

## **LEDBURY TOWN COUNCIL**

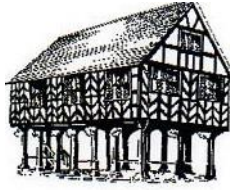
# **DOG HILL WOOD MAINTENANCE AND MANAGEMENT CONTRACT**

GENERAL CONDITIONS

SPECIFICATION

TENDER FORMS

**NOTE:** This tender document is to be completed in full and returned in total as the tender offer.



# **LEDBURY TOWN COUNCIL**

## **DOG HILL WOOD MAINTENANCE AND MANAGEMENT CONTRACT**

### **PART ONE**

### **GENERAL CONDITIONS**

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# 1 DEFINITIONS AND INTERPRETATIONS

- 1.1 In these conditions except where the context otherwise requires, the following expressions shall have the meanings hereby ascribed to them:-
- 1.1.1 "The Council" means Ledbury Town Council.
  - 1.1.2 "The Authorised Officer" means the person defined in Condition 3.
  - 1.1.3 "The Contract" means the documents forming the tender and the written acceptance thereof (in whole or in part) together with the appendices.
  - 1.1.4 "The Contractor" means the individual or firm or company whose tender shall have been accepted.
  - 1.1.5 "The Service" means the whole of the work to be executed in accordance with the Contract including any materials, articles and goods to be supplied thereunder, and involves any modification thereto made pursuant to these Conditions.
  - 1.1.6 "The Sites" means all amenity areas where the Service or any part thereof is to be performed by the Contractor.
  - 1.1.7 "The Conditions" means these Conditions for Maintenance and Management of Dog Hill Wood.
  - 1.1.8 "The Specification" means the description of the Service referred to in any specification within the Contract and any variation thereof, pursuant to **Clause 4** of these Conditions.
  - 1.1.9 "Commencement date" means the date stated in **Clause 5**.
  - 1.1.10 "Default Notice" means a notice or notices given by the Council to the Contractor in respect of the non-performance of the Service in accordance with this Contract.
  - 1.1.11 "The Expert" shall be a person agreed between the parties, or if the parties fail to agree, the appointment of a particular expert then the President of the Royal Institute of Chartered Surveyors, shall on the invitation of the Authorised Officer designate a particular body to act.
  - 1.1.12 "Additional works" is any additional work for which an official order has been raised by the Council to the Contractor and shall include the cost of all plant, materials, labour and overheads.
  - 1.1.13 "Variation Order" means a notice or notices given by the Council to the Contractor to vary the Contract pursuant to **Clause 4** of these Conditions.
  - 1.1.14 Reference to employees of the Contractor shall be deemed to include the Contractor's agents and sub-contractors unless the context otherwise requires.
  - 1.1.15 The Contract shall be governed by and construed in accordance with English Law.
  - 1.1.16 A reference to any Act of Parliament, or to any Order, Regulation and Statutory Instrument, Code of Practice or the like shall be deemed to include a reference to any amendment or re-enactment of the same.

## **2 PARTIES**

2.1 The parties to this contract are the Council and the Contractor.

## **3 AUTHORISED OFFICER**

3.1 The Authorised Officer shall be the Clerk to the Council or such representative appointed by the Council to act in the name of the Council for the purposes of the Contract. From time to time the Authorised Officer may appoint one or more representatives to act for the Authorised Officer.

## **4 VARIATIONS**

4.1 The Council may from time to time by giving not less than fourteen days' notice in the form of a written Variation Order to the Contractor require the Contractor to do all or any of the following:-

4.1.1 Add to or reduce the area and or work to be carried out in any of the Sites referred to in the Contract.

4.1.2 To vary the method of supplying the Service provided or to be provided at any Sites as determined by the Authorised Officer.

4.2 Where an addition, subtraction or substitution is made under this Condition 4, to the area and or work at any Sites specified in the Contract, then the provisions of the Contract shall thereafter apply in relation to such altered area and or work as if the same were detailed in the Specification.

4.3 The valuation of work shall be assessed by the Authorised Officer in his/her absolute discretion, in accordance with the following provisions:-

4.3.1 Where addition, subtraction or substitution is made and is of a similar nature to and/or is executed under similar conditions as work detailed in the Contract, the Authorised Officer shall assess the value of such work in accordance with the rates specified in the Schedule of Rates.

4.3.2 In other cases the value shall be determined in a fair and reasonable way having regard as far as possible to the Schedule of Rates

4.4 No additional payment shall be made in respect of a variation of the Contract or any additional work if:-

4.4.1 There is either a commensurate reduction or reorganisation of any other part of the work, or

4.4.2 Additional work has arisen as a result of weather or climatic conditions.

## **5 PERIOD OF CONTRACT**

5.1 The contract period is initially from 1 April 2015 to 31 March 2016. Should the work be carried out to the satisfaction of Ledbury Town Council the contract will then continue for a **further two years to 31 March 2018**.

## **6 CONDITIONS OF CONTRACT**

6.1 If a candidate for any appointment under the Town Council is, to his/her knowledge, related to any member of, or the holder of, any office under the Council, he and the person to whom he is related shall disclose the relationship in writing to the Clerk. A candidate who fails to do so shall be disqualified for such appointment, and if

appointed, may be dismissed without notice. The Clerk shall report to the Council or to the appropriate Committee any such disclosure. Where relationship to a member is disclosed the Standing Orders on interests of members in contracts and other matters shall apply. The Clerk shall make known the purport of this Standing Order to every candidate. (Standing Order No. 21b)

- 1) Canvassing of members or of any Committee, directly or indirectly, for any appointment under the Town Council shall disqualify the candidate for such appointment. The Clerk shall make known the purport of this sub-paragraph of this Standing Order to every candidate. (Standing Order No. 21a)
- 2) A member of the Council shall not solicit for any person any appointment under the Council or recommend any person for such appointment or for promotion; but, nevertheless, a member may give a written testimonial of a candidate's ability, experience or character for submission to the Council with an application for appointment. (Standing Order No.21c).

6.2 Standing Order No. 21a-c shall apply to tenders as if the person making the tender were a candidate for an appointment. (Standing Order No. 21d)

6.3 The Town Council does not bind itself to accept the lowest or any tender.

6.4 To avoid any misunderstandings the tenderer will be invited to a meeting with the Authorised Officer, to discuss the tender document and to walk the various areas within the wood.

6.5 Contractors will be deemed to have inspected the site concerned and allowed in the tender for all degrees of difficulty existing in various levels, embankments, obstructions, tree cover and accessibility. No claim for extra payment will be entertained arising from the Contractors ignorance of the site conditions.

## **7 FINANCIAL ARRANGEMENTS**

7.1 Type of tender price: Fixed

7.2 Contractors will be expected to tender a sum for the first year of the Contract plus a percentage increase, as thought appropriate for the remaining year/s.

7.3 The Contractor shall not include any sum for V.A.T.

7.4 Payment will be made of this tax according to the current rate for services at the time of execution of the work.

7.5 Any variations to the specification, deemed to be thought necessary by either the Contractor or the Town Council during the contract period will be settled as and when they occur.

7.6 All accounts to be submitted monthly together with reports of works carried out.

## **8 ASSIGNMENT**

8.1 The Contractor shall not assign the Contract or any part thereof without the prior written approval of the Authorised Officer.

8.2 The Contractor shall not sub-contract the Contract or any part thereof without the prior written approval of the Authorised Officer.

## **9 CONTRACTOR'S OBLIGATIONS**

- 9.1 The Contractor shall provide the Service or any variations thereof, in a proper, skillful and workmanlike manner, in accordance with the Conditions and the Specification and to the entire satisfaction of the Authorised Officer.
- 9.2 In the event of the Contractor being unable to perform the Service or any part of the Service, the Contractor shall immediately inform the Authorised Officer giving details of the circumstances, reasons, likely duration and measures put into place to rectify the situation. Nothing in this Condition shall in any way alter, modify, relieve or in any other way vary the Contractor's obligation to provide the Service.
- 9.3 The Contractor will be expected to provide a communication system enabling him to receive and respond to instructions from the Authorised Officer at all times during the provision of the Service. The Contractor will also provide an out of hours telephone number for contact during emergencies.
- 9.4 The Contractor shall maintain proper financial records in accordance with accepted accounting practice.
- 9.5 The Contractor shall supply any information requested by the Council with regards to environmental issues within 14 days of a written request. The information required may change due to legislative changes made over the period of the contract.

