



**Farmstead Drive  
Cost Consultant and PM/EA - Scope of Services  
RIBA Stages 2 to 7**

*Revised - 16<sup>th</sup> December 2021*

**Request for Quotations**

Prepared by  
Property and Commercial Services  
Sevenoaks District Council

December 2021



## 1. INTRODUCTION

**Sevenoaks District Council is seeking to appoint a Cost Consultant and Project Manager/Employers Agent (PM/EA) to bring forward a new high quality development on the Spitals Cross Estate, Edenbridge. The Cost Consultant and PM/EA will form part of a wider multi-disciplinary team.**

The proposed development site is located on Farmstead Drive within the Spitals Cross Housing Estate in Edenbridge. The estate was built in the 1960s, and the proposed development site is occupied by the local community hall (Fircroft Hall), the Londis convenience store and public open space. The site is circa 1 acre (0.42 hectares) and the redevelopment proposal is to re-provide the community hall, a convenience store, public open space and provide 33 residential units (of which 30% will be affordable) and parking. The total development cost is expected to be £4,750,000 (excluding design fees, risk and inflation and OH+P).

The community buildings currently occupying the site are at the end of their economic life and require substantial refurbishment. SDC are maximising the opportunity to redevelop the hall and its facilities and to replace the shop with modern premises and to provide new housing, including affordable homes. The sale of the residential accommodation would provide capital receipts to pay for these improvements.

A feasibility study has been undertaken which reviewed several options with a preferred option selected from a viability and planning perspective. This commission seeks to appoint an architect-led design team to further develop the preferred option to prepare and submit a planning application and to ultimately see through the delivery of the development.

## **2. THE COMMISSION**

The appointment of the Cost Consultant will be for RIBA work stages 2 and 3, with the possibility of proceeding to stages 4,5, 6 and 7 subject to the council's preferred procurement route and subsequent approval to proceed. The PM/EA will be from Stage 3 (at the point of tender preparation) through to Stage 7, subject to SDC's approval.

A fixed price fee submission is requested for all stages, broken down by stage. The Cost Consultant and PM/EA will be expected to attend team meetings where necessary, and to make an allowance for other meetings as considered appropriate for both roles.

The Cost Consultant and PM/EA will be expected to provide the appropriate range of skills and competencies with demonstrable experience of working on similar projects.

SDC will be appointing the remaining disciplines required to form the Project Team which will consist of the below. The requirement for additional services may be identified as the scheme progresses:

- Architect (also Principal Designer and lead consultant)
- QS and PM/EA (this commission)
- Mechanical, Electrical and Plumbing Engineer
- Structural and Civil Engineer
- Planning consultant

The Cost Consultant and PM/EA is required to provide a fixed-fee price individually for all stages. More information on tendering is provided below. The Consultant has the option to provide a combined fee or separated fee proposal for each discipline.

SDC will issue instructions to proceed prior to starting each stage as it wishes to reserve the right to break the commission at the conclusion of each stage.

## **3. DUTIES REQUIRED**

### **3.1 Cost Consultant**

#### General

- Provide a Quantity Surveying Consultancy service on the project

- Provide advice and guidance to SDC to achieve a viable scheme as far as possible
- Liaise with SDC and the Project Team to understand the brief and to determine SDC's requirements, particularly with regards to project timeframes and budgets.
- All services are to be performed in such a manner as to comply with responsibilities as defined by the CDM regulations. CDM Regulations are to be complied with insofar as they relate to this Appointment
- Undertake site visits as necessary
- Obtain SDC's approval to proceed to the next stage
- If SDC indicates a change to the agreed design brief, advise SDC on the cost and programme implications and obtain SDC's instruction for any changes
- Allow for up to five iterations of the proposed design until the project is a viable scheme. Iterations do not include changes from value engineering
- Make regular contact with Architects and other Consultants on the Project Team. The architect will be the lead consultant.
- Ensure all services listed hereunder are coordinated together with all disciplines as required.
- Attend Project Team meetings as required.
- Flag any risks and contribute to the risk assessments as necessary.
- In conjunction with the Project Team, review any additional surveys and site information the client holds e.g. topographical surveys.
- Regularly review client information and incorporate any cost changes.

#### SDC's net-zero carbon target:

- The Cost Consultant is to be aware of SDC's net-zero carbon emission targets. The Cost Consultant is expected to provide cost assumptions, advice and recommendations on sustainability measures to help SDC to meet its targets.

#### RIBA Work Stage 2 - Concept Design

- Prepare, maintain and develop a cost plan and cash flow forecast
- Advise on the cost of the Project Team's proposals including, but not limited to, effects of site usage, shape of buildings, alternative forms of design, procurement and construction.
- Advise on any cost variances to the allowances contained in the cost plan.
- Measure gross floor areas and net lettable/saleable floor areas.
- Confirm the scope of the Building Contract to SDC and advise on additional works required by third parties.
- Attend Client, Design, Project Site and other meeting as provided under this agreement (likely to be fortnightly meetings).
- Advise SDC on demolition, strip-out, site investigation and enabling works contracts required before the Building Contract.
- Advise SDC on specialist services including consultants, Contractors, sub-Contractors and suppliers, required in connection with the project.
- Advise on the cost of the project. Advise on the cost of alternative design and construction options.
- Advise SDC on any factors likely to affect cost, time or method of implementation.
- Advise on market conditions and the impact of this on project costs.

