

Service level agreement relating to The Beehive, Honiton

Dated 9 December 2015

Honiton Town Council (1)
Honiton Community Complex (2)

~~Draft~~
~~Ref:~~

1.....	DEFINITIONS.....	2
2.....	COMMENCEMENT AND DURATION	2
3.....	HCC'S RESPONSIBILITIES	2
4.....	THE COUNCIL'S RESPONSIBILITIES.....	4
5.....	REVIEW MEETINGS	4
6.....	GRANT OF LEASE	4
7.....	CONFIDENTIAL INFORMATION.....	5
8.....	INSURANCE AND LIABILITY	5
9.....	TUPE.....	5
10.....	DISPUTES	5
11.....	TERMINATION.....	6
12.....	OBLIGATIONS ON TERMINATION	6
13.....	NOTICES	6
14.....	ENTIRE AGREEMENT	6
15.....	VARIATION	6
16.....	CHARITY LAW.....	7
17.....	WAIVER	7
18.....	THIRD PARTY RIGHTS.....	7
19.....	GOVERNING LAW AND JURISDICTION	7
20.....	COUNTERPARTS	7

THIS AGREEMENT IS DATED

9 December 2015

PARTIES

- (1) Honiton Town Council of The Beehive, Dowell Street, Honiton, Devon EX14 1LZ ('the Council'); and
- (2) Honiton Community Complex, (trading as The Beehive) incorporated and registered in England and Wales with company number 08409289 and charity number 1162412, whose registered office is at The Beehive, Dowell Street, Honiton, Devon EX14 1LZ ('HCC'). *RM. (C)*

BACKGROUND

- 1 The Council owns the freehold of The Beehive and wishes the same to be managed as a community facility for the benefit primarily of the community of Honiton and east Devon.
- 2 The parties have agreed that HCC as tenant of the Council will manage the Beehive in accordance with its Charitable Objects and in accordance with this agreement.

Terms of the Agreement

1 DEFINITIONS

Business Plan: HCC's business plan for management and operation of The Beehive as from time to time varied by the written agreement of the parties, which it shall share with the Council and which shall be reviewed by HCC on an annual basis.

Charitable Objects: the charitable objects set out in HCC's Articles of Association on the date it was registered as a charity and as amended from time to time

Commencement Date: [11th SEPTEMBER 2015]¹. *RM. (C)*

Confidential Information: information in whatever form (including, in written, oral, visual or electronic form or on any disk or memory and wherever located) relating to the business, services, affairs and finances of the Council or to users of its services for the time being confidential to the Council and including information that HCC creates, develops, receives or obtains in connection with this agreement, whether or not such information (if in anything other than oral form) is marked confidential.

Lease: the 10 year lease of even date with this agreement for The Beehive from the Council to HCC.

TUPE: Transfer of Undertakings (Protection of Employment) Regulations 2006

2 COMMENCEMENT AND DURATION

- 2.1 HCC shall manage The Beehive on the terms of this agreement.
- 2.2 This agreement will commence on the Commencement Date and terminate on [10th SEPTEMBER 2025]² subject to earlier termination in accordance with clause 10 below. *RM. (C)*

3 HCC'S RESPONSIBILITIES

- 3.1 Throughout the term of this agreement HCC shall:

¹ Insert date specified by agreement for lease, being the date falling 10 working days after registration of HCC as a charity by the Charities Commission.

² Insert date falling ten years after the Commencement Date

- (a) use its best endeavours to manage and operate The Beehive with all due care, skill and ability in fulfilment of its Charitable Objects;
- (b) devote sufficient time to the management of The Beehive as may be necessary for its successful operation in accordance with the terms of this agreement;
- (c) use its best endeavours to ensure that The Beehive is used by a wide cross-section of the local community for a diverse range of activities, provided that, at all times, HCC is acting in fulfilment of its Charitable Objects;
- (d) use its best endeavours to maximise usage of The Beehive with a view to ensuring that it runs as a sustainable and viable facility for the community of Honiton and East Devon in the long-term, provided that, at all times, HCC is acting in fulfilment of its Charitable Objects;
- (e) ensure that access to The Beehive is open to all members of the community without discrimination on the grounds of disability, race, colour, sex, age, occupation, sexual orientation, religion or political persuasion;
- (f) comply with the requirements of charity law and good practice as recommended by the Charity Commission for England and Wales;
- (g) take all reasonable steps to ensure safe usage of The Beehive at all times;
- (h) use its best endeavours to fulfil the targets in its Business Plan;
- (i) undertake regular fundraising activities and actively seek grant-funding to support the successful operation of The Beehive;
- (j) ensure that any annual surplus of income over expenditure (such expenditure to include capital expenditure on extension and improvement of the Building and its equipment) derived from The Beehive is applied for the benefit of the community of Honiton and East Devon in accordance with its Charitable Objects;
- (k) ensure that in all publicity for and advertising of The Beehive, including its website, it gives clear recognition to the financial support provided by the Council;
- (l) use its best endeavours to recruit, train and manage suitable volunteers to assist with the management of The Beehive;
- (m) provide quarterly reports to the Council with details of the usage and financial performance of The Beehive, of HCC's performance against the targets set out in its Business Plan and other such information as may be reasonably requested by the Council;
- (n) promptly give to the Council all such information and reports as it may reasonably require in connection with matters relating to the operation of The Beehive;
- (o) provide security staff (who may be volunteers) as appropriate in order to keep the Beehive secure and to ensure that the Beehive is locked, secure and empty outside normal office hours (save when events are taking place at the Beehive outside normal office hours, in which case HCC shall provide appropriate security staff or volunteers during such events and ensure that the Beehive is locked, secure and empty once such events have finished Provided That when the Council is using the Beehive outside normal office hours and no event organised by HCC is taking place the Council and HCC will use their best endeavours to agree arrangements to ensure that the Beehive is locked secure and empty when its use is completed); and

- (p) allow the Council the use of available meeting and function rooms in the Beehive for meetings up to five times in any one calendar month by prior agreement with HCC at a reasonable charge of no more than £50 per three hour booking in the first three years of this agreement and thereafter at a rate to be agreed between the parties (acting reasonably).

3.2 Unless specifically authorised to do so by the Council in writing, HCC shall not:

- (a) have any authority to incur any expenditure in the name of or for the account of the Council; or
- (b) hold itself out as having authority to bind the Council.

3.3 HCC shall comply with all reasonable standards of safety, including but not limited to the provisions of the Health and Safety at Work Act 1974 and all other relevant health and safety regulations.

3.4 HCC shall appoint a representative ('HCC's Representative') who (to the extent permitted by charity and company law as regards the delegation of their authority by trustees and directors and no further) shall have authority to bind HCC on all matters relating to the management of The Beehive, and shall provide the Council with the name and contact details of such representative.

3.5 To the extent permitted by charity and company law, HCC shall be entitled to establish a wholly owned subsidiary company for the purpose of undertaking any taxable trading activity on behalf of, and for the benefit of, HCC.

4 THE COUNCIL'S RESPONSIBILITIES

4.1 The Council shall:

- (a) provide such support and information as HCC may reasonably request and the Council considers reasonably necessary for the management of The Beehive in a timely manner; and
- (b) appoint a representative ('the Council's Representative') who shall have mandated authority to bind the Council on all matters relating to the management of The Beehive, and shall provide HCC with the name and contact details of such representative.

5 REVIEW MEETINGS

5.1 The parties will arrange meetings at least quarterly during the term of the agreement to review performance of the terms of this agreement and to discuss any issues or concerns which may have arisen in connection with The Beehive.

5.2 At each meeting, the parties will discuss HCC's management of The Beehive in the light of the targets in the Business Plan, with a view to identifying any changes which may be required to HCC's management of The Beehive, or either party's obligations under this agreement.

5.3 If such changes identified pursuant to clause 5.2 above have not been implemented by HCC within a reasonable period of time, the Council may serve written notice on HCC requiring them to rectify such failure to implement the changes within a reasonable period of time.

6 GRANT OF LEASE

In order to enable HCC to manage The Beehive in accordance with its obligations in this Agreement, the Council granted the Lease to HCC on the date of this agreement.

7 CONFIDENTIAL INFORMATION

HCC shall not (except in the proper course of its duties), either during the term of this agreement or at any time after termination, use or disclose to any third party (and shall use its best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to any use or disclosure authorised by the Council or required by law.

8 INSURANCE AND LIABILITY

- 8.1 HCC will indemnify the Council against all costs, losses, damages, liabilities and expenses (including reasonable legal costs) incurred by the Council as a result of or in connection with any breach by HCC of the terms of this agreement, including any negligent or reckless act, omission or default in the management of The Beehive.
- 8.2 During the term of this agreement, HCC will maintain in force, with a reputable insurance company, public liability insurance in an amount not less than £2 million and shall, on the Council's request, produce the insurance certificate giving details of cover and evidence that the premium has been paid.

