

PROPOSED MEMORANDUM OF UNDERSTANDING

PARTIES

1. The parties to this Memorandum of Understanding which includes its Annexes (“**the MoU**”) are:
 - a) the Secretary of State for Energy and Climate Change (the “**Secretary of State**”);
 - b) The City Council of Bristol (“**the authority**”)
 - c) Known together as “**the parties**”.

BACKGROUND

2. The Secretary of State has decided to grant funding to the authority to help deliver Bristol European Green Capital City 2015.
3. The parties wish to record their understanding regarding the grant funding. Therefore, this MoU sets out the understanding reached by the parties on, amongst other things, the amount of the grant available to the authority, payment of the grant, how it should be spent, commitments by the authority and commitments in relation to the administration of the grant.

THE GRANT

4. The statutory power through which this grant is being provided is through Section 31 of the Local Government Act 2003.
5. Subject to the authority meeting the commitments, the Secretary of State will grant the following funds to the authority:

	Programme Funding £
Bristol European Green Capital City 2015 funding	7,000,000 (£7 million)

6. The total amount of grant funding referred to in paragraph 5 is referred to in this MoU as “**the Grant**”.

PAYMENT OF GRANT

7. The authority will provide as soon as possible the documentation and information specified in Annex 1. The Secretary of State will pay the Grant to the authority, through Section 31 of the Local Government Act 2003, after receipt of the documentation and information listed in Annex 1 and will endeavour to do so within an acceptable timeframe.

ELIGIBLE COSTS

8. Subject to paragraph 10 and 11, the authority will use reasonable endeavours to only use the Grant for eligible costs and in accordance with the provisions of the MoU with the authority. Eligible costs are those properly incurred to deliver the Proposal, the current draft of which is contained in Annex 4.

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9. Where the Grant includes capital funding, accounting standards permit, in certain circumstances, the capitalisation of costs incurred when delivering the capital assets for the Proposal (for example, professional fees). The authority will use reasonable endeavours to keep such costs incurred in delivering the Proposal below 10% of the total value of the capital funding part of the Grant provided by DECC. In all other cases capital funding should not be spent on revenue.

PROHIBITED USE OF GRANT

10. Without prejudice to any other provisions of this MOU, the authority will use reasonable endeavours not use the Grant for the following purposes:
- a) use to fund measures which have been funded, in part or in whole, by other incentive schemes as the Secretary of State may specify from time to time;
 - b) use to fund the provision of a loan;
 - c) use for activities of a political or exclusively religious nature;
 - d) use in respect of costs reimbursed or to be reimbursed by funding from public authorities or from the private sector;
 - e) use to cover interest payments (including service charge payments for finance leases);
 - f) use to pay statutory fines, criminal fines or penalties;
 - g) use in respect of Value Added Tax that the Authority is able to reclaim from HM Revenue and Customs.

AVAILABILITY OF GRANT

11. The Grant is made available for use between 1st April 2014 and 31st March 2016. .

STATE AID

12. The authority acknowledges that it is important to ensure that the Grant and use of it is not, and does not become, an unlawful state aid under Article 107 of the Treaty on the Functioning of the European Union. State aid rules ensure that the governments of EU Member States do not distort competition by unfairly subsidising their own industry or particular parts of it.
13. To minimise the risk that the European Commission or a court requires Grant funding to be repaid, the authority will use reasonable endeavours to:
- a. comply with EU law relating to state aid in its use of the Grant and its delivery of the Proposal and ensure that any third party and all other end beneficiaries of the Grant (i.e. any persons funded or subsidised by third parties) do so;
 - b. require third parties to keep a record of the use of Grant moneys and any end beneficiaries of the Grant;
 - c. ensure that use of the Grant in connection with the Proposal complies, and the use of it by third parties and end beneficiaries complies, with EU state aid rules (including the de minimis Regulation, where relevant); and
 - d. obtain and retain all declarations and information as may be required to enable both the authority and the Secretary of State to comply with EU state aid rules, particularly the de minimis Regulation and to provide copies to the Secretary of State when required to do so.

