

PARISH PATHS PARTNERSHIP (P3) AND PARISH LENGTHSMAN SCHEMES

Contract between Herefordshire Council and Parish Council

DATED: _____ 2019

WESON UNDER PENYARD PARISH COUNCIL

and

COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

AGREEMENT

Employer's Details

THIS AGREEMENT is made on the

BETWEEN the COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL of the one part and
WESTON UNDER PENYARD PARISH COUNCIL of the other part.

1. INTERPRETATION

In this Agreement the following expressions shall have the following meanings: -

- | | |
|----------------------------|---|
| 1.1 "The Council" | shall mean the County of Herefordshire District Council of Plough Lane, Hereford HR4 0LE |
| "The Parish" | shall mean the Parish Council. |
| "The Managing Agent" | shall mean Balfour Beatty Living Places when operating as the Provider under the Public Realm Services Contract between Herefordshire Council and Balfour Beatty Living Places. |
| "Public Realm" | shall comprise the highways, public rights of way and public open spaces specified in Annex 1 part 1 in so far as they relate to each part of the Public Realm Maintenance specified in Annex 1, Part 2A, Part 2B and Part 2C. |
| "Public Realm Maintenance" | shall comprise the particular minor Core Public Realm Maintenance work specified in Annex 1, Part 2A and Part 2C together with the Enhanced Public Realm Maintenance Work specified in Annex 1 Part 2B. All in accordance with the relevant specifications detailed in Annex 3. |
| "Financial Year" | shall mean from 1 April in any year to 31 March in the next year. |
| "Nominated Task" | shall mean a task agreed in writing between the Council, or the Managing Agent, and the Parish to be carried out or arranged to be carried out in one financial year at a cost agreed and funded by the Parish. |
| "Contractor" | shall mean person or persons nominated by the Parish Council, otherwise termed as Lengthsman or persons carrying out Parish Paths Partnership (P3) tasks. |

2. PURPOSE OF AGREEMENT

- 2.1 The Council as the local Highway Authority and as the authority responsible for other land, parks public open spaces and public rights of way is desirous of minor Public Realm Maintenance work being carried out by the Parish to meet the requirements of both the Council and the Parish.
- 2.2 The Parish are desirous of carrying out minor Public Realm Maintenance work within their Parish. Where P3 works are to be carried out the parish must have a parish paths officer appointed on behalf of the Council through the Managing Agent.
- 2.3 The Managing Agent is employed by the Council with the purpose to optimise the ability of the community to be self-reliant, reducing dependency of localities on public realm services. The specified outcome of which will be Communities within Herefordshire that are self-reliant and able to deliver services to an acceptable standard without the direct assistance of the Provider.
- 2.4 This Agreement is entered to provide the terms under which that Public Realm Maintenance work shall be carried out through the powers of the Council and the Parish to do so under Section 101 of the Local Government Act 1972 and all other enabling powers.
- 2.5 This Agreement is also the Council's consent as the highway authority under section 171 of the Highways Act 1980 for the Contractor to temporarily deposit building materials, rubbish or other things in the street or make a temporary excavation in streets that form part of the Public Realm that are a highway maintainable at the public expense. This in so far as it is necessary to deliver the specified Public Realm Maintenance.
- 2.6 The Council, Managing Agent, Parish and Contractor shall work as partners and in the spirit of mutual trust and cooperation to achieve the Council's objectives and the agreed objectives of the Parish in regard to the Public Realm.
- 2.7 The parties agree and acknowledge that:
 - (a) nothing in this Agreement shall change or otherwise affect the Council's legal rights and obligations as the local Highway Authority or cause the Parish to assume the Council's legal obligations to maintain the highways falling within the boundaries of the Parish;
 - (b) the Parish, in its discretion, has decided to support the Council in undertaking certain highways maintenance work which both parties consider to be low risk and amenable to local resolution but the Parish may choose to decline any Nominated Tasks or other Public Realm Maintenance at any time;
 - (c) any Nominated Tasks or other Public Realm Maintenance undertaken by the Parish or its Contractor(s) shall be completed to a standard of workmanship equivalent to, and in any event no higher than, that which would be applied by the Council if it was undertaking the work itself.
- 2.8 Prior to the start of each Financial Year the Managing Agent and Parish shall work together to produce an annual maintenance plan for the Public Realm. A template for that annual maintenance plan is provided in Annex 2. That annual maintenance plan shall contain a statement of the Council's objectives and the Parish's objectives for the Public Realm, it shall detail the activities that the Managing Agent and the Parish intend to undertake together to deliver these objectives through Public Realm Maintenance works; details of any Nominated Tasks; details of activities that the Parish and the Contractor intend to undertake to deliver Public Realm Maintenance; it shall specify at least one measure of performance against the plan; and the plan shall be in accordance with the requirements of this contract. The plan shall clearly state the funding to be used to fulfil the tasks of the plan.

