



REPORT TO EXECUTIVE

PORTFOLIO AREA:

PROMOTING CARLISLE / FINANCE & PERFORMANCE MANAGEMENT

Date of Meeting: 17th March 2008

Public Yes

Key Decision: Yes

Recorded in Forward Plan:

No

Inside Policy Framework Yes

Title: CARLISLE RENAISSANCE
NWDA FUNDING APPLICATION (REVENUE)
Report of: Director of Carlisle Renaissance
Report reference: CE 11/08

Summary: This report sets out details of a revised 'pre-approval' funding offer from the Northwest Development Agency and notes progress on activities funded under the existing agreement.

Recommendations: The Executive is requested to: -

- a) Note progress on the delivery of activities under the existing 'pre-approval' funding agreement
- b) Delegate authority for expenditure under the revised 'pre-approval' funding agreement to the Director of Carlisle Renaissance in consultation with the Portfolio Holder.

Contact Officer: Ian McNichol

Ext: 7399

Note: In compliance with section 100d of the Local Government (Access to Information) Act 1985 this report has been prepared in part from the following papers: None

1. INTRODUCTION

- 1.1 At its meeting on 28th August 2007 the Executive endorsed an outline funding application to the Northwest Development Agency for funding to progress the implementation of development and infrastructure projects and establish an appropriate delivery mechanism for Carlisle Renaissance.
- 1.2 The Executive noted the award of 'pre-approval' funding of £0.389m by the Northwest Development Agency to enable progress on these activities pending the submission and appraisal of a detailed funding application. It delegated authority for expenditure on these activities to the Director of Carlisle Renaissance in consultation with the Portfolio Holder,
- 1.3 At its meeting on 17th December 2007 the Executive (CE 34/07) endorsed a detailed funding application to the Northwest Development Agency for £2.884m and noted progress on 'pre-approval' funded activities. The detailed application is now subject to appraisal and pending a decision in early March 2008 the Northwest Development Agency has agreed to increase its 'pre-approval' funding to £0.819m.
- 1.4 This report sets out details of the revised 'pre-approval' funding offer and notes progress on activities funded under the existing agreement. A copy of the new grant offer letter and standard conditions of grant aid is attached as an appendix to this report.

2. PRE-APPROVAL FUNDING

- 2.1 The table below summarises the revised 'pre-approval' activity and funding profile.

Activity	Funding (£000s)			Total
	2007/08	2008/09	2009/10	
Development Manager	60	63	66	189
Professional & Technical Services		350		350
Delivery Mechanism	90	140		230
Marketing		50		50
Total	150	603	66	819

- 2.2 The City Council is permitted under the agreement with the Northwest Development Agency to reclaim 100% of the costs that it incurs in undertaking these activities.

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The revisions from the previous agreement and progress on activities are summarised below.

Development Manager

- 2.3 There is no change from the existing agreement. Appointed in July 2008 under a 3-year secondment agreement with the Northwest Development Agency the additional Development Manager co-ordinates activities related to the City Centre transformational schemes.

Professional & Technical Services

- 2.4 There is an increase of £0.25m from the existing agreement, which is carried forward into 2008/09. The scope of services extended to include site appraisal and investigations as well as development and valuation advice for the transformational schemes. The work packages will be commissioned in March 2008.

Delivery Mechanism

- 2.5 There is an increase in £0.18m from the existing agreement and cover the cost of appointing a new Programme Director, establishing a Carlisle Renaissance Board and preparing an Action Plan for the delivery of transformational economic development projects

Marketing

- 2.6 The existing allocation has been carried forward to 2008/09.

3. RECOMMENDATIONS

- 3.1 The Executive is requested to: -
- a) Note progress on the delivery of activities under the existing 'pre-approval' funding agreement
 - b) Delegate authority for expenditure under the revised 'pre-approval' funding agreement to the Director of Carlisle Renaissance in consultation with the Portfolio Holder

Note: In compliance with section 100d of the Local Government (Access to Information) Act 1985 this report has been prepared in part from the following papers: None

4 REASON FOR RECOMMENDATIONS

- 4.1 To enable progress on the implementation of development and infrastructure projects and establish the proposed delivery mechanism for Carlisle Renaissance.

