

Mr Steve Grimmond
Chief Executive
Fife Council
Fife House
North Street
Glenrothes
Fife
KY7 5LT

Our ref: Fife / Sub-Regional Business Park
21/03/2017

Dear Mr Grimmond

OFFER OF GRANT FOR CREATION OF SUB-REGIONAL BUSINESS PARK

The Scottish Ministers in exercise of their powers under section 126 of the Housing Grants, Construction and Regeneration Act 1996 hereby offer to give to Fife Council ("the Grantee") a grant of up to **£450,000 STERLING**, payable over the financial year 2016 to 2017 in connection with the **Creation of Sub-Regional Business Park**, which is more particularly described in Part 1 of **SCHEDULE 1** ("the Project") and subject to the following terms and conditions:

1. Definitions and Interpretation

- 1.1 In these Conditions, the words and expressions set out in **SCHEDULE 4** shall have the meanings ascribed to them in that Schedule.
- 1.2 In these Conditions unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 1.3 The headings in these Conditions are for convenience only and shall not be read as forming part of the Conditions or taken into account in their interpretation.
- 1.4 Except as otherwise provided in these Conditions, any reference to a clause, paragraph, sub-paragraph or schedule shall be a reference to a clause, paragraph, subparagraph or schedule of these Conditions. The schedules are intended to be contractual in nature. They form part of the Agreement and should be construed accordingly.
- 1.5 This Agreement shall not be varied except by an instrument in writing signed by both parties.

2. Purposes of the Grant

- 2.1 The Grant is made to enable the Grantee to carry out the Project.
- 2.2 The Grant shall only be used for the purposes of the Project and for no other purpose whatsoever.
- 2.3 No part of the Grant shall be used to fund any activity or material which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.
- 2.4 The main objectives/expected outcomes of the Grant are considered those detailed at section 3.0 of the approved application form dated: 14 March 2017.
- 2.5 The targets/milestones against which progress in achieving objectives/expected outcomes shall be monitored are considered those detailed at paragraph 4.3 of the approved application form dated: 14 March 2017.
- 2.6 The eligible costs for which the Grant can be claimed are those detailed at section 2.0 of the approved application form dated: 14 March 2017. Any changes to these costs must be approved in advance.
- 2.7 The Grant shall be used for the delivery and completion of the first Phase of a sub-regional business park (the Project) in line with the purposes detailed at paragraph 2.2 of the approved application form dated: 14 March 2017. Specifically, the Grant shall be used for the purposes of preparatory work to support the creation of a sub-regional business park by preparing land upon which business park buildings can be located serving Kincardine, Fife. The Grant shall be used to assess the technical constraints and viability of a site for the future construction of business park buildings. The Grant shall also enable the remediation and servicing of the land for development in addition to the creation or upgrade of suitable vehicle access points.
- 2.8 The eligible costs exclude:
- Any Value Added Tax (VAT) reclaimable by the Grantee.

3. Payment of Grant

- 3.1 The Grant shall be paid by the Scottish Ministers to the Grantee in accordance with the terms of **SCHEDULE 1** attached.
- 3.2 The Grantee shall within 1 month following the end of each financial year in respect of which the Grant has been paid or of receiving the final instalment of the Grant submit to the Scottish Ministers a statement of compliance with the Conditions of the Grant using the form of words provided in **SCHEDULE 3**. The statement shall be signed by the Grantee's Chief Executive or Director of Finance or equivalent.
- 3.3 In the event that the amount of the Grant paid by the Scottish Ministers to the Grantee at any point in time is found to exceed the amount of the expenses reasonably and properly incurred or required by the Grantee in connection with the Project, the Grantee shall repay to the Scottish Ministers the amount of such excess within 14 days of receiving a written demand for it from or on behalf of the Scottish Ministers.

- 3.4 The Scottish Ministers shall not be bound to pay to the Grantee, and the Grantee shall have no claim against the Scottish Ministers in respect of, any instalment of the Grant which has not been claimed by the Grantee by 31 March of the applicable financial year as set out in **SCHEDULE 1**, unless otherwise agreed in writing by the Scottish Ministers.

