

DATED

22 March

2023

NORTH DEVON DISTRICT COUNCIL

AND

INSTOW PARISH COUNCIL

**MANAGEMENT AND OPERATIONAL AGREEMENT FOR MARINE CAR PARK,
INSTOW**

**Legal Services
North Devon District Council
Lynton House
Commercial Road
Barnstaple
Devon
EX31 1DG**

THIS AGREEMENT is made the 22 day of March 2023

BETWEEN

- (1) **NORTH DEVON DISTRICT COUNCIL** of Lynton House, Commercial Road, Barnstaple, Devon, EX31 1DG (“the District Council”)
- (2) **INSTOW PARISH COUNCIL** of 1 Shepherds Way, Marine Parade, Instow, EX39 4FQ (“the Owner”)

WHEREAS:

- (1) The Owner is the owner of Marine Car Park (the Car Park)
- (2) The Owner wishes to make a charge for the parking of vehicles and has requested the District Council to facilitate this process and provide management for the Car Park
- (3) The Owner wishes the District Council to incorporate the Car Park within the District Council’s Off Street Parking Order
- (4) The Owner engages the District Council to provide the Services and the District Council agrees to provide the Services on the terms of this Agreement

NOW IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires each of the following terms shall have the meanings set out beside them:

Car Park	means those areas of land specified by name and as shown on the Plans in Schedule 7 of the North Devon (Off Street Parking Places) Order 2023
Car Park Charges	means the charge to any customer for the use of the Car Park
Commencement Date	22 March 2023

PCN	means a Penalty Charge Notice issued by the Enforcement Officer to a customer for a breach of the conditions set within The North Devon (Off Street Parking Places) Order 2023
Machines	means the "pay and display" machines located in the Car Park and owned by the Owner
Maintenance Contract	means the Metric Contract entered into in June 2021 and the Flowbird Contract entered into in July 2022
Off Street Parking Order	means The North Devon (Off Street Parking Places) Order 2023 and any subsequent Order or amendment Order
Plan	means the Plan attached to this Agreement showing the location of the Car Park
Services	means the services as set out in Clause 4
Enforcement Officer	means a person appointed and authorised by the District Council to perform the Services
Working Day	means any day

1.2 In the Agreement except where the context otherwise requires:

- (a) the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
- (b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (c) words importing the masculine include the feminine and the neuter;
- (d) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal

persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

- (g) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (h) headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

2. TERM

This Agreement shall be deemed to have commenced on the Commencement Date and shall continue unless terminated by either party giving to the other not less than six months' prior written notice.

3. FEES

In consideration of the District Council providing the Services the District Council shall be entitled to the income received from the issue of PCNs.

4. SERVICES

4.1 The District Council agrees to provide the following Services:

4.1.1 An Enforcement Officer will make a minimum of one visit to the Car Park each day (including weekends and public holidays) at such times as the District Council deems appropriate

4.1.2 In addition to the visits referred to in 4.1.1, the Enforcement Officer will make such visits to the Car Park as the District Council deems appropriate to check Machines

4.1.3 Issuing PCNs at the Enforcement Officer's discretion

4.1.4 Inspecting the state of repair and condition of the Car Park and the Machines as often as the District Council deems appropriate and notify the Owner of all necessary works of repair and maintenance required in the Car Park, including but not limited to poor signage, indistinguishable lines and any damage to the surface of the Car Park which results in a loss of income for the District Council though nonissue of PCNs

4.2 The processing of PCNs and any decisions in relation to the processing thereof shall be at the absolute discretion of the District Council. All processing and decisions will be carried out in accordance with the District Council's policies in force from time to time but the District Council will refer to the Owner any issue that requires clarification or further information.

- 4.3 In respect of the services provided by the Council at clause 4.1.1, which services have not been carried out, the Council shall pay to the Owner a sum equivalent to the average daily income for the previous week.

5. OWNER'S OBLIGATIONS AND RESPONSIBILITIES

- 5.1 The Owner will undertake basic repair and maintenance of the machines as per their Maintenance Contract.
- 5.2 Pursuant to clause 5.1 above the Owner will undertake repair and maintenance of the Car Park and Machines within as soon as reasonably practical of receiving the notification.
- 5.3 In respect of all necessary works of repair and maintenance of the Car Park within clause 5.1 and 5.2 above and which works have not been carried out in breach of clause 5.2, the Owner shall pay to the District Council a sum equivalent to the average daily income for the previous fully operational week
- 5.4 Neither party will make any changes to the Car Park, its operation or servicing without prior consultation and written approval of the other party such approval not to be unreasonably withheld or delayed

6. AUDIT

The Owner and the District Council shall agree such processes and procedures required to be put in place to demonstrate an audit trail that satisfies the District Council's audit function.


7. CONSEQUENCES OF TERMINATION

Within 21 Working Days of this Agreement being determined, the District Council agrees to prepare and serve on the Owner a statement of account showing all receipts and expenditure in respect of the Car Park for such period as the parties shall agree.

AS WITNESS the parties have signed this Agreement on the date set out at the beginning of this Agreement

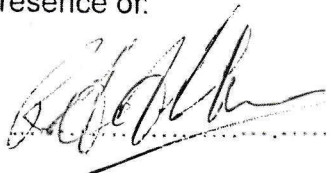
AS WITNESS the parties have signed this Agreement on the date set out at the beginning of this Agreement

SIGNED by an)
Authorised Signatory of)
NORTH DEVON DISTRICT COUNCIL)
In the presence of:)


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Authorised Signatory

SIGNED by an)
Authorised Signatory of)
INSTOW PARISH COUNCIL)
In the presence of:)


.....

Authorised Signatory

Paul E. P. Hackett
.....

Authorised Signatory

