

Cabinet – 24 April 2013

ERDF Growth Opportunities Local Delivery in Key sectors project (GOLD in Key sectors)

Portfolio: Councillor Adrian Andrew, Deputy Leader, Regeneration

Related portfolios: Councillor Chris Towe, Finance and Personnel

Service: Regeneration – Development and Delivery

Wards: Wards within Walsall

Key decision: Yes

Forward plan: Yes

1. Summary

- 1.1 The Council, with its Black Country local authority partners, has a priority to promote economic growth and job creation. The European Regional Development Fund (ERDF) funded 'GOLD in Key sectors' programme along with a number of other economic initiatives and programmes supports this wider comprehensive approach to business and enterprise growth.
- 1.2 The proposed programme will provide support to Small Medium Enterprises (SMEs) who are failing to maximise growth opportunities across the Black Country, and also deliver support to new businesses and pre-starts. This project will offer a seamless service to integrate existing business support services with the additional support offered by this project. Activity will focus on the key growth sectors that have been adopted by the Black Country Local Enterprise Partnership Board (the "LEP"), namely; Advanced Manufacturing, Building Technologies, Transport Technologies, Business Services and Environmental Technologies. The project will seek to address specific problems around business survival, Competitiveness, Business Growth, and Access to Finance.
- 1.3 The "Full Application" requesting £984,742 of ERDF funding for a 2 year project running from June 2013 to June 2015 was submitted by Wolverhampton City Council to DCLG to meet their deadline of 28th February 2013 - Wolverhampton City Council as applicant will also be accountable body for the programme on behalf of the Black Country partners. Included as part of the application was a letter of support for the project from each of the local authorities. (At the time of writing the application is undergoing full appraisal

by DCLG., and the partners collaboration agreement is under review by WBC legal]

- 1.4 Authority is now being sought for Walsall Council to enter into the Black Country Partners Collaboration Agreement that will govern - amongst other matters – liability of the four Black Country partner authorities for any monies subject to clawback from DCLG; in other words, how and in what amounts each local authority may be required to repay any of the grant funding due to an irregularity in the operation of the project and/or in the awarding of grants to businesses. (Draft agreement attached as Appendix A)

2. Recommendations

- 2.1 That Cabinet approve the Council’s participation in the Growth Opportunities Local Delivery in Key sectors project (GOLD in Key sectors) and that we play a full and active role in supporting and delivering the project with a commitment to provide staff and financial resources as detailed in paragraphs 6.1 and 9.1 of this report.
- 2.2 That Cabinet approves entering into the ‘Growth Opportunities Local Delivery in Key sectors’ project Collaboration Agreement with its Black Country local authority partners which provides for any liability for monies that are subject to clawback by the Department for Communities and Local Government
- 2.3 That Cabinet agree to delegate authority to the Executive Director – Regeneration in consultation with the Chief Finance Officer to sign or authorise the sealing of the proposed Collaboration Agreement to be entered into by the four Black Country Local Authority partners, in relation to the “Growth Opportunities Local Delivery in Key sectors project” and its related documents including the Funding Agreement.

3. Report detail

- 3.1 Many SMEs in the Black Country do have the potential for growth: our manufacturing sector continues to outperform national levels but does require innovation, modernisation and competitiveness. For many smaller SMEs there is a lack of capacity and infrastructure which prevents the companies from taking up opportunities (such as procurement tenders, export, supply chain contracts, increasing recruitment, IT developments, product innovation etc). This project aims to systematise the existing provision of business support for SMEs wanting to exploit growth opportunities, into a programme which offers tailored and specialist workshops by growth themes; expert 1-2-1 advice tailored into a language that can be understood; and a business grant for up to £32,000 (50% match funded by the SME) to invest in equipment and/or professional services to apply the advice and install the necessary infrastructure to help deliver the desired outcomes.

- 3.2 Businesses recruited to the project will go through an intense programme of support, to include:
- Initial contact (clients referred into the project by local authorities / other support agencies / self referral),
 - A Business Needs Analysis (a comprehensive analysis undertaken by project partners to understand the needs of the business),
 - Referral to tailored workshop (client referred to one or more of the thematic workshops, delivered by partners such as UKTI, Manufacturing Advisory Service, Federation of Small Businesses, and HMRC),
 - 1-2-1 follow up following the workshop (specialist 1-2-1 follow-up support provided by one of the workshop providers),
 - Access to grant (grant support up to a maximum of £16,000, matched),
 - KITE mark (businesses completing the full programme are awarded a KITE mark confirming their participation in the programme and that they have received support through ERDF),
 - Ongoing monitoring and support (ongoing support provided by Local authorities and partners).
- 3.3 The project will help support opportunities across the Black Country, supporting new businesses close to existing communities and in locations which have been the focus for employment for many years. The project will increase the number of local employment opportunities, and assist businesses to access new markets. The project will aim to support 480 businesses across the Black Country. At this time we are part way through an exercise to understand what specific Walsall business demands exist and through which funding programmes and projects these can be supported.
- 3.4 The project will seek to promote and provide support that will stimulate economic growth and job creation within the Black Country. A number of recent key pieces of evidence (including Walsall's Local Economic Assessment, and Black Country Core Strategy) highlight the problems of uncompetitive businesses, lack of access to new markets, and capital investment as areas that need strengthening.
- 3.5 Where a grant award is made then the businesses will be reimbursed on the basis of the business having incurred the expense, providing evidence of receipted payment for goods or services that they have procured, and that the goods or services procured had prior approval from the Project Manager. All businesses enrolling onto the project will enter into a formal agreement with the Project. The conditions and clauses within this agreement will help mitigate the risk of clawback.
- 3.6 Wolverhampton City Council (WCC) has agreed to act as the 'Accountable Body' for this project, leading its development, administration, and management. The other three Black Country authorities have been continually involved (through the project steering group) with the details of the project ensuring agreement to all key elements of the project.

