



## **Great Baddow Parish Council**

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# **Cemetery and Allotment Maintenance contract**

**Contract agreement and Conditions of contract**

**Published: 9<sup>th</sup> March 2021**

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# **Contract agreement**

**Now it is hereby agreed as follows:**

## **Article 1 –Agreement**

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

## **Article 2 –Payment**

The authority will pay to the contract the sum of: £

(in words) \_\_\_\_\_

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 'Authority' in said conditions shall mean: The Parish Council

The term 'Grounds Manager, acting on behalf of The Clerk' in the said conditions shall mean: The Parish Council's authorized representative.

The term 'Contractor' in said conditions shall mean: The authorized representative of Click or tap here to enter name of company..

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 authority 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 WITNESS the hands of the parties hereto.

Signed for and on behalf of the authority  
(Great Baddow Parish Council)

Cllr \_\_\_\_\_ (For the authority)

Cllr \_\_\_\_\_ (For the authority)

In the presence of \_\_\_\_\_ (Witness's Signature)

\_\_\_\_\_ (Witness's Name)

\_\_\_\_\_ (Witness's Address)

Signed for and on behalf of the contractor  
(Enter name of contractor)

\_\_\_\_\_ (For the contractor)

In the presence of \_\_\_\_\_ (Witness's  
Signature)

\_\_\_\_\_ (Witness's Name)

\_\_\_\_\_ (Witness's Address)

Date of contract signing \_\_\_\_\_

## **Conditions of contract**

### **1.0 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 Grounds Manager, under instruction from the Clerk, such a quality and standards shall be to the reasonable satisfaction of the Grounds Manager.

#### **1.2 Grounds Manager, acting on behalf of The Clerk duties**

Grounds Manager, under instruction from the Clerk, 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.

### **2.0 Commencement and completion**

#### **2.1 Commencement and completion**

The works may be commenced on 19<sup>th</sup> April 2021 and shall be completed by 18<sup>th</sup> April 2024.

#### **2.2 Extension of contract period**

The Parish Council reserves the right to extend the contract by a maximum of 1 year.

#### **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 or frost or drought shall be made good by the contractor entirely at their own cost unless Grounds Manager, under instruction from the Clerk shall otherwise instruct.

### **3.0 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 Grounds Manager, under instruction from the Clerk 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 Grounds Manager, under instruction from the Clerk shall be deemed to have been issued to the contractor.



### 3.3 Exclusion from the works

Grounds Manager, under instruction from the Clerk may (but not unreasonably or vexatiously) issue instructions requiring the exclusion from the works of any person employed thereon.

### 3.4 Grounds Manager, acting on behalf of The Clerk's instructions

Grounds Manager, under instruction from the Clerk 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 Grounds Manager, under instruction from the Clerk.

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

### 3.5 Variations

Grounds Manager, under instruction from the Clerk 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 Grounds Manager, under instruction from the Clerk on a fair and reasonable basis. 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 Grounds Manager, under instruction from the Clerk and the contractor prior to the contractor carrying out any such instruction.

### 3.6 Objections to a nomination

Grounds Manager, under instruction from the Clerk 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, Grounds Manager, under instruction from the Clerk 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 authority, his/her agents or services, then Grounds Manager, under instruction from the Clerk shall ascertain such loss and expense and include it in any payments due under clause 4.2.

## **4.0 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 Weekly statements**

A detailed weekly statement of work carried out, including any work still outstanding, is to be submitted to Grounds Manager, by the Tuesday of the following week.

### **4.3 Additional payments**

No payment will be made for extra work not specified unless agreed by Grounds Manager, under instruction from the Clerk.

### **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**

As per regulation 113 or the Public Contract Regulations 2015, the authority 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.

## **5.0 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 Grounds Manager, under instruction from the Clerk he shall immediately give to Grounds Manager, written notice specifying the divergence.

We require UK/EU 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 Minimum Wage Act 1998

The contractor shall in respect of all persons employed by them (whether in the execution of this contract or otherwise) in every factory, workshop or place occupied or used by them for the execution of this contract comply with the National Minimum Wage Act 1998 or any amendment thereof.

## 5.4 The Public Contract (PC) Regulations 2015

This contract is subject to the Public Contract Regulations.

(Link to PC Regulations – <http://www.legislation.gov.uk/ukxi/2015/102/contents/made>).

