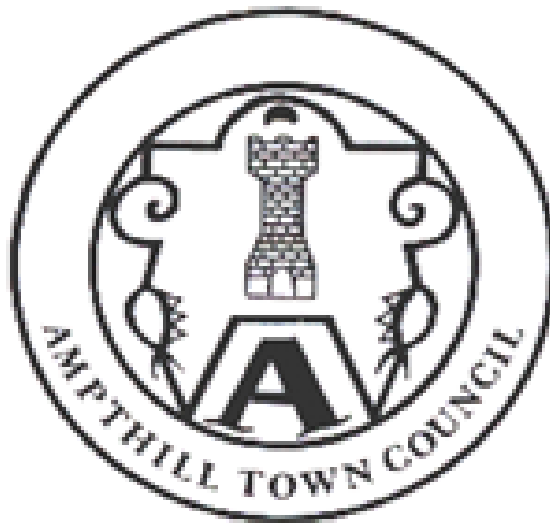


**Grounds Maintenance Contract**

**1st April 2026 - 31st March 2031**



Ampthill Town Council Grounds Maintenance Service

Ampthill Town Council Grounds Maintenance Service

Tender Documentation

Contents

1.0 INSTRUCTIONS TO TENDERERS

2.0 SPECIFICATION

3.0 DEFINITIONS AND CONDITIONS OF CONTRACT

4.0 QUALITY QUESTIONNAIRE

5.0 TENDER PRICE

6.0 TENDER FORM

7.0 DECLARATION OF COMPLIANCE

8.0 CERTIFICATE THAT THE TENDER IS BONA FIDE CERTIFICATE THAT

Accompanying Documents:

Annex 1 - Site Maps and photos.

# Ampthill Town Council Grounds Maintenance Service

## 1.0 INSTRUCTIONS TO TENDERERS

### 1.1 General

Tenderers should read these instructions carefully before submitting their responses to the Invitation to Tender (ITT).

Failure to comply with these requirements for completion and submission may result in the rejection of your tender response. Tenderers should acquaint themselves fully with the extent and nature of the requirement and contractual obligations and are deemed to have done so before submitting a tender.

### 1.2 Documentation

The documentation consists of the following:

Section 1: Instructions to Tenderers

Section 2: Specification of Requirement

Section 3: Terms and Conditions of Contract

Section 4: Quality Questionnaire

Section 5: Tender Price

Section 6: Tender Form

Section 7: Certificate Bona fide tender.

Ampthill Town Council (hereinafter referred to as “The Town Council”) reserves the right to modify or amend the ITT documentation at any time prior to the deadline for receipt of tenders. Any such changes will be notified to the Tenderers in writing. Where the modifications or amendments are significant, The Town Council may, at its discretion, extend the deadline for receipt of Tenders. This Invitation to Tender and its accompanying documents and publications, and any copies made in all or part, are and shall remain the property of The Town Council and must be returned on demand.

### 1.3 TUPE

The Town Council is aware that the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) could apply to this provision of services contract. The Town Council will seek to determine from the current service provider its position on whether it intends to seek a transfer of either a single individual or a group of employees under TUPE regulations. **This information will be published as an addendum to the tender specification documents**, and must be taken into account while preparing your tender return.

### 1.4 Enquiries

Please contact the following person if you have any enquires regarding this tender:-

**Park and Amenities Manager**, Ampthill Town Council Park Lodge Ampthill Great Park, Woburn Road, Ampthill Bedfordshire MK45 2HX . Email: [parkmanager@ampthill-tc.gov.uk](mailto:parkmanager@ampthill-tc.gov.uk)

## Ampthill Town Council Grounds Maintenance Service

Tenderers should note that all enquires must be made in writing or by email and The Town Council at their discretion reserve the right to circulate any response to all tenderers. All enquiries must be clearly marked ENQUIRY with the question and Tenderer details clearly set out. The deadline for receiving these enquiries will be fourteen days prior to the tender return date to allow information to be circulated in time. Please note that Council Office is not open every day.

### 1.5 Tender Return

The completed documents must be returned by email. The documents issued must be completed in full, and all supporting information should be sent by email to [tenders@ampthill-tc.gov.uk](mailto:tenders@ampthill-tc.gov.uk)

**The tender must be returned no later than  
2<sup>nd</sup> December 2025 at 12:00 (noon)**

Any Tender received after this date and time will not be considered.

It is the responsibility of the Tenderer to ensure that the Tender Document is delivered to The Town Council no later than the notified deadline.

The Town Council reserves the right to amend or modify the tender documents prior to the award of Contract. All Tenderers will be notified of any such amendment.

### 1.6 Un-submitted Tenders

It must be clearly understood that this invitation must not be passed to any other organisation.

Any proposed exceptions or amendments to the Town Council's Conditions of Contract must be submitted with the Tender.

### 1.7 Tender Validity

Tenders shall remain open for acceptance for a period of 90 Days from the closing date of receipt of the tender by the Town Council. If awarded a contract, the Tenderer must comply with all the provisions contained in the tender documentation, subject only to any agreed exceptions and amendments.

The Tenderer warrants that the performance of the Contract shall be undertaken in accordance with the requirement of the Contract and any codes of practice for the industry.

### 1.8 Tender Costs

Tenderers will not be entitled to claim from The Town Council any costs or expenses that may be incurred in preparing their tender. This applies whether or not the tender is successful and it also applies to any additional costs that may be incurred if The Town Council modifies or amends the tender requirements or the specification of the required services.

## Ampthill Town Council Grounds Maintenance Service

Tenderers are responsible, at their own expense, for obtaining all information necessary for the preparation of their Tender. Information provided to Tenderers by The Town Council is supplied only for general guidance in the preparation of the tender. Tenderers must satisfy themselves by their own investigations about the sufficiency of information and no responsibility is accepted by The Town Council for any loss, damage or expense of whatever kind arising from the use by Tenderers of such information.

### **1.9 Form of Tender**

Tenders must be fully completed by duly authorised personnel. Prior knowledge of any aspect of your organisation or of your ability to meet the requirement must not be assumed. The sections that require completion or a specific response are:

Section 4: Quality Questionnaire

Section 5: Tender Price

Section 6: Tender Form

Section 7: Certificate of Bona Fide Tender

Tenders may not be considered if complete information is not given or if the particulars asked for in the tender documents are not supplied.

The Tender response shall be submitted in English. Any printed literature furnished by the Tenderer may be written in any other language but must be accompanied by an English translation of its relevant pages. In such a case, for the purpose of interpretation in relation to the tender, the English translation shall prevail.

### **1.10 Accuracy of Price**

Tenderers shall ensure that, before submitting a tender that the Tender Form has been completed and signed and all necessary information supplied.

### **1.11 Modification and Withdrawal**

Tenders may not be modified subsequent to the deadline for receipt, but Tenderers may modify their tender prior to the deadline for receipt by giving written notice to The Town Council by email.

Tenderers may withdraw their tenders at any time prior to accepting the notification of award by sending a notice of withdrawal to The Town Council.

### **1.12 Confidentiality**

All information contained in this Invitation to Tender or which is communicated in further correspondence or in the course of any subsequent negotiations, is presumed to be confidential unless disclosure is statutorily required.

Tenderers should not disclose the fact they have been invited to tender and must not communicate, disclose or otherwise make available this information to any third party other than as set out below, nor use this information for any commercial or industrial purpose not connected with this tender.

## Ampthill Town Council Grounds Maintenance Service

The Tenderer may communicate, disclose or otherwise make available this information to an employee or a professional adviser who requires the information in connection with the preparation of the tender or to support any subsequent negotiation, provided they are bound by equivalent conditions of confidentiality.

All information provided by the tenderers will be treated as “Commercial in Confidence” by The Town Council and (except where required in law) will not be disclosed to a third party without the written permission of Tenderers.

### **1.13 Freedom of Information Act**

The Town Council is committed to meeting its responsibilities under the Freedom of Information Act 2000 (FOIA). All information submitted to The Town Council may be subject to disclosure to a third party in response to a request for information under the Act.

If The Town Council receives a request to disclose the information identified, it will consider whether the information is, in fact, exempt; consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information (unless the information benefits from an absolute exemption); and consult with the Tenderer prior to disclosure of information whenever reasonably practicable.

The Town Council will not be liable for any loss or damage suffered by the Tenderer, whether in contract, tort or any other way as a result of The Town Council disclosing information in response to a request made under FOIA, if the information is not specifically considered by both The Town Council and the Tenderer to be exempt. The Tenderer should note that the receipt of any information marked ‘confidential’ or equivalent by The Town Council should not be taken to mean that The Town Council accepts any duty of confidence by virtue of that marking. Further information on the FOIA can be obtained from the office of the Information Commissioner responsible for enforcing the Act.

### **1.14 Evaluation of Tenders**

Tender proposals will be subjected to a thorough evaluation. This may result in an award of contract or it may produce a short-list of the most promising technical and commercial offers requiring further assessment.

The Town Council will examine tenders for completeness and may seek clarification where necessary. Prior to detailed examination, The Town Council will determine whether a tender substantially fulfils the conditions in the tender documents. A tender determined as not substantially fulfilling the conditions in the tender documents will be rejected.

Short-listed tenderers may be further requested to clarify their bids or provide additional information in support of their proposals. Further assessment of short-listed tenders may include attendance at The Town Council’s premises for the purpose of clarifying aspects of a bid or may involve a visit by The Town Council’s representatives to any relevant facilities operated by the Tenderer. In each case, Tenderers will be responsible for their own costs.

## Ampthill Town Council Grounds Maintenance Service

### 1.15 Award Criteria

The Town Council does not bind itself to accept the lowest priced or any tender for the tendered services.

The Town Council will have no obligation to Tenderers arising from this tender unless and until it enters into a formal contract with the Tenderer for the provision of the services that are subject to this Invitation to Tender.

Any contract awarded will be to the Tenderer whose tender, or any parts thereof, has been determined as substantially fulfilling the conditions and is the most economically advantageous.

The Town Council will accept the tender that it believes to provide the best value. It will take into account factors other than price and will use the information provided in this evaluation questionnaire to assess the ability of the tenderer to deliver the specified services.

Each of the criteria used in tender evaluation will be assigned a weighting. The relative weighting of the criteria will be taken into account in determining the most economically advantageous bid.

The weighting system that will be applied is as follows:

Price - 60% or 90 points

Quality - 40% or 60 points

The score for Quality will be determined from the following weighting:

Organisation and Management	7 points
Employee Terms and Conditions/ Retention	15 points
Transport and Equipment	11 points
Service Delivery	17 points
Mobilisation and Action Plan	10 points

Irrespective of price, all tenderers will have to meet a minimum quality threshold of 45 points and any tender failing to meet this threshold will be eliminated from the evaluation process.

As part of the assessment process, and, in addition to references obtained from previous or current clients, the Town Council may wish to make specific site visits to previous or current areas of work to gauge the level of competence and quality of work performed by the Tenderers and their staff.

All Resource and Method Statements should be completed as comprehensively as possible in order that the priced Tender may be supported by evidence of managerial and technical and organisational capacity and capability. The Statements will be taken into account when evaluating Tenders and selecting the successful Tender bid, insofar as Tenderers will be expected to demonstrate that they are capable of carrying out the proposed works with a high level of professional expertise and in an adequate and business-like manner. Tenders must be submitted in the required form, but Tenderers are additionally invited to submit alternative

## Ampthill Town Council Grounds Maintenance Service

solutions and/or costing methods where it is believed they will result in efficiency and cost savings for The Town Council.

