



Local Authority Name

Address

Address

Address

Address

Grants Team
Rm G.50, Longmore House
Salisbury Place
Edinburgh
EH9 1SH

F.A.O. Contact Name

Heritage & Place Programme Application

Direct Line: 0131 668 8819
E-Mail: contact-email@hes.scot

Date

Dear Sirs

**HERITAGE & PLACE PROGRAMME
DEVELOPMENT PHASE OFFER OF GRANT
[SCHEME NAME]**

For and on behalf of Historic Environment Scotland, a non-departmental public body established under the Historic Environment Scotland Act 2014 being a registered Scottish Charity (Scottish charity number SC045925) and having its principal office at Longmore House, Salisbury Place, Edinburgh, EH9 1SH ("HES"), I hereby offer to make to you, the **Local Authority**, a grant under the **Programme** for the purpose of defraying in part the expenditure incurred by the **Local Authority** in the development of a heritage focused scheme for the **Scheme Area** with a view to submitting a **Delivery Phase Application** and that on the following terms and conditions:

1 DEFINITIONS AND INTERPRETATION

A list of defined terms and rules of interpretation for this **Offer** are contained in Clause 15. Where defined terms have been used throughout this **Offer**, they have been highlighted in bold.

2 PRECONDITIONS

2.1 The obligations on **HES** under the **Agreement** (including, for the avoidance of doubt, the obligation to pay the **Grant**) shall not come into effect until **HES** has notified the **Local Authority** that:-

2.1.1 **HES** has agreed the **Development Phase Objectives**; and

2.1.2 **HES** has received evidence that binding agreements are in place in respect of all income (other than the **Grant**) outlined in the **Development Phase Cost Breakdown**;

2.2 The **Local Authority** is responsible for all costs associated with complying with Clause 2.1.

2.3 Following (i) the **Local Authority's** acceptance of this Offer; and (ii) purification of the conditions contained in Clause 2.1; **HES** will issue the **Permission to Start**. The **Local Authority** must not commence the **Development Phase Activities** until **HES** issues the **Permission to Start**. If **HES** has not issued the **Permission to Start** within two months of the date of this **Offer**, **HES** will be entitled to withdraw this **Offer** or, as the case may be, terminate the **Agreement**, by notice to that effect.

3 THE GRANT

- 3.1 The **Grant** to be made available by **HES** can be drawn down (in accordance with the terms of the **Agreement**) in respect of the **Development Phase Activities** performed during the **Development Phase**.
- 3.2 The **Local Authority** must set aside and use the **Grant** solely for the purpose of (i) defraying (in part) the **Eligible Costs** of carrying out the **Development Phase Activities**; and (ii) delivering the **Development Phase Objectives**.
- 3.3 The **Development Phase Activities** are to be funded in accordance with the **Development Phase Cost Breakdown**.
- 3.4 If:-
- 3.4.1 there is a change to the income for the **Scheme**, **HES** will be entitled to reduce the amount of the **Grant**, as it considers appropriate, up to a maximum of the amount of the variation;
- 3.4.2 the actual costs incurred by the **Local Authority** in carrying out the **Development Phase Activities** are less than set out in the **Development Phase Cost Breakdown**, **HES** will be entitled to reduce the amount of the **Grant**, so as to reflect the amount that the **Grant Intervention Rate** bears to the actual expenditure;
- (the "**Revised Grant**"). If the amount of **Grant** already released exceeds the amount of the **Revised Grant**, the **Local Authority** will repay to **HES**, within 21 days of demand, any amount released in excess of the **Revised Grant**.
- 3.5 **HES** must approve any material change to the **Development Phase Cost Breakdown**, if **HES** do not approve such material change **HES** will be entitled to terminate the **Agreement** at its discretion.
- 3.6 In no event shall **HES** be obliged to release monies in excess of the **Grant**.

4 PAYMENT OF GRANT

- 4.1 Payment of the **Grant** (or any instalment of it) is suspensively conditional and dependent upon the following conditions being complied with:
- 4.1.1 the **Local Authority** completing and submitting to **HES** by the date falling four weeks after each **Quarterly Date** (until **HES** has confirmed approval of the documents referred to in Clause 8) the **Claim Documentation** in terms satisfactory to **HES**; and
- 4.1.2 the **Local Authority** complying with the terms of this **Agreement**.
- This clause is conceived solely for the benefit of **HES** who shall be entitled to waive the whole or any part of them at any time.
- 4.2 Subject to the provisions of Clause 4.1, instalments of the **Grant** will be paid quarterly in arrears and within 14 days of receipt by **HES** of the **Claim Documentation** in terms satisfactory to **HES**.
- 4.3 If any under- or over- payment of **Grant** occurs, this shall be corrected and accounted for in the **Progress Report** and **Claim Form** for the quarter next following.

5 RETENTION

Each instalment of **Grant** will be paid net of a 10% retention sum, payment of which will be suspensive on the documents referred to in Clause 8 being received by **HES** within the time period specified, failing which the retention sum (or such part of it as is deemed appropriate by **HES**) shall be forfeited and the **Grant** shall be reduced accordingly.

6 PROGRAMME GUIDANCE

In carrying out the **Development Phase Activities**, the **Local Authority** shall comply with the **Programme Guidance** and, in developing the **Scheme**, the **Guidance for Repair Grants**.

7 MILESTONES AND OBJECTIVES

7.1 The **Local Authority** shall carry out the **Development Phase Activities** so as to meet the **Development Phase Objectives**.

7.2 The **Local Authority** shall comply with any reasonable direction given by **HES** in connection with the monitoring of information related to the **Development Phase Objectives**.

7.3 It shall be a material condition of this **Agreement** that the **Local Authority** shall meet the **Milestones** by the dates specified (or otherwise agreed **HES**) and comply with the **Special Conditions**. In the event that the **Local Authority** fails to meet any of the **Milestones** or to comply with the **Special Conditions**, **HES** shall be entitled to resile from the **Agreement** or vary the **Grant** and the terms of the **Agreement**, as **HES** deems appropriate. This clause is conceived solely for the benefit of **HES** who shall be entitled to waive the whole or any part of it at any time.

8 REPORTING & AUDITING PROCEDURES

8.1 Within four weeks of the end of the **Development Phase** the **Local Authority** must submit (i) a final **Progress Report**; (ii) the final **Claim Form**; all in terms satisfactory to **HES**.

8.2 Within three months of the end of the **Development Phase** the **Local Authority** must submit the **Accountant's Report** in terms satisfactory to **HES**.

9 PROMOTION & ACKNOWLEDGEMENT OF GRANT

9.1 The **Local Authority** shall acknowledge the financial assistance of **HES** in publications and all relevant publicity, on such terms as **HES** may from time to time require.

9.2 The **Local Authority** must not make any announcement or issue any statement, press release or other publicity without the prior written approval of **HES**, which approval will not be granted (i) until **HES** has made public the award of the **Grant**; and (ii) unless it contains a quote issued by **HES** for inclusion and the **HES** logo.

9.3 The **Local Authority** must ensure that (i) any press release, statement or publicity relating to the **Development Phase Activities** mentions the **Grant** from **HES**; (ii) any social media activity on any platform relating to the **Development Phase Activities** includes the **HES** logo, the metadata tag "#HESsupported" and tags the relevant **HES** social media account; and (iii) **HES** is invited to any launch or other event celebrating the carrying out or completion of the **Scheme**.

10 GRANT RECOVERY

- 10.1 **HES** is entitled to (i) re-assess, vary, make a deduction from, withhold or recover the **Grant** (or such proportion of it as **HES** thinks fit); and/or (ii) to terminate the **Agreement**; if:-
- 10.1.1 at any time any condition of the **Agreement** is contravened or not complied with and, if the breach is capable of remedy, the **Local Authority** has been given notice of it and has failed to remedy it within the period of time specified in the notice;
 - 10.1.2 there is a significant change in the **Local Authority's** circumstances, status and/or organisational structure;
 - 10.1.3 **HES** considers that any information provided in the **Application** and/or in terms of the **Agreement** is fraudulent, incorrect or misleading or the **Local Authority** has failed to provide information which would have been relevant to **HES** in approving the **Grant** or determining any matter in terms of the **Agreement**;
 - 10.1.4 **HES** are not satisfied with any of the amounts specified in the **Claim Form**.
- 10.2 Any repayment of the **Grant** will incur **Interest** from the date of demand until payment is received by **HES**.
- 10.3 A certificate by **HES** as to the amount of the **Grant** due to be repaid will, in the absence of manifest error, be conclusive evidence of the sum to be repaid.

11 PUBLIC PROCUREMENT

The **Local Authority** must comply with its own policies and procedures (and all relevant **Legal Requirements**) in relation to public procurement activity for expenditure of the **Grant**.

12 STATUTORY COMPLIANCE

In carrying out the **Development Phase Activities** the **Local Authority** will comply with all **Legal Requirements**.

13 EQUALITIES, MODERN SLAVERY & HUMAN TRAFFICKING AND ANTI-BRIBERY

- 13.1 The **Local Authority** is expected to embrace fair work principles and practices in line with the advice of the Fair Work Convention. In particular, the **Local Authority** must ensure that any new paid posts funded by the **Grant** are paid the national Living Wage as a minimum.
- 13.2 The **Local Authority** must have effective systems to prevent, detect and deal with fraud, which systems shall be in form and substance satisfactory to **HES**.
- 13.3 The **Local Authority** must ensure that any person or body carrying out any activity on its behalf complies with all **Legal Requirements** and, in particular, does not commit any act of discrimination rendered unlawful under any **Legal Requirements**.
- 13.4 In performing the obligations under the **Agreement**, the **Local Authority** must comply with the **Modern Slavery Legislation** and notify **HES** as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the **Agreement**. The **Local Authority** represents and warrants that it has not been convicted of any offence involving slavery and human trafficking nor has it been the subject of any investigation, inquiry or enforcement proceedings

regarding any offence or alleged offence of or in connection with slavery or human trafficking.

- 13.5 The **Local Authority** must include in contracts with its contractors and oblige its contractors to include in any subcontracts which are funded by the **Grant**, provisions which are at least as onerous as those set out in Condition 13.4.

14 DATA PROTECTION & RECORDS RETENTION

- 14.1 Both the **Local Authority** and **HES** will duly observe all their respective obligations as **Controllers** under the **Data Protection Legislation**, which arise in connection with this **Agreement**.

- 14.2 The **Local Authority** shall provide **HES** with any **Personal Data** relating to the **Grant** as **HES** may reasonably require.

- 14.3 Notwithstanding the general obligation in Clause 14.1, the **Local Authority** undertakes to **HES** that the **Local Authority** will ensure that at all times each relevant **Data Subject** has been provided with:

14.3.1 sufficient information (in an appropriate form) so as to enable fair, transparent and lawful **Processing** of the **Personal Data** by the **Local Authority**; and

14.3.2 any information provided to the **Local Authority** by **HES** so as to enable the fair, transparent and lawful **Processing** of the **Personal Data** shared with **HES** pursuant to Clause 14.2;

in accordance with the **Data Protection Legislation**.

- 14.4 In the event that the **Local Authority Processes** any **Personal Data** on behalf of **HES** as a **Processor**, the **Local Authority** hereby agrees to enter into a separate data processing agreement with **HES** in such terms as **HES** considers appropriate.

- 14.5 The **Local Authority** shall provide **HES** with all assistance reasonably requested by **HES** to assist **HES** in complying with its obligations under the **PRSA** and with **HES's Records Management Plan** where such compliance is in respect of records created or to be created by the **Local Authority** on behalf of **HES** in terms of this **Agreement**. This assistance will be at no cost to **HES**.

- 14.6 The **Local Authority** shall in respect of records created during the term of this **Agreement** comply with the **Records Management Provisions** notified by the **Local Authority** and approved by **HES** from time to time. The **Local Authority** shall ensure that the **Local Authority Retention Schedule** provides for a separate class of records to be shown in a sub-section headed "HES Funded Projects" to be included under the section on "Projects" and for a duration of 15 years from (i) submission of the final **Claim Form** in accordance with Clause 8; or (ii) submission of the final claim form in respect of any future grant contract for the delivery of the **Scheme**; (whichever is the later), to be stated as the relevant period of retention of record.

