

# **BASINGSTOKE CANAL: SERVICE LEVEL AGREEMENT**

## **CONDITIONS**

1. Date of Agreement: 1 April 2009

2. Parties

This is an agreement between:

(i) THE COUNCIL

and

(ii) BASINGSTOKE CANAL AUTHORITY ("the Organisation")

### **3. Authorised Representatives**

3.1 The parties' authorised representatives for the purposes of this Agreement shall be:

**The Council :**

and

**The Organisation :**

### **4. Object of Agreement**

4.1 The Council wishes to obtain the services of the Organisation for the purpose of providing maintenance, measures and improvements aimed at facilitating the use of the Basingstoke Canal as a major leisure and conservation resource within its Borough or District Council area.

### **5. Period of Agreement**

5.1 This Agreement shall begin on 1 April 2009 and shall continue for a period of three years unless terminated earlier in accordance with Paragraph 18 provided that both the Council and the Organisation agree that they are satisfied with its performance and that there is sufficient demand to justify the level of grant assistance and provided that the Council makes available the funds set out in paragraph 16 below.

### **6. Status of Organisation**

6.1 In carrying out this Agreement the Organisation is acting in its own right and not as an agent of the Council.

6.2 Nothing in this Agreement shall be construed as creating a partnership between the parties and neither party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party in any way or for any purpose.

## **7. Status of Agreement**

7.1 The parties intend this Agreement to be legally binding.

7.2 Each party acknowledges that this Agreement inclusive of its appendices contains the whole agreement between the parties AND that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

7.3 Any failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any rights or remedies and no single or partial exercise of any rights or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

7.4 Except as expressly provided in this Agreement the rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## **8. The Organisation's Obligations**

### **The Organisation agrees:**

8.1 to provide the service specified in Schedule One of this Agreement ("the Service").

8.2 to comply with the relevant requirements of any provisions of any statutes byelaws and regulations affecting the Service.

8.3 not to use the grant assistance provided by the Council to support any activity which the Council has notified the Organisation that it is itself forbidden to finance or support or to provide services outside its objectives without having obtained the Council's permission and agreed a variation of this Agreement in advance.

## **9. Information**

9.1 The Organisation shall maintain proper records of those items specified in the Schedules of this Agreement These records shall be open for inspection by the Council at all reasonable times The Organisation shall provide such other information at such intervals as the Council may reasonably require.

9.2 The Organisation shall maintain a proper set of financial accounts of its activities in such form as the Council may reasonably require and shall arrange for the accounts to be audited annually in a manner approved by the Council. These accounts shall be made available to the Council within a reasonable period of any request to see them.

9.3 The Organisation shall maintain proper records of how the monies paid to it under this Agreement have been spent and shall make these records available to the Council within a reasonable period of any request to see them.

## **10. Quality Assurance**

10.1 The Organisation shall operate a quality assurance system in accordance with Schedule Two of this Agreement and with standards to be agreed between the parties' Authorised Representatives.

## **11. Representations and Complaints**

11.1 The Organisation shall operate a procedure consistent with the requirements of the Schedule of this Agreement for dealing with representations

and complaints about the Service and shall take all reasonable steps to bring this to the attention of service users.

## **12. Equal Opportunities**

12.1 The Organisation shall operate an Equal Opportunities Policy for the purposes of the Service and will have reasonable regard to the needs of people with disabilities.

## **13. Health and Safety**

13.1 The Organisation shall comply with the requirements of the Health and Safety at Work etc Act 1974 and of any other Acts Regulations or Orders about health and safety.

13.2 In particular the Organisation shall ensure that any vehicles and boats used to carry passengers are suitable for the purpose and comply with all legal requirements.

13.3 The Organisation shall provide adequate care and/or supervision for any users of its services.

## **14. Use of Other Organisations**

14.1 The Organisation may not assign its rights or obligations under this Agreement.

## **15. Insurance and Indemnity**

It is agreed that the Council shall not have any liability (whether civil or criminal) for any injury (including injury resulting in death) or other loss or damage sustained by any Service user or employee or other member of staff of the Organisation or any member of the public OR for any and all actions proceedings or claims brought by and costs or compensation for loss (including legal fees and costs) sought by any such third party against the Council arising in relation to the Service AND for this purpose the Organisation agrees to effect and maintain an employer's liability insurance and public liability insurance with a reputable

insurance office with the minimum cover of ten million pounds respectively on any single claim AND from time to time to produce to the Council within seven days of a request to do so copies of the respective policies and evidence of payment of the current premiums.

## **16. The Council's Obligation**

16.1 In consideration of the Service the Council shall pay grant assistance to the Organisation for a period of up to three years subject to Paragraphs 16.2 to 16.5 below provided that the Organisation is not in breach of this Agreement and subject to the Council being satisfied as to the financial viability of the Organisation and to the Organisation meeting the requirements of the monitoring procedure as set out in Schedule Two.

16.2 The grant assistance payable under paragraph 16.1 above shall consist of the sum of £???, payable on 1<sup>st</sup> April 2009 and of two further sums payable on 1<sup>st</sup> April 2009 and 1<sup>st</sup> April 2011 subject to 16.3 below or by such instalments as the Council shall consider appropriate, provided that the sums payable on 1<sup>st</sup> April 2010 and 1<sup>st</sup> April 2011 shall be subject to the review referred to in paragraph 20.1 being satisfactory to the Council and to receipt of a satisfactory annual report as referred to in Schedule Two paragraph 3(a).

16.3 The sum payable shall be reviewed annually by the Basingstoke Canal Joint Management Committee and such review shall increase the amount of the grant assistance payable by an inflation figure subject to the Organisation having met the objectives for the previous year set out in the Service Specification in Schedule One.

16.4 For the avoidance of doubt the services to be provided under this Agreement are services available to the general public and do not involve the provision of a service of any kind to the Council. In the event that VAT is deemed to be payable

then the grant assistance shall be deemed to be exclusive of VAT and each party shall furnish to the other such documentation as the other reasonably requires.

16.5 The Organisation agrees with the Council to repay to the Council the sum payable under paragraph 16.1 above less any deductions which are agreed by the parties in the event that this Agreement is terminated in accordance with clause 18 hereof.

16.6 The Council's Authorised Representative shall undertake to liaise with any Member who represents the Council on the Management Committee or its equivalent, to give advice and support to the Organisation as appropriate and as resources allow, to act as a facilitator with other Council departments when necessary and to attend as an observer meetings of the Joint Management Committee or its equivalent, to receive minutes of the meetings and copies of the documents required by this Agreement.

## **17. Monitoring**

17.1 The parties shall together operate the monitoring arrangements set out in Schedule Two of this Agreement. Where the Organisation is deemed to be failing to meet its obligations under the Agreement the Authorised Representative will require the Organisation to address areas of concern within a fixed time period to be determined by the Authorised Representative.

17.2 Where the level and quality of staff and equipment falls below the level required by this Agreement the Organisation shall be deemed to be in breach of the Agreement and the Council may, if the said breach cannot be remedied within a reasonable period of time to the satisfaction of the Authorised Representative make a deduction for any grant assistance due or seek recovery thereof as a civil debt without further demand.

17.3 For the avoidance of doubt it is expressly agreed that the Council may undertake its review of performance by way of any reasonable method it considers

appropriate not acting unreasonably or vexatiously and causing as little disruption as possible and where practicable on prior notice and with the agreement of the Organisation.

## **18. Termination**

18.1 Any party may terminate this Agreement upon giving twelve months' notice in writing to the other party or a lesser period if both parties agree.

18.2 Any party may terminate this Agreement immediately by notice in writing to the other in the event of any new legislation or Government ruling coming into force affecting the arrangements which are the subject of this Agreement.

18.3 The Council may terminate the Agreement following the passing by the Organisation of a resolution for its winding-up or the making by a Court of competent jurisdiction of an Order for the winding-up of the Organisation or the dissolution of the Organisation other than for the purposes of a solvent amalgamation or reconstruction, or following the making of an administrative order in relation to the Organisation or the appointment of a receiver, provisional liquidator or manager over, or the taking possession or sale of the encumbrance of any of the Organisation's assets, or following the Organisation making an arrangement or composition with its creditors generally or making an application to a Court of competent jurisdiction for protection from its creditors generally, or following the Organisation ceasing or threatening to cease to carry on business.