Alternative proposals will be subject to separate evaluation by The Town Council and should therefore be submitted by way of a separate second offer accompanying the primary or main proposal. They should also be fully detailed and costed so as to clearly demonstrate to The Town Council where the cost and efficiency savings will arise from relative to The Town Council's Specification and the Tenderers primary proposal.

### **1.16 Contract Management and Monitoring**

The Grounds Maintenance Service Provider will work with The Town Council to make sure that they fully understand the proposal and that there are appropriate processes in place for managing the service into the future.

The Park and Amenities Manager to the Town Council, hereinafter referred to as The P.M. will be responsible for managing this contract and all day to day matters. Day-to-day operational matters will be managed by: The P.M. For all queries regarding the tender please see 1.14 above.

### **1.17 Returns Checklist**

You will need to ensure that the following information is included in your tender submission.

Responses to the information requested in sections:		
Section 4	Quality Questionnaire Statements	
Section 5	Tender Price	
Section 6	Tender Form (Signed)	
Section 7	Bona Fide Tender Form (signed)	

### **1.18 Tender Timetable**

The key dates in the tender timetable are set out below. However, please note that these dates may be subject to change due to unforeseen circumstances beyond the control of The Town Council.

Deadline for Questions regarding the tender	18 <sup>th</sup> November
Tender Submission Deadline	2 <sup>nd</sup> December
Award Contract by	8 <sup>th</sup> January 2026
Anticipated Contract Commencement Date	1 <sup>st</sup> April 2026

## **2.0 SPECIFICATION**

### **2.1 GENERAL SPECIFICATIONS**

#### **Scope of Contract**

The Service Provider will be expected to carry out a number of operations, including grass and vegetation cutting, herbicide treatments, waste collection, hedge maintenance, pruning, tree planting and tree maintenance, wildflower and grass seeding, footpath and fence maintenance including repair and replacement, snow clearance, playground inspections, maintenance and



## Ampthill Town Council Grounds Maintenance Service

repairs, events support, managing and facilitating volunteer groups, other works reasonably expected by the Town Council and within the capabilities of Service Provider operatives.

### **Background Information**

#### **Areas of land included within the Contract (all or in part):-**

Ampthill Great Park approximately 60 hectares.

The Alameda and Coronation Walk Historic Lime Avenue and Beech Avenue.

Cemetery.

Verne Drive Open Space.

Everitt's Field and Grange Farm Allotment Sites.

Kings Arms Garden. Woodland Garden managed by volunteers.

Market Square.

Sands Car Park.

#### **3. Areas within the Park and not included within this tender : -**

Land within Ampthill Great Park used and maintained by Ampthill Cricket Club

Land within Ampthill Great Park and buildings used and maintained by Ampthill Football Club

Land and Building used and maintained by Ampthill Town Council, The Park Lodge Office Building, Park Coffee Lodge Café and the Park / Café store.

Approximately 70% of the land incorporating the reservoir (including the fence) and Westminster Pond including the fence used and maintained by Ampthill Angling Club.

The majority of the core tasks to be undertaken will be within Ampthill Great Park

### **Ampthill Great Park**

Ampthill Great Park makes up the majority of the grounds maintenance tasks. It is a 60 hectare hybrid park with formal urban elements including 2 car parks, formal play area, council offices, café, tennis courts, football ground and cricket ground. The countryside elements include open grassland, parkland trees, two large ponds, copses, woodland and shelterbelts. There is a rich history associated with the park dating back to the Tudor period. There are a significant number of veteran and ancient trees, a scheduled ancient monument (all below ground) two historic stone crosses, woodland pasture and acid grassland. Seasonal grazing by cattle to part of the park is practised by an independent grazier.

The park is on the Greensand Ridge and as such the soils are free draining and prone to erosion. The majority of maintenance and pedestrian routes are along grass / woodland tracks. The park accommodates approximately 300,000 visitors annually, and hosts a range of events throughout the year.

Note that the Football Ground, Cricket Ground and associated buildings are managed and maintained by the respective clubs. There will be no requirement of the Service Provider to

## Ampthill Town Council Grounds Maintenance Service

undertake tasks at these facilities. The two larger water bodies Westminster Pond and The Rezzie are managed and maintained by an angling club. There is public access in part to the Rezzie bankside, maintenance of this area is minimal.

### **Cemetery**

The cemetery is located on Gas House Lane approximately 2km from Ampthill Great Park. It is approximately 1 hectare in area. Burials are a combination of Traditional graves with the full grave area maintained by the owner, Lawn grave with the majority of the grave area maintained as grass, and Ashes graves which are closely spaced in ground stone slabs with vases and memorials placed on top. There are boundary hedges, longer grass areas, trees, car park, footpaths and paved areas.

The Town Council arranges burials, grave digging and representation at funerals. The Town Council's Maintenance Operative carries out duties including waste removal, grass seeding, some Knifing off.

The core tasks are as follows:-

- Grass cutting to all areas, including boxed pedestrian mowing to burial areas, ride on mowing to vacant grass areas and annual meadow / wildflower cutting to long grass areas / wildflower areas.
- Hedge cutting to the site perimeter once annually.
- Herbicide applications as instructed.
- Knifing Off around ashes graves and footpaths.

There may very occasionally be a requirement for the Service Provider to dig and dress an ashes grave and represent the council at burials.

### **Grange Farm and Everitt's Field Allotment sites**

Both allotment sites are approximately 2.5km from Ampthill Park. The core tasks are as follows:-

- Grass cutting to the main access tracks and car parking areas.
- Hedge cutting to the site perimeter once annually.
- Scrub and tree maintenance to buffer areas.
- Plot clearance as instructed by The P.M. or delegated representative.
- Herbicide applications to vacant plots as instructed.
- Maintenance and repair to boundary fences and gates.
- Maintenance of stone tracks.

### **Coronation Walk, Alameda Lime Avenue,**

These two adjacent sites are within 0.6km from Ampthill Great Park.

They are heavily used public walks of historical significance. Although they only require infrequent visits, they do require seasonal tasks in the autumn such as removal of epicormic growth to approximately 250 Lime trees, pruning of hedges and shrubs, leaf blowing and mulch mowing. Litter and Waste is dealt with by Central Bedfordshire Council. Preparation of these areas in advance of the annual Remembrance Sunday event will be required.

**Other Sites** - Other amenity areas include:

## **Ampthill Town Council Grounds Maintenance Service**

**The Kings Arms Garden** a community garden, managed and maintained by volunteers. This will only require occasional visits for example to cut a hedge, deliver and help spread woodchips to paths, remove vegetation or tree prunings to The Town Council appointed contractors' chipper or such like.

**Sands Car Park** is a small public car park (approximately 60 spaces) Removal of leaves and litter will be required as and when instructed, usually twice annually.

### **Verne Drive Open Space**

This is located approximately 1.0km from Ampthill Great Park. This is currently maintained by Central Bedfordshire Council and volunteers. If required the P.M will instruct the Service Provider to undertake work if and when required.

### **Market Area & Square**

This is located approximately 0.6km from Ampthill Great Park. This area is currently maintained by The Town Council. If required the P.M will instruct the Service Provider to undertake ad-hoc work as required

### **Events**

The Town Council host and facilitate a range of events held in Ampthill Great Park and other sites. The Service Provider will be required to schedule and undertake specific time critical tasks leading up to events and support The Town Council's staff during events as required.

### **Volunteers**

The Town Council is keen to see more opportunities and greater involvement of both corporate and community volunteering.

### **Layout of Specification**

The Service Provider will be required to submit annual staffing resource proposals as part of the tender bid that the Service Provider considers to be adequate to deliver the core tasks and other tasks that will be instructed during the year.

The Service Provider will be required to provide the staffing resource as tendered. and manage operatives to deliver the scheduled works in an efficient, effective and timely manner.

Works will be scheduled at least monthly and will consist of core tasks and other works as deemed necessary or priority by the Town Council.

The Service Provider will be jointly responsible with the P.M. for maintaining performance standards. Where the Service Provider believes that it is not possible to complete the task or maintain the required standard within the approved "monthly" schedule it is the responsibility of the Service Provider to inform the P.M. in order for the schedule to be revised or for additional resources to be provided. It is expected that staffing resources will fluctuate throughout the year to accommodate non-productive time such as leave, training, sickness etc. It is the Town Council's expectation that all scheduled work whether that be core tasks or additional or variable work will be completed within the allocated staffing resource and there will be no requirement for additional resources and employee costs to undertake tasks.

## Ampthill Town Council Grounds Maintenance Service

The Service Provider will be liable for the cost of any rectification works if it is shown that they have either failed to undertake the scheduled operations in an efficient and effective manner or if they have failed to undertake the works to the standard reasonably expected by the P.M. In this instance if work needs to be rectified the additional time will not form part of the allocated contract time and will be recorded separately.

The Town Council reserves the right to vary, the core tasks and any other task whilst maintaining the allocated hours.

### **Quality Management**

The Service Provider shall demonstrate at all times during the Contract Period its commitment to delivering works to an acceptable standard determined by the P.M. The specification for works will vary throughout the contract, these will be established prior to the task commencing or as part of the scheduling of tasks at least every month. The Service Provider will establish a Quality Policy and shall implement systems to demonstrate to the P.M. that tasks are delivered to the expected standard. The Service Provider will be required to submit a brief weekly report on the progress of tasks and staffing resources provided. This will be critical for the ongoing monitoring of works delivered and to support verification of staffing resources provided.

### **Complaints**

The Service Provider is required to deal directly with all complaints (and any subsequent litigation) relating to:

- i. Damage to private property.
- ii. Third party accidents or injury.
- iii. The personal behaviour of its employees.
- iv. Any activity not directly connected with the provision of a specified Service.

Any such complaints received by the Town Council will be referred to the Service Provider with a covering letter to the complainant advising them of the Service Provider's liability. The Service Provider shall maintain a record of all complaints received by them and shall make these available to the P.M. for inspection when requested. The record shall contain details of the complainant's name and address/ email address and other contact details (if given), the date and details of the alleged incident and subsequent action taken including any reply.

### **Working Hours**

The Service Provider will only carry out work during the working day between 0730 and 1800 Monday to Friday (excluding public holidays) except when otherwise agreed by the Town Council.

The Service Provider is to include in their Tender bid for the provision of an emergency call out service to respond to urgent issues that may occur outside normal working hours including weekends.

The Service Provider is to include in their Tender bid for the provision of an operative and vehicles and equipment to undertake site checks / specific tasks / event support as required on Saturdays, Sundays, Public Holidays or out of hours on up to 14 occasions per annum. At least

## **Ampthill Town Council Grounds Maintenance Service**

14 day's notice will be provided by the P.M. for each occasion. The minimum time allocation will be 4 hours. Any requirement of less than 7.5 hours can be worked up to 7.5 hours as long as tasks are determined and agreed with the P.M. in advance.

Core hours when at least one operative is required to be on site is between 9.30am and 3.00pm. Monday to Friday.

No additional payment will be made for work completed outside the normal working day.

### **Facilities and equipment for Service Provider's Employees**

The Service Provider is responsible for the provision of proper shelter, sanitary arrangements, protective clothing and equipment, and first aid equipment for all operatives employed by the Service Provider on this Contract. Note The Town Council will make available office and depot facilities within Ampthill Great Park.

### **Employee Safety**

The Service Provider and all its employees shall comply with all relevant employee safety legislation including the Health and Safety at Work Act and COSHH Regulations. The Service Provider shall also adhere to any Codes of Practice and safety procedures adopted by The Town Council and any amendments to them.

The Service Provider shall maintain a record of all notifiable injuries, notifiable diseases, fatalities, and dangerous or potentially dangerous incidents. The Service Provider shall notify the Health and Safety Executive of every notifiable incident. Copies of all correspondence between the Service Provider and the Health and Safety Executive shall be referred to the P.M. on every occasion.