3. DURATION OF THIS AGREEMENT

- 3.1 This Agreement shall commence on the first day of 1st April 2019 and shall continue until 31 March 2020 or until either party gives notice under the Agreement to terminate it.

- 3.2 Both the Council and the Parish shall have the right to terminate this Agreement on giving three months' written notice to the other party.
- 3.3 Either party may terminate this Agreement immediately in the event that the other party "the defaulting party") commits a material breach of any term of this Agreement which, if capable of remedy, has been notified to the defaulting party and has not been remedied by the defaulting party within 10 working days of such notification.

4. PUBLIC REALM MAINTENANCE

- 4.1 The Parish shall with all reasonable skill care and attention and in accordance with good industry practice carry out or arrange for the carrying out by the Contractor to the requirements of the Council and in compliance with the materials and standards approved by the Council or the Managing Agent (provided the Council or the Managing Agent shall have notified the Parish in advance of the materials or standards approved by the Council).
- (a) the Public Realm Maintenance on the Public Realm to at least the standard and the minimum level of frequency specified in Annex 1 Part 2A, 2B and 2C and to the specifications in Annex 3 and/or
 - (b) any Nominated Task.
- 4.2 The Parish shall comply with all relevant statutory requirements (including Health and Safety at Work Legislation) at all times in carrying out the Public Realm Maintenance. All works will be carried out in accordance with the Safety at Street Works and Road Works: Code of Practice 2013.
- 4.3 Wherever the Public Realm Maintenance works specified as Enhanced Maintenance Works in Annex 1 Part 2B have been identified as street works in accordance with section 48 of the New roads and Street Works Act 1991 "street works" meaning works of any of the following kinds (other than works for road purposes) executed in a street in pursuance of a statutory right or a street works licence:
- (a) placing apparatus, or
 - (b) inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, changing the position of apparatus or removing it, or works required for or incidental to any such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).

Or where the Council has identified said works as being the equivalent to street works.

Then the Parish, Contractor and the Managing Agent shall work together to ensure that the Contractor and those who supervise the Contractor in these works shall be qualified in accordance with any particular requirements of the Council and section 67 of the New Roads and Street Works Act 1991. For clarity the requirements for the qualifications of supervisors and operatives under section 67 of the New roads and Street Works Act 1991, are:

- (1) It is the duty of an undertaker executing street works involving—
- (a) breaking up the street, or any sewer, drain or tunnel under it, or
 - (b) tunnelling or boring under the street,

to secure that, except in such cases as may be prescribed, the execution of the works is supervised by a person having a prescribed qualification as a supervisor.

- (2) It is the duty of an undertaker executing street works involving—
- (a) breaking up or opening the street, or any sewer, drain or tunnel under it, or
 - (b) tunnelling or boring under the street,

to secure that, except in such cases as may be prescribed, there is on site at all times when any such works are in progress at least one person having a prescribed qualification as a trained operative.

