

DATED

2017

- (1) CHELTENHAM BOROUGH COUNCIL
- (2) COTSWOLD DISTRICT COUNCIL
- (3) FOREST OF DEAN DISTRICT COUNCIL
- (4) THE COUNCIL OF THE CITY OF GLOUCESTER
- (5) THE COUNCIL FOR THE BOROUGH OF
TEWKESBURY
- (6) STROUD DISTRICT COUNCIL
- (7) GLOUCESTERSHIRE COUNTY COUNCIL
- (8) GLOUCESTERSHIRE CLINICAL COMMISSIONING
GROUP

**INTER AUTHORITY AGREEMENT
FOR THE COUNTY ROUGH SLEEPING SOCIAL IMPACT BOND
PROJECT**

Sara Freckleton
Borough Solicitor
One Legal
Tewkesbury Borough Council
Council Offices
Gloucester Road
Tewkesbury
Glos. GL20 5TT

Ref. SH21642

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THIS AGREEMENT is made the

day of

2017

BETWEEN:-

- (1) **CHELTENHAM BOROUGH COUNCIL** of Municipal Offices Promenade Cheltenham Gloucestershire GL50 9SA ('Cheltenham');
- (2) **COTSWOLD DISTRICT COUNCIL** of Trinity Road, Cirencester, Gloucestershire, GL7 1PX ('Cotswold');
- (3) **FOREST OF DEAN DISTRICT COUNCIL** of High Street Coleford Gloucestershire GL16 8HG ('Forest of Dean');
- (4) **THE COUNCIL OF THE CITY OF GLOUCESTER** of Herbert Warehouse, The Docks, Gloucester GL1 2EQ ('Gloucester');
- (5) **THE COUNCIL FOR THE BOROUGH OF TEWKESBURY** of Gloucester Road, Tewkesbury, Gloucestershire GL20 5TT ('Tewkesbury');
- (6) **STROUD DISTRICT COUNCIL** of Ebley Mill, Stroud GL5 4UB ("Stroud")
- (7) **GLOUCESTERSHIRE COUNTY COUNCIL** of Shire Hall Westgate Street, Gloucester GL1 2TG ('Gloucestershire')
- (8) **GLOUCESTERSHIRE CLINICAL COMMISSIONING GROUP** of Sanger House, 5220 Valiant Court, Gloucester Business Park, Brockworth, Gloucester, GL3 4FE ('CCG')

together being hereafter referred to as the "Participating Organisations".

Background

1. The Participating Organisations (Cheltenham, Cotswold, Forest of Dean, Gloucester, Tewkesbury, Stroud, Gloucestershire and CGG) have agreed to collaborate to deliver services up to £990,000.00 of funding available to Gloucester from the Department for Communities and Local Government following a bid process as part of the monies made available to provide targeted interventions by local area partnerships to reduce homelessness through Social Impact Bonds ("SIB") ("the Funding"). It is intended that this will support work across Gloucestershire, specifically to assist long term and entrenched rough sleepers.
2. The Participating Organisations are empowered under Part VII Housing Act 1996 and Section 1 of the Localism Act 2011 to enter into this Agreement.
3. Gloucester has agreed to act as lead authority and accountable body for the Funding to enable the Participating Organisations to engage a partner to provide targeted interventions to reduce homelessness and find suitable social investors to support the project ("the Services").
4. The Participating Organisations to this Agreement will contribute resources and services as set out in this Agreement.

5. The purpose of this Agreement is to set out a framework for joint working between the Participating Organisations to enable the delivery of the Services using the Funding.

AGREEMENT

1 DEFINITIONS AND INTERPRETATION

- 1.1 The following terms shall have the following meaning for the purposes of this Agreement:

“Additional Funding” means the funding from the Department for Communities and Local Government for ancillary services such as legal advice, specialist advice and additional support for the Project

“Agreement” means this Agreement and any Schedules:

“Commencement Date” means 24th July 2017.

