

(1) WARWICKSHIRE COUNTY COUNCIL

AND

(2) WARWICK DISTRICT COUNCIL

**AGREEMENT FOR THE MANAGEMENT OF
BARRACK STREET CAR PARK**

D. G. Carter
Strategic Director of the Resources
Group
Warwickshire County Council
Shire Hall
Warwick
CV34 4RR

THIS DEED OF AGREEMENT is made on the 20 day of not date 2012

BETWEEN:

1. **WARWICKSHIRE COUNTY COUNCIL** of PO BOX 9, Shire Hall, Warwick CV34 4RR ("the County Council"); and
2. **WARWICK DISTRICT COUNCIL** of Riverside House, Milverton Hill, Leamington Spa, CV32 5HZ ("the District Council")

WHEREAS:

(1) Warwickshire County Council ('the County Council') are the owners of Barrack Street Car Park ('the Car Park') which is used during Working Days (other than Weekends and Public Holidays) for the purposes of County Council Staff Parking.

(2) The County Council have agreed that the Car Park shall be made available for use as a public Car Park at Weekends and Public Holidays and Warwick District Council ('the District Council') have agreed to manage the Car Park on behalf of Warwickshire County Council at those times subject to the following terms and conditions contained in this Management Agreement.

NOW IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION:

1.1 Definitions

When they are used in this Agreement, the terms and expressions set out below in the first column have the meanings set out in the second column.

"Bank Holidays"	Means public holidays on which banks are closed by law;
"Car Park"	Means the car park situated at Barrack Street, Warwick;
"Commencement Date"	Means the date on which this Management Agreement is signed;
"County Council"	Means Warwickshire County Council;
"County Council's Nominated Representative"	Means the person referred to in Clause 6;
"County Council Staff Parking"	Means parking solely by County Council employees;
"District Council"	Means Warwick District Council;
"District Council's Nominated Representative"	Means the person referred to in Clause 6;
"Financial Year"	Means a period of 12 months from 1 April in one year to 31 March in the next;
"Licence"	Means the licence agreement in respect

	of the Car Park dated 7 March 1996 between the County Council and the District Council;
"Management Agreement"	Means this agreement which sets out the terms upon which the District Council shall manage the Car Park;
"Management Costs"	Means the costs incurred by the District Council in return for the management of the Car Park at Weekends and on Bank Holidays as set out in Schedule 1 to this Agreement;
"Public Holidays"	Means an official public holiday authorised by law (which includes but is not limited to Bank Holidays) when banks, schools and many businesses are closed for the day;
"TUPE"	Means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (including all of the amendments made to those Regulations since 1981 which are still in force) and the Acquired Rights Directive;
"Variation"	Means a variation to this Management Agreement made in accordance with Clause 1.2.12;
"Week"	Means Mondays to Fridays;
"Weekends"	Means Saturdays and Sundays;
"Working Days"	Means between 9:00am and 5:00pm Monday to Friday inclusive, but does not include any days which are Bank Holidays or Public Holidays.

1.2 Interpretation

- 1.2.1 Parties:** shall mean Warwickshire County Council and Warwick District Council or either of them as the context permits.
- 1.2.2 Headings.** Clause and sub clause headings, clause numbers, and the use of use of bold type or italics are for ease of interpretation only and shall not affect the interpretation of this Agreement.
- 1.2.3 Gender, Singular / Plural and Individuals.** Words referring to the masculine gender include the feminine gender, words in the singular include the plural and words referring to individuals shall be treated as including organisations, and vice versa.
- 1.2.4 Entire Agreement.** This Agreement sets out the full agreement between the Parties in relation to this Agreement supersedes any previous contractual arrangement or licence or any assurance given between the parties in relation to the subject matter of this Agreement.
- 1.2.5 Compliance by Employees or Agents.** References to Acts or Omissions of the Provider shall include its employees, agents or sub contractors and it is the

Provider's responsibility to ensure its employees and sub-contractors comply with the provisions of the Agreement.

- 1.2.6 English Law.** The Agreement shall be governed in accordance with English Law and subject to Clause 10 (Dispute Resolution) the Parties submit to the exclusive jurisdiction of the English Courts.
- 1.2.7 Amendments to Legislation.** A reference to any Act of Parliament Order, Regulation, Statutory Instrument, or Guidance shall include any revised or updated version issued.
- 1.2.8 Severance of Clauses.** In the event that any clause in this Agreement shall be declared by a court of law or considered by the County Council, acting reasonably, to be void, invalid or unenforceable it shall be removed from this Agreement and the parties shall meet to agree an alternative clause which shall so far as reasonably practical give effect to the intentions of the clause which has been deleted.
- 1.2.9 Survival of Clauses.** Following termination of this Agreement, clauses which are expressed to survive after the termination of this Agreement shall remain in effect notwithstanding the termination of this Agreement including but not limited to Clause 7 (Insurance and Indemnity), Clause 9 (FOIA), Clause 10 (Dispute Resolution), clause 11 Notices and Clause 12 (TUPE).
- 1.2.10 Waiver.** The decision not to or failure of any party at any time to enforce any provision of the Agreement shall in no way affect its right thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any such provision or be a waiver of the provision itself.
- 1.2.11 Contracts (Rights of Third Parties) Act 1999.** Neither Party intends to confer any right or benefit upon a third party and for the avoidance of doubt, the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Management Agreement.
- 1.2.12 Variations.** A variation to this Management Agreement shall only be valid if it has been agreed in writing and signed by both Parties.

2 MANAGEMENT COSTS AND INCOME

2.1 The District Council shall be entitled to deduct the Management Costs from the income obtained from the Car Park as set out in Schedule 1 to this Agreement.

2.2 The income less the Management Costs shall be payable by the District Council to the County Council on a quarterly basis on 30 June, 30 September, 30 December and 30 March in any Financial Year, and shall be paid by the District Council into an account nominated for this purpose (which shall be notified to the District Council prior to the Commencement of this Agreement).

2.3 On the second anniversary of this Agreement and on the same date in every second year thereafter the Management Costs will be increased in line with the increase in the Retail Price Index for the preceding two financial years.

3 COUNTY COUNCIL OBLIGATIONS:

3.1 The County Council shall be responsible for the following obligations:

3.1.1 The provision of appropriate signage regarding conditions for use of the Car Park, the fact that the Car Park is 'pay and display' or display of permits for authorised staff, and car parking charges.

3.1.2 For the avoidance of doubt, the County Council shall be responsible for the management of the Car Park at all other times apart from Weekends and Public Holidays, and shall allocate permits to all County Council Staff who are permitted to park at the Car Park during the Week.

4. DISTRICT COUNCIL OBLIGATIONS:

4.1 The District Council shall be responsible for the following obligations:

4.1.1 The management of the Car Park at Weekends and on Public Holidays only (for the avoidance of doubt, the County Council shall be responsible for the Car Park at all other times);

4.1.2 The ownership, positioning, regular day-to-day inspection, maintenance and repair of 'pay and display' machines with a view to ensuring that they are working to their maximum potential;

4.1.3 Dealing with all ticket and coin jams promptly in order to ensure effective and efficient operation of the 'pay and display' machines;

4.1.4 The purchase of all consumables in relation to the 'pay and display' machines including but not limited to tickets and ink;

4.1.5 Ensuring that regular patrols take place at the Car Park to identify any broken, damaged or non-operational 'pay and display' machines;

4.1.6 Ensuring that all 'pay and display' machines are emptied regularly (at least once a week or at such frequency as agreed in writing between the Parties);

4.1.7 Ensuring that such sums taken from 'pay and display' machines shall be promptly paid into the County Council's nominated bank account in accordance with Clause 2.5 above; and

4.1.8 Retaining all paying-in receipts for a minimum of 6 (six) years from the date of issue.

4.2 The District Council shall co-operate with any audit of the Car Park income or any review of the Car Park arrangements.

4.3 The District Council shall be responsible for all matters in relation to the issue, processing and appeals, where appropriate, in relation to the issue of Penalty Notices for those parking without a ticket or permit and shall be entitled to retain any income from the issue of Penalty Notices.

4.4 The District Council must comply with the requirements of the Health and Safety at Work Act 1974 insofar as they apply to the service provided under this Management Agreement.

4.5 The District Council must notify the County Council of any complaints received in relation to the service provided under this Management Agreement as soon as they are received, and endeavour to resolve them as soon as practicable, which may, at the County Council's reasonable request, require liaison or co-operation with the County Council to provide a satisfactory outcome to the complainant. At the County Council's reasonable request, the District Council must supply the County Council with a copy of the records relating to any relevant complaints and the District Council's response.

