



# Newquay

## Grass Cutting Agreement

2022-23

This Agreement is made the first day of June Two Thousand and Twenty Two

BETWEEN

- (1) The Cornwall Council of New County Hall, Treyew Road, Truro, Cornwall, TR1 3AY (the "Authority")

and

- (2) Newquay Town Council (the "Town Council")

each a "Party" and together the "Parties"

### **BACKGROUND AND AIMS**

- A) The Authority and the Town Council are local authorities for the purposes of the Local Government Act 1972 ("the Act")
- B) The Authority is the local highway authority for the purposes of the Highways Act 1980 and is responsible for ensuring (inter alia) the highways verges maintainable at public expense within its administrative area are cut so as to maintain clear visibility for highway users.
- C) By virtue of Section 101 of the Act, section 19 of the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 a local authority may arrange for the discharge of any of its functions to any other local authority.

### **OPERATIVE PROVISIONS**

#### **DEFINITIONS & INTERPRETATION**

- 1.1 In these terms and conditions unless there is something inconsistent in the context or otherwise specified, the following expressions shall have the following meanings:

"Agreement" means these terms and conditions and any and all Schedules to this Agreement as the same may be amended, modified or supplemented from time to time in accordance with this Agreement.

"Commencement Date" means 1<sup>st</sup> June 2022

"Expiry Date" means 31<sup>st</sup> March 2023

"Japanese Knotweed" means Fallopia Japonica which is more commonly known as Japanese Knotweed.

"Schedule" means the schedules attached to this Agreement as amended by the Authority from time to time.

"Services" means the services provided by the Town Council as detailed in clause 2 and Schedules 1 and 2 to this Agreement.

"Term" means the period starting on the Commencement Date and ending on the Expiry Date unless terminated earlier in accordance with this Agreement.

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 The singular includes the plural and vice versa and any gender includes any other gender.
- 1.4 Reference to any statute or statutory provision includes a reference to the statute or statutory provision as from time to time amended, extended or re-enacted.
- 1.5 In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in any Schedule, the provision in the Agreement shall take precedence over the provision in the Schedule.
- 1.6 The Schedules to this Agreement attached hereto form part of and shall be deemed to be incorporated in this Agreement.

## **2. OBLIGATIONS OF THE TOWN COUNCIL**

- 2.1 The Town Council will discharge on behalf of the Authority the following Services in relation to the highway throughout the Term:
  - (i) cutting of grass verges as specified in Schedule 1 to this Agreement and such other areas as may from time to time be agreed in writing by the Parties as directed and/or according to the policies from time to time produced by the Authority;
  - (ii) the areas to be maintained as defined in Schedule 1 to this Agreement relating to grass cutting shall be cut and trimmed at regular intervals and on at least four occasions between 1<sup>st</sup> April and 31<sup>st</sup> October in any calendar year;
  - (iii) all cuttings, trimmings, weeds and other waste material removed in the exercise of the Services are to be immediately cleared from the highway and associated drains and disposed of in a manner approved by the Authority and in accordance with all statutory provisions.

- 2.2 The Town Council will use all reasonable endeavours to conform to the Schedules when carrying out the Services including the use of common forms and documentation.
- 2.3 The Town Council shall carry out the said Services in accordance with the requirements of the Highways Act 1980 and all other relevant statutory provisions.
- 2.4 The Town Council will ensure that all persons involved in the exercise of the Services shall hold the appropriate recognised qualifications.
- 2.5 The Town Council are to follow the Pollinator Action Plan. The Authority insist you only use glyphosate based weed killers on invasive plants like Japanese Knotweed which The Authority has a legal responsibility to control on its land. The Town Council will use a product that is currently approved for use in the EU around both humans and animals for this purpose. Staff who use this product are fully trained and use Controlled Droplet Application (CDA) to spot spray so that the product is targeted effectively.

In a proactive effort to reverse the destruction of the bees and pollinators and to protect human health, The Authority ceases the use of neonicotinoids and glyphosate on all of its assets. With the exception of use for the control of Schedule 9 plants (under the Wildlife & Countryside Act, 1981), such as Japanese Knotweed, or where it is used to reduce material risks to asset integrity.

### **3. OBLIGATIONS OF THE AUTHORITY**

- 3.1 The Authority will not introduce any changes to the administrative procedures without prior consultation with the Town Council.
- 3.2 Any required variation to the Services brought about by changes to the Authority's policy shall be communicated to the Town Council.
- 3.3 The Authority shall provide the Town Council with any advice on receipt of a reasonable written request in respect of the requirements of the Highways Act 1980 and all other relevant statutory provisions.
- 3.4 The Authority shall if reasonably requested by the Town Council provide advice in order to assist the Town Council in performing its Services under this Agreement.

