

**MAINTENANCE OF STREET LIGHTING  
FOR FRESHFORD**

**Freshford Parish Council  
and**

**SSE CONTRACTING LIMITED  
Trading as  
SSE Enterprise Lighting**

**SSE Contracting Limited**  
No. 1 Forbury Place  
43 Forbury Road  
Reading  
Berkshire  
RG1 3JH

<b><u>SECTION</u></b>	<b><u>CONTENTS</u></b>	<b><u>PAGE</u></b>
1.	Definitions and Interpretation	3
2.	Commencement, Progress and Completion of Maintenance Work	3
3.	SSE Contracting's Obligations	4
4.	Employer's Obligations	4
5.	Statutory Requirements and Health & Safety	5
6.	Communications	5
7.	SSE Contracting's Employees	5
8.	Assignment	5
9.	Sub-Contract Price and Payment	5
10.	Insurance and Indemnity	5
11.	Time and Delay	6
12.	Termination	6
13.	Protection, Loss, Outstanding Work and Defects	6
14.	Third Party Rights	7
15.	Dispute Resolution	7
16.	General	7

SCHEDULE 1:	MAINTENANCE WORKS	9
Schedule 2:	Schedule of Rates	12
Signature pages		13

This **CONTRACT** is made the 1<sup>st</sup> day of April 2017 between

- (1) **Freshford Parish Council** whose address is at Manor Orchard, 32 Lower Stoke, Limpley Stoke, Bath, BA2 7FR and
- (2) **SSE Contracting Limited (Company No: 2317133)** whose registered office is at No. 1 Forbury Place, 43 Forbury Road, Reading, RG1 3JH ('**SSE Contracting**'), together known as 'the Parties'.

## GENERAL

The Employer and SSE Contracting have agreed that SSE Contracting shall carry out and complete the Contract Works on the terms and conditions of this Contract.

SSE Contracting's offer is open for acceptance for one month, provided SSE Contracting has not previously withdrawn it. The Contract prevails over any inconsistent terms or conditions contained or referred to in the Employer's purchase order, confirmation of order or any other Employer's terms and conditions.

The Parties agree to act as stated in this Contract and in a spirit of mutual trust and co-operation.

### IT IS AGREED AS FOLLOWS:-

<b>1. DEFINITIONS AND INTERPRETATION</b>	
In this Contract the following words shall have the following meanings:	
<b>Associated Person</b>	shall have the meaning ascribed to it in section 8 of the Bribery Act.
<b>Bribery Act</b>	shall mean the Bribery Act 2010 (and any amendment thereto).
<b>Contract</b>	means this contract (including all Schedules).
<b>Contract Price</b>	means the Contract price payable by the Employer to SSE Contracting for the Maintenance Works (as specified in Schedule 1), as adjusted only by authorised variations in accordance with clause 3.7.
<b>Contract Works</b>	means the work to be carried out by SSE Contracting pursuant to this Contract; specifically the Maintenance Works as specified in Schedule 1.
<b>Commencement Date</b>	means the date that the Maintenance Works commence, or the date specified by the Employer for the commencement of the Maintenance Works.
<b>Completion Date</b>	means the completion date for the Maintenance Works.
<b>Corruption</b>	shall mean bribery, extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering, or any similar activity in relation to the Sub-Contract Works.
<b>Employer's Representative</b>	means the person(s) appointed by the Employer to fulfil the function of the contract administrator.
<b>Maintenance Works</b>	means the work specified in Schedule 1.
<b>Representative</b>	means the person who has authority to contractually bind the Parties.
<b>Site</b>	means the site(s) where the Contract Works are to be carried out.

1.1 Words in the singular also mean in the plural and vice versa. All references to numbered clauses and schedules are references to this Contract. Any references to enactments, codes of practice, guidelines or rules include all amendments, modifications and supplements.

## 2. COMMENCEMENT, PROGRESS AND COMPLETION OF MAINTENANCE WORK

2.1 SSE Contracting shall commence the Maintenance Works on the Commencement Date and shall make regular and diligent progress to complete the Maintenance Works in accordance with the terms and conditions of this Contract.

2.2 SSE Contracting is responsible for the protection and care of the Maintenance Works until they have been

fully and properly completed in accordance with this Contract.

- 2.3 SSE Contracting shall advise the Employer when it considers Completion of any Maintenance Works has been achieved and, if appropriate, the Employer will issue a Completion certificate. After Completion, SSE Contracting shall make good any defects during the defects liability period (stated in Schedule 1) within 14 days. If SSE Contracting fails to make good defects within 14 days of the Employer's notification, the Employer may arrange for defective work to be rectified (by itself or others) and recover the reasonably incurred costs from SSE Contracting.

### **3. SSE CONTRACTING'S OBLIGATIONS**

- 3.1 SSE Contracting shall carry out and complete the Contract Works in accordance with this Contract and to the reasonable satisfaction of the Employer's Representative in a proper and workmanlike manner. SSE Contracting will exercise the reasonable skill and care in carrying out the Contract Works.
- 3.2 SSE Contracting shall not knowingly breach any health & safety rules and regulations.
- 3.3 SSE Contracting warrants that no deleterious materials (including, but without limitation, materials not conforming with British Standards, Codes of Practice and good building practice) will be used.
- 3.4 SSE Contracting shall (at its own expense) provide all labour (including supervision), plant, materials, equipment, machinery and all apparatus required for the execution of the Maintenance Works.
- 3.5 SSE Contracting will be given access to Site on the date specified in Schedule 1 (subject to any variation under clause 3.7) and shall complete the Maintenance Works by the agreed Completion Date.
- 3.6 SSE Contracting will clear away and properly dispose of all debris, rubbish and other waste material arising from Maintenance Works in accordance with the relevant regulations and legislation and will properly clean all affected works and services.

#### Variations / Additional Works

- 3.7 The Employer may instruct that the Maintenance Works are varied, whether by additional, substituted or omitted works and SSE Contracting may agree to carry out the reasonable instructions. The Employer will pay SSE Contracting's reasonable costs incurred up to the point that the variations are agreed by both Parties. SSE Contracting may advise the Employer of additional work which it has not reasonably allowed for, and therefore was not included, in the Contract Works. The Parties agree that all variations / additional work shall be valued on a fair and reasonable basis.

#### Daywork rates

- 3.8 SSE Contracting may charge daywork rates if it provides the Employer with a schedule containing the following information:
- the reason(s) why daywork rates are to be claimed;
  - the names and job titles of each person proposed to work daywork rates;
  - the estimated number of hours to be worked and the activities to be carried out.

### **4. EMPLOYER'S OBLIGATIONS**

- 4.1 The Employer shall co-operate with SSE Contracting in all matters relating to the Contract Works and shall provide, in a timely manner and at no charge, information as SSE Contracting may request and shall ensure that it is accurate in all material respects.
- 4.2 The Employer shall provide for SSE Contracting, in a timely manner and at no charge, safe and suitable access to all working areas.
- 4.3 The Employer shall inform SSE Contracting of all reasonable health & safety rules and regulations and other reasonable restrictions which may affect the Contract Works.
- 4.4 If SSE Contracting's performance of its obligations is prevented or delayed by any act or omission of the Employer, its agents or sub-contractors, SSE Contracting shall not be liable for any costs, charges, or losses sustained or incurred by SSE Contracting arising from such prevention or delay. The Employer is liable to pay SSE Contracting's reasonable costs, charges or losses sustained or incurred by SSE Contracting arising from the Employer's negligence, failure to perform or delay in the performance of any of its contractual

obligations, subject to SSE Contracting confirming such losses in writing.

## 5. **STATUTORY REQUIREMENTS AND HEALTH & SAFETY**

5.1 SSE Contracting shall observe and comply with all Acts of Parliament and, including but not limited to, any relevant statutory provisions, regulations and approved codes of practice applicable to the Contract Works. SSE Contracting shall carry out tests and examinations of equipment, plant and materials as may be necessary to ensure the health and safety of anyone who is in or is likely to come into contact with the Contract Works.

## 6. **COMMUNICATIONS**

6.1 Any formal communication shall be in writing, sent for the attention of the person and to the address in clause 16.2, and shall be personally delivered; sent by fax; or pre-paid first class post / registered delivery.

## 7. **SSE CONTRACTING'S EMPLOYEES**

7.1 SSE Contracting shall ensure that its employees are suitably qualified, adequately trained and capable of properly performing the Contract Works.

7.2 The Employer may require the removal of any person engaged in connection with the Contract Works, if, in the Employer's reasonable opinion, their performance or conduct is or has been unsatisfactory.

## 8. **ASSIGNMENT, TITLE AND RISK**

8.1 SSE Contracting may not assign this Contract without the prior approval of the Employer, whose consent shall not be unreasonably withheld. SSE Contracting may sub-contract part of the works to its approved sub-contractors; however, where it does so, it will in no way exclude or limit the responsibilities and obligations of SSE Contracting.

8.2 Once SSE Contracting has supplied equipment and goods to the Employer, the equipment and goods immediately become the Employer's risk in respect of insurance; however, title will not pass until the Employer has paid in full for the equipment and goods.

## 9. **CONTRACT PRICE AND PAYMENT**

9.1 The Employer shall pay SSE Contracting, on the last day of each quarter, 1/4<sup>th</sup> of the annual Contract Price (specified in Schedule 1). The Employer shall pay SSE Contracting quarterly for rechargeable repairs carried out in that quarterly period.

9.2 SSE Contracting shall submit a payment notice containing the sum that SSE Contracting considers is due to SSE Contracting and the basis on which it was calculated at quarterly intervals calculated from the Commencement Date. Payment notices for rechargeable repairs will be submitted at quarterly intervals.

9.3 The Employer shall pay each invoice submitted by SSE Contracting, in full and cleared funds, within 28 days of date of invoice. If the Employer disagrees with an invoice, it is required to issue a pay less notice within **7 days** of receiving the payment notice / invoice and the pay less notice shall specify the amount it proposes to pay and the basis on which it was calculated. If the Employer fails to notify SSE Contracting within this period, it is deemed to have accepted liability to pay the invoice in full.

9.4 Without prejudice to any other right or remedy that it may have, if any payment from the Employer is delayed; SSE Contracting is entitled to apply for interest on the unpaid amount at the rate of 4% per annum above the base rate of National Westminster Bank plc.

## 10. **INSURANCE AND LIABILITY**

10.1 SSE Contracting shall take out and maintain insurance to the amounts stated below:

10.1.1 SSE Contracting shall insure the Contract Works (including all materials, plant, equipment and / or other goods for incorporation) against all loss and / or damage on an 'Indemnity to Principals basis from the Commencement Date until 6 years from the date the final certificate of making good defects (or similar) is issued under Contract.

10.1.2 SSE Contracting shall obtain Employer's Liability Insurance to the minimum amount required by legislation for any one occurrence. The value of the insurance shall be for the greater of (i.) the minimum amount for such insurance under the Main Contract, and (ii.) the minimum amount required by legislation.

- 10.2 If SSE Contracting fails to obtain effective insurance, the Employer may do so and recover any costs incurred from SSE Contracting.
- 10.3 SSE Contracting is not liable for any indirect or consequential loss (including, but not limited to, loss of profit, loss of business, etc) arising out of or in connection with the Contract Works.
- 10.4 SSE Contracting's total liability under or in connection with this Contract for any breach of contract; any delay; any equipment failure; or any other reason whatsoever shall not exceed the total of the annual Contract Price specified in Schedule 1.
- 10.5 Nothing in this Contract limits or excludes the liability of SSE Contracting or its sub-contractors for death or personal injury arising from negligence.

