

MEMORANDUM OF AGREEMENT

relating to the discharge of duties and powers
under the Highways Act 1980 and other
associated legislation

East Sussex County Council
County Hall
St Anne's Crescent
Lewes
East Sussex
BN7 1SW
CT506.201

THIS AGREEMENT is made the **XXX** day of **Month 2021**

BETWEEN:

- (1) **EAST SUSSEX COUNTY COUNCIL** of County Hall St Anne's Crescent, Lewes, East Sussex BN7 1SW ("the County Council") and
- (2) **XXX [PARISH/TOWN]¹ COUNCIL** of **Address** ("the [Parish/Town] Council").

WHEREAS

- (1) The County Council and the [Parish/Town] Council are local authorities as defined by the Local Government Act 1972.
- (2) By virtue of Section 1 of the Highways Act 1980 the County Council is the local highway authority for the County of East Sussex.
- (3) By virtue of Section 101 of the Local Government Act 1972 a local authority may arrange for the discharge of any of its functions by any other local authority.
- (4) The County Council and the [Parish/Town] Council have agreed to arrange for the discharge by the [Parish/Town] Council of certain of the functions of the County Council upon the terms and conditions set out in this Agreement.
- (5) The County Council and the [Parish/Town] Council have agreed that certain administrative and professional services as specified in this Agreement shall be provided by the [Parish/Town] Council on behalf of the County Council.

NOW THEREFORE in pursuance of Section 101 of the Local Government Act 1972 and all other powers so enabling it is hereby agreed as follows:-

1. DEFINITIONS

- 1.1 For the purposes of this Agreement the following words and expressions have the following meanings:-

"Agreement Period"	means the period commencing on the Commencement Date and continuing thereafter until determination of this Agreement;
"Allocated Revenue Budget"	means the yearly revenue budget for the provision of the Core Services;
"Assistant Chief Executive,	means the officer for the time being of the County Council

¹ Remove irrelevant references throughout the document (i.e. if the agreement is between ESCC and a Town Council remove the word "Parish" (and vice versa), un-highlight, remove square brackets and remove this footnote)

Governance Services"	responsible for legal matters, and his authorised representatives;
"Chief Financial Officer"	means the officer for the time being of the County Council responsible for financial matters, and his authorised representatives;
"Chief Legal Officer"	means the Chief Officer for the time being of the [Parish/Town] Council responsible for legal matters, and his or her authorised representatives;
"Commencement Date"	means 1 April 2021;
"Contractor"	means the contractor duly appointed by the [Parish/Town] Council to undertake the works;
"Contract Specification"	means the contract specification for the time being set out in Schedule 1 but subject to any modifications notified by the County Council to the [Parish/Town] Council in writing;
"Core Services"	means the services described in the Schedule 1;
"Director of Communities Economy, and Transport"	means the Chief Officer for the time being of the County Council responsible for highways, and his authorised representatives;
"Financial Year"	means a year ending on the thirty first day of March;
"XXX Area"	is the XXX ;
"Highway"	has the meaning ascribed to it at common law and includes footpaths and bridleways
"Urban Verge Grass Cutting Service"	Means the service described in schedule 1 paragraph 1.1;
"Urban Grass"	means grassed highway verges and twittens;
"Special Verges — designated wildlife verges"	means Small areas of rural or urban verge that have been classified as having high amenity and nature conservation value;
"Working Day"	means any day other than a Saturday, Sunday or public holiday in England and Wales;
"Works"	means any works carried out as part of the service;
"VAT"	means Value Added Tax.

1.2 In this Agreement:

- (a) unless the context otherwise requires, the singular includes the plural and vice versa;
- (b) headings and use of bold type face shall be ignored;

- (c) references to any enactment shall include references to such enactment as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted;
- (d) a reference to clause, sub-clause, paragraph or sub-paragraph is, unless indicated to the contrary, a reference to a clause, sub-clause, paragraph or sub-paragraph of this Agreement; and
- (e) references to the word "include" or "including" are to be construed without limitation;

2. CORE SERVICES

- 2.1 In consideration of the payments to be made to the [Parish/Town] Council by the County Council under this Agreement, the [Parish/Town] Council shall, as far as reasonably possible within the Allocated Revenue Budget, provide the Core Services to County Council within XXX for the Agreement Period, including providing the necessary administrative professional and technical staff to enable the Core Services to be carried out by the [Parish/Town] Council and its approved Contractor.

- 2.2 At all times the [Parish/Town] Council and the County Council shall adhere to any relevant standing orders, financial guidelines and procedures, policies (including in respect of operational and safety), as may exist and be amended from time to time and which will be provided to the [Parish/Town] Council on request.

3. ALLOCATED REVENUE BUDGET

- 3.1 The County Council and [Parish/Town] Council shall agree by 1 October in the relevant Financial Year, the amount of the Allocated Revenue Budget for the following Financial Year.

- 3.2 For the financial year 2021/2022 the Allocated Revenue Budget for Urban Grass cutting, to be used to deliver urban grass cutting in the XXX [Parish/Town] Area shall be [INSERT NUMBER IN WORDS] pounds (£XXX) to be used to deliver and manage the Urban Verge Grass Cutting service in the XXX Area.

- 3.3 During the Financial Year during the Agreement Period, the County Council shall pay to the [Parish/Town] Council the Allocated Revenue Budget.

- 3.4 The [Parish/Town] Council shall be responsible for prioritising, controlling and arranging for payments relating to the provision of the Core Services which are permitted under and within the Allocated Revenue Budget.

3.5 The County Council shall, in addition to the Allocated Revenue Budget and following evidence of a valid VAT invoice, pay the [Parish/Town] Council a sum equal to the VAT chargeable on the value of the Core Services supplied in accordance with this Agreement.

4. FAILURE TO PERFORM

4.1 If either party shall have failed to carry out an obligation under this Agreement the other party may give notice in writing specifying:

- (i) the nature of the failure;
- (ii) the action which is reasonably required to be taken in order to rectify the failure; and
- (iii) the reasonable time within which the failure is to be rectified.

4.2 The party receiving a notice under clause 4.1 shall carry out the required action within the time specified. If the failure has not been rectified by the end of the period specified in the notice, the party who served the notice may rectify the failure himself. However, if the serving party does not rectify the failure the receiving party shall nonetheless indemnify the serving party under clause 6.

5. PAYMENT

5.1 Subject to the requirements of this clause 5, the County Council shall pay to the [Parish/Town] Council the Allocated Revenue Budget

5.2 The County Council will send a Purchase Order to the [Parish/Town] once the relevant Financial Year has begun and all contractor evidence has been provided by the [Parish/Town] Council in accordance with clause 5.3.

5.3 The [Parish/Town] Council will only receive the Purchase Order referred to in clause 5.2 once all evidence is provided to the County Council. The following documents must be provided:

- 5.3.1 evidence of staff training and qualifications in traffic management including signing and guarding;
- 5.3.2 evidence of staff training and qualifications in the safe use of machinery;
- 5.3.3 the formal contract with the [Parish/Town] Council's Contractor for provision of the Works;
- 5.3.4 evidence that the required insurances referred to in clause 7 are properly in place, adequate and valid;
- 5.3.5 A health and safety policy;
- 5.3.6 Risk assessments for carrying out verge cutting on the highway; and
- 5.3.7 Method Statements for carrying out verge cutting on the highway.

5.4 The [Parish/Town] Council shall invoice the County Council for the Allocated Revenue Budget specified on the Purchase Order, and the County Council shall make payment within thirty (30) days of receipt of the invoice.

5.6 The [Parish/Town] Council shall add VAT to the Allocated Revenue Budget at the prevailing rate as applicable.

6. INDEMNITY

6.1 The County Council indemnifies the [Parish/Town] Council for claims made against the [Parish/Town] Council arising due as highway authority except to the extent that such claims are due to the negligence of the [Parish/Town] Council or to a failure by the [Parish/Town] Council to perform or observe its obligations under this Agreement.

6.2 The [Parish/Town] Council shall indemnify and keep indemnified the County Council against any liability, loss, costs, expenses, claims or proceedings whatsoever arising under any statute or at common law in respect of:

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

(ii) any injury to any person, including injury resulting in death,

in consequence of or in any way arising out of the provision of the Core Services by the [Parish/Town] Council, its servants or agents except insofar as such loss, damage or injury shall have been caused by negligence on the part of the County Council, its servants or agents (not being the [Parish/Town] Council or employed by the [Parish/Town] Council).

7. INSURANCE

7.1 The [Parish/Town] Council is to ensure that appropriate insurance shall be taken out by them or their contractor and maintain adequate insurance against all and any third party claims in respect of liability, loss, claim, damage or proceedings arising out of performance of the Core Services which is undertaken by the [Parish/Town] Council in respect of the following:

(i) all loss of and damage to property and injury to persons (including death) under which the cover shall not be less than ten million pounds (£10,000,000) in respect of any one incident (public liability insurance).

8. PROVISION OF INFORMATION

8.1 The parties acknowledge that both parties are subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, the Local Audit and Accountability Act 2014 and where applicable the Local Government Transparency Codes and shall assist and cooperate with each other to enable compliance with their information disclosure obligations.

8.2 The [Parish/Town] Council and the County Council shall make available to each other any information in such form and within such time specified within this Agreement or as either of them may reasonably require for the purposes of this Agreement.

9. ASSIGNMENT

- 9.1 The [Parish/Town] Council shall not assign or transfer this Agreement or any of the rights or obligations herein.

10. TERMINATION

- 10.1 Without prejudice to any other provisions of this Agreement, this Agreement may be terminated by either party giving at least three (3) months written notice to the other party to expire at any time on or after 01 April 2020 or such shorter notice period as may be agreed between the parties.
- 10.2 Any termination of this Agreement howsoever caused shall not affect any rights or liabilities which have accrued prior to the date of termination.
- 10.3 If the County Council and [Parish/Town] Council are unable to agree the Allocated Revenue Budget in accordance with clause 3.3 above, either party may, by written notice terminate this Agreement with effect from 31 March in the relevant Financial Year.

11. NOTICE

- 11.1 Notices to be served on either party shall be in writing and addressed to and served on:
- 11.1.1 in the case of the [Parish/Town] Council: the clerk, XXX ADDRESS; or
- 11.1.2 in the case of the County Council: the Assistant Chief Executive, Governance Services, County Hall, St Anne's Crescent, Lewes, East Sussex, BN7 1SW, by recorded delivery prepaid post or delivered by hand and shall be deemed to have been served on the third Working Day after the postmark (if posted) or on receipt (if delivered) by hand.

12. MEDIATION

- 12.1 The parties will use their best endeavours to resolve by agreement any dispute, difference or question between them with respect to any matter or thing arising out of or relating to this Agreement including a reference to, in the first instance, mediation by an independent person to be agreed between the parties or, in the case of failure of the parties' to agree, by a representative of a professional body appropriate in the circumstances of the case. Such an independent person shall be given all information and assistance by the parties in carrying out his duties, and may be given by agreement between the parties the duty to recommend or approve terms of settlement between the parties.

13. ANNUAL REVIEW PROCESS

- 13.1 The County Council shall undertake an annual review of this Agreement no later than five (5) months before the end of each Financial Year during the Agreement Period ("**the Annual Review**").

13.2 At the Annual Review, the parties shall agree the Core Services to be provided for the following Financial Year by selecting one of the options listed at paragraph 3 of Schedule 1.

IN WITNESS whereof the parties hereto have hereunto caused their respective Common Seals to be affixed the day and year first before written.

Executed as a DEED by affixing the)
COMMON SEAL of **EAST SUSSEX**)
COUNTY COUNCIL hereunto in)
the presence of:-)

.....
Authorised Signatory

Executed as a DEED by affixing the)
COMMON SEAL of **[XXX]**)
[PARISH/TOWN]²COUNCIL hereunto in)
the presence of:-)

.....
Authorised Signatory

² Select appropriate option , un-highlight, remove the irrelevant word, square brackets and this footnote.

SCHEDULE 1

CORE SERVICES

These Services relate only to highways within XXX

For the avoidance of any doubt, any Core Services relating to footpaths does NOT include direct maintenance of the hard surface paving of any path.

The Core Services are the following activities which are to be provided in accordance with the County Council's standards, frequencies and budgets as notified to the [Parish/Town] Council.

Staff Requirements:

Any individual carrying out works on the highway (including grass verges) must comply with all relevant legislation including, but not limited to, the Highways Act, 1980 and the New Roads and Streetworks Act (NRSWA), 1991.

Any individual carrying out works on the highway must also be trained and competent as required by the Safety at Streetworks and Roadworks Code of Practice, 2013. This includes training in traffic management as well as the use of machinery.

1.1 Grass Cutting Specification

1.1.1. The [Parish/Town] Council shall manage and maintain Urban grass cutting activities within XXX.

Urban Grass

1.1.2. The [Parish/Town] Council shall cut every urban grass verge a minimum of two (2) times per Financial Year as shall be determined by the Allocated Revenue Budget for that Financial Year.

1.1.3. The first cut after Winter / Spring shall be undertaken when the grass reaches a height of 150mm to a height between 30mm and 50mm. Subsequent cuts shall be programmed to be evenly spaced throughout the remainder of the growing season.

1.1.4. Immediately following each cutting operation the Contractor shall ensure that the length of Urban grass is between 30mm and 50mm in height.

1.1.5. The [Parish/Town] Council is responsible for notifying the County Council of any visibility or sightline issues.

Special Verges — Designated wildlife verges

1.1.7. The County Council shall manage any designated wildlife verges within XXX.

1.1.8. The [Parish/Town] Council will not undertake any cuts on these sites.

Japanese Knotweed Sites

1.1.9. The County Council shall manage any Japanese Knotweed Sites within XXX.

1.1.10. The [Parish/Town] Council will not undertake any cuts to Japanese Knotweed sites. The [Parish/Town] Council will only manage the surrounding verge seven (7) metres from the Japanese Knotweed and if an Urban Verge.

General Grass Cutting

1.1.11. The [Parish/Town] Council shall ensure that immediately following completion of a cut, the grass is cut in a neat and uniform appearance and areas are left tidy.

1.1.12. Grass cutting operation shall include cutting around all obstacles such as trees, posts and signs. Strimmers may be used where appropriate.

1.1.13. Grass around obstructions shall be trimmed to the same level as the adjacent cut area. Care shall be taken to avoid damaging trees and tree guards. Any damage caused by the [Parish/Town] Council shall be made good at its expense.

1.1.14. The [Parish/Town] Council shall cut the grass with machines of suitable type and size for the area, site and growth of the grass to be cut. These machines shall be adequately guarded at all times to comply with the provisions of the Health & Safety at Work etc. Act 1974.

1.1.15. Prior to any cutting operation all stones or other harmful material from whatever source which may damage grass cutting plant or create a possible hazard to persons or property shall be removed off site.

1.1.16. Mowing operations shall avoid spillage of debris such as stones onto carriageways or footways. Grass clippings lying on roads, footpaths, car parks, drains and other hard surfaces shall be swept up or redistributed onto the grassed areas using a pedestrian blower machine before moving to the next location.

1.2 Customer Service Management

1.2.1 The [Parish/Town] Council shall provide a comprehensive customer management service throughout the Agreement Period to address and action all queries, enquiries, and complaints relating to the Core Services under this Agreement.

1.2.2 The [Parish/Town] Council shall respond to all queries, enquiries and complaints in accordance with its own adopted policies and protocols.

1.2.3 The [Parish/Town] Council shall keep all appropriate records and data relating to the Core Services as required by the County Council and keep these available for inspection by the County Council at any reasonable time.

1.2.4 The [Parish/Town] Council is to maintain records for the Core services which includes but is not limited to:

- the dates that the work was carried out and the location;
- details of the type of cut; and
- the name of the Contractor who carried out the work.

2 For the avoidance of doubt, the Core Services do not include:

2.1 the provision of financial matters, which will be the responsibility of the Chief Financial Officer (save for financial matters in respect of the Allocated Revenue Budget); or

2.2 the provision of the County Council's powers under Section 42 of the Highways Act 1980.

3 Options

3.1 Receive a contribution from the County Council and manage the grass cutting service in its area directly.

Appendix 1 — Plan