#### **4. FINANCIAL PROVISIONS**

- 4.1 The Town Council shall keep an account of all expenditure and paperwork incurred in the exercise of the Services and to provide such information to the Authority on demand.

#### **5. JAPANESE KNOTWEED**

If during the performance of the Services, the Town Council discovers the presence of Japanese Knotweed growing or placed within the highway, the Town Council shall ensure that it provides the Authority (CORMAC Solutions Ltd) with details of the affected site as soon as reasonably practicable in accordance with Schedule 4 to this Agreement. The Town Council shall not cut or dispose of the Japanese Knotweed.

#### **6. SAFETY**

- 6.1 The Town Council or its agents shall ensure that Services are undertaken in accordance with any law or regulation at all times, including but not limited to:
- Chapter 8 of the Traffic Signs Manual.
  - New Roads & Street Works Act 1991
- 6.2 For the avoidance of doubt it is hereby agreed and declared that this Agreement does not impose on the Town Council any duty of routine inspection of the highway for safety checks. This duty will continue to be the responsibility of the Authority.

## **7. INDEMNITY**

- 7.1 The Town Council will be liable for all Services undertaken pursuant to this Agreement and shall indemnify the Authority and keep the Authority fully indemnified against any demands, claims, liabilities, losses, costs and expenses whatsoever including all legal costs and damages or compensation paid by the Authority on the advice of its legal advisers to compromise or settle any claim that may be incurred by Authority as a result of any breach of this Agreement by the Town Council including but not limited to ;
- a) any act of neglect or default of the employees Town Council or its agents;
  - b) any breaches in respect of any matter arising from the supply of the Services resulting in any successful claim by any third party.

## **8. INSURANCE**

- 8.1 The Town Council shall insure against liability under Clause 8 of this Agreement with a reputable insurance company in a sum of not less than £5,000,000 in respect of any one claim and shall produce the certificate for the current premium to the Authority on request.

The Town Council shall not sub-contract any or all of its obligations under this Agreement to a sub-contractor unless the sub-contractor has first produced to the Town Council proof of him having employer's liability insurance and public liability insurance from a reputable insurance company covering a minimum of £5,000,000 in respect of any one claim and the Town Council shall produce the certificate for the sub-contractor's current premium to the Authority on request.

## **9. FREEDOM OF INFORMATION**

- 9.1 Notwithstanding anything to the contrary contained or implied in any documents or negotiations leading to the formation of this Agreement;
- (i) the Authority shall be entitled to publish and/or release any and all terms or conditions of this Agreement, the contents of any documents and/or information relating to the formation of this Agreement under the provisions of the Freedom of Information Act 2000 and/or Data Protection Act 1998
  - (ii) nothing contained in this Agreement shall prevent the Authority from disclosing and/or publishing under the provisions of the Data Protection Act 1998 and/or

Freedom of Information Act 2000 any term or condition or information contained in or relating to the formation of this Agreement

9.2 The Town Council shall:

- (i) co-operate with the Authority and supply to it all necessary information and documentation required in connection with any request received by the Authority under the Data Protection Act 1998 and/or Freedom of Information Act 2000
- (ii) supply all such information and documentation at no cost to the Authority and within seven days of receipt of any request.

9.3 The Town Council shall not publish or otherwise disclose any information contained in this Agreement or in any negotiations leading to it without the Authority's previous written consent unless the Town Council is bound to publish and/or disclose such information under the Data Protection Act 1998 and/or Freedom of Information Act 2000 and such information is not exempt from such disclosure and/or publication under the provisions of the Data Protection Act 1998 and/or Freedom of Information Act 2000.

## **10. TERMINATION**

- 10.1 Either Party may terminate this Agreement for whatever reason at any time prior to the Expiry Date by giving not less than 3 months written notice to the other Party to include details of the reasons for the termination.
- 10.2 In the event of any breach by the Town Council the Authority shall serve written notice upon the Town Council giving details of the breach along with the remedy required. Failure by the Town Council to remedy the breach within 14 days will result in the Authority terminating this Agreement.

## **11. DISPUTE RESOLUTION**

- 11.1 In the event of any dispute between the Parties arising in connection with this Agreement, the Parties shall use all reasonable endeavours to resolve the matter on an amicable basis. If the Authority or the Town Council serves formal written notice on the other that a material dispute of such a description has arisen and the Parties are unable to resolve the dispute within a period of 30 days from the service of such notice, then the dispute shall be referred to a mediator for alternative dispute resolution and Parties shall seek in good faith to resolve the dispute by alternative dispute resolution.
- 11.2 The cost of the appointment of a mediator and the fees and expenses relating to the alternative dispute resolution are to be paid in equal shares by both Parties.

## **12. AMENDMENTS**

Any amendments to this Agreement shall be made in writing and signed by a duly authorised representative of the Parties.

## **13. NOTICE**

Any notice given under this Agreement shall be in writing and shall be sent to the address of the other Party as set out at the Head of this Agreement or such other address as that Party may from time to time notify to the other Party.

## **14. PARTNERSHIP AND ASSIGNMENT**

- 14.1 Nothing in this Agreement shall be construed as establishing or implying any partnership, joint venture, agency fiduciary relationship or other relationship between the Parties other than a contractual relationship expressly provided for by this Agreement. Neither Party shall have nor represent that it has any authority to make any commitments on the other Party's behalf.
- 14.2 This Agreement shall not be assigned, transferred nor the performance of any or all obligations hereunder sub-contracted by the Town Council without the prior written consent of the Authority, such consent to be at the absolute discretion of the authority.



**15. THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to and does not give any person who is not a Party to it any right to enforce any of its provisions.

**16. ENTIRE AGREEMENT**

This Agreement sets out the whole agreement of the Parties in respect of the Services and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

**17. FORCE MAJEURE**

No party shall be considered in breach of its obligations under this Agreement or responsible for any delay in carrying out such obligations, if the performance thereof is prevented or delayed wholly or in part as a consequence whether direct or indirect of war (whether war be declared or not) emergency, strike, industrial dispute, accident, fire, earthquake, flood, storm, tempest or any other unforeseen occurrence. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than six months either Party may terminate this Agreement by written notice to the other Party.

## **18. LAW AND JURISDICTION**

This Agreement shall be governed by English law and the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement.

IN WITNESS whereof the Parties have entered into this Agreement by signature of their respective duly authorised representatives, the day and year first above written.

Signed by a duly authorised officer for and on behalf of Cornwall Council

Signed by and on behalf of Newquay Town Council

## **SCHEDULES:**

### Schedule 1

List of roads and footways for the purpose of grass cutting:

**Dinard Gardens (Land adjacent the Griffin PH), Newquay - 318m<sup>2</sup>**

## Schedule 4

Further information on Japanese Knotweed and its current locations within Cornwall can be found on our website

[www.cornwall.gov.uk/environment/knotweed](http://www.cornwall.gov.uk/environment/knotweed)

### Japanese Knotweed in Cornwall

#### Recording Sheet

Thank you for contributing towards Cornwall Council's survey of Japanese Knotweed in Cornwall. Records will be computerised and made available for public information. The information will be used for nature conservation, research, education and to target a co-ordinated approach to controlling Knotweed. It will also be shared with the Botanical Society of the British Isles. Please fill in the information below as accurately as possible and return to: The Natural Environment Service, Cornwall Council, New County Hall, Truro, Cornwall, TR1 3AY.

Name	
Address	
Telephone Number	
Email Address	
Date of Record	
Location of Knotweed	
Six-Figure grid reference for the Centre of the Knotweed Stand	

(To obtain a six-figure grid reference, locate the centre of the Knotweed on an Ordnance Survey map. Each map should have written guidance regarding the National Grid Reference System, and how to obtain a grid reference. For instance, the six-figure grid reference for the post box on the top of Brown Willy Tor, Bodmin Moor, is SX 159 800.)

How long has Knotweed been known at this site?	
--	--

Please indicate the type/s of habitat covered in Knotweed by ticking the appropriate box:

Rivers edge	Hedge	Farmland	Amenity area	
Derelict land	Garden	Woodland	Public site	
Roadside verge	Industrial /Business site	Railway embankment	Other	

You are not obliged to complete the Section below concerning ownership, but this information may be of use to us.

Name, Address and Phone Number of Landowner, if known.	
--	--

(Please indicate on the sketch map if the Knotweed covers ground owned by more than one owner.

SKETCH MAP (Please remember to include details regarding location, distribution and the nearest road, river and/or habitation).

Area of ground covered by Knotweed	
Length	
Width	
Percentage of dense cover (Knotweed only)	
Percentage of partial cover (Knotweed and other plants)	

Thank you for your assistance

This survey is being undertaken on behalf of the Japanese Knotweed Control Forum for Cornwall which has a wide membership of organisations and individuals committed to controlling the spread of Japanese Knotweed in Cornwall.