

**Cabinet 15th January 2008
Highway Agency Agreement**

Appendix A

THIS AGREEMENT is made 2008
BETWEEN GLOUCESTERSHIRE COUNTY COUNCIL of Shire Hall Westgate Street
Gloucester (hereinafter called 'the County') of the one part and **CHELTENHAM
BOROUGH COUNCIL** of Municipal Offices, Promenade Cheltenham (hereinafter
called "the Borough") of the other part

WHEREAS:

1. The County is the local authority for the Functions for Gloucestershire of which the administrative area of the Borough forms part
2. Pursuant to Section 101 of the Local Government Act 1972 and Sections 2 and 19 of the Local Government Act 2000 the County and the Borough have agreed that the Functions shall be discharged by the Borough from the commencement of this Agreement on the 1 April 2007 until this agreement is terminated and subject to the terms of this Agreement

NOW THIS DEED WITNESSETH as follows:-

1. Interpretation

- 1.1 The words and expressions contained or referred to herein shall have the meaning ascribed to them in the Schedule 1
- 1.2 A reference to an Act of Parliament includes reference to that Act of Parliament as amended or modified in any statutory re-enactment thereof and to any regulations made thereunder and includes any statutory guidance practice statement code of practice or similar supplement to legislation
- 1.3 Where the context permits in this Agreement the singular shall include the plural and words importing one gender shall include any other gender
- 1.4 A reference to a Clause Schedule or Appendix shall unless the context otherwise requires be construed as a reference to the relevant Clause Schedule or Appendix of this Agreement

2. Compliance with Schedules

The County and Borough shall comply with the schedules hereto:

Schedule 1 – Definitions

- Schedule 2 – Functions to be discharged by the Borough
- Schedule 3 – Horticultural Maintenance Functions, Service Outputs and Related Matters
- Schedule 4 – Epicormic Growth Removal Functions, Service Outputs and Related Matters
- Schedule 5 – Highway Weed Control Functions and Outputs
- Schedule 6 – Highway Enforcement Licensing Functions and Gating Order
- Schedule 7 – Financial Provisions
- Schedule 8 – Landscaped Areas
- Schedule 9 – Rural Highway
- Schedule 10 – Alleyway Vegetation Clearance
- Schedule 11 – Highway Vegetation Clearance

3. Commencement

With effect from the commencement of 1 April 2007 and in accordance with the terms of this Agreement the County requests the Borough and the Borough agrees to perform the Functions within the Borough's administrative area

4. Limitation on Resources

The Borough hereby agrees that payments by the County to the Borough referred to in the **Schedule 8** shall be used solely in execution of the Functions

5. Standards of performance

- 5.1 The Borough shall and shall procure that all servants agents employees and contractors engaged by the Borough in respect of the Functions in performing obligations under this Agreement use all reasonable skill and care and take all reasonable precautions for the protection of public and private interests and discharge all statutory duties and discretions including those which would otherwise be the responsibility of the County as if the Borough was the statutory authority for the Functions. All reasonable skill and care shall include the exercise of that degree of skill care diligence prudence operating practice and foresight which would reasonably and ordinarily be expected from a skilled and experienced person of the appropriate profession or practice seeking in good faith to comply with their obligations complying with all applicable legislation licences regulations consents authorities directions and applicable codes of practice and engaged in the same or similar type of undertaking and

under the same or similar circumstances and conditions as that in which the relevant matter arises

5.2 The Borough shall indemnify the County and its servants agents employees and contractors against all losses and claims for damages and compensation in relation to the exercise of the Functions and shall deal with all such claims and shall insure against such liability. For the avoidance of doubt, dealing with all claims shall include both administration and meeting liability and shall apply for the duration of this agreement and at all times thereafter in respect of all causes of action or alleged causes of action arising before the termination of this agreement. When the Borough deals with causes of action or alleged causes of action after termination of this agreement the County will provide all reasonable assistance to the Borough in its investigation of such causes of action by reference to any documentation systems and staff that transfer to the County upon termination.

5.3 In performing its obligations under this Agreement the Borough will comply with the Highways Maintenance Handbook and Highways Maintenance Biodiversity Action Plan. The County shall provide the Borough with four copies of these documents on completion of this agreement and four further copies on each occasion these documents are updated at no charge to the Borough

6. Additional Performance by Borough

6.1 The Borough may within the Functions provide additional services or a higher standard of service or specification than that prescribed in the schedules to this agreement and the Borough shall meet all additional costs and expenses of the additional service, or higher standards of service or specification for the duration of this agreement or the duration of the additional service whichever shall be the shorter

6.2 At the commencement of this Agreement and thereafter at the commencement of each calendar year the Borough shall provide to the County in a form to be specified by the County a schedule of works, locations and budgets where, in the ensuing financial year, the Borough itself proposes to fund additional services or a higher standard of service than that prescribed by the County