- 4.4 The Parish in carrying out the Public Realm Maintenance shall not impede the passage of vehicles except to the extent that it is necessary to do so and shall safeguard the passage of pedestrians and shall use signs and cones when necessary for the guidance and protection of the public and to comply with the standards of the Council including any Code of Practice issued by the Council, or the Managing Agent, to the Parish. The Parish shall provide a minimum two weeks' notice to the Managing Agent of any works that may significantly impede traffic flow.
- 4.5 The Parish shall liaise with the Managing Agent who shall be responsible for notifying the Traffic Manager or his representative in accordance with the requirements of the Traffic Management Act 2004 and any associated legislation, regulation or working arrangements agreed between the Council and the Managing Agent. This to avoid unnecessary disruption to the travelling public and any conflict between different works being carried out on the Public Realm or other highways. If required to do so by the Council's Traffic Manager or his representative in the Managing Agent the Parish will reschedule, or revise the extent of, their works in line with any request made. Such requests will normally be made through the Managing Agent.
- 4.6 If the Council or its Managing Agent considers that any Public Realm Maintenance undertaken by the Parish or any of its Contractors is inadequate, unsafe or generally does not meet the standards set out in this Agreement then (without prejudice to the Council's other rights and remedies under this Agreement) the Council may require the Parish at its own expense to reschedule and re-perform the Public Realm Maintenance correctly within such reasonable time as may be specified by the Council or its Managing Agent.
- 4.7 The Parish shall ensure that any Contractor appointed under this Agreement has the requisite qualifications, skills and experience necessary for the proper performance of the Public Realm Maintenance. The Council reserves the right (acting reasonably) to require that a Contractor is immediately removed from Public Realm Maintenance work in circumstances where the Council or its Managing Agent has reasonable grounds to believe that the Contractor is unsuitable, whether on the basis of the Contractor's qualifications, skills or experience or on the basis of Public Realm Maintenance work already undertaken by the Contractor.

5. INDEMNITY AND INSURANCE

- 5.1 The Parish will be liable to the Council for, and must indemnify and keep the Council indemnified against:

- (a) any loss, damages, costs, expenses, liabilities, claims, actions and/or proceedings (including the cost of legal and/or professional services) whatsoever in respect of:
- (b) any loss of or damage to property (whether real or personal); and
- (c) any injury to any person, including injury resulting in death; and
- (d) any direct losses of the Council,

that result from or arise out of the Parish's or any appointed Contractor's negligence or breach of contract in connection with the performance of this Agreement, except insofar as that loss, damage or injury has been caused by any act or omission by or on the part of, or in accordance with the instructions of, the Council, its employees or agents.

5.2 The Parish shall maintain an insurance policy with a reputable insurance company to provide cover against any claim arising out of the indemnity in the previous clause (5.1) to a minimum level cover of £5,000,000 and shall ensure that any Contractor maintains similar insurance.

5.3 The Council will be liable to the Parish for, and must indemnify and keep the Parish indemnified against:

(e) any loss, damages, costs, expenses, liabilities, claims, actions and/or proceedings (including the cost of legal and/or professional services) whatsoever in respect of:

(f) any loss of or damage to property (whether real or personal); and

(g) any injury to any person, including injury resulting in death; and

(h) any direct losses of the Parish,

that result from or arise out of the Council's negligence or breach of contract in connection with the performance of this Agreement, except insofar as that loss, damage or injury has been caused by any act or omission by or on the part of, or in accordance with the instructions of, the Parish, its Contractors, employees or agents.

6. COUNCIL TRAINING, SUPERVISION AND GUIDANCE

6.1 The Council and the Managing Agent shall be entitled to provide guidance on the Public Realm Maintenance work and the manner in which it shall be carried out as necessary.

6.2 The Council and the Managing Agent may on occasions inspect the Public Realm Maintenance and give supervisory advice, if necessary. The Managing Agent shall act as the 'supervisor, manager or other competent person' in regard to the Safety at Street Works and Road Works Code of Practice 2013.

6.3 The Council will provide initial health and safety training through the Managing Agent and The Council and the Managing Agent may provide further training identified by the Parish, or the Managing Agent and Council.

6.4 The Parish and the Contractor shall comply with all guidance, advice, training and instruction provided in accordance with Clauses 6.1, 6.2 and 6.3.

6.5 The Council will provide a nominal amount of signs, cones and other highway safety equipment during the first year of operation only. It will be the Parish responsibility to ensure that all work carried out under its direction is carried out in a safe and efficient manner with the use of appropriate equipment in good working order.

