

Dated

2023

**UNITED UTILITIES WATER LIMITED
OLDHAM COUNCIL**

FUNDING AGREEMENT

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Parties

- (1) **United Utilities Water Limited** (No. 02366678) whose registered office is at Haweswater House, Lingley Mere Business Park, Lingley Green Avenue Great, Sankey, Warrington, WA5 3LP ("**the Company**"); and
 - (2) **Oldham Council** [(No. ♦) whose registered office is at ♦] ("**the Beneficiary**"),
- each a **party** and together the **parties**.

Background

- (A) The Beneficiary intends to undertake the Project described in the Schedule.
- (B) The Company has agreed to contribute the Funding Amount to the Project for the purposes of the particular Works described in the Schedule, subject to the terms of this Agreement.

Agreed Terms

1 Definitions and Interpretation

- 1.1 The following definitions and rules of interpretation in this clause apply in this Agreement.

Applicable Laws means any binding Court order, judgment or decree, and any law, statute, regulation, bylaw, ordinance, subordinate legislation, industry licence, code, policy, guidance, standard or accreditation terms enforceable by law which is in force and/or which is stipulated by any relevant regulatory authority (including any licences granted under the Water Act 1989 and/or the Water Industry Act 1991)

Beneficiary's Representative means the person appointed as such in the Schedule

Commenced has the meaning given to it at clause 2.3 and **Commences** and **Commencement** shall be interpreted accordingly

Commencement Deadline has the meaning given to it in the Schedule, subject to clause 2.4

Commercially Sensitive Information means the commercially sensitive information set out in Annex B (if any)

Confidential Information means any information or data relating to the existence and/or terms of this Agreement and/or to a party or a party's business, operations, assets or affairs or (in the case of the Company) to any member of Company's Group (including, but not limited to, any information ascertainable by the inspection or analysis of samples), disclosed (whether in writing, orally or by any other means) to one party by the other party or by a third party on behalf of the other party, and including any Commercially Sensitive Information

Delivery Agent means any third parties that enter into any contract or agreement, or proposed contract or agreement, with the Beneficiary pursuant to which that third party agrees to carry out the Works or any part of the Works (together with any sub-contractor of any such Delivery Agent)

Funding Amount means the amount specified as such in the Schedule

Information Acts means the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004

Insolvent means:

- (a) a party stopping or suspending or threatening to stop or suspend payment of all or a material part of its debts, or becoming unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986;
- (b) any step being taken by any person with a view to the winding up of such party or any person presenting a winding-up petition which is not dismissed within five (5) working days;
- (c) a receiver, manager, administrative receiver or administrator being appointed in respect of such party;
- (d) such party ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidated terms approved by the other party before such step is taken (which approval shall not be unreasonably withheld or delayed); or
- (e) any event occurring which, under the law of any relevant jurisdiction, has an analogous effect to any of the events listed above

Longstop Date has the meaning given to it in the Schedule

Minimum Maintenance Period means the period specified in the Schedule

Project means the project outlined in the Schedule

Trigger Event means the event (if any) specified as such in the Schedule

Company's Group means Company, and any subsidiary or holding company for the time being of Company or any other subsidiary for the time being of that holding company

Company's Representative means the person appointed as such in the Schedule

Works means the works forming part of the Project in respect of which the Company has agreed to make available the Funding Amount as set out in the Schedule.

- 1.2 Words such as "other", "includes", "including" "for example" and "in particular" do not limit the generality of any preceding words.
- 1.3 Any reference to a statute or a statutory provision (including any enactment, order, regulation or instrument) shall be construed as a reference to the same from time to time as amended, consolidated, modified, extended, re-enacted or replaced.
- 1.4 Headings and indexes are for reference purposes only and shall not be used to construe or interpret the meaning of this Agreement.
- 1.5 In the event of any conflict between the generally applicable terms of this Agreement, and any special conditions set out in the Schedule, then the special conditions shall take precedence.

2 No binding and enforceable obligation

- 2.1 The Company and the Beneficiary acknowledge and agree that nothing in this Agreement constitutes an obligation for the Beneficiary to carry out or procure the Works. If the Beneficiary elects not to Commence or procure the Commencement of the Works then subject to clause 2.2, the Beneficiary shall not be liable to the Company as a result of that election and none of the remaining provisions of this Agreement shall come into force. Where the Beneficiary elects to Commence or procure the Commencement of the Works, the remaining provisions of this Agreement shall come into force and shall apply to the Beneficiary, to the Works and to the Company.
- 2.2 In the event that the Works are not Commenced by the Commencement Deadline, this Agreement shall not come into force, whether or not the Beneficiary subsequently Commences (or procures the Commencement of) the Works, save in respect of clause 7.9 and this clause 2.2 (together with any other provisions necessary for the purposes of construing the same) which shall take effect from the date of this Agreement. In particular and without limiting the foregoing:
- (a) the Company shall have no liability to pay the Funding Amount in such circumstances; and
 - (b) if for any reason the Company has agreed to pay any amount of the Funding Amount in advance of Commencement (in which case clause 5 shall apply to such payments), then such amounts shall be held on trust by the Beneficiary for the benefit of the Company pending Commencement; and
 - (c) in the event that Commencement has not occurred by the Commencement Deadline then the Beneficiary shall repay such amounts to the Company in full without delay (and immediately upon receipt of written demand by the Company).
- 2.3 For the purposes of clause 2.2, the Works shall be deemed to have **Commenced** when any Trigger Event specified in the Schedule has occurred, or if no event is so specified, when the Beneficiary has, or has procured that, either:
- (a) a professional team has been appointed which has commenced the design, and development of the Project; or
 - (b) if no professional team is required to be appointed, or the professional team has been appointed at the date of this Agreement, when the Works have been physically commenced on the site of/ in respect of the Project.
- 2.4 Company's Representative shall be authorised to agree any extension to the Commencement Deadline where reasonably requested by the Beneficiary's Representative as a consequence of circumstances beyond the reasonable control of the Beneficiary (but shall not be obliged to agree to the same).

3 The Works

- 3.1 The Beneficiary shall carry out the Works in a timely manner, and in accordance with all relevant standards including health and safety, quality, and environmental standards as well as Applicable Laws.
- 3.2 The Beneficiary confirms that, in the event it elects to carry out or procure the Works, it is prepared to proceed with the Works on the terms set out in this Agreement including the Schedule.

- 3.3 The Beneficiary shall provide the Company with regular written progress updates in relation to the Works and in particular will update the Company on the following at least once per calendar month:
- (a) information on the progress of the Works to date (including actual cost of the Works to date);
 - (b) a forecast of future cost of the Works up to the completion of the Works;
 - (c) a project plan showing the outstanding Works; and
 - (d) the latest estimated date for the completion of the Works and the associated risks and mitigation measures.

4 Works obligations

4.1 The Beneficiary shall:

- (a) obtain all necessary permits and consents, including, without limitation, where necessary from the Company, any relevant regulator, landowner or planning authority, prior to the Commencement of the Works. For the avoidance of doubt, any permits or consents to be obtained from the Company must be applied for in the ordinary course and the entering into this Agreement shall not constitute any such permit or consent;
- (b) ensure that the Works do not impact on any footpath, access, right of way over, or other right in respect of, the relevant land.

4.2 The Beneficiary shall procure that:

- (a) all Works shall be carried out diligently, in a good and workmanlike manner and in accordance with good construction and environmental management practice, and that any and all plant and materials used shall be appropriate for their purposes, of good quality and free of defects;
- (b) there shall at all times be a sufficient number of staff (including all relevant grades of supervisory staff) and Delivery Agents (including professional appointments and any works contractor(s)) engaged in the provision of the Works with the requisite level of skill and experience;
- (c) all staff and Delivery Agents receive such training as is necessary to ensure the proper performance of the Works and all other obligations under this Agreement; and
- (d) all Works are carried out in accordance with all Applicable Laws, and any permits or consents obtained pursuant to clause 4.1 and in such manner as does not compromise any licence held by the Company in respect of its role as a water and/or wastewater undertaker.

4.3 The Beneficiary shall give the Company reasonable notice in writing of any inspections or testing of the Works by the Beneficiary or its Delivery Agent and shall afford the Company and any relevant regulator sufficient opportunities as it shall reasonably require to conduct any inspections, demonstrations, testing or audits in relation to the Works and the Beneficiary's management of the Works and discharge of its duties under Applicable Law that the Company reasonably deems necessary.

- 4.4 The Company may work together in collaboration with the Beneficiary, or a professional team procured by them, to develop the design of the Works.
- 4.5 Any design work carried out by the Company under clause 4.4, and/or any other design or other input (including any reports) provided by or on behalf of the Company to the Beneficiary (or any Delivery Agent) is indicative only and is used by the Beneficiary at its own risk. Accordingly, the Company shall not be responsible for the design Works and/or specification of the Works, which shall be the risk and responsibility of the Beneficiary.
- 4.6 For the purposes of all Works (and regardless of any action the Company takes pursuant to this Agreement) the Beneficiary agrees that (where and to the extent applicable):
- (a) it is the only client under the Construction (Design and Management) Regulations 2015 (as amended) (**CDM Regulations**) and shall fulfil all the roles and duties of such including making the necessary notification to the Health and Safety Executive in accordance with the CDM Regulations and appointing any necessary Principal Contractor or Principal Designer (as defined in and required by the CDM Regulations), save as specified in sub-clause (b) below;
 - (b) where the Funding Amount is ultimately to be transferred to a third party who should properly be appointed as client under the CDM Regulations, the Beneficiary may appoint that party as client, but the Beneficiary shall ensure that such client complies in full with the CDM Regulations;
 - (c) the Company shall in any event have no role under the CDM Regulations unless otherwise expressly agreed in writing; and
 - (d) in the event that the Beneficiary ceases to be the client under the CDM Regulations (either generally or in respect of any given Works), the Beneficiary shall fully co-operate with (and provide any information reasonably required by) any replacement so appointed.
- 4.7 It is acknowledged and agreed that the Works do not themselves entail Works to be carried out by the Beneficiary on or in respect of the Company's assets and infrastructure, for the benefit of the Company.
- 4.8 Where, notwithstanding clause 4.7, access to any of the Company's assets and/or infrastructure is required in connection with the carrying out of the Works, or where the Works are otherwise adjacent to any assets or infrastructure of the Company, then the Company may provide such access or permit the undertaking of such Works subject to the Beneficiary first providing the Company with reasonable notice and any requisite method statements for the Works. If the Company grants such access or permits such Works, the Beneficiary shall:
- (a) ensure only professional, suitably qualified Delivery Agents undertake any such Works;
 - (b) comply with all laws, good industry practice and any other requirements of the Company in respect of the site and/or the Company's assets and infrastructure, which may include:
 - (i) complying with all relevant policies, standards and/or specifications of the Company relating to the conduct of works on its assets and/or infrastructure, as may be made available by the Company to the Beneficiary;

- (ii) complying with all requirements of the Company to ensure that there is no interruption to the services delivered by the Company to its customers (or where such interruption cannot be avoided, to minimise such interference);
- (iii) complying with the Company's policies relating to vulnerable customers and to engagement with its customers more generally; and
- (iv) obtaining collateral warranties in the Company's favour from any Delivery Agent working on, or adjacent to, any such assets and infrastructure of the Company, in order to protect the Company's interests in those assets and infrastructure.

4.9 Where the Company grants the Beneficiary access to any Company assets or infrastructure under clause 4.8 above, the Beneficiary shall:

- (a) not connect any asset or infrastructure or otherwise enable the same to be used in a live environment without the prior consent of the Company and affording the Company the opportunity to undertake any necessary testing or inspection of the relevant asset;
- (b) not cause any damage, interference or disruption to such assets and infrastructure and shall indemnify the Company in respect of any costs, liabilities, damages and/or other liabilities arising from such access and/or any works carried out on any asset(s) and/or infrastructure of the Company.

4.10 The Beneficiary shall inform the Company as soon as possible (and in any event before the same takes effect) if it considers any of the following may occur: the sale or transfer of any land capable of having an impact on the Works; or the granting, termination or expiry of any lease or tenancy or other interest in land which is capable of having an impact on the Works. The Beneficiary shall remain responsible for ensuring the Works are carried out as intended or the Funding Amount is reimbursed to the Company.

4.11 In the event of a delay by the Beneficiary in completing the Works by the Longstop Date, then:

- (a) where the Company has permitted access to the assets and infrastructure of the Company pursuant to clause 4.8 in connection with the Works, the Beneficiary shall indemnify the Company in respect of any losses suffered or incurred by the Company in making good any impacts upon such assets or infrastructure or otherwise as a result of such delay; and
- (b) otherwise, the Company's sole remedy shall be the termination of this Agreement in accordance with clause 7.1, the refund of any amounts of the Funding Amount pursuant to clause 5.2(b) and the payment of any amounts pursuant to clause 7.6.

4.12 The Beneficiary must notify the Company as soon as possible upon becoming aware of any circumstances that could delay or impact upon the Works. In any event, if the Beneficiary is (or may be) prevented from complying with its obligations due to exceptional circumstances outside its reasonable control, the Beneficiary must notify the Company immediately. The Company may (acting reasonably) decide if any extension to the Longstop Date shall apply in this event.

5 Funding by Company

5.1 The Company agrees to contribute the Funding Amount towards the capital costs of the Works in respect of the Project. Unless otherwise stated in the Schedule:

- (a) the Funding Amount is inclusive of any tax that is payable in respect of it; and
- (b) if any tax (such as VAT) is payable in respect of any amounts received, then the Beneficiary shall be responsible for accounting for the same to HMRC at no additional cost to the Company. The Beneficiary shall diligently consider whether any taxes are so payable to ensure compliance with law; and
- (c) should any other tax legislation require the deduction of any amount in relation to tax, then this shall be at the sole risk of the Beneficiary. As such, any necessary deduction shall be made (whether by the Company, or by the Beneficiary, as applicable) from the Funding Amount such that the Company's total liability under this Agreement is not increased.

5.2 The Company shall pay the Funding Amount in accordance with the payment schedule set out in the Schedule, or if none is stated, in full upon completion of the Works, and:

- (a) where any amount is payable on completion of the Works, it shall be conditional upon the issue of a certificate of completion in accordance with clause 6.2; and
- (b) in the event that the Company has paid any amounts to the Beneficiary in advance of the issue of a certificate of completion in accordance with clause 6.2 and:
 - (i) the certificate of completion is not issued by the Longstop Date; or
 - (ii) the Beneficiary otherwise abandons or discontinues the Works, or carries them on in such a manner that leads the Company to reasonably conclude that the Beneficiary does not intend to endeavour to complete the Works in a timely fashion,

then (without prejudice to clause 2.3) the Company shall be entitled to a full refund of such pre-paid amounts of the Funding Amount. The Beneficiary shall pay the same to the Company within 21 days of a written demand by the Company, and any credit note required by the Company shall be issued by the Beneficiary within the same period.

5.3 The Company shall make payment of the Funding Amount (or any instalment thereof) to the Beneficiary within 30 days following the end of the month in which the Company receives a VAT invoice for such amount.

5.4 If the Company wishes to dispute the amount set out in an invoice, it shall notify the Beneficiary within 10 days following delivery of the invoice specifying the disputed amount and the grounds on which it claims that such amount is not due and payable. Late payment of any undisputed amount due and payable under any invoice shall carry interest from the due date to the date of payment at the rate of 2% per annum above the base rate of HSBC Bank plc from time to time.

5.5 The Funding Amount stated in the Schedule shall be the entirety of the Company's financial commitment to the Beneficiary in respect of the Works. Such payment is a grant funding contribution and it is not anticipated that this will cover 100% of the cost of the relevant Works. All other costs of delivering the Works (including any cost overruns) must be met by the Beneficiary, unless the Agreement has been specifically varied by the parties to increase the Funding Amount.

5.6 In addition, the Funding Amount must not exceed the final total cost of the Works. If it otherwise would, then the Beneficiary must notify the Company, and the Funding Amount will be reduced so that it does not exceed 100% of the total cost of the Works.

- 5.7 If the Beneficiary receives any overpayment or any amount to which it is not entitled, or where any amount is repayable to the Company under this Agreement, this amount must be repaid to the Company and shall be a debt owed to Company. Company may offset this amount against any future amount payable by the Company or demand its repayment (in which case the Beneficiary will do so within 30 days). Any repayment by the Beneficiary must be made without any offsetting or deduction of any kind.
- 5.8 Where under this Agreement the Company would be entitled to claw back or withhold payment of the Funding Amount, the Company may (at its absolute discretion) agree to pay to the Beneficiary (or permit the Beneficiary to keep) a pro-rata amount properly reflecting the actual work undertaken by the Beneficiary and the benefits to the public realm of such works.

6 Completion of the Works and ongoing maintenance

- 6.1 The Beneficiary shall notify the Company in writing once it considers that the Works have been completed in accordance with the drawings, specification and design agreed by the Company pursuant to any necessary consents given by the Company to the Beneficiary, in order to enable the Company to certify completion of the Works.
- 6.2 Following receipt of a notification from the Beneficiary pursuant to clause 6.1 that all the Works have been completed, and provided that the Company is satisfied that the Works comply in all respects with this Agreement and all relevant standards, and that all deficiencies, snagging and defects have been rectified, the Company shall issue a certificate of completion of the Works. In the event that the Company considers that the whole or any part of the Works does not comply as aforesaid, it shall notify the Beneficiary in writing together with full details of its reasons why the certificate of completion of the Works should not be issued.
- 6.3 Where the certificate of completion of the Works is not issued pursuant to clause 6.1, the Beneficiary shall have regard to the reasons given by the Company and shall carry out such further work as is required to comply with this Agreement. Once the Beneficiary has completed such further work, the process in clauses 6.1 and 6.2 shall be repeated.

7 Termination

- 7.1 The Company may elect to terminate this Agreement on thirty days' notice to the Beneficiary:
- (a) at any time prior to Commencement, or:
 - (b) if the Works have not been concluded by the Longstop Date (in which case clause 5.2 shall apply to any pre-paid amounts).

If the Company exercises its rights under this clause 7.1 then clause 7.9 shall apply.

- 7.2 If either party is in material breach of this Agreement then:
- (a) the party not in breach may notify the other in writing of such breach; and
 - (b) if the breach is not capable of rectification the party not in breach shall be entitled to terminate this Agreement immediately on giving written notice; or
 - (c) if the breach is capable of rectification and the breach is not remedied within 21 days following receipt by a party of the written notice then the party not in breach may terminate this Agreement immediately by written notice.

- 7.3 Either party may terminate this Agreement immediately by giving notice to that effect to the other if the other becomes Insolvent.
- 7.4 The Beneficiary will give notice to the Company immediately upon it becoming Insolvent.
- 7.5 The Company may terminate this Agreement immediately by giving notice to that effect to the Beneficiary if:
- (a) the Beneficiary breaches any Applicable Laws, including relating to bribery, corruption or modern slavery, or commits any fraud in connection to the Works;
 - (b) the Beneficiary by any act or omission causes the Company to breach (or to take any specific action to avoid breaching) any Applicable Law, or any licence held by the Company in respect of its role as a water and wastewater undertaker, or causes (or causes the Company to take any specific action to avoid) any unauthorised impact on any of services provided by the Company to customers.
- 7.6 Subject to clause 18, if this Agreement is terminated in accordance with clauses 7.2, 7.3 or 7.5, the party in default shall pay the reasonably and properly incurred costs in relation to termination. Where the party in default is the Beneficiary, such costs will include:
- (a) any costs incurred by the Company in making good the Works and/or otherwise in its role as a water and waste water undertaker; and
 - (b) reimbursing any instalment of the Funding Amount previously paid by the Company in accordance with clause 5.2.
- 7.7 The Company may terminate this Agreement on 60 days' notice if at any time:
- (a) it concludes on reasonable grounds that the anticipated benefits of the Works will not be realised; or
 - (b) the Company is otherwise compelled by law to terminate this Agreement.
- 7.8 If the Company terminates under clause 7.7:
- (a) the Beneficiary shall be entitled to retain any previously paid portion of the Funding Amount that reflects the actual costs incurred by the Beneficiary (but any excess of previously paid amounts over actual costs shall be repayable within 30 days of termination); and
 - (b) if the Beneficiary's committed, unavoidable costs exceed the amounts previously paid to the Beneficiary, the Beneficiary shall be entitled to apply for payment of an amount equal to the balance of those committed costs save that the maximum liability of the Company in respect of such additional amounts together with any previously paid amounts shall not exceed 100% of the Funding Amount. Any such application must be made within 30 days of termination, and shall be subject to satisfactory evidence of the relevant costs being produced by the Beneficiary. The Company shall pay the same within 30 further days of the end of the month in which such evidence is produced by the Beneficiary.
- 7.9 Upon termination (or where this Agreement does not come into force pursuant to clause 2.2), all obligations of both parties under this Agreement shall cease except for:

8 the provisions of clause 15 (Record Keeping, Access to Documents and Information)

8.1 The Beneficiary shall, whilst undertaking the Works and for the period for which any resulting structures or features are to be maintained and at least seven years afterwards, keep records to demonstrate compliance with this Agreement and any Applicable Laws.

8.2 The Beneficiary shall on request provide the Company with any documents, information, photographic or other documentary evidence, or written or verbal explanations that may be required by the Company in connection with this Agreement and/or the Works. The Beneficiary agrees that any documents provided to the Company may be supplied to (and used by) any Company personnel, and any regulatory authority having oversight over the Company and/or the Project.

8.3 The Beneficiary acknowledges that:

- (a) inspection of the Works under clause 6 or the provision of documents, information, photographic or other documentary evidence or other explanations may be required by the Company (in accordance with this clause 14) to demonstrate that the Works have been completed or any other deadline met; and
- (b) as a result, any failure of the Beneficiary to so comply to the reasonable satisfaction of the Company may result in all or any portion of the Funding Amount being withheld by the Company, and/or the Company otherwise refusing to confirm that the Works are complete or a relevant deadline met.
- (c) Confidential Information);
- (d) the provisions of clause 18 (Limitation on Liability); and
- (e) this clause 7 (Termination),

and save also for any antecedent breach by either party of the terms of this Agreement.

8.4 Save for any amounts expressly identified in this clause 7, no other compensation shall be payable by the Company in respect of termination of this Agreement.

9 Insurance

9.1 The Beneficiary shall, at its own cost, procure that the insurances, details of which are set out in Annex A to the Schedule (Insurance), are taken out and maintained from the date the Works are Commenced until the defects liability period under clause 10.1 has passed.

9.2 Without prejudice to the other provisions of this clause 9, the Beneficiary shall, at all relevant times, at its own cost, effect and maintain in full force those insurances which it is required to effect by any Applicable Law.

9.3 All Insurances shall:

- (a) shall be composite policies of insurance (and not joint policies); and
- (b) be placed with insurers who are acceptable to the Company (such acceptance not to be unreasonably withheld or delayed).

9.4 The Beneficiary shall supply the Company with copies of every policy of insurance (or such other evidence of insurances as may be reasonably required) as soon as it is available, together

with evidence of payment of the premiums. If the Beneficiary defaults in insuring or continuing to maintain the insurances, the Company may insure against any risk in respect of which such default has occurred and recover any premiums from the Beneficiary as a debt.

9.5 The Company shall not be obliged to take out any insurances for the Works.

10 Post completion of Works obligations

10.1 Following the issue of a certificate of completion under clause 6.2, for the period specified in the Schedule (or if no such period is expressly specified, twelve months) following the date of the certificate of completion, the Company may notify the Beneficiary of any deficiencies or defects in the Works which become apparent, giving full details of such deficiencies or defects in the Works.

10.2 If the Company notifies the Beneficiary of a deficiency or defect under clause 10.1, the Beneficiary shall have regard to such notification and shall carry out any further work as is required in order to rectify the deficiency or defect and complete the Works in accordance with the Agreement.

10.3 Following completion of the Works for the purposes of clause 6.2, the Beneficiary warrants, represents and undertakes to ensure that:

(a) any structures or features resulting from the Works are properly maintained and cared for (and that any necessary investment is made) for (as a minimum, and without prejudice to clause (b)) the Minimum Maintenance Period, and in addition for any longer period necessary to ensure that those structures and features deliver the benefits that they are designed to deliver for as long as they can reasonably be expected to endure; and

(b) in addition:

(i) any features created by the Works that are intended to become a permanent feature of the landscape, are maintained for as long as reasonably necessary to enable those features to become such a permanent feature; and

(ii) where the Works entail planting trees/other plants, they are cared for and maintained on an ongoing basis, to ensure they become fully established and act as a landscape feature as envisaged at the time of this Agreement; and

(iii) any permanent structures resulting from the Works will, following their completion, be appropriately maintained in accordance with good industry practice for their normal asset life.

10.4 In the event of any non-compliance with clause 10.3, the Company may notify the Beneficiary of such non-compliance and if it is not rectified within 30 days' of such notice, the Funding Amount (or such proportion thereof as the Company deems appropriate in all the circumstances) shall immediately be repaid to the Company and shall be recoverable by the Company as a debt.

11 Changes

11.1 The Beneficiary and the Company shall regularly meet to discuss what they believe to be working well, and what is not.

- 11.2 The Company may request changes (at any time) to:
- (a) the requirements of this Agreement;
 - (b) the Project;
 - (c) the Works; and
 - (d) include an additional requirement in the Agreement.
- 11.3 The Parties shall meet in good faith to discuss any such changes or additional requirements, and how best they might be provided for, and shall implement whatever agreement they may reach.
- 11.4 The Beneficiary shall not unreasonably withhold its approval of any changes or additional requirements which may be proposed by the Company.

12 Personnel

- 12.1 The Parties shall appoint the persons listed in the Schedule as the Beneficiary's Representative and Company's Representative respectively for the purposes of this Agreement, and all Works and obligations under (or in connection with) this Agreement.
- 12.2 The Beneficiary's Representative shall have full authority to act on behalf of and to bind the Beneficiary for all purposes related to this Agreement, and the Company shall be entitled to treat any act of the Beneficiary's Representative as being expressly authorised by the Beneficiary (save where the Beneficiary has notified the Company (in advance) that such authority has been revoked and with reason) and the Company shall not be required to determine whether any express authority has in fact been given.
- 12.3 The Beneficiary's Representative shall:
- (a) assume personal overall direction, management, supervision and control of the Works and other responsibilities and obligations under (or in connection with) this Agreement;
 - (b) establish and maintain direct and regular contact with Company's Representative on all matters pertaining to this agreement; and
 - (c) prepare for and make themselves available to attend all meetings required to be attended pursuant to clause 13.

13 Meetings

- 13.1 The Beneficiary's Representative and Company's Representative shall attend such meetings:
- (a) as may be required under (or contemplated within) clause 13.4; or
 - (b) as may otherwise be reasonably required by the Company (in the context of this Agreement).
- 13.2 The Beneficiary shall promptly provide the Company with such information regarding any Works, or any events affecting any Works, as may reasonably be required by the Company, including copies of any contract which relates to the carrying out of the Works.

- 13.3 The Beneficiary shall promptly notify the Company of any incident, event or circumstance which is likely to delay the progress of any Works.
- 13.4 The following meetings shall occur throughout the Project lifecycle, unless otherwise stated (and/or as added to) in the Schedule:
- (a) stage and gate review;
 - (b) progress meetings; and
 - (c) risk planning and review meetings.

14 Appointments

- 14.1 It is anticipated that the Beneficiary wishes to appoint or engage one or more Delivery Agent(s) (including any professional appointments and/or works contractors) in respect of carrying out the Works or part of the Works, and the Beneficiary shall obtain written consent from the Company prior to any appointment or engagement.
- 14.2 The Beneficiary shall ensure that each Delivery Agent performs and behaves in the same manner as the Beneficiary ought to do. Performance and behaviour measures shall include (but not be limited to) time, cost, sustainability, quality, health and safety, and shall be monitored by the Beneficiary on an on-going basis.
- 14.3 If the Beneficiary appoints or engages a Delivery Agent for any part of the Works, then the Beneficiary shall not be relieved from any liability or obligation whatsoever under this Agreement, and the Beneficiary shall be fully responsible for the acts, omissions or defaults of any Delivery Agent as if they were the acts, omissions or defaults of the Beneficiary.

15 Record Keeping, Access to Documents and Information

- 15.1 The Beneficiary shall, whilst undertaking the Works and for the period for which any resulting structures or features are to be maintained and at least seven years afterwards, keep records to demonstrate compliance with this Agreement and any Applicable Laws.
- 15.2 The Beneficiary shall on request provide the Company with any documents, information, photographic or other documentary evidence, or written or verbal explanations that may be required by the Company in connection with this Agreement and/or the Works. The Beneficiary agrees that any documents provided to the Company may be supplied to (and used by) any Company personnel, and any regulatory authority having oversight over the Company and/or the Project.
- 15.3 The Beneficiary acknowledges that:
- (a) inspection of the Works under clause 6 or the provision of documents, information, photographic or other documentary evidence or other explanations may be required by the Company (in accordance with this clause 14) to demonstrate that the Works have been completed or any other deadline met; and
 - (b) as a result, any failure of the Beneficiary to so comply to the reasonable satisfaction of the Company may result in all or any portion of the Funding Amount being withheld by the Company, and/or the Company otherwise refusing to confirm that the Works are complete or a relevant deadline met.

16 Confidential Information

- 16.1 Neither party shall disclose any Confidential Information of the other party save as required:
- (a) by any enactment or requirement of any regulatory authority (including the Information Acts as set out in clause 16 below);
 - (b) pursuant to any judicial or arbitral process;
 - (c) to enable that party to perform its obligations pursuant to this Agreement, including the disclosure of such information to any employee, consultant, agent, officer, Delivery Agent (of any tier), lender or adviser provided that such disclosure is made in good faith and only to the extent necessary to enable the party to fulfil its obligations under this Agreement; and/or
 - (d) by the Company, as required by its statutory duties or statutory licence.

17 Information Acts

- 17.1 The Beneficiary acknowledges that:
- (a) the Company may be required, under the Information Acts, to disclose information relating to the subject matter of this Agreement; and
 - (b) notwithstanding any other provision in this Agreement, the Company shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts (having regard to any identified Commercially Sensitive Information).
- 17.2 The Beneficiary shall provide all necessary assistance and cooperation as reasonably requested by the Company to enable it to comply with its obligations under the Information Acts.
- 17.3 The Beneficiary acknowledges that it may share information with the Company relating to its personnel or other individuals in connection with the Works and this Agreement. The Beneficiary agrees that the Company shall control that data and may use that data, and share it with third parties, in connection with its business and the Works. In any event, each Party shall comply with its obligations under data protection and privacy laws in dealing with any personal information, including but not limited to establishing the lawful basis for transferring any personal information to the other party. If either party reasonably considers that the nature of the Works is such that additional data protection requirements should apply, then both parties shall act reasonably in relation to agreeing the necessary data sharing agreement.

18 Publicity

- 18.1 Unless otherwise agreed by the Company, and save for any specific publicity activities specified in the Schedule, the Beneficiary shall not (and will ensure that none of its Delivery Agents shall) make any press announcements, or otherwise brief any media organisation, make any announcement or issue any brochure or other marketing material, which in any way concerns (or refers to) this Agreement, the Project, and/or the Works or any related matter, without the Company's prior written consent (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

- 18.2 If the Company provides its consent in accordance with clause 18.1, the parties shall consult together on the timing, contents and manner of release of any announcement.
- 18.3 The parties agree that any announcements or publications shall be in a form and substance agreed between the parties.
- 18.4 Notwithstanding clauses 18.1 – 18.3 above:
- (a) the Beneficiary acknowledges that the Company shall be entitled to request reasonable support from the Beneficiary in order to publicise the Company's contribution to the Project, which may include facilitating access to the Works to invitees of the Company and/or displaying billboards or similar advertising referring to the Company's contribution, and the Beneficiary shall act reasonably in respect of any such request; and
 - (b) the Beneficiary agrees to comply with all reasonable instructions of the Company which relates to communications with the Company's customers in respect of any impact that the Works may have in relation to the services provided by the Company, or other impacts upon customers of the Company, and not to communicate with customers in connection with the Company, its infrastructure or assets, without the prior written consent of Company's Representative.
- 18.5 Where any publicity entails either party making any use of any brand or logo of the other they shall do so only in accordance with the reasonable directions of the party whose brand or logo is being used.

19 Limitation on liability

- 19.1 The Company's aggregate liability in respect of this Agreement (whether in contract, tort, breach of statutory duty or otherwise) shall be limited to a sum equal to the Funding Amount less the aggregate of any amounts already paid by the Company in accordance with clause 5.3 provided that such limitation shall not apply to any liability in respect of death or personal injury resulting from a negligent act or omission or breach of statutory duty by the Company, or to any other liability that cannot be limited or excluded at law.

20 Bribery, Corruption and Modern Slavery

- 20.1 The Beneficiary warrants, represents and undertakes that no offence under the Bribery Act 2010 (**Bribery Act**) has been or will be committed by:
- (a) the Beneficiary; or
 - (b) any associated person of the Beneficiary,
- in connection with the procurement or implementation of this Agreement.
- 20.2 For the purposes of clause 20.1(b), the definition of associated person in section 8 of the Bribery Act applies.
- 20.3 If at any time the Beneficiary:
- (a) has knowledge of, or has reasonable grounds to suspect the occurrence of, a breach of the warranty in clause 20.1; or
 - (b) becomes the subject of any investigation in connection with the Bribery Act; or

- (c) becomes the subject of any other investigation in respect of any (or any suspected) wrong doing or impropriety; or
- (d) becomes aware of any equivalent investigation (as falls within clause 20.3(b) or 20.3(c)) in respect of its employees, or sub-contractors or any other associated person,

the Beneficiary (unless prohibited by Applicable Laws) shall promptly notify the Company in writing of such matters within its knowledge, or of such grounds for suspicion, and (where clause 20.3(a) applies) shall co-operate with the Company in the investigation of the breach or suspected breach of the same.

20.4 Similarly, the Beneficiary shall promptly inform the Company of any genuine and substantiated allegation, serious complaint or verifiable information in respect of any corruption related offence relating, in some way, to this Agreement or its subject matter (including, without limitation, any offence under the Bribery Act and/or any offence or practice relating to corruption, fraud, coercion, collusion, obstruction, money laundering and/or the financing of terrorism).

20.5 The Beneficiary shall:

- (a) comply with all Applicable Laws relating to modern slavery including but not limited to the Modern Slavery Act 2015 (the "**Relevant Modern Slavery Requirements**");
- (b) not do or omit to do any act or thing which causes or may cause the Beneficiary, the Company or any Company Group Member to be in breach of and/or to commit an offence under any Relevant Modern Slavery Requirements; and
- (c) promptly notify the Company of any breach of this clause.

21 IR35 and Tax Compliance

21.1 The Beneficiary shall ensure that:

- (a) it is UK tax resident or has a tax presence in the UK; and
- (b) no individuals who are or will be involved in the provision of the Works (each an Involved Individual) will be engaged via an Intermediary without the express prior written consent of Company; and
- (c) in any event, all income tax, national insurance contributions or other employment taxes and levies are applied and accounted for in full, and all associated tax laws (including IR35) are complied with, in respect of each and every Involved Individual,

and shall notify Company as soon as reasonably practicable if any of the foregoing is untrue or ceases to be true (and in any event shall notify Company as soon as reasonably practicable if it considers that Company may have any obligations under IR35 in respect of the Works). The Beneficiary shall be responsible for any costs or other liabilities incurred by Company as a result of any of the foregoing being or becoming untrue.

21.2 For the purposes of clause 20.1: (i) "Intermediary" means a third party which meets one of Conditions A to C set out in sections 61N(9) to (11) of the Income Tax (Earnings and Pensions) Act 2003 or such other meaning provided for such term in any other legislation amending or repealing IR35 (as interpreted in accordance with HMRC published guidance); and (ii) IR35" means the intermediaries legislation known as IR35 concerning off payroll working set out in Chapters 8 and 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 and the

Social Security Contributions (Intermediaries) Regulations 2000 (in each case as may be amended from time to time) and any other legislation or secondary legislation which imposes a liability to pay or deals with the payment to HMRC of any employment taxes in connection with services provided by workers via Intermediaries;

- 21.3 The Beneficiary shall in any event comply with all Applicable Laws, including tax laws, and shall not do or omit to do anything that causes Company to breach any Applicable Law.
- 21.4 If any sum paid or due to Company under the Agreement is liable to taxation, the Beneficiary shall pay Company such further sum as ensures that the net amount received and retained by Company equals the full amount which would have been received and retained by it but for that tax liability.
- 21.5 The Beneficiary shall account to HMRC for any VAT payable on sums due under the Agreement (and where relevant, Company is an “end user” for the purposes of Section 55A of the VAT Act 1994, the Domestic Reverse Charge for Construction).
- 21.6 Breach of any sub-clause of this clause 20 is a material breach by the Beneficiary which is not capable of remedy.
- 21.7 This clause 20 shall survive the expiry or termination (for any reason) of this Agreement (or of the Beneficiary’s engagement under it).

22 General

- 22.1 The Beneficiary will use its reasonable endeavours to enable the Company to receive the benefit of all the capital allowances in respect of the Funding Amount towards the cost of the Works, to the extent that the Company is entitled to those allowances.
- 22.2 The Beneficiary represents and warrants that that it has not done, and will not do, anything in connection with this Agreement and/or the Works which could be considered an inducement for any person to show favour to the Beneficiary or otherwise act in a particular matter, or which could be considered to amount to bribery or an attempt to defraud any party (including the Company).
- 22.3 The Beneficiary shall, whilst undertaking the Works and for the period for which any resulting structures or features are to be maintained and at least seven years afterwards, keep sufficient records to demonstrate compliance with this Agreement and any Applicable Laws or regulations and to demonstrate expenditure on the Works (including any relevant invoices and receipts).
- 22.4 The Beneficiary shall be responsible for compliance with all Applicable Laws in carrying out the Works and any subsequent maintenance required pursuant to clause 9.3, and shall not by act or omission cause the Company to breach any Applicable Laws, including:
- (a) relating to the undertaking of works, and/or the provision of water or waste water services; and/or
 - (b) relating to taxation, including ensuring that all income tax, national insurance contributions or other employment taxes and levies are applied and accounted for in full, and all associated tax laws are complied with, in respect of each and every individual involved in the discharge of the Works (including under the intermediaries legislation known as IR35 concerning off payroll working).

- 22.5 If any sum paid or due to the Company under this Agreement is liable to taxation, the Beneficiary shall pay the Company such further sum as ensures that the net amount received and retained by the Company equals the full amount which would have been received and retained by it but for that tax liability.
- 22.6 The Beneficiary grants to the Company an irrevocable, perpetual, non-exclusive royalty-free licence to use all the intellectual property and materials created as a result of the design and implementation of the Works for all purposes, including the right to sub-licence.
- 22.7 Neither party intends that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person other than the Company or the Beneficiary.
- 22.8 Any notice pursuant to this Agreement shall be in writing and shall be duly and validly served if delivered by hand or sent by first class post to the registered office of the relevant party (and in the case of a notice served on the Company, provided the notice is addressed to the Company Secretary of the Company). Any notice sent by post shall be conclusively treated as having been served two working days after posting.
- 22.9 Neither party may assign or charge its rights or interests under this Agreement without the prior written consent of the other party (not to be unreasonably withheld or delayed).
- 22.10 No amendment to or variation of this Agreement shall be effective unless in writing and signed by or on behalf of each party. No general terms and conditions contained in any purchase order or other document customarily required by either party in connection with a request for works or services shall be binding on the parties.
- 22.11 Should a dispute between the parties arise out of or in connection with this Agreement, the parties' respective representatives shall initially discuss and attempt to resolve the dispute. If the parties' representatives are unable to resolve the dispute to the satisfaction of both parties within 14 days, it shall be escalated to the parties' appropriate senior managers for resolution. If the senior managers are unable to resolve the dispute to the satisfaction of both parties within 14 days, it shall be escalated to the parties' directors for resolution. If the directors are unable to resolve the dispute to the satisfaction of both parties within 14 days, the dispute shall be referred to adjudication in accordance with clause 22.12.
- 22.12 Either party may refer to adjudication any dispute arising out of or in connection with this Agreement in accordance with the Housing Grants, Construction and Regeneration Act 1996. The adjudicator shall be agreed between the parties and failing agreement within 7 days of receipt by one party of a proposal by the other the adjudicator shall be nominated at the request of either party by the President or Vice President for the time being of TECBAR.
- 22.13 This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes any previous agreements between the parties. Each party acknowledges that in entering into this Agreement it is not relying upon any statement or representation not set out in this Agreement.
- 22.14 This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Save as expressly provided otherwise, the parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.

The Schedule

TABLE 1 – GENERAL INFORMATION

1	The Project	<p>Oldham Council, Town Centre regeneration scheme incorporating SuDS features to create green travel corridors and parks within Oldham Town Centre. Current buildings and hard impermeable paved areas will make way for green spaces with recreational facilities across Oldham town centre. Features include, new park areas, permeable paving, tree pits, rain gardens, cycleways.</p> <p>Projects were/are selected for the programme based on a matrix which assessed Volume (area) attenuated / disconnected from the network, Natural Capital Value, innovation in Partnership, Project maturity, innovation and flood risk benefits.</p>
2	The Works	
2.1	Description:	Market Place development provides cycleway, attenuation under permeable paving, recreational park, raingardens and tree pits which will attenuate the surface water and aid with slowing the flow within the current sewer network and removing capacity aimed at providing climate resilience benefit to UU sewer network.
2.2	Anticipated overall cost of the Works:	<p>Company Funding Amount = £600,000</p> <p>Beneficiary Funding Amount = £400,000</p> <p>Total cost of the Works for this Agreement = £1,000,000</p>
3	Funding	
3.1	Funding Amount	£600,000 (six hundred thousand pounds)
3.2	Payment schedule	Quarterly payments

4	Commencement Deadline:	Upon signature of the last party to execute this Agreement
5	Longstop Date:	31 st March 2025
6	Company's Representative:	Heather Lancaster UU Project Engineering Manager
7	Beneficiary's Representative:	[INSERT NAME/ROLE HOLDER]
8	Additional meetings or amendments to schedule of meetings in clause 12	NOT USED
9	Defects notification period for purposes of clause 9	12 months
10	Minimum Maintenance Period	The works should be maintained in accordance with the industry CIRIA guideline standards for SuDS installations.
11	Additional key commercial information	NOT USED
12	Trigger Event for the Works to be deemed to have Commenced	NOT USED

TABLE 2 – SPECIAL CONDITIONS

Ownership of assets	No assets, structures or features resulting from the Works shall be owned by or the responsibility of the Company, and the Company shall have no liability to adopt such assets, structures or features or have any other liability for the upkeep, maintenance, condition or operation of any of the foregoing.
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ANNEX A

Insurance

1 General

This schedule sets out the Insurances which the Beneficiary is required to take out, renew and maintain (pursuant to and in accordance with this Agreement).

2 Minimum insurance requirements

The following table sets out the minimum requirements for the various Insurances shown.

Insurance requirements		
Insurance type/coverage	Minimum level insured	Maximum permitted excess
Public Liability Insurance	£5,000,000	N/A
Professional Indemnity Insurance	£10,000,000	N/A
Employer's Liability	£5,000,000	N/A

ANNEX B

Commercially Sensitive Information

NOT USED

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ANNEX C

APPENDED INFORMATION

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Signed by [NAME OF DIRECTOR] for and on.....
behalf of United Utilities Water Limited

Signed by [NAME OF DIRECTOR] for and on
behalf of [NAME OF BENEFICIARY]

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