4. Inspection and Information

- 4.1 The Grantee shall keep the Scottish Ministers fully informed of the progress of the Project in the form of monitoring reports and claims as detailed in schedule 1, part 2 and paragraph 7. Details shall include actual expenditure to date compared with profiled expenditure and any change to estimated expenditure for the financial year and/or the Project as a whole, the reasons for any such changes and progress in achieving objectives/outcomes.
- 4.2 Revisions to targets/milestones against which progress in achieving objectives/outcomes are monitored shall be subject to the written agreement of the Scottish Ministers.
- 4.3 The Grantee shall, on completion of the Project, submit a report to the Scottish Ministers summarising the outcomes and performance of the Project. Such a report shall include such statistical and other information relating to the impact of the Project as shall be required by the Scottish Ministers.
- 4.4 The Grantee shall also provide any other information that the Scottish Ministers may reasonably require to satisfy themselves that the Project/Programme is consistent with the Agreement. The Grantee shall provide the Scottish Ministers with prompt access to any information they reasonably require to ensure compliance with these Conditions. This would include the need to retain adequate records to justify the outcomes and outputs declared through project monitoring reports.
- 4.5 The Grantee shall keep and maintain for a period of: **6 years** after the expenditure occurs, adequate and proper records and books of account recording all receipts and expenditure of monies paid to it by the Scottish Ministers by way of the Grant. The Grantee shall afford the Scottish Ministers, their representatives, the Auditor General for Scotland, his/her representatives and such other persons as the Scottish Ministers may reasonably specify from time to time, such access to those records and books of account as may be required by them at any reasonable time in response to a written request for such access from the person seeking it. The Grantee shall provide such reasonable assistance and explanation as the person carrying out the inspection may from time to time require.
- 4.6 In the event of the Grantee becoming aware of or suspecting any irregular or fraudulent activity that may have any impact on the Project or on the use of the Grant, or any part of it, the Grantee shall immediately notify the Scottish Ministers of such activity and provide such other information as the Scottish Ministers may reasonably require in relation to the impact on the Project and the use of the Grant.
- 4.7 The grantee shall immediately inform the Scottish Ministers of any change in its constitution for example, but not limited to, a change in status from one type of body corporate to another.

5. Confidentiality and Data Protection

- 5.1 The Grantee will respect the confidentiality of any commercially sensitive information that they have access to as a result of the Project.
- 5.2 Notwithstanding the above, the Grantee may disclose any information as required by law or judicial order. All information submitted to the Scottish Ministers may need to be disclosed and/or published by the Scottish Ministers. Without prejudice to the foregoing generality, the Scottish Ministers may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure. Further, the Scottish Ministers may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland, in right of the Scottish Administration or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Scottish Ministers shall if they see fit disclose such information but are unable to impose any restriction upon the information that it provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this agreement.
- 5.3 The Grantee shall ensure that all requirements of the Data Protection Act 1998 are fulfilled in relation to the Project.
- 5.4 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Scottish Ministers publish an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Grantee should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of grant) in the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

6. Disposal of Assets

- 6.1 The Grantee shall not, without prior written consent of the Scottish Ministers, dispose of any asset funded, in part or in whole, with Grant funds within 15 years of the asset being acquired or developed. During that period the Scottish Ministers shall be entitled to the proceeds of the disposal – or the relevant proportion of the proceeds based on the percentage of grant funding used in connection with the acquisition or improvement of the asset against the whole proceeds. The Scottish Ministers shall also be entitled to the relevant proportion of any proceeds resulting from any provision included as a condition of sale.
- 6.2 Where Grantees are assisting third party organisations, by providing grant on property not owned by the Grantee, or where the grantee subsequently transfers ownership, they must place a clawback provision and security on the property to ensure the condition can be met.

