

DATED *18th May* 2023

CONSULTANCY AGREEMENT

**FOR PROVISION OF
FOLKESTONE – A BRIGHTER FUTURE
ARTISTIC INPUT**

between

THE DISTRICT COUNCIL OF FOLKESTONE AND HYPHE

and

CREATIVE FOLKESTONE

© The District Council of Folkestone and Hythe 2018
Legal Services
Civic Centre
Castle Hill Avenue
Folkestone, Kent CT20 2QY

LS.DK draft 03.08.18, amended by IL September 2021

Draft 03.08.18 SDC/DK – with IL amendments (June 2021)

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THIS AGREEMENT is dated

18th May

2023

BETWEEN

- (1) **THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE** of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (the "**Council**");
- (2) **CREATIVE FOLKESTONE** (company registration number: 04566484) of Quarterhouse, Mill Bay, Folkestone, Kent, CT20 1BN (the "**Consultant**")

(hereinafter collectively "**the Parties**" and independently "**the Party**")

WHEREAS the Council requires professional services to be rendered for the provision of Folkestone – A Brighter Future Artistic Input and the Consultant has agreed to render those services in accordance with this Consultancy Agreement.

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement (unless the context requires otherwise).

1.1 Definitions:

Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Commencement Date: 2nd of May 2023

Council Property: all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the affairs of the Council or its or their customers and business contacts, and any equipment, keys, hardware or software provided for the Consultant's use by the Council during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant on the Council or the Consultant's computer systems or other electronic equipment during the Engagement.

Confidential Information: information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, suppliers products, affairs and finances of the Council for the time being confidential to the Council and trade secrets including, without limitation, technical data and know-how relating to the Council or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts, including (but not limited to) information that the Consultant creates, develops, receives or obtains in connection

with his Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

Data Protection Legislation: 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 (*Regulation (EU) 2016/679*) (UK GDPR), the Data Protection Act 2018 (and regulations made thereafter) 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).

Engagement: the engagement of the Consultant by the Council on the terms of this Agreement.

Holding Company: has the meaning given in clause 1.7.

Insurance Policies: professional indemnity insurance cover, employer's liability insurance cover and public liability insurance cover.

Intellectual Property Rights: patents, utility models, rights to Inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Invention: any invention, idea, discovery, development, improvement or innovation made by the Consultant in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

Request for Information: a request for information or an apparent request under the FOIA or the Environment Information Regulations.

Services: the services provided by the Consultant in a consultancy capacity for the Council as more particularly described in the 0 1 attached hereto.

Sub-consultant: a Sub-consultant engaged by the Consultant under the terms of clause 3.3.

subsidiary: has the meaning given in clause 1.7.

Termination Date: the date of termination of this Agreement, howsoever arising.

Works: all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultant in the provision of the Services.

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 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.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 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.
- 1.7 A reference to a **Holding Company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) as a nominee.

2. TERM OF ENGAGEMENT

- 2.1 The Council shall engage the Consultant and the Consultant shall provide the Services on the terms of this Agreement.
- 2.2 The Engagement shall be deemed to have commenced on the Commencement Date and (subject to clause 11 below) shall continue (unless extended at the mutual agreement of the Parties) until terminated:
- (a) for a period of 23 months, (to the 31st March 2025); or
 - (b) until either party giving to the other not less than 4 weeks' prior written notice.

3. DUTIES AND OBLIGATIONS

- 3.1 During the Engagement the Consultant shall:
- (a) provide the Services with all due care, skill and ability and use their best endeavours to promote the interests of the Council; and

- (b) promptly give to the Council all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services.

- 3.2 If the Consultant is unable to provide the Services due to illness or injury, they shall advise the Council of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with clause 4 in respect of any period during which the Services are not provided.

- 3.3 The Consultant may, with the prior written approval of the Council and subject to the following proviso, appoint a suitably qualified and skilled Sub-consultant to perform the Services on his behalf, provided that the Sub-consultant shall be required to enter into direct undertakings with the Council, including with regard to confidentiality. If the Council accepts the Sub-consultant, the Consultant shall continue to invoice the Council in accordance with clause 4 and shall be responsible for the remuneration of the Sub-consultant. For the avoidance of doubt, the Consultant will continue to be subject to all duties and obligations under this Agreement for the duration of the appointment of the Sub-consultant.

- 3.4 The Consultant undertakes that the terms and conditions of any sub-contract it enters into with a Sub-consultant shall (where applicable) comply with section 113 of the Public Contracts Regulations 2015 and result in payments being made not later than thirty (30) days from the date of receipt of a relevant invoice from the Sub-Consultant.

- 3.5 The Consultant shall use reasonable endeavours to ensure that they are available at all times on reasonable notice to provide such assistance or information as the Council may require.

- 3.6 Unless they have been specifically authorised to do so by the Council in writing, the Consultant shall not:
 - (a) have any authority to incur any expenditure in the name of or for the account of the Council; or
 - (b) hold themselves out as having authority to bind the Council.

- 3.7 The Consultant shall comply with all reasonable standards of safety and comply with all reasonable standards of safety and comply with the Council's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Council any unsafe working conditions or practices.

- 3.8 The Consultant undertakes to the Council that during the Engagement they shall take all reasonable steps to offer (or cause to be offered) to the Council any business

opportunities as soon as practicable after the same shall have come to their knowledge and in any event before the same shall have been offered by the Consultant (or caused by the Consultant to be offered) to any other party.

3.9 The Consultant may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:

- (a) the Council will not be liable to bear the cost of such functions; and
- (b) at the Council's request the third party shall be required to enter into direct undertakings with the Council, including with regard to confidentiality.

3.10 The Consultant shall:

- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) comply with the Council's Ethics and Anti-bribery and Anti-corruption Policies in each case as the Council or the relevant industry body may update them from time to time (**Relevant Policies**);
- (d) promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Consultant in connection with the performance of this Agreement;
- (e) ensure that all persons associated with the Consultant or other persons who are performing services or providing goods in connection with this Agreement comply with this clause 3.11; and
- (f) annually certify to the Council in writing, their compliance with this clause 3.10.11. The Consultant shall provide such supporting evidence of compliance as the Council may reasonably request.

3.11 Failure to comply with clause 3.11 may result in the immediate termination of this Agreement.

3.12 The Consultant shall:

- (a) not engage in any activity, practice or conduct which would constitute either:
 - (i) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or

- (ii) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
 - (b) promptly report to the Council any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 or any suspected tax evasion offences or facilitation of tax evasion offences, whether under UK law or under the law of any foreign country, in connection with the performance of this Agreement;
 - (c) ensure that all persons associated with the Consultant or other persons who are performing services or providing goods in connection with this Agreement comply with this clause 3.13; and
 - (d) annually certify to the Council in writing compliance with this Clause 3.13 by the Consultant and all persons associated with the Consultant or other persons who are performing services or providing goods in connection with this Agreement. The Consultant shall provide such supporting evidence of compliance as the Council may reasonably request.
- 3.13 Failure to comply with Clause 3.13 may result in the immediate termination of this Agreement.
- 3.14 The Consultant undertakes that the terms and conditions of any sub-contract or sub-consultancy agreement it enters into with a sub-contractor or sub-consultant shall comply with section 113 of the Public Contracts Regulations 2015 and result in payments being made not later than thirty (30) days from the date of receipt of a relevant invoice from the sub-contractor or sub-consultant.

4. FEES

- 4.1 In consideration of the Services to be rendered by the Consultant in accordance with this Agreement the Council shall make Payments to the Consultant for the provision of the Services as follows:
- (a) payments in respect of the Services as set out in the Payment Schedule as contained in Schedule 3 and in accordance with clause 4.2
 - (b) such additional Consultancy Fees (if any) as shall from time to time be determined by the Council having regard to the Services rendered by the Consultant.
- 4.2 The Council shall pay each invoice submitted by the Consultant for Services successfully rendered in accordance with this Agreement within 30 days of receipt thereof.

- 4.3 The Council shall accept and process for payment an electronic invoice submitted for payment by the Consultant where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 4.4 For the purposes of clause 4.3 an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 4.5 The Council shall be entitled to deduct from the fees (and any other sums) due to the Consultant any sums that the Consultant may owe to the Council at any time.
- 4.6 Payment in full or in part of the fees claimed under clause 4 or any expenses claimed under clause 5 shall be without prejudice to any claims or rights of the Council against the Consultant in respect of the provision of the Services.

5. EXPENSES

- 5.1 The Consultant shall bear his own expenses incurred in the course of the Engagement.
- 5.2 If the Consultant is required to travel abroad in the course of the Engagement he shall be responsible for any necessary insurances, inoculations and immigration requirements.

6. OTHER ACTIVITIES

Nothing in this Agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:

- (a) such activity does not cause a breach of any of the Consultant's obligations under this Agreement;
- (b) the Consultant shall not engage in any such activity if it relates to a business which is similar to or in any way competitive with the role of the Council without the prior written consent of the Council (such consent not to be unreasonably withheld); and
- (c) the Consultant shall give priority to the provision of the Services to the Council over any other business activities undertaken by the Consultant during the course of the Engagement.

7. CONFIDENTIAL INFORMATION

- 7.1 The Consultant acknowledges that in the course of the Engagement they may have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this clause 7.
- 7.2 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:
- (a) any use or disclosure authorised by the Council or required by law; or
 - (b) any information which is already in, or comes into, the public domain otherwise than through the Consultant's unauthorised disclosure.
- 7.3 At any stage during the Engagement, the Consultant will promptly on request return all and any Council Property in his possession to the Council.
- 7.4 Nothing in this clause 7 shall prevent the Consultant or the Council (or any of its officers, employees, workers or agents) from:
- (a) reporting a suspected criminal offence to the police or any law enforcement agency or co-operating with the police or any law enforcement agency regarding a criminal investigation or prosecution; or
 - (b) doing or saying anything that is required by HMRC or a regulator, ombudsman or supervisory authority; or
 - (c) whether required to or not, making a disclosure to, or co-operating with any investigation by, HMRC or a regulator, ombudsman or supervisory authority regarding any misconduct, wrongdoing or serious breach of regulatory requirements (including giving evidence at a hearing); or
 - (d) complying with an order from a court or tribunal to disclose or give evidence; or
 - (e) making any other disclosure as required by law.

8. DATA PROTECTION

- 8.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement, will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- (a) “Controller” (where the other Party acts as the “Processor”);
 - (b) “Processor” (where the other Party acts as the “Controller”);

- (c) “Joint Controller” (where both Parties are considered to jointly control the same Personal Data);
- (d) “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 4 (Processing Personal Data) which scenario or scenarios are intended to apply under this Agreement and what the relevant Party is authorised to do as the Processor.

- 8.2 The Consultant will comply with the Council's data protection policy when processing personal data relating to any employee, worker, customer, Council, supplier or agent of the Council and will not transfer the personal data outside of the UK.
- 8.3 Each Party undertakes to comply with Data Protection Legislation and undertakes to the other Party that it will not knowingly place the other Party in breach of that other Party's obligations under the Data Protection Legislation.

9. INTELLECTUAL PROPERTY

- 9.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights created by the Consultant or the Consultant's personnel:
 - (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Servicesshall vest in the Council on creation.

- 9.2 The Consultant shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

10. INSURANCE AND LIABILITY

- 10.1 The Consultant shall have liability for and shall indemnify the Council for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant or a Sub-consultant engaged by the Consultant of the terms of this Agreement including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive Insurance Policies.

- 10.2 The Consultant shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Council and that the level of cover and other terms of insurance are acceptable to and agreed by the Council.
- 10.3 The Consultant shall on request supply to the Council evidence of such Insurance Policies and evidence that the relevant premiums have been paid.
- 10.4 The Consultant shall comply with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Consultant is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Consultant shall notify the Council without delay.

11. TERMINATION

- 11.1 Notwithstanding the provisions of clause 2.2, the Council may terminate the Engagement with immediate effect with no liability to make any further payment to the Consultant (other than in respect of amounts accrued before the Termination Date) if at any time the Consultant:
- (a) commits any gross misconduct affecting the Council;
 - (b) commits any serious or repeated breach or non-observance of any of the provisions of this Agreement or refuses or neglects to comply with any reasonable and lawful directions of the Council;
 - (c) is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
 - (d) is in the reasonable opinion of the Council negligent or incompetent in the performance of the Services;
 - (e) is declared bankrupt or makes any arrangement with or for the benefit of their creditors or has a county court administration order made against them under the County Court Act 1984;
 - (f) is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of 7 days in any 52-week consecutive period;
 - (g) commits any fraud or dishonesty or acts in any manner which in the opinion of the Council brings or is likely to bring the Consultant or the Council into disrepute or is materially adverse to the interests of the Council;
 - (h) commits any breach of the Council's policies and procedures; or
 - (i) commits any offence under the Bribery Act 2010;

- (j) commits a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017 or a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017.

11.2 The rights of the Council under clause 11.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this Agreement on the part of the Consultant as having brought the Agreement to an end. Any delay by the Council in exercising its rights to terminate shall not constitute a waiver of these rights.

12. OBLIGATIONS ON TERMINATION

On the Termination Date the Consultant shall:

- (a) immediately deliver to the Council all Council Property and original Confidential Information in their possession or under his control;
- (b) subject to the Council's data retention guidelines, irretrievably delete any information relating to the Council stored on any magnetic or optical disk or memory (including but not limited to any Confidential Information) and all matter derived from such sources which is in their possession or under their control outside the premises of the Council. This obligation includes requiring any sub-contractor to delete such information where applicable. and
- (c) provide a signed statement that they have complied fully with their obligations under this clause 12, together with such evidence of compliance as the Council may reasonably request.

13. FREEDOM OF INFORMATION

13.1 The Consultant acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ("the FOIA") and the Environmental Information Regulations 2004 ("the EIRs"), in each case as may be amended from time to time. The Consultant undertakes:

- (a) to provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
- (b) to transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) to provide the Council with a copy of all information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within 5 Working Days (or

such other period as the Council may reasonably specify) of the Council's request for such Information; and

- (d) not to respond directly to a Request For Information unless authorised in writing to do so by the Council.

13.2 The Consultant acknowledges that the Council may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Consultant. The Council shall take reasonable steps to notify the Consultant of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Consultant accept that the Council shall determine in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

14. STATUS

14.1 The employee of the consultant will not be an employee of the council. The relationship of the Consultant to the Council will be that of independent contractor and nothing in this Agreement shall render them an employee, worker, agent or partner of the Council and the Consultant shall not hold themselves out as such.

14.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant shall be fully responsible for and shall indemnify the Council for and in respect of:

- (a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Consultant shall further indemnify the Council against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Council's negligence or wilful default;
- (b) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant or any Sub-consultant against the Council arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the Council.

14.3 The Council may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant.

15. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS

- 15.1 In performing its obligations under this Agreement, the Consultant shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
 - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
 - (c) include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 15.
- 15.2 The Consultant represents and warrants that:
- (d) neither the Consultant nor any of its officers, employees or other persons associated with it:
 - (i) has been convicted of any offence involving slavery and human trafficking; and
 - (ii) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 15.3 The Consultant shall implement due diligence procedures for its subcontractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 15.4 The Consultant shall notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.
- 15.5 The Consultant shall:
- (a) maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Council in connection with this Agreement; and
 - (b) permit the Council and its third party representatives, on reasonable notice during normal business hours to have access to and take copies of the Consultant's records and any other information and to meet with the Council's personnel to audit the Council's compliance with its obligations this clause;

- 15.6 The Consultant shall implement a system of training for its employees to ensure compliance with anti-slavery and human trafficking laws, statutes, regulations and codes.
- 15.7 The Consultant shall keep records of all training offered and completed by its employees to ensure compliance with anti-slavery and human trafficking laws, statutes, regulations and codes and shall make a copy of the record available to the Council on request.
- 15.8 The Consultant shall indemnify the Council against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by or awarded against the Council as a result of its failure to comply with anti-slavery and human trafficking laws, statutes, regulations and codes.
- 15.9 The Consultant represents, warrants and undertakes that it conducts its business in a manner that is consistent with anti-slavery and human trafficking laws, statutes, regulations and codes.
- 15.10 The Council may terminate the agreement with immediate effect by giving written notice to the Consultant if the Consultant fails to comply with anti-slavery and human trafficking laws, statutes, regulations and codes.

16. NOTICES

- 16.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at the address given in this Agreement or as otherwise notified in writing to the other party.
- 16.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address given in this Agreement;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.
- 16.3 If deemed receipt under clause 16.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 16.3 business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

16.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.5 A notice given under this Agreement is not valid if sent by e-mail.

17. ENTIRE AGREEMENT

17.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

17.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

17.4 Nothing in this clause shall limit or exclude any liability for fraud.

18. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. COUNTERPARTS

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.

20. THIRD PARTY RIGHTS

20.1 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

20.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

21. GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

22. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

23. GREENHOUSE GASES AND CARBON EMISSIONS¹

23.1 The following definitions apply in this clause and in Schedule 5:

“GHG Emissions” means the emissions of GHGs from all sources related to this Agreement, categorised as “Scope 1” and “Scope 2” emissions by The Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard, Revised Edition 2015 as updated from time to time;

“Greenhouse Gases (GHGs)” means the natural and anthropogenic gases which trap thermal radiation in the earth’s atmosphere and are specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC), as may be amended from time to time, which include carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF₆), and nitrogen trifluoride (NF₃), each expressed as a total in units of Carbon Dioxide Equivalent (CO₂e).

“Overall Sustainability Impact” means the Consultant’s assessment and performance of the relevant social, environmental and economic policies related to this Agreement in accordance with the Small business user guide: Guidance on how to measure and report your greenhouse gas emissions published by the Department for Environment, Food & Rural Affairs Published on February 2012

¹ This clause does not require a specific reduction in carbon emissions, but contains a general obligation to reduce and minimise emissions in providing the services. Specific reduction requirements could be dealt with by linking year-on-year improvements to relevant KPIs. Alternatively, a project specific sustainability clause may be more appropriate.

<https://www.gov.uk/government/publications/small-business-user-guide-guidance-on-how-to-measure-and-report-your-greenhouse-gas-emissions>.

“**Sustainability Report**” has the meaning given to it in clause 23.3.

23.2 In performing its obligations under the Agreement, the Consultant shall, where applicable to the Agreement, to the reasonable satisfaction of the Council:

- (a) in its operations, comply with all applicable environmental law, including in relation to waste disposal, GHG emissions and the handling of hazardous and toxic materials and the provision of certificates if requested and as appropriate;
- (b) demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Council’s reasonable questions;
- (c) minimise the release of GHG emissions, air pollutants and other substances damaging to health and the environment in providing the Services taking into account factors including the locations from which materials are sourced, transport of materials, work-related travel by relevant staff, emissions from Consultant offices and equipment.

23.3 On each anniversary of the Commencement Date, the Consultant shall complete and submit to the Council a Sustainability Report in relation to the Services being provided, which shall be in the form specified in Schedule 5 and include the assumptions used in the reporting and contain information on:

- (a) the Consultant’s GHG emissions associated with the delivery of the Agreement in accordance with established best practice and internationally accepted standards²
- (b) the Consultant’s water use (in metres cubed);
- (c) the Consultant energy consumption for all fossil fuels (in kilowatt-hours (kWh)) relating to assets used at Council premises or other locations;³
- (d) transport use (and resulting GHG emissions from transport fuel) for goods delivered to, or Consultant staff travel to, Council premises or other Council locations or the location where the contract is delivered;

² The Small Business User Guide published by DEFRA, 2012: [SMALL BUSINESS USER GUIDE: Guidance on how to measure and report your greenhouse gas emissions \(publishing.service.gov.uk\)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69494/pb13310-ghg-small-business-guide.pdf) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69494/pb13310-ghg-small-business-guide.pdf

³ Calculating the CO2 equivalent from the *UK Government GHG Conversion Factors for Company Reporting* for the relevant reporting period. <https://www.gov.uk/government/publications/greenhouse-gas-reporting-conversion-factors-2022>

- (e) volume of waste (in kilograms/tonne) produced at Council premises or other locations that relate to the provision of the Services, including how the Consultant intends to process and dispose of waste; and
- (f) the Overall Sustainability Impact of the Services, including improvements identified by the Consultant, new policies or targets adopted to reduce the environmental impact of the Consultant's operations and contributions towards any Council environmental policies or targets.

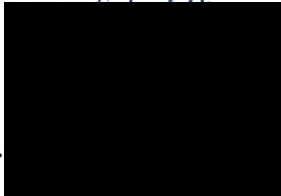
IN WITNESS WHEREOF the parties hereto have entered into this Consultancy Agreement on the day and year first above written

For and on behalf of
**THE DISTRICT COUNCIL OF
FOLKESTONE AND HYTHE**



.....
Authorised signatory

For and on behalf of
CREATIVE FOLKESTONE



Signature:

SCHEDULE 1: SPECIFICATION



FOLKESTONE & HYTHE DISTRICT COUNCIL

**Folkestone – A Brighter Future
Artistic Input**

**APPENDIX A
TENDER SPECIFICATION**

March 2023

**Prepared by:-
Folkestone & Hythe District Council
Civic Centre
Castle Hill Avenue
Folkestone
Kent CT20 2QY**

1. INTRODUCTION

- 1.1 Following a successful bid to the governments Levelling up Fund to deliver the programme Folkestone – A Brighter Future (FABF), Folkestone & Hythe District Council (FHDC) are seeking to commission a consultant to provide artistic guidance on Public Infrastructure works as part of Folkestone – A Brighter Future (FABF) programme.
- 1.2 In addition, the commission will also require the consultant to curate, commission and oversee the delivery of several art installations which are key to achieving originality, enhancing the sense of place, and complementing the unique artistic flavours that is already part of Folkestone’s USP.
- 1.3 The contract for the Consultant will run until the end of the LUF programme currently estimated to be March 31st 2025 but this could be extended.

2. BACKGROUND AND CONTEXT

- 2.1 In January 2021, FHDC commissioned the development of a Place Plan for Folkestone Town Centre. The purpose was to identify interventions necessary to future-proof the town centre as a desired place to live, work, visit and play, whilst supporting future economic growth.
- 2.2 To develop the Place Plan consultants undertook an Urban Appraisal to understand the place and conducted an extensive engagement programme to ensure stakeholders, organisations, groups and members of the public had input to the development of the Place Plan and proposed interventions.
- 2.3 In September 2021, members endorsed ongoing activity to develop a detailed programme that resulted in a bid to the Levelling Up Fund, focussing on the priority projects identified in the Place Plan.
- 2.4 Urban designers and architects We Made That, led a multi-disciplined team commissioned to work up a coherent package of interventions that would unlock transformational change for Folkestone and the town centre.

- 2.5 The Folkestone – A Brighter Future project comprises three work packages which will primarily bring improved infrastructure and public realm led interventions, with artistic opportunities to Folkestone. These are:
- Station Arrival and Town Centre Connections
 - Improved Gateway to the Town Centre and Bouverie Square
 - Folca, Sandgate Rd and Town Centre Public Realm
- 2.6 Further information on the project will be provided to bidders on request.
- 2.7 As the Highways authority, KCC are our key delivery partner and are the Project Lead for all programme elements excluding the refurbishment works at Folca which are to be led by the council.
- 2.8 Aecom have been commissioned as design consultants for all Highways/public realm works and will work closely with the successful consultants of this commission as the design is developed.

23.4 **3. PURPOSE/SCOPE**

- 3.1 The scope of this commission is to appoint a public art consultant to provide artistic guidance on the infrastructure and public realm design of the three work packages detailed in 2.5 and to curate and procure the art installations.
- 3.2 The following specific areas have been identified in the FABF project as an opportunity to include an artistic element in the design and where there is potential to incorporate art installations. There is a finite budget to cover this commission and installed art work. More detail of the projects is available here [link to Appendix 2 of LUF bid].

1.STATION ARRIVAL AND TOWN CENTRE CONNECTIONS
Uplift for artistic elements on above item
South Kent Community Church Junction
New planting beds
New crossing (40 m2), divided zebra crossing
Station Approach
Pocket park / SUDs
Uplift for crossings in Active Travel work
New junction layout at Shorncliffe Road / Cheriton Road junction and Shorncliffe Road footway widening
Informal crossing around junction

Cheriton Road and Cheriton Gardens
New benches
'Stand alone' arts interventions
On increased footway on Cheriton Road
At Continuous crossing at Broadmead Road
In integrated SUDs along existing curb lines
2. IMPROVED GATEWAY TO TOWN CENTRE AND BOUVERIE SQUARE
Middelberg Square
New crossing (50 m2), divided zebra crossing
Bespoke bus shelters,
Rain gardens / SUDs and planting
Shellons Street
Signalised crossings (allowed for puffin crossings)
Bouverie Square
Rain gardens / SUDs and planting
Play equipment;
'Stand alone' arts interventions
At new signalised crossing at Middelburg Square/Bouverie Road West
At existing underpasses to SUDs at Middelburg Square/Cheriton Road junction
3. SANDGATE ROAD AND TOWN CENTRE PUBLIC REALM
New 'special' paving to civic square
High quality stone sett paving to Sandgate road
Integrated seating to Rain planters
New illuminated sign to cinema and museum (6m x 5m)
Allowance for skate park elements
'Stand alone' arts interventions
In precinct outside Folca

4. OUTPUTS

- 4.1 The artistic input from the Consultant will ensure that the proposed artistic interventions visually enhance the new highways infrastructure and public realm and compliment the existing art interventions around Folkestone town centre. This will potentially bring national and international attention to the project, enhance local community pride in the town and its developments and bring greater economic benefits through increased tourism.
- 4.2 The Consultant will be specifically required to undertake the following activities, but the specific tasks of the consultant will vary for each piece of 'artistically-uplifted' public realm and highways infrastructure and art installation:

- Participate in fortnightly Project Steering Group and monthly Programme Board meetings, which are within the governance structure for delivering the public realm and highways infrastructure elements of the project.
- Articulate options for incorporating artistic elements into the public realm and highways infrastructure and communicate these to the Aecom project design team and other consultants.
- Produce briefs and oversee the procurement of artists to deliver the appropriate artistic uplifted features or art installations required.
- Support the council in the procurement of commissioned artists and manage their work to delivery on time and to budget
- Oversee the procurement and development process of the art installations and artistically uplifted public realm and highways infrastructure pieces, where appropriate.
- Be responsible for the delivery of the artistic uplifted public realm and highways infrastructure pieces within the required timeframe and to budget where appropriate.

4.3 All proposed artistic elements of the project must:

- Reflect local policy priorities;
- Be compliant with Health and Safety and planning regulations; and
- Be strongly linked to the existing art legacy within Folkestone to add value.

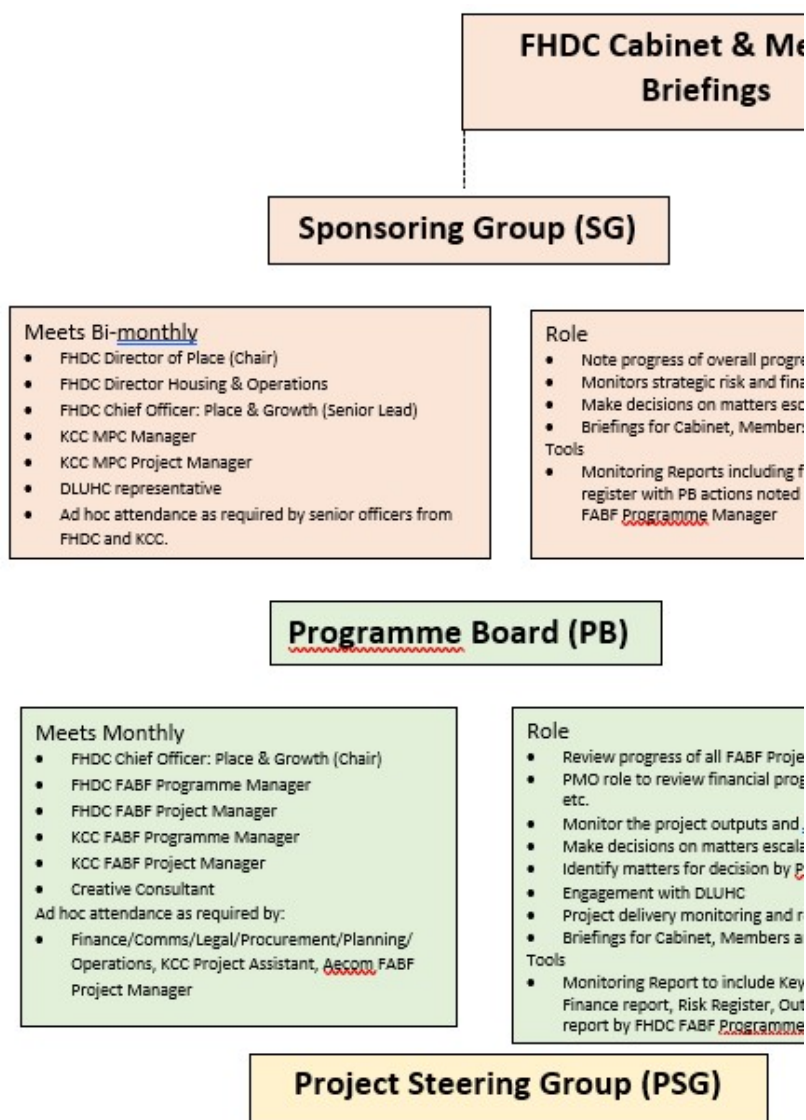
4.4 All recommended artistic designs for highways and infrastructure and art installation will be subject to council input and approval.

5 Project governance

5.1 Folkestone & Hythe District Council is the accountable body for the Folkestone – A Brighter Future Programme, which is to be 90% funded through the government’s Levelling Up Fund which is overseen by the DLUHC.

5.2 The Council’s Chief of Place and Growth, Rod Lead is the Lead Officer for the successful delivery of Folkestone – A Brighter Future (FABF) project and the FABF Programme Manager is Senior Economic Development Specialist, Lorraine Smith.

- 5.3 FHDC is working closely with members of KCC's, Major Projects Team who are responsible for the delivery of the highways and public realm elements of the project including the management of the design consultant Aecom. The KCC Project Manager for the FABF programme is Kerry Clarke.
- 5.4 Lorraine Smith the FABF programme manager facilitates the day to day of the programme and will oversee the management of the Consultant's contract with the council.
- 5.5 The formal governance structure for delivery across the project lifecycle is shown below and the successful consultant required to attend regular meetings as shown



6 CONSULTANT SKILLS

- 6.1 The Council is looking for a Consultant that has experience of performing the specific tasks outlined above and can successfully deliver synergy with the existing art installations throughout Folkestone.
- 6.2 The Consultant must be able to work proactively and productively with other consultants in the project team, including Aecom who has been appointed to design the highways infrastructure and public realm to RIBA stage 5. The Consultant will be expected to input ideas and identify opportunities where artistic uplift can be incorporated, taking into account both any budget and timeframe constraints.
- 6.3 The Consultant will be required to demonstrate previous experience relevant to this commission, including experience of curation, procurement and the development of art installations, from the concept stages through to installation. They must also demonstrate knowledge of the processes required to ensure the successful completion of art installations to budget and time, demonstrate experience of working in partnership with both local authorities and public realm designers and have experience of public art intervention on public highways being cognisant of all planning and highway standards

SCHEDULE 2: CONSULTANT'S QUOTATION

**Folkestone - A Brighter Future Artistic Consultancy Input
DN661008**

Suppliers are asked to submit a fixed fee quote for the fulfilment of the requirements.
This should include identifying all activities involved in undertaking this commission (incl. Meetings).
Prices submitted must be **exclusive** of Value Added Tax.
Suppliers are to complete cells highlighted in green only

PRICE SCHEDULE				
PROJECT STAGE / ACTIVITY please list the activities required to meet this commission	RESOURCE please add the name of the person(s) carrying out the activity	DAILY RATE (£)	DAYS TO COMPLETE	SUBTOTAL (£)
Project inception meeting, Concept design submission, concept design approval, artistic uplift/ installation schedule approved, artistic uplift installation complete for Station, town centre and Bouverie Sq and Sandgate Road and Town Centre public realm, project completion	Alastair Upton, Chief Executive		30	
Mid way programme payment, project completion	Angela Ludlow, Head of Finance		24	
Project inception meeting, Concept design submission, concept design approval, artistic uplift/ installation schedule approved, artistic uplift installation complete for Station, town centre and Bouverie Sq and Sandgate Road and Town Centre public realm, mid way programme payment, project completion	Jo Cowdrey, Head of Curatorial		130	
Project inception meeting, Concept design submission, concept design approval, artistic uplift/ installation schedule approved, artistic uplift installation complete for Station, town centre and Bouverie Sq and Sandgate Road and Town Centre public realm, project completion	Sorcha Carey, Triennial Curator		50	
Mid way programme payment, programme completion	Finance admin		20	
ALL	General admin		30	
TOTAL (£)				£ 78,824.00

SCHEDULE 3: PAYMENT SCHEDULE

PAYMENT SCHEDULE		
as per Clause 4.1 of the Consultancy Agreement. This table is for information only and will not be evaluated.		
PROJECT STAGE / ACTIVITY	% of TOTAL FEE	AMOUNT PAYABLE
Project inception meeting	20%	£ 15,764.80
Station arrival and town centre connections		£ -
Concept design submission	5%	£ 3,941.20
Concept design approval	5%	£ 3,941.20
Artistic uplift/installation delivery schedule approved (with necessary permissions)	5%	£ 3,941.20
Artistic uplift/installation complete/in-situ	5%	£ 3,941.20
Improved gateway to town centre and Bouverie Sq.		£ -
Concept design submission	5%	£ 3,941.20
Concept design approval	5%	£ 3,941.20
Artistic uplift/installation delivery schedule approved (with necessary permissions)	5%	£ 3,941.20
Artistic uplift/installation complete	5%	£ 3,941.20
Sandgate Road and town centre public realm		£ -
Concept design submission	5%	£ 3,941.20
Concept design approval	5%	£ 3,941.20
Artistic uplift/installation delivery schedule approved (with necessary permissions)	5%	£ 3,941.20
Artistic uplift/installation complete	5%	£ 3,941.20
Mid-way programme payment	10%	£ 7,882.40
LUF Project completion	10%	£ 7,882.40

SCHEDULE 4: PROCESSING PERSONAL DATA

For the purposes of the Data Protection Legislation, the parties acknowledged that there is no data sharing or processing as a result of this of this contract,.

F&HDC does not anticipate the contractor processing any data on its behalf. The contractor will be a data controller of information relating to F&HDC and its officers as clients of the contractor.

SCHEDULE 5: GREENHOUSE GAS REPORTING

1. This Schedule shall be completed on each anniversary of the Commencement Date of this Consultancy Agreement by the Consultant. The CO₂ equivalent emissions associated with fossil fuels will be calculated, the water usage, recycling rates and waste produced will be reported.
2. The Sustainability Report will demonstrate, measure and report on the carbon emissions (CO₂ equivalent) associated with the delivery of the Services under this Consultancy Agreement.
3. The Sustainability Report will set out the Overall Sustainability Impact of the Services, including improvements identified by the Consultant, new policies or targets adopted to reduce the environmental impact of the Consultant's operations and contributions towards any Council environmental policies or targets.
4. The calculation methodology for the Sustainability Report will follow the latest guidance from DEFRA⁴ and include:

Step 1.

Measure the greenhouse gas emissions for your business,

- taking into account the parts of your business which you either own or have control over. This means that you are only measuring emissions which relate to your business operations. To do this, you need to set a boundary which will ring fence your business operations and will help identify which greenhouse gases you need to measure; and
- apportion the emissions relating to this Consultancy Agreement, noting the assumptions that you have made.

Step 2.

Identify the main activities relating to this Consultancy Agreement, that release greenhouse gases in the Tables 1 (Fossil Fuel Use) and Table 2 Water & Waste) below.

Step 3.

The assumptions made in the calculation of the emissions associated with this Consultancy Agreement are to be expressly stated in Tables 1 (Fossil Fuel Use) and Table 2 Water & Waste) below.

Step 4.

Provide information on the Overall Sustainability Impact of the Services and return the completed Sustainability Report and Tables 1 (Fossil Fuel Use) and Table 2 Water & Waste) to the Council.

⁴ Latest guidance follows the DEFRA approach and can be found at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69494/pb13310-ghg-small-business-guide.pdf

Folkstone & Hythe District Council Sustainability Report: greenhouse gas emissions⁵

Name of Contract: The provision of Folkestone – A Brighter Future Artistic Input /
Reference Numcer: DN661008

Date of Report: *[insert date of report]*

Consultant Name: Creative Folkestone (04566484), Quarterhouse, Mill Bay, Folkestone,
Kent, CT20 1BN

Table 1: Fossil Fuel Use

Activity	Data Source	Assumptions used to apportion the consumption	CO2 equivalent in kg
Electricity Use	Electricity bills in kWh apportioned to this contract	<i>[Please be as specific as possible]</i>	<i>[insert figure]</i>
Natural Gas use	Gas bills in kWh apportioned to this contract	<i>[Please be as specific as possible]</i>	<i>[insert figure]</i>
Other fossil fuels	Oil, LPG, propane delivery notes	<i>[Please be as specific as possible]</i>	<i>[insert figure]</i>
Fuels used in vehicles and machinery to service the contract	Mileage and fuel bills (litres)	<i>[Please be as specific as possible]</i>	<i>[insert figure]</i>
Assumptions	<i>[insert relevant assumptions used for calculated the figures inserted above]</i>		

Table 2: Water and Waste

Activity	Data Source	Assumptions used to apportion the consumption	Consumption
Water consumption	Water supply from bills in m3	<i>[Please be as specific as possible]</i>	<i>[insert figure]</i>
Water treatment	Water treatment bills in m3	<i>[Please be as specific as possible]</i>	<i>[insert figure]</i>

⁵ The methodology to calculate the Sustainability Report should follow the latest guidance from DEFRA. Latest guidance follows the DEFRA approach and can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69494/pb13310-ghg-small-business-guide.pdf

Waste disposal	Tonnes of waste to landfill	<i>[Please be as specific as possible]</i>	<i>[insert figure]</i>
Waste recycling	Tonnes of waste to recycling facility	<i>[Please be as specific as possible]</i>	<i>[insert figure]</i>
Assumptions	<i>[insert relevant assumptions used for calculated the figures inserted above]</i>		