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PROCUREMENT AND OTHER BENEFITS TO THIRD PARTIES

14. The authority in delivering the Proposal will use reasonable endeavours to:

- a) comply with all relevant requirements of law relating to public procurement; and EU state aid and (in the case of contracts for goods, works and services).
- b) unless the Secretary of State agrees otherwise in writing, pay the person from whom any goods, works or services are purchased within 30 days of receiving a valid invoice from that contractor.

COMMERCIAL USE OF THE GRANT

15. The authority will use reasonable endeavours not use the Grant, or any asset financed wholly or partly by it, to generate profit or make a capital gain, except to the extent agreed as part of the Proposal as currently drafted or as it may be amended in the future. If the authority does so, it:

- a) will inform The Secretary of State immediately and in writing; and
- b) understands that the Grant may be reduced by the amount of that revenue or gain (as the case may be).

REDUCTION, WITHDRAWAL AND REPAYMENT

16. In accordance with paragraphs 17 to 22, it is the understanding of the parties that the Secretary of State may ask the authority to repay all, or any proportion of, the Grant, together with interest (calculated in accordance with paragraph 20 and, in the case of late payment, paragraph 21) and any other amount required by the European Commission, where the Grant, or any part of it, has been paid (including in cases where the authority has already spent the Grant money).

17. The Grant is also awarded on the condition that:

- a) the authority will include (and where necessary enforce) similar repayment rights in its agreement with any third party, and that third party, in turn, includes similar rights in its agreements with end beneficiaries; and
- b) those agreements contain rights entitling the Secretary of State to enforce those rights (so that the Secretary of State may recover grant moneys directly from third parties or the end beneficiaries) under the Contracts (Rights of Third Parties) Act 1999; for the avoidance of doubt, the Secretary of State expects that the authority will seek to recover the relevant moneys in the first instance and these rights do not qualify the obligation of the authority to do so.

18. The authority accepts that the Secretary of State may exercise the options referred to in paragraph 17:

- a) where the Secretary of State is required to cease Grant funding or to recover all, or any proportion, of the Grant or any other amount by virtue of a decision of a court or of the European Commission;

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- b) where the Secretary of State has reasonable grounds to consider that the payment of the Grant, or the authority's use of it, contravenes any requirement of law, in particular (but without limitation) EU law relating to state aid; or
 - c) in the case of any overpayment to, or material non-compliance or misuse of the Grant by any end beneficiary, or in the case of their wind-up or insolvency (or of any similar or precursor event).
19. The authority accepts that the Secretary of State may exercise the options referred to in paragraph 16 where the Secretary of State:
- d) is required to cease Grant funding or to recover all, or any proportion, of the Grant or any other amount by virtue of a decision of a court or of the European Commission; or
 - e) has reasonable grounds to consider that the payment of the Grant, or the authority's use of it, contravenes any requirement of law, in particular (but without limitation) EU law relating to state aid.
20. When exercising the options referred to in paragraph 16, the Secretary of State will notify the authority of the grounds concerned and as far as possible, consider the authority's representations made within any reasonable timeframe required by the Secretary of State.
21. A decision by the Secretary of State to ask the authority to repay the Grant will be communicated by letter, and the authority will use reasonable endeavours to make that repayment within 30 days of the date of that letter or within any later reasonable timeframe agreed by the Secretary of State in writing.
22. Where the Secretary of State requests repayment, interest will be calculated from the date of the Grant payment, in accordance with:
- a) the retail prices index over the relevant period (that index being taken as 0% for any period during which the index is negative); or
 - b) any other rate required by law in the circumstances (including any rate required under EU law relating to state aid), if it is higher.
23. Where the authority does not make the relevant payment within the timeframe specified in paragraph 19, further interest on the outstanding sum (inclusive of interest already charged under paragraph 20) will accrue, after that deadline, at the statutory rate of interest under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 or any other rate required by law in the circumstances, if it is higher.
24. Should the Secretary of State not exercise his options under paragraph 16 or delay in doing so, this shall not constitute a waiver of those options unless the Secretary of State confirms such a waiver in writing. Furthermore, any such written waiver shall not be taken as a precedent for any other, or subsequent, circumstances.

SUSPENSION

25. The Secretary of State may suspend payment of the Grant where:
- a) one of the grounds in paragraph 17 arises;
 - b) the Secretary of State has reasonable cause to believe that one of those grounds may have arisen, or is likely to arise; or

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- c) one of the provisions of the MoU is not met by the authority pending consideration of the circumstances and the making of a decision.
26. In the case of any suspension, unless the Secretary of State confirms a contrary agreement in writing:
- a) The authority will use reasonable endeavours to continue to comply with the requirements of this MoU including any deadlines occurring during the period of suspension; but
 - b) The authority will not make any further use of the Grant until the Secretary of State has authorised continued use of the Grant in writing.
27. The authority will inform the Secretary of State in writing as soon as reasonably practicable upon it becoming aware if it has any concerns that any of the grounds in paragraph 17 might arise or that it will not be able to meet the provisions of the MoU. If such concerns arise after the authority has received the Grant, the authority will not make any use of the Grant until the Secretary of State has authorised continued use of the Grant in writing.

VOLUNTARY REPAYMENT OF FUNDS GRANTED

28. The parties agree that in the event that the authority is unable to deliver the Proposal and with the agreement of the Secretary of State, any unspent Grant monies may be returned to the Secretary of State in the manner and at such time agreed by the parties.

COOPERATION

29. The authority agrees to cooperate and work in collaboration with an account manager appointed by the Secretary of State (“Account Manager”) in delivering the Proposal.

INFORMATION SHARING

30. The Secretary of State may share information relevant to the Grant and Proposal with the agents of the Secretary of State, other public authorities and the European Commission.

PROVISION OF PROGRESS REPORTS, PROJECT EVALUATION AND MONITORING DATA FOR BRISTOL EUROPEAN GREEN CITY 2015

31. In respect of the European Green City funding element of the Grant and Proposal, the authority will use reasonable endeavours to:
- a) Complete and return to the Secretary of State an **interim self-evaluation report** by 31 December 2014 and a **final evaluation report** as soon as possible once the Secretary of State considers that the Proposal has been delivered by 30 January 2016 at the latest. Guidance on the content of these evaluation reports is at Annex 5;
 - b) complete and return to the Secretary of State **monthly project progress reports**, in a format agreed with their Account Manager, at monthly intervals until a final **monthly project progress report** has been provided in respect of the month during which the Secretary of State considers the Proposal to have been delivered; and

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32. The Secretary of State may publish the interim self-evaluation report and the final evaluation report described in paragraph 29(a) to enable greater transparency.

RECORD KEEPING

33. The authority will keep for ten years records relating to any spending funded (or defrayed) by the Grant. Such records should indicate:

- a) the identity of any third party concerned and their business;
- b) the amounts any third party has been given;
- c) the purpose for which the money was spent;
- d) evidence that contracts have been awarded in accordance with public procurement law where they are required to be; and
- e) details of and information relating to any significant sub-contracting

MONITORING AND AUDIT

34. The authority will use reasonable endeavours to:

- a) respond fully, truthfully and promptly to any enquiries the Secretary of State, or the Comptroller and Auditor General, or their representatives, may make about the Proposal or the use of the Grant and provide any information and evidence reasonably requested, including by providing a statement of Grant usage (at such times, and in such form, as they may reasonably specify);
- b) allow the Secretary of State, the Comptroller and Auditor General, as well as the general public, and their representatives, access to all relevant documents and records, and reasonable access for inspecting any relevant site;
- c) where requested, ensure that any information or evidence provided to the Secretary of State, the Comptroller and Auditor General, or their representatives, is audited by an identified and independent reporting accountant or otherwise confirmed or verified by a person of such other relevant expertise as they may reasonably specify; and
- d) give reasonable assistance to the Secretary of State or the Secretary of State's contractors to carry out work in connection with the Grant throughout delivery of the Proposal and up to two years after completion of the Proposal, for example as part of the Secretary of State's ongoing evaluation commitments.

