



**Parks and Street Care  
Services**

**Grounds Maintenance,  
Maintenance of Cemeteries,  
Arboricultural Works and Associated  
Services**

**For**

**Calverton Parish Council**

**Contract Agreement  
2019 - 2020**

This AGREEMENT is made the 17th day of January 2019

Between:

**CALVERTON PARISH COUNCIL** of Council Room, Main Street, Calverton, Nottingham NG14 6JX (“the Parish Council”) of the one part; and

**GEDLING BOROUGH COUNCIL** of Civic Centre, Arnot Hill Park, Arnold, Nottingham, NG5 6LU (“the Borough Council”) of the other part.

WHEREAS

- 1 The Parish Council wishes the Borough Council to provide the Services set out in this Agreement; and
- 2 The Borough Council is willing to provide such Services in accordance with the provisions of this Agreement.

NOW IT IS AGREED between the Parish Council and the Borough Council as follows:

- 1 This Agreement and Schedules constitute the sole agreement between the Parish Council and the Borough Council for the provision of the Services;
- 2 The Borough Council shall provide the Services in accordance with the provisions of the Agreement and Schedules and to the satisfaction of the Parish Council.

## **PART A - OPERATIVE PROVISIONS**

### **A1. DEFINITIONS**

The terms and expressions used in this Agreement shall have the meanings set out below:

“Business Day” Any day other than a Saturday, a Sunday or a public holiday or bank holiday in England.

“Change in Law” The coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Agreement.

“Commencement date”	1 April 2019
“Confidential Information”	Any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Service, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA).
“DPA”	The Data Protection Act 1998 or any subordinate or replacement legislation or regulation made from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
“EIR”	The Environmental Information Regulations 2004.
“FOIA”	The Freedom of Information Act 2000.
“Force Majeure”	Any cause materially affecting the performance by a party of its obligations under this Agreement arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial disputes, protests, fire, flood, storm, tempest, epidemic, explosions, acts of terrorism and national emergencies.
“HRA”	The Human Rights Act 1998.

“Price”	The price detailed in Schedule 2 (the Bill of Quantities 2019-2020).
“Prohibited Act”	<p>The following constitute prohibited acts:</p> <ul style="list-style-type: none"> <li>a) To directly or indirectly offer, promise or give any person working for or engaged by the Borough Council a financial or other advantage to: <ul style="list-style-type: none"> <li>i) Induce that person to perform improperly a relevant function or activity; or</li> <li>ii) Reward that person for improper performance or a relevant function or activity:</li> </ul> </li> <li>b) To directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;</li> <li>c) Committing any offence under the Bribery Act, or under any legislation creating offences concerning fraudulent acts, or at common law concerning fraudulent acts relating to this Agreement or any other Agreement with the Borough Council; or defrauding or attempting to defraud or conspiring to defraud the Borough Council.</li> </ul>
“Services”	The Services described in Schedule 1 (Specifications 2019-2020) to be supplied by the Borough Council to the Parish Council in accordance with this Agreement.

“Term” A period of one (1) year beginning on, and including, 1 April 2019 and ending on, and including, 31<sup>st</sup> March 2020.

A1.1 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.

A1.2 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

**A2. HEADINGS**

A2.1 The index and headings to the clauses and appendices to and schedules of this Agreement are for convenience only and will not affect its construction or interpretation.

**A3. NOTICES**

A3.1 Any notice required by this Agreement to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the address specified in Clause A3.2 below or such other address notified to the other party in writing.

A3.2 In the case of the Borough Council, such notice is to be served on the Director of Finance Gedling Borough Council, Civic Centre, Arnot Hill Park, Arnold, Nottingham, NG5 6LU. In the case of the Parish Council, such notice is to be served on the Clerk to the Parish Council, Calverton Parish Council, Council Room, Main Street, Calverton, Nottingham, NG14 6JX.

A3.3 Any notice served personally will be deemed to have been served on the day of delivery, any notice sent by post will be deemed to have been served forty eight (48) hours after it was posted and any notice sent by fax will be deemed to have been served twenty four (24) hours after it was despatched save where the deemed date of service falls on a day

other than a Business Day in which case the date of service will be the following Business Day.

#### **A4. ENTIRE AGREEMENT**

A4.1 The Agreement constitutes the entire agreement between the parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral.

### **PART B - PROVISION OF SERVICES**

#### **B1. PERFORMANCE**

B1.1 If the Borough Council at any time becomes aware of any act or omission, or proposed act or omission by the Parish Council which prevents or hinders, or may prevent or hinder the Borough Council from performing the Services in accordance with the Agreement, the Borough Council shall inform the Parish Clerk and the Parish Council may, at its absolute discretion, extend the period of the Agreement accordingly.

B1.2 If the Borough Council at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Agreement, the Borough Council shall inform the Parish Council immediately.

#### **B2. PRIMARY CONTACT**

B2.1 The Borough Council's Primary Contact for the purposes of this Agreement is Mr Melvyn Cryer, Service Manager, Parks and Street Care: 0115 9013788: [melvyn.cryer@gedling.gov.uk](mailto:melvyn.cryer@gedling.gov.uk)

B2.2 The Parish Council's Primary Contact for the purposes of this Agreement is Mr Gareth Bott, Clerk to the Parish Council, 0115 965 4560: [clerk2thecouncil@btconnect.com](mailto:clerk2thecouncil@btconnect.com)

B2.3 Each party shall forthwith give notice in writing to the other of any change in the identity, address and telephone numbers of the person appointed as Primary Contact.

### **B3. SERVICES**

- B3.1 The Council agrees to provide the Services set out in Schedule 1.
- B3.2 The Services shall be provided for the Term of this Agreement. The Term of this Agreement may be extended and the Services continue to be provided by the Borough Council to the Parish Council under the terms of this Agreement for a maximum period of one (1) year..
- B3.3 Any agreed extension of the Term of this Agreement shall be in written format signed by both parties specifying the agreed period of extension and the new end date, such written agreement to be in place on or before 31 January 2020.

### **B4. STANDARD OF SERVICES**

- B4.1. The Borough Council agrees that the Services will be provided:
- B4.1.1. in a professional, skilled manner;
  - B4.1.2. by a sufficient number of appropriately qualified, trained and experienced personnel;
  - B4.1.3 in accordance with the Agreement and any descriptions provided by the Parish Council;
  - B4.1.4 to the reasonable satisfaction of the Parish Council; and
  - B4.1.5 in a way that the Borough Council takes every reasonable precaution to safeguard the Parish Council's property entrusted to the care of the Council.

## **PART C - PRICE AND PAYMENT**

### **C1. PRICE AND PAYMENT**

- C1.1 The Parish Council shall pay the Price set out in Schedule 2 to the Borough Council for the provision of the Services.
- C1.2 The Borough Council shall submit to the Parish Council an invoice at the end of each three (3) month period on or around 30 June 2019, 30 September 2019, 31 December 2019, and 31 March 2020).

- C1.3 Each invoice submitted in accordance with paragraph C1.2 above shall be for one quarter (1/4) of the scheduled work as detailed in the Final Summary at Schedule 2, plus any relevant deductions or additional work instructed and carried out during the previous three (3) months.
- C1.4 Payment of any invoice will be made no later than thirty (30) days following the date of receipt of the invoice by the Parish Council.
- C1.5 The Parish Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Borough Council has either failed to provide the Services at all or has not provided the Services in accordance with this Agreement and the schedules, and any invoice relating to such Services will not be paid unless or until the Services has been performed to the Parish Council's satisfaction.
- C1.6 Any overdue sums will bear interest from the due date until payment is made at four percent (4%) per annum over the HSBC base rate from time to time. The Borough Council is entitled to suspend provision of the Services in the event that any undisputed invoice remains outstanding for a period of ninety (90) days.

## **PART D - TERMINATION AND CONSEQUENCES OF TERMINATION**

### **D1. TERMINATION**

- D1.1 Subject to the provisions of clause H6 (Force Majeure) either party may terminate the Agreement with immediate effect by notice in writing to the other at any time if:
- D1.1.1 one party is in breach of any of its obligations under this Agreement that is capable of remedy and which has not been remedied to the satisfaction of the other within fourteen (14) days, or such other reasonable period as may be specified in a written notice specifying the breach and requesting it to be remedied; or
- D1.1.2 there is a material or substantial breach by either party of any of its obligations under this Agreement which is incapable of remedy; or



D1.1.3 one party commits three (3) or more persistent minor breaches of this Agreement in any three (3) month period whether remedied or not.

D1.2 Notwithstanding the above, either party may terminate this Agreement by giving a minimum of six (6) months' written notice to the other party.

## **D2. CONSEQUENCES OF TERMINATION**

D2.1 If this Agreement is terminated in whole or in part the Parish Council shall only be liable to pay to the Borough Council such elements of the Price, if any, that have properly accrued in accordance with the Agreement or the affected part of the Agreement up to the time of the termination.

D2.2 Upon the termination of the Agreement for any reason, subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Agreement.

## **D3 DISPUTE RESOLUTION PROCEDURE**

D3.1 If a dispute arises between the Parish Council and the Borough Council in connection with the Agreement, the Primary Contacts shall each use reasonable endeavours to resolve such dispute in good faith by means of prompt discussion.

D3.2 If a dispute is not resolved within fourteen (14) days of referral under clause D3.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within fourteen (14) days or longer period as the parties may agree.

D3.3 Provided that both parties consent, a dispute not resolved in accordance with clauses D3.1 and D3.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within fourteen (14) days of one party requesting mediation with the costs of mediation determined by the mediator.

D3.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

## **D4 SURVIVAL**

D4.1 The following clauses will survive termination or expiry of the Agreement: Clause D2 (Consequences of Termination), Clause F1 (Confidentiality and Protection of Information), Clause F2 (Data Protection), Clause F3 (Freedom of Information), Clause H4 (Severance), and Clause H9 (Law and Jurisdiction).

## **PART E - INSURANCE AND LIABILITIES**

### **E1. INSURANCE**

E1.1 The Borough Council shall maintain appropriate insurance with reputable insurer or underwriters sufficient to cover any liability arising under the Agreement and upon request provide copies of the same to the Parish Council.

## **PART F - PROTECTION OF INFORMATION**

### **F1. CONFIDENTIALITY AND PROTECTION OF INFORMATION**

F1.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall do each of the following:

F1.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

F1.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

F1.2 Clause F1.1 shall not apply to the extent that any one or more of the following applies to the relevant Information or disclosures:

F1.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the EIR pursuant to clause F3 (Freedom of Information);

F1.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the Information owner;

F1.2.3 such information was obtained from a third party without obligation of confidentiality;

F1.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

F1.2.5 it is independently developed without access to the other party's Confidential Information.

F1.3 Nothing in this Agreement shall prevent the Borough Council from disclosing the Parish Council's Confidential Information in any one or more of the following circumstances;

F1.3.1 to any Crown body or any other contracting council. All Crown bodies or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other contracting authorities on the basis that the Information is confidential and is not to be disclosed to a third party which is not part of any Crown body or contracting council;

F1.3.2 to any consultant, contractor or other person engaged by the Borough Council or any person conducting an Office of Government Commerce gateway review;

F1.3.3 for the purpose of the examination and certification of the Borough Council's accounts; or

F1.3.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Borough Council has used its resources.

F1.4 Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, employees, sub-contractors, agents, professional advisors and consultants.

## **F2. DATA PROTECTION**

F2.1 The Parish Council and the Borough Council shall (and shall procure that any of its staff involved in the provision of the Services) comply with any requirements under the DPA.

## **F3. FREEDOM OF INFORMATION**

F3.1 Both parties are subject to the FOIA and the EIR (“the Acts”). Either party may be required under the Acts to disclose information forming part of the Agreement to anyone who makes a reasonable request. Both parties recognise that the other has absolute discretion to apply or not to apply any exemptions under the Acts.

F3.2 Both parties shall assist and co-operate with the other (at its own expense) to enable the other party to comply with the information disclosure requirements under the Acts and in so doing comply with any timescale notified to it by the other.

## **PART G - STATUTORY OBLIGATIONS**

### **G1. HEALTH AND SAFETY**

G1.1 Both parties shall comply with all health and safety legislation in force and their respective health and safety policies.

G1.2 In addition, the Borough Council shall comply with any health and safety requirements as set out in the Specifications 2019-2020 (Schedule 2).

### **G2. CORPORATE REQUIREMENTS**

G2.1 Both parties agree to comply with all obligations under the HRA.

G2.2 Both parties agree not to unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, disability, gender reassignment, marriage and civic partnership, pregnancy and maternity, race, religion or belief sexual orientation or otherwise) in employment.