## 11. TIME AND DELAY

- 11.1 If it appears that the Contract Works will not be met because of:

- any event or potential delay event; or
- an event beyond the control of SEC; or
- any variation agreed under clause 3.7,

SSE Contracting shall give written notice to the Employer of the event within 28 days of it first occurring. Thereafter, SSE Contracting shall provide the Employer with particulars of the delay event or potential delay event. SSE Contracting shall use reasonable endeavours to prevent and minimise any delay.

- 11.2 The Employer shall assess the likely effect of the delay event and notify SSE Contracting of its assessment, as may be fair and reasonable, and shall issue a revised Maintenance Completion Date (if appropriate). Financial implications of the delay event are set out in clause 11.4.
- 11.3 If any Completion Date is not met because of an act of negligence, omission, default or breach of contract by the Employer, the Employer shall as soon as reasonably practicable serve notice on SSE Contracting specifying the cause of delay and anticipated revised Completion Date.
- 11.4 If SSE Contracting fails to complete any of the Maintenance Works by the agreed date, then the Employer may require SSE Contracting to pay liquidated and ascertained damages at the rate specified in Schedule 1 from the date that the Maintenance Works should have been carried out (as may be adjusted by the parties) until the date that the Maintenance Works are completed. Any deduction for liquidated and ascertained damages shall be capped at a maximum of 10% of the total annual value of the Contract Price.

## 12. TERMINATION

- 12.1 Both parties may terminate the Contract on giving 3 months notice to the other party in the event of the following:
- either party it commits a breach of any term of this Contract and (if such breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so; or
  - either party repeatedly breaches any term of this Contract; or
  - either party is deemed to be, or commences, any discussions or negotiations regarding insolvency, or
  - either party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of the Contract Works.

## 13. PROTECTION, LOSS, OUTSTANDING WORK AND DEFECTS

- 13.1 After Completion, SSE Contracting shall:

- maintain the Maintenance Works and make good defects, shrinkages, imperfections and other faults in the Maintenance Works during the defects liability period **PROVIDED** that if any defect or imperfection is caused by the act, neglect or default of the Employer then SSE Contracting shall be entitled to be paid its reasonable costs of making good such defect or imperfection.

- 13.2 If the Employer reasonably decides that any work done or materials used by SSE Contracting is defective or not in accordance with the Contract during the defects liability period, the Employer shall notify SSE

Contracting that its work has been rejected and specify full details of the alleged defect(s). Following that rejection, SSE Contracting will make good the defect(s) as soon as reasonably practicable. If SSE Contracting fails to do so within a reasonable period, the Employer may employ and pay other persons to carry out the work and recover its reasonable costs incurred from SSE Contracting.

13.3 The defects liability period for the Maintenance Works is the period stated in Schedule 1.

#### 14. **THIRD PARTY RIGHTS**

14.1 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999, save as and when notified by SSE Contracting to the Employer.

#### 15. **DISPUTE RESOLUTION**

15.1 This Contract and any dispute arising out of it shall be governed by and construed in accordance with English law. The courts of England and Wales will be non-exclusive jurisdiction to hear any disputes which may arise out of or in connection with this Contract. The parties irrevocably agree to submit to that jurisdiction. Any dispute or difference arising under this Contract shall in the first instance be referred to adjudication in accordance with The Housing Grants, Construction and Regeneration Act 1996.

#### 16. **GENERAL**

16.1 Severance. If any clause (or part of a clause) is found to be invalid or unenforceable, the other clauses remain in force. If any invalid or unenforceable clause would be valid or enforceable if part of it were deleted, that clause will apply with whatever modification is necessary to make it valid and enforceable.

16.2 Notices. Any notice or formal notification shall be in writing and shall be either delivered personally or sent by fax or prepaid first class post.

- In the case of SSE Contracting Limited to No. 1 Forbury Place, 43 Forbury Road, Reading, RG1 3JH. Fax number: 0118 953 4244.

For the attention of Legal Director.

In the case of Freshford Parish Council to Manor Orchard, 32 Lower Stoke, Limpley Stoke, Bath, BA2 7FR

Fax Number: To be advised.

