

1 APRIL 2013 – 31 MARCH 2016
FUNDING AGREEMENT
Between
SOUTH HAMS DISTRICT COUNCIL
And
SOUTH HAMS COMMUNITY & VOLUNTARY SERVICES 2

This agreement is dated

PARTIES

(1) **SOUTH HAMS DISTRICT COUNCIL** Follaton House Plymouth Road Totnes Devon TQ9 5NE ("**the Council**").

(2) **SOUTH HAMS COMMUNITY & VOLUNTARY SERVICES** a charitable company limited by guarantee (with company number 6215893) whose registered office is at The Cottage Follaton House Plymouth Road Totnes Devon TQ9 5NE ("**SHCVS**").

BACKGROUND

(A) The objective of SHCVS is to promote community and voluntary action in the South Hams.

(B) The Council wishes to support the objectives of SHCVS within the administrative area of South Hams District Council and has agreed to pay the Funding to SHCVS to enable it to achieve certain outcomes. These outcomes are more particularly specified in Appendix A.

(C) This agreement sets out the terms and conditions on which Funding is made by the Council to SHCVS.

(D) These terms and conditions are intended to ensure that Funding is used for the purpose for which it is awarded.

AGREED TERMS

1. DEFINITIONS

In this agreement the following terms shall have the following meanings:

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes or practice issued by the relevant government department concerning the legislation.

Commencement Date: 1 April 2013.

Force Majeure Event: means anything that effects the ability of either party to perform its obligations under this agreement arising from events acts or omissions outside the direct or indirect control of either party including acts of nature, war, terrorism, riot or civil disobedience but excluding anything purely because it makes it more expensive or less convenient to perform the obligations under this agreement.

Funding: the sum of **£42,616** for the period 1 April 2013 to 31 March 2014 to be paid to SHCVS in accordance with this agreement. The amount of Funding for subsequent years, if any, will be notified by the Council to SHCVS by 28 February in each year of the agreement. 3

Funding Period: the period for which the Funding is awarded starting on the Commencement Date and ending on 31 March in each year of this agreement.

Governing Body: the governing body of SHCVS including its directors or trustees.

Outcomes: mean the Council Outcomes more particularly described in the Service Specification at Appendix A.

Prohibited Act:

- (a) offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward for:
 - (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 Council; or
 - (ii) showing or not showing favour or disfavour to any person in relation to this agreement or any other contract with the Council;
- (b) entering into this agreement or any other contract with the Council where a commission has been paid or has been agreed to be paid by SHCVS or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this agreement or any other contract with the Council; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Council.

2. PURPOSE OF GRANT

SHCVS shall use the Funding for meeting the Outcomes in accordance with the terms and conditions set out in this agreement. The Funding shall not be used for any other purpose without the prior written agreement of the Council.

3. PAYMENT OF GRANT

3.1 Subject to clause 11, the Council shall pay the Funding to SHCVS in one annual instalment in advance of 30 April in any one year subject always to the necessary funds being available to the Council when payment falls due. SHCVS agrees and accepts that payment of the Funding can only be made to the extent that the Council has the available funds.

3.2 No Funding shall be paid unless and until the Council is satisfied that such payment will be used for proper expenditure in the delivery of the Outcomes. 4

3.3 SHCVS shall promptly repay to the Council, within 14 days of it being demanded, any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Funding monies have been paid in error before all conditions attached to the Funding have been complied with by SHCVS.

3.4 SHCVS agrees that every payment of the Funding is inclusive of all VAT that may be chargeable for the supply of the service to which the Funding relates.

4. USE OF GRANT

4.1 The Funding shall be used by SHCVS for the achievement of the Outcomes. SHCVS shall not use the Funding to:

(a) make any payment to members of its Governing Body except for the reimbursement of legitimately claimed travelling and subsistence expenses incurred in connection with this agreement;

(b) purchase buildings or land;

unless this has been approved in writing by the Council.

4.2 SHCVS shall carry out its functions in accordance with requirements in relation to staffing, quality assurance, legislative requirements and insurances.

4.3 Should any part of the Funding remain unspent at the end of the Funding Period, SHCVS shall ensure that any unspent monies are returned to the Council or, if agreed in writing by the Council, SHCVS shall be entitled to retain the unspent monies to use for its charitable purposes as agreed between the parties.

5. ACCOUNTS AND RECORDS

5.1 SHCVS shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Funding for a period of at least six years following receipt of any Funding monies to which they relate. The Council shall have the right to review, at the Council's reasonable request, SHCVS's accounts and records that relate to the expenditure of the Funding and shall have the right to take copies of such accounts and records.

5.2 SHCVS shall provide the Council with a copy of its audited annual accounts within six months of the end of the relevant financial year in respect of each year in which Funding is paid.

