

**FAREHAM**  
BOROUGH COUNCIL

DRAFT

**COMMUNITY FUND &  
COMMUNITY USE AGREEMENT**

**PAYMENT OF COMMUNITY FUND AWARD  
FOR SUMS BETWEEN £5,000 AND £50,000**

## **Contents**

1. What constitutes the Award Agreement?
2. Commencement and Duration of Community Fund and Community Use Agreement
3. Your Responsibilities under this Community Fund and Community Use Agreement
4. Equal Opportunities
5. Confidentiality and Obligations under the Freedom of Information Act 2000
6. Payment of Community Fund, Invoice Procedure and Recovery
7. Project Delivery
8. Your employees/volunteers/sub-contractors
9. Complaints
10. Monitoring, Review Arrangements and Community Fund Completion Report
11. Legal Liability, Insurance and Indemnities
12. Default and Termination
13. Dispute Resolution
14. Assignment
15. Waiver
16. Amendment and Variations
17. Communications and Notices
18. Assets bought by you using Community Funds
19. Governing Law and Jurisdiction
20. Third Parties
21. Publicity
22. Community Use Terms
23. Entire Grant Agreement

## **SCHEDULE 1**

The Council's Grant Award Letter

**THIS COMMUNITY FUND AND COMMUNITY USE AGREEMENT** is made the...  
day of                      2017

**BETWEEN:**

- (1) **FAREHAM BOROUGH COUNCIL** of Civic Offices, Fareham, PO16 7PU (the "Council") **AND**
- (2) **1<sup>st</sup> SARISBURY SCOUT GROUP** of Burr ridge Village Hall, Botley Road, Burr ridge, SO31 1BS (hereinafter referred to as "You or Your")

Together "Us" or "Our"

**BACKGROUND INFORMATION**

Fareham Borough Council is keen to support the local voluntary and community sector. One of the ways it does this is by awarding Community Funds to organisations and groups that meet its priorities, criteria and conditions of Community Fund aid as detailed in this Community Fund and Community Use Agreement.

In return for the payment of the Award by the Council to You and Your promise to complete the project described in Schedule 1, the Council and You agree as follows

**1. WHAT CONSTITUTES THE AWARD AGREEMENT**

- 1.1 The Community Fund and Community Use Agreement is formed of this Community Fund and Community Use Agreement and the Council's Community Fund Award Letter. You must read the whole Community Fund and Community Use Agreement before signing it.
- 1.2 You warrant that the execution copy of this Community Fund and Community Use Agreement was not altered in any way when it was in Your possession prior to execution and before returning it to the Council for execution by the Council other than any alteration in respect of which You gave clear prior express notification to the Council and obtained the Council's express written consent thereto. In the event that this Community Fund and Community Use Agreement is subsequently found to contain any alterations which were made without such notification and consent then You consent to any rectification of this Community Fund and Community Use Agreement to reinstate the drafting to that which removes the effect of any such alterations.

**2. COMMENCEMENT AND DURATION OF COMMUNITY FUND AND COMMUNITY USE AGREEMENT**

- 2.1 This Community Fund and Community Use Agreement shall start on ..... 2017 and end on.....2019 ("the Community Fund and Community Use Agreement Period") unless extended by the Council in writing to You or terminated early in accordance with this Community Fund and Community Use Agreement.

### **3. YOUR RESPONSIBILITIES UNDER THIS COMMUNITY FUND AND COMMUNITY USE AGREEMENT**

You shall use the Community Fund for the purposes for which it has been granted ("the Project"), as described in the Community Fund Award Letter and Your Application Form and in accordance with this Community Fund and Community Use Agreement.

### **4. EQUAL OPPORTUNITIES**

4.1 You shall comply with the Equality Act 2010

4.2 Without prejudice to the generality of clause 4.1, You shall not treat one individual or group of people less favourably than others because of age, disability, gender reassignment, marriage and civil partnership, race, religion and belief, pregnancy and maternity, sex and sexual orientation, and You shall furthermore seek to promote equality among Your personnel and generally.

