



Llywodraeth Cymru
Welsh Government

Rob Thomas
Managing Director and Director of Resources
Vale of Glamorgan Council
Civic Offices
Holton Road
Barry
CF63 4RU

23rd September 2015

Dear Mr Thomas

**Award of Funding in relation to Five Mile Lane Improvement Scheme
(130302)**

1. Award of Funding

- (a) We are pleased to inform you that funding of up to £25.8m (*twenty five million, and eight hundred thousand pounds*) ("the Funding") is awarded to you for the Purposes (as defined in Condition 4(a)).

Subject to compliance with HM Treasury guidance on Managing Public Money 2015, Public Contract Regulations 2015 and the Council's Contract Procedure Rules and Financial Regulations, the level of funding provided will be adjusted to match expenditure.

- (b) If you have any queries in relation to this award of Funding or the Conditions please contact the Welsh Government Official who will be happy to assist you.

2. Statutory Authority

This award of Funding is made on and subject to the Conditions and under the authority of the Minister for Economy, Science and Transport, one of the Welsh Ministers, acting pursuant to section 6 of the Transport (Wales) Act 2006 and sections 70 and 71(1) of the *Government of Wales Act 2006*.

3. Interpreting these Conditions

Any reference in these Conditions to:

'you', 'your' is to

Vale of Glamorgan Council
Civic Offices
Holton Road
Barry
CF63 4RU

'we', 'us', 'our' is to the Welsh Ministers;

'Welsh Government Official' is to

Andy Falley
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Tel: 02920 826232

Email: andy.falley@wales.gsi.gov.uk

or such other Welsh Government official as we may notify you.

'Project Manager' is to

John Dent
Major Project Manager - Development Services
Vale of Glamorgan Council
Dock Office
Barry Docks
Barry
CF63 4RT

Tel: 01446 704617

Email: jdent@valeofglamorgan.gov.uk

'Conditions' is to the terms and conditions set out in this letter;

'Schedule' is to the schedules attached to this letter;

'Costs Incurred' is to the cost of goods and services you have received regardless of whether you have paid for them by the date of your claim.

'Notification Event' is to any of the events listed in Schedule 3;

'State Aid Rules' is to the rules set out in Articles 107 to 109 of the Treaty on the Functioning of the European Union (or in those Articles that may succeed Articles 107 to 109), secondary legislation such as frameworks, guidelines and block exemptions produced by the European Commission derived from Articles 107 to

109, case law of the European Courts and decisions of the European Commission regarding the application of Articles 107 to 109; and

any legislation will include all amendments to and substitutions and re-enactments of that legislation in force from time to time;

4. What you must use the Funding for

- (a) You must use the Funding solely for the purposes set out in Schedule 1 (the "**Purposes**").
- (b) You must achieve the targets and outcomes set out in Schedule 2 (the "**Targets**").
- (c) Any change to the Purposes or Targets will require our written consent which must be obtained from us in advance of implementing any change. Such consent not to be unreasonably withheld or delayed.
- (d) You must not use any part of the Funding for: (1) party political purposes; (2) the promotion of particular secular, religious or political views; (3) gambling; (4) pornography; (5) offering sexual services; (6) purchasing capital equipment (other than as specified in the Purposes); (7) your legal fees in relation to this letter; (8) Costs Incurred or costs incurred and defrayed by you in the delivery of the Purposes prior to the date upon which the grant terms are agreed; (9) any kind of illegal activities; or (10) any kind of activity which in our opinion could bring us into disrepute.

5. Funding Pre-Conditions

- (a) We will not pay any of the Funding to you until you have provided us with the following information and documentation:
 - (i) documentary evidence that the signatories who have signed this letter on your behalf are duly authorised to do so;
 - (ii) record of signatories to be completed and returned to Welsh Government using the enclosed Register of Signatories;
- (b) Where you are required to provide information and documentation to us as evidence that you have satisfied a particular pre-condition, Condition or in support of a claim, the information and documentation must be in all respects acceptable to us. We reserve the right to reject any information and documentation which is for any reason not acceptable to us.

