

Appendix 2

West London Alliance Fibre West Project

Grant Funding Agreement

- (1) London Borough of Ealing
- (2) London Borough of Hammersmith and Fulham

Dated

2022

Draft 10 August 2022 [(TLT)]

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Schedules

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This Agreement is made the _____ day of _____ 2022

Between:

- (1) **London Borough of Ealing** of Perceval House 14-16, Uxbridge Road, London W5 2HL (the **Lead Authority**); and
 - (2) **London Borough of Hammersmith and Fulham** of Town Hall, King Street, London W6 9JU (the **Recipient**),
- together the “**parties**”.

Background:

- (A) The Lead Authority received grant funding of the sum of £7.7 million from the City of London Corporation from the Strategic Investment Pot Round 1 (**SIP-1**) to unlock investment in digital infrastructure under a grant funding agreement dated 4 March 2019 (the **CLC Agreement**). £6.1m of the SIP-1 funding remains available for fibre connection to public buildings, to be apportioned equally between the West London Alliance boroughs.
- (B) The Recipient is entitled to receive **£1.13million** from the **SIP-1** funding for its own fibre connections (the **Project**) under the terms of this Agreement, which mirror the terms of the CLC Agreement.

It is agreed as follows:

1 Definitions and interpretation

1.1 In this Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings they are given in the clauses they are used in or as set out below:

Agreement means this grant funding agreement including the schedules to and any documents referred to in this Agreement.

CLC means the City of London Corporation.

Commencement Date means the date of this Agreement.

Data Protection Legislation means (i) the UKGDPR, (ii) the DPA 2018 to the extent that it relates to processing of Personal Data and privacy; and (iii) all applicable laws and regulations relating to processing of Personal Data and privacy.

Grant means the sum of £1.13million to be paid to the Recipient by the Lead Authority in accordance with this Agreement.

Grant Period means the period beginning on the Commencement Date and ending on the expiry or early termination of the CLC Agreement.

Intellectual Property Rights means all patents, copyright, design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and know how however arising for their full term and any renewals and extensions.

London Pilot Scheme	refers to the additional business rates retention scheme set out in Schedule 5 of the CLC Agreement (MOU) for the pooling of business rates for 2018-2019 between the Participating Authorities.
ONS	means the office for national statistics.
Personal Data	has the meaning set out in the Data Protection Legislation.
Participating Authorities	means the London Boroughs, CLC acting in its capacity as a local authority and the Greater London Authority who are all parties to the Memorandum of Understanding dated 12 December 2017 in relation to the London Pilot Scheme.
Prohibited Act	<p>means offering, giving or agreeing to give any servant of the CLC any gift or consideration of any kind as an inducement or reward for:</p> <ul style="list-style-type: none"> i. doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the CLC; or ii. showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the CLC; or iii. under the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning that Act; or iv. under legislation creating offences in respect of fraudulent acts; or v. at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the CLC.
Project	means the Recipient's activities and works with respect to digital projects and fibre connections in its administrative area as set out in Schedule 1 (The Project).
SIP Manager	means the individual who has been nominated to represent CLC for the purposes of the CLC Agreement.
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
West London Alliance	Means the grant funded programme to roll out new fibre connections to public buildings in areas which

Fibre West Project

benefit West London's residents and businesses. The programme is a collaboration between five of the seven West London Boroughs of Ealing, Hillingdon, Barnet, Harrow and Brent.

- 1.2 In this Agreement, unless the context otherwise requires:
- 1.2.1 References to the singular shall be deemed to include the plural and vice versa and references in either gender shall be deemed to include the other and the neuter.
 - 1.2.2 References to clauses shall be to clauses of this Agreement, references to schedules shall be to the schedules to this Agreement, and references to paragraphs shall be to the paragraph in the schedule.
 - 1.2.3 References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of this Agreement.
 - 1.2.4 Headings are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.
 - 1.2.5 The documents constituting this Agreement are intended to be mutually explanatory. In the event of any conflict between any provision of the clauses to this Agreement and a provision of a schedule then the clauses shall take precedence except where the conflicting part of the other schedule is explicitly expressed to take precedence over any specific part of the clauses to this Agreement.
 - 1.2.6 The schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement.
 - 1.2.7 The expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.
 - 1.2.8 The words "including", "includes" and "included" will be construed without limitation unless inconsistent with the context.

