

DATED

2011

(1) KENT AND MEDWAY FIRE AND RESCUE AUTHORITY

and

(2) THE DARTFORD BOROUGH COUNCIL

ASSET PURCHASE AGREEMENT

In connection with a
Leyland Pump Escape Fire Engine registration number GKO 224

CONTENTS

CLAUSE

1.	Interpretation	1
2.	Agreement to sell and purchase	3
3.	Purchase price.....	3
4.	Completion	3
5.	Warranties	3
6.	Not Used	4
7.	Insurance.....	4
8.	Not Used	4
9.	Liabilities of the seller and the buyer.....	4
10.	Value added tax.....	4
11.	The employees	5
12.	The contracts.....	5
13.	Not Used	5
14.	Not Used	5
15.	Not Used	5
16.	Confidentiality and announcements.....	5
17.	Further assurance	5
18.	Assignment.....	6
19.	Whole agreement	6
20.	Variation	6
21.	Costs	6
22.	Notice	6
23.	Interest on late payment	7
24.	Severance	8
25.	Agreement survives completion.....	8
26.	Third party rights.....	8
27.	Successors.....	8
28.	Counterparts.....	8
29.	Language	8
30.	Governing law and jurisdiction	8

SCHEDULE

SCHEDULE 1	ASSETS AND VALUES	9
SCHEDULE 2	NOT USED	10
SCHEDULE 3	NOT USED	11
SCHEDULE 4	COMPLETION.....	12
1.	Actions and obligations at completion.....	12
SCHEDULE 5	NOT USED	13
SCHEDULE 6	NOT USED	14

SCHEDULE 7 WARRANTIES 15

Part 1. General warranties 15

1. Information supplied 15

2. Capacity of the seller 15

3. Title to the asset 15

4. Condition of assets 15

SCHEDULE 8 LIMITATIONS ON CLAIMS 16

THIS AGREEMENT is dated

2011

PARTIES

- (1) **KENT AND MEDWAY FIRE AND RESCUE AUTHORITY** of The Godlands, Tovil, Maidstone, ME15 6XB (**Seller**).
- (2) The Dartford Borough Council of Civic Centre Home Gardens Dartford Kent DA1 1DR(**Buyer**).

BACKGROUND

- (A) The Fire Museum has closed and the Seller is disposing of some of the Assets currently in its collection. In recognition of the Buyers previous connection with the Asset, the Seller wishes to transfer ownership of the Asset to the Buyer for a nominal sum.
- (B) The Seller has agreed to sell and the Buyer has agreed to purchase the Asset on the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Asset: the assets of the Seller that are set out in Schedule 1 of this agreement.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Claim: a claim under the Warranties and a Claim is **connected** with another Claim if they arise out of the occurrence of the same events or relate to the same subject matter.

Companies Acts: the Companies Act 1985 and the Companies Act 2006.

Completion: the completion of the sale and purchase of the Asset pursuant to and in accordance with this agreement.

Completion Date: [DATE].

Customs: HM Revenue & Customs.

DPA: the Data Protection Act 1998.

Encumbrance: any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, however created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect.

Fire Museum: means the museum operated by the Seller at [ADDRESS].

Interest Rate: interest at a rate equal to 2% per annum above the base lending rate from time to time of Bank of England.

Purchase Price: has the meaning given in clause 3.1.

Tax or Taxation: all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the UK or any other jurisdiction; and any penalty, fine, surcharge, interest, charges or costs relating thereto.

Transaction: the transaction contemplated by this agreement or any part of that transaction.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

Warranties: the warranties, representations and undertakings set out in clause 5 and Schedule 7 (Warranties).

- 1.2 Clause, schedule and paragraph headings do not affect the interpretation of this agreement.
- 1.3 A reference to a clause or a schedule is a reference to a clause of, or schedule to, this agreement. A reference to a paragraph is to a paragraph of the relevant schedule, and a reference to an appendix is to the relevant appendix to this agreement.
- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated.
- 1.6 Words in the singular include the plural and in the plural include the singular.
- 1.7 A reference to one gender includes a reference to the other gender.
- 1.8 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it. Provided that, as between the parties, no such amendment or re-enactment shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
- 1.9 Writing or written includes faxes but not e-mail.
- 1.10 Documents in agreed form are documents in the form agreed by the parties to this agreement and initialled by them or on their behalf for identification.
- 1.11 Where the words include(s) including or in particular are used in this agreement, they are deemed to have the words "without limitation" following them.
- 1.12 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.13 Other and otherwise are illustrative and shall not limit the sense of the words preceding them.

2. AGREEMENT TO SELL AND PURCHASE

2.1 Unless expressly provided in this agreement, the Seller shall sell with full title guarantee, and the Buyer, shall purchase the Asset free from all Encumbrances and with effect from the Completion Date.

3. PURCHASE PRICE

3.1 The Purchase Price for the Asset to be paid by the Buyer to the Seller pursuant to this agreement shall be £1 (payable on demand).

4. COMPLETION

4.1 Completion shall take place on the Completion Date:

- (a) at the offices of the Seller; or
- (b) at any other place agreed by the Seller and the Buyer.

4.2 At Completion, the Seller and the Buyer shall comply with their respective obligations set out in Schedule 4.

4.3 If the Seller does not comply with clause 4.2 in any material respect, the Buyer may, without prejudice to any other rights or remedies it has (including the right to claim damages for breach of this agreement):

- (a) so far as is practicable, proceed to Completion; or
- (b) defer Completion to a date no more than 28 days after the date on which Completion would otherwise have taken place; or
- (c) rescind this agreement.

5. WARRANTIES

5.1 The Buyer enters into this agreement on the basis of, and in reliance on, the Warranties.

5.2 The Seller warrants and represents to the Buyer that each of the Warranties is true, accurate and not misleading except in respect of anything disclosed.

5.3 The Seller shall ensure that nothing is done or omitted to be done which would, at any time before or at Completion, be materially inconsistent with any of the Warranties, breach any of the Warranties or make any of the Warranties untrue or misleading.

5.4 Without prejudice to the right of the Buyer to claim on any other basis or take advantage of any other remedies available to it, if any of the Warranties are breached or prove to be untrue or misleading, the Seller undertakes to pay to the Buyer on demand:

- (a) the amount necessary to put the Buyer into the position it would have been in if such Warranty had not been breached or had been true and not misleading; and
- (b) all costs and expenses (including, without limitation, damages, claims, demands, proceedings, costs, legal and other professional fees and costs, penalties, expenses and consequential losses) incurred by the Buyer (whether directly or indirectly) as a result of the breach or of such Warranty not being true or being misleading,

and a payment made in accordance with the provisions of this clause 5.4 shall include any amount necessary to ensure that, after any Taxation of the payment, the Buyer is left with the same amount it would have had if the payment was not subject to Taxation.

- 5.5 Warranties given so far as the Seller is aware are deemed to be given to the best of the knowledge, information and belief of the Seller after it has made all reasonable and careful enquiries.
- 5.6 Each of the Warranties is separate and, unless expressly provided to the contrary, is not limited by reference to any other Warranty or anything in this agreement.
- 5.7 The provisions of Schedule 8 shall limit the liability of the Seller in relation to any Claim. Provided that the limitations in Schedule 8 shall not apply to any claim arising as a result of a breach of clause 2.1 or any Claim arising as a result of a breach of the Warranties contained in paragraph 2 or paragraph 3 of Schedule 7.

6. NOT USED

7. INSURANCE

If applicable, the Seller shall maintain in force up to the Completion Date any policies of insurance which have been disclosed.

8. NOT USED

9. LIABILITIES OF THE SELLER AND THE BUYER

- 9.1 The Seller shall have no liabilities whatsoever in respect of the Asset following the Completion Date.

10. VALUE ADDED TAX

- 10.1 If any VAT is payable on the sale pursuant to this agreement and Customs have so confirmed in writing after full disclosure of all material facts, the Seller shall promptly deliver to the Buyer a proper VAT invoice in respect of the VAT payable. Following receipt of the VAT invoice, the Buyer shall pay the Seller the amount of the VAT immediately on:

- (a) recovery of that VAT by the Buyer from HM Revenue & Customs; or
- (b) payment of the VAT by the Seller,

as specified by the Seller.

- 10.2 For the purposes of clause 10.1, VAT shall only be treated as payable if Customs have so confirmed in writing after full disclosure of all material facts.
- 10.3 Before sending any relevant letter to Customs, the Seller shall give the Buyer a reasonable opportunity to comment on it, and shall make such amendments as the Buyer reasonably requires.
- 10.4 [If the Buyer pays the Seller an amount in respect of VAT under clause 10.1 and Customs note that all or part of it was not properly chargeable, the Seller shall repay the amount or relevant part of it to the Buyer. The Seller shall make the repayment promptly after the ruling, unless it has already accounted to Customs for the VAT. In that case, the Seller shall apply for a refund of the VAT (plus any interest payable by Customs), use reasonable endeavours to obtain it as speedily as practicable, and pay to the Buyer the amount of the refund and any interest when and to the extent received from Customs.

11. THE EMPLOYEES

The parties agree that no employees are affected by this Agreement.

12. THE CONTRACTS

There are no Contracts connected to this Agreement.

13. NOT USED

14. NOT USED

15. NOT USED

16. CONFIDENTIALITY AND ANNOUNCEMENTS

16.1 The Seller undertakes to the Buyer to keep confidential all the information that it has acquired about the Buyer and to use such information only for the purposes contemplated by this agreement.

16.2 The Buyer undertakes to the Seller to keep confidential the terms of this agreement and all information that it has acquired about the Seller and to use the information only for the purposes contemplated by this agreement.

16.3 Either party may disclose any information that it is otherwise required to keep confidential under this clause 16:

(a) to such professional advisers, consultants and employees or officers of its group as are reasonably necessary to advise on this agreement, or to facilitate the Transaction, provided that the disclosing party procures that the people to whom the information is disclosed keep it confidential as if they were that party; or

(b) with the written consent of the other party; or

(c) to the extent that the disclosure is required:

(i) by law; or

(ii) by a regulatory body, tax authority or securities exchange;

but shall use reasonable endeavours to consult the other party and to take into account any reasonable requests it may have in relation to the disclosure before making it.

16.4 The parties acknowledge that each party has obligations in respect of the Freedom of Information Act 2000 which may require it to release information.

17. FURTHER ASSURANCE

The Seller shall (at its own expense) promptly execute and deliver all such documents, and do all such things, as the Buyer may from time to time reasonably require for the purpose of giving full effect to the provisions of this agreement.

18. ASSIGNMENT

Except as otherwise provided in this agreement, no party may assign, or grant any Encumbrance over or deal in any way with, any of its rights under this agreement or any document referred to in it.

19. WHOLE AGREEMENT

19.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

19.2 Nothing in this clause operates to limit or exclude any liability for fraud.

20. VARIATION

20.1 A variation of this agreement shall be in writing and signed by or on behalf of each party.

20.2 Any waiver of any right under this agreement is only effective if it is in writing and signed by the waiving or consenting party and it applies only in the circumstances for which it is given and shall not prevent the party who has given the waiver from subsequently relying on the provision it has waived.

20.3 No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.

20.4 No single or partial exercise of any right or remedy under this agreement shall preclude or restrict the further exercise of any such right or remedy.

20.5 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

21. COSTS

Unless otherwise provided, all costs and expenses in connection with the negotiation, preparation, execution and performance of this agreement, and any documents referred to in it, shall be borne by the party that incurred the costs.

22. NOTICE

22.1 A notice given under this agreement:

- (a) shall be in writing in the English language (or be accompanied by a properly prepared translation into English);
- (b) shall be sent for the attention of the person, and to the address or fax number, given in this clause 22 (or such other address, fax number or person as the relevant party may notify to the party); and
- (c) shall be:
 - (i) delivered personally; or
 - (ii) delivered by commercial courier; or
 - (iii) sent by fax; or

(iv) sent by pre-paid first-class post or recorded delivery.

22.2 The addresses for service of notice are:

(a) **PETER AUSTEN**
KENT AND MEDWAY FIRE AND RESCUE AUTHORITY

The Godlands,
Tovil,
Maidstone,
ME15 6XB

Fax number: []

(b) **HEAD OF LEGAL SERVICES, DARTFORD BOROUGH COUNCIL**

Civic Centre, Home Gardens, Dartford, Kent DA1 1DR

Fax number: 01322 343422

22.3 A notice is deemed to have been received:

- (a) if delivered personally, at the time of delivery; or
- (b) if delivered by commercial courier, at the time of signature of the courier's receipt; or
- (c) if sent by fax, at the time of transmission; or
- (d) if sent by pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or
- (e) if sent by registered airmail, five days from the date of posting; or
- (f) if deemed receipt under the previous paragraphs of this clause 22.3 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a Business Day), when business next starts in the place of receipt.

22.4 To prove service, it is sufficient to prove that the notice was transmitted by fax to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

22.5 A notice under this agreement shall not be valid if sent by e-mail.

23. INTEREST ON LATE PAYMENT

Where a sum is required to be paid under this agreement but is not paid before or on the date the parties agreed, the party due to pay the sum shall also pay interest on that sum at the Interest Rate for the period beginning with that date and ending with the date the sum is paid (and the period shall continue after as well as before judgment). Interest shall accrue on a daily basis and be compounded quarterly.

24. SEVERANCE

- 24.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 24.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

25. AGREEMENT SURVIVES COMPLETION

This agreement (other than obligations that have already been fully performed) remains in full force after Completion.

26. THIRD PARTY RIGHTS

This agreement and the documents referred to in it are made for the benefit of the parties to them and their successors and permitted assigns, and are not intended to benefit, or be enforceable by, anyone else.

27. SUCCESSORS

The rights and obligations of the parties shall continue for the benefit of and shall be binding on their respective successors and assigns.

28. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

29. LANGUAGE

If this agreement is translated into any language other than English, the English language text shall prevail.

30. GOVERNING LAW AND JURISDICTION

- 30.1 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 30.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises 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 1 ASSETS AND VALUES

The Asset included in the sale pursuant to this agreement is the Leyland Pump Escape registration Number *****.

Schedule 2 Not Used

Schedule 3 Not Used

Schedule 4 Completion

1. ACTIONS AND OBLIGATIONS AT COMPLETION

- 1.1 The Seller shall deliver, or procure delivery, to the Buyer of, or make available to the Buyer:
- (a) physical possession of all the Asset, with the intent that title in such Assets shall pass by and upon such delivery;
 - (b) all documents of title and certificates pertaining to the Asset;
- 1.2 The Buyer shall use its reasonable endeavours to ensure that within two years from the date of this agreement the Asset will be placed on display within the Dartford Borough Council area. Should display of the Asset not be achieved by this period then the **Buyer may elect to return and transfer title to the Asset to the Seller Kent Fire and Rescue Authority should be considered by giving not less than one month's notice of its desire to do so to the Seller and the Seller shall accept possession and title of the Asset from the Buyer immediately on the expiry of the notice period**
- 1.3 The Buyer will not dispose of the Asset (*other than as provided for in paragraph 1.2 above*) without first **servicing notice on the Seller** offering **the Asset** back to **the Seller Kent and Medway Fire and Rescue Authority** to purchase for an amount equal to the Purchase Price paid under clause 3.1 and on the same terms and conditions contained in this Agreement. **Where the Seller wishes to accept the offer, it must do so by serving on the Buyer a notice accepting the offer within the period of one month beginning with the date of receipt of the notice from the Buyer. The parties shall complete the transfer of the Asset no later than one month from the acceptance of the offer by the Seller. If the time limits contained in this paragraph are not complied with, the Buyer may dispose of the Asset as it sees fit.**

Schedule 5 Not Used

Schedule 6 Not Used

Schedule 7 Warranties

Part 1. General warranties

1. INFORMATION SUPPLIED

- 1.1 All information contained in this agreement relating to the Asset given by or on behalf of the Seller to the Buyer, its advisers or agents are true, accurate and complete in every respect and are not misleading.
- 1.2 There is no information that has not been disclosed which, if disclosed, might reasonably affect the willingness of the Buyer to buy the Asset on the terms of this agreement.

2. CAPACITY OF THE SELLER

The Seller has all requisite power and authority, and has taken all necessary corporate action, to enable it to enter into and perform this agreement and all agreements and documents entered into, or to be entered into, pursuant to the terms of this agreement.

3. TITLE TO THE ASSET

- 3.1 The Seller has good and marketable title to the Asset (tangible and intangible), and it is legally and beneficially owned by the Seller. There are no Encumbrances over the Asset.

4. CONDITION OF ASSETS

The Asset is sold in the condition as seen.

Schedule 8 Limitations on claims

1. This Schedule 8 limits the liability of the Seller in relation to any Claim.
2. The liability of the Seller for all substantiated Claims when taken together shall not exceed the Purchase Price.
3. The Seller is not liable for any Claim to the extent that the Claim relates to matters disclosed.
4. The Seller is not liable for a Claim unless the Buyer has given the Seller notice of the Claim, specifying (in reasonable detail) the nature of the Claim and the amount claimed within 1 year of the Completion Date.
5. Nothing in this clause applies to a Claim that arises or is delayed as a result of dishonesty, fraud, wilful misconduct or wilful concealment by the Seller or employee (or former employee or officer), agent or adviser of the Seller.

Signed by

for and on behalf of the Buyer