

Dated

2021

(1) Whiteley Town Council

-and-

(2) [THE CONTRACTOR]

AGREEMENT

relating to the supply of grounds maintenance

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1. Initial contract period

The Contract shall take effect on 4th October 2021 and shall expire automatically on 3rd October 2024, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

2. Supply of services

2.1 The services

2.1.1 The Contractor shall supply the services during the contract period in accordance with Whiteley Town Council's requirements as set out in the Specification and the provisions of the contract in consideration of the payment of the contract price.

2.1.2 If Whiteley Town Council informs the Contractor in writing that it reasonably believes that any part of the services does not meet the requirements of the contract or differ in any way from those requirements, and this is other than as a result of a default by Whiteley Town Council, the Contractor shall at its own expense re-schedule and carry out the services in accordance with the requirements of the Contract within such reasonable time as may be specified by Whiteley Town Council.

3. Manner of carrying out the services

3.1 The Contractor shall at all times comply with the quality standards, and where applicable shall maintain accreditation with the relevant quality standards authorisation body. To the extent that the standard of services has not been specified in the contract, the Contractor shall agree the relevant standard of the services with Whiteley Town Council prior to the supply of the services and, in any event, the Contractor shall perform its obligations under the contract in accordance with the law and good industry practice.

3.2 The Contractor shall ensure that all staff supplying the services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the services.

3.3 Whiteley Town Council may require the Contractor to ensure that any person employed in the provision of the services has undertaken a Criminal Records Bureau check

4. Payment and VAT

4.1 Whiteley Town Council shall pay all sums due to the Contractor within 30 days of receipt of a valid invoice, submitted monthly in arrears.

4.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the services supplied and that it is supported by any other documentation reasonably required by the Whiteley Town Council to substantiate the invoice.

4.3 The Contractor shall add VAT to payments due at the prevailing rate as applicable.

4.4 The Contractor shall not suspend the supply of the services unless the Contractor is entitled to terminate the contract under clause 15.2 (Termination on default) for failure to pay undisputed sums of money.

5. Statutory obligations and regulations

5.1 If the Contractor, its staff or anyone acting on the Contractor's behalf, engages in illegal conduct Whiteley Town Council may:

- (a) terminate the contract and recover from the Contractor the amount of any loss suffered by Whiteley Town Council resulting from the termination.

6. Discrimination

6.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

6.2 The Contractor shall take all reasonable steps to secure the observance of clause 6.1 by all staff.

7. Environmental Requirements

The Contractor shall, when working on the areas required to carry out the contract (herein after called the premises), perform its obligations under the contract in accordance with Whiteley Town Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

8. Health and Safety

8.1 The Contractor shall promptly notify Whiteley Town Council of any health and safety hazards which may arise in connection with the performance of its obligations under the contract. Whiteley Town Council shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the premises and which may affect the Contractor in the performance of its obligations under the Contract.

8.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by Whiteley Town Council in respect of staff and other persons working there.

8.3 The Contractor shall notify Whiteley Town Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

8.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the premises in the performance of its obligations under the Contract.

8.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to Whiteley Town Council on request.

9. Freedom of Information

9.1 The Contractor acknowledges that Whiteley Town Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with Whiteley Town Council to enable Whiteley Town Council to comply with its information disclosure obligations.

10. Control of the Contract

10.1 Transfer and Sub-Contracting

10.1.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

10.1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

10.2 Variation

10.2.1 Whiteley Town Council may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is hereinafter called a "Variation".

10.2.2 Whiteley Town Council may request a Variation by notifying the Contractor in writing of the "Variation" and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the contract price is required in order to implement the Variation. Whiteley Town Council shall specify a

time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

10.2.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, Whiteley Town Council may;

- (a) allow the Contractor to fulfil its obligations under the Contract without the variation to the specification.

