

Appendix 1

DATED _____ 2010

(1) MAIDSTONE BOROUGH COUNCIL

(2) THE KENT COUNTY COUNCIL

MANAGEMENT AGREEMENT

**relating to the management of Gypsy Sites by
Kent County Council on behalf of Maidstone Borough Council**

At

STILEBRIDGE GIPSY SITE, STILEBRIDGE LANE, MARDEN, KENT

&

WATER LANE GIPSY SITE, WATER LANE, ULCOMBE, KENT

THIS AGREEMENT is dated and made **2010**

BETWEEN:

- (1) **MAIDSTONE BOROUGH COUNCIL** of Maidstone House, King Street, Maidstone, Kent ME15 6JQ (hereinafter known as "MBC")

- (2) **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, ME14 1XQ (hereinafter known as "KCC")

WHEREAS:

- A. MBC and KCC are each a local authority as defined by section 270 of the Local Government Act 1972.

- B. KCC has certain experience in site and facilities management. In reliance upon that skill, knowledge, and experience the MBC wishes to engage KCC to provide Management Services and KCC has agreed to accept the engagement on the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED as follows

1. Definitions and Interpretations

1.1 In this Agreement where the context admits:

"Commencement Date" means [];

"Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

“Management Cost”	means the annual fee paid by MBC to KCC for managing the Sites as set out in the Service Level Schedule.
“Management Services”	means the site and facilities management services to be provided by KCC to MBC at each of the Sites, which are more particularly described in the Service Level Schedule.
“Sites”	means the sites to be managed by KCC on behalf of MBC as set out in the Service Level Schedule.
“Transferring Employee(s)”	means any employee of the current provider whose contract of employment takes effect on the Transfer Date as if originally made between the Contractor and such employee by virtue of the Regulations/and or the Directive.
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (and where the context so requires the Council Directive 2001/23/EC) as extended from time to time or any subsequent re-enactment thereof.

1.2 Unless the context otherwise requires, each reference in this Agreement to:-

- 1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic mail, telex, facsimile transmission or similar means;
- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

- 1.2.3 "this Agreement" is a reference to this Agreement and each of the Schedules, as amended or supplemented at the relevant time;
- 1.2.4 a Schedule is a schedule to this Agreement; and
- 1.2.5 a clause or paragraph is a reference to a Clause of this Agreement or a paragraph of the relevant Schedule;
- 1.2.6 "days" shall mean calendar days unless expressly indicated otherwise.

1.3 In this Agreement:-

- 1.3.1 any reference to the parties includes a reference to their respective personal representatives, heirs, successors in title and permitted assignees;
- 1.3.2 any reference to a person includes any body corporate, unincorporated association, partnership or any other legal entity;
- 1.3.3 words importing the singular number include the plural and vice versa; and
- 1.3.4 words importing any gender include any other gender.

1.4 The headings in this Agreement are for convenience only and shall not affect its interpretation.

2. Provision of the Management Services

- 2.1 KCC shall throughout the continuance of this Agreement provide the Management Services on behalf of MBC at each of the Sites in accordance with the Service Level Schedule or as otherwise agreed by the parties.
- 2.2 KCC shall perform the Management Services within the Term in compliance with the Conditions and with all reasonable instructions of MBC, KCC exercising reasonable care and skill in accordance with the normal standards of a professional person engaged in services similar to the Management Services.
- 2.3 In the event that the KCC commits any breach of any of the terms and conditions of this Agreement (which is capable of remedy) by failing to provide any of the Management Services or commits any breach which otherwise adversely affects the provision of the Management Services, KCC shall be required to remedy such breach within 14 days of notice from MBC.

2.4 KCC shall not delegate any duties or obligations arising under this Agreement otherwise than as may be expressly permitted by these Conditions. For the avoidance of doubt, nothing in this clause shall prevent KCC from delegating responsibility for delivery of the Management Services to an appropriate officer of KCC, who shall himself be authorised to delegate performance of specific duties to individual employees (including locum and temporary staff where applicable) of KCC.

3. MBC's Obligations

3.1 MBC shall allow KCC and its personnel access to the Sites for the purpose of providing the Management Services.

3.2 MBC shall provide KCC with all MBC policy and procedures which MBC reasonably requires to be observed by KCC in connection with the delivery of the Management Services.

3.3 MBC shall from time to time promptly provide KCC on request with such records, documents, instructions or other information as KCC may reasonably require in connection with the delivery of the Management Services.

3.4 MBC and KCC shall each use reasonable endeavours to keep each other informed of any special requirements (including statutes and codes of good practice) applicable to the carrying out of the Management Services. To the extent necessary and appropriate KCC shall promptly take steps to comply with such special requirements.

4. Payments

4.1 MBC shall pay KCC in accordance with the provisions of the Service Level Schedule for the Management Services provided by KCC in accordance with the terms of this Agreement.

4.2 All payments required to be made pursuant to this Agreement by either party shall be made within 21 days of the date of the relevant invoice in cleared funds to such bank as the other party has nominated, without any withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.

4.3 MBC acknowledges that KCC is providing the Management Services on a cost

recovery rather than a profit-making basis. Accordingly, KCC shall be entitled to revise the Price from time to time (not more than once annually) to take account of increases to its costs (howsoever arising) associated with providing the Management Services. Where KCC proposes to increase the Price, it shall provide notice in writing in accordance with clause 4.4 setting out the amount of the revised Price and the reasons for the increase and the revised Price shall take effect on 1 April of the new financial year.

- 4.4 KCC will notify MBC of the Price revision for the Management Services annually, by no later than December 31 of each financial year, such revision to take effect from 1st April in the following year.
- 4.5 MBC can terminate the Agreement if they do not accept the proposed Price increase from KCC by giving three months written notice.

5. Duration and Termination

- 5.1 This Agreement shall come into force the Commencement Date and shall continue for a period of three years from that date, subject to the following provisions.
- 5.2 Either party may terminate this Agreement at any time by giving to the other not less than three months' written notice.
- 5.3 Either party may forthwith terminate this Agreement by giving written notice to the other party if:-
 - 5.3.1 that other party commits any material breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 14 days after being given written notice giving full particulars of the breach and requiring it to be remedied;
- 5.4 The rights to terminate this Agreement given by this Clause 5 shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

6. Effects of Termination

- 6.1 Upon the termination of this Agreement for any reason:-
 - 6.1.1 any sum owing by either party to the other under any of the provisions of this Agreement shall be immediately payable;

- 6.1.2 Clauses 8, 9, 11 and 13 shall remain in effect;
 - 6.1.3 any rights or obligations to which any of the parties to this Agreement may be entitled or be subject before its termination shall remain in full force and effect; and
 - 6.1.4 termination shall not affect or prejudice any right to damages or other remedy which the terminating party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any party may have in respect of any breach of this Agreement which existed at or before the date of termination.
 - 6.1.5 subject as provided in this Clause 6, and except in respect of any accrued rights, neither party shall be under any further obligation to the other.
- 6.2 Each party shall (except to the extent referred to in Clause 8.3) forthwith cease to use, either directly or indirectly, any Restricted Information, and shall forthwith return to the other party any documents in its possession or control which contain or record any Restricted Information.

7. Information and Access

- 7.1 MBC agrees that KCC and/or its agents shall be entitled throughout the continuance of this Agreement to have access to:
 - 7.1.1 The sites under the control of MBC for the purpose of Managing the Sites.
- 7.2 KCC agrees that the MBC shall be entitled to have access to:
 - 7.2.1 any of its books of account, financial or other records which relate to the provision of the Management Services or any other matter relevant to this Agreement

8. Freedom of Information Act

- 8.1 Each of the parties acknowledges that the other has a statutory duty to comply with the requirements of the Freedom of Information Act 2000 ("the Act") and agrees to the other disclosing to the general public on request such parts of this Agreement or information relating to this Agreement as must be lawfully disclosed under and by virtue of the operation of the Act.
- 8.2 Where either party receives a Request for Information, which relates to the subject matter of this Agreement, it shall promptly notify the other party of such request and shall use all reasonable endeavours to consult with the other party as to the manner in which such request shall be responded to or otherwise dealt with PROVIDED that nothing in this clause shall fetter the obligation of each party to comply with its statutory duties under the Act.

9. Complaints

- 9.1 KCC shall notify MBC of all complaints it receives from a member of the public or third party (whether incorporated or unincorporated) relating to the Management Services within three days of receipt. Thereafter, the Authorised Representatives of the parties shall consult as to the manner in which the complaint shall be dealt with and whether it should be treated as a complaint against KCC in which case it shall be dealt with by KCC in accordance with KCC's internal complaints procedures or a complaint against MBC in which case it shall be dealt with by MBC in accordance with MBC's internal complaints procedures.

10. Data Protection

- 10.1. KCC confirms that in performance of this Agreement it shall process Data (where "Data" means data as defined in the Data Protection Act 1998 ("DPA")) and it shall comply with its obligations under the DPA and any regulations rules orders and codes of practice made pursuant thereto and any guidelines issued by the Information Commissioner (as defined in the DPA) and in respect of that Data.
- 10.2 KCC covenants and confirms that all Data obtained and used in connection with the Management Services shall:
- 10.2.1 as between the MBC and the KCC be the property of the MBC;
- 10.2.2 be used for the sole purpose of undertaking the KCC's obligations under this Agreement;

- 10.2.3 upon expiration or early termination of this Agreement be returned to the MBC;
- 10.2.4 upon expiration or early termination of this Agreement except as required by law or under this Agreement neither be copied nor retained by the KCC;
- 10.2.5 be kept secure and be treated as Confidential Information; and
- 10.2.6 be kept and collated by the KCC solely for the purposes of enabling the KCC to perform the Management Services as required by the Agreement and for no other purpose.
- 10.3 KCC shall implement and maintain appropriate technical and organisational measures so as to prevent the destruction damage loss or alteration of the Data or the unauthorised or unlawful processing of the Data as agreed with the MBC and the KCC shall provide the MBC with such information as it may require to satisfy itself that the KCC is complying with such obligations including but not limited to a copy of its registration under the DPA and shall permit any authorised representative of the MBC to have access to any site at which Data is stored to monitor the implementation operation or existence of such procedures
- 10.4 For the avoidance of doubt and without prejudice to the generality of this Clause where the KCC is a Data Processor (as defined in the DPA) it shall comply with the seventh data protection principle (as set out in the DPA) as if it were the Data Controller (as defined in the DPA) in respect of the Data concerned and shall only act in relation to such Data in accordance with this Agreement or with instructions given by the MBC under this Agreement
- 10.5 The KCC shall ensure that any contract with any sub-contractor authorised in accordance with these provisions contains like provisions to those contained in this Clause.
- 10.6 If any Data is lost or destroyed damaged or altered without the consent of the MBC other than as a result of the negligence or default of the MBC then KCC shall forthwith at its own expense restore such Data or reimburse the costs incurred by the MBC in restoring such Data.

10.7 KCC shall ensure that it does nothing that places the MBC in breach of the MBC's obligations under the DPA and shall establish systems satisfactory to the MBC to ensure compliance with such obligations. For this purpose the KCC acknowledges the terms of the MBCs' registration under the DPA a copy of which registration is available for inspection by the KCC on reasonable notice at Maidstone House King Street Maidstone Kent ME15 6JQ.

11. Confidentiality

11.1 Neither party shall at any time during or after the Term divulge or allow to be divulged to any person any Confidential Information belonging to the other which does not have to be divulged under provisions of the Act other than to persons to whom the owner of the Confidential Information consents that such information can be released to and who have signed a secrecy undertaking in a form approved by the consenting party should the consenting party wish to require such a secrecy undertaking.

12. VAT

12.1 Any sums payable under this Agreement shall be exclusive of VAT (if applicable).

13. Employee Costs and TUPE

13.1 MBC acknowledges and accepts that KCC shall be required to employ an additional member of staff to perform the Management Services. KCC does not propose to assign any employee exclusively (or substantially) to the delivery of the Management Services. Rather, KCC intends (but does not warrant) that the Management Services will be performed by a team of KCC facilities management employees within the Kent Adult Social Services Department ("the Team"). Consequently it is not anticipated that TUPE will apply upon the expiration of this Agreement.

13.2 However, in the event that TUPE does apply such that the contract of employment of any KCC employee engaged in the provision of the Management Services is required to be transferred to MBC or MBC's appointed contractor, MBC undertakes to comply (and procure that any appointed contractor complies) with its obligations under TUPE. In particular (but without limitation) MBC undertakes and undertakes to procure that:

13.2.1 MBC or its contractor shall comply with any applicable provisions of TUPE including (but not limited to) the requirements with regard to consultation of affected employees pursuant to regulation 10 of the Regulations in respect of any transfer of an undertaking (which maybe so held by any Court or Tribunal) arising upon the termination of this Agreement for whatever reason.

13.2.2 MBC or its contractor shall discharge all wages salaries and honoraria of the Transferring Employees and all other costs and expenses relating to the Transferring Employee for the period from and including the relevant transfer date) and will pay over all deductions properly made therefrom to the relevant authority (including but not limited to taxation and national insurance)

and MBC shall indemnify and hold harmless KCC against all claims whatsoever and howsoever arising which may at any time arise out of the failure on the part of MBC or its contractor to comply with the requirements of this clause 13.2.

13.3 In the event that TUPE does not apply on the expiration or termination of this Agreement, KCC shall use all reasonable endeavours to re-deploy any additional staff member who was employed and assigned to the Team in contemplation of the additional responsibilities KCC would take on in entering this Agreement. However, where KCC deems it necessary to make any staff assigned to the Team redundant as a result of a diminution in the responsibilities of the Team arising from termination of this Agreement, MBC undertakes to indemnify KCC in respect of any costs (including but not limited to any redundancy costs) incurred as a consequence thereof.

14. Management Services Budget

14.1 In the course of undertaking the Management Services, KCC shall be required (and is hereby authorised) to collect licence fees and any other moneys payable to MBC by licencees of the Sites. KCC shall provide MBC with quarterly accounts recording all such payments as well as expenditures made against the budget in accordance with clause 14.2.

- 14.2 On or before 1st April each year, the parties shall agree a budget for the management of the Sites. KCC shall apply any moneys collected on behalf of MBC under clause 14.1 towards the annual budget PROVIDED that if there is a difference between the annual budget and the amount of such receipts, MBC shall pay KCC the shortfall
- 14.3 KCC will notify MBC of any anticipated shortfall or overspend within the quarter.

15. Nature of the Agreement

- 15.1 Each party shall be entitled to perform any of the obligations undertaken by it and to exercise any rights granted to it under this Agreement through any other member of its group, provided that any act or omission of that other Member shall, for all the purposes of this Agreement, be deemed to be the act or omission of the party in question.
- 15.2 This Agreement is personal to the parties and neither party may assign, mortgage, or charge (otherwise than by floating charge) any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the written consent of the other party.
- 15.3 This Agreement contains the entire agreement between the parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- 15.4 Each party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 15.5 No failure or delay by either party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 15.6 If any provision of this Agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.
- 15.7 At any time after the date hereof each of the parties shall, at the request and cost of another party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the party so requiring may

reasonably require for the purpose of giving to the party so requiring the full benefit of all the provisions of this Agreement.

16. Costs

16.1 MBC undertakes to pay KCC up to £1000 (inclusive of VAT) towards KCC's legal costs of and incidental to negotiating, preparing, executing and carrying into effect this Agreement. Save as aforesaid each party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

17. Relationship of the Parties

17.1 Nothing in this Agreement shall constitute, or be deemed to constitute a partnership between the parties nor, except as expressly provided, shall it constitute, or be deemed to constitute an agency of any other party for any purpose.

17.2 Subject to any express provisions to the contrary in this Agreement, the Supplier shall have no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the Company or bind the Company in any way.

18. Force Majeure

18.1 For the purposes of this Agreement "Force Majeure" means, in relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, any strike, lock-out or other form of industrial action).

18.2 If any Force Majeure occurs in relation to either party which affects or may affect the performance of any of its obligations under this Agreement, it shall forthwith notify the other party as to the nature and extent of the circumstances in question.

18.3 Neither party shall be deemed to be in breach of this Agreement, or shall otherwise be liable to other, by reason of any delay in performance, or the non-performance, of any of its obligations under, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.

18.4 If the performance by either party of any of its obligations under this Agreement is prevented or delayed by Force Majeure for a continuous period in excess of 2 months, the parties shall enter into discussions with a view to agreeing upon such alternative arrangements as may be fair and reasonable or the other party shall be entitled to terminate this Agreement by giving 14 days written notice to the party so affected.

19. NOT USED

20. MISCELLANEOUS

20.1 KCC and MBC hereby warrant that each has power to enter into this Agreement and has obtained all necessary approvals to do so.

20.2 Supervising Officer

MBC shall appoint a Supervising Officer who shall have power (such power to be delegated to any Officer of MBC as the Supervising Officer decides) to issue instructions to the KCC in accordance with the provisions contained in the Conditions of Contract and the Service Level Schedule for the satisfactory performance of the Management Services.

20.3 Whole Agreement

Each party acknowledges that this Agreement and the Conditions contain the whole agreement between the parties.

20.4 Supersedes Prior Agreements

This Agreement supersedes any prior agreement between the parties whether written or oral.

20.5 Notices

Any notice to be served on either of the parties by the other shall be sent by prepaid registered post or by Fax or by electronic mail and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by Fax or by electronic mail to the correct telephone number (with correct answerback) or to the correct electronic mail number of the addressee.

20.6 Headings

Headings contained in this Agreement are for reference purposes only and should not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate

20.7 Survival of terms

No term shall survive expiry or termination of this Agreement unless expressly provided.

20.8 Waiver

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement

20.9 Third Parties

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall be excluded from this Agreement and so that nothing contained in it shall purport to confer any right to enforce any of its conditions on any person who is not a party to it

21. Applicable Law and Jurisdiction

21.1 This Agreement shall be governed by, and construed in accordance with the laws of England.

21.2 In relation to any legal action or proceedings to enforce this Agreement or arising out of or in connection with this Agreement ("proceedings") each of the parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or in the grounds that the proceedings have been brought in an inconvenient forum

IN WITNESS whereof the parties hereto have caused this document to be executed as a Deed and the same was delivered the day and year first before written

THE COMMON SEAL of)
MAIDSTONE BOROUGH)
COUNCIL was hereunto)
affixed in the presence of:)

THE COMMON SEAL of)
KENT COUNTY)
COUNCIL was hereunto)
affixed in the presence of:)

Service Level Schedule

1. Description of Management Service

Regular (at least weekly, and usually more often) visits to the site by one or more site managers, including a manager who has a primary responsibility for the new site.

Ensure that rent and other charges are collected on a weekly basis, take appropriate action when rent and charges fall into arrears, and to reconcile income accounts annually in a form to be presented to the council.

Distribute electric cards and receive payments. Ensure records of card storage and sales are up to date and accurate. Provide an annual record of account to Maidstone BC.

These visits will include assessment of any changes on the site, including any hazards that have arisen, or where other action has been taken, and visits to licensees, including over rent, water and electricity payment issues and any other issues which they may raise. Notify the Maidstone BC of any serious issues.

Responding within 24 hours of visit, or report, to urgent matters on the overall site or surrounding land, including reinstatement of boundaries where there have been breaches allowing vehicle access, removing fly-tipping or similar, as well as seeking to prevent repetition and find those responsible.

Responding within 24 hours to any very urgent repairs on plots, including those resulting from flood, fire or other emergency that could cause homelessness.

Referral of any other maintenance issues to a local handyman being employed by the Gypsy and Traveller Unit or appropriate contractors, within competitive bidding processes.

Take all reasonable steps to maintain the cost of repairs within the agreed budget with Maidstone BC. Provide quarterly accounts on expenditure and notify Maidstone BC in good time if the agreed budget is likely to overspend.

Information and support to site tenants and their families over health, welfare, benefits, employment, education and similar issues – putting people in touch with the appropriate other agency and providing continuing support where needed.

Monthly visits from contractors employed to inspect for, and deal with, any vermin on sites.

Providing information to other public agencies, where it is either a statutory requirement to do so, or where it is necessary in the interests of health and safety, safeguarding children or vulnerable adults, or the prevention and detection of crime.

Assisting with mediating or arbitrating a successful resolution to disputes, whoever they are between, that are connected with the management of the site.

Facilitating the introduction of new pitch agreements under the Mobile Homes Act 1983 (as amended).

Taking appropriate enforcement action over breaches of pitch agreements, to remedy breaches or, if necessary, and bearing in mind all legal requirements, proceeding to eviction.

Responding appropriately, and with necessary speed, to any unauthorised encampments or other unlawful structures or items deposited on sites without authority.

Liaise with Maidstone BC concerning the condition and future improvement of the sites, including where appropriate bidding for external sources of funding in conjunction with Maidstone BC.

In the first three months of the transfer of site management both parties will meet regularly to ensure the service continuity to residents; thereafter to meet quarterly.

Provide statistics and information concerning the management of the sites that might be reasonably expected from Maidstone BC in the wider performance of its housing duties.

2. Site Details

The Gipsy sites including the communal facilities and land owned by the Council located at Water Lane, Ulcombe, Kent and Stilebridge Lane, Marden, Kent

3. Payment

Management Fee of £34,750 per annum (subject to review in accordance with clause 4). Payments shall be made quarterly in advance in accordance with clause 4.