7. Changes in Writing

This Agreement may be varied only by written agreement between the parties

8. Dispute Resolution

- 8.1 Before either may resort to legal proceedings the parties to this agreement shall attempt to settle in good faith all disputes or differences which arise between them out of or in connection with this agreement, by negotiations between them in good faith in accordance with the IRP or the ADR
- 8.2 In the event of either party giving the other party written notice of a dispute relating to the implementation or interpretation of this Agreement the following informal resolution procedure shall be followed:-
- 8.2.1 The County Director and Borough Director shall within 10 days of the said notification meet and try to resolve the dispute
- 8.2.2 If they do not agree a resolution to the dispute within 10 days of their meeting or if no such meeting has taken place within the time referred to in 8.2.1 above and the dispute remains unresolved then either party may require that the dispute be referred to the ADR process
- 8.3 Where a dispute has been referred to IRP and remains unresolved and a party requires that the dispute be referred to ADR then the parties shall together refer the dispute or difference to the Centre for Effective Dispute Resolution “CEDR”, for resolution in accordance with such of the ADR procedures offered by them as they consider appropriate in all of the circumstances
- 8.4 The parties agree to be bound by the relevant rules of the mediation facilitator relating to the conduct of the relevant ADR proceedings, as if the same were incorporated in this Agreement. Each party shall bear its own costs incurred in the relevant ADR proceedings, and one half of the fees and expenses of the mediation facilitator, unless a different agreement is reached as part of any settlement arrived at as a result of the relevant ADR proceedings

9. County Step In

Without prejudice to any other term of this agreement but subject to Clause 8 if the Borough in the reasonable opinion of the County fails in a material respect to carry out any of the Functions in accordance with the terms hereof and/or to the reasonable satisfaction of the County Director then the County may after giving to the Borough 14 days notice in writing setting out what remedial action is required and in the event the Borough shall have not taken that remedial action to the reasonable satisfaction of the County Director the County may carry out those Functions (or procure the carrying out of those Functions) and recover the reasonable cost thereof (including all administrative costs and officer time) from the Borough by action or set off against any liability from the

County to the Borough under this agreement or otherwise. For the avoidance of doubt this clause shall not prevent the County from carrying out any Functions in any event without notice at its own cost.

10. Contract Period, Variation and Termination

10.1 This Agreement shall commence on 1 April 2007 and continue until terminated by either party under Clause 10.2

10.2 Subject to clause 10.4, without prejudice to any other term of this agreement one party may give the other not less than twelve months notice in writing that this agreement will terminate on 31 March in any year except 2008

10.3 The County may give to the Borough not less than twelve months notice in writing taking effect on 1 April in any year after 2008 that the Functions will reduce as to their nature or quantity

10.4 In the event the County shall have served notice under clause 10.3 the Borough may give to the County not less than five months notice in writing taking effect at any time that this agreement will terminate.

10.5 Notwithstanding changes subject to clauses elsewhere in the agreement, on an annual basis, the County and the Borough will review the operation and scope of the agreement. Specific reference will be made to any increases in the number of roads within the Borough (new adoptions, new housing estates etc) which may require a corresponding, step increase in the amounts paid for the provision of services to these additional areas.

11. Post Termination Rights

Any termination of this Agreement shall not prejudice or affect any rights obligations or claims of either party which may have arisen prior to such termination

12. Transfer on Termination

During the period leading up to and after the termination of this Agreement the Borough shall diligently take all reasonable steps to ensure the orderly and timely transfer to the County of all documents data records and files. In the event the County requests the Borough so to do, the Borough shall execute such documents as the County shall reasonably require transferring to the County any rights and/or obligations specified by the County and acquired or entered into by the Borough in respect of the Functions

13. Assignment and Sub-Contracting

13.1 The Borough shall not assign this Agreement or any part thereof or the benefit or advantage of the Agreement or any part thereof without the previous written consent of the County

13.2 If the Borough sub-contracts any of its obligations under this Agreement to a third party, such sub-contracting shall not affect any of the provisions of this Agreement or the obligations of the Borough who shall remain liable

14. Best Value

14.1 The parties acknowledge that they are subject to duties in respect of best value and shall make arrangements to secure continuous improvement in the way in which the Functions are carried out having regard to a combination of economy efficiency and effectiveness

14.2 The parties will fully cooperate with each other in all respects in connection with those duties and the parties shall provide to each other free of charge all information reasonably requested in respect of the Functions and related to best value

15. Employment-Related Obligations in the event of any change to the Functions and on and after Termination

15.1 In the event of this Agreement being terminated and/or there being any change to the Functions and/or the extent to which the Functions are carried out by the Borough and any employee of the Borough becoming redundant as a direct result thereof then subject to the Borough having first done so the County shall use its reasonable endeavours to offer such employee suitable alternative employment

15.2 After notice has been given to terminate this Agreement and/or to change any of the Functions and/or the extent to which the Functions are carried out by the Borough no person shall be appointed to any post by the Borough in connection with the Functions without the previous written consent of the County

15.3 In the event of this Agreement being terminated and/or there being any change to the Functions and/or the extent to which the Functions are carried out by the Borough and as a direct result the employment of any employees of the Borough or any other person transfers or will transfer to the County or any other person from whom the County receives or will receive services or works by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") ("Transferring Employees") then the following provisions shall apply

- 15.3.1 the parties will cooperate in good faith in the transfer of employment of Transferring Employees
- 15.3.2 the Borough shall indemnify and keep indemnified in full the County and at the County's request any other person from whom the County receives or will receive services or works against all claims and awards in respect of all emoluments and all other contractual or statutory payments (including redundancy) by or to any Transferring Employees which relate to any period of employment or engagement before the said transfer and all income tax and pension and national insurance contributions payable thereon. For the avoidance of doubt liability under this sub clause shall not include liability for redundancy occurring after the said transfer;
- 15.3.3 the Borough shall indemnify and keep indemnified in full the County and at the County's request any other person from whom the County receives or will receive services or works against all costs, losses, expenses and liabilities reasonably and properly incurred by the County and/or such other person as a result of any employment or termination of employment related claim against the County or such other person in respect of any liability to any Transferring Employees where such claim arises and is the direct result of any act or omission of the Borough or any other employer of the Transferring Employees;
- 15.3.4 the Borough shall indemnify and keep indemnified in full the County and at the County's request any other person from whom the County receives or will receive services or works against all claims and awards in respect of all emoluments and all other contractual or statutory payments (including redundancy) by or to any Transferring Employees which relate to any period of employment or engagement after the said transfer and all income tax and pension and national insurance contributions payable thereon for a period of up to 12 months after the said transfer. The County agrees that it will use all reasonable endeavours to minimise the cost to the Borough by seeking to offer suitable alternative employment following the acceptance of which liability of the Borough under this sub clause 15.3.4 shall cease.

15.3.5 the Borough shall indemnify and keep indemnified in full the County and at the County's request any other person from whom the County receives or will receive services or works against all costs, losses, expenses and liabilities reasonably incurred by the County and/or such other person as a result of any claim against the County or such other person in respect of any liability to any Transferring Employees except to the extent that the same are attributable to the acts or omissions of the County or any other person from whom the County receives or will receive services or works.

16. Employment-Related Obligations Before Termination

Clauses 16.1 and 16.2 shall apply in the event there are or there are likely to be Transferring Employees

16.1 The Borough shall

16.1.1 on receiving a written request from the County provide within 28 days in respect of any Transferring Employees full complete and accurate details regarding the extent to which each Transferring Employee is wholly or partly funded by the Service Contribution the extent to which each Transferring Employee is wholly or partly employed in connection with the Functions and the identity number age sex length of service job title grade and terms and conditions of employment of and other matters affecting Transferring Employees ("the Employment Information" which expression shall include any information referred to in clauses 16.1.2 and 16.1.4)

16.1.2 on receiving a written request from the County provide in respect of any Transferring Employees wholly or partly funded other than by the Service Contribution and within 28 days the Employment Information (other than the extent to which each Transferring Employee is wholly or partly funded by the Service Contribution)

16.1.3 provide the Employment Information promptly and at no cost to the County;

16.1.4 notify the County forthwith in writing of any changes to the Employment Information;

16.1.6 not (subject to contractual obligations existing at the date hereof) increase the remuneration or change the terms and conditions of Transferring Employees without the County's prior written consent;

16.1.7 not transfer any Transferring Employees to another part of its business or move employees from elsewhere in its business to work in connection with the Functions without the County's prior written consent

16.1.8 upon supplying the Employment Information and upon the termination of this Agreement warrant to the County and at the County's request any other person to whom the Transferring Employees may transfer that the Employment Information and any information notified under clause 16.1.4 is and will be complete and accurate and that there are no omissions

16.2 The Borough shall indemnify and shall keep indemnified in full the County and at the County's request any other person to whom Transferring Employees may transfer against all losses, claims, damages, liabilities, costs and expense (Including reasonable legal costs) arising from any claim by any party as a result of the Borough failing to provide or promptly to provide the County with any information referred to in this clause as a result of any inaccuracy in or omission from the Employment Information

17. Interpretation Priorities

This Agreement shall be construed and interpreted as a whole provided that in the event of any inconsistency or conflict between the provisions of the main body of this Agreement its Schedules and any other documents therein referred to then

17.1 the main body shall prevail to the extent of any such conflict or inconsistency with the schedules and any other documents referred to

17.2 the schedules shall prevail to the extent of any such conflict or inconsistency with any other documents referred to

18. Provision of Documents

During the currency of this Agreement all deeds agreements contracts licences plans and other data documents and correspondence prepared and/or received by or on behalf of the Borough in respect of the Functions shall be retained by the Borough and the Borough shall in any event on completion thereof and at any time on request by the County free of charge deliver to the County a copy of all documents and data affecting interests in land and the County shall have the right to require production of any documentation free of charge and to require the originals thereof to be handed

over to the County at any time and the Borough shall deliver the same to the County in any event on termination of this Agreement

19. Mitigation of Loss

The parties shall each at all times take all reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against another party pursuant to this Agreement

20. Waiver

No term or provision of this Agreement shall be considered as waived by any party to this Agreement unless a waiver is given in writing by that party.

21. Notices

Any notice required to be given hereunder shall be sufficiently served if sent by recorded delivery post or by personal service to:-

21.1 In the case of the County, both the Head of Legal and Democratic Services of the County and County Director

21.2 In the case of the Borough, to the Borough Solicitor

or to such other addressees as such party shall have designated in writing

22. Indemnity

22.1 The Borough shall be responsible for and shall release and indemnify the County its employees agents and contractors on demand from and against all liability for:

22.1.1 death or personal injury;

22.1.2 loss of or damage to property (including property belonging to the County or for which it is responsible);

22.1.3 third party actions, claims or demands and any costs, charges and expenses (including legal expenses on an indemnity basis) associated with such third party claims or demands; and

22.1.4 breach of statutory duty,

arising out of or in connection with the performance or non-performance of the Functions by the Borough and/or its obligations under this Agreement or the presence and/or use of any land buildings plant equipment or personnel or any of them which is in the ownership possession direction and/or control of the Borough and used for the Functions.

22.2 None of the expressed or implied terms of this Agreement have the effect of excluding or limiting liability for death or personal injury arising from the negligence of either party.

23. Severability

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement

24. Insurance

The Borough undertakes and agrees:

- 24.1 to obtain and keep in full force and effect at all times in respect of the Functions a policy or policies of insurance covering public liability for death and/or injury to persons or damage to property with a minimum indemnity of £10,000,000 or a sum as may be agreed between the County and the Borough;
- 24.2 within 30 days of written request to deliver to the County copies of all applicable insurance policies taken out pursuant to the provisions of this agreement and to ensure that the County shall be entitled to the benefit of such insurance together with confirmation that premiums have been paid
- 24.3 that such insurance shall include an indemnity by the insurer to the County upon no less terms than the indemnity afforded to the Borough
- 24.4 that if, for whatever reason, the Borough fails to give effect to and maintain the insurances required by this Agreement the County may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Borough.
- 24.5 the terms of any insurance or the amount of cover shall not relieve the Borough of any liabilities under this Agreement

25. Entire Agreement

Except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement other than any made fraudulently.

26. Freedom of Information

- 26.1 The parties acknowledge that they are subject to the requirements of the Freedom of Information Act 2000 and other requirements for disclosure of information and shall facilitate each other's compliance with those requirements and shall do so without charge except to the extent that such charge shall be recovered from a third party

26.2 The parties agree that neither they or any of their agents or servants shall be liable (whether in contract, tort (including negligence), breach of statutory duty, restitution, breach of confidence or otherwise) for any injury, death, damage or direct, indirect or economic loss (all three of which terms include, without limitation, pure economic loss, or loss of profits, or loss of business, or depletion of goodwill and like loss) caused as a result of any disclosure correctly made in response to a request for information under the Freedom of Information Act 2000 or other requirements for disclosure

27. Change in Law

In the event any change in law shall give rise to additional liability or cost the same shall be borne by the party upon whom that additional liability is placed

28. Avoidance of Legal Partnership

For the avoidance of doubt the relationship between the County and Borough under the terms of this Agreement shall not be a partnership within the meaning of the Partnership Act 1890 and neither party shall commit the other to any course of action or liability to any third party.

29. Force Majeure

29.1 No party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event.

29.2 On the occurrence of a Force Majeure Event, the affected party shall notify the other party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected party and any action proposed to mitigate its effect. The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event and in particular any delay

29.3 As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.

29.4 If no such terms are agreed on or before the date falling 3 months after the date of the commencement of the Force Majeure Event and such Force Majeure

Event is continuing or its consequence remains such that the affected party is unable to comply with its obligations under this Agreement then either party may terminate this Agreement by giving 3 months written notice to the other party expiring at any time

29.5 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification,

29.5.1 this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event

29.5.2 any notice given under clause 29.4 shall become void

30. Resources and Training

The Borough shall procure that:

30.1 there shall at all times be a sufficient number of persons (including all relevant grades of supervisory persons) engaged in connection with the Functions with the requisite level of skill and experience. To avoid doubt, this obligation shall include ensuring that there are sufficient persons to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in demand in respect of the Functions and

30.2 all such persons receive such training and supervision as is necessary to ensure the proper performance of this Agreement and compliance with all health and safety rules, procedures and requirements.

31 Performance Monitoring

The parties agree that during each month they shall meet when the Borough shall report progress on all operational aspects of their discharge of the Functions. The report will include details of service delivery, costs and performance standards

32 Avoidance of Transfer of Employees

Regardless of the provisions of clauses 15 and 16 the Borough shall take all steps and manage its business and use all reasonable endeavours to influence its servants, agents and contractors to take all steps and manage their business so as to avoid the transfer under TUPE of any person to the County and to any person from whom the County receives or will receive services or works in the event of this agreement being terminated and/or there being any change to the functions.

EXECUTED AS A DEED by the County and the Borough the day and year first before written

THE COMMON SEAL of)
GLOUCESTERSHIRE COUNTY)
COUNCIL was hereunto affixed)
in the presence of:-)

for Director of Law & Administration

THE COMMON SEAL of)
THE COUNCIL OF CHELTENHAM)
BOROUGH COUNCIL affixed)
hereto is authenticated by the)
undermentioned person)
authorised by the Council to act)
for that purpose:-)

Borough Solicitor

SCHEDULE 1 - DEFINITIONS

1. County Director Such person as shall be appointed by the County as Director of Highway Maintenance, Traffic Management and Transport or any other title to act for the purposes of this Agreement or any officer nominated to act on his behalf
2. Borough Director Such person as shall be appointed by the Borough as Group Director of Environment or any other title to act for the purposes of this Agreement or any other officer nominated to act on his behalf
3. Force Majeure event The occurrence after the date of this Agreement of:
 - (a) war, civil war, armed conflict or terrorism
 - (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of the actions or omissions of the Contractor or any Contractor Related parties
 - (c) pressure waves caused by devices travelling at supersonic speedswhich directly causes either party (the Affected Party”) to be unable to comply with all or a material part of its obligations under this Agreement
4. Functions The statutory functions of the County in respect of traffic and transportation, highways and street works to the extent specified in and in accordance with **Schedule 2** of this Agreement and subject to any variation thereto in accordance with this Agreement
5. Service Contribution The amount of money in respect of any financial year specified by the County and paid or to be paid to the Borough as an annual contribution to the cost of the Functions referred to in paragraphs (i), (ii), (iii), (iv), (v), (vi), (vii), and (viii) of **Schedule 2**
6. Highway Any highway which is as at 1st April 2007 maintainable

at the public expense for which the County Council is the highway authority in the Borough of Cheltenham excluding such public rights of way as may be agreed between the parties together with any areas of highway adopted by the County after 1st April 2007 and which the Borough has expressly agreed to maintain [in return for additional payment](#)

7. Highways Maintenance Biodiversity Action Plan Gloucestershire County Council policy document affecting the carrying out of highway maintenance operations for the time being and including any changes thereto as notified to the Borough
8. Highways Maintenance Handbook Gloucestershire County Council policy document for delivery of highway services for the time being and including any changes thereto as notified to the Borough
9. Landscaped Areas The areas specified in Schedule 8 (excluding hedges) and such additional areas as may be agreed in writing between the Borough and the County
10. Rural Highway Verge The grass verge of Highway specified in Schedule 9
11. Urban Highway Verge The grass verge and grassed areas of traffic roundabouts and other grassed areas comprised in Highway within the Borough not specified in Schedule 9 except for the length of A40 between Badge worth Road and Benhall Roundabout
12. Alleyway Section of public highway, public right of way or commonly used lane. path or walkway, between two sections of public highway. The extent of Alleyways within Cheltenham borough are specified within Schedule 11
13. RPI Retail Price Index

SCHEDULE 2

FUNCTIONS TO BE DISCHARGED BY THE BOROUGH

The Borough will carry out the following functions on behalf of the County:

- (i) grass cutting of verges, roundabouts and other parts of the Highway (Schedule 3) Part IV Highways Act 1980.
- (ii) Maintenance of landscaped areas within the Highway (Schedule 8) Part IV Highways Act 1980.
- (iii) Alleyway vegetation clearance (Schedule 10) and highway vegetation clearance (Schedule 12) Part IV Highways Act 1980.
- (iv) Removal of epicormic growth from Highways (Schedule 4), Part IV Highways Act 1980, and from areas specified within Schedule 8 and Schedule 10 and Schedule 11, and from the base of any trees within any such areas above
- (v) Weed control and removal from Highways (Schedule 5) Part IV Highways Act 1980.
- (vi) Enforcement duties (Schedule 6)
- (vii) The making of Gating Orders (Schedule 6) thereon Part IV Highways Act 1980 (Gating Orders) (England) Regulations 2006.
- (viii) The granting of all licences, permissions and consents under the Highways Act 1980. as specified in Schedule 6

SCHEDULE 3

HORTICULTURAL MAINTENANCE FUNCTIONS, *SERVICE OUTPUTS AND RELATED MATTERS*

1. The Borough shall undertake, as a minimum standard, to maintain all grassed areas on the Highway. In the urban area within the Borough, grass shall not exceed 15cm in height and will therefore require up to five cuts per year. For rural roads within the Borough boundary (Schedule 9), a pedestrian refuge (first swathe of 1.2m width from the carriageway edge), visibility areas and approaches to signs will be cut at a minimum of twice per year. Access to ducts and surface water drainage systems (e.g. headwalls) shall be cut every three years.
2. This will include horticultural maintenance to all sections of the A40 within the Borough boundary, excluding the section from the Western Borough boundary (Badgeworth Road) to the circulatory section of the Arle court Roundabout. For clarity this includes the dual section between Arle Court roundabout and Princess Elizabeth Way roundabout.

NOTE : Inclusion of horticultural maintenance on the dual section of the A40 between Arle Court roundabout (inclusive) and Princess Elizabeth Way roundabout (inclusive) is subject to the introduction of a 40mph speed limit on this section by GCC in March 2008. Delayed or none introduction of the speed limit will automatically exclude this section only from the agreement until the speed limit is introduced. Payment of the corresponding fee (schedule 7 (i)b, £7,500 +RPI) will also be subject to the introduction of this speed limit.

3. In fulfilling this function the Borough will comply with the Highways Maintenance Handbook and the Highway Maintenance Biodiversity Action Plan.
4. The Borough may provide and maintain floral displays on highway verges, splays, and roundabouts at its additional expense.
5. Subject to the prior written consent of the County (not to be unreasonably withheld) the Borough may secure sponsorship for floral displays and signage on highway land and retain any proceeds for those purposes. All previous roundabout sponsorship arrangements, and those in development, shall be subject to a licence from the County.
6. **Where a location has existing sponsorship under clause 5 above, the County will require prior written consent of the Borough (not to be unreasonably withheld) before erecting additional none highway signage (sponsored signage,**

information signage) at this same location. (Note: clause 6 is designed to facilitate the highlighting of local events, highway related issues, highway safety campaigns etc, rather than being used as an income generation facility for the County).

SCHEDULE 4

EPICORMIC GROWTH REMOVAL FUNCTIONS, SERVICE OUTPUTS AND RELATED MATTERS

All epicormic growth removal shall be in accordance with the Highway Maintenance Biodiversity Action Plan and other established guidance for tree maintenance and may include any emergency works to trees if required.

Epicormic growth will be cut back once per year, from the first vertical 2m of the tree, to ensure maximum visibility and no unreasonable obstruction for all road users including pedestrians. Further ad-hoc requests to be undertaken to tackle localised excessive growth where required. All cuttings are to be removed and disposed of off site.

The Borough will carry out this Function in accordance with Highways Maintenance Biodiversity Action Plan and Highways Maintenance Handbook

SCHEDULE 5

HIGHWAY WEED CONTROL FUNCTIONS AND OUTPUTS

The Borough will carry out this Function in accordance with Highways Maintenance Biodiversity Action Plan and Highways Maintenance Handbook.

Currently full programmes of weed spraying are undertaken twice per year with further ad-hoc requests undertaken as required to maintain the above standard. Two treatments per year may be supplemented by additional cuts paid for by CBC if required.

SCHEDULE 6

HIGHWAY ENFORCEMENT LICENSING FUNCTIONS AND GATING ORDERS

The Borough shall undertake the County's licensing investigation and prosecution powers which are referred to in the legislation below and under the common law. For the avoidance of doubt, the Borough shall have the power to investigate and prosecute under these provisions as if it was the highway authority under the relevant legislation or common law and the County's prior consent to investigate and/or prosecute shall not be required.

Borough's licensing investigation and prosecution powers pursuant to this Agreement.

Highways Act 1980

Section 115 A to K	provision of amenities on highways (CBC)
Section 137	penalty for wilful obstruction (CBC)
Section 144	power to erect flagpoles (CBC)
Section 147A	road side sales (CBC)
Section 148	penalty for depositing things or pitching booths etc., on the highway (CBC)

Road Traffic Regulation Act 1984

Section 44	Control of Off Street Parking (CBC)
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Gating Orders

Subject to the prior written consent of the County in each case the County authorises the Borough to make Gating Orders under sections 129A to 129G of the Highways Act 1980 and the Highways Act 1980 (Gating Orders) (England) Regulations 2006.

For Clarity the following sections remain the responsibility of Gloucestershire Highways (the list is not exhaustive and should be used for guidance only)

Section 131	penalty for damaging the highway etc. (GH)
Section 132	<i>unauthorised markings on the highways (GH)</i>
Section 138	penalty for erecting building, etc., in highway (GH)
Section 141	restriction on planting of trees in or near highways (GH)
Section 142	licence to plant trees, shrubs (GH)

Section 143	power to remove structures from highways (GH)
Section 149	removal of things so deposited on highways as to be a nuisance (GH)
Section 151	prevention of soil etc., being washed onto street (GH)
Section 152	powers as to removal of projections from building (GH)
Section 153	doors in streets not to open outwards (GH)
Section 154	cutting or felling etc., of trees that overhang or are a danger to roads or footpaths (GH)
Section 155	straying animals (GH)
Section 161	penalties for causing certain kinds of danger or acceptance (GH)
Section 161A	danger or annoyance caused by fires lit otherwise (GH)
Section 162	penalty for placing ropes etc., across a highway (GH)
Section 163	prevention of water falling on or flowing on to highway (GH)
Section 164	power to require removal of barbed wire (GH)
Section 165	dangerous land adjoining street (GH)
Section 166	forecourt abutting on streets (GH)
Section 168	building operations affecting public safety (GH)
Section 170	control of mixing mortar on highways (GH)
Section 171	deposit of building materials and making excavations in streets (GH)

SCHEDULE 7

FINANCIAL PROVISIONS

The County will pay to the Borough the Service Contribution by equal instalments payable on the first working day of April, July, October and January of each year.

2007 / 2008 - The total minimum Service Contribution payment for 2007/08 is £73,800. This sum covers;

annual costs of (i) a) £54,500 Horticultural Maintenance (Urban Highway Verge and Rural Highway Verge) and (i) c) £19,300 Horticultural Maintenance (Landscaped Areas),

The remaining elements (i) b) A40 Verge Cutting, (i) d) Weedkilling, (i) e) Epicormic Growth Removal, (i) f) Alleyway Vegetation Clearance, (i) g) Highway

Vegetation Clearance, have already been completed by Gloucestershire Highways for 2007/2008. ie will not for part of the agreement for 2007 / 2008.

- (i) 2008 / 2009 - The total minimum Service Contribution payment for 2008/09 will be £166,300 + RPI, being split amongst the functions as follows
 - a. £54,500 + RPI, Horticultural Maintenance (Urban Highway Verge and Rural Highway Verge) (Schedule 3)
 - b. £7,500 + RPI, A40 Verge Cutting (Schedule 3)
 - c. £19,300 +RPI, Horticultural Maintenance (Landscaped Areas) (Schedule 9)
 - d. £30,000 + RPI, Weedkilling (Schedule 5)
 - e. £15,000 + RPI, Epicormic Growth Removal (Schedule 4)
 - f. £20,000 + RPI, Alleyway Vegetation Clearance (Schedule 10)
 - g. £20,000 + RPI, Highway Vegetation Clearance (Schedule 11)
- (ii) Any additional emergency work (including winter service provision) requested by the County shall be at such sum as is agreed in advance by the parties hereto
- (iii) Should the agreement be extended beyond 2008 / 2009, Indexation will be applied to the Service Contribution annually and the indexation used will be the Retail Price Index (All Items), applied at the 1st April each year.
- (iv) Quarterly spend information is required within a month of each quarter end, highlighting spend by functional area with relevant performance information to be agreed .

SCHEDULE 8

LANDSCAPED AREAS

On 6 occasions per year: cut back excessive growth or grass and shrubs (to maintain natural shape and for) physically remove weeds, remove vegetation overhanging the highway. Further ad-hoc requests undertaken to tackle localised excessive growth where required.

Cut back excessive growth, remove weeds and cut back any vegetation overhanging the highway or causing obstruction. Cuttings to be removed and disposed of off site.

The 6 cuts per year may be supplemented by additional cuts paid for by CBC if required.

Windyridge Road	School Mead
Seneca Way	Harry Yates Way
Medoc Close	Tewkesbury Road
Ballinode Close	St. Peters Close
Tilney Road	Park Street
Albermarle Gate	Buckles Close
Sackville Approach	Chancel Way
Monica Drive	Tudor Lodge Road
Evesham Road	Merestone Drive
Northern Relief Road	Merestones Close
St. Johns Avenue	Billings Way
Albion Street	Merlin Close
Marston Road	Suffolk Square
Gardens, The	Rodney Road Car Park
Burgage The	St. Georges Rd. Car Park
Roberts Road	Gloucester Road
Three Sisters Road	Lansdown Road
Idsall Drive Car Park	Drakes Place
Witcombe Place	Westal Park
Keynsham Bank	Brizzen Lanes
Southgate Drive	Runnymede
Carisbrook Drive	Haslette Way
Glenlea Close	Aysgarth Avenue
Winton Close	Hatherley Road
Loweswater Road	Hawcombe Mews
Kentmere Close	Telstar Road
South West Link Road	Greville Court
Finstock Close	Granley Gardens
Greville Court	Edinburgh Place
Granley Gardens	Meadow Close
Edinburgh Place	Peacock Close
Meadow Close	Admiral Close
Peacock Close	Telstar Way
Admiral Close	School Mead
Telstar Way	Harry Yates Way

SCHEDULE 9

RURAL HIGHWAY

Cut swathe at least 1.2m wide from carriageway edges, visibility splays and approaches to signs twice per year. Further ad-hoc requests undertaken to tackle

localised excessive growth where required. Two cuts per year may be supplemented by additional cuts paid for by CBC if required.

Detailed Plans are annexed at Schedule 9A

Kidnappers Lane	London Road
Farm Lane	Balcarras Road
Shurdington Road	Glenfall Way
Up Hatherley Way	Brockhampton Lane
	Stantons Drive (Allotment side only)
Sunnyfield Lane	Evesham Road
South West Link Road	Hyde Lane
Reddings Road	Manor Road
Coombe Glen Lane	Swindon Lane
Greatfield Lane	Swindon Lane (Sunnyside)
Branch Road	Arle Road (To St. Peters Rec.)
Fiddlers Green Lane	Mill Lane
Pheasant Lane	Noverton Lane
Badgeworth Lane	Shaw Green Lane
Leckhampton Hill	Southam Lane
Cirencester Road	Spring Lane
Sandy Lane	Upper Mill Lane
Timbercombe Lane	Farmfield Road
Ham Hill (including Natton Cottages)	North Road
Little Herberts Road	Church Road Leckhampton
Greenway Lane	Aggs Hill
Aggs Hill	
Harp Hill	

SCHEDULE 9A
PLANS RELATING TO RURAL HIGHWAYS

SCHEDULE 10

Alleyway Vegetation Clearance

Cut back hedging / vegetation overhanging alleyways footpaths / footways shown in schedule 10 and at locations where vegetation obstructs alleyway visibility or obscures signs. 1 full cut per year, with further ad-hoc requests undertaken to tackle localised excessive growth where required in order to maintain the above standard. The single cut may be supplemented by additional cuts paid for by CBC if required.

