

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")

WHEREAS the Council are the heritable proprietors of that area of recreational ground at James Street, Helensburgh shown delineated in [] on the plan annexed and executed as relative hereto (hereinafter referred to as 'James Street Park');

And WHEREAS the Council and the Association have agreed to work together to establish a garden that is suitable for all ages to enjoy by enhancing James Street Park and making it a notable example of current best practice in the utilisation of urban greenspace for the provision of educational, recreational and health benefits to the whole community (hereinafter referred to as 'the Project')

AND WHEREAS it is considered by the Parties that it is right and proper that there is effective communication and consultation between the Parties and that the terms of such communication and consultation are set down in writing;

And WHEREAS the cost of the Project will be funded in part by funding obtained by the Association from external funders and it is right and proper that the obligations to be placed upon the Parties in respect of the external funders' terms and conditions are agreed and set down in writing;

And WHEREAS it is considered that the obligations to be undertaken by the Parties under this agreement will accord with the principle of community partnership working by allowing for the improvement of James Street Park to a higher standard than is permitted by the Council's own budget allocation and providing the Association with the opportunity to apply for external grant support;

THEREFORE the Council and the Association HAVE AGREED and DO HEREBY AGREE as follows:

FIRST This Agreement shall commence on [] November 2016 and shall terminate on [] November 2026 unless earlier terminated in accordance with the provisions of clause SIXTEENTH or SEVENTEENTH hereof.

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 shall permit the Project to be delivered upon James Street Park
- FOURTH 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.
- FIFTH 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 FOURTH hereof which shall be obtained by the Council at its sole cost.
- SIXTH 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.
- SEVENTH 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, throughout the duration of this Agreement to the satisfaction of the Council acting reasonably. For the avoidance of doubt the Association shall not require to cut any grassed areas formed by it within James Street Park, which cutting shall be undertaken by the Council.

- EIGHTH 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
- NINTH Without prejudice to clause EIGHTH 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.
- TENTH 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.
- ELEVENTH Upon the conclusion of works to deliver the Project 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.
- TWELFTH Following the conclusion of works to deliver the Project the Council will be solely responsible for health and safety inspections of James Street Park which it will undertake on a fortnightly basis with quarterly inspections complementing. The Council shall advise the Association in writing, within 5 working days of the inspection, of any works that they consider are necessary to bring those areas of James Street Park upon which the Association has undertaken works to deliver the project, or those furnishings installed by the Association upon James Street Park, to an acceptable condition for use by the general public. The Association shall thereafter undertake the said works within seven working days, or within such timescale as may otherwise be agreed in writing with the Council, both parties acting reasonably. In the event that the Association do not carry out the said works within the required timescale the Council may undertake the said works and thereafter recover the cost of undertaking the Association. 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

THIRTEENTH

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;

Tom Murphy
Amenity Manager
Argyll and Bute Council
Development and Infrastructure Services
Helensburgh and Lomond Civic Centre
East Clyde Street
Helensburgh

Telephone- 01436 658908 07748930028

Email: tom.murphy@argyll-bute.gov.uk

The Representative for the Association shall be;

[Insert details]

Telephone

Email:

FOURTEENTH

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.

FIFTEENTH 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)

SIXTEENTH 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.

SEVENTEENTH Without prejudice to clause SIXTEENTH hereof the Council and the Applicant may each terminate this Agreement on the first anniversary of [] November 2016 and every anniversary of [] 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.

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

NINETEENTH 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.

TWENTIETH The Association are 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 Schedule in [] parts and Plan annexed are executed as follows :