### RIBA Work Stage 3 – Developed Design

- Prepare, maintain and develop a cost plan and cash flow forecast.
- Advise on the cost of the Project Team's proposals, including effects of site usage, shape of buildings, alternative forms of design, procurement and construction. Advise on any cost variances to the allowances contained in the cost plan.
- Measure gross floor areas and net lettable/saleable floor areas.
- Confirm the scope of the Building Contract to SDC and advise on additional works required by the third parties.
- Attend Client, Design, Project Site and other meeting as provided under this agreement (likely to be fortnightly meetings).
- Advise SDC on options for selection of Contractors, tendering, contractual procurement and agree a procurement procedure. Prepare recommendations for SDC's approval.

**Subject to the scheme obtaining final Council approval and depending on the Council's preferred procurement route, which is yet to be defined, the consultant may be retained to perform the following tasks and duties. Proceeding between stages will always be subject to SDC approval.**

### RIBA Work Stage 4 – Technical Design

- Obtain tender drawings and specifications from SDC and the Project Team.
- Liaise with SDC and the Project Team to prepare tender documentation
- Prepare pricing documents (excluding Bills of Quantities) for inclusion in tender documents
- Advise on suitable tenderers for the Building Contract. Prepare recommendations for SDC's approval
- Investigate prospective tenderers and advise SDC on their financial status and technical competence. Prepare recommendations for SDC's approval
- Attend pre- and post-tender interviews as required
- Arrange delivery of tender documents to selected tenderers
- Check tender submissions for errors, omissions, exclusions, qualifications and inconsistencies
- Liaise with the Project Team and advise on errors, omissions, exclusions, qualifications and inconsistencies between the tender documents and the tenders received. Prepare recommendations for SDC's approval
- Advise on the tenderers' design and construction programmes and method statements
- Liaise with the Project Team and prepare a tender report. Prepare recommendations for SDC's approval
- Conduct negotiations with tenderers. Prepare documentation to confirm adjustments to the tender sums. Prepare recommendations for SDC's approval
- Liaise with SDC and the Project Team and advise on methods of progressing design and/or construction works prior to the execution of the Building Contract
- Obtain confirmation that required Contractor insurances are in place prior to commencement of works on site

- Obtain contract drawings and specifications from SDC and the Project Team. Liaise with SDC's legal advisers, prepare the contract documents and deliver to SDC and Contractor for completion
- Liaise with SDC's insurance advisers and comment on construction related insurances (excluding the administration of claims)
- Liaise with SDC's legal advisers and advise on warranties/third party rights etc.
- Liaise with SDC's legal advisers and advise on bonds for performance and other purposes
- Liaise with SDC's legal advisers and advise on use and/or amendment of standard forms of contract or contribute to drafting of particular requirements
- Maintain and develop the cost plan and the cash flow forecast
- Attend team, design, project and site meetings as required

#### If procurement route is Design and Build Contract

- Liaise with SDC and the Project Team to prepare the employer's requirements.
- Liaise with the Project Team and advise on errors, omissions, exclusions, qualifications and inconsistencies between the employer's requirements and the Contractor's proposals. Prepare recommendations for SDC's approval.
- Liaise with the Project Team to prepare cost studies to assess alternative Contractor's proposals. Prepare recommendations for SDC's approval.
- Liaise with the Project Team and assist with specialist enquiries to assess alternative Contractor's proposals. Prepare recommendations for SDC's approval.
- Liaise with the Project Team and conduct negotiations with the Contractor. Obtain documentation from the Project Team to confirm the agreed design and/or performance specifications. Prepare recommendations for SDC's approval.
- Advise on the cost of variations, excluding loss and expense claims, proposed by the Contractor prior to the issue of instructions under the Building Contract.
- Agree the cost of instructions, excluding loss and expense claims, proposed by the Contractor under the Building Contract.

#### RIBA Work Stage 5 – Construction

- Visit the site as required (likely to be monthly) to assess the progress of the project for interim payment purposes
- Prepare monthly recommendations for interim payments to the Contractor
- Advise on the cost of variations prior to the issue of instructions under the Building Contract.
- Agree the cost of instructions, excluding loss and expense claims, issued under the Building Contract.
- Advise on the rights and obligations of the parties to the Building Contract.
- Prepare monthly cost reports. Advise SDC of any decisions required and obtain authorisation.
- Attend Client, Design, Project Site and other meeting as provided under this agreement. Site meetings are assumed to be fortnightly.

#### RIBA Work Stage 6 – Handover and Close Out

- Prepare recommendations for interim payments and release of retention funds.
- Prepare the final account or similar financial statement. Facilitate agreement to the final account or similar financial statement from the parties to the Building Contract. For the purposes of this clause the final account or similar financial statement excludes the assessment of loss and expense claims.
- Prepare recommendations for the payment of liquidated and ascertained damages.

### Supplementary Services

#### General

- Prepare Bills of Quantities for building works (excluding MEP)
- Price Bills of Quantities to provide an estimate for comparison with tenders
- Prepare a cost analysis based on agreed format or special requirements
- Prepare a cost analysis of the final account
- Provide estimates of replacement costs for insurance purposes
- Provide services in connection with insurance claims
- Facilitate, set up and manage value engineering exercise
- Attend and contribute to early warning and risk reduction meetings
- Facilitate, setup and manage a two stage tendering process
- Facilitate, set up & manage target cost &/or guaranteed maximum price contracts

#### Contractual

- Advise on the Contractor's entitlement to extensions of time. Analyse and report on the Contractor's application(s) for extensions of time. Prepare recommendation for SDC's approval.
- Advise on the cost and contractual consequences arising from an acceleration instruction.
- Advise on the Contractor's entitlement to loss and expense. Analyse and report on the Contractor's loss and expense claim(s). Prepare recommendations for SDC's approval.
- Advise SDC on the selection, terms of appointment and fee structures for the Project Team.

### **3.2 PM/EA (to begin from Stage 3 onwards only – subject to SDC’s approval)**

#### General

- Liaise with SDC and the Project Team to understand the brief and to determine SDC’s requirements, particularly with regards to project timeframes and budgets.
- Attend Client, Design, Project, Construction and other meetings as provided under this Appointment.
- Establish a structure and procedure for project, design, construction and other meetings including frequency, function, required attendees, chairperson and responsibility for recording of meetings and circulating reports and other information.
- Convene and chair all principal project meetings.
- Prepare and maintain a project execution plan, or similar management tool, identifying the roles and responsibilities of SDC and the professional team, the Contractor and specialist sub-Contractors and suppliers.
- Establish review, approval, variation and reporting procedures. Prepare recommendations for SDC’s approval.
- Issue instructions, on behalf SDC, to the Project Team and Contractor in accordance with the terms of their Appointments/the Building Contract.
- Agree project reporting and recording procedures with SDC, the Project Team and the Contractor. Implement agreed procedures.
- Agree financial and progress reporting procedures with SDC, the Project Team and the Contractor. Implement agreed procedures.
- Monitor the performance of the Project Team and the Contractor.
- Liaise with the Project Team, prepare and maintain the programme for the design, procurement and construction of the project. Monitor actual against planned progress.
- Liaise with the Project Team and prepare regular/monthly quality, progress and cost reports. Advise SDC of any decisions required and obtain authorisation.
- Check applications for payment from the Project Team. Recommend payments to SDC.
- Check other invoices related to the project. Recommend payments to SDC.
- Liaise with the Project Team, arrange for the preparation and maintenance of cash flow forecasts and other statements monitoring expenditure on the project.

#### RIBA Work Stage 3 – Developed Design

- Liaise with the Project Team and establish a structure and procedure for quality management. Establish review, approval, variation and reporting procedures. Prepare recommendations for SDC’s approval.
- Liaise with the Project Team and establish a structure and procedure for cost management. Establish review, approval, variation and reporting procedures. Prepare recommendations for SDC’s approval.
- Liaise with the Project Team and establish a structure and procedure for programme management. Establish review, approval, variation and reporting procedures. Prepare recommendations for SDC’s approval.

- Liaise with the Project Team and prepare a scheme design, or similar, report summarising the project design, cost, programme and risk register. Establish review, approval, variation and reporting procedures. Prepare recommendations for SDC's approval.
- Confirm the scope of the Building Contract to SDC and advise on additional works required by third parties.
- Liaise with the Project Team and identify any long delivery building components and systems. Prepare recommendations for SDC's approval.
- Liaise with the Project Team and identify specialist/proprietary building components and systems. Prepare recommendations for SDC's approval.
- Advise on tendering and contractual procurement options. Prepare recommendations in consultation with the Property Consultant for SDC's approval.

**Subject to the scheme obtaining final Council approval and depending on the Council's preferred procurement route, which is yet to be defined, the consultant may be retained to perform the following tasks and duties. Proceeding between stages will always be subject to SDC approval.**

#### RIBA Work Stage 4 – Technical Design

- Prepare a risk management strategy. Prepare and maintain a risk register.
- Advise on suitable tenderers for the Building Contract. Prepare recommendations for SDC's approval.
- Liaise with the Project Team and prepare a preconstruction report summarising the project design, cost, programme and risk register. Establish review, approval, variation and reporting procedures. Prepare recommendations for SDC's approval.
- Attend pre- and post-tender interviews.
- Monitor and report to the Client on the procurement process.
- Advise on the tenderer's design and construction programmes and method statements.
- Liaise with the Project Team and prepare a tender report. Prepare recommendations for the SDC's approval.
- Conduct negotiations with tenderers. Obtain documentation from the Project Team to confirm adjustments to the tender sum. Prepare recommendations for SDC's approval.
- Liaise with SDC and the Project Team and advise on methods of progressing design and/or construction works prior to the execution of the Building Contract.
- Obtain confirmation that required insurances are in place prior to commencement of works on the site.
- Obtain contract drawings and specifications from SDC and the Project Team. Liaise with SDC's legal advisers, prepare the contract documents and deliver to SDC and the Contractor for completion.

