

**THIS MEMORANDUM OF UNDERSTANDING** is made on

2013

**BY AND BETWEEN**

**THE PARTIES:**

- (1) **OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxfordshire OX1 1ND (“OCC”)
- (2) **OXFORDSHIRE LOCAL ENTERPRISE PARTNERSHIP ( an unincorporated association )** (“OLEP”)

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

## **1. Introduction and Background**

- 1.1 OLEP 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 OLEP are attached as Schedule One hereto.
- 1.3 OLEP have been allocated monies from the Government’s Growing Places Fund (“GPF”). Growing Places Funding is issued by central government pursuant to section 31 of the Local Government Act 2003 and therefore can only be paid to a local authority nominated to act as accountable body. OCC has agreed to act as accountable body in respect of OLEP’s GPF allocation (“the Fund”). It is anticipated that OLEP will receive additional funding streams in the future and consequently this Memorandum of Agreement (MoU) is intended to apply to all arrangements where OCC act as accountable body on behalf of OLEP.
- 1.4 OLEP and OCC may change these arrangements by mutual agreement or OLEP may appoint other local authorities as accountable body for different funding streams should it choose to do so. OCC will only act as an accountable body using this agreement for specific funding streams by mutual agreement.
- 1.5 The purpose of this MoU is to set out the respective roles and responsibilities of OCC acting as accountable body for OLEP and that of OLEP itself and therefore 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 either Party upon giving three months' notice in writing to the other. 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 OCC cease to be the accountable body, it shall:
- a) Continue to co-operate with OLEP and any successor accountable body and with all grantors to ensure a smooth transition; and
  - b) Provide to OLEP or the new accountable body (where requested to do so by OLEP) 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 OCC's Corporate Retention Schedule Policy.
- 4.2 This MoU shall terminate automatically upon the disbanding of OLEP. In such case, OCC and OLEP shall complete all of their obligations concerning:
- a) Monies granted to or by OLEP;
  - b) Other assets held by OCC on behalf of OLEP; and
  - c) Any accounts required to be submitted to central government or to any other relevant funding organisation.
- 4.3 This MoU shall be varied only by the written mutual agreement of OCC and OLEP save that this shall not prevent OLEP from making amendments to its Governance and Working Arrangements. Where a variation of this MoU requires a change to be made to OLEP'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 OCC, as recipient of the GPF grant allocation from central government is responsible for compliance with the grant conditions which include the obligation to repay, in whole or in part the grant in the event of non-compliance with the said conditions ("Clawback"). For the avoidance of doubt, in the event of the Fund containing insufficient sums to meet any Clawback, OCC will be responsible for paying the shortfall.
- 5.3 In the event that the recipient of a funding granted by OLEP fails to comply with the repayment terms or any other aspect of the funding agreement, OCC 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 Fund save as provided for in clause 5.2 above.
- 5.4 A record of income and expenditure for the GPF (and any other funding in respect of which OCC is acting as accountable body) will be prepared by OCC on an annual basis.
- 5.5 OCC will consolidate the OLEP's cash balances with its own cash balances and deposit the co-mingled funds in accordance with the OCC's Treasury Management Strategy. OCC will pay interest on OLEP daily cash balances based on the 'Average 7 Day Rate'. Interest will be charged on OLEP overdrawn balances at 2% above the Bank of England Base Rate.
- 5.6 OCC currently provide the GPF Programme/ Fund Management support free of charge. These arrangements will be reviewed with OLEP if/ when the size of the managed resources or project portfolio increase significantly.
- 5.7 External support may be procured where specialist skills are needed for example for the due diligence process and preparing legal agreements and to deal with peak workflows. Revenue funds available to the OLEP may, with the approval of OLEP, be used to support such specialist services.
- 5.8 OCC will maintain satisfactory insurances to cover its obligations under this MOU.

## **6. Asset Related Matters**

- 6.1 Any infrastructure constructed or acquired by OCC acting on OLEP's behalf, will be accounted for as part of the Council's asset register in line with OCC's normal accounting procedures.

## **7. Data Protection**

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

**8. Confidentiality**

- 8.1 Neither Party 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.
- 8.2 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.

**9. Freedom of Information**

- 9.1 OLEP shall co-operate with OCC and supply to it all information properly required in connection with any request received by the OCC 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 OCC.
- 9.2 OLEP acknowledges that in responding to requests received by OCC 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.

**10. Escalation**

- 10.1 If either Party has any issues, concerns or complaints about any matter in this MoU, that Party shall notify the other Party 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 Chairman of OLEP's Executive Board and OCC's Director of Economy and Environment who shall decide on the appropriate course of action to take.
- 10.2 If either Party receives any formal inquiry, complaint, claim or threat of action from a third party they shall notify the other Party and co-operate with each other to respond, or take such action, as is appropriate and/or necessary

**11. Equality**

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

**12. The Contracts (Rights of Third Parties) Act 1999**

- 12.1 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.

**13. Status**

13.1 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.

**14. Governing Law**

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

**This Memorandum of Understanding is agreed and signed by the parties on the day and year first before written**

Signed for and on behalf  
of Oxfordshire County Council by:

.....  
Signature

.....  
Name and Position

Signed for an on behalf of the Oxfordshire  
Local Enterprise Partnership by:

.....  
Signature

.....  
Name and Position

## Schedule One

### Oxfordshire Local Enterprise Partnership (OLEP) 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/loD/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 OLEP 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 OLEP; and
  - iv) Statutory requirements.
- 1.2 OCC 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 OLEP; and
  - iv) Statutory requirements.

#### 2. Growing Places Fund Operation Framework

- 2.1 The GPF is made up of both capital and revenue funds. The capital funding has to be spent on capital terms. The revenue funds can be spent on either revenue or capital items.
- 2.2 The capital part of the GPF is primarily used as a flexible forward funding mechanism to facilitate the development and timely provision of critical infrastructure that supports the delivery of planned growth or development and unlocks growth within Oxfordshire. The forward funding is founded on the premise that future funding secured through other funding streams or income streams generated by the supported projects will be used to replenish the GPF and be reinvested to unlock further development.
- 2.3 The revenue part of the GPF will be used to cover small capital projects and costs related to preparing infrastructure projects.
- 2.4 The GPF is structured and managed in a way that takes into account any delays or reductions in the recycled total. Therefore, the following operation model is applied:

##### Structure of the GPF

- a. The GPF is set up as a “capital investment fund” and is managed and reported in line with the standards applied to the OCC’s Capital Programme;
- b. The initial set up and size of the GPF is agreed/confirmed by OLEP and other partners who have agreed to contribute to the GPF. Each organisation will follow its own executive decision-making process to secure the required internal approvals;

- c. The GPF will be used to pump-prime or forward fund infrastructure schemes in situations where anticipated public/ private funding for the scheme will not be available in full at the time when the infrastructure is needed to support development;
- d. The GPF is able to receive income from other programmes or new funding streams where outcomes are aligned. Such decisions are subject to agreement by OLEP and other partners who have agreed to contribute to the GPF;
- e. Income being recouped from developments or from individual schemes will be recycled back into the GPF in order to finance other priority projects coming forward. Necessary arrangements will be put in place to safeguard this recovery for each allocation;
- f. Should the GPF be terminated, either by collective agreement or because of external changes, all outstanding balances to support the on-going projects and awaited paybacks from previous investments will be transferred under OCC given its role as the accountable body. Under such circumstances, OCC will ensure that any surplus funds following programme closure are returned to the contributors..

#### Prioritisation & Assessment Framework

- a. OLEP will ensure that there is guidance on the prioritisation mechanism where schemes' ability to produce outcomes are balanced with their financial appraisals;
- b. Priorities are determined on a need basis using the agreed prioritisation criteria and a transparent assessment framework. Investment decisions will be made subject to the results of the independent assessment process and based on the available funding envelope. Where required a risk assessment will be conducted to determine the level of contribution that could be made by the GPF and determine whether the GPF is the best possible resource to finance the bespoke scheme;
- c. Promoters (receiving organisations) are required to submit business cases demonstrating that their proposal meets the objectives of the GPF, confirming that resources will be spent in line with the local government accounting procedures and paid back to the accountable body within the agreed repayment period;
- d. Promoters (receiving organisations) will be required to sign a funding agreement outlining the conditions applied to the use of the GPF and the repayment arrangements and timetable;

#### Monitoring & Reporting

- a. The GPF is managed on "open book principles" and its progress and the annual position is reported back to OLEP and other contributors;
- b. Overall programme progress will be monitored by OLEP, in consultation with other contributors, at their formal meeting and the results of this monitoring will be made available to the public. This regular monitoring will capture progress made against any agreed actions and any compliance issues based on the conditions set out in the funding agreements prior to the release of the GPF;
- c. Promoters (receiving organisations) will be expected to provide progress reports on the supported projects at regular intervals to OLEP and to keep auditable records of their expenditure;

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- d. OLEP, in consultation with other contributors to the GPF, will reserve the right to claw the funding back or stall payments if a project is not progressing in line with the business case. OLEP will also reserve the right to authorise the OCC to act on any breach of the funding agreement;
- e. The S151 Officer of the OCC will ensure that there is guidance regarding the technical operation of the GPF and compliance related requirements are managed as per this guidance;
- f. A robust year-end financing strategy ensuring the appropriate use of resources and effective management of the cash-flow will be employed by OCC.

**Schedule Three**

**Scheme of Roles & Responsibilities**

**General**

1.1. OLEP shall

- i) undertake all strategic decision making to determine policy necessary for resource allocation and delivery of projects funded by funding streams for which OCC 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 and that the separation of duties between project appraisal and project approval;
- vi) invite applications for funding;
- vii) determine applications for funding following independent assessment, subject to referral to OCC for due diligence, and provided always that, where in OCC's reasonable opinion, any allocation would be in breach of the conditions of grant, OCC may refuse to give effect to the determination; and
- viii) make procurement decisions on other goods, works, services necessary to the day to day running of OLEP within the available resource envelope;

1.2. OCC shall

- i) hold any funding it receives and all interest or income earned for and on behalf of OLEP and ensure that the money is not moved or converted to cash without specific instruction from the OLEP;
- ii) will administer the GPF 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;
- iii) provide support and assistance to OLEP, including procurement advice, to ensure both legal and financial probity in relation to the receipt and use of specific funding for which it acts as accountable body;
- iv) advise the OLEP on the procedures necessary to ensure formal compliance with any terms and conditions of funding or grant;
- v) provide advice on proper and effective governance for overseeing the allocation and spend of OLEP funding;
- vi) enter into funding agreements on behalf of OLEP for mutually agreed funding streams;
- vii) Undertake any necessary action to seek recovery of Growing

- viii) Places Funding following a decision by the OLEP; enter into appropriate legal agreements or contracts with project delivery or sponsor organisations or other providers on behalf of OLEP for funding streams for which it acts as accountable body once the project is approved by the Board following a successful due diligence process;
- ix) ensure that the funding is passed on to the project delivery organisation in line with the conditions of the funding and loan agreements;
- x) submit the claims to the funding body and prepare and submit relevant documents for inspection by central government or external auditors as required;
- xi) where the funding streams is working on a claim basis, ensure that the claimed funding is passed on to the project delivery team or organisation without delay and in line with the conditions of the funding or loan agreements;
- xii) ensure that performance and financial systems are robust;
- xiii) provide details of all monies expended in accordance with the terms and conditions of funding;
- xiv) monitor approved projects during and after implementation in line with the agreed monitoring framework or as required by the funding body;
- xv) inform and keep OLEP informed of any grant funding allocations received and the procedures and recommended criteria for distributing the funding based on the funding body's requirements;
- xvi) assist OLEP in identifying other sources of funding or to apply for these where commissioned by the OLEP; and
- xvii) report and take appropriate action where it has reason to believe that OLEP, or anybody acting as its agent, is failing to
  - a) adhere to the terms and conditions of funding requirements or the funding or loan agreements;
  - b) comply with its Governance and Working Arrangements or any statutory requirement;
  - c) provide a suitable standard of probity.

## Financial/Audit

### 2.1. OLEP shall

- i) Co-operate with and assist OCC acting in its role as accountable body in undertaking the day to day responsibility for financial matters;
- ii) make funding available, through OCC, to persons and organisations who it has resolved shall receive these;
- iii) request OCC to effect the payment of such funding to the said persons or organisations;
- iv) co-operate with and assist OCC in regular audit examinations of all operating systems;
- v) act upon all recommendations contained within the OCC's internal audit reports where OCC's chief financial officer so requires;
- vi) report any financial irregularity or suspected irregularity in the use of any funding to OCC.

2.2. OCC shall

- i) establish and maintain a financial system to account for all monies received and disbursed on OLEP's behalf;
- ii) transfer , subject to due diligence, funding for projects identified by OLEP;
- iii) receive income and make payments for and on behalf of OLEP;
- iv) maintain proper records, in accordance with its Constitution, of all monies received and disbursed for OLEP and make such records available for inspection by both internal and external regulators;
- v) arrange regular audit examination of OLEP's activities with regards to use of public resources and, following each audit, present a report to OLEP with recommendations to strengthen their governance and management practices;
- vi) allow funding bodies to have access to all files/ records of projects for which it acts as accountable body; and
- vii) supply, as necessary, completed statements of income, expenditure and disbursements to OLEP, funding organisations, central government and external auditor.

**Recovery of the Growing Places Funds**

3.1. In most instances the conditions where funds will be recovered will be laid out in the initial funding or loan agreement. OCC will only take the step to recover funds from those parties it has a direct agreement with. If the project concerned is a third party such as a subcontractor it would be up to the body OCC is seeking funds from 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 difficult OCC, in consultation with the OLEP 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 OCC may then instigate debt recovery procedures which may result in legal action being taken.

3.3. OCC 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.