4.3 You shall take appropriate steps to prevent any unlawful discrimination by your employees towards members of the public when providing the Services which could amount to harassment or discrimination on any of the grounds described in clause 4.1. You shall ensure Your employees are not discriminated in their employment.

### **5. CONFIDENTIALITY AND OBLIGATIONS UNDER THE FREEDOM OF INFORMATION ACT 2000**

You agree where necessary in relation to this Community Fund and Community Use Agreement or the Project to assist the Council as reasonably requested by the Council in meeting its legal obligations under the Freedom of Information Act 2000. You shall keep confidential all information and data received in whatever form pursuant to this Community Fund and Community Use Agreement

### **6. PAYMENT OF COMMUNITY FUND, INVOICE PROCEDURE AND RECOVERY**

6.1 The Council will pay You the Community Fund, in a lump sum following evidenced completion of the project, as set out in the Community Fund Award Letter.

6.2 The Council does not guarantee the payment of the Community Fund or any part of it during the Community Fund and Community Use Agreement Period. The Council reserves the right to withdraw the Community Fund offer at any time during the Community Fund and Community Use Agreement Period, acting reasonably, giving a notice period of not less than ninety (90) days notice. The Council does not guarantee payment of the Community Fund beyond the Community Fund and Community Use Agreement Period.

6.3 The Council will, at its discretion, immediately recover the whole Community Fund or part, where Your Project is delayed and You are not granted an extension to the Community Fund and Community Use Agreement Period.

- 6.4 Where You spend less than the whole Community Fund, any unspent part shall be returned to the Council within thirty (30) days of the completion of the Project.
- 6.5 The Council may demand repayment of all or part of the Community Fund at its absolute discretion where You have acted dishonestly when making Your application for the Community Fund, breach the terms of the Community Fund and Community Use Agreement or You are investigated by HM Revenue and Customs, the Charity Commission, the Police or other regulatory or governing body and this results in an adverse finding against You or the Project will not meet its purpose upon completion or have received duplicate funding for the Project or any part of it from sources other than the Council.
- 6.6 The Grant sum is not subject to Value Added Tax (VAT) and no further payments will be made by the Council to cover any VAT costs not identified and included in the Grant Application.

## **7. PROJECT DELIVERY**

- 7.1 You shall deliver the Project in accordance with the proposals and terms set out in the Community Fund and Community Use Agreement, the Community Fund Award Letter, Your Application Form, and, where appropriate, the Project plan.
- 7.2 You will comply with all codes of practice, guidelines, policy documents and other information and requirements set out in Your Equal Opportunities Policy/Scheme and Health and Safety Policy (if required).
- 7.3 You shall ensure that You have all necessary consents; including any approval consent, exemption licence or permission from any governmental or other authority or any person required for You to provide the Project and from the setting detailed in the Community Fund Application Form.
- 7.4 You must not Yourself, and You shall use all Your reasonable endeavours to procure that Your suppliers and contractors shall not, knowingly do or omit to do, anything in relation to this Community Fund and Community Use Agreement, the Project or in the course of Your/their other activities, that may bring the standing of the Council into disrepute or attract adverse publicity for the Council.
- 7.5 You must ensure compliance to any special customised conditions stated in the Community Fund Award Letter.
- 7.6 You shall promptly inform the Council if the Project cannot be delivered within the Community Fund and Community Use Agreement Period and request an extension. Any extension shall be at the Council's discretion.

## **8. YOUR EMPLOYEES/VOLUNTEERS/SUB-CONTRACTORS**

- 8.1 If Your Project involves work with vulnerable adults, children, young people or other vulnerable groups You will ensure that You have a Safeguarding Children and or Safeguarding Adults policy in place to promote good practice and ensure

risks to vulnerable people are assessed and mitigated appropriately. You will obtain all approvals and licences and any profile checks, including but not limited to Disclosure and Barring Service (“DBS”) checks on personnel (and the term “personnel” in this Community Fund and Community Use Agreement shall include Your volunteers), required by law. In any case You shall carry out a DBS check at a level appropriate to the role undertaken by the subject of the check on all personnel engaged in a Regulated Activity (as defined in the Safeguarding Vulnerable Groups Act 2006) or otherwise where DBS advice or guidance or a risk assessment shows such a check is desirable or necessary provided always that the law permits such a check to be carried out.

8.2 Where You have volunteers providing the Services or any part of it, You must have a written volunteers’ policy.

## **9. COMPLAINTS**

9.1 The Council and You will each appoint a Community Fund Officer to act on Our behalves on all matters in relation to the Community Fund and Community Use Agreement and the Project. For the purposes of this Community Fund and Community Use Agreement the Council’s Community Fund Officer shall be as stated in the Community Fund Award Letter and Your Community Fund Officer shall be the person stated in the Community Fund Application Form.

9.2 You shall deal with any complaints about the Project, received from whatever source, in accordance with Your complaints procedure, which shall be made available to the Council upon request. You shall keep a written record of all complaints received in respect of the Project.

9.3 You shall provide a summary of all complaints received about the Project together with Your written response to the Council’s Community Fund Officer twice a year. The Council shall use the information received in this clause 9.2 as part of its monitoring and review process described in clause 10 below.

## **10. MONITORING, REVIEW ARRANGEMENTS AND COMMUNITY FUND COMPLETION REPORT**

10.1 Up to date, accurate and comprehensive records, monitoring information, invoices, bills and receipts must be kept by You which show how the Community Fund funding has been used for the term of this Community Fund and Community Use Agreement and for a period of 6 years after its termination howsoever caused.

10.2 The Council reserves the right to meet with Your Community Fund Officer at a time agreed between Us, to discuss the information collated by You under clause 10.1 above.

10.3 You may be requested to submit a short report to the Council’s Community Fund Officer twice a year. A progress report may be due mid-way through the Community Fund and Community Use Agreement Period. The second report will be due after the end of the Community Fund and Community Use Agreement

Period. The dates each report is due are set out in Community Fund Award Letter or at a later time.

10.4 If requested by the Council You must submit Your audited/inspected accounts to the Council's Community Fund Officer for each financial year(s) of the Community Fund and Community Use Agreement Period as soon as they are available.

## **11. LEGAL LIABILITY, INSURANCE AND INDEMNITIES**

11.1 You shall maintain full and proper insurance policies relevant to Your activities and shall when requested by the Council provide evidence of such insurance on demand.

11.2 You acknowledge that the Council's extent of involvement in the Project is restricted to providing funds to assist You to put the Project into practice. You shall be solely liable for Your personnel, the lawful performance of the Project and any and all claims demands, damage and proceedings which may arise and shall be liable and indemnify the Council against any expense, liability, cost, loss or proceeding in respect of any injury to or death of any person or damage to any property, real or personal whatsoever arising out of or caused by the performance of this agreement.

## **12. DEFAULT AND TERMINATION**

12.1 The Council shall be entitled to terminate this agreement by immediate notice at any time:

12.1.1 if You have an administrative receiver or receiver appointed for the whole or any part of Your assets or any order made or resolution passed for Your administration or winding up (unless as part of a scheme of reconstruction or amalgamation) or compounds with or You convene a meeting of Your creditors or anything analogous to any forgoing under the law of any jurisdiction;

12.1.2 on occurrence of any events entitling the Council to withhold the Community Fund at clause 6;

12.2 The Council shall be entitled to terminate immediately and to recover any Community Fund paid together with any loss or damage resulting from termination if in relation to any agreement with the Council You or anyone acting on Your behalf have:

12.2.1 committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010, or

12.2.2 given any fee or reward the receipt of which is an offence under s.117 (2) of the Local Government Act 1972

12.3 The Council shall not be liable for any direct and indirect losses howsoever incurred by You upon the termination of the Community Fund and Community Use Agreement.

12.4 The right to terminate this Community Fund and Community Use Agreement is without prejudice to any other rights the Council may have under this Community Fund and Community Use Agreement or under general law or otherwise.

### **13. DISPUTE RESOLUTION**

13.1 The Parties shall use their reasonable endeavours to resolve by agreement any dispute between them with respect to any matter relating to this Community Fund and Community Use Agreement.