#### RIBA Work Stage 5 – Construction

- Agree approvals required from the Project Team under the Building Contract.
- Obtain authorisation from SDC for additional costs where the Consultant's limit of authority is exceeded.



- Undertake regular site inspections. Obtain progress and quality reports from site staff representing the Client, the Project Team and the Contractor.
- Agree all test certificates and statutory and non-statutory approvals required from the Project Team and the Contractor. Prepare recommendations for SDC's approval.
- Liaise with SDC, the Project Team and the Contractor and prepare and maintain a handover plan, or similar management tool, identifying the roles and responsibilities of SDC, the Project Team and the Contractor. Establish review, approval, variation and reporting procedures. Prepare recommendations for SDC's approval.
- Undertake required monitoring services including review of main Contractors contract sum, cashflow, scope of works and prepare report for SDC.
- Attend site and agree interim valuations with main Contractor/QS, take photographic record and produce report incorporating valuation certificate.

#### RIBA Work Stage 6 – Handover and Close Out

- Liaise with SDC, the Project Team and the Contractor to prepare and maintain a defects administration plan, or similar management tool, to identify the roles and responsibilities of SDC, the Project Team and the Contractor. Establish review, approval, variation and reporting procedures. Prepare recommendations for SDC's approval.
- Facilitate agreement to the final account or similar financial statement from the parties to the Building Contract. For the purposes of this clause the final account or similar financial statement excludes the assessment of loss and expense claims.
- Advise on the recovery of liquidated and ascertained damages.

#### Supplementary Services

- Provide specialist project management advice on the interpretation of contracts and contractual clauses.
- Liaise with SDC's legal advisers and advise on the use and/or amendment of bespoke forms of contract or contribute to the drafting of particular SDC requirements.
- Advise on the Contractor's entitlement to extensions of time. Analyse and report on the Contractor's application(s) for extensions of time. Prepare recommendations for the SDC's approval.
- Advise on the cost, contractual and programme consequences arising from an acceleration instruction.
- Advise on the Contractor's entitlement to loss and expense. Analyse and report on the Contractor's loss and expense claim(s). Prepare recommendations for SDC's approval.

#### **4. PROGRAMME**

<b>Milestone</b>	<b>Date</b>
Dispatch of Requests for Quotations	Monday 13 <sup>th</sup> December
Submission of Quotations	9am 20th January 2021
Interview with shortlisted consultants	w/c 24 <sup>th</sup> January 2021

Award	w/c 31 <sup>st</sup> January 2021
Submission of planning application	May 2022
Start on site	January 2023
Handover and completion	Summer 2024

## 5. EVALUATION CRITERIA

Written quotations will be evaluated on a 40%:60% quality/price basis. The response to the brief to determine quality will be assessed against the quality criteria proposed below. A scoring matrix between 0 and 5 will be used to assess the submitted brief. The scoring matrix is stated below. This will be weighted accordingly as stated below.

0	Completely fails to meet required standard or does not provide a proposal
1	Significantly fails to meet the standards required, contains significant shortcomings or is inconsistent with other proposals
2	Proposal falls short of achieving expected standard in a number of identifiable respects
3	Proposal meets the required standard in most material respects, but is lacking or inconsistent in others
4	Proposal meets the required standard in all material respects
5	Proposal meets the required standard in all material respects and exceeds some or all of the major requirements.

Quality Criteria (60%)	Weighting %
<p>1. Previous relevant experience and case studies (min of 2)</p> <p><i>Please describe your experience in carrying out similar services as those required by this project, from conception through to completion. This is to include, but not limited to:</i></p> <ul style="list-style-type: none"> <li>- Working within a restricted budget</li> <li>- Delivering mixed tenure homes</li> <li>- Delivering schemes with a similar mix of uses</li> </ul>	30
<p>2. Understanding of the client's brief</p> <p><i>Please demonstrate that you have a good understanding of the requirements set out in SDC's brief and of the key opportunities and challenges associated with delivering the project, including but not limited to:</i></p> <ul style="list-style-type: none"> <li>- Budget restrictions</li> <li>- Site challenges and limitations</li> <li>- Zero-carbon targets</li> <li>- Innovative solutions</li> </ul>	20
3. Approach and method	20

<p><i>Please describe how you will deliver the scope of works as described in this brief, what your approach will be and how you will ensure you'll meet the deliverables to the required high standard. This should include:</i></p> <ul style="list-style-type: none"> <li>- <i>An outline of the critical steps you will take to ensure successful project delivery</i></li> <li>- <i>How you will mitigate any key risks and challenges</i></li> <li>- <i>Project management and ensuring the key outputs and deliverables will be met within the required timescales</i></li> </ul>	
<p>4. Staff employed (abridged CVs to be included as well as any sub-consultants to be used)</p> <p><i>Please provide a breakdown of your team's involvement in the project, the team structure and the time individual team members will be spending on the project</i></p>	15
<p>5. Deployment of resources (RACI matrix and envisaged timeline to be provided)</p> <p><i>Please provide a breakdown of your team's involvement in the project, the team structure and the time individual team members will be spending on the project</i></p>	5
<p>6. Innovation and flair and quality assurance</p> <p><i>Please indicate how you will ensure that this project will be delivered to the highest quality standards, and anything innovative that you can bring to the project</i></p>	10
<p>TOTAL</p>	100%

### Pricing evaluation

- The evaluation process will be made on a parity of tenders. The tenders must be fully fixed with no provisional items or excluded items.
- Bid prices will be scored on a comparative basis with the bid providing the greatest return to the Council receiving 100% of the available marks (60% following weighting). All other bids will be compared against that bid.
- In the event of an equality of marks between tenderers, following any clarifications which may have been sought, the Authority reserves its right at its absolute discretion to determine the party to whom the contract should be awarded based upon the views of the pane

### 6. SUBMISSION OF WRITTEN QUOTATIONS

Consultants are requested to submit their fixed-fee quotations responding to the evaluation criteria listed above, together with an outline of price as per the outline in the attached Appendix A. Written fixed fee quotations should not exceed 20 pages (inclusive of price outline and CVs).

Written submissions should be submitted in pdf format to Jessica at [Jessica.Bolsin@sevenoaks.gov.uk](mailto:Jessica.Bolsin@sevenoaks.gov.uk) by **9am on Thursday 20<sup>th</sup> January 2022**.

The Council reserves the right not to accept quotations received after the closing date, and also reserves the right not to make an award. The submission of quotations will be at the consultant's risk and expenditure associated in preparing quotations will not be reimbursed by the Council.

Please contact Jessica Bolsin with any queries regarding the tender submission.

## **7. FORM OF CONTRACT**

Attached at Appendix B is a copy of SDC's General Conditions of Contract. These are standard terms and each consultant will be expected to sign up to these terms, subject to minor amendments only.

Consultants will be expected to hold £5m Public Liability, £5m Employer Liability and £2m Professional Indemnity insurances where applicable.

## **8. APPENDICES**

Appendix A: Price outline submission

Appendix B: Scheme plans and layouts

Appendix C: SDC General Conditions of Contract

Appendix 1: Stage 1 report

## Appendix A – Price Outline Submission

Consultants are requested to complete the following table outlining their proposed fixed fee.

Table A1 – Elemental Cost Outline

<b>Element</b>	<b>Units/Days</b>	<b>Cost</b>
<i>i.e. design, surveying, needs assessment, draft HoTs, vision, disbursements, travel, printing, etc.</i>		
<i>Expand as required</i>		
<b>Total (excl. VAT)</b>		

Table A2 – Resource Allocation

<b>Staff/Sub-consultant</b>	<b>Rate per day</b>	<b>Days</b>	<b>Cost</b>
<i>Name &amp; designation (i.e. Senior, Principal, Director)</i>			
<i>Expand as required</i>			
<b>Total (excl. VAT)</b>			

## Appendix B – Plans and Layouts

### Site photos

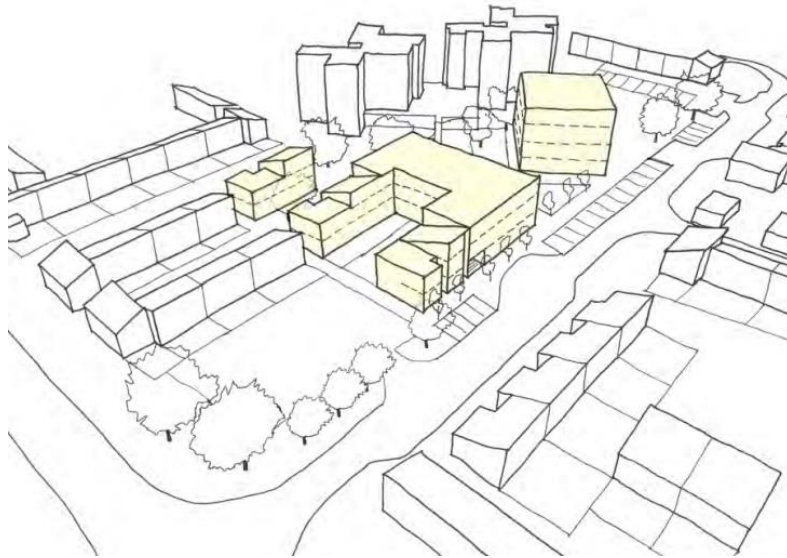


### Site area

The proposed scheme includes areas A and B



Indicative massing



Indicative layout



**Appendix C – SDC General Conditions of Contract (Consultants)(2021)**





<b>Consultants Conditions</b>	shall mean the Consultant's standard terms of business incorporated within the Consultant's Tender Submission (if any)
<b>Data Protection Legislation</b>	means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
<b>Day Rate</b>	means the rates as set out on [INSERT PAGE] of the Tender Submission.
<b>Engagement</b>	means the engagement of the Consultant by the Client on the terms of this agreement.
<b>Report</b>	means the report to be produced for the Council in accordance with the Specification.
<b>Results</b>	means full details of all information which results from or relates to the works or Service including ideas and developments conceived by the Consultant during the Term of this Agreement.
<b>Services</b>	means the [BRIEF TITLE OF THE SERVICES TO BE PROVIDED] being as defined in the Specification and Tender Submission forming part of the Contract Documents, including the Report.
<b>Specification</b>	Means the briefing document as attached at Schedule One.
<b>Supervising Officer</b>	means the [INSERT NAME OF RESPONSIBLE OFFICER]
<b>Tender Submission</b>	means the documents submitted by the Consultant as attached at Schedule Two.

