

Enriching nature, Enhancing communities



(1) **SITA TRUST LIMITED**

and

(2) **THE HAVENS COMMUNITY COUNCIL**

FUNDING AGREEMENT

For

SUPPORT THE BOARDWALK IN BROAD HAVEN

THIS AGREEMENT is made on the _____ day of _____ 2014

BETWEEN

(1) **SITA TRUST LIMITED** (Company Number 3323121) of The Coach House, Eastwood Park, Falfield, Gloucestershire, GL12 8DA (**the "Trust"**)

(2) **THE HAVENS COMMUNITY COUNCIL** of Support The Boardwalk, The Farmhouse, Broadway, Haverfordwest, SA62 3HX (**the "Grantee"**)

WHEREAS:

(A) The Trust is a company limited by guarantee and, in accordance with the Regulations, has enrolled as an environmental body (Enrolment Number 503230) with ENTRUST.

(B) The Trust is able to spend contributions which it receives from landfill site operator on various approved objects as specified in the Regulations.

(C) The Trust and the Grantee wish to record the terms and conditions on which the Trust has agreed to pay sums to the Grantee in accordance with the Regulations.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS

1.1 In this Agreement the following expressions have the following meanings:

"Application"

the Grantee's application for funding under the LCF submitted to the Trust, as varied by subsequent correspondence from the Trust (if any) and the ENTRUST Project registration;

"Conditions"

the terms and conditions upon which the Trust has agreed to contribute the Funding to the Grantee (a copy of which is attached to this Agreement) (including any variations which are notified by the Trust to the Grantee and expressly or impliedly accepted by it);

"ENTRUST"

Environmental Trust Scheme Regulatory Body Limited (Company Number 3221000) of 60 Holly Walk, Royal Leamington Spa, CV32 4JE, being the regulator of environmental bodies under the Regulations or its successor from time to time;

"Funding"

the sum of **£58,422.00** which includes any VAT applicable and which (subject to this Agreement) the Trust is prepared to pay to or at the direction of the Grantee in accordance with the Application (or, if the context permits, any part of it) and the Project Delivery Plan;

All LCF contributions are assets and must be protected. The Grantee will ensure that the Funding can be properly accounted for and the Grantee agrees to comply with the provisions regarding management and disposal of assets set out in the Conditions.

7. SALE OF ASSETS FUNDED BY THE TRUST

The Grantee hereby warrants, represents and undertakes that the Funding shall, in its entirety, be applied solely and exclusively for one or more approved objects (as defined in the Regulations).

6. APPROVED OBJECTS

The Trust shall be entitled from time to time to appoint any person (an "Observer") to attend meetings of the Grantee regarding the Project or the Funding or any aspect thereof. An Observer shall be given (at the same time as the Grantee's representatives) notice of all such meetings and all agendas, minutes and other papers relating to such meetings. In all cases, an Observer shall be entitled to speak at such meetings and to require business to be placed on the agenda but shall not in any circumstances be entitled to vote or form part of the quorum at such meetings.

5. OBSERVER

The provisions contained within the Conditions are deemed to have been incorporated into this Agreement in their entirety. Where Funding is paid in instalments and the Trust changes its Conditions after an instalment is paid, the Trust shall notify the Grantee of the new Conditions and, unless the Grantee promptly objects in writing to such changes, the new Conditions shall apply to any further instalments of Funding to be paid, and, to that extent, this Agreement shall be deemed to be varied. Any reference to this Agreement shall include the Conditions.

4. CHANGES TO CONDITIONS

Irrespective of whether or not the Application has been approved by the Trust, the Grantee acknowledges that this Agreement (and each payment which becomes due under it) is conditional upon the Trust acquiring the requisite amount of funding pursuant to the Landfill Tax Law.

3. CONDITION PRECEDENT

IN WITNESS whereof this Agreement has been entered into the day and year first above written.

SIGNED for and on behalf of
SITA TRUST LIMITED

in the presence of:

WITNESS

Signature.....

Full Name (Blocks).....

Position at SITA Trust.....

First Authorised Signature.....

Full Name (Blocks).....
Christine & Leas

Position Held.....
Finance Officer

Second Authorised Signature.....

Full Name (Blocks).....
Mark Burt

Position Held.....
Governor

SIGNED for and on behalf of
THE HAVENS COMMUNITY COUNCIL



SITA TRUST LIMITED ("Trust")

**TERMS AND CONDITIONS APPLYING WHERE THE TRUST ACTS AS THE
MANAGING ENVIRONMENTAL BODY**

DEFINITIONS

- 1. In these Conditions:
- 1.1 the following expressions have the following meanings:

"Agreement" the Funding Agreement between the Trust and the Grantee incorporating these Conditions relating to the Project;

"Application" the Grantee's application for funding under the LCF submitted to the Trust, as varied by subsequent correspondence from the Trust (if any) and the ENTRUST Project registration;

"Conditions" these terms and conditions (including any variations which are notified by the Trust to the Grantee and expressly or impliedly accepted by it);

"ENTRUST" Environmental Trust Scheme Regulatory Body Limited (Company Number 3221000) whose registered office is at 60 Holly Walk, Royal Leamington Spa, CV32 4JE being the regulator of environmental bodies under the Regulations or its successor from time to time;

"Funding" the sum (or, if the context permits, any part of it) which includes any VAT applicable and which (subject to these Conditions) the Trust is prepared to pay to or at the direction of the Grantee in accordance with the Application and Project Delivery Plan;

"Guidance" any guidance, circular, code of practice or other recommended action or treatment issued by or on behalf of ENTRUST (or any other competent regulatory or statutory body) in relation to the LCF or otherwise affecting the Trust and its activities;

"Landfill Tax Law" the Finance Act 1996, the Regulations and Guidance;

"LCF" the Landfill Communities Fund and environmental bodies' initiative developed pursuant to Regulations 30 to 36;

"Premises" the premises (if any) owned, occupied or used by the Grantee as referred to in the Application;

12. The Grantee shall notify the Trust as soon as possible if the Grantee anticipates that the Project supported by the Funding will realise a distributable profit or generate any revenue (such as royalties). An appropriate share of this profit will then be repaid to the Trust (such share to be as agreed between the parties, or, in the absence of agreement, to be determined finally by the Chairman for the time being of the Trust who shall act as an expert and not as an arbitrator).

11. The Funding will not be increased in the event of an (actual or projected) overspend on the Project. Any variation in the level of support must be the subject of a revised application and re-assessment by the Trust. If any such overspend results in the Project not being capable of completion in accordance with the Application and Project Delivery Plan, then the Grantee shall (if so requested by the Trust) return all or part of the Funding to the Trust.

10. Any underspend or misapplication (i.e. otherwise than in accordance with the Application) of the Funding on the Project shall be returned to the Trust as soon as reasonably practicable following completion of the Project (in the case of underspend) or immediately (in the case of misapplication). The reference to "misapplication" in this condition 10 shall include, without limitation, a situation where the Project is or becomes non compliant with Landfill Tax Law.

9. The Grantee agrees that the provision of the Funding can only continue to the extent that the Trust continues to be enrolled as an environmental body within the provisions of Regulation 33 and 33A of the Regulations and that the Trust shall not be liable to the Grantee for any failure to provide any of the Funding not yet contributed as a consequence of discontinuance.

FUNDING

8. The Grantee will from time to time comply with all reasonable directions of the Trust in connection with the Funding. The Grantee represents, warrants and undertakes to the Trust that all necessary consents, approvals and permissions required in respect of the Project (whether under the Landfill Tax Law or otherwise) have or will be obtained before the start of the Project and complied with in full thereafter.

7.2 that the Grantee undertakes to the Trust to perform services in pursuance of the Project and that such services will be performed with reasonable care and skill and will remain at all times within the scope of the Project and the Regulations, and any ENTRUST requirements.

7.1 that such Funding is applied wholly and exclusively for the Project and in a manner which is in furtherance of the Trust's approved objects (as defined in the Regulations); or

7. If the Grantee is not an approved body (as defined in the Regulations), then the Funding is being paid to the Grantee subject to the following conditions; either:

6. If the Grantee is an environmental body, then the Grantee shall behave in all respects as an approved body within the provisions of Regulation 33 and 33A of the Regulations until all the Funding is spent in accordance with the Project terms.

