

DATED

2015

SOUTH HAMS DISTRICT COUNCIL

-AND-

WEST DEVON BOROUGH COUNCIL

**MEMORANDUM OF UNDERSTANDING IN
RELATION TO THE LEISURE SERVICE PROJECT**

Prepared by
Andrew Ogalo – Solicitor (Contracts and Procurement)
West Devon Borough Council
Kilworthy Park, Drake Road
Tavistock, PL19 0BZ

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THIS MEMORANDUM OF UNDERSTANDING is dated

2015

BETWEEN:

- (1) **SOUTH HAMS DISTRICT COUNCIL** of Follaton House, Plymouth Road, Totnes, Devon TQ9 5NE (**South Hams**).
- (2) **WEST DEVON BOROUGH COUNCIL** of Kilworthy Park, Drake Road, Tavistock, PL19 0BZ (**West Devon**).

Together the “**Parties**” and each a “**Party**”.

1. BACKGROUND

- 1.1 South Hams and West Devon have agreed to work together on the project detailed in Annex A to this MoU (**Project**).
- 1.2 The Parties are party to a Collaboration Agreement which set out the basis for sharing resources generally but also make it clear that the Councils will continue operating different governance arrangements.
- 1.3 The Parties wish to record the basis on which they will collaborate with each other on the Project. This MoU sets out:
 - (a) the key objectives of the Project;
 - (b) the principles of collaboration;
 - (c) the governance structures the Parties will put in place; and
 - (d) the respective roles and responsibilities the Parties will have during the Project.

2. KEY OBJECTIVES FOR THE PROJECT

- 2.1 The Parties shall undertake the Project to achieve the key objectives set out in Annex A to this MoU (**Key Objectives**) in accordance with the Joint Working Protocol as set out Annex F to this MoU.
- 2.2 The Parties acknowledge that the current position with regard to the Project are as detailed in the Annex A to this MoU.

3. PRINCIPLES OF COLLABORATION

The Parties agree to adopt the following principles when carrying out the Project (**Principles**):

- (a) collaborate and co-operate. Establish and adhere to the governance structure set out in this MoU to ensure that activities are delivered and actions taken as required;

- (b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this MoU;
- (c) be open. Communicate openly about major concerns, issues or opportunities relating to the Project;
- (d) learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (e) adopt a positive outlook. Behave in a positive, proactive manner;
- (f) adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation. [In particular the Parties agree to comply with the requirements of the Information Sharing Protocol attached to this MoU in Annex B;
- (g) act in a timely manner. Recognise the time-critical nature of the Project and respond accordingly to requests for support;
- (h) manage stakeholders effectively;
- (i) deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this MoU; and
- (j) act in good faith to support achievement of the Key Objectives and compliance with these Principles.

4. PROJECT GOVERNANCE

4.1 Overview

The governance structure defined below provides a structure for the development and delivery the Project.

4.2 Guiding principles

The following guiding principles are agreed. The Project's governance will:

- (a) provide strategic oversight and direction;
- (b) be based on clearly defined roles and responsibilities at organisation, group and, where necessary, individual level;

- (c) align decision-making authority with the criticality of the decisions required;
- (d) be aligned with Project scope and each Project stage (and may therefore require changes over time);
- (e) leverage existing organisational, group and user interfaces;
- (f) provide coherent, timely and efficient decision-making; and
- (g) correspond with the key features of the Project governance arrangements set out in this MoU.

4.3 **Project Board**

- (a) The Project Board provides overall strategic oversight and direction to the Project.
- (b) The Project Board will consist of a maximum of six Members as may be nominated by the Councils from time to time, the Project Manager and the Executive Director Strategy & Commissioning. The initial membership of this board shall be as follows:
 1. Cllr H Bastone (South Hams DC),
 2. Cllr M Hicks (South Hams DC)
 3. Cllr R Musgrave (West Devon BC),
 4. Cllr R Oxborough (West Devon BC),
 5. Cllr R Sampson (West Devon BC),
 6. Cllr L Ward (South Hams DC)

 7. Jon Parkinson. (Project Manager)
 8. Steve Jorden (Executive Director Strategy & Commissioning),
- (c) The Project Board shall be managed in accordance with the terms of reference set out in Annex C to this MoU.
- (d) The Executive Director may nominate another officer to attend board meetings in his absence.

4.4 **Project Team**

- (a) The Project Board will provide strategic management at Project and workstream level. It will provide assurance to the Project Board that the Key Objectives are being met and that the Project is performing within the boundaries set by the Project Board.
- (b) The Project Team consists of representatives from each of the Parties. The Project Team shall have responsibility for the creation and execution of the project plan and deliverables, and therefore it will draw technical, commercial, legal and communications resources as appropriate into the Project Team. The core Project Team members are:
 - Ross Kennerley (Lead Specialist, Place and Strategy),
 - Chris Brook (Communities of Practice Lead, Assets),
 - Lisa Buckle (Section 151 Officer)
 - Robin Thompson (Director, RPT Consulting),
 - Roger Sheridan (Director, MML Consulting Ltd.),
 - Sophie Hosking (Executive Director Service Delivery and Commercial Development),
 - Carly Wedderburn (Corporate Procurement Officer)
 - Andrew Ogalo (Solicitor)

The Project Team shall meet monthly or at such frequency as determined by the Project Manager.

4.5 **Reporting**

Project reporting shall be undertaken at three levels:

- (a) **Project Team:** Minutes and actions will be recorded for each Project Board meeting. Any additional reporting requirement shall be at the discretion of the Project Board.
- (b) **Project Board:** Reporting shall be monthly, based on the minutes from the Project Team highlighting: Progress this period; issues being managed; issues requiring help (that is, escalations to the Project Board) and progress planned next period and/or aligned with the frequency of the Project Board meetings.

- (c) **Organisational:** the Project Team members shall be responsible for drafting reports into their respective sponsoring organisation as required for review by the Project Board before being issued.

5. ROLES AND RESPONSIBILITIES

- 5.1 The Parties agree to deliver the Project in accordance with the Joint Working Protocol.
- 5.2 The Parties agree that [] shall be the Lead Council in accordance with Clause 11 of the Collaboration Agreement.
- 5.3 The Councils will enter into a joint contract with the contractor.

6. ESCALATION

- 6.1 If either Party has any issues, concerns or complaints about the Project, or any matter in this MoU, that Party shall notify the other Party and the Parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the Project Board, which shall decide on the appropriate course of action to take. If the matter cannot be resolved by the Project Team within 14 days, the matter may be escalated to the Project Board for resolution.
- 6.2 If either Party receives any formal inquiry, complaint, claim or threat of action from a third party (including, but not limited to, claims made by a supplier or requests for information made under the Freedom of Information Act 2000) in relation to the Project, the matter shall be promptly referred to the Project Board (or its nominated representatives). No action shall be taken in response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect the Project, without the prior approval of the Project Board (or its nominated representatives).

7. INTELLECTUAL PROPERTY

- 7.1 The Parties intend that [notwithstanding any secondment] any intellectual property rights created in the course of the Project shall vest in the Party whose employee created them (or in the case of any intellectual property rights created jointly by employees of both Parties in the Party that is lead Party noted in clause 5 above for the part of the project that the intellectual property right relates to).

- 7.2 Where any intellectual property right vests in either Party in accordance with the intention set out in clause 7.1 above, that Party shall grant an irrevocable licence to the other Party to use that intellectual property for the purposes of the Project.

8. TERM AND TERMINATION

- 8.1 This MoU shall commence on the date of signature by both Parties, and shall expire on completion of the Project.

9. VARIATION

This MoU, including the Annexes, may only be varied by written agreement of the Project Board in consultation with the Leaders.

10. CHARGES AND LIABILITIES

- 10.1 The Parties agree to share the costs and expenses arising in respect of the Project between them in accordance with the terms of the Collaboration Agreement dated the 11th March 2015.

11. STATUS

- 11.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the Parties from this MoU. The Parties enter into the MoU intending to honour all their obligations.
- 11.2 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party as the agent of the other Party, nor authorise either of the Parties to make or enter into any commitments for or on behalf of the other Party.