13.2 In the event that a dispute cannot be resolved by agreement under clause 13.1 the Parties may refer the matter to an independent person whose decision shall be final and binding. The expenses incurred by such appointment shall be met equally between the Council and You.

### **14. ASSIGNMENT**

14.1 You shall not assign, novate, sub-contract or otherwise dispose of any or all of Your rights and obligations under this Community Fund and Community Use Agreement without the prior written consent of the Council which may be granted subject to such reasonable conditions as the Council may require.

14.2 The Council may by written notice to You assign, novate, outsource or otherwise dispose of any or all of its rights and obligations under this Community Fund and Community Use Agreement at any time to any person having the legal capacity, power and authority to become a party to and to perform the obligations of the Council under this Community Fund and Community Use Agreement.

14.3 In the event that You wish to assign, novate, sub-contract or otherwise dispose of any or all of its rights and obligations under this Community Fund and Community Use Agreement and the Council grants consent thereto then You shall pay to the Council upon receipt of an invoice, in accordance with the rates applicable at the time of the assignment, novation, outsourcing or other disposition (and such rates may be obtained from the Council on request), all reasonable legal, administrative and other costs, charges and expenses incurred by the Council in connection with such assignment, novation, outsourcing or other disposition as applicable.

### **15. WAIVER**

You acknowledge that a failure by the Council to act on any failure by You to observe any of the terms of the Community Fund and Community Use Agreement shall not be a waiver of its right to exercise any right or remedy to which it is entitled under this Community Fund and Community Use Agreement.



## **16. AMENDMENT AND VARIATIONS**

Any amendment or variation to this Community Fund and Community Use Agreement shall be recorded in writing and shall be signed by or on behalf of both Parties.

## **17. COMMUNICATION AND NOTICES**

All notices and communications shall be given to the Community Fund Officer of the respective parties and shall be deemed to be received by the Council and You.

## **18. ASSETS BOUGHT BY YOU USING COMMUNITY FUNDS**

If any asset, which exceeds one hundred pounds (£100) in value, is acquired with funding from the Community Fund, You shall notify the Council and keep a record of such assets in an Asset Register and abide by any directions or conditions which the Council may make in respect of use, maintenance, insurance and disposal of such asset. You shall not be entitled to dispose of the said asset without the prior written approval of the Council, such approval not to be unreasonably withheld. The Council may require some or all proceeds of sale to be returned to the Council.

## **19. GOVERNING LAW AND JURISDICTION**

This Community Fund and Community Use Agreement shall be governed and construed according to the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the Courts of England and Wales.

## **20. THIRD PARTIES**

For the purposes of the Contract (Rights of Third Parties) Act 1999 this Community Fund and Community Use Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions

## **21. PUBLICITY**

You shall where reasonably possible provide that any publicity relating to the Community Fund Project will acknowledge the Council's financial support.

## **22. COMMUNITY USE TERMS**

The payment of the community fund is subject to You agreeing that the facilities are available to hire by other not for profit making and local community groups (if and when requested). Any such organisation hiring the facilities will have individuals that are suitably qualified and have adequate equal opportunities, safeguarding and child protection policies in place.

## **23. ENTIRE COMMUNITY FUND AND COMMUNITY USE AGREEMENT**

This Community Fund and Community Use Agreement constitutes the entire understanding between You and the Council relating to the subject matter of this Community Fund and Community Use Agreement and, save as may be expressly referred to herein, supersedes all prior representations, writings, negotiations or understandings

**SCHEDULE 1**

THE COUNCIL'S GRANT AWARD LETTER

**AS WITNESSED** this Community Fund and Community Use Agreement has been signed under hand for and on behalf of the Parties the day and year written above.

**For and on behalf Fareham Borough Council**

Signature

Print name and position

Occupation:

Signature of Witness: .....

Name: .....

Occupation: .....

**For and on behalf of the Organisation**

Signature

Print name and position

Occupation:

Signature of Witness: .....

Name: .....

Occupation: .....