.13 Practical Completion

- 7.13.1 The Council shall give at least ten working days' notice to the Agency of the date when the Council anticipates that the date of practical completion of the Works will occur.
- 7.13.2 The Agency and/or its representatives shall (if they so desire) inspect the Works accompanied by the Council on the date specified in any notice issued under paragraph 7.13.1 and the provisions of paragraph 7.12.7 shall apply if the Agency wishes to make any representations following such inspection.
- 7.13.3 The Council shall following the issue of a certificate of practical completion (or equivalent) in respect of the Works (or any part thereof) furnish a copy of the certificate of practical completion (or equivalent) to the Agency.

7.14 Defects

The Council shall:

- 7.14.1 ensure that all outstanding works and all omissions and defects in the Works identified in any snagging list properly issued within any certificate of practical completion (or equivalent) are remedied within a reasonable time after the date of practical completion;
- 7.14.2 make good or procure the making good of any defects which appear in the Works within the defects liability period (or equivalent) under the Works Contract within a reasonable time of receipt of notification of such defects.

THE COMMON SEAL OF)
THE COUNTY OF HEREFORDSHIRE DISTRICT)
COUNCIL was hereunto affixed in the)
presence of:-)

Authorised Signatory)

THE COMMON SEAL OF ADVANTAGE WEST)
MIDLANDS was hereunto affixed in)
the presence of:-)

Authorised Signatory)

EXECUTED (but not delivered until)
the date hereof) **AS A DEED**)
by affixing the Common Seal of)
ESG HEREFORDSHIRE LIMITED)
in the presence of:-)

Director

Director/Secretary

APPENDIX 1

PLAN

APPENDIX 2

TERMS OF REFERENCE OF SENIOR OFFICERS WORKING GROUP

1. The Company shall be responsible for the formation of the Senior Officers Working Group as soon as reasonably practicable after the date of this Agreement comprising the Representatives.
2. No representative shall be appointed to the Senior Officers Working Group unless such representative has sufficient knowledge understanding and experience to contribute appropriately in connection with the remit of the Senior Officers Working Group.
3. The representative shall be responsible for ensuring delivery of the Objectives within their respective organisations and giving direction to any subordinate working groups.
4. Each party shall have the right to remove any of its appointed representatives and appoint other representatives so removed by giving notice to the other Parties.
5. The detailed terms of reference of the Senior Officers Working Group shall be agreed in writing by the Parties.
6. The Parties shall procure that the Senior Officers Working Group will agree as soon as reasonably practicable after the date hereof the powers of the Senior Officers Working Group, the requirements as to notices and agendas for meetings and circulation of information prior to meetings.
7. The Senior Officers Working Group shall meet monthly with the meeting to be attended by the Chief Executive of the Company who shall be responsible for reporting to the Company's Board.

APPENDIX 3

AUDIT REQUIREMENTS

1. Audit - Value Thresholds

Audit requirements for projects at value thresholds are given below:-

| Project Value and Duration | Annual Statement of Project Expenditure | Auditor's Report & Certificate | Final Statement of Project Expenditure |
|---|---|--------------------------------|--|
| Under £100,000 Less than 12 months | x | x | x |
| Under £100,000 More than 12 months | x | ✓ | ✓ |
| Over (or equal to) £100,000 Less than 12 months | x | ✓ | ✓ |
| Over (or equal to) £100,000k More than 12 months | ✓ | ✓ | ✓ |

- 1.1 [Statement of Grant Expenditure] will be audited by the Council's external auditors. Where the Council is not in the public sector, a tri-partite arrangement will be required in the form as set out in the Agency's Model Tri-Partite Engagement Letter (ADV-49).
- 1.2 Both annual and final statements must be sent to the Agency's representative within 30 Working Days of each completed financial year ending March 31st, or within 30 Working Days of project completion, using the Agency's approved standard template (ADV-34 Statement of Project Expenditure).

