



## STRATEGIC PARTNERSHIP AGREEMENT

relating to

COTSWOLD CANALS CONNECTED RESTORATION PROJECT

THIS AGREEMENT is dated 20<sup>th</sup> May 2020

## **PARTIES**

- (1) STROUD DISTRICT COUNCIL of Ebley Mill, Ebley Wharf, Stroud Glos GL5 4UB (“SDC”)
- (2) CANAL & RIVER TRUST whose principal office is at First Floor North, Station House, 500 Elder Gate, Milton Keynes MK9 1BB (“CRT”)
- (3) COTSWOLD CANALS TRUST of Island House, Moor Road, Chesham, HP5 1NZ (“CCT”)
- (4) GLOUCESTERSHIRE COUNTY COUNCIL of Shire Hall, Westgate Street, Gloucester GL1 2TG (“GCC”)
- (5) STROUD VALLEYS CANAL COMPANY of Brimscombe Mill, Brimscombe Port, Stroud Glos. GL5 2QG (“SVCC”)

## **BACKGROUND**

- (A) On the 29<sup>th</sup> November 2017 the Partners entered into the First Partnership Agreement for the purpose of submitting a bid to the then Heritage Lottery Fund (HLF) for development stage funding for the Project.
- (B) The bid was submitted on the 30<sup>th</sup> November 2017 and subsequently HLF confirmed that the bid had been successful and awarded a sum of £842,800.00 for the purpose of developing the Project to the point where a further bid for full funding of the delivery stage of the Project could be submitted.
- (C) The Partners are now in the process of preparing the bid to the National Lottery Heritage Fund (“NLHF”) for the delivery stage of the Project (and undertaking other required actions) with the intention of submitting the same by the 1<sup>st</sup> June 2020.
- (D) The Partners recognise that the First Partnership Agreement is no longer appropriate for the purposes of the current work on the Project or for the delivery stage thereof and wish to replace the First Partnership Agreement with this agreement.
- (E) The Partners have therefore entered into this agreement which sets out the terms on which they will, in the event of the delivery stage bid being successful, collaborate in order to deliver the Project
- (F) This agreement therefore sets out the governance, financial and other arrangements which will apply from the date of this agreement until the completion of the Project.

## **AGREED TERMS**

1. **INTERPRETATION**

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

**Accountable Body:** means SDC

**Canal Project Manager:** means the holder from time to time of the post of Project Manager in respect of the Project and other projects related to the restoration of the Cotswold canals and employed by SDC or his/her nominee

**Contributions:** means the sums to be contributed to the Project by each of the Partners in accordance with clause 4.2 as set out in Schedule 1 to this agreement;

**Delivery Stage Bid:** means the bid for NLHF Grant referred to in recital C to this agreement

**Effective Date:** means the 1<sup>st</sup> June 2020

**First Partnership Agreement:** means an agreement between the parties hereto dated 29<sup>th</sup> November 2017 for the purpose of submitting a bid to HLF for development stage funding for the Project and which set out therein the governance and other arrangements which would apply in respect of that purpose

**Force Majeure Event:** means an event beyond the reasonable control of a Partner which renders the performance of this agreement impossible whether temporarily or otherwise which (without prejudice to the generality of this definition) may include prohibitive government regulation, flood, extreme weather conditions, fire, explosion, malicious damage, industrial action or lockouts, terrorism, war, civil commotion, military operations, riot, national emergency, the act or omission of any third party not being that Partner's agent or sub-contractor or any change in the law or in the interpretation of the law by the courts

**Grant Conditions:** the terms and conditions specified in any agreement in respect of NLHF funding for the Development Stage of the Project

**Lead Partners:** means SDC and CCT

**NLHF:** means the National Lottery Heritage Fund

**NLHF Grant:** means the amount of funding which NLHF confirms it will provide towards the Project in response to the Delivery Stage bid referred to in recital (C) of this agreement

**Partners:** means the parties to this agreement including the Lead Partners

**Project:** means the restoration/re-creation of the four miles of the Stroudwater Navigation and other associated works and facilities as described in the bid for development stage funding and as will be set out in greater detail in the bid for delivery stage funding

**Project Board:** means a board comprising of representatives of each of the Partners in accordance with Schedule 2 to this agreement together with the Canal Project Manager who shall be an ex officio member of the board

**Project Funds:** means the aggregate of the NLHF Grant, the Contributions and any other funds donated or procured for the purpose of delivering the Project

**Relevant Policies and Procedures:** means policies and procedures adopted by each of the Partners from time to time in respect of Data Protection, Freedom of Information, Health and Safety, Anti-Fraud and Corruption, Financial Regulation, Contract Procurement and any other policy or procedure which affects or is likely to affect in any way the discharge of the Partners' obligations pursuant to this agreement

**Required Task:** means any construction, engineering or other work or any service which is necessary or desirable for the purpose of achieving the completion of the Project and which is identified in the Delivery Stage Bid or otherwise agreed by the Project Board

## 2. FIRST PARTNERSHIP AGREEMENT

This agreement shall come into effect upon the Effective Date whereupon the First Partnership Agreement and the obligations of the parties thereunder will cease and determine absolutely

## 3. GOVERNANCE AND ACCOUNTABILITY

- 3.1 The Project Board will be responsible for advising the Accountable Body on all aspects of the design, funding and delivery of the Project and for that purpose will hold regular meetings and will produce written records of its deliberations in that respect in the form of minutes.
- 3.2 The Project Board shall be duly constituted as an advisory committee to the Lead Partners, in the case of SDC pursuant to section 102(4) of the Local Government Act 1972, and each of the Partners agrees to appoint and maintain one representative to the Project Board throughout the subsistence of this agreement. The Project Board will conduct its proceedings in accordance with Schedule 2 to this agreement.
- 3.3 The Canal Project Manager shall be responsible for reporting the recommendations of the Project Board to the Accountable Body and or the appropriate Partner or Partners for the purpose of procuring that relevant

actions are taken in order to progress the delivery of the Project to completion in accordance with the Delivery Stage Bid.

- 3.4 The undertaking of Required Tasks for the purpose of delivering the Project shall be in accordance with the terms of the Delivery Stage Bid save that the Accountable Body will have the discretion to depart from those terms where it considers such departure to be in the best interests of delivering the Project and after consulting the Project Board in respect of such proposed departure. Where any actions taken by a Partner other than the Accountable Body involve expenditure of Project Funds that Partner will provide the Lead Partners with all such financial information and records of such expenditure as the Lead Partners reasonably requires.
- 3.5 The Partners agree that (subject to all requirements of law and the Grant Conditions) all decisions and actions taken by the Accountable Body for the purposes of this agreement shall be subject to and in compliance with its Constitution and shall be taken in accordance with any authority given by it to any committee, subcommittee or officer of the Lead Authority.
- 3.6 The Partners agree that in carrying out their obligations pursuant to clause 3 the Lead Partners shall have sole discretion to undertake such actions as they consider are necessary and convenient for the purpose of fulfilling those obligations subject to the Lead Partners having due regard to any advice provided to them by the Project Board.

#### **4. PARTNERS OBLIGATIONS**

The Partners hereby agree that each of them will:

- 4.1 Support and provide all reasonable assistance to the Accountable Body in undertaking its obligations under clause 2 of this agreement
- 4.2 Agree with the Project Board and the Accountable Body a programme for payment of their respective Contributions to the Accountable Body where appropriate
- 4.3 Co-operate and use all reasonable endeavours to ensure the successful completion of the Project
- 4.4 Act in good faith and in a spirit of co-operation in the carrying out of the Project
- 4.5 Ensure that all communications are constructive, comprehensive, timely and open
- 4.6 Promptly raise and use all reasonable endeavours to resolve any issues, difficulties, or problems

- 4.7 Aim to achieve consensus in decision making for the benefit of the Project
- 4.8 Use all reasonable care attention and diligence in undertaking their respective roles and discharging their respective responsibilities pursuant to this agreement