- 14.7 At the end of the relevant period set down in the **Local Authority's Retention Schedule** for a particular record or class of records, then if the **Local Authority's Retention Schedule** for that record or class of records lists the final disposal of the record or class of records as "Pass to HES", the **Local Authority** shall offer to transfer the records in question to **HES**, such transfer to include full ownership of the records (including transfer of the status of **Data Controller** of any **Personal Data** contained in the records, full beneficial ownership and transfer of any **Intellectual Property Rights** relating to the records.) The transfer shall be at no cost to **HES**. The **Local Authority** shall ensure that all relevant indices and any other relevant information

reasonably required to locate individual items within the records, including metadata and database schema, are also offered to **HES** on the same terms.

- 14.8 If the **Local Authority** ceases to exist then the records which would, in terms of Clause 14.7, fall to be offered to **HES** at the time stipulated in the **Local Authority's** Retention Schedule, shall be deemed to be held on trust by the **Local Authority** on behalf of **HES**. The **Local Authority** shall thereafter, if and when so required by **HES**, transfer the records in question to **HES**, such transfer to be on the same terms as would apply to a transfer made in terms of Clause 14.7.

15 **ASSIGNATION**

The Agreement will not be capable of assignment by the **Local Authority**.

16 **DEFINITIONS AND INTERPRETATION**

16.1 **Definitions**

In this **Offer** the following terms shall have the meanings ascribed to them as follows:

"Accountant's Report" means a report by an independent Chartered to certify to **HES** (on terms which **HES** can place reliance upon) that:

- (a) the amount of **Grant** claimed by the **Local Authority** is accurate;
- (b) the **Local Authority** has incurred expenditure in line with the **Development Phase Cost Breakdown** and the **Programme Guidance**; and
- (c) the **Local Authority** has secured the income for the **Scheme** outlined in the **Development Phase Cost Breakdown**;
- (d) the **Local Authority** has not received any additional funding for the **Scheme** which has not been approved by **HES**;
- (e) the **Local Authority** has complied with the terms of this **Agreement**.

"Agreement" means this **Offer** and any other formal letters following on from this **Offer** comprising a concluded contract between **HES** and the **Local Authority**;

"Application" means the **Local Authority's** application for a development phase grant under the **Programme** dated [REDACTED];

"Claim Documentation" means (i) the **Progress Reports**; (ii) the **Claim Form** and (iii) the **Updated Scheme Budget Profile**;

"Claim Form" means the financial form uploaded to the **Grantee Portal** by the **Local Authority** to request grant payment;

"Controller", **"Data Subject"**, **"Processing"**, **"Processor"** and **"Personal Data"** have the meanings ascribed to them in the **Data Protection Legislation**;

"Data Protection Legislation" means the UK Data Protection Legislation and any other European Union legislation relating to **Personal Data** and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the **Use of Personal Data** (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party;

"Delivery Phase Application" means an application under the **Programme** submitted by the **Local Authority** to **HES** in relation to the delivery of the **Scheme**;

"Development Phase" means the period from the date of the **Permission to Start** to (i) the date falling 12 months after the date of the **Permission to Start**, or (ii) the date of submission of the **Delivery Phase Application**; whichever is the earlier;

"Development Phase Activities" means the activities required to develop the **Scheme** in support of the **HES Grant Priorities** with a view to submitting a **Delivery Phase Application** all as contained in the **Application** and amended by supplementary information provided and agreed in writing by **HES**;

"Development Phase Cost Breakdown" means the breakdown for income and expenditure during the **Development Phase** submitted and approved as part of the **Application** and as subsequently amended with the prior written approval of **HES**;

"Development Phase Objectives" means the main objectives for the development of the **Scheme** as set out in the **Application** and agreed with **HES**;

"Eligible Costs" means the eligible costs as set out in the **Programme Guidance**;

"Financial Year" means each year starting 1 April and ending on 31 March of the next calendar year;

"Grant" means the sum of [] Pounds Sterling (£[]);

"Grant Intervention Rate" means []%;

"Grantee Portal" means the web portal published by **HES** to support the **Programme**;

"HES Grant Priorities" means the six grant priorities outlined in the **Programme Guidance**;

"Interest" means four per cent per annum above the base lending rate of The Royal Bank of Scotland PLC from time to time;

"Joint Delivery Agreement" means, where the **Scheme** is being delivered by more than one organisation, the agreement between the **Local Authority** (as the lead organisation) and the other partner organisations setting out the roles and responsibilities of each party in development of the **Scheme**;

"Legal Requirement" means any requirement in respect of or affecting the **Property** or its use under all common law, statute, statutory provision (including any subordinate legislation), instrument, rule or regulation under or in pursuance of any Act of Parliament, by-law, regulation, public or local policy or order made by, or any requirement of any competent statutory, public or local authority or the decision of any court of competent jurisdiction;

"Local Authority" means 'xxxx Council' constituted under the Local Government etc (Scotland) Act 1994, having its principal office at [INSERT ADDRESS OF PRINCIPAL OFFICE].

