

DATED

2018

**MENDIP DISTRICT COUNCIL (1)
FROME TOWN COUNCIL (2)**

**AGREEMENT FOR THE ESTABLISHMENT OF A
JOINT COMMITTEE FOR BOYLE CROSS, FROME**

including markets, carnivals, and any other event that may be identified from time to time by MDC

“Income”	means any income received for any events, functions or activities involving the use of the Land which shall be approved as part of the Functions
“Land”	means the land identified in Recital A above
“Staff”	means any staff employed by the either Council
“Functions	means the functions, tasks and activities set out in Schedule 2
“Term”	means the period of 1 year from the Commencement Date

2. THE COMMITTEE

- 2.1. In exercise of their powers under Sections 101, 102, 103, 111 and 113 of the Local Government Act 1972 and Section 20 of the Local Government Act 2000 and all other powers enabling them in that behalf, the Councils establish and participate in a joint committee to be delivered through the Committee Board which shall be constituted and conduct its business in accordance with the procedures, role and functions set out in Schedule 1.
- 2.2. The Councils authorise the Committee Board to carry out the Functions as set out in Schedule 2 and the responsibilities of the Committee Board shall be as set out in Schedule 1.
- 2.3. Each Council further empowers the Committee Board to arrange for the discharge of the Functions either directly or any part or parts of them by any Sub-Committee or officer appointed by it or by any officer of the Councils so appointed and subsection (2) of Section 101 of the Local Government Act 1972 shall apply in relation to the functions of the Committee Board as it applies in relation to the functions of the Councils.
- 2.4. In entering into this Agreement the Councils recognise that it is impractical to make provision for every contingency that may arise during the Term and accordingly the Councils declare it to be their intention that the Agreement shall operate between them with fairness and without detriment to the interests of any of them and if in the course of this Agreement unfairness to any Council is disclosed or anticipated the Committee Board shall use all reasonable endeavours to agree upon such action as may be necessary and equitable to remove the cause or causes of the same.
- 2.5. The Councils agree to use all reasonable endeavours to fulfil the following objectives:-
 - 2.5.1. to share and exchange experience, knowledge, strategies, objectives and any relevant technical and policy information relating to the Functions subject to certain applicable restrictions or requirements such as those relating to confidentiality or data protection;

2.5.2. to promote joint working, commitment, good communication and co-operation between each other and any other stakeholders as may be relevant and appropriate;

2.5.3. to ensure that the administration of the Committee Board operates effectively through the provision of assistance and support to the Committee Board as required.

3. MANAGEMENT OF THE COMMITTEE

3.1. Each Council shall appoint two members to the Committee Board (both being elected members of that Council) and each Council shall not hold more than 50% representation on the Committee Board. The Councils may make substitutions in accordance with their own procedures where one of their members is unable to attend any meeting of the Committee Board. The Councils may replace members of the Committee Board as and when required and may appoint additional members provided that both Councils agree to such additions and the representation is not altered.

3.2. The Councils shall work co-operatively (providing the resources of the Staff where necessary) to provide administrative support, venues and operational resources to all meetings of the Committee Board to include, in consultation with the Chairman and Committee Board members as required, publication of and invitations to meetings, agenda setting, minute taking and distribution of the same and shall do so at their own expense. The Committee Board may, in its discretion agree with the Councils a procedure for dealing with all such matters.

3.3. Members of the Committee Board shall report back to their respective Councils on matters raised at meetings of the Committee Board, actions agreed upon and approvals sought as necessary PROVIDED THAT members will provide a full written report to the Full Council meeting of each Council not less than once a year and provide the Business Plan and Budget for approval within 28 days of being approved by the Committee Board.

3.4. The Committee Board may require the Councils to provide any information, additional to that already provided and the Council(s) shall comply with such requests within 28 days of being made.

3.5. Any accommodation and any equipment held by either Council for the discharge of the Functions (or suitable alternative accommodation or equipment) shall be made available for the use of the Committee during the Term as agreed with each Council.

4. INDIVIDUAL COUNCIL'S RESPONSIBILITIES

4.1. FTC and MDC shall act in partnership and co-operation to jointly approve proposals/requests for Events to be held on the Land PROVIDED THAT if Staff from both Councils are not able to agree on whether to approve any request it may be referred to the Committee Board for a decision.

4.2. FTC and MDC shall use their reasonable endeavours to approve the Business Plan and Budget as recommended by the Committee Board and, where either Council believes it is unable to do so, they shall report back to the Committee Board as soon as practicable with their recommendations for amendments.