### **Public Safety**

The Service Provider is to ensure that public safety is not affected by its operations.

The Service Provider is liable for any accident, injury or occurrence attributable to its operation.

### **Service Provider's Conduct and Public Relations**

Whilst working for Ampthill Town Council, the Service Providers employees are representing the Council and must always act in a polite and responsible manner.

All employees of the Service Provider engaged in the provision of the service set out in this contract shall at all times observe the following code of conduct.

- Do not use any discriminatory or offensive remarks or gestures.
- Do not engage in any harassment on any grounds.
- Do not cause a nuisance to the public through excessive noise by the use of radios or other sound amplification equipment. This may be either personal radios or sound equipment mounted on the vehicles.
- The Service Provider will pay for repair costs to any damage caused by their vehicles or employees.

## **Ampthill Town Council Grounds Maintenance Service**

### **Public Relations**

The Service Provider shall be polite, approachable and helpful whilst working for the Town Council.

If a member of the public wishes to make a complaint about the Service provider or work in progress, the service provider shall refer the person(s) to the Park Manager.

The Service Provider shall provide a suitable sign with the name of the service provider and the words In Partnership with Ampthill Town Council to be erected on the Park Depot building.

### **Inclement weather**

The Service Provider shall make every effort to keep to the programme of work approved by the P.M. The Service Provider will be required to adjust the method and timing of operations to minimise any damage to the ground, on-site artefacts, neighbouring property or vegetation. If the Service Provider fails to take into consideration local ground conditions and causes any damage which could have reasonably been avoided the Service Provider's will be required to rectify the damage entirely at their own expense.

### **Vandalism, Damage and Fly Tipping**

Any instances of vandalism, damage to Council premises, property or vegetation or fly tipping shall be reported to the P.M. immediately if seen by the Service Provider.

### **Site Locations (see Annexe 1)**

Site plans / photos are included in Annex 1

### **Measurements**

The Service Provider's attention is drawn to the fact that this contract is an un-measured contract and the extent of work to be undertaken will vary throughout the contract period. The Service Provider will resource the contract as tendered, and the extent of work will be determined by the Park Manager in collaboration with the Service Provider at monthly scheduling meetings.

### **Access and Constraints**

The Service Provider shall take all reasonable care to ensure that public access to the location is maintained as absolutely necessary for public safety during the execution of the works.

Access to some locations may be restricted and the Service Provider is expected to become familiar with any such constraints. The Service Provider is responsible for the selection of the appropriate machine type for each location. No claims will be accepted as a result of inadequate access or on-site constraints.

The Service Provider shall not drive or park any vehicle on footways and shall conform to road traffic regulations at all times.

## Ampthill Town Council Grounds Maintenance Service

### **Materials**

Any materials required for tasks will be specified by the P.M. and any materials required to be purchased by the Service Provider will be reimbursed by the Town Council. There will be no uplift in the actual cost incurred by the Service Provider. Time spent sourcing, ordering and receiving materials will be within the staffing resource provided.

Invoices shall be retained and made available for re-imbursement.

### **Pesticides**

All operatives engaged in the application of any pesticide as defined within the terms of the Food and Environment Protection Act 1985 and the Control of Pesticides 13 Regulations 1986 shall be over 18 years old and shall hold a certificate from a training establishment that is an approved assessment centre under the terms of the Act.

Before the commencement date the Service Provider shall provide the P.M. with proof that the operatives to be engaged upon such work are suitably qualified.

Unqualified staff may not apply pesticides under any circumstances. The Service Provider shall provide the operatives with all protective clothing suitable for the chemical being used. The Service Provider shall give the operatives access to any necessary washing and cleaning facilities.

The Service Provider shall ensure that all operatives while engaged in application of pesticides wear such protective clothing as is required and that they observe all safety precautions.

The Service Provider's chemical store shall comply with the terms of the Food and Environment Protection Act 1985.

The Service Provider shall allow for random inspections of the chemical store by the P.M. The Service Provider shall ensure that all waste containers and pesticides are correctly disposed of in compliance with the appropriate regulations.

Before the Commencement Date the Service Provider shall inform the P.M. of the arrangements made for such disposal. The Service Provider will also inform the P.M. of any changes to these arrangements immediately they occur.

All machinery and equipment used in the application of chemicals shall be correctly maintained throughout the Contract Period to ensure correct application takes place and that no leakage occurs. When using chemicals, the Service Provider shall ensure that no damage or injury is caused to any person, animal, or non-target plant. Any such damage will be the responsibility of the Service Provider. The Service Provider is responsible for any claims for compensation arising from its acts or omissions. The Service Provider and all its operatives shall be fully conversant with all Codes of Practice relating to the use of chemicals. The timing of works shall be such that no spraying takes place during inclement weather, (as defined in the Food and Environment Protection Act 1985), or when rainfall is expected in a period that is less than the period of dry weather specified by the manufacturer for the chemical being used. In carrying out the application of pesticides the Service Provider shall ensure that no area is overdosed and that dosages accord with the manufacturer's recommendations.

## Ampthill Town Council Grounds Maintenance Service

The Service Provider shall ensure that the total area specified is treated. Any spread of pesticides outside the target area, pollution or contamination is the responsibility of the Service Provider. The Service Provider will be held to be responsible for any claims for compensation arising from its acts or omissions.

Consent from the P.M. for all proposed applications of pesticides is to be obtained by the Service Provider prior to any applications.

A copy of the spraying records shall be made available to the P.M. at all times. If the P.M. reasonably believes that an application has not been effective or is not likely to be effective then the Service Provider will be required to make a further application at its own expense.

### **Disposal and Recycling of Arisings**

General litter, dog waste and debris shall be removed to the 1100L bulk bins provided by The Town Council. Only waste generated or collected from the contract sites is to be disposed of in the bins provided.

Sufficient bulk bins will be provided to accommodate collected waste, the cost of disposal will be met by The Town Council. The Town Council will form a separate contract with a waste collection company. Collection will be limited to the bulk bins provided.

The Service Provider is required to compost, recycle or reuse all green waste generated through the core tasks. This will mainly consist of non woody vegetation. Woody material is to be stored on site and will be chipped or collected by an external contractor or by the Service Provider at an agreed additional cost.

When necessary The Town Council will provide suitable skips for the deposit of non toxic bulky waste such as waste collected from allotment sites. The provision of the skip and its collection will be at The Town Council's cost.

## **2.2 HEALTH AND SAFETY**

### **Public User, Health and Safety.**

The Service Provider must also ensure that its operatives are trained to a standard whereby the Town Council is satisfied with the operation being carried out at the appropriate skill level and the finished product for the task.

It is the overall objective of the Town Council to maintain facilities on its sites to the agreed standard.

It is the responsibility of all those employed by the Service Provider to report any health and safety concerns observed during their usual day to day tasks. This will assist with identifying potential hazards, which can be assessed and resolved in a reasonable and timely manner minimising the risk of harm to the public and or those working on the contract.



## Ampthill Town Council Grounds Maintenance Service

### **Tools, Equipment and Transport**

All tools, equipment and transport types to be used in the execution of this contract must be approved by the Authorised Officer prior to first time use and must at all times comply with Health and Safety standards. Tools, equipment and transport must be kept in a serviceable condition throughout the life of the contract and always be made available for inspection if required by the P.M.

### **Health and Safety at Work Risk Assessment**

The Service Provider must comply with Regulation 5 of the Management of Health and Safety at Work Regulations (MHSWR) 1999 requires employers to put in place arrangements to control health and safety risks.

Organisations should have, as a minimum, the processes and procedures required to meet their legal requirements;

- A written health and safety policy.
- Assessments of the risks to employees, customers, partners and any other people who could be affected by their activities; and record those findings in writing (if they employ five or more persons);
- Display the Health and Safety Law poster; or provide workers with the associated leaflet;
- Arrangements for the effective planning, organisation, control, monitoring and review of preventative and protective measures that come from the assessment of risks;
- Access to competent health and safety advice; and consultation with employees about their risks at work and current preventive and protective measures.

## **2.4 SITE CLEANSING INCLUDING LEAF CLEARANCE**

### **General Requirements -**

1. For the purposes of this specification, the areas to be cleansed shall include, but not be limited to, all hard and soft landscaped areas including roads, paths, entrances, car parks and other paved areas; play areas including all safety surfaced areas, paths, grass, shrub, and other planted beds; hedge and fence-lines, ponds and other water features; ditches.
2. For the purposes of this specification the term Litter shall include the removal of all litter, debris, deleterious detritus, dust, plant debris including leaf litter, human and animal excrement, animal carcasses, syringes, cans, cartons, paper, boxes, glass including broken glass, timber, metal, stones or other matter whatsoever; isolated growths of grass and weeds in footpaths and in paved areas collected by litter picking and/or sweeping whichever is appropriate to the Location.

## Ampthill Town Council Grounds Maintenance Service

3. For the purposes of this Specification, the term Cleansing shall include the collection of the materials identified in Paragraph 2. above, from the areas specified in Paragraph 2.1 in all the Locations. All the arisings from the above operations shall be collected and removed by the Service Provider to the bins provided by the Town Council or as instructed at the cost to the Town Council.
4. Broken glass shall be collected and removed immediately from grassed areas and hard surfaces and children's play areas. Fly tipped rubbish is to be photographed in situ and reported to the P.M. If possible Fly tipped rubbish is to be removed as part of the usual cleansing task and disposed of appropriately. Otherwise, the P.M. will advise on collection and disposal. Disposal costs to be paid by the Town Council.
5. The schedule of cleansing of the Locations shall be determined by monthly contract meetings. Litter collection shall include the complete removal of all litter, debris and detritus within a given location. All grass areas shall be litter picked before any mowing operation commences. Cleansing operations as described above, will normally be every working day for car parks and play area. Otherwise as instructed. Operatives should collect any litter when encountered during their daily tasks.

### **Recyclable Litter**

Currently all waste collected is treated as general waste and disposed of as such. If in future waste is collected through 2 or more waste streams such as mixed recyclables and general waste the Service Provider will be required to supply at their full cost suitable bags for each type of waste. The cost to dispose of the waste once collected will remain with the Town Council. Any additional time spent by operatives collecting more than one waste stream will be contained within the agreed tendered staffing provision.

### **Leaf Collection and Disposal General Specifications General**

There will be no routine requirement to collect leaf litter. Leaf litter will be mulch mown or blown to adjacent areas and left in situ subject to avoiding water courses. Any occasional requirement to collect leaf litter will be instructed at monthly contract meetings. This work will be undertaken within the agreed staffing provision. Any additional machinery costs will be met by the Town Council.

### **Emptying Litter Bins**

- a) Litter and dog bins shall be emptied twice weekly, high usage areas including the play area and park car parks will be checked every working day and emptied if more than 30% full and every Friday. The Service Provider will include within their tender costs for bin bags suitable for the type of bin and waste.
- b) Ampthill Great Park – Approximately 33 bins.
- c) No other sites will require bins to be emptied.
- d) Bins are supplied at the cost of the Town Council. Installation or removal will be undertaken by the Service Provider within the staffing resource provided.
- e) Any requirement to wash bins will be determined at the monthly Contract meeting.

## Ampthill Town Council Grounds Maintenance Service

### **2.5 WEED CONTROL**

#### **General**

Weed control shall be required throughout all contract areas.

Herbicide applications shall achieve total die-back of weeds. A schedule of weed control will be issued by the P.M. and shall be completed within the allocated time.

The approved herbicide shall be applied during a period of active growth in accordance with the manufacturer's instructions. Appropriate signage and exclusion of members of the public shall be implemented as necessary. The Service Provider will be required to undertake weed control outside normal working hours at no additional cost if this makes the task more efficient and effective.

Herbicide applications are usually limited to targeted species within the acid grassland areas, developing meadows, around establishing and semi mature trees, within mixed planted beds, site boundaries such as at the allotments, vacant allotment plots, path edges and hard surfaces.

The cost of all pesticides used on the contract will be paid by the Town Council. Product requirements and costs to be submitted by the Service Provider for approval by the Town Council prior to purchase.

#### **Weed Control by Pulling/Hand Weeding**

Hand weeding shall be carried out at locations and frequency as instructed by the P.M. as determined at the monthly Contract meeting. This will normally be limited to mixed planting near the park café and within the play area, ragwort pulling across the park .

The use of strimmers for controlling weeds will not normally be permitted.

#### **Other Methods of Controlling Vegetation / Weeds**

The Service Provider can employ other suitable methods of weed control which are effective and efficient. Consent from the P.M. will be required prior to implementation.

Current Other methods include flailing bracken, mulching , scorching with gas flame, strimming bracken in woodland, cutting and stump treatment of Laurel and self set trees.

#### **Arisings from Vegetation / Weed Control Operations**

All arisings from weed control operations shall be composted on site or if woody stacked for chipping. If instructed by the P.M. chipping will be at an additional cost by agreement or by a contractor appointed by The Town Council.

### **2.6 GRASS AND BRACKEN CUTTING**

#### **Timing of Operations**

Prior to grass cutting operations all litter and debris must be removed from the grass cutting area.

Grass cutting operations shall only take place during the normal working day unless with the prior agreement of the P.M.

## Ampthill Town Council Grounds Maintenance Service

Grass cutting operations shall include strimming around all obstacles, walls and fence lines.

The cutting regime will be determined by the P.M. in February each year.

It is anticipated that a full maintenance visit will be undertaken at the cemetery on 18 occasions per annum. Suitable wheeled pedestrian and boxed rotary mowers to be used for mowing between graves and in ground ashes stones, along path edges and as an apron to longer grass areas. A ride on flail mower can be used for larger areas of grass, bulb areas and long grass areas. The Service Provider will need to move items off ashes stones to enable grass cutting and to return items on completion of grass cutting.

Grass clippings on paths are to be removed / blown off at the end of each site visit.

Grass cutting in the Park and allotments is typically 6 occasions and limited to footpath edges, grass paths, car parks and café zone. A combination of pedestrian rotary mowers and ride on flail mowers or similar approved are to be used.

Bracken cutting is limited to the park and will be undertaken on two occasions per annum using a ride on flail mower or similar approved machine.

### **Long grass including bracken and rough areas**

Long grass and bracken areas which covers the majority of the grassland within the park will be Forage Harvested with all arising composted in the park. This will be carried out on one occasion per annum ( this is in addition to bracken cutting) but maybe split to be undertaken during 2 periods. This will be determined by the P.M. no later than 1<sup>st</sup> July. The extent of work is determined by growth. It typically takes 6 days to undertake this task.

Rough areas including scrub, brambles and areas of bracken not accessible by the forage harvester and includes the steep escarpment is to be cut annually with a flail or suitable approved machine. Suitable machinery to cut no less than 80% of the uneven ground on the steep escarpment will be required. Brushwood cutting can be utilised for any areas inaccessible by machinery. This operation can take place between November 1<sup>st</sup> and February 21<sup>st</sup>.

**Note:** Cattle are used to graze Westminster Field and the North areas of the park. This normally reduces the extent of Long grass and areas which require cutting. Some areas with ant hills will require strimming in lieu of flailing.

### **“Wild Flower” Areas**

Small areas of annual and perennial flower areas located in the play area and café zone shall be cut by flail and / or strimmed once per year in late October or otherwise determined by the PM. All arisings shall be composted on site or left in situ as determined by the PM.

### **Grass Edging**

All grass overgrowth along metalled footpaths are to be knifed off back to the defined footpath edge and arisings removed. Knifing off around ashes plots i.e individual stones may be required once per year. This task will be determined by the PM and undertaken between November and April. Note Knifing off around ashes plots is usually undertaken by The Town Council Maintenance Operative.

## Ampthill Town Council Grounds Maintenance Service

### **Horticultural Tasks**

The P.M. will instruct the Service Provider to undertake a variety of tasks as and when required to maintain and improve areas of annual and perennial planting in the play area and café zone. Appropriate guidance will be provided by the P.M. on site. The Service Provider will in most cases work with the Town Council Maintenance Operative to undertake these tasks.

### **Tree and Woodland Maintenance**

All arboricultural work across the contract area which requires climbing or felling of trees with a trunk diameter greater than 300mm will be undertaken by an external contractor appointed by The Town Council or the Service Provider at an agreed additional cost. The Service Provider shall fell trees which are less than 300mm in diameter, using hand saws and chain saws if qualified to do so. It is not a requirement of the Service Provider to make available operatives qualified in the use of chainsaws.

Arboricultural work will be considered on a task by task basis, only work within the capabilities and qualifications of the Service Providers operatives will be undertaken. The Service Provider shall provide operatives who are adequately skilled to undertake formative pruning of young trees up to a working height of 3.0m i.e from a 1.0m platform. Coppicing, removal of epicormic growth, shrub pruning such as clearance of laurel / holly, tree planting, watering and mulching. This work will be undertaken using hand tools, unless otherwise agreed. Watering newly planted and 1 year established trees will likely require weekly watering.(approximately 22 occasions) Although numbers vary this is likely to be in the region of 40 – 70 trees.

The Service Provider operatives will be required to work with external arboricultural contractors appointed by The Town Council from time to time to facilitate tasks which require ground workers to clear prunings ready for chipping. The Service Provider is not required in this tender to provide a woodchipper or operatives qualified to operate woodchippers.

## **2.10 PLAY AREA MAINTENANCE, REPAIR AND INSPECTION**

### **General**

The Service Provider shall ensure that persons carrying out daily inspections are competent to undertake this work and hold a recognised qualification in playground inspection. The P.M. will require the Service Provider to provide proof of this capability.

The playground will be maintained and inspected in accordance with the guidance set out by the Royal Society for the Prevention of Accidents and the recommendations of BS EN 1176, BS EN 1177 and BS EN 7188.

The Service Provider shall make itself aware of the type of safety surfacing used beneath play equipment i.e.: rubber wet pour, grass mat, loose fill Cushionfall wood chip, rubber mulch. The Service Provider is given the authority to make immediate repairs or take out of action equipment that poses an unacceptable risk. The Service Provider will be reimbursed the actual cost of fixings, materials and spare parts. There will be no opportunity to uplift the cost, operatives are permitted to use reasonable time to source and order parts as necessary.

## Ampthill Town Council Grounds Maintenance Service

The Service Provider shall ensure that these repairs are undertaken in the shortest possible time. The Service Provider will undertake a monthly Operational inspection and submit a report identifying issues and confirming completion of works previously identified. The P.M. will respond to the Service Provider monthly report and confirm work that does / does not need to be undertaken, provide target dates for completion and confirm any tasks that are to be undertaken by external Service Providers. The P.M. may also identify issues / tasks that the Operative has missed. Identified works will be expected to be completed subject to available parts before the next Monthly Inspection

### **Maintain Play Areas**

The play area located in Ampthill Park shall be inspected every working day. At each maintenance inspection the Service Provider shall ensure that the whole surface of the play area is cleared of all litter and debris, litter bins will be emptied at each inspection if more than 30% full and every Friday.

At each maintenance visit the Service Provider shall individually examine all equipment and facilities within the enclosed play area, gym equipment , table tennis table, Performance Area structure including canopy if installed and informal woodland balance beam located outside the enclosed play area but within the vicinity of the play area. This includes all items of play equipment, safety surfaces, boundary fencing, gates, signs, litter bins, seats, plant material and grassed areas or other ground surface.

Should any item be found to be in a defective condition that would pose a hazard to any person the Service Provider shall take action immediately to repair the item or, if this is not possible, restrict access to the area or item by the general public.

The Service Provider shall record the time and name of the operative, inspections undertaken, work carried out for each daily inspection. The format of the record sheet to be agreed with the P.M. and submitted monthly.

Maintenance of the Play Area shall ensure that loose fill surfacing is at the correct level, displaced material is raked back to the correct safety zone. Other surfacing is weed free and swept / blown of any detritus. Picnic benches are moved to even out wear of grass surfacing. Irregular tasks including cleaning below the trampolines, emptying gulleys, power washing equipment or surfaces is also to be undertaken as necessary. Minor repairs including rubber surfacing patch repairs, replacing parts, lubricating bearings, adjusting cableway steel rope etc shall be undertaken when necessary. The site is to be left in a clean and presentable condition. It is expected that a focused maintenance session is undertaken weekly ideally Friday. Other works will also include maintenance of trees including watering , planting, wildflower areas etc.

### **Other tasks**

Refurbishment tasks which require significant works such as dismantling, stripping back and replacement of mechanical parts, extensive replacement of wet pour rubber surfacing i.e individual areas greater than 2m<sup>2</sup>, extensive re-painting of equipment and the installation of complex new play equipment and safer surfacing will be undertaken by external contractors appointed by the P.M. unless otherwise agreed with the Service Provider. Re-painting of small areas, and installation of simple play equipment such as single post and dual post items with

## Ampthill Town Council Grounds Maintenance Service

loosefill safer surfacing shall be installed by the Service Provider if instructed by the P.M. Any materials / equipment, specialist labour and independent inspections will be charged by the Service Provider at cost. The Service Provider's operatives input will be contained within the staffing resource allocated within the tender sum.

### **Annual Inspection**

The Town Council will appoint an independent company to carry out an annual compliance and maintenance inspection of the play area. This inspection will highlight issues which will need to be addressed. The Service Provider will be required to undertake works determined by the P.M. in accordance with the requirements mentioned above.

## **2.11 VOLUNTEERING**

### **General**

The Service Provider will within the first 4 months of the contract be required to provide a volunteering strategy for approval by The Town Council. Once approved the Service Provider is to implement the strategy, establish a volunteer group and provide a programme of volunteering tasks to be implemented within the first year.

In subsequent years the Service Provider is to maintain and manage the volunteer group and provide a programme of volunteering tasks for approval of the P.M.

The Service Provider is to accommodate corporate requests for volunteering subject to agreement of the P.M.

## **2.12 SNOW CLEARANCE AND WINTER GRITTING**

### **General**

During the Contract Period the P.M. may require snow clearing or gritting operations to be undertaken. These operations will be necessary to maintain access and to ensure public safety.

Such operations could be at any site. The P.M. will provide the Service Provider with a schedule of operations at the start of the winter. This schedule is aimed at the undertaking of operations in anticipation of ice or snow fall.

The Town Council will provide materials or if provided by the Service Provider will be recharged to The Town Council at cost.

### **Method of Clearing**

Snow shall be cleared by hand or mechanical methods appropriate to the area to be cleared, as approved by the P.M. Under no circumstances shall mechanical equipment be used if it is likely to cause damage to any feature lying beneath the snow. Should such damage occur the Service Provider shall make good such damage at the Service Provider's expense and to the satisfaction of the P.M. Snow shall be piled in such a manner as to allow access to any facility and to maximise parking space on a cleared car park.

## Ampthill Town Council Grounds Maintenance Service

### **Gritting or Salting**

Immediately after clearance of snow or upon receipt of instructions from the P.M., the Service Provider shall carry out an application of Ice Melt to hard surfaces at the rate of 35gm per square metre.

### **2.13 LANDSCAPE FURNITURE (seats, bins, signs/notice boards)**

#### **General**

The Service Provider shall report to the P.M. any furniture that it finds to be in a dangerous or dilapidated condition. The Service Provider in July shall submit a schedule of furniture that they consider is in need of repair or refurbishment. The P.M. will if necessary, issue an instruction to refurbish furniture within the capabilities of the Service Provider. All materials necessary for the instructed works will be supplied or paid for by The Town Council.

When instructed by the P.M. the Service Provider shall remove furniture, replace furniture and install new furniture including any bases. The Town Council will be responsible for funding the purchase of new or replacement furniture and associated materials.

Furniture is to be cleaned as necessary when observed or reported. Flowers, wreaths and other memorials placed with benches are to be removed when observed. Discretion to be used for recently placed flowers / wreaths.

### **3.0 DEFINITIONS AND CONDITIONS OF CONTRACT**

#### **3.1 Part 1 - Preliminary**

##### **3.1.1 Definitions and Interpretations**

In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

**“Agreement”** means this agreement between Ampthill Town Council hereon referred to as The Town Council and the Service Provider consisting of these clauses and any attached Schedules, the Invitation to Tender (ITT) [the Service Provider’s Tender] [and any other documents (or parts thereof) specified by The Town Council].

**“Approval”** and **“Approved”** means the written consent of the Town Clerk.

**“Authority Property”** means any property, other than real property, issued or made available to the Service Provider by The Town Council in connection with the Agreement.

**“Commencement Date”** means the date on which the Service Provider starts performing the contract.

**“Commercially Sensitive Information”** means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information: which is provided by the Service Provider to The Town Council in confidence for the period set out in that Schedule; and/or that constitutes a trade secret.

**“Commercially Sensitive Information Schedule”** means the Schedule containing a list of the Commercially Sensitive Information.



## Ampthill Town Council Grounds Maintenance Service

**“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information.

**“Town Clerk”** means the person appointed by The Town Council as being authorised to administer the Agreement on behalf of The Town Council or such person as may be nominated by the Town Clerk to act on its behalf.

**“Contracting Authority”** means any contracting authority as defined in the Public Contracts Regulations 2015 other than The Town Council

**“Service Provider’s Representative”** means the individual authorised to act on behalf of the Service Provider for the purposes of the Agreement.

**Default”** means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-Service Providers in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

**“Equipment”** means the Service Provider’s equipment, plant, materials, and such other items supplied and used by the Service Provider in the performance of its obligations under the Agreement. “Environmental Information Regulations” means the Environmental Information Regulations 2004. “Extension” means the extension of the duration of the Agreement agreed in accordance with clause 3.6.7.

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

**“General Change in Law”** means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.

**“Information”** has the meaning given under section 84 of the Freedom of Information Act 2000. “Initial Term” means the period from the Commencement Date to the expiry date or such earlier date of termination or partial termination of the agreement in accordance with clause 3.1.2 of the Agreement.

**“Intellectual Property Rights”** means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

## Ampthill Town Council Grounds Maintenance Service

**“Invitation to Tender”** means an invitation for Service Providers to bid for the Services required by The Town Council

**“Key Personnel”** means those persons named in the Specification as being key personnel.

**“Monitoring Schedule”** means the Schedule containing details of the monitoring arrangements.

**“Month”** means calendar month.

**“Named Employee”** has the meaning given to it in clause 3.4.5.

**“Party”** means a party to the Agreement and “Parties” shall be construed accordingly.

**“Premises”** means the location where the Services are to be performed, as specified in the Specification. **“Price”** means the price exclusive of any applicable Tax, payable to the Service Provider by The Town Council under the Agreement, as set out in the Pricing Schedule, for the full and proper performance by the Service Provider of its obligations under the Agreement but before taking into account the effect of any adjustment of price in accordance with clause 3.3.4.

**“Pricing Schedule”** means the Schedule containing details of the Price.

**“Quality Standards”** means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body, which a skilled and experienced operator engaged in the same type of industry or business as the Service Provider would reasonably and ordinarily be expected to comply as supplemented by the Specification.

**“Regulatory Bodies”** means those government departments and regulatory statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of The Town Council and “Regulatory Body” shall be construed accordingly.

**“Replacement Service Provider”** means any third party Service Provider appointed by The Town Council from time to time, to provide any services which are substantially similar to any of the Services, and which The Town Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement, whether those services are provided by The Town Council internally and/or by any third party.

**“Requests for Information”** shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information

**Regulations. “Schedule”** means a schedule attached to the Agreement.

**“Services”** means the services to be provided as specified in the Specification.

**“Specification”** means the description of the Services to be provided under the Agreement and attached as the Specification Schedule.

**“Specification Schedule”** means the Schedule containing details of the Specification.

## Ampthill Town Council Grounds Maintenance Service

**“Specific Change in Law”** means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of The Town Council, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services.

**“Staff”** means all persons employed by the Service Provider to perform the Agreement together with the Service Provider’s servants, agents and sub-Service Providers used in the performance of the Agreement.

**“Tax”** means value added tax.

**“Tender”** means the Service Provider’s response to the Invitation to Tender

**“Term”** means the period of duration of the Agreement in accordance with clause 3.1.2. “The Service Provider” shall mean the service provider.

**“Users”** means a reasonably representative sample of those users who consume or benefit from the Services

**“Variation”** has the meaning given to it in 3.6.3.

In the Agreement except where the context otherwise requires:

The terms and expressions set out in clause 3.1.1 shall have the meanings ascribed therein;

Words importing the singular meaning include where the context so admits the plural meaning and vice versa;

Words importing the masculine include the feminine and the neuter; Reference to a clause is a reference to the whole of that clause unless stated otherwise;

References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;

Headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

### **3.1.2 Term**

The Agreement shall take effect on the Commencement Date and if not extended in accordance with this agreement, shall expire automatically 60 months later, unless terminated in accordance with the Agreement, or otherwise lawfully terminated.

## **Ampthill Town Council Grounds Maintenance Service**

The Town Council may seek to extend the duration of the Agreement in accordance with clause 3.6.7. During the extension, the obligations under the Agreement shall continue (subject to any Variation) until the expiry of the period specified in accordance with clause 3.6.7.

### **3.1.3 Service Provider's Status (Principal)**

In carrying out the Services the Service Provider shall be acting as principal and not as the agent of The Town Council.

Accordingly:

(a) The Service Provider shall not (and shall procure that its Staff do not) say or do anything that might lead any other person to believe that the Service Provider is acting as the agent of The Town Council; and

(b) Nothing in the Agreement shall impose any liability on The Town Council in respect of any liability incurred by the Service Provider to any other person but this shall not be taken to exclude or limit any liability of The Town Council to the Service Provider that may arise by virtue of either a breach of the Agreement or by negligence on the part of The Town Council, The Town Council's employees, servants or agents.

### **3.1.4 The Town Council's Obligations**

Save as otherwise expressly provided, the obligations of The Town Council under the Agreement are obligations of The Town Council in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain The Town Council in any other capacity, nor shall the exercise by The Town Council of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of The Town Council to the Service Provider.

### **3.1.5 Entire Agreement**

The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation. In the event of and only to the extent of any conflict between the body of the Agreement, Specification, Invitation to Tender, [Service Provider's Tender] [and other documents referred to or attached to the Agreement], the conflict shall be resolved in accordance with the following order of precedence:

- (1) The body of the Agreement shall prevail over;
- (2) The Invitation to Tender;
- (3) The Service Provider's Tender
- (4) Any other document referred to in the Agreement.

The Agreement 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.

## Ampthill Town Council Grounds Maintenance Service

### **3.1.6 Scope of Agreement**

Nothing in the Agreement shall be construed as creating a partnership or a contract of employment between The Town Council and the Service Provider.

### **3.1.7 Notices**

Except as otherwise expressly provided within the Agreement, no Notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.

Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post by the recorded delivery service), or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 3.1.7. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or four hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail.

For the purposes of clause 3.1.7, the address of each Party shall be:

(a) For the Town Council: Park Lodge Ampthill Great Park Woburn Road Ampthill MK45 2HX

(b) For the Service Provider: *(To be inserted)*

For the attention of: *(To be inserted)*

Tel: *(To be inserted)*

E-mail: *(To be inserted)*

Either Party may change its address for service by serving a notice in accordance with this clause.

### **3.1.8 Mistakes in Information**

The Service Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to The Town Council by the Service Provider in connection with the provision of the Services and shall pay The Town Council any extra costs for any discrepancies, errors or omissions therein.

### **3.1.9 Conflicts of Interest**

The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any employee, servant, agent, supplier or sub-Service Provider is placed in a position where in the reasonable opinion of The Town Council there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or such persons and the duties owed to The Town Council under the provisions of the Agreement. The Service Provider will disclose to The Town Council full particulars of any such conflict of interest which may arise.

The provisions of this clause shall apply during the continuance of the Agreement and for a period of two years after its termination.

## Ampthill Town Council Grounds Maintenance Service

### **3.1.10 Fraud**

The Service Provider shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by the Staff, the Service Provider (including its shareholders, members, directors) and/or any of the Service Provider's suppliers, in connection with the receipt of monies from The Town Council. The Service Provider shall notify The Town Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

### **3.2 Part 2 – The Provision of the Services**

#### **3.2.1 The Services**

The Service Provider shall provide the Services during the Term in accordance with The Town Council's requirements as set out in the Specification and the terms of the Agreement. The Town Council shall have the power to inspect and examine the performance of the Services at The Town Council's Premises at any reasonable time.

The Service Provider shall at all times deliver the Services in accordance with the Law.

If The Town Council informs the Service Provider that The Town Council considers that any part of the Services do not meet the requirements of the Agreement or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of The Town Council, the Service Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by The Town Council.

Subject to The Town Council providing Approval in accordance with clause 3.2.3, timely provision of the Services shall be of the essence of the Agreement, including in relation to commencing the provision of the Services within the time agreed or on a specified date.

Without prejudice to any other rights and remedies The Town Council may have pursuant to the Agreement, the Service Provider shall reimburse The Town Council for all reasonable costs incurred by The Town Council which have arisen as a consequence of the Service Provider's delay in the performance of its obligations under the Agreement and which delay the Service Provider has failed to remedy following reasonable notice from The Town Council. For the avoidance of doubt, the Service Provider's obligation to reimburse The Town Council under this clause does not arise to the extent that the delay was caused by a delay or failure by The Town Council to provide Approval under clause 3.2.3.

#### **3.2.2 Manner of Carrying Out the Services**

The Town Council will provide the Service Provider within Ampthill Great Park a depot building consisting of a two bay machinery store / workshop with adjoining office, mess room and welfare facilities. An adjacent external compound will also be provided of approximately 100m<sup>2</sup>. These facilities will be provided rent free.

The Service Provider shall be responsible for the repair and maintenance of the electrical and plumbing services within the building together with the repair and maintenance of doors. The

## Ampthill Town Council Grounds Maintenance Service

Town Council will be responsibility for the maintenance of the building structure – i.e. walls, roof, doors, septic tank and roller shutter doors.

The Service Provider will be responsible for all water, electric and sewerage charges. The Town Council will re-charge the Service Provider at least annually.

The Service Provider will need to arrange provision and pay all costs for Broadband and Telecom services.

The Service Provider's vehicles and equipment shall only be parked/stored overnight within the Tractor Shed or compound.

The Council van will be parked within the tractor shed overnight.

The depot building is security alarmed, but doesn't have any security cameras.

The Service Provider will be required to provide a key holder for the security company who will alert when a security breach is detected.

The Service Provider will be required to pay the costs of the Security provision which is currently approximately £200 per annum. The Service Provider can provide alternative security arrangements if they so wish.

Provision of additional security can be provided by the Service Provider entirely at their expense with consent of The Town Council.

The Service Provider will be responsible for all Health and Safety requirements for the purpose to which the building will be used. These may include storage of fuels and pesticides, Control of Substances hazardous to Health, Fire fighting equipment and Legionella testing and such like.

The Service Provider shall provide all the Equipment necessary for the provision of the Services.

The Service Provider shall make no delivery of Equipment nor commence any work on The Town Council's Premises without obtaining The Town Council's prior Approval.

All Equipment brought onto The Town Council's Premises shall be at the Service Provider's own risk. The Service Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto The Town Council's Premises will remain the property of the Service Provider.

The Service Provider shall maintain all items of Equipment within The Town Council's Premises in a safe, serviceable and clean condition.

All Equipment shall be at the risk of the Service Provider and The Town Council shall have no liability for any loss of or damage to any Equipment unless the Service Provider is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of The Town Council.

The Town Council shall have the power at any time during the performance of the Services to order in writing that the Service Provider: remove from The Town Council's Premises any Equipment which in the opinion of The Town Council is either hazardous, noxious or not in

## Ampthill Town Council Grounds Maintenance Service

accordance with the Agreement; and if The Town Council has ordered the Service Provider to remove any item of Equipment in accordance with this clause, to replace such item with a suitable substitute item of equipment.

On completion of the Services the Service Provider shall remove the equipment together with any other materials used by the Service Provider to provide the services in order to leave The Town Council's premises in a clean, safe and tidy condition. For the avoidance of doubt the Service Provider is solely responsible for making good any damage to The Town Council's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Service Provider or any of the Service Provider's employees, servants, agents, suppliers or sub-Service Providers.

Access to The Town Council's Premises shall not be exclusive to the Service Provider but shall be limited to such Staff and the Service Provider's suppliers as are necessary to perform the Services concurrently with the execution of work by others. The Service Provider shall co-operate free of charge with such others on The Town Council's premises as The Town Council may reasonably require. The Service Provider shall provide adequate space to store over night the Town Council van and access for The Town Council Maintenance Operative, P.M. or other designated Town Council staff to the depot building.

### **3.2.3 Standard of Work**

The Service Provider 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 the standard of Services has not been specified in the Agreement, the Service Provider shall agree the relevant standard of Services with the P.M. prior to execution, and shall execute the Agreement with reasonable care and skill and in accordance with good industry practice.

The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior approval.

The signing by the P.M. (or his representative) of time sheets or other similar documents shall not be construed as implying the Service Provider's compliance with the Agreement.

### **3.2.4 Key Personnel**

Key Personnel shall not be released from providing the Services without the agreement of The Town Council, except by reason of long-term sickness, termination of employment and other extenuating circumstances.

Any replacements to the Key Personnel shall be subject to the agreement of The Town Council. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

The Town Council shall not unreasonably withhold its agreement under clause 3.2.4. Such agreement shall be conditional on appropriate arrangements being made by the Service Provider to minimise any adverse impact on the Agreement which could be caused by a change in Key Personnel.



## Ampthill Town Council Grounds Maintenance Service

### **3.2.5 Service Provider's Staff**

The Town Council reserves the right under the Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of The Town Council: any member of the Staff; or any person employed or engaged by a sub-Service Provider, agent or servant of the Service Provider whose admission or continued presence would be, in the reasonable opinion of The Town Council, undesirable.

The Service Provider shall ensure that it complies with UK requirements with regard to the safeguarding of children and vulnerable adults including and in particular, the use of the appropriate Disclosing and Debarring Service Check for all staff engaged on the provision of the service.

If and when directed by The Town Council, the Service Provider shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Agreement to any premises occupied by or on behalf of The Town Council, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as The Town Council may reasonably desire.

The Service Provider's Staff, engaged within the boundaries of any of The Town Council's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

The decision of The Town Council as to whether any person is to be refused access to any premises occupied by or on behalf of The Town Council shall be final and conclusive.

The Service Provider shall bear the cost of any notice, instruction or decision of The Town Council under this clause.

### **3.2.6 Inspection of Sites and Premises**

Save as The Town Council may otherwise direct, the Service Provider is deemed to have inspected the sites and premises before tendering so as to have understood the nature and extent of the Agreement to be carried out and be satisfied in relation to all matters connected with the performance of the Agreement.

The Town Council shall, at the request of the Service Provider, grant such access as may be reasonable for the purpose referred to in clause 3.2.6.

### **3.2.7 Sub-Contracting for the Delivery of the Services**

Where the Service Provider enters into a sub-contract with a supplier or Service Provider for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Service Provider to the sub-Service Provider within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

### **3.2.8 TUPE**

## Ampthill Town Council Grounds Maintenance Service

The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended (TUPE) may apply in respect of this service provision, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) may transfer to the Service Provider on the commencement of the Contract.

During the period of at least three months preceding the expiry of the Contract or after The P.M. has given notice to terminate the Contract or the Service Provider stops trading, and within 20 working days of being so requested by The P.M., the Service Provider shall fully and accurately disclose to The P.M. for the purposes of TUPE all information relating to its employees engaged in providing Services under the Contract in particular, but not necessarily restricted to, the following:

- (a) The total number of personnel whose employment with the Service Provider is liable to be terminated at the expiry of this Contract but for any operation of law; and
- (b) For each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); and
- (c) Information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and
- (d) Details of pensions entitlements, if any.

The Service Provider shall permit The P.M. to use the information for the purposes of TUPE and of re-tendering. The Service Provider will co-operate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.

The Service Provider agrees to indemnify The P.M. fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 3.2.8

In the event that the information provided by the Service Provider in accordance with this Clause becomes inaccurate, the Service Provider shall notify The P.M. of the inaccuracies and provide the amended information.

The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its termination.

During the last year of this Contract as reasonably anticipated from time to time the Service Provider shall not without the prior written consent of The Town Council such consent not to be unreasonably withheld or delayed

- (i) Materially amend the terms of employment of any of the Staff; or
- (ii) Other than in the normal course of business or when necessity dictates such action replace any of the Staff or deploy any other person to perform the Services.

## Ampthill Town Council Grounds Maintenance Service

The Service Provider shall not enter into any contract of employment which contains provision for alteration of any term or redeployment of the employee by reference in either case to the termination of this Contract.

If the Service Provider is in breach of Condition 3.2.8;

- a) The Town Council shall be entitled to require the Service Provider to withdraw the employee forthwith from the provision of the Service; and
- b) If such employee transfers under TUPE to a subsequent provider the Service Provider shall pay to The Town Council on such transfer an amount equal to the statutory redundancy entitlement of that employee calculated according to the earliest practicable date on which the transferee employer could terminate the employment of the employee by reason of redundancy.

### **3.3 Part 3 – Payment and Price**

#### **3.3.1 Price**

In consideration of the performance of the Service Provider's obligations under the Agreement by the Service Provider, The Town Council shall pay the Price in accordance with clause 3.3.2.

In the event that the cost to the Service Provider of performing its obligations under the Agreement increases or decreases as a result of a change of Law, the provisions of clause 3.3.4 shall apply.

The Town Council shall pay the Service Provider, on the production of a valid Tax invoice, in addition to the Price, a sum equal to the Tax chargeable on the value of the Services provided in accordance with the Agreement.

#### **3.3.2 Payment and Tax**

The Town Council shall pay the undisputed sums due to the Service Provider in cleared funds within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of The Town Council.

Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the P.M. to substantiate the invoice.

Tax, where applicable, shall be shown separately on valid Tax invoices as a strictly net extra charge.

The Town Council may reduce payment in respect of any Services which the Service Provider has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of The Town Council

The Service Provider shall not suspend the supply of the Services unless the Service Provider is entitled to terminate the Agreement under clause 3.8.2 for failure to pay undisputed charges.

## Ampthill Town Council Grounds Maintenance Service

### **3.3.3 Recovery of Sums Due**

Wherever under the Agreement any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to The Town Council in respect of any breach of the Agreement), The Town Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Service Provider under the Agreement or under any other agreement or contract with The Town Council.

Any overpayment by The Town Council to the Service Provider, whether of the Price or of Tax, shall be a sum of money recoverable by The Town Council from the Service Provider.

The Service Provider shall make any payments due to The Town Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by The Town Council to the Service Provider.

### **3.3.4 Price Adjustment on Extension**

Subject to clause 3.3.1 the price shall remain fixed for the first year of the contract.

The price shall be revised on each anniversary of the contract by the Consumer Price Index rate as determined by the Office of National Statistics on the 31<sup>st</sup> March each year. The rate of any increase will be limited to a maximum of 5% in any year irrespective of any higher rate of increase within the CPI for any given year.

In the event of a possible contract extension, The Town Council reserves the right to review any charges payable to the Service Provider for the provision of services beyond the Initial Term.

If the Town Council approaches the Service Provider in accordance with clause 3.6.7 concerning an extension, payment for that period will be determined by negotiation.

### **3.3.5 Change of Law**

The Service Provider shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Agreement nor be entitled to an increase in the Price and/or any charges payable by the Service Provider as the result of:

A General Change in Law; or

A Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise.

If a Specific Change in Law during the Term or during any extension agreed pursuant to clause 3.3.4, the Service Provider shall notify The Town Council of the likely effects of that change, including: whether any change is required to the Services, the Price or the Agreement; and whether any relief from compliance with the Service Provider's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

## Ampthill Town Council Grounds Maintenance Service

As soon as practicable after any notification in accordance with clause 3.3.6 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Service Provider can mitigate the effect of the Specific Change of Law, including:

- (a) Providing evidence that the Service Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub Service Providers;
- (b) Demonstrating that a foreseeable Specific Change in Law had been taken into account by the Service Provider before it occurred;
- (c) Giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
- (d) Demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.

Any increase in the Price or relief from the Service Provider's obligations agreed by the Parties pursuant to this clause 3.3.5 shall be implemented in accordance with clause 3.6.3.

### **3.4 Part 4 - Statutory Obligations, Codes of Practice and Regulations**

#### **3.4.1 Prevention of Corruption**

The Service Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of The Town 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 Town 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 candidates 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 Town Council by the Service Provider or on the Service Provider's behalf.

Where the Service Provider or Service Provider's employees, servants, sub-Service Providers, suppliers or agents or anyone acting on the Service Provider's behalf, engages in conduct prohibited by clauses 3.4.1 in relation to this or any other contract with The Town Council, The Town Council has the right to: terminate the Agreement and recover from the Service Provider the amount of any loss suffered by The Town Council resulting from the termination; or recover in

## Ampthill Town Council Grounds Maintenance Service

full from the Service Provider any other loss sustained by The Town Council in consequence of any breach of this clause, whether or not the Agreement has been terminated.

### **3.4.2 Discrimination**

The Service Provider 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 Publisher shall not unlawfully discriminate within the meaning and scope of any Act of Parliament that may be in force during the term of the Contract.

The Service Provider shall take all reasonable steps to secure the observance of clause 3.4.2 by all servants, employees or agents of the Service Provider and all suppliers and sub-Service Providers employed in the execution of the Contract.

### **3.4.3 The Contracts (Rights of Third Parties) Act 1999**

No person who is not a Party to the Agreement (including without limitation any employee, officer, agent, representative, or sub-Service Provider of either The Town Council or the Service Provider) shall have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to the clause 30. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

### **3.4.4 Environmental Requirements**

The Service Provider shall, when working on The Town Council's Premises, perform the Agreement in accordance with good environmental practise, which is to conserve energy, water, wood, paper and other resources, reduce waste and maximise recycling. All green waste shall be recycled on site.

## **3.5 Part 5 - Protection of Information**

### **3.5.1 Data Protection Act and General Data Protection Regulation**

The Service Provider shall (and shall procure that any of its Staff involved in the provision of the Agreement) comply with any notification requirements under the Data Protection Act 1998 ("DPA") and General Data Protection Regulation 2016 ("GDPR") and both Parties will duly observe all their obligations under the DPA which arise in connection with the Agreement.

The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

### **3.5.2 Confidentiality**

Each Party:-

Shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as

## Ampthill Town Council Grounds Maintenance Service

may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

The Service Provider shall take all necessary precautions to ensure that all Confidential Information obtained from The Town Council under or in connection with the Agreement:

- (a) Is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
- (b) Is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Agreement.

Where it is considered necessary in the opinion of The Town Council, the Service Provider shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Agreement.

The Service Provider shall ensure that Staff or its professional advisors or consultants are aware of the Service Provider's confidentiality obligations under the Agreement. The Service Provider shall not use any Confidential Information it receives from The Town Council otherwise than for the purposes of the Agreement.

Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

### **3.5.3 Freedom of Information**

The Service Provider acknowledges that The Town Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with The Town Council (at the Service Provider's expense) to enable The Town Council to comply with these Information disclosure requirements.

The Service Provider shall and shall procure that its sub-Service Providers shall:

- (a) Transfer the Request for Information to The Town Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
- (b) Provide The Town Council with a copy of all Information in its possession or power in the form that The Town Council requires within five Working Days (or such other period as The Town Council may specify) of The Town Council requesting that Information; and
- (c) Provide all necessary assistance as reasonably requested by The Town Council to enable The Town Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations].

The Town Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

## Ampthill Town Council Grounds Maintenance Service

(a) Is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

(b) Is to be disclosed in response to a Request for Information, and in no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by The Town Council.

The Service Provider acknowledges that The Town Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information: without consulting with the Service Provider, or following consultation with the Service Provider and having taken its views into account.

The Service Provider shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit The Town Council to inspect such records as requested from time to time.

The Service Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that The Town Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 3.5.3.

### **3.5.4 Security of Confidential Information**

In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement, the Service Provider undertakes to maintain security systems approved by The Town Council. Where necessary to prevent such access, The Town Council may require the Service Provider to alter any security systems at any time during the Term at the Service Provider's expense.

The Service Provider will immediately notify The Town Council of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Service Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Service Provider's obligations under clause 3.5.2. The Service Provider will co-operate with The Town Council in any investigation that The Town Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

### **3.5.5 Publicity, Media and Official Enquiries**

Without prejudice to The Town Council's obligations under the FOIA and except as required under the Public Contract Regulations 2015, neither Party shall make any 54 press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party.

Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause 3.5.5 by all their servants, employees, agents, professional advisors and consultants. The Service Provider shall take all reasonable steps to ensure the observance of the provisions of clause 3.5.5 by its sub-Service Providers.



## Ampthill Town Council Grounds Maintenance Service

The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

### **3.5.6 Security**

The Town Council shall be responsible for maintaining the security of the various sites. The Service Provider shall comply with all reasonable security requirements of The Town Council while on the Premises, and shall procure that all of its employees, agents, servants and sub-Service Providers shall likewise comply with such requirements.

The security of the Park Depot is the responsibility of the Service Provider. Refer to 3.2.2

### **3.5.7 Intellectual Property Rights**

All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

- (a) Furnished to or made available to the Service Provider by The Town Council shall remain the property of The Town Council;
- (b) Prepared by or for the Service Provider for use, or intended use, in relation to the performance of the Agreement shall belong to The Town Council and the Service Provider shall not, and shall procure that the Service Provider's employees, servants, agents, suppliers and sub-Service Providers shall not, (except when necessary for the implementation of the Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Agreement) which the Service Provider may obtain in performing the Agreement except information which is in the public domain.

The Service Provider shall obtain Approval before using any material, in relation to the performance of the Agreement which is or may be subject to any third party Intellectual Property Rights. The Service Provider shall procure that the owner of the rights grants to The Town Council a non-exclusive licence, or if itself a licensee of those rights, shall grant to The Town Council an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Service Provider or to any other third party providing services to The Town Council, and shall be granted at no cost to The Town Council.

It is a condition of the Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Service Provider shall during and after the Term on written demand indemnify and keep indemnified The Town Council against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which The Town Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:

- (a) Designs furnished by The Town Council;
- (b) The use of data supplied by The Town Council which is not required to be verified by the Service Provider under any provision of the Agreement.

## Ampthill Town Council Grounds Maintenance Service

The Town Council shall notify the Service Provider in writing of any claim or demand brought against The Town Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Service Provider. The Service Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Service Provider, provided always that the Service Provider:

- (a) Shall consult The Town Council on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) Shall take due and proper account of the interests of The Town Council; and
- (c) Shall not settle or compromise any claim without The Town Council's prior written consent (not to be unreasonably withheld or delayed).

The Town Council shall at the request of the Service Provider afford to the Service Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against The Town Council or the Service Provider for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Agreement and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause 3.5.7.

The Town Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by The Town Council or the Service Provider in connection with the performance of the Agreement.

If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Agreement or in the reasonable opinion of the Service Provider is likely to be made, the Service Provider may at its own expense and subject to the consent of The Town Council (not to be unreasonably withheld or delayed) either:

- (a) Modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or
- (b) Procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to The Town Council.

At the termination of the Agreement the Service Provider shall immediately return to The Town Council all materials, work or records held, including any back-up media.

The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

## Ampthill Town Council Grounds Maintenance Service

### **3.6 Part 6 – Control of the Contract**

#### **3.6.1 Assignment and Sub-Contracting**

The Service Provider shall not assign, sub-contract or in any other way dispose of the Agreement or any part of it without prior Approval. Sub-contracting any part of the Agreement shall not relieve the Service Provider of any obligation or duty attributable to the Service Provider under the Agreement.

The Service Provider shall be responsible for the acts and omissions of its sub-Service Providers as though they are its own.

Where The Town Council has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Service Provider to The Town Council within [2] Working Days of issue.

The Service Provider shall not use the services of self-employed individuals without prior Approval.

#### **3.6.2 Waiver**

The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.

No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 3.1.7.

A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

**3.6.3 Variation of the Services** The Town Council reserves the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever. Such a change is hereinafter called “a Variation”.

Any such Variation shall be communicated in writing by the P.M. to the Service Provider’s Representative in accordance with the notice provisions of clause 3.1.7. All Variations shall be in the form of an addendum to the Agreement.

In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by The Town Council and agreed in writing with the Service Provider and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of clause 3.9.2.

The Service Provider shall provide such information as may be reasonably required to enable such varied price to be calculated.

## Ampthill Town Council Grounds Maintenance Service

### **3.6.4      Severability**

If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

### **3.6.5      Remedies in the Event of Inadequate Performance**

Where a complaint is received or a problem indicated in any Customer Satisfaction Survey about the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Agreement, then the P.M. shall take all reasonable steps to ascertain whether the complaint is valid. If the P.M. so decides, he may uphold the complaint, or take further action in accordance with the provisions of clause 3.8.1 of the Agreement.

In the event that The Town Council is of the reasonable opinion that there has been a material breach of the Agreement by the Service Provider, or the Service Provider's performance of its obligations under the Agreement has failed to meet the requirement set out in the Specification Schedule, then The Town Council may, without prejudice to its rights under clause 3.8.1 of the Agreement, do any of the following:

- (a) Make such deduction from the Price to be paid to the Service Provider as The Town Council shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Service Provider shall have failed to provide or performed inadequately.
- (b) Without terminating the Agreement, itself provide or procure the provision of part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of The Town Council that the Service Provider will be able to perform such part of the Services in accordance with the Agreement;
- (c) Without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or
- (d) Terminate, in accordance with clause 3.8.1, the whole of the Agreement.

The Town Council may charge to the Service Provider any cost reasonably incurred by The Town Council and any reasonable administration costs in respect of the provision of such part of the relevant Services by The Town Council or by a third party to the extent that such costs exceed

## Ampthill Town Council Grounds Maintenance Service

the Price which would otherwise have been payable to the Service Provider for such part of the relevant Services.

If the Service Provider fails to perform any of the Services to the reasonable satisfaction of The Town Council and such failure is capable of remedy, then The Town Council shall instruct the Service Provider to remedy the failure and the Service Provider 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 The Town Council may reasonably direct.

In the event that:

- (a) The Service Provider fails to comply with the Clause 3.6.5 above and the failure, is materially adverse to the commercial interests of The Town Council or prevent The Town Council from discharging a statutory duty; or
- (b) The Service Provider persistently fails to comply with clause 3.6.5 above, The Town Council reserves the right to terminate the Agreement by notice in writing with immediate effect.

### **3.6.6 Remedies Cumulative**

Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

### **3.6.7 Possible Extension of Term**

Subject to satisfactory performance by the Service Provider during the Initial Term, The Town Council may wish to extend the Agreement once or on multiple occasions for a further period of up to 1 or 2 years. The Town Council may approach the Service Provider if it wishes to do so before the end of the Initial Term. The clauses in the Agreement will apply throughout any such extended period unless otherwise stated to the contrary.

### **3.6.8 Novation**

The Town Council shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority, private sector body or any other body established under statute provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations under this Agreement. The Town Council shall be entitled to disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Agreement by the Service Provider. In such circumstances The Town Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Agreement and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

## Ampthill Town Council Grounds Maintenance Service

### 3.7 **Part 7 – Liabilities**

#### 3.7.1 **Indemnity and Insurance**

Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

The Service Provider shall indemnify and keep indemnified The Town Council fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. This clause shall not apply to the extent that the Service Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or sub-Service Providers, or by any circumstances within its or their control. Subject always to clause 3.7.1, the liability of either Party for Defaults shall be subject to the financial limits set out in this clause 3.7.1.

(a) The aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Agreement shall in no event exceed two million pounds (£2 million).

(b) The annual aggregate liability under the Agreement of either Party for all Defaults (other than a Default governed by clause 3.5.6 or clause 3.7.1 shall in no event exceed 10% of the amount paid or payable by The Town Council for the Services (as determined at the date on which the liability arises) to the Service Provider for the Service performed in that Year.

Subject always to clause 3.7.1, in no event shall either Party be liable to the other for:

- (a) Loss of profits, business, revenue or goodwill; and/ or
- (b) Indirect or consequential loss or damage.

The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover of £20 million in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the Agreement, 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 Service Provider.

The Service Provider shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.

The Service Provider shall produce to the P.M., 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.

## Ampthill Town Council Grounds Maintenance Service

If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the Agreement The Town Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Agreement. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability referred to in clause 3.7.1.

### **3.7.2 Warranties and Representations**

The Service Provider warrants and represents that:

- (a) The Service Provider has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Service Provider;
- (b) The Service Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice;
- (c) All obligations of the Service Provider pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (d) The Service Provider is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Agreement.

**3.7.3 Liquidated Damages** In the event that The Town Council is of the opinion that there has been a fundamental breach of this Contract by the Service Provider, or the Service Provider's performance of its duties under the contract has failed to meet the requirements, then The Town Council may make such deduction from the payment to be made to the Service Provider as The Town Council shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services.

## **3.8 Part 8 – Default, Disruption and Termination**

### **3.8.1 Termination on Change of Control and Insolvency**

The Town Council may terminate the Agreement by notice in writing with immediate effect where:

- (a) The Service Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Agreement; or
- (b) The Service Provider is an individual or a firm and a petition is presented for the Service Provider's bankruptcy, or a criminal bankruptcy order is made against the Service

## Ampthill Town Council Grounds Maintenance Service

Provider or any partner in the firm, or the Service Provider or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Service Provider's or firm's affairs; or

- (c) The Service Provider is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
- (d) Where the Service Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (e) Any similar event occurs under the law of any other jurisdiction.

The Town Council may only exercise its right under clause 3.8.1 within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Service Provider shall notify the P.M. immediately when any change of control occurs.

If the Service Provider, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, The Town Council shall be entitled to terminate the Agreement by notice to the Service Provider or the Service Provider's Representative with immediate effect.

### **3.8.2 Termination on Default**

The Town Council may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Service Provider or the Service Provider's Representative with immediate effect if the Service Provider commits a Default and if:

- (a) The Service Provider has not remedied the Default to the satisfaction of The Town Council within 25 Working Days, or such other period as may be specified by The 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 The Town Council, capable of remedy; or
- (c) The Default is a material breach of the Agreement.

In the event that through any Default of the Service Provider, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse The Town Council for any costs charged in connection with such Default of the Service Provider.



## Ampthill Town Council Grounds Maintenance Service

The Service Provider may terminate the Agreement if The Town Council is in material breach of its obligations to pay undisputed charges by giving The Town Council 60 Working Days' notice specifying the breach and requiring its remedy. The Service Provider's right of termination under this clause 3.8.2 shall not apply to non-payment of the charges or Price where such non-payment is due to The Town Council exercising its rights under clauses 3.3.4 and 3.6.5.

### **3.8.3 Break**

The Town Council shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement at any time by giving three Months' written notice to the Service Provider.

### **3.8.4 Consequences of Termination**

Where The Town Council terminates the Agreement under clause 3.8.1, or terminates the provision of any part of the Agreement under that clause, and then makes other arrangements for the provision of Services, The Town Council shall be entitled to recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by The Town Council throughout the remainder of the Initial Term or any Extension. The Town Council shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under clause 3.8.2, no further payments shall be payable by The Town Council to the Service Provider until The Town Council has established the final cost of making those other arrangements.

Where The Town Council terminates the Agreement under clause 3.8.3, The Town Council shall indemnify the Service Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Service Provider by reason of the termination of the Agreement, provided that the Service Provider takes all reasonable steps to mitigate such loss. Where the Service Provider holds insurance, the Service Provider shall reduce its unavoidable costs by any insurance sums available. The Service Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Service Provider as a result of termination under 3.8.2.

The Town Council shall not be liable under clause 3.8.4 to pay any sum which:

- (a) Was claimable under insurance held by the Service Provider, and the Service Provider 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; or
- (b) When added to any sums paid or due to the Service Provider under the Agreement, exceeds the total sum that would have been payable to the Service Provider if the Agreement had not been terminated prior to the expiry of the Initial Term.

### **3.8.5 Disruption**

The Service Provider shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of The Town Council, its employees or any other Service Provider employed by The Town Council.

## Ampthill Town Council Grounds Maintenance Service

The Service Provider shall immediately inform The Town Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.

In the event of industrial action by the Staff or the Service Provider's suppliers, the Service Provider shall seek The Town Council's Approval to its proposals for the continuance of the performance of the Services in accordance with its obligations under the Agreement.

If the Service Provider's proposals referred to in clause 3.8.5 are considered insufficient or unacceptable by The Town Council, then the Agreement may be terminated by The Town Council by notice in writing with immediate effect.

If the Service Provider is temporarily unable to fulfil the requirements of the Agreement owing to disruption of normal business by direction of The Town Council, an appropriate allowance by way of extension of time will be approved by The Town Council. In addition, The Town Council will reimburse any additional expense incurred by the Service Provider in fulfilling the provisions of the Agreement as a result of such disruption.

### **3.8.6 Recovery upon Termination**

Termination or expiry of the Agreement shall be without prejudice to any rights and remedies of the Service Provider and The Town Council accrued before such termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

At the end of the Term (and howsoever arising) the Service Provider shall forthwith deliver to The Town Council upon request all The Town Council's Property (including but not limited to materials, documents, information, access keys) relating to the Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-Service Providers and in default of compliance with this clause The Town Council may recover possession thereof and the Service Provider grants licence to The Town Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted suppliers or sub-Service Providers where any such items may be held.

At the end of the Term (howsoever arising) and/or after the Term the Service Provider shall provide assistance to The Town Council and any new Service Provider appointed by The Town Council to continue or take over the performance of the Agreement in order to ensure an effective handover of all work then in progress. Where the end of Term arises due to the Service Provider's default, the Service Provider shall provide such assistance free of charge. Otherwise the Town Council shall pay the Service Provider's reasonable costs of providing the assistance, and the Service Provider shall take all reasonable steps to mitigate such costs.

The provisions of this clause shall survive the continuance of the Agreement and indefinitely after its termination.

### **3.8.7 Force Majeure**

For the purpose of this clause, "Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental

## Ampthill Town Council Grounds Maintenance Service

regulations, fire, flood, or any disaster. It does not include any industrial action occurring amongst the Service Provider's Staff or any staff of any sub-Service Provider.

Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of 6 Months, either Party may terminate the Agreement by notice in writing with immediate effect.

Any failure or delay by the Service Provider in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-Service Provider or supplier shall be regarded as due to Force Majeure only if that agent, sub-Service Provider or supplier is itself impeded by Force Majeure from complying with an obligation to the Service Provider.

Clause 3.8.6 does not affect The Town Council's rights under clause 3.8.5.

If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in clause 3.8.6 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue. 66 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Agreement shall be any event qualifying for Force Majeure hereunder.

### **3.9 Part 9 – Dispute and Law**

#### **3.9.1 Governing Law**

The Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of [England].

#### **3.9.2 Dispute Resolution**

The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within [20] Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the [finance director] (or equivalent) of each Party.

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

If the dispute cannot be resolved by the Parties pursuant to clause 3.9.2 the dispute shall be referred to mediation pursuant to the procedure set out in clause 3.9.2 unless

- (a) The Town Council considers that the dispute is not suitable for resolution by mediation; or (b) the Service Provider does not agree to mediation.

## Ampthill Town Council Grounds Maintenance Service

The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Service Provider (or employee, agent, supplier or sub-Service Provider) shall comply fully with the requirements of the Agreement at all times.

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 Centre for Effective Dispute Resolution (“CEDR”) 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 CEDR 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 reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
- (f) 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.

### **3.10 Part 10 - Monitoring and Liaison Meetings**

The Service Provider shall be responsible for monitoring its performance of the Agreement and shall provide The P.M. with a record of any aspect of its performance on which supporting information is requested.

Liaison meetings between the Service Provider and The P.M. shall be held as required by either party, in addition to the meetings described above to consider new services.

A record of all meetings shall be made by the Service Provider and copies provided to The P.M.

The Service Provider shall be required to attend at least six meetings per annum with the Town Council

## Ampthill Town Council Grounds Maintenance Service

### **4.0 QUALITY QUESTIONNAIRE**

All tenderers must submit the following information as part of their tender submission. The responses to the Quality Questionnaire will be assessed and scored. The Quality Questionnaire scores will make up 40% of the total tender assessment. The combined scores for Quality Questionnaire and Tender Price will determine short listing of potential Service Providers and /or their appointment.

#### **1/ ORGANISATION AND MANAGEMENT - 7 Points**

- How will the service be managed?
- Works scheduling/programming arrangements.
- Attendance recording, monitoring task progression and quality of delivery.
- Communication between the Service Provider and Town Council.
- Response to Town Council instructions and revision to planned works.
- Short notice site meeting and emergency cover arrangements.
- Complaints procedure.
- Procedures for dealing with risks and accidents and compliance with Health and Safety at work regulations.

#### **2/ Employee Terms and Conditions / Retention - 15 Points**

- Working Hours
- Holiday entitlement
- Hourly rate of pay
- Employer pension contributions
- Training and career progression.
- Other employee benefits.

#### **3/ TRANSPORT/EQUIPMENT/MACHINERY - 11 Points**

Details of vehicles and machinery to be used on the contract. Provide a schedule of vehicles and machinery that you will provide as permanently available and available to undertake specific tasks or seasonally.

How will you deal with machinery breakdowns and provision of alternative machinery to replace machinery that is temporary unavailable.

#### **4/ SERVICE DELIVERY - 17 Points**

Details of staff who will be employed on the contract, e.g. qualifications, experience, training courses. What arrangements will there be in place to cover for absenteeism. Out of normal working hours contact arrangements. How will you recruit and manage volunteers?

- Working hours / flexible working
- Number of Full Time Equivalent staff, Number of productive hours delivered per full time equivalent employee or total number of productive hours delivered per annum.
- Public engagement and volunteering
- Work Programming

## Ampthill Town Council Grounds Maintenance Service

- Wearing of uniforms.
- Mobile phones.
- Dealing with dead or injured wildlife.
- Conduct of staff.
- Depot Facilities, cleanliness and management.
- Emergency Response arrangements.

### **5/ 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 and provision of equipment and machinery prior to contract start date.
- Pre – commencement meeting.
- Communication systems.
- Premises to be used and security arrangements.
- Administration and central support proposals.
- Submission of Risk Assessments / Method Statements
- Initial operational programme.

### **5.0 TENDER PRICE – 90 Points (60%)**

#### **5.1 Pricing of Tender**

The Tender price is to include all operational related costs, i.e. employees, provision of transport and machinery, supply of consumables, insurances, departmental and corporate support costs, supervisory and management costs and in addition, the costs associated with:

- Attending meetings with Ampthill Town Council.
- Attending site inspections instructed by the Town Council.
- Cleaning and maintaining the depot and external storage area.

## Ampthill Town Council Grounds Maintenance Service

### 6.0 TENDER FORM

I/we the undersigned hereby offer to supply in accordance with The Town Council's Tender documentation (Terms and Conditions of Contract, Instructions to Tenderers, Specification, Quality Questionnaire the services specified to the satisfaction of your duly authorised representatives.

For the sum of £ \_\_\_\_\_ for Year 1

Excluding Value Added Tax –

Signed	
Print Name	
Dated	
Job Title	
Company Name	
Address	
Telephone No	

## Ampthill Town Council Grounds Maintenance Service

### 7.0 CERTIFICATE THAT THE TENDER IS BONA FIDE

In recognition of the principle that the essence of selective tendering is that Ampthill Town 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 \_\_\_\_\_



## 8. Declaration of Compliance – Conditions of Participation

**Procurement Reference:** [Insert Tender Title & Reference]

**Contracting Authority:** Amphill Town Council

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### 1. Legal Capacity

I/we confirm that:

- Our organisation is duly incorporated and authorised to enter into contracts.
  - We comply with all applicable laws and regulations, including Health & Safety and employment law.
  - We are not bankrupt, insolvent, or subject to any winding-up proceedings.
  - We have not been convicted of offences relating to fraud, corruption, or bribery.
- 

### 2. Financial Capacity

I/we confirm that:

- Our organisation is financially sound and able to perform the contract.
  - We hold the required insurance cover:
    - Public Liability Insurance: **£20 million**
    - Employer's Liability Insurance: **As required by law**
  - We are not in default of tax obligations.
- 

### 3. Conflict of Interest

I/we confirm that:

- We have no actual, potential, or perceived conflicts of interest in relation to this procurement.
  - If any conflict arises during the process, we will notify Amphill Town Council immediately.
- 

### 4. Declaration

I/we certify that the above statements are true and accurate.

We understand that providing false information may result in exclusion from the procurement process.

**Signed:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**Company:** \_\_\_\_\_

**Date:** \_\_\_\_\_