“Funding Agreement” means a finance agreement including the outcome rates card and any documents incorporated therein between the Gloucester and the Provider;

“Funding” has the meaning given to it in Recital 1 to this Agreement;

“Lead Authority” means Gloucester;

“Other Organisations” means the Participating Organisations other than the Lead Authority;

“Participating Organisations” means all the parties to this Agreement

“Project” means the procurement process, provision of the Services and the evaluation at the conclusion of the Service Agreement

“Provider” means the appropriately qualified and experienced third party provider of the Services appointed to provide the Services;

“Services” means the targeted interventions to reduce homelessness which are described in more detail in the Lead Authority's Application for the Funding and the Specification for the Services attached at Schedule 1 and 2;

“Service Agreement” means the agreement to provide the Services between the Lead Authority and the Provider

“Term” means the period starting on the Commencement Date and ending on the fifth anniversary of the Commencement Date unless terminated earlier in accordance with the terms herein.

- 1.2 Headings contained in this Agreement are for reference purposes only and should not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

- 1.3 This Agreement shall be several and the neuter singular gender throughout this Agreement shall include all genders and the plural and the successors in title to the Participating Organisations.
- 1.4 References to any statute or statutory provision include references to:
- 1.4.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom;
- 1.4.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;

2 TERM

- 2.1 This Agreement shall continue for 5 years to include up to 6 months for the procurement process, 4 years for the Provider to provide the Services and a further period at the conclusion of the Services to evaluate the outcomes of the Project unless terminated as set out in Clause 9.
- 2.2 If it is necessary to extend the Funding Agreement, this Agreement will also be extended by the same period by the Lead Authority sending reasonable written notice of the extension to the Other Organisations
- 2.3 The Participating Organisations appoint the Lead Authority to act on behalf of the Other Organisations as the lead authority in appointing a Provider to deliver the Services and in the preparation and entering into the Funding Agreement and the Service Agreement.
- 2.4 The Participating Organisations agree to work in a spirit of mutual co-operation to comply with the terms and conditions of the Funding, the Agreement and the Service Agreement.

3 LEAD AUTHORITY'S OBLIGATIONS

The Lead Authority agrees that it will:

- Carry out a procurement for the Provider in accordance with the Lead Authority's Contract Rules and the Public Contract Regulations 2015
- prepare and enter into the Agreement for the provision of the Services with the Provider on behalf of all the Participating Organisations;
- act as the primary contact with the Provider on behalf of the Participating Organisations;
- apply to the Department of Communities and Local Government for payments during the terms of and in accordance with the Funding Agreement and the Service Agreement

- pay to the Provider such amounts as may be payable under the terms of the Funding Agreement and/or Service Agreement on behalf of the Participating Organisations provided that the Lead Authority has received the funding from the Department of Communities and Local Government;
- hold the Additional Funding for ancillary services and pay for these services as and when required.
- not delegate any duties or obligations arising under this Agreement otherwise than as may be expressly permitted under its terms
- comply with the terms of the Funding Agreement and not to agree to vary the terms of, extend the term of or terminate the Funding Agreement without the prior written consent of the Other Organisations
- monitoring the outcomes of the Services to enable the payments to be applied for on a quarterly basis
- evaluate the outcomes of the Project
- assist DCLG with any evaluation of the Project

4 THE PARTICIPATING COUNCILS' OBLIGATIONS

4.1 Each Participating Organisation agrees to:

- 4.1.1 act in good faith with transparency honesty and openness towards the others and use reasonable endeavours to observe the terms of the Funding and the Agreement;
- 4.1.2 do all things reasonably necessary or desirable to give effect to the Agreement;
- 4.1.3 contribute such resources and facilities as required to give effect to the Agreement;
- 4.1.4 not do or cause to be done anything or omit to do anything which would result in the Participating Organisations breaching the terms of the Funding Agreement, the Service Agreement or otherwise giving the Provider the right to terminate the Services Agreement;
- 4.1.5 if required grant to the Provider a non-exclusive, non-transferable royalty-free revocable licence to use any documents, text, drawings, diagrams, images or sounds (together with any database made up of those) embodied in any medium that are supplied to the Provider by or on their behalf solely for the purpose of providing the Services;
- 4.1.6 Assist the Lead Authority to comply with its obligations set out in the Funding Agreement and Services Agreement.

4.2 if the Lead Authority does not pay the Funding or part thereof pursuant to the terms of the Funding Agreement and Service Agreement and if the Funding Agreement allows, the Participating Organisations shall agree how the Funding shall be spent subject to the prior written approval of the Department for Communities and Local Government.

