

DATED

2024

THE GLYNDE & BEDDINGHAM PARISH COUNCIL

and

GLYNDE AND BEDDINGHAM SWIMMING CLUB CIC

OUTSOURCING CONTRACT FOR SERVICES

A solid red square containing the text "Adams & Remers" in white, sans-serif font, centered within the square.

Trinity House

School Hill

Lewes

East Sussex

BN7 2NN

Tel: 01273 480616

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THIS AGREEMENT is dated on

2024

BETWEEN:

- (1) **THE GLYNDE AND BEDDINGHAM PARISH COUNCIL** in the County of East Sussex c/o Mr Steve Carter as Parish Clerk and Responsible Financial Officer at 84 Barnett Road, Brighton, BN1 7GH (the "Council"); and
- (2) **GLYNDE AND BEDDINGHAM SWIMMING CLUB CIC** incorporated and registered in England and Wales with company number 15041172 whose registered office is at Glynde Place The Street Glynde Lewes East Sussex BN8 6SX ("the **CIC**").

BACKGROUND

- (A) The Council is the tenant under a lease dated 2024 of the Recreation Ground and Swimming pool as more particularly defined in the lease
- (B) Under the terms of the lease the Council is permitted to outsource the management and control of the Swimming Pool to a Community Interest Company.
- (C) The Services are currently being provided internally by the Council with the support of community volunteers.
- (D) The Council now wishes to outsource the provision of those Services to the CIC to allow the CIC to manage the operation of the Swimming Pool on a day to day basis on the terms set out in this agreement.

AGREED TERMS

1 Interpretation

1.1 The definitions and rules of interpretation in this clause 1 apply throughout this Agreement.

"Applicable Law" the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services, including any Relevant Requirements.

"Business Day" Monday to Friday, excluding any public holidays in England and Wales

"Confidential Information" any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.

"Consents" all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary for the provision of the Services.

"Effective Date" the date of this Agreement.

"Force Majeure Event" any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any dispute relating to the CIC or the CIC's personnel

"Premises" Glynde Community Swimming Pool Glynde Lewes East Sussex shown edged red on the plan annexed hereto

“Services” the services to be delivered by or on behalf of the CIC under this Agreement, including the services set out in the Schedule , and Service means any of the Services (or any part of any of them).

- 1.2 Words in the singular include the plural and in the plural include the singular.
- 1.3 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.4 Clause and schedule headings shall not affect the interpretation of this Agreement.
- 1.5 References to clauses and schedules are, unless otherwise provided, references to the clauses of and schedules to this Agreement.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 Unless a right or remedy of a party is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party’s other rights and remedies.
- 1.8 A reference to this Agreement includes a reference to the schedules to this Agreement.
- 1.9 A reference to one gender shall include reference to the other genders.
- 1.10 A **“person”** includes a corporate or unincorporated body (whether or not having separate legal personality).
- 1.11 Any phrase introduced by the words **“including”**, **“includes”**, **“in particular”** or **“for example”** or similar shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.12 **“Writing”** or **“written”** includes faxes but not e-mail.

2 Commencement and Duration

- 2.1 This Agreement shall take effect on the Effective Date and shall continue unless and until terminated in accordance with its terms.

3 Services

- 3.1 The Council hereby appoint the CIC, and the CIC shall provide the Services to the Council pursuant to the terms and conditions of this Agreement.
- 3.2 In providing each of the Services, the CIC shall at all times:
 - 3.2.1 provide the Services in accordance with all Applicable Laws;
 - 3.2.2 obtain, maintain and comply with all Consents;
 - 3.2.3 with a degree of skill and care appropriate for the provision of the Services and
 - 3.2.4 allocate sufficient resources to provide the Services in accordance with the terms of this Agreement
 - 3.2.5 the CIC shall use the Equipment with all reasonable skill and care and shall indemnify the Council against all and any damage to the Equipment caused by the CIC personnel or any other persons using the same with the CIC's authorisation
 - 3.2.6 provide the Council with reports on membership of the club receipts and payments and by way of update on the upkeep and state and condition of the Premises and Equipment to be submitted to the Council 7 days prior to each Council Meeting (there currently being 6 Council Meetings per year held every other month starting with January),
 - 3.2.7 The CIC shall maintain in force the following insurance policies:

- i. Public Liability Insurance Policy: limit £10 million per claim; (to be reviewed during the term of the agreement).
 - ii. Asset insurance over the Swimming Pool and Equipment against all normal comprehensive risks for its full reinstatement value and shall ensure that the appropriate noting of the CICs interest has been recorded on the policies or a generic interest clause has been included and shall on the written request of the CIC from time to time provide the CIC with copies.
- 3.2.8 Each year, upon renewal, the CIC will issue a copy of all insurance policies and cover provided, to the Council to demonstrate the required cover is in place
- 3.3 In order to facilitate the provision of the Services by the CIC, the Council shall (in addition to those responsibilities and obligations identified elsewhere in this Agreement):
 - 3.3.1 respond to and provide such documentation, data and other information as the CIC reasonably requests in order for the CIC to perform its obligations under this Agreement
 - 3.3.2 provide support and oversight as may be requested by the CIC from time to time; and
 - 3.3.3 to the extent that the following are not expressly provided for elsewhere in this Agreement, using its reasonable endeavours, respond to requests for information in a prompt and timely manner, where such requests are reasonably made by or on behalf of the CIC to enable the CIC to comply with its obligations under this Agreement
 - 3.3.4 The Council will allow to persons duly authorised by the CIC such access to the Premises as is reasonably required for the purpose of providing the Services. The CIC shall use such rights of access for the purpose of providing the Services only
 - 3.3.5 The Council will allow to persons duly authorised by the CIC such use of the Equipment as is reasonably required for the purpose of providing the Services. Procedures will be agreed between the Council and the CIC from time to time. The CIC shall use the Equipment for the purpose of providing the Services only.
 - 3.3.6 The Council shall observe and perform the provisions of the Lease
 - 3.3.7 The Council shall, during the term of this agreement, and for a period of one year thereafter:
 - a) administer the insurance policies and the Council's relationship with its insurers at all times to preserve the benefits for the CIC set out in this agreement;
 - b) do nothing to invalidate any such insurance policy or to prejudice the CIC's entitlement under those policies; and
 - c) procure that the terms of such policies shall not be altered in such a way as to diminish the benefit to the CIC of the policies as provided at the Effective Date.
 - 3.3.8 The Council shall apply the proceeds of any asset insurance in reinstating the Swimming Pool and/or its associated buildings.

4 Charging

In consideration of the provision of the Services by the CIC in accordance with the terms and conditions of this Agreement, the CIC is hereby authorised to retain for its own account all sums received by it from time to time from members of the Glynde Swimming Pool Club for the purposes of operating, maintaining and managing The Pool and The Club.

5 Warranty

Each party warrants to the other that:

- 5.1 it has taken all necessary actions and has all requisite power and authority to enter into and perform this Agreement in accordance with its terms; and
- 5.2 this Agreement constitutes valid, legal and binding obligations on such party in accordance with its terms.

6 Confidentiality

- 6.1 Except to the extent set out in this clause 6, or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
 - 6.1.1 treat the other party's Confidential Information as confidential; and
 - 6.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 6.2 Clause 6.1 shall not apply to the extent that:
 - 6.2.1 such information was in the possession of the party making the disclosure, without obligation of confidentiality, prior to its disclosure; or
 - 6.2.2 such information was obtained from a third party without obligation of confidentiality; or
 - 6.2.3 such information was already in the public domain at the time of disclosure otherwise than through a breach of this Agreement; or
 - 6.2.4 such information was independently developed without access to the other party's Confidential Information;
- 6.3 The CIC may disclose the Council's Confidential Information to its officers, employees, agents and professional advisers who are directly involved in the provision of the Services and who need to know the information.
- 6.4 On the termination of this Agreement, each party shall:
 - 6.4.1 return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
 - 6.4.2 erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and
 - 6.4.3 certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party.
- 6.5 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

7 Force Majeure

- 7.1 Subject to the remaining provisions of this clause 7, neither party to this Agreement shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Force Majeure Event.
- 7.2 In the event that either party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure Event, such party shall:

- 7.2.1 give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- 7.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
- 7.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 7.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 7.4 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.
- 7.5 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 7.6 Either party may, during the continuance of any Force Majeure Event, terminate this Agreement in accordance with clause 9.3 in the circumstances set out in that clause.

8 Limitations on Liability

- 8.1 Neither party limits its liability for:
 - 8.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors; or
 - 8.1.2 fraud by it or its employees; or
 - 8.1.3 any other act or omission, liability for which may not be limited under Applicable Law.
- 8.2 Subject to clause 8.1, each party's total aggregate liability in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement, shall in no event exceed the amount received by the CIC pursuant to clause 4 of this Agreement in the period of 12 months preceding notice of the relevant claim (and in the case of the first 12 months of this Agreement, shall not exceed £[]).
- 8.3 Subject to clause 8.1, neither party shall in any circumstances be liable to the other party for
 - 8.3.1 any indirect, special or consequential loss or damage; or
 - 8.3.2 any loss of business opportunities, revenue or damage to goodwill.
- 8.4 The parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 8 is held to be invalid under any applicable statute or rule of law, it shall, to that extent, be deemed omitted. If any party becomes liable for loss or damage which would otherwise have been excluded, that liability shall be subject to the other limitations and provisions set out in this clause 8.
- 8.5 Nothing in this Agreement shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a party.

9 Termination Rights

- 9.1 The Council shall be entitled to terminate this Agreement by giving to the CIC not less than 90 days' written notice.

- 9.2 Either party (the “**Non-defaulting Party**”) may terminate this Agreement where the other party (the “**Defaulting Party**”) commits a material breach of its provisions PROVIDED THAT:
- 9.2.1 the Non-defaulting Party has given written notice to Defaulting Party, providing as much detail as possible regarding the alleged breach, as soon as reasonably practicable after becoming aware of the material breach; and
- 9.2.2 the Defaulting Party has been provided with a period of not less than 30 days in which to remedy such material breach.
- 9.3 Either party may, during the continuance of any Force Majeure Event, terminate this Agreement by written notice to the other party if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 30 Business Days.
- 9.4 The provisions of clause 1, clause 5, clause 8, clause 12, clause 14, clause 16, clause 17, clause 18, clause 21, clause 22 and clause 23 and shall survive the termination for any reason or expiry of this Agreement.

10 Assignment and Novation

Neither the Council nor the CIC shall assign, novate or otherwise dispose of any or all of their rights and obligations under this Agreement without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed).

11 Variations

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12 Waiver

- 12.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 12.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13 No Partnership or Agency

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

14 Announcements

No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

15 Severance

- 15.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 15.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable,

and, to the greatest extent possible, achieves the intended commercial result of the original provision.

16 Further Assurance

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

17 Entire Agreement

17.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

18 Third Party Rights

This Agreement does not create, and shall not be construed as creating, any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not party to this Agreement.

19 Notices

19.1 Any notice or other communication required to be given under this Agreement or in connection with the matters contemplated by it shall, except where otherwise specifically provided, be in writing and shall be addressed as provided in clause 19.2 and may be:

19.1.1 personally delivered, in which case it shall be deemed to have been given upon delivery at the relevant address; or

19.1.2 sent by first class pre-paid post, in which case it shall be deemed to have been given two Business Days after the date of posting.

19.2 Any notice to be given to or by all of the Sellers under this Agreement is deemed to have been properly given if it is given to or by the Sellers' Representative. Any notice required to be given to or by some only of the Sellers shall be given to or by the Sellers concerned (and in the case of a notice to the Sellers) at their address as set out in clause 19.3.

19.3 The addresses and other details of the parties referred to in clause 19.1 and 19.2 are, subject to clause 19.4:

The Council

For the attention of: The Parish Clerk

Address: 84 Barnett Road, Brighton. BN1 7GH

The CIC

For the attention of:

Address:

19.4 Any party to this Agreement may notify the other parties of any change to its address or other details specified in clause 19.2, provided that such notification shall only be effective on the date specified in such notice or five Business Days after the notice is given, whichever is later.

20 Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

21 Rights and Remedies

The rights and remedies of the parties provided under this Agreement are in addition to, and not exclusive of, any of their rights or remedies provided by law.

22 Governing Law

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

23 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Schedule

The Services

1. To manage the Swimming Club with paying members
2. To demonstrate industry best practice management of the swimming pool, plant, water, and surrounding environment is in place and that all legal requirements for operating a public pool are observed
3. To train all volunteers and officers appropriately for the requirements of this agreement
4. To operate the plant on a day to day basis
5. To manage all repairs, refurbishments and maintenance to the physical infrastructure of the pool - including 5 yearly (minimum painting and treatment of buildings and fences etc
6. To employ contractors to service the pool and plant and commission and decommission the operation of the pool at appropriate times in each year
7. To ensure the water in the pool is safe to swim in and properly treated
8. To ensure the pool is a safe environment for its members including ensuring there is adequate supervision during opening hours and the provision of sufficient safety equipment
9. To draw up a health and safety policy for the operation of the pool and ensure adherence thereto

Executed as a Deed by the said

GLYNDE and BEDDINGHAM

PARISH COUNCIL at a meeting held on

2023 by [

] a member duly authorised

by the meeting in the presence of:

Witness' Signature

Witness' name:

Witness' address:

.....

Witness' occupation:

EXECUTED (but not delivered until the date hereof) as a DEED by GLYNDE AND BEDDINGHAM SWIMMING CLUB CIC

.....
Director

Witness' signature:

Witness' name:

Witness' address:

.....

Witness' occupation: