

"Conditions" means these conditions and any modification thereof, duly made in accordance with their provisions;

"Contract" means this Contract, including the Conditions and Schedules;

"Contractor" xxxxxxxx

"Council" means Belper Town Council and any successor authority and any body to which all or part of its functions may lawfully be transferred;

"Parish" means the administrative area of the Council;

"Party" and "Parties" means the Council and the Contractor

"Plant" means all large machinery required to undertake the Service.

"Rates" means the costs provided on the Programme of Works in Schedule 2 as increased on an annual basis in accordance with Condition 6.7

"Service" means the Service set out in the Specification in Schedule 1 and Tender return including Programme of Works in Schedule 2 together with any agreed modification of any of them;

"Supervising Officer" means the Town Clerk of the Council and any person who, may subsequently be appointed by the Council to carry out all or any of the functions carried out by the Town Clerk at the Commencement Date and any person duly appointed by the Council to be a deputy or assistant to the Town Clerk.

"Working Days" means Monday to Friday inclusive excluding Christmas Day, Boxing Day, Good Friday and Easter Monday.

2. Commencement Date and Duration

2.1 The Contract shall commence on the Commencement Date for the Contract Period subject to any extensions in accordance with Condition 2.2 or Termination in accordance with Condition 11.

2.2 The Contract Period shall be reviewed by the Council on the second anniversary of the Commencement Date. The Council will review the Contractors performance of the Contract and decide in its sole discretion as to whether to extend the Contract period for a further year. If extended, the Contract Period shall be reviewed by the Council on the third anniversary of the Commencement Date. The Council will review the Contractors performance of the Contract and decide in its sole discretion as to whether to extend the Contract period for a further year.

3. Performance of the Service

3.1 During the Contract Period the Contractor shall perform the Service in strict accordance with the Contract Standard and in a proper, skillful and workmanlike manner, to the entire satisfaction of the Supervising Officer.

3.2 The Contractor shall provide all labour, materials, Plant, depots and transport to and from and in or about the Parish, and everything of a temporary or permanent nature required in, or for the performance of the Service.

3.3 The Contractor shall in carrying out the Service comply at all times with all relevant Acts of Parliament, statutory regulations, notices or orders and Codes of Practice and shall indemnify the Council against any loss or damage caused by non-compliance with any such provisions.

3.4 The Contractor shall during the Contract Period hold all relevant Licenses, including a Waste Carriers License.

3.5 The Contractor shall comply with the conditions and regulations, imposed by the Licenses and will notify the Supervising Officer immediately in the event that such License is suspended or terminated.

3.6 The Contractor will allow the Supervising Officer to inspect the Licenses immediately upon request.

4. Modifications and Omissions

4.1 Except as otherwise expressly provided, the Schedules and Conditions of the Contract are to be taken as mutually explanatory of one another. In case of ambiguities, discrepancies or inconsistencies the same shall be explained and adjusted by the Council acting through the Supervising Officer, who shall thereupon issue to the Contractor appropriate instructions in writing and the Contractor shall carry out and be bound by such instructions. Any adjustment to the Service arising there from shall be treated as a modification pursuant to this Condition.

4.2 Any error in the Contract or omission there from shall not vitiate the Contract nor release the Contractor from the performance of the whole or any part of the Service or from its obligations or liabilities under the Contract. Any such error or omission shall be corrected by the Supervising Officer, who shall thereupon issue the Contractor with appropriate instructions in writing and the Contractor shall carry out and be bound by such instructions. Any adjustment to the Service arising there from shall be treated as a modification pursuant to this Condition.

4.3 No omissions from, addition to, or variation of the Conditions shall be valid, or of any effect unless it is agreed in writing and signed by the Supervising Officer and by a duly authorised representative of the Contractor.

5. Supervising Officer

5.1 The functions, rights and powers conferred by this Contract upon the Council shall be exercised by the Supervising Officer as defined in the Conditions. The Contractor shall in no circumstances question the existence or extent of the authority of any person notified to the Contractor (whether orally or in writing) to be the Supervising Officer.

6. Payments

6.1 Provided the Contractor submits an invoice for the Service, half the invoice will be paid within 14 days of the submission of invoice and the remaining half will be paid at the end of June providing the Service complies with the Conditions.

6.2 The Council shall be entitled to deduct from any payment any sum certified by the Supervising Officer as being deductible by reason of any omission or non-performance of the Service by the Contractor, or the defective performance of the Service by the Contractor, or any variation in the Service performed by the Contractor, or as a result of any modification in the Contractor's method of carrying out the Service or by way of charges, payments, compensation, agreed damages or other sums payable to the Council in pursuance of any of the Conditions.

6.3 The Council shall add to any payment any sum certified by the Supervising Officer as being due to the Contractor in the period to which the installment relates, by reason of any additional works actually performed by the Contractor, pursuant to an instruction of the Supervising Officer, or any variation in the Service performed by the Contractor pursuant to an instruction of the Supervising Officer.

6.4 Where an instruction is given by the Supervising Officer, or as in the opinion of the Supervising Officer a reduction in the Service is involved, or a written notice has been served on the Contractor the Supervising Officer shall certify the amount to be deducted from the relevant installment or installments and in so certifying the Supervising Officer shall have regard so far as is practicable to the Rates applicable to such part or parts of the Service as is effected, omitted, reduced or not performed.

6.5 Where any instruction is given by the Supervising Officer, which in the opinion of the Supervising Officer involves an increase or an addition in the Service the Supervising Officer shall certify the amount to be added to the relevant payment as follows;

a) if the additional or increased services are the same as, or similar to any part of the Service, then the Supervising Officer shall have regard as far as practicable to the Rates for performing the Service;

b) if such additional or increased services are not the same or similar to any part of the Service then the Supervising Officer shall certify such sums as

may be agreed between the Supervising Officer and the Contractor, or in default of such agreement, such sums as the Supervising Officer may at his entire discretion fix as being a fair and reasonable sum for the performance of such services.

6.6 The Contractor shall submit to the Supervising Officer an invoice detailing payment it considers itself entitled under the Contract. The invoice shall specify:

- a) Which part or parts of the Service are exempt from VAT;
- b) Which part or parts of the Service bear a zero rate of VAT;
- c) Which part or parts of the Service bear a rate of VAT greater than zero;

And in each case specifying the exact rate chargeable.

6.7 The Rates included in the Programme of Works shall remain fixed for one year from the Commencement Date. The Rates for each succeeding year of the Contract Period, plus the possible two year extension to the Contract, shall, be increased by 2% per annum.

7. Vehicles, Plant and Machinery

7.1 The Contractor shall at all times, be fully responsible for obtaining all licenses, the payment of all licensing fees, taxes and insurances required in connection with or arising out of the possession or use of all plant employed in the performance of the Services.

7.2 The Contractor shall procure and effect fully comprehensive insurance cover in respect of all vehicles employed in the performance of the Services.

7.3 The Contractor shall put and keep all plant employed in the performance of the Service at all times in good and serviceable repair and in such condition as is commensurate with the proper performance by the Contractor of its obligations under this Contract.

8 Clause Removed

9. Health and Safety

9.1 The Contractor shall in performing the Services adopt safe methods of work in order to protect the health and safety of the employees and of all other persons including members of the public.

9.2 The Contractor shall at all times comply with the requirements of the Health and Safety at Work, etc, Act, 1974 the Management of Health and Safety at Work Regulations 1999 (and shall supply a copy of its risk assessment under these Regulations when requested by the Council), Workplace (Health and Safety and Welfare Regulations 1992) and of other Acts, Regulations,

Orders, Approved Codes of Practice, Guidance or rules of law pertaining to health and safety.

- 9.3 The Contractor shall adhere at all times to COSHH Regulations 1999. The Contractor shall produce and implement comprehensive written instructions for the safe use, delivery, handling and storage of all chemicals.

10. Policies and Procedures

- 10.1 The Contractor will at all times comply with its policies and procedures on Health and Safety, Equal Opportunities and complaints.

11. Termination

- 11.1 The Contractor may terminate this Contract by giving the Council six (6) months Notice in accordance with Condition 22.
- 11.2 The Council may terminate this Contract
- a) Immediately on what it considers in its sole discretion to be a material and serious breach of the Contract
 - b) By giving the Contractor one months Notice in accordance with Condition 22, if the Council considers that the Contractor has breached the Contract and that the breach has been notified in writing to the Contractor and either; it has not been remedied within the time limit given by the Council (such time limit to be reasonable) or the breach has been repeated.

12. Waiver and accumulation of remedies

- 12.1 The rights and remedies provided by this Contract may be waived only in writing by the Contractor and the Supervising Officer in a manner that expressly states that such waiver is intended for, and such waiver shall only be operative with regard to, the specific circumstances referred to.

13. Force Majeure

- 13.1 Notwithstanding any provision of this Contract or in any document referred to or incorporated in it neither of the Council nor the Contractor shall be liable for any failure to carry out or delay (or for the consequences of any failure or delay) in performing any of their respective obligations under this Contract if such delay is due to acts of god, fire, war, riot, civil commotion, lightening, earthquakes, flood or similar natural calamity strikes or other industrial action or dispute (other than involving the Contractor's Personnel) acts of government and the party so delayed shall be allowed a reasonable extension of the time for performing such obligations.

14 Guarantees, Indemnity and Insurance

14.1 The Contractor shall indemnify and keep indemnified the Council against all Losses in respect of or in any way arising out of the provision of the Services in relation to the injury to or death of any person and loss of or damage to any property including property belonging to the Council.

14.2 The Contractor shall obtain insurance cover to the sum of five million pounds (£5,000,000.00) for public indemnity and one million pounds (£1,000,000.00) for Employers Liability.

14.3 The Contractor shall supply to the Supervising Officer forthwith and upon each renewal date a copy of any relevant policy a certificate from its insurers or brokers confirming that the Contractor's insurance policies.

15 Freedom of Information Act 2000

15.1 The Contractor acknowledges that the Council is subject to the provisions of the Freedom of Information Act 2000 ('FOIA') and the Environmental Information Regulations 2004 (EIR).

15.2 The Contractor shall upon request by the Council (and within such period as the Council may specify) provide the Council with all assistance and Information under its control to enable the Council to respond to a request for Information within the time for compliance prescribed by FOIA or EIR

15.3 The Contractor acknowledges that the provisions of the FOIA or EIR may override any obligation of confidentiality as between the Council and the Contractor and that the Council may be obliged to disclose Information without consulting the Contractor or having consulted the Contractor but in opposition to the views of the Contractor.

16 ASSIGNMENT AND NOVATION

16.1 The Contractor shall not assign, novate or otherwise dispose of any or all of its rights and obligations under this contract without the prior written consent of the Council (which consent shall not be unreasonably withheld or delayed).

17 Relationship of the Parties

17.1 Nothing in this Contract is intended to create a partnership or legal relationship of any kind that would impose liability on one party for the act or failure to act of the other party, or to authorise either party to act as agent for the

other party. Neither party shall make representations, act in the name of, on behalf of or otherwise bind the other party.

17.2 Nothing in this Contract prohibits the Council from obtaining additional goods and services from a different Contractor.

18 Severance

18.1 If any provision of this contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remainder of the provisions. If a provision of this Contract that is fundamental to the accomplishment of the purpose of this Contract is held to any extent to be invalid, the contractor and the council shall immediately commence good faith negotiations to remedy such invalidity. Neither Party shall unreasonably withhold or delay their agreement to any such matters.

19. Amendments

19.1 No amendment to the Contract shall be binding unless they are in writing and signed by the duly authorised representatives of the Council and of the Contractor and expressed to be for the purpose of such amendment.

20. Entire Agreement

20.1 This Contract constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

20.2 Each of the parties acknowledges and agrees that, in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this agreement. The only remedy available to either party in respect of any such statement, representation, warranty or undertaking shall be for breach of contract under the terms of this Contract.

20.3 Nothing in this Condition shall operate to exclude any liability for fraud.

21 Third Party Rights and Sole Remedy

21.1 This Contract does not create, and shall not be construed as creating, any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not party to this Contract.

21.2 The Contractor's sole remedy with regard to any breach or termination of this Contract shall be such remedies contained within this agreement other than its right to claim for specific performance of any obligations contained herein.

22 Notices

22.1 Any Notice required to be given under or in connection to this Contract shall be in writing, signed by or on behalf of the Party giving it and shall be served by delivering it personally, or by sending it by pre-paid first-class post, recorded delivery or registered post, or by fax, to the address or fax number and for the attention of the relevant Party notified for such purpose.

22.2 Notices shall not be deemed to be served if sent by e-mail.

22.3 A notice shall be deemed to have been received:

- a) if delivered personally, at the time of delivery;
- b) in the case of pre-paid first-class post, three (3) Working Days from the date of posting; and
- c) in the case of fax, on the day of transmission if sent before 4.00 pm on any Working Day and otherwise at 9.00 am on the next Working Day provided that, at the time of transmission, an error-free transmission report has been received by the sender.

22.4 In proving service, it shall be sufficient to prove that the envelope containing the Notice was addressed to the relevant Party at its address previously notified for the receipt of notices (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first-class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party at its fax number previously notified for the receipt of notices (or as otherwise notified by that Party).

23 Governing law and jurisdiction

23.1 This Contract and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English Law and submitted to the exclusive jurisdiction of the English Court.

EXECUTED as a Deed by the Parties the day and year as written:

SIGNED ON BEHALF OF }
BELPER TOWN COUNCIL }

Mayor

Date

Deputy Mayor

Date

Witnessed by

Town Clerk

Date

SIGNED ON BEHALF OF THE }
CONTRACTOR: }

Director

Date

Secretary

Date

Schedule 1

SPECIFICATION

1 Summer Plants

To provide bedding plants for the Summer beds as per order each January. The plants should be strong and healthy and should be in flower by mid-June and give a good display until mid-September.

2 Hanging Baskets

To plant up no194 hanging baskets (complete with liners) and no36 half baskets (complete with liners). The plants should be strong and healthy and should be in flower by mid -June and give a good display until mid - September.

3 Winter/Spring Bedding

To provide bedding plants for Winter/Spring Beds as per order in August each year. The plants should be strong and healthy and should be in flower by mid October and give a good display until May.

4 Delivery

The plants to be delivered to the Coppice Car Park Lock Up, in accordance with the following dates-

Summer Bedding

Monday 21 May 2018 – 1/3 plants and similar date to be agreed annually

Wednesday 30 May – all hanging baskets and similar date to be agreed annually

Monday 4 June 2018 – 1/3 plants and similar date to be agreed annually

Monday 11 June 2018 – 1/3 plants and similar date to be agreed annually

Winter Bedding

Monday 15 October 2018 – and similar date to be agreed annually

5 Additional commitments

- To meet with the Council in January each year to discuss the Summer Plants requirements.
- To meet the East Midlands in Bloom Judges and if the Council is entered – the Britain in Bloom judges. Dates usually in July and August.

Schedule 2

Insert charges schedule from the tender