4.3. Notwithstanding the joint arrangements for the establishment and operation of the Committee the following matters relating to the carrying out of the Functions shall remain the sole responsibility of each Council as follows:

4.3.1. FTC will on behalf of the Joint Committee act as the facilitator of and shall be responsible for the planning and management of Events on the Land (irrespective of the organisations and/or individuals who will operate the same) in accordance with the Business Plan and the written events procedure set out in Schedule 3. This responsibility shall include (but not exclusively) the promotion of the Land, receiving requests from third parties to hold Events, and processing and submitting such requests to MDC for consideration and approval. All requests for Events shall be submitted to MDC by FTC using such notification forms as are currently adopted by MDC from time to time and shall be accompanied by such additional information as MDC shall require.

4.3.2. MDC shall be responsible for considering all requests made under clause 4.3.1 and, where appropriate issuing approvals to the Event organiser to enable Events to be carried out (such approval being given by the Council's Neighbourhood Services department).

4.3.3. FTC shall be responsible for managing, overseeing and, where appropriate, carrying out Events in accordance with the terms of any consent given by MDC under clause 4.3.2 above and shall, in particular;

4.3.3.1. attend if deemed necessary any meeting of the Council (including any relating to health and safety of public events); and comply with any instructions or actions that arise out of such meeting; and

4.3.3.2. ensure that all Events comply with the Business Plan or such other agreed objectives of the Committee.

5. **STAFF**

5.1. For the Term, unless otherwise stated, the Councils will make available to the Committee such Staff as are reasonably required to carry out or assist in carrying out the Functions in accordance with the powers of the Councils under s.113 Local Government Act 1972 to place their officers at the disposal of other local authorities.

5.2. During the Term, all Staff shall continue to be employed by the Council with whom they were originally employed on its terms and conditions.

6. FINANCIAL ARRANGEMENTS

6.1. The Councils will jointly be responsible for the collection of all Income arising out of the use of the Land which shall be paid into their respective Account exclusively for the use of the Committee Board:

6.1.1. towards the maintenance of the Land; and,

6.1.2. in carrying out the Functions / complying with the Business Plan.

Council Contributions

6.2. Each Council will, subject the Business Plan and Budget agreed by the Committee Board and subject to sign-off by each Council, commit a financial contribution to be used by and for the benefit of the Committee at such levels as shall be agreed between the Councils at the Commencement Date and, as set in following years by the Committee Board subject to approval from each Council.

6.3. Each Council's contribution shall be held and maintained within their respective Account but the contributions and all Income generated from Events or parts of Event on the Land together may be treated as pooled budgets by the Committee Board.

Audit

6.4. The Accounts together with all relevant records and supporting vouchers of the Committee shall be audited in accordance with such procedures as shall be agreed by the Committee Board and shall be open to inspection by each Council and members of the public as required. All internal and external audit reports shall also be open to inspection by each Council subject to the usual rules relating to disclosure of confidential or personal information.

7. DURATION AND WITHDRAWAL

7.1. This Agreement shall come into force on the Commencement Date and shall continue until the end of the Term unless the Committee is terminated by the mutual agreement of the Councils.

7.2. In the event of the Councils agreeing to terminate the Committee under this clause disposal of equipment or other costs arising from the termination of the Agreement shall be met by the Councils in equal proportions or such other percentage proportions as shall be agreed by the Committee Board.

7.3. Each Council must ensure appropriate budgetary provision is made for the cost of termination, including their closing obligations to the Committee and to the other Council.

8. EXTENSION AND VARIATION

- 8.1. This Agreement may be extended beyond the Term by agreement in writing between the parties, such agreement to be made no later than 2 months before the end of the Term and to specify the new commencement date and term.
- 8.2. Any term of this agreement may at any time be varied or amended by deed executed by both Councils from time to time

9. DISPUTE RESOLUTION

Subject as provided by Section 103 of the Local Government Act 1972 any question, dispute or difference in relation to any matter in connection with this Agreement which may occur between the Councils or between the Committee Board and any Council shall be referred to a process of mediation in accordance with the Centre for Dispute Resolution Model Mediation Procedure.

