

Date of Agreement: **XX 2021**

Service Agreement

Between

Coxhoe Parish Council

And

Named Tenderer

**Coxhoe Parish Council
Coxhoe Village Hall
Front Street East
Coxhoe
Durham
DH6 4DB**

COXHOE PARISH COUNCIL

Service Agreement for the Provision of Hanging Baskets and Floral Container Services

This Agreement is made on [date] between Parties:

- (1) Coxhoe Parish Council, Coxhoe Village Hall, Coxhoe, Co. Durham DH6 4DB ('Council') and
- (2) ('Service Provider')

Background

- (1) The Council wishes the carrying out of Hanging Baskets and Floral Tubs services ('the Services') and the Supervising Officer (the Parish Clerk) has caused an Invitation to Tender describing the Services to be prepared.
- (2) The Service Provider has submitted a Tender which it has supplied to the Council and the Council have on the basis of the Tender selected the Service Provider to carry out the Services.

It is Agreed:

1. Definitions

In this Contract, save where the context otherwise requires, the following expressions shall have the meanings assigned to them:

- 1.1 'Commencement Date' means [date];
- 1.2 'the Contract' and 'this Contract' means the contract set out below, the Invitation to Tender and the Tender;
- 1.3 'Contract Period' shall be construed in accordance with clause 7 of this Contract;
- 1.4 'Contract Sum' shall be the sum named in clause 3 but subject to clause 15 of this Contract;
- 1.5 'the Council' means Coxhoe Parish Council or any successor authority;
- 1.6 'Daywork Rates' means the rates for the performance of additional services described in the Tender;
- 1.7 'Default Notice' means a notice issued in accordance with clause 22 of this Contract;
- 1.8 'Invitation to Tender' means the invitation to tender published by the Council on [date];
- 1.9 'Equipment' means equipment, machinery, equipment and vehicles;
- 1.10 'Review' means the review of the Contract Sum and Daywork Rates to be undertaken on the first, second and third Review Dates;
- 1.11 'Review Dates' means the first, second and third anniversaries of the Commencement Date as the context requires;
- 1.12 'the Services' means the services described in the Invitation to Tender;
- 1.13 'Supervising Officer' means the Clerk to the Council, or any other officer fulfilling the like role;
- 1.14 'Tender' means the Tender dated [date] submitted by the Service Provider to the Council;
- 1.15 the masculine includes the feminine and in the case of a limited company the indefinite article, and the singular includes the plural and vice versa; and
- 1.16 Reference to any Act of Parliament and to any orders, regulations or rules made pursuant to that Act shall include reference to any modification, re-enactment or replacement.

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2. Service Provider's Obligations

- 2.1 For the consideration specified in clause 3 the Service Provider shall perform the Services in accordance with this Contract.
- 2.2 The Service Provider shall provide the Services in accordance with the Invitation to Tender.
- 2.3 The Service Provider shall:
- 2.3.1 co-operate with the Council in all matters relating to the Services;
 - 2.3.2 use reasonable skill and care in the performance of the Services; and
 - 2.3.3 be currently qualified and hold all licenses, consents, permits and authorities necessary to perform the Services, including (but not limited to) those required to access suitable waste disposal sites.

3. Contract Sum

The Council shall pay to the Service Provider the Contract Sum of £tbc or such other sums as shall become payable under this Contract, at the times and in the manner specified in this Contract.

4. Variation of Contract

- 4.1 Without prejudice to any other clause in this Contract, no omission from, addition to or variation of this Contract shall be valid or of any effect unless it is agreed in writing and signed by the Supervising Officer and by a duly authorised representative of the Service Provider.
- 4.2 Save for an omission, addition or variation agreed pursuant to clause 4.1 of this Contract any provision inconsistent with this Contract contained in any other document or in any oral agreement is agreed to be void and of no effect.

5. The Supervising Officer

The functions, rights and powers conferred by this Contract upon the Council shall be exercised by the Supervising Officer. The Service Provider shall in no circumstances question the existence or extent of the authority of any person authorised by the Supervising Officer to act on his behalf.

6. Sufficiency of Tender

The Service Provider shall be deemed to have satisfied itself before submitting its Tender as to the correctness and sufficiency of the rates and prices stated by it in the Tender which shall (except in so far as it is otherwise provided in this Contract) cover all its obligations under this Contract.

7. Contract Period

This Contract shall extend for a period of 3 years from the Commencement Date and shall not be terminable by either party within that period save in accordance with this Contract.