5. IMPLICATIONS

- Staffing/Resources – This report makes reference to the appointment of a member of staff by the City Council whose salary and associated on-costs will be met in full the Northwest Development Agency
- Financial – Should the conditions of the grant offer be considered acceptable by the City Council, systems to monitor the and report the delivery of the requirements against actual expenditure incurred will need to be set up as per the corporate procedure. The Director of Renaissance is confident that expenditure of £150k will be defrayed by the 31 March and therefore claimed from the NWDA. There is a risk of grant clawback should the conditions of the grant offer not be met and/or the paperwork be accurately completed.
- Legal – The City council has power under Section 2 of the Local Government Act 2000 to do anything that it considers likely to achieve the promotion or improvement of the economic, social or environmental wellbeing of all or part of its area or some or all its residents, provided that it has regard to its community strategy when determining whether to exercise these powers. The funding offer is tied to furthering the objectives of Carlisle renaissance and improving the wellbeing of Carlisle and so should be capable of being pursued using the powers referred to above. The Council needs to be satisfied that an appropriate agreement with the Northwest Development Agency, on terms acceptable to the Council, is in place before drawing down any funding.
- Corporate – Carlisle Renaissance is a corporate priority of the City Council and the activities outlined in this report are referenced in the City Council's Corporate Improvement Plan and Development Framework & Movement Strategy Policy Statement

Note: In compliance with section 100d of the Local Government (Access to Information) Act 1985 this report has been prepared in part from the following papers: None

- Risk Management – Carlisle Renaissance is included in City Council’s Corporate Risk Register, which is updated regularly to account for different types of risk. The detailed funding application referred to includes a risk management plan
- Equality and Disability – None
- Environmental – None
- Crime and Disorder – None
- Impact on Customers – None

Note: In compliance with section 100d of the Local Government (Access to Information) Act 1985 this report has been prepared in part from the following papers: None

APPENDIX A

NORTHWEST DEVELOPMENT AGENCY GRANT OFFER LETTER & STANDARD CONDITIONS

Note: In compliance with section 100d of the Local Government (Access to Information) Act 1985 this report has been prepared in part from the following papers: None



Northwest

REGIONAL DEVELOPMENT AGENCY



INVESTOR IN PEOPLE

Our Ref: X00361PR

5 February 2008

Dr Peter White
Executive Director
Development

Ian McNichol
Director of Carlisle Renaissance
Carlisle City Council
Civic Centre
Carlisle
CA3 8QG

TCCE: P + P: COMMS	
FILE	
08 FEB 2008	
PASSED TO	
ANSWERED	

Dear Ian

NWDA SINGLE PROGRAMME CARLISLE RENAISSANCE – CORE COST

Further to your recent application for Northwest Development Agency ("the Agency") funding support, I am pleased to offer Carlisle City Council a maximum grant of £819,000 ("the Grant") towards the eligible costs of the Project.

The Project is Carlisle Renaissance Core Costs ("the Project").

This offer supersedes that dated 3 July 2007 entitled 'Development Programme Part1.'

We are awarding this grant to facilitate the development of the Carlisle Renaissance Board and to progress key studies required to inform the development of key City Centre development sites.

This grant is subject to your organisation;

- (i) achieving the outputs objectives and milestones detailed in the agreed consultant briefs and monitoring and evaluation plan (to be agreed);
- (ii) using all reasonable endeavours to ensure that the outcomes detailed in the agreed consultant briefs and monitoring and evaluation plan are achieved within the timescales set;
- (iii) complying with the standard conditions and special conditions attached, and the provisions of this letter and any other provisions in the monitoring and evaluation plan;
- (v) the Branding and Publicity requirements (attached).

In the event that there is a conflict between the provisions of the Standard Conditions and the Special Conditions, then the Special Conditions shall prevail.

