



## Grounds Maintenance Contract Agreement & Conditions of Contract Contract period 1 April 2019 – 31 March 2022

### Contract agreement

This agreement is made the [xx] day of [xxxxxxx] 2019

Between:

St Mary Bourne Parish Council of Bourne Meadow, St Mary Bourne, Andover, SP11 6HA (hereinafter called "the parish council") on the one part

and

[Enter name and address of company] (hereinafter called "the contractor") on the other part

It is hereby agreed as follows:

#### Article 1 – Agreement

For the consideration hereinafter mentioned the contractor will in accordance with the contract documents carry out and complete the works included in the contract specification.

#### Article 2 – Payment

The parish council will pay to the contract the sum of:

[Enter contract sum in numbers]

Exclusive of vat or such other sum as shall become payable hereunder at the times and in the manner specified in the contract documents.

#### Article 3 – Definitions

The term "supervising officer" in the said conditions shall mean: The parish council's authorised representative.

The term "sub-contractor" in said conditions shall mean: Any person not employed by the contractor, contracted to perform work on behalf of the contractor.

#### Article 4 – Disputes or Differences

If any dispute or difference concerning this contract shall arise between the parish council and the contractor such dispute or difference shall be referred to arbitration and final decision of a person to be agreed between the parties or, failing agreement, within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, a person to be appointed on the request of either party by the President or Vice President for the time of the Landscape Institute.

The provisions of the Arbitration Act 1996 shall apply to any arbitration under this Contract wherever the same, or any part of it, shall be conducted.

As witnessed the hands of the parties hereto.

Signed for and on behalf of St Mary Bourne Parish Council		(For the parish council)
In the presence of		(Witness's signature)
		(Witness's name)
		(Witness's address)
Signed for and on behalf of [enter name of contractor]		(For the contractor)
In the presence of		(Witness's signature)
		(Witness's name)
		(Witness's address)

## Conditions of contract

### 1. Intentions of the parties

#### 1.1 Contractor's obligations

The contractor shall with due diligence and in a good and workmanlike manner carry out and complete the works in accordance with the contract documents using materials and workmanship of the quality and standards therein specified, provided that where and to the extent that approval of the quality of materials or the standards of workmanship is a matter for the opinion of the supervising officer such a quality and standards shall be to the reasonable satisfaction of the supervising officer.

#### 1.2 Supervising officer's duties

The supervising officer shall issue any further information necessary for the proper carrying out of the works, arrange all payments and confirm all instructions in writing in accordance with these conditions.

### 2. Commencement and completion

#### 2.1 Commencement and completion

The works may be commenced on 1 April 2019 and shall be completed by 31 March 2022, unless extended under clause 2.2.

#### 2.2 Extension of contract period

The parish council reserves the right to extend the contract by one or two years.

#### 2.3 Defects liability

Any defects, tree, shrub, grass and other plant failures, which appear during the period of the contract and are due to materials or workmanship not in accordance with the contract shall be made good by the contractor entirely at their own cost unless the supervising officer shall otherwise instruct.

### 3. Control of the works

#### 3.1 Sub-contracting

The contractor shall not sub-contract the works or any part thereof without the written consent of the supervising officer whose consent shall not unreasonably be withheld.

### 3.2 Contractor's representative

The contractor shall at all reasonable times keep a competent person in charge and any instructions given to them by the supervising officer shall be deemed to have been issued to the contractor.

### 3.3 Exclusions from the works

The supervising officer may (but not unreasonably or vexatiously) issue instructions requiring the exclusion from the works of any person employed thereon.

### 3.4 Supervising officer's instructions

The supervising officer may issue written instructions which the contractor shall forthwith carry out. If instructions are given orally they shall be confirmed, within two working days, in writing by the supervising officer.

If within 7 days after receipt of a written notice from the supervising officer requiring compliance with an instruction the contractor does not comply therewith then the parish council may employ and pay other persons to carry out the work and all costs incurred thereby may be deducted by the supervising officer from any monies due or to become due to the contractor under the contract or shall be recoverable from the contractor by the parish council as a debt.

### 3.5 Variations

The supervising officer may, without invalidating the contract, order an addition to or omission from or other change in the works or the order or period in which they are to be carried out and any such instruction shall be valued by the supervising officer on a fair and reasonable basis, using where relevant prices in the priced schedule. If any omission substantially varies the scope of the work such valuations shall take due account of the effect on any remaining items of work.

Instead of the valuation referred to above, the price may be agreed between the supervising officer and the contractor prior to the contractor carrying out any such instruction.

### 3.6 Objections to a nomination

The supervising officer shall not nominate any person as a nominated subcontractor against whom the contractor shall make reasonable objection or who will not enter into a sub-contract that applies the appropriate provisions of these conditions.

### 3.7 Disturbance of regular progress

If upon written application being made to them by the contractor within a reasonable time of it becoming apparent, the supervising officer is of the opinion that the contractor has been involved in direct loss and/or expense for which he would not be reimbursed by a payment under any other provisions of this contract by reason of the regular progress of the works or part of the works having been materially affected by reasons within the control of the parish council, his/her agents or services, then the supervising officer shall ascertain such loss and expense and include it in any payments due under clause 4.2.

## 4. Payment

### 4.1 Correction of inconsistencies

Any inconsistency in or between the contract specification shall be corrected and any such correction which results in an addition, omission or other change shall be treated as a variation under clause 3.5 hereof. Nothing contained in the schedules shall override, modify or affect in any way whatsoever, the application or interpretation of that which is contained in these conditions.

### 4.2 Monthly statements

A detailed monthly statement of work carried out, including any work still outstanding is to be submitted to the supervising officer by the 5<sup>th</sup> of each following month.

### 4.3 Additional payments

No payment will be made for additional work not specified unless agreed by the supervising officer.

### 4.4 Documents

No payment shall be made for the loss of expenses of the contractor due to misunderstandings of the documents.

### 4.5 Fixed price

The contract price will be fixed for the period of the contract.

### 4.6 Payment frequency

The parish council will ensure that all undisputed invoices are paid within a 30-day period and ensure that all invoices are considered and verified in a timely manner.

## 5. Statutory obligations

### 5.1 Statutory obligations, notices, fees and charges

The contractor shall comply with, and give all notices required by, any statute, any statutory instrument, rule or order or any regulation or bylaw applicable to the works (hereinafter called the statutory requirements) and shall pay all fees and charges in respect of the works legally recoverable from them. If the contractor finds any divergence between the statutory requirements and the contract documents or between the statutory requirements and any instruction of the supervising officer, he shall immediately give to the supervising officer written notice specifying the divergence.

The parish council requires UK employment, environmental and health & safety regulations to be adhered to for all aspects of work.

### 5.2 Value added tax

The contractor shall assess the Value Added Tax due and include on each invoice submitted for payment.

### 5.3 Transparency

The parish council is a Local Authority to whom the provisions of the Freedom of Information Act 2000 ('FOIA') or General Data Protection Regulation 2016 (GDPR) apply, the parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA/GDPR, the content of this contract is not confidential. The parish council shall be responsible for determining in its absolute discretion whether any of the content of this contract is exempt from disclosure in accordance with the provisions of FOIA/GDPR. Notwithstanding any other term of this contract:

- 5.3.1 the contractor hereby consents to the parish council publishing the contract, contract specification and related documents in their entirety, including any changes agreed by both parties, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA/GDPR, said information will be redacted;
- 5.3.2 the parish council shall promptly inform the contractor of any request for disclosure that he/she receives in relation to this contract.

## 6. Injury, damage and insurance

### 6.1 Contractor's liability – personal injury and death

The contractor shall be liable for, and shall indemnify the parish council against any expense, liability, loss, claim or proceedings whatsoever in respect of

personal injury to or death of any person arising out of or in the course of or caused by the carrying out of the works, except to the extent that the same is due to parish council, any parish council's person or any statutory undertaker.

Without prejudice to his/her liability to indemnify the parish council, the contractor shall maintain and shall cause any subcontractor to maintain such insurances as are necessary to cover the liability of the contractor, or, as the case may be, of such contractor, in respect of personal injury or death arising out of or in the course of or caused by the carrying out of the works. Provided that nothing in this clause contained shall impose any liability on the subcontractor in respect of negligence or breach of duty on the part of the parish council, the contractor, his/her other subcontractors or their respective servants or agents.

The contractor should ensure that employees have appropriate training for the following legislation:

- Provision and Use of Work Equipment Regulations 1998 for equipment.
- Food and Environment Protection Act for the application of chemicals.
- Control of Pesticides Regulations 1986 for the application of chemicals.
- Control of Substances Hazardous to Health Regulations 2002 for the application of chemicals.

Information on any hazardous chemicals used on parish council land is to be supplied to the supervising officer before use.

## 6.2 Damage to property

The contractor shall be liable for, and shall indemnify the parish council against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the contractor or any contractor's person.

## 6.3 Contractor's insurance of liability

Without limiting or affecting his/her indemnities to the parish council under clauses 6.1 and 6.2, the contractor shall effect and maintain (and shall cause any sub-contractor similarly to effect and maintain) insurance in respect of claims arising out of the liabilities referred to in those clauses which:

- 6.3.1 in respect of claims for personal injury to or the death of any employee of the contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and
- 6.3.2 for all other claims to which clause 6.3 applies, shall indemnify the parish council under the terms of this contract and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than £10,000,000.00.

## 6.4 Evidence of insurance

The contractor shall produce within 7 days of a request, and shall cause any subcontractor to produce, such evidence as the parish council may reasonably require that the insurances referred to in clauses 6.1 and 6.2 have been taken out and are in force.

## 7. Termination

### 7.1 Termination by parish council

The parish council may (but not unreasonably or vexatiously) by notice by registered post or recorded delivery to the contractor, forthwith terminate the employment of the contractor under this contract if the contractor shall make default in any one or more of the following respects:

- If the contractor without reasonable cause fails to proceed diligently with the works or wholly suspends the carrying out of the works before completion;
- If the contractor becomes insolvent, as defined under the Insolvency Act 1986;
- If the contractor becomes bankrupt or makes any composition or arrangement with his/her creditors or has a winding up order made (except for the purposes of reconstruction) or a resolution for voluntary winding up passed or a receiver or manager of his/her business or undertaking is duly appointed or possession is taken by or on behalf of any creditor of any property the subject of a charge.

In the event of the parish council terminating the employment of the contractor as aforesaid the contractor shall immediately give up possession of the site of the works, provided always that the right of termination shall be without prejudice to any other rights or remedies which the parish council may possess.

### 7.2 Termination by contractor

The contractor may (but not unreasonably or vexatiously) by notice by registered post or recorded delivery to the parish council, forthwith terminate the employment of the contractor under this contract if the parish council shall make default in any one or more of the following respects:

- 7.2.1 if the parish council or any person for whom it is responsible interferes with or obstructs the carrying out of the works or fails to make the premises available for the contractor in accordance with clause 2.1 hereof;
- 7.2.2 if the parish council suspends the carrying out of the works for a continuous period of at least one month;



- 7.2.3 If the parish council becomes bankrupt or makes a composition or arrangement with his/her creditors, or has a winding up order made or a resolution for voluntary winding up passed or a receiver or manager of his/her business is appointed or possession is taken by or on behalf of any creditor of any property the subject of a charge.

Provided that the employment of the contractor shall not be terminated under clauses 7.2.1., 7.2.2., or 7.2.3 hereof unless the parish council has continued the default for seven days after receipt by registered post or recorded delivery of a notice from the contractor specifying such default.

In the event of the contractor terminating the employment of the contractor as aforesaid the parish council shall pay to the contractor, after taking into account amounts previously paid, such sum as shall be fair and reasonable for the value of work begun and executed and materials on site. Provided always that the right of termination shall be without prejudice to any other rights or remedies which the contractor may possess.

## 8. Preliminaries

### 8.1 Tendering

The contractor shall make due allowance in their tender for entering into a contract with the parish council in accordance with Agreement and Conditions set out.

### 8.2 Programming of works

The contractor shall agree a programme for the work, before work commences on site, with the supervising officer.

### 8.3 Hours of work

The contractor shall not perform any of the work outside of the hours of Monday to Friday between 8.00am and 6.00pm, unless by prior agreement with the supervising officer.

### 8.4 Nature of site

The contractor is to visit the site, and satisfy themselves as to the nature of the access, the extent and nature of the maintenance and the site and conditions under which maintenance will be carried out, and any other matters which affect their tender, such as the character of grassed areas, planted areas, hedges, trees and paved areas, as no claim can be entertained which is based on conditions which could have been foreseen.

### 8.5 Storage of plant, machinery, tools and equipment

There is no provision for the contractor to store any plant, machinery, tools or equipment on site.

## 8.6 Interpretation of contract documents

The documents are intended to convey accurate description of the nature and standard of quality of the works to be performed by the contractor. Should the contractor be in any doubt regarding the true meaning and intent of any clause in the conditions of contract, specification, schedules or details shown on the drawings he is entitled to have these fully resolved in writing before submitting his/her tender, as no extras will be allowed for any loss or expense involved through any misunderstanding arising from his/her failure to comply with his/her invitation.

## 8.7 Damage to road etc.

Any repairs or costs of repairs caused by damage to road surfaces, kerbs, edging footpaths, manholes and gullies, etc. caused while the contract shall be made good to the satisfaction of the local authority at the contractor's expense.

## 8.8 Mud on roads

Any mud or debris deposited on highways or in the highway drainage systems by the contractor's vehicles or the vehicles of his/her subcontractors or suppliers are to be removed immediately at the contractor's expense.

## 8.9 Warning signs and lights

The contractor must allow for the erection of warning notices and lights where maintenance works, materials or plants are near roads or pedestrian routes during and outside working hours.

## 8.10 Relics and antiquities

All objects of value or of antiquity or of archaeological interest discovered during the works shall be delivered into the custody of the supervising officer.

## 8.11 Site meetings

Site meetings will be held annually during the period of contract and a representative at Supervisory grade from the contractor and his/her subcontractors as appropriate will be expected to attend.

## 8.12 Protection of existing artefacts

Protection shall be afforded to, and care taken when working adjacent to, all existing buildings, walls, paving, steps, manholes, etc. and any damage caused to any such existing feature shall be made good by the contractor as soon as possible at his/her expense.

8.13 Fires

No fires shall be lit on site under any circumstances.

8.14 Keeping the works tidy

All rubbish and litter arising from maintenance operations shall be removed as it accumulates and disposed of off-site.

8.15 Inclement weather

Inclement weather will not be considered a reason for a claim for loss by the contractor.