8. Performance of the Services

- 8.1 During the Contract Period the Service Provider shall perform the Services (and any modifications authorised by or under this Contract (in particular clause 9 of this Contract)) efficiently, effectively and safely and in a manner totally consistent with the terms of this Contract and to the entire satisfaction of the Supervising Officer.
- 8.2 The Service Provider warrants to the Council that:
- 8.2.1 The Service Provider will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;
 - 8.2.2 The Services will conform with all descriptions and specifications provided to the Council by the Service Provider, including the Invitation to Tender; and

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8.2.3 the Services will be provided in accordance with all applicable legislation from time to time in force, and the Service Provider will inform the Council as soon as it becomes aware of any changes in that legislation.

8.3 The Council's rights under this Contract are in addition to the statutory terms implied in favour of the Council by the Supply of Goods and Services Act 1982 and any other statute.

8.4 The provisions of this clause 8 shall survive any performance, acceptance or payment pursuant to this agreement and shall extend to any substituted or remedial services provided by the Service Provider.

9. Modification

9.1 The Supervising Officer shall be entitled to issue to the Service Provider instructions in writing requiring the Service Provider to do all or any of the following:

9.1.1 to omit and to cease to perform any part of the Services for such period as the Supervising Officer may fix;

9.1.2 to perform the Services or any part in such manner as the Supervising Officer may require;

9.1.3 to perform such additional services outside the scope of the Services as the Supervising Officer may require, provided that such additional services shall be the same as or similar to the Services under this Contract, in which case rates shall be agreed between the Supervising Officer and the Service Provider based on the rates in the Contract or alternatively the Daywork Rates shall apply to such additional services.

9.2 The Council shall reimburse to the Service Provider reasonable costs expended by the Service Provider in carrying out any instructions under this clause 9 or the Service Provider shall allow to the Council savings arising (as the case may be).

10. Method of Payment

Provided that the Service Provider shall have performed the Services in accordance with this Contract, the Council shall in each year pay to the Service Provider in the manner provided below the Contract Sum by monthly instalments for work undertaken in arrears subject to the additions and deductions provided below. Any additional services shall be paid for at the rates and prices agreed in clause 9 of this Contract.

11. Statement

The Service Provider shall submit to the Supervising Officer after the end of each calendar month or at the end of each period of work a statement showing:

11.1 its valuation of the work undertaken in respect of each aspect of the Contract up to the end of that month or period; and

11.2 the amounts to which the Service Provider considers itself entitled in connection with any variations or instructions for additional services duly authorised by the Supervising Officer.

12. Payment

Within 30 days of the date of delivery to the Supervising Officer of the statement in clause 11 of this Contract, the Council shall pay to the Service Provider (after deducting any previous payment on account) the amount which, in the opinion of the Supervising Officer on the basis of the statement, is due to the Service Provider, including the sum (if any) to be added by way of VAT.

13. Additions and Deductions

The Supervising Officer shall have the power to amend any statement submitted by the Service Provider under clause 11 of this Contract in respect of the variation, by addition or deduction, of the value of any additional work or omission which has been duly authorised.

14. Interest on Overdue Payments

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In the event of failure by the Council to make payment in accordance with the Contract, the Council shall pay to the Service Provider interest on any payment overdue at a rate equivalent to the Bank of England base rate current on the date upon which such payment first becomes overdue.

15. VAT

- 15.1 Sums payable to the Service Provider pursuant to this Contract are exclusive of VAT.
- 15.2 The Council shall pay to the Service Provider in the manner set out below any VAT at the appropriate rate properly chargeable on the supply by the Service Provider of the Services.
- 15.3 The Service Provider shall in accordance with clause 11 of this Contract inform the Supervising Officer in writing in respect of the Services during that period:
- 15.3.1 as to which part or parts of such Services are exempt from VAT;
- 15.3.2 as to which part or parts of such Services bear a zero rate of VAT;
- 15.3.3 as to which part or parts of such Services bear a rate of VAT greater than zero, in each case specifying the exact rate chargeable.
- 15.4 Upon receipt of the Service Provider's written notice under clause 15.3 of this Contract, unless the Council objects to any part of such notice, the Supervising Officer shall calculate the amount of VAT due in accordance with the contents of such notice and shall so certify pursuant to this Contract.
- 15.5 Upon receipt by the Service Provider of any payment made by the Council pursuant to this Contract, being a payment including VAT, the Service Provider shall issue to the Council an authenticated receipt in such form as may be required by the Value Added Tax Act 1994 or by any regulations made under the Value Added Tax Act 1994 as enables such receipt to be treated as a VAT invoice.

16. Assignment

- 16.1 The Council shall be entitled to assign the benefit of this Contract or any part of the Contract to a statutory or other public body and shall give written notice of any assignment to the Service Provider.
- 16.2 The Service Provider shall not assign this Contract or any part of it or any benefit or interest in or under it without the written consent of the Supervising Officer.
- 16.3 The Service Provider shall not sublet the whole of the Services and, except where otherwise provided by this Contract, the Service Provider shall not sublet any part of the Services without the written consent of the Supervising Officer and such consent if given shall not relieve the Service Provider from any liability or obligation under the Contract and it shall be responsible for the acts, defaults and neglects of any sub-Service Provider, its agents or servants as fully as if they were the acts, defaults or neglects of the Service Provider, its agents or servants.