## **5. FUNDING AND EXPENDITURE**

- 5.1 The Accountable Body will be accountable to the Partners and the NLHF for expenditure of the NLHF Grant.
- 5.2 Expenditure of any Project Funds shall be in accordance with clause 3 of this agreement. Where the Delivery Stage Bid is not clear as to the responsibility for undertaking or procuring the undertaking of a particular Required Task the Lead Partners will consider the steps required to be taken by it or such other of the Partners as appears appropriate to achieve the carrying out of the Required Task in question and will make recommendations to the Project Board in that respect.
- 5.3 Where any Partner (other than the Accountable Body) undertakes or commissions with the agreement of the Lead Partners the undertaking of a Required Task it will either (i) submit an invoice to the Accountable Body in respect of the expenditure incurred by that Partner in procuring the undertaking of the Required Task or (ii) where the said Required Task has been commissioned from a third party procure the submission of such an invoice by that third party to the Accountable Body.
- 5.4 Upon receipt of an invoice pursuant to clause 5.3 the Accountable Body will (subject to it being satisfied that the expenditure has been reasonably and properly incurred on the Project and is in accordance with all relevant Grant Conditions) promptly pay from the Project Funds the amount stated in the invoice to the relevant Partner or third party as the case may be. For the avoidance of doubt it is agreed that the Accountable Body shall not be obliged to make any payment out of Project Funds in respect of any works or services which do not constitute a Required Task.
- 5.5 The Parties agree to be bound by the Grant Conditions and undertake to the Accountable Body (and each other) that they will not act or omit to act in any way which puts or is likely to put the Accountable Body in breach of any of the Grant Conditions.

## 6. FINANCIAL REPORTING

- 6.1 The Accountable Body will keep accurate and up-to-date accounts and records of the receipt of all Project Funds and of expenditure out of such funds and will provide the Project Board with regular reports of such receipts and expenditure and of progress in delivering the Project.

## 7. TERMINATION

- 7.1 Either of the Lead Partners shall be entitled to terminate this agreement by giving to all of the other Partners not less than 2 months' notice in writing to that effect in circumstances where:

7.1.1 that Lead Partner considers (acting reasonably) that there are or will be insufficient funds available to meet the cost of continuing with and/or completing the Project and that alternative funding to meet the shortfall is unlikely to be obtainable; or

7.1.2 any action is taken by NLHF to claw-back, withdraw or withhold NLHF Grant and the Lead Partner considers it unlikely that such grant can or will be replaced or restored within a reasonable time; or

7.1.3 any other circumstances arise which the Lead Partner reasonably considers to materially call into question the financial or reputational viability of the Project or the ability of the Partners to achieve completion of it (including a Force Majeure Event) and which cannot reasonably be expeditiously remedied

Otherwise this agreement shall terminate when the Project Board determines that the Project has been completed or otherwise unanimously agrees that it should be terminated for any other reason.

- 7.2 Before any unilateral decision is taken by either of the Lead Partners to terminate this agreement pursuant to clause 7.1 that Lead Partner will refer the matter to the Project Board and where appropriate to NLHF in an attempt to resolve the issues giving rise to that Lead Partner considering termination but such consultation shall be without prejudice to the rights of that Lead Partner contained in clause 7.1 in the event that it considers that no reasonable resolution can be found

- 7.3 None of the Partners or any number of them other than the Lead Partners shall be entitled to terminate this agreement.

- 7.4 In the event of termination pursuant to clause 7.1 the Partners, in association with NLHF will agree a closing financial statement for the Project which will (inter alia) clearly state the financial liability of all of the Partners at the point of termination assessed and agreed on a fair and proportionate basis

as between the Partners and any dispute in respect of such financial statement shall be dealt with by way of dispute resolution pursuant to clause 10

- 7.5 Subject to clause 7.4, upon expiry of the notice pursuant to clause 7.1 this agreement shall cease and determine absolutely save in respect of any antecedent breach of any of its terms by any of the Partners.

## **8. NOTICES**

- 8.1 Any notice to be served by any of the Partners under this agreement shall be sufficiently served if either delivered by hand or sent by pre-paid first class post to the address of the relevant recipient or recipients as stated at the beginning of this agreement or such other address as shall be notified in writing by any Partner to the other Partners from time to time. Communication of any notice by facsimile transmission or electronic mail will not constitute good service for the purposes of this agreement.

- 8.2 Any notice sent in accordance with sub paragraph 6.2 shall (subject to proof to the contrary) be deemed to have been received by the addressee on the second day of business after the date of posting.

## **9. COMPLIANCE WITH LAW AND RELEVANT POLICIES AND PROCEDURES**

The Partners acknowledge and agree that the Relevant Policies and Procedures shall apply in respect of any action or other matter required or arising in respect of this agreement and the Partners agree not to act or omit to act in any way which causes or might cause any Partner to be in breach of its Relevant Policies and Procedures or any other requirement of any applicable law or regulation including the terms of any consent licence or permission required for the purpose of delivering the Project

## **10. DISPUTE RESOLUTION**

If any dispute or difference arises between the Partners including with regard to the interpretation of any of the terms of this agreement then the Partners shall in good faith use all reasonable endeavours to resolve the matter of dispute or difference and if the Partners are unable after a reasonable period (taking account of the particular circumstances) to resolve the dispute or difference then any of the Partners may refer the matter to either (i) mediation by a mediator agreed by the parties or in default of agreement appointed by the Lead Partners; or (ii) arbitration by the decision of a single arbitrator to be agreed upon by the Partners or in default of agreement to be appointed by the President for the time being of the Law Society in accordance with the provisions of the Arbitration Act 1996

## **11. ASSIGNMENT AND SUB CONTRACTING**

- 11.1 None of the Partners shall be entitled to assign sub-contract or otherwise transfer the whole or any part of its obligations under this agreement (except in the case of assignment or transfer for the purposes of solvent reorganisation or transfer to a successor body or by operation of law) without the prior written consent of all Partners and it is hereby agreed and declared that in view of the close and collaborative nature of the relationship between the Partners intended by this agreement it shall be reasonable to refuse consent to such assignment sub-contract or transfer other than in exceptional circumstances.
- 11.2 No assignment, sub contract or transfer by a Partner in accordance with clause 11.1 shall relieve it of any of its obligations or duties under this agreement and that Partner shall remain fully liable as though the matter assigned, transferred or sub-contracted had been carried out by that Partner.
- 11.3 The terms of any sub-contract entered into by a Partner in connection with this agreement shall be consistent with and shall require compliance with this agreement including all auditing and financial requirements
- 11.4 Any Partner sub-contracting work under this agreement shall ensure that it and any third party contractor to whom that work is sub-contracted has the appropriate skill, expertise and experience to carry out the work and has appropriate financial and auditing procedures in place to manage its commitments to the Project and that Partner shall ensure that both it and its sub-contractor have complied with all relevant tax requirements relevant to the agreement and their involvement with it.

## **12. FORCE MAJEURE**

- 12.1 If the performance by any Partner of any of its obligations under this Agreement is prevented or delayed by a Force Majeure Event then that Partner shall be excused from the performance of that obligation for the duration of the Force Majeure Event subject to giving notice as set out in clause 12.2 below.
- 12.2 If a Partner becomes aware of a Force Majeure Event that is likely to give rise to a delay to the progress of the Project or have a materially adverse effect on it then the Partner shall notify the Accountable Body of the nature of the said event and of its likely duration and the Accountable Body shall report to the Project Board with recommendations on actions it proposes to take to mitigate the impact of the event and maintain progress of the Project to completion.

### **13. VARIATIONS**

13.1 No change or variation to this agreement will be effective unless and until agreed in writing and signed by all of the Partners

### **14. INDEMNITIES**

14.1 Subject to clause 14.2 each of the Partners shall indemnify the other Partners against all claims, demands, actions, costs, expenses losses and damage arising from any breach of the terms of this agreement or any infringement of law in the context of this agreement by the indemnifying Partner including (but without limitation) any breach of the Data Protection Act 2018 or regulations related to that Act.

14.2 Except as may be otherwise expressed in this agreement no Partner shall be liable to another for loss of actual or anticipated profits or any economic loss or loss of revenue arising out of or in connection with this agreement whether for breach of contract, negligence or otherwise.

14.3 No Partner seeks to exclude or limit its liability for death or personal injury caused by its negligence or for fraudulent misrepresentation made by it or on its behalf, or for such other matters where exclusion of liability is constrained or prohibited by operation of law

### **15. NATURE OF AGREEMENT**

15.1 Nothing in this Agreement will be construed as creating a partnership (for the purposes of the Partnership Act 1890) or joint venture although the Partners enter into this Agreement in good faith and in a spirit of co-operation

15.2 No Party to this Agreement shall represent itself as being the agent of another Party hereto nor is authorised to commit another Party otherwise than is provided for herein

### **16. WAIVER**

16.1 No failure or delay or grant of indulgence by a Partner to exercise or enforce any right power or remedy available to it will operate or be construed as a waiver of such right, power or remedy under this agreement or otherwise, nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.

### **17. SEVERABILITY**

17.1 If any court or other competent authority finds that any part or provision of this agreement is void, unlawful or unenforceable then that part or provision will be deemed to have been severed from this agreement and shall have no force or effect. The remaining provisions of this agreement will continue to be

valid and enforceable to the fullest extent permitted by law and the Partners shall in good faith settle terms of a mutually acceptable and satisfactory alternative part or provision which is valid lawful and enforceable.

## **18. GOVERNING LAW AND JURISDICTION**

- 18.1 This agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to the agreed provisions in respect of alternative dispute resolution the Partners agree to submit to the exclusive jurisdiction of the courts of England and Wales regarding any claim or matter arising under this agreement

### SCHEDULE 1

#### **Financial Contributions**

The following partners commit to making financial contributions as outlined during the whole lifetime of the Project:-

Stroud District Council - £3,220,000, together with 'help in kind' assistance and office accommodation

Cotswold Canals Trust - a minimum of £4,625,000 including the grant to CCT by Highways England of £4,000,000, and to use best endeavours to fund any gap between costs and secured income.

Gloucestershire County Council - £700,000, together with 'help in kind' assistance up to the value of £300,000

Canal & River Trust - £625,000, together with 'help in kind' assistance up to the value of £375,000

### SCHEDULE 2

#### **Project Board: Constitutional Arrangements**

1. Number of members

- 1.1 Each Partner will appoint representatives to the Project Board as follows:-

Stroud District Council – 3

Cotswold Canals Trust – 2

Canal & River Trust – 1

Gloucestershire County Council – 1

Stroud Valleys Canal Company - 1

The names of those representatives will be submitted to the Canal Project Manager who shall be an ex officio and non-voting member of the Project Board.

2. Chair

2.1 The Chair of each meeting of the Project Board will be appointed by a majority of the Project Board members present at the commencement of each meeting.

3. Administration

3.1 The Lead Partner will provide secretariat services to the Project Board (minute taking, circulation of notes, notification of meetings etc).

4. Regularity of meetings

4.1 The Project Board will agree the regularity of its meetings which in any event shall be not less than one per calendar month. A list of meeting dates will be agreed by the end of October in each year for the ensuing year.

5. Decision making

5.1 The rules of procedure for meetings of committees set out in the Accountable Body's constitution will be applied for the purpose of taking decisions.

5.2 A quorum will exist when at least one representative from both the Accountable Body and Cotswold Canals Trust and one of the other Partners are present.

5.3 Individual Project Board representatives will be responsible for reporting back to their own organisations.

**Canal Project Manager: Role and Responsibilities**

- i. To oversee and manage the implementation of the Project on behalf of the Partners and the Project Board
- ii. To act as the first point of contact of the Lead Partners and the Project Board for all purposes in connection with the Project
- iii. To provide effective liaison between the Accountable Body and the other Partners and the Project Board

- iv. To report to the Project Board on progress of the Project at reasonable and appropriate intervals as determined by the Project Board
- v. To report recommendations of the Project Board to the appropriate Committee of the Accountable Body as and when necessary
- vi. To exercise such delegated powers in relation to the Project as may be given to him/her by the Accountable Body from time to time subject to any limitations or conditions imposed on those powers by the Project Board
- vii. To consult the Project Board as may be required or appropriate in respect of the Project having particular regard to any financial and legal implications as may arise from time to time

Signed..........  
 Name and Designation J.A.P. WHITE - CHAIR of TRUSTEES  
 Duly authorised on behalf of the Cotswold Canals Trust  
 Dated.....30 APRIL 2020.....

Signed.....  
 Name and Designation .....  
 Duly authorised on behalf of the Canal & River Trust  
 Dated.....

Signed..........  
 Name and Designation **Mark Darlow-Joy BEng CEng MCIHT**  
**Highways Programme & Procurement Manager**  
 Duly authorised on behalf of Gloucestershire County Council  
 Dated.....06/05/2020.....

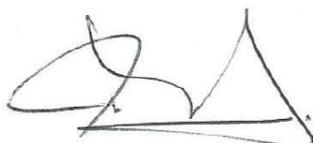
Signed.....

A handwritten signature in black ink, appearing to read 'Brendan Cleere', written in a cursive style.

Name and Designation: Brendan Cleere, Strategic Director of Place

Duly authorised on behalf of Stroud District Council

Dated: 13 May, 2020

A handwritten signature in black ink, appearing to read 'John Twydell', written in a cursive style.

Signed

Name and Designation John Twydell Chairman

Duly authorised on behalf of the Stroud Valleys Canal Company

Dated 29 April 2020