"Local Authority's Retention Schedule" refers to those parts of the **Records Management Provisions** relating to how long particular records or classes of records created or managed by the **Local Authority** are to be retained for after they have come to the end of their normal operational use.

"Milestones" means the dates and objectives agreed between the **Local Authority** and **HES** as representing deadlines on progress relative to the **Scheme** and financial commitments as follows:

Deadline	Agreed Progress
By []	A dedicated project officer must be in post to administer the Scheme for its duration.
By []	Drawdown of no less than 25% of HES grant (£[]) against approved project expenditure.
By []	Delivery Phase Application to have been submitted to HES.

[Option to add in any other Milestones]

"Modern Slavery Legislation" means all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015;

"Offer" means this offer;

"PRSA" means the Public Records (Scotland) Act 2011;

"Permission to Start " means the letter issued by **HES** confirming that all of the pre-conditions set out in Clause 2.1 have been satisfied and that it has received the **Local Authority's** acceptance of the **Offer** so as to permit the **Development Phase Activities** to start;

"Programme" means the Heritage and Place Programme under Section 11 of the Historic Environment Scotland Act 2014;

"Programme Guidance" means the guidance issued by HES setting out the priorities, processes and procedures for delivering the **Development Activities** and the **Scheme**;

"Programme Objectives" means **HES's** objectives for the **Programme** outlined in the **Programme Guidance**;

"Progress Reports" means the report on the progress of the **Development Phase Activities** against the **Development Phase Objectives** in the form of the style progress report published on the **Grantee Portal**;

"Quarterly Date" means each of 30 June, 30 September, 31 December and 31 March in each **Financial Year**;

"Records Management Plan" means the plan prepared by the **Local Authority** and approved by the Keeper of the Records of Scotland under Section 1 of the PRSA;

"Records Management Provisions" refers to the policies, procedures and arrangements for the management and preservation of the records created by the **Local Authority** further to this **Agreement**;

"Scheme" means (i) physical projects; (ii) administration and (iii) eligible proposals relating to the **Scheme Area**, being the subject of the **Application** and the **Delivery Phase Application** and amended by supplementary information provided and agreed in writing by **HES**;

"Special Conditions" means [REDACTED];

"UK Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

16.2 Interpretation

Save to the extent that the context or the express provisions of this **Offer** otherwise requires, in this **Offer**:

- 16.2.1 words importing any gender shall include all other genders;
- 16.2.2 words importing the singular number only shall include the plural and vice versa;
- 16.2.3 obligations contained in this **Offer** undertaken by more than one person shall be binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;
- 16.2.4 words importing individuals include corporations and vice versa;
- 16.2.5 references to the **Offer** or to any other document shall be construed as reference to the **Offer** or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;
- 16.2.6 any reference to a clause, Schedule or Part of the Schedule is to the relevant clause, **Schedule** or Part of the **Schedule** of or to the **Offer**;
- 16.2.7 reference to any statute or statutory provision (including any subordinate legislation) or any **Legal Requirement** includes any provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall include any orders, legislation, instruments or other subordinate legislation made under the relevant statute or statutory provision; and
- 16.2.8 any phrase introduced by the words "including", "include", "in particular" or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words.

17 **TIME LIMIT FOR ACCEPTANCE**

This **Offer** shall be open for acceptance in writing within two months the date hereof and failing acceptance on or before that date shall thereafter be deemed to have been withdrawn.

18 **SIGNATORIES**

..... Full Name Full Name
..... Designation Address
..... Address
.....

Dated20**

I, Proper Officer of xxx Council hereby, for and on behalf of xxx Council, accept the terms and conditions contained in the foregoing offer of grant by HES dated xxxx.

..... Signed Witness
..... Full Name Full Name
..... Designation
..... Address
.....

Dated.....