6. How to claim the Funding

- (a) The Funding will be paid to you quarterly in arrears based on Costs Incurred by you in the delivery of the Purposes.
- (b) You must claim the Funding promptly. We reserve the right to withdraw any part of the Funding that you do not claim within a reasonable time.
- (c) You must submit your claims for payment of Funding to the Welsh Government Official.
- (d) You must use our current claim pro-forma (which is available from the Welsh Government Official) and attach the information and documentation to each claim:
 - i) Quarterly progress reports, to include the following information:
 - a) report on progress,
 - b) programme for next reporting period,
 - c) actual start dates of activities commenced since the previous update and reasons for any changes from the approved Project Programme,
 - d) actual completion dates of activities completed since the previous update and reasons for any changes from the approved Project Programme,
 - e) the anticipated time for completion, in working days, for activities in hand,
 - f) any change requested by the Contractor to the programmed completion date and the reasons for any change,
 - g) proposals for retrieving of any slippage to the approved Project Programme,
 - h) design issues,
 - i) environmental issues,
 - j) status of certificates,
 - k) confirmation of scheme costs estimate and budget forecast,
 - l) payment schedule – agreement of compensation events,
 - m) schedule of early warnings,
 - n) updated risk register,
 - o) quality matters,
 - p) safety CDM issues,
 - q) third party claims and complaints register,
- (e) We will aim to pay all valid claims as soon as possible and typically within 28 days.

7. Your general obligations to us

You must:

- (a) Safeguard the Funding against fraud generally and, in particular, fraud on the part of your management, employees and/or suppliers and notify us immediately if you have reason to suspect that any fraud has occurred or is occurring or is likely to occur. You must

also participate in such fraud prevention initiatives as we may require from time to time.

- (b) Comply with all applicable laws or regulations or official directives whether derived from domestic, EU or international law;
- (c) Put in place and maintain adequate insurances to cover against the risks which may arise in connection with any property or any activity undertaken in delivery of the Purposes. We reserve the right to require you to provide proof of your insurance;
- (d) Co-operate fully with the Welsh Government Official and with any other employee of the Welsh Government or consultant appointed by us to monitor your use of the Funding and your compliance with these Conditions.

8. Declarations

You declare that:

- (a) you have the power to enter into and to perform the obligations set out in these Conditions and you have taken all necessary action to authorise the entry into and performance of the obligations under these Conditions;
- (b) no litigation or arbitration is current or pending or, so far as you are aware, threatened, which have or could have an adverse effect on your ability to perform and comply with any of these Conditions;
- (c) you have discussed and agreed the Targets with us and you are confident that they are realistic and achievable.

9. Notification Events and their consequences

- (a) You must notify us immediately if a Notification Event has occurred or is likely to occur but we also reserve the right to notify you where we believe a Notification Event has occurred or is likely to occur.
- (b) We will seek to discuss the Notification Event with you and to agree a course of action to be taken to address the Notification Event and in doing so we will consider both the seriousness of the Notification Event and whether or not it can be remedied.
- (c) We will be entitled to take any of the actions listed in Condition 9(d) if:
 - (i) despite our reasonable efforts including written communications we have been unable to discuss the Notification Event with you within a reasonable time, or
 - (ii) The Notification Event is not capable of remedy, or