6.6 The Contractor shall ensure that all operatives working in the Public Realm shall hold a Blue - Craft CSCS Card for general highway maintenance or an equivalent that is approved by the Council as demonstration of appropriately training and competence.

7. COMPLAINTS

7.1 The Parish shall record and report to Managing Agent any complaints made in respect of Public Realm Maintenance. The Parish shall deal with these complaints in cooperation with the Managing Agent.

7.2 The Council and the Managing Agent is entitled to refer any complaints it receives to the Parish.

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- 7.3 The Council and the Managing Agent shall have the option to investigate any complaints that it considers necessary to investigate.
- 7.4 The Parish shall provide a written summary to the Managing Agent of all complaints received and the action taken in response to such complaints within 1 month of receipt of complaint.
- 7.5 The Parish shall notify the Managing Agent immediately of any complaints received which may potentially involve the Council or the Managing Agent in any claim.

8. VARIATION

- 8.1.1 The Council and the Parish reserve the right at any time by written agreement to vary the terms of this Agreement.

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Agreement does not confer rights to any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

SIGNED

by

its duly appointed Chairman

and

its duly appointed Clerk on

behalf of WESON UNDER PENYARD PARISH COUNCIL

Signed on behalf of the **COUNTY
OF HEREFORDSHIRE DISTRICT
COUNCIL**

.....Authorised Signatory

ANNEX 1

PART 1

The places covered by this Agreement are:

For Core Public Realm Maintenance	As per maps in ANNEX 4
For Enhanced Public Realm Maintenance	As per maps in ANNEX 4

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PART 2A

Core Public Realm Maintenance – Lengthsman activities

Tasks	Minimum Frequency	Standard
1. Drainage	As agreed through the annual maintenance plan	Clear leaves and other debris from gully grid tops, drainage grips and entrances and exits of highway culverts, rodding of pipes, localised ditching works; assisting in land drainage affecting the highway (working with landowners).
2. Non-Mains Powered Traffic Signs	As agreed through the annual maintenance plan	Ensure legibility and visibility of Traffic Signs including straightening, cleaning and removing vegetation. Repaint traditional finger and mileposts.
3. Highway minor works	As agreed through the annual maintenance plan	Removal of soils and detritus build up; clear minor storm debris discharged onto the highway as is reasonable and practical; cutting back vegetation overhanging the road or footway; clearing and siding out of footways; removing vegetation from structures and fences; verge cutting and strimming of visibility splays; paint and repair fences.
4. Environmental	As agreed through the annual maintenance plan	Sweeping footways and public realm spaces; litter clearance and litter picking and bin emptying; removal of fly posting, graffiti and unauthorised signs; street name plates cleaning and repair; repair of street furniture including litter bins, benches and bus stops
5. Nominated Task	As agreed through the annual maintenance plan	Task as agreed through the locality steward with a clear benefit to the public realm

PART 2B

Enhanced Public Realm Maintenance – lengthsman activity

Tasks	Minimum Frequency	Standard
1. Pothole filling	As agreed through an annual maintenance plan	

PART 2C

Public Rights of Way – Parish Paths Partnership (P3)

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6. Public Rights of Way	Parish Paths Officer (PPO)	The parish must have least one Parish Paths Officer (PPO) in post, who will inspect ALL paths in the parish at least twice a year.
	As agreed through the annual maintenance plan	Ensuring cutting back of vegetation (excluding crops) is carried out on ALL paths where necessary at least twice in summer months. Maintenance and installation of gates, stile crossing steps and other PROW furniture. Signposting and Waymarking. Purchase/hire/maintenance of tools

ANNEX 2 - Annual maintenance plan as detailed in Clause 2.7

ANNEX 3 - Specifications for Public Realm Maintenance.

To be inserted as required

Pothole

Grass Cutting

Public Rights of Way Maintenance

Gully unblocking

Ditch clearance

ANNEX 4

Maps of roads identified for lengthsman activities (including PROW)

Maps of roads identified for pothole repairs

Maps of areas identified for grass cutting