

**DATED** 19 JANUARY 2024

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**CONSULTANCY AGREEMENT**

for

**DEVELOPMENT OF FOLKESTONE TOWN CENTRE OPERATING MODEL  
AND MARKET STRATEGY**

between

**THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE**

and

**THE MEANS LTD**

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Legal Services  
Civic Centre  
Castle Hill Avenue  
Folkestone, Kent CT20 2QY

LS.DK draft 03.08.18, amended by IL September 2021

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

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**THIS AGREEMENT** is dated 19 JANUARY 2024

**BETWEEN**

- (1) **THE DISTRICT COUNCIL OF FOLKESTONE AND HYPHE** of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (the "**Council**");
- (2) **THE MEANS LTD** (company registration no. 08627753) of 08627753 (the "**Consultant**")

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

**WHEREAS** the Council requires professional services to be rendered for the development of an operating model for the town centre and Market Improvement Programme 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:** 23 October 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 17 months to 31 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 NOT USED.

- 3.9 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.
- 3.10 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.
- 3.11 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 3.11.11. The Consultant shall provide such supporting evidence of compliance as the Council may reasonably request.
- 3.12 Failure to comply with clause 3.11 may result in the immediate termination of this Agreement.
- 3.13 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.
- 3.14 Failure to comply with Clause 3.13 may result in the immediate termination of this Agreement.
- 3.15 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; and
  - (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 NOT USED.

8.2 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.

8.3 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.

8.4 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 Services

shall 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.

9.3 NOT USED.

9.4 NOT USED.

9.5 NOT USED.

9.6 NOT USED.

9.7 NOT USED.

9.8 NOT USED.

9.9 NOT USED.

9.10 NOT USED.

## **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 14 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 relationship of the Consultant to the Council will be that of independent contractor and nothing in this Agreement shall render any employee, worker, agent or partner of the Consultant an employee, worker, agent or partner of the Council and the Consultant shall not hold them 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 undertakes not to purchase any resource or raw materials or products that has been sourced from producers or manufacturers using forced labour or child labour in its operations or practices.

- 15.5 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.
- 15.6 NOT USED.
- 15.7 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.
- 15.8 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.
- 15.9 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.
- 15.10 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.
- 15.11 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.
- 15.12 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.
- (b) sent by email to [REDACTED] (or such other person as the Council nominates).

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.
- (c) if sent by email, at 9.00 am on the next Business Day after transmission.

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.

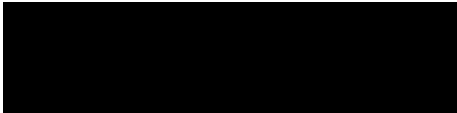
**22. JURISDICTION**

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. NOT USED**

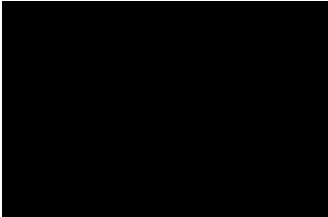
**IN WITNESS WHEREOF** the parties hereto have entered into this Consultancy Agreement on the day and year first above written

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



Authorised signatory

**For and on behalf of  
THE MEANS LTD**

Signature  .....

**SCHEDULE 1: SPECIFICATION**



**FOLKESTONE & HYTHE DISTRICT COUNCIL**

# **Folkestone – A Brighter Future Town Centre Activation**

## **BRIEF**

### **August 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 consultants/contractor to lead on the activation of the town centre to complement the highway and public realm interventions.
- 1.2 In addition, the commission will require consultants/contractor to identify a deployable strategy to ensure a strong legacy post project investment, with the aim to improve the townscape, support existing and future businesses, help attract inward investment and add to the vibrancy of Folkestone Town Centre.
- 1.3 The contract with consultants/contractor will run until the project is due to be completed, currently scheduled for March '25.

## **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. More than 70 actions were identified in support of regeneration of the town centre.
- 2.3 In September 2021, elected 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 their aim was to progress the proposed seven priority project identifying their key benefits and outline costs, and then prepare an options appraisal recommending the projects to progress as part of the LUF bid. The seven priority projects were:
  - Station Arrival and town centre connections

- Improved gateway to the town centre, including a new bus station layout
- Folca (former Debenhams store acquired by the council)
- Sandgate Rd town lab, public realm and “Guildhall Sq”
- F51 environs and Payers Park
- Harbour Line/Tram Road
- Sunny Sands

- 2.5 The Folkestone – A Brighter Future project comprises three work packages which will primarily bring improved infrastructure and public realm led interventions. 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 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 Folkestone & Hythe District Council.
- 2.7 Creative Folkestone are the creative partners for the programme and will deliver artistic installations and interventions throughout the three work packages.
- 2.8 There are key projects within the programme that will be the main focus of this commission and will require close liaison with the design team to ensure the design and proposed infrastructure will complement the proposed activation strategy to maximise the legacy vision.
- 2.9 The Bouverie Square element will see the current bus station conversion to a multipurpose public space.
- 2.10 Folca is a former department store acquired by the district council in 2020. FABF programme funding will enable initial works as part of a refurbishment programme.
- 2.11 Our bid included the delivery of a “test lab” where new uses could be tested.
- 2.12 Sandgate Road and Guildhall Street are the main arteries of the pedestrianised area of the town centre and identified as our primary retail area.

### 3. PURPOSE/SCOPE

- 3.1 The following areas of the programme have been identified as the predominant focus for this commission:
- Bouverie Square animation and revenue generating opportunities.
  - Folca refurbishment and delivery of a test lab
  - Pedestrianised part of the town centre (Sandgate Road and Guildhall St)
  - Other town centre specific actions from the place plan
- 3.2 The consultancy team will work with FABF programme members throughout the project lifecycle to ensure a cohesive delivery plan.
- 3.3 It is anticipated that interventions could be trialled and tested within the town centre during the project delivery phase, requiring engagement with relevant internal/external stakeholders and businesses, to bring schemes forward.
- 3.4 To ensure delivery post project timeline, internal engagement on policy issues during process development, ensuring relevant permissions (e.g. highways/planning) are sought to successfully deliver initiatives to improve use of these various spaces.
- 3.5 The role will also ensure there is a streamlined and efficient Town Centre Operating Model, to maximise opportunities as they arise, including revenue generating initiatives to cover ongoing/future expenditure, utilizing existing process or systems where appropriate.
- 3.6 The role will be instrumental in the delivery of a “test lab” a provision of space(s) for innovation, experimentation, and enterprise, during the project lifecycle, with a secured legacy post project investment.

### 4. OUTCOMES AND OUTPUTS

- 4.1 Consultants/contractor will need to ensure evidence of deliverables are in line with the defined output and outcome evidence criteria as set out by DLUHC for monitoring report purposes.
- 4.2 The consultants/contractor will be required to:
- Participate in regular project meetings relating to the areas in scope.
  - Scope, agree, and successfully implement (including internal roles and responsibilities to maintain) a Town Centre Operating Model, utilizing existing systems and processes, with process and guidance notes for internal and external parties.