For the attention of Ms. Ruth Talboys (Parish Clerk) and shall be deemed to have been duly given or made:

- personally delivered, on delivery at the address of the relevant party; or
- if sent by first class post, two business days after the date of posting; or
- if sent by fax, when despatched, apart from any notice given after 5pm, which is deemed to be delivered on the next business day.

16.3 Force Majeure. SSE Contracting has no liability if it is prevented or delayed in performing its obligations by acts, events, delays, omissions or accidents beyond SSE Contracting's reasonable control, including but not limited to, strikes or other industrial disputes, delay or failure or a utility company or transport network, act of God, exceptionally bad weather, war, riot, civil commotion, accident, breakdown of plant or machinery, fire, flood, storm or default by the Employer or the Employer's suppliers.

16.4 Waiver. A waiver of any right is only effective if it is in writing and it applies only to the party to whom it is addressed and the circumstances for which it is given.

16.5 Entire Agreement. Each Party agrees that it has not relied upon any undertaking, promise, assurance, statement, representation, warranty or understanding of any person relating to the Contract.

16.6 No Partnership or Agency. Nothing in this Contract is intended to create a partnership between the Parties and / or with the Employer, or to authorise the Parties to act as agent.

16.7 Precedence. In the event of any discrepancy or conflict between the documents forming part of the Contract, this Contract shall prevail.

16.8 Anti-Bribery Act: Both parties shall (and shall procure that any Associated Person (as defined in section 8 of the Bribery Act) in connection with this Agreement):

- 16.8.1 Comply with the Relevant Requirements (which means all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including, but not limited to, the Bribery Act 2010);
  - 16.8.2 Undertake not to engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act;
  - 16.8.3 Not authorise, or acquiesce in, or turn a blind eye to, and has not authorised or acquiesced in or turned a blind eye to, any Corruption (which shall mean bribery, extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity in relation to the provision of the Contract Works under this Contract).
- 16.9 If the Employer (or any Associated Person) commits a breach of clause 16.8, then SSE Contracting may, at its absolute discretion, terminate this Contract with immediate effect by giving written notice to the Employer. Any termination of this Contract shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to SSE Contracting. If SSE Contracting terminates this Contract for breach of this clause, the Employer shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination and SSE Contracting shall not be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach of any of the Relevant Requirements.



**SCHEDULE 1 – MAINTENANCE WORKS**

<b>Subject</b>	<b>Details</b>
<b>Further documents forming part of the Maintenance Works</b>	1. This Contract 2. Annual Charge Sheet  <i>(The Contract shall prevail over any other document. The precedence of the documents is as listed above)</i>
<b>The scope of the Maintenance Works to be carried out by SSE Contracting:</b>	<p>Clean lighting column bases, control boxes and lanterns once in a three-year period. To also replace lamps* at the same time as the maintenance visit (LED lanterns cleaned only). To carry out electrical inspection and testing every 6<sup>th</sup> year during a contracted maintenance visit.</p> <p>Failed lamps* (other than LED) will be replaced free of charge during the contract period, (replacement of lamps which fail due to 3<sup>rd</sup> party damage or water ingress will be chargeable).</p> <p>*Subject to availability.</p> <p>Attendance to repair reported faults within 10 working days - (chargeable items will carry a 12 month guarantee within the contract period – guarantees will expire at the end of the contract period).</p> <p>All lighting faults to be reported to our Swindon office:            Email: <a href="mailto:Deborah.Hitchcox@sse.com">Deborah.Hitchcox@sse.com</a> or            Phone (during Normal Office Hours): 01793 516185            Fax: 01793 516197</p> <p>SSE Contracting Ltd            T/A SSE Enterprise Lighting            Faraday Road            Dorcan            Swindon            SN3 5EY</p>
<b>SSE Contracting's Representative</b>	<p>David Page            SSE Contracting Ltd            T/A SSE Enterprise Lighting            Faraday Road            Dorcan            Swindon            SN3 5EY            Email: <a href="mailto:David.Page@sse.com">David.Page@sse.com</a>            Tel : 01793 516182            Fax : 01793 516197</p>