**Tender Sum** means the sums and rates as set out in the Tender Submission together with any **additional work** that may be agreed in writing by the Council calculated by reference to the Day Rate.

**Term** mean the period during which this agreement remains in full force and effect as set out in the Contract Documents or continued under the provisions herein contained.

**Termination Date** means the date of termination of this agreement, howsoever arising.

- 1.2. In the event of conflict between the Council's Conditions and the Consultant's Conditions the former shall prevail.
- 1.3. It is hereby agreed and declared that all the provisions of the Invitation to Tender and Specification have been read and construed as one with this Agreement and shall be as binding upon the Supplier and upon the Council as if the same had been repeated herein.
- 1.4. Conditions heading and notes are for ease of reference only and shall not affect construction of the Contract.
- 1.5. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6. Words importing the masculine gender include the feminine gender words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa.
- 1.7. The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

## **2. Appointment**

- 2.1. The Council hereby appoints the Consultant to carry out the Services in conformity with the Contract Documents and to provide the Report required in the Specification and in consideration of this covenant the Council agrees to pay the Consultant the Tender Sum together with any additional work that the

Council may agree in writing with the Consultant in accordance and as determined by the Day Rate.

### **3. Fees and Prompt Payment**

3.1. The appropriate proportion of the Tender Sum shall be paid in the following staged payments:

**3.1.1. Payment Schedule TBC on appointment – but all payments will be made on completion of agreed milestones**

Payment will be made upon the presentation of an invoice for that part of the service already completed and the Council shall pay the sum on confirmation of the performance of the Service within 14 days of receipt of the invoice.

3.2. The Consultants acknowledge that the Council may reject an invoice that does not detail the work carried out so that the same can be certified by the Council's audit section or if the work shall be of insufficient quality to satisfy the Council Tender requirements.

3.3. The Council's supervising officer shall issue any instructions or variations under this contract and such instructions shall be in writing.

3.4. Where the Council fails to comply with this clause and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes after a reasonable time has passed.

3.5. Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

3.5.1. provisions requiring the Consultant to provide prompt payment as per clauses 3.1 and 3.4 of this Agreement; and

3.5.2. a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as this sub-clause

and in this sub-clause "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

### **4. Consultants obligations**

- 4.1. The Consultant will be responsible for coordinating all works associated with the Service which shall include but is not limited to the following: -
- 4.1.1. Identifying each task as and when required and carrying out the same in accordance with the Conditions and the Specification such works and Service to be completed within the Term.
  - 4.1.2. Carrying out preliminary meetings with Council's representatives in order to fully understand the Council's requirements.
  - 4.1.3. Agreeing the use of any sub-contractor or other representative to be utilised in performance of the Service by the Consultant with the Council before the engagement of the contractor or representative.
  - 4.1.4. Agreeing any specific requirements identified by the Consultant with the Council prior to commencement of the Service and notifying the Council of any relevant information that could lead to a provision of work that is additional to the Service and would be paid for in accordance with the Day Rate forming part of the tender documents.
  - 4.1.5. The Consultant will coordinate manage and supervise the Service in accordance with the Specification and as instructed at the preliminary meetings with the Council and secure all necessary resources for effectively bringing about the completion of the Service in accordance with the requirements of and the stated aims in the Specification.
  - 4.1.6. The Consultant shall ensure that that the total cost of the Service (other than as provided for in clause 4.1.4) including the costs of travelling employees agreed subcontractors and any associated equipment is included in their Tender Sum which shall from completion of this Agreement become the contract sum payable hereunder.
  - 4.1.7. The Consultant shall exercise the skill and care described in clause 5 to see that the service that they provide will be of sufficient quality and professionalism to meet the Council's requirements and to produce the Report and Results that will meet the needs of the Council.

## **5. Warranty**

- 5.1. The Consultant warrants to the Council that the Consultant will exercise and will continue to exercise all proper skill care and diligence that may reasonably be expected of a professional company acting in the capacity of consultant within the scope of the appointment and will comply in all respects with the

terms of the appointment and the Council will be deemed to have relied and to rely upon the exercise of the Consultants skill and care.

## **6. Confidential information**

- 6.1. The Consultant acknowledges that in the course of the Engagement they will have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this clause 6.
- 6.2. The Consultant shall not (except in the proper course of their duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use their best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:
  - 6.2.1. any use or disclosure authorised by the Council or required by law; or
  - 6.2.2. any information which is already in, or comes into, the public domain otherwise than through the Consultant's unauthorised disclosure.
- 6.3. At any stage during the Engagement, the Consultant will promptly on request return all and any Council property in their possession to the Council.

