

BY AND BETWEEN

THE PARTIES:

- (1) **OXFORDSHIRE LOCAL ENTERPRISE PARTNERSHIP (an unincorporated association)** (“OxLEP”)
- (2) **VALE OF WHITE HORSE DISTRICT COUNCIL** of Abbey House, Abbey Close, Abingdon, OX14 3JE (“Vale”)
- (3) **OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxfordshire OX1 1ND (“OCC”)

each a “Party” and together known as the “Parties”.

1. Introduction and Background

- 1.1 OxLEP was established in 2011 with the aim of encouraging enterprise in the Oxfordshire economy, helping to create more sustainable, value adding jobs and removing barriers to growth. It is a primary partnership between the business community and local government.
- 1.2 The Governance and Working Arrangements of OxLEP are attached as Schedule One hereto.
- 1.3 OxLEP have applied for and been successful in being allocated an enterprise zone within the Science Vale UK Partnership area. Enterprise zone status means that additional business rates income earned within the zone over a 25 year period will be retained locally and will be spent on economic priorities.
- 1.4 The OxLEP board is responsible for determining how business rates achieved through growth in the Enterprise Zone is spent. It does this by setting an overarching investment strategy for Oxfordshire whilst ensuring that there are clear governance, management and delivery arrangements in place.
- 1.5 Management and distribution of business rates growth requires a single body to take on the role of “accountable body”. This body must be a legal entity, nominated to act on behalf of OxLEP for the receipt of business rates income growth within the enterprise zone area and correct usage of that growth in line with economic priorities as supported by the OxLEP board. Vale accepted this role from 6 December 2013. All subsequent references to Vale refer to Vale acting in that accountable body role unless otherwise stated.
- 1.6 OxLEP and Vale may change these arrangements by mutual agreement or OxLEP may appoint another local authority as accountable body should it choose to do so. Vale will only act as an accountable body for retained business rates growth within the enterprise zone.
- 1.7 The purpose of this MoU is to set out the respective roles and responsibilities of Vale acting as accountable body for OxLEP for retained business rates in the enterprise zone, and that of OxLEP itself. Whilst having no direct role, OCC are included as a party to this agreement as they are the accountable body for OxLEP. The Parties hereby agree the Scheme of Operation as set

out in Schedule Two hereto and the Scheme of Roles and Responsibilities set out in Schedule Three hereto.

2. Commencement

- 2.1 This MoU shall commence upon the date hereof and shall continue in effect until terminated by any Party upon giving three months' notice in writing to the others. In terminating this MoU the Parties shall comply with the requirements, if any, of central government and any other funding agencies.

3. Principles of Decision Making

- 3.1 The following principles apply to decision making:
- 3.1.1 due regard to all relevant considerations and disregard of all irrelevant factors
 - 3.1.2 proportionality (i.e. the action must be proportionate to the desired outcome);
 - 3.1.3 lawfulness and financial propriety and prudence;
 - 3.1.4 the ability to explain the options considered and the reasons for decisions;
 - 3.1.5 due consultations;
 - 3.1.6 taking of professional advice as required;
 - 3.1.7 respect for human rights and application of the Human Rights Act 1998;
 - 3.1.8 a presumption in favour of openness;
 - 3.1.9 clarity of aims and desired outcomes

4. Termination and Variation

- 4.1 If Vale ceases to be the accountable body, it shall:
- a) Continue to co-operate with OxLEP and any successor accountable body and with all grantors to ensure a smooth transition; and
 - b) Provide to OxLEP or the new accountable body (where requested to do so by OxLEP) all such invoices, receipts and other relevant records which are in its possession and which it holds in connection with its role of accountable body. For the avoidance of doubt, documents will be retained in accordance with Vale's Corporate Retention Schedule Policy.
- 4.2 This MoU shall terminate automatically on 31 March 2038.
- 4.3 This MoU shall be varied only by the written mutual agreement of Vale, OCC and OxLEP save that this shall not prevent OxLEP from making amendments to its Governance and Working Arrangements. Where a variation of this MoU requires a change to be made to OxLEP's Governance and Working Arrangements, that change shall not come into effect until the Governance and Working arrangements have been duly amended in accordance with its requirements.