PROVISION OF PERSONAL INFORMATION AND COMPLIANCE WITH DATA PROTECTION ACT

35. In so far as it is possible to do so in accordance with the Data Protection Act 1998, the Market Research Society Code regarding the collection and use of personal data for research and statistical purposes and all other law, the authority agrees to collect the information required to complete the datasets referred to in paragraph 29(a) ("the Information") and return it to the authority in a way which:

- a) allows it to share the Information with DECC;
- b) allows DECC to share the Information with any of its research partners;

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- c) enables the Information to be used by DECC to contact individuals who are the subject of the Information for the purposes of further research; and
- d) allows DECC to use the Information for research and statistical purposes (this does not include publishing the Information in a way that identifies individual households).

FREEDOM OF INFORMATION

- 36. The parties may be obliged to disclose information relating to the Bristol European Green City funding, the Grant and the Proposal under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or under another requirement of law.
- 37. The parties will use reasonable endeavours to assist and cooperate with each other as reasonably requested to facilitate compliance with those requirements.
- 38. In the event that the Secretary of State provides information in response to a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, the Secretary of State may make that response publicly available for the purposes of transparency.

NOTICES AND COMMUNICATIONS

- 39. The authority will be able to contact the Department of Energy and Climate Change on any working day between 9am and 5pm in writing, either via email at fiona.booth@decc.gsi.gov.uk or via post /hand delivery to the following address:

Department of Energy and Climate Change
3 Whitehall Place
London
SW1A 2AW

INTELLECTUAL PROPERTY

- 40. In undertaking the Proposal, the authority will ensure that the intellectual property rights of any third party are not infringed.
- 41. Where the Proposal gives rise to the generation of any intellectual property, save for as expressly identified and agreed in the Proposal as currently drafted or as amended in the future, the authority will not subsequently seek to make profit from the use of such intellectual property, for example through the use of licences.
- 42. Unless otherwise agreed by the Secretary of State, the authority will allow the Secretary of State royalty free use of any intellectual property created whilst delivering the Proposal.

COMPLIANCE WITH THE LAW

- 43. The authority will use reasonable endeavours to comply with all laws and regulatory requirements when delivering the Proposal as well as any third parties it works with.
- 44. In signing this MoU, the authority confirms that use of the Grant for the purpose of the Proposal and in accordance with the MoU is in compliance with all laws and regulatory requirements.

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ANTI-DISCRIMINATION

45. The authority will use reasonable endeavours to ensure compliance with the requirements of the Equality Act 2010 and avoid any unlawful discrimination as well as any third parties it works with.

RESPONSIBILITY FOR EMPLOYEES, CONTRACTORS, AGENTS AND PARTNERS

46. The authority will use reasonable endeavours to ensure that it and any third party ensures its employees, contractors, agents, partners and local authorities or organisations it works with in delivering the Proposal comply with the commitments and principles set out in the MoU and will be responsible for any failure by them to meet those commitments and principles.

WARRANTIES

47. The authority confirms that:

- a) it has full capacity and authority to deliver the Proposal and to enter into this MOU;
- b) it will use reasonable endeavours to obtain any consents necessary to undertake the Proposal;
- c) the information and evidence in its application remains true, complete and accurate, and that its circumstances have not materially changed since submitting its application; and
- d) it knows of the existence of no circumstances which might materially and adversely impact on its ability to undertake the Proposal or observe the provisions and principles of this MOU.

LIMITATION OF LIABILITY

48. The authority confirms that the Secretary of State's liability to the authority is limited to payment of the Grant (subject to meeting the commitments and principles of the MOU and its Annexes and to the Secretary of State's rights set out therein). The authority remains entirely responsible for its risks and liabilities in undertaking the Proposal, and the Secretary of State shall have no liability for any consequence, direct or indirect, that may arise through the authority and undertaking of the Proposal or its use of the Grant through third parties.

INDEMNITY

49. The authority will indemnify the Secretary of State against all claims, demands, actions, proceedings, costs, charges, expenses, losses, damages or other liabilities arising from the authority's acts or omissions, or those of its employees, contractors, agents or partners, including any other local authorities or organisations the authority works with in delivering the Proposal and makes use of the Grant.

VARIATION

50. No variation of this MoU will be effective unless it is agreed in writing and signed by all parties. This does not prevent the Secretary of State making reasonable changes in relation to the administrative arrangements in the MoU (such as departmental contact details) without such agreement in writing signed by both parties.

PAYMENT

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51. The authority will use reasonable endeavours to assign tranches to appropriate third parties within a reasonable timeframe of receiving the Grant from Secretary of State. The authority may not otherwise assign or dispose of its rights under this MoU.

STATUS

52. This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU. The parties do, however, enter into the MoU intending to honour all their commitments under it.

53. Nothing in this MoU is intended to, or shall be deemed to, establish any partnership, joint venture or relationship of employment between the parties, constitute either party as the agent of the other party, nor authorise either of the parties to make or enter into any commitments for or on behalf of the other party. Accordingly, the authority will not hold itself out as having any such relationship with the Secretary of State.

FURTHER FUNDING

54. The Secretary of State is under no obligation to provide the authority or any third party associated with any further funding in respect of the Proposal or for any other purpose.

REFERENCES

55. In this MoU references to legislation, including EU legislation and any documents issued by the EU institutions, are to that legislation as amended or re-enacted from time to time (including any amendment or re-enactment having taken place before the date of this MoU).

Signed for and on behalf of the Secretary of State for Energy and Climate Change

Signature:

Name:

Position:

Date:

Signed for and on behalf of the authority

Signature:



Name: **STEPHEN HILTON**

Position: **DIRECTOR, BRISTOL FUTURES**

Date: **21.8.2014**

Documentation to be provided by the authority before the Grant will be released

The authority is requested to provide the following documents to enable the Secretary of State to release the Grant:

- a copy of this MOU, signed at page 9.
- a completed grant claim form set out in Annex 5;
- details of a bank account of the authority into which the Grant may be paid, unless already provided separately;
- the name and contact details of personnel authorised by the authority to deal with the Secretary of State on matters connected to the Grant on the authority's behalf; and
- any other information specified the letter sent to you notifying you of the Secretary of State's decision, in principle, to pay the Grant.

Terms of Bristol 2015 and third parties who receive grant funding

The authority is requested to ensure that in the event of a third party providing onward grants to third party organisations that binding terms between the authority and the third party are developed which include when working with neighbourhood groups, third sector groups and organisations:

- how groups and organisations demonstrate compliance with law
- how groups and organisations demonstrate compliance with State Aid legislation
- how groups and organisations demonstrate financial security
- how Bristol 2015 Ltd will recover costs of grants distributed in event of breach

SECTION 151 OFFICER DECLARATION FROM BRISTOL CITY COUNCIL

In my position as the Section 151 Officer for the authority, I confirm that:

- a) The authority will accept the grant funding that it has been offered through DECC;
- b) The information and evidence pertaining to this grant claim is complete, true and accurate;
- c) The authority will use reasonable endeavours to ensure that any third party who deliver the goods and services that have been set out in the Proposal in accordance with the terms of the Proposal; *and*
- d) The authority will use reasonable endeavours to comply with the provisions of the Memorandum of Understanding in connection with its delivery of the Proposal.

Signature:

A black rectangular redaction box covering the signature of Peter Gillett.

Name: pp PETER GILLETT

Position: SERVICE DIRECTOR, FINANCE

Date: 21.8.2014

Proposals for European Green Capital Status

The programme will focus on three aims:

1. Working with communities in the Bristol area to ensure the value of sustainable living is delivered across neighbourhoods, businesses and the voluntary sector and result in attitude and behaviour change.
2. Building Bristol's global profile as the UK's most pioneering, sustainable city region to drive, inward investment, tourism and economic growth.
3. Becoming the leading forum for UK, European and Global exchange of sustainable expertise in the lead up to the 2015 Global Climate Summit

High level breakdown of costs that the grant funding will be spent on

	Workstream	Cost
1	International Summit Series including a future youth summit, future cities summit, future business summit, future festival summit, Paris COP21 activation and strategy development.	£1.7 million
2	International Festival for Clean Tech Business & The Bristol Prize including research and development awards.	£1.4 million
3	National Primary Schools Programme including digital and print assets, implementation and monitoring and evaluation.	£1 million
4	Neighbourhood Programme for small scale action at the local level on climate change and sustainable urban living including community energy	£2 million
5	Bristol Welcome Programme including volunteer recruitment programme, supporting costs, training and capacity building.	£650,000
6	The Bristol Method for evaluation, knowledge transfer and case studies.	£250,000
Total		£7 million

The parties acknowledge that the Proposal is an evolving document and by agreement between the parties may be subject to amendment throughout the life of the Grant. Any costs breakdown contained in the Proposal are indicative only and by agreement between the parties may be subject to amendment throughout the life of the Grant.

Grant Claim Form

SECTION 1: REQUESTER DETAILS

BRISTOL CITY COUNCIL	
PURCHASE ORDER NUMBER <i>(As provided by DECC)</i>	
CONTACT NAME	
TELEPHONE NUMBER	
EMAIL ADDRESS	

SECTION 2: CLAIM DETAILS

EUROPEAN GREEN CITY FUNDING TOTAL CLAIMED (as per table at para 4 of MoU):	£7,000,000
DATE OF CLAIM	
<ul style="list-style-type: none"> Claims may include VAT that the authority is not currently able to reclaim from HM Revenue & Customs or not likely to become able to reclaim. 	

SECTION 6: THE AUTHORITY'S FINANCE DIRECTOR DECLARATION

I confirm that I have considered the Proposal (the current version of which is contained in Annex 4 of the MoU) that is to be delivered as part of Bristol's European Green Capital City 2015 programme against which this Grant claim is made, as well as the principles set out in the Memorandum of Understanding, and that:

- a) The information and evidence pertaining to this Grant claim is complete, true and accurate;
- b) We will comply with the principles set out in the Memorandum of Understanding.

Signed: 

Printed name: pp PETER GILLETT

Position: SERVICE DIRECTOR, FINANCE

Date: 21.8.2014

BRISTOL EUROPEAN GREEN CAPITAL CITY : Project Evaluation Guidance

Making sure that we learn about the operation, delivery and impact of the initiatives you fund under this Grant is very important to DECC. As such we would expect you to undertake evaluation activity as described in paragraph 29 and 31 of the MOU, and to provide the data at Annex 6. When designing and delivering your evaluation you might like to consider the questions set out below. This list is not exhaustive as your evaluation should be tailored to the particular initiatives you are delivering and your specific circumstances. The Magenta Book, available at <https://www.gov.uk/government/publications/the-magenta-book> provides more help and advice about evaluating policies, programmes and project.

- **Matters to consider when conducting project evaluation.**
- What are the objectives that your project hopes to address?
- What does success look like for this project? And how will you measure this?
- What is the baseline situation from which you are measuring the project?
- What other initiatives are operating in your area at the same time that might have an influence on the project or its outcomes?
- How will you collect information about both the operation of the delivery processes and on the outcomes you achieved? What data sources will you need?
- How might you be able to establish whether outcomes are additional to what might have happened anyway?
- What sources of evidence and data are being collected to evaluate the initiative and by whom?
- What other resources are needed to evaluate your evaluation effectively?
- Which groups are being affected, in what way, in what circumstances?
- How will you ensure you collect both positive and negative outcome and process information? (It is not likely that everything will work in all circumstances)
- What are the reasons why some approaches were successful and others weren't?
- What barriers did you encounter over the course of the project and what solutions did you find to these?
- Consider what is the "logic model" for your project (the relationship between your intervention's inputs, activities, outputs, outcomes, and impacts) – what outcomes do you expect will be the result of your projects activities? You can then evaluate whether these were achieved.

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- It is a good idea (as far as data protection allows) to collect telephone numbers of householders participating as this makes it easier to contact them in future – as telephone interviews are much cheaper than face to face.
- We are particularly interested to know how you worked with community groups and other local partner organisations and what were the advantages and disadvantages of this?