

FULL COUNCIL 12th MAY 2021

TOWN CREW

1. PURPOSE OF THIS REPORT

- 1.1 To approve the partnering agreement with MCC for the establishment of the Town Crew and to agree the name for the new team.

2. BACKGROUND

- 2.1 Councillors considered a report in November 2020 recommending the establishment of a dedicated team for the maintenance and enhancement of the streetscene. Subsequently budgetary provision was agreed in the 2021/22 budget and at the February meeting it was agreed that the Chairs of Policy & Resources Committee and Environment Committee together with the Town Clerk meet with Nigel Leaworthy from MCC to agree the wording of the partnering agreement. Two meetings have taken place.

3. THE NAME

- 3.1 One of the discussion points has been the name of this new team. The name will be on the uniform and vehicle and will give the team a unique identity from MCC. The names discussed are listed below for Council to make a decision. If a decision cannot be reached on the name at this meeting it can be decided at the June meeting, however the agreement should be considered and approved at this meeting as the aim is to have the team in place by July.

- Abergavenny Town Rangers
- Abergavenny Environment Crew
- Abergavenny Environment Team
- Abergavenny Town Crew
- Abergavenny Streetscene Team

4. THE AGREEMENT

- 4.1 The agreement (appendix 1) is based on the Chepstow agreement with additions to clarify matters regarding ownership of equipment, staff training and development, options after the end of the initial 3 years and supervision.
- 4.2 If Council approves the agreement, the discussions with continue with MCC regarding staffing the team which will be a combination of transfer of existing staff and recruitment of a Team Leader. Abergavenny Town Council will be involved in the recruitment process. It is anticipated that the new Team could be in place in July.
- 4.3 Councillors are requested to co-ordinate with fellow ward councillors to prepare a list of works to be undertaken by the new team. It would be helpful to indicate whether the works are a one off or should be added to a schedule of works.

5. RECOMMENDATIONS

5.1 To agree the name for the new team

5.2 To approve the agreement subject to the new team name being inserted

DATED

2021

MONMOUTHSHIRE COUNTY COUNCIL

and

ABERGAVENNY TOWN COUNCIL

PARTNERING AGREEMENT

for the provision of maintenance and management street scene services

AGREEMENT

DATED:

BETWEEN:

- (1) **MONMOUTHSHIRE COUNTY COUNCIL** of County Hall, The Rhadyr, Usk, NP15 1GA ("MCC")
- (2) **ABERGAVENTNY TOWN COUNCIL** of Town Hall, Cross Street, Abergavenny, NP7 5HD ("ATC")

PARTNERING AIMS

- (A) ATC wishes to see an improved street scene within the 5 wards of Abergavenny: Priory, Castle, Cantref, Lansdown and Grofield.
- (B) MCC will provide such additional Services (as set out in this agreement) to help improve the street scene in the locations required by ATC in addition to their statutory obligations in relation to street clean.
- (C) MCC and ATC have decided to enter into a partnering arrangement to support the common goals noted in A and B and to share expertise and operational support to deliver these goals.
- (D) Once this Agreement expires, ATC has the option to:
 - (i) Take on the management of the team directly
 - (ii) Extend the agreement with MCC for a further 3 years
 - (iii) Disband the **Town Ranger Service**

1 PARTNERING SERVICES

- 1.1 During the term of this Agreement, MCC shall provide the Services in accordance with and subject to the terms and conditions of this Agreement by the direct employment of a **Town Crew**, namely a team leader and two crew operatives to deliver the Services.
- 1.2 The Services shall incorporate:
 - 1.2.1 Scheduled Work - as set out in the appendices and agreed between ATC and the Council.
 - 1.2.2 Reactive Work – to be agreed between ATC Town Clerk and North Team Area Supervisor during the regular weekly discussion. Reactive works may also be set by the team leader.
 - 1.2.3 Additional Works – any works not covered by Scheduled or Reactive work, and that require additional support from MCC may still be delivered but there may be additional costs.
 - 1.2.4 Management of the **Town Crew** –MCC shall provide all HR functions, administration, payroll support and training of the Team. A full training analysis and programme will be provided at the outset of the Agreement. Day to day supervision will be undertaken by MCC.