## **7. Value Added Tax**

- 7.1. All sums payable under this agreement shall be exclusive of VAT unless otherwise stated.

## **8. Duration**

- 8.1. This Agreement and the obligations thereunder shall subsist until such time as such obligations are discharged by the parties hereto.

## **9. Limitation of Liability**

- 9.1. It is hereby agreed by the parties hereto that the liability of the Consultant shall be limited to the sums expended by the Council under this Agreement together with any additional costs that the Council may incur in requiring the Service to be carried out by another party upon the Consultants default under this Agreement.
- 9.2. The limitation outlined in clause 9.1 above shall not extend to any cost claims damages or expenses arising out of any tortuous act or omission any breach of contract or statutory duty.

## **10. Termination**

10.1. In addition to and without prejudice to any other provisions of this Agreement the Council shall be entitled forthwith to terminate this Agreement upon the happening of the following events: -

10.1.1. the Consultant commits any material breach of their obligations hereunder and does not remedy such breach within 21 days of a written notice by the council to do so.

10.1.2. the Consultant becomes bankrupt or insolvent or enters into liquidation or receivership or is the subject of an application for an administration order or suffers an administrative receiver to be appointed in relation to the whole or any parts of its assets or makes a composition or arrangement with its creditors or suffers any judgement to be executed in relation to any of its property or assets.

10.2. If the Consultant fails to act in a diligent manner in acquiring the information necessary to carry out the Service or fails to produce Results of sufficient quality to meet the requirements of the Specification in the time scale contained or referred to in the Specification or subsequently agreed with the Council's representative then the Council shall give the Consultant 21 days written notice in which to rectify the default that has occurred. In the event that the rectification is inadequate or incomplete in anyway the Council will give 7 days written notice to terminate this agreement without prejudice to its rights and remedies in relation to that breach.

10.3. Any termination of this Agreement (whether under this clause or otherwise) shall not relieve any obligation under this Agreement that is expressed to continue after termination.

## **11. Liability for Damage to Persons and Property**

11.1. The Consultant shall be responsible for any damage to property or injury to persons animals or things whether the property of the Council or otherwise caused by the Consultant employees sub-contractors agents or representatives in carrying out the Service and shall indemnify the Council against any claims or proceedings in respect thereof and also against any claims or proceedings made at Common Law or under any Act of Parliament by any third parties or persons in the employ of the Consultant or other representative or sub-contractor or by any person claiming through such person.

## **12. Indemnity**

12.1. The Consultant shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Consultant, or any other loss which is caused directly or indirectly by any act or omission of the Consultant. This Condition shall not apply to the extent that the Consultant is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or sub-contractors, or by any circumstances within its or their control.

### **13. Insurance**

13.1. Throughout the period of this Agreement the Consultant shall maintain policies of insurance with a reputable insurance company in respect of professional indemnity cover, public liability cover and employer liability cover, such cover to be not less than £2 million, £5 million, and £5 million respectively or such other amounts as the Council may from time to time reasonably require and the Consultant shall as and when reasonably required by the Council produce for inspection documentary evidence that such insurances are being properly maintained and that payments have been made in respect of the last preceding premiums due thereunder.

### **14. Advertising**

14.1. The Consultant shall not advertise or publicise that it is employed by the Council without prior written agreement of the Supervising Officer, which shall not be unreasonably withheld.

14.2. The Consultant shall comply fully with the Council's policy and codes and any code of practice that may from time to time be in force in respect of publicity in order to maintain effective communication to the media and the public.

### **15. Copyright**

15.1. It is acknowledged and confirmed by the Consultant that any copyright including but not limited to literary artistic typographical and publishing arrangements is vested in the Council for the report that the service produces and that the Council will be free to use the information acquired in such manner as they consider appropriate.

### **16. Anti-Corruption**



- 16.1. The Council shall be entitled to cancel this Agreement and to recover from the Supplier the amount of any loss resulting from such cancellation if the Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or regard for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Supplier or any other contract with the Council, for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council, or if the like acts shall have done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Supplier) or in relation to any Agreement with the Council the Supplier or any person employed by him or acting on his behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- 16.2. The Supplier shall:
- 16.2.1. comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 16.2.2. comply with the Councils' Anti-Corruption and Bribery Policy;
  - 16.2.3. Promptly report to the Council any request or demand which if complied with would amount to a breach of either this Agreement or the Councils' Anti-Corruption and Bribery Policy;
  - 16.2.4. Ensure that any person associated with it who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause.
- 16.3. Breach of this clause shall be deemed a material breach of this Agreement entitling the Council to terminate it immediately.

## **17. Diversity**

- 17.1. Throughout the duration of this Agreement the Supplier shall, and in addition shall ensure that any sub-contractors (that the Council has agreed in writing

to) shall: discharge their obligations under this Agreement and perform the Services in accordance with their responsibilities under the Equality Act 2010 Codes of Practice issues by the Equalities and Human Rights Commission.

