***DATED 2020***

***CUMBRIA COUNTY COUNCIL***

**- and -**

**.........................................**

**AGREEMENT RELATING TO PARISH / TOWN COUNCIL COMMISSIONING MINOR HIGHWAYS WORKS FROM A THIRD PARTY**

Between

**CUMBRIA COUNTY COUNCIL** of Cumbria House, 117 Botchergate, Carlisle, Cumbria, CA1 1RD (hereinafter called “the County Council”)

and

[.........To be added...........................] COUNCIL (hereinafter called “the Parish Council”) of the other part

Individually the “party” and collectively the “parties”.

WHEREAS

(1) In consideration of the payment by each party to the other of the sum of one pound (£1), the receipt and sufficiency of which is acknowledged by each party the parties have agreed to enter into this Agreement the purpose of which is to improve the standard of highway services provided to the public by improved working relationships between the County Council and Parish Council.

(2) For the purposes of the Highways Act 1980 the County Council is the local authority for highways (other than trunk roads) situated in the County of Cumbria.

(3) The Parish Council wishes to carry out certain minor highway maintenance activities and the County Council as local highways authority In order to maintain the safety of users of the highway and persons undertaking highways works the County Council requires the Parish Council to undertake and comply with the requirements set out in this Agreement.

(4) The Highways Activities are activities which the Parish Council is empowered to undertake under legislation and in no way does this Agreement give the Parish Council additional powers or responsibilities for any other highways works maintenance and or activities.

NOW THIS AGREEMENT WITNESSETH as follows:-

1 **Interpretation**

1.1 In this Agreement unless the context otherwise requires, the following terms shall have the meanings given below:

1.1.1 “**Agreement**” means these conditions together with the attached Schedules;

1.1.2 “**Commencement Date**” means the date this Agreement is signed by the County Council;

1.1.3 “**Force Majeure**” means any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control.

1.1.4 “**Highway Activities**” means the activities listed in Schedule 1.

1.1.5 “**Working Day**” means Monday to Friday, excluding any public holidays in England and Wales.

1.1.6 “**Working Together Scheme**” means the carrying out Highway Activities by either the Parish Council and /or the Parish Council using a third party to do so;

1.1.7 A reference to an Act of Parliament or any Order, Regulation, Statutory Instruction or the like shall include a reference to any amendment, consolidation or re-enactment of the same from time to time.

2 **Commencement Date and Term**

2.1 This Agreement shall commence on the Commencement Date and shall continue in force for a period of one year (“the Term”) unless terminated in accordance with the provisions of the Agreement.

2.2 Pursuant to clause 2.1 above this Agreement may be renewed for further periods by written agreement between the parties at any time before the expiry of the Term.

2.3 If the Agreement is not renewed it will terminate without notice on expiry of the Term and the Parish Council shall cease all Highway Activities.

3 **The Parish Council’s Parties’ Duties**

3.1 The Parish Council shall make arrangements for the provision of the Highways Activities in accordance with the requirements as more particularly detailed in Schedule 1 of the Agreement.

3.2 In exercising any functions under this Agreement the Parish Council shall conform to such policies specifications and procedures as may from time to time be reasonably laid down by the County Council as Highways Authority and to standards not less than those which may be so laid down and shall comply with any reasonable directions which may be given by the County Council either generally or in any particular case.

3.3 The County Council undertakes that it will ensure any third party it commissions to undertake the Highways Activities shall do so in accordance with the practices and procedures as may be notified by the County Council.

3.4 The Parish Council shall at all times comply with the Health and Safety at Work etc. Act 1974 and the Parish Council agrees and accepts it has a duty to ensure the Health, Safety and wellbeing of its workforce. This will include amongst other things, correct training and provision of safe working practices and procedure.

3.5 For the avoidance of any doubt the County Council shall have no liability in respect of the contract for Parish Lengthsman services between the Lengthsman and the Council in relation to the Working Together Scheme.

4 **Principles of Collaboration**

The parties agree when carrying out the Working Together Scheme to co-operate with the other at all times during the Term and provide information requested by the other party within all reasonable timescales to ensure that the Highway Activities are delivered and actions taken as required.

5 **Indemnity**

5.1 The Parish Council hereby agrees to indemnify the County Council, in respect of all claims, demands, actions, costs, reasonable expenses, direct losses, damages and all other liabilities arising from or incurred by reason of the actions and/or negligence (including omissions) of the Parish Council in relation to the Working Together Scheme, the non-fulfilment of obligations of the Parish Council under this Agreement or its obligations to third parties.

5.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement.

6 **Insurance**

The Parish Council shall at its own cost effect and maintain with a reputable insurance company a policy public liability insurance with a limit of indemnity of not less than £10,000,000 (TEN MILLION POUNDS STERLING) in relation to any one claim or series of claims without limit on the number of claims in any one year or other period.

7 **Claims**

7.1 Claims and proceedings against the Parish Council in respect of any functions exercised by the Parish Council pursuant to this Agreement shall be handled by the Parish Council.

7.2 Any such claims or other intimation of such proceedings against the County Council received by the Parish Council shall be referred by the Parish Council to the County Council as soon as possible but in any event within 5 Working Days of receipt of the claim together with all supporting information.

8 Freedom of Information Act 2000 (“FOIA”) and Environmental Information Regulations 2004 (“EIR”)

Each party acknowledges that the other party is subject to the requirements of the FOIA and the EIR and each party shall assist and co-operate with the other party (at their own expense) to enable the other party to comply with these information disclosure obligations.

9 **Termination**

9.1 The County Council may terminate this Agreement on giving 20 Working Days’ written notice to the Parish Council

9.2 The County Council may terminate this Agreement in whole or part with immediate effect by the service of written notice on the Parish Council if the Parish Council in breach of any material obligation under this Agreement provided that if the breach is capable of remedy, the County Council may only terminate this Agreement under this clause 9.2 if the Parish Council has failed to remedy such breach within 10 Working Days (or such other longer period if stipulated by the Authority in writing) of receipt of notice from the County Council (a Remediation Notice) to do so.

10 **Entire Agreement**

10.1 The parties agree that this Agreement forms the entire agreement and understanding between the parties regarding the subject matter.

10.2 The parties warrant one to the other that this Agreement supersedes all earlier meetings, discussions, correspondence, arrangements and agreements of any kind and that there are no collateral or supplemental agreements at the time this Agreement is signed.

11 **Dispute Resolution**

The parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement. If any dispute cannot be settled amicably through ordinary negotiations then it shall be referred to their senior managers for discussion and resolution.

12 **Contract (Rights of Third Parties) Act 1999**

None of the provisions of this Agreement are intended to or will operate to confer any benefit (pursuant to the Contracts (Rights of Third Parties) Act 1999) on a person who is not named as a party to this Agreement.

13 **Variation**

This Agreement, including the Schedules, may only be varied by written agreement of both parties.

14 **Charges and liabilities**

14.1 Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in complying with their respective duties under this Agreement.

14.2 Both parties shall remain liable for any losses or liabilities incurred due to their own or their employee's actions and neither party intends that the other party shall be liable for any loss it suffers as a result of this Agreement.

15 **Status**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, nor authorise either of the parties to make or enter into any commitments for or on behalf of the other party.

16 **Force Majeure**

16.1 Neither party shall be in breach of any obligation under this Agreement if it is unable to perform that obligation in whole or in part by reason of Force Majeure.

16.2 If an event of Force Majeure lasts for more than thirty (30) days, either party may, terminate this Agreement with immediate effect by serving notice on the other party.

17 **Severability**

If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

18 **Waiver and Cumulative Remedies**

18.1 The rights and remedies provided by this Agreement may be waived only in writing in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

18.2 Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

19 **Law and Jurisdiction**

The Agreement shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.

**IN WITNESS** whereof the parties have executed this Agreement the day and year first above written.

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| --- | --- |
| Signed by ………………………………………  Name …………………………………………...  **Highways Network Manager**  for and on behalf of **CUMBRIA COUNTY COUNCIL**  Signed by ………………………………………  Name …………………………………………...  **Working Together Service**  for and on behalf of **CUMBRIA COUNTY COUNCIL** | )  )  )  )  ) |

|  |  |
| --- | --- |
| Signed by ………………………………………  Name …………………………………………...  Position …………………………………………  for and on behalf of **PARISH COUNCIL** | )  )  )  )  ) |

**SCHEDULE ONE**

**Highways Activities**

This schedule lists the duties the Parish Council may commission a 3rd party to undertake.

**Drainage Works**

• Clear gully grates of debris

• Clean exiting drainage grips

• Advise landowners when their ditches need cleaning.

• Maintaining ditches.

• Cleaning channels

• Clearing outfalls

**Signage**

• Cleaning – (non illuminated)

• Minor repairs

• Painting

**Vegetation and weed clearance**

• Weed Clearance - The removal of excess weed and moss clearance from footpaths and footways.

• Remove vegetation obstructing signs

• Remove vegetation from parapets/fences and minor repairs

• Cut back and dispose of vegetation encroaching onto the public highway/footway – liaise with landowner as appropriate. Should informal negotiations with the landowner be unsuccessful the Administrator shall contact CCC to enable CCC to follow the legal notice process with the Landowner.

• Grass cutting

**Minor highway works**

• Side out footways to normal width and spread arising’s on verge where possible.

• Remove soil/detritus

• Reporting defects e.g. potholes

• Sweeping

• Litter picking

• Removing flyposting

• Graffiti removal

• Cleaning bus shelters

• Minor repairs to street furniture

• Rights of way maintenance and communicating with land owners

• Verge maintenance

• Any other agreed miscellaneous works

**SCHEDULE TWO**

**EXCLUDED WORKS**

**This schedule lists the duties the Parish Lengthsman may not undertake.**

**Cleaning, repair or any work on:**

• Street Lighting

• Illuminated signs and bollards (i.e. any street furniture with an electrical connection)

• The live road,

• and Patching and structural repairs (no excavation due to possibility of underground apparatus)

• Emergency call-outs to highway incidents

• Any activities that fall underground

• Any activities that fall near existing overhead services