7. Publicity

- 7.1 The Grantee shall where reasonably practicable acknowledge in all publicity material relating to the Project the contribution of the Scottish Ministers to its costs. The Scottish Ministers may require to approve the form of such acknowledgement prior to its first publication.
- 7.2 The confirmation of Capital Grant Fund support must be reflected in any new publicity material on at least an equal basis with that of any other financial contributor to the Project.

8. Intellectual Property Rights

- 8.1 All Intellectual Property Rights are hereby assigned to and shall vest in the Crown or its assignees.
- 8.2 The Grantee shall ensure that nothing contained in any materials produced or submitted to the Scottish Ministers by the Grantee or anyone acting on its behalf nor the reproduction of such materials, shall constitute an infringement of any third party copyright or intellectual property right and shall indemnify the Scottish Ministers against all actions, proceedings, claims and demands made by reason of any such infringement.

9. Default and Recovery etc. of Grant

- 9.1 The Scottish Ministers may re-assess, vary, make a deduction from, withhold, or require immediate repayment of the Grant or any part of it in the event that:
- 9.1.1 The Grantee commits a Default;
 - 9.1.2 The Scottish Ministers consider that any change or departure from the purposes for which the Grant was awarded warrants an alteration in the amount of the Grant;
 - 9.1.3 The Grantee fails to carry out the Project;
 - 9.1.4 In the Scottish Ministers' opinion, the progress on the Project is not satisfactory; or
 - 9.1.5 In the Scottish Ministers' opinion, the future of the Project is in jeopardy.
- 9.2 If, in the Scottish Ministers' opinion, the Grant or any part of it is state aid and they consider that they are required to recover such sum in order to ensure compliance with their obligations under EU law Scottish Ministers may require immediate repayment of the Grant or any part of it together with interest at such rate and on such basis as may be determined from time to time by the Commission of the European Union.
- 9.3 The Scottish Ministers may withhold the payment of the Grant if at any time within the duration of the Agreement:
- 9.3.1 The Grantee passes a resolution that it be wound up, or a court makes an order that the Grantee be wound up, in either case otherwise than for the purposes of reconstruction or amalgamation, or circumstances arise which would enable a court to make such an order or the Grantee is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- 9.3.2 Where the Grantee is an individual, if a petition is presented for the Grantee's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Grantee; or the Grantee makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or
- 9.3.3 A receiver, manager, administrator or administrative receiver is appointed to the Grantee, or over all or any part of the Grantee's property, or circumstances arise which would entitle a court or a creditor to appoint such a receiver, manager, administrator or administrative receiver.
- 9.4 In the event that the Grantee becomes bound to pay any sum to the Scottish Ministers in terms of clause 9.1, the Grantee shall pay the Scottish Ministers the appropriate sum within 14 days of a written demand for it being given by or on behalf of the Scottish Ministers to the Grantee. In the event that the Grantee fails to pay the sum within the 14 day period, the Scottish Ministers shall be entitled to interest on the sum at the rate of 2 per cent per annum above the Bank of England base lending rate prevailing at the time of the written demand, from the date of the written demand until payment in full of both the sum and interest.
- 9.5 Notwithstanding the provisions of this clause 9, in the event that the Grantee is in breach of any of the Conditions, the Scottish Ministers may, provided that the breach is capable of a remedy, postpone the exercise of their rights to recover any sum from the Grantee in terms of clause 9 for such period as they see fit, and may give written notice to the Grantee requiring it to remedy the breach within such period as may be specified in the notice. In the event of the Grantee failing to remedy the breach within the period specified, the Grantee shall be bound to pay the sum to the Scottish Ministers in accordance with the foregoing provisions.
- 9.6 Any failure, omission or delay by the Scottish Ministers in exercising any right or remedy to which they are entitled by virtue of clauses 9.1 to 9.3 shall not be construed as a waiver of such right or remedy.

10. Assignment

The Grantee shall not be entitled to assign, sub-contract or otherwise transfer its rights or obligations under the Agreement without the prior written consent of the Scottish Ministers.

11. Termination

The Agreement may be terminated by the Scottish Ministers giving not less than 3 months' notice in writing from the date of the notice being sent.

12. Corrupt Gifts and Payments of Commission

The Grantee shall ensure that its employees shall not breach the terms of the Bribery Act 2010 in relation to this or any other grant. The Grantee shall ensure that adequate controls are in place to prevent bribery.

13. Continuation of Conditions

- 13.1 These Conditions, except for Condition 6, shall continue to apply for a period of 5 years after the end of the financial year in which the final instalment of the Grant was paid.
- 13.2 Condition 6 shall continue to apply until the end of the period referred to in that Condition.

14. Compliance with the Law

The Grantee shall ensure that in relation to the Project, they and anyone acting on their behalf shall comply with the relevant law, for the time being in force in Scotland.

15. Governing Law

This contract is governed by the Law of Scotland and the parties hereby prorogate to the exclusive jurisdiction of the Scottish Courts.

If you wish to accept the offer of this Grant on the whole terms and conditions as set out in the letter and annexed Schedules, you should sign and date both copies of the Grant Acceptance below and return one copy of the offer of Grant and Schedules to me at Enterprise and Cities Division, 3rd Floor, 5 Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU. You should retain the second copy of the offer of Grant and Schedules for your own records.

Yours sincerely



Oonagh Gil

Deputy Director, Enterprise and Cities Division
Scottish Government

21/03/2017

GRANT ACCEPTANCE

On behalf of Fife Council I accept the foregoing offer of Grant by the Scottish Ministers dated 21/03/2017 on the whole terms and conditions as set out in the letter and annexed Schedules. I confirm that I hold the relevant signing authority.

Signed:

«Director/Company Secretary/Authorised Signatory»

Print Name:

Position in Organisation of Person Signing:

Date:

Place of Signing:

Signed:

«Witness»

Witness Name:

Address:

Date:

Place of Signing:

Please enclose with your acceptance of grant, a letter on headed paper, which provides details of the bank account the grant should be paid into, including account name, bank address with post code, sort code and account number.

This letter should be signed by an authorised signatory.

SCHEDULE 1

PART 1: THE PROJECT

CREATION OF SUB-REGIONAL BUSINESS PARK

PART 2: PAYMENT OF GRANT

1. The total Grant of up to **£450,000** shall be payable by the Scottish Ministers to the Grantee on receipt of a completed claim for Grant in the form set out in **SCHEDULE 2** together with the associated monitoring information set out in paragraph 4.1 of the Offer of Grant and paragraph 7 below.
2. The total Grant shall be payable over the financial year 2016/17, 1 April 2016 to 31 March 2017. The Scottish Ministers shall not be bound to pay any instalment of the Grant which has not been claimed by the Grantee by 31 March of the applicable financial year, unless otherwise agreed in writing by the Scottish Ministers.
3. Any change to the profile or to the overall costs of the Project detailed in the approved application shall be notified to the Scottish Ministers at the earliest opportunity via the claims for Grant and monitoring reports.
4. Each claim shall be submitted together with such explanatory or supplementary material as the Scottish Ministers may from time to time require whether before or after submission of the claim.
5. On receipt of each claim (and any required documentation and information), the Scottish Ministers shall determine the amount of expenditure which they consider the Grantee has reasonably and properly incurred or shall reasonably and properly incur in connection with the Project having regard to that claim. The determination shall be based on the information provided by the Grantee in accordance with this Schedule. The Scottish Ministers shall use their best endeavours (but shall be under no obligation or duty) to pay the amount determined to the Grantee within 4 weeks of receiving a claim and any required documentation and information relevant to the claim.
6. In order to facilitate the accrual of expenditure of the Grant for the financial year the Grantee shall, where appropriate, advise the Scottish Ministers in writing by the second Friday in April the amount of the Grant actually expended up to and including 31 March.
7. Reporting Requirements: Claims and Monitoring reports.
 - The Grantee should complete and submit the Grant Claim and Monitoring Report as detailed in Schedule 2.
 - Please note a Project Completion Report will be required on completion of the Project. This report should include an update on the outputs anticipated and which have been detailed at section 4, economic impact of your approved application dated: 14 March 2017.
8. Where the project is being delivered by a partner organisation it is the Grantee's responsibility as Lead Partner to review any claim and monitoring information before documents are submitted to the Scottish Government to ensure that the information is correct and all supporting evidence is available.

