

**Dated**

**20**

**WEST SUSSEX COUNTY COUNCIL**

**And**

**COUNCIL**

**Agency Agreement**

Under s.101 of the Local Government Act 1972 relating to specified highway functions

ORBIS, Public Law, West Sussex County Council

**BETWEEN**

**WEST SUSSEX COUNTY COUNCIL** County Hall, West St, Chichester PO19 1RG ("the Principal")

And xxxxxxxxxxxx **COUNCIL** of

**BACKGROUND**

(1) The Principal and the Agent are local authorities constituted by the Local Government Act 1972.

(2) For the purposes of the Highways Act 1980, the Principal is the highway authority for highways (other than trunk roads) situated in East Grinstead and for the purposes of the Road Traffic Regulation Act 1984, the Principal is a traffic authority and a local traffic authority,

(3) By virtue of Section 101 of the Local Government Act 1972 and, subject as provided therein, a local authority may arrange for the discharge of any of its functions by another local authority.

(4) This discharge of functions is made in accordance with Section 9EA of the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012.

(5) The Principal and the Agent have agreed that the Agent will act as agent for the Principal and discharge certain of the Principal's highway functions on the terms set out in this Agreement ('the Agency').

**IT IS AGREED THAT:**

**1. TERM AND TERMINATION**

1.1 This Agreement shall commence on the xxxx ('the commencement date') and shall continue until it is xxxxx

1.1.1 by either party giving a minimum of six months' written notice;

1.1.2 by the Principal under clause 11.1 (serious breach by the Agent).

**2. PARTNERSHIP WORKING**

2.1 The parties are committed to the efficient delivery and operation of the Agency for the benefit of the local community and will co-operate in a spirit of partnership to comply with their obligations under this Agreement.

**3. PRINCIPAL**

3.1. The Principal may continue to exercise the functions described in Schedule 1 and Schedule 4, in accordance with s.101(4) of the Local Government Act 1972.

**4. AGENT'S FUNCTIONS**

- 4.1. The Agent is empowered in the performance of the Agency to exercise on behalf of the Principal, such powers of the Principal as highway authority and traffic authority and listed in the Schedule of Functions at Schedule 1 ("the Agency Functions").

The Agent's Functions under this Agreement are exercisable solely within the area of the Parish (plan in Schedule 3), known as xxxx Parish, The authority given in Clause 4.1 shall include support to defend any legal proceedings on behalf of the Principal and to issue any consent or licences or enter into any agreements that may be necessary, subject to the terms of this Agreement. The Agent will notify the Principal within 21 days of receipt of any such claim.

- 4.2. The Agent shall not further delegate these functions except to a committee, sub-committee or an officer of the Agent.

## **5. AGENT'S OBLIGATIONS**

- 5.1. The Agent shall provide the Agency to the highest standard with reasonable care and skill in compliance with this Agreement and the Schedule of Functions and shall conform with such legislative requirements and current specifications as are relevant to the provision of the Agency.
- 5.2. In performing the Agency, the Agent shall conform to all relevant policies and procedures of the Principal, including but not limited to those contained in Schedule 4 in relation to health and safety matters.
- 5.3. The Agent shall properly manage and monitor performance of the Agency and immediately inform the Principal if the Agency or any part of the Agency is not, or may not be performed, and whether or not this is the result of any act or omission by the Agent giving details, reasons and likely duration.
- 5.4. The Agent shall take such precautions for the protection of public and private rights or interests as though they were the Principal and in accordance with Schedule 1.
- 5.5. The Agent must comply with all legislative provisions, regulations and guidance relating to the Agency Functions as though the Agent were the Principal.

## **6. COMMUNICATIONS**

- 6.1. The Agent shall provide a quarterly update on the performance of the Agency to include such information as specified in Schedule 2 - Reporting of Agency. This update must be given to the Contact Officer.
- 6.2. The Agent shall operate a complaints procedure for dealing with complaints from members of the public regarding Agency Functions.
- 6.3. The Contact Officer is xxxxxx or any other officer specified to the Agent in writing.

## **7. AGENT'S PERSONNEL**

- 7.1. The personnel assigned by the Agent to the performance of the Agency will be suitably qualified, trained, experienced and properly supervised with regard to the provision of the Agency Functions and will be made fully aware of the Agent's

obligations under the Agreement as it affects them in the performance of their functions.

- 7.2. The Agent shall employ sufficient persons to ensure the Agency Functions are provided at all times and in all respects in accordance with the Agreement.
- 7.3. For the purposes of this clause, 'personnel' shall mean all persons employed by the Agent to perform the functions of the Agency together with the Agent's servants, agents and sub-contractors.

## **8. COSTS RECEIVED BY THE AGENT**

- 8.1 The Agent shall only receive costs in line with the provisions in the sections of the Highways Act 1980 listed in Schedule 1 (Schedule of Functions)
- 8.2 All costs received by the Agent in respect of the Agency Functions carried out on behalf of the Principal under this Agreement shall belong exclusively to the Agent.

## **9. PAYMENTS**

- 9.1. No payments shall to be made by the Principal to the Agent in respect of the performance of the Agency.

## **10. INDEMNITY AND INSURANCE**

- 10.1. The Agent shall indemnify the Principal against all and any action, claim, costs, demands, proceedings and liabilities arising out of:
  - 10.1.1.any failure of the Agent to discharge the Agency in accordance with the requirements of this Agreement or with any provision of law or to comply in the exercise of the Agency with any requirement referred to herein; or
  - 10.1.2.any negligent act or omission on the part of the Agent, its agents or servants in performing the Agency, except to the extent that any claim is due to any act or omission of the Principal or to any person for whom the Principal is responsible.
- 10.2. The Agent shall have the Principal's interest endorsed on an existing policy of insurance to cover the indemnity referred to in Clause 10.1
- 10.3. The policy referred to in Clause 10.2 shall:
  - 10.3.1 have a minimum third party public liability cover in respect of any one occurrence on a claims occurring basis of £10m;
  - 10.3.2 a minimum employer's liability cover in respect of any one occurrence maintained on a claims occurring basis of £10m;

## **11. INADEQUATE PERFORMANCE**

- 11.1. In the event of a serious breach of the Agreement or if non-compliance occurs the Principal may issue an improvement notice detailing the nature of the breach. Where the subject of the improvement notice has not been rectified to the satisfaction of the

Principal within 28 days of issue of the notice, the Agreement may be terminated forthwith.

**12. VARIATION OF AGREEMENT**

12.1. This Agreement may only be varied in writing, in the form of an addendum to this Agreement and with both parties' signed consent.

**13. REVIEW OF AGREEMENT**

13.1. This Agreement shall be subject to formal review annually.

**14. DISPUTE RESOLUTION**

14.1. If any dispute arises out of this Agreement the parties will first attempt to settle it by negotiation.

14.2. If resolution cannot be agreed between the officers directly involved, the matter shall be referred to the parties' duly authorised representatives at the earliest opportunity and within 28 days of the original identification of a possible dispute.

14.3. Where the matter remains unresolved, it shall be referred to the Director of Environment and Economy For The Agent and the senior elected Councillor within their Council, for resolution.

**15. GOVERNING LAW AND JURISDICTION**

15.1. This Agreement shall be construed in accordance with English Law and the Parties hereby submit to the non-exclusive jurisdiction of English Courts.

Agreed and signed by the parties:

**WEST SUSSEX COUNTY COUNCIL**

Signature  
Name (printed)  
Position  
Dated

**xxxxxxCOUNCIL**

Signature  
Name (printed)  
Position  
Dated

**SCHEDULE 1**

**SCHEDULE OF FUNCTIONS**

The Agent is empowered to carry out minor highway maintenance activities at their own cost and discretion

Examples include but not limited to:

Removal of epicormic growth

Issuing of overgrown vegetation cards to known owners

Cut back of overgrowth vegetation causing an obstruction

Clear leaves from gully tops

Siding of footpaths

## **SCHEDULE 2**

### **REPORTING OF AGENT**

## **SCHEDULE 3**

### **AGREEMENT PLAN**

## **SCHEDULE 4**

### **HEALTH & SAFETY**

The Agent and all persons (including any sub-contractors) employed by it shall throughout the Agreement Term and where appropriate the Agreement Term Option comply fully with the requirements of the Safety Legislation.

The Agent shall provide to the Authorised Officer any information relating to the Town Council's compliance with the Health and Safety policy and the Safety Legislation that the County Council may reasonably request at any time from the Commencement Date.

The Agent shall in performing the Highway Services:

comply with their Health and Safety policy and all applicable Safety Legislation,

ensure that a suitably competent person be responsible for health and safety matters,

undertake appropriate risk assessments,

notify the County Council promptly of all incidents and accidents relating to the Highway Services reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 together with any serious incidents and accidents involving members of the public or employees,

shall inform the County Council of any action taken by the xxx Council or recommended to be taken to prevent a reoccurrence; and

Keep a full record of all incidents and accidents relating to the Highway Services which shall be available for inspection by the County Council upon reasonable notice