

Dated this _____ day of _____ 2008

002-43-5-CC

BELFAST CITY COUNCIL

AND

EAST BELFAST PARTNERSHIP

AGREEMENT

Connswater Community Greenway

Ciaran Quigley
Director of Legal Services
City Hall
Belfast
BT1 5GS

ARTICLES OF AGREEMENT made the day of 2008 Between **BELFAST CITY COUNCIL** of City Hall, Belfast of the one part and **EAST BELFAST PARTNERSHIP** (a company with charitable status and limited by guarantee with company number NI031146) having its registered office at 278-280 Newtownards Road, Belfast, BT4 1HE of the other part.

1 **Interpretations**

1.1 The rules of interpretation and definitions in this clause apply to this Agreement unless the context otherwise requires:

- (a) The headings in this Agreement are included for convenience only and shall not affect its interpretation.
- (b) Any reference to any statute shall be taken to mean any re-enactment, modification or amendment to it for the time being in force and shall include any regulation, order, direction, bye-law, permission, licence, consent, condition, scheme or other matter made under or pursuant to it.
- (c) Nothing in this Agreement shall be construed as creating any partnership or, contract of employment relationship of principal and agent between the parties.
- (d) Failure or delay by a party in exercising any right under this Agreement shall not constitute a waiver of that right and shall not affect the validity of this Agreement nor any part thereof or the right of the parties to enforce its terms.
- (e) In this Agreement unless the context otherwise requires:
- (f) clause headings are inserted for convenience only and shall not affect the construction of this Agreement;
- (g) All references to clauses or sub-clauses and Appendices are to clauses, sub-clauses and paragraphs of and Appendices to this Agreement;
- (h) Words denoting the singular number include the plural and vice versa;
- (i) References to persons include references to bodies corporate and unincorporated words importing any gender include every gender

“the Council” means Belfast City Council the first named party to this Agreement

“the Partnership” means East Belfast Partnership the second named party to this Agreement

“the Greenway” means Connswater Community Greenway as envisaged by the Programme

“the Programme” means the regeneration Programme more particularly described in clause 2 hereof

“Council Funding” means the sum of £4,235,252 of Council funds as referred to in clause 3.1 hereof

“the Land Acquisition Strategy” means the document setting out the Council’s strategy for the assembly of the lands required for the Programme as detailed in Appendix 3

“the PMT” means the Programme Management Team established by the Partnership, the Council and the Other Funders to manage the Programme

“the Other Funders” means BIG and DSD

“BIG” means The Big Lottery Fund

“DSD” means The Department for Social Development

“Programme Structure Document” the document attached hereto as Appendix 2

“Working Days” means any day except Saturdays Sundays and Bank Holidays.

“Deleterious Materials” means any materials considered at the time of specification to be unacceptable in general building practice in Northern Ireland for construction works similar to the works associated with the Programme

“the Programme Manager” means the manager appointed by the PMT to oversee the daily management of the Programme

2. Background

- 2.1 The Greenway is a regeneration Programme aimed at delivering a linear park, connecting existing green and open spaces along the banks of the Connswater, Loop and Knock rivers, from the Castlereagh Hills, through the centre of East Belfast, to Victoria Park in the Belfast Harbour Estates. The Programme has been developed and led by the Partnership as a response to need identified through research carried out by the Partnership. The Programme will reconnect the communities of East Belfast and restore the rivers as a living community asset. It will create some 9 kms of linear park for leisure, recreation and community events and activities. It is envisaged that a regeneration Programme of this scale will significantly increase the interconnections across East Belfast. The vision is to develop a safe, accessible sustainable Greenway which is an inspirational living landmark, improving the quality of life for the people of East Belfast now and for future generations. The successful delivery of the Greenway will be reliant upon the acquisition of the land over which the Greenway is to run, and the completion of all necessary capital works. The Greenway has been awarded funding through the Big Lottery Fund and a copy of BIG's terms and conditions of funding are attached hereto at Appendix 1. The Council has agreed to support the Programme as outlined in this document.
- 2.2 The purpose of this Agreement is to provide clarity in terms of accountability, policy, operational and reporting procedures between the Partnership and the Council and in particular details:
- the Council's financial and monitoring arrangements
 - the duration and structure of the Programme;
 - the Land Acquisition Strategy and the Council's role in this regard and with regard to the management and maintenance of the land once acquired and the contracts work is complete
 - the general roles and responsibilities of the Partnership

4. Monitoring

The Council shall receive (at least) three quarterly reports from the Partnership which will (subject where necessary to the Council having appraised the Partnership of progress under the Land Acquisition Strategy) include the following information:-

- 4.1 Progress on the implementation of the Programme;
- 4.2 Any changes in the nature or scale of the Programme;
- 4.3 Up-dates on the prospects of the technical and commercial success of the Programme;
- 4.4 Up-dates on costs incurred in operating the Programme including any unanticipated factors having or likely to have an impact on costings;
- 4.5 All other information which may be relevant to the progress of the Programme and to the Council's continued commitment to the Programme; and
- 4.6 An outline of the outputs, impacts and expenditure relating to the Programme;

5. Inspection

The Council, through its authorised officers and agents, the Chief Local Government Auditor shall have uninhibited right to:-

- 5.1 Inspect the premises and equipment used for the purposes of the Programme;
- 5.2 Interview all participating staff and trainees;
- 5.3 Discuss all aspects of the Programme with the Programme Manager;
- 5.4 Inspect all financial and other relevant documents relating to expenditure incurred in connection with the Programme;
- 5.5 Initiate independent reviews to assess the performances of the Programme against stated performance standards.

6. Notification to Council

The Partnership shall forthwith give notice to the Council in the event that it should become aware of:-

- 6.1 Any threat to the future participation in the Programme of the Other Funders;

- 6.2 Any doubt as to the ability of the Other Funders to continue with their commitment to the Programme;
- 6.3 Any substantial deterioration in the financial position of the Partnership;
- 6.4 Any likelihood of the Partnership not being able to spend the funding in the time scale set out in this Agreement;
- 6.5 The happening or substantial likelihood of the happening of any of the circumstances set out in clause 8.2.

7. Withdrawal

The Council reserves the right to cease any further or continued commitment to the Programme if it should decide at its entire discretion that any of the circumstances described in Clause 8.2 shall have arisen or have become likely to arise.

8. Repayment of Funding

- 8.1 In the event that any of the circumstances described in Clause 8.2 should arise, the Council shall be under no obligation to pay further funding to the Partnership under this Agreement and the Partnership shall forthwith, upon the written demand of the Council, refund to the Council so much of the funding advanced pursuant to Clause 3 as has not yet then been spent.
- 8.2 The circumstances referred to in Clause 8.1 are the following:-
 - (a) That the Programme for whatever reason has been jeopardised as to its future continuance;
 - (b) That the progress of the Programme has become unsatisfactory;
 - (c) That there has been a substantial change in the nature, scale or timing of the Programme to an unacceptable degree;
 - (d) That there has been an increase in costs which no other contributor has agreed to meet;
 - (e) That any of the information furnished by the Partnership to the Council in respect of the Programme, transpires to have been materially incomplete, incorrect or misleading;
 - (f) That any of the monies provided by the Other Funders is not entirely applied for the purposes of the Programme.

(g) That the Partnership fails to comply with any of its obligations contained in this Agreement.

8.3 It will be a matter for the discretion of the Council, reasonably exercised and acting by its Director of Parks and Leisure, to determine whether any of the circumstances referred to in clause 8.2 have, at any time, come about.

8.4 The obligations of the Partnership to refund unspent monies under Clause 8.1 is without prejudice to the right of the Council to recover from the Partnership all the funding advanced by it by way of action for breach of the Partnership's contractual obligation (which the Partnership hereby acknowledges) to apply the funding for the purposes of the Programme.

9. New Sources of Funding

The Partnership must inform the Council of any new sources of funding which may arise after the date of this Agreement. The Council reserves the right to adjust the funding to be paid by it under this Agreement following notification of any new source of funding

10. Refund of Funding

Any funding provided by the Council to the Partnership which remains unspent at the expiration of this Agreement shall be refunded to the Council by the Partnership.

11. Retention/Disposal of Assets

The Partnership shall not, without the prior approval of Council, appropriate or dispose of assets acquired with assistance under this Agreement for any other purpose than that for which funding has been given.

12. Records

The Partnership shall retain all accounting and other records relating to the Programme in a secure place until 30th September 2022.

13. Contract

The Partnership shall award all Contracts, where appropriate, by open or selective competition

Duration and structure of the Programme

14. Duration

The Programme commenced on 01/04/2008 and the parties hereto will use all their respective reasonable endeavours to ensure that same is completed by 30/09/2015 (including retention period).

15. Structure and Management

15.1 The Programme shall be structured and managed in accordance with the Programme Structure Document – See Appendix 2. Amendments to the Programme Structure Document are to be agreed by the Programme Management Team.

15.2 The overall management of the Programme shall be the responsibility of the Partnership and undertaken by the PMT on its behalf. The PMT shall comprise representatives from the Partnership, the Council and the Other Funders and such other persons as the PMT may direct. The Council shall be entitled to have one representative on the PMT. The names of the initial members of the PMT and its terms of reference are set out in the Programme Structure Document.

15.3 Day to day management of the Programme shall be undertaken by the Programme Manager. The Programme Manager's duties shall include, but not be limited to, management and administration of the Programme, risk management, public relations and marketing, communications and liaising with funders.

15.4 Programme Assurance shall be provided by a Programme Assurance Team which shall consist of representatives from the Council and DSD and such other persons as shall be agreed by the Programme Management Team. The Council shall nominate the chair of the Programme Assurance Team which shall meet regularly as required.

15.5 The Programme Manager shall appoint such subject matter experts as are required to assist with the management and successful completion of the Programme as shall be agreed with the PMT. Procurement expertise shall be provided to the Programme by the Central Procurement Directorate (CPD). A copy of the CPD's 'Service Descriptions and Responsibilities' document is attached hereto at Appendix 5.

- 15.6 An Employer's Agent and Client Representative as required shall be appointed to assist in the management of the capital works element of the Programme. The capital works necessary for the Programme shall include, but not be limited to, the construction of the Greenway to include all bridges, footpaths, landscaping etc.

Land Acquisition Strategy

- 16.1 The Council agrees with the Partnership to undertake the land assembly services required to deliver the Programme in accordance with the Land Acquisition Strategy. The land will be purchased in the name of the Council.
- 16.2 The Partnership shall receive (at least) three quarterly reports from the Council which will include the following information:-
- 16.2.1 Progress on the implementation of the land assembly;
- 16.2.2 Updates on costs incurred in land assembly including capital payments to be made to land owners
- 16.2.3 All other information which may be relevant to the progress of the Programme as the Partnership may reasonably require.
- 16.3 The Council agrees with the Partnership to use all reasonable endeavours to ensure that the Council complies with the programme and commitments outlined in the Land Acquisition Strategy and, in particular, to ensure that the Partnership is not in breach of its commitments to the BIG. The CCG Land Acquisition is outlined in Appendix 3.
- 16.4 If in the reasonable opinion of the Council, after consulting the Partnership, it is impractical, unduly difficult or excessively expensive to deliver any part of the land assembly services required to deliver the Programme in accordance with the Land Acquisition Strategy, or to ensure that the Council complies with the programme and commitments outlined in the Land Acquisition Strategy (to include but not be limited to the purchase of individual plots of land or the securing of rights over same) then the Council and the Partnership shall work together to secure suitable alternative accommodation for the Greenway to the satisfaction of BIG.