Detailed Plans are annexed at Schedule 10A

<i>Start</i>	<i>Finish</i>	<i>Plan No</i>
Bradley Road	Croft Road	1
Garden Road	Cirencester Road	2
Garden Road	Little Herbert's Road	3
Garden Road	Cirencester Road (Rear of Pub)	4
Morlands Drive	Cirencester Road	5
Garden Road	Little Herbert's Road	6
Woodlands Road	Lichfield Drive	7
Lichfield Drive	Shurdington Road	8
Mead Road	Old Bath Road	9
Southcourt Drive	Mead Road	10
Merestones Drive	St Michael's Road	11
Bouncers Lane	Noverton Lane	12
Gallops Lane	Muscroft Lane / Noverton Lane	13
Shaw Green Lane	Open Countryside	14
Hatherley Road	Alma Road	15
Hatherley Lane	Nettleton Road	16
Hatherley Lane	Old Reddings Road	17
Olio Lane		18
Burrows Perimeter Path		19
Bafford Lane	Cirencester Road	20
Bafford Lane	Sandy Lane	21
Brookway Road		22
Church Walk		23
Pumphreys Road	Horsefair Close	24
Manor Road Open Space	Church Road	25
Runnings Road	Manor Road Open Space	26
London Road	Hartlebury Way	27
Chase Avenue	London Road	28
Milne Walk (Lipson Road)	(Dill Avenue)	29

Willersey Road	Benhall Open Space	30
Andover Road	Ashford Road	31
Everest Road	Sandy Lane P/F	32
Granley Road	Benhall Open Space	33
Osprey Road	Allenfield Road	34
Greenway Lane	Ryeworth Road	35
Moorend Road	Old Bath Road	36
North Road East	Hatherley Lane	37
Springbank Way	Watermore Close	38
Lido Carpark	Orrisdale Terrace	39
Hesters Way Park	Seacombe Road	40
Long Mynd Avenue	Pembroke Road	41
Ashley Road	Greenway Lane	42
Hayden Road	Pilgrove Way	43
Harp Hill	Priors Road	44
Hayden Lane	Rear of Nursery	45
Ashley Road	Birchley Road	46
	(Jacob's Ladder)	
Welland Lodge Road	Starvehall Farm (New Barn Lane)	47
Whitethorn Drive	Bramble Rise	48
The Close	Collum End Rise	49
Cirencester Road	(Charlton Hill)	50
Greatfield Drive	Sandy Lane	51
Ansell Close	Dinas Close	52
Swindon Village (3 alleys)	Dog Bark Lane	53
Warden Hill Close	Caernarvon Road	54
Yeend Close	Tewkesbury Road	55
Windyridge Gardens	Gardeners Lane	56
Shurdington Road	Merlin Way	57
Merestones Drive	Merestones	58
Malvern Road	St George's Road	59
Swindon Road	Swindon Lane	60
Beeches Road	Open Countryside	61
East End Road	London Road	62
Highland Road	Open Countryside	63
Welland Drive	Prestbury Road	64
Orchard Avenue	Brooklyn Road	65
Benhall Open Space	Hatherley Road	66
Noverton Lane	Open Countryside	67
Smythe Road	Rivelihoods Road	68
Quat Goose Lane	Brockhampton (part)	69
Branch Road		70
Mendip Road	Prestbury Road	71
Ullswater Road	Ennerdale Road	72
Glebe Road	Bouncers Lane	73
Glenfall Way	Pembridge Close	74
Dunster Grove	Springbank Way	75
Wymans Brook	Roman Hackle Avenue	76

SCHEDULE 10A

PLANS RELATING TO HIGHWAY VEGETATION CLEARANCE

SCHEDULE 11

Highway Vegetation Clearance

Cut back hedging / vegetation overhanging, carriageway, highway verges, highway ditches, highway footpaths / footways shown in schedule 11 and at locations where vegetation obstructs visibility splays or obscures signs. 1 full cut per year, with further ad-hoc requests undertaken to tackle localised excessive growth where required in order to maintain the above standard. The single cut may be supplemented by additional cuts paid for by CBC if required.

Road	Plan No		No
		Up Hatherley Way	20
Swindon Road	1	Greatfield Lane	21
Windyridge Road	2	Warren Close	22
Stanwick Drive	3	Loweswater Road	23
Stanwick Gardens	4	Unwin Close	24
Swindon Lane	5	Greville court	25
Tilney Road	6	Campden Road	26
Albemarle Gate	7	Miserden Road	27
Sackville Approach	8	Springbank Road	28
Cromwell Road	9	Tewkesbury Road -	29
Burma Avenue	10	Homebase	
Oak Manor Drive	11	River Leys	30
Hales Road	12	The Poplars	31
Glynrosa Road	13	Shurdington Road	32
Cirencester Road	14	Grove Field Way	33
Charlton Park Drive	15	Telstar Road	34
The Park	16	Davallia Drive	35
Rodney Road Carpark	17	Arle Court - Park & Ride -	
Gloucester Road	18	Grovefield Way highway	36
Hawkswood Road	19	boundary	
Road	Plan		