

MINUTE OF AGREEMENT

BETWEEN

ARGYLL AND BUTE COUNCIL

and

JAMES STREET COMMUNITY GARDEN ASSOCIATION

SUBJECTS: James Street Park, James Street, Helensburgh

MINUTE OF AGREEMENT

Between

ARGYLL and BUTE COUNCIL, a local authority constituted under the Local Government etc. (Scotland) Act 1994 and having its Chief Office at Kilmory, Lochgilphead Argyll, PA31 8RT (who and whose successors are hereinafter referred to as "the Council")

And

Alexander Kerr, residing at 172 West Princes Street, Helensburgh, G84 8EY, Jean Maccaulay, residing at 2 The Mews, 90 West Princes Street, Helesnburgh, G84 8XD, and Catriona Malan, residing at 36A James Street, Helensburgh, G84 8UH the Chairperson, Treasurer, and Secretary respectively of the JAMES STREET COMMUNITY GARDEN ASSOCIATION and their successors in office as Office Bearers of the JAMES STREET COMMUNITY GARDEN ASSOCIATION (hereinafter referred to as "the Association")

(each a "Party", together the "Parties")

- SECOND The Association acknowledges and agrees that where it breaches any provision of this Agreement and/or the terms and conditions of funding that it has agreed with external funders and the Council suffer any costs, losses or damages as a result, the Council shall be entitled to recover such costs, losses or damages from the Association.
- THIRD The Council acknowledges and agrees that where it breaches any provision of this Agreement and/or the terms of funding that it has agreed with external funders and the Association suffer any costs, losses or damages as a result, the Association shall be entitled to recover such costs, losses or damages from the Council
- FOURTH The Council shall permit the Project to be delivered upon James Street Park
- FIFTH Throughout the duration of this Agreement the Association may, at its sole cost, open and close the gates to James Street Park always providing that James Street Park shall remain open to the public during those hours that are to be agreed in writing between the Council and the Association, both parties acting reasonably.
- SIXTH The Council shall assist the Association by undertaking the felling of those trees that are identified by the Council and the Association as requiring removal to enable the delivery of the Project. The Council will undertake those ground clearance works upon James Street Park that are required to enable the delivery of the project always providing that the Council will not undertake the removal of any concrete that is considered by the Council to be of a depth that is beyond the Council's capability to remove having regard to the equipment and man power available within the Council's own resources.
- SEVENTH The Association will obtain all permits, licences, permissions, consents, approval, certificates and authorisations (whether statutory or otherwise) associated with the Project at its sole cost with the exception of those that may be required in respect of the felling of the trees referred to in clause SIXTH hereof which shall be obtained by the Council at its sole cost.

EIGHTH Any works to be undertaken, or furnishings to be installed, in James Street Park by the Association to deliver the Project, shall be to a specification to be agreed between the Council and the Association in writing, subject to the external funder's approval, both parties acting reasonably. Without prejudice to the foregoing generality the specification shall include a detailed method statement and details of measures that will be followed to ensure safe working practice in the delivery of the Project.

NINTH The Association undertakes that it will, at its sole cost, manage and maintain those areas of James Street Park upon which it has undertaken works to deliver the Project, and keep all furnishings installed by it upon James Street Park safely and in good repair and condition, to the satisfaction of the Council acting reasonably. For the avoidance of doubt the Association shall not require to 1) cut any grassed areas formed by it within James Street Park, which cutting shall be undertaken by the Council at the Council's cost and 2) maintain the boundaries of James Street Park where responsibility for such maintenance rests with the Council and the Association have not undertaken works to the detriment of boundary structures.

TENTH The Association shall maintain, at all times throughout the works undertaken by it to deliver the Project, adequate insurance cover against public liability and third party risks that may arise in respect of the undertaking of works by the Association to deliver the Project upon James Street Park, with a reputable insurance company and to provide details of all such insurance to external funders and the Council upon request

ELEVENTH Without prejudice to clause TENTH hereof the Association will indemnify the Council, from and against all or any liability in respect of any actions, proceedings, fines, costs, charges, claims and demands whatsoever which may be made or brought against the Council by any third party, and howsoever arising, in relation to or in connection with death or personal injury caused by the Association delivering the Project upon James Street Park and all consequential expenses arising therefrom.

TWELFTH The Council will indemnify the Association, from and against all or any liability in respect of any actions, proceedings, fines, costs, charges, claims and demands whatsoever which may be made or brought against the Association by any third party, and howsoever arising, in

relation to or in connection with death or personal injury caused by the Council delivering any part of the Project upon James Street Park and all consequential expenses arising therefrom.

THIRTEENTH After the date upon which the Council and the Association have agreed in writing, both parties acting reasonably, that the creation phase of the Project has been completed the Council shall maintain, for the remaining duration of this Agreement, adequate insurance cover against public liability with a reputable insurance company and to provide details of all such insurance to external funders upon request.

FOURTEENTH Without prejudice to Clause FIFTH hereof should James Street Park be found at any time to be in such a condition as to represent a risk to health and safety the Council may close off James Street Park to the public until such works as the Council consider necessary, acting reasonably, to make James Street Park safe have been completed. In such an event the Council will not be held liable to the Association or third parties for any losses incurred by them in respect of such closure.

FIFTEENTH The Council, and the Association shall each appoint and maintain in place for the duration of this Agreement a Representative who shall have the authority to act on behalf of that party on matters relating to this Agreement. Either Party may, by prior written notice to the other Party, appoint a new or an alternate Representative. The respective Representatives shall be sufficiently senior within the organisation of the appointing Party, and granted sufficient authority by that Party, to ensure full cooperation in relation to the operation and the management of this Agreement and full discharge of that Party's obligations under this Agreement.

The Representative for the Council shall be;

Jim Smith
Head of Roads and Amenity Services
Development and Infrastructure Services
Kilmory
Lochgilphead
P31 8RT

Telephone- 01546 604324

Email: jim.smith@argyll-bute.gov.uk

The Representative for the Association shall be;

[Insert details]

Telephone

Email:

SIXTEENTH

Quarterly meetings will be held between the Association and the Council to discuss the outcomes of this Agreement and review progress whilst works are being undertaken to deliver the Project upon James Street Park. Meetings may be held more frequently if required. The required schedule for meetings with thereafter be agreed between the Parties. The Parties shall ensure that their Representative or a substitute attends all meetings in respect of which at least seven business days' prior written notice has been given; and use all reasonable endeavours to ensure that the its Representative attends all other Project meetings or calls. Communication between the Parties can take place in writing, by phone or email. A timetable of review points shall be agreed between the Parties at which time the effectiveness of this Agreement shall be monitored.

SEVENTEENTH

The Parties shall not make any press announcement, or respond to any media request for information in respect of the Project without having first obtained the prior written consent of the other Party to the content of the same (which consent shall not be unreasonably withheld or delayed)

EIGHTEENTH

In the event that the Association shall at any time during the currency of this Agreement become disbanded or dissolved or in the event that they contravene or permit the contravention of or fail to implement any of the provisions of this Agreement then and in any of such events the Council at their option may by notice served on the Association or on its last known office bearers bring their obligations to the Association, and the Association's obligations to the Council, hereunder to an end, save in relation to any antecedent breach, on giving one month's written notice of their intention to do so.

NINETEENTH

Without prejudice to clause EIGHTEENTH hereof the Council and the Applicant may each terminate this Agreement on the first anniversary of 1st October 2017 and every anniversary of 1st October thereafter throughout the duration of this Agreement upon giving the other party no less than two months prior written notice of its intention to do so.

TWENTIETH No variations of this Agreement shall be effective unless made in writing and duly executed by the Parties.

TWENTY FIRST The Parties hereby agree that in the event of any dispute or difference of opinion arising as to the provisions of these presents or the interpretation thereof such dispute or difference of opinion shall be referred on the application of either party to the Sheriff of North Strathclyde at Dumbarton.

TWENTY SECOND The Association is prohibited from transferring or assigning directly or indirectly, to any person or persons whatsoever, any portion of this Agreement without the written permission of the Council's relevant Executive Director, or a Council officer authorised by that Executive Director

LASTLY This Agreement shall be governed by and construed in accordance with the Laws of Scotland and each Party agrees to submit to the exclusive jurisdiction of the courts of Scotland

IN WITNESS WHEREOF these presents consisting of this and the preceding [] pages together with the Plan annexed are executed as follows :