

**Agreement for supply of services of Grass Cutting and  
other associated works**

## Services Agreement

**DATE:****PARTIES:**

- (1) \_\_\_\_\_ (a Partnership established under English Law between) and having its principal place of business at \_\_\_\_\_ (the "Supplier")
- (2) NORTH TAWTON TOWN COUNCIL having its office at 14a The Square North Tawton Devon EX20 2EP (the "Customer").

**BACKGROUND:**

*The Supplier has expertise in the provision of the Services set out on the attached schedule marked "A" and signed by the parties, and the Customer wishes the Supplier to supply the Services to the Customer; the parties have agreed that it will do so on the terms of this Agreement"*

**AGREEMENT:****1. Definitions and interpretation****1.1** In this Agreement:

**"Agreement"** means this agreement (including the Schedule) and any amendments to it from time to time;

**"Business Day"** means any week day, other than a bank or public holiday in England;

**"Charges"** means the charges specified in the Schedule / the Supplier's Hourly Rate multiplied by the number of man-hours spent by the Supplier's personnel performing the Services payable by the Customer to the Supplier, which may be varied in accordance with Clause 5;

**"Control"** means:

- (a) the legal power to directly or indirectly control the management of a company, firm or other entity;
- (b) the right to select the majority of the directors (or their equivalent) of a company, firm or other entity; and/or
- (c) ownership of more than 50% of the voting shares in a company;

and **"Controlled"** will be construed accordingly;

**"Effective Date"** means the date of execution of this Agreement;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Hourly Rate"** means the Supplier's standard hourly labour rate as specified in the Schedule and varied in accordance with Clause 5

**"Premises"** means the premises of the Customer where the Services will be provided, in whole or part, by the Supplier, as specified in the Schedule;

**"Schedule"** means the schedule attached to this Agreement;

**"Services"** means the services supplied by the Supplier to the Customer under this Agreement (details of which are set out in the Schedule);

**"Term"** means the term of this Agreement; and

**"Year"** means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on the Effective Date or on any anniversary of [the Effective Date].

## **2. Appointment and Term**

- 2.1 The Customer hereby appoints the Supplier as its supplier of the Services for grass cutting and associated matters during the Term.
- 2.2 This Agreement will come into force on the Effective Date and will continue in force for a fixed period of 3 Years, after which it will terminate automatically, but may be renewed by negotiation, unless previously terminated in accordance with Clause 8.

## **3. Services**

- 3.1 The Supplier will supply the Services to the Customer in accordance with the terms of this Agreement.
- 3.2 The supplier shall ensure that it has suitable insurance cover to the value of at least £5million and shall provide a photocopy of the certificate of insurance to the Customer prior to the Effective Date
- 3.3 The Supplier shall, prior to the effective date and by 1<sup>st</sup> April in each of the years following, provide the Customer with a calendar setting out the dates upon which it is intended to carry out each operation and will use reasonable endeavours to meet the timetable for the provision of the Services set out in the Schedule but the time for delivery of the Services will not be of the essence of this Agreement. The Supplier shall subsequently provide a detailed monthly report setting out what services have been provided, shall note which planned services have not been carried out and shall indicate when it is planned that these services shall be performed
- 3.4 The Supplier may sub-contract the provision of the Services without the prior written consent of the Customer; providing that if the Supplier does sub-contract the provision of Services, the Supplier will remain liable to the Customer for the performance of the sub-contracted obligations.
- 3.5 In the performance of the Services at the Premises, the Supplier shall comply with all health, safety and security policies and regulations and in addition shall comply with any specific requirements advised by the Customer to the Supplier.
- 3.6 The Supplier will not take any action or do any thing which would or would be likely to damage the reputation or goodwill of the Customer or bring the Customer into disrepute.
- 3.7 The Customer and the Supplier will review the operation of the contract at six-monthly intervals and will by negotiation agree any additional works to be regularly

carried out or any works to be removed from the contract.

#### **4. Customer obligations**

4.1 The Customer will provide to, or procure for, the Supplier any:

- (a) support and advice;
- (b) information and documentation;
- (c) third party co-operation;

reasonably necessary to enable the Supplier to discharge its obligations under this Agreement.

4.2 The Customer will use reasonable endeavours to seek to ensure that the person(s) occupying the Premises will:

- (a) provide to the Supplier prompt access to the Premises upon request;
- (b) maintain the Premises in good order for the supply of Services, and in accordance with all applicable laws;
- (c) inform the Supplier of any specific health and safety rules and regulations and any reasonable security requirements that apply at the Premises; and

4.3 The Customer will not take any action or do any thing which would or would be likely to damage the reputation or goodwill of the Supplier or bring the Supplier into disrepute.

#### **5. Charges and payment**

5.1 The Customer will pay the Charges to the Supplier in accordance with the provisions of this Clause.

5.2 The Customer may from time to time require the Supplier to carry out extra works. The Supplier and the Town Clerk [on behalf of the customer] will normally agree a price for the work by telephone or otherwise. In emergency the Supplier's hourly rate shall apply.

5.3 The Supplier will issue an invoice for the Charges to the Customer detailing the work carried out during the month. This invoice, together with a report on the work carried out, shall be delivered to the Customer's office at 14a The Square North Tawton not later than 10.00am on the Monday prior to the first Tuesday of the month. Delivery by electronic means will be accepted.

5.4 Provided that provisions of Clause 5.3 are adhered to the Customer will pay charges to the Supplier in accordance with its Financial Regulations by means of a Bacs payment approved at the Annual Meeting of the Town Council as a 'regular payment.

5.5 All amounts payable under this Agreement are exclusive of value-added tax, which will be payable by the Customer, and which will be shown separately on the invoice by the Supplier in accordance with regulations made from time to time by H M Revenue and Customs.

5.6 If any charges are in dispute the Customer shall not withhold payment of any

amount greater than that part which is in dispute.

- 5.7 If the Customer does not pay any amount properly due to the Supplier under or in connection with this Agreement, the Supplier may claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 The Supplier and Customer agree that the Charges / Hourly Rate shall be renewed annually by a percentage amount of the variation in the Retail Prices Index (all items) published by the UK Office for National Statistics at 31<sup>st</sup> December each year. If the index is negative the Charges/Hourly rate shall not alter. For the avoidance of doubt the parties shall document the change in writing prior to the renewal date.

## **6. Warranties**

- 6.1 The Customer warrants to the Supplier that it has the legal right and authority to enter into and perform its obligations under this Agreement.
- 6.2 The Supplier warrants to the Customer that:
- (a) it has the legal right and authority to enter into and perform its obligations under this Agreement.
  - (b) the Services will be performed with reasonable care and skill.
- 6.3 All of the parties' liabilities and obligations in respect of the subject matter of this Agreement are expressly set out in the terms of this Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

## **7. Limitations of liability**

- 7.1 Nothing in this Agreement will exclude or limit the liability of either party for:
- (a) death or personal injury caused by that party's negligence;
  - (b) fraud or fraudulent misrepresentation on the part of that party; or
  - (c) any other liability which may not be excluded or limited under applicable law.
- 7.2 Subject to Clause 7.1, each party's liability to the other party under or in connection with this Agreement or any collateral contract, whether in contract or tort (including negligence), will be limited as follows:
- (a) neither party will be liable for any:
    - (i) loss of profits, income or anticipated savings;
    - (ii) reputational damage or damage to goodwill;
    - (iii) loss of any commercial opportunity; or
    - (iv) indirect or consequential loss or damage];
  - (b) neither party will be liable for any losses arising out of a Force Majeure

Event;

## **8. Termination**

- 8.1 The Agreement will be for a Minimum Term of 180 days after which the Customer will carry out a review to ensure that the Supplier is carrying out the work in a satisfactory manner.
- 8.2 Either party may terminate this Agreement at any time by giving at least 90 days' written notice to the other party expiring at any time after the end of the Minimum Term.
- 8.2 Either party may terminate this Agreement immediately by giving written notice to the other party if the other party:
- (a) commits any material breach of any term of this Agreement, and:
    - (i) the breach is not remediable; or
    - (ii) the breach is remediable, but other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
  - [(b) persistently breaches the terms of this Agreement.
- 8.3 Either party may terminate this Agreement immediately by giving written notice to the other party if:
- (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or
    - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement);
  - (d) where the Supplier's partnership is dissolved, or as a result of illness, incapacity or otherwise becomes incapable of managing its own affairs, or is the subject of a bankruptcy petition or order.

## **9. Effects of termination**

- 9.1 Upon termination all the provisions of this Agreement will cease to have effect, save that the following provisions of this Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1,

5.6, 7 and 10.

- 9.2 Termination of this Agreement will not affect either party's accrued rights (including accrued rights to be paid) as at the date of termination.

## **10. General**

- 10.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.
- 10.2 If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 10.3 Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.
- 10.4 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 10.5 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under this Agreement.
- 10.6 This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 10.7 (a) this Agreement and the schedule will constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter;
- (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement; and
- (c) neither party will have any liability other than pursuant to the express terms of this Agreement.
- 10.8 This Agreement will be governed by and construed in accordance with the laws of England and Wales and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

**The parties have indicated their acceptance of this Agreement by executing it below.**

### **EXECUTION:**

**SIGNED** by .....  
duly authorised for and on behalf

.....

of the Supplier

..... [Partner]

..... [Partner]

Date:

**SIGNED** by .....  
duly authorised for and on behalf  
of the Customer

.....

..... [Chairman]

..... [Town Clerk]

Date: