

DATED *Memorandum of Understanding* 2012

THE TRUSTEES OF THE NATIONAL HERITAGE
MEMORIAL FUND

- and -

SEFTON BOROUGH COUNCIL

CONTRACT

relating to

Kings Gardens, Southport

Contract

This Contract is between **the Trustees of the National Heritage Memorial Fund** of 7 Holbein Place, London, SW1W 8NR ('HLF') and **the Big Lottery Fund** whose registered office is at 1 Plough Place, London EC4A 1DE ('BIG') (HLF and BIG being referred to in this Contract as 'we', 'us', 'our') and

Sefton Borough Council of 324-242 Stanley Road Bootle Merseyside L20 6ET ('you', 'your')

Date: ~~do not date~~ 2012

- **Application** – any documents or information you send us to support your request for a grant and identified in our records under reference number **PF-08-00696/2**.
- **Approved Purposes** – the purposes for which you have applied for the Grant and how you plan to carry out those purposes as set out in your Application (taking account of any changes we and you have agreed in writing up to the date of our decision to award you the Grant and any changes that we tell you about in our letter awarding you the Grant). Approved Purposes include receiving and using partnership funding as set out in your Application.
- **Approved Usage** – how you said you would use the Property in your Application (allowing for any changes that we may have agreed up to the date of this Contract).
- **Monitoring Documents** – the documents we publish from time to time to guide you and regulate the conduct of the Approved Purposes, insurance, publicity, how we pay the Grant, how we recover the Grant, project monitoring and changes to the Grant.
- **Property** – the Property referred to in your Application and briefly described as **Kings Gardens Southport**. It includes any property that you buy, receive or restore, or property that is otherwise funded by the Grant, and any documents that you produce or order as part of the Approved Purposes.
- **The Award** – a Green flag Award.
- **The Grant – Four Million and Seventy Nine Thousand Pounds (£4,079,000)**.

This is the amount given in our letter telling you about our grant award.

You and we agree to the following.

- 1 You will use the Grant only for the Approved Purposes, unless you get our approval beforehand.
- 2 You will achieve the Approved Purposes by **30 June 2015** (the Grant Expiry Date).
- 3 You will use the Property, or allow it to be used, only for the Approved Usage.
- 4 As well as the terms of this Contract, you will follow the special conditions (if any) set out in the Appendix and meet the conditions and requirements contained in the Monitoring Documents.

- 5 You will carry out the Approved Purposes in line with current best practice and to a standard that is appropriate to a project of importance to the national heritage.
- 6 You will not start work to achieve the Approved Purposes without our approval beforehand.
- 7 You will send us, in line with our instructions, the relevant information we ask for in the Monitoring Documents.
- 8 You will give us any financial or other information and records we may need from time to time on the Grant, the Property, the Approved Purposes (and achieving them) and the Approved Usage.
- 9 You will allow us (or any people we authorise) to have any access we may need to:
 - a inspect the Property and any work to the Property;
 - b monitor the conduct and progress of the Approved Purposes; and
 - c monitor the Approved Usage.
- 10 If we (or any person we authorise) make any recommendation on the matters set out in clause 9, you will consider those recommendations when meeting your obligations under this Contract.
- 11 You will take appropriate steps to monitor your own success in achieving the Approved Purposes and in using the Property for the Approved Usage.
- 12 Before you start any phase of the work needed to achieve the Approved Purposes, you will sign and date all necessary contracts with contractors and professional advisers to allow you to finish that phase of the work. Each contract you sign and date must be on terms that an employer with relevant experience would enter into for contractors to provide similar work or services for projects of the same size, value, complexity and importance as the Approved Purposes. The contracts must contain a clause which allows you to withhold part of the contractors' fees on practical completion. If you want any contracts to be on different terms, you must get our approval beforehand.
- 13 If the Approved Purposes involve buying goods or services or getting work done, you will get tenders in line with the Monitoring Documents.
- 14 You will continue to own the Property and keep full control over what happens to it. You will not sell, or otherwise part with it or any interest in it, or give any rights over it to anyone else (or take any steps to do so) without our approval beforehand. If we give you our approval, it may depend on any of the following requirements.
 - a That you pay us a share of the net proceeds of selling or letting the Property (we will work out the share in line with the Monitoring Documents).
 - b That you sell or let the Property at the full market value.
 - c Any other conditions as we think fit.
- 15 If the Approved Purposes include buying or receiving land or buildings, you will buy or receive either a freehold interest in the Property or a lease that has at least 80 years left to run.