5. Charges and Liabilities

- 5.1 Except as otherwise provided, the parties shall bear their own costs and expenses in the preparation of this MoU.

- 5.2 Vale, as *billing authority*, will collect all business rates generated in the enterprise zone area. As *accountable* body, Vale will forecast and retain business rates income growth in the enterprise zone area, and on behalf of OxLEP will disburse funds to projects that are agreed by OxLEP. Vale will advise OxLEP of sums available for distribution, which will be the amount of retained business rates received less a sum held for contingency purposes. OxLEP shall not commit to spend more than the sum identified as being available for distribution.
- 5.3 Where OxLEP agrees to disburse funds to agreed projects, Vale will prepare funding agreements for all parties. Vale will pay out business rates to the agreed parties subject to their being sufficient retained business rates available to make the agreed payments. Funding agreements will include enforceable terms to protect the delivery of the project, including recovery of funds in the event that the recipient fails to complete the project. In such circumstances Vale will use reasonable endeavours to recover such sums as may be due and to enforce such terms. In the event that full recovery is not possible, the risk of any shortfall will be borne by the retained business rates fund.
- 5.4 A record of retained business rates income and expenditure funded from those receipts will be prepared by Vale on an annual basis, with quarterly updates being reported to OxLEP board.
- 5.5 Vale will consolidate the OxLEP's retained business rates balances with its own cash balances and deposit the co-mingled funds in accordance with the Vale's Treasury Management Strategy. Vale will pay interest annually on the average cash balances held for OxLEP based on the average Bank of England base rate for the year in question. Interest will be charged on OxLEP overdrawn balances at 2 per cent above the Bank of England Base Rate.
- 5.6 Vale will provide internal staff resources free of charge. These arrangements will be reviewed annually with OxLEP.
- 5.7 External support will be procured where specialist skills are needed that are not available within Vale's internal staff resources, for example for any due diligence process, evaluation of state aid status, preparing legal agreements, programme management if required, and to deal with peak workflows. Where these additional services are required the accountable body will ensure value for money procurement of services compliant with applicable legislation and in accordance with the Vale's constitutional requirements. The cost of the additional services will be met from the retained business rates.
- 5.8 Vale will maintain satisfactory insurances to cover the extent of its obligations under this MOU.

6. Data Protection

- 6.1 The Parties hereto shall comply with their obligations under the Data Protection Act 1998 in the performance of their obligations under this agreement.

7. Confidentiality

- 7.1 No Party to the agreement will use or disclose any confidential material provided by the other pursuant to this agreement otherwise than for the performance of their obligations under this agreement, save as may be otherwise agreed or required by law.

For the avoidance of doubt, confidential information shall not include (a) any information obtained from a third party who is free to divulge such information; (b) any information which is already in the public domain otherwise than as a breach of this agreement; or (c) any information which was rightfully in the possession of a Party prior to the disclosure by the other Party and lawfully acquired from sources other than the other Party.

8. Freedom of Information

- 8.1 OxLEP and OCC shall co-operate with Vale and supply all information properly required in connection with any request received by the Vale under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and shall supply all such information and documentation at no cost to the Council within 7 days of a request from Vale.
- 8.2 OxLEP and OCC acknowledge that in responding to requests received by Vale under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, the Council will be entitled to provide information relating to the MoU.

9. Escalation

- 9.1 If any Party has any issues, concerns or complaints about any matter in this MoU, that Party shall notify the other Parties and the Parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the OxLEP Chief Executive, Vale's Strategic Director and OCC's Chief Finance Officer who shall decide on the appropriate course of action to take.
- 9.2 If any Party receives any formal enquiry, complaint, claim or threat of action from a third party they shall notify the other Parties and co-operate with each other to respond, or take such action, as is appropriate and/or necessary

10. Equality

- 10.1 In performing their obligations in pursuance of this MoU, the Parties shall comply with requirements of the Equality Act 2010.

11. The Contracts (Rights of Third Parties) Act 1999

- 11.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this MoU but this does not affect any rights which are available apart from this Act.