- 3.7 Wolverhampton City Council will receive the funding from DCLG and enter directly into grant agreements with the businesses that enrol on to the project and/or receive grant support.
- 3.8 A draft Collaboration Agreement has been prepared by WCC. This legally binding agreement sets out the framework for joint working between the parties during the lifetime of the Project. The agreement will ensure commitment to the process and the responsibilities of each Black Country authority partner, thereby, assisting the partners to mitigate the risks associated with the Project. It is expected (subject to further consultation with Legal and Finance, and our Black Country partners) that the final draft agreement will follow similar formula to that agreed by Cabinet in relation to the Black Country Business Property Investment Programme (BCBPIP), i.e. in the event that some type of irregularity forces DCLG to clawback grant monies then we will only be liable for grants awarded to Walsall based businesses. (Draft collaboration agreement included as Appendix A)

4. Council priorities

- 4.1 This project will promote investment and support employment growth in the Black Country. It will support the delivery of the Black Country Core Strategy and as well as the Council's corporate priorities. The project meets the Council's economic priority, as set out in the Corporate Plan.
- 4.2 The Black Country, via its Core Strategy, Vision for 2020 and Local Economic Strategy works through its LEP to create the conditions for enterprise to flourish and to improve the economic prosperity of the Black Country area by co-ordinated action to stimulate the drivers of economic development, including increasing the levels of employment, improving the levels of businesses operating within the area, and modernising and diversifying the business base in order to close the productivity gap (of £6bn p.a.) the area faces. The LEP is co-ordinating a range of actions focussed on key issues for Black Country Businesses.
- 4.3 The project will increase the number of local employment opportunities, therefore it aligns closely to the objectives set out in the Marmot Review:
- Give every child the best start in life
 - Enable all children, young people and adults to maximise their capabilities
 - and have control over their lives
 - Create fair employment and good work for all
 - Ensure a healthy standard of living for all
 - Create and develop healthy and sustainable communities

5. Risk management

- 5.1 Multi-partner projects of this nature present risks for the Council. However, in order to mitigate risk the Council will enter into the partner collaboration agreement.

WCC as the accountable body for the project will have overall responsibility for the delivery of the project. The Project will be managed by a dedicated full time Project Manager as well as a full time Grants Administrator for the lifetime of the project.

WCC has considerable experience in managing, delivering and co-ordinating large scale externally funded projects (under ERDF, ESF and other UK government funding streams).

To support the project Wolverhampton City Council have access to:

- An internal strategic Funding & Projects Team (5 dedicated staff) to oversee strategy and co-ordination of policy through to delivery plans,
- A corporate level Projects & Programmes Team (3 dedicated staff) to instil quality thresholds of PRINCE 2 standards for all projects that the Council engages in,
- A Strategic Finance Team / Corporate Accountancy to monitor all external funding income and expenditure profiles, monitoring spend and variance with responsibility for annual accountancy reports and returns, offering advice on budget profiling, reporting and reducing variance,
- A Risk Management Specialist advisor to advise on all aspects of measuring, assessing, and monitoring risks to service delivery, budgetary provision and day-to-day management of activities,
- A Legal Advice Team that have been involved in developing this project bid from early concept stage through to the final submission of the ERDF application.

The Project Steering Group will draw on the support available as highlighted above. Meetings of the monthly Project Steering Group will allow regular review of the project and identification of potential risks associated with delivery or operation of the project.

The Project Manager and Project Administrator will work closely at an operational level with Partners during the lifetime of the project.

6. Financial implications

- 6.1 The project will require a financial contribution from each of the Black Country local authority partners as match to the ERDF funded programme management costs. The Council's financial commitment to the project will therefore be £32,500 over two years or £16,250 per financial year 2013-2015. This is made up of £17,500 match funding (as a financial contribution) and

£15,000 (staff in kind matched time), the £17,500 has been identified in existing revenue budgets managed by the Strategic Regeneration Service.

- 6.2 There is a risk for WCC as the grant applicant and accountable body, that should a business not deliver their agreed outputs, the grant could be “clawed back” by central government. In order to reduce the impact of this, a collaboration agreement will be entered into between all four Black Country local authorities.
- 6.3 The collaboration agreement detail our liability for the sharing of any potential clawback associated with the project.