- (iii) a course of action is agreed with you but you fail to follow it, or any reasonable conditions attached to it are not met (including without limitation the timescale for such course of action), or
 - (iv) the course of action fails to remedy the Notification Event to our reasonable satisfaction.
- (d) If any of the circumstances set out in Condition 9(c) occurs we may by notice to you:
- (i) withdraw the award of Funding; and/or
 - (ii) suspend or cease all further payment of Funding; and/or
 - (iii) make all further payments of Funding subject to such conditions as we may specify; and/or
 - (iv) exercise any other rights against you which we may have in respect of the Funding.
- (e) All repayments of Funding must be made to us within 28 days of the date of our demand. You must pay interest on any overdue repayments at a rate of 1.5% per annum above the Bank of England base rate from time to time or at such other rate as may be required by the State Aid Rules. Interest will accrue on a daily basis from the date the repayment is due until actual repayment of the Funding, whether before or after judgment. You must pay the interest together with the overdue repayment.
- (f) In the event that the "Target Cost for Construction + Employers Risk allowance" (agreed before KS6 contract award) exceeds the budget estimate for "Design and Build Contract Direct Costs", a notification event shall be raised as detailed in Clause 9(a). The Welsh Ministers shall decide whether to withdraw or cease funding as set out in Clause 9(d)(i) and 9(d)(ii) and the associated "Purposes" In such circumstances Clause 9(d)(ii) would not be enforced and either party may terminate this agreement .
- (g) In the event that cost of land purchase, land related compensation claims and actual costs claimed by valuers appointed by you or by landowners exceed the Budget estimate as set out in Schedule 1 a notification event shall then be raised as detailed in clause 9(a). The Welsh Ministers shall fund such additional cost provided they are validated by the District Valuer.
- (h) PROVIDED ALWAYS that in the event that expenditure has been committed by contractual or other legal obligations by you that expenditure will be paid to you notwithstanding such withdrawal or cessation of funding.

10. Monitoring Requirements

You must:

- (a) provide us with such documents, information and reports which we may reasonably require from time to time in order for us to monitor your compliance with the Conditions, these shall include:
 - 1. Annual profile of expenditure
 - 2. Monthly progress reports
 - 3. Procurement reports
 - 4. Contractor Monthly application
 - 5. Value for Money reports
- (b) meet with the Welsh Government Official and such other of our representatives as we may from time to time reasonably require; including without limit:
 - i) monthly progress meetings,
 - ii) financial monitoring, budget and grant review meetings,
 - iii) technical working group meetings, and
 - iv) pre-construction public exhibition,
- (c) ensure that the Project Manager (or such other person as we may agree) attends all meetings with the Welsh Government Official.

11. Audit Requirements

(a) You must:

- (i) maintain clear accounting records identifying all income and expenditure in relation to the Purposes;
- (ii) without charge, permit any officer or officers of the Welsh Government, Wales Audit Office or European Commission at any reasonable time and on reasonable notice being given to you to visit your premises and/or to inspect any of your activities and/or to examine and take copies of your books of account and such other documents or records as in such officer's reasonable view may relate in any way to your use of the Funding. This undertaking is without prejudice and subject to any other statutory rights and powers exercisable by the Welsh Government, Wales Audit Office or the European Commission or any officer, servant or agent of any of the above;
- (iii) retain this letter and all original documents relating to the Funding until we inform you in writing that it is safe to destroy them.

- (b) Under paragraph 17 of Schedule 8 to the Government of Wales Act 2006 the Auditor General for Wales has extensive rights of access to documents and information relating to monies provided by the

Welsh Government. He and his officials have the power to require relevant persons who control or hold documents to give any assistance, information and explanation that they may require; and to require those persons to attend before them for such a purpose. The Auditor General and his staff may exercise this right at all reasonable times.

12. Third Party Obligations

- (a) Nothing in the Conditions imposes any liability on us in respect of any liability incurred by you to any third party (including, without limit, employees and contractors).
- (b) You must indemnify us against any liabilities, claims, proceedings, demands, losses, costs and expenses suffered or incurred by us directly or indirectly arising as a result of or in connection with any failure by you to perform fully or in part any obligation you may have to a third party.

13. Intellectual Property Rights & Publicity

- (a) Nothing in these Conditions transfers to us any rights in any intellectual property created by you as a result of the Purposes.
- (b) You must acknowledge our support on all publicity, press releases and marketing material produced in relation to the Purposes. Such acknowledgement must be in a form approved by us and must comply with the Welsh Government's branding guidelines.
- (c) You must provide the Welsh Government Official with a copy of all material listed in Condition 13(b) for our approval before any such material is published and you may not publish such material without our prior written approval. We will endeavour to respond to all written requests for approval within 10 working days.
- (d) You agree that from the date of this letter until 5 years from the date of the final payment of Funding we may include details about your organisation and business, the Funding and the Purposes in Welsh Government promotional materials and you further agree to cooperate with our reasonable requests to achieve the production of such materials.

14. Access to Information

- (a) You acknowledge that we are subject to the requirements of the Code of Practice on Access to Information published by the Welsh Government (the "Code"), the Freedom of Information Act 2000 (the "FOIA"), the Environmental Information Regulations 2004 (the "EIR") and the Data Protection Act 1998 (the "DPA").

- (b) You acknowledge that we are responsible for determining in our absolute discretion whether:
- (i) to disclose any information which we have obtained under or in connection with the Funding to the extent that we are required to disclose such information to a person making a disclosure request under the FOIA or the EIR; and/or
 - (ii) any information is exempt from disclosure under the Code, the FOIA or the EIR.

15. Buying Goods and Services

If you decide to buy any goods and/or services to deliver the Purposes, they must be purchased in a competitive and sustainable way so as to demonstrate that you have achieved best value in the use of public funds and compliance with your contract standing orders and financial regulations shall be conclusive evidence of compliance with this requirement.

16. Giving Notice

- (a) Where notice is required to be given under these Conditions it must be in writing (this does not include email but may include a letter attached to an email) and must prominently display the following heading:

“Notice in relation to the Five Mile Lane Improvement Scheme (130302)”.

- (b) The address and contact details for the purposes of serving notice under these Conditions are as follows

You: the Project Manager at the address stated in Condition 3.

Us: the Welsh Government Official at the address stated in Condition 3.

- (c) A notice will be deemed to have been properly given as follows:-

Prepaid first class post: on the second working day after the date of posting.

By hand: upon delivery to the address or the next working day if after 4pm or on a weekend or public holiday.

By email attachment: upon transmission or the next working day if after 4pm or on a weekend or public holiday.

17. Equal Opportunities

You must apply a policy of equal opportunities as employers, as users of volunteers, and as providers of services, regardless of race, gender/gender identification, sexual orientation, religion and belief, age or any disability.

18. Welsh Language

Where the Purposes include or relate to the provision of services or written materials (including signage and information published online) in Wales, they must be provided in Welsh and English, unless it would be unreasonable or disproportionate to do so. Guidance about providing services and written materials in Welsh can be obtained from the Welsh Language Commissioner on 0845 6033 221 or by visiting www.comisiynyddygybraeg.org.

19. Sustainability

Your use of the Funding must (where reasonably practicable) meet the Welsh Government's current agenda for sustainable development and the environment.

20. Welsh Ministers' Functions

You acknowledge that the Welsh Ministers have a range of functions which will continue to accrue and be amended and that decisions in relation to each such function are obliged to be taken in the light of all relevant and to the exclusion of all irrelevant considerations. You agree that nothing contained or implied in, or arising under or in connection with, these Conditions will in any way prejudice, fetter or affect the functions of the Welsh Ministers or any of them nor oblige the Welsh Ministers or any of them to exercise, or refrain from exercising, any of their functions in any particular way.

21. General

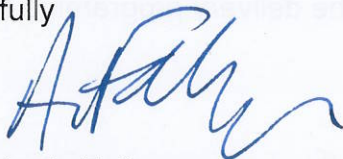
- (a) If at any time any of these Conditions is deemed to be or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.
- (b) No failure or delay on our part to exercise any power, right or remedy under these Conditions will operate as a waiver of any such power, right or remedy or preclude its further exercise or the exercise of any other power, right or remedy. The powers, rights or remedies hereby provided are cumulative and not exclusive of any powers, rights or remedies provided by law.

- (c) Any amendment or variation to these Conditions must be in writing and signed by us and you in the same manner as this letter.
- (d) You may not assign or otherwise dispose of in any way your rights, benefits, obligations or duties under these Conditions.
- (e) Conditions 7, 9, 11, 13, 14, and 21(e) and such other Conditions which by implication need to continue in force beyond the final payment of Funding will so continue in full force and effect.
- (f) The award of the Funding is to you alone and no one else is entitled to make any claim in respect of the Funding or seek to rely on or enforce any of these Conditions.
- (g) These Conditions are to be governed by and construed in accordance with the laws of Wales and England as applied in Wales and the parties hereto submit to the exclusive jurisdiction of the courts of Wales and England.

22. How to accept this offer of Funding

- (a) To accept this award of Funding you must sign and return a copy of this letter to the Welsh Government Official. None of the Funding will be paid to you until we have received your signed letter.
- (b) We must receive your signed letter within 8 weeks of the date of this letter, or this award of Funding will automatically be withdrawn.

Yours faithfully



Signed by Andy Falley

under authority of the Minister for Economy, Science & Transport,
one of the Welsh Ministers.

SCHEDULE 1
The Purposes

The Purpose of the Funding is to undertake highway improvements to the A4226 Five Mile Lane, taking the scheme through the statutory processes, procurement of an Employer's Agent and Design and Build Contractor, and supervision of the construction works.

Cost	Value (£)
Ground investigation compensation	10k
Appointment of Valuer	24k
Planning Process and Exhibition	66k
Orders Public Inquiry	10k
Employer's Agent direct costs and VGC Highways Technical salaries	850k
Archaeological Work	250k
Design and Build Contract direct costs	20,489k
Land purchase and land related compensation claims	4,048k
Total	£25,747k

NB. These indicative values have been provided following a cost estimating methodology which relies on current levels of information, industry standards and works cost figures associated with similar schemes but are, in the main, not currently relying on formal procurement exercises and it is intended that these figures will be reviewed throughout the delivery programme to ensure appropriate budget provision.

**SCHEDULE 2
The Targets**

Description of the Target	Minimum time period by which it should be achieved	Evidence required
Submit planning application	Four weeks after VGC Cabinet approval to proceed	Confirmation of receipt by Planning Department
Publish Orders	Twelve weeks after agreement by VGC Full Council decision to proceed with CPO	Issue Public Notices
Appoint Valuer	Eight weeks after agreement by VGC Full Council decision to proceed with CPO	Appointment letter
Appoint Employer's Agent	Thirty six weeks after VGC Cabinet decision to proceed with scheme	Appointment letter
Gain planning permission	Twenty weeks after registration of the application by the Planning Department or as agreed as an extension of time with the Planning Department	Planning letter
Appoint Design and Build Contractor (Stage 1) Confirm that Design and Build tendered prices are within budget	Forty two weeks from issuing the relevant Ojeu Notice Twenty four weeks after Contractor Stage 1 appointment	Tender report
Successful at public inquiry (if applicable)	Sixty weeks after publishing orders	Confirmation Letter from Welsh Government Orders Branch, or confirmation that no public inquiry is required
Complete construction	Provisionally a 72 week programme but subject to the programme agreed under the terms of the works contract and as may be varied/amended within the contract terms	Completion Certificate

Defect date	As may be agreed under the Works Contract	Defects Certificate
Completion of landscaping aftercare period	Dec2022	Defects Certificate
Land related compensation claims	July 2027	DV sign off

SCHEDULE 3
Notification Events

The Notification Events referred to in Condition 9 are listed below:

1. repayment of any part of the Funding is required under European Law (whether under State Aid Rules or otherwise);
2. you fail to comply with any of the Conditions;
3. you fail to achieve any or all of the Targets;
4. we have made an overpayment of Funding to you;
5. any declaration made in Condition 8 is incorrect in any respect or, if repeated at any time with reference to the facts and circumstances then existing, would be incorrect;
6. any event occurs or circumstances arise which in our reasonable opinion gives reasonable grounds for believing that you or we will be unable to perform or comply with any of your or our obligations under these Conditions.