Deleted:

1.2.5 MCC will provide direct supervision of the team and will participate in meetings to review the progress of the agreement as set out in section 7.

2 TERM AND TERMINATION

- 2.1 Subject to earlier termination in accordance with its terms, this Agreement shall commence on the _____ and shall continue for 3 years.
- 2.2 No later than six (6) months prior to the expiration of this Agreement ATC may, in its absolute discretion, give written notice to MCC that it wishes the Agreement to continue for an additional 3 years.
- 2.3 If ATC gives notice in accordance with clause 2.2 this Agreement shall continue, subject to the provisions for earlier termination contained in the Agreement.
- 2.4 This agreement may be terminated at any time by either party giving at least 12 months' clear written notice to the other party. Either party may terminate immediately in the event of a breach which is not resolved via the dispute process in 9.
- 2.5 There will be a review point every 12 months during the initial term of this agreement to assess the viability of the full transfer of Services under the partnering agreement and any proposed variations. Each party shall consider in good faith any such transfer arrangements or proposed variations [but which shall not be binding on the parties unless expressly agreed by both parties in writing].

3 OBLIGATIONS OF MCC

- 3.1 MCC:
- 3.1.1 shall exercise all due skill, care and diligence in the performance of the Services and will carry out the Services in accordance with good industry practice and relevant legislation, the Scheduled Work (as may be amended from time to time by agreement between the parties) and the terms of this Agreement;
- 3.1.2 warrants and represents to ATC that it has all necessary authorisations, consents, licences, accreditations and corporate powers to enter into this Agreement and entry into and performance of its obligations under this Agreement will not conflict with or result in any breach of any law, regulation or contract or document binding on it;
- 3.1.3 shall ensure all staff employed in the provision of the Services have the appropriate training for the services being delivered and are offered opportunities for staff development. Should ATC taken on direct employment of the team, MCC could train the staff at their inhouse facility but there will be an additional cost for this service in accordance with the MCC's standard training rates applicable at the relevant time; and
- 3.1.4 shall ensure all staff employed in the provision of the Services are provided with the appropriate uniforms as agreed by MCC and ATC prior to the commencement of this Agreement.

4 OBLIGATIONS OF ATC

- 4.1 ATC will work with MCC on the agreement of Scheduled Works.

- 4.2 ATC and MCC will ensure all Scheduled Works remain the priority of the Service and that any Reactive Works for ATC directly are not done at the detriment of scheduled works which form part of this Agreement.

5 PAYMENT FOR THE SERVICES

- 5.1 In consideration of the provision of the Services provided by MCC under this Agreement, including the provision of [all related] Management Services, ATC will pay the fees noted in Schedule 2 in quarterly instalments payable in line with the Council's Sundry Debtors Policy.
- 5.2 Any Additional Works provided to ATC by MCC shall be charged on an ad-hoc basis, to be agreed in writing at the time. MCC shall not carry out any Additional Works except as agreed in advance in writing by the ATC.
- 5.3 ATC shall make payment in line with MCC's Sundry Debtors Policy.
- 5.4 The fees payable under this Agreement will be increased in line with MCC's salary increase, and the fee for management services will remain at 10% of the staffing fee.
- 5.5 All sums payable under this Agreement are exclusive of any applicable value added tax which will be added to each invoice at the applicable rate at the time and will be paid for by ATC.
- 5.6 The agreement will include provision for the purchase of equipment and materials up to a sum agreed by MCC and ATC. Proof of the purchases are to be sent to ATC and the cost of these purchases are to be added to the quarterly invoice raised by MCC.

6 VARIATION IN THE SERVICES

- 6.1 Should either party wish to significantly vary the Services delivered under this Agreement, each party's nominated representatives for the purposes of this Agreement shall meet to discuss in good faith such variations. Any significant agreed variations will be added to this Agreement as supplementary appendices.

7 REPRESENTATIVES AND PERFORMANCE MANAGEMENT

- 7.1 MCC and ATC shall each nominate a representative who shall be authorised to make decisions relating to the Services and this Agreement on their behalf.
- 7.2 Each party shall inform the other promptly of any change in the identity of its nominated representative during the course of this Agreement.

Initial Review Meetings

- 7.3 The parties' nominated representatives shall meet on a monthly basis for the first 6 months following commencement of this Agreement to discuss and review the working of this Agreement and discuss KPIs, ("**Initial Review Meetings**"). During these meetings, a review will be presented of all costs associated with the agreement for inspection by ATC.

Ongoing Review Meetings

- 7.4 The parties' nominated representatives shall meet on quarterly basis following the Initial Review Meeting schedule to discuss and review the working of this Agreement in the preceding year and such other matters as the parties deem appropriate (an "**Ongoing Review Meeting**").

7.4.1 The Ongoing Review Meetings will include reviewing the Performance Measures as set out in Schedule Three and the preparation of a performance monitoring report that can be shared with members of ATC at a Council meeting.

7.5 **Annual Review Meetings** The parties nominated representatives shall meet on an annual basis, but this could form part of the Ongoing Review Meetings, to discuss fee adjustments as noted in 5.4 for the forthcoming year and viability of the transfer of the Services. Annually, MCC representatives will attend a Council meeting to present on progress and performance.

8 BREACH OF AGREEMENT TERMS

8.1 Should either party breach any of the terms of this Agreement in any material respect, and fail to rectify such breach within a 14 days of them becoming reasonably aware of their breach, the other Party shall be entitled to terminate with immediate effect.

8.2 Examples of the type of material breach that would cause such a breach as noted in 8.1 above include:

8.2.1 The **town crew** used to fulfil the Services being made redundant by MCC.

8.2.2 Continued or repeated failure to complete Scheduled Work at all or in accordance with the terms of this Agreement

8.2.3 A significant breakdown in communications between the MCC and ATC that has not been resolved via the dispute resolution process.

8.2.4 More than 6 months of outstanding fees.

9 RESOLUTION OF DISPUTES

9.1 If there is a dispute between the parties concerning any matter arising from or in connection with this Agreement, the parties will use reasonable endeavours to settle the matter in accordance with the dispute resolution procedure set out below.

9.2 Any dispute which has not been resolved between the nominated representatives within fourteen (14) days of the matter being raised, may be escalated by either party to the Head of Service and Mayor by notice in writing.

9.3 If following the escalation process in 9.2 the dispute remains unresolved within thirty (30) calendar days of a notice under clause 9.2, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than twenty (20) days after the date of the ADR notice.

10 CONFIDENTIALITY

10.1 Except as otherwise provided under this Agreement, all confidential information, however recorded or preserved, communicated to one party by the other or learned by one party from the other, whether before or after the Agreement is in effect, shall be kept in confidence and shall be used for the purpose of this Agreement. Each party confirms to the other that all confidential information of the other communicated or learned before the date of this Agreement has been kept in confidence and used only for the purpose of this Agreement.

- 10.2 No confidential information, including without limitation the provisions of this Agreement, shall be disclosed or used otherwise than for the purposes of this Agreement by the recipient party, its agents, sub-contractors, suppliers or employees without the prior written consent of the other party except:
- 10.2.1 as may be necessary by reason of binding legal requirements which were involuntarily incurred;
 - 10.2.2 to the extent such confidential information is known (or becomes known) to the public otherwise than by a breach of the provisions of this clause 10;
 - 10.2.3 to the extent such confidential information has been independently developed by persons who have had no access to or knowledge of the confidential information of the disclosing party;
 - 10.2.4 to the extent such confidential information has been received from a third party without a duty of confidence;
 - 10.2.5 to the professional advisers (including bankers) of the recipient party in connection with the interpretation or operation of this Agreement or any dispute arising therefrom;
 - 10.2.6 in accordance with the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 or any amendment, addition to or replacement of the Act or the Regulations or
 - 10.2.7 as may be required by any regulator.
- 10.3 This clause 10 shall survive the termination of this Agreement.