18.4 Where a party is failing to carry out its terms any other party may terminate this Agreement subject to having given 30 days notice to remedy the breach upon giving 7 days notice in writing.

18.5 The Council shall be entitled to terminate this Agreement with immediate effect where the Organisation has committed a criminal offence.

18.6 The Council recognises that the Organisation's ability to continue to provide the service depends on it continuing to receive financial support and / or facilities

of other organisations or volunteers and that if these are withdrawn the Organisation's ability to provide the service may be jeopardised. If the Organisation and the Council agree that it is no longer possible for the Organisation to provide the service either party may terminate the Agreement by notice as in 18.7 below.

18.7 Any notice given pursuant to this Agreement shall be in writing and shall be sufficiently served;

(a) by the Organisation on the Council if delivered personally on or sent in a letter by first class prepaid post addressed to the appointed/designated officer of the Council.

or

(b) by the Council on the Organisation if delivered personally to or sent in a letter by first class prepaid post to the Authorised Representative of the Organisation and any notice so given shall be deemed unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

18.8 Save as provided herein all rights and obligations of the parties shall cease to have effect immediately on termination of this Agreement except that termination shall not affect the accrued rights and obligations of the parties at the date of termination, and the continued existence and validity of the rights and obligations of the parties under those conditions which are expressed to or which in their context appropriately survive termination and any provisions of this Agreement necessary for the interpretation or enforcement of this Agreement.

18.9 If this Agreement is terminated by the Council pursuant to 18.3, 18.4 or 18.5 above, the Council shall cease to be under any obligation to make further payment until costs loss and/or damage resulting from or arising out of the termination of the Organisation's engagement shall have been calculated and provided such



calculation shows a sum or sums due to the Organisation. The Council may retain any sum due to the Organisation to set off against any sum due to the Council from the Organisation under the term of this Agreement. Sums due to the Council shall include reasonable costs of the Council of time spent by Officers in terminating the Agreement.

18.10 The rights of the Council under 18.8 and 18.9 above are in addition to and without prejudice to any rights the Council may have to claim the amounts of any loss or damage suffered by the Council on account of acts or omissions of the Organisation.

## **19. Disputes**

19.1 The Council and Organisation will use their best endeavours to resolve disputes.

19.2 Any party may use the following procedure to resolve disputes:

- (a) request a meeting between Authorised Representatives within 10 working days or such other period as may be agreed.
- (b) a further meeting involving senior representatives may be requested within 14 working days should the dispute remain unresolved.
- (c) should the dispute still not be resolved then the matter can be referred to independent mediation. Providing all parties agree this will take place as soon as is practically possible with a person acceptable to all parties.

19.3 Use of the disputes procedure will not delay or take precedence over any use of the default or termination procedures.

## **20. Review**

20.1 This Agreement shall be reviewed in September 2011 and may be amended if all parties agree the review shall cover all aspects of the working of the Agreement.

20.2 The Agreement may be reviewed at such other times as the parties agree

## 21. Variation

21.1 The terms of this Agreement may only be varied by agreement in writing

## 22. Child Protection (where applicable)

22.1 In providing the Service the Organisation shall in accordance with the Children Act 1989 give paramount consideration to the welfare of the child.

22.2 Where the Service requires the Organisation's employees or volunteers to have substantial unsupervised access to children the Organisation must undertake checks with the Criminal Records Bureau in accordance with the Rehabilitation of Offenders Act 1974 and the Protection of Children Act 1999 for each person prior to their appointment as an employee or their deployment as a volunteer.

## 23. Confidentiality

Without prejudice to the provisions of Clause 24. below the Council and the Organisation and their staff shall treat as confidential and shall not disclose to any person unconnected with the provision of the Service any confidential information acquired by the said parties or their staff in connection with the provision of the Service including any personal information whatsoever about any individual. Notwithstanding the foregoing, the Council and the Organisation jointly acknowledge that pursuant to Article 8 of the Human Rights Act 1998, an individual's right to confidentiality is not absolute and may be overridden where there is evidence that sharing information is necessary in exceptional cases, for example:

- (1) where there are child or adult protection issues;
- (2) inter-agency disclosures on a need to know basis, subject to the provisions of the Information Sharing Protocol which has been signed by the individual members of the Council;

- (3) to comply with the order of a Court or tribunal of competent jurisdiction or any relevant legislation
- (4) to prevent:
  - (a) serious crime
  - (b) danger to a person's life
  - (c) danger to other people
  - (d) danger to the community
  - (e) serious threat to others, including staff
  - (f) serious infringement of the law
  - (g) breaching a legal obligation to supply certain information
- (5) to preserve the health of any person or meet public health concerns to achieve the effective delivery of the Service within the bounds of duty of care.

#### **24. Data Protection Act**

The Organisation shall comply in all respects with the requirements of the Data Protection Act 1984 and the Data Protection Act 1998 and all subsequent legislation amending or replacing the same ("the Data Protection Acts") and in particular but without prejudice to the generality of the foregoing the Organisation shall;

- (i) treat all Personal Data (as defined in the Data Protection Act 1998 Section 1) received from the Council as confidential.
- (ii) not allow its staff (whether paid employees or unpaid volunteers) to have access to such Personal Data unless the member of staff exercising such access has been duly authorised in writing to do so by the Organisation.
- (iii) not use such Personal Data except strictly in connection with the performance of this agreement and the provision of the Service.
- (iv) not permit the disclosure of any such Personal Data to any other person or body without the express permission in writing of the Council.

(v) comply fully with the Organisation's policy on maintaining security of Personal Data a copy of which is annexed to this agreement.

(vi) comply with obligations equivalent to those imposed on the Council by the Seventh Principle of the Data Protection Act 1998 and

(vii) without prejudice to the foregoing paragraphs (i) to (vi) inclusive take all such measures as may from time to time be necessary to ensure that it complies and that the Council is enabled to comply with the Data Protection Acts AND the Organisation hereby indemnifies the Council from and against all actions costs claims proceedings and demands which may be made or brought against the Council for breach of the Data Protection Acts arising from the non-compliance by the Organisation with the provisions of this sub-clause.

#### **25. Human Rights Act**

The Organisation in the performance of this agreement shall comply with the provisions of the Human Rights Act 1998 in all respects as if it were a public body within the meaning of the Act. The Organisation shall indemnify or keep indemnified the Council against all actions, claims, demands, proceedings, damages, losses, costs, charges and expenses whatsoever in respect of any breach by the Organisation of this clause.

#### **26. General Conditions**

26.1 The Council shall be empowered to cancel this agreement and recover from the Organisation the amount of any loss resulting from cancellation, if the Organisation or any person acting on his behalf, shall have, in relation to the agreement or any other agreement with the Council:

(i) offered, paid or given, directly or indirectly, any gift in money or any other form to any elected member, employee or agent of the Council as an inducement or reward; or

(ii) committed any offence under the Prevention of Corruption Acts 1889 to 1916, or paid or offered any fee or reward contrary to Section 117(2) and 117(3) of the Local Government Act 1972.

## 27. Definitions

In this Agreement "working days" means every day except Saturdays, Sundays and Bank Holidays in respect of the Council and every day in respect of the Organisation who must provide adequate every day service.

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## SCHEDULE ONE

### SERVICE SPECIFICATION

#### 1. Key Objectives of Service

To provide measures and improvements aimed at facilitating the use of the Basingstoke Canal as a major leisure/recreation and conservation resource within the District or Borough Council area.

#### 2. Services which will be provided

The Basingstoke Canal is managed by the Basingstoke Canal Authority under a 'partnership' approach. The budget is apportioned between the two County and six District and Borough Councils along the Canal in relation to the population within five miles of the Council and the length of Canal within each administrative area.

All funders contribute to a central pot - the whole being greater than the sum of its parts - which covers central costs essential for running the Canal as well as specific projects. Local residents benefit from the central provision in terms of the Canal Centre, information and leaflets and the ability to enjoy all 32 miles of Canal whether on foot or by boat.

The District or Borough Council area takes in areas of canal with multiple open access which are intensively used by residents who enjoy free access to natural open spaces and multiple recreation activities alike. The canal is however a feature of heritage and engineering requiring considerable maintenance.

Projects and essential improvements planned for the next three years within the Council boundaries are intensive, ongoing and include:

a) 'Sustainable Tree Maintenance Policy' - Continuation of the removal of over shading trees to allow more light to enter the Canal and thus enhance the Site of Special Scientific Interest, natural flora and fauna. Monitoring, recording and management of dead, diseased and danger of falling trees.

b) Towpath maintenance and improvements - filling holes and embayment's.

c) Delivering the Conservation Management Plan.

In addition, the Authority will undertake, as appropriate, such elements of its Strategic Plan as fall within the Council boundaries for 2009 – 2011

**3. Who will be provided with a service?**

All members of the public

**4. Where will the service be provided?**

**(a) Location:**

Throughout the length of the Basingstoke Canal

**(b) What is the catchment area for service users?**

The surrounding area and beyond

**5. When will the service be provided?**

At all times; open access

## SCHEDULE TWO

### QUALITY ASSURANCE

#### 1. Management Structure Staff Supervision and Training

##### (a) Management/Committee Structure:

The Canal Joint Management Committee (JMC) consists of Members from Surrey and Hampshire County Councils plus the District and Borough Councils of Hart, Rushmoor, Guildford, Surrey Heath, Woking and Runnymede. In addition there is representation from the Surrey & Hampshire Canal Society and Natural England. The JMC meets twice a year.

The Canal Joint Advisory Group (JAG) meets a month before the JMC to discuss issues in detail and agree what to take to JMC. The JAG consists of Officers from the Councils represented on the JMC plus Natural England, Environment Agency, Canal Society, IWA, local Wildlife Trusts and the Angling Association.

##### (b) Arrangements for and Frequency of Staff Supervision:

The Canal Director has overall responsibility for staff supervision with a Senior Ranger (line manager) responsible for 9 Canal Rangers and service level delivery. The Canal Visitor Centre Manager is responsible for all centre activities and line management responsibilities for casual and volunteer staff. An Administration Manager/ PA to the Director and line management responsible for an Administrative Assistant. All staff are employees of Hampshire County Council and are subject to the pay & benefits and conditions of service, including HR, support and training.

##### (c) Staff Training Programme:

Hampshire County Council Learning and Induction Programme (all staff are Hampshire County Council employees).



**(d) Staff Recruitment:**

Hampshire County Council arrangements (as (b & c) above)

**2. Representations and Complaints Procedure****(a) User Representation Arrangements:**

Users are represented on several bodies:

(i) **User Forum Group** meets once a year with the Director and consists of members from the various boating, canoeing, angling, access etc. groups. Minutes of the meetings are circulated to the JMC and the Director will take forward issues as necessary.

(ii) **The Conservation Steering Group** meets twice a year and has representation from Natural England, The Wildlife Trusts, Environment Agency, Canal Society and co-opted experts. Minutes and issues are taken to the JMC by the Director.

(iii) **Canal Steering Group** meets quarterly attended by the chairman and vice chairman of the Joint Management Committee and senior officers representing both the joint (County Council) owners and forms an action project plan and feedback by and to the Director.

**(b) Complaints Procedure**

The Canal will report into Hampshire and Surrey County Council's complaints procedures. The Director currently deals with complaints initially, aiming to give an initial response within a week. Further action or response (if required) is sought from the most appropriate person. This will usually be within Hampshire or Surrey County Council.

**3. Monitoring Arrangements**

(a) The Organisation will submit to the Council an annual report on activity and progress relating to performance of its obligations under this Agreement.

(b) The Council's Authorised Representative may make inspections to review the service provision on giving reasonable notice to the Organisation.

(c) The Organisation will keep records which demonstrate the volume of work undertaken in providing the specified service, including minutes of meetings, attendances, financial records of transactions etc as appropriate for the service.

These will be made available to the Council as part of its evaluation and monitoring process.

(d) The Organisation shall submit its latest annual report and accounts to the Council's Authorised Representative within six months of the end of its accounting year.

(e) The Organisation shall allow access for audit or inspection purposes by the Council's Authorised Representative upon fourteen days notice in writing.

In addition the Organisation shall provide its audited accounts to the Council within six months of the end of the Organisation's accounting period.

(f) At the end of each year of this Agreement representatives of the Organisation and of the Council will formally monitor the Agreement and will submit a record of the meeting to the Contracts Policy Panel which will consider whether the Agreement should continue with or without modification.