SCHEDULE 2

Grant Claim and Monitoring Report

PART 1 – PROJECT CONTACT AND BANK DETAILS

11 . Lead Applicant contact details	
11.1 Name	
11.2 Email	
11.3 Phone number	

12. Bank details	
12.1 Account name	
12.2 Bank name	
12.3 Address line 1	
12.4 Address line 2	
12.5 Postcode	
12.6 Sort code	
12.7 Account number	
12.8 Account description/ payment reference	

PART 2 – SIGNATURE AND DECLARATION

13. Declaration	
We hereby claim total grant of £450,000 in respect of the above period in accordance with the terms and conditions of the offer of Grant dated 21 March 2017 and the Schedules attached thereto.	
I confirm I have the relevant signing authority and supplementary information to support the above claim has been retained and is available on request.	
I understand that the grant awarded for the financial year 2016/17 must be drawn down before the end of March 2017 (either on a basis of incurred costs or having the binding contract/s in place) and I will inform the Scottish Government immediately should any delays or difficulties in the project delivery occur.	
Signature	<i>(please remember to sign this report before sending a hard copy)</i>
Name in block capitals	
Designation/ job title	
Date	
Telephone	
E-mail	

Please return the completed form to the Scottish Government. A signed and scanned copy of this claim should be emailed to Walter.McConnachie@gov.scot together with relevant documents.

PART 3 – ITEMS OF EXPENDITURE

Please list in the table below all discrete items of expenditure relevant to the above period and the type of documentary evidence that has been submitted or will be made available on request to substantiate each amount.

A	B	C
Details of contracts or invoices provided (copies of contracts must be attached with the claim)	Contract Value /Invoice(£)	Other (please specify, e.g. certificate of payment in kind)
Summary of contract/ Invoice		
Summary of contract		
Summary of contract		
TOTAL*		

* Note the total should add up to the total expenditure claimed for the period.

SCHEDULE 3

STATEMENT OF COMPLIANCE WITH CONDITIONS OF GRANT

CREATION OF SUB-REGIONAL BUSINESS PARK

This is to confirm that the grant claimed by Fife Council in relation to the above Project during the financial year ended 31 March 2017 was properly due and was used for its intended purpose(s) in accordance with the terms and conditions of the Grant. This statement is supported by the records of Fife Council.

Signed:

Name in block capitals:

Position:

Date:

SCHEDULE 4

DEFINITIONS

“Agreement” means the agreement constituted by the Scottish Ministers’ invitation to apply for a grant, the Grantee’s Application, these Conditions and the Grantee’s acceptance of these Conditions;

“Conditions” means these grant conditions;

“Default” means:

- a) Any breach of the obligations of either party under this Agreement (including, but not limited to, any breach of any undertaking or warranty given under or in terms of this Agreement);
- b) Any failure to perform or the negligent performance of any obligation under this Agreement;
- c) Any breach of any legislation; or
- d) Any negligence or negligent or fraudulent mis-statement or misappropriation of Grant, or any other default,

In all cases by either party, its employees, agents or representatives;

“Financial Year” means a period from 1 April in one year until 31 March in the next;

“Grant” means the grant offered by the Scottish Ministers to the Grantee as specified in the Award Letter, as varied from time to time in accordance with these Conditions;

“Grantee” means the person, organisation or body to which the Grant will be payable as specified in these Conditions. Where two or more persons, organisations or bodies are the Grantee, references to the “Grantee” are to those persons, organisations or bodies collectively and their obligations under the Agreement are undertaken jointly and severally;

“Intellectual Property Rights” means all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto) which are created, produced or generated as part of the Project by or on behalf of the Grantee.

“Project/Programme” means the purpose for which the Grant has been awarded as described in the Offer of Grant;

“Payment” means each of the payments specified in Schedule 1 hereto.