2 Purpose and use of the Grant

- 2.1 The Recipient shall use the Grant only for the delivery of the Project outlined at Schedule 1 (The Project) and in accordance with the terms and conditions set out in this Agreement. The Grant shall not be used for any other purposes without the prior written agreement of the Lead Authority and CLC.
- 2.2 The Recipient shall not make any significant change to the Project without the prior written agreement of the Lead Authority and CLC.
- 2.3 Should any part of the Grant remain unspent at the end of the Grant Period, the Recipient shall ensure that any unspent monies are returned to the Lead Authority.

3 Payment of the Grant and Obligations of the Recipient

- 3.1 Subject to clause 11 the Lead Authority will transfer the Grant to the Recipient in one transaction upon the receipt of a valid receipt of an invoice for the Grant.

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

4 Accounts and Records

- 4.1 The Grant shall be recognised as income by the Recipient in accordance with proper practice as soon as this Agreement is executed. The Grant is a revenue grant, though may be applied to capital spend if this is appropriate to the nature of the Project. The Recipient may use its discretion on the most appropriate way to carry the relevant funds forward to future years using accruals, earmarked or general reserves or such other mechanisms as deemed appropriate.
- 4.2 The Recipient shall keep separate, accurate and up to date accounts and records of the receipt and expenditure of the Grant monies received by it. This may be achieved using a specific cost centre or capital project in the Recipient's accounting system.
- 4.3 In line with usual practice for the proper administration of the Recipient's financial affairs, the Recipient shall keep all invoices, receipts, accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six years following the transactions. The Lead Authority and CLC shall have the right to review, at reasonable request, the Recipient's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.
- 4.4 The Recipient shall comply and facilitate the Lead Authority's compliance with the CLC Agreement and all statutory requirements as regards accounts, audit or examination of accounts, annual report and annual returns applicable to itself and CLC.

5 Monitoring and Reporting

- 5.1 The Recipient shall closely monitor the delivery and success of the Project throughout the Grant Period to ensure that the aims and objectives of the Project are being met and that the terms of this Agreement are being adhered to.
- 5.2 The Recipient shall provide the Lead Authority with a report on its use of the Grant and delivery of the Project every quarter in the form and format set out in Schedule 2 (Reporting) as may be required by CLC or as required under the CLC Agreement. The Recipient shall provide the Lead Authority with each report within one month of the last day of the quarter to which it relates.
- 5.3 The Recipient shall on request provide the Lead Authority with such further information, explanations and documents as the Lead Authority may reasonably require in order for it to establish that the Grant has been used properly in accordance with this Agreement.
- 5.4 The Recipient shall permit any person authorised by the Lead Authority or CLC for the purpose of carrying out visits once every year to monitor the delivery of the Project. Where, in its reasonable opinion, the Lead Authority or CLC considers that additional visits are necessary to monitor the Project, it shall be entitled to authorised any person to make such visits on its behalf.
- 5.5 The Recipient shall provide the Lead Authority with a final report on completion of the Grant Period which shall confirm whether the Project has been successfully and properly completed.

6 Acknowledgement and Publicity

- 6.1 The Recipient shall acknowledge the aims and rationale of SIP-1 as specified in the CLC Agreement in any materials that refer to the Project and in any written or spoken public presentations about the Project.
- 6.2 Subject to any approvals required in clause 6.1 in using any logos or straplines relating generally to SIP-1 or the London Pilot Scheme shall comply with all reasonable branding guidelines issued by CLC from time to time.

- 6.3 The Recipient agrees to participate in and co-operate with reasonable promotional activities relating to the Project or the London Pilot Scheme that may be instigated and organised by the Lead Authority or by CLC.
- 6.4 The Recipient agrees to being acknowledged by either the Lead Authority or by CLC in relation to the wider West London Alliance Fibre West Project, the London Pilot Scheme or the Project as appropriate without prior notice.
- 6.5 The Recipient shall comply with all reasonable requests from the Lead Authority to facilitate visits, provide reports, statistics, photographs, and case studies that will assist the Lead Authority or CLC in its promotional and fundraising activities relating to SIP-1, the London Pilot Scheme or the Project.

7 Intellectual Property Rights

The Lead Authority and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other Intellectual Property Rights whatsoever owned by either party before the Commencement Date or developed by either party during the Grant Period remain the property of that party.