5.3 SHCVS shall comply with and facilitate the Council's compliance with all statutory requirements including but not limited to accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Council. 5

6. MONITORING AND REPORTING

6.1 SHCVS shall on request provide the Council with such further information, explanations and documents as the Council may reasonably require in order for it to establish that the Funding has been used properly in accordance with this agreement subject to ensuring that the provision of any such requested information will not be in breach of any client confidentiality.

6.2 The Council and SHCVS shall each appoint a contact officer ("the Contact Officer") who shall act as the respective party's representative and first point of contact for all purposes connected with this agreement. At the date of this agreement the Council's Contact Officer is Amanda Harvey and SHCVS's Contact Officer is Jill Davies.

The Council's Contact Officer shall:

- (a) be the initial point of contact within the Council for SHCVS;
- (b) inform SHCVS of any issues that may have an effect on the delivery of the Outcomes in this agreement;
- (c) provide information advice and support to SHCVS as reasonably required;
- (d) liaise with SHCVS's Contact Officer in relation to the monitoring requirements in clauses 5 and 6 of this agreement and;
- (e) advise of any change to the Council's Contact Officer.

SHCVS's Contact Officer shall:

- (a) provide the information required in clauses 5 and 6 of this agreement;
- (b) advise of any proposals which may change the Outcomes or targets in Appendix A;
- (c) advise of any matters which may affect SHCVS's ability to achieve the Outcomes;
- (d) advise of any major changes to SHCVS's budget;
- (e) advise of any changes to SHCVS's Constitution or Memorandum and Articles of Agreement and;
- (f) advise of any change to SHCVS's Contact Officer.

6.3 Six monthly monitoring meetings will be held between the Council and SHCVS Contact Officers. These will include an update on the achievement of the Outcomes identified in Appendix A with information to be provided by SHCVS before these meetings and will take account of changes to community needs, the Council's corporate objectives and any other factors which may affect the ability of SHCVS to achieve the Outcomes. 6

6.4 SHCVS must notify the Council immediately if:

- (a) circumstances have arisen which might adversely affect service delivery;
- (b) the results of any audit or quality of service review indicates a less than satisfactory performance.

7. PUBLICITY

7.1 SHCVS shall not publish any material referring to the Outcomes or the Council without the prior written agreement of the Council. SHCVS shall acknowledge the support of the Council in any materials that refer to the Outcomes and in any written or spoken public presentations about the Outcomes.

7.2 SHCVS agrees to participate in and co-operate with promotional activities relating to the Outcomes that may be instigated and/or organised by the Council.

7.3 SHCVS may acknowledge the Council's Funding and involvement in the Outcomes as appropriate without prior notice.

8. CONFIDENTIALITY

Subject to clause 9, each party shall during the term of this agreement and thereafter keep secret and confidential all matters relating to individual clients or 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, required by law or save as expressly authorised in writing by the other party or unless authorised by a client to make such a disclosure.

9. FREEDOM OF INFORMATION

9.1 SHCVS acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 ("the 2004 Regulation") and shall assist and co-operate with the Council (at SHCVS's expense) to enable the Council to comply with these information disclosure requirements.

9.2 The Council shall be responsible for determining at its absolute discretion whether the information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the 2004 Regulations;
- (b) is to be disclosed in response to a request for information, and in no event shall SHCVS respond directly to a request for information unless expressly authorised to do so by the Council; 7

(c) whenever it is practical to do so the Council shall not provide confidentially sensitive information to a third party under FOIA or the 2004 Regulations without having informed SHCVS of the request for information and given SHCVS the opportunity to make representations.

10. DATA PROTECTION

SHCVS and the Council shall (and shall procure that any of its staff involved in connection with the activities under the agreement shall) comply with any notification requirements under the Data Protection Act 1998 (**DPA**) and both Parties will duly observe all their obligations under the DPA, which arise in connection with the agreement.

11. WITHHOLDING, SUSPENDING AND REPAYMENT OF GRANT

11.1 The Council's intention is that the Funding will be paid to SHCVS in full. However, without prejudice to the Council's other rights and remedies, the Council may at its discretion withhold or suspend payment of the Funding and/or require repayment of all or part of the Funding if:

- (a) SHCVS uses the Funding for purposes other than those for which it has been awarded;
- (b) the Council considers that SHCVS has not made satisfactory progress with the delivery of the Outcomes under this agreement;
- (c) SHCVS is, in the reasonable opinion of the Council delivering the requirements of the specification in a negligent manner;
- (d) SHCVS provides the Council with any materially misleading or inaccurate information;
- (e) SHCVS commits or has committed any Prohibited Act;
- (f) SHCVS, any member of its governing body, employee or volunteer of SHCVS has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of SHCVS or the Council or (b) taken any actions which, in the reasonable opinion of the Council bring or are likely to bring the Council's name or reputation into disrepute;
- (g) SHCVS ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- (h) SHCVS becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; 8

(i) SHCVS fails to comply with any of the terms and conditions set out in this agreement and fails to rectify any such failure within 30 days of receiving a written notice detailing the failure.

11.2 Should SHCVS be subject to financial or other difficulties which are capable of having a material impact on its effective achievement of the Outcomes or compliance with this agreement, it will notify the Council as soon as possible so that, if possible, and without creating any legal obligation, the Council will have an opportunity to provide assistance in resolving the problem or to take action to protect the Council and the Funding.

12. ANTI-DISCRIMINATION

12.1 SHCVS shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.

12.2 SHCVS shall take all reasonable steps to secure the observance of clause 12.1 by all servants, employees or agents of SHCVS and all suppliers and sub-contractors engaged in the Outcomes.

13. LIMITATION OF LIABILITY

13.1 The Council accepts no liability for any consequences, whether direct or indirect, that may come about from SHCVS carrying out its activities, the use of the Funding or from withdrawal of the Funding. SHCVS shall indemnify the Council with respect of all liabilities, proceedings, costs, claims, damages and losses of whatsoever nature arising from or incurred by reason of the actions and/or omissions of SHCVS, the non-fulfilment of obligations of SHCVS under this agreement or its obligations to third parties.

13.2 Nothing in this agreement shall exclude or in any way limit either party's liability for fraud or for death and personal injury caused by its negligence or any other liability to the extent that the same not be excluded or limited by law.

14. WARRANTIES AND UNDERTAKINGS

SHCVS warrants, undertakes and agrees that:

- (a) it has all necessary resources and expertise to deliver the services (assuming due receipt of the Funding);
- (b) it has not committed, nor shall it commit, any Prohibited Act;
- (c) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and 9

shall notify the Council immediately of any significant departure from such legislation, codes or recommendations;

(d) 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 for SHCVS;

(e) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;

(f) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;

(g) all financial and other information concerning SHCVS which has been disclosed to the Council is to the best of its knowledge and belief, true and accurate;

(h) 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 Funding;

(i) it is not aware of anything in its own affairs, which it has not disclosed to the Council or any of the Council's advisers, which might reasonably have influenced the decision of the Council to make the Funding on the terms contained in this agreement.

15. DURATION

15.1 Except where terminated in accordance with the terms of this agreement this agreement shall continue in place for an initial term of three years from the Commencement Date.

15.2 At least 6 months before the expiry of the three year term the Council may propose by notice in writing that the agreement be extended for a period of up to 2 years on the same terms (subject to any alterations that either party may agree). If SHCVS accept such proposals this agreement shall be extended for the agreed period.

16. TERMINATION

Either party may terminate this agreement on giving to the other at least six months written notice. Should SHCVS terminate under this clause it shall repay to the Council all of the unspent Funding received from the Council.

17. ASSIGNMENT

SHCVS may not, without the prior written consent of the Council, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this agreement. 10

18. FORCE MAJEURE

18.1 Neither Party shall be liable to the other for any delay in performing or failure to perform its obligation under this agreement to the extent that such delay or failure is a result of a Force Majeure Event.

18.2 If the Force Majeure Event continues for a period of two consecutive months then the Council may terminate the agreement by giving notice in writing which may have immediate effect.

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

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 or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 17:00 on any working day they shall be deemed received on the next working day) and if mailed all such 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 Council's right to withhold funds or terminate) arising between the parties to this agreement in relation to this agreement the parties shall make every effort to resolve the issue through joint discussions.

21.2 Where joint discussions fail to resolve the issue the complaining party shall provide written details of the complaint including proposals for resolution to the receiving party.

21.3 Within 14 days of receipt of the complaint the receiving party shall respond in writing. Where the response fails to resolve the complaint a meeting shall be called between the Council's Head of Planning, Economy & Community Service and the Chief Officer of SHCVS.

21.4 In the absence of agreement under clause 19.3, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as agreed by both parties). Unless 11

otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

22. REVIEW

This agreement and the specification shall be reviewed on a regular basis and at least annually by the parties and any amendments or variations will be agreed by both parties and recorded in writing prior to implementation and annexed to this agreement.

23. NO PARTNERSHIP OR AGENCY

This agreement shall not create any partnership or joint venture between the Council and SHCVS, 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.

24. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This agreement does not and is not intended to confer any contractual benefit on any person who is not a party to it pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

25. GOVERNING LAW

This agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

This agreement is delivered and takes effect on the date stated at the beginning of it.

Signed on behalf of SHDC:

Name: Title:

Date:

Signed on behalf of SHCVS:

Name: Title:

Date: