



## **HUGHENDEN PARISH COUNCIL. GROUNDS MAINTENANCE ITT; 2023-24**

### **Section B: Terms and Conditions**

This section includes: -

1. Contractor's Obligation
2. Amendments to the ITT
3. Modifications and Omissions
4. Supply of Equipment/Materials, Plant and Transport
5. Health and Safety
6. Work Procedures & Safe Systems of Work
7. Applicant/Contractor Personnel
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### **1. Contractor's Obligation**

As a contractor, the applicant shall, subject to the provisions of the ITT, diligently and in a good workmanlike manner (with the highest degree of expertise, skill, care and due diligence), carry out and complete all grounds maintenance work to the reasonable satisfaction of Hughenden Parish Council.

### **2. Amendments to the ITT**

At any time prior to the Tender Response Deadline, the Parish Council may amend the ITT. Any such amendment shall be issued to all potential applicants, and if appropriate to ensure potential contractors have reasonable time in which to take such amendment into account, the Tender Response Deadline shall, at the discretion of the Council, be extended.

### **3. Modifications and Omissions**

3.1 The *Specification* and *Terms of Conditions* of the ITT and 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 issue appropriate and binding instructions in writing to the contractor. Likewise, any additional requested work (not identified in the ITT/contract specification) will be agreed through a *Contract Amendment* and added to the contract.

3.2 Any additional work requested by the contractor, if agreed by the Parish Council will be conducted through a *Variation to Contract*. The Council will confirm acceptance by raising a *Variation Order* document containing the original contract price, variation price and new price. Any work carried out by the contractor without prior authorisation will not be paid.

### **4. Supply of Equipment/Materials, Plant and Transport**

4.1 The applicant shall provide all tools, plant, vehicle, cutting machinery, consumables, fuel and equipment necessary for the proper performance of the services and maintain the requisite standard of work.

4.2 The contractor shall maintain all plant machinery and equipment to ensure proper performance and completion of the Works. The contractor will ensure the testing of maintenance equipment meets standards of the 1998 *Provision and Use of Work Equipment Regulations* (PUWER). This procedure will be made available to the Parish Council on request.

4.3 All machinery used on grassed areas shall be free from oil or fuel leaks. All hand machinery shall be maintained in such a way as to prevent the spillage of oil or fuel or other chemicals.

4.4 The contractor shall ensure that all vehicles are licensed, taxed, insured and in a well-maintained roadworthy condition during the progress of the works.

4.5 The contractor will ensure that all machines engaged in cutting operations are sharp and properly set, to produce a true and even cut. Any damage to areas of grass not cut to the approval of the Council from such lack of maintenance will be made good by the contractor at their own

expense and to the satisfaction of the Parish Council. Unsatisfactory tree or hedge pruning and cutting will be made good by the contractor at their own expense and to the satisfaction of the Council.

4.6 The contractor will at all times during the period of the contract ensure that equipment and machines are properly guarded and maintained so as to present no danger to the operator, surrounding structures, vehicles or any members of the public in the vicinity of operations. The council will not be liable for any damage to the contractor's equipment caused by carrying out these works.

## **5. Health and Safety**

5.1 The contractor shall ensure that the Service is performed in accordance with the 1974 *Health and Safety at Work Act* having regard to the safety of the public and of their employees. They will adopt safe systems of work and accept full responsibility for compliance with all other applicable laws and relevant statutory provisions in respect of the performance of their services to fulfil the contract.

5.2 The contractor shall at all times comply with the requirements of the 1999 *Management of Health and Safety at Work Regulations* (and shall supply a copy of its risk assessment under these Regulations when requested by the Council), Workplace (1992 *Health and Safety and Welfare*) *Regulations* and of other acts, regulations, orders, approved codes of practice, guidance or rules of law pertaining to health and safety.

5.3 The Contractor shall review their health and safety policy and safe working procedures as often as may be necessary and in the light of changing legislation or working practices or the introduction of new equipment and shall notify the supervising officer in writing of any such revisions. The Parish Council may require the contractor to amend their health and safety policy and safe working procedures to comply with any change in legislation or working practices or required as a result of the introduction of new equipment.

5.4 When working on public footpaths and adjacent to highways all operatives will wear high visibility clothing to BS 6629:1985 standards. All protective clothing and equipment (PPE) relevant to an operation will be correctly worn/used. The applicant will provide staff with all safety PPE equipment, (boots, reflective vests, ear defenders etc), and ensure they are always used when engaged in work for the Parish Council.

5.5 Traffic movement (including pedestrians) along roads and footways must be maintained at all times. Where it is appropriate to place warning signs, cones etc, the contractor will do so in accordance with Chapter 8 of the *Traffic Signs Manual*<sup>1</sup>.

5.6 Any vehicles and trailers used by the contractor in support of grass cutting operations, are to be parked in a manner that causes the minimum, or if possible, no obstruction to road or footway users or residents. Warning and hazard lights will be used where appropriate. Access to properties along roads and footways are not to be obstructed.

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<sup>1</sup> Traffic Signs Manual, Department of Transport 2006 as amended, March 2020.

5.7 The contractor is required to notify the Parish Council immediately of any accidents, near misses or environmental incidents such as oil or diesel spillages. The contractor is expected to carry spillage kits.

## **6. Work Procedures & Safe Systems of Work**

6.1 The Parish Council requires that all contracted staff are suitably trained in safe systems of work and refreshed again at regular intervals through training and toolbox talks. Safe systems of work must be in place to address lone working, security, vehicle use, operation of tools and equipment and other work activities.

6.2 All persons operating machinery and tools must be qualified and competent. The Council reserves the right to ask the contractor to provide adequate proof that their operators are well trained, conversant with health and safety legislation and competent in their operating methods.

6.3 Risk Assessments; Each site is required to have a suitable generic risk assessment, and contracted staff trained to undertake specific risk assessments against areas where there is thought to be risk.

6.4 Risk Assessments & Method Statements must be available on request. Company template risk assessments will need to be submitted before the commencement of the contract.

6.5 Control of Substances Hazardous to Health (COSHH) Assessments; The contractor shall adhere at all times to the 1999 *CoSHH Regulations*. The contractor shall produce and implement comprehensive written instructions for the safe use, delivery, handling and storage of all chemicals, herbicides and ensure the employees are trained and fully competent.

6.6 Company template COSHH assessments will need to be submitted before the commencement of the contract.

6.7 Accident and Incident Investigation Procedure; Accident and incident records must be maintained and each is reported to the supervising officer. In specific cases, reports of an accident will be declared to the *Health & Safety Executive*.

6.8 Inspection; As part of the day-to-day role, the Parish Council expect the contractor to report any identified health and safety matters with regard to open spaces and grounds infrastructure. Defects should be noted and reported to the council for action.

6.9 Evidence of how health and safety is maintained and monitored must be made available upon request.

## **7. Applicant/Contractor Personnel**

7.1 The contractor must ensure all operatives employed in fulfilling the work of the contract are appropriately qualified to undertake the works included in the grounds maintenance specification.

7.2 The contractor will provide adequate information, instruction, and supervision for employees

7.3 It is expected where appropriate, operatives will hold the minimum relevant NVQ Level qualifications required.

7.4 The contractor will ensure all employees are competent to do their tasks, and give them adequate training. The Parish Council will be provided details of how any skills gaps identified and how they will be met.

## **8. Sub-Contracting**

8.1 Applicants must be able to satisfy the Parish Council as to their ability to perform the contracted services.

8.2 The Contractor may not assign, sub-contract or otherwise transfer any or all of its rights and obligations under this ITT, whether in whole or in part, without the prior written consent of the Parish Council.

8.2 The Parish Council may consider proposals for the performance of part of the contracted services by sub-contractors, provided that the part of the services to be sub-contracted, the terms of the sub-contract and identity of the sub-contractor are approved by the Parish Council. The Council may require any or all of the following conditions to be satisfied:

- (i) The proposed sub-contractor enters into a collateral warranty in favour of the Council for the performance of the relevant part of the maintenance (a signed copy of such documents must be submitted electronically and if requested, in hardcopy);
- (ii) The applicant remains fully liable for the acts and omissions of the sub-contractor
- (iii) The Council may require the removal of the sub-contractor at any time and at its sole discretion.

## **9. Force Majeure**

In the event either party is unable to perform its obligations under the terms of this Agreement because of acts of God, strikes, equipment or transmission failure or damage reasonably beyond its control, or other causes reasonably beyond its control, such party shall not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes.

## **10. Guarantees, Indemnity, Liability and Insurance Cover**

10.1 The Contractor shall indemnify and keep indemnified the Council against all losses arising out of provision of the contracted 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; arising from the performance of the services or any act, neglect or omission of any employee of the contractor, howsoever such liability may arise.

10.2 The applicant shall also indemnify the Parish Council accordingly for any failure to so comply with any aspect of this ITT.

10.3 The contractor shall obtain insurance cover to the sum of a minimum of; £5million public liability insurance, £5million Employer's Liability Insurance and £2million Professional Indemnity Insurance for each claim; -

- to the Council and to any employee of the Council,
- to the employees of the contractor,
- to any other person, for any damage, loss or injury

10.4 Current certificates of insurance must be produced to the parish clerk prior to commencement of the contract.

## **11. Precautions**

11.1 Noise; The contractor shall comply with the general requirements of *BS 5228 (2014) Code of Practice* or as amended for noise control on construction and open sites. The contractor shall ensure that in executing the services they and persons in their employment execute the work in such a manner that it does not constitute a nuisance to other users.

11.2 Hours for Working; The contractor may work between the hours of 8.00 am and 6.00 pm, but will not be permitted to carry out any part of maintenance works during the hours of darkness without the prior consent of the supervising officer.

11.3 Damage Caused During the Performance of the Service; The contractor shall make good at their own expense any damage caused to furniture, fences, paths, roadways, shrubs, trees or any other property, during maintenance operations by its machinery or staff.

## **12. Payment, Invoicing and Schedules**

12.1 Invoices should be produced monthly by the last day of the month. In accordance with the 2015 *Public Procurement Contract Regulations*, the Parish Council will pay correctly addressed and undisputed invoices within 30 days in accordance with the requirements of the contract.

12.2 General requirements for an invoice for the Parish Council include:

- A description of the good/services supplied.
- Clearly state the agreed scheduled payment or the cost of each individual job carried out over that period.
- If appropriate or requested, the invoice should be accompanied by a completed timesheet.
- Where appropriate, the Parish Council's reference number/purchase order number.
- This invoice must be addressed to Hughenden Parish Council.

## **13. General Policy Requirements**

Contractors are required to acquaint themselves fully with the extent and nature of the services and contractual obligations. These instructions constitute the conditions of tender. Participation in the tender process automatically signals that the potential provider accepts these conditions of tender.

**14. Confidentiality, Publicity, Data Protection and Information Governance**

14.1 The contractor shall take all necessary precautions to ensure that all confidential information obtained from and about Hughenden Parish Council is treated confidentially and not disclosed (without prior approval) or used other than for the purposes of this contract.

14.2 This ITT and its accompanying documents shall remain the property of Hughenden Parish Council and must be returned on demand. The contractor shall not disclose, copy or reproduce any of the information supplied as part of this ITT other than for the purposes of preparing and submitting a tender response.

14.3 The contractor shall comply at all times with the *General Data Protection Regulation* (GDPR) and will not perform in such a way to breach any of his applicable obligations to Hughenden Parish Council under current such data protection legislation.

14.4 The contractor acknowledges that the Parish Council is subject to the provisions of the 2000 *Freedom of Information Act* and the 2004 *Environmental Information Regulations* and upon request by the Parish Council provide assistance and information to enable the Council to respond to a request for Information within the time for compliance prescribed.

14.5 If the contractor considers any of the information included in the tender response is commercially confidential; please identify it and explain (in broad terms) what harm might result from disclosure and/or publication. It should be remembered though, even where indicated that information is commercially sensitive, the Council may disclose this information where they see fit. Receipt by the Council of any material marked “confidential” or equivalent should not be taken to mean that the Council accept any duty of confidence by virtue of that marking.

**15. Due Diligence, Performance of Service and Public Engagement**

15.1 The grounds maintenance services are public focused and it is vital that the appointed contractor is able to demonstrate a commitment to meeting the high professional standards required when working on behalf of Hughenden Parish Council.

15.2 Consideration, courtesy and due diligence will be required in dealing with the public, open spaces areas and neighbouring residents and businesses.

15.3 All operations shall be carried out without unreasonable noise and disturbance so as not to interfere with the convenience of the public, access to, or occupation of public roads, public footpaths or properties. The contractor shall indemnify the Council in respect of all claims demands proceedings costs and expenses whatsoever arising out of, or in relation to, any such matters.

15.4 The applicant should be prepared to positively communicate with the public; providing relevant information and explaining what maintenance is being carried out and why.

15.5 The contractor will need to present a clean and professional image, while also wearing visible ID badges and using clearly liveried vehicles.

**16. Good faith and collaborative working**

The parties shall at all times act in good faith towards each other and establish, develop and implement a collaborative relationship. This will be based on trust, fairness and mutual co-operation and freely share information with the objective of enabling the Parish Council to effectively provide the relevant services for the benefit of the parish.

**17. Resolving Disputes and Breaches**

17.1 If Hughenden Parish Council or the contractor does not fulfil their part of the ITT (whether failing their obligations or not achieving the standards set out in the ITT), the first course of action will be to amicably resolve any dispute; through good faith negotiation directly between the parties.

17.2 If this does not resolve the dispute, then a suitable arbitrator (acceptable to both parties) may be required to resolve any dispute fairly.

**18. Termination and Notices**

18.1 Either party may, without reason, terminate the contract, in writing, giving three months written notice.

18.2 If one or other of the contracted parties is no longer able to fulfil their obligations, due to reasonably unforeseen circumstances, they should notify the other party as soon as possible. Any outstanding payments or monies still owed should be adequately settled and the contract agreement terminated early to the satisfaction of both parties.

18.3 Any Notice shall be in writing, signed by or on behalf of the party giving it and delivered; in person, sending it by recorded pre-paid post or sending it by email. All notices should be addressed for the attention of the relevant authorising officer.

18.4 If a dispute is unresolved or an unacceptable breach occurs (held invalid, illegal or unenforceable by any court of competent jurisdiction), then it may be necessary for one or other of the parties to appropriately terminate the contract, seek agreeable arbitration (acceptable to both parties) or take further legal action.

18.5 The contract may be terminated by the Council immediately if the contractor:

- i) has failed to respond satisfactorily within 14 days to a written notice of default issued by the Parish Clerk or
- ii) is the subject of proceedings in voluntary or involuntary bankruptcy or
- iii) enters any arrangements or takes any action which could, in the reasonable opinion of the Parish Council affect the good reputation of the Council either directly or indirectly



**19. Third Party Rights and Sole Remedy**

19.1 The contract will not create or construe any right under the 1999 *Contracts (Rights of Third Parties) Act* which is enforceable by any person who will not be party to this contract.

19.2 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.

**20. Completion Period**

20.1 The one-year Grounds Maintenance contract commences on the 1<sup>st</sup> of April 2023 and will be completed on the 31<sup>st</sup> of March 2024, subject to satisfactory performance.

20.2 Extension Periods; There is a variable-option to extend the contract for a further two years (1 year +1 year +1 year) at the discretion of the Council and by mutual agreement of both parties. These two extension period options might, if agreed, extend for 2 x 12 months from;

- 1<sup>st</sup> April 2024 – 31<sup>st</sup> March 2025
- 1<sup>st</sup> April 2025 – 31<sup>st</sup> March 2026

**21. Compliance with all legislation and relevant Council policies.**

The contractor will comply with all relevant legislation and Hughenden Parish Council's policies regarding this ITT, resultant contract and maintenance works.

**22. Canvassing**

Contractors tendering for this contract must not canvass members of Hughenden Parish Council or its officers. Any effort to do so will immediately disqualify any tender submitted.