4.3 In the event that the Provider incurs costs which the Lead Authority is obliged to pay under the Service Agreement or a "Service Fee" (as defined in the contract with the Provider) is payable to the Provider or the contract is terminated early and an "Authority Default Termination Sum" (as defined in the contract with the Provider) becomes payable to the Provider and the Lead Authority is unable to recover any or all the costs under the Funding Agreement, each of the Participating Organisations agrees to pay to the Lead Authority in equal amounts any shortfall in the funding from Department of Communities and Local Government to enable the Lead Authority to make the payments under the Service Agreement.

5 INDEMNITIES

5.1 Each of the Participating Organisations (either as Lead Authority or as one of the Other Organisations) shall indemnify and keep indemnified each other against all claims and losses arising directly or indirectly out of or in connection with a failure by the relevant Participating Organisation to comply with its obligations under this Agreement.

6 MONITORING, REVIEW AND DISPUTE WITH THE PROVIDER

6.1 The Lead Authority will monitor and review the progress of the Provider in line with the frequency and detail specified in the Service Agreement and report back to the Other Organisations at regular intervals

6.2 In the event of continued default in performance by, or disputes with, the Provider, the Lead Authority will seek legal advice from its legal team and then report options for remedies to the Other Organisations who shall decide the action that should be taken to remedy such continued default by the Provider (such remedy may include the early termination of the Service Agreement where the Service Agreement allows).

6.3 If due to a dispute with the Provider it is necessary for the Participating Organisations to seek advice or support from an external adviser, legal firm or counsel the costs of such advice or support shall be funded by the Lead Authority out of the Funding or Additional Funding. If there is no Funding or Additional Funding available then the cost shall be shared equally by the Participating Organisations provided that the costs are agreed by the Participating Organisations before they are incurred.

7 WARRANTY

- 7.1 Each of the Participating Organisations warrants that:
- 7.1.1 it has the necessary right and authority to enter into this Agreement; and
 - 7.1.2 the signatories hereto for and on behalf of the Participating Organisations are authorised and fully empowered to execute this Agreement on that Participating Organisation's behalf.

8 **TERMINATION**

- 8.1 This Agreement may be terminated:
- 8.1.1 by effluxion of time;
 - 8.1.2 by the Lead Authority giving 28 days' notice to the Other Organisations in the event of the early termination of the Funding Agreement or the Service Agreement;
- 8.2 Upon termination of this Agreement the Participating Organisations will do anything reasonably necessary to bring about an efficient termination of this Agreement

Comment [SS1]: What will happen if a Participating Organisation wished to withdraw from this Agreement? I would advise that a clause is added in this agreement which addresses this point.

Comment [SS2]: Is a 14 day notice period sufficient for termination in this circumstance?

Comment [SH3]: The Participating organisation will need to agree what happens if one party pulls out and what notice period you require so that this can be added into this clause

9 **FORCE MAJEURE**

- 9.1 If a Participating Organisation is affected by a Force Majeure it shall forthwith notify the Lead Authority and the Other Organisations of the nature and extent thereof.
- 9.2 Excluding the obligations that may arise under clause 4.3 and 6.3, no Participating Organisation shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations hereunder, to the extent that such delay or non-performance is due to any Force Majeure event of which it has notified the other Participating Organisations, and the time for performance of that obligation shall be extended accordingly.
- 9.3 If the Force Majeure event in question prevails for a continuous period in excess of three months, the Participating Organisations, acting reasonably, shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

10 **PUBLICITY AND PUBLIC RELATIONS**

- 10.1 The Participating Organisations will co-operate and consult with each other in respect of any matter involving public relations in so far as reasonably practicable having regard to the nature and urgency of the issue involved. The Participating Organisations may agree protocols for the handling of public relations from time to time.

11 **FREEDOM OF INFORMATION**

- 11.1 The Participating Organisations acknowledge that they are subject to the requirements of the code of practice on access to government information, the Freedom of Information Act 2000 (“FOIA”) and the Environmental Information Regulations 2004 (“EIR”) and shall assist and cooperate with each other to enable the Participating Organisations to comply with their information disclosure obligations.
- 11.2 The Participating Organisations shall provide all necessary assistance as reasonably requested by the Other Organisations to enable the Other Organisations to respond to any requests for information that fall under the FOIA or EIR and is related to the Agreement and/or Services (“Request for Information”) within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 11.3 The Participating Organisations who received the initial Request for Information shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Agreement or any other agreement whether any information is exempt from disclosure in accordance with the provisions of the code of practice on access to government information, the FOIA or the EIR.
- 11.4 The Participating Organisations shall ensure that all information produced in the course of the Agreement is retained for disclosure and shall permit the other Participating Organisations to inspect such records as requested from time to time.