5.4.1 the Contractor shall include in any sub-contract entered into by him/her provisions requiring the sub-contractor to abide by sections 113 and 71(3), 71(4), 71(5) of the PC regulations.

5.4.1.1 the Contractor shall include in any sub-contract entered into by him provisions that shall entitle him to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;

5.4.1.2 in the event the Authority requires the Contractor to terminate a sub-contractor's employment pursuant to regulation 71(9) the Contractor shall take the appropriate steps to terminate that employment and where required by the Authority under regulation 71(9) shall, or in circumstances where there is no such requirement may, appoint a replacement sub-contractor.

## 5.5 Health & Safety

5.5.1 Without limiting either Party's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of this Contract, the Parties will endeavour to establish and maintain a culture and working environment in which health and safety is of paramount concern to everybody involved with the project.



5.5.2 In addition to the specific health and safety requirements of this Contract, the Contractor undertakes to:

- 5.5.2.1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;
- 5.5.2.2 ensure that all personnel engaged by the Contractor and members of the Contractor's supply chain on site receive appropriate site-specific health and safety induction training and regular refresher training;
- 5.5.2.3 ensure that all such personnel have access at all times to competent health and safety advice in accordance with regulation 7 of the Management of Health and Safety at Work Regulations 1999; and
- 5.5.2.4 ensure that there is full and proper health and safety consultation with all such personnel in accordance with the Health and Safety (Consultation with Employees) Regulations 1996.
- 5.5.2.5 Ensure an up-to-date copy of their health & safety policy and all relevant risk assessments and method statements (RAMS) are provided to the Grounds Manager.

## 5.6 Transparency

The Authority 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 Authority shall be responsible for determining in his/her 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:

- 5.6.1 the Contractor hereby consents to the Authority 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;
- 5.6.2 the Authority shall promptly inform the Contractor of any request for disclosure that he/she receives in relation to this Contract.

## 5.7 Corruption and regulation 73(1)(b) of the Public Contracts Regulations

The Authority shall be entitled by notice to the Contractor to terminate the Contractor's employment, under this or any other contract with the Authority if, in relation to this or any other such contract, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010, or, where the Authority is a Local or Public Authority, shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972, or, where this Contract is one to which regulation 73(1) of the PC Regulations applies, the circumstances set out in regulation 73(1)(b) of the PC Regulations apply.

### Prevention of Corruption

The Service Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of The Parish Council any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or any other contract with The Parish Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any such contract. The attention of the Service Provider is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

Canvassing Councillors or the members of a committee or sub-committee, directly or indirectly, for appointment to or by the Council shall disqualify the candidate from such an appointment. The Proper Officer shall disclose the requirements of this standing order to every candidate.

A Councillor or member of a committee or sub-committee shall not solicit a person for appointment to or by the Council or recommend a person for such appointment or for promotion but nevertheless, any such person may give a written testimonial of a candidate's ability, experience or character for submission to the Council with an application for appointment.

This standing order shall apply to tenders as if the person making the tender were a candidate for an appointment.

The Service Provider warrants that it has not paid commission or has agreed to pay any commission to any employee or representative of The Parish Council by the Service Provider or on the Service Provider's behalf.

## 6.0 Injury, damage and insurance

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

The Contractor shall be liable for, and shall indemnify the Authority 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 Authority, any Authority's Person or any Statutory Undertaker.

Without prejudice to his/her liability to indemnify the authority, 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 authority, 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 Grounds Manager before use.

## 6.2 Damage to property

The Contractor shall be liable for, and shall indemnify the Authority 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 Authority under clauses 5.1 and 5.2, the Contractor shall effect and maintain (and shall cause any subcontractor 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 5.3 applies, shall indemnify the Authority 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.

## 6.3 Evidence of insurance

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

## 7.0 Termination

### 7.1 Termination by authority

The authority 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 authority 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 authority 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 authority, forthwith terminate the employment of the contractor under this contract if the authority shall make default in any one or more of the following respects:

- 7.2.1 if the authority or any person for whom he 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 authority suspends the carrying out of the works for a continuous period of at least one month;
- 7.2.3 If the authority 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 authority 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 authority 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.

## **8.0 Preliminaries**

### **8.1 Tendering**

The Contractor shall make due allowance in their tender for entering into a contract with the authority in accordance with Agreement and Conditions set out above.

### **8.2 Programming of works**

The contractor shall agree a programme for the work, before work commences on site, with Grounds Manager, under instruction from the Clerk.