7. Legal implications

- 7.1 Legal Services will work closely with officers to ensure that all necessary legal processes are in place to minimise the risk to the Council, including but not limited to advising on the collaboration agreement.

7.2 State Aid

The individual contracts for specialist business support the “grant” activity” in this project will be delivered via a framework, or pool, or approved suppliers who will be procured in order to undertake the activity. The service will be tendered by open competition, in line with OJEU procurement regulations, and as such will meet with State Aid regulations.

The companies in receipt of the business support service will also need to comply with State Aid. Companies will have to declare any State Aid they have been in receipt of over the previous three years. This particular project will be delivering under the De Minimis levels allowable under State Aid laws. If a company has been in receipt of significant funding over the past three years which result in the De Minimis levels being breached then such a company will be excluded from entering onto the project unless an alternative State Aid solution can be found.

The support provided by the project would be State Aid, however the level of the aid provided falls well under the De Minimis limits of 200,000 euro, therefore the project in its own right will not breach any State Aid regulations. However, it will fall on the project to ensure that individual companies do not breach the State Aid limits on public sector support. As noted above each company will therefore be required to self declare any past state aid they have been in receipt of.

8. Property implications

The Programme will not have an impact on the Councils’ portfolio of property assets as the funding is intended for private sector organisations.

9. Staffing implications

Officers within the Regeneration directorate and namely the Development & Delivery Service will work to deliver and support the programme. It is expected that matched staff time will equate to one officer spending one day a week working on the project. This will consist of marketing activities, supporting the delivery of workshops, providing support during the grant application stage, updating the project Client Relationship Management system, serving on the project delivery group, and other ad-hoc support as required. Timesheets accounting for time spent on the project will be submitted quarterly to the WCC based Project Manager.

10. Equality implications

There are no specific equality implications associated with this report. However, an Equality Impact Assessment as part of Wolverhampton City Council's management of the project is on-going. The ERDF Convergence and Competitiveness Equality and Diversity Guidelines at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/11741/Equality_in_Projects_Guidance.pdf place requirements on ERDF supported programmes. WCC as project lead and accountable body is adhering to these in the development of the project.

11. Consultation

- 11.1 The project has been developed in consultation amongst the Black Country authorities (Walsall, Dudley, Wolverhampton and Sandwell). Officers within Walsall Council's Regeneration Directorate, and Resources Directorate (Legal and Finance) have also been involved. Project partners will meet on a regular basis as part of the project steering group to ensure continuous consensus around project delivery.
- 11.2 The details contained within the collaboration agreement will have been developed in consultation with local authority Legal teams in Dudley, Sandwell, Walsall and Wolverhampton.

Background papers;

- Letter of support that accompanied the full ERDF application.
- Appendix A - Partners collaboration agreement

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15 April 2013

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Councillor Adrian Andrew
Deputy Leader
Portfolio holder Regeneration

15 April 2013

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Ref: 07746 / PortonS

DATE: _____ **2013**

Wolverhampton City Council



- (1) WOLVERHAMPTON CITY COUNCIL**
- (2) WALSALL METROPOLITAN BOROUGH COUNCIL**
- (3) DUDLEY METROPOLITAN BOROUGH COUNCIL**
- AND**
- (4) SANDWELL METROPOLITAN BOROUGH COUNCIL**

COLLABORATION AGREEMENT
in relation to
the Black Country Gold Programme

Wolverhampton City Council
Civic Centre
St Peter's Square
Wolverhampton WV1 1RG

THIS AGREEMENT is made on the _____ day of _____ 2013

BETWEEN:

- (1) **WOLVERHAMPTON CITY COUNCIL** of Civic Centre St Peter's Square Wolverhampton WV1 1RG; (together being "**the Parties**")
- (2) **WALSALL METROPOLITAN BOROUGH COUNCIL** of Civic Centre, Darwall Street, Walsall, WS1 1TP ("**WMBC**");
- (3) **DUDLEY METROPOLITAN BOROUGH COUNCIL** of The Council House, Priory Road, Dudley, West Midlands, DY1 1HF;
- (4) **SANDWELL METROPOLITAN BOROUGH COUNCIL** of Freeth Street PO Box 2374 Oldbury B69 3DE

WHEREAS:

- (A) The Parties have agreed to collaborate to apply to the European Regional Development Fund (ERDF) for funding anticipated to be £1,969,484 to be administered as the Black Country GOLD ("Growth Opportunities": Local Delivery) Programme ("GOLD" ("the Programme"). It is intended that the GOLD will assist Small Medium Enterprise (SME) property owners and developers across the Black Country region, and provide tailored one to one advice, resulting in a development plan, workshops business grant funding and follow up support for SME's enable to exploit growth opportunities due to lack of capacity. Support will be targeted at SMEs [within the Sustainable Urban Development (SUD) boundary.]
- (B) The Parties are empowered under s.1 of the Localism Act 2011 to "do anything that individuals generally may do".
- (C) WCC have agreed to act as Lead Partner and Accountable Body for the Programme and the other Parties to this Agreement will contribute resources and services as set out in this Agreement.
- (D) WCC has entered into a [_____] with [_____] in relation to GOLD for and on behalf of the Parties.
- (E) The purpose of this Collaboration Agreement is to set out a framework for joint working between the Parties to enable delivery of the Programme [until WCC is released of all obligations and responsibilities under [_____]].