12. MOBILISATION AND CONTRACT MANAGEMENT

Following award of the Contract, the Project Team shall be reconstituted and shall be responsible for mobilisation process and post award contract management. The Project Team shall make a determination and recommend to the Project Board on how the Contract shall be managed and who the contract managers shall be.

13. GOVERNING LAW AND JURISDICTION

This MoU shall be governed by and construed in accordance with English law and, without affecting the escalation procedure set out in clause 6, each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS MEMORANDUM
AS A DEED ON THE DAY AND YEAR FIRST ABOVE WRITTEN

**THE COMMON SEAL OF
SOUTH HAMS DISTRICT COUNCIL**

Was hereunto affixed

In the presence of

Authorised Signatory	NAMES IN CAPITAL
	SIGNATURE

Witnessed by

Authorised Signatory	NAMES IN CAPITAL
	SIGNATURE

**THE COMMON SEAL OF
WEST DEVON BOROUGH COUNCIL**

Was hereunto affixed

In the presence of

Authorised Signatory	NAMES IN CAPITAL
	SIGNATURE

Witnessed by

Authorised Signatory	NAMES IN CAPITAL
	SIGNATURE

CONTACT POINTS

South Hams

Name:
Office address:
.....
Tel No:
E-mail Address:

West Devon

Name:
Office Address:
.....
Tel No:
E-mail Address:

Annex A. The Project

These are contained in the Descriptive Document (Information Memorandum) a copy of which is attached.

To Follow.

Annex B. Information Sharing Protocol

Please refer to the Collaboration Agreement dated the 11th March 2015

Annex C. Project Board terms of reference

Scope of authority

- To approve Procurement Documents
- To recommend to the respective Councils Award Decisions
- To recommend to the Councils Procurement Procedure
- To sign off specification
- To sign off selection and award criteria
- To brief respective Councils on all aspects of the Project.
- To refer to respective Councils for authority to commence and award contracts.
- To review the draft Project Initiation Document;
- To oversee consultation with stakeholders and other potential partners;
- To oversee the formulation and implementation of the communications strategy;
- To develop and explore delivery options;
- To monitor the Project Plan and work with officers to manage and mitigate risks;
- To report to the Hub Committee and to Executive with a proposed way forward;
- To monitor the agreed delivery process until the new arrangements begin.

Decision-making:

- Each member shall have equal voting right.
- There shall be one member one vote
- Voting shall be by a show of hands
- Decisions shall be by a simple majority
- Equal voting rights.

- Members shall elect one of them to be chair of the Board.

Meetings:

- Members shall meet at least once a month or at such frequency as determined by members.
- There shall be at least two members from each Council for there to be a quorum.
- Meetings shall take place such a place and time as determined by members.
- Notice of meetings shall take whatever form as agreed by members.
- Keep and maintain minutes of all Key Decisions and recommendations.

Membership of the Board

Project Board shall comprise of those named in clause 4.3 as may be amended from time to time by the Councils.

Annex D

Collaboration Agreement dated the 11th March 2015.

ANNEX E – Project Teams terms of reference

Leadership

The Project Team shall be led by a Project Manager. The Project Manager shall be appointed by the Project Board.

The person initially appointed as the Project Manager shall be [insert name].

Role of the Project Manager shall be:

- Provide leadership and direction to the Project Team
- Manage the Project

Membership of the Project Team

The Project Team shall comprise of those individual named in clause 4.4 as may be amended from time to time:

Role of the Project Team

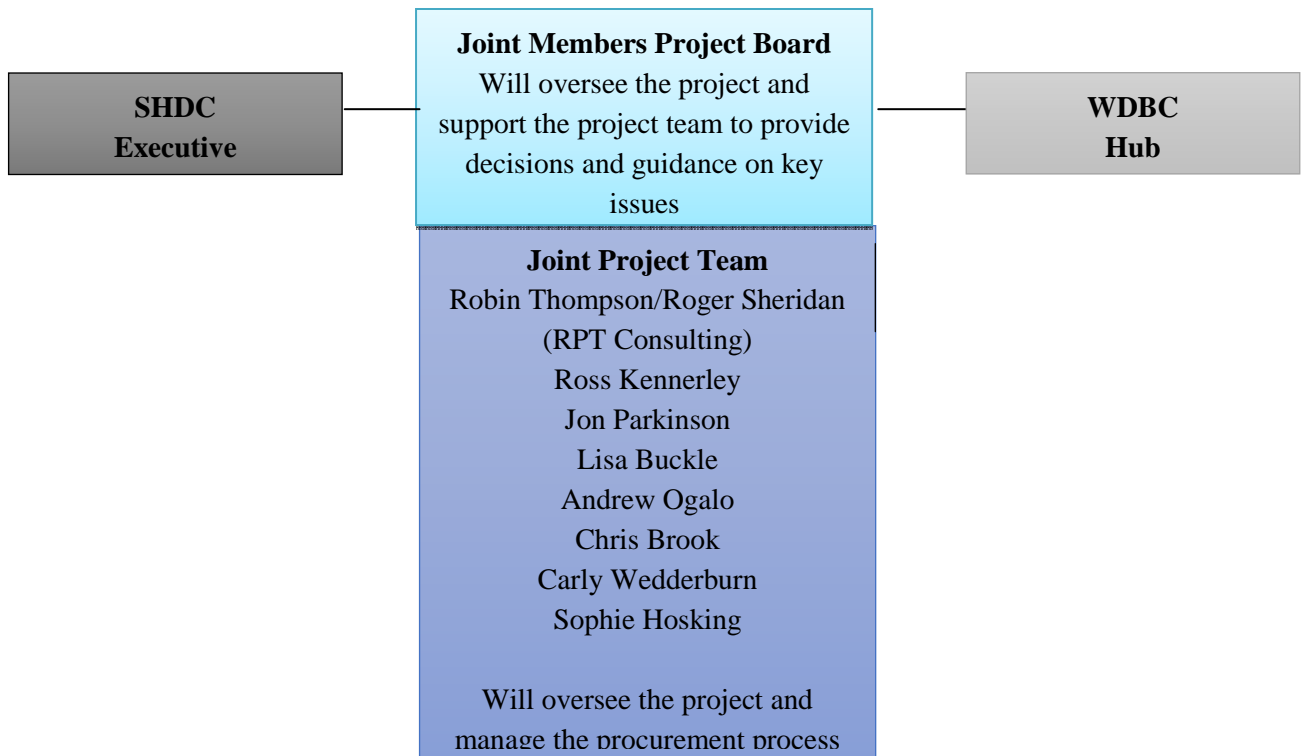
- Produce Procurement Documents
- Formulate the procurement structure and undertake all necessary work required in order to achieve objectives of the project as detailed in the Descriptive Document
- Ensure that the Procurement exercise is undertaken in accordance with the Law and the Council's Contract Procedure Rules
- Conduct the procurement exercise including, dialogues etc.
- Undertake selection of bidders
- Undertake evaluation of bids
- Recommend to the Project Board a decision to award
- Ensure that the procurement timetable is adhered to.
- Advise the Project Board of any risks to the councils arising out of the procurement exercise
- Evaluate and review all risks associated with the procurement and advise the Project Board immediately.
- Ensure that adequate Contract Management measures are put in place immediately after the decision to award has been made.
- Advise the Project Board on the Contract Management measures and make recommendations on resourcing etc.
- Keep minutes of all meetings including, dialogue meetings
- Keep and maintain a Risks Register including, level and mitigation

ANNEX F - Joint Working Protocol

Set out below is the joint working protocol for the management and operation of the joint procurement for the leisure contracts at WDBC and SHDC.

Governance and Project Management

It is proposed that the following structure will be set up for the project management and governance of the joint procurement.



The Joint Project Team (JPT) will have responsibility for managing the procurement process, developing the evaluation criteria, inputting specifications within the contract and agreeing the protocols of working together.