Capital Works and Management and Maintenance

17. As soon as practicable after the signing of this Agreement, the Partnership shall commence a procurement process to procure the services of an employer's agent to manage the capital works element of the Programme. The Partnership shall be responsible for all procurement and contracts in respect of the capital works and shall enter into any necessary contracts in respect of same. The Council shall have a representative in an advisory capacity on any team that is configured to draft or review any of the said procurement documents and contracts. The Partnership warrants to the Council that it shall at all times be diligent and shall use all reasonable endeavours to ensure that the procurement processes are carried out and the capital works contracts are awarded and managed in a timely, efficient and professional manner that best secures the timely and cost-effective delivery of the Programme.

- 18 Without Prejudice to the generality of the foregoing, the Partnership shall ensure that the capital works are carried out and completed in alignment with the Land Acquisition strategy and:
 - (a) In a good and workmanlike manner with good design practice using the materials specified in any design drawings and/or any building contract; and
 - (b) Where none are specified using good quality and suitable materials without using any Deleterious Materials;
 - (c) In such a manner that the rights of owners or occupiers of any adjoining or neighbouring property are not infringed;
 - (d) In accordance with any design drawings;
 - (e) In compliance with any necessary consents;
 - (f) In compliance with any building contract;
 - (g) In compliance with all Statutory Requirements and all other statutory provisions and every applicable instrument order direction regulation byelaw local act permission licence and consent;
 - (h) In accordance with all relevant British Standards Institution Standards and Codes of Practice;

- (i) Diligently and expeditiously and in accordance with any agreed programme
 - (j) In compliance with the CDM Regulations;
 - (k) In compliance with Health and Safety Legislation;
 - (j) In compliance with any Planning Permission granted;
 - (k) In accordance with the Joint Fire Code;
19. The Council through its Director of Parks and Leisure Services agrees to be responsible for the management and maintenance of the lands and assets acquired and constructed for implementation of the Programme. The Council's obligations in this regard shall commence immediately following the issue of a certificate of practical completion in respect of each element of the capital works pursuant to the works contract for construction on the said lands or a portion of same. The Council and the Partnership shall enter into a binding contract to allow for the management and maintenance of the said lands and assets acquired and constructed to include specifications in respect of the assets as to how they shall be maintained and managed. The Council and the Partnership shall ensure that the said contract satisfies any requirements of BIG.
20. The Partnership shall (if required by the Council) use reasonable endeavours to assist the Council in procuring a collateral warranty agreement in favour of the Council from each contractor and consultant appointed in respect of the capital works associated with the Programme.

General Roles and Responsibilities of the Partnership

21. Community and Stakeholder Engagement

The Partnership shall establish a communications plan for the Programme and also ensure that the following appointments are made and/or groups formed:-

- 21.1 a community engagement officer for the Programme to deliver the community engagement strategy agreed by the PMT and whose principal role is to engage with the community in respect of the Programme.
- 21.1 education officers whose role is to support the use by the community of the Greenway

21.3 a stakeholder forum and political sub group to ensure that the key stakeholders and local politicians are kept informed of developments in respect of the Programme.

22. Accountability

Overall accountability for the delivery of the Programme will rest with the Partnership save that the Council will be accountable for its own finances and ensuring that appropriate controls are in place in order to provide the necessary assurance.

23. Insurance

The Partnership shall ensure that adequate insurance cover in the form of employee liability insurance, public liability insurance and asset insurance as required is in place throughout the course of this Agreement in respect of the Programme and shall produce any such insurance policies to the Council on demand.

24. Big Lottery Funding

The Partnership and the Council shall both use their respective best endeavours to ensure that all the terms and conditions in the BIG letter of offer, attached hereto at Appendix 1, are met.

General

25. Liability

The Council accepts no responsibility, financial or otherwise for any expenditure or liabilities arising out of the Partnership's work or activities

26 Default and Early Termination

26.1 If either party (the 'defaulting party') is in material breach of any of its obligations under this Agreement and fails to remedy such breach within 10 Working Days of receipt of a written notice from the other party (the 'non-defaulting party') requiring him to do so the non-defaulting party may serve notice of its intention to terminate this Agreement . The parties' nominees shall meet within 10 Working Days with a view to resolving any dispute or difference relating to the material breach in good faith. If such material breach has not been remedied by the defaulting party within a further 10 Working Days the non-defaulting party shall be entitled to immediately terminate this Agreement upon written notice

26.2 Either party shall be entitled to terminate this Agreement upon 7 days' notice in writing to the other if:

- (a) The other enters into any arrangement or composition with or for the benefit of its creditors; or
- (b) The other suffers any distress or execution to be levied on a substantial part of its assets; or
- (c) An order is made or a resolution is passed for the winding-up of the other; or
- (d) The other enters into liquidation either voluntarily or compulsorily (except for the purposes of amalgamation or reconstruction); or
- (e) The other has a receiver appointed for a substantial part of its assets; or
- (f) The other suspends payment of its debts or ceases or threatens to cease to carry on its business or substantially the whole of its business.

27. Consequences of termination

27.1 Termination of this Agreement howsoever arising shall be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other prior to the termination.

27.2 The Council shall be entitled subject to the appropriate consent being obtained from the Other Funders to require the immediate assignment of the benefit of any contract entered into by the Partnership in respect of the Programme to the Council thereby enabling the Council to complete the Programme.

28. Variation

This Agreement or any part of it may be amended at any time by the mutual written agreement of both parties and any additional conditions or variations of the conditions contained in this Agreement which are agreed in correspondence and which make express reference to this clause are deemed to be incorporated in this Agreement

29. Law and Jurisdiction

29.1 This Agreement shall be governed by, and construed in accordance with, the laws of Northern Ireland.

29.2 The parties to this Agreement irrevocably agree that the courts of Northern Ireland shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any dispute which may arise out of or in connection with this Agreement, and for such purpose the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Northern Ireland.

30. Indemnity

Without prejudice to any other rights of either party against the other, each party agrees to indemnify the other from and against the consequences of any breach by it of any of its obligations under this Agreement.

31 Notices

31.1 Except as otherwise provided for in this Agreement, all notices or other communications under or in respect of this Agreement to either party shall be deemed to be duly given or made when delivered (in the case of personal delivery or letter) or when despatched (in the case of facsimile) to the party addressed to it at the address appearing above (or at such address as the party may hereafter specify for this purpose to the other):

31.2 A written notice includes a notice by fax. A notice or other communication received on a non-working day or after business hours in the place of receipt shall be deemed to be given or made on the next following working day in that place.

32. Waiver

Failure or delay by a party in exercising any right under this Agreement shall not constitute a waiver of that right and shall not affect the validity of this Agreement nor any part thereof or the right of the parties to enforce its terms.

33. Severance

If any provision of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability or declaration shall in no way impair or affect any other provision all of which shall remain in full force and effect.

34. Publicity

The Council reserves the right to publicly announce its participation in the Programme and the extent of its commitment thereto, but otherwise all information passing between the Council and the

Partnership in connection with the Programme shall be treated as confidential unless otherwise agreed.

IN WITNESS whereof the Council and the Partnership have executed this Agreement in manner hereunder appearing the day and year first herein **WRITTEN**

PRESENT when the Corporate Seal of **BELFAST CITY COUNCIL** was affixed hereto:-

LORD MAYOR

CHIEF EXECUTIVE)

EXECUTED AS A DEED
by **EAST BELFAST PARTNERSHIP**
by means of these authorised signatories

CHAIR

CHIEF EXECUTIVE

APPENDICES

1. Terms and conditions of Big Lottery Funding
 2. Programme Structure Document
 3. Land Acquisition Strategy
 4. Management and Maintenance Plan
 5. CPD Service Descriptions and Responsibilities
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