1 Definitions

1.2 Interpretation

In this Agreement the following words and expressions have the following meanings:

Accountable Body means WCC

Agreement means this Collaboration Agreement

Beneficiary means the organisation that will be granted grant funding under the [BC GOLD]

BIS means the Department for Business, Innovation and Skills

BCRGF means the Black Country Regional Growth Fund

CLG means the Department for Communities and Local Government

Commencement Date means 2013

RGF means the Regional Growth Fund

Force Majeure means any circumstances beyond the reasonable control of either party (including, without limitation, any strike, lock-out or other form of industrial action)

Funding Agreement means any Funding Agreement to be entered into between WCC and Department of Business, Innovation and Skills, the offer letter on which the Funding Agreement will be based upon it set out in Schedule 5 to this Agreement

Grant Agreement means the grant agreement to be entered into between WCC and the beneficiary

Intellectual Property Rights means all patents, trade marks, copyright, moral rights, rights to prevent passing off, rights in designs, know how and all other intellectual or industrial property rights, in each case whether registered or unregistered and including applications or rights to apply for them and together with all extensions and renewals of them, and in each and every case all rights or forms of protection having equivalent or similar effect anywhere in the world

IP Material means the Intellectual Property in the Material

Lead Partner means the WCC

Longstop Date means or such other date as all the Parties (acting reasonably) agree

Material means all data, text graphics, images and other materials or documents created, used or supplied by a Council in connection with this Agreement unless before the first use or supply, the Council notified the other Council that the data, text supplies is not to be covered by this definition.

Monitoring Procedures means the monitoring procedures/requirements, audits and any other reporting, monitoring or audit processes required by CLG in relation to the Programme

Objectives and Outputs means the objectives and outputs set out in Clause 3 together with such other objectives and outputs as are adopted by the parties from time to time in accordance with this Agreement

Offer Letter means the letter set out in Schedule 5

Programme means the programme as set out in Schedule 1

Programme Manager means an officer appointed by WCC to fulfil the roles and duties as detailed in Schedule 6

Named Officer

Regeneration Leads means the senior officers who represent each of the parties at sub regional level on regeneration and economic development matters.

- 1.3 In this Agreement:
- 1.4 the clause headings do not affect its interpretation,
- 1.5 words in the singular shall include the plural and vice versa,
- 1.6 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a paragraph are to a paragraph of that Schedule,
- 1.7 references to any statute or statutory provision include references to:
- 1.8 all Acts of Parliament and all other legislation having legal effect in the United Kingdom,
- 1.9 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute,
- 1.10 a person includes a natural person, corporate or unincorporated body or organisation and their successors and permitted assigns,
- 1.11 including means including, without limitation,
- 1.12 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

2 Commencement and Objectives/Outputs

- 2.1 This Agreement shall continue in full force and effect from the Commencement Date unless formulated in accordance with Clause 13.
- 2.2 The Parties agree to work together in accordance with this Agreement and using the collaboration process in Clause 3 and agree that the Objectives and Outputs of this Programme will include the following together with such other outputs as the parties may from time to time adopt following the collaboration processes set out in Clause 3:
 - 2.2 The agreed objectives / outputs of the process will be:
 - Support up to 480 SMEs across the Black Country to fully exploit a growth opportunity through a customer journey to address barriers identified through a diagnostic and outlined in their development plan by June 2015.
 - Provide a tailored programme of support to 480 post start-up SMEs over a two year period, thus improving business performance and survival through a structured programme of tailored business support that:
 - Plug gaps in provision; and

- Improves signposting and co-ordination of existing business support services where a national programme needs tailoring to local needs.
 - Over a two year period support 120 SMEs to access Business Grants of up to £5k for equipment and/or up to £16k for professional services (or a combination of both capital equipment and professional consultancy up to a maximum of £16k) To enable SMEs to take advantage of growth opportunities.
 - Deliver a range of 6 thematic workshops, delivered twice per year for businesses to address barriers identified through the diagnostic and outlined in their development plans.
 - By June 2015 establish at least 3 local thematic networks of SME's where gaps exist e.g. BME, women, social enterprise across the Black Country
 - By June 2015 co-ordinate at least 3 cluster networks, where gaps exist, identifying barriers to survival, competitiveness and growth which project delivery will aim to address. Work across the Black Country to share best practice and approaches to address these issues.
 - By June 2015 Local Authorities will coordinate the bringing together a partnership of at least 20 stakeholders/business support providers, improving access to local provision and businesses.
1. Support up to 480 SMEs across the Black Country to fully exploit a growth opportunity through a customer journey to address barriers identified through a diagnostic and outlined in their development plan by June 2015.
 2. Provide a tailored programme of support to 480 post start-up SMEs over a two year period, thus improving business performance and survival through a structured programme of tailored business support that:
 - a. Plug gaps in provision; and
 - b. Improves signposting and co-ordination of existing business support services where a national programme needs tailoring to local needs.
 3. Over a two year period support 120 SMEs to access Business Grants of up to £5k for equipment and/or up to £16k for professional services (or a combination of both capital equipment and professional consultancy up to a maximum of £16k) To enable SMEs to take advantage of growth opportunities.
 4. Deliver a range of 6 thematic workshops, delivered twice per year for businesses to address barriers identified through the diagnostic and outlined in their development plans.
 5. By June 2015 establish at least 3 local thematic networks of SME's where gaps exist e.g. BME, women, social enterprise across the Black Country
 6. By June 2015 co-ordinate at least 3 cluster networks, where gaps exist, identifying barriers to survival, competitiveness and growth which project delivery will aim to address. Work across the Black Country to share best practice and approaches to address these issues.
 7. By June 2015 Local Authorities will coordinate the bringing together a partnership of at least 20 stakeholders/business support providers, improving access to local provision and businesses.
- Key output measures of 120 businesses assisted to improve performance (2 days) and businesses given intensive assistance will be met only when the pre-requisites of the GOLD programme are met (namely that a SME travels through the customer journey to receive a full diagnostic; 1-2-1 support in developing a growth plan; attends a localised thematic workshop and receives advice before investing a business grant to boost their infrastructure).

3 Collaboration

- 3.1 The parties agree to work in a spirit of mutual co-operation to fulfil their agreed roles and responsibilities to achieve the Objectives and Outputs, and to put in resources to the extent set out in this Agreement
- 3.2 Each party shall:
- 3.2.1 carry out the tasks and contribute the resources and facilities respectively allotted to or required of it as part of the Programme, including but not limited to the initial responsibilities set out in Schedule [3];
 - 3.2.2 co-operate with each other and do such acts, matters and things as may be necessary or desirable to implement the decisions of the Parties and in order to complete the Programme,
 - 3.2.3 keep the other Parties fully informed of the progress of and of any matters relevant to the Programme and make available to the other party all relevant information, data, reports and opinions in relation to the Programme,
 - 3.2.4 immediately notify the other Parties in writing if there is an unexpected problem which is likely to cause a material delay to achievement of any of the objectives of the Programme or any particular stage of the Programme or any material increase in the costs of the Programme or if any party becomes aware of the action of any third party which threatens to affect adversely the progress of the Programme or the reasonable expectations of either party hereunder.
 - 3.2.5 Ensure that the named officers attend the meetings and in the roles and responsibilities set out in Schedule []:
- 3.4 The Parties agree with and to abide by the decision making process and Governance Scheme as set out in Schedule(s) [] and [].

4 Obligations

- 4.1 The Parties will read and take advice (where necessary) on the terms of the Funding Agreement.
- 4.2 The Parties agree that they will be bound by the terms of the Funding Agreement as if they were the "Grant Recipient" as referred to in the Funding Agreement.
- 4.3 The Parties agree that they may be required to comply directly with the Funding Agreement.
- 4.4 The Parties agree to assist, co-operate and comply with the Monitoring Procedures and will work together to resolve or rectify any errors or irregularities identified during the Monitoring Procedures or otherwise.
- 4.5 Each Party shall be liable for any cost implications or irregularities or errors attributable primarily to it and identified during any Monitoring Procedures
- 4.6 Each party indemnifies WCC acting as the lead authority against any [clawback from [] arising out of the negligence default or breach by the other Parties of this Agreement or the [Funding Agreement]
- 4.7 Each Party indemnifies the others against all claims, liabilities, costs, expenses, damages or losses suffered by the others arising out of the negligence, default or breach by such Party of this Agreement or the Funding Agreement and each Party shall be responsible for maintaining

sufficient insurance where available in respect of such liabilities under this Agreement.

- 4.8 Each party shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against another pursuant to this Agreement.
- 4.9 The Parties agree that in the event that monies are paid out in relation to a project situated within the administrative area of one of the Parties and that project does not proceed to the satisfaction of CLG to the extent that monies are clawed back from WCC as the accountable body under the Funding Agreement, then the relevant Party in whose administrative area that unsuccessful project was within will:
 - 4.9.1 take all reasonable steps to mitigate the amount of monies clawed back from WCC; and
 - 4.9.2 pay to WCC an amount equivalent to the monies that WCC is obliged to pay back to CLG.]

5 Financial

- 5.1 Each Party will contribute equally to the costs incurred by WCC in relation to the Programme which will include but not be limited to the costs referred to in Schedule 4.
- 5.2 The Parties acknowledge and agree that the costs to be incurred by WCC in relation to the Programme are not known at this stage and each authority will contribute a 25% share to the total costs incurred by WCC as Accountable Body for the Programme.
- 5.3 Each Party's contribution as referred to in clause 5.2 will initially be capped at a maximum of £ although the Parties agree and acknowledge that in the event that the costs incurred by WCC are likely to exceed the combined total of such contributions then each Party will act reasonably in agreeing to pay further contributions to WCC.
- 5.4 WMBC will invoice the other Parties in respect of their share of such costs and the Parties will pay any such invoices within 7 days of receipt.
- 5.5 If applicable, WCC may require any other Party to verify any expenditure presented by that Party as being incurred by that Party and corresponds to any portion of the Project Activities (as defined in the Funding Agreement) being delivered by that Party.

6 Confidentiality

- 6.1 Each party shall use all reasonable endeavours to keep in strict confidence, and shall bind all its employees and agents to keep in strict confidence, all commercial and technical information in whatever form acquired by it (whether directly or indirectly) concerning the other party in consequence of this Agreement (hereinafter called **Confidential Information**). No party shall, save as hereinafter provided, use or disclose any such Confidential Information other than for the purposes of the Programme or as expressly permitted by this Agreement. The foregoing restriction shall not apply to:
 - 6.2 information which at the time of disclosure is generally available to the public,
 - 6.3 information which the Parties obliged to release under the provisions of the Freedom of Information Act 2000,
 - 6.4 information which after disclosure becomes generally available to the public through no fault of the receiving party,

- 6.5 information which the receiving party can show was in its possession prior to the disclosure and which was not acquired directly or indirectly from the other party, and
- 6.6 information which the receiving party can show was received by it after the time of disclosure from any party without any obligation of confidentiality and which was not acquired directly or indirectly from the other party.
- 6.7 The confidentiality obligations set out in this clause shall survive for a period of five (5) years after the termination of the Programme.
- 6.8 Each Party shall impose the same confidentiality obligations set out in this clause 8 upon its affiliates, consultants and other third parties who are in association with it and may have access to any Confidential Information during the term of this Agreement.

7 Intellectual Property

- 7.1 The Parties agree that all Intellectual Property Rights relating to the Programme shall unless otherwise agreed in writing belong to WCC, and that the parties will use all reasonable endeavours to ensure that WCC receive appropriate rights to any Intellectual Property Rights created during and relating to the Programme.

8 Warranties

- 8.1 Each party warrants to the other that:
- 8.2 it has the necessary right and authority to enter into this Agreement,
- 8.3 the signatories hereto for and on behalf of that party are authorised and fully empowered to execute this Agreement on that party's behalf.

9 Force majeure

- 9.1 If Party is affected by Force Majeure it shall forthwith notify the other party of the nature and extent thereof.
- 9.2 No Party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations hereunder, to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.
- 9.3 If the Force Majeure in question prevails for a continuous period in excess of three months, the Parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

10 Duration and termination

- 10.1 The provisions of this Agreement shall come into force on the Commencement Date and, subject to the provisions of clause 10.2 shall continue in force until completion of the Programme.
- 10.2 A Party other than WCC may only withdraw from this Agreement by written notice to WCC and the Programme Executive Board if [ERDF] Funding is not granted or the Programme is terminated.
- 10.3 WCC may terminate this Agreement if [ERDF] Funding is not granted or the Programme is terminated or any other Party does not make the contributions to WCC as set out in clause 5.

WCC will give written notice to the Executive Board following WCC's termination of this Agreement.

- 10.4 No relaxation, forbearance, delay or indulgence by any Party in enforcing any of the terms of this Agreement or the granting of time by any Party to any other shall prejudice, affect or restrict the rights and powers of that Party in relation to the other, nor shall any waiver by any Party of a breach of this Agreement be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.5 The rights to terminate or withdraw from this Agreement given by this clause 100 shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

11 Publicity and Public Relations

- 11.1 The Parties will co-operate and consult with each other in respect of any matter involving public relations in so far as reasonably practicable having regard to the nature and urgency of the issue involved. The Parties acting through Steering Group and the Executive Board may agree protocols for the handling of public relations from time to time.
- 11.2 [The Parties will adhere to the obligations in the Funding Agreement in relation to publicity and use of the ERDF logo.]

12 Disputes

- 12.1 If any dispute arises between the Parties arising out of the provisions of this Agreement the Parties shall endeavour to resolve the dispute by agreement as quickly as possible but if the dispute has not been resolved within ten (10) Working Days then either Party may request the other to participate in a meeting of their respective senior managers, in order to discuss the dispute and to agree a strategy to resolve it. The Parties shall then liaise in good faith to arrange and implement the meeting within ten (10) Working Days and shall exchange statements at least three (3) clear Working Days prior to the date of the meeting, setting out their respective views of the disputed issues.
- 12.2 If notwithstanding any steps taken by the Parties pursuant to clause 12.1, the dispute between them remains unresolved then at the request of either Party it shall be referred (in the absence of any express provision to the contrary) to an Independent Person appointed jointly by the Parties.
- 12.3 The Independent Person is to have at least 10 years relevant post qualification experience and his/her identity shall be agreed between the Parties.
- 12.4 If the Parties cannot agree on the Independent Person's identity the Independent Person is to be appointed at the request of any of the Parties by the president or chairman for the time being of whichever of the following bodies is most appropriate having regard to the nature of the dispute:
- 12.5 The Royal Institution of Chartered Surveyors;
- 12.6 The Institute of Chartered Accountants in England & Wales; or
- 12.7 The Law Society of England and Wales.
- 12.8 The Independent Person is to act as arbitrator in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the Parties in the proportions determined by the Independent Person.

12.9 Where costs of the Independent Person remain unpaid by the Party liable to pay them pursuant to this clause, the other party may discharge those costs and recover the sum so paid from the defaulting party as a debt on written demand.

13 Local authority powers

13.1 Nothing in this Agreement shall prejudice or affect any of the statutory rights powers obligations and duties for the time being vested in the Parties.

14 Notices and service

14.1 Any notice or other information required or authorised by this Agreement to be given by either party to the other shall be given by:

14.1.1 delivering the same by hand,

14.1.2 sending the same by pre-paid registered post, or

14.1.3 sending the same by facsimile transmission, to the other party at the address given at the beginning of this Agreement or such other address as has been notified to the parties in writing.

14.2 Any notice or information sent by post in the manner provided by clause 14.1 which is not returned to the sender as undelivered shall be deemed to have been given on the second day after the envelope containing it was so posted, and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been returned to the sender, shall be sufficient evidence that the notice or information has been duly given.

14.3 Any notice or information sent by facsimile transmission shall be deemed to have been duly given on the date of transmission, provided that a confirming copy is sent to the other party at the appropriate address within

15 Freedom of Information

15.1 The Parties acknowledges that they are subject to the requirements of the code of practice on access to government information, the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations ("EIR") and shall assist and cooperate with each other to enable the Parties to comply with their information disclosure obligations.

15.2 The Parties shall provide all necessary assistance as reasonably requested by the other Parties to enable the other Parties to respond to any requests for information that falls under the FOIA or EIR and is related to the Project ("Request for Information") within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

15.3 The Party who received the initial Request for Information shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any information is exempt from disclosure in accordance with the provisions of the code of practice on access to government information, FOIA or the EIR.

15.4 The Parties shall ensure that all information produced in the course of this Agreement is retained for disclosure and shall permit the other Parties to inspect such records as requested from time to time.

16 Data Protection Act 1998 (the “DPA”)

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

17 Equality Act 2010

17.1 The Parties agree to each comply with the obligations imposed on them by the Equality Act 2010.

18 General

18.1 This Agreement is personal to each of the Parties and no party may assign, mortgage, charge or (except as otherwise provided in this Agreement) license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the written consent of all the other Parties.

18.2 Nothing in this Agreement shall create, or be deemed to create, a partnership, or the relationship of principal and agent, between the Parties.

18.3 The Parties will act in good faith towards each other in relation to the Programme and in achieving the Objectives and Outputs of the Programme and in complying with this Agreement and the Funding Agreement.

18.4 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

18.5 This Agreement, the Funding Agreement and the documents referred to in it, constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement.

18.6 Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

18.7 All payments by either party pursuant to this Agreement are exclusive of any applicable value added tax except where expressed to the contrary, and if any such value added tax is payable, the party in question shall be additionally liable for such tax, which shall accordingly be shown on the relevant VAT invoice.

18.8 No variation to this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by and on behalf of each of the parties.

18.9 Each party shall from time to time do all such acts and execute all such documents as may be reasonably necessary in order to give effect to the provisions of this Agreement.

18.10 The parties shall bear their own costs of and incidental to the preparation, execution and implementation of this Agreement.

18.11 The Parties do not intend that any of this Agreement should be enforceable pursuant to the Contracts (rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

SIGNED by or on behalf of the parties on the date which first appears in this Agreement

SCHEDULE 2

BC GOLD Steering Group

The Black Country wide Steering Group will oversee the delivery of the programme making key recommendations.

Terms of Reference

To oversee the delivery of the Programme.

To meet on a [quarterly] basis

To bring any issues of concern to the attention of members that would have implications for the successful delivery of the programme.

To agree the criteria for funding and make recommendations.

To undertake the initial appraisal of Expressions of Interest to the Programme and make recommendations.

To consider the appraisals of full applications to the Programme, undertaken for by the Technical Advisor.

Lead the promotion of the Programme

Members should be available to answer programme specific queries as and when necessary

Membership:

- Project Manager – WCC
- Business Support Manager – WCC
- Grants Administrator
- Officers at WCC, Walsall, Dudley and Sandwell with knowledge of the SME sector

Modus Operandi

1. The Parties may each substitute representatives where necessary who may vote on their behalf at meetings of the GOLD Steering Group.
2. **Chairperson**
 - 2.1 The Chairperson of the GOLD Steering Group and shall be appointed at the first meeting.
3. **Convening of Meetings**
 - 3.1 The Chairperson shall, after consultation with each representative and taking the views of all representatives into account, have the power to cancel meetings when there is insufficient business for the BC GOLD Steering Group to consider.
 - 3.2 Without prejudice to paragraph 4.1 above, no meeting of the GOLD Steering Group shall be cancelled in the event that a majority of all of the representatives signify in writing (for the avoidance of doubt, such written signification may be by electronic means) that the meeting should proceed.

4. Notices of Meetings

- 4.1 The Chairperson shall provide not less than [ten (10) Working Days] notice of a meeting of the GOLD Steering Group provided that in the case of emergencies, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- 4.2 Meetings of the GOLD Steering Group shall be held at a venue to be agreed by the BC GOLD Steering Group and on such date and such time as was agreed by the GOLD Steering Group at the previous meeting. Where such dates times and venues cannot be so agreed the Chairperson shall select the date, time and venue of the next meeting.
- 4.3 Notice of cancellation of a meeting of the GOLD Steering Group must be served on all representatives not less than twenty four (24) hours before the meeting was due to commence.

5. Quorum

- 5.1 A meeting of the GOLD Steering Group shall not be quorate unless representatives or their substitute from each Party who has not withdrawn from this Agreement are present.

6. Attendance at Meetings

- 6.1 Meetings of the GOLD Steering Group should normally include the attendance (in person or by substitute) of all representatives.
- 6.2 Meetings may also be held by telephone or another form of telecommunication by which each participant can hear and speak to all other participants at the same time.

7. Procedure

- 7.1 In the event that the Chairperson is absent from any meeting of the GOLD Steering Group another representative shall be co-opted to the Chair for that meeting by a majority of the representatives present (the "Acting Chairperson").
- 7.2 Each representative may consult with colleagues from their own authorities in relation to any aspect of the Programme or any grant application received in relation to any matters discussed at the Steering Group meetings.

8. Voting

- 8.1 Each Party represented at the meeting shall have one vote to be cast by one of the representatives from that Party.
- 8.2 Decisions will be made by a simple majority of the votes cast at the GOLD Steering Group Meeting, and in the event of any deadlock the representative of GOLD shall have a casting vote to make the decision.

9. Minutes

- 9.1 Minutes of all decisions meetings of the GOLD Steering Group (including those made by telephone and other form of telecommunication) shall be kept by WCC who shall circulate copies promptly to the Parties and in any event within ten (10) Working Days of the meeting.

10. Dispute Avoidance or Resolution

- 10.1 Any dispute between the representatives, which the BC GOLD Steering Group cannot resolve during a meeting of the GOLD Steering Group shall be dealt with in accordance with Clause 12 (Dispute Resolution) of this Agreement.

Responsibilities of the Parties

The parties have agreed that their additional responsibilities will be as follows:

WCC

1. Submit [ERDF] Funding application
2. Act as accountable body
3. Project Manager role – details:

Reporting to the Steering Group and the Executive Board. Take responsibility for the day to day management of the programme, financial contracting, monitoring and ensuring claims and returns are completed accurately in a timely manner, manage external consultancy services, liaise with legal / finance officers.

4. Provide legal assistance
5. Ensure management of the procurement processes

Dudley, Walsall and Sandwell Local Authorities

1. Representation on the Programme Executive Board.
2. Make key decisions programme decisions.
3. To make financial contributions to the programme (as per clause 5)
4. Representation on the Programme Steering Group

SIGNED by a duly authorised officer for and on behalf of

WOLVERHAMPTON CITY COUNCIL

Authorised Officer

Print Name

SIGNED by a duly authorised officer for and on behalf of

WALSALL METROPOLITAN BOROUGH COUNCIL

Authorised Signatory

Print Name

SIGNED by a duly authorised officer for and on behalf of

DUDLEY METROPOLITAN BOROUGH COUNCIL

Authorised Signatory

Print Name

SIGNED by a duly authorised officer for and on behalf of

SANDWELL METROPOLITAN BOROUGH COUNCIL

Authorised Signatory

Print Name



Walsall Council

Tim Johnson
Executive Director

Ref
Date
Telephone

TJ/YB
13 February 2013
01922 652004

For the Attention of Jay Patel
Wolverhampton City Council
Civic Centre
St Peter's Square
WV1 1RP

Dear Jay

Black Country Growth Opportunities: Local Delivery (GOLD) in Key Sectors ERDF Project

In principle we agree to support the project as a partner. Along with the other Black Country local authorities we commit to match funding over 2 financial years (April 2013-2015) which spans 3 calendar years, subject to entering into a partner collaboration agreement.

Previously, Black Country authorities agreed to support two separate projects, the Growing Key Sectors project at £5,000 match funding, and the BC GOLD project at £27,500 match funding.

We agree now to combine our commitments in support of the joint GOLD in Key Sectors project bid on the following basis:

Growing Key Sectors - £5,000 match funding (as a financial contribution)
BC GOLD - £27,500 match funding (£12,500 as a financial contribution and £15,000 staff match in time)

We commit a total match fund allocation for the two years of £32,500 or £16,250 per financial year 2013-2015.

Furthermore, we agree to promote the scheme to our local businesses, using staff time to log business enquiries into the shared IT database to enable assistance of the SMEs.

We also agree to work with the business advice agencies, and assist in finding suitable relevant and accessible venues for the thematic workshops taking place in our borough.

Yours sincerely



Tim Johnson
Executive Director



Councillor A. Andrew
Deputy Leader