17. Equipment

- 17.1 The Service Provider shall at all times during the Contract Period provide and maintain all such Equipment as is necessary for the proper performance of the Services.
- 17.2 The Service Provider shall at its own expense keep all Equipment employed in the performance of the Services at all times in good and serviceable repair and in such condition as is commensurate with the proper performance by the Service Provider of its obligations under this Contract.
- 17.3 The Service Provider shall at all reasonable times permit the Supervising Officer access to all Equipment employed for the purposes of this Contract.

18. Service Provider's Staff

- 18.1 The Service Provider shall at all times during the Contract Period employ sufficient persons of sufficient abilities and skills for the proper performance of the Services. In particular the Service Provider shall provide sufficient currently qualified staff to undertake all activities in accordance with all appropriate statutes, regulations and case law to ensure, amongst other things, that employees and members of the public are kept safe at all times.

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- 18.2 The Service Provider shall at all times during the Contract Period employ sufficient persons of sufficient abilities and skills to supervise and administer the performance of the Services in a proper and continuous manner.
- 18.3 The Service Provider shall notify the Supervising Officer of the name, address and telephone number of the person who will be in charge of the Contract at local level.
- 18.4 The Service Provider shall at all times take all such precautions as are necessary to protect the health and safety of all persons employed by him, and shall comply with the requirements of the Health and Safety at Work etc Act 1974 ('the Act') and of any other Acts, regulations, orders or EU directives relating to the health or safety of employed persons.
- 18.5 The Service Provider shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions or levies of any kind relating to or arising out of the employment of any person employed by the Service Provider, and shall indemnify the Council in respect of any liability that arises from the default of the Service Provider.
- 18.6 The Supervising Officer shall be entitled to recommend to the Service Provider, by notice in writing, that any employee of the Service Provider specified in such notice be removed from the performance of the Services or be disciplined. The Council shall in no circumstances be liable either to the Service Provider or to the employee in respect of any liability, loss or damage occasioned by such removal or disciplinary action, and the Service Provider shall indemnify the Council against any claim made by such employee.
- 19. Liability of Service Provider**
- 19.1 The Service Provider shall be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings arising under any statute or at common law in respect of personal injury to or death of any person arising out of or in the course of or caused by the performance of the Services, except to the extent that the same is due to any act or neglect of the Council or of any person for whom the Council is responsible.
- 19.2 The Service Provider shall be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings in respect of any loss of or injury or damage 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 performance of the Services, and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Service Provider, its employees or agents, or of any person employed or engaged by the Service Provider upon or in connection with the performance of the Services or any part, its employees or agents.
- 19.3 The Service Provider warrants that it has fully satisfied itself as to the scope and nature of the Services and of its obligations under the Contract and has made all necessary appropriate searches, enquiries and inspections.
- 20. Insurance**
- 20.1 Without prejudice to clause 19 of this Contract, the Service Provider shall at all times maintain in force such policies of insurance with reputable insurers or underwriters approved by the Council, and shall fully insure and indemnify itself against liability:
- 20.1.1 to the Council and to any employee of the Council;
- 20.1.2 to its employees;
- 20.1.3 to any other person.
- 20.2 The Service Provider shall, before the Commencement Date, and thereafter annually and at such other times as the Supervising Officer may require, supply the Supervising Officer with copies of all insurance policies, cover notes, premium receipts and other documents necessary to comply with clause 20.1 of this Contract.
- 20.3 The Supervising Officer shall be entitled to notify the Service Provider in writing that in the opinion of the Supervising Officer any such policy of insurance does not effect sufficient cover to comply with the Contract, and to require the Service Provider to effect such insurances as will comply. Upon receipt of such notice the Service Provider shall immediately procure and effect such insurance as the Supervising Officer shall require, and

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in default the Supervising Officer may himself cause such insurance to be effected, whereupon the Service Provider shall pay to the Council such sum as the Supervising Officer shall certify as being the cost to the Council of effecting such insurance.

21. Liability of Council

- 21.1 The Council shall not be liable for any loss or damage however arising except for loss or damage directly arising from negligent acts or omissions of the Council, its servants or agents. Damages arising from such negligent acts or omissions shall be limited to direct and unavoidable losses and the Service Provider shall take all reasonable steps to mitigate such losses.
- 21.2 The Council in no way warrants the truth or accuracy of any representation that may have been made to the Service Provider before its entering into this Contract and the Service Provider acknowledges that it did not rely upon any representation made by or on behalf of the Council when entering into the Contract.