9 TUPE

- 9.1 The Council warrants that there are no employees currently employed by the Council who would transfer to HCC under TUPE in relation to the performance by HCC of its obligations under this agreement.
- 9.2 HCC shall indemnify the Council (for and on behalf of itself and any Replacement Provider), against all claims, costs, expenses or liabilities incurred or suffered by the Council or any Replacement Provider, including without limitation all reasonable and properly incurred legal expenses and other reasonable professional fees (together with any VAT thereon), in relation to any employee who asserts or pursues any claim or demand against the Council or any Replacement Provider on the basis of an argument that such employee's employment or liabilities associated with their employment have transferred to the Council or the Replacement Provider by virtue of TUPE in connection with the termination of this agreement or the cessation of the provision of any or all of the services provided by HCC in accordance with its obligations under this agreement. For the avoidance of doubt, the liabilities associated with any such employee's employment shall include (but are not limited to) any costs and liabilities associated with the employment or dismissal of any such employee who is deemed to transfer to the Council or any Replacement Provider under TUPE in connection with the termination of this agreement or the cessation of the provision of any or all of the services provided by HCC in accordance with its obligations under this agreement.

10 DISPUTES

- 10.1 If at any time any question, dispute or difference arises between the parties affecting this agreement, the parties' representatives shall meet in good faith to resolve the dispute.
- 10.2 If the dispute cannot be resolved by negotiation, it may be referred at any time by either party to a mediator agreed by the parties.
- 10.3 Where it is considered by either party that the outcome of mediation is unsatisfactory, or that the issue is of such importance, either party can refer the matter to an arbitrator, agreed by the parties. In default of an agreement of an arbitrator, the parties will allow the Secretary of State for Health or his representative to arbitrate in accordance with and subject to the provisions of the Arbitration Act 1950, or any re-enactment for the time being in force.
- 10.4 The costs of the arbitration shall be borne as the Arbitrator directs and the award of such arbitration shall be binding on the parties.

11 TERMINATION

11.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement immediately on giving written notice to the other, if:-

- (a) the other party commits a material breach of any of the terms of this agreement and, if such breach is remediable, fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) the other party commits a material breach of any of the terms of this agreement which is irremediable.

11.2 Without prejudice to any other rights or remedies which the Council may have, the Council may terminate this agreement:

- (a) with immediate effect on giving written notice to HCC if a resolution is passed or an order is made for the winding up of HCC, or if HCC becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the HCC's property or equipment;
- (b) at any time on giving not less than three months' prior written notice to HCC following a breach of clause 5.3 above; or
- (c) automatically without any necessity for notice should the Lease be terminated for any reason.

11.3 Termination by either party shall be without prejudice to any rights or claims which either party may have against the other which are subsisting at the time of termination and all provisions of this agreement which are expressed to have effect after termination shall continue in force accordingly.

12 OBLIGATIONS ON TERMINATION

On termination of this agreement for any reason, HCC shall immediately deliver to the Council all of the Council's property in its possession or under its control.

13 NOTICES

Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at the address detailed on the first page of this agreement.

14 ENTIRE AGREEMENT

Each party acknowledges and agrees with the other party that this agreement constitutes the entire agreement and understanding between the Council and HCC and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement (which shall be deemed to have been terminated by mutual consent).

15 VARIATION

No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

16 CHARITY LAW

Nothing in this agreement is to impose on HCC any obligation or restriction which is inconsistent or incompatible with its Charitable Objects or the law relating to charities generally.

17 WAIVER

No failure by either party to insist on the strict performance by the other of any obligation under this agreement or to exercise any right or remedy on breach of any such obligation will constitute waiver of any obligation or waiver of any subsequent breach or default in the performance of any obligation.

18 THIRD PARTY RIGHTS

18.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

18.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any person that is not a party to this agreement.

19 GOVERNING LAW AND JURISDICTION

19.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

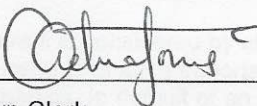
19.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

20 COUNTERPARTS

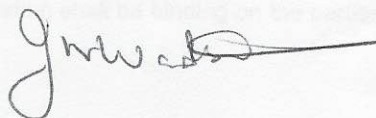
20.1 This Agreement may be executed in two counterparts, each of which shall be an original and which together shall constitute one and the same instrument

Executed and delivered as a deed by the parties on the date at the beginning of this Deed.

Executed as a deed by affixing the
common seal of HONITON TOWN
COUNCIL in the presence of:


Town Clerk







029/15

Executed as a deed by HONITON
COMMUNITY COMPLEX acting by two
directors:

W.J. Burgess

[signature of first director]

W.J. BURGESS

[print name of first director]

and

R.M. Potts

[signature of second director]

R.M. POTTS

[print name of second director]

Director

Director

Date: 2 December 2015

Honiton Town Council (1)
Honiton Community Complex (2)