## **10 CONTRACTOR'S EMPLOYEES**

- 10.1 The Contractor shall appoint a suitably experienced and qualified Contract Manager empowered at all times to act on behalf of the Contractor and for all purposes connected with the Contract. Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been given to the Contractor.
- 10.2 The Contractor shall ensure that the Contract Manager and/or the nominated deputy manager duly authorised by the Contractor to act on his/her behalf, is available to the Authorised Officer at all times during the provision of the Service.
- 10.3 The Contractor shall ensure that all persons employed to carry out the provisions of the Contract are at all times properly and sufficiently qualified, competent, careful, skilled, honest, experienced, instructed and supervised with regard to the Service and in particular:-
- 10.3.1 The task or tasks such person has to perform,
  - 10.3.2 All relevant provisions of the Contract,
  - 10.3.3 All relevant rules, procedures and statutory requirements concerning health and safety at work,
  - 10.3.4 Fire risks and fire precautions,
  - 10.3.5 The need to maintain the highest standards of hygiene, courtesy and consideration,
  - 10.3.6 The need to recognise situations which may involve any actual or potential danger or personal injury to any person at any Site, where possible, without personal risk, to make safe such situations, and forthwith to report such situations to the Authorised Officer.
- 10.4 The Contractor shall to the satisfaction of the Authorised Officer implement a

scheme of ensuring that his/her staff maintain the appropriate skills and knowledge so as to ensure continuous and efficient provision of the Service.

- 10.5 The Contractor shall comply with any law that prohibits discrimination in relation to employment on the grounds of sex, colour, race, ethnic or nature of origin or religion.

## **11 CONTROL/SUPERVISION OF CONTRACTOR'S EMPLOYEES**

- 11.1 The Contractor shall employ a sufficient number of supervisory employees to ensure that the Contractor's employees engaged in and about the provision of the Service are adequately supervised and properly perform their duties to the standard required in the Specification.
- 11.2 The Contractor shall ensure that its employees perform their duties in an orderly and as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them.
- 11.3 The Contractor shall require its employees at all times while engaged in provision of the service to be properly and presentably dressed in appropriate uniforms or work-wear to the satisfaction of the Council. Such uniforms or work-wear to be worn by the Contractor's employees shall be provided, maintained and replaced as necessary by the Contractor.

## **12 CONTRACTOR TO COMPLY WITH SPECIAL REQUIREMENT IN RELATION TO STATUTORY BODIES**

- 12.1 The Contractor shall comply with any Special Requirements in relation to the Post Office, British Telecom, the Welsh Water Authority, the Midlands Electricity Board, British Rail, the District of Herefordshire County Council.
- 12.2 Compliance with such special requirements shall not relieve the Contractor of any of his/her other obligations and liabilities under the Contract and fulfilment of such other obligations and liabilities shall not relieve him/her of his/her responsibility to comply with the said Special Requirements.

## **13 RACIAL DISCRIMINATION**

- 13.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act in place at the time the contract is let or any statutory modification or re-enactment thereof relating to discrimination in employment.
- 13.2 The Contractor shall take all reasonable steps to secure the observance of the provisions of this clause by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

## **14 INSPECTION**

- 14.1 The Contractor shall at all times during the period of the Contract allow the Authorised Officer and such persons as may from time to time be nominated by the Authorised Officer access to:-
- 14.1.1 Materials and spare parts and plant and equipment for the purpose of ensuring that such items meet the requirements of the Specification;



- 14.1.2 Any employee or agent of the Contractor for the purpose of interviewing him/her/them in connection with the carrying out of all or any part of the Service.

## **15 BRITISH AND EUROPEAN STANDARDS**

- 15.1 Where an appropriate British Standards Specification or British Standard Code of Practice issued by the British Standard Institute or its EU equivalent is current, all goods and materials used or supplied and all workmanship shall as a minimum requirement be in accordance with that standard without prejudice to any higher standard required by the Contract.

## **16 INDEMNITY AND INSURANCE**

- 16.1 This condition applies to any personal injury or loss of or damage to any property which arises out of or in any way in connection with the execution or purported execution of the Contract.
- 16.2 The Contractor shall keep the Council fully indemnified against such injury loss or damage and costs or expenses arising from the same.
- 16.3 If the Contractor shows that any personal injury or loss of property to which this Condition applies was not caused, nor contributed to, by his/her neglect or default or by that of his/her servants, agents or sub-contractor, or by any circumstances within his/her or their control, he/she shall be under no liability under this Condition, and if he/she shows that the neglect or default of any other person (not being his/her servant, agent or sub-contractor) was in part responsible for any personal injury or loss of property to which this Condition applies, the Contractor's liability under this Condition shall not extend to share in responsibility attributable to the neglect or default of that person.
- 16.4 The Contractor shall maintain third party/public liability insurance of at least £5 million to cover the indemnity given in **Clause 16.2** and shall provide evidence that such insurance is in force prior to commencement of the contract, and whenever so requested by the Authorised Officer, said insurance to cover any incident, the number of incidents unlimited.

## **17 CONFIDENTIALITY**

- 17.1 The Contractor shall not, without the prior written consent of the Council during the period of the Contract or at any time thereafter make use for its own purposes, or disclose to any person (except as may be required by law), the Contract documents or any information contained therein or in any material provided to it by the Council pursuant to the Contract or prepared by the Contractor pursuant to the Contract, all of which information shall be deemed to be confidential.
- 17.2 The Contractor shall not and shall ensure that its employees do not divulge to any third party any information, which comes into its or their possession in the course of providing the Service.
- 17.3 The Contractor shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this **Clause 17**.

## **18 HEALTH AND SAFETY**

- 18.1 The Contractor shall at all times comply with all statutory and other provisions to be observed in connection with the Service and in particular the requirements of Health and Safety at Work etc., Act 1974, and any other Acts, Regulations, Orders or rules of law pertaining to health and safety. In particular they shall at all times maintain safe and healthy working conditions at all sites and comply with the requirements of Codes of Practice which are applicable to the work being undertaken and ensure that all Employees and Sub-contractors comply with this clause.
- 18.2 The Contractor shall at all times co-operate with the Authorised Officer who shall have the right to inspect upon the Contractor's compliance with the statutory requirements and the Codes of Practice referred to in **Clause 18.1** hereof.
- 18.3 The Contractor shall provide the Service safely and in a manner that is not likely to be injurious to health or detrimental to the environment or the fabric of any site.
- 18.4 The Contractor shall keep all plant, machinery and equipment used for the performance of the Service in a safe condition at all times.
- 18.5 The Contractor shall, as part of the tender submission, supply a copy of his/her Health and Safety Policy, his/her Safety Practices of Work and Risk Assessments relating to all of the Work to be carried out under this Contract.
- 18.6 The Contractor shall review and update his/her Policy in the light of changing legislation and/or changes in the Council's policies.
- 18.7 The Authorised Officer may suspend the provision of the Service or part of the provision of the Service under the terms of this Contract in the event of non-compliance by the Contractor with health and safety law, regulations or procedures including matters affecting public safety and the safety of the Council's or the Contractor's employees.
- 18.8 The Contractor shall not resume provision of the Service until the Authorised Officer certifies that he is satisfied that the Contractor has complied with health and safety law, regulations and procedures.
- 18.9 All additional costs, fees and expenses occasioned by such suspension shall be borne by the Contractor, including those costs incurred to return the programme of works back to schedule.

## **19 RECOVERY OF SUMS DUE FROM THE CONTRACTOR**

- 19.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the Contractor under the Contract or any other Contract with the Employer.

## **20 DETERMINATION BY THE COUNCIL**

- 20.1 Without prejudice to any other rights or remedies, which the Council may possess, if the Contractor shall make default in any one or more of the following respects, that is to say:
- 20.1.1 If the Contractor without reasonable cause wholly suspends the carrying out of the Service before completion thereof, or
- 20.1.2 If the Contractor fails to proceed regularly and diligently with the Service, or

- 20.1.3 If the Contractor is in default, under **clause 21**.
- 20.1.4 If the Contractor fails to comply with any part thereof of the contract specification, after receiving three written warnings, then the Council shall determine to give four weeks written notice.
- 20.2 Then, without prejudice to **Clause 20.4** hereof the Council shall be entitled to determine the Contract, or any part thereof, without prejudice to any accrued rights or remedies under it, by notice in writing to the Contractor having immediate effect. In such case the Contractor shall make good all loss and costs suffered or incurred by the Town Council. Such notice, and any other notice under this contract, may be given under the hand of the Clerk for the time being, and any such notice shall be deemed to be sufficiently served if sent by post to or left at the Contractor's usual or last place of business.
- 20.3 If the Contractor becomes bankrupt or makes a composition or arrangement with the Contractor's creditors or has a proposal in respect of the company for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986, or has an application made under the Insolvency Act 1986 in respect of the company to the court for the appointment of an administrator, or has a winding up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up is passed or a provisional liquidator, receiver or manager of the company is duly appointed, or has an administrative receiver, as defined in the Insolvency Act 1986 appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge, this Contract shall be forthwith automatically determined but the Contract may be reinstated and continued if the Council and the Contractor, the Contractor's trustee in bankruptcy, liquidator, provisional liquidator, receiver or manager as the case may be shall so agree.
- 20.4 The Council shall be entitled to determine the Contract if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or any reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other Contract, or for showing or forbearing to show favour or disfavour to any person in relation to this or any other Contract with the Council, or if the like acts shall have been done by any person employed by the Contractor or acting on his/her behalf (whether with or without the knowledge of the Contractor), or if in relation to this or any other Contract with the Council the Contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Prevention of Corruption Acts, 1906 to 1916, or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972 or any amendment to or re-enactment thereof.
- 20.5 In the event of the Contract being determined as aforesaid and so long as it has not been reinstated and continued the Council staff:
- 20.6 Cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Contractors employment shall have been calculated and provided such calculation shows a sum or sums due to the Contractor.
- 20.7 Be empowered entitled to employ and pay other persons to provide and complete the provision of the Service or any part thereof and to use all such Contractors materials, clothing, equipment, vehicles or other goods for the purposes thereof. Any additional expense incurred in so doing shall be recoverable by the Town Council from the Contractor as ascertained liquidated damages or may be deducted

by the Town Council from any money they may have in hand which may be due to the Contractor

- 20.8 The Council will be entitled to exercise lien over any of the materials, clothing, equipment, vehicles or other goods belonging to the Contractor for any sum due from the Contractor.

## 21 DEFAULT OF CONTRACTOR

- 21.1 If the Contractor fails to provide the Service or any part thereof with due diligence or in a proper, skilful and workmanlike manner, or in accordance with the Conditions and the Specification and to the entire satisfaction of the Authorised Officer, the Council may, without prejudice to any other remedy available, reserve the right to withhold payment of defective work until the work has been carried out to the satisfaction of the Authorised Officer or Council's representatives' in accordance with the Specifications and Drawings, and may:-
- 21.1.1 Require such work to be re-executed at no cost to the Council;
- 21.1.2 Deduct from any account rendered by the Contractor such sum as the Council considers appropriate in respect of such non-performance,
- 21.1.3 Provide or employ and pay other persons to provide the Service or any part thereof and in the meantime debar the Contractor, its employees and agents from the Sites or part thereof, and all costs incurred thereby may be deducted from any sums due or to become due to the Contractor under the Contract or shall be recoverable from the Contractor as a debt (after taking account of any sum deducted under **Clause 20.2**, and)
- 21.1.4 Determine the Contract by giving to the Contractor not less than four weeks notice in writing either wholly or in respect of the Site or the part of the Sites in relation to which the default has occurred.