10. WARRANTIES AND INDEMNITY

- 10.1. Each Council warrants to the other Council that it has the authority and has obtained all relevant consents required to enter into this Agreement.
- 10.2. The Councils jointly and severally undertake and confirm that they each hold and shall maintain insurance cover providing a limit of indemnity of not less than £10,000,000 in respect of public and employers' liability and £2,000,000 in respect of professional indemnity for any liability arising from the discharge of the Functions for the duration of this Agreement and for a period of twelve years after termination of this Agreement.
- 10.3. All liabilities incurred by the Committee Board in discharging the Functions (except for any liability arising solely as a result of the actions of one Council which shall be met by that Council except where that Council is acting strictly in accordance with a mandate of and on behalf of the Committee Board) including any continuing obligations and liabilities after termination of this Agreement shall be shared equally by the Councils and each Council fully indemnifies the other in respect of all losses, costs, claims, actions, proceedings, expenses or liabilities of whatsoever nature arising from the Committee and in respect of any continuing obligations and liabilities of the Committee after termination of this Agreement to the extent of its share.
- 10.4. Each of Council shall be responsible for (and for meeting the costs of conducting and/or settling of) any action or claim which is pursued within the relevant limitation period (other than an action or claim in contract) whether made before on or after the date of this Agreement and whether made against any or both of the Councils which is founded on any act, omission or default of any Council occurring before the date of this Agreement and which, if this Agreement had not been entered into, could have resulted in any such action or claim being made against any Council and in respect of which any of Council is covered by a policy of insurance and to the extent that any such actions or claims are pursued against any or all of the Councils the responsible Council will indemnify other Council against any such action or claim

11. CONFIDENTIALITY AND DATA PROTECTION

Data Protection

- 11.1. The Councils acknowledge their respective and collective duties and obligations under the provisions of the Data Protection Act 1998 and General Data Protection Regulations (as amended) (“the DP Laws”) and shall comply in all respects with it and all regulations made under the DP Laws and the Councils collectively warrant that they are individually properly registered as data controller and data processor for the purposes of the DP Laws.
- 11.2. Each Council shall at all times comply with all relevant provisions of the DP Laws and do nothing which causes, or may cause, the other Council to be in breach of their obligations under the DP Laws. In particular, to the extent that one Council acts as a data controller or processor in respect of any personal data pursuant to the Agreement that Council shall only process such personal data as is necessary to enable it to fulfil its obligations under this Agreement and in accordance with any privacy notices issued by that Council.
- 11.3. Both Councils collectively warrant to each other that they have appropriate technical and organisational measures in place to protect any personal data they are processing on behalf of another Council against any unauthorised or unlawful processing and against any accidental loss, destruction or damage and undertakes to maintain such measures during the course of this Agreement.

Confidentiality

- 11.4. Subject to their respective obligations under the Freedom of Information Act 2000 (as amended) each Council shall use its best endeavours shall keep confidential the terms of this Agreement and any and all confidential information that it may acquire in relation to the business or affairs of the other parties. No party shall use this confidential information for any purpose other than to perform its obligations under this Agreement and to comply with any statutory or regulatory requirements and each party shall ensure that its officers and employees comply with this clause at all times.
- 11.5. The obligations set out in clause 10.4 above shall not apply to any information which is publicly available or becomes publicly available through no act or omission of either party; or a party is required to disclose by order of a court of competent jurisdiction.

Freedom of Information

- 11.6. The parties shall co-operate with each other so as to ensure compliance with the Freedom of Information Act 2000 (“FOIA”). In the event that any Council is required to provide information to any person as a result of a request made to it under FOIA (“the Requesting Council”) and the other Council holds information which, within the meaning of FOIA, is under the control of that Council (“the Receiving Council”);

11.6.1. the Receiving Council shall respond in a timely manner (time being of the essence) to a request from the Requesting Council for such information; and

11.6.2. subject to the operation of the exemptions specified in FOIA the Requesting Council shall have the right to disclose information relating to this Agreement and to the Committee.

11.7. Without prejudice to the generality of the above all Councils shall co-operate with enquiries by the Scrutiny Committee or equivalent or similar Committee of any local authority, the Local Government Ombudsman and any other legally constituted regulatory body for the provision of information or other assistance whether or not raised pursuant to the FOIA.

11.8. All parties, shall where possible, use their best endeavours to assist the other party in complying with any statutory obligations and duties and shall make available to the other party such facilities and assistance as that party may reasonably request provided that reasonable notice of the request has been given and provided further that this does not put the party providing the assistance to what they consider an unreasonable cost.

12. GENERAL PROVISIONS

Assignment

12.1. The Councils may only assign or transfer this Agreement or any of their rights under this Agreement to a successor public authority with similar powers and obligations and upon giving written notice to the Committee Board, such notice to be given not less than 28 days prior to assignment or transfer.

Notices

12.2. All notices to be given under this Agreement shall be in writing and shall either be delivered personally to the authorised representatives of the Councils or sent by first class mail or by facsimile transaction and shall be deemed duly served

12.2.1. in the case of a notice delivered personally, at the time of delivery;

12.2.2. in the case of a notice sent by first class pre-paid post, three Business Days after the date of dispatch; or

12.2.3. in the case of facsimile transaction, if sent during normal business hours on a normal business day then at the time of transmission and if sent outside normal business hours on a normal business day then on the next following.

Complaint Handling

12.3. The Councils shall assist each other in the investigation of any complaint made against them or against the Committee concerning the carrying out of the Functions and will (subject to any

statutory or regulatory confidentiality requirements) provide all files and other information, including information relating to the performance by their Staff of their agreed duties pursuant to this Agreement

Waiver and Severability

12.4. No failure or delay on any Council part to exercise any power or right under this Agreement shall operate as a waiver, nor shall any single or partial exercise by the Committee Board or a Council of any power or right under this Agreement preclude any other or further exercise of those rights or the exercise of any other right. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

12.5. In case any one or more of the provisions in this Agreement should be invalid, illegal or unenforceable in any respect under any law applicable in any relevant jurisdiction, the validity, legality and enforceability of the remaining provisions in this Agreement shall not in any way be affected or impaired.

Force Majeure

12.6. All parties shall be released from their respective obligations in the event of national emergency war prohibitive government regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of this Agreement not reasonably practical.

Third Party Rights

12.7. The parties confirm their intent not to confer any rights on any third parties by virtue of this Agreement and the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

Governance

12.8. This Agreement shall be governed by and construed in accordance with English Law.

SCHEDULE 1

Standing Orders for the Partnership Board

1. The Standing Orders agreed by the Councils shall apply to the meetings of the Committee Board except as hereinafter provided.
2. The Committee Board shall hold the obligatory meetings required under paragraph 3 below and any other meetings that the Committee Board deem necessary from time to time.
3. The Committee Board will meet a minimum of twice a year which shall include the Annual General Meeting, to approve the Committee's draft final accounts, and agree the balance(s) to

be held; to reassess the values and objectives of the Committee and monitor service delivery and financial performance to be held in or as reasonably close to April as practicable;

4. At the Annual General Meeting the Committee Board shall from among their members elect a Chairman provided that if there be an equality of votes in the election of the Chairman it shall be decided by lot which of the members having an equal number of votes shall be appointed.
5. In the event that the Chairman is unavailable to attend any meeting of the Committee Board he may nominate a substitute from the other Board members to carry out his duties at that particular meeting. In the absence of any such nomination the Board members present may elect a Chairman from amongst the attendees to undertake such role for the duration of that meeting.
6. The Chairman may call a meeting of the Committee Board at any time and shall do so upon the written requisition of two members.
7. Every matter arising at a meeting of the Committee Board shall be decided by a majority of the votes of the members present. In the case of an equality of votes the Chairman of the meeting shall have a casting vote.
8. All voting members (or their authorised substitutes) of the Committee Board are required to be present to form a quorum for each meeting.
9. Senior Managers or any authorised representative (including any members of Staff) from any Council will be able to attend meetings of the Committee Board in an advisory capacity but shall have no voting rights. The Committee Board may, from time to time, invite other groups or individuals to attend meetings and such invitees shall have no voting rights.
10. Meetings of the Committee Board will be open to members of the public to attend unless otherwise agreed by the Committee Board and notified to each Council.

SCHEDULE 2

FUNCTIONS

1. To agree a Business Plan for the use, management and maintenance of the Land, such exercise to be completed as soon as practicable following the Commencement Date and to take account of maintenance obligations, anticipated use and likely income and submit the agreed Business Plan to each Council for approval.
2. To review, monitor and amend the Business Plan as considered appropriate and necessary from time to time and, as soon as practicable, following an instruction to do so by any Council
3. To, as soon as practicable following the Commencement Date, agree a reasonable level of funding required in order to carry out the Functions ("the Budget") and to notify this to each Council in order that compliance with clause 6.2 can be achieved.
4. To agree such fees as are reasonable and appropriate for Events that may be held on the Land (subject to any fees payable to third parties)
5. To (*no later than 1 December in each year of the Term*) agree a Budget for the forthcoming year and submit this to each Council for approval, which approval shall not be unreasonably withheld. All Budget setting shall take account of Income received in the previous 12 months.
6. To set the strategic direction for the use of the Land to provide a revenue stream to benefit the community of Frome and to promote the use of the Land.

7. To agree a maintenance schedule for the Land, setting out which Council shall be responsible for which aspects of maintenance and the associated financial implications and obligations.
8. To consider and, if appropriate agree, any proposal from either Council for additional works or further improvements to the Land.

SCHEDULE 3

Events Procedure (tba)

Execution clauses to follow