

DATED

PARTIES

- (1) PETERSFIELD TOWN COUNCIL (charity no 239054) ('**the Trustee**') and
- (2) PETERSFIELD TOWN COUNCIL ('**the Council**')

**MEMORANDUM OF AGREEMENT RELATING TO THE MANAGEMENT AND MAINTENANCE OF THE
HEATH PETERSFIELD**

Wellers Hedleys Solicitors
6 Bishopsmead Parade
East Horsley
Surrey
KT24 6SR
IRD/32606-1 v2 7.10.16

THIS AGREEMENT is made on *(date)*

PARTIES

- (1) PETERSFIELD TOWN COUNCIL of The Town Hall Heath Road Petersfield Hampshire GU31 4EA (charity no 239054) ('**the Trustee**') and
- (2) PETERSFIELD TOWN COUNCIL of The Town Hall Heath Road Petersfield Hampshire GU31 4EA ('**the Council**')

BACKGROUND

1. The Trustee is the registered proprietor of the land known as Petersfield Heath Heath Road Petersfield Hampshire ('**the Heath**') under title no SH32862 by virtue of a supplementary order made by the Secretary of State for the Environment by way of extension to the Local Authorities (England) (Property etc) Order 1973 and is the sole managing trustee of the Heath Charity by virtue of a scheme made by the Charity Commission dated 22 September 1925.
2. The Trustee has requested the Council to perform the Services
3. The Council pursuant to section 111 of the Local Government Act 1972, section 19 of the Local Government (Miscellaneous Provisions) Act 1976, section 297 of the Charities Act 2011 and other enabling powers has agreed to perform the Services set out in the schedule ('**the Services**').

IT IS AGREED:

1 Council's obligations

At the request of the Trustee and for the consideration specified in Clause 2 the Council shall perform the Services in accordance with this Memorandum of Agreement.

2 Contract Sum

The Trustee shall pay to the Council all income received from the Heath as received from time to time as specified in this Memorandum of Agreement.

3 Authorised Officer

The 'Authorised Officer' means Neil Hitch or such other person or persons as shall be appointed by the Trustees

4 Disputes

Any dispute concerning this Contract shall be dealt with in accordance with Condition 15 of the Conditions of Agreement

Signed on behalf of the Trustee

Signed on behalf of the Council

CONDITIONS OF AGREEMENT

1. Definitions

- 1.1 In this Memorandum of Agreement, save where the context otherwise requires, the following expressions shall have the meanings assigned to them:
- 1.2 '**Authorised Officer**' means the officer referred to in Clause 3 of this Agreement or officer fulfilling the like role;
- 1.3 '**Commencement Date**' means *(date)*;
- 1.4 '**Conditions**' means these Conditions, any supplementary conditions and any modification of these Conditions;
- 1.5 '**Contract Sum**' shall be the sums which shall be the actual costs of effecting and carrying out the Services less the fees and charges collected by the Council (which fees and charges shall belong to the Council and which sums shall be credited against the Contract sum) Review;
- 1.6 '**the Heath**' means the land referred to recital 1
- 1.7 '**the Memorandum of Agreement**' and '**this Memorandum of Agreement**' means the Agreement set out above, these Conditions, any supplementary conditions and any modification of these Conditions, the Schedule;
- 1.8 '**Term**' shall be construed in accordance with Condition 4;
- 1.9 '**Plan**' means the plan attached to this Memorandum of Agreement;
- 1.10 '**Plant**' means equipment, machinery, plant and vehicles;'
- 1.11 '**the Schedule**' means the Schedule to the Memorandum of Agreement;
- 1.12 '**the Services**' means the services described in the Schedule;
- 1.13 '**the Trustee**' means Petersfield Town Council or any successor authority;
- 1.14 the masculine includes the feminine and in the case of a limited company the indefinite article, and the singular includes the plural and vice versa; and

1.15 reference to any Act of Parliament and to any orders, regulations or rules made pursuant to that Act shall include reference to any modification, re-enactment or replacement.

2. Variation of Contract

2.1 Without prejudice to any other of these Conditions, no omission from, addition to or variation of this Memorandum of Agreement shall be valid or of any effect unless it is agreed in writing and signed by the Authorised Officer and by a duly authorised representative of the Council.

2.2 Save for an omission, addition or variation agreed pursuant to Condition 2.1 any provision inconsistent with these Conditions contained in any other document or in any oral agreement is agreed to be void and of no effect.

3. The Authorised Officer

3.1 The functions, rights and powers conferred by this Memorandum of Agreement upon the Trustee shall be exercised by the Authorised Officer.

4. Term

4.1 This Memorandum of Agreement shall extend for a period of 5 years from the Commencement Date and shall not be terminable by either party within that period save in accordance with this Memorandum of Agreement.