- Deliver a defined and adopted Market strategy with an associated delivery options appraisal.
- Implement a successful Market Improvement Programme, with areas of ongoing revenue opportunity for the council identified.
- Curated programme of events to promote and maximise the use of the town centre, driving footfall and how they can become self-sustaining post-delivery.
- Identification of any capital acquisition items to support town centre animation and recommendation to ensure ongoing quality/maintenance of items.
- Strategy and operational process for successful delivery of the test lab
- Options appraisal for the most efficient location of the test lab with curation of early adopters of the space and other potential inward investors for the commercial element of the scheme.
- Proposal for animation of Bouverie Square including seasonal and regular interventions.

4.3 Representation at FABF public engagement events during project lifecycle.

4.4 Internal and External stakeholder engagement to enable the refinement of proposed interventions.

## 5 PROJECT GOVERNANCE

5.1 The Council's Chief of Place and Growth, Rod Lead is the Lead Officer for the successful delivery of Folkestone – A Brighter Future. Day to day activities will be facilitated by the Programme Manager, Senior Economic Development Specialist, Lorraine Smith.

5.2 There is a formal governance structure during the project lifecycle, with the successful consultant required to attend regular meetings including weekly project meetings with the Client to present progress against agreed project milestones. Where necessary, attendance at the fortnightly Steering Committee meetings with other key members of the programme management and F&HDC senior leadership meetings and member briefings (to be assumed at least once every six months for each).

## 6 PROJECT TIMELINE

6.1 The commission needs to align with the current project delivery schedule, currently the project officially to be completed by March 25, continued dialogue with DLUHC to potentially extend this deadline (due to DLUHC announcement and formal funding agreement slipping by 6 months). The anticipated substantive works completion date is September 2025.

This commission will align to the project schedule and will ensure a smooth transition to a sustainable delivery model created as part of the proposed outcome.

## **7 CONSULTANT SKILLS**

- 7.1 The Council is looking for a consultancy team/contractor that has experience of performing the role outlined above.
- 7.2 The Consultants/contractor must be able to work proactively and productively with members of the project team and other service areas within the council to adopt any new processes to ensure the ongoing legacy post project investment.
- 7.3 The consultants/contractor need to demonstrate previous experience relevant to the commission, including the curation to successfully animate town centre spaces. Including the engagement of existing businesses and organisations who may be impacted by change.

## **8 KEY DOCUMENTATION**

- 8.1 Folkestone Town Centre Place Plan
- 8.2 Folkestone A Brighter Future Project Designs (LUF bid submission)
- 8.3 Folkestone A Brighter Future Project key milestones

Date Received	No.	Question	Response
28 Sept '23	1	Should the tender proposal include marketing costs, or would the successful candidate/company work with the Council marketing team and be able to draw on their resources, including their social media capacity and print budgets?	we are expecting to use council resources, however, any activity would have to be cognizant of other council related activities and priorities respective teams are responsible to deliver.
28 Sept '23	2	Do you have any detail on budget to refurbish Folca?	The entire budget for Folca initial works is £2.2m
28 Sept '23	3	Is activation for the test space/lab intended for the ground/basement floor only at this point?	Not yet confirmed or defined. We have commissioned architects CarverHaggard, to draw up indicative plans (RIBA stages 1-2) for Folca 2. The successful consultant/consultancy will work with council officers on this.
28 Sept '23	4	Is there still ambition to consolidate Doctor/Health services and develop residential space in Folca?	There is still the ambition to bring forward a medical provision. Folca 2 is a refurbishment project and not a re-development, so residential is not expected.
28 Sept '23	5	The tender package states that the Council's Chief of Place and Growth, Rod Lead is the Lead Officer, and that day to day activities will be facilitated by the Programme Manager, Lorraine Smith.  Are there any other key personnel in post that will support the delivery of this animation package?	The programme is delivered by a lean project team and there will not be direct assigned resource for this activity, however, the LUF programme is one of the key projects for F&HDC to successfully deliver.
28 Sept '23	6	I note in Appedix A some key documentation is listed - can I access this documentation, or is it already part of the Tender package and I've missed it?  4.1 Folkestone A Brighter Future Project Designs (LUF bid submission)  4.2 Folkestone A Brighter Future Project key milestones LSmith	4.1 the weblink to the application <a href="https://www.folkestone-hythe.gov.uk/levelling-up-fund-application-data">levelling-up-fund-application-data (folkestone-hythe.gov.uk)</a>  4.2 this will be provided to the successful consultant/consultancy

**SCHEDULE 2: CONSULTANT'S QUOTATION**

# Invitation to Tender (ITT) Supplier Response Document



## Consultant for Folkestone Town Centre Operating Model and Market Strategy

September 2023

### CONTENTS

- Section 1 – Supplier details
- Section 2 – Technical and quality questions
- Section 3 – Pricing schedule
- Section 4 – Terms & conditions of contract
- Section 5 – Declarations

### REQUIRED DOCUMENTS

Please also complete and provide:

- Appendix B – pricing schedule
- ITT sub-contractor information (if applicable)

### APPENDICES

Please list any additional documents you have submitted with your tender:

- Team CVs

## SECTION 1 – SUITABILITY QUESTIONNAIRE

### 1.1 ORGANISATION DETAILS

This section is for information only, but must be completed in full.

The terms 'the organisation' and 'your organisation' used in this document mean your business, company, charity, partnership or any other type of organisation identified below.

Full name of the organisation submitting this tender	The Means Ltd
Registered office address:	80-83 Long Lane, London, EC1A 9ET
Company registration or charity registration number	08627753
VAT registration number	783 6229 02
Name of immediate parent company	N/A
Name of ultimate parent company	N/A
Type of organisation: <ul style="list-style-type: none"> <li>• public limited company (PLC)</li> <li>• limited company (LTD)</li> <li>• limited liability partnership (LLP)</li> <li>• other partnership</li> <li>• sole trader</li> <li>• third sector (charity)</li> <li>• other (please explain)</li> </ul>	please state which:  Limited company
Are you a Small, Medium or Micro Enterprise (SME)?	Yes

#### Contact details for questions about this tender

<b>Name:</b>	██████████
<b>Phone:</b>	██████████
<b>Mobile:</b>	██████████
<b>Email:</b>	██████████@themeans.co.uk

### **Sole bidding organisation**

You are a 'sole bidding organisation' if this tender is submitted for your company only. If you intend to use sub-contractors, consultants or other partner organisations to deliver the contract, you do not need to identify them in your response\*. Your company will be entirely liable to Folkestone & Hythe District Council (F&HDC) for the delivery of the requirements of the contract.

\*Exception: where sub-contractors will play a significant role in the delivery of the services (e.g. more than 50%) please refer to Section 1.1

### **Consortia, partnerships and joint ventures**

If you are tendering for this contract on behalf of a group of companies (a consortium, partnership or joint venture) the following information must be provided:

- Full details of the consortium, partnership or joint venture and
- Information sought in this questionnaire in respect of each of the consortia, partnership or joint venture constituent members as part of a single response.

If you propose to create a separate corporate entity for this contract, you must provide details of the actual or proposed percentage shareholding of the constituent members within the consortium in a separate schedule (how much of the new organisation each member will own).

F&HDC reserves the right to require a successful consortium to form a single legal entity in accordance with Regulation 19(6) of the Public Contracts Regulations 2015.

If there is a change in the consortium, partnership or joint venture you must inform F&HDC immediately.

### **Special Purpose Vehicles (SPV)**

You are a 'Special Purpose Vehicle' (SPV) if you have formed (or will form) a new legal entity for the purpose of bidding for this contract, with the intention that this organisation will be awarded the contract.

In addition the member organisation of the special purpose vehicle will be required to be jointly and severally liable to the Council for the delivery of the requirements of the contract, regardless of

- (a) the value of their contributions in respect of the contract sum, time, volume, quality or any other considerations, or
- (b) the future organisational or legal standing of the special purpose vehicle.

You must inform F&HDC of any withdrawal of members of the SPV during or subsequent to the ITT so that the implications of such a withdrawal may be assessed.

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<b>Consortia and sub-contracting</b> (please tick)	
a) Your organisation is bidding to deliver the contract itself	
b) Your organisation is bidding in the role of prime contractor and intends to use third parties to deliver some of the contract  If more than 50% of the work will be completed by sub-contractors, please complete the sub-contractor information template provided.	✓
c) Bidding organisation is a consortium, joint venture or partnership	
d) Bidding organisation is a special purpose vehicle	
<p><b>If your answer is (c) or (d)</b> please provide a separate document explaining which member of the group will be responsible for providing each part of the contract.</p>	

<b>for non-UK organisations only</b>	
<p>Is your organisation registered with the appropriate trade or professional register(s) in the EU member state where it is established?</p> <p>If yes, please provide details and any registration numbers.</p>	<p><del>Yes / No</del> N/A</p>
<p>Is it a legal requirement in the state where you are established for you to be licensed or a member of a particular organisation in order to provide the services in this procurement?</p> <p>If yes, please provide details of what is required and confirm that you have complied with this.</p>	<p><del>Yes / No</del> N/A</p>



## 1.2 GROUNDS FOR MANDATORY REJECTION

This Section is **PASS/FAIL**. If you answer 'yes' to any question in this section your tender will be rejected.

If you are unsure how to respond you should contact us for advice before completing this form.

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: your response must apply to all members.

<p>1.2.1 Details about the grounds for mandatory rejection are set out on online <a href="#">(go to gov.uk webpage)</a>.</p> <p>If your organisation or any other person who has powers of representation, decision or control in your organisation has been convicted anywhere in the world for any of the offenses below within the last 5 years, please mark which.</p>	<p>Answer</p>
<p>(a) Participation in a criminal organisation.</p>	<p>No</p>
<p>(b) Corruption.</p>	<p>No</p>
<p>(c) Fraud.</p>	<p>No</p>
<p>(d) Terrorist offences or offences linked to terrorist activities</p>	<p>No</p>
<p>(e) Money laundering or terrorist financing</p>	<p>No</p>
<p>(f) Child labour and other forms of trafficking in human beings</p>	<p>No</p>
<p>(g) Has your organisation been in breach of tax payment or social security contribution obligations?</p>	<p>No</p>
<p>1.2.2 If you answered "yes" to any of (a) to (f) above, please provide:</p> <ul style="list-style-type: none"> <li>• Date of conviction;</li> <li>• which the conviction was for;</li> <li>• the reasons for conviction; and</li> <li>• Identity of who has been convicted</li> </ul> <p>If the relevant documentation is available online, please provide:</p> <ul style="list-style-type: none"> <li>• the web address;</li> <li>• issuing authority; and</li> <li>• reference of the documents</li> </ul>	
<p>Not applicable</p>	

<p>1.2.3 If you answered "yes" to (g) above,</p> <p>(a) provide details.</p> <p>(b) confirm you have paid, or have entered into a binding arrangement to pay, the outstanding sum (and any accrued interest or fines).</p>
Not applicable

**1.3 GROUNDS FOR DISCRETIONARY REJECTION**

This Section is **PASS/FAIL**. If you answer ‘yes’ to any question F&HDC is entitled to reject your tender but can choose to allow you to proceed further, after considering your circumstances.

If you answer ‘yes’ to any question, please set out (in 1.3.1) the full details of the relevant incident and any remedial action taken. F&HDC will consider your response before making a decision about whether or not to include your tender in its evaluations or to reject it.

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: your response must apply to all members.

<p>1.3.1 Details about the grounds for discretionary rejection are set out on online <a href="#">(go to gov.uk webpage)</a>.</p> <p>Do any of the below apply or have applied to your organisation or any other person who has powers of representation, decision or control in your organisation within the last 3 years?</p>	Answer
(a) Breach of environmental obligations?	No
(b) Breach of social obligations?	No
(c) Breach of labour law obligations?	No
(d) Bankruptcy or gone into liquidation or receivership? Or currently subject to proceedings for the appointment of a receiver, manager or administrator on behalf of a creditor?	No
(e) Committed an act of grave misconduct in the course of your business or profession?  Or been convicted of a criminal offence relating to the conduct of your business or profession?	No
(f) been significantly or persistently deficient in the performance of a previous public contract, leading to early termination of the contract, damages, or other comparable sanctions	No

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1.3.2 Conflict of interest	
(a) Is any officer, employee or consultant of your organisation an employee or ex-employee of F&HDC or in any way connected to an employee or ex-employee of F&HDC?  Or Is any officer, employee or consultant of your organisation an elected member of the Authority or someone who has been an elected member?	No
(b) Is any officer, employee or consultant of your organisation involved in any other organisation that may be interested in bidding for F&HDC services under this tender process?	No
(c) Been involved in the preparation of this procurement process, design of services, or tender documents?	No
(d) Obtained or attempted to obtain confidential information, or entered into unlawful agreements with competitors whose to restrain or distort competition,  or influenced or attempted to influence the evaluation panel or F&HDC  in the process of preparing this tender?	No
(e) Aware of any other conflicts of interest in submitting this tender or which may occur in delivering the services?	No
1.3.3 If the answer to any of the criteria listed in 1.3.1 or 1.3.2 above is “yes”, please give details, including action has been taken to remedy the situation.	
Not applicable	

## 1.4 ECONOMIC & FINANCIAL STANDING

This Section is risk based **PASS/FAIL**.

You are not required to submit any financial documents at this time, but F&HDC reserves the right to request further information and or request a credit agency report.

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: we will obtain this information for each member of the group. The threshold for turnover can be met entirely by one member or by a combination of members; it is not necessary for each member to individually meet the threshold.

1.4.1 Is your annual turnover (at the date of the last audited accounts) greater than £60,000 GBP?	Yes / <del>No</del>
--	---------------------

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1.4.2 If the audited accounts dated more than 6 months ago, has been any material change in the financial or trading conditions of your organisation?	<del>Yes material change</del> / No material change / <del>Not applicable</del>
1.4.3 If your organisation has been trading for fewer than 12 months, is your projected annual turnover greater than £60,000 GBP?	Not applicable
1.4.4 Please list which you are able to provide: A copy of your audited accounts for the last two years, Or financial statements for the most recent year, Or a statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position.	Account for last two years, financial statement and cash flow forecast
1.4.5 If you cannot provide one of the above, please explain why and list any other financial information you can provide.	N/A

## 1.5 INSURANCE

This Section is **PASS/FAIL**. Your organisation will fail if it does not hold or is unwilling to obtain the minimum levels of insurance required.

You are not required to submit any evidence at this time. If you are successful, you will be asked to provide evidence in the form of copies of policies, letters of confirmation from insurers (or Brokers).

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: you must be adequately covered as a whole but may do so through any combination of policies of member organisations.

1.5.1 Is your Public Liability indemnity cover greater than £5 million GBP per incident?	Yes / <del>No</del> / <del>Can Obtain</del>
1.5.2 Is your Employers Liability cover greater than £5 million GBP per incident (or the amount required by law)?	Yes / <del>No</del> / <del>Can Obtain</del>
1.5.3 Is your Professional Indemnity cover greater than £ 2 million GBP per incident?	Yes / <del>No</del> / <del>Can Obtain</del>

## 1.6 HEALTH & SAFETY

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: the lead member must ensure that this information is shared with all members. The lead member must confirm that all members understand and agree their obligations in this section.

Your organisation must:

- Ensure that its entire workforce and all sub-contractors will comply with all relevant health and safety legislation as well as any requirements or instructions from F&HDC.
- Have appointed a competent person with overall responsibility for health and safety that is duly authorised in the organisation.
- Have processes in place for the identification of training needs and delivery of training to its workforce appropriate to the work for which it is bidding.
- Have processes in place for the development of risk assessments and method statements relevant to the nature of the work for which it is bidding that will identify, manage and mitigate associated risks and hazards.

If your organisation has five or more employees

- have in place a written health and safety policy as required by Section 2(3) of the Health and Safety at Work etc Act 1974 and issue any codes of safe working practices to your workforce.

This policy must provide details of the competent person or persons that have been appointed on behalf of the organisation to undertake the measures needed to comply with the requirements and prohibitions of the Management of Health and Safety at Work Regulations 1999.

F&HDC may verify your compliance with the above requirements at any stage of the procurement process or during the life of the contract, by means of policy checking, validation of accreditations, site audits or any other method it deems appropriate.

Further information on employers' health and safety obligations can be found on the Health and Safety Executive website at [hse.gov.uk/simple-health-safety/index](https://www.hse.gov.uk/simple-health-safety/index).

Specific guidance on how to write a policy and risk assessment is available at [hse.gov.uk/simple-health-safety/write](https://www.hse.gov.uk/simple-health-safety/write).

Please confirm that you understand and agree to your obligations as described above	Yes /No
---	---------

## 1.7 EQUALITY & DIVERSITY

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: your response must apply to all members.

1.7.1 Does your organisation comply with its legal obligations under the Equality Act 2010, relating to the protected characteristics as follows?	Answer
Age	Yes / No
Disability	Yes / No
Gender reassignment	Yes / No
Marriage and civil partnership	Yes / No
Pregnancy and maternity	Yes / No
Race	Yes / No
Religion or belief	Yes / No
Sex	Yes / No
Sexual orientation	Yes / No

<p>1.7.2 In the last three years has any finding of unlawful discrimination been made against your organisation by any court or industrial or employment tribunal?</p> <p>Or in comparable proceedings in any jurisdiction other than the UK?</p>	Yes/ No
<p>1.7.3 In the last three years has any finding of unlawful discrimination been made against your organisation as a result of a formal investigation by the Equality and Human Rights Commission (EHRC) or any relevant statutory European Body?</p>	Yes/ No

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<p>1.7.4 If the answer to either 1.8.2 or 1.8.3 was <b>Yes</b>, provide the following information:</p> <p>(a) If your organisation was required to take action, did the action taken satisfy the relevant organisation?</p> <p>(b) what action your organisation was required to take</p> <p>(c) what action your organisation took. If your organisation did not take the required action, explain why not.</p> <p>You may be excluded if you are unable to demonstrate to F&amp;HDC's satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination occurring in the future.</p>	
<p>Not applicable / <del>[insert details]</del></p>	
<p>1.7.5 If you use sub-contractors, do you have processes in place to check whether any of the above apply to your sub-contractors?</p>	<p>Yes / <del>No</del> / <del>Not applicable</del></p>

**1.8 MODERN SLAVERY**

<p>1.8.1 Section 54 of the Modern Slavery Act 2015 requires organisations with a turnover of £36 million or more to develop a slavery and human trafficking statement each year.</p> <p>Does this requirement apply to your organisation?</p> <p>Guidance about the Modern Slavery Act 2015 can be found online (<a href="#">go to gov.uk webpage</a>)</p>	<p><del>Yes</del> / No</p>
<p>1.8.2 If you have answered 'yes' to 1.8.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015?</p> <p><b>If yes</b>, provide the web address where your report can be found</p> <p><b>If no</b>, please explain.</p>	<p><del>Yes</del> / No / Not applicable</p>

**1.8.3 This question is for information only.** Your tender will not be rejected if the answer is 'no'.

If you have answered 'no' to 1.8.1, do you have a modern slavery policy or measures in place to mitigate the risk of modern slavery in your organisation and in your supply chain?

This would include checks made on your staff and people who work for your organisation through subcontractors and agencies.

If yes, please provide details of the measures currently in place.

Yes / No

We have a number of policies and procedures that support actions against modern slavery:

Recruitment and selection

Health and safety

Equal opportunity

Personal safety and lone working

Staff development and training

Flexible working

Grievance

Violence and aggression

**1.8.4 This question is for information only.** Your tender will not be rejected if the answer is 'no'.

Are all of your employees paid at the National Living Wage (NLW) or higher?

The current rate of NLW can be found online ([go to gov.uk webpage](#))

Yes, we pay National Living Wage as a minimum to all our employees, including employees under 23 years of age.

~~No, we pay National Minimum Wage to employees under 23 years of age.~~

## 1.9 WHISTLEBLOWING

1.9.1 Do you have a Whistleblowing policy in place; or do you agree to have in place or adopt F&HDC's Whistleblowing policy by contract award?

([go to F&HDC's policy page](#))

Yes / No



## SECTION 2 – TECHNICAL AND QUALITY QUESTIONS

### 2.1 CAPABILITY

This section is **PASS/FAIL**. A bidding organisation will fail if it cannot provide details of up to 3 contracts that demonstrate technical capability or provide alternative evidence.

#### RELEVANT EXPERIENCE AND CONTRACT EXAMPLES

Please provide details of up to three contracts from the public, private or voluntary sector, that are relevant to the services described in this tender.

Contracts for the supply of goods or services should be from the past three years. Works contracts may be from the past five years.

The customer contact for each example should be prepared to speak to F&HDC to confirm the accuracy of the information provided below.

Suppliers should not use previous work for or associated with F&HDC in these examples.

	Contract 1	Contract 2	Contract 3
Name of Customer Organisation	Better Bankside	Viva Port Talbot BID	Rhondda Cynon Taf CBC
Contact name, telephone number and email	██████████ ██████████████████ ██████████	██████████ ██████████████████	████████████████████ ██████████ ██████████████████
Start date	2007	June 2021	November 2020

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End date	January 2022	June 2022 + ongoing management	July 2021
Estimated Contract Value	c.£600,000	£246,000 (capital and 3 year revenue)	£15,000
Brief description of contract	<p>Developed the concept, fitted-out and managed a 'community space' in Bankside.</p> <p>Negotiated access to 'pre re-development' sites in Bankside.</p> <p>Developed the Low Line idea, secured funding and led on the commissioning and implementation of the programme to repurpose a number of arches and conceive Mixed Occupier Test Beds along rail viaducts spanning Bankside, London Bridge and Bermondsey.</p>	<p>Glan Afan Hub 'The Business Community at Glan Afan'.</p> <p>Redevelopment of the old school.</p> <p>Securing funding and Project Managing the redevelopment.</p> <p>Oversight of the space management.</p>	<p>Adaptive reuse of commercial property in Rhondda Cynon Taff town centres to support the visitor economy.</p>
If you cannot provide three contract examples please give evidence of your technical capability in this market.			

## 2.2 GENERAL DATA PROTECTION

For the purposes of the Data Protection Legislation, F&HDC is the data controller and the contractor will be the data processor.

Data F&HDC anticipates will be shared and processed under the contract include:

- Business contact details of Consultant Personnel,
- Business contact details of any directors, officers, employees, agents, consultants and contractors of the Council (excluding the Consultant Personnel) engaged in the performance of the Council's duties under this Agreement).
- Business contact details of local businesses and business owners in Folkestone provided by the Council to the Consultant.
- Business contact details of local businesses and business owners in Folkestone provided by the Consultant to the Council.
- Business contact details of local not-for-profit and owners in Folkestone provided by the Council to the Consultant.
- Business contact details of local not-for-profit organisations and owners in Folkestone provided by the Consultant to the Council.

2.2.1 Do you have the resources, systems and procedures in place to ensure your organisation will comply with the General Data Protection Regulations and F&HDC's information management policies while performing the contracted services?

If **yes**, please provide details of the measures currently in place.

If **no**, please detail what measures will be in place before the contract starts.

[Redacted response content]

[Redacted content]

**2.3 SKILLS AND APPRENTICES**

NOT USED.

**2.4 CARBON REDUCTION**

This question is for information only, but must be completed.

<p>2.4.1 Do you currently have a carbon reduction plan or other measures in place to avoid or minimise the carbon emissions produced by your organisation and in your supply chain?</p>	<p>Yes /No</p>
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<p>2.4.2 Provide an estimated figure for your scope 1 (direct emissions), scope 2 (energy indirect) emissions for your organisation's previous financial year.</p> <p>Guidance on how to calculate this figure can be found online (<a href="#">go to "Small Business User Guide" on gov.uk website</a>)</p>	
<p>We have an established sustainability policy and take measures to reduce energy use in our premises, operations and business travel.</p> <p>We recently signed up to the UKSPF funded Southwark Climate Collective supported by the Mayor of London. The program includes an initial audit to measure carbon emissions, followed by training and support to implement measures to reduce emissions.</p>	
<p>2.4.3 <b>If you do not</b> have a carbon reduction plan, does your organisation intend to evaluate its carbon emissions and implement carbon reduction initiatives within the next 12 months?</p>	<p>Yes / <del>No</del></p>

**2.5 HEADLINE QUESTIONS**

NOT USED.

**2.6 WEIGHTED QUESTIONS**

**Q1. Previous similar project(s) (20%)**

Provide details of a similar project where you have curated and delivered a legacy programme of high street or town centre interventions within a defined timescale and budget, with relevant engagement of internal and external stakeholders.

Each example should include:

- A description of the scope and objective and Budget
- The methodology or approach taken
- what post project lifecycle legacy was achieved
- What lesson were learnt
- How does this example relate to this specific commission

*Max. 1000 words*

[Redacted content]

[Redacted text block containing multiple paragraphs of blacked-out content]

**Q2. TITLE (20%)**

Please detail the relevant skillset and knowledge of the proposed team to deliver on the objectives of this brief.

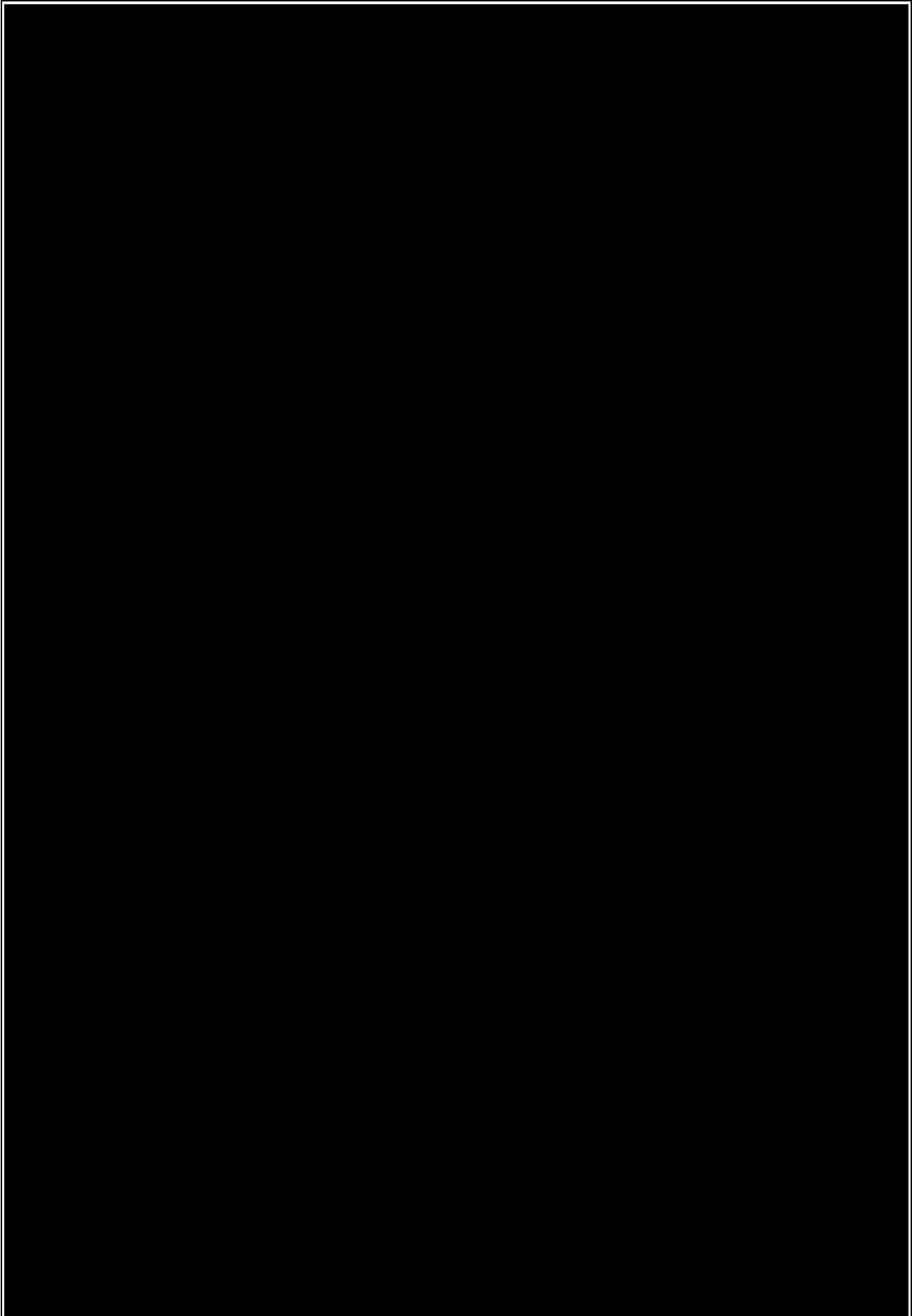
Include a proposed programme for the works, demonstrating the resource commitments and considering the project lifecycle, milestones and brief objectives.

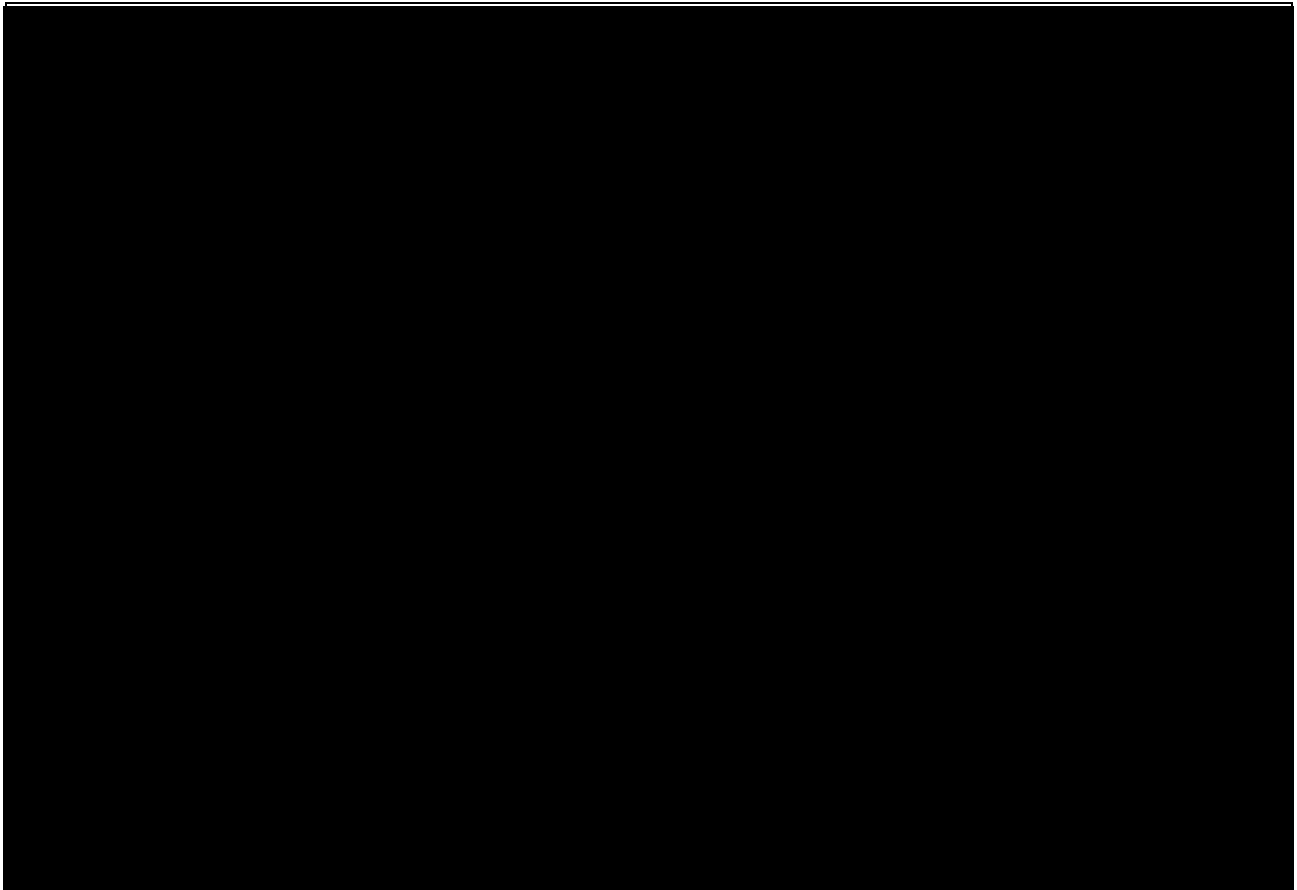
*Max. 1000 words*

[Redacted text block containing blacked-out content]

[Redacted content]







**Presentation (20%)**

*Please ensure you have booked a time slot for your presentation.*

### SECTION 3 – PRICING SCHEDULE

- 3.1 Please complete **Appendix B – Price Schedule**.  
Detailed instructions on how to complete the schedule are included in that document.
- 3.2 Prices/rates are to be in £ Sterling (GBP), net only, and inclusive of all costs associated with the provision of the services (or works or goods).
- 3.3 Price(s) submitted must be **exclusive** of Value Added Tax (VAT). The percentage and amount of VAT will be shown on invoices at the current rate at the time of invoicing, if VAT applies.
- 3.4 Any estimated requirements (e.g. volumes) we give are intended for guidance only and are not guaranteed. Please submit your best commercial offer based on the information provided.
- 3.5 Unless otherwise stated, prices must be fixed (i.e. not subject to variation) for the period of the contract subject.
- 3.6 If we find any arithmetical or mathematical errors in your tender, we correct it and inform you of any corrections we make. However, we are not responsible for finding errors. It is your responsibility to make sure your tender is complete, comprehensive and correct.

### SECTION 4 – TERMS & CONDITIONS OF CONTRACT

This Section is **PASS/FAIL**. If you answer 'no' F&HDC is entitled to reject your tender but can choose to allow you to proceed further, after considering your circumstances.

If you answer 'no', please set out the full details in an additional appendix. F&HDC will consider your response before making a decision about whether or not to include your tender in its evaluations or to reject it.

<p>Please ensure you have read Appendix C and Section 7 of the Instructions document.</p> <p>Do you accept F&amp;HDC's terms (or the terms as amended by F&amp;HDC in any pre-tender clarifications)?</p>	<p>Yes / No</p>
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## SECTION 5 – DECLARATIONS

TO: The District Council of Folkestone and Hythe (F&HDC)

PROVISION OF: Folkestone Town Centre Activation Consultant Support

REFERENCE: DN689333

On behalf of The means Ltd, I offer to provide the supplies, services and/or works to F&HDC as specified in the tender documents, commencing and continuing for the period specified in those documents (including any option to extend).

The tender documents consist of:

- Invitation to Tender Instructions
- Consultant brief (Appendix A)
- Draft contract terms (Appendix C)
- my organisation's completed Price Schedule (Appendix B)
- this response document
- and any documents I have submitted with this response document (listed on the first page)

If this offer is accepted, we will execute such documents as maybe appropriate in order to create a binding contract between F&HDC and ourselves.

I agree with the Council in legally binding terms to comply with the provisions of confidentiality set out in the **Invitation to Tender Instructions**.

I understand F&HDC is not obliged to accept the tender with the lowest cost or any tender.

I accept that any costs incurred in preparing this tender are at my organisation's own cost and F&HDC will not provide any reimbursement of these costs for unsuccessful or successful tenders.

I declare that to the best of my knowledge the answers submitted and information contained in this document are correct and accurate.

I declare that, upon request and without delay I will provide the certificates or documentary evidence referred to in this document.

I understand that the authority may reject this submission in its entirety if there is a failure to answer all the relevant questions fully, or if false/misleading information or content is provided in any section.

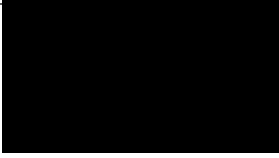

I am aware of the consequences of serious misrepresentation.

I declare our tender has not been calculated by agreement or arrangement with any person other than F&HDC and that the pricing information for our tender has not been shared with any person before the Tender Return Date and not without the written consent of F&HDC.

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I declare no person at my organisation has canvassed or solicited any member, officer, employee or agent of F&HDC in connection with the award of the Contract and that no person will do so before F&HDC completes the evaluation process.

I warrant that I have all requisite authority to sign this tender and confirm that I have complied with all the requirements of the tender process described in the **Invitation to Tender Instructions** and this **Invitation to Tender supplier response document**.

Signature:	
Name & job title:	
Dated:	05/10/2023
For and on behalf of:	The means Ltd

# Invitation to Tender (ITT)

## Supplier Response - Sub-Contractor Information

Additional information for Section 1.1 of the Supplier Response document



## Consultant for Folkestone Town Centre Operating Model and Market Strategy

### September 2023

#### SECTION 1 – INSTRUCTIONS FOR THIS TEMPLATE

If your organisation is bidding in the role of prime contractor and intends to use third parties to deliver more than 50% of the work, please complete the this template.

Please copy and paste Section 2 subsections as many times as needed to list each sub-contractor.

If you do not intend to use sub-contractors or none of the sub-contractors will be delivering a significant portion of the work, you do not need to complete this form.

If you are appointed, F&HDC reserves the right to require a collateral warranty from any sub-contractor(s).

F&HDC also reserves the right to reject the use of any particular sub-contractor. If we do reject a sub-contractor, we will send you the reason(s) in writing. Examples of reasons for rejection include an organisation being banned from entering the premises, financial risk, or criminal prosecutions pending, but there may be other reasons.

## SECTION 2 – DETAILS OF SUB-CONTRACTORS

### 2.1 FOLKESTONE FRINGE

Registered office address:	The Workshop, 32-40 Tontine Street, Folkestone, CT20
Role in providing services / works / supplies	Project management Project co-ordination Communications
Approximate % of the total service / works / supplies	60%
Company registration or charity registration number	09805329
VAT registration number	GB288565052
Type of organisation: <ul style="list-style-type: none"> <li>• public limited company (PLC)</li> <li>• limited company (LTD)</li> <li>• limited liability partnership (LLP)</li> <li>• other partnership</li> <li>• sole trader</li> <li>• third sector (charity)</li> <li>• other (please explain)</li> </ul>	please state which:  Limited Company (LTD)
Is it a Small, Medium or Micro Enterprise (SME)?	Yes

**SCHEDULE 3: PAYMENT SCHEDULE**



**Folkestone - A Brighter Future  
Town Centre Activation Consultant Support  
DN689333**

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 white cells only

<b>PRICE SCHEDULE</b>				
<b>PROJECT STAGE / ACTIVITY</b> please list the activities required to meet this commission	<b>RESOURCE</b> please add the name of the person(s) carrying out the activity	<b>DAILY RATE (£)</b>	<b>DAYS TO COMPLETE</b>	<b>SUBTOTAL (£)</b>
Meetings and Project management	TM Director - James Thomas		2	
Meetings and Project management	TM PM - Susie Barlow		7	
Meetings and Project management	FF PM - Diane Dever		8	
Desk research	TM PM - Susie Barlow		1	
Desk research	FF PM - Diane Dever		1	
Desk research	FF Coord - Lucy Edwards		1	
Desk research	TM Coord - TBC		1	
Walk about	TM PM - Susie Barlow		1	
Walk about	FF PM - Diane Dever		1	
Walk about	TM Coord - TBC		1	
Stakeholder mapping	TM PM - Susie Barlow		1	
Stakeholder mapping	FF PM - Diane Dever		1	
Stakeholder mapping	FF Coord - Charmaine Jacobs		1	
Stakeholder/Tenant engagement	TM PM - Susie Barlow		2	
Stakeholder/Tenant engagement	FF PM - Diane Dever		2	
Stakeholder/Tenant engagement	FF Coord - Jacob Bray		4	

<b>PRICE SCHEDULE</b>				
<b>PROJECT STAGE / ACTIVITY</b> please list the activities required to meet this commission	<b>RESOURCE</b> please add the name of the person(s) carrying out the activity	<b>DAILY RATE (£)</b>	<b>DAYS TO COMPLETE</b>	<b>SUBTOTAL (£)</b>
Draft TC operating model	TM Director - James Thomas		1	
Draft TC operating model	TM PM - Susie Barlow		2	
Draft TC operating model	FF PM - Diane Dever		1	
Draft TC operating model	TM Coord - TBC		1	
Market strategy & options appraisal	TM Director - James Thomas		1	
Market strategy & options appraisal	TM PM - Susie Barlow		2	
Market strategy & options appraisal	FF PM - Diane Dever		1	
Market strategy & options appraisal	FF Technical - Denice Dever		1	
Market strategy & options appraisal	TM Coord - TBC		1	
Infrastructure and public realm activation strategy	TM PM - Susie Barlow		1	
Infrastructure and public realm activation strategy	FF PM - Diane Dever		1	
Test Lab FOLCA scoping	TM PM - Susie Barlow		2	
Test Lab FOLCA scoping	FF PM - Diane Dever		2	
Test Lab FOLCA scoping	FF Coord - Lucy Edwards		2	
Events programme - design & planning	TM PM - Susie Barlow		1	
Events programme - design & planning	FF PM - Diane Dever		2	
Events programme - design & planning	FF Coord - Lucy Edwards		4	
Events programme - design & planning	FF Marketing - Lucy Edwards		1	
Comms strategy & implementation	TM PM - Susie Barlow		1	
Comms strategy & implementation	FF PM - Diane Dever		1	
Comms strategy & implementation	FF Marketing - Lucy Edwards		5	
Comms strategy & implementation	FF Coord - Jacob Bray		2	
Events production/delivery	TM PM - Susie Barlow		3	
Events production/delivery	FF PM - Diane Dever		3	
Events production/delivery	FF Coord - Jacob Bray		5	

<b>PRICE SCHEDULE</b>				
<b>PROJECT STAGE / ACTIVITY</b> please list the activities required to meet this commission	<b>RESOURCE</b> please add the name of the person(s) carrying out the activity	<b>DAILY RATE (£)</b>	<b>DAYS TO COMPLETE</b>	<b>SUBTOTAL (£)</b>
Events production/delivery	FF Coord - Charmaine Jacobs		5	
Events production/delivery	FF Marketing - Lucy Edwards		3	
Events production/delivery	FF Production - TBC		10	
Market improvement plan - implementation	TM PM - Susie Barlow		2	
Market improvement plan - implementation	FF PM - Diane Dever		4	
Market improvement plan - implementation	FF Coord - Jacob Bray		5	
Market improvement plan - implementation	FF Coord - Charmaine Jacobs		5	
Market improvement plan - implementation	FF Marketing - Lucy Edwards		3	
Market improvement plan - implementation	FF Production - TBC		9	
Market improvement plan - implementation	FF Apprentice - TBC		4	
Test Lab implementation	TM PM - Susie Barlow		2	
Test Lab implementation	FF PM - Diane Dever		3	
Test Lab implementation	FF Coord - Jacob Bray		5	
Test Lab implementation	FF Coord - Charmaine Jacobs		2	
Test Lab implementation	FF Coord - Lucy Edwards		3	
Test Lab implementation	FF Production - TBC		10	
Test Lab implementation	FF Apprentice - TBC		10	
Test Lab implementation	TM Coord - TBC		2	
Test Lab implementation	FF Marketing - Lucy Edwards		4	
Test Lab implementation	FF Production - TBC		8	
Evaluation & monitoring	TM PM - Susie Barlow		3	
Evaluation & monitoring	FF PM - Diane Dever		1	
Evaluation & monitoring	FF Coord - Jacob Bray		3	
Evaluation & monitoring	TM Coord - TBC		2	
Evaluation & monitoring	FF Apprentice - TBC		3	

**PRICE SCHEDULE**

<b>PROJECT STAGE / ACTIVITY</b> please list the activities required to meet this commission	<b>RESOURCE</b> please add the name of the person(s) carrying out the activity	<b>DAILY RATE (£)</b>	<b>DAYS TO COMPLETE</b>	<b>SUBTOTAL (£)</b>
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<b>TOTAL (£)</b>	
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#### SCHEDULE 4: PROCESSING PERSONAL DATA

This Schedule shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the Council at its absolute discretion.

The contact details of the Council’s Data Protection Officer are:

Amandeep Khroud,  
 The District Council of Folkestone and Hythe, Civic Centre, Castle Hill Avenue, Folkestone,  
 Kent CT20 2QY.  
 Email: data.protection@folkestone-hythe.gov.uk  
 Tel: 01303 853 526

The contact details of the Consultant’s Data Protection Officer are:

James Thomas, Director, The means  
 Unit 2, 21-25 West End, Llanelli, Carmarthenshire SA15 3DN  
 Email: james.thomas@themeans.co.uk  
 Mobile: 07921 691380

The Processor shall comply with any further written instructions with respect to processing by the Controller.

Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Council is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with Clause 21.2 to 23.15 and for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> <li>• Business contact details of Consultant Personnel,</li> <li>• Business contact details of any directors, officers, employees, agents, consultants and contractors of the Council (excluding the Consultant Personnel) engaged in the performance of the Council’s duties under this Agreement).</li> <li>• Business contact details of local businesses and business owners in Folkestone provided by the</li> </ul>

	<p>Council to the Consultant.</p> <ul style="list-style-type: none"> <li>• Business contact details of local businesses and business owners in Folkestone provided by the Consultant to the Council.</li> <li>• Business contact details of local not-for-profit and owners in Folkestone provided by the Council to the Consultant.</li> <li>• Business contact details of local not-for-profit organisations and owners in Folkestone provided by the Consultant to the Council.</li> </ul>
Duration of the processing	For the duration of this agreement.
Nature and purposes of the processing	<p>The nature of the processing shall be any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose of the processing is to identify and contact stakeholders in the Folkestone town centre regeneration project for consultation regarding the deliverables given in Schedule 1 Consultant's Brief including a market improvement plan and an event management strategy.</p>
Type of Personal Data	name, business telephone number, and business email address
Categories of Data Subject	<ul style="list-style-type: none"> <li>• Council staff</li> <li>• Consultant's Personnel</li> <li>• Business owners and staff</li> <li>• Not-for-profit owners and staff</li> </ul>
Plan for return and destruction of the data once the processing is complete	It is expected data will be kept for no longer than 12 months after the Termination Date.
UNLESS requirement	

under law to preserve that type of data	
Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Agreement	At the Consultant's premises.
Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Agreement against a breach of security (insofar as that breach of security relates to data) or a Personal Data Breach	As detailed in the consultant's ITT response document section 2.2.1.