8 Confidentiality

- 8.1 Subject to clause 9 (Freedom of Information), each party shall during the Grant Period and thereafter keep secret and confidential all Intellectual Property Rights or know-how or other business, technical or commercial information disclosed to it as a result of this Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.
- 8.2 The obligation of confidentiality contained in this clause 8 shall not apply to or shall cease to apply to any Intellectual Property Rights, know-how or other business, technical or commercial information which:
 - 8.2.1 at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
 - 8.2.2 is already known to the receiving party as evidenced by written record at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligation of confidence;
 - 8.2.3 is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party; or records, reports or information obtained from the Recipient in accordance with this Agreement provided to CLC by the Lead Authority in accordance with the CLC Agreement.

9 Freedom of Information

The parties acknowledge that they are both subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**) and shall provide such assistance to each other as necessary in discharging those obligations pursuant to the FOIA and EIR.

10 Data Protection

Both parties shall comply with all applicable requirements of and all their obligations under the Data Protections Legislation, which arise in connection with this Agreement.

11 Withholding, suspending and repayment of the Grant

11.1 The Lead Authority's intention is that the Grant will be paid to the Recipient in full. The Lead Authority will rely on the execution of this Agreement to denote reasonable assurance that the Recipient will comply with the conditions herein. However, without prejudice to the Lead Authority's other rights and remedies, the Lead Authority may in consultation with the Participating Authorities, withhold, suspend payment of the Grant and/or require repayment of all or part of the Grant if:

- 11.1.1 the Recipient uses the Grant for purposes other than those for which it has been awarded (as set out in Schedule 1 (The Project));
- 11.1.2 the delivery of the Project is significantly delayed and the Recipient has failed to provide the Lead Authority or CLC with a reasonable explanation for the delay;
- 11.1.3 the Recipient is, in the reasonable opinion of the Participating Authorities, delivering the Project in a negligent manner;
- 11.1.4 the Recipient obtains duplicate funding from a third party for the Project;
- 11.1.5 the Recipient obtains funding from a third party which, in the reasonable opinion of CLC, undertakes activities that are likely to bring the reputation of the SIP-1 grant funding programme or the Participating Authorities into disrepute;
- 11.1.6 the Recipient provides the Lead Authority or CLC with materially misleading or inaccurate information;
- 11.1.7 the Recipient commits or committed a Prohibited Act;
- 11.1.8 any member of the governing body, employee or volunteer of the Recipient has acted dishonestly or negligently at any time and directly or indirectly to the detriment of the SIP-1 grant funding programme or taken any actions which, in the reasonable opinion of CLC bring or is likely to bring the reputation of the Participating Authorities or the SIP-1 grant funding programme into disrepute.
- 11.1.9 the Recipient fails to comply with any of the terms and conditions set out in this Agreement, which leads to a breach of the CLC Agreement and fails to rectify such failure within 28 days of receiving a written notice detailing the failure.

11.2 The Lead Authority may retain or set off any sums owed to it by the Recipient which have fallen due and payable against any sums due to the Recipient under this Agreement or any other agreement pursuant to which the Recipient provides goods or services to the Lead Authority.

11.3 The Recipient shall make any payments due to the Lead Authority without any deductions whether by way of set-off, counterclaim, discount, abatement or otherwise.

12 Anti-discrimination

- 12.1 The Recipient shall (and shall use reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the delivery of the Project and in the performance of this Agreement.
- 12.2 The Recipient shall undertake or refrain from undertaking, such acts as the Lead Authority requests so as to enable the Lead Authority to comply with its obligations under the Human Rights Act 1998.

13 Limitation of Liability

- 13.1 The Lead Authority accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Grant or from withdrawal of the Grant.
- 13.2 The Recipient shall indemnify and hold harmless the Lead Authority, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.
- 13.3 Subject to clause 13.1, the Lead Authority's liability under this Agreement is limited to the payment of the Grant.

14 Warranties

- 14.1 The Recipient warrants, undertakes and agrees that:
- 14.1.1 it has all necessary resources, approvals, powers and expertise to deliver the Project (assuming due receipt of the Grant);
 - 14.1.2 it has not committed, nor shall it commit any Prohibited Act;
 - 14.1.3 it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Lead Authority immediately of any significant departure from such legislation, codes or recommendations;
 - 14.1.4 it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
 - 14.1.5 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
 - 14.1.6 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
 - 14.1.7 all financial and other information concerning the Recipient which has been disclosed to the Lead Authority is to the best of its knowledge and belief, true and accurate;
 - 14.1.8 it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant;
 - 14.1.9 it is not aware of anything in its own affairs, which it has not disclosed to the Participating Authorities' advisers, which might reasonably have influenced the decision of the Lead Authority to make the Grant on the terms contained in this Agreement; and
 - 14.1.10 since the date of its last accounts there has been no material detrimental change in its financial position or prospects.