5. The Grantee shall not carry out any act or thing or permit any act or thing to occur as a result of which ENTRUST cancels or may cancel the registration of the Trust as an environmental body or the registration of the Project.

- 20.4 any part of the Funding shall cease to be invested or spent in accordance with the Project purposes so that credit against landfill tax shall or might cease to be available to the Trust;
- 20.5 (except where the Grantee is a local authority) there is a change in the ownership of the Grantee which results in a change of control;
- 20.6 it shall appear to the Trust that the Application was completed fraudulently, negligently, incorrectly or is misleading in any material particular;
- 20.7 the Grantee has acted fraudulently or negligently during or made any misrepresentation prior to the performance of the Project for which the Funding has been contributed;
- 20.8 the Grantee has acted in a manner which the Trust in its reasonable opinion decides is likely to bring the Trust or any of its funders into disrepute;
- 20.9 the Grantee shall enter into any voluntary arrangement with his or its creditors;
- 20.10 the Grantee (if a company) becomes subject to an administration order or passes a resolution (otherwise than for the purposes of amalgamation or reconstruction) for the winding up or dissolution of the Grantee or a court of competent jurisdiction shall make an order to that effect;
- 20.11 the Grantee (if an individual or unincorporated body) becomes bankrupt;
- 20.12 the Grantee shall have a receiver or administrative receiver appointed of it or over the whole or any part of its undertaking or assets or otherwise is or becomes insolvent;
- 20.13 the Grantee ceases to function or to operate or to carry on its published activities.
21. Upon termination for whatever reason, the Trust shall, without limitation to any other remedy which may be available to it, in addition to being entitled to withhold any of the Funding not yet contributed, be entitled to recover any of the Funding contributed which would be recoverable under the Regulations, and shall be free to apply such Funding elsewhere. Termination of the Agreement shall not affect any continuing obligations of the Grantee in respect of Funding payments already made to the Grantee.
- PUBLICITY**
22. The Grantee will not issue any public statement, press release or other publicity in relation to the Funding or which refers to the Trust other than in a form approved by the Trust who must be consulted in advance of any such public statement, press release or other publicity.
23. The Trust may make public the purpose and amount of the Funding in whatever way it shall deem fit from time to time.

32. All provisions of these Conditions and the Agreement shall so far as they are capable of being performed or observed continue in full force and effect notwithstanding termination except in respect of those matters already performed.
33. No exercise or failure to exercise or delay in exercising any right, power or remedy by any party shall, unless otherwise agreed in writing by such party, constitute a waiver by that party of any such right, power or remedy or of any other right, power or remedy arising under the Conditions.
34. This Agreement sets out the entire agreement and understanding between the parties and no purported variation of the Agreement shall be effective unless made in writing and signed by both parties (subject as otherwise provided in these Conditions).
35. The Contracts (Rights of Third Parties) Act 1999 shall not apply to the contract between the Trust and the Grantee of which these Conditions form part.

MISCELLANEOUS

31. The Grantee shall ensure that all statutory, court and other requirements applicable to achieving and maintaining or performing the Project and which are within its control are complied with in all respects.

COMPLIANCE

30. Without prejudice to condition 28, if any intellectual property rights (whether or not capable of registration) are created in connection with the Project which are directly or indirectly attributable to the Funding by the Trust (whether in respect of the subject matter of the Project or as a result of any written report or analysis of it), then the Trust shall be an owner of such intellectual property rights but the Trust shall on request by the Grantee assign or (at the Trust's option) license to the Grantee the benefit of such ownership interest (either exclusively or, at the Trust's option, non exclusively) in return for a cash sum by way of assignment fee or royalty. Such sum shall be appropriate to the actual or potential value of the intellectual property rights so created and shall be agreed between the parties or, in the absence of agreement, on the application of either party to the Chairman for the time being of the Trust who shall act as an expert and not as an arbitrator.

IPR

- 28.4 The Trust will maintain a register of such assets and the Grantee will promptly provide to the Trust all relevant information and access as the Trust shall reasonably require for these purposes.
29. The Grantee shall use all reasonable endeavours to maintain the capital value of any assets acquired with the Funding including (in the case of tangible assets) keeping them in a good and safe condition, obtaining any necessary licences or consents for their use and insuring them against fire, theft and other usual risks and complying with all statutory and regulatory requirements.