Key principles

It is proposed that the following key principles are agreed between the two Councils which will enable both Authorities to get the maximum benefit out of any procurement process and possible joint future contract. The intention is to work on the basis that the joint contract will be the preferred route.

Key Area	Principle Agreed
Contract Length	The contract will be based on the same contract length of up to 25 years and is expected to be a DBOM contract.
OJEU Advert	To be placed in July/August and will be a joint advert – the procuring authority to be confirmed
Contract Lots	The approach will be to have one lot, based on a joint contract, but with a separate split to understand the implications if there are separate contracts.
Bidders Open day	Proposed to have one open day which covers both Authorities, suggesting a starting point at one of the Authorities and finishing at the other
PQQ Evaluation	<p>The evaluation of the PQQ will be based on agreed evaluation criteria across both Authorities, with the intention to shortlist up to 5 bidders for the ISDS stage.</p> <p>Both Authorities will seek to appoint the same shortlist, as it is based on evaluation of the company rather than their submission, with the joint management team undertaking the evaluation together.</p>
Contract Development and Form	<p>There will be one contract which sets out the standard terms for a contract which will be the same across both Authorities but the commercial terms and schedules may be different between both Authorities.</p> <p>In particular it is anticipated that the specifications will be different.</p>
Legal Advice	Provision of legal advice will be provided by external advisers for the development of the draft contract (<i>to be confirmed</i>). Other advice will be delivered by in house provision
Dialogue Sessions	<p>It is expected that the dialogue sessions will be scheduled at the same time for both Authorities and managed such that there may be three parts to any dialogue session</p> <ul style="list-style-type: none"> - Joint issues which apply across both Authorities (e.g. contract, submission, evaluation, etc) - Specific WDBC Issues - Specific SHDC issues
ISDS Evaluation	<p>It is the intention that the evaluation criteria will be the same for both Authorities – however it is recognised that because solutions and evaluation may need to be specific, then this may not be possible.</p> <p>Keeping the evaluation criteria the same will enable the benefits of joint procurement to be realised. This would also mean that both</p>

Key Area	Principle Agreed
	<p>Authorities should seek to shortlist the same bidders (up to 3) for final tender.</p> <p>Each project team will evaluate their specific submission, with the joint management team providing a moderating role.</p>
ISFT Evaluation	As for ISDS ideally the same bidders are assessed against the same evaluation criteria which if it leads to the same bidder being appointed then benefits may be realised.

Meetings and Timescale

It is proposed that project team meetings are held monthly and on the same day to allow the programming in of sessions which enable effective discussion, with each individual Council if required.

Project Plan and timescale to be developed.

ANNEX G – Defined Terms

Annex –	means annexes to this MoU
Contract Award –	has the meaning given in Regulation 67 of PCR 2015
Councils –	means West Devon Borough Council and South Hams District Council
Community Services Committee –	has the meaning given in the Constitution of West Devon Borough Council.
Constitution-	means constitution of the Council
Council-	means either of the Councils
Contract Management	means management of the contract arising out the Project.
Contract Procedure Rules-	has the meaning given in the Constitution.
Collaboration Agreement –	has the meaning given in Annex D
Descriptive Document –	has the meaning given in Annex A
EU –	means the European Union
ISDS –	means the Invitation to Submit Detailed Solution
ISFT –	means Invitation to Submit Final Tender
PQQ –	means the Prequalification Questionnaire
Project Initiation Document (PID) –	has the meaning given in Annex F
Procurement Documents-	has the meaning given in Regulation 2 of PCR 2015
Project –	has the meaning given in Annex A

Project Plan -	has the meaning given in the Procurement Documents.
Procurement Procedure -	means the procedure adopted by the Councils for the procurement in accordance with section 3 Part 2 of the PCR 2015
Joint Working Protocol –	has the meaning given in Annex F
Key Decisions-	means all decisions that are relevant and has the effect of impacting on or facilitating the Project.
Law –	means any applicable law in England and Wales
Resources Committee-	has the meaning given in the Constitution of South Hams District Council.
Risk Register -	means a register/log of all risks arising out of or associated with the Project including, delays, compliance and management of information/data.