12. Status

- 12.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the Parties from this MoU. The Parties enter into the MoU intending to honour all their obligations.

13. Governing Law

13.1 This MoU shall be governed by and construed in accordance with English law.

This Memorandum of Understanding is agreed and signed by:

Signed for and on behalf
of Oxfordshire County Council by

.....
Signature

.....
Name and Position

Signed for and on behalf of Vale of
White Horse District Council by

.....
Signature

.....
Name and Position

Signed for and on behalf of the Oxfordshire
Local Enterprise Partnership by

.....
Signature

.....
Name and Position

Schedule One

Oxfordshire Local Enterprise Partnership (OxLEP) Governance and Working Arrangements

1. Overview

- 1.1. The Oxfordshire Local Enterprise Partnership was established at the beginning of 2011. Its primary aim is to provide strategic leadership in encouraging enterprise in the Oxfordshire economy, helping to create more sustainable, value adding jobs and removing barriers to growth.
- 1.2. It is a partnership between the business community and local government that operates as an unincorporated association.
- 1.3. The governance and working arrangements are designed so as to ensure that the Partnership fulfils its primary aim. In so doing it works with existing partnerships or working arrangements that are already operating successfully in support of economic growth. The working relationship between the Partnership and any other partnership and/or working group will be set down and agreed by both parties in form of a Memorandum of Understanding.
- 1.4. The governance structure comprises an Executive Board and the Forum. The Executive Board is responsible for preparing an annual business plan on behalf of the Partnership and for ensuring that its priorities are taken forward. The Forum shall meet with the Executive Board at least twice a year to review the work of the Partnership.
- 1.5. It is neither appropriate nor necessary for the Enterprise Partnership to seek a leadership role in all aspects of economic development – it is this philosophy that underpins the ‘row’, ‘steer’ and ‘cheer’ ethos of the Partnership.
- 1.6. The Partnership shall, through its business plan, identify a ‘premier league’ of key sectors that it will actively support. It will also identify spatial priorities for its activities. It will keep its priorities under review and refine/adjust in light of circumstances, both locally and nationally. It will not limit itself to supporting economic development in accordance with these priorities.
- 1.7. The focus for the Partnership’s activities are:
 - Supporting/facilitating inward investment (both in terms of supporting the expansion of existing businesses and in encouraging new investment into the economy) – ensuring that the right mechanisms and support for businesses is available forms part of this activity;
 - Identifying the infrastructure priorities that enable economic growth and then working with partners to enable its delivery;
 - Improving the skills of Oxfordshire’s workforce and those about to enter it, to improve their employability.
- 1.8. The Enterprise Partnership will conduct its business in an open and transparent way, with the papers and minutes of all meetings made publicly available. Once a year it will hold an open meeting with the wider business community.

2. The Executive Board

- 2.1. The Executive Board is responsible for preparing an annual business plan on behalf of the Partnership and for ensuring that its priorities are taken forward.
- 2.2. It shall meet on a regular basis in order to conduct its business. It shall meet with the Forum at least twice a year to review the work of the Partnership.
- 2.3. All appointments to the Executive Board are for a 3-year period and are made on a non-executive basis.
- 2.4. A Board member is eligible to serve 2 consecutive 3-year periods: a retiring member at the end of their second 3-year period would not be eligible to stand again until after the passage of 12 months.
- 2.5. Board members will stand-down on a rotational basis – with a third of Board members standing down annually.
- 2.6. The Chairman and Vice-Chairmen of the Executive Board will be elected by their peers.
- 2.7. Voting is on the basis of one member one vote with the Chairman holding the casting vote.
- 2.8. Each Board member is expected to:
 - a) Attend a minimum of 80% of Board meetings per annum
 - b) Communicate with and represent the collective interests of the sector/interest they are representing
 - c) Act as a conduit for the flow of information to/from the Executive Board to their sector/interest
 - d) Act as a 'champion' for one (or more) of Partnership's priority areas of work.
- 2.9. In exceptional circumstances a Board member may nominate an alternate to attend a Board meeting in their absence.
- 2.10. Membership of the Executive Board shall consist of the following:
 - Business/Enterprise Representatives
 - 3 x nominations from the business representative organisations (coordinated by CBI/IoD/FSB and Chambers of Commerce)
 - 1 x representative of the Oxfordshire Skills Board (expected to be the Chairman of the Skills Board – who will be a business leader)
 - 3 x representatives of the key spatial locations: nominated by private/public sector partnerships in each location (with the expectation that nominations will be business leaders from the locale) – e.g. Bicester Vision, Science Vale UK, and Oxford and its environs

- 2 x representatives from the Universities (reflecting their role in supporting and promoting enterprise in the Oxfordshire economy)
 - 1 x representative from the College Sector
 - Public Sector Representatives
 - 1 x County Council (as the accountable body for the public funds allocated by the Partnership and as a strategic planning authority)
 - 2 x representatives from the District/City Councils (expected to include the Chairman of the Spatial Planning and Infrastructure Partnership)
- 2.11. The Executive Board will hold an open public forum at least once a year: the Board will summarise its work for the previous year, set out its Business Strategy for the forthcoming year and answer queries from the wider business community.
- 2.12. Meetings of the Board will not be open to the public. All papers considered by the Board and minutes of its meeting are public documents.

3. The Forum

- 3.1. Membership of the Forum is drawn from the senior business and local government leadership within Oxfordshire. The Forum provides oversight on the work of the Partnership. It shall meet with the Executive Board at least twice a year to review the work of the Partnership.
- 3.2. Membership of the Forum is by invitation: a list of current members is maintained on the Partnership website at all times.
- 3.3. Meetings of the Forum will not be open to the public. All papers considered by the Forum and minutes of its meeting are public documents.

4. Support Functions

Secretariat/Administrative Functions

- 4.1. The secretariat/administrative support functions for meetings of the Board and the Forum will be supplied by the County Council in accordance with a service level agreement agreed by both parties. This will be provided in the form of a dedicated staff resource as 'in-kind' support.

Executive Support

- 4.2. Executive functions in support of Partnership work priorities will be provided through working arrangements at 'official level' and/or through the use of 'task groups' on which Board members may sit. Wherever possible this support will be provided through the use of existing groupings.

Accountable Body

- 4.3. The Local Enterprise Partnership is responsible for the allocation of public sector funding identified by the Government from time to time as being within its remit. The allocation of this funding must be undertaken in accordance with statute and the principles of democratic and financial accountability.

- 4.4. This requires there to be a public sector body identified as the accountable body for audit and transparency purposes. Oxfordshire County Council is the accountable body for the Partnership. As such it provides:
- i) Advice on what information (both technical and financial) is required in order to assess the eligibility of projects put forward for funding;
 - ii) Staff resource to undertake an appraisal of projects put forward for consideration and advise the Partnership on their merits;
 - iii) Staff resource to monitor the investments made using resources allocated by the Partnership, to include:
 - i Progress reports on investment proposals supported by the Partnership;
 - ii. Monitoring reports on the status of the funds allocated to the Partnership, including the status of the revolving investment fund established using the GPF;
 - iii) Audit functions with regard to the use of any public funds that are allocated in accordance with Partnership priorities.

**Oxfordshire Local Enterprise Partnership
Executive Board
March 2012**

Schedule Two

Scheme of Operation

1. Organisational frameworks

- 1.1 OxLEP will operate in accordance with:
- i) its governance and working arrangements;
 - ii) This MoU;
 - iii) The guidelines provided by central government or any other body whose regulation controls the use of funds provided to OxLEP; and
 - iv) Statutory requirements.
- 1.2 Vale will operate in accordance with:
- i) Its constitution;
 - ii) This MoU;
 - iii) The guidelines provided by central government or any other body whose regulation controls the use of funds provided to OxLEP; and
 - iv) Statutory requirements.