GENERAL PROVISIONS (APPLICABLE TO BOTH PARTIES) :

5 Duration

5.1 This Agreement shall commence on the Commencement Date and shall continue, unless terminated by either Party, upon giving to the other not less than 3 (three) months' notice in writing.

5.2 In the event that this Management Agreement is terminated, either Party shall account for any sums due to the other Party under this Management Agreement, and ensure that they are paid to the other Party as soon as practicable, which may be on a pro rata basis as appropriate.

6 Appointment of Nominated Representatives

6.1 Both parties shall appoint a Nominated Representative who shall deal with day-to-day matters in relation to this Management Agreement, and in the event that the Nominated Representative or their contact details change they shall notify the other Party in writing as soon as reasonably practical and in any event within 1 (one) Working Day.

County Council's Nominated Representative	<i>Name</i>	John Findlay, Facilities Service Manager
	<i>Tel no</i>	01926 418642
	<i>Mobile</i>	07825 263801
	<i>E mail</i>	johnfindlay@warwickshire.gov.uk
	<i>Postal address</i>	Physical Assets, Resources Group, Warwickshire County Council, PO Box 9, Shire Hall, Warwick CV34 4RR.
District Council's Nominated Representative	<i>Name</i>	Gary Charlton, Parking Services Manager
	<i>Tel no</i>	01926 456315
	<i>Mobile</i>	
	<i>E mail</i>	parking@warwickdc.gov.uk
	<i>Postal address</i>	Parking Services, PO Box 2179, Warwick District Council, Riverside House, Milverton Hill, Royal Leamington Spa, CV32 5QG.

6.2 The Nominated Representatives shall be entitled to receive written notices in relation to this Management Agreement.

7 Insurance and Indemnity

- 7.1 The County Council, as owner of the Car Park, shall insure the Car Park as part of its own property portfolio.
- 7.2 The County Council shall indemnify the District Council against all claims, liabilities, costs, expenses, actions, proceedings and losses suffered or incurred by the District Council arising out of or in connection with the state or condition of the Car Park up to a maximum of £2 million (£2,000,000) in respect of any one claim. This indemnity shall not cover the District Council to the extent that a claim under it results from the negligence or wilful misconduct of the District Council, its employees, agents or sub-contractors.

8 Dealing with Claims and the Media

- 8.1 If any third party makes a claim or notifies an intention to make a claim against the District Council which may reasonably be considered to give rise to a liability under this indemnity ('a Claim') the District Council shall:
- 8.1.1 as soon as reasonably practicable, give written notice of the Claim to the County Council, specifying the nature of the Claim in reasonable detail; and
 - 8.1.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the County Council; and
 - 8.1.3 permit the County Council to take over and manage the claim, including any settlement, on behalf of the District Council.
- 8.2 Nothing in this Clause shall restrict or limit the District Council's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.
- 8.3 In the event that a Claim is made against the County Council, or the County Council reasonably considers that a claim is likely to be made it shall notify the District Council as soon as practicable.
- 8.4 For the avoidance of doubt, both Parties shall have a duty to co-operate with each other and provide such information free of charge as is reasonably required for the purposes of investigating, defending or settling a claim.
- 8.5 In the event that there is an incident, however arising, or a claim or potential claim in relation to the Car Park both parties shall cooperate with each other in relation to agreeing any media statements and releases and unless otherwise agreed in writing the County Council shall take the lead in relation to any property related matters and the District Council shall take the lead in relation to any management issues.

9 Freedom of Information

- 9.1 Both Parties are Public Authorities for the purposes of the Freedom of Information Act 2000 ('the FOIA') and in the event that a request for information is made in relation to the Car Park or its operational arrangements to one Party, the other Party agrees to co-operate in providing information, or setting out its reasons why information should not be disclosed within five (5) working days or such period as is reasonable in the circumstances to allow the other Party receiving the request to comply with the request within the timescale given within the FOIA.

10 Dispute Resolution

10.1 In the event of a dispute between the Parties the following arrangements shall apply:

Stage 1: the Nominated Representatives of each Party shall meet within 5 (five) Working Days to attempt to agree resolution of the dispute.

In the event that they are unable to resolve the matter or consider that they will not be able to reach an agreement either Party may give the other written notice to refer the dispute to the Head of Department within its respective local authority. Any such notice shall set out details of the matter in dispute and the action or otherwise required to settle the dispute.

Stage 2: The relevant Heads of Department shall meet within 10 (ten) Working Days, or such longer period as is agreed between the Parties for the purpose of resolving the dispute. Either party may request that the other provides additional information needed to resolve the dispute and such information shall be provided within 2 (two) Working Days or as soon as reasonably practicable.

In the event that the Heads of Department are not able to resolve the dispute either party may refer the matter to the other relevant Director. The Director may appoint another suitably senior officer to deal with the matter on his/her behalf.

Stage 3: The Directors shall meet within 15 (fifteen) working days, or such longer period as is agreed for the purpose of resolving the dispute. Either Party may request that the other provides additional information needed to resolve the dispute and such information shall be provided within 2 (two) working days or as soon as reasonably practicable.

11. Notices:

11.1 Either Party may serve a notice on the other Party by forwarding a written notification to the other Party's Nominated Representative at the last address given.

11.2 Such notice shall be considered to have been delivered at the time and date set out in the following table.

Method of Service	Time of delivery
By Hand	Day and time of receipt but if delivered after 5PM shall take effect the following day;
Recorded Delivery / Registered Post	Day and time signed for but if delivered after 5PM shall take effect the following day;
First Class Post	The Working Day after posting.

12. TUPE

- 12.1 In the event that this Agreement is terminated neither Party considers that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') would apply to any ongoing arrangements for management of the Car Park.
- 12.2 In the event that TUPE is considered to apply, the District Council shall provide information in relation to any potentially transferring employees as the County Council may reasonable require to enable it to comply with its obligations under TUPE, as soon as reasonably practicable.
- 12.3 In the event that TUPE shall occur the District Council shall provide information in relation to staff who may potentially transfer as soon as practical and in any event within 10 (ten) working days of a request for information.
- 12.4 In the event that a TUPE transfer occurs, the District Council shall indemnify the County Council and any new provider appointed with respect to any act or omission in relation to the transferring employees occurring before the transfer and the County Council shall use its reasonable endeavours to ensure that any new provider offers a reciprocal indemnity to the District Council if that is appropriate in the circumstances.

13 Termination of Licence Agreement

- 13.1 The Parties agree that the Licence shall terminate with immediate effect on the day and time that this Management Agreement commences.

IN WITNESS of which the parties or their duly authorised representatives have executed this Agreement as a Deed on the date first written above.

THE COMMON SEAL of
WARWICKSHIRE COUNTY COUNCIL

was hereto affixed in the presence of

Authorised Signatory

THE COMMON SEAL of
WARWICK DISTRICT COUNCIL

was hereto affixed in the presence of

Authorised Signatory

SCHEDULE 1

Management Costs and Income

Neighbourhood Services
Ian Coker – Head of Service

Parking Services PO Box 2179, Warwick District Council, Riverside House
Milverton Hill, Royal Leamington Spa, CV32 5QG

John Findlay
Warwickshire County Council
Shire Hall
Warwick
CV34 4SA

direct line: 01926 456315
switchboard: 01926 410410
fax: 01926 456210
email: parking@warwickdc.gov.uk
web: www.warwickdc.gov.uk

our ref: /
your ref:

21st May 2012

Dear John,

As requested, a revision to the charges which reflects the non-enforcement of the car park Monday to Friday. To clarify, we will now only patrol the car park on Saturday and Sundays between 8am and 6pm.

We will not attend the site outside of these times therefore, any problems with the pay and display machines will result in the machine being out of service until we next visit the site.

The charge to Warwickshire County Council for the proposal is as follows;

Maintenance Charge per annum	=	£275.00 per machine
Consumables Charge per annum	=	£300.00 (mostly machine parts)
Cash Collection Charge per annum	=	£584.00 per machine emptied once a week
Patrol Charge per annum	=	£546.00 (minimum 1 patrol per day)
Administration Charge per annum	=	£500.00 (PCN query's)
Total Cost per annum	=	£2480.00 (Ex VAT)
Estimated Annual Income from PCN's	=	£500.00
Estimated annual Income from pay and display	=	£8,500.00 (Ex VAT)
Estimated Annual Income payable to WCC less costs	=	£6,520.00 (Ex VAT)

The costs to manage the car park are based on the actual supplier charge and staffing time is at priced at cost per hour including on-costs. I have not included any management fee as WCC would be paying our costs and WDC would retain the PCN income.

I'm happy to discuss this offer further, please contact me via e-mail or at the telephone number stated.

Yours sincerely,

Gary Charlton
Parking services Manager