Northwest Regional Development Agency
Renaissance House,
PO Box 37, Centre Park,
Warrington, WA1 1XB

Telephone: +44 (0)1925 400100
Fax: +44 (0)1925 400400
E-mail: information@nwda.co.uk
www.nwda.co.uk

INVESTING IN
englandsnorthwest

Commencement

You must materially commence the Project no later than 8th February 2008. You shall, when accepting this offer, notify us of the date on which the Project is expected to start. You shall also notify us in writing immediately upon commencement of the Project.

Completion of the Project

The Project must be completed to our satisfaction no later than 31 March 2010. You shall, when accepting this offer, notify us of the date on which the Project is expected to be completed. You shall also notify us in writing immediately upon completion of the Project.

Grant Aid

1. The Grant is the maximum sum payable by NWDA for this Project.
2. The offer of grant remains open for 30 days from the date of this offer letter. If you have not signed and returned the attached acceptance form by the specified date, the offer shall lapse.
3. Eligible Costs are:

Item	Financial Year			Total	Maximum Contribution by the Agency
	07-08	08-09	09-10		
Valuation fees/market analysis/technical studies		350		350	350
Development manager	60	63	66	189	189
Marketing		50		50	50
SPV business planning/Carlisle Renaissance Board establishment and Director Salary	90	140		230	230
	150	603	66	819	819

Costs approved include those detailed in the Agency's offer letter dated 3 July 2007 entitled 'Development Programme Part1.'

4. We shall only be liable to pay Eligible Costs in each year up to the individual levels stated above. If you do not incur and claim the Full Eligible Costs for the relevant financial year then you may lose your right to claim that element of Eligible Costs.
5. The balance of funding from other partners in this Project must be secured before grant is claimed from us, and evidence of this submitted (if you have not already done so) with the first claim form.

Payment & Payment Criteria

Claims must be submitted quarterly following commencement of the Project. A final claim must be submitted within 3 months of completion of the Project.

Before payment can be made, the Agency must be in receipt of your acceptance of this offer; evidence that the balance of funding is in place; the appropriate claim form (attached); and evidence of progress/completion in the form of the monitoring report (attached), an agreed monitoring and evaluation form.

A Statement of Grant Expenditure/Independent Accountants Report in the format attached will be required by 30 September in each year. Any final claim will not be paid by the Agency until the final audit report is received.

If you are unable to claim any of these payments on the dates specified for any reason, then you must inform us in writing before the claim is due. You should give a reason for the delay and provide a revised date when a claim will be made.

Reporting & Monitoring

Monitoring reports are required with each quarterly claim from commencement of the Project. They must be submitted to your Contract Manager using the monitoring report (attached).

Your Contract Manager within the Agency for this Project is Andrew Sproat (Tel No. 01768 861 326) who will be pleased to answer any queries you may have. In any correspondence with us please would you quote X00361PR.

Yours sincerely



Peter White
Executive Director, Development

Encls. Acceptance Form
Standard Conditions
Special Conditions

To be provided by e-mail:

Claim Form and Monitoring Report
Monitoring and Evaluation Plan
Exit Report
Audit Commission Instructions
NWDA Branding and Publicity requirements

SPECIAL CONDITIONS

VAT

Where the you are required to pay Value Added Tax on any of the Eligible Costs you shall use all reasonable endeavours to recover any such Value Added Tax and the Agency shall not be obliged to pay any funding in respect of Value Added Tax until you have demonstrated to the Agency's satisfaction that the Value Added Tax is irrecoverable by you.

If the Agency has to reimburse the payment of any irrecoverable Value Added Tax, then it shall be at a rate not exceeding 17.5% (but will be any lower rate if the prevailing Value Added Tax rate is reduced).

Reliance

Upon request by the Agency you will procure a deed or deeds of warranty in a form reasonably acceptable to the Agency from the consultants and/or contractors who prepare any reports, studies, investigations, design work, construction advice, legal reports and advice, valuations, masterplanning and like activities as part of the Project.

Other

This offer supersedes that dated 3 July 2007 entitled 'Development Programme Part1.'

All briefs for consultants or feasibility studies must be agreed by the Agency.

Acceptance of NWDA Offer of Investment

Project Name: Carlisle Renaissance – Core Cost
Project Number: X00361PR
Offer letter date: 1 February 2008

I/we accept the NWDA's offer of investment in respect of the above project, and the terms and conditions contained therein.

Signed: _____

Name:

Position:

Date:

On behalf of

NORTH WEST DEVELOPMENT AGENCY
SINGLE PROGRAMME
STANDARD CONDITIONS

1. Definitions

Certain words in the offer letter or these conditions have special meanings shown below in bold type. When we use this word it will have this meaning.

The **Agency, we, us** or **our** refers to the North West Development Agency.

You or the **Applicant** means the individual, partnership, group or organisation whether incorporated or otherwise, who submitted the development and appraisal form for the Grant.

The **development and appraisal form** means the printed proposal form you submitted and any supporting material, even if submitted at a different time.

The **Branding Guide** means the Agency's brochure entitled "branding and publicity requirements - A guide for partners delivering Northwest Development Agency funded activities" (a copy of which has been supplied to you on or prior to the date of this Agreement or is available to you from the Agency upon request) as amended or replaced from time to time by the Agency and notified to you in writing

Project means the activity, undertaking or venture described in the development and appraisal form.

The **Agreement** refers to the arrangement between us, described in your development and appraisal form and our offer letter.

Day means working days.

Maximum Sum is the maximum amount of funding payable by the Agency as set out in our offer letter.

2. Interpretation

2.1 The headings are inserted only for convenience and shall not affect its construction.

2.2 Where appropriate in these conditions, you can read a sentence written in the singular as though it were plural (and vice versa).

2.3 Where the Applicant is two or more persons any obligations or warranties given by the Applicant shall be deemed to be given by such persons jointly and severally.

2.4 "including" shall be construed so as not to limit the generality of any words or expressions in connection with which it is used.

3. Grant

The Grant must only be used for the Project and not for any other purposes and in particular the Grant must be used to achieve the outputs objectives and outcomes.

4. Representations and Warranties

By accepting this offer you are warranting to the Agency that the acceptance of the offer has been validly authorised, that you are not under any statutory obligation to undertake the

Project, that all information supplied to the Agency is true and accurate, that you have disclosed all information which might influence the Agency in awarding the funding or the amount thereof, that you fully satisfy the eligibility criteria in respect of any additional funding (including any received from the European Regional Development Fund) relating to the Project and that there is no litigation or other proceedings taking place or pending against you or the Project.

5. **Time of Performance**

You must carry out and complete the Project promptly and efficiently and to the timescale set out in the offer letter using all due skill and care. You must tell us in writing if you find yourself falling behind schedule.

6. **Consents**

You must ensure at all times that the Project complies with any necessary consents, licences, permissions or registration by or from any governmental or other authority or any other person or otherwise required to enable the Project to be lawfully carried out.

7. **Procurement**

You must comply with all applicable European procurement legislation in connection with the procurement of the Project or any services in respect of which funding is to be provided by the Agency and you will promptly provide to the Agency any information which the Agency may request in order to satisfy itself that you have done so.

8. **Applicant's sub-contractors and employees**

8.1 You must include in your contracts with suppliers or contractors engaged for the purposes of the Project a written condition undertaking to make payment for the supply of their goods and/or services within 30 days of receipt of the supplier's or contractor's invoice (provided that such goods and/or services have been supplied in accordance with the terms and conditions of the relevant contract).

8.2 You must use all reasonable endeavours to ensure that your employees are not claiming any government benefit, where payment of such benefit is precluded due to earnings. You shall further use all reasonable endeavours to ensure that your employees who are not EC nationals are legally entitled to be resident in the United Kingdom and, where applicable, have a work permit.