2. Science Vale enterprise zone

- 2.1 OxLEP successfully bid for an enterprise zone to be located within the Science Vale UK partnership area. Additional business rates income earned within the enterprise zone area is to be retained and spent on economic priorities. A public sector entity must be identified as the enterprise zone accountable body for audit and accounting purposes.
- 2.2 The principles of the enterprise zone accountable body arrangements in respect of the retention of business rate income are set out below:
- i) Business rate income growth within the enterprise zone will be retained by the billing authority;
 - ii) OxLEP partners will put in place local arrangements to ensure this revenue is spent in line with economic priorities as supported by the OxLEP Board;
 - iii) The uplift in business rate receipts within the enterprise zone will be used by the OxLEP for key economic priorities, related to the zone itself or elsewhere within OxLEP's boundaries;
 - iv) Retained business rates will continue to be viewed by government as public funds. As such a local authority should act as the responsible organisation for audit and accounting purposes;
 - v) In line with expectations for the treatment of other public funding, it is expected that LEP partnerships will take collective responsibility for ensuring that there is transparency in the way retained business rates are spent. The local authority should retain a degree of oversight of transparency arrangements for the total pot of retained business rates.

Forecasting business rates uplift

- 2.3 Vale council will prepare and periodically update a forecast of expected additional business rates income earned within the enterprise zone. The forecasts will be based on anticipated levels of development activity in the enterprise zone area, but independent sensitivity testing will be carried out on these forecasts. Forecasts should be approved by OxLEP as robust.
- 2.4 As development is delivered the amount of available retained business rates income available to distribute increases. Conversely, should development fail to materialise in line with projections, distribution at desired levels may not be achievable and may even fall should properties be demolished prior to new development.

Retaining and accounting for additional business rates

- 2.5 Vale as *billing authority* is responsible for collecting the additional business rates income generated in the enterprise zone area. As *accountable body*, Vale will act on behalf of the LEP in retaining the additional income, and disbursing the funds as per agreed LEP priorities.

Disbursement of funds

- 2.6 The retained business rates income generated in the enterprise zone will be used by the LEP to support its economic priorities, either in the enterprise zone area, or elsewhere within the wider area covered by the LEP.
- 2.7 Vale will put into place arrangements to manage the disbursement of funds. This recognises that recipients of these funds may choose to borrow against this future revenue. EZLEP funding will cease after 25 years– i.e. by 31 March 2038, however borrowing organisations are free to determine over what period they wish to borrow as they carry the risk of that borrowing .
- 2.8 Under these arrangements, Vale will undertake the following tasks:
- It will determine a prudent proportion of retained funds to be taken into account in determining expenditure commitments, which will include borrowing and operating costs should the LEP agree that these should be funded from the retained business rate income. This will provide a safety margin which is needed due to the uncertainty surrounding future income levels;
 - It will agree payment agreements, including any cost recovery, on behalf of the LEP for organisations undertaking developments to be funded from retained business rates.
- 2.9 Vale will not bear risks relating to undertaking proposed developments. The organisation undertaking the development will be responsible for the following:
- Undertaking any necessary borrowing;
 - Cost control for developments;

- Owning the financial risk and acting as guarantor should borrowing costs exceed those projected.
- 2.10 In the event that a project has cost overruns, the organisation undertaking the development will report to the OxLEP executive on the circumstances should they wish to seek additional funding. It is for the OxLEP to decide on this matter and the Vale will act on OxLEP instructions.
- 2.11 In the event that retained business rate funds are paid out in respect of a development that ultimately does not deliver the outcomes as determined by OxLEP, Vale will make all reasonable endeavours to recover those funds on behalf of the LEP.

Monitoring and reporting

- 2.12 Vale will report the following to the LEP and the LEP's accountable body on a quarterly basis:
- The amount of retained business rates received against latest forecasts;
 - Commitments made against retained business rates and contingency amounts available;
 - Progress against plan for projects to be funded from retained business rates.

Schedule Three

Scheme of Roles & Responsibilities

General

1.1. OxLEP shall

- i) undertake all strategic decision making to determine policy necessary for resource allocation and delivery of projects funded by retained business rates for which Vale is to act as accountable body;
- ii) ensure that all decisions are fully documented and recorded in writing;
- iii) agree robust and transparent assessment criteria against which funding will be allocated;
- iv) agree the robust and objective assessment methodology based on the assessment criteria to support the prioritisation of projects and to facilitate independent assessment in accordance with the appropriate use of public funds;
- v) ensure that projects are approved only after an appraisal has been carried out;
- vi) invite applications for funding;
- vii) agree applications for funding following assessment by the LEP;
- viii) commit to allocate no more than the sum identified by the accountable body as being available for investment.