15 Insurance

- 15.1 The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's performance of the Agreement or delivery of the Project, including death or personal injury, loss of or damage to property or any other loss (the **Required Insurances**).
- 15.2 The Required Insurances referred to above include (but are not limited to):
- 15.2.1 public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Project; and
 - 15.2.2 employer's liability insurance with a limit of indemnity of not less than five millions pounds (£5,000,000) in relation to any one claim or series of claims arising from the Project.

The Recipient shall (on request) supply to the Lead Authority or CLC as copy of such insurance policies and evidence that the relevant premiums have been paid.

16 Duration

- 16.1 Except where otherwise specified, the terms of this Agreement shall apply from the Commencement Date until the expiry of the Grant Period.
- 16.2 Any obligations under this Agreement that remain unfilled following the completion of the Project or the expiry of the Grant Period or the early termination of this Agreement shall survive such expiry or early termination and continue in full force and effect until they have been fulfilled.

17 Termination

The Lead Authority may terminate this Agreement and any Grant payments upon giving the Recipient two months' written notice, should it be required to do so by financial restraints or for any other reason (including but not limited to the Lead Authority's non-availability to fulfil that role moving forward or a Government decision to abandon its support for the London Pilot Scheme).

18 Assignment

The Recipient may not, without the prior written consent of the Lead Authority, assign, transfer, sub-contract or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Grant.

19 Waiver

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

20 Notices

- 20.1 All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, emailed or mailed (first class postage prepaid) to the address of the relevant party as referred to above or otherwise notified in writing.
- 20.2 If personally delivered or if emailed, all notice and communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00pm on a any working day they shall be deemed received on the next working day) and if mailed, all such notices and communications shall be deemed to have been given and received on the second working day following such mailing.

21 Dispute Resolution

- 21.1 In the event of any complaint or dispute (which does not relate to the Lead Authority's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement, the matter should first be referred for resolution to the SIP Manager or any other individual nominated by CLC from time to time.
- 21.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the SIP Manager or other nominated individual, as the case may be, either party may refer the matter to the Chief Executive or anyone nominated by them, of the Lead Authority and the Chief Executive of the Recipient or anyone nominated by them with an instruction to attempt to resolve the dispute by agreement within 28 days or such other period as may be mutually agreed by the parties.
- 21.3 Should the complaint or dispute remain unresolved within 28 days of the matter first being referred to the Chief Executives of the parties (or their representatives), it may be further referred to a panel of three Chief Executives from the other Participating Authorities for determination.
- 21.4 In the absence of agreement under clause 21.2 and 21.3, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

22 No Partnership or agency

This Agreement shall not create any partnership or joint venture between the Lead Authority and the Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

23 Contracts (Rights of Third Parties) Act 1999

- 23.1 This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

24 Governing law

This Agreement shall be governed by and construed in accordance with the laws of England and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1 The Project

Insert details of Hammersmith & Fulham fibre connection project

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Schedule 2 Reporting

25	Accountable bidding borough	26	London Borough of Ealing		
27	Partner borough	28	London Borough of Hammersmith and Fulham		
29	Other partners	30			
31	Total Project cost forecast:	32		34	Total
		33	Expenditure item		35
					Actual spend to date
36				37	£
				38	£
40		41		42	43
44		45		46	47
48		49	Total (should equal funding total)	50	51
52	Funding for the total forecast:	53		57	Total
		54			58
		55	Funding Source		Actual spend to date
59		56		60	£
				61	£
62		63	SIP	64	65
66		67		68	69
70		71		72	73
74		75	Total (should equal total Project cost forecast)	76	77
78	Update on Project and progress	79			
80	Update on scale of economic benefit	81			
82	Officer contact details	83			

I hereby certify that the terms and conditions of the Grant have been met, the above report represents a true and fair picture of the position on the Project, and the above amounts have been spent or received by the Recipient.

Authorised by: _____ (Section 151 Officer)

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IN WITNESS whereof this Agreement has been executed as a Deed on the day and year first above written.

**The Common Seal of
LONDON BOROUGH OF EALING
was affixed in the presence of:**

.....
Authorised Officer
Name:.....

**The Common Seal of
LONDON BOROUGH OF HAMMERSMITH
AND FULHAM
was affixed in the presence of:**

.....
Authorised Officer
Name:.....