- 17.2. The Supplier shall operate an equal opportunities policy and warrants that this policy shall comply with all relevant law. A copy of the Supplier's policy shall be made available on request by the Council.
- 17.3. If any Court or tribunal or the Equality and Human Rights Commission should make any finding of unlawful discrimination against the Supplier the Supplier shall take all necessary steps to prevent recurrence of such unlawful discrimination.
- 17.4. The Supplier will be required to notify the Council of the finding and provide full details of the steps taken to prevent such recurrence as aforesaid.
- 17.5. The Supplier's equal opportunities policy shall be set out in any instructions circulated to those members of the Supplier's employees concerned with recruitment training and promotion in relevant documentation available to its employees and others and in its recruitment advertisements and other relevant literature. The Supplier may be required to provide the Council with copies of such instructions documents advertisements and other literature and to notify the Council of any changes to the policy.

## **18. Freedom of Information**

- 18.1. The Supplier acknowledges that the Council is subject to the requirements of the Code of Practice on Access to Government Information, the Freedom of Information Act and the Environmental Information Regulations and shall assist and cooperate with the Council (at the Supplier's expense) to enable the Council to comply with these information disclosure requirements.
- 18.2. The Supplier shall and shall ensure that any agreed sub-contractors shall: -
  - 18.2.1. Provide the Council with a copy of all information in its possession or power in the form that the Council requires within five working days (or such other period as the Council may specify) of the Client requesting that information; and
  - 18.2.2. Provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in Section 10 of the Freedom of Information Act 2000 or any amendment or addition thereto.

- 18.3. The Council shall be responsible for determining at its absolute discretion whether:-
- 18.3.1. The information is exempt from disclosure under the Code of Practice on Access to Government Information the FOIA and the Environmental Information Regulations;
  - 18.3.2. The information is to be disclosed in response to a request for information, and in no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by the Council.
- 18.4. The Supplier acknowledges that the Council may, acting in accordance with the Cabinet Office Freedom of Information Code of Practice be obliged under the Code of Practice on Access to Government Information, the FOIA, or the Environmental Information Regulations to disclose Information:-
- 18.4.1. without consulting with the Supplier; or
  - 18.4.2. following consultation with the Supplier and having taken its views into account.
- 18.5. The Supplier shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time. The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with the above clauses.

## **19. Data Protection**

- 19.1. Both Parties to this Agreement shall ensure at all times that they comply with all relevant requirements under the Data Protection Legislation. They acknowledge that each Party is a Data Controller in its own right and that nothing under this Agreement transfers personal information and nothing under this Agreement confers any right to process personal information on behalf of another Party.
- 19.2. The Service Provider warrants that it will duly observe all its obligations under the Data Protection Legislation which arise in connection with the Agreement and any information it may receive or acquire in connection with the Agreement and ensure that the Council shall not be in breach of the Data

Protection Requirements as a result of any act or omission of the Service Provider.

19.3. The Service Provider shall not store, copy, disclose, or use Personal Information under this Agreement for which the Council is the Data Controller except as necessary for the performance of its obligations under this Agreement or as otherwise expressly authorised in writing by the Council.

19.4. The Service Provider shall indemnify and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Contractor or any of its staff of this clause.

## **20. Force Majeure**

20.1. Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires, strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delay in transportation inability to obtain supplies and raw materials requirements or regulations of any civil or military authority (an event of Force Majeure).

## **21. Notices**

21.1. Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by first class post to the address of the other party set out in this Agreement (or such other address or by such other method as may have been notified) and any such notice or other document shall be deemed to have been served (if sent by post) upon the expiration of 48 hours after posting.

## **22. No Assigning or Sub-Contracting**

22.1. The Consultant shall be prohibited from transferring or assigning, directly or indirectly, to any person or persons whatsoever any portion of this Agreement without the prior written consent of Council Sub-letting, other than that which may be agreed in accordance with clause 5.3 herein.

## **23. Counterparts**

23.1. This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**24. Third Party Rights**

24.1. Without prejudice to any other right which any third party may have, nothing in this Contract shall confer on any third party any right to enforce any term of this Contract under the Contracts (Rights of Third Parties) Act 1999.

**25. Jurisdiction**

25.1. This Agreement shall be governed by and construed in accordance with the laws of England and Wales

## Schedule 1 Services

[BRIEF DESCRIPTION OF SERVICES TO BE PROVIDED]

## **Schedule 2 Tender Submission**

IN WITNESS whereof the parties hereto have caused their respective Common Seals to be hereunto affixed (or have hereunto set their respective hands and seals) as deed the day and year first above written.

THE COMMON SEAL of  
The **District Council of**  
**Sevenoaks** was hereunto  
affixed in the presence of:

Authorised Signatory

Authorised Signatory

Signed as a Deed by  
**[CONSULTANTS]** acting by and  
Under the signatures of:-

Signature of Director: -----

Name of Director: -----

Signature of Director / Company Secretary: -----

Name of Director / Company Secretary: -----

Role (please delete as appropriate): Director / Company Secretary