11 CONSEQUENCES OF TERMINATION

- 11.1 Any equipment (with the exception of the vehicle and equipment bought specifically for the **Town Crew**) used in the provision of these Services shall remain the property of MCC upon termination.
- 11.2 This agreement envisages that subsequent to the commencement of this agreement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part, or otherwise) resulting in a transfer of the Services in whole or in part ("Service Transfer") to ATC or any third party supplier of the Services or services which are substantially similar to the Services ("Replacement Supplier"). If a Service Transfer is a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("Employment Regulations") then, in such event, ATC or a Replacement Supplier would inherit liabilities in respect of those employees whose contract of employment will be transferred to ATC or a Replacement Supplier ("Transferring Employees"). Accordingly, on a Service Transfer the following provisions apply:
- a. MCC shall perform and discharge all its obligations in respect of all the Transferring Employees and their representatives for its own account up to and including the date upon which the Services or any part of the Services for whatever reason transfer from MCC to ATC or a Replacement Supplier ("Service Transfer Date"). MCC shall indemnify ATC and any Replacement Supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by ATC or any Replacement Supplier including without limitation all reasonable legal expenses

and other professional fees (together with any VAT thereon) in relation to:

- i. MCC's failure to perform and discharge any such obligation (save where such failure is caused by a failure by ATC or a Replacement Supplier);
 - ii. any act or omission by MCC on or before the Service Transfer Date or any other matter, event or circumstance occurring before the Service Transfer Date;
 - iii. all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Service Transfer Date;
 - iv. any claim made at any time by any employee of MCC other than the Transferring Employees who claim to have become an employee of or have rights against ATC by virtue of the Employment Regulations.
- b. MCC shall indemnify ATC and any Replacement Supplier in respect of any claims arising from any act or omission of MCC in relation to any other MCC employee who is not a Transferring Employee during any period whether before, on or after the Service Transfer Date.
 - c. MCC shall provide ATC with all information required by Regulation 11 of the Transfer Regulations together with all contractual information relating to the Transferring Employees and shall warrant that such information is true and accurate at the date of provision and shall keep such information updated until the Service Transfer Date.
 - d. MCC shall not, following notice of termination of this agreement, reassign any employees who are assigned to the Service for the purpose of the Employment Regulations nor make any changes to those employees' terms and conditions.
 - e. ATC shall indemnify MCC against all claims arising from ATC's or the Replacement Supplier's failure to perform and discharge any obligation and against any claims in respect of any Transferring Employees arising from or as a result of:
 - i. any act or omission by ATC or the Replacement Supplier relating to a Transferring Employees occurring on or after the Service Transfer Date (save where any act of omission before the Service Transfer Date is caused by a failure by the Council); and
 - ii. all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Service Transfer Date.
 - f. The parties shall co-operate to ensure that any requirement to inform and consult employee representatives in relation to any relevant transfer as a consequence of a Service Transfer will be fulfilled.

- 11.3 ATC must obtain adequate insurance for the provision of the Services should a decision be taken to become the employer of the **Town Crew** and may wish to seek independent advice in relation to the level of insurance required.

12 INSURANCE

- 12.1 MCC shall maintain policies of insurance (and produce certified copies to ATC on request together with satisfactory evidence of their existence and renewal) in respect of any insurances which MCC is obliged to carry under any applicable laws, including (without

limitation) insurance against public liability (which covers, without limitation, damage to property) to a maximum of £25,000,000 and employers liability to a maximum of £25,000,000.

12.2 This clause 12 shall not be deemed to limit in any way MCC's liability under this Agreement.

13 COMPLIANCE WITH LAWS AND REGULATIONS

13.1 MCC warrants that it will comply in all respects with all applicable laws and relevant regulations.

14 DATA PROTECTION

14.1 MCC warrants that it will comply with each of the provisions of the Data Protection Act 1998 (the "Act") and GDPR as amended or replaced from time to time, as if it were a data controller, including without limitation the data protection principles set out in Schedule 1 to the Act.

14.2 ATC warrants that upon expiry of this Agreement it will maintain the same levels of compliance with the Act as noted in 13 and 14.1.

15 STAFF

15.1 MCC shall:

15.1.1 ensure that all staff engaged in Scheduled Works are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (the "**Pre-Employment Checks**");

15.1.2 monitor the level and validity of the pre-employment checks for each member of staff;

15.1.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk; and

15.1.4 share any pre-employment checks or risk assessment in respect of any member of Staff who will be delivering the Services to ATC.

15.1.5 Shall ensure that ATC, where possible, is involved in the recruitment process of staff who will be delivering the Services.

15.1.6 Shall only provide additional staff to cover existing staff absence in exceptional circumstances.

15.1.7 Shall ensure staff are provided with appropriate personal protective equipment, branded in agreement with ATC, and the costs for such equipment to be shared equally between both parties.