10.3 Remedies in the event of inadequate performance

10.3.1 Where a complaint is received about the standard of services or about the manner in which any services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then Whiteley Town Council shall notify the Contractor, and where considered appropriate by Whiteley Town Council, investigate the complaint. Whiteley Town Council may, in its sole discretion, uphold the complaint and take further action in accordance with clause 15.2 (Termination on default) of the contract.

10.3.2 In the event that Whiteley Town Council is of the reasonable opinion that there has been a material breach of the contract by the Contractor, then Whiteley Town Council may, without prejudice to its rights under clause 15.2 (Termination on default), do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of Whiteley Town Council that the Contractor will once more be able to supply all or such part of the Services in accordance with the contract;
- (b) without terminating the whole of the contract, terminate the Contract in respect of part of the services only (whereupon a corresponding reduction in the contract price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (c) terminate, in accordance with clause 15.2 (Termination on default), the whole of the contract.

10.3.4 Whiteley Town Council may charge the Contractor for any costs reasonably incurred to mitigate any additional expenditure in obtaining replacement Services.

10.3.5 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then Whiteley Town Council shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as Whiteley Town Council may direct.

10.3.6 In the event that:

(a) the Contractor fails to comply with clause 10.3.5 above and the failure is materially adverse to the interests of the Whiteley Town Council or prevents the Whiteley Town Council from discharging a statutory duty; or

(b) the Contractor persistently fails to comply with clause 10.3.5 above,

Whiteley Town Council may terminate the contract with immediate effect by notice in writing.

11. Entire agreement

11.1 The contract constitutes the entire agreement between the parties in respect of the matters dealt with therein. The contract supersedes all prior negotiations between the parties and all representations and undertakings made by one party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

11.2 In the event of, and only to the extent of, any conflict between the clauses of the contract, any document referred to in those clauses and the schedules, the conflict shall be resolved in accordance with the following order of precedence:

(a) the clauses of the contract;

(b) the schedules; and

(c) any other document referred to in the clauses of the Contract.

12. Counterparts

This contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

13. Liabilities

13.1 Liability, Indemnity and Insurance

13.2 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period.

13.3 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

13.4 The Contractor shall give Whiteley Town Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

13.5 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract Whiteley Town Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

13.6 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it may incur.

14. Warranties and Representations

The Contractor warrants and represents that:

(a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the contract and that the contract is executed by a duly authorised representative of the Contractor;

(b) in entering the Contract it has not committed any fraud;

(c) as at the commencement date, all information contained in the tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to Whiteley Town Council prior to execution of the contract;

(d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

(e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

(f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;

(h) in the three 3 years prior to the date of the Contract:

(i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

(ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

(i) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

15. Default, disruption and termination

15.1 Termination on insolvency and change of control

15.1.1 Whiteley Town Council may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor it becomes insolvent.

15.1.2 The Contractor shall notify Whiteley Town Council immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“**change of control**”). Whiteley Town Council may terminate the Contract by notice in writing with immediate effect within six months of:

(a) being notified that a change of control has occurred; or

(b) where no notification has been made, the date that the Whiteley Town Council becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

15.2 Termination on default

15.2.1 Whiteley Town Council may terminate the contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

(a) the Contractor has not remedied the default to the satisfaction of Whiteley Town Council within 25 working days, or such other period as may be specified by Whiteley Town Council, after issue of a written notice specifying the default and requesting it to be remedied; or

(b) the default is not, in the opinion of Whiteley Town Council, capable of remedy; or

(c) the default is a material breach of the Contract.

15.3 Break

Whiteley Town Council shall have the right to terminate the Contract at any time by giving 3 months' written notice to the Contractor.

15.4 Consequences of Expiry or Termination

15.4.1 Where Whiteley Town Council terminates the Contract under clause 15.2 (Termination on default) and then makes other arrangements for the supply of Services, Whiteley Town Council may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by Whiteley Town Council throughout the remainder of the contract period. Whiteley Town Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 15.2 (Termination on default), no further payments shall be payable by the Whiteley Town Council to the Contractor (for services supplied by the Contractor prior to termination and in accordance with the contract but where the payment has yet to be made by Whiteley Town Council), until Whiteley Town Council has established the final cost of making the other arrangements envisaged under this clause.

15.4.2 Subject to clause 13 where Whiteley Town Council terminates the Contract under clause 15.3 (Break), Whiteley Town Council shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, Whiteley Town Council shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from Whiteley Town Council, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 15.3 (Break).

15.4.3 Whiteley Town Council shall not be liable under 15.4.2 to pay any sum which:

(a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

(b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or

(c) is a claim by the Contractor for loss of profit, due to early termination of the Contract.

15.4.4 Save as otherwise expressly provided in the Contract:

(a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination

or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

(b) termination of the Contract shall not affect the continuing rights, remedies or obligations of Whiteley Town Council or the Contractor under the above terms and conditions.

16. Recovery upon Termination

16.1 On the termination of the Contract for any reason, the Contractor shall:

(b) immediately deliver to Whiteley Town Council all Property (including materials, documents, information and access keys) provided to the Contractor. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

(c) assist and co-operate with Whiteley Town Council to ensure an orderly transition of the provision of the services to the replacement contractor and/or the completion of any work in progress.

17. Disputes and Law

17.1 Governing Law and Jurisdiction

17.1.1 Whiteley Town Council and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

17.2 Dispute Resolution

17.2.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 working days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Chairman/finance director (or equivalent) of each party.

17.2.2 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

17.2.3 If the dispute cannot be resolved by the parties pursuant to clause 17.2.1 the parties shall refer it to mediation pursuant to the procedure set out in clause 17.2.5 unless (a) Whiteley Town Council considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

17.2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

17.2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 10 working days after a request by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within 10 working days from the date of the proposal to appoint a Mediator or within 10 working days of notice to either Party that he is unable or unwilling to act, apply to the Chartered Institute of Arbitrators to appoint a Mediator.

(b) The parties shall within 10 working days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from the Chartered Institute of Arbitrators to provide guidance on a suitable procedure.

(c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.

(d) If the parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the parties once it is signed by their duly authorised representatives.

(e) If the parties fail to reach agreement in the structured negotiations within 60 working days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts [unless the dispute is referred to arbitration pursuant to the procedures set out in clause 14.2.7].

17.2.6 Subject to clause 17.2.2, the Parties shall not institute court proceedings until the procedures set out in clauses 17.2.1 and 17.2.3 have been completed save that:

(a) Whiteley Town Council may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 17.2.7.

(b) if the Contractor intends to commence court proceedings, it shall serve written notice on Whiteley Town Council of its intentions and Whiteley Town Council shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 17.2.7.

(c) the Contractor may request by notice in writing to Whiteley Town Council that any dispute be referred and resolved by arbitration in accordance with clause 17.2.7, to which Whiteley Town Council may consent as it sees fit.

17.2.7 In the event that any arbitration proceedings are commenced:

(a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;

(b) Whiteley Town Council shall give a written notice of arbitration to the Contractor (the “**Arbitration Notice**”) stating:

(i) that the dispute is referred to arbitration; and

(ii) providing details of the issues to be resolved;

(c) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the parties in the absence of any material failure to comply with such rules;

(d) the tribunal shall consist of a sole arbitrator to be agreed by the parties;

(e) if the parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by Whiteley Town Council or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

(f) the arbitration proceedings shall take place in London and in the English language; and

(g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

IN WITNESS of which this Agreement has been duly executed by the parties.
SIGNED for and on behalf of **Whiteley Town Council** **SIGNED** for and on behalf of
[Contractor]

	Whiteley TC		Contractor
Whiteley TC Chairman			
Whiteley TC Vice Chairman			
Whiteley TC Clerk			

SPECIFICATION SCHEDULE

Specification

Drawings

1. Meadowside Recreation Ground
2. Caraway & Saffron Way
3. Rosemary Gardens
4. Mollison Rise
5. Cheshire Close