

DATED

01/04/2021

LANCASHIRE COUNTY COUNCIL

and

XXXXXXXXXX

**A PUBLIC REALM
AGREEMENT**

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THIS AGREEMENT is made on the 1st day of April 2021

BETWEEN

- (1) **LANCASHIRE COUNTY COUNCIL** of PO Box 78, County Hall, Preston, PR1 8XJ (“**the County Council**”) and
- (2) **XXXXXXXXXXXXXXXXXXXXXXXXXXXX** (“**the Council**”).

BACKGROUND

- (A) The County Council is the Highway Authority for highways other than trunk roads in the County of Lancashire by virtue of Section 1(2) of the Highways Act 1980.
- (B) The County Council has the power to arrange for the discharge of its functions by the Council under section 101 of the Local Government Act 1972.
- (C) The Council has the power to discharge the functions of the County Council under section 101 of the Local Government Act 1972.
- (D) This arrangement is designed to facilitate the discharge of certain highway authority functions by the Council and the Council's acceptance of those functions on the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

IT IS HEREBY AGREED AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

In this Agreement:-

- 1.1 the following expressions have the following meanings unless inconsistent with the context:

"Commencement Date" means 1 April 2021

"Data Protection Legislation" means:

- i) the General Data Protection Regulations (Regulation (EU) 2016/679) and any applicable national implementing laws as amended from time to time;
- ii) the Data Protection Act 2018 to the extent that it relates to the processing of

- personal data and privacy;
- iii) all applicable laws about the processing of personal data and privacy.

“FOI Legislation”	means the Freedom of Information Act 2000 and subordinate legislation made under this and the Environmental Information Regulations 2004 (each as amended or replaced from time to time) , or any other information access information regimes as may be applicable to the Parties from time to time;
“Highway”	A highway maintainable at the public expense, carrying full mechanically propelled vehicular rights together with those footpaths denoted as “F class” on the County Council records. For the avoidance of doubt the extent of a highway maintainable at public expense carrying full mechanically propelled vehicular rights may include carriageway, verges, footways and cycletracks
“Reimbursement”	The sum to be paid by the County Council to the Council in accordance with clause 7.
“Relevant Area”	Means the area as depicted by the shaded area on the plan at Schedule 3
“Relevant Functions”	means the functions as more particularly described in Schedule 2.
“Relevant Legislation”	Any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom.

1.2 The neuter and the singular shall include the plural and vice versa;

- 1.3 References to Clauses and Schedules are to Clauses of and Schedules to this Agreement;
- 1.4 The Schedules form part of this Agreement and have the same force and effect as if set out expressly in the body of this Agreement;
- 1.5 The headings to Clauses and Schedules are for ease of reference only and shall not affect the construction of this Agreement;
- 1.6 Reference to “parties” shall be to the parties to this Agreement;

2. **POWERS**

The parties have entered into this Agreement pursuant to Section 101 of the Local Government Act 1972 and Sections 2 and 19 of the Local Government Act 2000 and all other enabling powers.

3. **COMMENCEMENT AND DURATION**

This Agreement shall come into force on the Commencement Date and shall continue for a period of five years ending on 31 March 2026.

Each party will indicate in writing to the other by the 31 October 2025 whether or not it wishes to enter into a new Agreement from 1 April 2026.

4. **THE COUNCIL’S DUTIES AND RESPONSIBILITIES**

- 4.1 With effect from the Commencement Date, the Council will discharge the Relevant Functions at locations agreed by both parties in writing within the Relevant Area as indicated on the plan at Schedule 3. In March each year the Council shall submit an annual programme of works detailing all planned activities to be undertaken in the forthcoming year.
- 4.2 In the performance of its undertaking of the Relevant Functions under this Agreement the Council shall comply with all Relevant Legislation

and the Work Codes of Practice and Specification set out in Schedule 1.

- 4.3 The Council shall indemnify the County Council and keep the County Council fully and effectively indemnified in respect of all liabilities costs claims loss damage demands actions and expenses (including but not limited to any settlements or ex gratia payments and reasonable legal and expert costs and expenses) arising directly or indirectly from any negligence, omission or default in the performance of the Relevant Functions on the part of the Council or its employees, subcontractors, servants or agents.

5. **THE COUNTY COUNCIL'S DUTIES AND RESPONSIBILITIES**

- 5.1 The County Council shall inform the Council of the Reimbursement as soon as reasonably practicable and in any event not later than 1 February each year.

6. **PERSONNEL**

- 6.1 Staff employed by the Council for the discharge of the Relevant Functions shall be competent and shall be properly managed by the Council.

7. **REIMBURSEMENT**

- 7.1 The Reimbursement shall comprise an annual payment of £149,003 (2021) in respect of the Council carrying out the Relevant Functions. This payment will be subject to an annual percentage increase from April 2022 in line with the Retail Price Index measure for September of the preceding year.
- 7.2 The County Council shall pay to the Council the Reimbursement within 30 days of invoice receipt but in any event no later than 31 May of each year.

8. **CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS**

8.1 The Council shall comply with the Construction (Design and Management) Regulations 2015 (the "**CDM Regulations**").

9. **TERMINATION**

9.1 This Agreement can be terminated with effect from 31 March by either the County Council or the Council by the 31 October in the preceding year.

9.2 If in any particular case it appears to the County Council that the Council has failed to do anything that they are required to do under this Agreement or to undertake a Relevant Function to the standard required by the County Council the County Council may give notice in writing to the Council specifying the nature of the failure and the actions that they require the Council to take in order to rectify it and the time within which the action is to be taken.

9.3 If at the end of that time it appears to the County Council that the Council has not taken the required action the County Council may take action themselves and reclaim any such costs paid to the Council for the performance of that function.

10. **INTELLECTUAL PROPERTY AND RECORDS**

10.1 All plans, photographs, illustrations, sketches, diagrams, specifications, calculations, records, computer data, codes of practice or any other information in whatsoever form provided by or on behalf of the County Council in connection with this Agreement shall at all times be and be deemed for the purposes of this Agreement to be the sole property of the County Council. The County Council shall have and be deemed for the purposes of this Agreement to have the sole and exclusive

ownership of all copyrights and any other Intellectual Property Rights therein.

10.2 The Council shall, at the request of the County Council or upon the termination of this Agreement, forthwith deliver all the documents and records produced, generated, prepared, acquired or created by or on behalf of the Council for the purposes of this Agreement and the carrying out of the Relevant Functions under the Agreement to the County Council.

10.3 The parties acknowledge that, as public authorities, they each have a duty to comply with the provisions of the Freedom of Information Act and subject to the exceptions provided under that Act that they are obliged to disclose any information that they hold to an applicant if requested to do so.

10.3 If one of the parties considers that information that it intends to share is confidential and/or commercially sensitive it will make the other party aware of this when it passes the information to that other party

11. DISPUTE RESOLUTION

11.1 If a dispute arises between the parties either party may refer the matter for determination in accordance with the procedure set out in this clause 11.

11.2 A dispute shall be referred in the first instance to the County Council's Head of Service - Highways or their successor.

11.3 If any dispute is not resolved within 21 days of its referral pursuant to clause 11.2 then the dispute shall be escalated to a more senior County Council officer for determination provided always that the period of 21 days can be extended by the agreement of both parties.

12. PRIOR AGREEMENTS AND VARIATION

12.1 This Agreement (including the Schedules) sets forth the entire agreement between the parties with respect to delegation of the Relevant Functions by the County Council as highway authority, traffic authority and local authority under S45 Road Traffic Regulation Act 1984 save as set out below and supersedes and replaces all prior communications, drafts, agreements, representations, warranties, indemnities, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the parties thereto and for the avoidance of doubt nothing in this Agreement sets aside or replaces in any way any existing agreement between the parties relating to any functions other than the Relevant Functions.

12.2 Each party acknowledges that in entering into this Agreement on the terms set out in this Agreement it is not relying upon any representation, warranty, indemnity, promise or assurance made or given by the other party whether or not in writing, at any time prior to the execution of this Agreement that is not expressly set out in this Agreement or the Schedules, provided that this shall not exclude any liability that either party would otherwise have to the other in respect of any statements made fraudulently by either party prior to the date of this Agreement.

12.3 This Agreement may not be modified or amended except by express agreement in writing by both parties.

13. NOTICES

All notices to be given under this Agreement shall be in writing and shall be either delivered personally or sent by first class or pre-paid post to the other party at the address stated in this Agreement or such other address as may be specified by the parties by notice to the other from time to time.

14. DATA PROTECTION

The parties agree to ensure that they shall at all times comply with the provisions and obligations imposed by Data Protection Legislation in relation to the storing and processing of personal data and all personal data acquired by either party from the other shall be returned to the disclosing party on request. Both parties agree to indemnify each other in respect of any unauthorised disclosure or processing of personal data or breach of Data Protection Legislation to the extent it applies to this Agreement.

15. FOI LEGISLATION

15.1 The County Council and the Council are public authorities as defined by FOI Legislation and therefore recognise that information relating to this arrangement may be the subject of an Information Request.

15.2 Where an Information Request is received by the Council relating to or relevant to the Relevant Functions and or this arrangement the Council will prior to responding to the Information Request refer the response to the County Council for approval.

15.3 Where an Information Request is received by the County Council relating to or relevant to the Relevant Functions and or this arrangement the Council will provide any information requested by the County Council relevant to the Information Request.

16. PARTNERSHIP OR AGENCY

This arrangement save as expressly set out within this agreement does not authorise the Council to act as agent of the County Council (and vice versa) and is not a partnership.

17. GOVERNING LAW

This arrangement and the matters arising out of or in connection with it will be governed by the law of England.

SIGNED ON BEHALF OF LANCASHIRE COUNTY COUNCIL:

Date:

Head of Service for Highways

SIGNED ON BEHALF OF XXXXXXXXXXXXXXXXXXXXXXXXXXXX:

Date:

Position:

SCHEDULE 1
WORK CODES OF PRACTICE AND SPECIFICATION

- 1.1 The Council shall be responsible for dealing with and responding to and settling all enquiries/complaints/claims associated to all or any aspect of Relevant Functions undertaken under this agreement and shall keep proper administrative records of all such enquiries to be made available to the County Council at any time during or upon its termination and shall give to the County Council details of all and any claims as soon as received.
- 1.2 All works undertaken by the Council on behalf of the County Council shall be in accordance with the specification and requirements set out in the County Councils Highway Management Plan (HMP), associated Codes of Practice as referred to within the HMP and in accordance with the requirements/specification set out in clauses 1.3 to 1.8 below.
- 1.3 Verge Maintenance. In addition to the requirements detailed and set out in the HMP the Council shall at the time of undertaking grass cutting operations undertake visual inspection of the respective verge area and shall, within the same working day report to Lancashire County Council details of any defect or damage or obstruction within the verge area, which may be of danger to users of the highway. Damage identified outside normal working hours should be made safe and then reported to Lancashire County Council the next working day. Where the damage is considered to require an immediate response then it should be reported to the Police using their non-emergency contact number 101.
- 1.4 Weed Control. In addition to the requirements detailed and set out in the HMP the Council shall undertake a regime of cyclical weed treatment twice yearly to deal with known/persistent problem areas so as to prevent weed growth and damage to the highway structure. The Council shall manage treatment of weed growth in a manner that meets the requirements and specification set out in the HMP and within the limits of the financial provision made within this agreement. This will be

reviewed if material changes occur within the weed spraying industry during the term of this agreement that affect the ability of the Council to undertake the works within the financial provision.

- 1.5 Removal and Disposal of Leaves upon the Highway. The Council shall be responsible for collection and disposal of leaf fall from the highway and footway areas so as to prevent any danger to highway users and to prevent blockage of highway and footway gully covers and drainage systems. The Council shall be responsible for assessing sweeping requirements across their respective areas and shall plan and execute sweeping operations in such a manner that areas are dealt with relative to need/surface condition and in a timely and efficient manner. All such works shall be managed and carried out within the limits of the financial provision specified within this agreement.
- 1.6 Removal of Wind Blown Sand.
- 1.7 Maintenance of Trees, All maintenance activities shall be in accordance with the standards and practice as set out within the HMP.
- 1.8 Hedges and Shrubs. All maintenance activities shall be in accordance with the standards and practice as set out within the HMP. The Council shall attend and undertake any necessary reactive maintenance to hedges or shrubs located within the highway boundary in response to complaints received or following receipt of an inspection report. All such works shall be managed and carried out within the limits of the financial provision specified within this agreement.
- 1.9 Undertaking of works within the adopted highway and which are considered not to be of a cyclical nature, shall be considered to come under the terms and requirements of the Traffic Management Act 2004. In such circumstance and prior to commencement of any on-site works, prior approval shall be sought from the Lancashire County Council Streetworks Team and appropriate consent/permits or approvals shall be obtained. Where works within the highway are planned which would

require the use of highway space, excavation of the highway or cause disruption to traffic, prior approval for the works must be obtained.

SCHEDULE 2
THE RELEVANT FUNCTIONS

1. Grass cutting in Highway verges and roundabouts in the Relevant Area, to a standard not lower than 8 cuts to amenity grass areas and 4 flail cuts to rural non amenity areas.
2. Carry out reactive treatment to prevent the growth of weeds upon adopted highways and footways within the Relevant Area in accordance with the requirements set out within the Highway Management Plan. Areas to be treated twice yearly in May/June and August/September.
3. Remove and dispose of leaf fall from Highways within the Relevant Area as per the requirements set out in Schedule 1.
4. Removal and disposal of Wind Blown Sand from highways and footways.
5. Maintenance of Trees
6. Undertake maintenance of highway verges and shrubs to a standard not lower than the standard set out in the County Council's Highway Management Plan and in accordance with the requirements at Schedule1.
7. Permissive Task Only: XXXXXXXXXXXXX

SCHEDULE 3

PLAN OF THE RELEVANT AREA