12 DATA PROTECTION ACT 1998

- 12.1 With respect to the Participating Organisations' rights and obligations under this Agreement, the Participating Organisations agree to each comply with the obligations imposed on them by the Data Protection Act 1998 as a Data Controller and to ensure that Personal Data (as defined in the Act) is processed only in accordance with their own policies on data protection, information security and retention of personal data to comply with their obligations under the Data Protection Act 1998.

13 EQUALITY ACT 2010

- 13.1 The Participating Organisations agree to each comply with the obligations imposed on them by the Equality Act 2010.

14 COSTS

- 14.1 Subject to Clause 4.3 and 6.3 each of the Participating Organisations shall pay its own costs and expenses incurred by it in connection with the preparation of the Agreement.

15 THIRD PARTY RIGHTS

- 15.1 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Agreement.

16 DISPUTE RESOLUTION

- 16.1 Without prejudice to the provisions of Clause 16.2 any disagreement arising between the Participating Organisations shall be referred to the the relevant head of service at each of the Participating Organisations who, acting reasonably, will endeavour to reach agreement on a consensus basis. If the disagreement is not resolved within 4 weeks, then the Participating Organisations will refer the matter to the Chief Executives or Managing Directors of the Participating Organisations for further resolution and if the disagreement remains unresolved after a further 8 weeks then the matter will be referred to arbitration as set out in clause 16.2 hereof.
- 16.2 All disputes or differences which at any time arise between the Participating Organisations whether during the Term or afterwards concerning this Agreement or its construction or effect or the rights duties or liabilities of the Participating Organisations under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of this Agreement shall be referred to a single arbitrator to be agreed upon by the Participating Organisations or in default of Agreement to be nominated by the President for the time being of the Chartered Institution of Arbitrators in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being in force.

17 NOTICE

- 17.1 Any notice which is to be given under the Agreement shall be given by letter (sent by hand, post, registered post or by the recorded delivery service to the Council Solicitor or Senior legal advisor for the Participating Organisation, unless directed otherwise, at the addresses appearing above) or by facsimile transmission or electronic mail (if confirmed in either case by letter).

18 VARIATIONS

- 18.1 No variation of this Agreement shall be effective unless it is in writing and signed by the Participating Organisations

19 PROPER LAW AND JURISDICTION

- 19.1 This Agreement shall be governed by English Law in every particular including formation and interpretation and shall be deemed to have been made in England. Subject to Clause

17 any proceedings arising out of or in connection with this Agreement may be brought in any court of competent jurisdiction in England and Wales.

IN WITNESS of which the authorised representatives of the Participating Organisations have executed this Agreement as a Deed the day and year first before written.

SCHEDULE 1
SPECIFICATION OF SERVICES

SCHEDULE 2
FUNDING AGREEMENT

THE COMMON SEAL OF CHELTENHAM)
BOROUGH COUNCIL being affixed hereto and)
authenticated by the undermentioned person)
authorised by the Council to act for that purpose:)

Authorised Signatory

THE COMMON SEAL OF COTSWOLD)
DISTRICT COUNCIL being affixed hereto and)
authenticated by the undermentioned person)
authorised by the Council to act for that purpose:)

Head of Legal and Property Services

THE COMMON SEAL OF FOREST OF DEAN)
DISTRICT COUNCIL being affixed hereto and)
authenticated by the undermentioned person)
authorised by the Council to act for that purpose:)

Authorised Signatory

THE COMMON SEAL OF THE)
COUNCIL OF THE CITY OF GLOUCESTER)
affixed hereto is authenticated)
by the undersigned a person authorised)
by the said council to act for that purpose)

Authorised Signatory

THE COMMON SEAL OF STROUD DISTRICT)
COUNCIL was affixed in the presence of:)

Authorised Signatory

THE COMMON SEAL of COUNCIL)
OF THE BOROUGH OF TEWKESBURY)
was hereto affixed In the presence of:)

Authorised Signatory

THE COMMON SEAL of)
GLOUCESTERSHIRE COUNTY COUNCIL)
was affixed hereto in the presence of:)

Head of Legal Services

Attestation Clause for CGG to be added