22. Default in Performance

- 22.1 The Supervising Officer may investigate each case where the Service Provider appears to have failed to perform the Services in accordance with the provisions of this Contract.
- 22.2 Where the Supervising Officer is satisfied that in any particular case the Service Provider has failed to perform the Services completely in accordance with the provisions of the Contract he shall be entitled to instruct the Service Provider to remedy the failure in order to comply fully with this Contract within such reasonable period as the Supervising Officer may determine.
- 22.3 In addition to any other rights and remedies the Council may have, the Council may terminate this Contract in accordance with clause 23 of this Contract.

23. Termination

- 23.1 Without affecting any other right or remedy available to it, either party may terminate this Contract on giving not less than six months' written notice to the other party.
- 23.2 Without affecting any other right or remedy available to it, the Council shall be entitled forthwith upon the happening of any of the following events to terminate this Contract, such events being:
- 23.2.1 the Service Provider's failure to complete the Services for a period of 2 weeks;
 - 23.2.2 where more than 2 Default Notices have been issued in respect of any week or more than 4 in respect of any four-week period;
 - 23.2.3 any breach by the Service Provider of any other provision of the Contract;
 - 23.2.4 where the Service Provider has suffered an execution to be levied on its goods; or if the Service Provider consists of one or more individuals any such individual dying, entering into a composition or arrangement for the benefit of its creditors or having a receiving order in bankruptcy made against him; or if the Service Provider consists of a body corporate, having a receiver or administrator appointed or being the subject of a resolution or order for winding up, PROVIDED that an amalgamation or reconstruction of a limited company shall be deemed not to be a breach of this clause 23.2.4 of this Contract.
- 23.3 Upon such termination, in addition to such consequences as are set out in the other provisions of this Contract:
- 23.3.1 the Service Provider shall immediately cease to perform any of the Services;
 - 23.3.2 the Council shall be under no obligation to make any further payment to the Service Provider, and shall be entitled to retain in its hands any payment which may have fallen due to the Service Provider before termination until the Service Provider has paid in full to the Council all sums due under this Contract, or to deduct from such sum any sum due from the Service Provider to the Council under this Contract; and
 - 23.3.3 the Service Provider shall fully indemnify the Council in respect of the cost of causing to be performed such Services as would have been performed by the

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Service Provider during the remainder of the Contract Period to the extent that such cost exceeds such sums as would have been lawfully payable to the Service Provider for performing such Services and the Council shall be at liberty to have such Services performed by any persons (whether or not employees of the Council) as the Council shall in its discretion think fit, and shall be under no obligation to employ the least expensive method of having such Services performed.

24. Notices

- 24.1 No notice to be served upon the Council shall be valid or effective unless it is sent by prepaid post or delivered by hand to the Council at the address specified in this Contract or to such other address as the Supervising Officer may notify the Service Provider in writing.
- 24.2 Any notice to be served upon the Service Provider shall be valid and effective if it is sent by prepaid post or delivered by hand to the registered office, principal place of business or to the premises referred to in this Contract, or is delivered by hand to a director, proprietor or other responsible representative of the Service Provider.

25. Observance of Statutory Requirements

The Service Provider shall comply with all statutory and other provisions to be observed and performed in connection with the Services provided under this Contract with particular regard to health and safety of employees and of the public and shall indemnify and keep indemnified the Council accordingly.

26. Rights and Duties Reserved

Nothing in this Contract shall prejudice or fetter the proper exercise of any function by the Council or its officers.

27. Legal Fees

Each party shall bear its own legal and other fees in relation to the preparation and submission of the Tender documents and this Contract.

28. Whole Contract

This Contract constitutes the whole agreement and understanding of the parties as to the subject matter of this Contract and there are no prior or contemporaneous agreements between the parties.

29. Waiver

Failure by the Council at any time to enforce any provision of this Contract or to require performance by the Service Provider of any of the provisions of this Contract shall not be construed as a waiver of any such provisions and shall not affect the validity of this Contract or any part of it or the right of the Council to enforce any provision in accordance with its terms.

30. Severance

If any provision of this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision, all of which shall remain in full force and effect.

31. Inconsistency

In the event of a conflict between any provision of this Contract and any provision of the Invitation to Tender the provision of this Contract shall prevail.

32. Clause Headings

The clause headings shall not be construed as part of this Contract.

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33. Law

This Contract shall be governed by and construed in accordance with the laws of England and the Service Provider irrevocably submits to the exclusive jurisdiction of the English courts.

This Contract has been entered into as an agreement on the date stated at the beginning of it.

Signed by

Claire Llewelyn
Parish Council Clerk
For and on behalf of
Coxhoe Parish Council

Signed by
[Name]

For and on behalf of
[Service Provider]