8.3 You must take all reasonable steps to satisfy yourself that your employees or contractors (or their employees) are suitable and competent in all respects to perform necessary work or tasks in relation to Project.

8.4 You must immediately notify the Agency in writing of any claim brought against you arising out of or relating to the Project, including (without limitation) any claim made against any contractor of which you receive notification.

8.5 Without prejudice to **clause 26**, you must ensure that any arrangements you enter into with any sub-contractors contain provisions which are consistent with the offer letter and these conditions.

9. **Legislation**

9.1 You must (and shall procure that your employees, agents and contractors shall) comply in all respects with all relevant legislation (including for the avoidance of doubt the requirements of the European community public works regulations and any other relevant European Directives).

- 9.2 You must provide evidence to the Agency on request of policies covering racial, sex, age and disability discrimination and evidence shall be provided upon request as to the implementation of these policies.
10. **Material Alteration of the Project**
- You must not make any material alterations to the Project without the prior written consent of the Agency.
11. **Insurance**
- At all times during the carrying out of the Project you shall maintain or procure that there are maintained full and proper insurance policies in relation to all land, buildings and assets forming part of the Project to the full reinstatement or replacement costs thereof from time to time together with appropriate insurance against any other claims or demands which may be brought or made against you by any person suffering injury damage or loss.
12. **Reinstatement**
- Without prejudice to any other remedy, if any part of the Project is not performed in accordance with this Agreement then the Agency shall be entitled, where appropriate to:
- 12.1 require you promptly to re-perform or replace the relevant part of the Project without additional charge to the Agency; or
- 12.2 assess the cost of remedying the failure ("the Assessed Cost") and to deduct from any sums due to you the Assessed Cost for the period that such failure continues.
13. **Notification by the Applicant**
- You must notify the Agency in writing as soon as practicable:
- 13.1 in the event of any material change in the information on costs (whether actual or estimated) of carrying out the Project provided for the appraisal of funding or the arising of any event which materially affects the continued accuracy of such information.
- 13.2 in the event of the receipt by you of any other funding for the Project or the offer of same.
- 13.3 of any event which might adversely affect the carrying out and completion of the Project or any part thereof.
14. **Good faith and co-operation**
- 14.1 You must at all times act with the utmost good faith towards and co-operate with the Agency.
- 14.2 You must comply with all the Agency's reasonable instructions and requirements in relation to the Project from time to time.
15. **Waiver and Indemnity**
- 15.1 You acknowledge and agree that any activities of the Agency in connection with the Project, including the giving of any consents or approvals will not give rise to any claims by you against the Agency.
- 15.2 You shall be liable for and shall indemnify the Agency in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person or loss of or damage to property whether or not belonging to the Agency, arising out of or in the course of or caused by the Project and/or the performance or non-performance by you of your obligations under this Agreement.

16. Assets

- 16.1 No property, rights or assets (whether fixed or moveable) or any interest therein ("the Assets") purchased, leased or developed in whole or in part with funding from the Agency (whether directly or indirectly) shall be sold, let, charged or otherwise disposed of by you without the prior written consent of the Agency.
- 16.2 You shall keep a register of all Assets and their location which shall be accessible at all times by the Agency.
- 16.3 If you sell, let, dispose of or transfer the Assets (or any of them) you acquired partly or wholly with our funds, we are entitled to some or all of the proceeds, in proportion to our contribution, unless otherwise agreed by us.
- 16.4 Any income or revenue received in connection with the Assets (including any rental income) shall be paid to the Agency, unless otherwise agreed by us.
- 16.5 The provisions of this **clause 16** do not apply to any fixed or moveable assets which has a purchase value of less than £500 and which on the date of its purchase by you had a useful life of less than one year.

17. Monitoring Arrangements

- 17.1 You must comply with the monitoring arrangements described in the offer letter. It is your responsibility to ensure that any report or document we require reaches the person we name in the offer letter by the due date.
- 17.2 The offer letter tells you how to set out the reports we need. You must send them by the due date to your Contract Manager.
- 17.3 You shall also provide the Agency from time to time with such additional information as the Agency may require in connection with the Project or any permitted variations.

