

BIRMINGHAM CITY COUNCIL (1)

AND

THE COMMITTEE OF ASSOCIATION (2)

ALLOTMENT MANAGEMENT AGREEMENT

**DRAFT
VERSION 9
(inc amdts)**

Birmingham Legal Services

Birmingham City Council
Ingleby House
11-14 Cannon Street
Birmingham B2 5EN

LS/PE/IB/75596

PARTIES

- 1 Birmingham City Council (“the Council”) of the Council House, Victoria Square Birmingham; and
- 1 The Committee of Association (“the Association”) of (Secretary’s address)

INTRODUCTION

- 1 The Committee of the Association has been duly authorised and appointed by the Association to enter into this Agreement on behalf of the Association.
- 2 The Council owns the land shown edged green on the attached Plan which is divided into plots some of which have been let to members of the Association for cultivation as allotment gardens as shown on the Plan.
- 3 By section 29 of the Small Holdings and Allotments Act 1908 the Council is entitled to appoint allotment managers.
- 4 The Committee of the Association consists of the persons whose names and addresses appear in Schedule 1.
- 5 It has been agreed that the allotments shall be controlled and managed by the Association as agents for the Council on the terms and conditions set out in this agreement.

IT IS AGREED:-

1 DEFINITIONS

- 1.1 In this agreement the following words and expressions are to have the following meanings unless the context requires otherwise:-

Allotments allotment gardens on the Site as identified on the Plan and the term ‘Allotment’ shall be construed accordingly

Allotment Rules rules made by the Council under Section 28 of the Small Holdings and Allotments Act 1908 from time to time. A copy of the current rules is set out in Schedule 2 or such amendments as may be introduced by the Council from time to time

Allotments Officer the Officer appointed by the Council to manage its Allotments

Allotments Consultative Committee The joint group formed of Council Allotment Officers and representatives of the BDAC through which consultation on allotment management matters is conducted.

The Association the members of the Association and the Committee members all of which are party to this

Agreement

BDAC	The members of the unincorporated association known as the Birmingham & District Allotments Confederation
the Council	Birmingham City Council and its Officers
the Committee	the members of the Association or other body which according to the constitution of the Association is responsible for managing its affairs
the Constitution	the ratified constitution of the Association provided to the Council in so far as it relates to this Agreement
Devolved Budget	The funds provided by the Council to cover the Association's maintenance liabilities under this Agreement
Due Date	1 October annually
The Flo Pickering Memorial Fund	The fund established as the holding account for any capital receipts arising from the disposal of allotment land or other assets. The Fund is administered jointly by the Council and the BDAC through the Allotments Consultative Committee.
Locally Appointed Adviser	plottolders appointed to assist Associations in carrying out their functions under this Agreement
Management Committee	Those members and Officers of the Committee appointed to undertake those functions described in this Agreement
The Robins Fund	The Fund created from the sale of the Robins Allotments site and administered by the Council. The Fund is administered jointly by the Council and the BDAC through the Allotments Consultative Committee.
Officer Tenancy	Officer of Birmingham City Council the letting of a designated Allotment under a formal Tenancy Agreement between the Council and the Tenant
Tenant	person to whom Allotments on the Site have been let and the term Tenant will be construed accordingly
Tenancy Agreement	The form issued by the Council creating a Tenancy between the Council and the Tenant
the Plan	the plan annexed to this Agreement which is for identification purposes only

Rents

rents payable by Tenants for Allotments

the Shed

the shed or pavilion provided by the Council for the Association's use in managing the Site

the Site

the Allotment site shown edged green on the Plan

- 1.2 References to statutory provisions include all subsequent legislation amending replacing or relating to them.
- 1.3 Reference to clauses and sub-clauses are to clauses and sub-clauses of this Agreement.
- 1.4 The headings to this Agreement are not to affect its construction or interpretation.

2 **MANAGING AGENCY**

In consideration of the payments made to the Association the Council appoints the Association as its managing agent for the Site and the Association agrees to manage the Site on the terms and conditions set out in this agreement.

3 **ASSIGNMENT**

- 3.1 ~~This Agreement may not be assigned~~ **The Association shall not assign this Agreement.**

4 **OBLIGATIONS OF THE ASSOCIATION**

Rents

- 4.1 The Association shall use its best endeavours to collect all Rents and penalties due and payable in respect of the Allotments on the Site. ~~The Association shall submit payment of the amounts due to the Council at regular intervals during the rent collection period but in any event no later than 1 month after collection or to any other timescale as otherwise specified by the Council in writing together with a rent receipt for each Tenant and Income Return form.~~
- 4.2.1 The Association shall seek to collect the Rent due from each Tenant **on its register** promptly and efficiently ~~and in any event by the date the Council sets or the due date for the Rent for each tenancy year and~~ **shall** pass the amount due a copy of the rent receipt for each Tenant and Income Return form to the Council at regular intervals during the rent collection period ~~together with.~~
- 4.3 The amounts of the Rents are to be set by the Council and advised to the Association
- 3.2 The Association shall be authorised to issue only official receipts to Tenants for Rent collected by them and such receipts where properly issued will be accepted by the Council as evidence of payment of rent.
- 3.3 The Association may not delegate the collection of Rents payable by the Tenants or the maintenance of the register under sub-clauses ~~3.1-3.3~~ **4.1-4.3** to anyone other than a Committee member

- 3.4 Those members of the Management Committee engaged in the collection of Rent and letting of plots will, **where required**, receive training from the appropriate Allotment Officer before undertaking those functions. The BDAC will be invited to participate in such training.
- 3.5

Financial Management

The Association shall observe and apply the requirements set out in this Agreement and Schedules 5, 6 and 7 in carrying out its financial management responsibilities

4.9 If the Association is wound up any sum due to the Council in respect of Rents already collected is to be a first charge on the assets of the Association.

Plot letting

- 4.10 The Association shall act as the agent of the Council in letting plots on the Site and in the management of the Site in accordance with the Council's Allotment Rules and on the basis of such Tenancy Agreements as the Council decides **issues** following consultation with the BDAC.
- 4.11 The Association shall arrange for each new Tenant to complete a Tenancy Agreement as supplied by the Council from time to time and to be given a copy of the Council's current Allotment Rules. A Tenancy Agreement must also be completed for a change of plot or where the designation of a plot changes.
- 4.12 In ~~selecting Tenants~~ **letting Tenancies** for vacant Allotments the Association shall not discriminate **as defined by the Equality Act 2010** between applicants on the basis **that an individual possesses a single protected characteristic or a combination of protected characteristics which include** of gender, **sexual orientation, gender reassignment, pregnancy and maternity**, marital status, race, ethnic origin, **religion or belief**, disability, or age and shall observe the Allotment Rules. **No person may access an Allotment until a Tenancy Agreement has been completed and given to them.**
- 4.13 The Association shall not let an Allotment to any person in respect of whom the Council has notified the Association that an Allotment is not to be let to.
- 4.14 The Association shall keep an up to date register of the names and addresses of all Tenants containing a record of all Rent payments by each Tenant and this record must be available for inspection by the Council at any reasonable time by arrangement with the Association. Personal information must be managed in accordance with the Data Protection Act 1998 and any subsequent amendments.
- 4.15 The Association shall take all reasonable measures to let Allotments which become vacant as soon as possible.

Repairs and maintenance

- 4.16 The Association shall ~~endeavour to~~ carry out all maintenance required under clause 8.2 in so far as this satisfies the conditions in Schedule 3 as soon as possible to the extent of the funds available to it for such repairs. In the event of emergency or major repairs being required the Association may submit an application via the BDAC for funding from the Council.

Allotment Rules

- 4.17 The Association shall ~~use its best endeavours~~ to ensure Tenants observe the Allotment Rules or the instructions of any appointed Allotments Officer or any responsible Officer on the Council's behalf.
- 4.18 The Association is not allowed to authorise any departure from the Allotment Rules by a Tenant.
- 4.19 The Association shall not do anything whereby compensation may be payable to a Tenant.

Plot Cultivation

- 4.20 The Association shall monitor the standard of plot cultivation make a review by **30 April** each year and where necessary will issue a Letter of Concern to tenants and inform the Council where it has done so. On review, the Association may ask the Council to issue a Notice of Re-entry.
- 4.21 The Association may issue a Letter of Intent between 1 October and the end of February and carry out a review by **30 April**.
- 4.22 In carrying out inspections required under this sub-clause ~~4.12~~ **4.20 – 21** above, only Officers of the Association or members appointed by the Management Committee and accompanied by a Committee Officer may enter a Tenant's plot **to carry out this function**.

Complaints and disputes

- 4.23 The Association shall apply the Allotment Rules and carry out the investigation of any complaints or disputes involving Tenants. Assistance may be sought from Locally Appointed **Advisers** ~~Representatives~~ who may advise or mediate in such matters. Guidance is provided in Schedule 8 of this Agreement.
- 4.24 After considering breaches of the Allotment Rules the Association may recommend to **their** Locally Appointed **Adviser** that the tenancy of the Allotment be terminated but only after a meeting of the Committee. Any recommendation is to be submitted together with evidence to the BDAC but will not be binding on the Council. The Council will provide the Association with a written explanation where it does not agree to uphold the Association's recommendation.

Grounds Maintenance

- 4.25 The Association will regularly inspect the execution of horticultural maintenance carried out by the Council's service providers and will submit **a reports each at the end of the relevant** period to the appropriate Officer on a form provided by the Council.

General

- 4.17 Maintain an Accident Book for each site and replace the book as necessary.
- 4.18 Settle all bills received from Utility providers for water, gas or electrical services.
- 4.19 The **Management Committee** will be responsible for monitoring health and safety on site in accordance with clause ~~14~~ **15.6** below.
- 4.20 Provide a copy of its Constitution **if requested by the Council** and any subsequent amendments made thereto.

5 OBLIGATIONS OF THE COUNCIL

The Council will

- 5.1 be responsible for the strategic management of all Sites ~~its allotment sites~~ and Tenants, the application of the Allotment Acts and the Council's Allotment Rules and the provision of guidance to Management Committees.
- 5.2.1 make any final decision in respect of disputes and complaints provided that the Association has carried out its obligations under this Agreement and where the matter cannot be resolved otherwise by ~~Locally Appointed Advisers representatives~~ or subsequently by the BDAC. Any decision by the Council will be binding on all parties.
- 5.3 provide relevant data and stationery to allow the Association to carry out its responsibilities under this Agreement.
- 5.4 carry out an annual risk assessment of the Site and inform the Association of any risk assessment made and of any relevant recommendations.
- 5.5 carry out statutory inspections of electricity and, where appropriate, gas services and fire extinguishers on the Site but not appliances for which the Association is responsible.
- 5.6 Calculate the amount of any Devolved Budget from its assessment of forecast income and make bi-annual payments to the Association each financial year before the end of April and October commencing 1 April 2014. Make payment of any Management Fee or cleaning materials grant annually by 30 April. The terms of payment are set out in Schedule 4
- 5.7 undertake or pay for emergency or major repairs subject to the availability of funding and consideration of other maintenance priorities. The Allotment Officer will inform the Association in writing if repairs requested by the Association cannot be undertaken.
- 5.8 maintain fire insurance for any buildings on the Site that are owned by the Council.
- 5.9 inform the Association of any warnings, Notices to Quit or Notices of Re-entry issued by the Council
- 5.10 issue Notices to Quit where Rent has not been paid within the period permitted for settlement and to advise the Association where payment has been made direct to the Council.
- 5.11 provide regular Health and Safety training to the Committee under clause 14.6 of this Agreement.
- 5.12 Consider any recommendations for the issue of warnings or eviction notices received from the BDAC after due investigation by the Association and Locally Appointed Adviser and to inform the Association parties in writing of the reason(s) for not upholding any recommendation ~~made by the Association for the termination of a tenancy.~~
- 5.13 oversee the performance of its horticultural service providers on the basis of reports submitted by Associations under clause 4.16 above.
- 5.14 provide an official Accident Book for each site if this has not already been supplied to the Association

- 5.15 manage any capital receipts credited to the Flo Pickering Memorial Fund and consult with the BDAC via the Allotments Consultative Committee (or succeeding joint consultative forum) about the use of such funds.
- 5.16 manage the Robins Fund and to consult with the BDAC via the Allotments Consultative Committee (or succeeding joint consultative forum) regarding the issue of grants.
- 5.17 provide training in administrative procedures necessary to fulfil the Association's obligations under this Agreement

6 **RECORDS**

- 6.1 The Association must maintain proper accounting records of all receipts and payments in connection with the Devolved Budget and provide an annual statement of Income and Expenditure to the 31 March each year in the form set out in Schedule 7.
- 6.2 Receipts and invoices for any charges assigned to this account shall be open to inspection by the Council at any reasonable time and on reasonable notice.

7. **INSURANCE AND INDEMNITY**

- 7.1 The Association agrees to indemnify the Council in respect of all claims damages charges and costs which arise out of or in consequence of the exercise of its management responsibilities under this Agreement.
- 7.2 Public Liability insurance will be obtained on behalf of the Association in respect of its liabilities under this Agreement and the cost of premiums will be met by the Council. Such insurance will cover public liability, member to member liability, member's personal liability, Employers liability and Landlord's indemnity. It will not cover the Association's own liabilities in relation to its own activities or risks (e.g. cash loss, property or equipment that it owns)
- ~~The Association agrees that it shall maintain a minimum of £3m (three million pounds) public liability insurance against costs claims demands expenses and liabilities arising out of the Agreement.~~

8. **INCOME & EXPENDITURE ACCOUNT**

- 8.1 The Association must maintain a record of income and expenditure relating to its Devolved Budget in the form set out on Schedule 7 of this Agreement.
- 8.2 The Association may use such income received from the Council to meet the costs of the following:
- a) repairs and maintenance within the conditions set out in Schedule 3
 - b) horticultural maintenance where agreed by the Council
 - c) all charges for water and sewerage services
- 8.3 Subject to funds being available within its Devolved Budget the Association will endeavour to shall comply with any written instruction from the Council to carry out repairs which it can reasonably be expected to carry out.

9 TERMINATION OF TENANCIES

- 9.1 The Council reserves to itself the right to terminate any of the Allotment tenancies by notice to quit and also the right to exercise the powers of re-entry and all other powers and remedies conferred upon it by the Allotment Acts 1908 to 1950 or by the Allotment Rules.

10. USE OF SHEDS

- 10.1 This clause applies only where the Council makes a shed, chalet or pavilion ("the Shed") available to the Association for use in conjunction with the management of the Site.
- 10.2 The Association shall be entitled to occupy and use the Shed on the basis of a gratuitous licence from the Council which does not give the Association the right to exclusive possession of the Shed and which may be terminated by the Council at any time.
- 10.3 **The Association will pay and discharge any gas and electric charges (including standing charges) which may be payable from time to time on the Shed and shall indemnify the Council against any liability for such items which may fall upon it.**
- 10.4 The Association agrees:-
- a) not to purport to assign, underlet or share possession of the Shed;
 - b) not to pull down, carry out works, alter or add to the Shed without the prior written permission of the Council;
 - c) not to use the Shed for any illegal or immoral purpose or to do or allow anything to be done to the Shed which may be a nuisance to the Council, Tenants or the owners or occupiers of neighbouring premises.
 - d) not to manufacture or sell any intoxicating liquors from the Shed and to ensure that social consumption does not cause a nuisance to others
 - e) not to carry on any trade or business from the Shed other than the purchase and sale of requisites as provided for under Section 49 of the Small Holdings and Allotments Act 1908 to members of the Association for use in connection with cultivation of the Allotments on the Site;
 - f) not to store any vehicles in the Shed;
 - g) not to store any inflammable materials including petrol, oil fuel or lubricants into or store them in the Shed;
 - h) to place all materials in the Shed in such a way as to allow air circulation to the inside walls of the Shed so as to minimise the possibility of rot;
 - i) not to place, bring or store anything in the Shed which does not belong to the Association or its members;
 - j) to allow the Council and its officers to exercise its rights to enter into the Shed at any reasonable time by arrangement with the Association **except in the case of emergency**;

- k) to use the Shed only for the purposes of the Association and to use it solely in connection with the cultivation of the Allotments and for the benefit of Tenants;
 - l) to indemnify the Council against any damage caused to the shed by the Association in connection with its used of the shed.
 - m) to vacate the Shed on request by the Council and to remove all items placed in it belonging to the Association or its members and any other items the Association has allowed to be placed in the Shed.
- 10.5 On termination of the Association's licence to occupy the Shed the Council may remove and (at the cost of the Association) deliver to any of the Association's Officers any items left in it ~~5~~ **30** days after the date by which the Association had been requested to give up occupation.
- 10.6 The Council shall insure the shed against damage or loss through fire and shall be responsible for the maintenance of the Shed insofar as funds allow. If the Shed is damaged or destroyed the Council shall not be obliged to repair or replace it.

11. **SUBSTITUTION OF OFFICERS TO THE ASSOCIATION**

- 11.1 The Association may by resolution duly passed in accordance with its Constitution displace the Committee or any of its members and substitute others in their place who shall be agents for the members of the Association at the time the resolution is passed. Where meetings are held to re-elect committee members Officers from the Council may attend such meetings in the capacity of observers.
- ~~11.2 A resolution passed under sub clause 11.1 shall have the effect of making the terms and conditions of this Agreement binding on such substituted Committee members who shall be deemed to have consented to this by accepting office in the Association.~~
- 11.2 The Association Secretary must formally notify the Council in writing (on a form provided by the Council) of changes to the membership of the Committee **from time to time** within 14 days of those changes taking place and this notice must contain full details of all appointed Committee members.
- 11.3 **If any member of the Committee or a person collecting Rents is reasonably suspected by the Council of dishonesty or misconduct in relation to the collection of Rents or otherwise that person shall, following investigation by the Association and on the recommendation of the BDAC, be removed immediately by the Association as a member of its Committee and shall have no further authority to collect Rents or otherwise act on behalf of the Association under this Agreement. Any person so excluded will only be permitted to resume the collection and handling of rents with the Agreement of the Council, the BDAC and the Association.**

12. **FORCE MAJEURE**

- 12.1 In the event of any cause beyond their reasonable control, neither party to this Agreement shall be liable to the other for any delay in performance or non-performance of their obligations.
- 12.2 The party affected by such circumstances shall promptly inform the other party in writing.
- 12.3 The time for compliance shall be extended for the length of such delay.

13 — DISPUTE RESOLUTION

~~In the event of dispute the parties agree to attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.~~

14. DURATION OF THIS AGREEMENT

14.1 This agreement shall commence on 1 April 2014 and continue until 31 March 2019 unless terminated in accordance with the following provisions of this clause.

14.2 Either party may terminate this agreement by two months written notice to the other party at any time. Such notice to be given not earlier than 12 months after the commencement of this Agreement. Where this is intended, the Association and the Council shall be required to engage with the BDAC to seek an alternative Management Committee to undertake the management of the site.

14.3 The Council may terminate this agreement at any time without prior notice if:

- a) the Association is in material breach of its obligations under this Agreement and fails to remedy that breach within seven days of a notice from the Council specifying the breach and requiring its remedy; or
- b) the Association commits a non material breach of the Agreement and fails to remedy the breach within 56 days of a notice from the Council specifying the breach and requiring its remedy; or
- c) the Association ~~is dissolved or wound up~~ ceases to exist.

In such circumstances the Council will consult the BDAC to seek an alternative Management Committee to undertake the management of the site.

14.4 On termination the Rents receivable will be apportioned by reference to time between the Association and the Council such that:-

- a) any Rents receivable in respect of the period after termination shall belong exclusively to the Council and
- b) the proportion of any Rents which have been collected by the Association relating to the period after termination will be held by the Association on trust for the Council.

15. HEALTH AND SAFETY/

The Association shall **take all reasonable steps to :**

15.1 be responsible for compliance with the Health and Safety at Work etc Act 1974, **Management of Health at Work Regulations 1999, Control of Pesticides Regulations 1986** and any codes of practice issued thereunder with regard to the maintenance and management of the Site. This includes arrangements for assessing risks and where hazards are identified taking appropriate steps to safeguard the health and safety of plot holders and other persons. Significant safety hazards arising from defects in pathways roadways and communal areas must be reported to the Council's nominated officer without delay.

15.2 report to the Allotments Officer by telephone **ALL** accidents which occur on the Site where a person/s suffers serious injury (requiring hospital treatment) or any incident resulting in loss or

damage. A **current** Accident Book **compliant with the Data Protection Act** must be maintained for every site and replaced as necessary by the Association.

- 15.3 where pesticides are stored in the Shed ensure that only pesticides approved by the Department for Environment, Food and Rural Affairs (DEFRA) for amenity horticulture are stored on the Site. Minimum quantities only shall be stored in an appropriate locked container designed for pesticide storage. Any identified use of banned products by tenants should be reported to the Allotment Officer immediately.
- 15.4 **not** carry out any alterations to the 230 volt mains electrical supply on the Site. In the use of extension cables outside buildings for temporary equipment (such as electric flymos) the supply must be protected by an earth leakage circuit breaker (E.L.C.B.).
- 15.5 ensure that the Site is maintained in a clean and tidy condition with any accumulation of rubbish being collected and disposed of in an approved manner.
- 15.6 be responsible for co-ordinating health and safety management of the Site. Members of the Committee will attend risk assessment training provided by the Council from time to time. Arrangements will be made for the Council's nominated officer to liaise with the Committee on health and safety inspections and matters arising from annual risk assessment inspections.
- 15.7 be responsible for ensuring that any volunteers who are providing services are approved by them and have appropriate Health and Safety provisions and are covered under appropriate insurance.
- 15.8 exercise a duty of care to everyone entering and using the Site including visitors trespassers and tenants.
- 15.9 be responsible for appointing contractors, checking for Public Liability insurance, monitoring work quality, ensuring that appropriate health and safety measures are followed, rectifying faults, settling invoices and rectifying any damage caused by the works (or compensation to third parties)

16. **HORTICULTURAL MAINTENANCE WORKS**

16.1 The Council shall have a programme of maintenance for horticultural features and shall furnish the Association with a copy of the Plan and Bill of Quantities relating to its Site and with copies of any amendments thereto. Under sub-clause 4.16 the Association shall monitor and report performance each period on a form provided by the Council.

17. **NOTICES**

17.1 Notices given by the Council may be signed by the Assistant Director of Local Services or any other duly authorised officer and shall be validly served if served on the Secretary, Chairman or Vice Chairman of the Association.

17.2 The persons signing this Agreement and any notified to the Council under clause 11.2 as new Committee members are to be treated as the Committee members unless and until their replacement is notified to the Council under Clause 11.2.

17.3 Notices to be served on the Council shall be validly served if addressed to the Assistant Director of Local Services, c/o **The Lodge, 115 Reservoir Road, Ladywood, Birmingham B16 9EE** and signed on behalf of the Association by its Secretary and one other officer for the time being.

16.4 Notices may be served either personally or by first or second class or recorded delivery pre-paid Post. **and Notices served personally will be deemed to be received immediately after receipt. If served by first class post are deemed to be served the next working day after posting and if sent by second class post on the second day after posting.**

16.5 Notices to be served on the Association shall be validly served if sent to the address provided in this Agreement

~~EXECUTED AS A DEED by the parties hereto the day and year before written~~

~~EXECUTED AS A DEED by affixing _____)
THE COMMON SEAL OF BIRMINGHAM CITY _____)
COUNCIL in the presence of _____)~~

AUTHORISED SIGNATORY

Signed as a Deed by
(name)
For and on behalf of the
(.....) Association

.....

In the presence of

.....

Signature of witness

.....
Name of Witness

.....
.....

.....
Address of Witness

.....
Occupation of Witness

DRAFT No 9

SCHEDULE 1

Members of the Committee

Name

Address

DRAFT No 9

SCHEDULE 2

Birmingham City Council Allotment Rules

DRAFT No 9