1.2. Vale, as *billing authority*, shall

- i) Collect and account for all business rates generated in the enterprise zone area.

1.3. Vale, as *accountable body*, shall

- i) prepare and bi-annually update forecasts of the amount of growth in business rates in the enterprise zone area that will be retained
- ii) advise OxLEP of sums available for investment, which will be the amount of business rates retained less a sum held for contingency purposes
- iii) hold the additional business rates generated in the enterprise zone and all interest or income earned on it for and on behalf of OxLEP and ensure that the money is not moved or converted to cash without specific instruction from the OxLEP;
- iv) administer the retained business rates under its own accounting policies and financial procedures to ensure that funds are applied and accounted for appropriately. This will be carried out under the direction of the Section 151 Officer;
- v) provide support and assistance to OxLEP to ensure both legal and financial probity in relation to the receipt of retained business rates;
- vi) advise the OxLEP on the procedures necessary to ensure formal compliance with any requirements for administering the retention of business rates;

- vii) provide proper and effective governance for the allocation of retained business rates;
- viii) enter into appropriate contracts or agreements on behalf of OxLEP for projects to be funded from retained business rates once the projects have been approved by OxLEP;
- ix) undertake any necessary action to seek recovery of retained business rates funding where projects do not deliver outcomes determined by OxLEP;
- x) ensure that the funding is passed on to the project delivery organisation in line with the conditions of the funding agreements and in accordance with agreed project payment profiles, providing there are sufficient retained business rates available.

1.4 For the avoidance of doubt, any reference in this schedule to financial information being provided to OxLEP should also be provided to Oxfordshire County Council, as the LEP's accountable body.

Financial/Audit

2.1. OxLEP shall

- i) co-operate with and assist Vale acting in its role as accountable body in undertaking the day to day responsibility for financial matters;
- ii) direct the Vale to make funding available to persons and organisations who it has resolved shall receive these;
- iii) co-operate with and assist Vale in regular audit examinations of all operating systems;
- iv) act upon all recommendations contained within the Vale's internal audit reports where Vale's chief financial officer so requires;
- v) shall not reverse funding instructions once the accountable body has entered into binding legal agreements to advance funding.

2.2. Vale as *accountable body* shall

- i) establish and maintain a financial system to account for all monies received and disbursed on OxLEP's behalf;
- ii) pay over, subject to due diligence, funding for projects identified by OxLEP;
- iii) receive income and make payments for and on behalf of OxLEP;
- iv) maintain proper records, in accordance with its Constitution, of all monies received and disbursed for OxLEP and make such records available for inspection by both internal and external regulators;
- v) prepare and supply a record of retained business rates income and expenditure funded from those receipts on an annual basis to OxLEP, and also provide quarterly updates to the OxLEP;
- vi) prepare and supply, as necessary, completed statements of income, expenditure and disbursements to other organisations as required.

Recovery of retained business rates

- 3.1. The conditions where funds will be recovered will be laid out in the initial funding agreement. Vale will only take the step to recover funds from those parties it has a direct agreement with. If the project concerned employs a third party such as a subcontractor it would be up to the body Vale has provided funding to to determine and take any action they require to recover their losses from any 3rd parties.
- 3.2. The general stage of fund recovery will be as follows:
 - Stage 1: Notice sent containing the reason for concern, outlining the potential fund recovery situation and giving time where appropriate for corrective action;
 - Stage 2: If no corrective action is taken or is deemed insufficient to avoid fund recovery a further notice will be sent asking for the return of funds with a deadline for the return of the funds. In cases of particular difficulty Vale, in consultation with the OxLEP Board, may accommodate a fund return payment plan of instalments over an agreed period of time. However, this must be agreed in writing and cannot be assumed;
 - Stage 3: If funds are not returned within the set deadline then Vale may then instigate debt recovery procedures which may result in legal action being taken.
- 3.3. Vale does not wish to undertake these steps if at all avoidable but will do so in order to protect the public purse and ensure that public funding is being used appropriately.