## **PART H - GENERAL PROVISIONS**

### **H1. AGREEMENT VARIATION**

H1.1 No variation or modification to the Agreement is valid unless it is in writing and signed by the Parish Council and the Borough Council.

### **H2. THIRD PARTY RIGHTS**

H2.1 This Agreement is enforceable by the original parties to it, by their successors in title and permitted assignees. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third parties) Act 1999 to enforce any term of the Agreement.

### **H3. NO WAIVER**

H3.1 Failure by either party at any time to enforce any one or more of the provisions of this Agreement or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Agreement nor affect the validity of the Agreement or any part of it or the right of the parties to enforce any provision in accordance with its terms.

### **H4. SEVERANCE**

H4.1 If any provision of the Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision, all of which shall remain in full force and effect.

### **H5. FORCE MAJEURE**

H5.1 Neither party shall be liable for failure to perform its obligations under the Agreement if such failure results from Force Majeure.

H5.2 If provision of the Services is affected by circumstance of Force Majeure, the Parish Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Borough Council against the Parish Council nor entitle the Borough Council to terminate the Agreement.

H5.3 If the event of Force Majeure continues for more than two (2) months either party may give written notice to the other to terminate the Agreement immediately or on a set termination date.

H5.4 If the Agreement is terminated in accordance with clause H6.3 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist. .

## **H7. INDUCEMENTS**

H7.1 The Parish Council shall not, and shall procure that its employees, agents, consultants and any sub-contractor shall not, in connection with this Agreement commit a Prohibited Act.

H7.2 The Parish Council warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Borough Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement.

H7.3 The Parish Council shall if requested, provide the Borough Council with any reasonable assistance to enable the Borough Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.

H7.4 If any breach of clause H7.1 is suspected or known, the Parish Council must notify the Borough Council immediately. If the Parish Council notifies the Borough Council that it suspects or knows that there may be a breach of clause H7.1, the Parish Council must respond promptly to the Borough Council's enquiries, co-operate with any investigation, and allow the Borough Council to audit books, records and any other relevant documentation. This obligation shall continue for seven (7) years following the expiry or termination of this Agreement.

H7.5 Where the Parish Council (including its employees, agents, consultants, any sub-contractor or anyone acting on its behalf (in all cases whether or not acting with the Parish Council's knowledge)) engages in conduct prohibited by clauses H7.1 and H7.2 in relation to this or any other

agreement with the Borough Council, the Borough Council has the right to terminate the Agreement with immediate effect.

H7.6 In determining whether to exercise the right of termination under clause H7.5, the Borough Council shall give all due consideration, where it considers it appropriate, to action other than termination of this Agreement.

H7.7 Any notice of termination under clause H7.5 must specify:

H7.7.1 the nature of the Prohibited Act;

H7.7.2 the identity of the party whom the Borough Council believes has committed the Prohibited Act; and

H7.7.3 the date on which this Agreement will terminate.

H7.8 The decision of the Borough Council shall be final and conclusive in any dispute, difference or question arising in respect of:

H7.8.1 the interpretation of this Clause H7;

H7.8.2 the right of the Borough Council under this Clause to terminate this Contract; and

H7.8.3 the amount or value of any such gift, consideration or commission.

H7.9 Any termination under clause H7.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Borough Council, this includes but is not limited to the right to recover from the Parish Council the amount of any loss suffered by the Borough Council resulting from the termination.

## **H8. INSPECTION OF PHYSICAL LOCATIONS**

H8.1 The Parish Council shall permit the Borough Council to make any inspections or tests which may reasonably be required in respect of the delivery of the Services in relation to the Agreement.

**H9 LAW AND JURISDICTION**

H9.1. This Agreement shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

IN WITNESS of which this Contract has been duly executed as a deed by the parties, the day and year first before written

The COMMON SEAL of  
GEDLING BOROUGH COUNCIL  
was hereunto affixed as a deed  
in the presence of:

Mayor

Monitoring Officer

EXECUTED AS A DEED  
by CALVERTON PARISH COUNCIL  
and signed by:



# **SCHEDULE 1**

## **SERVICES**

The Services are as set out in the Specification 2019-2020 attached.

## **SCHEDULE 2**

### **PRICE**

The Price is as set out in the Bill of Quantities 2019-2020 attached.

The Price is exclusive of VAT.