15.2 MCC warrants that at all time for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by MCC in the provision of Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

15.3 It is anticipated the staff team will include a team leader and two operatives. All staff will be employed and paid in line with MCC's usual terms and conditions. Staff will be subject to

all MCC policies in relation to behaviour, compliance and standards and benefit from MCC policies in relation to annual leave, sickness absence, training and development

Deleted: .

- 15.4 Staff will be supervised by MCC until the expiry or termination of the Agreement.
- 15.5 MCC will include ATC in the recruitment and performance management process with employees subject MCC policies and procedures.

16 ASSETS

- 16.1 All assets, including vans and equipment shall remain the sole property of the ATC

17. WELFARE FACILITIES

- 17.1 MCC will provide appropriate welfare facilities at MCC premises

18. GOVERNING LAW

This Agreement shall be subject to and constructed and interpreted in accordance with the law of England s and shall be subject to the exclusive jurisdiction of the courts of England. **IN WITNESS WHEREOF the parties have executed this document as a deed on the day and year first above written:**

Insert schedules prior to attestation clause

NOTE ATC may not have a common seal in which case this will need amendment

The signature of the Mayor of)
ABERGAVENNY TOWN COUNCIL was)
hereunto affixed in the presence of:

Authorised signatory

The Common Seal of **MONMOUTHSHIRE**)
COUNTY COUNCIL was hereunto affixed in)
the presence of:

Authorised signatory

Authorised signatory

SCHEDULE 1

SCHEDULED SERVICES and REACTIVE WORKS

- Manual Street cleaning – week days
- Litter picking – black spots, reactive to requests, complaints etc.
- Daily litter bin emptying (less frequent dependent upon usage)
- Events support (signage, setting out stalls, barriers etc) – *requires training*
- Horticultural works including maintenance of newly planted areas, enhanced activity in all the greenspaces,
- Graffiti removal/covering
- Repairs, cleaning and decoration to street/park furniture and fencing – benches, bins, bollards, signs etc.
- Operation of pedestrianisation bollards
- Deep clean of the town centre area

SCHEDULE 2

THE FEE

- 1 The Fee shall be as follows and subject to review in accordance with the terms of this Agreement ;

Element	Total cost (£)
Band D Operative x 1 Salary Costs	20,842.00
Band D Operative x 1 NI, Superann & Apprenticeship Levy	7,490.00
Band C Operative x 2 Salary Costs	39,300.00
Band C Operative x 2 NI, Superann & Apprenticeship Levy	14,065.00
Estimated costs for crew vehicle including maintenance and fuel	10,250.00
Estimated costs for plant hire, materials, waste disposal (actuals to be provided in monthly reporting meetings) (max annual cost £10,000)	10,000.00
Subtotal	102,197.00
MCC Supervision and Management at 10% of total staff costs	8,169.00
Total	110,116.00

- 2 The Fee shall be paid in quarterly equal monthly instalments.

SCHEDULE 3
PERFORMANCE MEASURES

KPI	Description	Target	Actual Performance	Commentary
Customer Service & Quality				
Visits carried out on time and successfully	Visits should be undertaken in accordance to the schedule provided by the contractor on a quarterly basis	90%		
Register of compliments	Details of compliments to be received to be maintained	N/A		
Town Areas to be spot-checked by the contractor	Sample spot checks to be undertaken by an appropriately qualified supervisor and the results reported back to Town Clerk	10%		
Complaint resolution – on time	Complaints received through the formal complaint procedure of either MCC or ATC should be dealt with within the timescales set out in relevant procedure. MCC 5 days, ATC X days	100%		

Complaint resolution – outcome	% of complaints successfully resolved (as set out in the relevant procedure) by MCC	100%		
Health and Safety				
Near miss incidents involving the Town Team and/or members of the public	Records to be kept of near miss incidents that happen within Town Area to ensure the appropriate controls and learning are put into place	N/A	N/A	
Adverse event incidents involving the contractor staff and/or members of the public	Records to be kept and Town Clerk to be immediately notified of any incidents causing harm to MCC staff and/or members of the public. This includes; unacceptable behaviour from members of the public	N/A	N/A	