<b>Employer's Representative</b>	Ms Ruth Talboys Freshford Parish Council parish.council@freshfordvillage.co.uk Tel: 07855 309434			
<b>Commencement Date &amp; Completion Date</b>	As specified below or on the date notified to SSE Contracting in writing. Commencement Date 01 April 2020  Completion Date 31 March 2023			
<b>The Contract Price (exclusive of VAT) for Maintenance Works</b>	See Annual Maintenance Charge Sheet for details.			
	Total number of lamps			Total Cost for 1 <sup>st</sup> Year of Contract
	39			£1134.00
	<b>The above rates will be subject to an annual adjustment based on the NEDO (National Economic Development Office) indices published in September of the previous contract year.</b>			
<b>Defects Liability Period</b>	12 months			
<b>Liquidated Damages to be charged if the maintenance response time are not met:</b>	<b>For the following operations:-</b>			
			<b>Rate</b>	<b>Maximum that can be applied.</b>
	Emergency Callout	>2 working days	£25 per day or part day	£250
	Scheduled Visit	>10 working days	£5 per day	£50
<b>Insurance</b>	Public Liability Insurance £5,000,000.00			
<b>Any other matters</b>	<p>The scope of work does not include the following.</p> <ul style="list-style-type: none"> <li>• Replacement of or additional wiring or equipment which is required to bring the installation up to standard to comply with BS7671:2018 (IEE Wiring Regulations 18<sup>th</sup> Edition);</li> <li>• Day patrols;</li> <li>• Night patrols (unless specified on Annual Maintenance Charge Sheet);</li> <li>• Painting (unless specified on Annual Maintenance Charge Sheet);</li> <li>• Numbering;</li> <li>• Surveying;</li> <li>• Bulk data collection;</li> <li>• Column straightening;</li> <li>• Lantern Shielding (painting / blocking of lantern bowls to reduce light spill);</li> <li>• Items replaced due to third party damage, vandalism or water ingress;</li> <li>• Replacement of existing faulty lighting columns and brackets, pole and wall brackets or lanterns which have come to the end of their life span;</li> <li>• Refitting or replacement of doors or lantern parts due to vandalism, third party damage or storm / weather damage;</li> </ul>			

- Replacement of parts or lamps which are obsolete or no longer available.
- Installation of new lighting columns and lanterns or pole and wall brackets and lanterns;
- Visits and materials to carry out repairs not covered under the maintenance contract;
- Emergency / unscheduled visits - these will be chargeable at a minimum of 3 hours per person. Some emergency / unplanned visits may have 2 persons attend (both will be chargeable)

Details of any changes to the lighting inventory (lamp wattage and type) during the current contract year will be implemented for charging purposes from the start of the next contract year.

Any additional / missing lighting units not listed but added / removed during the clean and change will be chargeable from the start of the maintenance contract with payment back dated.

**SCHEDULE 2 – SCHEDULE OF RATES FOR RECHARGEABLE REPAIRS**

The hourly rate per person for emergency / unplanned visits -  
(minimum 3 hours per person and may consist of a 2 person team).  
Rates subject to the NEDO annual adjustment.

Day / Time	Hourly rate per person
Monday - Thursday 08.00 – 16.00 hrs Friday 08.00 - 15.30 hrs	£63.55

Please note - Emergency response within 2 working days - this will be chargeable at the rates above (plus disposal fees for off-site disposal and sundry materials to provide temporary reinstatement as required).

**Rechargeable Repair Costs:**

At current rates.

Executed and delivered as a Contract by the Employer:

Freshford Parish Council

SSE Contracting Limited



.....  
Signature

.....  
Signature

.....  
Name

David Page  
.....  
Name

.....  
Title

New Business Manager  
.....  
Title

.....  
Date

09.01.2020  
.....  
Date