### **8.3 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.

### **8.4 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.

### **8.5 Damage to road etc.**

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

### **8.6 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 expenses.

#### **8.7 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.

#### **8.8 Relics and antiquities**

All objects of value or of antiquity or of archaeological interest discovered during the work shall be delivered into the custody of Grounds Manager.

#### **8.9 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.

#### **8.10 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.

#### **8.11 Fires**

No fires shall be lit on site under any circumstances.

#### **8.12 Keeping the works tidy**

All rubbish and litter arising from maintenance operations shall be removed as it accumulates and disposed of in the designated area.

#### **8.13 Inclement weather**

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

#### **8.14 Unforeseen works**

Works arising as a result of vandalism or other malicious damage will be considered by the Authority and a price negotiated as additional items.

### **9.0 Quality Questionnaire**

All tenderers must submit the following information as part of their tender submission

#### **9.1 Organisation and Management - 5 Points**

- How will service be managed?
- Works scheduling/programming arrangements.
- Communication links between supervisors and work force and with Service Provider and Parish Council.

- Emergency cover arrangements.
- Complaints procedure.
- Procedures for dealing with risks and accidents and compliance with Health and Safety at work regulations.

### 9.2 Transport/Equipment/Machinery - 5 Points

Details of vehicles and machinery to be used on the contract.

What is the age profile of the fleet, i.e. will it be new.

Arrangements in place of transport/machinery breakdown.

Vehicle and plant replacement policy.

### 9.3 Service Delivery - 15 Points

Details of staff who will be employed on the contract, e.g. qualifications, experience, training courses. Including copies of all up-to-date training and qualifications.

Seasonal Working Hours Arrangement.

What arrangements will there be in place to cover for absenteeism.

Out of normal working hours contact arrangements.

Company policy with regard to:

- Environmental policy
- Equality and Diversity policy
- Ethical Trading Policy (incl Modern Slavery)
- Wearing of uniforms.
- Public awareness.
- Items found whilst performing services.
- Conduct of staff.

Depot Facilities

Work Programming

### 9.4 Mobilisation and Action - 10 Points

Ability of a Service Provider to ensure that there is a seamless provision of the service when at the commencement of the contract.

- Resourcing the contract, i.e. recruitment arrangements prior to contract start date.
- Understanding of Council's standing orders and codes of practice.
- Communication systems.
- Administration and central support proposals.
- Submission of a detailed operational programme.

**10.0 CONTRACT VARIATION FORM**

Please detail below all matters (Technical, Commercial or Contractual) where you are unable to comply with the requirements laid down in the Invitation to Tender documentation. Sequentially number each point in the first column for ease of reference. If required, take copies of this blank form for additional points of non-compliance.

TENDERER:

PAGE \_\_\_\_\_ OF \_\_\_\_\_

Section of Tender Document	Area of Non-Compliance	Extent of Non-Compliance/Alternative Proposal

Signed	
Print Name	
Dated	
Job Title	
Company Name	



## 11.0 Certificate that the Tender is Bona Fide

In recognition of the principle that the essence of selective tendering is that Great Baddow Parish Council shall receive bona fide competitive tenders from all those tendering WE CERTIFY THAT:

1 The Tender submitted herewith is a bona fide tender, intended to be competitive.

2 We have not fixed or adjusted the amount of the Tender under or in accordance with any agreement or arrangement with any other person.

3 We have not done and we undertake that we will not do at any time before the hour specified for the return of the Tender any of the following acts:

(a) Communicate to any other person other than the persons calling for these tenders the amounts or approximate amount of the proposed Tender (except where disclosure, in confidence, of the approximate amount of the Tender is essential to obtain insurance premium quotations required for the preparation of the Tender);

(b) Enter into any agreement with any person that he shall refrain from tendering or as to the amount of any tender to be submitted; and

(c) Offer or pay or agree to give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or having caused to be done in relation to any other tender or proposed tender any act or thing of the sort described above.

In this certificate:

1 "persons" includes any person or body or association or partnership corporate or unincorporated.

2 "any agreement or arrangement" includes any transaction of the sort described above, formal, or informal and whether legally binding or not.

Signed \_\_\_\_\_ (as in Form of Tender)

Name \_\_\_\_\_

Date \_\_\_\_\_

Company \_\_\_\_\_

Position \_\_\_\_\_