## 22 EXPERT DETERMINATION

- 22.1 Provided always that in case any dispute or difference shall arise between the Council or the Authorised Officer on its behalf and the Contractor, either during the process of or after the completion or abandonment of the Service, as to the construction of the Contract or as to any matter or thing of whatsoever nature arising hereunder or in connection herewith then if not resolved within 28 days of arising such dispute or difference may be referred by either party to the determination and final decision of a person (the "Expert).
- 22.2 The Expert shall, without prejudice to the generality of his/her powers, have power to direct such measurements and/or valuations as may in his/her opinion be desirable in order to determine the rights of the parties and to ascertain and award any sum which ought to have been the subject of or included in any payment and to open up, review and revise any payment, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him/her in the same manner as if no such payment, opinion, decision, requirement or notice had been given.
- 22.3 The Expert shall provide a written response to both parties, giving details of and an explanation of how that decision was reached.
- 22.4 The decision of such Expert shall be final and binding on the parties and each party shall bear their own costs of the determination.
- 22.5 Nothing in this **Condition 22** shall apply to those Conditions in the Contract that

give the Authorised Officer total discretion on any matter.

## **23 NOTICES**

- 23.1 Any demand, notice or other communication required to be given hereunder shall be sufficiently served if served personally on the addressee, or if sent by prepaid first class delivery post to the registered office or last known address of the party to be served therewith and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting.
- 23.2 Any demand, notice or other communication authorised or required to be given by the Council for the purposes of the Contract shall be deemed to be duly given by the Authorised Officer or any person appointed as his/her representative.

## **24 ADDITIONAL WORKS**

- 24.1 Additional work shall not be worked by the Contractor without the express written authority of the Authorised Officer, payment for which will be made to the Contractor in accordance with the rates for additional work within the tender documents.

## **25 PAYMENT**

- 25.1 Payments due will be paid to the Contractor in 12 equals amounts over the year.
- 25.2 Prior to any payment being made, the work must have been carried out to the satisfaction of the Council and the Authorised Officer.
- 25.3 The Contractor will issue separate invoices in respect of Additional works and these will include a breakdown of all charges therein.

## **26 VALUE ADDED TAX**

- 26.1 The rates disclosed in the Forms of Tender are to be exclusive of Value Added Tax. When submitting an invoice for payment, the Contractor shall include on that invoice any Value Added Tax properly chargeable by the Commissioners of Customs and Excise.

## **27 STATUTORY OBLIGATIONS**

- 27.1 The Contractor shall comply with, and give all notices required by any Act of Parliament, any Instrument, Rule or Order made under any Act of Parliament, or any Regulation or Bye-Law of any local authority or of any statutory undertaker which has any jurisdiction with regard to the Service.

## **28 EQUIPMENT AND MATERIALS**

- 28.1 Except as otherwise specified in the Contract, the Contractor shall provide all materials and equipment necessary for the provision of the Service.
- 28.2 The Contractor shall maintain in a safe, serviceable and clean condition and replace as necessary all equipment used by the Contractor's employees in the provision of the Service at any Site.
- 28.3 The Contractor shall prepare, mix and use all materials and prepare and use all equipment in a safe manner and to the satisfaction of the Authorised Officer and



shall keep the same when on the Sites under proper control and safe keeping and shall ensure that all materials are properly, accurately and clearly labelled on their containers.

- 28.4 The Contractor shall be responsible for the security of all materials and equipment used by the Contractor in connection with the provision of the Service and the Council shall be under no liability in respect thereof.

## **29 VEHICLES, PLANT AND MACHINERY**

- 29.1 The Contractor shall at all times during the Contract Period, provide and maintain all such vehicles, plant and machinery as are necessary for the proper performance of the Service and shall bear all running and maintenance costs in respect thereof.
- 29.2 The Contractor shall at all times be fully responsible for licensing and for the payment of all licensing fees, taxes and insurance's required in connection with or arising out of the possession or use of all plant employed in the performance of the Service.
- 29.3 The Contractor shall at his/her own expense keep all plant employed in the performance of the Service in good and serviceable repair in accordance with all transport legislation and in such condition as is commensurate with the proper performance by the Contractor of his/her obligations under the Contract.
- 29.4 The Contractor shall at all times permit the Authorised Officer access to all plant employed for the purposes of the Agreement. The Authorised Officer shall be entitled to serve upon the Contractor a notice in writing requiring the Contractor to put any item of plant into such condition as is required in **Clause 29.3** above within the period specified in such notice and the Contractor shall forthwith upon receipt of such notice cause all necessary works to be carried out to comply with such notice.
- 29.5 The Contractor shall indemnify the Council against any liability arising out of an incident caused during the use of the Contractor's plant.

## **30 QUALITY CONTROL**

- 30.1 The Council may require the Contractor to implement a quality control system in accordance with European Standards during the Contract Period, any such implementation shall be at the Contractors cost.
- 30.2 The Contractor shall throughout the Contract Period institute and maintain a properly documented system of quality control designed to ensure that the Service is provided at all times and in all respects in accordance with the Contract.
- 30.3 Such a system shall include interalia:-
- 30.3.1 Daily supervision and the carrying out of frequent inspections,
- 30.3.2 Ensuring the recording in a register kept solely for that purpose of any complaints received in connection with the provision or failure to provide the Services whether received orally or in writing and whether from members or the public or others and of the action taken by the Contractor in respect of each such complaint,
- 30.3.3 The provision of a copy of these records to the Authorised Officer if requested.
- 30.4 The system shall be open to inspection at any time by the Authorised Officer or his/her representative who may make or take copies of any documentation and interview the Contractor's staff or the Contractor in relation thereto. The Authorised

Officer may make recommendations concerning the improvement of the system, such recommendations shall forthwith be implemented by the Contractor.

- 30.5 The system maintained by the Contractor in accordance with the above shall be in addition to and shall not prejudice any action which the Council may be able to take under any other provision of the Contract.

## **31 PARENT COMPANY GUARANTEE**

- 31.1 If the Contractor is a subsidiary company within the meaning of Section 736 of the Companies Act 1985 (as amended) it shall also provide a Guarantee and Indemnity in the form specified by the Authority given by its holding company or companies (as defined by the said Section 736) to secure the due performance by the Contractor of its obligations to the Authority.

## **32 INFORMATION AND PROGRESS MEETINGS**

- 32.1 Progress meetings will be held between the Authorised Officer or his/her representative and the Contractor at a mutually agreed time and place when progress of the Service will be monitored and any other matters relative to the Contract discussed. These meetings will be held as and when required. At these progress meetings the Contractor will be expected to give a detailed up to date report on the progress of the Service and also any reasons for non-completion of the work.
- 32.2 The Authorised Officer may from time to time arrange joint site inspections.

## **33 WAIVER**

- 33.1 Failure by the Authority 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 or as creating an estoppel in connection with any such provision and shall not affect the validity of the Contract or any part thereof.

## **34 EXCLUSION OF CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 34.1 Notwithstanding any other provision of this Contract nothing in this Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

## **35 POLLUTION**

- 35.1 Subject and without prejudice to any other provision of the Contract the Contractor shall take all reasonable precautions.
- 35.1.1 in connection with any rivers, streams, waterways, drains, watercourses, lakes and the like to prevent:
- i. silting
  - ii. erosion of their beds or banks
  - iii. pollution of the water so as to affect adversely the quality or appearance thereof or cause injury or death to animal and plant life.
- 35.1.2 in connection with underground water resources (including percolating water) to

prevent:

- i. any interference with the supply to or abstraction from such sources
- ii. pollution of the water so as to affect adversely the quality thereof.

## **36 ENVIRONMENTAL POLICY AND APPROVED CHEMICALS**

- 36.1 The Contractor must comply with its own Environmental Policy as approved by the Council during the tender procedure.