

SECTION C

CONDITIONS OF CONTRACT

CONTENTS

Clause No.	Description	Page No.
1.	Definitions	C3
2.	Variation of Contract	C6
3.	The Supervising Officer	C6
4.	Contract Period	C6
5.	Performance of Service	C6
6.	Provision of Statistical Information	C7
7.	Modification and Additional Works	C8
8.	Method of Payment	C9
9.	Statements	C9
10.	Additions and Deductions	C9
11.	Certification	C10
12.	Amended Statements	C10
13.	Invoice	C10
14.	Interest on Overdue Payments	C10
15.	Income Tax	C11
16.	Assignment and Subletting	C11
17.	Premises	C11
18.	Equipment	C12
19.	Vehicle & Equipment Operation	C13
20.	Contractor's Staff	C14
21.	Uniforms and Identification	C16
22.	Waste Disposal	C16
23.	Water Supply	C17
24.	Agency	C17
25.	Indemnity	C17
26.	Insurance	C17
27.	Confidentiality	C19
28.	Performance Bond	C19
29.	Bribery and Corruption	C19
30.	Gratuities	C20
31.	Liability of the Employer	C20
32.	Default in Performance	C21
33.	Default in Provision of the Service	C25
34.	Method of Price Review	C25
35.	Termination by Contractor	C25

Clause No.	Description	Page No.
36.	Notices & Instructions	C26
37.	Arbitration	C27
38.	Relevant European Standards	C27
39.	Observation of Statutory Requirements	C27
40.	Programme of Work	C28
41.	Rights and Duties Reserved	C28
42.	Health and Safety	C28
43.	Waiver	C29
44.	Severance	C29
45.	Amendments to Documents	C29
46.	Equal Opportunities Policy	C29
47.	End of Contract	C29
48.	Final Payment	C30
49.	Force Majeure	C30
50.	Partnership	C31
51.	Law of England	C31
Appendix 1.	Form of Tender	C32
Appendix 2.	Declaration Relating to Collusive Tendering	C34
Appendix 3.	Performance Bond	C35
Appendix 4.	Actual Performance Bond	C36
Appendix 5.	Details of Proposed Insurance Cover	C38
Appendix 6.	Articles of Agreement	C39

1. DEFINITIONS AND INTERPRETATION

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

“Additional Services” means extra services similar in nature to or the same as Services on sites specified in the schedules and Services to be undertaken at sites not specified in the schedules, which may be required at regular or irregular intervals.

“Articles of Agreement” means an agreement annexed hereto giving details of the parties to this Contract and incorporating the Conditions.

“Bill of Quantities” means work items to be priced by the Contractor.

“Certificate” means a certificate issued by the Employer indicating the amount of money agreed to be due to the Contractor.

“Commencement Date” means the date from which the Contractor commences to carry out the Services in the Contract which shall be no later than 1 April 2011.

“Conditions” means these conditions, any supplementary conditions and any variation agreed between the Employer and the Contractor.

“Contract” means the Instruction to Tenderers, Conditions of Contract, Specification, Method Statements, Site Details, Bills of Quantities, Schedule of Rates, Day Work Rates, Form of Tender, Form of Bond, Articles of Agreement, (see Appendix 6 to Section C) and Framework Programme of Works, together with all appendices, maps and drawings and any variations thereto signed by both parties.

“Contract Area” means all the sites within which the Contractor is liable to carry out the Services.

“Contract Manager” means the person nominated by the Contractor to manage the Services from within the Contract Area.

“Contract Period” means the term of this Contract as determined by Clause 4 of Section C.

“Contractor” means The Landscape Group Ltd contracted to carry out the Grounds Maintenance.

“Day Work Rates” means the rates for the performance of Additional Services described in the Schedule of Rates and includes all on-cost percentages for working normal hours in accordance with the Specification.

“Default Notice” means any Notice of default issued under these conditions.

“Employer” means Newbury Town Council or any successor or any other body to whom the Council may assign the Contract in whole or in part.

“Equipment” means any vehicle, machine, powered or hand tool, or other item of equipment used by the Contractor for the purposes of the Contract.

“Extension Period” means an agreed period of time during which the Contractor will deliver the Services and which follows the Contract termination date.

“Index” means the All Items Index in the Monthly Digest of Statistics compiled by the Central Statistics Office or successor body.

“Instructions” means any direction whether oral, written or described in any other way by the Supervising Officer or any person duly authorised by him to act on his behalf.

“Location” means the place or places where the Services or any part thereof is to be performed by the Contractor or to which goods, equipment or materials are to be delivered.

“Lump Sum per Annum” means the rate to be paid by the Employer to the Contractor for performing or undertaking that part of the Service for the whole of the year.

“Method Statement” means the Contractor’s method of carrying out the Services as defined in the Programme.

“Notice” means any written communication.

“Notice of Determination” means a Notice served by the Supervising Officer on the Contractor which terminates the Contract.

“Notice of Failure” means a Notice served by the Supervising Officer on the Contractor for failure to provide the Services in accordance with the Contract.

“Programme” means a programme of work submitted by the Contractor in accordance with the requirements of the Tender documents.

“Rectification Notice” means a notice served on the Contractor by the Supervising Officer for the Contractor’s failure to perform Services in accordance with the Contract.

“Review Date” means the anniversary date at which the rates entered in the Bills of Quantities, Schedules of Rates and Schedule of Day Work Rates will be reviewed.

“Schedule of Rates” means the priced schedule of rates forming part of the Tender documents.

“Services” means the whole of the work to be executed as described throughout the contract and includes any modifications or variations thereto made pursuant to clauses 2 & 7 hereat.

“Site” means “Location”.

“Statement” means a statement of indebtedness of the Employer to the Contractor.

“Statistical Information” means information required of the Contractor by the Employer in accordance with the Conditions of Contract.

“Summer Months” shall mean the period from the third Monday in March to the last Sunday in October.

“Supervising Officer” means the Services Manager of Newbury Town Council for the time being or any person duly authorised by him to act on his behalf as notified in writing to the Contractor or any person appointed by him under the provisions of Clause 3 of Section C.

“Tender documents” means the Tender documents relating to the award of this Contract for the work of grounds maintenance.

“Variation” means any variation, addition, deletion or omission made to any part of the Contract.

“Variation Order” means Notice of any Variation.

“Week” means seven consecutive days starting on Monday and ending on the following Sunday.

“Winter Months” shall mean the period from the day after the last Sunday in October until the day before the third Monday in March.

“Working Hours” means the hours between 0730 and 2030 or sunset (as specified by the Meteorological Office) whichever is sooner on Monday to Friday and 0730 to 1730 on Saturday. No work shall be undertaken on Sunday or on Bank Holidays except where specifically provided for in the Specification or previously agreed in writing by the Supervising Officer.

- b) A reference to an Act of Parliament or any Order, Resolution, Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same.
- c) Except where the context otherwise requires, words denoting the singular includes the plural and vice versa; words denoting any gender include both genders; words denoting persons include firms and corporations and vice versa.

- d) Unless otherwise stated, a reference to a clause, sub-clause or schedule is a reference to a clause or sub-clause of or a schedule to this Tender document.
- e) Clause headings are for ease of reference only and do not affect the construction of this Contract.

2. VARIATION OF CONTRACT

Without prejudice to any other conditions hereof, no omission from, addition to or variation of the Contract shall be valid or of any effect unless it is agreed in writing and signed by the Supervising Officer and a duly authorised representative of the Contractor.

3. THE SUPERVISING OFFICER

The functions, rights and powers conferred by this Contract upon the Employer shall be exercised by the Supervising Officer who may from time to time appoint a person or persons to act on his behalf in the supervision of the Contract. The Supervising Officer shall notify the Contractor in writing of the name or names of the person or persons so appointed, the element of the Contract which they have been appointed to supervise, and the extent of their authority. The Contractor shall at all times during the Contract Period allow the Supervising Officer and such persons as may be nominated by the Supervising Officer access to all parts of the Contract Area and to all locations for the purpose of inspecting work being performed pursuant to the provision of the Service.

4. CONTRACT PERIOD

- a) The Contract shall be from and including 1 April 2011 to and including 31 March 2014.
- b) The Contract Period may be extended for a further period of no more than 5 years or part thereof by either party serving on the other party a Notice indicating its desire to continue this Agreement. Such Notice must be served not more than 12 months or less than 6 months before the expiration of the Contract Period. If both parties are in agreement, then this Contract shall continue for such further period of time as the parties shall agree in writing.

5. PERFORMANCE OF SERVICE

- a) The Contractor shall perform the Services during working hours in accordance in all respects with the Contract and any agreed Method Statements in a professional manner and with due care and attention and in accordance with the terms and conditions of the Contract. Any damage caused to the Employer's property arising out of the

performance of this Contract shall be made good by the Contractor at the Contractor's expense.

- b) Approval by the Supervising Officer of the Method Statements and Programme, or any Variation thereto will not relieve the Contractor of any of his other duties, obligations or responsibilities under the Contract.
- c) The Contractor shall have due regard for the Health and Safety of the public at all times when carrying out the Services. The Contractor will not disrupt legitimate public use of facilities within the Contract Area, except for the purpose of closing off an area in the interests of the health and safety of the public for the purpose of complying with its obligations under the terms of the Contract and with the prior agreement of the Supervising Officer except in those emergency situations when prior agreement is impracticable.
- d) In delivering the Services, the Contractor shall comply with all relevant legislation and statutes, European directives and standards and local bye laws.

6. PROVISION OF STATISTICAL INFORMATION

- a) The Contractor shall provide such Statistical Information (in an agreed format), which the Employer may from time to time reasonably require, to enable the Employer to supervise and measure the Contractor's performance under the Contract.
- b) The following list indicates the type of information that the Employer might require but it should not be considered exhaustive and the Employer reserves the right to request additional information. In all cases the information is required on a weekly basis to be submitted before the end of the following week:-
 - statement of the number and status of persons engaged upon the Contract
 - statement of the equipment and plant used on the Contract
 - statement of the Locations where work has been undertaken, the nature of the work and an assurance that that work has been wholly completed in accordance with the Contract
 - statement of the names of sub contractors and details of the work that they have undertaken
 - statement of suppliers of materials, vehicles and equipment
 - statement of all complaints received, including:
 - the name, address and telephone number of the complainant

- the time, date and nature of the complaint
- action taken by the Contractor to resolve the complaint and the date and time at which it was taken, including, where appropriate, referring the complaint to the Supervising Officer if the complaint is not about the services provided by the Contractor
- statement of work which has not been progressed according to plan and details of the corrective action to be followed.

7. MODIFICATION AND ADDITIONAL WORKS

- a) The Supervising Officer shall be entitled to issue to the Contractor a Variation Order requiring the Contractor to do all or any of the following:
 - i. To omit and cease to perform any part of the Services for such period as the Supervising Officer may specify.
 - ii. To perform the Services or any part thereof in such manner as the Supervising Officer may reasonably require.
 - iii. To vary the Programme and to perform the Services in accordance with the Programme as so varied.
 - iv. To perform such Additional Services in addition to the Services as the Supervising Officer may require for such period as the Supervising Officer shall specify provided that such Additional Services shall be of the same nature or similar to the Services under the Contract and for such period as shall be agreed between the Supervising Officer and the Contractor.
 - v. To perform such Additional Services as the Contractor has agreed in writing to undertake outside the scope of the services which may not be of the same nature or similar to the services under the Contract and for such period as shall be agreed between the Supervising Officer and the Contractor shall immediately carry out all such instructions.
- b) Where any Variation requires additional or reduced resources, the rates and prices as set out in the Bill of Quantities, Schedule of Rates or Day Work Rates in priority order shall apply. Where additional works are not of the same nature or similar to the Services under the Contract, the Bill of Quantities, Schedule of Rates or Day Work Rates shall be used as a basis for valuation so far as may be reasonable, failing which the rate shall be agreed in writing between the Contractor and the Supervising Officer. If such agreement cannot be reached and without prejudice to the Contractor's rights to arbitration, the Supervising Officer shall determine a rate, which shall be based on the nearest appropriate rate in the Bills of Quantities or Schedules of Rates.

- c) The Employer reserves the right to employ others in the performance of any Additional Services whether or not the Contractor has indicated his willingness to carry out such Additional Services and whether or not the Contractor has quoted a price for such Additional Services. For the avoidance of any doubt the Employer shall not be entitled to employ another contractor to carry out any of the Services which the Contractor is to undertake under this Contract other than following the service of a Notice of Failure or Notice of Determination.
- d) The Contractor should be aware that other contractors or the Employer's employees may be working in the same area as himself.

8. METHOD OF PAYMENT

Provided that the Contractor shall have performed the Services in accordance with the Contract, the Employer shall pay to the Contractor the amount due for the provision of the Services subject to any additions and deductions. Any Additional Services or omitted Services shall be paid for or deducted at the rates and prices contained in the Bill of Quantities, Schedule of Rates or Day Work Rates calculated against the quantity applicable to each payment period. For those parts of the Services to be paid for on the basis of a lump sum per annum or per unit per annum, the Employer shall pay 9.5% of the annual sum per four week payment period during the Summer Months and 4.8% of the annual sum per four week period during the Winter Months. The final payment in the year will be adjusted to ensure 100% of the annual sum is paid in each year of the Contract.

9. STATEMENTS

- a) The Contractor shall submit in writing to the Supervising Officer within 14 days after the end of each four week period starting on the Commencement Date of the Contract a Statement showing:
 - the amounts to which the Contractor considers himself entitled in respect of the Contract up to the end of the period,
 - the amounts to which the Contractor considers himself entitled in connection with any Variation or Instructions for Additional Services duly authorised by the Supervising Officer in accordance with the Contract.
- b) The Contractor shall provide such information and in such form as the Employer shall reasonably require to enable the Employer to validate the Contractor's claim.

10. ADDITIONS AND DEDUCTIONS

The Supervising Officer shall have the power to amend any Statement in respect of:

- a) Errors in calculations.

- b) Any deduction in respect of a Default Notice.
- c) Any additions in respect of any additional Services authorised by the Supervising Officer.
- d) Previous payments on account.
- e) Any other sums owed by the Contractor to the Employer whether under the terms of the Contract or otherwise.

11. CERTIFICATION

Within 14 days of the Supervising Officer receiving the Statement from the Contractor, the Supervising Officer shall certify the Statement as amended and shall issue a certificate to the Contractor.

12. AMENDED STATEMENTS

A copy of the Statement as certified by the Supervising Officer shall be sent to the Contractor. Any dispute arising as to the fact of or the manner in which the Supervising Officer has certified the Statement shall in the first instance be determined between the Supervising Officer and the Contractor. In the event of their failure to agree within 28 days, such dispute shall be determined by arbitration as provided in Clause 37.

13. INVOICE

- a) On certification, the Contractor shall issue an invoice for payment. In addition to the value of the Services which the Contractor has invoiced for, the Contractor shall add such Value Added Tax (VAT) as may be properly chargeable. The Contractor shall issue a Value Added Tax invoice in respect thereof.
- b) Within 30 days of the receipt of the invoice, the Employer shall pay to the Contractor the sum due to the Contractor including the sum (if any) to be added by way of value added tax and the sum (if any) to be deducted by way of income tax.

14. INTEREST ON OVERDUE PAYMENTS

- a) In the event of failure by the Employer to make payment in accordance with Clause 13, the Employer shall pay to the Contractor interest on any payment unreasonably withheld at a rate per annum equivalent to the base rate quoted by the National Westminster Bank plc plus 2.5%.
- b) In the event of a variation in the said base rate being announced whilst such payment remains overdue the interest payable to the Contractor for the period that such payment remains overdue shall be correspondingly varied from the date of each such variation.

15. INCOME TAX

For the purposes of the Income & Corporation Taxes Act 1988 ('the Act') the Contractor is deemed to be a "Sub-Contractor". The Contractor shall produce to the Supervising Officer such evidence as the Employer shall deem necessary to satisfy the Employer that the Contractor has a current and valid certificate in form 7141, form 714P or form 714C and shall produce such documents as are set out in the documents published by the Board of Inland Revenue as IR 14/15 of 1976 to satisfy the Employer that the Contractor is entitled to be paid without deduction of tax pursuant to the Act. Should the Contractor fail to produce the said documents the Employer will deduct tax from any payment due to the Contractor at such rates as are currently in force. This Condition will only apply if the Contractor carries out Services which comes within the definition of "constructions items" as defined by the Act.

16. ASSIGNMENT AND SUBLETTING

- a) The Employer shall be entitled to assign the benefit of this Contract or any part thereof to a statutory or other public body and shall give written notice of any assignment to the Contractor.
- b) The Contractor shall in no circumstances assign or purport to assign the Contract or any part thereof or any benefit therein or thereunder to any person whatsoever provided that any assignment occurring as a result of any internal reconstruction of a Contractor which is a limited company shall be deemed not to be a breach of this condition.
- c) The Contractor shall not sub-let the whole of the Services. Except where otherwise provided by the Contract, the Contractor shall not sub-let any part of the Services without the written consent of the Supervising Officer (which shall not be unreasonably withheld) and such consent, if given, shall not relieve the Contractor from any liability or obligation under the Contract and the Contractor shall be responsible for the acts, defaults and negligence of any sub-contractor, his agents, servants or employees.
- d) The provision of labour by an employment agency or similar shall not be deemed to be sub-letting under this clause.

17. PREMISES

- a) The Contractor shall at all times during the Contract Period provide and maintain such premises as are necessary for the proper performance of the Contract.
- b) The Contractor shall equip the premises with a telephone, answering machine and fax machine with automatic switch overs and shall arrange for the Contract Manager or the supervisor to visit the premises at least

once each morning and once each afternoon of each working day to check for any messages.

- c) The Contractor shall permit the Supervising Officer and such persons as may be nominated from time to time by the Supervising Officer access to all premises occupied by the Contractor for the purpose of the Contract, at all reasonable times during the working week for the purpose of inspecting records and documents in possession of the Contractor in connection with the provision of the Services.

18. EQUIPMENT

- a) The Contractor shall at all times during the Contract Period provide and maintain at his own expense all Equipment as is necessary for the proper performance of the Contract. Such Equipment shall at all times comply with the relevant Construction and Use Regulations and all relevant statutory requirements and other regulations having the force of law and shall be of a design which is entirely suitable for the performance of the Contract. The Contractor shall ensure that he has an adequate level of reserve Equipment available for use by him at all times to enable him to perform his obligations under the Contract as lack of suitable Equipment will not be considered as an acceptable reason for non-performance under the Contract.
- b) The Contractor shall insure and at all times keep insured the Equipment as required by legislation from time to time in force and against such further risks as the Employer may from time to time reasonably require (as specified in clause 26). The Contractor shall pay all premiums and produce to the Employer on request receipts therefore and shall not do or suffer or permit anything to be done which might prejudice the policy. All money which may at any time be received or receivable under any such insurance shall be applied in replacing or repairing the Equipment lost, damaged or destroyed.
- c) The Contractor shall allow the Supervising Officer at any time to inspect and test any or all items of Equipment used in connection with the provision of the Services and to inspect and take copies from the maintenance records in relation thereto. The Supervising Officer shall be entitled to serve upon the Contractor a notice in writing requiring the Contractor to put into serviceable condition any item of Equipment which is in the opinion of the Supervising Officer unsafe, in need of repair or maintenance or require the Contractor to cease to use such Equipment until it is put into a serviceable condition.
- d) The Contractor shall obtain, and at all times during the Contract Period maintain, all necessary operator's licenses, rates and insurances and

other permits as may be required for the purpose of or in connection with the provision of the Services or the operation of the Equipment.

- e) The Contractor shall ensure that at all times Equipment used in the provision of the Services presents a good image for the Employer and, where appropriate, bears the Employer's livery and logo in such a manner as the Supervising Officer may reasonably require. The reasonable cost of any words, devices or insignia requested by the Supervising Officer in addition to or in substitution for the standard livery and signwriting provided by the Contractor shall be borne by the Contractor. All such words, devices or insignia of the Employer are to be removed at the Contractor's expense at the end of the Contract Period.
- f) No advertising material of any nature shall be displayed on any equipment, premises or clothing without the prior permission of the Supervising Officer, save for the Contractor's and/or the Employer's logo.
- g) If required by the Supervising Officer, the Contractor shall produce to the Supervising Officer copies of all leasing and hiring agreements for any Equipment to be used on the Contract and shall produce any revised or amended details within seven days of any revisions or amendments being made.

19. VEHICLE AND EQUIPMENT OPERATION

- a) The Contractor shall ensure that:
 - i. Drivers and operators of the Equipment operate in a proper and safe manner in accordance with the relevant Codes of Practice in operation from time to time.
 - ii. Drivers drive safely and correctly at all times in accordance with statutory regulations.
 - iii. Drivers and operators are trained and thoroughly competent in the safe use of Equipment.
 - iv. Equipment operations are carried out in a reasonable and professional manner without causing obstruction, nuisance or annoyance to the public.
 - v. Where appropriate, the Equipment is cleaned and washed internally and externally on a frequent and regular basis and maintained in such a condition so that it presents a professional and pleasant image to the public at all times.
- b) The Contractor shall provide to the Supervising Officer upon request written details of training undertaken and safe methods of work employed.

20. CONTRACTOR'S STAFF

- a) The Contractor shall;
 - i. at all times during the Contract period employ sufficient persons of appropriate abilities, skills, care, and experience as are required for the proper performance of the Services in accordance with the Contract, but in any event will provide minimum staff levels of 4 persons during winter (6 if cemetery included) and 8 persons during summer periods (10 if cemetery included);
 - ii. ensure that a sufficient reserve of persons is available to provide the Services during holiday periods, absences due to sickness and special events/emergencies.
- b) The Contractor shall appoint a Contract Manager (and, in his absence, a deputy) to supervise those persons employed to perform the Services in accordance with the Contract and to act on his behalf for all purposes connected with the Contract. The Contractor shall indicate in his Method Statement what proportion of the week or which days of the week the Contract Manager will be present and available within the Contract Area. The Contract Manager shall meet the Supervising Officer at such place, dates and times as may be reasonably determined by the Supervising Officer at frequencies of not less than once per month to consider such matters as either the Contract Manager or the Supervising Officer may reasonably wish to be considered. Where the Employer, for reasons of improving performance, dealing with special circumstances or for any other reasonable reason, requires it, the Contract Manager shall be permanently within the Contract Area for all hours during which the Service is being undertaken. The Contractor shall not be paid extra for any additional attendance.
- c) If the Contract Manager or his deputy is not to be in the Contract Area at all times that the Service is to be provided, the Contractor shall arrange for a Supervisor to be present at all times to manage the contract on a day-to-day basis. The Supervisor shall be equipped with a mobile telephone which shall be switched on at all times that the Service is being provided. The Contractor shall authorise the Supervisor to receive notices, to liaise with the Supervising Officer on the day-to-day management of the Contract and to agree with the Supervising Officer the adequacy of the Service provided in comparison with the requirements of the Contract. The Supervisor shall accompany the Supervising Officer or any other person nominated by him on reasonable request to visit any part of the Contract Area for any purpose in connection with the Contract.
- d) The Contractor shall notify the Supervising Officer of the name, address and telephone number (including night time and weekend numbers) of

the person(s) detailed in sub clauses (b) and (c) above who will be responsible for receiving notification from the Employer of complaints and instructions under the Contract. The Contractor shall also notify the Supervising Officer of the name, address and telephone number of any other employee for whom the Supervising Officer reasonably requests such details.

- e) The Employer shall be entitled to notify the Contractor by notice in writing to remove from the Contract or discipline any employee of the Contractor (which for avoidance of doubt shall include the Contract Manager or his deputy) who, in the reasonable opinion of the Supervising Officer, has shown himself for whatever reason to be unsuitable to perform his duties under the Contract. The Employer shall in no circumstances be liable either to the Contractor or to the employee in respect of any liability, loss or damage occasioned by such removal or disciplinary action and the Contractor shall fully and promptly indemnify the Employer against any claim made by such employee.
- f) The Contractor shall ensure that every person employed by the Contractor in and about the provision of the Services is at all times properly and sufficiently trained, instructed and supervised with regard to:
 - i. the task the person has to perform;
 - ii. any relevant provisions of the Contract;
 - iii. relevant rules, procedures and standards of the Employer;
 - iv. all relevant rules, procedures and statutory requirements concerning Health and Safety at work;
 - v. fire risks and fire precautions; and
 - vi. the necessity to observe the highest standards of courtesy and consideration to the public to promote and enhance the Employer's image and reputation (high importance).

It is recommended for the purposes of clarity Supervisors, Foremen, Chargehands and Operators hold the following minimum qualifications.

Maintenance of fine turf, sportsfields etc.

C & G / NVQ level II groundsmanship.

Pruning of shrubs, roses etc.

C & G / NVQ level II horticulture.

Application of pesticides.

NPTC registered user PA 2, PA 6.

Chainsaw user.

NPTC registered user.

First Aid.

HSE First Aid at work.

- g) The Contractor shall at all reasonable times during the Contract Period allow access by the Supervising Officer or to any person nominated by the Supervising Officer to any employee or agent of the Contractor for the purpose of interviewing him in connection with the carrying out of all or any part of the Service or the investigation of any complaint that the Employer may have received.
- h) If, owing to the nature of the Contract, employees of the Contractor are exempt from the provisions of Section 4 (2) of the Rehabilitation of Offenders Act 1974, by virtue of Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975, then the Contractor shall ensure that all employees engaged in the provision of the Services shall provide information in accordance with the said Act and Order about convictions which would otherwise be spent under the provisions of the said Act. The Contractor shall disclose to the Supervising Officer the names and addresses and sufficient information to enable proper checks to be made as appropriate of all convictions of its employees engaged in and about the provision of the Services and the Employer may require any or all such employees not to be employed under the Contract.

21. UNIFORMS AND IDENTIFICATION

- a) The Contractor shall ensure that all persons employed in the performance of the Contract shall at all times be properly attired and presentable in protective uniforms of a design and colour which must be approved in advance in writing by the Supervising Officer. Such uniforms shall be required to carry the Employer's logo and the name of the Contractor. Uniforms must be worn at all times during the performance of the Contract.
- b) Representatives and employees of the Contractor shall carry at all times identity cards in a form approved by the Supervising Officer and make such cards available for inspection on request by the Supervising Officer who shall similarly disclose his identity. Neither the Contractor's staff nor the Employer's staff shall avoid disclosing their identity to any person reasonably requesting it.

22. WASTE DISPOSAL

The Contractor shall make his own arrangements for the disposal of waste products arising from the provision of the Services at facilities licensed by the relevant Waste Disposal Authority in accordance with latest legislation. The

Contractor shall be responsible directly to the Waste Disposal Authority concerning all matters over which that Authority holds statutory powers. All costs incurred in making arrangements and in disposing of waste shall be borne by the Contractor. The description "dispose of to tip" shall include disposal of any material suitable for composting to composting facilities and the disposal of any material not suitable for composting but suitable for recycling in any other way (e.g. bark chipping, metal reclamation) to the Contractor's or other's facilities. The Contractor will be expected to demonstrate his commitment to reduction, recycling and reuse of materials in his Method Statement.

23. WATER SUPPLY

The Contractor shall make his own arrangements with the relevant Water Company for the provision of any water supply required for the performance of the Services and shall be responsible for all costs incurred.

24. AGENCY

- a) The Contractor is not and shall in no circumstances hold himself out as being the agent of the Employer, unless specifically contracted to do so.
- b) The Contractor is not and shall in no circumstances hold himself out as being authorised to enter into any Contract on behalf of the Employer or in any other way to bind the Employer to the performance, variation, release or discharge of any obligation.
- c) The Contractor has not and shall in no circumstances hold himself out as having the power to make, vary, discharge or waive any by-law or regulation of any kind unless required to do so by the Employer.

25. INDEMNITY

- a) The Contractor shall fully and promptly indemnify and keep indemnified the Employer, its officers and employees against all liabilities, fines, penalties, damages, costs, losses, claims, demands and proceedings whatsoever, howsoever arising, whether in contract, tort, under statute or otherwise, directly or indirectly, out of, or in the course of, or in connection with, the provision of or failure to provide the Services or the use or occupation by the Contractor or the Contractor's employees of the Employer's facilities or the breach by the Contractor of any provision of the Contract.
- b) The Contractor's liability and indemnity to the Employer arising under this condition shall be without prejudice to any other right or remedy available to the Employer.

26. INSURANCE

- a) The Contractor shall maintain and shall ensure that its sub-contractors maintain the following insurances:
 - i. Third party insurance with a minimum limit of indemnity in respect of any one act or occurrence or series of acts or occurrences arising from one cause at a minimum level of £10,000,000.
 - ii. Employers' liability insurance to comply with statutory requirements and at a minimum level of £10,000,000.
 - iii. Professional indemnity insurance in respect of any one act or occurrence or series of acts or occurrences in any one year at a minimum level of £5,000,000.
 - iv. In the event that the Contractor is granted possession of any Employer's premises, appropriate property insurance providing cover at levels to be agreed by the parties prior to execution of the Contract.
- b) Any amounts due under any self insured deductibles shall be the sole and exclusive responsibility of the Contractor.
- c) Both the Contractor and its sub-contractors shall, where appropriate, name the Employer as joint insured on any relevant policies and shall ensure that his or their underwriters/insurers endorse the policies to provide full contractual liability cover and prevent any exercise of rights of subrogation against the Employer, its other contractors and its or their staff.
- d) If the Contractor wishes to self-insure against such risks either in whole or in part, details of these arrangements must have been approved by the Employer in writing prior to execution of the Contract.
- e) The Contractor shall, prior to the commencement of the Services; and thereafter on the renewal date of each individual policy of insurance, as and when such occurs; and at such other times as the Supervising Officer may reasonably require:
 - i. Provide sight of original insurance documentation (including policies, cover notes, premium receipts and any other documents) to the Council;
 - ii. Supply copies of original insurance documentation.
 - iii. Supply confirmation from the Contractor's and, if relevant, sub-contractors' insurers that the insurance obtained is fully compliant with the obligations of this Contract.

- f) The Employer shall be entitled to notify the Contractor in writing that if in its opinion any such policy of insurance or self-insurance arrangement does not provide sufficient cover to comply with this Clause to require the Contractor to provide such insurance as will so comply. Upon receipt of such notice, the Contractor shall forthwith procure and maintain such insurance as the Employer shall reasonably require in breach of which the Employer itself may cause such insurance to be effected. Where such breach does occur, the Contractor shall pay to the Employer as a debt such sum as the Employer shall certify as being the cost to the Employer of effecting such insurance, together with a sum equal to 10% of the costs of such insurance as a contribution towards the Employer's administrative costs and overheads.
- g) It shall be a condition of this Contract that the Contractor will deal speedily and efficiently with all claims submitted to it by third parties, either by its own staff or by referring such claims to its insurers or their agents. Any such claims should be notified to the Employer.

27. CONFIDENTIALITY

All information provided to or obtained by the Contractor in the provision of the Services shall be deemed confidential and, except with the prior written permission of the Employer, shall not be released or divulged to any third party at any time before, during or after the Contract Period except to the extent that such release or divulgence is necessary for the performance of the Service or is required by law. Where the Contractor has to release or divulge information to any third party, he shall ensure that the third party complies with the provisions of this clause.

28. PERFORMANCE BOND

- a) The successful Tenderer shall provide the Employer within 14 days of receipt of the Employer's written acceptance of the Tender, a Bond to secure the due performance by the Contractor of his obligations to the Employer. The value of the Bond shall be 12% of the estimated annual value of the Contract. The Contractor shall ensure that such Bond remains in force throughout the Contract Period and the value of the Bond shall be increased at each anniversary of the Commencement Date pro rata to any increase in the most recently published General Index of Retail Prices 'All Items Monthly Digest of Statistics' compiled by the Central Statistics Office or successor body.
- b) In the absence of any such index, the Supervising Officer and the Contractor shall agree a suitable alternative. An undertaking to provide a Bond, in accordance with Clause 28, shall be given by the Contractor in the form shown in Appendix 4 of Section C. The surety proposed must be acceptable to the Employer.

29. BRIBERY AND CORRUPTION

The Employer shall be entitled to terminate the Contract forthwith and to recover from the Contractor the amount of any loss resulting from such termination if:

- a) the Contractor shall have offered or given or agreed to offer or to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the Contract or any other Contract with the Employer; or
- b) the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor); or
- c) in relation to any Contract with the Employer, the Contractor or person employed by him or acting on his behalf shall;
 - i. have committed any offence under the Prevention of Corruption Acts 1889 to 1916; or
 - ii. have given any fee or reward the receipt of which is an offence under Section I 17(2) of the Local Government Act 1972.

30. GRATUITIES

The Contractor, and his employees, shall not solicit nor accept any gratuity or tip or any other form of money, token or reward, or other consideration, or charge for any of the Services provided for in the Contract other than bona fide charges approved by the Employer.

31. LIABILITY OF EMPLOYER

- a) Save as referred to in this Contract, the Employer shall not under any circumstances be liable to the Contractor whether in Contract, tort or otherwise, for any loss, damage or injury however caused or arising out of, or in the course of, or in connection with, the provision by the Contractor of the Services or the use or occupation by the Contractor or the Contractor's staff of any premises made available under this contract.
- b) The Employer shall not be liable to the Contractor for any loss of profit, business or production or for any similar loss or damage whether direct, indirect or economic consequential however caused.
- c) The Employer shall not be liable to the Contractor for any consequential, economic or financial loss of any kind whatsoever which the Contractor sustains in consequence of any failure on the Employer's part to commission the volume of work anticipated by the Contractor or in any other way to generate the anticipated level of remuneration under this Contract.

- d) Any information given to the Contractor in the Bills of Quantities/Schedules of Rates and/or any plan, drawing, report, database, file or similar information in the Specification, is only given as a guide. The Contractor agrees that it has ascertained for himself the accuracy of the information and shall be deemed to have obtained for himself all necessary information as to risks contingencies and any other circumstances which might reasonably influence or affect the Contractor's Tender. No claim against the Council shall be allowed whether in contract or, in tort, under the Misrepresentation Act 1967, or otherwise on the ground of any inaccuracy.

32. DEFAULT IN PERFORMANCE

If at any time, after 30 consecutive calendar days from the Commencement Date, the Contractor has failed to perform the Services in accordance with the Contract, then the Employer may, without prejudice to any other rights that the Employer may have under the Contract, issue to the Contractor a Rectification Notice in accordance with this Clause or may advise the Contractor orally of any works which may become the subject of a Rectification Notice. Where a failure in the Service cannot be rectified the Default Notice procedure shall apply.

1. Rectification Notices

- a) Where the Employer is satisfied that the Contractor has failed to perform the Services specified in accordance with the Contract, he shall be entitled to issue to the Contractor a Rectification Notice giving details of the failure and requiring the Contractor to remedy such failure within a specified period of time.
- b) A Rectification Notice shall be pre-numbered, dated and signed by the Supervising Officer and contain the following details:
- i the exact location of the particular site where the failure has occurred;
 - ii the date and time at which the failure was inspected and found to exist;
 - iii a description of the failure required to be remedied;
 - iv a description of the action required to remedy the failure and, where applicable, the methodology to be used;
 - v the period of time allowed to remedy the failure, subject to a minimum of 48 consecutive hours, except where the failure has resulted in a risk to any person or property in which case a shorter period may be specified.

- c) The Rectification Notice shall provide a space for the Contractor to advise that the work has been completed and the date on which it was completed. The Rectification Notice shall be signed and dated by the Contract Manager or Supervisor and returned to the Supervising Officer within two working days of the work being completed.
- d) The period allowed in which to remedy the failure shall commence on receipt by the Contractor of the Rectification Notice and the Contractor shall carry out whatever works are necessary to remedy the failure detailed on the Rectification Notice within the period allowed.
- e) If the Contractor shall remedy the failure within the period allowed, then he shall be entitled to full payment for the Services without any deduction.
- f) If the Contractor shall fail to remedy the failure within the period allowed or cannot rectify the failure then the Employer shall be entitled to issue a Default Notice.

2. Default Notices

- a) Where a failure cannot be rectified or where, after the issue of a Rectification Notice, the Contractor fails to remedy a failure within the period allowed, or, after a Rectification Notice has been served to remedy the same failure on five separate occasions, the Employer, without prejudice to any other rights that he may have under the Contract, shall be entitled to issue to the Contractor a Default Notice giving details of the continuing failure.
- b) A Default Notice shall be pre-numbered, dated and signed by the Supervising Officer and shall contain the following details:
 - i the date and reference number of the relevant Rectification Notice if applicable;
 - ii the exact location of the particular site where the failure still exists;
 - iii the date and time at which the failure was re-inspected and found still to exist;
 - iv a description of the failure which still exists and is required to be remedied;
 - v where considered appropriate by the Employer, a description of the action required to remedy the failure;
 - vi the period of time being allowed to remedy the failure, subject to a minimum of 48 consecutive hours, except where the failure has resulted in a risk to any person or property in which case a shorter period may be specified;

- vii where considered appropriate by the Employer, the methodology and specification required to be adopted in remedying the failure.
- c) The period allowed in which to remedy the failure shall commence on receipt by the Contractor of the Default Notice and the Contractor shall carry out whatever works are necessary to remedy the failure detailed on every Default Notice within the period allowed.
- d) If the Contractor shall remedy the failure within the period allowed, then he shall be entitled to full payment for the works in accordance with the contract subject to a deduction of £500 per Default Notice issued within the particular payment period. If the failure is of such a nature that it cannot be rectified (e.g. failure to ensure that changing rooms are not cleaned and opened for use), the Employer shall be entitled to deduct the charge of £250 from any payment due to the Contractor. Where the Employer incurs additional costs as a result of the default, then those costs shall be notified by the Employer to the Contractor and the Employer will be entitled to deduct the costs together with an administration charge of 25% of the costs from any payment due to the contractor, which represents a genuine pre-estimate of the costs incurred by the Employer and is agreed by the parties, not to be a penalty.
- e) If the Contractor shall fail to remedy any failure that can be remedied within the period allowed then the Employer shall be entitled to issue a Notice of Failure.

3. Notice of Failure

- a) The Employer, without prejudice to any other rights that the Employer may have under the Contract, may issue a Notice of Failure, but not unreasonably or vexatiously, to the Contractor in any of the following circumstances:
 - i if, without reasonable cause, he wholly suspends the carrying out of the Services before the expiration or earlier termination of the Contract; or
 - ii if he fails to proceed regularly and diligently in the provision of the Services; or
 - iii if he refuses or persistently neglects to comply with Notices issued in accordance with this Clause and, by such refusal or neglect, the Services are materially affected; or
 - iv if he fails to comply with any other provisions of the Contract.
- b) A Notice of Failure shall be clearly marked as such and shall be delivered to the Contractor at his registered address by registered post or recorded delivery. Notices of Failure issued by the Employer need only give details of the circumstances leading to the issue of the Notice.

- c) In issuing a Notice of Failure, the Employer shall notify the Contractor of one or more of the following actions to be taken by the Employer:
 - i that others are to be employed to provide that part of the Services not provided by the Contractor, giving details of the part of the Services no longer required to be carried out by the Contractor together with the date and, if applicable, the period over which such action shall take effect;
 - ii that others are to be employed to remedy a failure by the Contractor in providing part of the Services in accordance with the Contract, giving details of the part of the Services referred to and the date and, if applicable, the period over which such action shall take effect.
- d) Following the issue of a Notice of Failure, the Employer shall be entitled to make a deduction from payments becoming due to the Contractor by way of damages according to the following rules;
 - i If others are employed and paid to provide part or parts of the Services then the following costs of the Employer may be deducted;
 - 1. the cost incurred by the Employer in paying others; and
 - 2. an administration charge of 25% of the full cost to the Employer of paying others, subject to a minimum of £100
 - ii If others are employed and paid to remedy a failure by the Contractor then the following costs of the Employer may be deducted;
 - 1. the cost incurred by the Employer in paying others; and
 - 2. an administration charge of 25% of the full cost to the Employer of paying others, subject to a minimum of £100

4. Notice of Determination

- a) If the Contractor either shall continue such failure for 7 calendar days after the date of the Notice of Failure or shall at any time thereafter repeat such default (whether previously repeated or not), then the Employer may within 7 days after such continuance or repetition by further notice to the Contractor's registered office by registered delivery or recorded delivery forthwith determine the employment of the Contractor under this Contract
- b) If, within any period of 26 consecutive weeks, the Employer shall issue to the Contractor more than 50 Notices of Rectification or 25 Notices of Default or 5 Notices of Failure, the Employer may by further notice to the

Contractor's registered office by registered delivery or recorded delivery forthwith determine the employment of the Contractor under this Contract

- c) The Supervising Officer reserves the right to invoke all or any aspect of the default in performance procedure depending on the seriousness of the failure to perform the Services. The costs and charges incurred by the Employer in determining the Contract shall be paid by the Contractor to the Employer on demand or may be deducted by the Employer from any moneys due or which may become due to the Contractor.

33. DEFAULT IN PROVISION OF THE SERVICE

- a) Without prejudice to any other powers of the Employer, if the Contractor, for whatever reason fails to provide or perform the Services in whole or in part completely in accordance with the terms of the Contract, then, without prejudice to any other remedy contained herein, the Employer may by his own or other workmen provide and perform such Services or part thereof in which the Contractor has made default. The costs and charges incurred by the Employer in so doing shall be paid by the Contractor to the Employer on demand or may be deducted by the Employer from any moneys due or which may become due to the Contractor.
- b) If the Employer notifies the Contractor by serving a Notice upon him at his registered address either by registered post or recorded delivery that, as a consequence of the failure of the Contractor to provide the Service or to comply with his obligations under the Contract, the Employer intends to undertake the Service with his own or other workmen the Contractor, at no charge, shall make available to the Employer for this purpose all materials, clothing, equipment, vehicles, depots or other goods belonging to the Contractor or hired or leased by him for the purpose of providing the Service.

34. METHOD OF PRICE REVIEW

During the Contract Period and any extension thereto, the prices contained within the Annual Sum, Bills of Quantity, Schedule of Rates and Day Work Rates shall be increased or decreased on the Review Dates in line with the most recently published General Index of Retail Prices 'All Items Monthly Digest of Statistics' compiled by the Central Statistics Office or successor body for the month immediately preceding the Review Date. In the absence of such an Index, the Supervising Officer shall determine an alternative. Any revised rates shall apply to all work undertaken in the 12 months following the Review Date.

35. TERMINATION BY CONTRACTOR

- a) If the Employer makes default in any one or more of the following respects:
- i he does not pay the amount properly due to the Contractor in respect of any certificate or pay any VAT due on that amount pursuant to Clause 13;
 - ii he, or any person for whom he is responsible, interferes with or obstructs the issue of any Certificate due under this Contract or interferes with or obstructs the carrying out of the Services;
 - iii he suspends the carrying out of the whole or substantially the whole of the Services for a continuous period of 28 days or more; or for periods amounting in aggregate to 56 days or more in any period of twelve months, other than as a consequence of the failure by the Contractor to provide all or part of the Service,
- the Contractor may give notice to the Employer which specifies the default and requires it to be ended. If the default is not ended within 28 days of receipt of the notice, the Contractor may by further notice to the Employer determine the employment of the Contractor under this Contract. Such determination shall take effect on the date of receipt of the further notice. A notice of determination under this Clause shall not be given unreasonably or vexatiously.
- b) Upon determination of the employment of the Contractor, the Contractor shall prepare an account setting out:
- i the total value of work properly executed and of materials and goods properly brought into the Contract Area for the purpose of the Services, such value to be ascertained in accordance with this Contract as if the employment of the Contractor had not been determined together with any amounts due to the Contractor under the Conditions not included in such total value; and
 - ii the cost to the Contractor of removing or having removed from the Contract Area all temporary buildings and Work Equipment; and
 - iii any direct loss and/or damage caused to the Contractor by the determination
- c) After taking into account amounts previously paid or otherwise discharged to the Contractor under this Contract so far as it relates to the matters referred to in the Contractor's Account, the Employer shall pay to the Contractor the full amount properly due in respect of this account within 30 days of its submission by the Contractor.
- d) The provisions of this clause are without prejudice to any other rights and remedies which the Contractor may possess.

36. NOTICES AND INSTRUCTIONS

- a) No notice served upon the Employer shall be valid or effective unless it is addressed to the Supervising Officer and sent by recorded delivery, facsimile or e-mail or delivered by hand to the Employer at the address specified in Section B, Clause 1 or to such other address as the Supervising Officer may notify to the Contractor in writing.
- b) Any Notice served upon the Contractor shall be valid and effective from the date of receipt if it is sent by recorded delivery, facsimile or e-mail or delivered by hand to the registered office, principal place of business or to the premises referred to in the Tender documents or is delivered by hand to a director, proprietor or the Contractor.

37. ARBITRATION

- a) Except where otherwise provided for in the Contract all disputes between the parties arising out of or connected with this Contract or the performance of the Services by the Contractor shall be referred to an arbitrator to be agreed upon by the parties or, in default of such agreement within seven days, to a person appointed on the application of either party to the President of the Institute of Arbitration or a person nominated by him to make such appointments
- b) The arbitrator shall be entitled to make such a decision or award as he thinks just and equitable having regard to the circumstances then existing.
- c) Any award or decision of such arbitrator shall be final and binding on the parties hereto.
- d) Unless the Contract shall have already been determined, the Contractor shall in every case continue to carry out the Services with all due diligence and the Contractor and the Employer shall both give effect forthwith to every decision of the Supervising Officer unless and until the same shall be revised by an arbitrator as herein provided.
- e) The Arbitration shall be conducted in accordance with the Arbitration Acts 1950 and 1979.

38. RELEVANT EUROPEAN STANDARDS

Implicit in the Contract documents (including the Specifications) is a requirement of the Contractor to meet the standards defined in ISO documents. In the event that there is a variance between specifications and ISO standards, the specifications will take precedence.

39. OBSERVATION OF STATUTORY REQUIREMENTS

The Contractor shall comply with all statutory and other provisions to be observed and performed in connection with the Services provided under the Contract and shall indemnify the Employer accordingly for any failure to so comply.

40. PROGRAMME OF WORK

- a) Prior to the commencement of the Contract, the Contractor shall provide to the Supervising Officer a detailed Programme of the Services for the first twelve months of the Contract. An updated Programme must be provided each month, in advance, in the form of a rolling Programme for the subsequent twelve months to the Supervising Officer in writing. In preparing the Programme, the Contractor must comply with the restrictions in the Working Hours.
- b) At all times, the Contractor must comply with the agreed Programme and in accordance with the requirements of the Tender specification or any variation thereof.
- c) On a monthly basis and as provided for in Clause 20, the Contractor or his Contract Manager shall meet the Supervising Officer to consider the progress achieved in respect of the previous month's operations against the Programme.

41. RIGHTS AND DUTIES RESERVED

- a) All rights and duties of the Employer are reserved.
- b) Copyright in the documents comprising the Contract excepting the Contractor's prices shall vest in the Employer but the Contractor may obtain or make at his own expense any further copies required for use by him in performing the Contract but not for any other purpose.

42. HEALTH AND SAFETY

- a) The Contractor shall in performing the Services adopt safe methods of work in order to protect the health and safety of his own employees, the employees of the Employer and of all other persons, including members of the public and shall comply with the requirements of the Health and Safety at Work Act 1974 and of any other relevant Acts, Regulations, Orders or any European Directive pertaining to the health and safety of employed persons, including members of the public. The Contractor shall indemnify the Employer accordingly for any failure to so comply.
- b) The Contractor shall, as part of the response to the Method Statements, at the time of submitting his Tender provide to the Employer a written copy of his health and safety working procedures relating to the performance of the Contract.

- c) The Contractor shall review his Health and Safety policy and safe working procedures as often as may be necessary and in the light of changing legislation or working practices or the introduction of new Equipment and shall notify the Supervising Officer in writing of any such revisions. The Supervising Officer may require the Contractor to amend his health and safety policy and safe working procedures to comply with any change in legislation or working practices or required as a result of the introduction of new Equipment.

43. WAIVER

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

44. SEVERANCE

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

45. AMENDMENTS TO DOCUMENTS

No alteration or qualification of any kind shall be made to the text of this Contract by the Contractor without the written authority of the Supervising Officer. Any unauthorised alteration, amendment, note, omission or addition so made shall be of no effect and the Contract as originally prepared by the Employer shall be adhered to.

46. EQUAL OPPORTUNITIES POLICY

The Contractor shall keep his equal opportunities policy in force for the duration of the Contract to comply with statutory obligations. Any findings of unlawful discrimination against the Contractor during the three years prior to the commencement of the Contract shall be reported to the Employer at the time of submitting the Tender, together with details of the steps taken to avoid repetition.

47. END OF CONTRACT

- a) 180 days prior to the retendering of this Contract or within seven days of notice of the termination of the Contract for whatever reason, the Contractor will supply to the Employer sufficient details of employees engaged on the Contract and their terms and conditions of employment to enable all Tenderers for a new Contract to assess accurately their potential liability under the Transfer of Undertakings (Protection of

Employment) Regulations 2006 and the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC).

- b) Upon termination of the Contract for any reason, the Contractor shall supply the Employer with details of all vehicles and equipment being used on the Contract, materials ordered or delivered but not used and work in progress.
- c) At such times as the Supervising Officer may determine in the immediate run-up to the termination of the Contract, the Contractor shall co-operate with the Supervising Officer and with any person or persons appointed by him and provide such information as may be reasonably requested as to ensure the smooth transition of the Contract from the Contractor to the Employer or to other persons.

48. FINAL PAYMENT

- a) The Contractor shall supply to the Supervising Officer within 56 days from the date of termination of the Contract for whatever reason, a final Statement showing the amounts to which the Contractor considers himself entitled in respect of the Contract up to the end of the Contract Period, such amounts to include any payments for Additional Services authorised by the Supervising Officer and properly carried out in accordance with the terms and conditions of the Contract.
- b) Clauses 10 (Additions and Deductions), 11 (Certification), 12 (Amended Statements), 13 (Invoice) and 14 (Interest on Overdue Payments) shall apply to this final payment.

49. FORCE MAJEURE

- a) In case of an Act of God or war (whether declared or not), rebellion, riot, insurrection, national or international emergency, export or import restrictions, fire, flooding, explosions, damage or loss due to natural causes, labour strikes or disturbances, mobilisation or extended military activities, seizure, requisitions, restrictions on foreign exchange, restrictions or shortage of labour, equipment, spare parts or supplies or any order by local, national or international authority or any introduction or ancillary or supplementary orders or other enactments or any case of force majeure whether or not of like kind to those mentioned before, the Employer shall be entitled to (but shall not be obliged to) rescind all his obligations towards the Contractor under this Contract and the Contractor shall not be entitled to compensation or damages or any other compensation whether in respect of direct or indirect consequential loss or damage or otherwise.

- b) In the event of an Act of God or Force Majeure, which are both beyond the control of the Contractor and are such that the Contractor with the application of all due diligence and foresight could not prevent, causes the cessation of or substantial interference with the performance of the Services, the duty of the Contractor to perform the Services shall be suspended until such circumstances have ceased. The Council shall not be liable to make any payment to the Contractor in respect of such suspension and any such sum already paid in respect of any part of the Services not yet performed shall be held to the credit of the Council and returned to the Council.
- c) For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties, and failure to provide adequate premises, equipment, materials, consumables and/or staff or similar matters, which a prudent and diligent Contractor could have avoided with the application of foresight, are not to be considered as events of Force Majeure or acts of God.

50. PARTNERSHIP

Nothing contained in the Contract shall create a partnership between the parties thereto or the relationship of principal and agent or the relationship of employer and employee between the parties.

51. LAW OF ENGLAND

This Contract shall be governed by and construed in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

SECTION C – APPENDIX 1

Form of Tender

For: Grounds Maintenance
To: Newbury Town Council

I/We Landscapes Group Ltd

carrying on business at Frilsham Nursery, Yattendon, Thatcham, Berkshire, RG18
OXX

I/We hereby Tender and undertake to execute and complete all the Services required to be performed in accordance with the Articles of Agreement, Conditions of Contract, Specification, Methods Statements, Bills of Quantities and prices contained therein and any other documents listed or referred to in the Conditions of Contract Clause 1 for the sum of: £275,260.56

Two hundred and seventy five thousand, two hundred and sixty pounds and fifty six pence.

I/We agree that the insertion by me/us of any conditions qualifying this Tender or any unauthorised alteration to any of the Tender documents shall not affect the Articles of Agreement or the Contract Conditions and may cause the Tender to be rejected.

I/We agree that this Tender shall remain open to be accepted or not by the Council and shall not be withdrawn for a period of six months from 1 October 2010.

And I/we further undertake to execute a Contract to be prepared at your expense for the proper and complete fulfilment of the Service.

I/We agree that it will be a condition precedent to a Contract based on the acceptance of the Tender that I/we shall enter into a contract performance Bond, in the Form attached, with a surety to be approved by you, which Bond shall be lodged with the Council prior to the Commencement Date.

Unless and until a formal agreement is prepared and executed, this Tender together with your acceptance thereof in writing, shall constitute a binding Contract between us.

I/We certify that the details of this Tender have not been communicated to any other person or adjusted in accordance with any agreement or arrangement with any other person.

GENERAL

I/We understand that you are not bound to accept the lowest or any Tender you may receive.

I/We certify that this is a bona fide Tender.

Contractor's Signature (s)¹

Print name (s) in full

Date

Name and Address of Firm: The Landscapes Group Ltd, Landscapes House, First Floor Offices, 3 Rye Hill Office Park, Birmingham Road, Allesley, Coventry, CV5 9AB.

¹ Where the Contractor is an incorporated association the company secretary and a duly authorised director should sign. In the case of a partnership at least two duly authorised partners should sign. In the case of an individual the proprietor should sign.

SECTION C – APPENDIX 2

Declaration Relating to Collusive Tendering

We declare that this is a bona fide Tender, intended to be competitive and we have not fixed or adjusted the amount of the Tender by or under or in accordance with any agreement or arrangement with any other person. We also declare that we have not done, and we undertake that we will not do at any time before the hour and date specified for the return of this Tender any of the following acts:

- (a) Communicate to a person other than the person calling for those Tenders the amount or approximate amount of the proposed Tender, except where the disclosure, in confidence, of the approximate amount of Tender was necessary to obtain insurance premium quotations required for the preparation of the Tender.
- (b) Enter into any agreement or arrangements with any other person that he shall refrain from Tendering or as to the amount of any Tender to be submitted.
- (c) Offer to pay or give or agree to pay any sum or valuable consideration directly or indirectly to any person for doing or having done or causing to be done in relation to any other Tender or proposed Tender for the said work any act or thing of the sort described above.

In this certificate, the word 'person' includes any person or any body or association, corporate or non-corporate and 'any agreement or arrangement' includes such transaction, formal or informal, and whether legally binding or not.

Signature

Firm or Company: The Landscapes Group Ltd

SECTION C – APPENDIX 3

Performance Bond

Please advise of the bond you would propose to put in place.

Name and Address of Provider:

Aviva, Sienna Floor 6, Surrey Street, Norwich, Norfolk, NR1 3NS

Contact name, position and telephone number Gerald Knights, Technical Underwriter
01603 687289

Has the Provider formally advised of his willingness in principle to stand as surety/guarantor? Yes

Page 1 of Performance Bond to be inserted here as Appendix 4

Page 2 of Performance Bond to be inserted here as Appendix 4

SECTION C – APPENDIX 5

Details of Proposed Insurance Cover

Employers' Liability Insurance

Insurer	AXA Insurance UK Plc
Policy No	LC COM 1217435
Extent of Cover	£10,000,000
Expiry Date	31 January 2011

Public Liability (Third Party) Insurance

Insurer	AXA Insurance UK Plc & ACE European Group Ltd
Policy No	LC COM 1217435 & UKCANC28456
Extent of Cover	£2,000,000 and £8,000,000
Expiry Date	31 January 2011

Professional Indemnity Insurance

Insurer	Royal Sun Alliance Insurance Plc
Policy No	RKK269434
Extent of Cover	£10,000,000
Expiry Date	31 January 2011

The Council may call for sight of the various policies at its sole discretion.

SECTION C – APPENDIX 6

Articles of Agreement

THIS CONTRACT is made the day of 2011 between NEWBURY TOWN COUNCIL of Town Hall, Market Place, Newbury, RG14 5AA ('the Employer') of the one part and The Landscapes Group Ltd., Landscapes House, First Floor Offices, 3 Rye Hill Office Park, Birmingham Road, Allesley, Coventry, CV5 9AB ('the Contractor') of the other part.

WHEREAS

1. The Employer wishes to have provided the Service set out in the Contract and
2. The Contractor is willing to perform such Service in accordance with the provisions of the Contract

NOW IT IS AGREED between the Employer and the Contractor as follows:

1. This Contract comprises the following documents:
 - A Instruction to Tenderer
 - B Conditions of Contract
 - C Specifications and Appendices
 - D Method Statements
 - E Site Details
 - F Bills of Quantities
 - G Schedule of Rates
 - H Day Work Rates
 - I Form of Tender
 - J Form of Bond
 - K Articles of Agreement
 - L Framework Programme of Works
2. This Contract constitutes the sole contract or agreement between the Employer and the Contractor for the performance by the Contractor of the Service.

Articles of Agreement

- 3. The Contractor shall provide the Service in accordance with the provisions of the Contract for the Contract Period and to the satisfaction of the Employer.
- 4. So long as the Contractor shall continue to provide the Service in accordance with the provisions of the Contract the Employer shall make to the Contractor the payments provided by the Contract.
- 5. This instrument or document hereby expresses itself as executed as a deed.

IN WITNESS THEREOF the parties hereto have caused their respective Common Seals to be hereunto affixed have hereunto set their hands and seals the day and year before written.

THE COMMON SEAL of NEWBURY TOWN COUNCIL

)
)
)
was hereunto affixed by Order)

THE COMMON SEAL of

)
)
was hereunto affixed)
in the presence of)

Director
Secretary

SIGNED SEALED and DELIVERED)

)
by)
in the presence of)