APPENDIX 4

CLAIM FORM

APPENDIX 5

MONITORING AND REPORTING REQUIREMENTS

MONITORING

1. General Requirements

- 1.1 The [Project Management Plan] will form the basis on which the Agency will expect the project to be managed and monitored. Failure to prepare and implement a plan to the approval of the [Agency's project and contract manager will [constitute a clawback and termination event]
- 1.2 Monitoring staff will need to be satisfied that the systems used by the Project are sound and that [Grant] claims are correct. There will be a range of documentary evidence available to allow this to be done including the accounting records of the Project which show the dates invoices are/will be Paid¹, receipts and statements from suppliers, bank statements, cheque stubs, and correspondence with payees and with the Project's internal and external auditors. Monitoring staff will determine which of these or which combination of these items will be required.
- 1.3 The Council must keep records of all cash payments and their dates, as these are part of the Project's records. The Council must also ensure that any organisation acting on the Council's behalf does the same. The Council is advised to encourage payees to accept payment by BACS, rather than by cheque. The Council should contact the Agency if the Council is in any doubt as to whether particular items of expenditure are eligible for [Grant].
- 1.4 If the Project has European funding the Council will need to identify expenditure by geographical area, i.e. Core, Transitional and non-Objective 2 Area.
- 1.5 The Council shall produce and agree with the [Project and Contract Manager] a monthly forecast of expenditure and outputs for the year. The Council shall sign the completed Outputs and Expenditure profile sheets.

2. Interim Claims – Monthly

- 2.1 Where the contract extends into the next financial year, the Council shall produce and agree with the [Project and Contract Manager] a monthly forecast of expenditure and outputs for the following year. This shall be done by the end of Quarter 3 of the current year.
- 2.2 All interim claims must be submitted monthly, and must consist of a fully completed [Grant] Claim form which includes a forecast, confirmed expenditure and output profiles. The [Grant] Claim form and profiles will be made available to the Council electronically.
- 2.3 In addition, for each [Grant] claim an update to milestones, risks, issues, monthly progress report and status reports must be provided; where appropriate, the [Quantity Surveyor's] Contract Valuation Sheet must be submitted with the [Grant] claim.
- 2.4 The interim claims should be submitted within 10 working days of the end of the preceding month.
- 2.5 Evidence to support each interim claim must be held and be available for inspection or audit.

3. Interim Claims – Exceptions

¹ "Paid" means when the Project has given money for goods/services received and the money has passed out of the control of the Project by the time it is included in a claim for grant. This will be the point when the money is given or sent to the supplier by post or electronic instruction to the Project's bank e.g. invoice paid by cheque in post. "Incurred" means liabilities for goods or services that have actually been received, and that may be validated by an authorised invoice in respect of the full amount of such goods or services.

[Projects] shall submit [Grant] claims on a monthly basis for the lifetime of the project. Any exception must be approved by an Agency Project and Contract Team Leader in advance.

4. Final Claims

- 4.1 Payment of final claims will not be made until receipt by the Agency of a final statement of project expenditure including an [Auditor’s Report].
- 4.2 All final claims must include a [Grant] Claim form, and Expenditure and Output profiles
- 4.3 Evidence to support each final claim must be held and be available for inspection or audit.

REPORTING

1. Quarterly Reporting

- 1.1 This should include an inventory of assets if applicable [(as detailed in Appendix [])]
- 1.2 Progress of the Project against [Project Details in Appendix 1] must be included, in accordance with the following timetable:

| Quarter | Date required at the Agency |
|---------------------------|---|
| April - June | Within 10 Working Days ² of quarter end date |
| July - September | Within 10 Working Days of quarter end date |
| October - December | Within 10 Working Days of quarter end date |
| January - March | Within 5 Working Days of quarter end date |

- 1.3 Even where all claims are completed the Quarterly Progress Reports must be submitted until Project completion or until the Project is confirmed as completed or terminated by the Agency’s representative.

2. Annual Reporting

- 2.1 The Council must send the Agency a copy of the Council's Annual Report and Accounts (Statutory) annually or equivalent.
- 2.2 A breakdown by cost type as per [Appendix 1 Paragraph 7.1 Total Project Costs] is required annually each financial year end (31st March). The Council should highlight any significant variation from either the Council's application form or the previous year’s submission.

3. Final Reporting

- 3.1 A Final Report shall be completed at the end of the Project and submitted with the final claim for payment (or, if later, on completion of the Project) which should include a full assessment and evaluation of the Project, together with any exit plan.
- 3.2 Where a Project is due to have a duration of less than three months, only a final report will be required unless the Agency stipulates otherwise.

4. Additional Reporting

² ‘Working Days’ means Monday to Friday inclusive, except public and bank holidays.

The Agency representative will decide upon further monitoring requirements based upon the content of the reports and the Council will co-operate and assist the Agency with the implementation of any such requirements.

5. **Site Visits**

These will be arranged on reasonable notice as specified by the Agency's Project & Contract Manager.

APPENDIX 6
SUSTAINABILITY FRAMEWORK