18. Management and Meetings

- 18.1 If you set up a management group to run the Project, we reserve the right to send a representative to its meetings. You must let us know 10 Days in advance when and where any meeting is to be held. You must also let us have any minutes or agenda within 10 Days of issue.
- 18.2 You shall ensure that your project manager for the Project and any other representatives as may be reasonably requested by the Agency attend such meetings as the Agency may reasonably request to review the progress of the Project.

19. Audit

- 19.1 You must keep a satisfactory record of all your expenditure on the Project, and of any fees, costs or other payments made to staff, consultants or other workers. You must keep the records for 6 years after our funding of the Project has stopped.
- 19.2 These records shall include an invoice register of supplier's and contractor's invoices and all other documents relating to the purchase of assets or the carrying out of the Project funded by the Agency or other amounts claimed under this Agreement.
- 19.3 You shall allow access to your business premises on 2 days notice during 9.00 am - 5.00 pm to the Agency's internal auditors or its other duly authorised staff or agents, Government Office, European Commission or the National Audit Office to inspect such documents and take copies thereof as the Agency considers necessary in connection with this Agreement. The Agency shall be entitled to interview your employees in order to obtain oral and/or

written explanations of documents and you shall provide access to the relevant employees at such times as may be reasonably required to enable the Agency to do so. The Agency reserves the right to have such staff or agents carry out examinations into the probity, economy, efficiency and effectiveness with which the Applicant has used the Agency's resources in relation to the Project and the performance of this Agreement.

19.4 You must permit the Agency or persons authorised by it to inspect, audit and take copies of all reports, books, accounting records and vouchers which the Agency considers relevant.

19.5 The Applicant acknowledges that the Agency is subject to the requirements of the Freedom of Information Act 2000 and shall assist and co-operate with the Agency to enable the Agency to fully comply with its obligations under the Act.

20. **Payment**

20.1 We will tell you in the offer letter what documentation we require before we pay you the Grant. Once we have received a properly completed and certified claim, we will use all reasonable endeavours to pay the instalment of grant within 28 days.

20.2 We must receive satisfactory reports as specified in the offer letter before we pay any more of your Grant.

20.3 We may reduce our funding to the Project, if Project costs are lower than expected, or if there is a material change to the Project or if other funding or revenue is received.

20.4 We may require before we pay any claim evidence that expenditure to which a claim relates has been incurred and that you have made the payment.

20.5 There will be no rollover of underspend by the Applicant.

21. **Repayment**

21.1 If the Agency shall determine that any expenditure previously defrayed and the subject of a prior instalment does not relate to Eligible Costs or if at any time the Agency has paid more than it is liable to pay under any provision of this Agreement, you shall forthwith on demand in writing pay to the Agency the amount stipulated by the Agency as having been overpaid.

21.2 The Agency may vary or withhold any or all of the payments of funding under this Agreement and/or may require you to repay any or all funding already paid to the extent that such repayment is required under or by virtue of any European Union State aid laws (including without limitation under any of Articles 86 to 89 inclusive of the Treaty of Rome (as amended) and/or any applicable judgment, court order, statute, statutory instrument, regulation, directive or decision (insofar as legally binding) ("State Aid Law") and/or the Agency is otherwise required to repay or recover such funding in whole or in part to or by the European Commission. Any funding required to be repaid or recovered in accordance with this **clause 21.2** shall bear interest at such rate as required under or by virtue of State Aid Law from the date of the Agency's notice requiring repayment to the date of repayment (both before and after judgment) or such other period as may be required under or by virtue of State Aid Law.

22. **Termination**

22.1 Where there is a default by the Applicant the Agency may by notice in writing to the Applicant:

22.1.1 suspend the payment of funding under this Agreement for such period as the Agency shall determine;

22.1.2 vary the Maximum Sum in which case the payment of funding shall thereafter be made in accordance with the variation notified to the Applicant;

- 22.1.3 terminate this Agreement whereupon the Agency shall cease to be under any obligation to provide any further funding to the Applicant under this Agreement and (in addition) the Agency may require the Applicant to repay the whole or any part of the funding previously paid to the Applicant and the Applicant agrees that upon receipt of notice requiring repayment it shall repay the sums required within 20 Days of receipt of such notice.
- 22.2 A default occurs under the provisions of this Agreement where:
- 22.2.1 you fail to perform and observe any obligation on your part contained in or implied by this Agreement; or
 - 22.2.2 if the Project does not achieve the outputs, objectives and milestones stated in the monitoring and evaluation plan; or
 - 22.2.3 any required consent is withdrawn or revoked or expires or is modified or made subject to any condition which in the Agency's opinion may materially or adversely affect the Applicant's ability to perform and observe its obligations under this Agreement; or
 - 22.2.4 you cease or threaten to cease to carry on the whole or a substantial part of your business; or
 - 22.2.5 you are unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986 (or otherwise become insolvent) or an administrator or other receiver is appointed over the whole or any parts of your assets or any steps are taken to enforce any charge over any of your property or any order is made or effective resolution passed or petition presented or steps taken for your winding up dissolution or liquidation or an administration order is made against you; or
 - 22.2.6 the Agency is of the opinion that, taking into account the funding to be provided under this Agreement, you no longer have the necessary resources and funding to complete the Project; or
 - 22.2.7 you are convicted (or being a company, any officers or representatives of the Applicant are convicted) of a criminal offence related to the business or professional conduct; or
 - 22.2.8 you commit (or being a company, any officers or representatives of the Applicant commit) an act of grave misconduct in the course of the business; or
 - 22.2.9 in the opinion of the Agency you are in material default under any other Agreement with the Agency and such default has not been remedied to the satisfaction of the Agency.
23. **Publicity**
- 23.1 You shall comply fully with the provisions of the Branding Guide and you shall acknowledge the receipt of funding from the Agency in such manner as the Agency may from time to time require to enable the Agency to publicise its involvement in the Project in accordance with the provisions of the Branding Guide. You shall inform the Agency at least 10 working days prior to any promotional events relating to the Project and, for the avoidance of doubt, otherwise comply with the provisions of the Branding Guide in respect of such events.
 - 23.2 In addition to your obligations under **clause 23.1** above and **clause 23.3** below, you shall provide such assistance as the Agency may reasonably request from time to time (having regard to the time commitment sought and the cost implications if any, for the Applicant) in assisting and enabling the Agency to promote best practice in relation to the promotion of projects similar to the Project in the Agency's region.

- 23.3 You shall erect and permanently maintain on any building relating to the Project approved by the Agency and in a prominent location approved by the Agency (usually within a reception area or foyer) a plaque which complies with the Branding Guide recognising the Agency's involvement in the Project in accordance with the Branding Guide. The costs of erecting and maintaining such a plaque will be your responsibility provided that the costs of erection may be recoverable from the Agency as part of the Project costs pursuant to this Agreement.
- 23.4 The Agency grants to you during the term of this Agreement a non-exclusive licence to use the NWDA Logo and England's Northwest Brand (in each case in the manner and style and together with the accompanying graphic design as identified on page 01 of, and as more particularly described in, the Branding Guide) ("Logos") for the purposes of complying with the provisions of the Branding Guide provided that you acknowledge that the Logos are owed by and shall remain the property of the Agency and you shall not assign or grant any sub-licence of this licence or any part of it, or use either or both Logos (or any part of them) for any other purpose or acquire any further or other rights in respect of the Logos by reason of the exercise of the rights granted by this **sub-clause 23.4**.
24. **Intellectual Property Rights**
- We shall have the right to use and reproduce any information supplied under the terms of this Agreement subject to copyright. If you submit any information which is not your copyright, and which you have reason to believe may not be used in this way or reproduced, you must tell us.
25. **Reputation of the Agency**
- You must not and must use all reasonable endeavours to procure that your suppliers and contractors shall not, knowingly, do or omit to do anything in relation to this Agreement or the Project or in the course of their other activities that may bring the standing of the Agency into disrepute or attract adverse publicity for the Agency.
26. **Assignment**
- You must not assign transfer charge or deal in any other manner with this Agreement or its rights or subcontract any or all of your obligations without obtaining our written consent first and subject to such conditions as we may require
27. **Confidentiality**
- Unless the Agency notifies you otherwise, the offer letter and all documents and information provided by the Agency to you during or in connection with the performance of this Agreement shall be treated as confidential ("the Confidential Information"). The Confidential Information shall not be used by you except for the purposes for which they were made available and Confidential Information shall not be disclosed by you to any other person without the prior written consent of Agency. You shall use all reasonable endeavours to ensure that your employees, agents and contractors are under a similar obligation of confidentiality in respect of the Confidential Information.
28. **Status**
- In carrying out its obligations under this Agreement you agree that you will be acting for your own account as principal and not as the agent of the Agency.
29. **Notices**
- Any written notice required to be served under this Agreement shall be served, as regards notice to be served upon the Agency, by personal delivery or by sending it by recorded postal delivery to Renaissance House, P.O. Box 37, Centre Park, Warrington, Cheshire, WA1 1XB with a copy to your Contract Manager or such other addresses as shall from time to time be notified in writing by the Agency to you, and in the case of notice to be served

upon you by delivering or sending it to your address specified in the development and appraisal form or such other address as shall from time to time be notified in writing by you to the Agency: any such written notice shall (where sent by post) be deemed to have been served and received on the second business day following the day of posting and where delivered personally be deemed to have been given when received

30. **VAT**

It is your responsibility to assess liability for Value Added Tax. The Agency is not responsible for payment of any Value Added Tax.

31. **Jurisdiction**

This Agreement shall be governed by and construed in accordance with the Law of England and the parties submit to the jurisdiction of the English Courts.

32. **Miscellaneous**

32.1 Nothing in this Agreement shall constitute a partnership or joint venture between the parties hereto for any purpose whatsoever.

32.2 A certificate by the Agency as to any sum payable hereunder by you shall be conclusive save in the case of manifest error.

32.3 If at any time any of the provisions of this Agreement become illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement shall be in any way affected or impaired as a result.

32.4 Save as provided in **sub-clause 21.2**, where any amount is due to be paid by the Applicant to the Agency under this Agreement, the Applicant shall pay interest thereon at the rate of 4% p.a. above the base interest rate of Barclays Bank plc compounded with rests on the usual quarter days for the period between the date on which the relevant amount should have been paid and the date on which it is paid (as well after as before judgment).

32.5 No failure or delay on the part of the Agency in exercising any right or power and no course of dealing between the parties hereto shall operate as a waiver nor shall any single or partial exercise of any right or power of the Agency prevent any other or further exercise thereof or the exercise of any other right or power of the Agency. The rights and remedies of the Agency are cumulative and not exclusive of any rights or remedies which the Agency would otherwise have.

32.6 Nothing contained in or done under this Agreement and no consents given by the Agency shall prejudice the Agency's rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, bye-laws, instruments orders or regulations.

32.7 Nothing in this Agreement nor any other document shall impose any obligation or liability on the Agency with respect to any actions of or obligations or liabilities assumed or incurred by the Applicant or its agents, contractors or employees whether under contract, statute or otherwise.

32.8 Any approval by the Agency or any person on behalf of the Agency pursuant to this Agreement of any matter submitted by the Applicant for approval shall not be deemed to be an acceptance by the Agency of the correctness or suitability of the contents of the subject of the approval or consent.

32.9 The Agency shall not be liable to the Applicant for any advice given by a representative of the Agency. In addition, the Agency gives no assurance as to the suitability or viability of the Project and no endorsement of the same.

- 32.10 The parties to this Agreement expressly agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that they do not intend any person other than a party to this Agreement to be able to enforce any term of this Agreement.