- 16
 - a Following completion of the capital works needed to achieve the Approved Purposes you will maintain the Property in good repair and condition.
 - b You must apply for the Award in the year immediately following completion of the capital works needed to achieve the Approved Purposes. After that you must re-apply for the Award for at least the next four years.
 - c When requested you will send us written confirmation of the Award to the Property for the then current year.
- 17 You will insure the Property to the standard as set out in (and use any proceeds of the insurance in line with) the Monitoring Documents.
- 18 You will keep any objects or fixtures that form part of the Property in a physically secure and appropriate environment.
- 19 You will tell us, in writing, within five working days about any significant loss or damage to the Property.
- 20 You will arrange for the general public to have appropriate access to the Property. You will make sure that no person is unreasonably denied access to the Property.
- 21 Before we make any public announcement of the Grant, you will not issue any public statement, press release or other publicity in relation to the Grant or which refers to us, other than in a form we have approved beforehand.
- 22 Once we have announced the Grant, you must acknowledge the Grant publicly in line with the Monitoring Documents and the HLF 'How to acknowledge your grant' guidance. You must meet the minimum requirements as set out for the kind of project you are running. You must also provide us with photographs, transparencies or high resolution digital images in electronic format of your project and meet any other acknowledgement or publicity requirements we may tell you about from time to time.
- 23 You give us the right to use the photographs you send us. You must get any permission you need for you to use the photographs before you send them to us or before you use them.
- 24 We will make the purpose and amount of the Grant public under the Freedom of Information Act 2000 and in whatever other way we think fit.
- 25 We will, up to the Grant Expiry Date, pay you the Grant or any instalment of it in line with this Contract and the procedures and terms set out in the Monitoring Documents. The terms set out in the Monitoring Documents (and the terms of this Contract) will apply as long as:
 - a the National Lottery continues to operate under the National Lottery etc. Act 1993 (as amended from time to time), and enough funds are made available to us under the Act; and
 - b we are satisfied that you are achieving (and will continue to achieve) or have achieved the Approved Purposes in line with this Contract, and that you are

spending the Grant in proportion to any other funds you receive from other sources for the Approved Purposes.

- 26 We confirm that the Grant is recorded in our accounts as a firm commitment to pay the money.
- 27 You acknowledge that the Grant is the total amount of funds we will provide and will not be increased as the result of you overspending or for any other reason.
- 28 You must repay to us immediately any Grant that we have paid you (and we will stop any future instalments of the Grant) if:
- a you fail to keep to clause 1 or 2 (unless the failure was to achieve the Approved Purposes by the Grant Expiry Date and the failure happened due to events beyond your control);
 - b you no longer operate, or you are declared bankrupt or placed into receivership or liquidation;
 - c you have in, our opinion, put fraudulent, incorrect or misleading information in your application form;
 - d you have acted negligently in any significant matter or fraudulently in connection with the Approved Purposes or the Approved Usage; or
 - e any competent authority directs the repayment of the Grant.
- 29 You must repay to us any Grant that we have paid you (or any smaller amounts we ask you to repay) if we tell you that you must repay it for any of the following reasons. (We will also stop any future payments of the Grant.)
- a There is a significant change in your status.
 - b We are satisfied that you have used any fraudulent, incorrect or misleading information to fill in any Monitoring Documents or to provide other information to us.
 - c You knowingly withhold information that is relevant to the content of the Application.
 - d You fail to keep to any of the terms of this Contract (other than under clause 28).
- 30 If you have to repay the Grant as a result of:
- a a change of ownership of all or part of the Property;
 - b a significant change in your status;
 - c a change from the Approved Purposes or Approved Usage; or
 - d you no longer operating due to a merger with, or the transfer of functions to, another organisation;
- you, the new organisation or the new owner must, within 90 days of the terms being broken, send us a new version of your Application to consider.

- 31 We may decide not to ask you to repay the Grant (or any part of it as we think fit) if we agree to the new application and you, the new organisation or the new owner enters into a new grant contract with us on any terms as we think fit.
- 32 If you achieve the Approved Purposes without spending the full amount of the Grant, you must pay back the part of the Grant you have not spent. We will assume that you have spent the Grant in proportion to other funds you received from other sources for the Approved Purposes.
- 33 a Within 28 days of the date of this Contract, you must send us a certified copy (signed to confirm it is a true copy) of the document recording your decision (or the decision of the relevant properly constituted committee, executive or authorised officer) authorising you to enter into this Contract, together with a statement containing the information set out in paragraph b below.
- b The statement must include the following information.
- The power (statutory or otherwise) you have and which you have used to enter into this Contract.
 - An extract of that part of your policy framework under which you have entered into this Contract.
 - The executive arrangements under which your decision to enter into this Contract was made.
 - The considerations that you took into account in using the powers and the procedure under which any consultation took place and the decision was made.
 - The authority under which this Contract has been signed on your behalf.
- c Without affecting clause 37, you must (if we think it is necessary) confirm your decision in whatever way we direct. Within seven days of confirming, you must send us evidence of this.
- d We may withdraw the Grant (after considering the matters referred to in paragraphs 33a and 33b) if we are not satisfied that this Contract is valid and binding on you.
- e Within 21 days of sending us the document and information needed under paragraph 33a (or evidence of the confirmation of the decision in line with paragraph 33c), we may ask that you get the written opinion of a barrister, in a form satisfactory to us, asking for his or her opinion on whether:
- the powers you are relying on in entering into this Contract do allow you to enter into these arrangements;

- you have followed correctly all procedural requirements in using those powers and have acted in a reasonable and proper way; and
- you have taken account of only, and all, relevant considerations in using those powers.

You must send us the barrister's opinion and make sure that it is addressed to us as well as to you. You must also make sure that the barrister confirms we may rely on his or her opinion for our own purposes.

f You acknowledge that neither any documents or information that you send us, nor the fact that we may then have paid you part of the Grant, will affect our right to rely on the promise in paragraph g below.

g You promise that:

- you have the authority to enter into this Contract;
- in using that authority you have acted in good faith, in a reasonable and proper way, for a proper purpose, without breaking any procedural requirement and in considering only (and all) relevant considerations; and
- your decision to enter into this Contract is one that any reasonable local authority (applying the laws that are relevant to it) could have reached.

h Within one month of the end of each of the 10 years after you finish the work, you must send us detailed accounts, certified by your chief finance officer, showing the funding and resources you used on the Property in the year before.

34 Before you begin any of the capital works needed to achieve the Approved Purposes, you must prepare a 10-year management plan for the Property and send it to us for our approval. The plan should include details of the amounts you need to provide each year to achieve the proposals in the plan. After that, you must manage the Property in line with the approved management plan (or any modification that we have approved).

35 If you sell or otherwise part with all or part of the Property without our permission under clause 14 or 30, or you receive money in some other way as a result of the terms being broken, you may have to pay us immediately a share of the net proceeds (we will work out the share in line with the Monitoring Documents) if that share is more than the amount we would otherwise be entitled to under clause 28 or 29.

36 You may not, and will not claim to, transfer the Grant or this Contract, or any rights under this Contract.

37 You will take all steps and sign and date any documents as may be necessary to carry out your obligations under this Contract and to give us the rights granted to us under this Contract.

- 38 If you are made up of more than one person, any liability under this Contract will apply to you all together and separately.
- 39 We may rely on any of our rights under this Contract at any time, even if we do not always choose to do so. If we decide not to rely on one right, we may still rely on any of our other rights under this Contract.
- 40 If you need our approval for anything, you must write to us to ask for it. You may only rely on any approval needed under this Contract if we (or any person we authorise) give it to you in writing.
- 41 Any notice, request or other document we or you send to each other under this Contract will be delivered or sent by first-class post or fax to the addresses in this Contract, or to any other addresses we may specify.
- 42 Any documents you need to send us under this Contract are for our own purposes only. If we approve or accept any documents, this does not mean that we have approved or accepted them for any other purpose.
- 43 The conditions of this Contract last for 25 years from the date of this Contract.
- 44 The conditions in this Contract cannot be enforced by any person other than you and us, but this will not affect the rights anyone else might have other than under the Contracts (Rights of Third Parties) Act 1999.

APPENDIX

Special Conditions

1. Before you start any of the works needed to achieve the Approved Purposes you must send to us for approval further developed proposals for ongoing management including clear management structures for delivery of the Approved Purposes and after completion and which should set out responsibilities for all areas of activity, management controls and director level lead. After that you must implement the proposals (or any variation of them) that we have approved.
2. Final designs for the following areas must be resubmitted to us and approved by us before implementation:-
 - a) site wide interpretation
 - b) marine lake café and
 - c) fencing around the model village

After that you must carry out the works in accordance with the final designs (or any variation of them) that we have approved.

3. Within 12 months of the date of this Contract you must send to us for approval a revised management and maintenance plan which must specifically include marine lake, site signage and interpretation. After that you must manage the Property in accordance with the revised management and maintenance plan (or any variation of it) that we have approved.

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Signed on behalf of the Trustees of
the National Heritage Memorial Fund
and on behalf of
the Big Lottery Fund

.....
(Please print name)

A.....*A*
Signed on your behalf:

A.....*A*
(Please print name)