5. Performance of the Services

5.1 During the Term the Council shall perform the Services (and any modifications authorised by or under this Memorandum of Agreement) efficiently, effectively and safely and in a manner totally consistent with the terms of this Memorandum of Agreement and to the entire satisfaction of the Authorised Officer.

5.2 All costs and expenses incurred in the performance of the Services shall be paid by the Council who shall be entitled to be paid any income received from the use and facilities of the Heath as from the date of this Memorandum of Agreement

5.3 The Trustee shall (to the extent of any funds which are available to them) reimburse to the Council reasonable costs expended by the Council in carrying out any instructions under this Condition 5

6. Assignment

- 6.1 The Trustee shall not be entitled to assign the benefit of this Memorandum of Agreement or any part of the Memorandum of Agreement
- 6.2 The Council shall not assign this Memorandum of Agreement or any part of it or any benefit or interest in or under it.
- 6.3 The Council may sublet the whole or part of the Services but such subletting shall not relieve the Council from any liability or obligation under the Memorandum of Agreement and it shall be responsible for the acts, defaults and neglects of any contractor, its agents or servants as fully as if they were the acts, defaults or neglects of the Council, its agents or servants.

7. Premises and Licence

- 7.1 The Trustee grants to the Council a licence to enter, occupy and use the Heath and any buildings or other facilities for the purposes of performing the Services.

8. Plant

- 8.1 The Council shall at all times during the Term provide and maintain all such Plant as is necessary for the proper performance of the Services.

9. Council's staff

- 9.1 The Council shall at all times during the Term employ sufficient persons of sufficient abilities and skills for the proper performance of the Services. In particular the Council shall provide sufficient currently qualified staff to operate all premises and undertake all activities in accordance with all appropriate statutes, regulations and case law to ensure, amongst other things, that employees and members of the public are kept safe at all times.
- 9.2 The Council shall at all times during the Term employ sufficient persons of sufficient abilities and skills to supervise and administer the performance of the Services in a proper and continuous manner.
- 9.3 The Council shall at all times take all such precautions as are necessary to protect the health and safety of all persons employed by it, and shall comply with the requirements of the Health and Safety at Work etc Act 1974 and of any other Acts,

regulations, orders or EU directives relating to the health or safety of employed persons.

10. Liability of Council

10.1 The Council shall be liable for and shall indemnify the Trustee against any expense, liability, loss, claim or proceedings arising under any statute or at common law in respect of personal injury to or death of any person arising out of or in the course of or caused by the performance of the Services, except to the extent that the same is due to any act or neglect of the Trustee or of any person for whom the Trustee is responsible.

10.2 The Council shall be liable for and shall indemnify the Trustee against any expense, liability, loss, claim or proceedings in respect of any loss of or injury or damage to any property, real or personal, in so far as such loss, injury or damage arises out of or in the course of or by reason of the performance of the Services, and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Council, its employees or agents, or of any person employed or engaged by the Council upon or in connection with the performance of the Services or any part, its employees or agents.

11. Insurance

11.1 Without prejudice to Condition 16, the Council shall at all times maintain in force such policies of insurance and shall fully insure and indemnify itself against liability:

- i. to the Trustee and to any employee of the Trustee;
- ii. to its employees;
- iii. to any other person;
- iv. in the sum of at least £10 million in respect of each claim.

12. Liability of Trustee

12.1 The Trustee shall not be liable for any loss or damage however arising except for loss or damage directly arising from negligent acts or omissions of the Trustee.

tee, its servants or agents. Damages arising from such negligent acts or omissions shall be limited to direct and unavoidable losses and the Council shall take all reasonable steps to mitigate such losses.

13. Termination

- 13.1 Without prejudice to any other remedy, the Trustee shall be entitled forthwith to terminate this Memorandum of Agreement in the event of any material breach by the Council of any other provision of the Memorandum of Agreement;
- 13.2 Either party may give to the other one year's prior written notice to terminate this Memorandum of Agreement;
- 13.3 Such termination shall be without prejudice to any rights and liabilities which may have accrued up to the date of termination and upon such termination, in addition to such consequences as are set out in the other provisions of this Memorandum of Agreement the Council shall immediately cease to perform any of the Services.

14. Notices

- 14.1 Any notice to be served upon the Trustee shall be valid or effective provided it is sent by prepaid post or delivered by hand to the Trustee at the address specified in the Agreement or to such other address as the Authorised Officer may notify the Council in writing.
- 14.2 Any notice to be served upon the Council shall be valid or effective provided it is sent by prepaid post or delivered by hand to the Council at the address specified in the Agreement or to such other address as the Council may notify the Trustee in writing.

15. Arbitration

- 15.1 If any dispute or difference concerning this Memorandum of Agreement shall arise between the Trustee (or the Authorised Officer on its behalf) and the Council, such dispute or difference shall be referred to the arbitration and final decision of a person to be agreed between the parties, or failing agreement within 14 days after either party has given to the other a written request to concur in the ap-

pointment of an arbitrator, a person to be appointed on the request of either party by the President of the Institute of Leisure and Amenity Management.

15.2 The arbitrator shall be entitled to make such decision or reward as he thinks just and equitable having regard to the circumstances then existing, the cost of such arbitration to follow the event, or in the event of neither party succeeding, to be apportioned between the parties by the arbitrator in such proportions as he in his absolute discretion thinks fit.

15.3 Any reward or decision of such arbitrator shall be final and binding on the parties to this Memorandum of Agreement.

15.4 Unless this Memorandum of Agreement shall have already been determined or abandoned, the Council shall in every case continue to proceed with the Services with all due diligence, and the Council and the Trustee shall both give immediate effect to every such decision of the Authorised Officer, unless and until the same shall be revised by an arbitrator.

16. Observance of statutory requirements

16.1 The Council shall comply with all statutory and other provisions to be observed and performed in connection with the Services provided under this Memorandum of Agreement with particular regard to the health and safety of employees and of the public and shall indemnify and keep indemnified the Trustee accordingly.

16.2 Without prejudice to the generality of Condition 26.1 the Council shall in performing the Services seek to protect the natural flora and fauna and the historical heritage of the Heath.

17. Whole understanding

17.1 This Memorandum of Agreement constitutes the whole understanding of the parties as to the subject matter of this Memorandum of Agreement and there are no prior or contemporaneous agreements between the parties.

18. Waiver

18.1 Failure by the Trustee at any time to enforce any provision of this Memorandum of Agreement or to require performance by the Council of any of the provi-

sions of this Memorandum of Agreement shall not be construed as a waiver of any such provisions and shall not affect the validity of this Memorandum of Agreement or any part of it or the right of the Trustee to enforce any provision in accordance with its terms.

19. Severance

19.1 If any provision of this Memorandum of 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 shall in no way impair or affect any other provision, all of which shall remain in full force and effect.

20. Inconsistency

20.1 In the event of a conflict between any of these Conditions and any provision of the Appendices the provision of these Conditions shall prevail.

21. Clause headings

21.1 The clause headings shall not be construed as part of these Conditions.

22. Law

22.1 This Memorandum of Agreement shall be governed by and construed in accordance with the laws of England and the Council irrevocably submits to the jurisdiction of the English courts.

SCHEDULE (the Services)

		Particulars	Standards
1.	Manage events on the Heath	<p>Arrange bookings</p> <p>Issue appropriate licences</p> <p>Collect fees</p> <p>Check insurances</p> <p>Ensure that participants have disclosure and barring checks</p> <p>Ensure that organisers have undertake appropriate risk assessments and carry into effect appropriate safeguards, have arrangements in place to comply with health and safety, food hygiene and safety and electrical safety</p>	<p>Ensure that no organisers acquire any rights in the land or any tenancy</p>
2.	Undertake the maintenance of the ground	<p>Grass cutting</p> <p>Tree maintenance</p> <p>Pond bank stabilisation</p> <p>Water quality control</p> <p>Brushcutting</p> <p>Hedgerow management</p> <p>Ditch clearance</p> <p>Strimming</p> <p>Litter picking</p> <p>Litter collection</p>	
3.	Manage and maintain the	Maintain the surface and boundary	

	car parks marked on the Plan	<p>structures and devices for taking payments</p> <p>Install and maintain any security or safety measures</p> <p>Collect charges</p> <p>Take appropriate enforcement action</p> <p>Erect and maintain appropriate signs</p>	
4.	Grant and manage concessions and licences	<p>Arrange bookings</p> <p>Issue appropriate licences</p> <p>Collect fees</p> <p>Check insurances</p> <p>Ensure that participants have disclosure and barring checks (if appropriate)</p> <p>Ensure that concessionaires and licensees have undertake appropriate risk assessments and carry into effect appropriate safeguards, have arrangements in place to comply with health and safety, food hygiene and safety and electrical safety</p>	<p>Ensure that no concessionaire or licensee acquires any rights in the land or any tenancy</p>
5.	Provide and maintain a children's play area	<p>Undertake the design, manage any contract for works, equip and maintain the facilities provided.</p> <p>Carry out appropriate safety inspections in accordance with best practice</p>	
6.	Effect appropriate insurances of the land, its		

	buildings, structures and works, public liability insurance on behalf of the Trustee		
7.	Manage and maintain the public toilets	To keep in repair the public toilets their structure, interior and exterior, manage their operation	
8.			